

AN ACT relating to wastewater.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds that regionalization of utility services benefits Kentuckians by sharing the capital and operating costs of facilities among many users while protecting and enhancing the water quality of the Commonwealth's watersheds, creeks, lakes, and rivers. Consequently, the General Assembly hereby enables the creation and encourages the use of regional wastewater commissions as a means to deal with the increasingly difficult task of providing affordable and environmentally appropriate wastewater services across the Commonwealth. The provisions of Sections 1 to 15 of this Act shall constitute full and complete authority for the creation of a regional wastewater commission and for carrying out the powers and duties of the commission.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 15 of this Act, the following definitions shall apply:

(1) "Commission" means a regional wastewater commission established pursuant to Section 4 of this Act;

(2) "Member entity" means any of the following entities that are participating in or that are eligible to participate in a regional wastewater commission:

(a) A city that owns a wastewater system;

(b) An urban-county government that owns a wastewater system;

(c) A sanitation district created pursuant to KRS Chapters 67 and 220;

(d) A wastewater collection project as defined in KRS 67A.871;

(e) A metropolitan sewer district or a joint sewer agency established under KRS Chapter 76;

- (f) A water district that owns a wastewater system established under KRS Chapter 74; and
- (g) An agency of the federal, state, or local government owning a wastewater system subject to regulation by the Kentucky Division of Water;
- (3) "Organizing official" means the chief elected official from the county having the greatest population of those counties in which there are located member entities that jointly propose to create a regional wastewater commission. The organizing official may be a county judge/executive or the mayor of an urban-county government or a consolidated local government;
- (4) "Wastewater" means the same as defined in KRS 67A.871, except that it shall also include stormwater; and
- (5) "Sources of collected wastewater" means raw, untreated, or partially treated wastewater collected by lateral and main lines from residential, commercial, and industrial customers of wastewater systems owned by or under contract with a member entity of a commission and properly conveyed to designated receiving points for further transportation or treatment.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) Any two (2) or more member entities owning wastewater systems may jointly:
- (a) Acquire and construct wastewater collection, transportation, and treatment facilities;
- (b) Operate and manage those facilities; and
- (c) Improve and extend those facilities in any manner permitted under law.
- (2) The governing body of a member entity owning a wastewater system that wants to form a regional wastewater commission shall adopt a resolution or ordinance electing to participate with other member entities to perform any of the functions authorized under subsection (1) of this section.

- (3) Upon the adoption of an ordinance or resolution by the governing body of each member entity or a decision by a local, state, or federal agency owning a wastewater system to participate in a commission, a certified copy of each member entity's action shall be filed with the organizing official.
- (4) The organizing official, upon receipt of the certified copy, shall set a date for a public hearing regarding the creation of the commission and shall give thirty (30) days' prior notice of the hearing. Notice may be given in the manner prescribed by KRS Chapter 424. A resident, sewer customer, or citizen of the Commonwealth affected by a member entity proposing to establish a commission may submit written or oral comments and objections to the organizing official.
- (5) The organizing official shall enter an order of decision along with factual findings for the decision. The organizing official shall establish the commission designating it as a "regional wastewater commission" if, after the public hearing and consideration of all comments and objections received, the organizing official finds that:
- (a) The establishment of a commission is in the furtherance of public health, convenience, and benefit of the customers of the member entities proposing the creation of the commission; and
- (b) The establishment of a commission can reasonably be expected to result in the improvement of the environment.
- (6) Any party adversely affected by an order of the organizing official pursuant to subsection (5) of this section may appeal the order to the Circuit Court in the county where the organizing official is located.
- (7) The respective member entities of an order issued by an organizing official to establish a commission may revise, update, adopt, and file with the organizing official new ordinances or resolutions for consideration in accordance with the procedures set forth in subsections (2) to (6) of this section.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) After an organizing official has entered an order establishing a commission, the chief executive of each member entity shall appoint one (1) commissioner to represent that member entity. The commissioner shall be a customer, a resident, or an authorized representative of the designated planning area of one of the member entities to the commission. The appointment shall be subject to the approval of the governing body of that member entity.

(2) There shall be no fewer than three (3) commissioners appointed by member entities to a commission, and the commission shall always have an odd number of commissioners. If the total number of commissioners is less than three (3) or is an even number, then the organizing official shall appoint one (1) additional member.

(3) Commissioners shall serve a term of four (4) years and may be reappointed. Terms shall commence from the first day of the month when the order establishing the commission was entered. Upon the expiration of a commissioner's term, a successor shall be appointed in the manner of the commissioner's original appointment. Each commissioner shall serve until a qualified successor is appointed, and any vacancy shall be filled for the balance of the unexpired term.

(4) Initial commissioners shall serve the following terms:

(a) One-third (1/3) of the commissioners shall serve for a term of two (2) years;

(b) One-third (1/3) of the commissioners shall serve for a term of three (3) years; and

(c) The remaining commissioners shall serve for a term of four (4) years.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) Any entity listed in subsection (2) of Section 2 of this Act that did not participate in the initial creation of the commission may elect to participate in the operation and appoint a commissioner to an existing commission. To elect participation, the governing body of the prospective member entity shall follow the process set forth in subsections (2) to (5) of Section 3 of this Act.
- (2) After the process set forth in subsections (2) to (5) of Section 3 of this Act is complete, inclusion of the prospective member entity in the existing commission shall be granted if the organizing official finds that:
- (a) The member entity meets the criteria set forth in paragraphs (a) and (b) of subsection (5) of Section 3 of this Act; and
- (b) The inclusion of the member entity in the existing commission shall be advantageous for the existing member entities of the commission.
- (3) If inclusion is granted, the organizing official shall enter an order authorizing the inclusion of the member entity. The chief executive officer of the member entity shall appoint a commissioner to the commission in accordance with the process and restrictions set forth in Section 4 of this Act.
- (4) The term of the newly appointed commissioner shall be determined in accordance with the provisions of subsection (4) of Section 4 of this Act but may be adjusted by the commission so that no more than one-third (1/3) of the terms of the commissioners expire each year.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) The commission shall organize by appointing a chair from among its members and a secretary and a treasurer, who need not be commissioners. The secretary shall keep a record of all proceedings of the commission. The treasurer shall be the lawful custodian of all funds of the commission and shall make expenditures as authorized by the commission. The secretary and treasurer shall perform other

duties pertaining to the affairs of the commission and may receive salaries prescribed by the commission.

(2) The commission shall:

(a) Adopt bylaws and rules of procedure;

(b) Establish a regular meeting time, date, and location; and

(c) Decide upon other matters for conduct of its business.

(3) The commission may employ and fix compensation for a qualified general manager and other personnel. The commission may contract with and fix the compensation for the services of officers, agents, operators, and consultants, including engineers, attorneys, accountants, fiscal agents, and other professional persons.

(4) Each commissioner shall receive the same compensation fixed by the commission and paid out of the commission's funds, except that the compensation shall not be more than five hundred dollars (\$500) per year. Reasonable expenses incurred by a commissioner in the course of commission business shall be paid by commission funds.

(5) Each commissioner shall have one (1) vote on matters requiring a vote and shall be bonded for faithful performance of his or her official duties pursuant to KRS 65.067. Bond shall be in an amount prescribed by the commission, and the cost of bonding shall be borne by the commission.

(6) Commission meetings and records shall be subject to the provisions of KRS 61.805 to 61.850 and KRS 61.870 to 61.884, respectively.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) A commissioner may be removed for cause by the chief executive officer of the member entity he represents. The chief executive officer shall give the commissioner ten (10) days' written notice of hearing. The notice shall identify

the charges brought against that commissioner, and the hearing shall be conducted by the chief executive officer. The commissioner may elect to be represented by private legal counsel and shall bear any cost associated with private legal counsel.

(2) After the hearing, the chief executive officer shall submit written findings to the governing body of the member entity for approval or disapproval. If the governing body approves the charges brought against the commissioner, then the decision to remove the commissioner shall be final, and the commissioner shall vacate that office.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) Any member entity of a commission may withdraw its participation by submitting a resolution of its governing body to all member entities and to the organizing official of the commission requesting to withdraw from the commission.

(2) Upon receipt of the resolution, the organizing official may confer with other member entities and conduct a hearing to determine whether the withdrawal will be detrimental to the other member entities or to the environment.

(3) The organizing official shall enter an order to approve or reject the withdrawal based on whether the withdrawal will:

(a) Adversely impact a member entity; and

(b) Adversely impact the environment.

(4) If the withdrawal will be limited to a fiscal impact only, the organizing official may permit the withdrawal conditioned on the entity making payment in full or satisfying other mutually agreeable financial arrangements to meet contract obligations, retire any cost, or pay the portion of any debt or other obligations incurred by the commission on behalf of the member entity.

(5) Vacancies on the commission that result from a withdrawal of a member entity

shall be filled in the manner prescribed in Section 4 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) The commissioners shall constitute the managing board of the commission. The commission shall be a public corporation and a public body corporate and politic with the powers and duties in its corporate name to:

(a) Execute contracts or be contracted with;

(b) Sue and be sued;

(c) Adopt and alter its corporate seal, at its own pleasure;

(d) Make loans and issue and repay revenue bonds, or other instruments of indebtedness;

(e) Receive proceeds from loans and grants;

(f) Purchase, acquire, own, hold, and dispose of all real and personal property necessary for carrying out its corporate purposes; and

(g) Exercise any powers, duties, and requirements for carrying out its corporate purposes in the manner prescribed in KRS 58.010 to 58.190 and KRS Chapter 224A.

(2) The commission shall have full and complete supervision, management, and control over all of its facilities. The commission may prescribe standards for the quality and characteristics of the wastewater it accepts into its facilities. All matters relating to the following shall be clearly set forth in commission policy and procedures and promulgated to the governing bodies of all the member entities of the commission:

(a) Procurement of professional services;

(b) Construction of facilities;

(c) Accepting, metering, conveying, and treating influent from all waste streams; and

- (d) Handling of treatment process solids and effluent.
- (3) It shall be the role and duty of the commission to:
- (a) Plan for and provide site and technology appropriate facilities and services relating to any type or aspect of wastewater collection, transportation, or treatment to achieve the best benefit to its member entities; and
- (b) Protect and enhance the environmental quality of the watershed in which those facilities and services are located.
- (c) The commission shall actively participate in the planning activities of the Area Water Management Planning Councils, established pursuant to KRS Chapter 151, serving the regions in which the commission has facilities.
- (4) For the purpose of ensuring proper collection, transportation, and treatment of wastewater and in the furtherance of its purpose, the commission may collect and treat or contract with others to collect and treat any portion of its overall waste load. The commission may use whatever configuration of available or proposed facilities in the most cost-effective manner appropriate to its purposes.
- (5) The commission's property and income, along with any bonds or financial instruments issued by the commission or income derived from those bonds or financial instruments, shall be exempt from taxation.
- (6) The commission shall adopt and comply with the Kentucky Model Procurement Code and conduct all its business and financial activities according to approved governmental fiscal procedure. The commission shall procure the services of a certified public accountant to conduct an audit of all funds and fiscal transactions annually, providing copies of the audit report to the governing bodies of its member entities.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) The commission shall provide all services on a wholesale contract basis and shall

have no retail customers. The commission shall not be deemed a utility under KRS 278.010(3). Contracts entered into between the commission and its member entities or other parties shall include covenants for the establishment of rates and charges as provided in subsection (5) of this section.

(2) In addition to providing services to its member entities by contract, the commission may contract with cities, city-owned utilities, urban-county governments, sanitation districts, joint sewer agencies, water districts, and agencies of local, state, and federal government that are not members of the commission. The commission may contract to provide services to wastewater entities in neighboring states that are not members of the commission under terms mutually agreed upon by the respective parties.

(3) The commission shall not enter into a service contract with any entity that is obtaining the same wastewater collection, transportation, or treatment services by agreement with another wastewater service provider that has incurred debt obligations to be retired in whole or in part from revenue generated from providing the service to the entity unless the wastewater service provider releases the entity from its wastewater service agreement.

(4) All services provided by the commission to member entities or other parties shall be set out in contracts that shall contain, at minimum, the following elements:

(a) A comprehensive description of any type of services to be provided;

(b) A statement of term, with beginning and ending times, dates, and a specific delineation of automatic term extensions of the contract if any;

(c) A provision that the commission shall be the exclusive service provider for all or a designated geographic portion of a member entity's wastewater collection system;

(d) Statements that:

1. All service shall be metered at each point of service and that the

- contractee shall be responsible for initial capital costs and construction of metering stations subject to the commission's specifications;
2. The commission shall take ownership and provide security for all metering stations for purposes of management;
 3. The commission shall arrange for testing of all meters according to manufacturer's recommended schedule;
 4. Testing and metering station maintenance costs shall be shared equally between the commission and the contractee;
 5. Metering stations shall be accessible to both parties; and
 6. Meters shall be read at least monthly or more often according to a mutually agreed upon schedule;
- (e) A statement setting out allowed minimum volumes, if any, and allowed maximum volumes expressed in gallons per minute for each meter;
- (f) Identification of collected wastewater sources and allowed quality of influent to commission facilities at each meter;
- (g) A statement of rates and charges for access to services, for allowed minimum volumes, if any, expressed in dollars per thousand gallons, and for allowed maximum volumes, expressed in dollars per thousand gallons;
- (h) A statement that all rates or charges are subject to adjustment based on periodic cost of service analyses and an associated cost allocation plan funded equitably between the commission and contractees, and a statement that any rates and charges adjustment that may occur in the interim between the times of full cost of service analyses with cost allocation plans, if any, are subject to clauses citing time frames, volumes of influent, or other triggering elements tied to designated indexing method and proper notice;

- (i) A requirement that either party provide immediate notification to the other party regarding changes in volume or the quality of influent, instances of mechanical failure, or other critical circumstance affecting operations when and as changes are known or can be reasonably anticipated;
 - (j) A statement regarding any modifications or restrictions in service by either the commission or the contractee during emergencies;
 - (k) A statement delineating any special condition binding one (1) or both parties, or citation of a particular action that, if taken by either party or if either party allows a third party to take, will constitute a breach of contract or invoke specifically identified penalties;
 - (l) A statement requiring both parties to provide current contact information of the respective parties' agents for both administrative matters and for emergencies; and
 - (m) A statement that the commission and the governing body of the contractee agree to meet at least annually to review any contract issues, assess service delivery, and plan for future service needs.
- (5) Any contract entered into by the commission to supply designated wastewater services to either a commission or noncommission member shall provide that charges assessed by the commission and payments made by the entity shall be sufficient to cover all costs associated with the service. The commission's rates and charges may be modified to compensate for increased operating costs, pursuant to covenants set forth in contract. Contracts for services shall be fully binding on the parties but shall not be construed to be a debt of the commission member entities within the meaning of any statutory or constitutional limitations.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) The rates and charges to be assessed by the commission to its member entities

and others shall be the verified cost of providing the services as prescribed in this section. However, the commission may negotiate and establish temporary initial service terms without strict regard to actual dollar cost or value in every instance in furtherance of its basic purpose to assist the member entities in providing wastewater services and protect the environment.

(2) Member entities of a commission shall establish charges and rates for wastewater service supplied by them to their retail customers sufficient at all times to:

(a) Make the principal and interest payments on all outstanding obligations of its wastewater facilities or secure other fund sources to retire those obligations; and

(b) Pay the cost of operation and maintenance of their respective wastewater systems, including the payments to be made to the commission pursuant to contracts for the purchase of any collection, transportation, and treatment services.

(3) The commission shall establish wholesale charges and rates for its services to its member entities and to any other entity to which it provides service under contract that is sufficient at all times to:

(a) Pay the cost of operation and maintenance of any facility that it may own or lease to provide wastewater services contracted to its members or others;

(b) Pay the principal and interest on any bonds, loans, or other instruments or obligations secured in the name of the commission; and

(c) Provide an adequate fund for renewals, replacements, and reserves.

(4) The commission's procedure for establishing or changing rates and charges levied on member entities and others that contract for service shall be as follows:

(a) Every five (5) years, or more often if circumstances warrant, the commission shall procure, pursuant to KRS Chapter 45A, the professional consulting services of an independent accounting firm or other qualified

- individual experienced in conducting cost-of-service studies. The commission shall invite the governing body of each member entity to designate a special representative to participate in the consultant selection process;
- (b) The firm or individual selected in consultation with the commission's designated engineers, operators, and other knowledgeable individuals shall perform a cost-of-service study to:
1. Determine the actual or probable cost of operating and maintaining the commission's respective wastewater facilities;
 2. Determine the cost of servicing any associated debt obligations and administrative costs;
 3. Devise a comprehensive cost allocation plan and recommend that the commission establish and levy specific rates for treatment services and appropriate charges for other services to offset these costs; and
 4. Devise and recommend a standard method of formulary whereby the commission may conduct regular financial analyses internally, based on sound accounting policy, allowing for the application of inflation indices and other equitable methods of determining service rates;
- (c) The commission shall determine final rates and charges based on:
1. The cost-of-service study and recommendations of the consultant; and
 2. Consultation with the governing bodies of member entities during the cost-of-service study or during any proposed changes in rates and charges;
- (d) Initial rates and charges and any subsequent changes to rates and charges shall be approved by the commission; and
- (e) The commission shall provide not less than sixty (60) days' written notice to the governing bodies of the member entities prior to the effective date of any

change in rates or charges for service.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) For the purpose of acquiring all or part of the facilities necessary to collect, transport, and treat wastewater, the commission may purchase facilities and equipment from member entities and others for mutually agreed upon terms not to exceed the actual value of the facilities and equipment. Notwithstanding any provision of law to the contrary, a member entity of the commission or other entity may convey ownership of the facility or equipment to the commission without an election or voter approval.
- (2) If a member entity has any outstanding debt obligation related to an acquisition of its facilities or equipment by the commission, the commission may either make sufficient purchase payment to the owner to cover debt obligations or assume the debt obligations in its name pursuant to a sales agreement and any other instruments deemed appropriate by legal counsel. If the commission makes cash payment to the owner for the equipment or facility, it shall be a condition of sale that any outstanding debt obligation associated with the equipment or facility be retired by the owner at the time of sale.
- (3) The commission may secure funding from state and federal grants and loan programs, nonprofit associations, and private lending institutions and may issue revenue bonds to acquire, construct, improve, or extend facilities for the collection, transportation, or treatment of wastewater. Loans and bonds shall be payable solely from the revenues derived pursuant to contracts for wastewater collection, transportation, and treatment services with member entities or other entities.
- (4) For the purpose of securing appropriate sites, facilities, and required funding, the commission shall be vested with all the powers, duties, and responsibilities as

delegated and granted to a governmental agency under Sections 12 of this Act and under the terms and provisions of KRS 58.010 to 58.190 and KRS Chapter 224A.

→Section 13. KRS 58.010 is amended to read as follows:

As used in KRS 58.010 to 58.140, unless the context requires otherwise:

- (1) "Public project" means any lands, buildings, or structures, works or facilities (a) suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare or the conservation of natural resources, including medical office buildings contiguous to hospital facilities, and shall also include the planning of any such lands, buildings, structures, works or facilities; or (b) suitable for and intended for use for the purpose of creating or increasing the public recreational, cultural and related business facilities of a community, including such structures as concert halls, museums, stadiums, theaters and other public facilities, together with related and appurtenant parking garages, offices and office buildings for rental in whole or in part to private tenants, dwelling units and apartment buildings for rental in whole or in part to private tenants, commercial and retail businesses, stores or other establishments, and any structure or structures or combination of the foregoing, or other structures having as their primary purpose the creation, improvement, revitalization, renewal or modernization of a central business or shopping community, and shall also include existing lands, buildings, structures, works and facilities, as well as improvements or additions to any such lands, buildings, structures, works or facilities.
- (2) "Public project" as defined herein shall include projects intended for use as public property for public purposes by another governmental agency, including the United States government, other than the governmental agency acquiring the land or constructing the building, structure or facility.

- (3) "Governmental agency" means the Commonwealth of Kentucky as such acting by or through any department, instrumentality or agency thereof, or any county, city, agency, or instrumentality, including regional wastewater commissions, or other political subdivision of the Commonwealth.

➔Section 14. KRS 65.067 is amended to read as follows:

- (1) All officers, officials, and employees of cities, counties, urban-county governments, charter county governments, regional wastewater commissions, and special districts who handle public funds in the execution of their duties shall give a good and sufficient bond to the local governing body for the faithful and honest performance of his or her duties and as security for all money coming into that person's hands or under that person's control. The bond amount shall be based upon the maximum amount of public funds the officer, official, or employee handles at any given time during a fiscal year cycle. The local governing body shall pay the cost of the bond.
- (2) Elected officials who post bond as required by statute, and employees of their offices covered by a blanket or umbrella bond, shall be deemed to have complied with subsection (1) of this section.

➔Section 15. KRS 224A.011 is amended to read as follows:

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

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and

between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.

- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.
- (5) "Authority revenues" means the totality of all:
- (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political

subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.

- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.
- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Environmental and Public Protection Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems

used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.

- (11) "Environmental and Public Protection Cabinet" means the Kentucky Environmental and Public Protection Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.
- (12) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (13) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.
- (14) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts;

sanitation taxing districts; regional wastewater commission; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.

- (15) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.
- (16) "Infrastructure project" means any construction or acquisition of treatment works, facilities related to the collection, transportation, and treatment of wastewater, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the Environmental and Public Protection Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300.
- (17) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (18) "Loan or grant" means moneys to be made available to governmental agencies by

the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.

- (19) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the Environmental and Public Protection Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district. The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from area development districts, telecommunications

businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky.

- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the

existence of, and requirements of, any assistance agreement.

- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition

of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act.

- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, facilities to collect, transport, and treat wastewater as defined in Section 2 of this Act, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every

purchase of water or sewer service in the Commonwealth of Kentucky.

(42) "Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth.

(43) "Unserved area" means any place where broadband service is not available.

➔Section 16. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city **or a regional wastewater commission as defined in subsection (1) of Section 2 of this Act**, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing

- of water to or for the public, for compensation;
- (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
 - (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
 - (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
 - (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
 - (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
 - (9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;

- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission;
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;

- (18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;
- (19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;
- (20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;
- (21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;
- (22) "Nonregulated" means that which is not subject to regulation by the commission;
- (23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;
- (24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;
- (25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;
- (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;
- (27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;
- (28) "USDA" means the United States Department of Agriculture;
- (29) "FERC" means the Federal Energy Regulatory Commission;
- (30) "SEC" means the Securities and Exchange Commission;
- (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications

used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line; and

(32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.