

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 ~~the~~ markets for farm
13 products, the extent and nature of farm improvements, the present status of
14 farming, and anticipated trends in agricultural economic conditions and
15 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 accompanied by the signature of the property owner; and

21 (c) 1. a. The property owner shall be afforded the opportunity to obtain
22 an independent appraisal of the property within sixty (60) days of
23 the receipt of the initial offer for purchase under paragraph (b)
24 of this subsection.

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

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

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

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

11 A violation of this subsection shall result in a dismissal of the condemnation
12 action with prejudice pursuant to subsection (4) of Section 5 of this Act, and
13 the condemnor shall be liable to the property owner for reasonable
14 attorney's fees in the action. The condemnor shall not initiate a subsequent
15 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)
24 of this subsection no later than ten (10) days prior to entry on the property.

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

26 1. Be delivered to the property owner by:

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

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

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

6 2. Include the following information:

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

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

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

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

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

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

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

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

5 f. That the property owner may obtain an independent appraisal of
6 the property as described in subsection (2) of Section 3 of this
7 Act; and

8 g. That the property owner has the right to request one (1) public
9 meeting under subsection (6)(a) of this section.

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

12 1. Conducted using only up-to-date data; and

13 2. Provided to the property owner within fifteen (15) days of completion.

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

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

21 (a) Certified mail, return receipt requested; or

22 (b) Hand delivery, verified by government-issued identification and
23 accompanied by the signature of the property owner;

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

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

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

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

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

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

- (1) After the owner has been summoned twenty (20) days, the court shall examine the report of the commissioners to determine whether it conforms to the provisions of KRS 416.580. If the report of the commissioners is not in the proper form, the court shall require the commissioners to make such corrections as are necessary.
- (2) If no answer or other pleading is filed by the owner or owners putting in issue the right of the petitioner to condemn the property or the use and occupation of the property ~~thereof~~ sought to be condemned, the court shall enter an interlocutory judgment which shall contain, in substance:
 - (a) A finding that the petitioner has the right, under the provisions of KRS ~~416.540~~ ~~416.550~~ to 416.670 and other applicable law to condemn the property or the use and occupation of the property ~~thereof~~;
 - (b) A finding that the report of the commissioners conforms to the provisions of KRS 416.580;
 - (c) An authorization to take possession of the property for the purposes and under 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.