

1       AN ACT relating to eminent domain and declaring an emergency.

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

3           ➔Section 1. KRS 382.850 is amended to read as follows:

4       (1) A conservation easement shall not be transferred by owners of property in which  
5           there are outstanding subsurface rights without the prior written consent of the  
6           owners of the subsurface rights.

7       (2) A conservation easement shall not operate to limit, preclude, delete, or require  
8           waivers for the conduct of coal mining operations, including the transportation of  
9           coal, upon any part or all of adjacent or surrounding properties; and shall not  
10           operate to impair or restrict any right or power of eminent domain created by  
11           statute, and all such rights and powers shall be exercisable as if the conservation  
12           easement did not exist.

13       (3) (a) Notwithstanding subsection (2) of this section, in a condemnation action  
14           under the Eminent Domain Act of Kentucky, KRS 416.540 to 416.670,  
15           involving privately owned property that is subject to a conservation  
16           easement, the condemnor shall provide a written report to the court  
17           justifying the condemnation of the specific property at issue due to the lack  
18           of feasible alternative locations to satisfy the purposes of the project unless  
19           the condemnation action:

20           1. Is initiated by a city, municipal utility, investor-owned utility, or utility  
21           cooperative; and

22           2. Involves easements for utilities that do not interfere with agricultural  
23           operations or result in a taking of agricultural infrastructure.

24       (b) If the court, in its discretion, determines that the report does not  
25           demonstrate a lack of feasible alternative locations to satisfy the purposes of  
26           the project, the condemnation action shall be dismissed in accordance with  
27           subsection (4) of Section 5 of this Act.

1            ➔Section 2. KRS 262.850 is amended to read as follows:

2    (1) This section shall be known as "the Agricultural District and Conservation Act."

3    (2) It is the policy of the state to conserve, protect, and to encourage development and  
4        improvement of its agricultural lands for the production of food and other  
5        agricultural products. It is also the policy of this state to conserve and protect the  
6        agricultural land base as a valuable natural resource which is both fragile and finite.  
7        The pressure imposed by urban expansion, transportation systems, water  
8        impoundments, surface mining of mineral resources, utility rights-of-way, and  
9        industrial development has continually reduced the land resource base necessary to  
10        sufficiently produce food and fiber for our future needs. It is the purpose of this  
11        section to provide a means by which agricultural land may be protected and  
12        enhanced as a viable segment of the state's economy and as an important resource.

13    (3) The local governing administrative body for an agricultural district shall be the  
14        conservation district board of supervisors. The Soil and Water Conservation  
15        Commission shall be responsible for statewide administration of the agricultural  
16        district program and shall have sole authority to certify or deny agricultural district  
17        petitions. The commission may apply for assistance and funds from the Federal  
18        Farmland Protection Act of 1981, Pub. L. No. 97-377, which may be available for  
19        the development of the agricultural district program and may accept easements as  
20        provided in KRS 65.410 to 65.480.

21    (4) Any owner or owners of land may submit a petition to the local conservation  
22        district board of supervisors requesting the creation of an agricultural district within  
23        the county. The petition shall include a description of the proposed area, description  
24        of each land parcel, location of the proposed boundaries, petitioners' names and  
25        addresses, adjacent landowners' names and addresses, and other pertinent  
26        information as required in the petition application. The boundary of an agricultural  
27        district shall be contiguous. No land shall be included in an agricultural district

1 without the consent of the owner.

2 (5) Upon receipt of a petition, the local conservation district board of supervisors shall  
3 notify the fiscal court and any local or regional planning or zoning body, if any, of  
4 the proposed agricultural district, and shall notify each city that is located less than  
5 one (1) mile from the boundaries of the proposed agricultural district, by sending a  
6 copy of the petition and accompanying materials to that body.

7 (6) The following factors shall be considered by the local conservation district board of  
8 supervisors and the Soil and Water Conservation Commission when considering the  
9 formation of any agricultural district:

10 (a) The capability of the land to support agricultural production, as indicated by:  
11 soil, climate, topography or other natural factors;

12 (b) The viability of active farmlands, as indicated by[:]  
13 markets for farm  
14 products, the extent and nature of farm improvements, the present status of  
15 farming, and anticipated trends in agricultural economic conditions and  
technology;

16 (c) That the proposed agricultural district meets the minimum size limit of fifty  
17 (50) contiguous acres, unless the local conservation district board and the Soil  
18 and Water Conservation Commission allow fewer than fifty (50) contiguous  
19 acres if the proposed area meets a minimum annual production performance  
20 established by the district board and approved by the commission;

21 (d) County development patterns and needs and the location of the district in  
22 relation to any urban development boundaries within the county;

23 (e) Any matter which may be relevant to evaluate the petition; and

24 (f) Whether an application is from more than one (1) farm owner, in which case a  
25 preference shall be given to the application.

26 (7) The local soil and water conservation district board of supervisors shall review the  
27 petition application and submit a recommendation to the Soil and Water

1        Conservation Commission within one hundred (100) days of receipt. The local  
2        conservation district recommendation shall be submitted to the commission in the  
3        form of approval, approval with modifications, or denial of the petition  
4        accompanied by justification for such a denial.

5        (8) The Soil and Water Conservation Commission shall review the recommendation of  
6        the district board of supervisors and certify or deny the agricultural district's  
7        petition within one hundred (100) days of receipt.

8        (9) Upon the approval of a petition by the Soil and Water Conservation Commission,  
9        the commission shall notify the area development district in which the agricultural  
10       district will lie, the local county clerk, the clerk of each city that is located less than  
11       one (1) mile from the boundaries of the approved agricultural district, and the  
12       secretary of the Governor's **Executive** Cabinet by sending a description of the  
13       boundaries and the names and addresses of the property owners within the district.

14       (10) Land within the boundary of an agricultural district shall not be annexed.

15       (11) The owners of land within the boundary of an agricultural district shall be exempt  
16       under KRS 74.177 from any assessment authorized for the extension of water  
17       service lines until the land is removed from the district and developed for  
18       nonagricultural use.

19       (12) Any member, or any successor heir of the member, of an agricultural district may  
20       withdraw his or her property from the district upon notifying the local conservation  
21       district board of supervisors in writing. The removal of the property from the  
22       agricultural district shall be effective immediately upon the district board of  
23       supervisors' receipt of the written notification, at which time the district board of  
24       supervisors shall remove the property from the agricultural district and shall  
25       immediately provide written notice of the changed boundaries to ~~the~~ those entities  
26       listed in subsection (9) of this section.

27       (13) It shall be the policy of all state agencies to support the formation of agricultural

1 districts as a means of preserving Kentucky's farmlands and to mitigate the impact  
2 of their present and future plans and programs upon the continued agricultural use  
3 of land within an agricultural district.

4 (14) Agricultural districts shall be comprised only of agricultural land as defined in KRS  
5 132.010.

6 (15) An agricultural district shall be established for five (5) years with a review to be  
7 made by the local soil and water conservation district board of supervisors at the  
8 end of the five-year period and every five (5) years thereafter. Each owner of land  
9 shall agree to remain in the district for a five (5) year period, unless a member  
10 elects to withdraw his or her property pursuant to subsection (12) of this section,  
11 which is renewable at the end of the five (5) years. However, the board shall make a  
12 review any time upon the written request of a local government which demonstrates  
13 that the review is necessary in order to consider development needs of the local  
14 government. The board shall consider whether the continued existence of the  
15 district is justified, any adjustments which may be necessary due to urban or county  
16 development, and other factors the board finds relevant. The board shall revise the  
17 district as necessary based on the review and subject to approval of the State Soil  
18 and Water Conservation Commission. Before the state commission takes final  
19 action, all interested parties shall be given the opportunity to request the state  
20 commission to amend or overturn the local board's decision.

21 (16) The withdrawal of a member from a district reducing the remaining acreage of  
22 agricultural district land to less than fifty (50) acres or resulting in the remaining  
23 land being noncontiguous shall not cause the decertification of the district. The  
24 local district board of supervisors may consider a dissolution of the agricultural  
25 district if the withdrawal results in the remaining property within the agricultural  
26 district no longer meeting the definition of agricultural land as defined in KRS  
27 132.010.

1 (17) (a) Any member of an agricultural district who has received a summons of  
2 condemnation proceedings being instituted concerning the member's land  
3 located in the district may request the local soil and water conservation district  
4 board of supervisors to hold a public hearing on the proposed taking of land.  
5 ~~However a hearing under this section shall not be held if the petitioner in the~~  
6 ~~condemnation proceeding is a utility as defined in KRS 278.010(3) and~~  
7 ~~obtained a certificate of convenience and necessity as required by KRS~~  
8 ~~278.020(1).]~~

9 (b) In a condemnation action under the Eminent Domain Act of Kentucky,  
10 KRS 416.540 to 416.670, involving privately owned property that is located  
11 in an agricultural district, the condemnor shall provide a written report to  
12 the court justifying the condemnation of the specific property at issue due to  
13 the lack of feasible alternative locations to satisfy the purposes of the project  
14 unless the condemnation action:  
15 1. Is initiated by a city, municipal utility, investor-owned utility, or utility  
16 cooperative; and  
17 2. Involves easements for utilities that do not interfere with agricultural  
18 operations or result in a taking of agricultural infrastructure.

19 (c) If the court, in its discretion, determines that the report under paragraph (b)  
20 of this subsection is required and does not demonstrate a lack of feasible  
21 alternative locations to satisfy the purposes of the project, the condemnation  
22 action shall be dismissed in accordance with subsection (4) of Section 5 of  
23 this Act.

24 (18) (a) The board shall notify the local property valuation administrator of the farms  
25 which belong to an agricultural district and whenever a farm is withdrawn  
26 from a district. The board shall also inform all members of a district of the  
27 right to have their land assessed by the local property valuation administrator

1 at the land's agricultural use value and shall offer advice and assistance on  
2 obtaining such an assessment.

3 (b) The board shall also notify the local property valuation administrator  
4 whenever a farm is released or withdrawn from an agricultural district.

5 (19) The board may allow an amendment to an existing certified agricultural district if  
6 approved by the commission.

7 ➔Section 3. KRS 416.550 is amended to read as follows:

8    **(1)** Whenever any condemnor cannot, by agreement with the owner thereof, acquire the  
9        property right, privileges or easements needed for any of the uses or purposes for  
10      which the condemnor is authorized by law, to exercise its right of eminent domain,  
11      the condemnor may condemn such property, property rights, privileges or  
12      easements pursuant to the provisions of KRS **416.540**~~416.550~~ to 416.670.

13 (2) *In obtaining an agreement under subsection (1) of this section:*

14                   (a) *The condemnor and its employees or agents shall not make any materially*  
15                   *false statements or engage in intimidating or misleading negotiating tactics;*

16                   **(b) Any offer for the purchase of property shall be in writing and delivered to**  
17                   ***the property owner via:***

18                   1. *Certified mail, return receipt requested; or*

19           2. Hand delivery, verified by government-issued identification and  
20            *accompanying by the signature of the property owner; and*

25                   **b. If the property owner refuses to take delivery of the initial offer**  
26                   **for purchase under paragraph (b) of this subsection, the**  
27                   **independent appraisal period shall be reduced to thirty (30) days**

from the date of the refusal. The condemnor shall certify the refusal in a sworn affidavit.

2. The condemnor and property owner may continue to negotiate following the initial offer for the purchase of property. Subsequent offers following negotiation between the property owner and the condemnor shall not be subject to the independent appraisal period described in subparagraph 1. of this paragraph.

3. The condemnor shall not file a petition for the initiation of a condemnation action until after the independent appraisal period described in subparagraph 1. of this paragraph has expired.

A violation of this subsection shall result in a dismissal of the condemnation action with prejudice pursuant to subsection (4) of Section 5 of this Act, and the condemnor shall be liable to the property owner for reasonable attorney's fees in the action. The condemnor shall not initiate a subsequent condemnation action with respect to the same property.

16 (3) It is not a prerequisite to an action to attempt to agree with an owner who is  
17 unknown or who, after reasonable effort, cannot be found within the state or with an  
18 owner who is under a disability.

19 ➔Section 4. KRS 416.560 is amended to read as follows:

20 (1) Notwithstanding any other provision of [the] law, a department, instrumentality or  
21 agency of a consolidated local government, city, county, or urban-county  
22 government, other than a waterworks corporation the capital stock of which is  
23 wholly owned by a city of the first class or a consolidated local government, having  
24 a right of eminent domain under other statutes shall exercise such right only by  
25 requesting the governing body of the consolidated local government, city, county,  
26 or urban-county **government** to institute condemnation proceedings on its behalf. If  
27 the governing body of the consolidated local government, city, county, or urban-

1 county **government** agrees, it shall institute **condemnation**[such] proceedings under  
2 KRS 416.570, and all costs involved in the condemnation shall be borne by the  
3 department, instrumentality, or agency requesting the condemnation.

4 (2) If any department, instrumentality, or agency of a consolidated local government,  
5 city, county, or urban-county government, other than a waterworks corporation the  
6 capital stock of which is wholly owned by a city of the first class or a consolidated  
7 local government, operates in more than one (1) governmental unit, it shall request  
8 the governing body of the consolidated local government, city, county, or urban-  
9 county government wherein the largest part of the individual tract of the property  
10 sought to be condemned lies, to institute condemnation proceedings on its behalf.

11 (3) A department, instrumentality, or agency of the Commonwealth of Kentucky, other  
12 than the Transportation Cabinet and local boards of education, having a right of  
13 eminent domain under other statutes shall exercise **that**[such] right only by  
14 requesting the Finance and Administration Cabinet to institute condemnation  
15 proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall  
16 institute such proceedings under KRS 416.570, and all costs involved in the  
17 condemnation shall be borne by the department, instrumentality, or agency  
18 requesting the condemnation.

19 (4) **(a)** Prior to the filing of the petition to condemn, the condemnor or its employees  
20 or agents shall have the right to enter upon any land or improvement which it  
21 has the power to condemn, in order to make studies, surveys, tests, sounding,  
22 and appraisals, provided that the owner of the land or the party in whose name  
23 the property is assessed has been notified **in accordance with paragraph (b)**  
**of this subsection no later than** ten (10) days prior to entry on the property.

24 **(b) Notification under paragraph (a) of this subsection shall:**

25 **1. Be delivered to the property owner by:**

26 **a. Certified mail, return receipt requested, to the last known**

address of the property owner listed on the real property tax rolls  
of the county; or

b. Hand delivery to the property owner, verified by government-issued identification and accompanied by the signature of the property owner; and

**2. Include the following information:**

a. That all or a portion of the property is necessary for a public project;

**b. The nature of the project for which the property is considered necessary and the parcel designation of the property to be acquired, provided that if disclosure of specific project details is restricted by a legally binding nondisclosure agreement entered into in connection with an economic development project, the condemnor may describe the project in general terms sufficient to identify the public purpose without disclosing confidential or proprietary information;**

*c. A copy of the provision of law granting the condemnor the power of eminent domain;*

d. The estimated timeline for completion of the portion of the project for which the property is to be taken;

e. That, within fifteen (15) business days after receipt of a request by the property owner, the condemnor will provide copies, to the extent prepared, of:

*i. Right-of-way maps or other documents that depict the proposed taking; and*

*ii. Nonconfidential construction plans that depict project improvements to be constructed on the property taken and*

improvements to be constructed adjacent to the remaining property, including but not limited to plan, profile, cross-section, drainage, and pavement marking sheets, and driveway connection detail;

- f. That the property owner may obtain an independent appraisal of the property as described in subsection (2) of Section 3 of this Act; and
- g. That the property owner has the right to request one (1) public meeting under subsection (6)(a) of this section.

(c) Surveys and appraisals conducted under paragraph (a) of this subsection  
shall be:

1. Conducted using only up-to-date data; and
2. Provided to the property owner within fifteen (15) days of completion.

**(d)** Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or the court may refer the matter to commissioners to ascertain and assess the damages sustained by the condemnee, which award shall be subject to appeal.

(5) The condemnor shall notify the property owner of a material change to the nature of the project disclosed under subsection (4)(b)2. of this section via:

(a) Certified mail, return receipt requested; or

(b) Hand delivery, verified by government-issued identification and

accompanied by the signature of the property owner;

within fifteen (15) days of the discovery of the change.

(6) (a) 1. After receiving notification under subsection (4)(b) or (5) of this section, the property owner may, within thirty (30) days of receipt, petition his or her local legislative body as defined in KRS 65.410 to

1                   request a public meeting regarding the proposed taking, provided a  
2                   public meeting regarding the proposed taking, of which the property  
3                   owner was notified, has not previously been held. The property owner  
4                   may waive his or her right to a public meeting in writing.

5                   2. The meeting shall be held within thirty (30) days of the request, and  
6                   the local legislative body shall send notice to the condemnor no less  
7                   than ten (10) days prior to the meeting. The condemnor shall attend  
8                   the meeting.

9                   (b) Failure to provide notification under subsection (4)(b) or (5) of this section  
10                   shall result in a dismissal of the condemnation action pursuant to  
11                   subsection (4) of Section 5 of this Act.

12                   ➔ Section 5. KRS 416.610 is amended to read as follows:

13                   (1) After the owner has been summoned twenty (20) days, the court shall examine the  
14                   report of the commissioners to determine whether it conforms to the provisions of  
15                   KRS 416.580. If the report of the commissioners is not in the proper form, the  
16                   court shall require the commissioners to make such corrections as are necessary.

17                   (2) If no answer or other pleading is filed by the owner or owners putting in issue the  
18                   right of the petitioner to condemn the property or the use and occupation of the  
19                   property[thereof] sought to be condemned, the court shall enter an interlocutory  
20                   judgment which shall contain, in substance:

21                   (a) A finding that the petitioner has the right, under the provisions of KRS  
22                   416.540[416.550] to 416.670 and other applicable law to condemn the  
23                   property or the use and occupation of the property[thereof];

24                   (b) A finding that the report of the commissioners conforms to the provisions of  
25                   KRS 416.580;

26                   (c) An authorization to take possession of the property for the purposes and under  
27                   the conditions and limitations, if any, set forth in the petition upon payment to

1 the owner or to the clerk of the court the amount of the compensation awarded  
2 by the commissioners;

3 (d) Proper provision for the conveyance of the title to the land and material, to the  
4 extent condemned, as adjudged therein in the event no exception is taken as  
5 provided in KRS 416.620(1); **and**

6        (e) In cases where only a portion of the property has been condemned, a  
7        requirement that the condemnor take appropriate measures to ensure  
8        reasonable, direct access to the property for the use and enjoyment of the  
9        owner for the duration of the on-site work for the project.

10 (3) Any exception from the[such] interlocutory judgment by either party or both parties  
11 shall be confined solely to exceptions to the amount of compensation awarded by  
12 the commissioners.

13 (4) If the owner has filed an answer or pleading putting in issue the right of the  
14 petitioner to condemn the property or use and occupation thereof sought to be  
15 condemned, the court shall, without intervention of a jury, proceed forthwith to  
16 hear and determine whether or not the petitioner has that[such] right. If the court  
17 determines that petitioner has condemnation[such] rights, an interlocutory  
18 judgment, as provided for in subsection (2) of this section, shall be entered. If the  
19 court determines that petitioner does not have that[such] right, it shall enter a final  
20 judgment which shall contain, in substance:

21 (a) A finding that the report of the commissioners conforms to [the provisions of  
22 ]KRS 416.580;

23 (b) A finding that the petitioner is not authorized to condemn the property or the  
24 use and occupation of the property[thereof] for the purposes and under the  
25 conditions and limitations set forth in the petition, stating the particular  
26 ground or grounds on which the petitioner is not so authorized;

27 (c) An order dismissing the petition and directing the petitioner to pay all costs.

1            ➔Section 6. KRS 416.660 is amended to read as follows:

2        (1) In all actions for the condemnation of lands under the provisions of KRS  
3        416.540~~416.550~~ to 416.670, except temporary easements, there shall be awarded  
4        to the landowners as compensation ~~[such]~~a sum that~~[as]~~ will fairly represent the  
5        difference between the fair market value of the entire tract, including  
6        improvements existing at the time of the filing of the action, all or a portion of  
7        which is sought to be condemned, immediately before the taking and the fair market  
8        value of the remainder ~~[thereof]~~immediately after the taking, including in the  
9        remainder all rights which the landowner may retain in the lands sought to be  
10       condemned where less than the fee simple interest ~~[therein]~~is taken, together with  
11       the fair rental value of any temporary easements sought to be condemned.

12       (2) Any change in the fair market value prior to the date of condemnation which the  
13       condemnor or condemnee establishes was substantially due to the general  
14       knowledge of the imminence of condemnation or the construction of the project  
15       shall be disregarded in determining fair market value. The taking date for valuation  
16       purposes shall be either the date the condemnor takes the land, or the date of the  
17       trial of the issue of just compensation, whichever occurs first.

18       (3) The value of agricultural infrastructure improvements, including but not limited  
19       to drainage tile, water systems, livestock fencing, and permanent on-farm  
20       structures, shall be considered in determining the fair market value of property  
21       actively used for farm or agricultural purposes.

22            ➔Section 7. KRS 416.570 is amended to read as follows:

23        Except as otherwise provided in KRS 416.560, a condemnor seeking to condemn  
24        property or the use and occupation thereof, shall file a verified petition in the Circuit  
25        Court of the county in which all or the greater portion of the property sought to be  
26        condemned is located, which petition shall state that it is filed under the provisions of  
27        KRS 416.540~~416.550~~ to 416.670 and shall contain, in substance:

- 1     (1) Allegations sufficient to show that the petitioner is entitled, under the provisions of  
2                   applicable law, to exercise the right of eminent domain and to condemn the  
3                   property, or the use and occupation thereof, sought to be taken in such proceedings;
- 4     (2) A particular description of the property and the use and occupation thereof sought  
5                   to be condemned; and
- 6     (3) An application to the court to appoint commissioners to award the amount of  
7                   compensation the owner of the property sought to be condemned is entitled to  
8                   receive therefor.

9                   ➔Section 8. KRS 416.600 is amended to read as follows:

10       Any answer or other pleading filed by the owner in response to the summons shall be  
11       filed on or before the twenty (20) days after date of service and shall be confined solely  
12       to the question of the right of the petitioner to condemn the property sought to be  
13       condemned, but without prejudice to the owner's right to except from the amount of the  
14       compensation awarded in the manner provided in KRS 416.540~~416.550~~ to 416.670.

15                   ➔Section 9. KRS 416.630 is amended to read as follows:

16       All money paid into court or paid or transferred to the clerk of a court under the  
17       provisions of KRS 416.540~~416.550~~ to 416.670 shall be received by the clerk of the  
18       court and held subject to the order of the court, for which the clerk and his sureties on his  
19       official bond shall be responsible to the persons entitled thereto.

20                   ➔Section 10. KRS 416.640 is amended to read as follows:

21       Where there are conflicting claimants to the land sought to be condemned and all such  
22       parties are before the court, each claimant, for the purposes of the condemnation  
23       proceeding only, shall be deemed to be an owner, and the procedure for the  
24       condemnation of the land shall be as provided in KRS 416.540~~416.550~~ to 416.670  
25       except that, before the condemnor shall be entitled to take possession of the land, it shall  
26       be required to pay the compensation awarded therein to the Circuit Court clerk to be held  
27       for the benefit of, and paid over to such persons as may thereafter be determined to be

1 entitled to receive it. In such cases, the claimants may have their rights determined in a  
2 separate action, but the filing of such action or its pendency shall in no wise stay or delay  
3 said condemnation proceedings.

4 ➔Section 11. KRS 416.650 is amended to read as follows:  
5 All proceedings under KRS 416.540~~416.550~~ to 416.670 shall be governed by the  
6 provisions of the Rules of Civil Procedure except where the provisions of KRS 416.550  
7 to 416.670 specifically or by necessary implication provide otherwise.

8 ➔Section 12. Whereas citizens of the Commonwealth require protection from  
9 unfair practices related to taking of private property through eminent domain, an  
10 emergency is declared to exist, and this Act takes effect upon its passage and approval by  
11 the Governor or upon its otherwise becoming a law.