

**House Bill 4 – AN ACT relating to merchant electric generating facilities and making an appropriation therefor.**

This bill would provide that the terms of service for the ad hoc members of the Kentucky State Board on Electric Generation and Transmission Siting end when the merchant electric generating facility for which they were appointed has been constructed and has begun generating electricity for sale or its construction certificate expires. The bill would also lengthen the period of time that a construction certificate for a merchant electric generating facility is valid from 2 years to 3 years and include decommissioning requirements within the requirements over which local planning and zoning requirements shall have primacy.

This bill also would require that a decommissioning plan be included in an application for construction of a merchant electric generating facility, establish minimum requirements for a decommissioning plan, require as part of a decommissioning plan that a bond or similar security be secured to assure that the decommissioning plan is accomplished and establish requirements for how the bond is set and how the beneficiaries of the bond are to be determined. It would require that certain components of the decommissioning plan be incorporated into the construction certificate applicant's leases with landowners and reference the transfer of the enforcement authority for mitigation measures that are conditions of application approval from the board to the Energy and Environment Cabinet to include whether the decommissioning plan is complete and complies with the requirements of the Act.

The bill would also require a person that has received a construction certificate for a merchant electric generating facility file with the Energy and Environment Cabinet the copy of the bond or similar security no later than the date that construction commences for the facility, require that an updated copy of the bond or similar security be refiled at least once every 5 years thereafter and require notice to be filed with the Energy and Environment Cabinet when the construction of the merchant electric generating facility is complete and has begun producing electricity for sale. It would also require that notice be given of any transaction involving the sale or transfer of ownership of the facility to the Energy and Environment Cabinet and local officials within 10 days of finalizing the transaction, require a person who has acquired a merchant electric generating facility to file with the Energy and Environment Cabinet written consent to assume the obligations in the decommissioning plan for the facility and to adopt or replace the required decommissioning bond, provide that the transferor of control of a merchant electric generating facility remain liable for its decommissioning obligations until the transferee completes the documentation required by the Act and the secretary of the Energy and Environment Cabinet accepts it as complete.

Provide that after the application for a construction certificate for a merchant electric generating facility has been approved, the bond required by the Act has been posted, the facility has been constructed, and it has begun generating electricity for sale, the secretary of the Energy and Environment Cabinet shall ensure the facility's ongoing compliance with these requirements and the conditions of its construction certificate approval, including updating its decommissioning plan and bond amounts at least once every 5 years.

The bill would transfer the enforcement authority for mitigation measures that are conditions of application approval from the board to the Energy and Environment Cabinet once the facility is constructed and begins generating electricity for sale and require that while the electric merchant generating facility is operational, if solar panels are removed and discarded, the discarded solar panels be removed from the site within 90 days of the completion of the work.

The bill also would clarify that an ordinance, permit, or license issued by a local government shall have primacy over all requirements.

The bill would authorize the Energy and Environment Cabinet to monitor and enforce compliance of merchant electric generating entities with the requirements of the Act and authorize the Energy and Environment Cabinet to draw upon a decommissioning bond or other similar security for which it is named a beneficiary to complete an approved decommissioning plan.

The bill would give jurisdiction to the Circuit Court in any county where a merchant electric generating facility is located for actions arising from or related to certain provisions of the Act and allow for a civil penalty not to exceed \$2,500 per day to be imposed for violation of the bonding and bond transfer requirements in the Act. The bill would allow for the suspension of a merchant electric generating facility's operations for failing to pay civil penalties or complying with the bonding transfer requirements of the Act and would allow for the decommissioning of the facility if it is still noncompliant after 90 days of suspension of its operation.

It would also require that if a merchant electric facility fails to complete its decommissioning plan within 18 months of ceasing to produce electricity for sale, then the cabinet shall draw upon the decommissioning bond and implement the decommissioning plan and requires the Energy and Environment Cabinet within 90 days of the effective date of the Act to promulgate administrative regulations to establish the monitoring and enforcement of the bonding and bond transfer requirements of the Act.

The bill would also allow the Energy and Environment Cabinet to establish a fee structure to cover the costs of its enforcement responsibilities and establish the merchant electric generating facility monitoring and enforcement fund to receive the fees and penalties collected by the Energy and Environment Cabinet pursuant to their monitoring and enforcement responsibilities under the Act and require that the funds collected only be used to defray the Energy and Environment Cabinet's costs related to their monitoring and enforcement responsibilities under the Act. It would also require that all expenses for the determination of the bond amount and for the procurement of decommissioning services by the Energy and Environment Cabinet be paid by the owner of the merchant electric generating facility.

The Senate Committee Substitute retains original provisions of the bill and would require that a merchant electric generating facility decommissioning plan include removal of above-ground and below-ground facilities to a depth of three feet and to leave interconnection facilities unless otherwise requested by the landowner. The Senate Committee Substitute would also require noncancelable bonds to ensure decommissioning only if they are available and require notice by the surety if a bond will be lapsing or canceled and allow for an opportunity for the stakeholders to cure the lapse or cancellation. The committee substitute would also clarify that lease terms with the landowner are not discretionarily accommodated by the applicant and specify that the secretary of the Energy and Environment Cabinet

shall review decommissioning plans and bonds once every five years, including those required by local ordinance, permit, or license and authorize the Secretary of the Energy and Environment Cabinet to extend the time period for removing discarded solar panels upon request of the facility owner-operator.

The Senate Floor Amendment would specify that decommissioning plans provide for the removal of underground components and foundations for above-ground components of merchant electric generating facilities to a depth of three feet unless otherwise agreed to by the parties and specify that additional lease terms agreed to by the parties are not discretionarily accommodated.