

350.570 Right of cabinet to enter upon land for reclamation purposes -- Acquisition and disposal of land by Commonwealth.

- (1) If the cabinet makes a finding of fact pursuant to the Abandoned Mine Lands Program that:
 - (a) Land or water resources have been adversely affected by past coal mining practices; and
 - (b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or
 - (d) The owners will not give permission for the United States, the Commonwealth, political subdivisions, or their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies, the cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon the property adversely affected by past coal mining practices, and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

- (2) The cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.
- (3) The Commonwealth shall have the power to acquire, by purchase, donation, devise, or condemnation, any land which is adversely affected by past coal mining practices if acquisition of such land is necessary for successful reclamation and that:
 - (a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or

provide open space benefits; or

- (b) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
 - (c) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.
- (4) Title to all lands acquired pursuant to this section shall be in the name of the Commonwealth. The price paid for the land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices. The Commonwealth may exercise the power of eminent domain against such land by filing a condemnation suit under the procedure of the Eminent Domain Act of Kentucky. Provided, that when the Commonwealth acquires land adversely affected by past coal mining practices pursuant to the Abandoned Mine Lands Program and when such abandoned mine reclamation fund moneys are less than the purchase price, the Commonwealth shall be authorized to use whatever funds are available pursuant to KRS 350.156(3).
- (5) The Energy and Environment Cabinet may receive any federal, state, or other funds for the purpose of reclaiming lands affected by past coal mining practices, including federal funds made available to it pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). The cabinet may avail itself of any services which may be provided by other state agencies or the federal government, and may compensate them for such services.
- (6) The cabinet shall have the power to backfill, grade, revegetate, and perform other acts of restoration and reclamation on lands acquired pursuant to this section. The cabinet may cause the reclamation work to be done by its own employees or by employees of other governmental agencies or soil conservation districts, or through contracts with qualified persons. Such contracts shall be awarded pursuant to regulations promulgated by the cabinet. The cabinet and any other agency and any contractor under a contract with the cabinet shall have the right of access to the land affected to carry out such reclamation.
- (7) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Commonwealth shall have the power to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such regulations as may be promulgated to insure that such lands are put to proper use consistent with local and state land use plans, if any. The proceeds of any such sale shall be credited to the abandoned mine reclamation fund. The cabinet, when requested after appropriate public notice, shall hold a public hearing, with the appropriate notice, in the county or counties in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse

effects of past coal mining practices.

- (8) In addition to the authority to acquire and reclaim land for the purposes set forth in subsection (3) of this section, the Commonwealth is given authority to use money in the fund to acquire land by purchase, donation, devise, or condemnation and to reclaim such land and to transfer it to any political subdivision of the Commonwealth or to any person, firm, association, or corporation, if such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in KRS 350.585, or persons dislocated as the result of natural disasters or catastrophic failures from any cause, or any related commercial, industrial, agricultural, recreational, or governmental use of facilities. Such activities shall be accomplished under such terms and conditions as the Commonwealth shall require, which may include transfers of land with or without monetary consideration. Provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under the abandoned mine reclamation fund may be used to pay the actual construction costs of housing.
- (9) All acquisitions and disposals of land or any interests therein pursuant to the authority granted by this section shall be governed by the applicable provisions of KRS Chapters 45A and 56.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1893, effective July 15, 2010. -- Amended 1990 Ky. Acts ch. 496, sec. 64, effective July 13, 1990. -- Created 1980 Ky. Acts ch. 62, sec. 22.