

**FINAL REPORT OF THE
COAL REVENUE ALLOCATION
TASK FORCE**

RESEARCH MEMORANDUM NO. 442

LEGISLATIVE RESEARCH COMMISSION

October, 1991



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Legislative Research Commission
Frankfort, Kentucky
October, 1991



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TO: Senator John A. "Eck" Rose
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FROM: Senator Charles Berger *CWB*
Representative Greg Stumbo *GS*
Co-chairmen
Coal Revenue Allocation Task Force

DATE: October 1, 1991

SUBJECT: Final Report of the Coal Revenue Allocation
Task Force

The Coal Revenue Allocation Task Force has concluded its activities. This final report, which includes legislation recommended for adoption by the 1992 Session of the General Assembly, is submitted as provided by law. The Task Force respectfully requests adoption of the report and referral of the draft legislation, 1992 BR 430, to the appropriate interim committee for consideration.

Acknowledgement is given to the work of C. Gilmore Dutton, Task Force Administrator, Virginia Wilson and Donna Cantrell, Task Force Staff Economists, and Linda Hughes, Task Force Secretary. A special thanks is also due to M. E. "Buddy" Combs, State/Local Finance Officer, Department of Local Government, and his staff, for their contributions to the development of county revenue and expenditure data.

Executive Summary

The Coal Revenue Allocation Task Force, created by the 1991 Special Session of the General Assembly, addressed the significance of Kentucky's coal industry to the economy of the state and the coal producing counties, the economic needs of the coal-producing counties, and the allocation of the coal severance tax revenues to meet those county needs.

Testimony was taken from economists, mining experts, university researchers, state administrators, private and public practitioners in economic development, a Montana legislator active in his and other western states coal revenue allocation programs, and county judges from coal-producing counties.

The Task Force found the following:

1. Kentucky's coal industry plays a significant part in the economy of all of Kentucky's coal-producing counties and is a major element in the economy of Kentucky's eastern coal-producing region.
2. Revenue generated from the direct and indirect taxation of Kentucky's coal industry makes up a significant part of the state's General Fund.
3. Under current technology, employment in Kentucky's coal industry has declined and is expected to decline.
4. Federal acid rain legislation will likely have a profound impact upon the marketability of Kentucky's coal.
5. The development of alternative sources of employment will be essential for the maintenance and improvement of the economies of Kentucky's coal-producing counties.
6. Current coal severance tax revenue allocations to coal-producing counties are a significant and necessary part of those counties' revenues, without which the delivery of present county services would be severely hampered.
7. "True" unemployment rates in Kentucky's Appalachian counties exceed official unemployment rates by more than five times, an average of 31% of the available workforce in the entire region.
8. The median salary of magistrates in coal-producing counties exceeds the median salary of magistrates in all of Kentucky's counties by nearly 30%. And,
9. Local tax rates in coal-producing counties equal or exceed the rates in non-coal-producing counties in each of the three property tax rate categories, real property, motor vehicle, and other tangible personal property.

The Task Force reached the following conclusions:

1. Economic diversification within Kentucky's coal-producing regions will require a substantial infusion of revenue for development of industrial sites and associated infrastructure, elements necessary for the successful attraction of industry.

2. Emphasis should be placed on the development of regional industrial sites rather than the development of industrial locations within each coal-producing county.
3. Additional allocation of coal severance tax revenues to coal-producing counties should be restricted to expenditure for economic development purposes.
4. Coal impact counties should not be direct recipients of coal severance tax revenues, either through the existing, or through any new coal severance tax revenue allocation program.
5. A total of 50% of Kentucky's coal severance tax revenues should be earmarked for general expenditure and economic development within the coal-producing counties.
6. Any formula of allocation of additional coal severance tax revenues to coal-producing counties should recognize the history of coal production in those counties rather than current coal production only.
7. The administration of additional coal severance tax allocation formulas, together with associated programs, should be the function of existing executive branch agencies.
8. Commensurate with the imposition of the coal severance tax, Kentucky should have assigned a significant part of the tax revenues to a permanent, inviolate trust fund which would have served as a permanent source of funding for coal severance tax related programs. The creation of the fund, less a political reality and less a fiscal priority, given the immediate needs of Kentucky's coal-producing counties, should be a part of the general assembly's long-term agenda. And,
9. Legislation reflecting the findings and conclusions of the Task Force, as suggested in the accompanying bill draft, should be introduced for consideration by the 1992 Session of the General Assembly.

Genesis, Mission, and Membership of the Coal Revenue Allocation Task Force

The Coal Revenue Allocation Task Force was created through Senate Concurrent Resolution 47, adopted by the 1991 Special Session of the General Assembly. The resolution was offered as an alternative to legislation introduced in the Special Session which would have allocated additional coal severance tax revenue to coal-producing counties for economic development purposes. An informal consensus was reached to the effect that the issues embodied in the legislation would be better considered in an interim setting, and the legislation more properly the business of a regular session.

The charge to the Task Force was to study for the Commonwealth the following:

- (1) The allocation of coal severance and processing tax receipts to counties of production;
- (2) The most pressing needs of the coal-producing counties;
- (3) The most effective use of the allocated receipts.
- (4) The most effective division of receipts according to use and need.

The membership of the Task Force, as directed by the resolution, was made up of members of the House, appointed by the Speaker of the House, and members of the Senate, appointed by the President Pro Tem of the Senate.

Nine members of the Senate and fifteen members of the House were appointed by Senate President Pro Tem, John A. "Eck" Rose, and Speaker of the House, Donald J. Blandford, respectively. Senator Eck Rose served as an ex-officio member. Senator Charles Berger and Representative Greg Stumbo were designated as co-chairmen of the Task Force. The membership of the Task Force was as follows: Senators Benny Ray Bailey, Charles Borders, Kelsey Friend, Henry Lackey, Joe Meyer, Michael Moloney, Kim Nelson and Bill Quinlan; Representatives Russell Bentley, Donald Blandford, Michael Bowling, Jerry Bronger, Joe Clarke, Freed Curd, Danny Ford, Pat Freibert, Clayton Little, Louie Mack, Dorsey Ridley, Martin Sheehan, Bill Strong, and Mike Ward.

Task Force Activities and Information Developed by the Task Force

The Task Force met six times; the first meeting was held on March 27, 1991, the sixth meeting on September 30, 1991. Testimony was taken from economists, mining experts, university researchers, state administrators, private and public practitioners in economic development, a Montana legislator active in his and other western states' coal revenue allocation programs, and county judges from coal-producing counties.

A substantial body of information was developed on the following subjects: Kentucky coal industry trends and coal-producing region economic performance; contributions of coal industry related taxes to the state's treasury; coal resources and reserves; coal-producing county and coal impact county receipts under the Commonwealth's current coal severance tax revenue allocation program; current county services funded by local severance tax revenues; "true" unemployment rates in Kentucky's eastern coal-producing counties; local tax effort in the coal-producing and other counties of the state; magistrate salaries in the coal-producing and other counties of the state; and coal severance tax revenue allocation programs in selected western states. Following is a summary of that information. Copies of all documents and summaries of verbal testimony received by the Task Force are on file in the offices of the Task Force staff.

Kentucky's History of Allocation of Coal Severance Tax Revenues to Local Governments

Kentucky's coal severance tax was imposed effective April 1, 1972; however, it was two years before any of the tax revenues were returned to coal-producing counties. The "Mountain Caucus" of the 1974 General Assembly successfully promoted legislation establishing a Coal Producing County Development Fund (CBCDF) to return to the coal-producing counties one-half of any coal severance tax surplus realized during fiscal years 1973-74 and 1974-75. "Surplus" was defined as any amount above the official Department of Revenue estimate for coal severance tax for the two fiscal years.

An unprecedented demand for coal resulted in record prices during the 1974-76 biennium, and produced an unexpected windfall in severance tax receipts, benefiting both the state's General Fund and the CBCDF. Revenues returned to the counties totaled \$6.2 million in fiscal year 1974-75 (11% of total receipts in fiscal year 1973-74) and \$27 million for fiscal year 1975-76 (27% of total receipts in fiscal year 1974-75).

The 1976 General Assembly replaced the 1974 program with a series of programs and appropriations, informally labeled the "coal severance tax package." Seven programs were included in the package, but only one represented a direct appropriation of moneys to local governments. That program, entitled the "Coal Severance Economic Aid Fund," provided a \$5 million per year appropriation for capital construction projects in coal-producing counties. The other programs that made up the package included transfer of coal severance tax revenues from the General Fund to the Road Fund to meet the debt service on bonds issued to construct "Resource Recovery Roads;" an "Energy Road Fund," established for road projects in coal-producing counties; an appropriation to the Workmens' Compensation Special Fund for payment of coal miners' black lung benefits; an "Area Development Fund" for capital projects in each of the state's fifteen area development districts; an appropriation for the construction of the Jefferson County Freeway; and a "Power Equalization Fund" for payments to local school districts, to equalize the revenue-producing power of local school tax rates. The total cost of the package for the biennium was \$89 million, or 38% of the coal severance tax revenues for the period, with the cost of the aid to coal-producing counties at \$10 million, or 4% of the coal severance tax revenues for the biennium.

The 1978 Session of the General Assembly continued the Coal Severance Tax Economic Aid Fund, funded at the same level as in the previous biennium, and established a Coal Impact County Road Fund (CICRD) for the maintenance of highways affected by the transportation of coal. The CICRF was funded with 25% of coal severance taxes in excess of the amount budgeted for fiscal year 1978-79 and for fiscal year 1979-80. Unfortunately, coal severance tax revenues fell below the amount estimated in each fiscal year; hence, no moneys were received in the fund.

In 1980, the General Assembly repealed all earlier established coal severance tax revenue allocation programs, with the exception of the Resource Recovery Road Fund and the Area Development Fund. A Local Government Economic Assistance Fund (LGEAF) was established, benefiting coal-producing and coal

impact counties and incorporated areas within those counties. One-half of coal severance tax revenues in excess of an annual \$177.6 million amount were earmarked for the new program. Ninety percent of all moneys received in the fund were allocated to coal-producing counties, and 10% were allocated to coal impact counties. Incorporated areas within each affected county received 10% of their county's allocation. Twenty-nine million dollars, or 12.1% of total coal severance tax receipts, was transferred to the fund in its first year of existence; however, the following four years saw an average of only \$8 million, or 5% of total severance tax receipts, received into the fund.

In 1986, the rate of coal severance tax revenue earmarked for the LGEAF was set at a flat 10% of total coal severance tax receipts, with the rate increased to 12% for the following and successive fiscal years. The 12% return of coal severance tax revenue stands as the state's current allocation rate for local government purposes.

Since the inception of the first program for the direct allocation of coal severance tax moneys to units of local governments in 1974, coal-producing counties, coal impact counties and affected cities have received, through fiscal year 1989-90, \$207.9 million. This amount represents 7.6% of the total \$2,724.5 million in coal severance tax receipts for the same period.

Kentucky's Coal Industry Economic Trends

Legislative Research Commission Staff Economists Virginia Wilson and Donna Cantrell provided the Task Force with a comprehensive listing of economic trends in Kentucky's coal industry. The following data was of particular significance to the Task Force:

1. Kentucky's coal production totaled 125.3 million tons in 1970, and increased to 167.4 million tons by 1989, an average annual growth rate of 1.4%.
2. Employment in mining grew from 23,713 miners in 1970 to 50,806 in 1979, then declined to 31,486 in 1989.
3. Coal mining productivity has steadily increased from an average of less than 2 tons per miner hour in 1979 to nearly 3 tons per miner hour in 1989. Underground mining leads surface mining in efficiency by more than one-half ton per miner hour. Underground and surface mining accounted for the same total production in 1979; but, by 1989, underground mining accounted for nearly 60% of the state's total production of coal.
4. Kentucky's western coal-producing region accounts for 25% of the state's current coal production, and 12.6% of the state's total coal related employment, while the eastern coal-producing region accounts for 75% of the state's current coal production and 87.4% of the state's coal related employment.

5. Employment in mining in the eastern coal-producing region has declined from a high in 1981 of 40,000 persons to less than 30,000 in 1989. Employment in Kentucky's western coal-producing region has declined from a high in 1979 of more than 10,000 persons to approximately 5,000 in 1989.
6. Personal income declined by 0.6% in Kentucky's eastern coal-producing region from 1979 to 1988, increased by 1.2% in Kentucky's western coal-producing region during the same period, and grew by 16.2% over the decade in non-coal-producing counties.
7. Per capita income in 1988 was \$12,019 for counties in the western coal-producing region, \$11,601 for non-coal-producing counties, and \$8,886 for counties in the eastern coal-producing region.
8. Current unemployment rates stand at 9.1% for Kentucky's eastern coal-producing counties, 7.6% for the western coal-producing counties and 6.5% for the non-coal-producing counties.
9. During the decade between 1980 and 1990, population in the eastern coal-producing counties declined by 8.6%, increased by 0.5% in the western coal-producing counties, and increased by 3.7% in the non-coal-producing counties.

Contribution of Kentucky's Coal Industry to the State's General Fund

An estimate of General Fund revenue attributable to direct and indirect taxes generated by Kentucky's coal industry was prepared by Lawrence K. Lynch, Consultant to the Interim Joint Committee on Appropriations and Revenue for revenue estimation. Dr. Lynch concluded that in fiscal year 1990-91, coal industry related taxes accounted for 409.2 million in general fund dollars, or nearly 10% of the total general fund receipts of \$4,326.1 million for the year.

Expected Life of Kentucky's Coal Industry

Mr. James C. Cobb, Assistant State Geologist and Head of the Coal and Minerals Section, Kentucky Geological Survey, University of Kentucky, voiced concern that Kentucky's current rate of coal production, under existing technology, could be sustained for no more than 20 to 30 years. Mr. Cobb based his statement upon the fact that with the current production rate of 130 million tons of coal per year in Eastern Kentucky, a total of 3.9 billion tons would be mined in 30 years. Another 3.9 billion tons of coal would be left as pillars in underground mines, resulting in a net consumption of 7.8 billion tons for the period. Assuming that 8% to 20% of Eastern Kentucky's original coal reserves are economically recoverable under current technology, the amount of recoverable coal in Eastern Kentucky stands at only 5.1 billion to 12.8 billion tons.

The Task Force was given an overview of the potential effects of federal acid rain legislation on the marketability of Kentucky's coal by Mr. Glen Gibian, Kentucky Governor's Office for Coal and Energy Policy. Mr.

Gibian said that federal law requires electric utilities to reduce emissions of sulfur dioxide. Electric utilities can meet the federally-imposed standards by decreasing consumption of high sulfur coal and increasing consumption of low sulfur coal, by installing equipment to capture the undesirable emissions, or by adopting a fuel source other than coal. Since 90% of coal production in Kentucky's western region, and 64% of the coal produced in Kentucky's eastern region is sold to electric utilities, the method chosen by these companies to reduce sulfur dioxide emissions will be of utmost significance to Kentucky.

Mr. Gibian postulated that production of low sulfur Eastern Kentucky coal could increase, and production of high sulfur Western Kentucky coal could decrease as a result of utility companies' compliance with sulfur dioxide emission rates.

Significance of Kentucky's Coal Industry to Employment in Kentucky's Coal Producing Counties

Employment in mining accounted for 10.11% of total employment in 1990 in Kentucky's eastern coal-producing region, with individual county rates ranging from 0.3% in Greenup County to 46.49% in Martin County. Employment in mining accounted for 5.16% of total employment in 1990 in Kentucky's western coal-producing region, with individual county rates ranging from 0.31% in Christian County to 23.4% in Union County. These figures were reported to the Task Force by Donna Cantrell, Legislative Research Commission Staff Economist.

Other States' Use of Coal Severance Tax Revenues

The diversification of use of coal severance tax revenues is best seen in allocation programs in the western states, particularly Montana, North Dakota and Wyoming. Thomas E. Towe, a Montana State Senator, who sponsored legislation establishing Montana's coal severance tax allocation programs and who has addressed other state legislatures on the use of coal severance tax moneys, testified before the Task Force at its meeting on May 16, 1991. He reported that Montana, North Dakota, and Wyoming had each established permanent coal severance tax trust funds. In the case of Montana and Wyoming, the trusts are constitutionally based, with only interest income generated by investment of the trusts' principal available for appropriation.

In all three states, allocation of available coal severance tax revenues to local governments represents a significant percentage of the appropriation of coal severance tax receipts, although the states' general funds are the single largest beneficiary of the revenues. Rather than carte blanche appropriations to coal-producing counties, the three states have established "impact boards," which issue grants or loans to units of local government demonstrating adverse impacts from coal production.

Other programs of significance funded with coal severance tax revenues are the construction of adult and vocational education centers; elementary, secondary and higher education operations; research and development of alternative energy sources; the improvement of renewable resources, such as timber, wildlife and agricultural land; parks acquisition

and maintenance; libraries; highway reconstruction and maintenance (Montana); property tax relief (North Dakota); and a budget reserve account (Wyoming).

Prospects for the Diversification of the Economy of Kentucky's Coal Producing Regions

The third meeting of the Coal Revenue Allocation Task Force, held on June 26, 1991, was devoted to testimony from practitioners in the field of economic development with experience in Kentucky's eastern and western coal-producing regions. Providing testimony were representatives of the Kentucky Economic Development Cabinet, East Kentucky Economic Development and Jobs Creation Corporation, Kentucky Highlands Investment Corporation, Pikeville-Pike County Industrial Development and Economic Authority, Ohio County Industrial Foundation, Muhlenberg-Greenville Industrial Development Authority, Big River Electric Corporation, American Standard, Hazard Community College, and Kentuckians for the Commonwealth. Highlights of the speakers' remarks are as follows:

1. Road systems in eastern Kentucky, providing easy access to interstate highways, have brought the region within effective reach of nearly two-thirds of the population of the United States;
2. Many of the counties in the eastern coal-producing region lack developed industrial or commercial land and associated infrastructure necessary for economic development;
3. The availability of developed industrial and commercial sites is critical to the recruitment of industry;
4. Venture capital and incentives for small entrepreneurs are effective mechanisms for attracting the size businesses that can be realistically expected to settle in many of the eastern Kentucky coal-producing counties;
5. The development of growth centers, i.e., towns and cities throughout a region which are moving towards economic success and which have the size, leadership and infrastructure to act as job magnets for surrounding counties, would be the most efficient and effective use of economic development funds;
6. Regional economic development initiatives, rather than individual county efforts, should be encouraged;
7. Funds for the upgrading of existing industrial facilities should be an integral part of any economic development program;
8. Most observers of Kentucky's coal industry, including those directly associated with the industry, believe that the industry will not continue to provide in future years the same level of employment as currently exists;

9. Severance tax moneys should be returned to coal-producing counties based upon need and potential for economic development, rather than upon a production based formula;
10. Strong local commitment is a necessary ingredient to the successful development and marketing of an industrial site;
11. Perceived inequities in the quality of life in eastern Kentucky require additional subsidies to attract industry to that locale; and,
12. Expenditures for economic development projects should be project specific and based upon job creation potential.

Coal Producing County Judge/executives' Opinions on the Current Coal Severance Tax Allocation Program and the Need for Economic Diversification in Kentucky's Coal-Producing Regions

County judge/executives representing counties in Kentucky's eastern and western coal-producing regions appeared before the Task Force in a two-day meeting on July 16-17, 1991. Testimony was given regarding the current coal severance tax allocation program and the need for economic diversification in Kentucky's coal-producing counties. Significant portions of that testimony are as follows:

1. Current coal severance tax revenue received by the coal-producing counties represents a significant, and in some cases substantial, portion of local government receipts, without which the delivery of county services would be severely hampered;
2. County services funded through the current coal severance tax revenue allocation program include public safety, recreation, road construction and maintenance, and economic development;
3. The need for economic diversification in the coal-producing counties is reaching a critical point, best exemplified by the loss of mining jobs and the associated rise in unemployment rates;
4. Employment in mining in some coal-producing counties has declined by as much as 85% over the last ten years;
5. Additional coal severance tax revenue allocations to coal-producing counties would enable counties to develop industrial sites, the present lack of which preclude even discussions with industrial clients regarding locating in the area;
6. Additional coal severance tax revenues would be welcomed by counties for use in road maintenance, public safety, upkeep of public buildings, solid waste disposal, and residential infrastructure projects;
7. The present allocation of coal severance tax revenues is insufficient in many counties to correct the negative impacts of coal production, particularly the contamination of residential water supplies; and,

8. Regional economic development projects would appear to be a more efficient and effective use of economic development funds, than individual county projects.

Miscellaneous Information

1. Unemployment Rates in Kentucky's Appalachian Counties.

"True" unemployment rates in Kentucky's eastern coal-producing counties became a concern of the Task Force after reviewing data published by the University of Kentucky's Appalachian Center. Official unemployment rates, developed by the Cabinet for Human Resources from applications for unemployment benefits, had been the only unemployment statistics previously available.

The Appalachian Center, suspecting that many unemployed persons were no longer being counted in the official statistics after their unemployment benefit coverage expired, conducted a survey of unemployed workers in Kentucky's 49 mountain counties. The study concluded that 173,295 people, or 31% of the available workforce, were unemployed in the region in 1989, more than five times the state's official count of 33,944. Examples of discrepancies between the official and survey unemployment figures are: Boyd County, where the official unemployment rate was 5.5% and the survey rate 26.0%; Carter County, 12.5% versus 37.4%; Elliott County, 17.7% versus 63.3%; Floyd County, 8.7% versus 40.2%; Greenup County, 5.7% versus 29.6%; Johnson County, 8.4% versus 38.9%; Lawrence County, 10.0% versus 43.9%; Lewis County 9.2% versus 27.3%; Magoffin County, 14.8% versus 53.2%; and Martin County, 10.1% versus 57.5%.

2. Magistrates' Salaries in the Coal-Producing Counties.

The Task Force responded to suggestions that current coal severance tax revenue allocations to coal-producing counties were, in some cases, being used to supplement county officials' salaries, particularly the salaries of county magistrates, rather than being expended to improve the quality of life of the residents of those counties, by requesting a study of county magistrates' salaries from the Department of Local Government. The results of the study showed that the median salaries of magistrates in coal-producing counties exceeded the \$9,991 median for all counties by \$2,802, or nearly 30%. Examples of coal-producing counties paying their magistrates at levels above the median include: Bell, \$12,329; Breathitt, \$17,551; Clay, \$12,758; Daviess, \$27,926; Floyd, \$26,212; Harlan, \$23,867; Henderson, \$14,184; Hopkins, \$12,000; Jackson, \$15,156; Johnson, \$14,467; Knott, \$18,600; Laurel, \$16,552; Leslie, \$16,368; Letcher, \$15,360; Martin, \$19,200; Muhlenberg, \$13,913; Perry, \$21,600; Pike, \$26,064; and Webster, \$16,359.

3. Maintenance of Local Tax Effort.

The Task Force tested the hypothesis that coal-producing counties had reduced their local tax effort as a result of the receipt of coal severance tax revenue allocations, by commissioning another study by the Department of

Local Government. The results of the study showed that while the median per capita local tax collections for coal-producing counties were only one-half those of non-coal-producing counties, the discrepancy was due entirely to lower property values in the coal-producing counties; property tax rates in the coal-producing counties were consistently equal to or higher than those in the non-coal-producing counties in each category of property tax rates, real property, motor vehicles, and other tangible property. The conclusion drawn from the study was that coal-producing counties had not reduced their effort as a result of state assistance.

Task Force Recommended Legislation

The Task Force recommends legislation for consideration by the 1992 Session of the General Assembly which would increase, over a three-year period, the allocation of coal severance tax revenues to counties of production from the current level of 12% of total receipts to a level of 50% of total receipts. The additional funds would be entirely reserved for economic development projects.

Attached as part of this report is 1992 BR 430, embodying the Task Force's general goals. Following are significant provisions of 1992 BR 940:

1. The continued allocation of 12% of total coal severance and processing tax receipts to the "Local Government Economic Assistance Fund," as provided under current law;
2. The repeal of the current allocation of 10% of the revenues in the Local Government Economic Assistance Fund to coal impact counties, with the reallocation of revenues in the fund exclusively to coal-producing counties.
3. The establishment within the Kentucky Development Finance Authority of a "Local Government Economic Development Program," to consist of a system of grants to counties to attract new industry;
4. The allocation of one-third of the development program funds to counties based upon coal production; the allocation of one-third of the development program funds to coal-producing counties, based upon percentage of employment in mining, percentage of earnings from mining and unemployment rate; and the allocation of one-third of the development program funds for regional projects benefiting two or more coal-producing counties;
5. The disqualification of any county from participation in either the Local Government Economic Assistance Program or the Local Government Economic Development Program, if the salary paid to the magistrates of the county exceeds the statewide average salary for county magistrates; and,
6. The designation of the Secretary of the Cabinet for Economic Development as the office for approval of grant applications and the designation of the Kentucky Development Finance Authority as the agency for award of grants.

AN ACT relating to economic assistance for local governments, making an appropriation, and declaring an emergency.

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

1 Section 1. KRS 42.450 is amended to read as follows:

2 (1) There is hereby established in the State
3 Treasury a fund entitled "Local Government Economic
4 Assistance Fund." The fund may receive state
5 appropriations, gifts, grants, and federal funds and shall
6 be disbursed by the State Treasurer upon the warrant of
7 the secretary of the Finance and Administration Cabinet.
8 Any unallotted or unencumbered balances in the fund shall
9 be invested in United States Government Securities
10 maturing not later than one (1) year from the date of
11 investment and the income earned from the [such]
12 investment shall be prorated for expenditure in coal
13 producing and coal impact counties according to each
14 [such] county's allocable part in the fund.

15 (2) Effective July 1, 1981, an amount equal to
16 one-half (1/2) of the tax collected annually on the sale
17 of minerals, exclusive of coal, shall be transferred from
18 the general fund into this fund. The [such] transfers
19 shall be made quarterly[/

1 (3) Effective July 1, 1981, an amount equal to
2 one-half (1/2) of the severance and processing taxes on
3 coal collected annually, in excess of \$177.6 million,
4 shall be transferred from the general fund into this fund.
5 However, in no event shall the amount transferred from the
6 general fund into this fund for fiscal year 1986+87 be
7 less than ten percent (10%) of the total severance and
8 processing taxes on coal collected in fiscal year 1986+87,
9 and in no event shall the amount transferred from the
10 general fund into this fund for fiscal year 1987+88 and
11 all subsequent fiscal years be less than twelve percent
12 (12%) of the total severance and processing taxes on coal
13 collected in fiscal year 1987+88 and in each respective
14 subsequent fiscal year. Such transfers shall be made
15 quarterly], based upon the revenue estimates prevailing
16 at the time each quarterly transfer is due, except that
17 the last quarterly transfer shall be made after the close
18 of the fiscal year accounting records, and shall be
19 adjusted to provide the balance of the annual transfer
20 required by this subsection.

21 Section 2. KRS 42.455 is amended to read as follows:

22 (1) There is established within the Department of
23 Local Government a Local Government Economic Assistance
24 Program to consist of a system of grants to local
25 governments to improve the environment for new industry
26 and to improve the quality of life for the residents.

1 (2) Grants obtained under this program shall be used
2 for priority expenditures. Thirty percent (30%) of all
3 moneys in the fund shall be spent on the coal haul road
4 system as described in subsection (7) of this section. The
5 remaining seventy percent (70%) of the fund shall be spent
6 on priority categories limited to the following:

7 (a) Public safety, including law enforcement, fire
8 protection, ambulance service and other related services;

9 (b) Environmental protection, including sewage
10 disposal, sanitation, solid waste and other related
11 programs;

12 (c) Public transportation, including mass transit
13 systems, streets and roads;

14 (d) Health;

15 (e) Recreation;

16 (f) Libraries and educational facilities;

17 (g) Social services for the poor, aged, and
18 handicapped;

19 (h) Financial administration and governmental
20 management programs;

21 (i) Industrial and economic development; and

22 (j) Vocational education.

23 (3) The use of entitlement funds for repayment of
24 debt as related to long-term bond issues is permissible as
25 long as the revenue from the bond issues is expended on
26 priority categories.

1 (4) Grants obtained under this program may be used
2 as local portion to secure federal programs as long as
3 program expenditures are in the priority category area.
4 Interest earned on funds received by local units of
5 government shall be considered available for use by the
6 local unit of government in the priority expenditure
7 categories.

8 (5) The Department of Local Government shall be
9 responsible for the promulgation of rules and regulations
10 necessary to implement the grants programs authorized by
11 this section.

12 (6) The Department of Local Government shall assure
13 that a public hearing is held on the expenditure of funds
14 received under KRS 42.450 to 42.495. Advertisement of the
15 public hearing shall be published at least once but may be
16 published two (2) or more times, provided that one (1)
17 publication occurs not less than seven (7) days nor more
18 than twenty-one (21) days before the scheduled date of the
19 public hearing. The department shall submit an annual
20 report to the Governor indicating how the grants were used
21 and an evaluation of the program's effectiveness in
22 improving the economy of the units of government receiving
23 assistance.

24 (7) On or before August 15, 1980, and each year
25 thereafter, the Transportation Cabinet shall publish and
26 furnish to the Department of Local Government a directory,

1 including supporting maps and other documents, designating
2 the official state coal road system in coal [~~impact and~~
3 ~~coal~~] producing counties which shall include all public
4 highways, roads, and streets over which quantities of
5 coal, sufficient to significantly affect the condition and
6 state of repair of such highways, roads and streets, have
7 been transported in the immediately preceding fiscal year.
8 The cabinet shall further publish the total county mileage
9 of the official state coal road system and the total
10 ton/miles within each coal [~~impact and coal~~] producing
11 county for said preceding fiscal year.

12 (8) Every person shipping or transporting coal, and
13 every carrier for hire or common carrier hauling coal over
14 the public highways, roads and streets shall file with the
15 Transportation Cabinet such information and at such
16 intervals as the department shall designate by regulation
17 duly adopted for the purpose of identifying those
18 highways, roads, and streets comprising the coal haul road
19 system and the quantities of coal transported thereon, in
20 order that the cabinet can accurately calculate total
21 ton/miles within each coal [~~impact and coal~~] producing
22 county.

23 (9) The Revenue Cabinet shall make available to the
24 Transportation Cabinet coal severance and processing tax
25 data for use in verifying and supplementing the
26 information furnished under the provisions of subsection

1 (8) of this section. The information shall be furnished in
 2 such a manner as to conceal the identity of individual
 3 taxpayers; if [~~in the event~~] the data cannot be
 4 furnished without revealing the identity of individual
 5 taxpayers, it shall be withheld.

6 Section 3. KRS 42.470 is amended to read as follows:

7 Moneys in the local government economic assistance
 8 fund shall be allocated among the counties as follows:

9 (1) Funds allocated under Section 6 of this Act
 10 [~~KRS 42.450(3)~~];

11 (a) Sixty-five [~~Sixty~~] percent (65%) [~~(60%)~~]
 12 shall be distributed to each coal producing county on the
 13 basis of the ratio of tax collected on coal severed in
 14 each respective county to the tax collected statewide.

15 (b) Thirty-five [~~Thirty~~] percent (35%) [~~(30%)~~]
 16 shall be distributed to each coal producing county on the
 17 basis of per capita income (inverse order), ton miles of
 18 resource roads and population, equally weighted.

19 [~~(c) Ten percent (10%) shall be distributed to~~
 20 ~~non-coal producing counties impacted by the transport of~~
 21 ~~coal on the basis of geographic area, ton miles of~~
 22 ~~resource roads, and per capita income (inverse order),~~
 23 ~~weighted on a basis of 30/100, 40/100, and 30/100,~~
 24 ~~respectively. The expenditure of such funds shall be~~
 25 ~~limited to the categories of projects set out in KRS~~
 26 ~~42.455 (2)(c). To qualify for the funds distributed under~~

1 the provisions of this paragraph, a county must have
 2 within its geographic boundaries twenty-five hundredths of
 3 one percent (.25%) of the total ton miles within coal
 4 impact counties.]

5 (2) All funds allocated under KRS 42.450(2) shall be
 6 distributed among the mineral producing counties on the
 7 basis of the tax collected on minerals severed in each
 8 respective county.

9 SECTION 4. A NEW SECTION OF KRS CHAPTER 42.450 TO
 10 42.495 IS CREATED TO READ AS FOLLOWS:

11 (1) There is hereby established in the State
 12 Treasury a fund entitled "Local Government Economic
 13 Development Fund." The fund may receive state
 14 appropriations, gifts, grants, and federal funds and shall
 15 be disbursed by the State Treasurer upon the warrant of
 16 the secretary of the Finance and Administration Cabinet.
 17 Any unallotted or unencumbered balances in the fund shall
 18 be invested as provided for in KRS 42.500(6). Income
 19 earned from the investments shall be prorated for grants
 20 to counties according to the allotment schedule set out in
 21 Section 8 of this Act.

22 (2) Moneys shall be transferred from the general
 23 fund into this fund according to the following schedule:

24 (a) Effective July 1, 1992, an amount equal to
 25 twenty-five percent (25%) of the severance and processing
 26 taxes on coal collected annually;

1 (b) Effective July 1, 1993, an amount equal to
2 thirty-eight percent (38%) of the severance and processing
3 taxes on coal collected annually; and

4 (c) Effective July 1, 1994, an amount equal to fifty
5 percent (50%) of the severance and processing taxes on
6 coal collected annually.

7 The transfers shall be made quarterly, based upon the
8 revenue estimates prevailing at the time each quarterly
9 transfer is due, except that the last quarterly transfer
10 shall be made after the close of the fiscal year
11 accounting records, and shall be adjusted to provide the
12 balance of the annual transfer required by this subsection.

13 SECTION 5. A NEW SECTION OF KRS CHAPTER 42.450 TO
14 42.495 IS CREATED TO READ AS FOLLOWS:

15 (1) A portion of each quarterly transfer of moneys
16 provided for in Section 5 of this Act shall be transferred
17 from the local government economic development fund into
18 the local government economic assistance fund according to
19 the following schedule:

20 (a) Effective July 1, 1992, an amount equal to
21 forty-eight percent (48%) of each quarterly transfer;

22 (b) Effective July 1, 1993, an amount equal to
23 thirty-one and one-half percent (31.5%) of each quarterly
24 transfer; and

25 (c) Effective July 1, 1994, an amount equal to
26 twenty-four percent (24%) of each quarterly transfer.

1 The transfers shall be made quarterly.

2 (2) The amount transferred annually from the local
3 government economic development fund into the local
4 government economic assistance fund under the provisions
5 of subsection (1) of this section shall not be less than
6 an amount equal to twelve percent (12%) of the severance
7 and processing taxes on coal collected annually.

8 SECTION 6. A NEW SECTION OF KRS CHAPTER 42.450 TO
9 42.495 IS CREATED TO READ AS FOLLOWS:

10 (1) There is established within the Kentucky
11 Development Finance Authority a local government economic
12 development program to consist of a system of grants to
13 counties to attract new industry.

14 (2) Grants obtained under this program shall be used
15 for:

16 (a) Industrial development projects if an industrial
17 firm has agreed with the local government, to the
18 satisfaction of the Kentucky Development Finance
19 Authority, to develop, in conjunction with the industrial
20 development project, manufacturing, processing,
21 assembling, or other facilities approved by the secretary
22 of the Cabinet for Economic Development; and

23 (b) Industrial development projects if the secretary
24 of the Cabinet for Economic Development finds that the
25 project is necessary for the creation of an environment
26 for new industry in order to obtain an agreement from an

1 industrial firm to develop manufacturing, processing,
2 assembling, or other facilities approved by the secretary
3 of the Cabinet for Economic Development.

4 (c) Debt service on bonds issued under the
5 provisions of KRS 65.270 or KRS 103.200 to 103.285 for
6 industrial development projects, as defined in subsection
7 (2)(a) and (b) of this section, or for facilities approved
8 by the secretary of the Cabinet for Economic Development
9 under the provisions of subsection (3) of this section.

10 (3) The secretary of the Cabinet for Economic
11 Development may approve facilities, other than
12 manufacturing, processing, or assembling facilities, for
13 industrial development projects when the secretary finds
14 that the facility will add value to a product. Value added
15 facilities shall include data processing,
16 telecommunication, and distribution facilities, but shall
17 not include retail facilities or coal mining, coal
18 processing, or coal transportation facilities. The
19 secretary may also approve privately-owned facilities for
20 transient lodging and recreation where the secretary finds
21 that the cost of the recreation component of the facility
22 is equal to, or greater than, the cost of the lodging
23 component of the facility. The criteria for approval of
24 applications for grants provided for in paragraphs (a),
25 (b), and (c) of subsection (9) of this section shall be
26 paramount in the case of lodging and recreational

1 facilities.

2 (4) Applications for grants from funds provided for
3 in subsection (1)(a) and (b) of Section 8 of this Act
4 shall be made by the legislative bodies of one (1) or more
5 counties with accounts in the local government economic
6 development fund. Applications for grants from funds
7 provided for in subsection (1)(c) of Section 8 of this Act
8 shall be made by the legislative bodies of two (2) or more
9 counties with accounts in the local government economic
10 development fund. No grant shall be awarded without
11 application for a grant.

12 (5) A grant may be awarded for an industrial
13 development project located in a county that does not have
14 an account in the local government economic development
15 fund, if the secretary of the Cabinet for Economic
16 Development finds that the industrial development project
17 may be reasonably expected to create jobs for residents of
18 the local unit or units of government applying for the
19 grant. Application for the grant shall be made by the
20 legislative bodies of one (1) or more counties with
21 accounts in the local government economic development fund.

22 (6) With the exception of grants awarded to service
23 debt on bonds, as provided for in subsection (2)(c) of
24 this section, grants awarded from funds provided for in
25 subsection (1)(a) and (b) of Section 8 of this Act shall
26 not exceed the total balance of the accounts of the

1 applicant counties at the time of the award of the grant.

2 (7) Grants awarded under the provisions of
3 subsection (2)(c) of this section may be for a period not
4 to exceed thirty (30) years, and shall be limited to an
5 annual amount not to exceed twenty-five percent (25%) of
6 the amount estimated to be allocated to the applicant
7 county or counties for the current fiscal year under the
8 provisions of subsection (1)(a) and (b) of section 8 of
9 this Act.

10 (8) Approval of grant applications shall be by the
11 secretary of the Cabinet for Economic Development. Award
12 of grants shall be by the Kentucky Development Finance
13 Authority.

14 (9) Criteria for approval of applications and the
15 award of grants shall be based upon the following:

16 (a) The number of jobs to be created or preserved,
17 directly or indirectly, by the industrial development
18 project;

19 (b) Payrolls, and the taxes generated, both at the
20 state and local levels, by the industrial development
21 project and taxes generated by the employment created or
22 preserved by the industrial development project;

23 (c) The size, nature, and cost of the industrial
24 development project, including the prospect of the
25 industrial development project providing long-term jobs in
26 enterprises consistent with the changing economies of the

1 affected local units of government;

2 (d) The needs, and degree of needs, of the local
3 units of government which will be affected by the
4 industrial development project;

5 (e) The needs of any industrial firm benefiting from
6 the industrial development project;

7 (f) The amount and kind of assistance, if any,
8 available to an industrial firm from other government
9 agencies through tax exemption or abatement, financing
10 assistance through industrial development bonds, and
11 otherwise, with respect to the industrial development
12 project;

13 (g) The amount of capital made available to the
14 facility by lenders and by the industrial firm; and

15 (h) The economic feasibility of the facility.

16 (10) For purposes of this section:

17 (a) "Industrial development project" means and
18 includes the acquisition of any real estate and the
19 construction, acquisition, and installation thereon and
20 with respect thereto of improvements and facilities
21 necessary and useful for the improvement of the real
22 estate for conveyance to or lease to industrial firms to
23 be used for manufacturing, processing, or assembling
24 purposes, including surveys; site tests and inspections;
25 subsurface site work; excavation, removal of structures,
26 roadways, cemeteries, and other surface obstructions;

1 filling, grading, and provision of drainage; storm water
2 retention; installation of utilities, such as water,
3 sewer, sewage treatment, gas electricity, communication,
4 and other similar facilities; off-site construction of
5 utility extensions to the boundaries of the real estate;
6 construction and installation of buildings, including
7 buildings to be used for worker training and education;
8 rail facilities; roads; sidewalks; curbs; and other
9 improvements to the real estate necessary to its
10 manufacturing, processing, assembling, or other approved
11 use by industrial entities; and

12 (b) "Industrial firm" means any corporation,
13 partnership, person, or other legal entity, whether
14 domestic or foreign, which will itself or through its
15 subsidiaries and affiliates construct and develop a
16 manufacturing, processing, assembling, or other approved
17 facility on the site of an industrial development project
18 financed pursuant to this section.

19 (11) Findings by the secretary of the Cabinet for
20 Economic Development, provided for in subsections (2)(b),
21 (3) and (5) of this section, shall be made in writing to
22 the affected counties, the Governor, and the Legislative
23 Research Commission.

24 (12) By October 1 of each odd-numbered year, the
25 secretary of the Cabinet for Economic Development shall
26 provide, in writing, to the Governor and the Legislative

1 Research Commission a listing of all applications for
 2 grants received pursuant to this section subsequent to the
 3 last report, indicating which applications were approved
 4 or disapproved, with the reason for disapproval when the
 5 decision was to disapprove, and a listing of all grants
 6 awarded, with the amount of the award, the recipient
 7 county, and the related industrial development project.

8 SECTION 7. A NEW SECTION OF KRS CHAPTER 42.450 TO
 9 42.495 IS CREATED TO READ AS FOLLOWS:

10 (1) Moneys remaining in the local government
 11 economic development fund following the transfer of moneys
 12 to the local government economic assistance fund provided
 13 for in Section 6 of this Act shall be allocated as follows:

14 (a) Thirty-three and one-third percent (33 1/3%)
 15 shall be allocated to each coal producing county on the
 16 basis of the ratio of total tax collected in the current
 17 and preceding four years on coal severed in each
 18 respective county to the total tax collected statewide in
 19 the current and four (4) preceding years.

20 (b) Thirty-three and one-third percent (33 1/3%)
 21 shall be allocated to each coal producing county on the
 22 basis of factors computed for the current and four (4)
 23 preceding years, as follows:

24 1. Percentage of employment in mining in relation to
 25 total employment in the respective county;

26 2. Percentage of earnings from mining in relation to

1 total earnings in the respective county; and

2 3. Unemployment rate.

3 Each factor shall be equally weighted. For purposes of
4 this paragraph, percentage of employment in mining and
5 percentage of earnings from mining shall be the
6 percentages published for the latest available five (5)
7 year period by the Bureau of Economic Analysis in the
8 United States Department of Commerce; unemployment rate
9 shall be the rate published for the latest available five
10 (5) year period by the University of Kentucky Appalachian
11 Center.

12 (c) Thirty-three and one-third percent (33 1/3%)
13 shall be reserved for expenditure for industrial
14 development projects benefiting two or more coal producing
15 counties.

16 The allocations shall be made quarterly.

17 (2) The funds allocated under the provisions of
18 paragraphs (a) and (b) of subsection (1) of this section
19 shall retain their identity with respect to the county to
20 which they are attributable, and a separate accounting of
21 available moneys within the fund shall be maintained for
22 the respective counties. Accounting for funds allocated
23 under the provisions of this section shall be by the
24 Department of Local Government.

25 SECTION 8. A NEW SECTION OF KRS CHAPTER 42.450 TO
26 42.495 IS CREATED TO READ AS FOLLOWS:

1 (1) If a county otherwise qualifying for funds
2 through the Local Government Economic Assistance Act or
3 the Local Government Economic Development Act, as provided
4 for in Sections 3 and 8 (1)(a) and (b) of this Act, adopts
5 or has adopted by ordinance, order, resolution, or other
6 means a salary schedule for the current period for the
7 magistrates of the county fiscal court which exceeds the
8 statewide average salary for county magistrates, the
9 county shall be ineligible for the funds. Eligibility
10 shall be determined quarterly, with a county forfeiting
11 funds for which it otherwise would be eligible for any
12 quarter in which the salary schedule would apply.

13 (2) For purposes of this section:

14 (a) "Magistrate" shall mean a member of the fiscal
15 court other than the county judge/executive;

16 (b) "Salary" shall mean payment from any fund
17 source, and shall include lump sum expense allowances,
18 including the expense allowance for serving on committees
19 of the fiscal court provided for in KRS 64.530(6); and

20 (c) "Statewide average salary for county
21 magistrates" shall mean the average salary of the
22 magistrates of the Commonwealth's counties, computed
23 without respect to the salaries of the magistrates of
24 Jefferson County, for the preceding fiscal year.

25 Computation of the statewide average salary for county
26 magistrates, and determination of county eligibility for

1 funds under the provisions of this section, shall be by
2 the Department of Local Government.

3 (3) Funds forfeited under the provisions of this
4 section shall lapse to the general fund.

5 SECTION 9. A NEW SECTION OF KRS CHAPTER 42.450 TO
6 42.495 IS CREATED TO READ AS FOLLOWS:

7 The Department of Local Government may promulgate
8 administrative regulations to implement the provisions of
9 Sections 5, 6, 8, or 9 of this Act. The Cabinet for
10 Economic Development or the Kentucky Development Finance
11 Authority may promulgate administrative regulations to
12 implement the provisions of Section 7 of this Act.

13 Section 10. KRS 42.460 is amended to read as follows:

14 Except as provided in subsection (4)(b) of KRS
15 91A.040, any assistance granted under KRS 42.450 to 42.495
16 shall include an agreement that an independent annual
17 audit shall be conducted and that the audit report shall
18 include a certification that the funds were expended for
19 the purpose intended. A copy of the audit and
20 certification of compliance shall be forwarded to the
21 Department of Local Government, in the case of assistance
22 granted from the local government economic assistance
23 fund, or to the Cabinet for Economic Development and the
24 Kentucky Development Finance Authority, in the case of
25 assistance granted from the local government economic
26 development fund, within eighteen (18) months after the

1 end of the fiscal year.

2 Section 11. KRS 42.480 is amended to read as follows:

3 (1) On or before July 1, 1992 [~~1981~~], and each
 4 year thereafter, the commissioner of the Department of
 5 Local Government, shall provide the Cabinet for Economic
 6 Development, the Kentucky Development Finance Authority,
 7 and the legislative body of each local government eligible
 8 for funds under the provisions of KRS 42.450 to 42.495, an
 9 estimate of the funds that will be allocated to the local
 10 government for fiscal year 1992-93 [~~1981-82~~], and each
 11 year thereafter.

12 (2) On or before the fifteenth (15th) of the first
 13 month of a quarter, the commissioner of the Department of
 14 Local Government, shall cause to be remitted to the
 15 legislative bodies of the local governments eligible for
 16 funds from the local government economic assistance fund
 17 [~~under the provisions of KRS 42.450 to 42.495~~], the
 18 funds allocated to the respective local governments for
 19 the prior quarter; except that the remittance for the last
 20 quarter of a fiscal year shall be made after the close of
 21 the fiscal year accounting records, and shall be adjusted
 22 to provide the balance of the annual allocation due the
 23 local government.

24 Section 12. KRS 42.495 is amended to read as follows:

25 (1) If [~~In the event that~~] a qualifying local
 26 government unit reduces its general tax effort for any

1 fiscal year, below the level of fiscal year 1991-92
2 [~~1979+80~~], that governmental unit shall forfeit funds
3 that would otherwise be available under the provisions of
4 KRS 42.450 to 42.495 on a dollar-for-dollar basis.

5 (2) For purposes of this section, "general tax
6 effort" shall mean the total revenues raised in fiscal
7 year 1991-92 [~~1979+80~~] from the levy of all of the
8 taxing district's taxes in fiscal year 1991-92
9 [~~1979+80~~]. Taxes based upon the 1979 assessment of
10 property shall be considered to be taxes levied and
11 collected for fiscal year 1991-92 [~~1979+80~~].

12 Section 13. KRS 154.005 is amended to read as
13 follows:

14 It shall be the purpose of this chapter to create a
15 body corporate and politic to be known as the "Kentucky
16 development finance authority" which shall exist and
17 operate to help diversify the economy of this state,
18 including the economies of the coal producing regions of
19 this state, to develop and expand existing and alternative
20 sources of energy and the conservation of energy, to
21 assist business enterprise in obtaining additional sources
22 of financing to aid this state in achieving the goal of
23 long-term economic growth and full employment, to meet the
24 growing competition for business enterprises, to preserve
25 existing jobs, to create new jobs, to reduce the cost of
26 business and production, to foster export activity, to

1 foster economic development on surface mining land, and to
 2 alleviate and prevent unemployment through the retention,
 3 promotion, and development of agriculture and agricultural
 4 facilities, forestry and forestry facilities, commerce and
 5 commercial facilities, health care and health related
 6 facilities, export markets and export activities, industry
 7 and industrial buildings and facilities, tourism and
 8 tourist facilities, including the sites therefor, and
 9 agricultural, forestry, commercial, and industrial
 10 machinery and equipment, water, and air pollution control
 11 equipment, and solid waste disposal facilities with
 12 respect thereto or for use by individuals for private
 13 sector employment. Such purposes shall be public purposes
 14 for which public money may be spent.

15 Section 14. KRS 154.010 is amended to read as
 16 follows:

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

19 (1) "Authority" means the Kentucky Development
 20 Finance Authority;

21 (2) "Cabinet" means the Economic Development Cabinet;

22 (3) "Cost of a project" means the cost of the
 23 acquisition, construction, reconstruction, conversion, or
 24 leasing of any industrial, commercial, health care,
 25 agricultural, or forestry enterprise, or any part thereof,
 26 to carry out the purposes and objectives of this chapter,

1 including but not limited to acquisition of land or
2 interest in land, buildings, structures, or other planned
3 or existing planned improvements to land, including
4 leasehold improvements, machinery, equipment, or
5 furnishings; working capital; and administrative costs
6 including, but not limited to, engineering, architectural,
7 legal, and accounting fees which are necessary for the
8 project;

9 (4) "Industrial entity" means any corporation,
10 partnership, person, or any other legal entity, domestic
11 or foreign, which will itself or through its subsidiaries
12 or affiliates, engage in an industrial improvement project
13 in the Commonwealth of Kentucky;

14 (5) "Industrial firm" means industrial firm as
15 defined in subsection (10)(b) of Section 7 of this Act.

16 (6) "Industrial improvement project" means and
17 includes the acquisition, construction, or implementation
18 of new manufacturing, processing, or assembling
19 facilities, equipment, methods of processes, or
20 improvements to or repair of existing manufacturing,
21 processing, or assembling facilities, equipment, methods,
22 or processes, as well as improvements to the real estate
23 upon which the facilities are located, and includes any
24 capital improvement to any existing facility, including
25 any restructuring, retooling, rebuilding, reequipping, or
26 any other form of upgrading such existing facility and

1 equipment and any other improvements to such real estate,
 2 existing facility, or manufacturing, processing, or
 3 assembling equipment, method or process;

4 (7)[(6)] "Industrial development project" means
 5 industrial development project as defined in subsection
 6 (10)(a) of Section 7 of this Act.

7 (8) "Municipality" means a county, city, village,
 8 township, development organization, an institution of
 9 higher education, a community or junior college, a
 10 subdivision or instrumentality of any of the foregoing, or
 11 any entity created by two (2) or more municipalities
 12 pursuant to the Interlocal Corporation Act, KRS 65.210 to
 13 65.300;

14 (9)[(7)] "Person" means an individual,
 15 partnership, joint venture, profit or nonprofit
 16 corporation including a public or private college or
 17 university, or other association of persons organized for
 18 agricultural, commercial, health care, or industrial
 19 purposes; or a public utility or local industrial
 20 development corporation;

21 (10)[(8)] "Private sector" means other source than
 22 the authority, a state or federal source, or an agency
 23 thereof;

24 (11)[(9)] "Project" means an endeavor approved by
 25 the Cabinet for Economic Development and related to
 26 industrial, manufacturing, mining, mining reclamation for

1 economic development, commercial, health care, or
2 agricultural enterprise. Project shall include, but is not
3 limited to, agricultural or forestry production,
4 harvesting, storage, or processing facilities or
5 equipment; equipment or facilities designed to produce
6 energy from renewable resources; research parks; office
7 facilities; engineering facilities; research and
8 development laboratories; warehousing facilities; parts
9 distribution facilities; depots or storage facilities;
10 port facilities; railroad facilities, including trackage,
11 right of way, and appurtenances; airports and airport
12 renovation; water and air pollution control equipment or
13 waste disposal facilities; tourist facilities; theme or
14 recreational parks; health care and health related
15 facilities; farms, ranches, forests and other agricultural
16 or forestry commodity producers; agricultural harvesting,
17 storage, transportation, or processing facilities or
18 equipment; grain elevators; shipping heads and livestock
19 pens; livestock; wharves and dock facilities; water,
20 electricity, hydroelectric, coal, petroleum or natural gas
21 provision facilities; dams and irrigation facilities;
22 sewage, liquid, and solid waste collection, disposal
23 treatment, and drainage services and facilities. Project
24 shall include industrial development projects, financed
25 out of the local government economic development fund
26 through the local government economic development program.

1 Except for airport related facilities project shall not
2 include that portion of an endeavor devoted to the sale of
3 goods at retail or that portion of an endeavor devoted to
4 housing which does not consist of the manufacture of
5 housing;

6 (12)[(10)] "Reclamation development fund" means
7 the fund administered by the Kentucky Development Finance
8 Authority to foster economic development on surface mining
9 land;

10 (13)[(11)] "Reclamation development project" means
11 only that reconditioning of land affected by surface
12 mining, which will directly promote and benefit an
13 economic undertaking which constitutes a project under
14 subsection (11)[(9)] of this section;

15 (14)[(12)] "Reclamation development plan" means a
16 plan submitted to the Natural Resources and Environmental
17 Protection Cabinet to show compliance with reclamation
18 standards, and submitted to the Kentucky Development
19 Finance Authority to seek moneys from the reclamation
20 development fund for a reclamation development project;

21 (15) "Local government economic development fund"
22 means the fund established under the provisions of Section
23 5 of this Act.

24 (16) "Local government economic development program"
25 means the program established under the provisions of
26 Section 7 of this Act.

1 (17)[(13)] "State" means the Commonwealth of
2 Kentucky; and

3 (18)[(14)] "Tax revenues" means any revenues
4 received by the Commonwealth directly or indirectly as a
5 result of the industrial improvement project, including
6 state corporate income taxes, state income taxes paid by
7 employees who work in the project, state property taxes,
8 state corporation license taxes or state sales and use
9 taxes.

10 Section 15. KRS 154.041 is amended to read as
11 follows:

12 The authority shall have the powers necessary or
13 convenient to carry out and effectuate the purposes,
14 objectives, and provisions of this chapter, the purposes
15 and objectives of the authority, and the powers delegated
16 by other laws, including the provisions of Sections 7 and
17 10 of this Act, or executive orders, including, but not
18 limited to, the power to:

19 (1) Sue and be sued; to have a seal and alter the
20 same at pleasure; to make, execute, and deliver contracts,
21 conveyances, and other instruments necessary or convenient
22 to the exercise of its powers; and to make and amend
23 bylaws;

24 (2) Solicit and accept gifts, grants, loans, and
25 other aids from any person or the federal, state, or a
26 municipality or any agency of the federal, state, or a

1 municipality, or to participate in any other way in any
2 federal, state, or local government program;

3 (3) Make grants, loans, and investments; to
4 guarantee and insure loans, leases, bonds, notes, or other
5 indebtedness, whether public or private; and to issue
6 letters of credit;

7 (4) Construct, acquire by gift, purchase,
8 installment purchase, or lease; and reconstruct, improve,
9 repair, or equip a project or any part of a project;

10 (5) Borrow money and issue bonds and notes to
11 finance part or all of the costs of a project, or of a
12 loan pursuant to subsection (18) of this section for an
13 export transaction, and to secure those bonds and notes by
14 mortgage, assignment, or pledge of any of its money,
15 revenues, income, and properties. The authority provided
16 by this subdivision shall include, but is not limited to,
17 issuing bonds and notes to acquire and install machinery,
18 equipment, furnishings, and other personal property,
19 notwithstanding that the authority does not own or propose
20 to own or finance the building or land in or near to which
21 the machinery, equipment, furnishings, and other personal
22 property is or is to be located;

23 (6) Acquire or contract to acquire from any person,
24 municipality, the federal or state government, or any
25 agency of the foregoing, or otherwise, leaseholds, real or
26 personal property or any interest in real or personal

1 property; to own, hold, clear, improve, and rehabilitate
2 and to sell, assign, exchange, transfer, convey, lease,
3 mortgage, or otherwise dispose of or encumber leaseholds,
4 real or personal property or any interest in real or
5 personal property, as is convenient for the accomplishment
6 of the purposes of this chapter and of the authority;

7 (7) Procure insurance against any loss in connection
8 with the authority's property, assets, or activities;

9 (8) Invest any money of the authority, prior to the
10 time it may be needed for the authority's programs, at the
11 authority's discretion, in any obligations determined
12 proper by the authority, and name and use depositories for
13 its money;

14 (9) Engage personnel as necessary and engage the
15 services of private consultants, managers, counsel,
16 auditors, engineers, and scientists for rendering
17 professional management and technical assistance and
18 advice, payable out of any money of the authority legally
19 available for this purpose;

20 (10) Charge, impose, and collect fees and charges in
21 connection with any transaction and provide for reasonable
22 penalties for delinquent payment of fees or charges;

23 (11) Indemnify and procure insurance indemnifying
24 any members of the authority from personal loss or
25 accountability from liability asserted by a person on the
26 bonds or notes of the authority or any personal liability

1 or accountability by reason of the issuance of the bonds,
2 notes, insurance, or guarantees; by reason of acquisition,
3 construction, ownership, or operation of a project; or by
4 reason of any other action taken or the failure to act by
5 the authority;

6 (12) Enter into a lease for the use or sale of a
7 project. The lease may provide for options to purchase or
8 renew;

9 (13) Mortgage or create security interests in a
10 project or any part of a project, or in a lease or loan,
11 or in the rents, revenues, or sums to be paid thereunder,
12 in favor of the holders of the bonds or notes issued by
13 the authority;

14 (14) Convey or release a project or any part of a
15 project to a lessee, purchaser, or borrower under any
16 agreement after provision has been made for the retirement
17 in full of the bonds or notes issued for that project
18 under terms and conditions provided in the agreement or as
19 may be agreed with the holders of the bonds or notes, at
20 any time the obligation of the lessee, purchaser, or
21 borrower to make the payments prescribed shall remain
22 fixed as provided in the agreement notwithstanding the
23 conveyance or release, or as may otherwise be agreed with
24 the holders of the bonds or notes;

25 (15) Make loans, participate in the making of loans,
26 undertake commitments to make loans and mortgages, buy and

1 sell loans and mortgages at public or private sale,
2 rewrite loans and mortgages, discharge loans and
3 mortgages, foreclose on a mortgage, commence an action to
4 protect or enforce a right conferred upon the authority by
5 a law, mortgage, loan, contract, or other agreement, bid
6 for and purchase property which was the subject of the
7 mortgage at a foreclosure or other sale, acquire or take
8 possession of the property and, in that event, complete,
9 administer, pay the principal and interest on obligations
10 incurred in connection with the property, and dispose of
11 and otherwise deal with the property, in a manner as may
12 be necessary or desirable to protect the interests of the
13 authority;

14 (16) Create accounts and funds as required or
15 permitted by law for the use and disbursement of assets of
16 the authority;

17 (17) Contract with others, public or private, for
18 the provision of all or a portion of the services
19 necessary for the management and operation of the
20 authority;

21 (18) Make loans to a financial institution to
22 facilitate financing of all or part of an export related
23 transaction including, but not limited to, pre-export
24 working capital financing and post-export receivable
25 financing;

26 (19) Administer the reclamation development fund;

1 (20) Promulgate administrative regulations governing
2 its proceedings;

3 (21) Make loans for airport construction and
4 renovation;

5 (22) Do all other things necessary or convenient to
6 achieve the objectives and purposes of the authority, this
7 chapter, or other laws that relate to the purposes and
8 responsibilities of the authority.

9 Section 16. KRS 350.010 is amended to read as
10 follows:

11 As used in this chapter unless the context requires
12 otherwise:

13 (1) "Surface coal mining operations" means
14 activities conducted on the surface of lands in connection
15 with a surface coal mine and surface impacts incident to
16 an underground coal mine. The activities shall include
17 excavation for the purpose of obtaining coal, including
18 such common methods as contour, strip, auger, extended
19 depth secondary recovery systems, mountaintop removal, box
20 cut, open pit, and area mining, the use of explosives and
21 blasting, and in situ distillation or retorting, leaching,
22 or other chemical or physical processing, and cleaning,
23 concentrating, or other processing or preparation, and the
24 loading of coal at or near the mine site. The activities
25 shall not include the extraction of coal by a landowner of
26 fifty (50) tons or less within twelve (12) successive

1 calendar months for his own noncommercial use from land
2 owned or leased by him; the extraction of coal as an
3 incidental part of federal, state, or local government
4 financed highway or other construction under regulations
5 established by the cabinet; the extraction of, or intent
6 to extract, twenty-five (25) tons or less of coal by any
7 person by surface coal mining operations within twelve
8 (12) successive calendar months; the extraction of coal
9 incidental to the extraction of other minerals where coal
10 does not exceed sixteen and two-thirds percent (16 2/3%)
11 of the tonnage of minerals removed for purposes of
12 commercial use or sale; or coal exploration subject to KRS
13 350.057. Surface coal mining operations shall also include
14 the areas upon which the activities occur or where the
15 activities disturb the natural land surface. The areas
16 shall also include any adjacent land, the use of which is
17 incidental to the activities, all lands affected by the
18 construction of new roads or the improvement or use of
19 existing roads to gain access to the site of the
20 activities and for haulage, and excavations, workings,
21 impoundments, dams, ventilation shafts, entryways, refuse
22 banks, dumps, stockpiles, overburden piles, spoil banks,
23 culm banks, tailings, holes or depressions, repair areas,
24 storage areas, processing areas, shipping areas, and other
25 areas upon which are sited structures, facilities, or
26 other property or materials on the surface resulting from

1 or incident to the activities. This definition shall
2 include the terms "strip mining" of coal and the "surface
3 effects of underground mining" of coal as used in this
4 chapter;

5 (2) "Strip mining" means the breaking of the surface
6 soil in order to facilitate or accomplish the extraction
7 or removal of minerals, ores, or other solid matter; any
8 activity or process constituting all or part of a process
9 for the extraction or removal of minerals, ores, and other
10 solid matter from its original location; and the
11 preparation, washing, cleaning, or other treatment of
12 minerals, ores, or other solid matter so as to make them
13 suitable for commercial, industrial, or construction use;
14 but shall not include the extraction of coal by a
15 landowner for his own noncommercial use of fifty (50) tons
16 or less within twelve (12) successive calendar months from
17 land owned or leased by him; the extraction of coal as an
18 incidental part of federal, state, or local government
19 financed highway or other construction under regulations
20 established by the cabinet; the extraction of, or intent
21 to extract, twenty-five (25) tons or less of coal by any
22 person by surface coal mining operations within twelve
23 (12) successive calendar months; the extraction of coal
24 incidental to the extraction of other minerals where coal
25 does not exceed sixteen and two-thirds percent ($16 \frac{2}{3}\%$)
26 of the tonnage of minerals removed for purposes of

1 commercial use or sale; coal exploration subject to KRS
2 350.057; nor shall it include the surface effects or
3 surface impacts of underground coal mining;

4 (3) "Surface coal mining and reclamation operations"
5 means surface coal mining operations and all activities
6 necessary and incident to the reclamation of the
7 operations as required by this chapter;

8 (4) "Overburden" means material of any nature,
9 consolidated or unconsolidated, excluding topsoil, which
10 lies above a natural deposit of coal and also means the
11 material after removal from its natural state in the
12 process of surface coal mining;

13 (5) "Area of land affected" means any area of land
14 or water upon which surface coal mining and reclamation
15 operations are conducted or located or are to be conducted
16 or located;

17 (6) "Operations" means surface coal mining
18 operations, all of the premises, facilities, roads, and
19 equipment used in the process of producing coal from a
20 designated area or removing overburden for the purpose of
21 determining the location, quality, or quantity of a
22 natural coal deposit or the activity to facilitate or
23 accomplish the extraction or the removal of coal;

24 (7) "Method of operation" means the method or manner
25 by which the cut or open pit is made, the overburden is
26 placed or handled, water is controlled, and other acts are

1 performed by the operator in the process of uncovering and
2 removing the coal;

3 (8) "Operator" means any person, partnership, or
4 corporation engaged in surface coal mining and reclamation
5 operations;

6 (9) "Person" means any persons, partnership,
7 corporation, association, society, joint stock company,
8 firm, company, or other business organization;

9 (10) "Cabinet" means the Natural Resources and
10 Environmental Protection Cabinet;

11 (11) "Secretary" means the secretary of the Natural
12 Resources and Environmental Protection Cabinet;

13 (12) "Reclamation" means the reconditioning of the
14 area affected by surface coal mining operations under a
15 plan approved by the cabinet;

16 (13) "Degree" when used in this chapter shall mean
17 from the horizontal, and in each case shall be subject to
18 a tolerance of five percent (5%) of error;

19 (14) "Bench" means the ledge, shelf, or terrace
20 formed in the contour method of strip mining;

21 (15) "Fill bench" means that portion of the bench
22 which is formed by depositing overburden beyond the cut
23 section;

24 (16) "Approximate original contour" means that
25 surface configuration achieved by backfilling and grading
26 of the mined area so that the reclaimed area, including

1 any terracing or access roads, closely resembles the
2 general surface configuration of the land prior to mining
3 and blends into and complements the drainage pattern of
4 the surrounding terrain, with all highwalls and spoil
5 piles eliminated; water impoundments may be permitted
6 where the cabinet determines that they are in compliance
7 with KRS 350.455;

8 (17) "Certification" by a qualified registered
9 professional engineer, as required by this chapter and
10 regulations promulgated hereunder, means a good faith
11 representation to the best of his or her knowledge and
12 belief, based on adequate knowledge of the requirements of
13 this chapter and regulations promulgated hereunder,
14 related experience, best professional judgment, accepted
15 engineering practices and recognized professional
16 standards, and standard practice as it relates to direct
17 participation by the registered professional engineer or
18 supervision of the registered professional engineer's
19 employees or subordinates. Certification shall not be
20 construed to constitute a warranty or guarantee.

21 (18) "Reclamation development fund" means only that
22 reconditioning of land affected by surface mining, which
23 will directly promote and benefit the fund administered by
24 the Kentucky Development Finance Authority to foster
25 economic development on surface mining land.

26 (19) "Reclamation development project" means only

1 that reconditioning of land affected by surface mining,
2 which will directly promote and benefit an economic
3 undertaking which constitutes a project under KRS
4 154.010(11)[(9)].

5 (20) "Reclamation development plan" means a plan
6 submitted to the cabinet to show compliance with
7 reclamation standards, and submitted to the Kentucky
8 Development Finance Authority to seek moneys from the
9 reclamation development fund for a reclamation development
10 project.

11 Section 17. All unincumbered fund balances in each
12 coal impact county's account established under KRS 42.470
13 prior to amendment by this Act, shall be distributed to
14 the respective counties. The intent of this section is to
15 ensure that funds due coal impact counties for fiscal year
16 1991-92, but scheduled to be remitted after the close of
17 the fiscal year accounting records, as provided by KRS
18 42.480(2), shall be remitted.

19 Section 18. Moneys in the local government economic
20 development fund are hereby appropriated, and shall be
21 treated as a continuing appropriation and shall not lapse
22 at the end of the fiscal year.

23 Section 19. Whereas, in order to effectuate the
24 dates provided for in this Act, an emergency is declared
25 to exist, and this Act shall become effective July 1, 1992.





