

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) No more than three (3) members of the commission shall be of the same political  
18           party, and members of the commission shall not serve on any other regulatory  
19           bodies during their terms on the commission.

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

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

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

1        (c) The commission shall consist of the five (5) commissioners appointed under  
2        Section 1 of this Act, an executive director appointed under Section 5 of this  
3        Act, and other agents and employees as necessary to carry out the  
4        commission's obligations under this chapter.

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

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

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

19       (c) In the bidding and negotiation processes, the executive director, upon  
20       approval of the commission, shall perform his or her own bidding and  
21       procurement in accordance with the procedures established by KRS Chapter  
22       45A.

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

27       (b) In his or her sole discretion, the chair may assign all five (5) commissioners

1 to hear and decide a matter before the commission.

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

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

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

15 (6) All personal service contracts entered into by the commission shall be subject to  
16 review by the Government Contract Review Committee established by KRS  
17 45A.705.

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

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

26 (8)~~(2)~~ The jurisdiction of the commission shall extend to all utilities in this state. The  
27 commission shall have exclusive jurisdiction over the regulation of rates and

1 service of utilities, but with that exception nothing in this chapter is intended to  
 2 limit or restrict the police jurisdiction, contract rights or powers of cities or political  
 3 subdivisions.

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

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

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

11 (1) Each commissioner shall be a resident and qualified voter of this state, not less than  
 12 twenty-five (25) years of age at the time of his or her appointment and  
 13 qualification, and shall have resided in this state for at least three (3) years prior to  
 14 his or her appointment and qualification. Each commissioner shall take and  
 15 subscribe to the constitutional oath of office, which shall be recorded in the office  
 16 of the Secretary of State.

17 (2) No person shall be appointed to or hold the office of commissioner who holds, or  
 18 whose immediate family member holds, any official relationship to any utility, or  
 19 who owns any stocks or bonds thereof, or who has any pecuniary interest therein,  
 20 except for a pension or retirement savings account if no contributions have been  
 21 made to it for at least one (1) year prior to the appointment.

22 (3) No commissioner shall receive any rebate, pass, percentage of contract or other  
 23 thing of value from any utility.

24 (4) In addition to the restrictions on members of the commission set forth in Section 1  
 25 of this Act~~[KRS 278.050(1)]~~, no commissioner shall engage in any occupation or  
 26 business inconsistent with his or her duties as such commissioner.

27 (5) If any commissioner becomes a member of any political party committee, his or her

1 office as commissioner shall be thereby vacated.†

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

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

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

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

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

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

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

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

26 **(3)** The executive director shall be the chief administrative officer for the commission  
27 and shall be responsible for implementing the programs, directing the staff, and

1 maintaining the official records of commission proceedings, including all approved  
2 orders.

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

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

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

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

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

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

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

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

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

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

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

- 1                   a.    One (1) of the ad hoc public members shall be the chairman of the
- 2                                    planning commission with jurisdiction over an area in which a
- 3                                    facility subject to board approval is proposed to be located. If the
- 4                                    proposed location is not within a jurisdiction with a planning
- 5                                    commission, then the Governor shall appoint either the county
- 6                                    judge/executive of a county that contains the proposed location of
- 7                                    the facility or the mayor of a city, if the facility is proposed to be
- 8                                    within a city; and
- 9                   b.    One (1) of the ad hoc public members shall be appointed by the
- 10                                    Governor and shall be a resident of the county in which the facility
- 11                                    is proposed to be located.
- 12           2.    If the facility subject to board approval is proposed to be located in more
- 13                                    than one (1) county, two (2) ad hoc public members to be chosen as
- 14                                    follows:
- 15                   a.    One (1) ad hoc public member shall be the county judge/executive
- 16                                    of a county in which the facility is proposed to be located, to be
- 17                                    chosen by majority vote of the county judge/executives of the
- 18                                    counties in which the facility is proposed to be located; and
- 19                   b.    One (1) ad hoc public member shall be a resident of a county in
- 20                                    which the facility is proposed to be located, and shall be appointed
- 21                                    by the Governor.
- 22                                    If a member has not been chosen by majority vote, as provided in
- 23                                    subdivision a. of this subparagraph, by thirty (30) days after the filing of
- 24                                    the application, the Governor shall directly appoint the member.
- 25           3.    Ad hoc public members appointed to the board **and their immediate**
- 26                                    **family members** shall have no direct financial interest in the facility
- 27                                    proposed to be constructed **and shall be subject to the executive branch**

1                                    *code of ethics established in KRS Chapter 11A.*

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

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

1 effective until it has been approved by the Governor by executive order.

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

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

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

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

27 Notwithstanding KRS 278.040~~(8)~~~~(2)~~, or any other provision to the contrary, any utility,

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

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

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

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

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

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

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

1 and approval by the Governor or upon its otherwise becoming a law.