

1 AN ACT relating to solar farms on agricultural lands.

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

3 ➔Section 1. KRS 100.111 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

- 5 (1) "Administrative official" means any department, employee, or advisory, elected, or
6 appointed body which is authorized to administer any provision of the zoning
7 regulation, subdivision regulations, and, if delegated, any provision of any housing
8 or building regulation or any other land use control regulation;
- 9 (2) "Agricultural use" means the use of:
- 10 (a) A tract of at least five (5) contiguous acres for the production of agricultural
11 or horticultural crops, including but not limited to livestock, livestock
12 products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco,
13 timber, orchard fruits, vegetables, flowers, or ornamental plants, including
14 provision for dwellings for persons and their families who are engaged in the
15 agricultural use on the tract, but not including residential building
16 development for sale or lease to the public. For purposes of this subsection,
17 "livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas,
18 buffaloes, and any other animals of the bovine, ovine, porcine, caprine,
19 equine, or camelid species;
- 20 (b) Regardless of the size of the tract of land used, small farm wineries licensed
21 under KRS 243.155;
- 22 (c) A tract of at least five (5) contiguous acres used for the following activities
23 involving horses:
- 24 1. Riding lessons;
- 25 2. Rides;
- 26 3. Training;
- 27 4. Projects for educational purposes;

- 1 5. Boarding and related care; or
- 2 6. Shows, competitions, sporting events, and similar activities that are
- 3 associated with youth and amateur programs, none of which are
- 4 regulated by KRS Chapter 230, involving seventy (70) or less
- 5 participants. Shows, competitions, sporting events, and similar activities
- 6 that are associated with youth and amateur programs, none of which are
- 7 regulated by KRS Chapter 230, involving more than seventy (70)
- 8 participants shall be subject to local applicable zoning regulations; or

9 (d) A tract of land used for the following activities involving horses:

- 10 1. Riding lessons;
- 11 2. Rides;
- 12 3. Training;
- 13 4. Projects for educational purposes;
- 14 5. Boarding and related care; or
- 15 6. Shows, competitions, sporting events, and similar activities that are
- 16 associated with youth and amateur programs, none of which are
- 17 regulated by KRS Chapter 230, involving seventy (70) or less
- 18 participants. Shows, competitions, sporting events, and similar activities
- 19 that are associated with youth and amateur programs, none of which are
- 20 regulated by KRS Chapter 230, involving more than seventy (70)
- 21 participants shall be subject to local applicable zoning regulations.

22 This paragraph shall only apply to acreage that was being used for these
23 activities before July 13, 2004;

24 (3) "Board" means the board of adjustment unless the context indicates otherwise;

25 (4) "Citizen member" means any member of the planning commission or board of
26 adjustment who is not an elected or appointed official or employee of the city,
27 county, or consolidated local government;

- 1 (5) "Commission" means planning commission;
- 2 (6) "Conditional use" means a use which is essential to or would promote the public
3 health, safety, or welfare in one (1) or more zones, but which would impair the
4 integrity and character of the zone in which it is located, or in adjoining zones,
5 unless restrictions on location, size, extent, and character of performance are
6 imposed in addition to those imposed in the zoning regulation;
- 7 (7) "Conditional use permit" means legal authorization to undertake a conditional use,
8 issued by the administrative official pursuant to authorization by the board of
9 adjustment, consisting of two (2) parts:
- 10 (a) A statement of the factual determination by the board of adjustment which
11 justifies the issuance of the permit; and
- 12 (b) A statement of the specific conditions which must be met in order for the use
13 to be permitted;
- 14 (8) "Development plan" means written and graphic material for the provision of a
15 development, including any or all of the following: location and bulk of buildings
16 and other structures, intensity of use, density of development, streets, ways, parking
17 facilities, signs, drainage of surface water, access points, a plan for screening or
18 buffering, utilities, existing manmade and natural conditions, and all other
19 conditions agreed to by the applicant;
- 20 (9) "Fiscal court" means the chief body of the county with legislative power, whether it
21 is the fiscal court, county commissioners, or otherwise;
- 22 (10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky
23 Plumbing Code, and any other building or structural code promulgated by the
24 Commonwealth or by its political subdivisions;
- 25 (11) "Legislative body" means the chief body of the city, consolidated local government,
26 urban-county government, charter county government, or unified local government
27 with legislative power, whether it is the board of aldermen, the general council, the

1 common council, the city council, the board of commissioners, or otherwise; at
2 times it also implies the county's fiscal court;

3 (12) "Mayor" means the chief elected official of the city, consolidated local government,
4 urban-county government, charter county government, or unified local government,
5 whether the official designation of his office is mayor or otherwise;

6 (13) "Nonconforming use or structure" means an activity or a building, sign, structure, or
7 a portion thereof which lawfully existed before the adoption or amendment of the
8 zoning regulation, but which does not conform to all of the regulations contained in
9 the zoning regulation which pertain to the zone in which it is located;

10 (14) **"Photovoltaic power station" means a power plant that uses photovoltaic cells to**
11 **directly or indirectly convert sunlight into electricity;**

12 **(15)** "Planning operations" means the formulating of plans for the physical development
13 and social and economic well-being of a planning unit, and the formulating of
14 proposals for means of implementing the plans;

15 **(16)**~~(15)~~ "Planning unit" means any city, county, consolidated local government, urban-
16 county government, charter county government, or unified local government, or any
17 combination of cities, counties, or parts of counties, or parts of consolidated local
18 governments engaged in planning operations;

19 **(17)**~~(16)~~ "Plat" means the map of a subdivision;

20 **(18)**~~(17)~~ "Political subdivision" means any city, county, consolidated local government,
21 urban-county government, charter county government, or unified local government;

22 **(19)**~~(18)~~ "Several" means two (2) or more;

23 **(20)**~~(19)~~ "Public facility" means any use of land whether publicly or privately owned
24 for transportation, utilities, or communications, or for the benefit of the general
25 public, including but not limited to libraries, streets, schools, fire or police stations,
26 county buildings, municipal buildings, recreational centers including parks, and
27 cemeteries;

1 ~~(21)~~~~(20)~~ "Street" means any vehicular way;

2 ~~(22)~~~~(21)~~ "Structure" means anything constructed or made, the use of which requires
3 permanent location in or on the ground or attachment to something having a
4 permanent location in or on the ground, including buildings and signs;

5 ~~(23)~~~~(22)~~ "Subdivision" means the division of a parcel of land into three (3) or more lots
6 or parcels except in a county containing a city with a population equal to or greater
7 than eight thousand (8,000) based upon the most recent federal decennial census or
8 in an urban-county government or consolidated local government where a
9 subdivision means the division of a parcel of land into two (2) or more lots or
10 parcels; for the purpose, whether immediate or future, of sale, lease, or building
11 development, or if a new street is involved, any division of a parcel of land;
12 provided that a division of land for agricultural use and not involving a new street
13 shall not be deemed a subdivision. The term includes resubdivision and when
14 appropriate to the context, shall relate to the process of subdivision or to the land
15 subdivided; any division or redivision of land into parcels of less than one (1) acre
16 occurring within twelve (12) months following a division of the same land shall be
17 deemed a subdivision within the meaning of this section;

18 ~~(24)~~~~(23)~~ "Unit" means planning unit; and

19 ~~(25)~~~~(24)~~ "Variance" means a departure from dimensional terms of the zoning
20 regulation pertaining to the height, width, length, or location of structures, and the
21 size of yards and open spaces where such departure meets the requirements of KRS
22 100.241 to 100.247.

23 ➔Section 2. KRS 100.203 is amended to read as follows:

24 Cities and counties may enact zoning regulations which shall contain:

25 (1) A text, which shall list the types of zones which may be used, and the regulations
26 which may be imposed in each zone, which must be uniform throughout the zone.

27 In addition, the text shall make provisions for the granting of variances, conditional

1 use permits, and for nonconforming use of land and structures, and any other
2 provisions which are necessary to implement the zoning regulation. The city or
3 county may regulate:

- 4 (a) The activity on the land, including filling or excavation of land, **prohibiting**
5 **the construction of photovoltaic power stations, removing**~~[and the removal~~
6 ~~of]~~ natural resources, and **using**~~[the use of]~~ watercourses **or**~~[, and]~~ other
7 bodies of water, **and prescribing the use of**~~[as well as]~~ land subject to
8 flooding;
- 9 (b) The size, width, height, bulk, location of structures, buildings and signs;
- 10 (c) Minimum or maximum areas or percentages of areas, courts, yards, or other
11 open spaces or bodies of water which are to be left unoccupied, and minimum
12 distance requirements between buildings or other structures;
- 13 (d) Intensity of use and density of population floor area to ground area ratios, or
14 other means;
- 15 (e) Districts of special interest to the proper development of the community,
16 including, but not limited to, exclusive use districts, historical districts,
17 planned business districts, planned industrial districts, renewal, rehabilitation,
18 and conservation districts; planned neighborhood and group housing districts;
- 19 (f) Fringe areas of each district, by imposing requirements which will make it
20 compatible with neighboring districts; and
- 21 (g) The activities and structures on the land at or near major thoroughfares, their
22 intersections, and interchanges, and transportation arteries, natural or artificial
23 bodies of water, public buildings and public grounds, aircraft, helicopter,
24 rocket and spacecraft facilities, places having unique interest or value, flood
25 plain areas, and other places having a special character or use affecting or
26 affected by their surroundings;
- 27 (2) The text may provide that the planning commission, as a condition to the granting

- 1 of any zoning change, may require the submission of a development plan, which
2 shall be limited to the provisions of the definition contained in KRS 100.111(8).
3 Where agreed upon, this development plan shall be followed. As a further condition
4 to the granting of a zoning change, the planning commission may require that
5 substantial construction be initiated within a certain period of time of not less than
6 one (1) year; provided that such zoning change shall not revert to its original
7 designation unless there has been a public hearing;
- 8 (3) A map, which shall show the boundaries of the area which is to be zoned, and the
9 boundaries of each zone;
- 10 (4) Text provisions to the effect that land which is used for agricultural purposes shall
11 have no regulations except that:
- 12 (a) Setback lines may be required for the protection of existing and proposed
13 streets and highways;
- 14 (b) All buildings or structures in a designated floodway or flood plain or which
15 tend to increase flood heights or obstruct the flow of flood waters may be fully
16 regulated;
- 17 (c) Mobile homes and other dwellings may be permitted but shall have
18 regulations imposed which are applicable, such as zoning, building, and
19 certificates of occupancy; ~~and~~
- 20 (d) The uses set out in KRS 100.111(2)(c) may be subject to regulation as a
21 conditional use; and
- 22 (e) Photovoltaic power stations shall be prohibited on lands defined as
23 agricultural lands under KRS 132.010(9);
- 24 (5) The text may empower the planning commission to hear and finally decide
25 applications for variances or conditional use permits when a proposed development
26 requires a map amendment and one (1) or more variances or conditional use
27 permits;

- 1 (6) In any regulation adopted pursuant to subsection (5) of this section:
- 2 (a) The text shall provide that the planning commission shall assume all powers
- 3 and duties otherwise exercised by the board of adjustments pursuant to KRS
- 4 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251, in a
- 5 circumstance provided for by subsection (5) of this section; and
- 6 (b) The text shall provide that the applicant for the map amendment, at the time of
- 7 the filing of the application for the map amendment, may elect to have any
- 8 variances or conditional use permits for the same development to be heard and
- 9 finally decided by the planning commission at the same public hearing set for
- 10 the map amendment, or by the board of adjustments as otherwise provided for
- 11 in this chapter;
- 12 (7) Any judicial proceeding to appeal the planning commission action authorized by
- 13 subsection (5) of this section in granting or denying any variance or conditional use
- 14 permit shall be taken pursuant to KRS 100.347(2);
- 15 (8) In urban-county governments, in addition to any other powers permitted or required
- 16 to be exercised by this chapter, the text of the zoning regulations may provide, as a
- 17 condition to granting a map amendment, that the planning unit may:
- 18 (a) Restrict the use of the property affected to a particular use, or a particular class
- 19 of use, or a specified density within those permitted in a given zoning
- 20 category;
- 21 (b) Impose architectural or other visual requirements or restrictions upon
- 22 development in areas zoned historic; and
- 23 (c) Impose screening and buffering restrictions upon the subject property;
- 24 The text shall provide the method whereby such restrictions or conditions may be
- 25 imposed, modified, removed, amended and enforced.
- 26 ➔Section 3. KRS 100.208 is amended to read as follows:
- 27 (1) Any city, county, consolidated local government, or urban-county government

- 1 which is part of a planning unit may provide, by ordinance, for:
- 2 (a) The voluntary transfer of the development rights permitted on one (1) parcel
3 of land to another parcel of land **except that no transfer shall be authorized if**
4 **the transfer would result in the construction of a photovoltaic power station**
5 **on agricultural lands as defined in KRS 132.010(9);**
- 6 (b) Restricting or prohibiting further development of the parcel from which
7 development rights are transferred; and
- 8 (c) Increasing the density or intensity of development of the parcel to which such
9 rights are transferred.
- 10 (2) The ordinance shall designate and show on the zoning map areas from which
11 development rights may be transferred and areas to which such rights may be
12 transferred and used for development. These zones may be designated as separate
13 use districts or as overlaying other zoning districts.
- 14 (3) Any city within a county that adopts an ordinance providing for the transfer of
15 development rights, may also adopt a transfer of development rights ordinance, and
16 the county and city by adoption of mutual provisions may provide for the transfer of
17 development rights on land located in one to land located in another.
- 18 (4) "Transferable development rights" means an interest in real property that constitutes
19 the right to develop and use property under the zoning ordinance which is made
20 severable from the parcel to which the interest is appurtenant and transferable to
21 another parcel of land for development and use in accordance with the zoning
22 ordinance. Transferable development rights may be transferred by deed from the
23 owner of the parcel from which the development rights are derived and upon the
24 transfer shall vest in the grantee and be freely alienable. The zoning ordinance may
25 provide for the method of transfer of these rights and may provide for the granting
26 of easements and reasonable regulations to effect and control transfers and assure
27 compliance with the provisions of the ordinance.

1 ➔Section 4. KRS 100.324 is amended to read as follows:

2 (1) All other provisions of this chapter to the contrary notwithstanding, public utilities
3 operating under the jurisdiction of the Public Service Commission, except as
4 specified in KRS 100.987, or the Department of Vehicle Regulation or Federal
5 Energy Regulatory Commission, any municipally owned electric system, and
6 common carriers by rail shall not:

7 (a) Be required to receive the approval of the planning unit for the location or
8 relocation of any of their service facilities; and

9 (b) Site a photovoltaic power station or any facilities or appurtenances
10 associated with the station on agricultural lands as defined in KRS
11 132.010(9).

12 Service facilities include all facilities of such utilities and common carriers by rail
13 other than office space, garage space, and warehouse space and include office space,
14 garage space, and warehouse space when such space is incidental to a service
15 facility. The Public Service Commission and the Department of Vehicle Regulation
16 shall give notice to the planning commission of any planning unit of any hearing
17 which affects locations or relocations of service facilities within that planning unit's
18 jurisdiction.

19 (2) The nonservice facilities excluded in subsection (1) of this section must be in
20 accordance with the zoning regulations.

21 (3) Upon the request of the planning commission, the public utilities referred to in this
22 section shall provide the planning commission of the planning unit affected with
23 information concerning service facilities which have been located on and relocated
24 on private property.

25 (4) Any proposal for acquisition or disposition of land for public facilities, or changes
26 in the character, location, or extent of structures or land for public facilities,
27 excluding state and federal highways and public utilities and common carriers by

1 rail mentioned in this section, shall be referred to the commission to be reviewed in
2 light of its agreement with the comprehensive plan, and the commission shall,
3 within sixty (60) days from the date of its receipt, review the project and advise the
4 referring body whether the project is in accordance with the comprehensive plan. If
5 it disapproves of the project, it shall state the reasons for disapproval in writing and
6 make suggestions for changes which will, in its opinion, better accomplish the
7 objectives of the comprehensive plan. No permit required for construction or
8 occupancy of such public facilities shall be issued until the expiration of the sixty
9 (60) day period or until the planning commission issues its report, whichever occurs
10 first.

11 ➔Section 5. KRS 154.60-040 is amended to read as follows:

12 (1) As used in this section:

13 (a) 1. "Agricultural assets" means:

- 14 a. Agricultural land which has been appraised by an individual
15 certified by the Real Estate Appraisers Board created under KRS
16 324A.015; and
- 17 b. Buildings, facilities, machinery, equipment, agricultural products,
18 or horticultural products, if:
- 19 i. Owned by the same selling farmer owning the agricultural
20 land sold to a beginning farmer;
- 21 ii. Purchased at the same time and in the same transaction with
22 the agricultural land; and
- 23 iii. Purchased with the intent to be used on the purchased
24 agricultural land.

25 2. "Agricultural assets" does not mean:

- 26 a. A personal residence or any other residential structures; and
- 27 b. Any agricultural assets that have been previously included in an

1 approved application for the Kentucky selling farmer tax credit;

2 (b) "Agricultural land" means:

3 1. Any land located entirely in Kentucky that is zoned or permitted for
4 farming, if the jurisdiction where the land is located has enacted an
5 ordinance for zoning or permitting; and

6 2. a. Is a tract of land of at least ten (10) contiguous acres in area for a
7 farming operation for agricultural products; or

8 b. Is a tract of land of at least five (5) contiguous acres in area for a
9 farming operation for aquaculture or horticultural products;

10 owned by the selling farmer prior to the sale;

11 (c) "Agricultural products" means:

12 1. Livestock or livestock products;

13 2. Poultry or poultry products;

14 3. Milk or milk products; or

15 4. Field crops and other crops, including timber if approved by the
16 authority;

17 (d) "Aquaculture" means the farming of fish, crustaceans, mollusks, aquatic
18 plants, algae, or other similar organisms;

19 (e) "Farm product" means aquaculture, agricultural products, or horticultural
20 products;

21 (f) 1. "Farming operation" means the management and operation of
22 agricultural assets for the purpose of pursuing a profitable commercial
23 business venture to produce agricultural products, horticultural products,
24 or both for sale.

25 2. "Farming operation" does not mean any:

26 a. Hobby farm, as determined by the Internal Revenue Service;

27 b. Nonprofit venture;

- 1 c. Farm used primarily for storing agricultural products or
2 horticultural products; ~~for~~
- 3 d. Farm used to grow or raise agricultural products or horticultural
4 products primarily for use by the immediate family members or
5 owners of the agricultural assets;
- 6 (g) "Horticultural products" means orchards, fruits, vegetables, nuts, flowers, or
7 ornamental plants; ~~and~~
- 8 (h) "Immediate family member" means any of the following in relation to any
9 owner or spouse of the owner of the agricultural assets:
- 10 1. Parent or grandparent;
- 11 2. Children or their spouses; or
- 12 3. Siblings or their spouses; and
- 13 (i) "Photovoltaic power station" means a power plant that uses photovoltaic
14 cells or solar cells to convert sunlight into electricity either directly or
15 indirectly.
- 16 (2) Any incentive offered to an eligible company under the Selling Farmer Tax Credit
17 Program shall be negotiated by Cabinet for Economic Development officials and
18 shall be subject to approval by the authority.
- 19 (3) The purpose of the Selling Farmer Tax Credit Program is to promote the continued
20 use of agricultural land in Kentucky for farming purposes by granting a tax credit to
21 a selling farmer who agrees to sell agricultural assets to a beginning farmer.
- 22 (4) Selling farmers wanting to sell agricultural assets may be eligible for a tax credit up
23 to five percent (5%) of the selling price of qualifying agricultural assets, subject to:
- 24 (a) A twenty-five thousand dollar (\$25,000) cap for each taxable year of the
25 selling farmer;
- 26 (b) A one hundred thousand dollar (\$100,000) lifetime cap for each selling
27 farmer; and

- 1 (c) A proration by the authority based on the overall cap shared between the
2 Small Business Tax Credit Program and the Selling Farmer Tax Credit
3 Program cap of three million dollars (\$3,000,000) under KRS 154.60-020.
- 4 (5) The tax credit allowed in subsection (4) of this section may be claimed under KRS
5 141.3841.
- 6 (6) In order to be eligible to receive approval for a tax credit, a selling farmer shall, at a
7 minimum:
- 8 (a) 1. a. Be registered with the Kentucky Secretary of State; and
9 b. Be in good standing with the Kentucky Secretary of State; or
10 2. If not required to be registered with the Kentucky Secretary of State, be
11 a resident of Kentucky;
- 12 (b) Prior to a sale of agricultural assets, be a small business with fifty (50) or
13 fewer full-time employees and be the sole legal owner of agricultural assets
14 sold to a beginning farmer;
- 15 (c) Not be a farm equipment dealer, livestock dealer, or similar entity primarily
16 engaged in the business of selling agricultural assets for profit and not
17 engaged in farming as a primary business activity;
- 18 (d) Not be a bank or any other similar lending or financial institution;
- 19 (e) Not be:
- 20 1. An owner, partner, member, shareholder, or trustee;
21 2. A spouse of an owner, partner, member, shareholder, or trustee;
22 3. An immediate family member of any of the owners, partners, members,
23 shareholders, or trustees;
- 24 of the beginning farmer to whom the selling farmer is seeking to sell
25 agricultural assets;
- 26 (f) 1. Demonstrate management and operation of real and personal property
27 for the production of a farm product;

- 1 2. Execute and effectuate a purchase contract to sell agricultural land with
2 a beginning farmer for an amount evidenced by an appraisal; ~~and~~
- 3 (g) Sell, convey, and transfer ownership of related agricultural assets to a
4 beginning farmer; and
- 5 **(h) Not be under an agreement with a company to site a photovoltaic power**
6 **station on the lands that would be transferred.**
- 7 (7) In order for the selling farmer to qualify for the tax credit, a beginning farmer shall,
8 at a minimum:
- 9 (a) 1. a. Be registered with the Kentucky Secretary of State; and
10 b. Be in good standing with the Kentucky Secretary of State; or
11 2. If not required to be registered with the Kentucky Secretary of State, be
12 a resident of Kentucky;
- 13 (b) Possess all licenses, registrations, and experience needed to legally operate a
14 farming operation within the jurisdiction for the agricultural land purchased
15 from a selling farmer;
- 16 (c) Not previously have held an ownership interest in agricultural land used for a
17 farming operation for a period exceeding ten (10) years prior to entering into
18 an agreement to purchase agricultural assets from a selling farmer;
- 19 (d) Not have an ownership interest in any of the agricultural assets included in the
20 transaction with the selling farmer; ~~and~~
- 21 (e) Provide a majority of the management, and materially participate in the
22 operation of a for-profit farming operation located in Kentucky and purchased
23 from a selling farmer, with the intent to continue a for-profit farming
24 operation on the purchased agricultural land for a minimum of five (5) years
25 after the sale date; and
- 26 **(f) Not site a photovoltaic power station on any lands defined as agricultural**
27 **land as defined in KRS 132.010(9).**

- 1 (8) The selling farmer shall submit an application after consummation of the sale,
2 transfer of title, and conveyance of agricultural assets together with all information
3 necessary for the authority to determine eligibility for the tax credit.
- 4 (9) An application for the selling farmer tax credit shall contain, at a minimum,
5 information about the:
- 6 (a) Selling farmer and purchasing beginning farmer eligibility;
 - 7 (b) Purchase contract and closing statement;
 - 8 (c) Documentation, such as a deed, title conveyance for the transfer of assets,
9 including verification of Kentucky residency; and
 - 10 (d) Any other information the authority may require to determine eligibility for
11 the credit.
- 12 (10) For each approved application, the authority shall transmit to the Department of
13 Revenue sufficient information about the selling farmer to ensure compliance with
14 this section and KRS 141.3841, including the amount of approved tax credit
15 allowed to the selling farmer.
- 16 (11) Beginning January 1, 2020, the authority may approve selling farmer tax credits.
- 17 ➔Section 6. KRS 262.010 is amended to read as follows:
- 18 (1) "Board" means the board of supervisors of a conservation district;
 - 19 (2) "Commission" means the Conservation Commission;
 - 20 (3) "District" means a conservation district whenever used in KRS 262.010 to 262.660
21 or a watershed conservancy district whenever used in KRS 262.700 to 262.795;
 - 22 (4) "Due notice" means notice published in accordance with the legal notice provisions
23 of KRS Chapter 424;
 - 24 (5) "Infrastructure" means the plant and assets required for maintaining a district office;
 - 25 (6) "Land occupier" or "occupier of land" includes any person other than the landowner
26 who is in possession of any lands lying within the district, whether as lessee or
27 otherwise;

- 1 (7) "Landowner" or "owner of land" includes any person who holds legal or equitable
2 title to the land within the district determined as follows:
- 3 (a) By his, her, or their names appearing on the recorded deed to the land;
- 4 (b) By title derived through a probated will or by the laws of descent and
5 distribution under KRS Chapter 391;
- 6 (c) Where a minor or person adjudged mentally disabled is the owner of land
7 within the district, the guardian or conservator or whoever has the power of
8 attorney shall have the right to vote for such landowner under the provisions
9 of KRS Chapter 262;
- 10 (d) Where the will has not been probated by the date of the referendum or election
11 as provided in KRS Chapter 262, the executor of the deceased landowner shall
12 have the right to vote for the devisee or devisees;
- 13 (e) Where the land within the districts is held in trust, the trustee shall have the
14 right to vote for the landowner under the provisions of KRS Chapter 262;
- 15 (f) A landowner shall be entitled to but one (1) vote whenever he is given the
16 right to vote under KRS Chapter 262 regardless of the number of tracts or
17 parcels of land which he owns either wholly or in part, within the district;
- 18 (g) Where a trustee, executor, guardian, conservator, or other person with
19 authority to vote for a landowner exercises such duty in relation to two (2) or
20 more estates or tracts of land, within a district, such person shall have the right
21 to vote separately for each such landowner which he represents within the
22 district;
- 23 (h) In the case of a dispute as to whether or not a person has the right to vote in an
24 election or referendum under the provisions of KRS Chapter 262, the person
25 seeking such right must provide to the satisfaction of the polling
26 superintendent that he has the right to vote under this section.
- 27 (8) **"Photovoltaic power station" means a power plant that uses photovoltaic cells to**

1 *convert sunlight either directly or indirectly into electricity.*

2 (9) "Supervisor" means one (1) of the members of the governing body of a conservation
3 district.

4 ➔Section 7. KRS 262.850 is amended to read as follows:

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

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

16 (3) The local governing administrative body for an agricultural district shall be the
17 conservation district board of supervisors. The Soil and Water Conservation
18 Commission shall be responsible for statewide administration of the agricultural
19 district program and shall have sole authority to certify or deny agricultural district
20 petitions. The commission may apply for assistance and funds from the Federal
21 Farmland Protection Act of 1981 (Pub. L. 97-377) which may be available for the
22 development of the agricultural district program and may accept easements as
23 provided in KRS 65.410 to 65.480.

24 (4) Any owner or owners of land may submit a petition to the local conservation district
25 board of supervisors requesting the creation of an agricultural district within the
26 county. The petition shall include a description of the proposed area, description of
27 each land parcel, location of the proposed boundaries, petitioners' names and

1 addresses, adjacent landowners' names and addresses, and other pertinent
2 information as required in the petition application. The boundary of an agricultural
3 district shall be contiguous. No land shall be included in an agricultural district
4 without the consent of the owner.

5 (5) Upon receipt of a petition, the local conservation district board of supervisors shall
6 notify the fiscal court and any local or regional planning or zoning body, if any, by
7 sending a copy of the petition and accompanying materials to that body.

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

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

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

16 (c) That the proposed agricultural district meets the minimum size limit of two
17 hundred fifty (250) contiguous acres, unless the local conservation district
18 board and the Soil and Water Conservation Commission allow fewer than two
19 hundred fifty (250) contiguous acres if the proposed area meets a minimum
20 annual production performance established by the district board and approved
21 by the commission;

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

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

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

27 (7) The local soil and water conservation district board of supervisors shall review the

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

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

9 (9) Upon the approval of a petition by the Soil and Water Conservation Commission,
10 the commission shall notify the area development district in which the agricultural
11 district will lie, the local county clerk, and the secretary of the Governor's Cabinet.

12 (10) Land within the boundary of an agricultural district shall not be annexed **and shall**
13 **not be used for the siting of a photovoltaic power station.**

14 (11) The owners of land within the boundary of an agricultural district shall be exempt
15 under KRS 74.177 from any assessment authorized for the extension of water
16 service lines until the land is removed from the district and developed for
17 nonagricultural use. Any member, or any successor heir of the member, of an
18 agricultural district may withdraw from the district upon notifying the local
19 conservation district board of supervisors in writing.

20 (12) It shall be the policy of all state agencies to support the formation of agricultural
21 districts as a means of preserving Kentucky's farmlands and to mitigate the impact
22 of their present and future plans and programs upon the continued agricultural use
23 of land within an agricultural district.

24 (13) Agricultural districts shall be comprised only of agricultural land as defined in KRS
25 132.010.

26 (14) An agricultural district shall be established for five (5) years with a review to be
27 made by the local soil and water conservation district board of supervisors at the

1 end of the five-year period and every five (5) years thereafter. Each owner of land
2 shall agree to remain in the district for a five (5) year period, which is renewable at
3 the end of the five (5) years. However, the board shall make a review any time upon
4 the written request of a local government which demonstrates that the review is
5 necessary in order to consider development needs of the local government. The
6 board shall consider whether the continued existence of the district is justified, any
7 adjustments which may be necessary due to urban or county development, and other
8 factors the board finds relevant. The board shall revise the district as necessary
9 based on the review and subject to approval of the State Soil and Water
10 Conservation Commission. Before the state commission takes final action, all
11 interested parties shall be given the opportunity to request the state commission to
12 amend or overturn the local board's decision.

13 (15) The withdrawal of a member from a district reducing the remaining acreage of
14 agricultural district land to less than two hundred fifty (250) acres or resulting in the
15 remaining land being noncontiguous shall not cause the decertification of the
16 district.

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

24 (17) (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 (18) The board may allow an amendment to an existing certified agricultural district if
6 approved by the commission.

7 ➔Section 8. KRS 262.902 is amended to read as follows:

8 (1) The General Assembly hereby finds and declares that it is a policy of the
9 Commonwealth to retain agriculture and enhance the contribution that agriculture
10 makes to its economy. A program to retain and enhance agriculture is in the
11 economic best interests of the Commonwealth and, consequently, constitutes a
12 public benefit that contributes to the health, safety, and general welfare of the
13 residents of the Commonwealth and the nation.

14 (2) The General Assembly further finds and declares that the use of the
15 Commonwealth's funds for the purpose of paying in whole or part the cost of
16 acquiring agricultural conservation easements as set forth in KRS 262.900 to
17 262.920, including any costs necessarily incident to the acquisition, sale, issuance,
18 and delivery of the funds, and the monitoring and enforcement of agricultural
19 conservation easements, or to the participation of any party for these purposes, will
20 promote the public health, safety, and general welfare of the people of the
21 Commonwealth.

22 (3) Further, it is the purpose of KRS 262.900 to 262.920 to:

23 (a) Establish procedures for the acquisition of agricultural conservation easements
24 in order to ensure that:

25 1. Lands currently in agricultural use will continue to remain available for
26 agriculture and not be converted to other land uses ***including the use of***
27 ***agricultural land for siting a photovoltaic power station;***~~[-]~~ and~~[-that]~~

1 2. Landowners who participate in this program will be fairly compensated
2 for their agreement to accept deed restrictions limiting the use of their
3 property;

4 (b) Encourage landowners to make a long-term commitment to agriculture by
5 offering them financial incentives and security that land use will remain stable
6 *and that the land value will not be diminished by uses incompatible with*
7 *nonfarming uses;*

8 (c) Protect normal farming operations in agricultural areas from incompatible
9 nonfarming uses that may render farming impracticable;

10 (d) Protect normal farming operations from complaints of public nuisance against
11 normal farming operations; and

12 (e) Maximize the use of agricultural conservation easement purchase funds and
13 protect the investment of taxpayers in agricultural conservation easements.

14 ➔Section 9. KRS 262.910 is amended to read as follows:

15 (1) During the term of an easement, the restricted land shall be used solely for the
16 production of crops, livestock and livestock products, and nursery and greenhouse
17 products including the processing or retail marketing of these crops, livestock and
18 livestock products, and nursery and greenhouse products if more than fifty percent
19 (50%) of the processed or merchandised products are produced on the subject land,
20 and for the raising and stabling of horses for commercial purposes. For the purposes
21 of this section and administrative regulations promulgated under its provisions,
22 "crops, livestock and livestock products, and nursery and greenhouse products"
23 include, but are not limited to:

24 (a) Tobacco;

25 (b) Wheat, soybeans, corn, and all commercially-produced fruits and vegetables;

26 (c) Horticultural specialties, including nursery stock ornamental shrubs,
27 ornamental trees, and flowers;

- 1 (d) Livestock and livestock products, including cattle; sheep; swine; goats;
2 horses; alpacas; llamas; buffaloes; any other animals of the bovine, ovine,
3 porcine, caprine, equine, or camelid species; poultry; milk; and eggs; and
4 (e) Aquatic plants and animals and their by-products.
- 5 (2) (a) During the term of an easement the landowner and the landowner's assigns,
6 agents, or leasees shall not perform, nor knowingly allow others to perform,
7 any act on or affecting the restricted land that is inconsistent with the
8 provisions of this section. The landowner shall be deemed to have authorized
9 the PACE board to enforce these provisions.
- 10 (b) Unless otherwise specified, the landowner shall not be required to take any
11 action to restore the condition of the restricted land after any act of God or
12 other event over which the landowner had no control.
- 13 (c) Nothing in the PACE Program shall relieve the landowner of any obligation or
14 restriction on the use of the property imposed by law.
- 15 (d) The Commonwealth shall not locate landfills, sewage treatment plants, or
16 other public service facilities that are not compatible with or complimentary to
17 agricultural production on restricted lands.
- 18 (3) (a) To retain the agricultural viability of the restricted land, the PACE board shall
19 require, and the owner of the restricted land shall implement, a conservation
20 plan approved by the soil and water conservation district. This plan shall be
21 updated every ten (10) years and any time the basic farming operation
22 conducted on restricted lands is changed. All farming operations shall be
23 conducted substantially in accordance with the plan. **No plan shall be**
24 **approved by the PACE board that includes the siting of a photovoltaic**
25 **power station on the restricted land.**
- 26 (b) In addition to the requirements established by the soil and water conservation
27 district, the conservation plan shall require that:

- 1 1. The use of the land for growing sod, nursery stock, and ornamental trees
2 and shrubs does not remove excessive soil from the restricted land;
- 3 2. The excavation of soil, sand, gravel, stone, or other materials for use in
4 agricultural production on the restricted land is consistent with
5 subsection (4)(h) of this section and is conducted in a location and
6 manner that retains the viability of the restricted land for agricultural
7 production; and
- 8 3. The mining of minerals is consistent with subsection (4)(h) of this
9 section and is conducted only through the use of methods which will not
10 interfere with the viability of the restricted land for agricultural
11 production.
- 12 (4) The construction or reconstruction of any building or other structure, except those
13 existing on the date of the easement or previously approved by the PACE board, is
14 prohibited except in accordance with this subsection.
- 15 (a) Existing fences may be repaired and replaced, and new fences may be built
16 anywhere on the restricted land for purposes of reasonable and customary
17 management of livestock and wildlife, without approval of the PACE board.
- 18 (b) New buildings and other structures and improvements to be used solely for
19 agricultural purposes including the processing or sale of farm products
20 predominantly grown or raised on the restricted land, but not including any
21 dwelling or farm labor housing, may not be built on the restricted land without
22 the advance approval of the PACE board. **Solar panels or small solar arrays**
23 **that generates power to be used solely for on-farm activities such as**
24 **powering gates and electric fences shall not be affected by the prohibition of**
25 **a photovoltaic power station under this section.** The PACE board shall give
26 approval within a reasonable time, unless it determines that the proposed
27 building, structure, or improvement would not be properly located or would

1 significantly diminish the agricultural production capacity of the restricted
2 land.

3 (c) All existing single-family residential dwellings may be repaired, reasonably
4 enlarged, and replaced at their current locations without further permission of
5 the PACE board. No new single-family residential dwellings may be built on
6 the restricted land without the advance approval of the PACE board. The
7 PACE board shall give approval within a reasonable time, unless it determines
8 that a proposed dwelling would not be properly located or would significantly
9 diminish the agricultural production capacity of the restricted land.

10 (d) The subdivision of the restricted land, whether by physical or legal process, is
11 prohibited without the advance written approval of the PACE board. The
12 PACE board shall give approval within a reasonable time, unless it determines
13 that the proposed subdivision will diminish or impair the agricultural
14 productivity of the restricted land.

15 (e) The granting of rights-of-way through restricted land for the installation of,
16 transportation of, or use of, lines for water, sewage, electric, telephone, gas,
17 oil or oil products is permitted. The term "granting of rights-of-way" includes
18 the right to construct or install the lines. The construction or installation of
19 utility lines other than the types stated in this paragraph is prohibited on the
20 restricted land.

21 (f) No portion of the restricted land shall be paved or otherwise be covered with
22 concrete, asphalt, gravel, or any other paving material, nor shall any road for
23 access or other purposes be constructed, without the advance written approval
24 of the PACE board. The PACE board shall give approval within a reasonable
25 time, unless it determines that the proposed paving or covering of the soil, or
26 the location of any road, will substantially diminish or impair the agricultural
27 productivity of the restricted land.

- 1 (g) Trees may be cut to control insects and disease, to prevent personal injury and
2 property damage, and for firewood and other domestic uses, including
3 construction of permitted buildings and fences on the restricted land. Trees
4 may also be cut to clear land for cultivation or use of livestock, but only if
5 done in accordance with the conservation plan required by subsection (3) of
6 this section. Any commercial timber harvesting on the restricted land shall be
7 conducted on a sustainable yield basis and in substantial accordance with a
8 forest management plan prepared by a competent professional forester.
- 9 (h) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or
10 any other mineral substance, using any method that disturbs the surface of the
11 land, is prohibited without the advance written approval of the PACE board.
12 The PACE board shall give approval within a reasonable time, unless it
13 determines that the proposed mining or extraction will substantially diminish
14 or impair the agricultural productivity of the restricted land.
- 15 (i) The dumping or accumulation of any kind of trash or refuse on the restricted
16 land is prohibited. However, this shall not prevent the storage of agricultural
17 products and by-products on the restricted land, so long as it is done in
18 accordance with all applicable laws, administrative regulations, and
19 ordinances.
- 20 (j) Golf courses are prohibited on the restricted land. Buildings and facilities for
21 any other public or private recreational use may not be built on the restricted
22 land without the advance written approval of the PACE board. The PACE
23 board shall not give approval unless it determines that the proposed use or
24 facilities will not substantially diminish or impair the agricultural productivity
25 of the restricted land.
- 26 (5) Landowners shall retain the right to perform any act not specifically prohibited or
27 limited by this section and administrative regulations promulgated under its

1 provisions. These ownership rights include, but are not limited to, the right to
2 exclude any member of the public from trespassing on the restricted land and the
3 right to sell or otherwise transfer the restricted land to anyone of the landowner's
4 choice.

5 ➔Section 10. KRS 278.216 is amended to read as follows:

- 6 (1) Except for a utility as defined under KRS 278.010(9) that has been granted a
7 certificate of public convenience and necessity prior to April 15, 2002, no utility
8 shall begin the construction of a facility for the generation of electricity capable of
9 generating in aggregate more than ten megawatts (10MW) without having first
10 obtained a site compatibility certificate from the commission.
- 11 (2) An application for a site compatibility certificate shall include the submission of a
12 site assessment report as prescribed in KRS 278.708(3) and (4), except that a utility
13 which proposes to construct a facility on a site that already contains facilities
14 capable of generating ten megawatts (10MW) or more of electricity shall not be
15 required to comply with setback requirements established pursuant to KRS
16 278.704~~(4)~~~~(3)~~. A utility may submit and the commission may accept
17 documentation of compliance with the National Environmental Policy Act (NEPA)
18 rather than a site assessment report.
- 19 (3) The commission may deny an application filed pursuant to, and in compliance with,
20 this section. The commission may require reasonable mitigation of impacts
21 disclosed in the site assessment report including planting trees, changing outside
22 lighting, erecting noise barriers, and suppressing fugitive dust, but the commission
23 shall, in no event, order relocation of the facility.
- 24 (4) The commission may also grant a deviation from any applicable setback
25 requirements on a finding that the proposed facility is designed and located to meet
26 the goals of this section and KRS 224.10-280, 278.010, 278.212, 278.214, 278.218,
27 and 278.700 to 278.716 at a distance closer than those provided by the applicable

1 setback requirements.

2 (5) Nothing contained in this section shall be construed to limit a utility's exemption
3 provided under KRS 100.324.

4 (6) Unless specifically stated otherwise, for the purposes of this section, "utility" has
5 the same meaning as in KRS 278.010(3)(a) or (9).

6 ➔Section 11. KRS 278.704 is amended to read as follows:

7 (1) No person shall commence to construct a merchant electric generating facility until
8 that person has applied for and obtained a construction certificate for the facility
9 from the board. The construction certificate shall be valid for a period of two (2)
10 years after the issuance date of the last permit required to be obtained from the
11 Energy and Environment Cabinet after which the certificate shall be void. The
12 certificate shall be conditioned upon the applicant obtaining necessary air, water,
13 and waste permits, **and the applicant has complied with all applicable planning**
14 **and zoning requirements**. If an applicant has not obtained all necessary permits **or**
15 **is not in compliance with local planning and zoning requirements**, and has not
16 commenced to construct prior to the expiration date of the certificate, the applicant
17 shall be required to obtain a valid certificate from the board.

18 (2) Except as provided in subsections ~~(4)~~~~(3)~~, ~~(5)~~~~(4)~~, and ~~(6)~~~~(5)~~ of this section, no
19 construction certificate shall be issued to construct a merchant electric generating
20 facility unless:

21 **(a)** The exhaust stack of the proposed facility and any wind turbine is at least one
22 thousand (1,000) feet from the property boundary of any adjoining property
23 owner and all proposed structures or facilities used for generation of
24 electricity are two thousand (2,000) feet from any residential neighborhood,
25 school, hospital, or nursing home facility; **and**

26 **(b)** **The photovoltaic power system of a proposed facility is located on land not**
27 **defined as agricultural lands in KRS 132.010(9).**

1 **(3)** For purposes of applications for site compatibility certificates pursuant to KRS
 2 278.216, only the exhaust stack of the proposed facility to be actually used for coal
 3 or gas-fired generation or, beginning with applications for site compatibility
 4 certificates filed on or after January 1, 2015, the proposed structure or facility to be
 5 actually used for solar or wind generation shall be required to be:

6 **(a)** At least one thousand (1,000) feet from the property boundary of any
 7 adjoining property owner; ~~and~~

8 **(b)** Two thousand (2,000) feet from any residential neighborhood, school,
 9 hospital, or nursing home facility; **and**

10 **(c)** Located on a site not defined as agricultural land under KRS 132.010(9).

11 ~~(4)(3)~~ If the merchant electric generating facility is proposed to be located in a
 12 county or a municipality with planning and zoning, then setback requirements from
 13 a property boundary, residential neighborhood, school, hospital, or nursing home
 14 facility may be established by the planning and zoning commission. Any setback
 15 established by a planning and zoning commission for a facility in an area over
 16 which it has jurisdiction shall:

17 (a) Have primacy over the setback requirement in subsections (2), **(3)**, and
 18 ~~(6)(5)~~ of this section; and

19 (b) Not be subject to modification or waiver by the board through a request for
 20 deviation by the applicant, as provided in subsection ~~(5)(4)~~ of this section.

21 ~~(5)(4)~~ The board may grant a deviation from the requirements of subsection (2) **and**
 22 **(3)** of this section on a finding that the proposed facility is designed to and, as
 23 located, would meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214,
 24 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided
 25 in subsection (2) **and (3)** of this section.

26 ~~(6)(5)~~ If the merchant electric generating facility is proposed to be located on a site
 27 of a former coal processing plant in the Commonwealth where the electric

1 generating facility will utilize on-site waste coal as a fuel source, then the one
2 thousand (1,000) foot property boundary requirement in subsection (2) and (3) of
3 this section shall not be applicable; however, the applicant shall be required to meet
4 any other setback requirements contained in subsection (2) and (3) of this section.

5 ~~(7)~~~~(6)~~ If requested, a merchant electric generating entity considering construction of
6 a facility for the generation of electricity or a person acting on behalf of such an
7 entity shall hold a public meeting in any county where acquisition of real estate or
8 any interest in real estate is being considered for the facility. A request for such a
9 meeting may be made by the commission, or by any city or county governmental
10 entity, including a board of commissioners, planning and zoning, fiscal court,
11 mayor, or county judge/executive. The meeting shall be held not more than thirty
12 (30) days from the date of the request.

13 ~~(8)~~~~(7)~~ The purpose of the meeting under subsection ~~(7)~~~~(6)~~ of this section is to fully
14 inform landowners and other interested parties of the full extent of the project being
15 considered, including the project time line. One (1) or more representatives of the
16 entity with full knowledge of all aspects of the project shall be present and shall
17 answer questions from the public.

18 ~~(9)~~~~(8)~~ Notice of the time, subject, and location of the meeting under subsection
19 ~~(7)~~~~(6)~~ of this section shall be posted in both a local newspaper, if any, and a
20 newspaper of general circulation in the county. Notice shall also be placed on the
21 Web sites of the unregulated entity, and any local governmental unit. Owners of real
22 estate known to be included in the project and any person whose property adjoins at
23 any point any property to be included in the project shall be notified personally by
24 mail. All notices must be mailed or posted at least two (2) weeks prior to the
25 meeting.

26 ~~(10)~~~~(9)~~ The merchant electric generating entity or a person acting on behalf of a
27 merchant electric generating entity shall, on or before the date of the public meeting

1 held under subsection ~~(7)~~~~(6)~~ of this section, provide notice of all research, testing,
2 or any other activities being planned or considered to:

- 3 (a) The Energy and Environment Cabinet;
4 (b) The Public Service Commission;
5 (c) The Transportation Cabinet;
6 (d) The Attorney General; and
7 (e) The Office of the Governor.

8 ~~(11)~~~~(10)~~ A person that, on or before April 10, 2014, has started acquiring interests in
9 real estate for a project as described in subsection ~~(7)~~~~(6)~~ of this section shall hold
10 a meeting that complies with this section within thirty (30) days of April 10, 2014.

11 ~~(12)~~~~(11)~~ Subsections ~~(7) to (11)~~~~(6) to (10)~~ of this section shall not apply to any
12 facility or project that has already received a certificate of construction from the
13 board.

14 ➔Section 12. KRS 278.706 is amended to read as follows:

15 (1) Any person seeking to obtain a construction certificate from the board to construct a
16 merchant electric generating facility shall file an application at the office of the
17 Public Service Commission.

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

- 19 (a) The name, address, and telephone number of the person proposing to
20 construct and own the merchant electric generating facility;
21 (b) A full description of the proposed site, including a map showing the distance
22 of the proposed site from residential neighborhoods, the nearest residential
23 structures, schools, and public and private parks that are located within a two
24 (2) mile radius of the proposed facility;
25 (c) Evidence of public notice that shall include the location of the proposed site
26 and a general description of the project, state that the proposed construction is
27 subject to approval by the board, and provide the telephone number and

- 1 address of the Public Service Commission. Public notice shall be given within
2 thirty (30) days immediately preceding the application filing to:
- 3 1. Landowners whose property borders the proposed site; and
 - 4 2. The general public in a newspaper of general circulation in the county or
5 municipality in which the facility is proposed to be located;
- 6 (d) A statement certifying that the proposed plant will be in compliance with all
7 local ordinances and regulations concerning noise control, prohibitions on
8 siting photovoltaic power plants on agricultural lands, and with any local
9 planning and zoning ordinances. The statement shall also disclose setback
10 requirements established by the planning and zoning commission as provided
11 under KRS 278.704~~(4)(3)~~;
- 12 (e) If the facility is not proposed to be located on a site of a former coal
13 processing plant and the facility will use on-site waste coal as a fuel source or
14 in an area where a planning and zoning commission has established a setback
15 requirement pursuant to KRS 278.704~~(4)(3)~~, a statement that the exhaust
16 stack of the proposed facility and any wind turbine is at least one thousand
17 (1,000) feet from the property boundary of any adjoining property owner and
18 all proposed structures or facilities used for generation of electricity are two
19 thousand (2,000) feet from any residential neighborhood, school, hospital, or
20 nursing home facility, unless facilities capable of generating ten megawatts
21 (10MW) or more currently exist on the site. If the facility is proposed to be
22 located on a site of a former coal processing plant and the facility will use on-
23 site waste coal as a fuel source, a statement that the proposed site is
24 compatible with the setback requirements provided under KRS
25 278.704~~(6)(5)~~. If the facility is proposed to be located in a jurisdiction that
26 has established setback requirements pursuant to KRS 278.704~~(4)(3)~~, a
27 statement that the proposed site is in compliance with those established

- 1 setback requirements;
- 2 (f) A complete report of the applicant's public involvement program activities
- 3 undertaken prior to the filing of the application, including:
- 4 1. The scheduling and conducting of a public meeting in the county or
- 5 counties in which the proposed facility will be constructed at least ninety
- 6 (90) days prior to the filing of an application, for the purpose of
- 7 informing the public of the project being considered and receiving
- 8 comment on it;
- 9 2. Evidence that notice of the time, subject, and location of the meeting
- 10 was published in the newspaper of general circulation in the county, and
- 11 that individual notice was mailed to all owners of property adjoining the
- 12 proposed project at least two (2) weeks prior to the meeting; and
- 13 3. Any use of media coverage, direct mailing, fliers, newsletters, additional
- 14 public meetings, establishment of a community advisory group, and any
- 15 other efforts to obtain local involvement in the siting process;
- 16 (g) A summary of the efforts made by the applicant to locate the proposed facility
- 17 on a site where existing electric generating facilities are located;
- 18 (h) Proof of service of a copy of the application upon the chief executive officer
- 19 of each county and municipal corporation in which the proposed facility is to
- 20 be located, and upon the chief officer of each public agency charged with the
- 21 duty of planning land use in the jurisdiction in which the facility is proposed
- 22 to be located;
- 23 (i) An analysis of the proposed facility's projected effect on the electricity
- 24 transmission system in Kentucky;
- 25 (j) An analysis of the proposed facility's economic impact on the affected region
- 26 and the state;
- 27 (k) A detailed listing of all violations by it, or any person with an ownership

1 interest, of federal or state environmental laws, rules, or administrative
2 regulations, whether judicial or administrative, where violations have resulted
3 in criminal convictions or civil or administrative fines exceeding five
4 thousand dollars (\$5,000). The status of any pending action, whether judicial
5 or administrative, shall also be submitted; and

6 (l) A site assessment report as specified in KRS 278.708. The applicant may
7 submit and the board may accept documentation of compliance with the
8 National Environmental Policy Act (NEPA) rather than a site assessment
9 report.

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

12 (4) Replacement of a merchant electric generating facility with a like facility, or the
13 repair, modification, retrofitting, enhancement, or reconfiguration of a merchant
14 electric generating facility shall not, for the purposes of this section and KRS
15 224.10-280, 278.704, 278.708, 278.710, and 278.712, constitute construction of a
16 merchant electric generating facility.

17 (5) The board shall promulgate administrative regulations prescribing fees to pay
18 expenses associated with its review of applications filed with it pursuant to KRS
19 278.700 to 278.716. All application fees collected by the board shall be deposited in
20 a trust and agency account to the credit of the Public Service Commission. If a
21 majority of the members of the board find that an applicant's initial fees are
22 insufficient to pay the board's expenses associated with the application, including
23 the board's expenses associated with legal review thereof, the board shall assess a
24 supplemental application fee to cover the additional expenses. An applicant's failure
25 to pay a fee assessed pursuant to this subsection shall be grounds for denial of the
26 application.

27 ➔Section 13. KRS 278.708 is amended to read as follows:

- 1 (1) Any person proposing to construct a merchant electric generating facility shall file a
2 site assessment report with the board as required under KRS 278.706(2)(1).
- 3 (2) A site assessment report shall be prepared by the applicant or its designee.
- 4 (3) A completed site assessment report shall include:
- 5 (a) A description of the proposed facility that shall include a proposed site
6 development plan that describes:
- 7 1. Surrounding land uses for residential, commercial, agricultural, and
8 recreational purposes;
- 9 2. The legal boundaries of the proposed site;
- 10 3. Proposed access control to the site;
- 11 4. The location of facility buildings, transmission lines, and other
12 structures;
- 13 5. Location and use of access ways, internal roads, and railways;
- 14 6. Existing or proposed utilities to service the facility;
- 15 7. Compliance with applicable setback requirements and restrictions for
16 agricultural lands as provided under KRS 278.704(2), (3), (4), ~~(5)~~,
17 or (6); and
- 18 8. Evaluation of the noise levels expected to be produced by the facility;
- 19 (b) An evaluation of the compatibility of the facility with scenic surroundings;
- 20 (c) The potential changes in property values and land use resulting from the
21 siting, construction, and operation of the proposed facility for property owners
22 adjacent to the facility;
- 23 (d) Evaluation of anticipated peak and average noise levels associated with the
24 facility's construction and operation at the property boundary; and
- 25 (e) The impact of the facility's operation on road and rail traffic to and within the
26 facility, including anticipated levels of fugitive dust created by the traffic and
27 any anticipated degradation of roads and lands in the vicinity of the facility.

- 1 (4) The site assessment report shall also suggest any mitigating measures to be
2 implemented by the applicant to minimize or avoid adverse effects identified in the
3 site assessment report.
- 4 (5) The board shall have the authority to hire a consultant to review the site assessment
5 report and provide recommendations concerning the adequacy of the report and
6 proposed mitigation measures. The board may direct the consultant to prepare a
7 separate site assessment report. Any expenses or fees incurred by the board's hiring
8 of a consultant shall be borne by the applicant.
- 9 (6) The applicant shall be given the opportunity to present evidence to the board
10 regarding any mitigation measures. As a condition of approval for an application to
11 obtain a construction certificate, the board may require the implementation of any
12 mitigation measures that the board deems appropriate.

13 ➔Section 14. KRS 100.273 is amended to read as follows:

- 14 (1) Any planning commission which has completed the objectives, land use plan,
15 transportation plan, and community facilities elements of a comprehensive plan may
16 adopt regulations for the subdivision of land within its boundaries, except that, in
17 the case of urban-county governments, the planning commission shall make
18 recommendations to the legislative body of the urban-county government as to the
19 regulations, and it shall take a majority of the entire legislative body to override the
20 recommendation of the planning commission.
- 21 (2) A county which does not wish to establish a planning program or form a planning
22 unit may adopt regulations for the subdivision of land within its boundaries. In this
23 case, the county shall be governed by the provisions of KRS 100.111~~23~~²³~~[(22)]~~,
24 100.277, 100.281, 100.283, 100.287 and 100.291, but any powers delegated to a
25 planning commission in these sections shall instead be delegated to the fiscal court,
26 any reference to the planning unit shall be considered a reference to the county, and
27 any reference to the chairman of the planning commission shall be considered a

1 reference to the county judge/executive.