

1 AN ACT relating to eminent domain.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 262.900 TO 262.920 IS CREATED  
4 TO READ AS FOLLOWS:

5 (1) Notwithstanding any provision of law to the contrary, an entity authorized to  
6 exercise the power of eminent domain shall not take by eminent domain any  
7 privately owned property that is subject to an agricultural conservation easement,  
8 unless the proceeding is maintained by:

9 (a) The Transportation Cabinet in furtherance of its statutory mandates; or

10 (b) A utility for the purposes listed in KRS 278.020(1)(a).

11 (2) (a) An owner of property subject to an agricultural conservation easement who  
12 has been served with a summons of condemnation proceedings concerning  
13 property subject to the agricultural conservation easement may request a  
14 public hearing on the proposed taking of land to be held before the local  
15 soil and water conservation district board of supervisors.

16 (b) The condemnor shall provide at the public hearing a written report  
17 justifying the condemnation of the specific property at issue due to the lack  
18 of feasible alternative locations to satisfy the purposes of the project.

19 (c) An action in the condemnation proceeding shall not affect the property  
20 owner's right to a public hearing under this subsection.

21 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO  
22 READ AS FOLLOWS:

23 (1) Any person who is not a party to an eminent domain proceeding under KRS  
24 Chapter 416, owns real property adjoining condemned property, and incurs  
25 damage to his or her real property as a result of the condemnor's entry upon  
26 either the condemned property or the person's property may file a claim for  
27 actual damages, court costs, and reasonable attorney's fees against the

1       condemnor.

2       (2) An action under this section shall be filed within the period of time prescribed in  
3       Section 3 of this Act.

4       ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 413 IS CREATED TO  
5 READ AS FOLLOWS:

6       An action under Section 2 of this Act shall be filed within five (5) years of the time that  
7       the claimant discovers or should have discovered the damages caused to the property  
8       by the condemnor.

9       ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 416 IS CREATED TO  
10 READ AS FOLLOWS:

11       Notwithstanding any provision of law to the contrary, land condemned by eminent  
12       domain under this chapter or any other grant of condemnation authority under state  
13       law shall not be used for the construction of a facility that generates electricity using  
14       solar energy.

15       ➔Section 5. KRS 262.850 is amended to read as follows:

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

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

27       (3) The local governing administrative body for an agricultural district shall be the

1 conservation district board of supervisors. The Soil and Water Conservation  
2 Commission shall be responsible for statewide administration of the agricultural  
3 district program and shall have sole authority to certify or deny agricultural district  
4 petitions. The commission may apply for assistance and funds from the Federal  
5 Farmland Protection Act of 1981, Pub. L. No. 97-377, which may be available for  
6 the development of the agricultural district program and may accept easements as  
7 provided in KRS 65.410 to 65.480.

8 (4) Any owner or owners of land may submit a petition to the local conservation  
9 district board of supervisors requesting the creation of an agricultural district within  
10 the county. The petition shall include a description of the proposed area, description  
11 of each land parcel, location of the proposed boundaries, petitioners' names and  
12 addresses, adjacent landowners' names and addresses, and other pertinent  
13 information as required in the petition application. The boundary of an agricultural  
14 district shall be contiguous. No land shall be included in an agricultural district  
15 without the consent of the owner.

16 (5) Upon receipt of a petition, the local conservation district board of supervisors shall  
17 notify the fiscal court and any local or regional planning or zoning body, if any, of  
18 the proposed agricultural district, and shall notify each city that is located less than  
19 one (1) mile from the boundaries of the proposed agricultural district, by sending a  
20 copy of the petition and accompanying materials to that body.

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

24 (a) The capability of the land to support agricultural production, as indicated by~~[-]~~  
25 soil, climate, topography or other natural factors;

26 (b) The viability of active farmlands, as indicated by~~[-]~~ markets for farm  
27 products, the extent and nature of farm improvements, the present status of

- 1 farming, and anticipated trends in agricultural economic conditions and  
2 technology;
- 3 (c) That the proposed agricultural district meets the minimum size limit of fifty  
4 (50) contiguous acres, unless the local conservation district board and the Soil  
5 and Water Conservation Commission allow fewer than fifty (50) contiguous  
6 acres if the proposed area meets a minimum annual production performance  
7 established by the district board and approved by the commission;
- 8 (d) County development patterns and needs and the location of the district in  
9 relation to any urban development boundaries within the county;
- 10 (e) Any matter which may be relevant to evaluate the petition; and
- 11 (f) Whether an application is from more than one (1) farm owner, in which case a  
12 preference shall be given to the application.
- 13 (7) The local soil and water conservation district board of supervisors shall review the  
14 petition application and submit a recommendation to the Soil and Water  
15 Conservation Commission within one hundred (100) days of receipt. The local  
16 conservation district recommendation shall be submitted to the commission in the  
17 form of approval, approval with modifications, or denial of the petition  
18 accompanied by justification for such a denial.
- 19 (8) The Soil and Water Conservation Commission shall review the recommendation of  
20 the district board of supervisors and certify or deny the agricultural district's  
21 petition within one hundred (100) days of receipt.
- 22 (9) Upon the approval of a petition by the Soil and Water Conservation Commission,  
23 the commission shall notify the area development district in which the agricultural  
24 district will lie, the local county clerk, the clerk of each city that is located less than  
25 one (1) mile from the boundaries of the approved agricultural district, and the  
26 secretary of the Governor's Executive Cabinet by sending a description of the  
27 boundaries and the names and addresses of the property owners within the district.

- 1 (10) Land within the boundary of an agricultural district shall not be annexed.
- 2 (11) The owners of land within the boundary of an agricultural district shall be exempt  
3 under KRS 74.177 from any assessment authorized for the extension of water  
4 service lines until the land is removed from the district and developed for  
5 nonagricultural use.
- 6 (12) Any member, or any successor heir of the member, of an agricultural district may  
7 withdraw his or her property from the district upon notifying the local conservation  
8 district board of supervisors in writing. The removal of the property from the  
9 agricultural district shall be effective immediately upon the district board of  
10 supervisors' receipt of the written notification, at which time the district board of  
11 supervisors shall remove the property from the agricultural district and shall  
12 immediately provide written notice of the changed boundaries to the those entities  
13 listed in subsection (9) of this section.
- 14 (13) It shall be the policy of all state agencies to support the formation of agricultural  
15 districts as a means of preserving Kentucky's farmlands and to mitigate the impact  
16 of their present and future plans and programs upon the continued agricultural use  
17 of land within an agricultural district.
- 18 (14) Agricultural districts shall be comprised only of agricultural land as defined in KRS  
19 132.010.
- 20 (15) An agricultural district shall be established for five (5) years with a review to be  
21 made by the local soil and water conservation district board of supervisors at the  
22 end of the five-year period and every five (5) years thereafter. Each owner of land  
23 shall agree to remain in the district for a five (5) year period, unless a member  
24 elects to withdraw his or her property pursuant to subsection (12) of this section,  
25 which is renewable at the end of the five (5) years. However, the board shall make a  
26 review any time upon the written request of a local government which demonstrates  
27 that the review is necessary in order to consider development needs of the local

1 government. The board shall consider whether the continued existence of the  
2 district is justified, any adjustments which may be necessary due to urban or county  
3 development, and other factors the board finds relevant. The board shall revise the  
4 district as necessary based on the review and subject to approval of the State Soil  
5 and Water Conservation Commission. Before the state commission takes final  
6 action, all interested parties shall be given the opportunity to request the state  
7 commission to amend or overturn the local board's decision.

8 (16) The withdrawal of a member from a district reducing the remaining acreage of  
9 agricultural district land to less than fifty (50) acres or resulting in the remaining  
10 land being noncontiguous shall not cause the decertification of the district. The  
11 local district board of supervisors may consider a dissolution of the agricultural  
12 district if the withdrawal results in the remaining property within the agricultural  
13 district no longer meeting the definition of agricultural land as defined in KRS  
14 132.010.

15 (17) **(a) Land within the boundaries of an agricultural district shall not be subject to**  
16 **a taking by eminent domain, unless the proceeding is maintained by:**

17 **1. The Transportation Cabinet in furtherance of its statutory mandates; or**

18 **2. A utility for the purposes listed in KRS 278.020(1)(a).**

19 **(b)** Any member of an agricultural district who has received a summons of  
20 condemnation proceedings being instituted concerning the member's land  
21 located in the district may request the local soil and water conservation district  
22 board of supervisors to hold a public hearing on the proposed taking of land,  
23 **at which the condemnor shall provide a written report justifying the**  
24 **condemnation of the specific land due to the lack of feasible alternative**  
25 **locations to satisfy the purposes of the project.**

26 **(c) An action in the condemnation proceeding shall not affect the member's**  
27 **right to a public hearing under this subsection** ~~However a hearing under~~

1           ~~this section shall not be held if the petitioner in the condemnation proceeding~~  
2           ~~is a utility as defined in KRS 278.010(3) and obtained a certificate of~~  
3           ~~convenience and necessity as required by KRS 278.020(1)].~~

4       (18) (a) The board shall notify the local property valuation administrator of the farms  
5           which belong to an agricultural district and whenever a farm is withdrawn  
6           from a district. The board shall also inform all members of a district of the  
7           right to have their land assessed by the local property valuation administrator  
8           at the land's agricultural use value and shall offer advice and assistance on  
9           obtaining such an assessment.

10       (b) The board shall also notify the local property valuation administrator  
11           whenever a farm is released or withdrawn from an agricultural district.

12       (19) The board may allow an amendment to an existing certified agricultural district if  
13           approved by the commission.

14       ➔Section 6. KRS 382.850 is amended to read as follows:

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

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

24       **(3) Notwithstanding any provision of law to the contrary, an entity authorized to**  
25           **exercise the power of eminent domain shall not take by eminent domain any**  
26           **privately owned property that is subject to a conservation easement, unless the**  
27           **proceeding is maintained by:**

1 (a) The Transportation Cabinet in furtherance of its statutory mandates; or

2 (b) A utility for the purposes listed in KRS 278.020(1)(a).

3 (4) (a) An owner of property subject to a conservation easement who has been  
4 served with a summons of condemnation proceedings concerning property  
5 subject to the conservation easement may request a public hearing on the  
6 proposed taking of land to be held before the local soil and water  
7 conservation district board of supervisors.

8 (b) The condemnor shall provide a written report justifying the condemnation  
9 of the specific property at issue due to the lack of feasible alternative  
10 locations to satisfy the purposes of the project.

11 (c) An action in the condemnation proceeding shall not affect the property  
12 owner's right to a public hearing under this subsection.

13 ➔ Section 7. KRS 416.550 is amended to read as follows:

14 (1) If, after meeting the requirements in subsection (2) of this section, a<sup>[Whenever</sup>  
15 <sup>any]</sup> condemnor cannot, by agreement with the owner of the property<sup>[thereof]</sup>,  
16 acquire the property right, privileges, or easements needed for any of the uses or  
17 purposes for which the condemnor is authorized by law, to exercise its right of  
18 eminent domain, the condemnor may condemn the<sup>[such]</sup> property, property rights,  
19 privileges, or easements pursuant to the provisions of KRS 416.550 to 416.670. It is  
20 not a prerequisite to an action to attempt to agree with an owner who is unknown or  
21 who, after reasonable effort, cannot be found within the state or with an owner who  
22 is under a disability.

23 (2) A condemnor seeking to condemn private property for any of the purposes for  
24 which the condemnor is authorized by law to exercise the right of eminent  
25 domain shall:

26 (a) Prior to filing a petition initiating condemnation proceedings under Section  
27 9 of this Act, engage in good-faith negotiations with the owner or owners of



1           the property to voluntarily acquire the property rights, privileges, easements,  
2           or other agreements to use and occupy the property sought by the  
3           condemnor;

4           **(b) 1. With the written consent of the property owner, make audio or video**  
5           recordings, or both, of all good-faith negotiations required under  
6           paragraph (a) of this subsection and, no later than one (1) week  
7           thereafter, submit the recordings to the Attorney General, in the form  
8           and manner as the Attorney General may prescribe, for review for  
9           compliance with the requirements of this section.

10           **2. Prior to obtaining the consent of the property owner for making an**  
11           audio or video recording under this paragraph, the condemnor shall  
12           inform the property owner that the recording will be subject to public  
13           inspection in accordance with subsection (3) of this section.

14           **3. If the property owner refuses to consent to a recording being made,**  
15           then the requirements of this paragraph shall be waived;

16           **(c) Not make any materially false or misleading statements when engaging in**  
17           the good-faith negotiations required by paragraph (a) of this subsection;  
18           and

19           **(d) Not enter into any legally binding agreement with the property owner or**  
20           seek condemnation until after a survey of the property has been conducted  
21           at the expense of the condemnor.

22           **(3) Notwithstanding KRS 61.878 or any other provision of law to the contrary, any**  
23           recordings required under subsection (2)(b) of this section that have been  
24           submitted to the Attorney General shall be nonexempt public records under the  
25           Kentucky Open Records Act, KRS 61.870 to 61.884, and shall be subject to public  
26           inspection.

27           ➔Section 8. KRS 416.560 is amended to read as follows:

- 1 (1) Notwithstanding any other provision of ~~the~~ law, a department, instrumentality or  
2 agency of a consolidated local government, city, county, or urban-county  
3 government, other than a waterworks corporation the capital stock of which is  
4 wholly owned by a city of the first class or a consolidated local government, having  
5 a right of eminent domain under other statutes shall exercise such right only by  
6 requesting the governing body of the consolidated local government, city, county,  
7 or urban-county government to institute condemnation proceedings on its behalf. If  
8 the governing body of the consolidated local government, city, county, or urban-  
9 county government agrees, it shall institute condemnation~~[such]~~ proceedings under  
10 KRS 416.570, and all costs involved in the condemnation shall be borne by the  
11 department, instrumentality, or agency requesting the condemnation.
- 12 (2) If any department, instrumentality, or agency of a consolidated local government,  
13 city, county, or urban-county government, other than a waterworks corporation the  
14 capital stock of which is wholly owned by a city of the first class or a consolidated  
15 local government, operates in more than one (1) governmental unit, it shall request  
16 the governing body of the consolidated local government, city, county, or urban-  
17 county government wherein the largest part of the individual tract of the property  
18 sought to be condemned lies, to institute condemnation proceedings on its behalf.
- 19 (3) A department, instrumentality, or agency of the Commonwealth of Kentucky, other  
20 than the Transportation Cabinet and local boards of education, having a right of  
21 eminent domain under other statutes shall exercise that~~[such]~~ right only by  
22 requesting the Finance and Administration Cabinet to institute condemnation  
23 proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall  
24 institute such proceedings under KRS 416.570, and all costs involved in the  
25 condemnation shall be borne by the department, instrumentality, or agency  
26 requesting the condemnation.
- 27 (4) (a) Prior to the filing of the petition to condemn, the condemnor or its employees

1 or agents shall have the right to enter upon any land or improvement which it  
2 has the power to condemn, in order to make studies, surveys, tests, sounding,  
3 and appraisals, provided that the condemnee~~[owner of the land or the party in~~  
4 ~~whose name the property is assessed]~~ has been notified in accordance with  
5 paragraph (b) of this subsection no later than ten (10) days prior to entry on  
6 the property.

7 (b) Notification under paragraph (a) of this subsection shall be sent by certified  
8 mail, return receipt requested, to the condemnee's last known address listed  
9 on the real property tax rolls of the county and shall include the following  
10 information:

- 11 1. That all or a portion of the property is necessary for a public project;
- 12 2. The nature of the project for which the parcel is considered necessary  
13 and the parcel designation of the property to be acquired;
- 14 3. That, within fifteen (15) business days after receipt of a request by the  
15 condemnee, the condemnor will provide copies, to the extent prepared,  
16 of:
  - 17 a. Right-of-way maps or other documents that depict the proposed  
18 taking; and
  - 19 b. Construction plans that depict project improvements to be  
20 constructed on the property taken and improvements to be  
21 constructed adjacent to the remaining property, including but  
22 not limited to plan, profile, cross-section, drainage, and  
23 pavement marking sheets, and driveway connection detail;
- 24 4. If a condemnor has entered into a public-private partnership for the  
25 public project for which the property is considered necessary, a  
26 disclosure of the identities of existing and potential future private  
27 partners involved in the project. For purposes of this subparagraph,

1 "public-private partnership" and "private partner" have the same  
2 meaning as in KRS 65.025; and

3 5. A statement of the condemnee's statutory rights under the Eminent  
4 Domain Act of Kentucky, KRS 416.540 to 416.670, or alternatively,  
5 copies of those provisions of law.

6 (c) Any actual damages sustained by the owner of a property interest in the  
7 property entered upon by the condemnor shall be paid by the condemnor and  
8 shall be assessed by the court or the court may refer the matter to  
9 commissioners to ascertain and assess the damages sustained by the  
10 condemnee, which award shall be subject to appeal.

11 (5) Failure to provide notice under subsection (4)(b) of this section shall result in a  
12 penalty of five percent (5%) of the compensation awarded to the condemnee  
13 under Section 13 of this Act to be assessed as costs.

14 ➔Section 9. KRS 416.570 is amended to read as follows:

15 Except as otherwise provided in KRS 416.560, a condemnor seeking to condemn  
16 property or the use and occupation of the property~~thereof~~, shall file a verified petition  
17 in the Circuit Court of the county in which all or the greater portion of the property  
18 sought to be condemned is located, which petition shall state that it is filed under ~~the~~  
19 ~~provisions of~~ KRS 416.550 to 416.670 and shall contain, in substance:

20 (1) Allegations sufficient to show that the petitioner is entitled, under the provisions of  
21 applicable law, to exercise the right of eminent domain and to condemn the  
22 property, or the use and occupation of the property~~thereof~~, sought to be taken in  
23 the condemnation~~such~~ proceedings;

24 (2) A statement certifying that the:

25 (a) Proposed condemnation will not violate Section 1, 4, 5, or 6 of this Act;

26 (b) Condemnor has complied with the requirements of Section 7 of this Act;

27 (c) Condemnor has conducted due diligence; and

1 (d) Project for which the land proposed to be condemned cannot be reasonably  
2 placed in an alternate location or routed in a manner that would be less  
3 disruptive to layout or operations of current and potential uses of the  
4 property;

5 (3) A particular description of the property and the use and occupation of the  
6 property~~[thereof]~~ sought to be condemned; and

7 (4)~~[(3)]~~ An application to the court to appoint commissioners to award the amount of  
8 compensation the owner of the property sought to be condemned is entitled to  
9 receive under Section 13 of this Act~~[therefor]~~.

10 ➔ Section 10. KRS 416.580 is amended to read as follows:

11 (1) (a) The Circuit Court, or in the absence of the Circuit Judge from the county, the  
12 Circuit Court Clerk, shall appoint as commissioners an independent real  
13 estate appraiser certified under KRS Chapter 324A and three (3) impartial  
14 housekeepers of the county who are owners of land. They shall be sworn to  
15 faithfully and impartially discharge their duties under this section. The  
16 commissioners shall view the land or material sought to be condemned and  
17 award to the owner or owners such a sum as will fairly represent the reduction  
18 in the market value of the entire property, all of or a portion of which is  
19 sought to be condemned, said sum being the difference between the fair  
20 market value of the entire property immediately before the taking and the fair  
21 market value of the remainder of the property immediately after the taking~~[~~  
22 ~~thereof]~~, together with the fair rental value of any temporary easements sought  
23 to be condemned. Within fifteen (15) days from the date of their appointment  
24 they shall return a written report to the office of the Circuit Court, stating the  
25 above values in their award and shall describe in their report the property  
26 sought to be condemned. They shall be allowed a reasonable fee which shall  
27 be taxed as costs.

1 (b) If any person appointed to serve as commissioner fails, refuses, or becomes  
2 incapable of acting, the court~~[, or judge thereof]~~ shall **without**  
3 **delay**~~[forthwith]~~ appoint a qualified person to fill the vacancy. A majority of  
4 the commissioners appointed and qualified have the power to act and to make  
5 and sign the award and report. If a majority of the commissioners do not agree  
6 on a decision, **four (4)**~~[three (3)]~~ new commissioners shall be appointed by  
7 the court on application by any of the parties to the action.

8 (2) In eminent domain proceedings instituted pursuant to KRS 99.700 to 99.730, in  
9 determining the **fair** market ~~[of ]~~value **of** blighted or deteriorated property, the  
10 commissioners shall consider:

11 (a) The estimated cost of repairs necessary to bring the property up to the  
12 minimum standards of the local housing or nuisance code as determined by an  
13 independent appraiser, general building or residential contractor, or inspector;  
14 or

15 (b) The cost of demolition of the property, if the commissioners determine that  
16 demolition would be the most cost-effective manner of addressing the  
17 blighted or deteriorated structures on the property.

18 ➔Section 11. KRS 416.610 is amended to read as follows:

19 (1) After the owner has been summoned twenty (20) days, the court shall examine the  
20 report of the commissioners to determine whether it conforms to the provisions of  
21 KRS 416.580. If the report of the commissioners is not in the proper form the court  
22 shall require the commissioners to make such corrections as are necessary.

23 (2) If no answer or other pleading is filed by the owner or owners putting in issue the  
24 right of the petitioner to condemn the property or the use and occupation **of the**  
25 **property**~~[thereof]~~ sought to be condemned, the court shall enter an interlocutory  
26 judgment which shall contain, in substance:

27 (a) A finding that the petitioner has the right~~[,]~~ under ~~[the provisions of ]~~KRS

- 1           416.550 to 416.670 and other applicable law to condemn the property or the  
2           use and occupation of the property~~[thereof]~~;
- 3           (b) A finding that the report of the commissioners conforms to the  
4           requirements~~[provisions]~~ of KRS 416.580;
- 5           (c) An authorization to take possession of the property for the purposes and under  
6           the conditions and limitations, if any, set forth in the petition upon payment to  
7           the owner or to the clerk of the court the amount of the compensation awarded  
8           by the commissioners;
- 9           (d) Proper provision for the conveyance of the title to the land and material, to the  
10          extent condemned, as adjudged therein in the event no exception is taken as  
11          provided in KRS 416.620(1).
- 12       (3) Any exception from the~~[such]~~ interlocutory judgment by either party or both parties  
13          shall be confined solely to exceptions to the amount of compensation awarded by  
14          the commissioners.
- 15       (4) If the owner has filed an answer or pleading putting in issue the right of the  
16          petitioner to condemn the property or use and occupation thereof sought to be  
17          condemned, the court shall, without intervention of a jury, proceed without  
18          delay~~[forthwith]~~ to hear and determine whether or not the petitioner has that~~[such]~~  
19          right. If the court determines that petitioner has condemnation~~[such]~~ rights, an  
20          interlocutory judgment, as provided for in subsection (2) of this section, shall be  
21          entered. If the court determines that petitioner does not have that~~[such]~~ right, it  
22          shall enter a final judgment which shall contain, in substance:
- 23           (a) A finding that the report of the commissioners conforms to the  
24           requirements~~[provisions]~~ of KRS 416.580;
- 25           (b) A finding that the petitioner is not authorized to condemn the property or the  
26           use and occupation of the property~~[thereof]~~ for the purposes and under the  
27           conditions and limitations set forth in the petition, stating the particular

1 ground or grounds on which the petitioner is not so authorized;

2 (c) An order dismissing the petition and directing the petitioner to pay all costs,  
3 expenses, and reasonable attorney's fees.

4 ➔Section 12. KRS 416.620 is amended to read as follows:

5 (1) Within thirty (30) days from the date of entry of an interlocutory judgment  
6 authorizing the petitioner to take possession of the property, exceptions may be  
7 filed by either party or both parties by filing with the clerk of the Circuit Court and  
8 serving upon the other party or parties a statement of exceptions, which statement  
9 shall contain any exceptions the party has to the award made by the commissioners.  
10 The statement of exceptions shall be tried, but shall be limited to the questions  
11 which are raised in the original statements of the exceptions, or as amended, but the  
12 owner shall not be permitted to raise any question, nor shall the court reconsider  
13 any question so raised, concerning the right of the petitioner to condemn the  
14 property. All questions of fact pertaining to the amount of compensation to the  
15 owner, or owners, shall be determined by a jury, which jury on the motion of either  
16 party shall be sent by the court, in the charge of the sheriff, to view the land and  
17 material. After a jury trial, and if possession previously has not been taken by the  
18 condemnor of the land and material condemned, the condemnor~~[[+]]~~ may do so upon  
19 the payment to the owner or to the clerk of the Circuit Court the amount of the  
20 compensation adjudged by the Circuit Court to be due the owner.

21 (2) Appeals may be taken to the Court of Appeals from the final judgment of the  
22 Circuit Court as in other cases except that an appeal by the owner shall not operate  
23 as a supersedeas.

24 (3) The payment by the condemnor of the amount of compensation awarded and the  
25 taking of possession of the lands and material condemned shall not prejudice its  
26 right to except from the award of the commissioners or the judgment of any court,  
27 nor shall the acceptance by the owner of the amount of the compensation awarded



1        prejudice his or her right to except from the award of the commissioners or the  
2        judgment of any court.

3        (4) All costs, expenses, and reasonable attorney's fees in the Circuit Court shall be  
4        adjudged against the condemnor.

5        (5) If the condemnor takes possession of the property condemned and the amount of  
6        compensation is thereafter increased over that awarded by the commissioners, the  
7        condemnor shall pay interest to the owner at the rate of six percent (6%) per annum  
8        upon the amount of such increase from the date the condemnor took possession of  
9        the property. If the condemnor takes possession of the property condemned and the  
10       amount of compensation is thereafter decreased below that awarded by the  
11       commissioners, the condemnor shall be entitled to a personal judgment against the  
12       owner for the amount of the decrease plus interest at the rate of six percent (6%) per  
13       annum from the date the owner accepted the amount of compensation the  
14       condemnor paid into court or to the owner. If the owner at all times refuses to  
15       accept the payment tendered by the condemnor, no interest shall be allowed in the  
16       judgment against the owner for the amount of the decrease.

17       (6) Upon the final determination of exceptions, or upon expiration of thirty (30) days  
18       from entry of the interlocutory judgment if no exceptions are filed, the Circuit Court  
19       shall make such orders as may be proper for the conveyance of the title to the extent  
20       condemned, to the property, and shall enter such final judgment as may be  
21       appropriate.

22       ➔Section 13. KRS 416.660 is amended to read as follows:

23       (1) In all actions for the condemnation of lands under the provisions of KRS 416.550 to  
24       416.670, except temporary easements, there shall be awarded to the landowners as  
25       compensation ~~[such]~~ a sum that~~[as]~~ will fairly represent the difference between the  
26       fair market value of the entire tract, all or a portion of which is sought to be  
27       condemned, immediately before the taking and the fair market value of the

1 remainder ~~thereof~~ immediately after the taking, including in the remainder all  
2 rights which the landowner may retain in the lands sought to be condemned where  
3 less than the fee simple interest ~~therein~~ is taken, together with the fair rental value  
4 of any temporary easements sought to be condemned.

5 (2) Except as provided in subsection (3) of this section, the fair market value of  
6 property in an eminent domain proceeding shall be the price on the valuation  
7 date for the highest and best use of the property that a vendor, willing but not  
8 obligated to sell, would accept for the property, and which a purchaser, willing  
9 but not obligated to buy, would pay, excluding any increment in value  
10 proximately caused by the public project for which the property condemned is  
11 needed.

12 (3) The fair market value of property actively used for conservation, farm, or  
13 agricultural purposes in an eminent domain proceeding shall be one hundred  
14 twenty-five percent (125%) of the highest appraised value of the property.

15 (4) Any change in the fair market value prior to the date of condemnation which the  
16 condemnor or condemnee establishes was substantially due to the general  
17 knowledge of the imminence of condemnation or the construction of the project  
18 shall be disregarded in determining fair market value. The taking date for valuation  
19 purposes shall be either the date the condemnor takes the land, or the date of the  
20 trial of the issue of just compensation, whichever occurs first.

21 ➔Section 14. KRS 416.675 is amended to read as follows:

22 (1) Every grant of authority contained in the Kentucky Revised Statutes to exercise the  
23 power of eminent domain shall be subject to the condition that the authority be  
24 exercised only to effectuate a public use of the condemned property.

25 (2) "Public use" shall mean the following:

26 (a) Ownership of the property by the Commonwealth, a political subdivision of  
27 the Commonwealth, or other governmental entity;

- 1 (b) The possession, occupation, or enjoyment of the property as a matter of right  
2 by the Commonwealth, a political subdivision of the Commonwealth, or other  
3 governmental entity;
- 4 (c) The acquisition and transfer of property for the purpose of eliminating  
5 blighted areas, slum areas, or substandard and insanitary areas in accordance  
6 with KRS Chapter 99;
- 7 (d) The use of the property for the creation or operation of public utilities or  
8 common carriers; or
- 9 (e) Other use of the property expressly authorized by statute.
- 10 (3) (a) No provision in the law of the Commonwealth shall be construed to authorize  
11 the condemnation of private property for transfer to a private owner for the  
12 purpose of economic development that benefits the general public only  
13 indirectly, such as by increasing the tax base, tax revenues, or employment, or  
14 by promoting the general economic health of the community.
- 15 (b) For purposes of this subsection, "private owner" includes public-private  
16 partnerships as defined in KRS 65.025, individuals, corporations or other  
17 business entities, and nongovernmental entities.
- 18 (c) ~~[However,]~~ This subsection ~~[provision]~~ shall not prohibit the sale or lease of  
19 property to private entities that occupy an incidental area within a public  
20 project or building, provided that no property may be condemned primarily  
21 for the purpose of facilitating an incidental private use.
- 22 (4) The exercise of the power of eminent domain for the acquisition of property  
23 financed by state road funds or federal highway funds shall be exempt from the  
24 provisions of this section.