

1 AN ACT relating to stream and wetland mitigation, making an appropriation
2 therefor, and declaring an emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
5 READ AS FOLLOWS:

6 *As used in Sections 1 to 7 and 14 of this Act:*

- 7 *(1) "Acquire" to come into possession of by sale, trade, exchange, or other*
8 *transaction;*
- 9 *(2) "Aquatic resources" means the ecological functions, services, and values*
10 *provided by the waters of the United States that are subject to compensatory*
11 *mitigation under 33 U.S.C. secs. 1251 et seq. and 33 U.S.C. secs. 401 and 403;*
- 12 *(3) "Compensatory mitigation" means the restoration, establishment, enhancement,*
13 *or preservation of the jurisdictional waters of the United States and their aquatic*
14 *habitats that is required as a condition of a permit issued by the United States*
15 *Army Corps of Engineers for the purposes of offsetting unavoidable adverse*
16 *impacts which remain after all appropriate and practicable avoidance and*
17 *minimization have been achieved;*
- 18 *(4) "Compensatory mitigation credit" means a non-tangible ecosystem service asset*
19 *comprising a unit of measure that represents the accrual or attainment of aquatic*
20 *functions or improvements;*
- 21 *(5) "Compensatory mitigation project" means the work associated with*
22 *implementing compensatory mitigation as required by a Department of Army*
23 *(DA) permit or by a mitigation bank or an in-lieu fee program which results in*
24 *the ultimate production of mitigation credits, including but not limited to property*
25 *acquisition, design, construction, and monitoring;*
- 26 *(6) "Compensatory mitigation site" means the location where compensatory*
27 *mitigation is implemented by the permittee, mitigation bank, or in-lieu fee*

- 1 program in order to meet the obligations imposed by the United States Army
2 Corps of Engineers;
- 3 (7) "Conservation easement" has the same meaning as in KRS 382.800;
- 4 (8) "DA permit" means Department of Army permit;
- 5 (9) "Design-bid-build" has the same meaning as in Section 11 of this Act;
- 6 (10) "Design-build" has the same meaning as in Section 11 of this Act;
- 7 (11) "Design-build mitigation" means a project delivery method in which the
8 Commonwealth enters into a single contract for design and construction of a
9 compensatory mitigation project on a property that the Commonwealth either
10 owns in fee or possesses a conservation easement in its favor for:
- 11 (a) A stream;
- 12 (b) A wetland; or
- 13 (c) Both streams and wetlands;
- 14 (12) "FILO" means the in-lieu fee program operated by the department in
15 accordance with the in-lieu fee program instrument approved by the United
16 States Army Corps of Engineers and this chapter;
- 17 (13) "Foreign entity" has the same meaning as in KRS 14A.1-070;
- 18 (14) "Full delivery compensatory mitigation" means a performance contract for
19 construction management services where the Commonwealth procures and
20 obtains the production and delivery of mitigation credits from a vendor who
21 acquires the land and develops or preserves a stream or wetland mitigation site
22 approved by the United States Army Corps of Engineers, and upon the release of
23 mitigation credits, the vendor:
- 24 (a) Donates the property to the Commonwealth;
- 25 (b) Provides a conservation easement in favor of the Commonwealth; or
- 26 (c) Donates the property, if approved by the United States Army Corps of
27 Engineers, to a third party holder for purposes of site protection;

- 1 (15) "In-lieu fee program" means a program involving the restoration, establishment,
2 enhancement, and preservation of aquatic resources through funds paid to a
3 governmental or non-profit natural resources management entity to satisfy
4 compensatory mitigation requirements for Department of Army permits;
- 5 (16) "In-lieu fee program instrument" or "program instrument" means the legal
6 document for the establishment, operation, and use of an in-lieu fee program;
- 7 (17) "Mitigation bank" means a site, or a suite of sites, where aquatic resources are
8 restored, enhanced, and preserved for the purpose of providing compensatory
9 mitigation for impacts authorized by DA permits;
- 10 (18) "Performance-based" with respect to a contract means the inclusion of or
11 reliance on both quantitative and qualitative indicators or measures that
12 demonstrate acceptable completion of tasks or deliverables;
- 13 (19) "Person" has the same meaning as in KRS 151.100;
- 14 (20) "Request for proposal" has the same meaning as in KRS 45A.070;
- 15 (21) "Responsible bidder" has the same meaning as in KRS 45A.070;
- 16 (22) "Service area" means a defined geographic area approved by the United States
17 Army Corps of Engineers within which mitigation providers including in-lieu fee
18 mitigation and mitigation bank sponsors may provide compensatory mitigation
19 for aquatic impacts as designated in the program instrument;
- 20 (23) "Site protection instrument" means a written description of the legal
21 arrangements, including site ownership, management, and enforcement of any
22 use restrictions that will be used to ensure the long-term protection of the
23 compensatory mitigation project site; and
- 24 (24) "USACE" means the United States Army Corps of Engineers.

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
26 READ AS FOLLOWS:

- 27 (1) Upon approval of the commission, the department may acquire, as necessary for

1 the construction, operation, and protection of a compensatory mitigation project,
 2 with payment being made solely from funds under Section 14 of this Act:

3 (a) Lands or interests therein including subsurface mineral rights;

4 (b) Structures or other surface property;

5 (c) Rights-of-way, franchises, or other easements; and

6 (d) Compensatory mitigation credits.

7 (2) Notwithstanding KRS Chapters 45 and 45A and except when an acquisition is
 8 made under full delivery compensatory mitigation under subsection (2) of Section
 9 3 of this Act, title to any real property or interests therein shall be made in the
 10 name of the Commonwealth and for use and benefit of the department. All
 11 property acquisitions made pursuant to Sections 1 to 7 of this Act shall be only
 12 for the purposes stated in, and paid out of funds from, Section 14 of this Act.

13 (3) The acquisition price of real property including interests therein shall be subject
 14 to the approval of the commission. Interests in real property may be purchased at
 15 an amount greater but not more than five percent (5%) of the appraised value
 16 when a comparable sales comparison or market approach appraisal method is
 17 used to determine the property interest's value.

18 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) Notwithstanding any provision of law to the contrary, the department may use
 21 design-build or design-bid-build construction methodology as an alternative
 22 method of procuring construction contracting for compensatory mitigation
 23 projects and the production of compensatory mitigation credits, solely expending
 24 funds from Section 14 of this Act, and shall not be subject to title, acquisition
 25 requirements, and other restrictions and limitations under KRS Chapters 45 and
 26 45A.

27 (2) Notwithstanding any provision of law to the contrary, the department may utilize

1 full delivery compensatory mitigation as an alternative method of procuring
2 construction contracting for compensatory mitigation projects to produce or
3 purchase compensatory mitigation credits and shall be exempt from title,
4 acquisition requirements, and other restrictions and limitations pursuant to KRS
5 Chapter 45 and 45A. The department shall be authorized to approve the transfer
6 of title or to take fee simple title to any property, including the site protection
7 instrument or any other interests or rights that is a part of the compensatory
8 mitigation site, from the vendor upon:

9 (a) Approval of the site protection instrument by the department and USACE;

10 and

11 (b) Project completion and the production of compensatory mitigation credits.

12 (3) If any work, tasks, or deliverables for a compensatory mitigation project cannot
13 be fulfilled under this section, the department may procure the same from an
14 existing compensatory mitigation bank if:

15 (a) The procurement is approved by USACE; and

16 (b) The compensatory mitigation credits purchased offset impacts from a
17 compensatory mitigation project that is:

18 1. Approved by USACE; and

19 2. Located within the existing mitigation bank's service and hydrologic
20 area.

21 (4) All full delivery compensatory mitigation procurement shall be performance-
22 based with payment conditioned on successful completion of work, tasks, or
23 deliverables as defined by the contract. The contract shall include:

24 (a) Commencement and completion dates for work, tasks, or deliverables;

25 (b) Remittance dates and the manner of payment for the work, tasks, or
26 deliverables, which may include a provision for withholding or delaying a
27 percentage of the contract price or a fixed amount until a specified date or

1 until certain work, tasks, or deliverables are completed by the contractor
 2 and accepted by the department;

3 (c) A site protection instrument approved by USACE that covers the entire
 4 compensatory mitigation site and runs with the land in perpetuity; and

5 (d) A right for the vendor to transfer the site protection instrument,
 6 conservation easement, or fee simple title to the property of the
 7 compensatory mitigation site after the site protection instrument is approved
 8 by department and USACE but before commencing construction on the
 9 compensatory mitigation site.

10 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 11 READ AS FOLLOWS:

12 The following requirements shall apply to design-build, design-bid-build, and full
 13 delivery compensatory mitigation procurement methodologies:

14 (1) When the contract provides for partial payment based on the completion of work,
 15 a department representative supervising the project shall certify, each time a
 16 payment comes due, the amount of work completed for which payment is to be
 17 made;

18 (2) When the work has been fully completed, the department representative
 19 supervising the project shall certify the final cost of work in a detailed and
 20 itemized statement to the department, and the department shall review the
 21 statement for correctness;

22 (3) Once the project cost has been certified and reviewed in accordance with
 23 subsection (2) of this section, the department shall certify the final project cost to
 24 the Finance and Administration Cabinet and the cabinet shall draw a warrant for
 25 the amount due;

26 (4) Once a contract is awarded to a vendor:

27 (a) The contractor or vendor shall not deviate from the contract's provisions,

1 plans, or specifications without first having obtained written authorization
2 from the department;

3 (b) No agency of the Commonwealth of Kentucky, including the department,
4 the Finance and Administration Cabinet, and the State Treasurer, shall
5 assume liability or make payment for any unauthorized work performed by
6 the contractor; and

7 (c) If the contractor or vendor fails to perform any of the work, tasks, or
8 deliverables in the contract, the department may:

9 1. Cancel the contract; and

10 2. Re-award the contract to a qualified contractor without advertisement
11 as provided in subsection (5) of this section, but only if the new
12 contractor can perform the work at or below the original price;

13 (5) Solicitation of the bid and public notice shall be advertised by publication
14 pursuant to KRS Chapter 424. The department may contract for the performance
15 of a compensatory mitigation project via:

16 (a) Competitive sealed bidding;

17 (b) Competitive negotiation; and

18 (c) Noncompetitive negotiation;

19 (6) The department may:

20 (a) Determine the type of credits, restoration, improvement, and property
21 interest to be included in the contract for a compensatory mitigation
22 project;

23 (b) Advertise and receive bids for only the types of credits, restoration,
24 improvement, or property interest to be included in the contract;

25 (c) Adopt rules and promulgate administrative regulations to:

26 1. Implement the FILO program; and

27 2. Establish procedures, forms, and requirements for procurement,

1 adjudication of disputes, and collection of fines pursuant to Sections 7
2 and 15 of this Act, and any other matters to implement Sections 1 to 7
3 of this Act; and

4 (d) Investigate the financial status, experience, responsibility, capacity,
5 previous record of experience, resource sufficiency including required plant
6 and equipment, and any other pertinent fact necessary to determine whether
7 the bidder is a responsible bidder.

8 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) For compensatory mitigation projects designed to produce compensatory
11 mitigation credits procured through a request for proposals, at a minimum a
12 proposal shall include:

13 (a) Identification of the service area where compensatory mitigation credits are
14 to be produced;

15 (b) The amount of compensatory mitigation credits to be produced;

16 (c) A timeline for the needed production of compensatory mitigation credits;

17 (d) The estimated price for the compensatory mitigation credits; and

18 (e) The required experience and credentials of the vendor.

19 (2) In order to evaluate each proposal, the department shall develop criteria and a
20 method of scoring each submitted proposal. Each submitted proposal shall have
21 the individual scores for the criteria clearly marked on the scoring sheet, and the
22 department shall calculate a final grade which reflects the bidder's placement in
23 the hierarchy of submitted proposals. The department may pre-qualify suppliers
24 of particular types of services, products, supplies, or construction as responsible
25 bidders.

26 (3) All bids shall be opened publicly, at a time and place designated in the invitation
27 for bids. Each bid, together with the name of the bidder, shall be recorded and

1 open to public inspection.

2 (4) The contract shall be awarded to the bidder who receives the highest grade out of
3 all the proposals submitted for the request for proposals. If the department deems
4 it advisable, the department may require bonds or any other form of security or
5 financial assurance of any contractor to secure the performance of the contract.
6 The provisions of KRS 45A.015 shall apply to all contracts issued under this
7 section.

8 (5) The department may reject any bid when it finds it is in the best interest of the
9 state to do so. If all bids for a request for proposal are rejected, the department
10 may advertise for new bids or may engage a different method of procurement if
11 the department deems that it is prudent and necessary to obtain the required
12 work.

13 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) For the purposes of this section, "protest" means a written objection by an
16 interested party to any of the following:

17 (a) A solicitation or request by the department for offers for a contract or for
18 procurement of property or services;

19 (b) The cancellation of the solicitation or other request;

20 (c) An award or proposed award of a contract; or

21 (d) The termination or cancellation of an award of the contract if the written
22 objection contains an allegation that the termination or cancellation is
23 based in whole or in part on improprieties concerning the award of the
24 contract.

25 (2) The commissioner or designee shall have the authority to determine protests and
26 other controversies of actual or prospective bidders or offerors in connection with
27 the soliciting or awarding a contract.

- 1 (3) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
2 connection with the soliciting or awarding of a contract may file a protest or
3 notice of other controversy with the commissioner or designee. Protests or notices
4 of other controversy shall be deemed complete and actionable when the protest or
5 notice:
- 6 (a) Is written and physically delivered to the department;
7 (b) Is concise and logically presented to facilitate review by the department;
8 (c) Contains all relevant information as prescribed by the department; and
9 (c) Has been filed not later than ten (10) calendar days after the facts giving
10 rise to the protest are known or should have been known.
- 11 (4) A protest or notice filed in accordance with the requirements of subsection (3) of
12 this section shall suspend the solicitation or award involved until the
13 commissioner or designee makes a written and adequately supported
14 determination that continuation of the procurement is necessary to protect
15 substantial interests of the Commonwealth.
- 16 (5) The commissioner promptly shall issue a decision in writing. A copy of the
17 decision shall be mailed or otherwise furnished to the aggrieved party and shall
18 state the reasons for the action taken.
- 19 (6) The commissioner's or designee's decision shall:
- 20 (a) Be final and conclusive;
21 (b) Be entitled to the presumption of correctness with respect to any controversy
22 arising under, or in connection with, the solicitation or award of a contract;
23 and
24 (c) Not be disturbed unless the decision was procured by fraud or the findings
25 of fact by the commissioner or designee do not support the decision.
- 26 (7) Any actual or prospective bidder who is aggrieved by the final decision of the
27 commissioner or designee may appeal to the Franklin Circuit Court within

1 fifteen (15) calendar days of the issuance of the decision.

2 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) No contract for building, construction, or any other type of work on a
5 compensatory mitigation project, shall be awarded by the department or any other
6 agency of the Commonwealth to:

7 (a) Any person until that person assures, by affidavit, that all contractors and
8 subcontractors employed or that will be employed under the provisions of
9 the contract are covered by the Commonwealth's unemployment insurance
10 and workers' compensation insurance requirements pursuant to KRS
11 Chapter 341 and 342, respectively; or

12 (b) A foreign entity unless that foreign entity, on record with the Secretary of
13 State, holds a certificate of authority or a statement of foreign qualification
14 and is in good standing pursuant to KRS 14A.9-010.

15 (2) Any person who fails to comply with the requirements of subsection (1) of this
16 section during the term of the contract, upon a finding by a court of competent
17 jurisdiction, shall be fined the greater amount of either:

18 (a) Four thousand dollars (\$4,000); or

19 (b) An amount equal to the sum of the unemployment insurance claims for
20 which no wages were reported as required by KRS Chapter 341 and
21 uninsured and unsatisfied claims brought under the provisions of KRS
22 Chapter 342.

23 (3) The penalty imposed under this section shall be enforced by the department in
24 Franklin Circuit Court. Proceeds from penalties imposed and collected under this
25 section shall be deposited into the nongame fish and wildlife fund established
26 under KRS 150.165 and expended solely for the purposes of the fund stated
27 therein.

1 **(4) Nothing contained in this section shall be construed to impair any right of action**
2 **under KRS Chapters 341 and 342.**

3 ➔Section 8. KRS 45.750 is amended to read as follows:

4 (1) As used in KRS 45.760 to 45.810:

5 (a) "Committee" means the Capital Projects and Bond Oversight Committee;

6 (b) "Capital construction item" means:

7 1. The construction, reconstruction, acquisition, and structural maintenance
8 of buildings;

9 2. The installation of utility services, including roads and sewers;

10 3. The acquisition or improvement of real property;

11 4. The purchase and installation initially or during major renovation of
12 equipment, facilities, and furnishings of a permanent nature for
13 buildings;~~or~~

14 5. The acquisition of any building to be occupied by any:

15 a. Subdivision of state government as defined in KRS 12.010 or
16 enumerated in KRS 12.020;

17 b. Municipal corporation which exercises its authority on a statewide
18 basis including, but not limited to, the Kentucky Employees
19 Retirement System, Teachers' Retirement System of the State of
20 Kentucky, Kentucky Higher Education Student Loan Corporation,
21 Kentucky Lottery Corporation, Kentucky Housing Corporation, or
22 any entity with a governing body whose membership is
23 substantially similar to the membership of the governing body of a
24 municipal corporation which exercises its authority on a statewide
25 basis; and

26 c. Institution of higher education; **or**

27 **6. The purchase of compensatory mitigation credits solely using funds**

1 from Section 14 of this Act from a vendor, including a third party
2 vendor, who acquires or improves the real property on behalf of the
3 Commonwealth for the purpose of satisfying performance of a
4 compensatory mitigation project;

5 (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase
6 of any real property space occupied by:

- 7 1. Any entity listed in paragraph (b)5. of this subsection;
- 8 2. The legislative branch; or
- 9 3. The judicial branch when leased from a private sector landlord;

10 (d) "Equipment" means:

- 11 1. Any major item of equipment, including aircraft;
- 12 2. Any movable furnishing, appurtenance, or other equipment, necessary to
13 make a building operable; and
- 14 3. Equipment purchased or otherwise acquired, or equipment to be
15 purchased or otherwise to be acquired, under a lease or lease-purchase
16 contract or agreement or an arrangement equivalent to a lease or lease-
17 purchase contract or agreement;

18 (e) "Information technology system" means any related computer or
19 telecommunications components that provide a functional system for a
20 specific business purpose and contain one (1) or more of the following:

- 21 1. Hardware;
- 22 2. Software, including application software, systems management software,
23 utility software, or communications software;
- 24 3. Professional services for requirements analysis, system integration,
25 installation, implementation, or data conversion services; or
- 26 4. Digital data products, including acquisition and quality control;

27 (f) "Capital projects" means, regardless of the source of cash or other

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- consideration:
1. Any capital construction item, or any combination of capital construction items necessary to make a building or utility installation complete, estimated to cost one million dollars (\$1,000,000) or more in cash or other consideration;
 2. Any lease of real property space with an annual rental cost exceeding two hundred thousand dollars (\$200,000);
 3. The use allowance paid by the judicial branch for a real property space pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for the space exceeds two hundred thousand dollars (\$200,000) on an annual basis;
 4. Any item of equipment estimated to cost two hundred thousand dollars (\$200,000) or more in cash or other consideration;
 5. Any lease of an item of movable equipment if the annual cost of the lease is two hundred thousand dollars (\$200,000) or more or if the total cost of the lease-purchase or lease with an option to purchase is two hundred thousand dollars (\$200,000) or more;~~and~~
 6. Any new acquisition, upgrade, or replacement of an information technology system estimated to cost one million dollars (\$1,000,000) or more in cash or other consideration;
 7. The purchase of compensatory mitigation credits from a vendor, including a third party vendor, for performance of a compensatory mitigation project which may entail real property held in easement or fee simple interest and any improvements, enhancements, or preservation of streams, wetlands, and habitat located on the property; and
 8. A compensatory mitigation project, construction project, or other

1 contract to procure full delivery compensatory mitigation or
2 compensatory mitigation credits, solely using funds from Section 14 of
3 this Act;

4 (g) "Emergency repair, maintenance, or replacement project" means the
5 maintenance, repair, or reconstruction of a capital construction project or the
6 maintenance, repair, or replacement of a major item of equipment that is:

- 7 1. Necessitated by injury or damage resulting from a disaster;
- 8 2. Necessary to maintain government operations or to prevent or minimize
9 injury or damage that could reasonably be expected to result from an
10 impending disaster; or
- 11 3. Necessitated by an unforeseen mechanical breakdown, electrical
12 breakdown, or structural defect that must be corrected to make a facility
13 or item of equipment usable;

14 (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy
15 attack, sabotage, explosion, power failure, energy shortage, transportation
16 emergency, or other man-caused disaster;

17 (i) "Capital construction funds" means any funds used for capital construction,
18 including, but not limited to, appropriated capital construction funds, agency
19 funds, federal funds, private funds, or funds from any source held by an
20 agency for management or investment purposes; ~~and~~

21 (j) "Entity head" means the Chief Justice of the Supreme Court, the President of
22 the Senate and the Speaker of the House of Representatives, the secretary of
23 the Finance and Administration Cabinet, the president of any university which
24 complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees
25 of the Kentucky Employees Retirement System, the board of trustees of the
26 Teachers' Retirement System of the State of Kentucky, the board of directors
27 of the Kentucky Higher Education Student Loan Corporation, the board of

1 directors of the Kentucky Lottery Corporation, or the board of directors of the
 2 Kentucky Housing Corporation;

3 **(k) "Compensatory mitigation" has the same meaning as Section 1 of this Act;**

4 **(l) "Compensatory mitigation credit" has the same meaning as Section 1 of**
 5 **this Act;**

6 **(m) "Compensatory mitigation project" has the same meaning as Section 1 of**
 7 **this Act; and**

8 **(n) "Full delivery compensatory mitigation" has the same meaning as Section**
 9 **1 of this Act.**

10 (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall
 11 apply to capital projects and bonds for use by:

12 (a) The state government;

13 (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated
 14 in KRS 12.020;

15 (c) A municipal corporation which exercises its authority on a statewide basis,
 16 including but not limited to the Kentucky Employees Retirement System,
 17 Teachers' Retirement System of the State of Kentucky, Kentucky Higher
 18 Education Student Loan Corporation, Kentucky Lottery Corporation, and
 19 Kentucky Housing Corporation; and

20 (d) Institutions of higher education.

21 (3) KRS 45.760 to 45.810 shall not apply to:

22 (a) Capital projects or bonds used directly in or for the construction or
 23 maintenance of roads, including but not limited to bulldozers, graders, earth
 24 movers, and real estate purchased for rights-of-way **or for compensatory**
 25 **mitigation projects or compensatory mitigation credits purchased solely**
 26 **using funds from Section 14 of this Act;** and

27 (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in

1 KRS 12.020, or created as a municipal corporation which exercises its
 2 authority on a statewide basis including, but not limited to, the Kentucky
 3 Employees Retirement System, Teachers' Retirement System of the State of
 4 Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky
 5 Lottery Corporation, Kentucky Housing Corporation, or any entity with a
 6 governing body whose membership is substantially similar to the membership
 7 of the governing body of a municipal corporation which exercises its authority
 8 on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall
 9 not apply to acquisition or maintenance of any building or land which is
 10 purchased as a legal investment by any of the state retirement systems, which
 11 is not to be occupied by the retirement system, and which is financed solely
 12 with those assets of the retirement system used for investment purposes.

13 ➔Section 9. KRS 45.777 is amended to read as follows:

14 (1) The proceeds from the sale of major items of equipment or real property, purchased
 15 in whole or in part with capital construction funds, shall be deposited into the
 16 general fund unless federal funding restraints require otherwise.

17 (2) The provisions of this section shall not apply to:

18 (a) The sale of real property held as right-of-way;

19 (b) The sale of equipment by the Transportation Cabinet; ~~for~~

20 (c) The sale of confiscated firearms; or

21 (d) The sale or transfer of title, and any interests therein, to real property
 22 subject to a compensatory mitigation project or used to procure
 23 compensatory mitigation credits solely using funds from Section 14 of this
 24 Act.

25 ➔Section 10. KRS 45.760 is amended to read as follows:

26 The provisions of any other law notwithstanding:

27 (1) During any biennium the amount allotted, from all sources, for expenditure on any

1 project in the state capital construction program for that biennium shall not exceed
2 the estimated cost of the project during that biennium, as shown in any branch
3 budget bill enacted by the General Assembly, except as provided in this section and
4 KRS 45.770 and 45.780.

5 (2) When the General Assembly disapproves a capital project or item of equipment that
6 was previously approved, it shall be eliminated as a capital project or major item of
7 equipment in the Capital Projects Program. General fund moneys appropriated for
8 that project or item of equipment but not allotted, and general fund moneys allotted
9 but not expended to the project or equipment account, shall be transferred to the
10 capital construction and equipment purchase contingency account in the capital
11 construction fund. Agency or federal funds for a disapproved project or item, that
12 have been appropriated but unallotted or allotted but unexpended, shall be returned
13 to the appropriate agency fund. Road fund moneys for a disapproved project or item
14 that have been appropriated but unallotted or allotted but unexpended, shall be
15 returned to the Road Fund Surplus Account.

16 (3) Capital projects and major items of equipment disapproved under subsection (2) of
17 this section shall be terminated.

18 (4) During any biennium, the amount allotted from all sources for expenditure for the
19 purchase of any major item of equipment shall not exceed the estimated cost of the
20 item as shown in any branch budget bill enacted by the General Assembly and
21 authorizing the purchase, except as provided in subsections (5) and (6) of this
22 section and in KRS 45.770 and 45.780.

23 (5) A major item of equipment to be used for medical, scientific, or research purposes,
24 excluding computer equipment and aircraft, or an expenditure of funds from
25 Section 14 of this Act for a compensatory mitigation project, may be authorized
26 even though it is not specifically listed in any branch budget bill enacted for the
27 current biennium, subject to the following conditions and procedures:

- 1 (a) Moneys specifically budgeted and appropriated by the General Assembly for
2 another purpose shall not be reallocated for expenditure on the item; moneys
3 utilized shall not jeopardize any existing program and shall not require the use
4 of any current general funds specifically dedicated to existing programs;
- 5 (b) Funds are available for the purchase and the method of financing the purchase
6 will not require an additional appropriation of state funds to acquire the item;
7 and
- 8 (c) The purchasing agency shall, within thirty (30) days after making the
9 purchase, report the purchase to the Capital Projects and Bond Oversight
10 Committee. The report shall include a description of the item, the purpose for
11 which it will be used, the necessity for the purchase, and the amount expended
12 for the purchase from each source of funds used.
- 13 (6) Moneys from any source may be transferred to the allotment account of any capital
14 project authorized by the General Assembly under this section, subject to the
15 following conditions and procedures:
- 16 (a) The total amount transferred shall not exceed fifteen percent (15%) of the
17 amount authorized by the General Assembly unless:
- 18 1. The source of funds is private or federal; ~~or~~
- 19 2. *The source of funds is restricted to expenditure solely for the*
20 *performance of compensatory mitigation and the production of*
21 *compensatory mitigation credits under Section 14 of this Act; or*
- 22 3. An unforeseen decision by a federal or state court or regulatory agency
23 requires the transfer.
- 24 (b) Moneys specifically budgeted and appropriated by the General Assembly for
25 another purpose shall not be allotted or reallocated for expenditure on the
26 capital project.
- 27 (c) Moneys utilized shall not jeopardize any existing program and shall not

1 require the use of any current general funds specifically dedicated to existing
2 programs.

3 (d) The relevant entity head, or his designee, shall submit the capital project to the
4 Capital Projects and Bond Oversight Committee at least fourteen (14) days
5 prior to the committee meeting. The submission shall include a written
6 certification to the committee that the transfer, in excess of fifteen percent
7 (15%) of the amount authorized by the General Assembly, is:

- 8 1. Paid for out of private *funds, restricted funds under Section 14 of this*
9 *Act for performance of compensatory mitigation and production of*
10 *compensatory mitigation credits*, or federal funds; or
- 11 2. Required by an unforeseen decision by a federal or state court or
12 regulatory agency; and
- 13 3. Not allotted or reallocated from moneys specifically budgeted and
14 appropriated by the General Assembly for another purpose; and
- 15 4. Not jeopardizing any existing program and not requiring the use of any
16 current general funds specifically dedicated to existing programs.

17 (e) If a capital project is financed with road funds, the cost overruns or scope
18 increases shall be paid out of the highway contingency account established
19 pursuant to KRS 45.247.

20 (7) *Except for a capital construction project or major equipment purchase for*
21 *compensatory mitigation funded solely from Section 14 of this Act which shall be*
22 *authorized pursuant to this subsection*, a capital construction project or a major
23 item of equipment may be authorized even though it is not specifically listed in any
24 branch budget bill, subject to the following conditions and procedures:

25 (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or
26 private funds, and fifty percent (50%) or less of the actual cost shall be funded
27 by moneys appropriated to the capital construction and equipment purchase

- 1 contingency account or, if the purpose of the project or equipment is to reduce
2 energy costs, the relevant entity head certifies projected energy cost savings
3 associated with the project or equipment are reasonable and sufficient to
4 produce an aggregate simple payback period, as defined by KRS 56.770, of
5 five (5) years or less;
- 6 (b) Moneys specifically budgeted and appropriated by the General Assembly for
7 another purpose shall not be allotted or reallocated for expenditure on the
8 project or major item of equipment; moneys utilized shall not jeopardize any
9 existing program and shall not require the use of any current general funds
10 specifically dedicated to existing programs; and
- 11 (c) The relevant entity head, or his designee, shall submit the project or major
12 item of equipment to the committee for review as provided by KRS 45.800.
- 13 (8) The capital construction and equipment purchase contingency fund may be used to
14 advance funds to projects authorized to be financed by bonds, to finance feasibility
15 studies for projects which may be contemplated for future funding, or to audit the
16 capital projects program when authorized by the General Assembly.
- 17 (9) On or before October 1, each branch of government shall submit to the committee
18 the following information:
- 19 (a) A complete list and summary description of every capital construction project
20 and major item of equipment not completed as of June 30 of the prior fiscal
21 year; and
- 22 (b) For each project and major item of equipment, as of July 1, of the current
23 fiscal year:
- 24 1. The project phase;
- 25 2. The project account number, project name, and any other term employed
26 to identify the project or major item of equipment;
- 27 3. The available balance in the project or major item of equipment account,

- 1 and any sums considered available for that project or major item of
2 equipment;
- 3 4. A statement of the transfers of funds to or from the project or major item
4 of equipment account; and, any account to which transfers from each
5 project or major item of equipment has been made;
- 6 5. The year in which the project or major item of equipment was approved,
7 with specific reference to the legislation by which the project or item
8 was approved;
- 9 6. Total expenditure on the project or major item of equipment;
- 10 7. The current estimated completion cost, including the amount required
11 for annual inflation; and
- 12 8. A statement that additional funds for the completion of the project or
13 major item of equipment are or are not required; and, if required, why
14 sufficient funds for completion are not available; and
- 15 (c) The balance in the appropriated, but unallotted account; and the balance in any
16 account, however designated, that contains appropriated, but unallotted funds
17 for capital construction.
- 18 (10) When the General Assembly authorizes a capital construction item in the capital
19 construction section of a branch budget bill, the entity head charged with executing
20 the branch budget shall construct the capital construction item according to the
21 requirements set forth in the branch budget bill, supporting documentation
22 considered by the General Assembly, and branch budget records. The entity head
23 shall not deviate from these requirements with regard to:
- 24 (a) Purpose or location to the extent that the capital construction item no longer
25 meets the identified needs; or
- 26 (b) Configuration for reasons other than practical accommodation to the
27 construction site or specific program to be accommodated within that capital

1 construction item.

2 ➔Section 11. KRS 45A.030 is amended to read as follows:

3 As used in this code, unless the context requires otherwise:

- 4 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint
5 stock company, joint venture, or any other legal entity through which business is
6 conducted;
- 7 (2) "Change order" means a written order signed by the purchasing officer, directing the
8 contractor to make changes that the changes clause of the contract authorizes the
9 purchasing officer to order without the consent of the contractor;
- 10 (3) "Chief purchasing officer" means the secretary of the Finance and Administration
11 Cabinet, who shall be responsible for all procurement of the Commonwealth except
12 as provided by KRS Chapters 175, 175B, 176, 177, and 180, and compensatory
13 mitigation projects and credits contracted for under KRS Chapter 150;
- 14 (4) "Compensatory mitigation" has the same meaning as Section 1 of this Act;
- 15 (5) "Compensatory mitigation credit" has the same meaning as Section 1 of this Act;
- 16 (6) "Compensatory mitigation project" has the same meaning as Section 1 of this
17 Act;
- 18 (7) "Construction" means the process of building, altering, repairing, improving, or
19 demolishing any public structures or buildings, or other public improvements,
20 including compensatory mitigation projects for streams or wetlands, of any kind
21 to any public real property. It does not include the routine maintenance of existing
22 structures, buildings, or real property;
- 23 ~~(8)~~~~(5)~~ "Construction manager-agency" means services to assist the purchasing
24 agency manage construction that are procured through a contract that is
25 qualifications-based;
- 26 ~~(9)~~~~(6)~~ "Construction management-at-risk" means a project delivery method in which
27 the purchasing officer enters into a single contract with an offeror that assumes the

1 risk for construction at a contracted guaranteed maximum price as a general
2 contractor, and provides consultation and collaboration regarding the construction
3 during and after design of a capital project. The contract shall be subject to the
4 bonding requirements of KRS 45A.190;

5 ~~(10)~~~~(7)~~ "Construction manager-general contractor" means a project delivery method
6 in which the purchasing officer enters into a single contract with an offeror to
7 provide preconstruction and construction services. During the preconstruction
8 phase, the successful offeror provides design consulting services. During the
9 construction phase, the successful offeror acts as general contractor by:

- 10 (a) Contracting with subcontractors; and
11 (b) Providing for management and construction at a fixed price with a completion
12 deadline;

13 ~~(11)~~~~(8)~~ "Contract" means all types of state agreements, including grants and orders,
14 for the acquisition, purchase, or disposal of supplies, services, construction, or any
15 other item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-
16 fee, contingency fee, or incentive type; contracts providing for the issuance of job or
17 task orders; leases; letter contracts; purchase orders; public-private partnership
18 agreements; and insurance contracts except as provided in KRS 45A.022. It
19 includes supplemental agreements with respect to any of the foregoing;

20 ~~(12)~~~~(9)~~ "Contract modification" means any written alteration in the specifications,
21 delivery point, rate of delivery, contract period, price, quantity, or other contract
22 provisions of any existing contract, whether accomplished by unilateral action in
23 accordance with a contract provision or by mutual action of the parties to the
24 contract. It includes bilateral actions, such as supplemental agreements, and
25 unilateral actions, such as change orders, administrative changes, notices of
26 termination, and notices of the exercise of a contract option;

27 ~~(13)~~~~(10)~~ "Contractor" means any person having a contract with a governmental body;

1 ~~(14)~~~~(11)~~ "Data" means recorded information, regardless of form or characteristic;

2 ~~(15)~~~~(12)~~ "Design-bid-build" means a project delivery method in which the purchasing
3 officer sequentially awards separate contracts, the first for architectural,
4 engineering, or engineering-related services to design the project and the second for
5 construction of the capital project according to the design. The contract shall be
6 subject to the bonding requirements of KRS 45A.185;

7 ~~(16)~~~~(13)~~ "Design-build" means a project delivery method in which the purchasing
8 officer enters into a single contract for design and construction of a capital project.
9 The contract shall be subject to the bonding requirements of KRS 45A.190;

10 ~~(17)~~~~(14)~~ **"Design-build mitigation" has the same meaning as Section 1 of this Act;**

11 ~~(18)~~ "Designee" means a duly authorized representative of a person holding a superior
12 position;

13 ~~(19)~~~~(15)~~ "Document" means any physical embodiment of information or ideas,
14 regardless of form or characteristic, including electronic versions thereof;

15 ~~(20)~~~~(16)~~ "Employee" means an individual drawing a salary from a governmental body,
16 whether elected or not, and any nonsalaried individual performing personal services
17 for any governmental body;

18 ~~(21)~~~~(17)~~ **"Full delivery compensatory mitigation" has the same meaning as Section**
19 **1 of this Act;**

20 ~~(22)~~ **"Goods" means:**

21 **(a) Any tangible property, including all equipment, materials, supplies, and**
22 **other unique and specialty nontangible commodities such as compensatory**
23 **mitigation credits; and**

24 **(b) Unless the context otherwise requires, acquisition of printing;**

25 ~~(23)~~ "Governmental body" means any department, commission, council, board, bureau,
26 committee, institution, legislative body, agency, government corporation, or other
27 establishment of the executive or legislative branch of the state government;

1 ~~(24)~~~~(18)~~ "Meeting" means all gatherings of every kind, including video
2 teleconferences;

3 ~~(25)~~~~(19)~~ "Negotiation" means contracting by either the method set forth in KRS
4 45A.085, 45A.090, or 45A.095;

5 ~~(26)~~~~(20)~~ "Person" means any business, individual, organization, or group of
6 individuals;

7 ~~(27)~~~~(21)~~ "Private partner" means any entity that is a partner in a public-private
8 partnership other than:

9 (a) The Commonwealth of Kentucky, or any agency or department thereof;

10 (b) The federal government;

11 (c) Any other state government; or

12 (d) Any agency of a state, federal, or local government;

13 ~~(28)~~~~(22)~~ "Procurement" means the purchasing, buying, renting, leasing, or otherwise
14 obtaining of any supplies, services, or construction **including compensatory**
15 **mitigation credits, a compensatory mitigation project, or construction work for**
16 **the performance of compensatory mitigation**. It includes all functions that pertain
17 to the procurement of any supply, service, or construction item, including
18 description of requirements, selection and solicitation of sources, preparation and
19 award of contract, and all phases of contract administration;

20 ~~(29)~~~~(23)~~ "Public-private partnership" means a project delivery method for construction
21 or financing of capital projects, as defined in KRS 45.750, or procurement of
22 services, pursuant to a written public-private partnership agreement entered into
23 pursuant to KRS 45A.077 and administrative regulations promulgated thereunder,
24 between:

25 (a) At least one (1) private partner; and

26 (b) The Commonwealth of Kentucky, or any agency or department thereof;

27 ~~(30)~~~~(24)~~ "Purchase request" or "purchase requisition" means that document whereby a

1 using agency requests that a contract be obtained for a specified need, and may
2 include, but is not limited to, the technical description of the requested item,
3 delivery schedule, transportation, criteria for evaluation of solicitees, suggested
4 sources of supply, and information supplied for the making of any written
5 determination and finding required by KRS 45A.025;

6 ~~(31)~~~~(25)~~ "Purchasing agency" means any governmental body that is authorized by this
7 code or its implementing administrative regulations or by way of delegation from
8 the chief purchasing officer to contract on its own behalf rather than through the
9 central contracting authority of the chief purchasing officer;

10 ~~(32)~~~~(26)~~ "Purchasing officer" means any person authorized by a governmental body in
11 accordance with procedures prescribed by administrative regulations to enter into
12 and administer contracts and make written determinations and findings with respect
13 thereto. The term includes an authorized representative acting within the limits of
14 authority;

15 ~~(33)~~~~(27)~~ "Services" means the rendering by a contractor of its time and effort rather
16 than the furnishing of a specific end product, other than reports that are merely
17 incidental to the required performance of services;

18 ~~(34)~~~~(28)~~ **"Service contract" means any contract or agreement for:**

19 **(a) Professional services, including consultant and personal services, for**
20 **stream or wetland compensatory mitigation that requires specialized**
21 **knowledge, experience, and expertise to perform the work that will result in**
22 **the production of compensatory mitigation credits; or**

23 **(b) The direct purchase of compensatory mitigation credits;**

24 ~~(35)~~ "Supplemental agreement" means any contract modification that is accomplished by
25 the mutual action of the parties;

26 ~~(36)~~~~(29)~~ "Supplies" means all property, including but not limited to leases of real
27 property, printing, and insurance, except land or a permanent interest in land;

1 ~~(37)~~~~(30)~~ "Using agency" means any governmental body of the state that utilizes any
2 supplies, services, or construction purchased under this code;

3 ~~(38)~~~~(31)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more
4 locations, where individuals can see and hear each other by means of video and
5 audio equipment; and

6 ~~(39)~~~~(32)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent,
7 set down by handwriting, typewriting, printing, photostating, photographing,
8 magnetic impulse, mechanical or electronic recording, or other form of data
9 compilation.

10 ➔Section 12. KRS 45A.045 is amended to read as follows:

11 (1) The Finance and Administration Cabinet shall serve as the central procurement and
12 contracting agency of the Commonwealth.

13 (a) The cabinet shall require all agencies to furnish an estimate of specific needs
14 for supplies, materials, and equipment to be purchased by competitive bidding
15 for the purpose of permitting scheduling of purchasing in large volume. The
16 cabinet shall establish and enforce schedules for purchasing supplies,
17 materials, and equipment. In addition, prior to the beginning of each fiscal
18 year all agencies shall submit to the Finance and Administration Cabinet an
19 estimate of all needs for supplies, materials, and equipment during that year
20 which will have to be required through competitive bidding.

21 (b) The Finance and Administration Cabinet shall have power, with the approval
22 of the secretary of the Finance and Administration Cabinet, to transfer
23 between departments, to salvage, to exchange, and to condemn supplies,
24 equipment, and real property.

25 (c) The Finance and Administration Cabinet shall attempt in every practicable
26 way to ensure that state agencies are fulfilling their business needs through the
27 application of the best value criteria.

1 (2) The Finance and Administration Cabinet shall recommend regulations, rules, and
2 procedures and shall have supervision over all purchases by the various spending
3 agencies, except as otherwise provided by law, and, subject to the approval of the
4 secretary of the Finance and Administration Cabinet, shall promulgate
5 administrative regulations to govern purchasing by or for all these agencies. The
6 cabinet shall publish a manual of procedures which shall be incorporated by
7 reference as an administrative regulation pursuant to KRS Chapter 13A. This
8 manual shall be distributed to agencies and shall be revised upon issuance of
9 amendments to these procedures. No purchase or contract shall be binding on the
10 state or any agency thereof unless approved by the Finance and Administration
11 Cabinet or made under general administrative regulations promulgated by the
12 cabinet.

13 (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or,
14 with the approval of the secretary, may delegate and control the purchase and
15 acquisition of the combined requirements of all spending agencies of the state,
16 including, but not limited to, interests in real property, contractual services, rentals
17 of all types, supplies, materials, equipment, and services.

18 (4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of
19 any interest in real property of the state which is not needed, or has become
20 unsuitable for public use, or would be more suitable to the public's interest if used
21 in another manner, as determined by the secretary of the Finance and
22 Administration Cabinet. The determination of the secretary of the Finance and
23 Administration Cabinet shall be set forth in an order and shall be reached only after
24 review of a written request by the agency desiring to dispose of the property. This
25 request shall describe the property and state the reasons why the agency believes the
26 property should be disposed. All instruments required by law to be recorded which
27 convey any interest in any real property so disposed of shall be executed and signed

1 by the secretary of the Finance and Administration Cabinet and approved by the
2 Governor. Unless the secretary of the Finance and Administration Cabinet deems it
3 in the best interest of the state to proceed otherwise, all interests in real property
4 shall be sold either by invitation of sealed bids or by public auction. The selling
5 price of any interest in real property shall not be less than the appraised value
6 thereof as determined by the cabinet, or the Transportation Cabinet for the
7 requirements of that cabinet.

8 (5) (a) Except as provided in paragraph (b) of this subsection, the Finance and
9 Administration Cabinet shall sell, trade, or otherwise dispose of all personal
10 property of the state that is not needed, or has become unsuitable for public
11 use, or would be more suitable to the public's interest if used in another
12 manner, or, with the approval of the secretary, may delegate the sale, trade, or
13 other disposal of the personal property. In the event the authority is delegated,
14 the method for disposal shall be determined by the agency head, in accordance
15 with administrative regulations promulgated by the Finance and
16 Administration Cabinet, and shall be set forth in a document describing the
17 property and stating the method of disposal and the reasons why the agency
18 believes the property should be disposed of. In the event the authority is not
19 delegated, requests to the Finance and Administration Cabinet to sell, trade, or
20 otherwise dispose of the property shall describe the property and state the
21 reasons why the agency believes the property should be disposed of. The
22 method for disposal shall be determined by the Division of Surplus Properties,
23 and approved by the secretary of the Finance and Administration Cabinet or
24 his or her designee.

25 (b) Interests in real property purchased solely with funds under Section 14 of
26 this Act may be declared surplus by the Fish and Wildlife Commission once
27 compensatory mitigation has been completed and all compensatory

1 mitigation credits have been released. Upon approval of the United States
2 Army Corps of Engineers, the property may be transferred to another
3 governmental agency or local government.

- 4 (6) The Finance and Administration Cabinet shall exercise general supervision and
5 control over all warehouses, storerooms, and stores and of all inventories of
6 supplies, services, and construction belonging to the Commonwealth. The cabinet
7 shall promulgate administrative regulations to require agencies to take and maintain
8 inventories of plant property, buildings, structures, other fixed assets, and
9 equipment. The cabinet shall conduct periodic physical audits of inventories.
- 10 (7) The Finance and Administration Cabinet shall establish and maintain programs for
11 the development and use of purchasing specifications and for the inspection, testing,
12 and acceptance of supplies, services, and construction.
- 13 (8) Nothing in this section shall prevent the Finance and Administration Cabinet from
14 negotiating with vendors who maintain a General Services Administration price
15 agreement with the United States of America or any agency thereof. No contract
16 executed under this provision shall authorize a price higher than is contained in the
17 contract between the General Services Administration and the vendor affected.
- 18 (9) Except as provided in KRS Chapters 175, 176, 177, and 180, and KRS Chapter 150
19 solely for the purposes of procurement for compensatory mitigation projects and
20 compensatory mitigation credits, and subject to the provisions of this code, the
21 Finance and Administration Cabinet shall purchase or otherwise acquire all real
22 property determined to be needed for state use, upon approval of the secretary of the
23 Finance and Administration Cabinet as to the determination of need and as to the
24 action of purchase or other acquisition. The amount paid for this real property shall
25 not exceed the appraised value as determined by the cabinet or the Transportation
26 Cabinet (for such requirements of that cabinet), or the value set by eminent domain
27 procedure. Subject to the provisions of this code, real property or any interest

1 therein may be purchased, leased, or otherwise acquired from any officer or
2 employee of any agency of the state upon a finding by the Finance and
3 Administration Cabinet, based upon a written application by the head of the agency
4 requesting the purchase, and approved by the secretary of the Finance and
5 Administration Cabinet and the Governor, that the employee has not either himself
6 or herself, or through any other person, influenced or attempted to influence either
7 the agency requesting the acquisition of the property or the Finance and
8 Administration Cabinet in connection with such acquisition. Whenever such an
9 acquisition is consummated, the request and finding shall be recorded and kept by
10 the Secretary of State along with the other documents recorded pursuant to the
11 provisions of KRS Chapter 56.

12 (10) The Finance and Administration Cabinet shall maintain records of all purchases and
13 sales made under its authority and shall make periodic summary reports of all
14 transactions to the secretary of the Finance and Administration Cabinet, the
15 Governor, and the General Assembly. The Finance and Administration Cabinet
16 shall also report trends in costs and prices, including savings realized through
17 improved practices, to the above authorities. The Finance and Administration
18 Cabinet shall also compile an annual report of state purchases by all spending
19 agencies in the state's statewide accounting and reporting system. The report format
20 shall include, but not be limited to, dollar amount, volume, type of purchase, and
21 vendor.

22 (11) For capital construction projects, subject to the provisions of this code and KRS
23 45A.180, the procurement may be on whichever of the following alternative project
24 delivery methods, in the judgment of the secretary of the Finance and
25 Administration Cabinet after first considering the traditional design-bid-build
26 project delivery method, offers the best value to the taxpayer:

27 (a) A design-build basis; or

1 (b) A construction management-at-risk basis.

2 Proposals shall be reviewed by the engineering staff to assure quality and value, and
3 compliance with procurement procedures. All specifications shall be written to
4 promote competition. Nothing in this section shall prohibit the procurement of
5 phased bidding or construction manager-agency services.

6 (12) The Finance and Administration Cabinet shall have control and supervision over all
7 purchases of energy-consuming equipment, supplies, and related equipment
8 purchased or acquired by any agency of the state as provided in this code, and shall
9 promulgate administrative regulations to designate the manner in which an energy-
10 consuming item will be purchased so as to promote energy conservation and
11 acquisition of energy efficient products. Major energy components shall be
12 amortized on a seven (7) to ten (10) years' recovery basis and shall take into
13 consideration the projected cost of fuel. The Finance and Administration Cabinet, in
14 consultation with the Cabinet for Economic Development, shall conduct a thorough
15 economic feasibility analysis on any major energy-using component of at least three
16 million (3,000,000) BTU's per hour heat input and shall issue a certificate of
17 economic feasibility prior to the Finance and Administration Cabinet's purchasing
18 or retrofitting any such component that utilizes any fuel other than coal. The
19 economic feasibility analysis shall consist of life-cycle cost comparisons of a
20 component that would utilize coal and one(s) that would utilize any fuel other than
21 coal. For the analysis, the Finance and Administration Cabinet shall provide
22 detailed estimates of equipment purchase price, installation cost, annual operation
23 and maintenance costs, and usage patterns of energy-using components.

24 ➔Section 13. KRS 45A.050 is amended to read as follows:

25 (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177,
26 and 180, and KRS Chapter 150 solely for the purposes of procurement for
27 compensatory mitigation projects and compensatory mitigation credits, all rights,

1 powers, duties, and authority relating to the procurement of supplies, services, and
2 construction, and the management, control, warehousing, sale, and disposal of
3 supplies, services, and construction now vested in or exercised by any state agency
4 under the several statutes relating thereto, are hereby transferred to the secretary of
5 the Finance and Administration Cabinet as provided in this code, subject to the
6 provisions of subsection (2) of this section.

7 (2) Unless otherwise ordered by the secretary of the Finance and Administration
8 Cabinet, the acquisition of the following shall not be required through the Finance
9 and Administration Cabinet:

10 (a) Works of art for museum and public display;

11 (b) Published books, maps, periodicals, and technical pamphlets; and

12 (c) Services of visiting speakers, professors, and performing artists.

13 (3) The Finance and Administration Cabinet shall include in all state agency price
14 contracts for the purchase of materials or supplies a provision that, as approved by
15 the secretary of the Finance and Administration Cabinet, any political subdivision,
16 including cities of all classes, counties, school districts, or special districts, may
17 participate in these contracts to the same extent as the Commonwealth. Any
18 political subdivision may purchase materials and supplies in accordance with a
19 contract for supplies and materials entered into by the Finance and Administration
20 Cabinet for the Commonwealth, including those contracts negotiated by the cabinet
21 with vendors who maintain a General Services Administration price agreement as
22 provided in KRS 45A.045(8). Political subdivisions of the Commonwealth must
23 comply with other provisions of the Kentucky Revised Statutes which require
24 purchase by competitive bidding, before participating in the contract, unless the
25 state contract has been let by competitive bidding, or the contract was negotiated as
26 provided in KRS 45A.045(8).

27 (4) The Finance and Administration Cabinet shall inform the Department for Local

1 Government, which shall then inform the appropriate purchasing agent of each
2 political subdivision interested in participating under this section, of all state agency
3 contracts in effect between the Commonwealth and vendors.

4 (5) The secretary of the Finance and Administration Cabinet shall promulgate
5 administrative regulations necessary for the implementation of this section and
6 necessary to provide that the Commonwealth be reimbursed for any additional
7 expenses incurred by the Commonwealth in allowing political subdivisions to
8 participate in contracts with vendors.

9 (6) The Finance and Administration Cabinet shall comply with all provisions relating to
10 the methods of purchasing in the Kentucky Revised Statutes. This section is not
11 intended to repeal or otherwise affect any provision of the Kentucky Revised
12 Statutes regarding purchasing methods of the Finance and Administration Cabinet.

13 (7) Notwithstanding any other statute to the contrary, all public agencies as defined in
14 KRS 45A.490 shall comply with the provisions for reciprocal preference for
15 resident bidders in KRS 45A.490 to 45A.494.

16 ➔Section 14. KRS 150.255 is amended to read as follows:

17 (1) Upon request of any state agency or any other entity, the department may contract
18 with the agency or party to undertake any compensatory mitigation project,
19 including, but not limited to, the performance of a wetland or stream mitigation
20 project or the purchase of compensatory mitigation credits.

21 (2) The department may establish and manage wetland or stream compensatory
22 mitigation banks, the purpose of which shall be to restore, create, or enhance
23 wetlands and streams as compensatory mitigation where a state agency or other
24 party is required to provide compensatory mitigation, and where the use of banked
25 mitigation is approved by the agency requiring mitigation and USACE. The
26 department may create the bank in advance of requests for banked mitigation
27 credits.

- 1 (3) There is established and created in the State Treasury the "Kentucky Wetland and
2 Stream Mitigation Fund" for the purpose of:
- 3 (a) Restoring, creating, enhancing, or preserving the Commonwealth's wetlands
4 or streams that may be damaged or destroyed due to any project approved
5 under a DA permit requiring compensatory mitigation;~~;~~
- 6 (b) Recovering costs associated with performing these compensatory mitigation
7 projects and producing the required compensatory mitigation credits;~~;~~ and
- 8 (c) Administering these programs.
- 9 (4) The fund shall be deemed a trust and agency fund account and made available
10 solely for the purposes and benefits of the Kentucky wetland and stream
11 compensatory mitigation projects and the FILO program. Funds may be used to
12 allow for and make payments whenever remittance is due regardless of the
13 procurement methodology utilized for the performance of compensatory
14 mitigation, capital construction projects for compensatory mitigation, or the
15 development of mitigation credits.
- 16 (5) The fund may receive state appropriations, gifts, grants, federal funds, revolving
17 funds, and any other funds both public and private. Money deposited in the fund
18 shall be disbursed by the State Treasurer upon the request of the commissioner with
19 the approval of the commission. Any unallocated or unencumbered balance in the
20 fund shall be invested as provided in KRS 42.500(9), and any income earned from
21 the investments, along with the unallocated or unencumbered balance in the fund,
22 shall not lapse.
- 23 (6) The department shall coordinate all aspects of the performance of compensatory
24 mitigation required by DA permits or authorizations issued by USACE. The
25 regulatory requirements for the establishment, operation, and monitoring of a
26 compensatory mitigation bank or a full delivery compensatory mitigation project
27 shall vest at the time of the execution of the mitigation banking instrument or the

1 award of the procurement contract for compensatory mitigation services.

2 ➔Section 15. KRS 382.850 is amended to read as follows:

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

6 (2) A conservation easement may be acquired by the Department of Fish and
7 Wildlife Resources, using funds under Section 14 of this Act, or by a mitigation
8 bank on the surface lands where the mineral and subsurface rights are severed in
9 order to produce compensatory mitigation credits. If mineral rights are
10 subsequently exercised or the surface is disturbed on a compensatory mitigation
11 site as a result of mining activity where compensatory mitigation credits were
12 produced or acquired, the mining entity shall be responsible for:

13 (a) Ensuring the site is restored to its previous condition as described in the site
14 protection instrument; or

15 (b) Paying into the nongame fish and wildlife fund pursuant to KRS 150.165 in
16 an amount equal to what it would cost to restore the site.

17 (3) A conservation easement shall not operate to limit, preclude, delete or require
18 waivers for the conduct of coal mining operations, including the transportation of
19 coal, upon any part or all of adjacent or surrounding properties; and shall not
20 operate to impair or restrict any right or power of eminent domain created by
21 statute, and all such rights and powers shall be exercisable as if the conservation
22 easement did not exist.

23 (4) Notwithstanding subsection (3) of this section, the holder of a conservation
24 easement may utilize and enforce the terms of the conservation easement in the
25 Circuit Court of jurisdiction to protect the project areas subject to compensatory
26 mitigation from environmental damage from activities occurring on or adjacent
27 to surrounding properties if:

1 (a) The easement was acquired solely using funds pursuant to Section 14 of
2 this Act or is being used to produce compensatory mitigation credits; and

3 (b) The site is subject to a site protection instrument approved by United States
4 Army Corps of Engineers.

5 (5) As used in this section, the following terms have the same meaning as in Section
6 1 of this Act:

7 (a) "Compensatory mitigation";

8 (b) "Compensatory mitigation credit";

9 (c) "Compensatory mitigation site";

10 (d) "Mitigation bank"; and

11 (e) "Site protection instrument."

12 ➔Section 16. Whereas the lack of compensatory mitigation credits available to
13 certain areas of the state due to the lack of completed compensatory mitigation projects
14 constrains economic development, an emergency is declared to exist, and this Act takes
15 effect upon its passage and approval by the Governor or upon its otherwise becoming a
16 law.