

1 AN ACT relating to public utilities and declaring an emergency.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) The Public Service Commission shall consist of five (5) members appointed by the*
6 *Governor as follows:*

7 *(a) Two (2) shall be licensed attorneys who have actively practiced law in the*
8 *Commonwealth for at least seven (7) years; and*

9 *(b) Three (3) shall have education or training, and five (5) years of actual*
10 *experience, in one (1) or more of the following fields:*

11 *1. Economics;*

12 *2. Engineering;*

13 *3. Accounting;*

14 *4. Finance;*

15 *5. Utility regulation, operation, or management;*

16 *6. Pipeline or utility infrastructure safety;*

17 *7. Business management; or*

18 *8. Environmental management.*

19 *(2) Appointments and reappointments to the commission shall be subject to*
20 *confirmation by the Senate as provided in KRS 11.160.*

21 *(3) (a) Every four (4) years, the commissioners shall elect a chair from among the*
22 *commissioners, who shall serve a four (4) year term or until his or her term*
23 *expires without reappointment, whichever comes first.*

24 *(b) Members of the commission may serve multiple terms as chair subject to the*
25 *term limitations set forth in subsection (5) of this section.*

26 *(c) The chair shall be the chief executive officer of the commission and shall*
27 *designate one (1) of the commissioners to serve as vice chair to act for the*

1 chair in his or her absence.

2 (d) The chair may designate in writing one (1) or more commissioners or the
3 executive director to act for him or her in the event of his or her absence or
4 inability for any reason to discharge the duties of the position. The designee
5 of the chair shall have all of the duties and powers of the chair for the
6 duration of the designation, except that the executive director shall not
7 serve as a member of the commission on any cases before the commission.

8 (4) Vacancies for unexpired terms shall be filled in the same manner as the original
9 appointments, but the appointee shall hold office only until the end of the
10 unexpired term and shall be subject to confirmation by the Senate as provided in
11 KRS 11.160.

12 (5) Members of the commission shall serve no more than three (3) terms, but any
13 terms or partial terms served prior to the effective date of this Act shall not be
14 counted toward the term limits established by this subsection.

15 (6) After the initial appointments, a member of the commission shall serve for a term
16 of four (4) years and until a successor is appointed and qualified.

17 (7) The members of the commission shall not serve on any other regulatory bodies
18 during their terms on the commission.

19 ➔Section 2. KRS 278.040 is amended to read as follows:

20 (1) (a) The Public Service Commission shall constitute an independent department
21 of state government within the meaning of KRS Chapter 12 and shall be
22 administratively attached to the Energy and Environment Cabinet only for
23 those limited functions and purposes expressly requested by the commission
24 to be performed by the Energy and Environment Cabinet.

25 (b) The commission shall have sole discretion as to which functions shall be
26 deemed necessary for its efficient operation.

27 (c) The commission shall consist of the five (5) commissioners appointed under

1 Section 1 of this Act, an executive director appointed under Section 5 of this
2 Act, and other agents and employees as necessary to carry out the
3 commission's obligations under this chapter.

4 (2) Notwithstanding any provision of law to the contrary:

5 (a) The commission shall conduct all procurements necessary for the
6 performance of its duties in accordance with the procurement procedures
7 outlined in KRS Chapter 45A, this chapter, and the administrative
8 regulations promulgated under this chapter, but the commission shall not
9 be subject to any provision of KRS Chapter 45A that requires the approval
10 of any Finance and Administration Cabinet official for the commission to
11 proceed with any aspect of the procurement process;

12 (b) Upon approval of the commission, the executive director shall be deemed
13 the chief purchasing officer for the purposes of conducting procurements
14 for the commission and shall have all of the authority and responsibility
15 with regard to the commission's procurements as the secretary of the
16 Finance and Administration Cabinet has for procurements under KRS
17 Chapter 45A; and

18 (c) In the bidding and negotiation processes, the executive director, upon
19 approval of the commission, shall perform his or her own bidding and
20 procurement in accordance with the procedures established by KRS Chapter
21 45A.

22 (3) (a) Except as provided in paragraph (b) of this subsection, in any matter to be
23 decided by the commission, the chair of the commission shall assign three
24 (3) commissioners to hear and decide the matter. No more than two (2) of
25 the assigned commissioners shall be of the same political party.

26 (b) In his or her sole discretion, the chair may assign all five (5) commissioners
27 to hear and decide a matter before the commission.

1 (4) (a) Notwithstanding Section 8 of this Act or any provision of KRS Chapter 18A
2 to the contrary, the commission may, in its sole discretion, identify and
3 determine the compensation for categories of its professional employees at
4 the amounts it deems necessary to recruit and retain employees who have
5 the experience, expertise, and education required to perform their job
6 responsibilities with the commission.

7 (b) Noncontractual employees of the commission shall otherwise be subject to
8 the requirements and benefits of KRS Chapter 18A.

9 (5) The commission may engage hearing officers, consultants, and other persons and
10 entities on a contractual basis as needed to assist with the performance of the
11 commission's duties under this chapter and the administrative regulations
12 promulgated thereunder. The scope of responsibilities and duties held by a
13 hearing officer shall be established by the commission by rule.

14 (6) All personal service contracts entered into by the commission shall be subject to
15 review by the Government Contract Review Committee established by KRS
16 45A.705.

17 (7) The ~~Public Service~~ commission shall regulate utilities, ~~and~~ enforce the
18 provisions of this chapter and the rules and administrative regulations
19 promulgated hereunder, and exercise all powers necessary and incidental thereto.

20 The commission shall be a body corporate, with power to sue and be sued in its
21 corporate name. The commission may adopt a seal bearing the name "Public
22 Service Commission of Kentucky," which seal shall be affixed to all writs and
23 official documents, and to such other instruments as the commission directs, and all
24 courts shall take judicial note of the seal.

25 (8)~~(2)~~ The jurisdiction of the commission shall extend to all utilities in this state. The
26 commission shall have exclusive jurisdiction over the regulation of rates and
27 service of utilities, but with that exception nothing in this chapter is intended to

1 limit or restrict the police jurisdiction, contract rights or powers of cities or political
2 subdivisions.

3 ~~(9)~~~~(3)~~ The commission may promulgate~~[adopt,]~~ in accordance~~[keeping]~~ with KRS
4 Chapter 13A~~[,]~~ reasonable administrative regulations to implement the provisions
5 of KRS Chapter 278 and investigate the methods and practices of utilities to require
6 them to conform to the laws of this state, and to all reasonable rules, regulations and
7 orders of the commission not contrary to law.

8 **(10) The commission shall not be subject to reorganization under KRS Chapter 12.**

9 ➔Section 3. KRS 278.060 is amended to read as follows:

- 10 (1) Each commissioner shall be a resident and qualified voter of this state, not less than
11 twenty-five (25) years of age at the time of his or her appointment and
12 qualification, and shall have resided in this state for at least three (3) years prior to
13 his or her appointment and qualification. Each commissioner shall take and
14 subscribe to the constitutional oath of office, which shall be recorded in the office
15 of the Secretary of State.
- 16 (2) No person shall be appointed to or hold the office of commissioner who holds, or
17 whose immediate family member holds, any official relationship to any utility, or
18 who owns any stocks or bonds thereof, or who has any pecuniary interest therein,
19 except for a pension or retirement savings account if no contributions have been
20 made to it for at least one (1) year prior to the appointment.
- 21 (3) No commissioner shall receive any rebate, pass, percentage of contract or other
22 thing of value from any utility.
- 23 (4) In addition to the restrictions on members of the commission set forth in Section 1
24 of this Act~~[KRS 278.050(1)]~~, no commissioner shall engage in any occupation or
25 business inconsistent with his or her duties as such commissioner.
- 26 (5) If any commissioner becomes a member of any political party committee, his or her
27 office as commissioner shall be thereby vacated.}

1 ~~(6) In making appointments to the commission, the Governor shall consider the various~~
 2 ~~kinds of expertise relevant to utility regulation and the varied interests to be~~
 3 ~~protected by the commission, including those of consumers as well as utility~~
 4 ~~investors, and no more than two (2) members shall be of the same occupation or~~
 5 ~~profession.]~~

6 ➔Section 4. KRS 278.070 is amended to read as follows:

7 **(1)** The Governor may remove any commissioner for cause, after giving him **or her** a
 8 copy of the charges against him **or her** and an opportunity of being publicly heard
 9 in person or by counsel in his **or her** own defense upon not less than ten (10) days'
 10 notice.

11 **(2)** If a commissioner is removed, the Governor shall file in the office of the Secretary
 12 of State a complete statement of all charges against the commissioner and his **or her**
 13 findings thereon, and a complete record of the proceedings.

14 **(3)** Any commissioner so removed may bring action in the proper court to determine
 15 whether or not he **or she** was legally removed in accordance with this section.

16 ➔Section 5. KRS 278.100 is amended to read as follows:

17 **(1)** The commission shall **have the sole authority to** appoint an executive director, **by a**
 18 **majority vote of the members of the commission and subject to confirmation by**
 19 **the Senate pursuant to KRS 11.160,** who shall hold office **at the**~~[during its]~~
 20 pleasure **of the commission** and shall devote his **or her** entire time to the duties of
 21 **the**~~[his]~~ office.

22 **(2)** The executive director shall be selected on the basis of experience and training
 23 demonstrating capacity to deal with the problems of management and governmental
 24 regulation and knowledge relatable to utility regulation.

25 **(3)** The executive director shall be the chief administrative officer for the commission
 26 and shall be responsible for implementing the programs, directing the staff, and
 27 maintaining the official records of commission proceedings, including all approved

1 orders.

2 ➔Section 6. KRS 278.120 is amended to read as follows:

3 (1) ~~The chairman and the other two (2) members of the commission shall be paid a~~
4 ~~salary fixed under KRS 64.640 to be paid monthly.~~

5 ~~(2)~~ **Notwithstanding Section 8 of this Act or any provision of KRS Chapter 18A to the**
6 **contrary**, the executive director of the commission shall be paid a salary to be fixed
7 **solely** by the commission~~, with the approval of the Governor~~.

8 ~~(2)~~~~(3)~~ The commissioners, the executive director, and employees of the commission
9 are entitled to all expenses, including hotel bills, incurred in traveling on business
10 of the commission.

11 ~~(3)~~~~(4)~~ The salaries and expenses provided for by this section, and all other expenses
12 of the commission incurred in the administration of this chapter, shall be paid out of
13 appropriations as provided by law out of the general expenditure fund.

14 ➔Section 7. KRS 278.702 is amended to read as follows:

15 (1) There is hereby established the Kentucky State Board on Electric Generation and
16 Transmission Siting. The board shall be composed of **nine (9)**~~seven (7)~~ members
17 as follows:

18 (a) The **five (5)**~~three (3)~~ members of the Kentucky Public Service Commission;

19 (b) The secretary of the Energy and Environment Cabinet or the secretary's
20 designee;

21 (c) The secretary of the Cabinet for Economic Development or the secretary's
22 designee;

23 (d) 1. If the facility subject to board approval is proposed to be located in one
24 (1) county, two (2) ad hoc public members to be appointed by the
25 Governor from a county where a facility subject to board approval is
26 proposed to be located:

27 a. One (1) of the ad hoc public members shall be the chairman of the

1 planning commission with jurisdiction over an area in which a
2 facility subject to board approval is proposed to be located. If the
3 proposed location is not within a jurisdiction with a planning
4 commission, then the Governor shall appoint either the county
5 judge/executive of a county that contains the proposed location of
6 the facility or the mayor of a city, if the facility is proposed to be
7 within a city; and

8 b. One (1) of the ad hoc public members shall be appointed by the
9 Governor and shall be a resident of the county in which the facility
10 is proposed to be located.

11 2. If the facility subject to board approval is proposed to be located in more
12 than one (1) county, two (2) ad hoc public members to be chosen as
13 follows:

14 a. One (1) ad hoc public member shall be the county judge/executive
15 of a county in which the facility is proposed to be located, to be
16 chosen by majority vote of the county judge/executives of the
17 counties in which the facility is proposed to be located; and

18 b. One (1) ad hoc public member shall be a resident of a county in
19 which the facility is proposed to be located, and shall be appointed
20 by the Governor.

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

24 3. Ad hoc public members appointed to the board **and their immediate**
25 **family members** shall have no direct financial interest in the facility
26 proposed to be constructed **and shall be subject to the executive branch**
27 **code of ethics established in KRS Chapter 11A.**

- 1 (2) The term of service for the ad hoc members of the board shall continue until the
2 merchant electric generating facility for which they were appointed has been
3 constructed and begins generating electricity for sale or the construction certificate
4 expires. The remaining members of the board shall be permanent members.
- 5 (3) The board shall be attached to the Public Service Commission for administrative
6 purposes. The commission staff shall serve as permanent administrative staff for the
7 board. The members of the board identified in subsection (1)(a) to (d) of this
8 section shall promulgate administrative regulations in accordance with KRS
9 Chapter 13A to implement KRS 278.700 to 278.716.
- 10 (4) No member of the board shall receive any salary or fee for service on the board or
11 shall have any financial interest in any facility the application for which comes
12 before the board, but each member shall be reimbursed for actual travel and
13 expenses directly related to service on the board.
- 14 (5) The chair~~chairman~~ of the Public Service Commission shall be the
15 chair~~chairman~~ of the board. The chair~~chairman~~ shall designate one (1) member
16 of the board as vice chair~~chairman~~. A majority of the members of the board shall
17 constitute a quorum for the transaction of business. No vacancy on the board shall
18 impair the right of the remaining members to exercise all of the powers of the
19 board. The board shall convene upon the call of the chair~~chairman~~.
- 20 ➔Section 8. KRS 64.640 is amended to read as follows:
- 21 (1) Except as otherwise provided in subsection (2) of this section, and excepting
22 officers elected by popular vote, employees of the General Assembly, including
23 employees of the Legislative Research Commission, members of boards and
24 commissions, those officers and employees of Kentucky Educational Television
25 exempt from classified service as provided in KRS 18A.115, presidents and
26 employees of the state universities and the state colleges, officers employed by the
27 Department of Kentucky State Police under KRS Chapter 16, employees whose

1 compensation is set by the Public Service Commission under subsection (4) of
2 Section 2 of this Act and subsection (1) of Section 6 of this Act, and persons
3 employed by the commissioner of parks on a temporary basis under KRS 148.026,
4 the Personnel Cabinet shall prepare schedules of compensation, payable out of the
5 State Treasury, with a minimum salary rate, and other salary rates as are deemed
6 necessary or advisable, for the office or position of employment of every state
7 officer and employee, including specifically the offices and positions of
8 employment in every constitutional administrative department, statutory
9 administrative department, independent agency, board, commission, or other unit of
10 state government. The language of any statute empowering a board, commission,
11 authority, or other administrative body for which the Personnel Cabinet provides
12 personnel and payroll services, except for any board governing any of the Kentucky
13 Retirement Systems, the County Employees Retirement System, the Kentucky
14 Public Pensions Authority, the Kentucky Higher Education Assistance Authority,
15 the Kentucky Authority for Educational Television, or the Council on
16 Postsecondary Education, to establish, set, or approve the salaries of its
17 administrative head and other employees to the contrary notwithstanding, the
18 establishment or setting of salaries for administrative heads or other employees
19 shall be subject to the approval of the secretary of the Personnel Cabinet. The
20 schedules and rates shall be based upon studies of the duties and responsibilities of
21 the offices and positions and upon a comparison with rates being paid for similar or
22 comparable services elsewhere, and in the preparation of such schedules, the
23 Personnel Cabinet shall ascertain and record the duties, responsibilities, and
24 authority pertaining to the various offices and positions in the state service, and
25 classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110,
26 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become
27 effective until it has been approved by the Governor by executive order.

1 (2) The Governor shall set the compensation payable out of the State Treasury to each
 2 officer or position in the state service, which officer or position heads a statutory
 3 administrative department, independent agency, or other unit of state government,
 4 except for those excluded under subsection (1) of this section. Such compensation
 5 shall be based upon studies of the duties and responsibilities and classification of
 6 the positions by the Governor and upon a comparison with compensation being paid
 7 for similar or comparable services elsewhere, provided, however, such
 8 compensation shall not exceed the total taxable compensation of the Governor
 9 derived from state sources, the provisions of KRS 64.660 to the contrary
 10 notwithstanding. For the purposes of this section, the total taxable compensation of
 11 the Governor from state sources shall include the amount provided for
 12 compensation to the Governor under KRS 64.480 and any benefits or discretionary
 13 spending accounts that are imputed as taxable income for federal tax purposes.

14 (3) The compensation payable out of the State Treasury to officers and employees
 15 subordinate to any office or position covered by subsection (2) of this section shall
 16 not exceed the maximum rate established pursuant to subsection (2) of this section
 17 for such office or position, except with respect to physicians as provided in KRS
 18 64.655 and employees of the Public Service Commission ***not otherwise exempt***
 19 ***from the requirements of this section under subsection (4) of Section 2 of this Act***
 20 ***and subsection (1) of Section 6 of this Act***~~[of Kentucky]~~ whose compensation shall
 21 be fixed, within constitutional limits, by the Personnel Cabinet with the approval of
 22 the Governor as provided in subsection (1) of this section.

23 (4) Nothing in this section shall preclude the allowance of maintenance to officers and
 24 employees of the state.

25 ➔Section 9. KRS 160.617 is amended to read as follows:

26 Notwithstanding KRS 278.040~~(8)~~~~(2)~~, or any other provision to the contrary, any utility,
 27 cable service provider, or satellite broadcast and wireless cable service provider required

1 to pay the tax authorized by KRS 160.613 or 160.614 may increase its rates in any school
2 district in which it is required to pay the school tax by the amount of the school tax
3 imposed, up to three percent (3%). Any utility, cable service provider, or satellite t
4 rnbroadcast and wireless cable service provider so increasing its rates shall separately state
5 on the bills sent to its customers the amount of the increase and shall identify the amount
6 as: "Rate increase for school tax."

7 ➔Section 10. The following KRS section is repealed:

8 278.050 Membership of Public Service Commission -- Appointment -- Terms --
9 Chairman -- Vacancies.

10 ➔Section 11. (1) Within thirty days of the effective date of this Act, the
11 Governor shall appoint two members of the Public Service Commission for terms
12 expiring July 1, 2028.

13 (2) All current members of the Public Service Commission on the effective date
14 of this Act may serve out the remainder of their terms and any subsequent terms upon
15 reappointment without being subject to the qualifications and appointment limitations in
16 subsection (1) of Section 1 of this Act, but they shall be subject to subsections (2) to (7)
17 of Section 1 of this Act.

18 (3) On the effective date of this Act, copies of any records, files, or documents,
19 including legal documents or memoranda, associated with functions of the Public Service
20 Commission that were previously performed by the Energy and Environment Cabinet but
21 for which it is no longer deemed responsible, shall be transferred or transmitted to the
22 Public Service Commission.

23 ➔Section 12. Whereas it is critical that changes to the organization, membership,
24 and authority of the Public Service Commission be enacted as soon as possible to apply
25 to any membership vacancies or matters before the commission to which the changes
26 may apply, an emergency is declared to exist, and this Act takes effect upon its passage
27 and approval by the Governor or upon its otherwise becoming a law.