Proposed Revisions to Kentucky Revised Statutes

Theodore Hopwood II*        Donald G. Hartman†

*University of Kentucky, ted.hopwood@uky.edu
†University of Kentucky
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PROPOSED REVISIONS TO KENTUCKY REVISED STATUTES

by

Theodore Hopwood II
Transportation Research Engineer V

and

Donald G. Hartman
Senior Professional Associate

Kentucky Transportation Center
College of Engineering
University of Kentucky
Lexington, Kentucky

in cooperation with
Transportation Cabinet
Commonwealth of Kentucky

The contents of this report reflect the views of the authors who are responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the University of Kentucky or the Kentucky Transportation Cabinet.

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The authors would like to thank the members of the Study Advisory Committee for their efforts in preparing this document. They took time from busy schedules to assist us in updating and improving revised statutes that impact the operations of the Transportation Cabinet. The Study Advisory Committee members were: Charles Briggs, Glenn B. Mitchell, Charles Moore, Sandra G. Pullen (Committee Chairperson), and David E. Smith.
INTRODUCTION

Background

Since the mid-1930's, the Kentucky Legislature has sought to periodically revise and update statutory law. At that time, the Legislature created a Statute Revision Commission whose efforts resulted in the Kentucky Revised Statutes. In 1954, the legislature transferred the statute revision process to the Legislative Research Commission.

The most recent efforts directed specifically toward updating highway laws occurred in the early 1960's when the Kentucky Department of Highways contracted with the University of Louisville, School of Law, for a review of highway-related statutes. There was some controversy related to that study and the Department of Highways canceled its contract with the University of Louisville, apparently before work was completed on the study.

The Department of Highways, Division of Research published a compilation report, Kentucky Highway Law, which was prepared by the University of Louisville, School of Law in June 1964. In 1967, the Department of Highways Division of Research issued a second report, Research Relating to State Highway Laws, by James H. Havens. The report was primarily a review of trends and developments in the field of highway law and contained a summary of the University of Louisville work. It also provided insight into the objectives and desirability of conducting highway law studies aimed at revising and modernizing highway statutes.

The initial report was furnished to the Department of Highways, but was not provided to the U.S. Bureau of Roads. The second report was prepared to satisfy the requirements of the U.S. Bureau of Roads who partially funded the University of Louisville study. Apparently, there was no implementation by the Department related to either of the reports (i.e. no legislative changes were proposed by the Department of Highways). Since those two reports were published, no further in-state research has been conducted concerning highway-related laws.

Purpose of Research of Highway-Related Laws

In the past, a number of states including Iowa, Nebraska, North Dakota and others have performed research on highway-related laws. The purpose was to achieve updated and improved state highway laws. As noted in Mr. Havens's report, a number of objectives can be met to provide those improvements.

One of those objectives (aims) would be to improve the searchability of statutes by indexing or grouping of sections and subsections. It may be desirable, but impractical, for all facets of an issue to be covered by one section of the Kentucky Revised Statutes.
A second objective would be to redefine ambiguous provisions. One area that probably may be readily addressed is the standardization of definitions that serve as the foundations for many sections of a particular chapter of the statutes. Provisions that are so poorly worded as to be unenforceable should be redefined to allow for practical conformance by the Transportation Cabinet and others.

A third objective would be to eliminate archaic provisions. If a statute presently is outdated or does not reflect current practice, it should either be revised or repealed.

A fourth objective would be to provide statutes that would imbue departments and other governing bodies having broad discretionary powers that would avoid unnecessary conflicts, unburden the courts, and eliminate the need for special legislation to enable the departments to perform their delegated functions.

A fifth objective would be to provide equitable penalties for violations of statutes. For example, Department of Highways personnel who authorize or mandate illegal work should be as guilty as those who perform it.

Current Research on Highway-Related Laws

The Kentucky Transportation Center has conducted a preliminary review of all the Kentucky Revised Statutes (KRS) that are currently in effect for KRS chapters 176 (Department of Highways) and 178 (County Roads--Grade Crossing Elimination). Proposed revisions to those chapters were furnished to the Kentucky Transportation Cabinet officials for review.

The Transportation Cabinet established a Study Advisory Committee to review those proposed revisions. The Study Advisory Committee also solicited recommended changes to the two KRS chapters from Transportation Cabinet personnel. The Study Advisory Committee reviewed all of the proposed revisions and reached a consensus as to which ones warranted consideration by the State Legislature.

All sections of Chapters 176 and 178 are presented in Appendices 1 and 2, respectively. Proposed changes to KRS Chapter 178 are restricted to the viewpoint of the Transportation Cabinet and the Kentucky Transportation Center. There may be unidentified changes which would aid local governments.

The recommended changes to the provisions are shown as follows: a) additions are indicated by underlining and b) proposed deletions are indicated by brackets and strike outs. Justifications for the proposed changes are provided in italics at the end of each section that contains proposed revisions.
APPENDIX 1

(KRS 176 Department of Highways)
# CHAPTER 176

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176.010. Definitions. -- As used in this chapter, unless the context requires otherwise:

(1) "Department" means department of highways; and

(2) "Roads" includes highways, bridges and bridge approaches.

(3) "Person" means any individual, firm, agency, company, association, partnership or corporation.

Purpose of Revision - In the proposed revision, Section 176.010 would incorporate the definition of the term "Person" currently contained in Section 176.122. Section 176.122 would be deleted to consolidate definitions for the entire chapter and to avoid duplication of definitions in KRS Chapter 176.
176.020. Secretary -- Engineer -- Divisions. -- With prior approval of the governor and the secretary in writing, the commissioner of highways shall appoint as state highway engineer, a civil engineer who is a registered professional engineer and who has had at least six (6) years executive engineering experience in the design, supervision and construction of highways. He shall be the technical adviser to the commissioner of highways, and under the direction of the commissioner, he shall supervise all planning, design, construction and maintenance work of the department and perform such other duties as are assigned to him by the commissioner.

(2) With prior approval of the secretary and pursuant to KRS chapter 12, the department shall be divided into such divisions as the commissioner of highways may deem necessary to perform the duties and functions of the department. Each division shall perform the duties assigned to it by the commissioner of highways and shall be headed by a director who shall act under the direction and supervision of the commissioner of highways through the state highway engineer.

Purpose of Revisions - The proposed revisions are clean-ups intended to reflect current practice and organization of the department of highways.
176.050. **Duties of department.** -- (1) The department shall operate a statewide system of roads and shall perform the related functions of planning, design, construction, and maintenance. Those duties shall include, but not be limited to:

(a) Investigate all problems relating to the construction and maintenance of roads in the state;
(b) Examine all projects and ascertain the feasibility of all routes;
(c) Obtain information as to the proper type of road for any project;
(d) Examine all types of road materials which may be used in the construction or maintenance of any road to be constructed by the department or under its direction or supervision;
(e) From time to time, examine and have examined and audited all of its books, papers and records;
(f) Cause to be made all necessary surveys in the establishment and construction of the system of public highways; all necessary maps, prints, plans and specifications of all work to be done on the roads; estimates of costs; advertisement for bids; contracts for construction or maintenance; and all necessary forms in connection therewith; and
(g) Prescribe guidelines [rules and regulations] for the care and maintenance of roads after they have been constructed.

(2) The department may have published from time to time bulletins containing useful information concerning the construction and maintenance of roads.

(3) No invoice or bill to be paid out of the road or bridge funds shall be approved by the department for payment until it has been carefully examined by the department to ascertain whether such bill or invoice is in every respect a proper and legitimate charge against the road or bridge funds. The commissioner may call before him any person who may have information respecting any bill or invoice.

*Purpose of Revisions - The proposed revisions are clean-ups intended to reflect current practice and organization of the department of highways.*
176.051. Department to eradicate noxious weeds on rights-of-way --

Advertisement of program. -- (1) The department of highways shall take steps to control on [keep] all state rights-of-way [free of] the species of grass, sorghum halepense, commonly known as Johnson grass, and setaria faberii, commonly known as giant foxtail, and the species of weeds, cirsium arvense, commonly known as Canada thistle, cardia nutans, commonly known as musk (nodding) thistle, rosa multiflora, commonly know as multiflora rose, pueraria thunbergiana, commonly known as wild cucumber, and solanum nigrum, commonly known as black nightshade, all of which are noxious weeds; and, upon written request, shall give priority to any abutting property owner engaged in a program of eradication of johnson grass, giant foxtail, Canada thistles, nodding thistles, multiflora rose, kudzu, wild cucumber, or black nightshade: and shall cooperate with the abutting property owner by controlling [eradicating] the species of johnson grass, giant foxtail, Canada thistles, nodding thistles, multiflora rose, kudzu, wild cucumber, or black nightshade from abutting state rights-of-way. The department shall take steps to control [eradicate] these grasses and these weeds by the use of chemicals or any other means found to be effective by the department.

(2) The department of highways shall inform property owners of the availability of said control [eradication] program. In carrying out this responsibility the department shall, no later than the first week in March of every year, advertise in each county, pursuant to the provisions of KRS Chapter 424 that the program is available. The department shall stipulate in such advertisement the place and manner in which an interested property owner may make a written request for inclusion in the program.

Purpose of Revisions - It is impossible for the department of highways to comply with this statute as it is currently written. The proposed revisions incorporate more realistic language and reflect what can be accomplished.
176.053. Trees along rights-of-way - Proceeds from sale of products. --

(1) The department of highways is authorized to plant or set trees on and along any and all rights-of-way of highways or state property adjacent thereto, and to cut and sell wood, lumber or forest products therefrom.

(2) All proceeds from the sale of such wood, lumber or forest products shall be held in a separate fund for the maintenance, construction or improvement of highways, or the acquiring of rights-of-way, and the improvement or development thereof.

No changes proposed.
176.054. Obtaining trees to carry out KRS 176.053. -- The natural resources and environmental protection cabinet shall furnish to the department of highways such seedlings or young trees as the department may require, or as may be available. The department of highways shall pay to the natural resources and environmental protection cabinet the reasonable value thereof as may be agreed upon between such departments.

No changes proposed.
176.055. Dissemination of information concerning roads and highways.

-- (1) The department of highways may purchase space in magazines, newspapers, and other publications and may cause to be made and circulated all maps, prints, plans, lithographs, engravings, photographs, drawings, art work, and other specialized work deemed necessary in the dissemination of information concerning its roads and highways.

(2) The department of highways, with the approval of the governor, may expend an amount not in excess of two hundred and fifty thousand dollars ($250,000) a year for the purposes set out in subsection (1) hereof.

(3) The provisions of KRS chapter 57 shall not be applicable or controlling in the expenditure of this fund.

No changes proposed.
176.060. Roads under construction -- Regulation of traffic -- Temporary roads. -- The department may stop or regulate or cause to be stopped or regulated all traffic over any road being constructed or improved [until it is ready to be opened to the public] and may designate other roads for the accommodation of traffic until the construction is completed. The department may establish temporary roads while such construction is going on, and may make arrangements with landowners for necessary temporary rights-of-way, and may contract and pay for such rights-of-way out of appropriations from the state road fund [by certifying the costs to the finance and administration cabinet]. The temporary road shall be opened for travel at least two (2) weeks before work is begun on the road purposed to be constructed or improved.

Purpose of Revisions - The proposed revisions constitute clean-ups that reflect current practice in performing traffic control.
176.070. Advertisement for bids. — (1) After surveys, plans, specifications and estimates have been completed for any road or section thereof, and the type and character of the road has been determined, and the right-of-way defined [obtained], the department shall advertise by publication pursuant to KRS chapter 424, for bids on the work, and may contract for the purchase of all materials necessary for the construction and maintenance of roads.

(2) Before advertising for bids for the construction or reconstruction of any highway, the department may determine the type of improvement desired, and may advertise and receive bids for only the types determined. The advertisement shall make it generally known that the work is to be done, and shall state the place where the bidders may examine the plans and specifications.

Purpose of Revision - The proposed revision is intended to allow projects to proceed in an expeditious manner.
176.080. Bond or check to accompany bid--Bids may be rejected--
Advertisement for new bids--Security.-- (1) Each bidder shall accompany his bid
with a bond or certified check payable to the state treasurer for a reasonable sum,
fixed by the department, guaranteeing that he will enter into a contract with the
department for doing the work if the work is awarded to him.

(2) The contract shall be awarded to the lowest and best bidder. The
department may require bonds from any contractor to secure the performance of any
contract or may require security by any other means it deems advisable.

(3) The department may reject any bid when it finds it for the best interest of
the state to do so. When all bids are rejected, the department shall advertise for new
bids as in the first place.

No changes proposed.
176.085. Compliance with workers' compensation insurance and unemployed insurance laws required. -- (1) No contract for building, construction, reconstruction, renovation, demolition, or other type work on any state road, waterway, or aviation-related work shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

(2) Any person who fails to comply with the assurances required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars ($4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.

(3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

No changes proposed.
176.090. Provisions of contract -- Partial and complete payment -- Bonds, bids, etc., to be filed.-- (1) The contract shall state the time when the work shall be begun and completed or the time allotted for completion, and the time and manner of payment. The department may require that a certain percent of the contract price, or a certain fixed sum shall not be paid to the contractor until a fixed time after completion and acceptance of the work.

(2) When the contract provides for partial payment based on the amount of work done, the representative of the department in charge of the work shall present to the department, as each payment becomes due, a certificate signed by him showing as nearly as possible the amount of work done for which payment is to be made. If the department [state highway engineer] finds that the amount certified is due, the finance and administration cabinet shall draw a warrant for the amount certified, on the request of the department of highways.

(3) When the work has been fully completed, the representative of the contractor [department] shall certify to the department a detailed and itemized statement of the cost of the work done, and if it is found to be correct, the department shall certify the amount to the finance and administration cabinet, which shall draw a warrant for the amount due.

(4) All bonds and bids filed and all contracts approved by the department and a copy of all specifications and certifications shall be kept on file in the office of the department.

Purpose of Revisions - The proposed revision in subsection (1) reflects current practice that stipulates the number of work days allowed for a contract. The proposed revision in subsection (2) reflects the fact that department personnel other than the state highway engineer deal with partial payments to contractors. The proposed revision in subsection (3) reflects the fact that contractor's personnel presently prepare statements for the cost of work performed for the Department.
176.095. Contractor's deposit of securities with department. -- (1) Where any percent of a contract price or a certain fixed sum shall have been retained pursuant to the provisions of subsection (1) of KRS 176.090, the contractor may from time to time withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract and substitute therefor securities of the following classes which are upon deposit with a custodian designated by the commissioner of the department and approved by the secretary of the finance and administration cabinet:

(a) United States treasury bonds, United States treasury notes, United States certificates of indebtedness, United States treasury bills,

(b) Bonds of the Commonwealth of Kentucky, or

(c) Bonds of any political subdivision, including school districts, of the Commonwealth of Kentucky.

No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or the par value of such securities, whichever is lower.

(2) The custodian shall on a regular basis collect all the interest or income on the obligations so deposited and shall pay the same when and as collected to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the custodian shall deliver each coupon as it matures to the contractor.

(3) Any amount deducted by the department, pursuant to the terms of the contract, from the retained payments otherwise due the contract, shall be deducted first from the portion of such retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons or income only from those securities which remain after such amount has been deducted.

(4) The securities so deposited shall be properly indorsed by the contractor in such manner so as to enable the custodian to carry out the provisions of this section.

No changes proposed.
176.100. Deviation from contract. -- No contractor shall deviate from the provisions, plans or specifications upon which a contract has been awarded without first having obtained written authority from the department to do so. If the contractor does deviate without such authority, neither the state of Kentucky, the department of highways, the finance and administration cabinet nor the state treasurer shall pay or be liable for any work or material not fully provided for in the original contract.

No changes proposed.
176.110. Breach of contract -- Cancellation to keep expenditures within annual income. -- (1) If any person or his surety having a contract with the department fails to carry out the contract, the department may cancel the contract and re-award it without advertisement if it can obtain a qualified contractor to perform the work at the original contract price or for less. Otherwise the work shall be advertised as required by law.

(2) When the department ascertains that the cost of any contract or the cost of continued work on any contract will exceed the revenues of the fiscal year or that it is in the best interests of the state, the department may cancel any such contract or any portion thereof necessary in order to keep expenditures within the revenues of the fiscal year, and may contract for the completion of such work when the funds are available without advertising the work if it can obtain a qualified contractor to assume the work at the original contract price. Otherwise the work shall be advertised as required by law.

Purpose of Revisions - The proposed revision in subsection (1) is intended to allow the department to declare a surety in default if a bond is not paid, allowing the department to proceed with the contract. The proposed revision in subsection (2) is intended to codify the department's ability to exercise the sovereign power of the Commonwealth to act in the state's best interest.
176.121. Construction work by department employees. -- The department of highways may cause any road construction or reconstruction to be done by employees of the department instead of through contractors when, in the opinion of the commissioner as expressed in an official order, any of the following conditions is found to exist:

(1) Emergency construction or reconstruction is made necessary by the fact that a road has been rendered unusable or the urgency of need for construction or reconstruction is apparent.

(2) Construction or reconstruction of access roads would serve as an inducement to industrial location or substantial expansion of industry, and the estimated cost of the project is less than one hundred twenty-five thousand dollars ($125,000) excluding the cost of equipment rental.

(3) The project involves: an existing road and provides for such work as improvement of sight distance, traffic marking, channelization or the addition or widening of traffic lanes or widening of shoulders; or construction, reconstruction, widening or strengthening of small bridges and projects for which preparation of detailed plans required to secure bids is unnecessary; or an emergency need does not allow for time for preparation of plans and advertisement for bids.

(4) No satisfactory bid is received for the construction or reconstruction of the road after all necessary steps have been taken to obtain bids for such work, and the estimated cost of the projects is less than one hundred twenty-five thousand dollars ($125,000) excluding the cost of equipment rental.

Purpose of Revisions - While the Transportation Cabinet does not intend to get very involved with force account construction work, there are times when it is necessary. Due to the increased cost of renting heavy equipment, such as that needed to clear a slide, the cap needs to be increased above $125,000. It has been 12 years since this statute was amended.

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[176.122. Definitions for KRS 176.122 to 176.128.—As used in KRS 176.122 to 176.128, unless the context requires otherwise:

(1) "Department" means department of highways, Commonwealth of Kentucky.
(2) "Person" means any individual, firm, agency, company, association, partnership or corporation.]

Purpose of Revision - This section is unnecessary. The term "Department" is already defined for KRS Chapter 176 in section 176.010. It is proposed that the term "person" be added to section 176.010 and this section be deleted.
176.124. Work of department personnel restricted to rights-of-way. --

No officer, agent or employe of the Commonwealth of Kentucky, department of highways, shall perform or cause to be performed any work or provide or cause to be provided services of any nature beyond the right-of-way or easement limits of any public road, nor shall any person accept the work or services of any officer, agent or employe of the department on private property.

Purpose of Revision - The proposed revision would allow the department needed flexibility to carry out its functions.
176.126. **Use of department goods and materials restricted to rights-of-way.** No goods or materials belonging to or under control of the department shall be used in work of any nature beyond the right-of-way or easement limits of any public road, nor shall any person accept or permit the use of such goods or materials on private property.

*Purpose of Revision* - *The proposed revision would allow the department needed flexibility to carry out its functions.*
176.128. **Effect of KRS 176.122 to 176.128.** -- Nothing in KRS 176.122 to 176.128 shall be so construed as to prevent the lawful execution of other granted powers necessary to accomplish the purposes of the department of highways.

_No changes proposed._
176.130. Certificates of eligibility for contractors -- Application -- When necessary. -- (1) Every person who seeks to procure, bid upon, or offer to bid upon any contract with the department for the construction or maintenance of any public road or any section thereof, before procuring a proposal form or submitting any bid to obtain such contract, shall procure a certificate of eligibility from the department to bid on such work.

(2) All applications for a certificate of eligibility shall be made to the department in writing, and the department shall act upon the application within thirty (30) days after the application is filed.

(3) A certificate of eligibility is not necessary where the department purchases equipment, material and supplies directly[,] except in the case of the purchase of crushed stone in lots of more than one thousand (1,000) tons, or bituminous materials in tank car lots.

Purpose of Revision - A portion of subsection (3) should be deleted because those purchases, like equipment, materials and supplies are covered by the purchasing statutes.
176.140. **Determination of eligibility to bid.** -- (1) The department shall determine who shall be eligible to bid upon any contract with the department for the construction or maintenance of any public road or section thereof. The department may adopt [rules and] regulations and make investigations and examinations to determine the financial status, organization, experience, responsibility, business ability, previous record, sufficiency of plant and equipment, and any other pertinent facts necessary to determine the eligibility of the proposed bidder.

(2) The department shall establish [rules and] regulations governing the application for the certificate of eligibility, the means and methods of obtaining information relative to the applicant, and the granting of, or refusal to grant, a certificate of eligibility, and may require a financial statement of the applicant, verified by the applicant or, in the case of a corporation, by an authorized official thereof, as often as the department deems it necessary, and at least once in every twelve (12) months.

*Purpose of Revisions* - The proposed revisions are necessary to: 1) ensure that a bidder has sufficient organization to accomplish the work he bids on and 2) eliminate archaic language (rules). This revision will further ensure the integrity of the bidding process.
176.150. Investigation of financial status of applicants -- Nonresidents may obtain certificates. -- (1) No bidder shall be given a certificate of eligibility unless his financial statement and the investigation made by the department show that he possesses net current assets or working capital sufficient in the judgment of the department to render it probable that he can satisfactorily execute his contracts and meet obligations therein incurred. All applications for certificates shall expressly authorize the department to obtain all information which it deems pertinent with respect to the financial status, assets and liabilities of the applicant from any persons having business transactions with the applicant, and shall expressly authorize all such persons to furnish any such information requested from them by the department.

(2) Certificates of eligibility shall be issued without reference to the residence of applicants and the rules and regulations regarding the issuance of certificates shall apply equally to residents and nonresidents. A certificate of eligibility shall not be denied to any applicant upon the sole issue of nationality or residence.

3) When the applicant is a [foreign] corporation the application shall be accompanied by a certificate from the secretary of state that the [such] corporation is authorized to do business in Kentucky [the state in which it is incorporated].

Purpose of Revisions - The proposed revisions require that all corporations show that they are authorized to do business in Kentucky.
176.160. Issuance or denial of certificate -- Effect. -- (1) After obtaining such information as it deems necessary relative to the qualification of the applicant, the department shall determine whether or not the applicant is eligible to bid upon road contracts. The department shall promptly notify all applicants of its final action on their applications.

(2) If the department determines that the applicant is eligible, it shall issue to him a certificate of eligibility which shall entitle the applicant to bid upon any contract with the department for the construction or maintenance of any public road or section thereof upon which bids are being asked.

(3) If the department determines that the applicant is ineligible to bid, it shall reject the application and refuse to issue the certificate of eligibility, and the applicant shall not thereafter make application for a certificate of eligibility until he is qualified, both financially and in all other ways.

No changes proposed.
176.170. **Rehearing -- Appeal.** -- (1) Any applicant aggrieved by the decision of the department may, within ten (10) days after receiving notification of such decision, request in writing a reconsideration of his application, and may submit additional evidence bearing on his qualifications. The department shall thereupon reconsider the application, and may adhere to, modify or reverse its previous decision. The department shall act upon any request for reconsideration within thirty (30) days after the filing thereof, and shall immediately notify the applicant of the action taken.

(2) Within ten (10) days after his notification of the final action of the department upon such reconsideration, any applicant who is still aggrieved by the decision may appeal to the Franklin Circuit Court, or any other court of competent jurisdiction, on the grounds of fraud or abuse of discretion by the department. The appeal shall be perfected by the filing of a bond with the clerk of the court in such amount as the clerk may fix and by causing a summons to be served upon the department as in other civil actions. The court shall hear the evidence offered by the applicant and by the department, and if it finds that there was neither fraud nor abuse of discretion, it shall dismiss the appeal. Otherwise it may make the order with respect to qualifications which it finds should have been made by the department. The order of the court shall be binding on the department.

*No changes proposed.*
176.180. **Limitation on certificate -- Rehearing.** -- (1) In issuing a certificate of eligibility to any applicant, the department may limit the scope of the certificate as to the number or type of projects, or the amount of work that the contractor may bid upon.

(2) Any applicant who is dissatisfied with the department’s ruling as to the aggregate amount of work which he will be permitted to have under contract at any one (1) time, may at any time file a new application for qualification. Such new application shall be promptly considered and acted upon by the department.

*No changes proposed.*
176.190. **Revocation of certificate -- Hearing.** -- A certificate of eligibility may be revoked by the department only after a written notice is given to the qualified bidder and an opportunity given to him to be heard by the department. The notice shall enumerate the grounds on which the revocation is proposed to be issued.

*No changes proposed.*
176.200. **Subcontractor to be named.** -- Before making an award the department may require the bidder to name the subcontractor whom he intends to employ for the various divisions of the work bid upon.

*No changes proposed.*
176.210. Lists of qualified bidders. -- The department may make public from time to time lists of qualified bidders. Such lists shall be general in character and shall not indicate the size of the contracts with respect to which the bidders have qualified.

No changes proposed.
176.220. Bids from unqualified bidders. -- The department shall not consider any bid filed with it by any person not holding a certificate of eligibility. Bids from unqualified bidders which are discovered by the department before they are read, shall be returned to the bidders without being read. If the department finds subsequent to the opening of bids that facts exist which would disqualify the lowest bidder, or that such bidder is not responsible and competent, the department shall reject such bid, despite the previous qualification of the bidder. The department shall not award any contract to any bidder not qualified to bid thereon at the time the bids are opened.

No changes proposed.
176.240. Federal aid for road building -- Cooperation by department --
Allocation of funds. -- (1) The department may contract with the federal
government in regard to the survey, construction and maintenance of roads under any
act of congress providing federal aid to the states in road construction, and may[; subject to the rules of the United States secretary of agriculture,] make plans for and
supervise the construction of federal aid roads, and may do all things necessary to
fully carry out the cooperation contemplated.

(2) The department may set apart out of moneys appropriated out of the state
road fund an amount equal to any sum allotted to the state by the federal
government, or any sum necessary to carry on cooperative work with the federal
government.

(3) The state treasurer may receive money due under the provisions of any
federal aid act, and he shall pay out such money upon warrants of the finance and
administration cabinet issued in payment of claims certified by the department of
highways.

Purpose of Revision - The proposed revision will remove archaic language referring to
the U.S. Department of Agriculture.
176.250. Duties of department in regard to county roads. -- The department of highways or the department of rural and municipal aid may [shall]:

(1) Recommend guidelines [rules] and regulations determining the method of constructing roads and fixing the duties of county road engineers and their employes in respect to all public roads;

(2) Instruct and advise with the county road engineers and their employes as to the establishment of grades and suitable systems of drainage and as to the construction, improvement and maintenance of public roads;

(3) Cause plans, specifications and estimates to be prepared for the repair and improvement of public roads and the construction and repair of bridges, and, when requested, advise upon the various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of public roads throughout the state, and collect such information relating thereto as it deems expedient; and

(4) Cause meetings to be held in each county for the purpose of furnishing general information and instruction upon the maintenance and improvement of public roads and the application of the road laws and the guidelines [rules] of the department of highways and the department of rural and municipal aid. The department of highways and the department of rural and municipal aid shall notify the county engineer of any county of such meetings and specify the date and place thereof.

Purpose of Revisions - The proposed revision are intended to: 1) reflect the current structure of the transportation cabinet that contains both the department of highways and the department of rural and municipal aid and 2) remove archaic language (rules). The present statute mandates that the transportation cabinet and department of highways perform specific duties related to county road projects. Currently, some counties have assumed performance of those duties.
[176.200. Fiscal year of department.— The fiscal year for the department of highways which commences on April 1, 1950, shall be extended up to and including June 30, 1951, and thereafter the fiscal year for the department shall begin July 1, and end June 30.]

Purpose of Revision - The department of highways currently has the same fiscal year as the rest of state government. This section contains archaic language that is superfluous and needs to be eliminated.
176.270. Finance and administration cabinet to furnish income estimates. -- [On or before June 1 of each year, the finance and administration cabinet shall furnish to the department of highways estimates of income for the ensuing fiscal year.] Upon the request of the department of highways the finance and administration cabinet shall, from time to time, furnish revised estimates of income.

Purpose of Revision - The revenue estimate preparation provisions of KRS Chapter 48 have supplanted the requirement of the June 1 estimates. Therefore, the incompatible portion should be repealed.
[176.280. Legal service—Duty of county attorneys.— The county attorneys shall each render legal service to the department in carrying out its duties. The services so rendered shall be without additional compensation, and no county attorney shall be required to render service outside his county.]

Purpose of Revision - This section should be eliminated because county attorneys do not provide this service to the department of highways.
176.400. Covered wooden bridges -- Administrative control -- Title -- Maintenance. -- (1) Administrative control of covered wooden bridges designated as state shrines shall be shared by the transportation cabinet, the department of parks and the authorities created under KRS 176.410.

(2) The transportation cabinet shall maintain all covered wooden bridges in the Commonwealth which are on public roads and open to vehicular traffic. The cabinet shall maintain the bridges for safety and for historical and aesthetic beauty. The cabinet shall prepare estimates of the cost of maintaining covered wooden bridges which are on public roads and open to vehicular traffic and shall identify and include the total of these estimates in its biennial budget request.

(3) The cabinet may delegate its responsibility for maintenance of covered bridges located on roads maintained by a county to the local government responsible for such roads. Delegation of responsibility for maintenance of covered bridges to a local government shall require periodic inspection by the cabinet.

(4) Nothing in this section shall prevent an appropriate unit of government from closing a covered wooden bridge to vehicular traffic.

(5) The department of parks shall be responsible for all covered wooden bridges located in the Commonwealth which are on public property and no longer open to vehicular traffic. The department of parks shall maintain these bridges in sound structural condition and for historical and aesthetic beauty. The department of parks shall prepare estimates of the cost of maintaining covered wooden bridges for which it has a responsibility and shall identify and include the total of these estimates in its biennial budget request.

(6) When an appropriation is made to a covered wooden bridge authority created under the provisions of KRS 176.410, the department of parks shall transfer the obligation of maintenance for the bridges designated in the appropriation to that authority.

(7) An authority may re-transfer the right of possession or title and the obligation of maintenance of covered bridges under its jurisdiction to the department of parks.

(8) The heritage division may determine that an authority is inactive or unable to discharge its responsibilities and may transfer the right of title or possession to covered bridges under the jurisdiction of the authority to the department of parks. The division shall give notice of such an action to the authority and the department of parks.

Purpose of Revisions - The proposed revisions provide additional wording for this section to clarify which department has maintenance responsibility for covered wooden bridges designated as state shrines.
176.410. County or multi-county covered wooden bridge authority -- Members -- Purpose -- Powers -- Pilot project. -- (1) Except as provided by KRS 176.400, at the request of citizens or organizations of a county or multi-county region, the Heritage Division shall certify to the Governor the creation of a county or multi-county covered wooden bridge authority for that county or multi-county region. 
(2) An authority shall consist of five (5) members to be appointed by the Governor. The members of an authority shall hold office for terms of four (4) years and until their successors are appointed and qualify except that the terms of office of the members first appointed shall be as follows: two (2) members shall be nominated and appointed for two (2) years, and three (3) members shall be nominated and appointed for four (4) years. An authority may elect by majority voice officers deemed necessary by its members. A majority of the members shall constitute a quorum. An authority shall meet at the call of its chairman, but at least twice during each calendar year. 
(3) An authority shall be dedicated to the preservation, restoration and maintenance of all covered wooden bridges not open to vehicular traffic in the county or multi-county region for which it is created. The duties and functions of an authority shall be to: 
(a) Review, recommend and administer projects and programs to insure the proper preservation, restoration and maintenance of covered wooden bridges in the county or multi-county region for which it is created. 
(b) Advise, consult and cooperate with state, local and national officials and agencies, and with the heritage division as provided by KRS 176.400 and 176.410, to accomplish the purposes for which the authority is established. 
(4) An authority may: 
(a) Accept grants or other funds or property from any source, public or private; 
(b) Enter into such contractual relationships as may be necessary; 
(c) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the authority; 
(d) Adopt rules and regulations necessary to the performance of its duties and functions. 
(5) Members of an authority may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and reasonable expenses incurred in the furtherance of the authority’s activities. 
(6) The receipt, control and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of state agencies. 
(7) Each authority shall develop a program for the preservation, restoration and maintenance of covered wooden bridges in the county or multi-county region for which it was established. It shall select the bridges to be preserved, restored or maintained within a biennium and shall prepare estimates of the cost of preservation, restoration or maintenance within that biennium. 
(8) The program developed by an authority shall be submitted to the Heritage Division. Upon approval by the division, the authority shall submit its program as its biennial budget request.
(9) When an appropriation is made to an authority to fund its program for the preservation, restoration and maintenance of covered wooden bridges, title to all covered wooden bridges to be preserved, restored or maintained under its authority shall be transferred to the authority. Preservation, restoration and maintenance of covered wooden bridges shall comply with the program approved by the division and shall be administered by the authority. Each authority is authorized to enter into any agreement or contract necessary to implement an approved and funded program. (10) There is established the covered wooden bridge authority for the counties of Bracken, Fleming, Lewis, Mason and Robertson as a pilot project.

No changes proposed.
176.420. Continuing study of highway needs by department of highways -- Biennial estimate to general assembly of maintenance and improvement costs. -- (1) The Department of Highways shall undertake a continuing study of the needs of the highways under its jurisdiction for the purpose of bringing existing facilities to acceptable standards or for the replacement of existing facilities where required.

(2) The Department of Highways shall provide the general assembly, at the time of submission of the executive budget to the regular session of the General Assembly pursuant to KRS 48.100, with a biennial highway construction and preconstruction program. The biennial construction and preconstruction program shall detail those projects which the department shall advance to construction or preconstruction during the ensuing biennium.

(3) At the same time of submission of the highway construction plan provided in subsection (2) of this section, the department shall provide the General Assembly with an additional four (4) year preconstruction and construction document of projects being considered by the department, but are not included for funding during the ensuing biennium. The four (4) year preconstruction plan shall be separate and distinct documents from the construction plan required in subsection (2) of this section. No project shall appear in this preconstruction plan without a specific fiscal year being designated for commencing construction and a construction cost estimate provided.

(4) In addition to the plans required to be submitted by subsections (2) and (3) of this section, the department shall provide the General Assembly with the computer tapes and file layout for each plan in a form prescribed by the General Assembly or the Legislative Research Commission at the same time as the submission of the plans.

Note: At the time this study was underway, the Highway Needs Task Force was evaluating KRS 176.420-176.460 in detail. Therefore, it was considered duplicative for the study to also evaluate those sections.
176.430. Department to submit biennial program of construction to general assembly, based on anticipated appropriation -- Factors to be considered in construction program -- Preconstruction program report -- Responsibilities of secretary and department. -- (1) The recommended highway construction program submitted to the General Assembly as provided by Section 2 of this Act and KRS 176.420(2) to be commenced during the ensuing biennium shall be based upon the budget submitted by the Governor for highway construction.

(2) In determining each construction program, the following factors shall be considered but are not exclusive:

(a) Alignment of existing roads;
(b) The width or elevation of existing roadways and shoulder surfaces;
(c) The width of rights-of-way;
(d) The cost of construction;
(e) The type and volume of traffic;
(f) The condition of structures and drainage;
(g) The accident rate;
(h) The geographic distribution of roadways to be constructed or reconstructed; and

(i) The social, economic and environmental impact of the proposed construction.

(3) In addition to the construction program, the department also shall provide to the general assembly a biennial program of preconstruction projects in various stages of planning and preparation for the ensuing biennium and an additional four year period. All preconstruction projects shall designate the fiscal year each phase is scheduled to commence, a cost estimate for each phase, a projected construction date, and construction cost estimate.

(4) The transportation cabinet shall monthly provide the legislative research commission with the following information:

(a) Advertisements relating to the letting of projects;
(b) Bid awards including the amount of the contract;
(c) Final project cost estimates;
(d) Bid rejections;
(e) Change order authorizations; and
(f) Any additional financial consideration for funds utilized in the design, right of way acquisition, utilities relocation or construction of a transportation cabinet project.

(5) The secretary of transportation shall be responsible for the execution of each biennial program as approved by the general assembly and shall promptly account for any deviations of funding and schedule to the interim joint committee on transportation. The department of highways shall be responsible to provide annual certification of project expenditures to the general assembly prior to either the organizational or regular session.

Note: At the time this study was underway, the Highway Needs Task Force was evaluating KRS176.420-176.460 in detail. Therefore, it was considered duplicative for the study to also evaluate those sections.
176.440. Time for presentation of programs -- Deletion of programs by general assembly. -- (1) Six (6) months prior to the convening of each regular session of the General Assembly, the department shall furnish the projected highway biennial construction and preconstruction program, computer tapes, and file layout in a form prescribed by the General Assembly at the same time of submission of the plan to the interim joint committee on transportation, which may hold public hearings in each highway district.

(2) A report based on the testimony received at said hearings shall be made to the department. On or before November 15 of each odd numbered year, the department shall submit the requested highway construction and preconstruction program, computer tapes, and file layouts in the form prescribed in Section 8 of this Act to the Legislative Research Commission as provided by Section 2 of this Act and KRS 176.420(2) and (3).

(3) When the final biennial highway construction program is presented to the general assembly for approval and funding as provided in Section 2 of this Act and KRS 176.420(2) and (3), any project which the general assembly determines is not in accordance with the factors stated KRS 176.430(2) may be deleted by the General Assembly.

Note: At the time this study was underway, the Highway Needs Task Force was evaluating KRS176.420-176.460 in detail. Therefore, it was considered duplicative for the study to also evaluate those sections.
176.460. Project to be commenced in biennium for which it is planned - Exceptions -- Limitations on application of KRS 176.420 to 176.460. -- (1) The project planned for the biennium for which the appropriations have been made shall be commenced in that biennium; however, if a project cannot be commenced within the biennium for which it is designated, the secretary shall file with the project records a public statement as to the factors causing delay.

(2) When the delaying factors for construction of a project have been overcome, the funding for the delayed project shall be reinstated in the next biennial construction program. Funds allocated for each biennial construction project remain so allocated until the project is completed and project costs are liquidated.

(3) No provision of KRS 176.420 to 176.460 shall apply to expenditures for:
(a) Resurfacing;
(b) Bridge maintenance and repair;
(c) Rural secondary road program;
(d) Routine maintenance;
(e) Minor reconstruction.

Note: At the time this study was underway, the Highway Needs Task Force was evaluating KRS 176.420-176.460 in detail. Therefore, it was considered duplicative for the study to also evaluate those sections.
176.500. Mississipi River parkway commission -- Members -- Duties -- Reimbursement for expenses. -- (1) The Mississippi River parkway commission of Kentucky is hereby established to serve as the local coordinating agency for the development of the Great River Road along the Mississippi River from Canada to the Gulf of Mexico. The commission shall be attached to the Office of the Secretary of the Tourism Cabinet for administrative purposes.

(2) The commission shall consist of the following eleven (11) members: Four (4) citizen members, appointed by the Governor, and consisting of one (1) member from each of the four (4) counties that border the Mississippi River, who shall serve a term of four (4) years and may serve until a successor is appointed. Four (4) members shall be the respective county judge/executives of Ballard, Carlisle, Fulton and Hickman Counties in Kentucky. Other members shall be the secretary of the tourism cabinet or his designee; the secretary of the economic development cabinet, or his designee; and the secretary of the transportation cabinet, or his designee. The commission shall annually elect a chairman and shall meet quarterly or upon call of the chairman with ten (10) days' written notice. Six (6) members present shall constitute a quorum for the official conduct of business. The commission may enter into contracts with the purchase area development district to provide administrative services.

(3) Members shall receive no compensation but shall be reimbursed according to state regulations for actual and necessary expenses incurred in conducting commission business.

(4) The commission shall assure that the proper direction is taken in developing a corridor of scenic, historical and archaeological significance through the Kentucky counties of Ballard, Carlisle, Hickman and Fulton.

No changes proposed.
176.990. Penalties. -- (1) Any person who violates the provisions of KRS 176.122 to 176.128 shall be guilty of a misdemeanor and shall upon conviction be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each day in which work is performed or materials furnished in violation of the provisions of KRS 176.122 to 176.128 shall constitute a separate offense.

(2) In addition to any other penalties provided in this section, any officer, agent or employee of the department who performs or causes to be performed work or services beyond the right of way or easement limits of public road or any person who accepts such work or services shall reimburse the department for all costs of the work or services performed and for any materials which shall have been used in the performance of the work or services.

Purpose of Revisions - The proposed revisions hold a supervisor who orders illegal work to be as responsible as the persons doing the work. The physical limits of legal work are also better defined.
176.991. *Penalties.* — (1) Any person who willfully burns, defaces or destroys a covered bridge designated as a state shrine by the Kentucky heritage commission or by the heritage division shall be fined not more than five hundred dollars ($500) or confined in the county jail for not less than thirty (30) days or more than six (6) months or both. This shall be in addition to other penalties.

(2) Any person who exceeds the posted weight limits for a covered wooden bridge designated as a state shrine shall be fined not less than ten dollars ($10.00) or more than five hundred dollars ($500). This shall be in addition to other penalties.

*No changes proposed.*
APPENDIX 2

(KRS 178 County Roads--Grade Crossing Elimination)
CHAPTER 178

COUNTY ROADS--GRADE CROSSING ELIMINATION

Section    Title
178.010    Definitions -- Construction of chapter.
178.020    Roads, bridges and landings continued, removal from through road system.
178.025    Road presumed established when -- Width of right-of-way.
178.030    Transfers from state to county.
178.040    Width of county roads, how fixed -- Acquisition of right-of-way.
178.050    Notice and advertisement of establishment, alteration or discontinuance, and of letting of contracts.
178.060    Changes in location of county road.
178.070    Discontinuance of county roads.
178.080    Establishment and alteration of public roads, bridges and landings, upon petition.
178.090    Conditions may be imposed upon petitioner.
178.100    Action to contest decision of fiscal court.
178.110    Condemnation of right-of-way -- Temporary roads.
178.115    Power of fiscal court to open, establish or alter road -- Procedure -- Appeal.
178.116    Discontinuance of a road.
178.117    Private improvement of public road in counties containing first-class city -- When permitted -- Procedure.
178.120    Condemnation of land by fiscal court.
178.125    Condemnation of additional land adjacent to existing road -- Procedure.
178.130    (Repealed.)
178.140    Awarding of contracts -- Rejection of bids.
178.150    Department of highways to render assistance in certain cases.
178.155    Effect of lack of maintenance of road by county for fifteen years.
178.160    (Repealed.)
178.170    Bonds for hard surface roads -- Issuance.
178.180    Commissioners may be appointed to handle proceeds of bonds.
178.190    Duties of commissioners -- Supervision.
178.200    Tax levy to retire bonds and pay interest.
178.210    Special tax for construction of roads -- Submission to vote -- Short-term bonds.
178.220    Vote on special tax -- Form of question.
178.230    Collection of special tax -- Sheriff's fee.
178.240 Advertisement of special tax election -- Conduct of election.
178.250 Joint bridges and roads between counties.
178.260 Contracts for work on joint bridges and roads.
178.270 Costs of joint roads and bridges.
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**COUNTY THROUGH ROAD SYSTEMS**

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178.337 Removal of road from system -- When city streets in system.

**GRADE CROSSING ELIMINATION**

178.350 Application of KRS 178.350 to 178.385 limited to counties containing first-class city.
178.355 Procedure for ordering elimination of grade crossings or change of existing overhead or under-pass structure crossing county road.
178.360 Grade separation of proposed railroad and county road crossings.
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178.370 Maintenance of roadway, sidewalks, bridge, structure and approaches.
178.375 Appeals to circuit court from final orders of fiscal court.
178.380 Appeals to Court of Appeals.
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**DEDICATION OF ROADS, STREETS OR HIGHWAYS**

178.400 Definitions for KRS 178.405 to 178.425.
178.405 Conditions requisite.
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178.415 Fee simple title in county -- Minimum width.
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**PENALTIES**

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<td>178.990</td>
<td>Penalties.</td>
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178.010 Definitions -- Construction of chapter. -- (1) As used in this chapter, unless the context otherwise requires:

(a) "Construction" includes reconstruction and improvement;

(b) "County roads" are public roads which have been accepted by the fiscal court of the county as a part of the county road system after July 1, 1914 or private roads, streets, or highways which have been acquired by the county pursuant to KRS 178.405 to 178.425. "County roads" includes necessary bridges, culverts, sluices, drains, ditches, waterways, embankments or retaining walls; and

(c) "Hard surface road" means a road the surface of which is asphalt, brick, stone block, macadam, concrete, gravel or other material of equal merit.

(2) Nothing in this chapter shall be construed to take from the jurisdiction or control of the legislative body of any incorporated city any road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of such city.

(3) Nothing in this chapter shall prevent any fiscal court from acquiring land by gift for public purposes.

(4) Nothing in this chapter, including the fact that a municipal street has not been accepted into the county road system, shall prevent any county from entering into an agreement, pursuant to the provisions of KRS 65.220 to 65.300, with any city located within the county to perform work upon or to provide personnel, materials or equipment for work to be performed upon any street located within the city, provided that the city agrees to pay the costs if any associated with any such agreement.

No changes proposed.
178.020. Roads, bridges and landings continued, removal from through road system. -- Every county road, bridge and landing, and every city street and alley heretofore lawfully established and opened and not lawfully discontinued or vacated shall continue as such, until properly discontinued. Every road, street and alley, used and occupied as a public road, street or alley, shall be presumed to be a public road, street or alley, as the case may be. Nothing in this section shall be interpreted as interfering with the right of the fiscal court of a county containing a city of the first class from detaching a road or a portion thereof from the county through road system.

No changes proposed.
178.025. Road presumed established when -- Width of right-of-way. --
(1) Any road, street, highway or parcel of ground dedicated and laid off as a public way and used without restrictions by the general public for five (5) consecutive years, shall conclusively be presumed to be a public road.
(2) In the absence of any record, the width of a public road right-of-way shall be presumed to extend to and include that area lying outside the shoulders and ditch lines and within any landmarks such as fences, fence posts, corner stones or other similar monuments indicating the boundary line.
(3) In the absence of both record or landmark, the right-of-way of a public road shall be deemed to extend to and include the shoulders and ditch lines adjacent to said road, and to the top of cuts or toe of fills where such exist.

No changes proposed.
178.030. Transfers from state to county. -- The roads, bridges and landings transferred by the state to the counties in which they are located shall be county roads, bridges and landings. Provided, however, that roads, bridges and landings so transferred shall not become a part of a county through road system in a county containing a city of the first class unless they are made a part of such a system in accordance with KRS 178.330 or 178.333, or both.

No changes proposed.
178.040. Width of county roads, how fixed -- Acquisition of right-of-way. -- (1) In order to change the width of a county road, the fiscal court shall make a special order for a different width. The order shall be recorded in the office of the county clerk. In order to change the width of the right-of-way of a portion of a county through road system the fiscal court of a county containing a city of the first class may make a special order for a different width. The order shall be recorded in the office of the county road engineer.

(2) All county roads hereafter established shall occupy a right-of-way not less than thirty (30) feet wide, but the fiscal court may order it to be a greater width. All roads added to the county through road system in a county containing a city of the first class in accordance with KRS 178.333 shall occupy a right-of-way width as ordered by the fiscal court.

(3) In acquiring a right-of-way for a county through road within any city, the fiscal court or the county court of a county containing a city of the first class may exercise any powers granted them by statute for the acquisition of property.

No changes proposed.
178.050. Notice and advertisement of establishment, alteration or discontinuance, and of letting of contracts. -- (1) No county road shall be established or discontinued, or the location thereof changed unless due notice thereof has been given according to the provisions of this chapter.

(2) Notices and advertisements for the establishment, alteration or discontinuance of any county road, bridge or landing, and all notices and advertisements for the letting of contracts for construction or maintenance of county roads and bridges under the provisions of this chapter shall be published pursuant to KRS chapter 424 by the fiscal court [county road engineer].

Purpose of Revision - The proposed revision reflects the fact that some counties do not have a county road engineer. Therefore, this procedure should not be restricted to a county road engineer.
178.060. Changes in location of county road. -- (1) The fiscal court [county road engineer] may change the location of any county road in the [his] county with the written consent of the owner of the land on which a change is to be made, setting forth the exact changes proposed. The proposed change and the owner’s consent shall be entered in the form of an agreed order of the fiscal court and subject to the approval of the county judge/executive.

(2) The change shall not materially increase the length or grade or require more work to keep the road in repair, or place the road on worse ground than it was before the change, or render the road in any respects worse than it was before the change.

(3) If the fiscal court [county road engineer] makes a change in violation of the provisions of this section, the part of the road thus altered shall not be established as a county road, and the former location shall be continued as such.

Purpose of Revision - The proposed revision reflects the fact that some counties do not have a county road engineer. Therefore, this procedure should not be restricted to a county road engineer.
178.070. **Discontinuance of county roads.** -- The fiscal court may direct any county road to be discontinued. Notice must be published, according to the provisions of KRS 178.050, and in addition, notices must be placed at three (3) public places in the vicinity of the road. After the posting of notices as aforesaid, the fiscal court shall appoint two (2) viewers who, together with the county road engineer, shall view the road and report in writing at the hearing what inconvenience would result from the discontinuance. Upon such report and other evidences, if any, the court may discontinue the road.

*No changes proposed.*
178.080. Establishment and alteration of public roads, bridges and landings, upon petition. -- (1) When any person desires the establishment or alteration of a public road, bridge or landing, he shall petition the fiscal court setting forth in his petition specifically the nature and location of the proposed work. The court shall thereupon appoint two (2) viewers who, together with the county road engineer, shall view the ground and report in writing the advantages and disadvantages which, in their opinion, will result to the individual and to the public from the proposed work and the grades and bearings of the proposed road, and other facts and circumstances that may enable the fiscal court to determine whether the work ought to be undertaken by the county.

(2) If the petition is for the establishment or alteration of a public road leading from a main public road, the report shall set out whether such road should be established, stating specifically whether it would be necessary to take any burying ground, garden, yard, orchard, or any part thereof, or to injure or destroy any buildings and the probable cost of the work, the names of the landowners whose property would have to be taken or injured, which of them would require compensation and the probable amount to which each would be entitled. They shall make careful examination of routes or locations other than that proposed or petitioned for, keeping in view the possible future development of the county and the accommodations of the general traveling public, and shall report in favor of the one they prefer, giving reasons for the preference. A map giving the grades and bearings of the routes or locations shall be returned with the report.

(3) If it appears to the fiscal court that the interests of the general public may be furthered thereby, the fiscal court shall personally examine the proposed work. If the court decides to undertake the proposed work the county judge/executive shall appoint a day for hearing the parties interested, and cause notices thereof to be given to all interested parties.

(4) If the county judge/executive at any time has sufficient evidence before him to enable him to ascertain what would be a just compensation to the proprietors and tenants, and if the proprietors and tenants are willing to accept what the county judge/executive deems just, the county judge/executive, upon such acceptance being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work, subject to the consent and approval of the fiscal court.

No changes proposed.
178.090. **Conditions may be imposed upon petitioner.** -- Where the petition is for the establishment or alteration of a public road leading from the main public road, the court may refuse to undertake the proposed work or abandon it after having undertaken it, unless the petitioner, or someone for him, deposits with the fiscal court a sum sufficient to pay all damage and cost sustained by reason of the establishment or alteration of the road. In such case the court may, if it thinks proper, establish the road upon condition that the petitioner shall pay all costs and damages, and make and keep the road in repair, and the court may also impose upon the petitioner, his heirs and assigns, and upon the public, such other conditions in reference to the road as the court finds just.

*No changes proposed.*
178.100. **Action to contest decision of fiscal court.** -- From a decision of the fiscal court ordering a new road to be opened, or ordering an alteration or discontinuance of an existing road, or allowing gates to be erected across a road or abolishing existing gates, or a decision refusing any such order, the party aggrieved may bring an action in the circuit court to contest the decision of the fiscal court.

*No changes proposed.*
178.110. Condemnation of right-of-way -- Temporary roads. -- (1) If the court decides to establish or alter a county road, bridge or landing, and the compensation to be paid for the right-of-way cannot be fixed by agreement, the right-of-way shall be condemned under the procedure set forth in the Eminent Domain Act of Kentucky.

(2) In case of roadbeds or bridges, or a portion of them, washing or slipping away, or in case of extreme emergency, and when in its judgment conditions warrant it, the fiscal court may immediately open and have surveyed a road or passway to be temporarily used while the commissioners appointed under the Eminent Domain Act of Kentucky are acting, or while the matter is pending in the court to establish a permanent road or passway, and the commissioners shall assess the damages of the temporary road or use thereof. The same proceedings shall be had to recover damages as in recovery in regard to other roads.

(3) But when such compensation is ascertained it shall be at the option of the fiscal court to pay it or to abandon the proposed undertaking. If it decides to pay the compensation, the fiscal court of the county shall include in its next levy an amount sufficient therefor.

(4) Not more than two (2) acres shall be condemned for a landing.

No changes proposed.
178.115. Power of fiscal court to open, establish or alter road -- Procedure -- Appeal. -- (1) Whenever the fiscal court of any county deems it to be in the best interest of such county to open, establish or alter the location of any public road, street, alley, ditch, culvert, bridge or similar public way or structure in such county, said fiscal court shall adopt a resolution setting forth the necessity for such public road or structure, and thereupon such public road or structure shall be deemed opened, established or altered, as the case may be, on behalf of the county. A certified copy of said resolution or order shall be posted by the county road engineer of the county along or at the proposed road or structure within five (5) days after its adoption.

(2) In all cases where such public roads or structures have been established, any person or persons aggrieved thereby may prosecute an appeal from such order or resolution of the fiscal court by filing a petition in equity in the circuit court of the county setting forth his grievance, to which petition shall be attached an attested or certified copy of such order or resolution. Such petition shall be filed within thirty-five (35) days from the date such order or resolution was entered. Such appeal shall be heard and decided by the court without the intervention of a jury. Any party so appealing shall execute and file a bond for costs at the time such appeal is taken. An appeal to the Court of Appeals may be taken in accordance with the Rules of Civil Procedure.

No changes proposed.
178.116. Discontinuance of a road. -- (1) Any county road, or road formerly maintained by the county [or state] shall be deemed discontinued and possession shall revert to the owner or owners of the tract of land to which it originally belonged unless at least one (1) of the following conditions exists:

(a) A public need is served by the road;
(b) The road provides a necessary access for a private person:
(c) The road has been maintained and policed by the county or state within a three (3) year period.

(2) If the only condition which exists is for a necessary access for a private person, by a joint petition of all parties entitled to such access, the road shall be deemed discontinued and possession shall revert to the owner or owners of the tract of and to which it originally belonged.

(3) If the only condition which exists is for a necessary access for a private person, by joint petition of all parties entitled to such access, the road shall be closed to public use but remain open in accordance with its condition and use for the access of the private parties involved.

(4) If a county road has been discontinued under the provisions of KRS 178.070, then by a joint petition of all private parties entitled to necessary access the road shall be closed to public use but remain open in accordance with its condition and use for the access of the private parties involved, or by a joint petition of all parties entitled to necessary access the road shall revert to the owner or owners of the tract or tracts of land to which it originally belonged.

(5) For the purposes of this chapter "necessary access" shall be construed to include access to any farm, tract of land, or dwelling, or to any portions of such farm, tract of land, or dwelling.

Purpose of Revision - The proposed revision would eliminate the words "or state" which should not be contained in this statute. The procedures for discontinuance of a state road are contained in Chapter 177.
178.117. Private improvement of public road in counties containing first-class city -- When permitted -- Procedure. -- (1) Any person or corporation, public or private, or any group of such persons or corporations or both residing in or owning property adjacent to any publicly dedicated road in unincorporated territory in a county containing a city of the first class desiring to make any improvements to the publicly dedicated road shall submit to the fiscal court for approval plans and specifications for its improvements at their own expense. Any such request for private improvement shall include all the information required by KRS 184.020 to accompany a request for the creation of a public road district pursuant to that section.

(2) The sponsors of the private improvement of the publicly dedicated road shall present their request, together with the attached maps and estimates of cost, to the fiscal court, who shall turn over to the county engineer for his consideration the maps and estimates of cost. In considering whether to permit the requested improvement, the fiscal court and the county engineer shall follow the same procedures provided for in KRS 184.040 and the same appellate rights provided for in these sections are available to the petitioners. When the county engineer receives from the fiscal court an application for approval of plans or specifications for the private improvement of publicly dedicated roads by some individual or corporation, or a combination thereof, the county engineer shall be authorized and empowered to examine, inspect and investigate, as seems to be advisable, the sufficiency of the improvements which the application seeks to serve the purposes intended, and to establish and make reasonable charges for such services on the basis of a schedule adjusted according to the services required to make such investigation or on any other reasonable method.

(3) When it appears to the county engineer that the completion of the improvement by or on behalf of any such individual or corporation requires inspection and supervision in order to assure the protection of the public safety and the proper subsequent completion of such work for the purposes intended, the county engineer shall include such findings in his recommendation to the fiscal court approving, modifying or disapproving the particular plans and projects, and shall charge such person or corporation for such inspection and supervision on the basis of the actual cost of inspection plus a reasonable additional cost of supervision.

No changes proposed.
178.120. Condemnation of land by fiscal court. -- Whenever the fiscal court of any county deems it to be in the best interest of the county to open, establish, construct, alter or repair any public road, street, alley, ditch or bridge of the county and the fiscal court is unable to contract with the owner of the land, required for such purpose, for its purchase or to acquire the same by gift, the land may be condemned under the procedure set forth in the Eminent Domain Act of Kentucky.

No changes proposed.
178.125. Condemnation of additional land adjacent to existing road -- Procedure. -- (1) Whenever the fiscal court of any county deems it to be in the best interest of the county to acquire additional land adjacent to an existing county road to provide for future widening and improvement of said road, and the fiscal court is unable to contract with the owners of the land required for such purposes for its purchase or to acquire the same by gift, the land may be condemned under the provisions set forth in the Eminent Domain Act of Kentucky.

(2) The resolution authorizing condemnation shall set forth the facts of the proposed acquisition, including a description of the land sought to be acquired, which description may be stated in widths from the existing centerline of the road proposed to be improved. In condemnation for future improvement under this section it shall not be necessary for the county to have completed plans for actual construction; provided, the property owner is furnished with an accurate description of the property sought to be condemned. The right-of-way thus obtained shall be for reasonably foreseeable future construction and improvement in conformity with the existing grade of said road and with free access to adjacent property.

No changes proposed.
[178.140. — Awarding of contracts — Rejection of bids. — (1) All bids for the
collection or maintenance of county roads and bridges shall be received at the time
and place specified in the advertisement, and shall be opened publicly at the time of
awarding, and the amount of items comprising each bid shall be publicly announced.
(2) The contract shall be awarded to the lowest and best bidder, who shall
furnish satisfactory security in an amount equal to the amount of the contract in
question, to be approved by the county judge/executive of the county.
(3) The fiscal court may reserve twenty percent (20%) of the amount accruing
on the contract until the completion of the work and the approval thereof by the
county road engineer.
(4) The fiscal court may reject any and all bids, and may readvertise for and
receive bids. If satisfactory bids cannot be obtained, the fiscal court may have the
work done in the manner it deems best.

Purpose of Revision - The proposed revision would eliminate this section because
counties awarding of contracts is covered in KRS Chapter 45A.
Purpose of Revision - This section is obsolete. Its purpose has been replaced by rural and municipal aid funds.
178.155. Effect of lack of maintenance of road by county for fifteen years. -- Any road, except any road accepted as part of the county road system after July 1, 1914, which according to county records has not been maintained with county funds on a continuous basis for fifteen (15) years shall not be considered part of the county road system. Such roads shall not be maintained or improved with county funds thereafter unless the fiscal court has complied with the provisions of KRS 178.115.

No changes proposed.
178.170. Bonds for hard surface roads -- Issuance. -- (1) The fiscal court, after an election as provided in subsection (2), may issue and sell bonds for the purpose of constructing or reconstructing public roads and bridges. The bonds shall bear interest not to exceed five percent (5%) per annum, with coupons attached, payable semiannually, and shall be in denominations of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). The bonds shall mature within forty (40) years, and may be redeemed within that time at the pleasure of the court, and shall be sold at not less that par value and accrued interest.

(2) Upon the petition of one hundred and fifty (150) legal voters who are freeholders of the county, the county judge/executive shall make an order on his order book directing an election to be held in the county on some day named in the petition, but not earlier that sixty (60) days after the application is received by the judge. The order shall direct the sheriff to advertise the election and its object by publication pursuant to KRS chapter 424 and also by printed handbills posted at not less than four (4) public places in each voting precinct in the county and at the courthouse door. The election shall be held under the general election laws. The question shall be: "Are you in favor of issuing...in bonds for the purpose of building roads and bridges?"

(3) All the money raised by the sale of bonds under this section shall be used solely for the construction of hard surface roads.

No changes proposed.
178.180. Commissioners may be appointed to handle proceeds of bonds. -- (1) The fiscal court of any county may select or appoint four (4) or more commissioners who are freeholders and legal voters and residents of the county, to act as a road commission in the handling of any funds derived from the sale of bonds authorized and voted by the county for the purpose of constructing and reconstructing roads and bridges. The commissioners shall be equally divided between the two (2) dominant political parties of the county.

(2) The commissioners shall each give a bond, approved by the county judge/executive. The commissioners shall be allowed a reasonable compensation for their services by the fiscal court, to be paid out of the county road fund.

(3) The commissioners shall be selected at least fifteen (15) days before the date of the election on the question of the bond issue, and their names shall be published pursuant to KRS chapter 424.

No changes proposed.
178.190. Duties of commissioners -- Supervision. -- (1) The duties of the commissioners in regard to the construction, reconstruction and designation of roads to be built with the proceeds of the bond issue, shall be the same as those now exercised by the fiscal court.  

(2) If the county receives financial aid from the state in regard to the construction, reconstruction, or designation of roads, the department of highways may elect to supervise the commissioners [., the commissioners shall act under the supervision of the department of highways].

Purpose of Revision - The proposed revision reflects the fact that some counties have sufficient engineering staff to oversee their projects. They do not require the department to provide construction supervision.
178.200. Tax levy to retire bonds and pay interest. -- (1) If bonds are sold to enable the fiscal court to construct roads and bridges, the fiscal court shall levy a tax of not over twenty cents (20¢) on the one hundred dollars ($100) of the assessed valuation of the county. The tax shall be collected as other county taxes and allocated, first, to the payment of the interest on the bonds, and the balance placed to the credit of a sinking fund for the redemption of the bonds.

(2) Any accumulation in the sinking fund may be loaned by the fiscal court on first mortgage real estate security, on the basis of fifty percent (50%) of its value, at the legal rate of interest, which shall accrue to the sinking fund, but before the loan is made all titles shall be looked up and papers approved by the county attorney.

(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of this section for levies which were approved prior to December 16, 1965 shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.

(4) Notwithstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.

No changes proposed.
178.210. Special tax for construction of roads -- Submission to vote -- Short-term bonds. -- (1) The fiscal court of any county may submit to the voters at a special election to be held for that purpose, the question of voting a tax of any sum not exceeding twenty cents (20¢) on the hundred dollars ($100) on all property subject by law to local taxation for the construction of the public roads and bridges of the county, as the fiscal court directs. The order of the fiscal court calling the election shall specify the amount of the tax to be levied each year and the number of years for which the tax may be imposed, not exceeding ten (10) years, and shall also provide that no money in excess of the amount that can be raised by the levy in any one (1) year shall be expended in that year.

(2) The fiscal court may borrow money and issue bonds therefor in advance of the collection of the tax for any year, but the amount borrowed shall not exceed eighty percent (80%) of the estimated tax for the year. The amount of the tax shall be estimated according to the assessment and collection of the preceding year. Any money so borrowed shall be paid out of the money raised form the tax in the year in which the money is borrowed.

(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of the section for levies which were approved prior to December 16, 1965 shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.

(4) Not withstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.

No changes proposed.
178.220. Vote on special tax -- Form of question. -- (1) The question submitted to the voters shall be: "Are you in favor of a property tax of ........cents on each one hundred dollars' ($100) worth of property in the county, to be levied each year for........years, for the purpose of improving or constructing, either or both, the roads and bridges of the county?" The rate of taxation and the number of years for which the tax is to be levied shall be inserted in respective blank spaces, and two (2) small squares shall be placed opposite and on the right of the question, one (1) for votes for and one (1) for votes against the measure, designated respectively by the words "Yes" and "No".

(2) If a majority of those voting upon this proposition are in favor of it, then it as soon as the result has been ascertained and certified, the fiscal court shall make provision for the road and bridge work contemplated.

No changes proposed.
178.230. Collection of special tax -- Sheriff's fee. -- The sheriff shall collect the taxes at the same time and in the same manner the he collects other taxes and shall pay the proceeds over as the fiscal court directs. For the collection of the tax levied under KRS 178.210 to 178.240, the sheriff shall be entitled to a commission of one percent (1%) of the amount collected.

No changes proposed.
178.240. Advertisement of special tax election -- Conduct of election. --
(1) The fiscal court shall direct the sheriff to advertise the time and purpose of the election and the amount of tax to be levied each year. The advertisement shall be published pursuant to KRS chapter 424.
(2) The election shall be held under the general election laws.

No changes proposed.
178.250. Joint bridges and roads between counties. -- (1) When it is necessary to build or repair any bridge across any stream on the line between two (2) counties, or to construct or repair any road between two (2) counties, or along the boundary line thereof, the fiscal courts of the counties may enter into such agreement therefor as they find best, but if they disagree, the fiscal court of each county shall appoint two (2) special commissioners who, together with the county road engineer of each county and a representative of the transportation cabinet [department of highways], shall meet and arrange the matter.

(2) The fiscal court of each county interested shall notify the transportation cabinet [department of highways] of the action taken and request its assistance in the matter and the decision reached by the committee thus appointed, acting jointly with the representative of the transportation cabinet [department of highways], shall be binding.

(3) If the fiscal court of any county, upon being requested to do so, fails to appoint commissioners, or if either court fails in any respect to fulfill its part of the agreement with respect to work, the remedy by mandamus shall lie before the circuit court of the county whose fiscal court is complained of on behalf of the fiscal court complained of to do what ought to be done in the matter.

Purpose of Revisions - The organization of the transportation cabinet includes both the department of highways and the department of rural and municipal aid. Some functions assigned to the department of highways in the current section fall under the purview of the department of rural and municipal aid. The proposed revisions would more accurately reflect the organization and function of the Transportation Cabinet.
178.260. Contracts for work on joint bridges and roads. -- If the fiscal courts decide to make the improvements, [the county road engineer of] each county [shall request the department of highways to furnish plans specifications and estimates of cost, in accordance with KRS 178.150, and] shall advertise for bids[,] as provided in KRS 178.050[,] and KRS Chapter 45A[,] in each of the counties, and the contract shall be awarded to the lowest responsible bidder who shall furnish satisfactory security to be approved by the county judge/executive of each county]. The fiscal courts, voting separately, shall approve the plans and specifications and shall jointly award the contract.

Purpose of Revisions - The proposed revisions provide compatibility with the proposed repeal of section 178.150.
178.270. Costs of joint roads and bridges. -- (1) The contract for the work shall specify the portion of the costs to be paid by each fiscal court, and each county shall be severally liable for its proportion. The cost of the work shall be borne in proportion to length of road or bridge in [the total assessed value of] each county.

(2) After the completion of the work, the improvement shall be maintained by the fiscal courts or other authorities of the counties or other political divisions joining in the improvements, who shall bear and pay the same proportion of the costs that they severally bore toward the cost of the original improvements.

Purpose of Revisions - The proposed revision would provide a more equitable proportioning of project costs.
178.290. Construction of sidewalks along public roads -- School bus turn-around areas. -- (1) Any person may build a sidewalk, composed of gravel, concrete or other suitable material, along the side of any public road in this state. [The sidewalk shall not exceed sixty (60) inches in width and the construction and repair of the sidewalk shall be without expense of any kind to any other person who may want to use it. All persons who desire shall be permitted to use the sidewalk, and it shall be so constructed as not to interfere with the traveling public on any public road. The fiscal court of any county may build and repair sidewalks along public roads where the need exists for the safety of school children. Before the beginning of construction of the sidewalk, written approval must be obtained from the governmental agency having jurisdiction over the public road.]

(2) The fiscal court may, where needed, build and maintain suitable areas for the safe turning around of school buses.

Purpose of Revision - The proposed revision accommodates for the construction of wider sidewalks for instances when the current 60-inch width limitation proves inadequate.
178.300. Road passing over or obstructed by dam. -- (1) Where a county road passes over a dam, the owner or occupier of the dam shall keep such dam in good order and at least fourteen (14) feet wide at the top. He shall also keep in good order a bridge of like width over the pierhead, floodgates or any waste cut through or around the dam and shall erect and keep in good order a strong railing on both sides of such bridges or dam.

(2) Every owner of a dam built after 1914, which dam, or the race or ditch connected therewith, obstructs any county road by the backing of water or otherwise, shall whenever it is necessary for the safe and convenient crossing of the same, or the pond created thereby, build and keep in repair over the dam, pond, race or ditch, a bridge like that specified in subsection (1) of this section.

No changes proposed.
178.310. County roads taken for railroad purposes -- Correction of unsafe conditions. -- (1) The fiscal court of a county in which any county road or portion thereof is taken for railroad purposes may, upon petition of any party interested, served upon the railroad company as any other civil process, appoint a committee of three (3) to inquire whether the road or portion thereof is unsafe for travel by reason of the railroad, and whether an laceration of the old road or the construction of a new road is necessary.

(2) The committee shall examine the place where the danger is complained of, and shall give fifteen (15) days written notice to the persons making the complaint and the persons complained of, of an opportunity to be heard. After the hearing, the committee shall report its findings to the fiscal court, which may make an order concerning the matter.

(3) If the fiscal court orders any alteration or construction, and the railroad company fails to comply with the order, the fiscal court shall have the work done and may recover the cost from the railroad company, in the same manner that the cost of removing obstructions is recovered under KRS 179.280.

(4) This section shall not apply to street railways or to public roads located in incorporated cities which have control of their roads, streets and alleys, or to roads which have been constructed since the railroad.

No changes proposed.
178.320. Title to rights-of-way and records of discontinued roads to be filed in county clerk’s office. -- (1) The county road engineer shall turn over to the county clerk all documents of title to all rights-of-way, whether acquired by gift or condemnation, and all documents relating to discontinuations of public roads, including maps, plats and surveys.

(2) The county clerk shall keep on convenient file or in books prepared for that purpose a complete record of all such documents.

No changes proposed.
178.330. County through road system, establishment -- Effect (counties containing first-class city). -- (1) It is hereby declared that in counties containing a city of the first class a system of county through roads over which traffic can be routed or which can serve as major connecting links to state highways is a necessary and integral part of a unified system of highways, roads and streets needed for the movement of traffic. In such a system of county through roads is a proper and legitimate public function as an alternative to other authorizations or requirements.

(2) The fiscal court of a county containing a city of the first class, acting upon the basis of an engineering and traffic investigation by the county road engineer, may designate for purposes of construction, reconstruction, widening, relocation, repair, maintenance and improvement form among the public roads within the county certain roads proposed to constitute the "county through road system." County through roads may include (a) main traveled roads, (b) major roads connecting two (2) primary roads maintained by the state. County through roads shall not include roads on the state highway system.

(3) As soon as the proposed county through roads are designated as provided in subsection (2) of this section, the fiscal court shall cause such county through roads to be marked on a map to be deposited with the county road engineer and to be open to public inspection. Upon the filing of the map, the clerk of the fiscal court shall, in conformance with KRS 424.130 (1)(b), have published in a newspaper of bona fide general circulation within the county (a) a notice of the proposed adoption of a county through road system, (b) a description of roads or portions thereof proposed to be included, (c) notice of the date upon which the fiscal court will consider the adoption of the county through road system, and (d) notice that the map of the proposed county through road system is open to inspection in the office of the county road engineer.

(4) At any time before the adoption of the county through road system, any free holder of the county may file a petition with the county road engineer asking for any change in the designated county through roads, setting forth the reason for the proposed change. Any such petition shall be accompanied by a plat showing such proposed change. Any such petition shall be considered by the fiscal court at its meeting held on the date advertised in accordance with subsection (3) of this section. The fiscal court may accept or reject any such suggested changes in the proposed county through road system. The fiscal court may continue the consideration to a later meeting which must be advertised as provided in subsection (3) of this section. The roads which the fiscal court so designated by official resolution shall be conclusively established as the county through road system.

(5) Classifications or designations of a county through road system established by this section shall not affect or change classification or designations made by other sections of the Kentucky Revised Statutes such as "county roads," "main county roads," "rural and secondary roads," "turn-pikes," "city streets" or similar terms; except that when there is an irreconcilable conflict arising from the actual application of this section in a given instance and a designation or classification made in other sections of the Kentucky Revised Statutes, this section shall prevail. Nothing in KRS 178.020 to 178.040, 178.117, 178.330 to 178.337, 179.070 and 179.330 shall preclude the expenditure on the county through road system, including portions within cities, of state funds allocated for public highways under the provisions of KRS 179.410 and
179.415, or 177.320 to 177.369, or any other section of the Kentucky Revised Statutes in accordance with the provision of KRS 177.330, 177.340, or 179.440.

(6) The provisions of KRS 178.050 to 178.100 shall not apply to a county through road system established under KRS 178.330 to 178.337.

No changes proposed.
178.333. Addition of roads to through road system -- New roads, relocation. -- (1) The fiscal court of a county containing a city of the first class may, at any time, add other roads, or portions of roads, to the county through road system adopted in accordance with KRS 178.330. The fiscal court shall cause the proposed addition to be marked on a map to be deposited with the county road engineer and to be open to public inspection. The same procedure set forth in KRS 178.330 for the establishment of the county through road system shall be followed in the case of roads or portions of roads added thereto. Notice of the proposed addition to the system shall conform to KRS 424.130.(1)(b).

(2) The fiscal court of a county containing a city of the first class may establish a new road in compliance with the provision of KRS 178.115 to 178.125, or relocate a road in accordance with KRS 178.115, and at the same time add it to the county through road system, following the same procedure as is now set forth in KRS 178.330 and subsection (1) of this section, including notice in accordance with KRS 424.130(1)(b).

(3) The decisions of the fiscal court made in accordance with this section shall be final.

No changes proposed.
178.337. Removal of road from system -- When city streets in system. --

(1) After an engineering and traffic investigation and the receipt of recommendations by the county road engineer, a county through road or a portion thereof established as provided in KRS 178.330 may be detached from the county through road system. The fiscal court shall cause the proposed deletion to be marked on a map to be deposited with county road engineer and to be open to public inspection. The same procedure set forth in KRS 178.330 for the establishment of a county through road system shall be followed in the case of roads or portions of roads detached there-from. Notice of the proposed deletion from the system shall conform to KRS 424.130(1)(b). The fiscal court may in its discretion detach or retain the road as a part of the county through road system. The decisions of the fiscal court made in accordance with this section shall be final. Whenever any county through road has been added or detached from the county through road system in accordance with KRS 178.330 to 178.337, the county road engineer shall accordingly amend the map of the county through road system, which map shall at all times be available for public inspection in the office of the county road engineer. Nothing herein shall be construed as automatically deleting from the county through road system any portion of the system in territory which becomes incorporated as a city or which becomes annexed to a city.

(2) Nothing in this chapter shall be construed to take form the jurisdiction or control of the legislative body of any incorporated city, and road, bridge, landing or wharf, or any other thing exclusively under the jurisdiction or control of such city. Provided, however, that roads within a city of the first through sixth classes in a county through road system, in accordance with KRS 178.330 or 178.333, or both, with the agreement of the legislative body of said city.

(3) Nothing in this chapter shall prevent any fiscal court from acquiring land by gift for public purposes.

No changes proposed.
178.350. Application of KRS 178.350 to 178.385 limited to counties containing first-class city. -- The provisions of KRS 178.350 to 178.385 shall apply only in counties containing a city of the first class.

No changes proposed.
178.355. Procedure for ordering elimination of grade crossings or change of existing overhead or underpass structure crossing county road.—

(1) Whenever the fiscal court considers it reasonably necessary for the public safety, it may in the manner hereafter provided, order any railroad company, either steam or electric, owning or operating a railroad in its county, to eliminate any existing grade crossing or change any existing overhead or underpass structure where any county road crosses the railroad track of such company.

(2) The fiscal court shall give at least ten (10) days' notice by certified mail, return receipt requested to the railroad company of a hearing to be held at the time and place stated in the notice, at which hearing it shall consider whether or not the proposed grade separation or change is reasonably necessary; the fiscal court shall receive evidence of, and shall consider, all relevant facts, including the present and prospective density of highway traffic and the present and prospective frequency and speed of train movements over the crossing, the adequacy of existing or proposed signals or warning devices for the protection of highway traffic at the grade crossing, the possibility and probability of personal injury to the public using the highway and to employees and passengers of the railroad company and damage to property, and the cost of the grade separation or change in relation to benefits resulting from the proposed construction. If the fiscal court finds that the grade separation or change is reasonably necessary, it shall make an order to that effect and furnish a copy thereof by certified mail, return receipt requested to the railroad company. The order shall specify a general plan for the new or changed grade separation. The order shall direct the railroad company to prepare plans, specifications and estimates of cost for the grade separation or change in accordance with the general plan prescribed by the order, or may provide that the plans, specifications and estimates of cost shall be prepared by the county if the grade separation structure shall pass over the railroad track. The plans, specifications and estimates of cost may, if requested by any public utility, provide facilities for such public utility.

(3) Within ninety (90) days after the entry of an order directing a grade separation or change, and the preparation of plans, specifications and estimates of cost by the railroad company, the railroad company shall present the fiscal court, plans specifications and estimates of cost for the grade separation or change, including the necessary approaches thereto.

(4) After receipt of the plans, specifications and estimates of cost form the railroad company the fiscal court shall give at least ten (10) days' notice by certified mail, return receipt requested to the railroad company of a time and place for final hearing with respect to the grade separation or change. If the fiscal court elects to prepare plans, specifications and estimates of cost, it shall furnish copies thereof to the railroad company prior to or at the time it gives notice of a final hearing. At the final hearing the fiscal court shall consider whether or not the plans make reasonably adequate provision for present and future safety and efficiency of operation of trains of the railroad company, its employees and passengers, and for the development of highway and railroad facilities, and shall approve or modify the plans and specifications. It shall then consider and determine the method of doing the work, whether by the railroad company or by the county, or partly by one and partly by the other, and whether by contract or by the employees of the county or the railroad
company, or both, or by any combination of these methods, and if by contract, the method and manner of advertising for bids, the time and place of opening the bids, the time when work shall be begun and completed, and all similar matters of an administrative nature. The fiscal court shall embody its conclusions in a final order, a copy of which shall be sent by certified mail, return receipt requested to the railroad company.

(5) The fiscal court may reject or order the rejection of all bids submitted for the work, or any part thereof, and require a readvertisement for bids. The fiscal court may reject all bids and elect to do the work itself, or partly by itself and by the railroad company, or by contractors, or by a combination of these methods. If the work includes a structure to support the railroad track, the railroad company shall have the right to supervise the construction of that part of the work. If the fiscal court elects to do the work itself there shall not be charged to the railroad company any sum in excess of that it would have been required to pay had the contract been let to the lowest bidder.

(6) In all cases where the work is let by the railroad company on contract, the work shall be done under the general supervision of the county road engineer.

(7) The cost of all work incident to or occasioned by the elimination of the grade crossing and the construction of a substituted crossing, or the reconstruction of an existing overhead or underpass structure, including without limitation of the generality of the foregoing, the cost of preparing plans and specifications, the cost of acquisition of necessary property and property damage, if any, the construction of approaches, drainage structures, and streets and pavements, shall be paid in the proportion of fifteen percent (15%) by the railroad company and eighty-five percent (85%) by the county.

(8) As the work progresses the fiscal court shall furnish to the railroad company, and the railroad company shall furnish to the fiscal court, a monthly statement showing in detail all amounts expended in connection with the work. On or about the fifteenth of each month, the county road engineer shall prepare a statement showing the total amount expended to the close of the preceding month, the amounts paid or expended by each party up to the time, and the amount due form the county to the railroad company or from the railroad company to the county. Upon receipt of the statement each party shall pay to the other the amounts shown to be due thereby.

(9) All payments made on such monthly statements shall be considered only payments on account, and upon final completion of the work the county road engineer shall prepare and furnish to the railroad company a statement showing the total cost of the work, the amount paid or expended by the county or the railroad company, and the amount due from one to the other. Each party shall be afforded reasonable opportunities to verify the statements of expenditures by the other, and the balance due as certified by the county road engineer in his final statement shall be paid by one party to the other promptly upon receipt of such final statement.

(10) The fiscal court and any railroad company may agree by contract as to the method of eliminating any grade crossing or changing any existing overhead or underpass structure. In event of such agreement all notices, hearings and proceedings shall be deemed to have been waived, and the work of eliminating the
grade crossing or making the change shall be performed in accordance with the terms
of the contract, with the same effect as thought the work were being performed
pursuant to a final order of the fiscal court.

No changes proposed.
178.360. Grade separation of proposed railroad and county road crossings. -- (1) After June 19, 1952, if the fiscal court proposes to construct a new county road across an existing railroad, or a railroad company proposes to construct a new railroad across an existing county road, the party proposing such construction shall provide the other party with plans and specifications for its proposed construction, showing the location thereof, and, if the proposed crossing is to be separated, a general plan for such separation. The fiscal court shall give at least ten (10) days' notice of a hearing to be held at the time and place stated in the notice, at which hearing it shall consider whether the proposed crossing shall be approved and whether a grade separation is reasonably necessary for the present and future safety and convenience of highway traffic and present and future efficient operation of the railroad company's facilities and the safety of its employe and passengers, and in accordance with the standards prescribed for grade separations in KRS 178.355.

(2) If the fiscal court shall find that a grade separation is reasonable necessary at such proposed crossing, it shall approve, or provide for the submission and subsequent approval of, plan and specifications for the grade separation. The determinations of the fiscal court shall be by order, and its final determination shall be by final order, which shall fix the method of doing the work in the manner provided in subsection (4) of KRS 178.355, and which shall be served on the railroad company by certified mail, return receipt requested. If the fiscal court orders a grade separation at such proposed crossing, the entire cost of such separation shall be borne by the party proposing the crossing.

(3) The fiscal court and the railroad company may agree by contract as the method of constructing grade separations under this section and the distribution or allocation of cost thereof, under this section, and in such event, all notices, hearings and orders shall be deemed to have been waived, and the construction of the crossing shall be performed in accordance with the terms of the contract, with the same effect as thought the work was being performed pursuant to a final order of the fiscal court.

No changes proposed.
178.365. County road engineer to approve contracts. -- All contracts let by the railroad company under KRS 178.350 to 178.385 shall be submitted to and approved by the county road engineer.

No changes proposed.
178.370. Maintenance of roadway, sidewalks, bridge, structure and approaches. — After the construction of any grade separation under KRS 178.350 to 178.385, the county shall maintain the roadway paving and sidewalks. If the road crosses the railroad by an overhead bridge or elevated structure, the county shall maintain the bridge or structure and its approaches. If the road passes under the railroad tracks, the railroad company shall maintain the structure supporting its tracks, and its abutments.

No changes proposed.
178.375. Appeals to circuit court form final orders of fiscal court. --

(1) Any railroad company dissatisfied with a final order of the fiscal court directing the elimination of any existing grade crossing or change of existing overhead or underpass structure under KRS 178.355, or a final order in respect of a new crossing under KRS 178.360, may within twenty (20) days after receipt of the railroad company of a copy of the order, attested by the clerk of the fiscal court, file in the clerk's office of the circuit court of the county, together with a statement of the reasons why the order should not be enforced. On the filing of a copy of the order and the statement, the circuit clerk shall issue summons thereon in the same manner as summons is issued in equity actions in the circuit court. The trial of all appeals under this section shall be by a chancellor, and the evidence shall be taken by depositions or as the circuit court may direct.

(2) On the hearing of the appeal, the circuit court shall determine whether under the standards hereinbefore prescribed, a grade separation or change in an existing overhead or underpass structure is reasonably necessary for the public safety, whether the plans and specifications prescribed by such order make reasonably adequate provision for present and future safety and convenience of highway traffic and present and future safety of operation of trains of the railroad company, its employe and passengers, and for the future development of highway and railroad facilities.

(3) Upon submission of the case, the circuit court shall embody its findings and conclusions of law in a final judgment, which may enjoin the fiscal court form enforcing its order, or direct the railroad company to proceed with the work in accordance with the order of the fiscal court, or in accordance with other plans and specifications prescribed by the court, or direct the fiscal court to proceed with the work in accordance with plans and specifications prescribed by the court.

No changes proposed.
178.380. **Appeals to Court of Appeals.** -- Either the county or the railroad company dissatisfied with the final judgment of the circuit court may appeal to the Court of Appeals in accordance with the Rules of Civil Procedure.

*No changes proposed.*
178.385. Enforcement of order or judgment. -- If any railroad company fails to comply with any order of the fiscal court issued under authority of KRS 178.350 to 178.385 or with a final judgment of the circuit court or Court of Appeals, the county through its fiscal court may cause to be instituted in the circuit court of the county an action to compel compliance with the order by mandatory process of the court.

No changes proposed.
178.400. Definitions for KRS 178.405 to 178.425. -- As used in KRS 178.405 to 178.425, "general public" means any person in addition to an owner, agent, or tenant of property that abuts any road, street, or highway.

No changes proposed.
178.405. **Conditions requisite.** -- When any private road, street, or highway established prior to February 12, 1969 in an unincorporated area in a county containing a city of the first class has been used by the general public openly, continuously, and notoriously for a period of at least fifteen (15) years, it shall be implied that such road, street, or highway may be dedicated to public use; provided, that fifty-five percent (55%) of all property owners abutting the private road, street or highway sign a petition stating that they are willing to dedicate the road, street, or highway to public use.

*No changes proposed.*
178.410. Fiscal court determination. — Upon application by any person or corporation, public or private, the fiscal court shall determine whether the conditions of KRS 178.405 have been satisfied. If the court's determination is in the affirmative, it shall notify the county works department and other appropriate agencies or departments that the road, street, or highway has been dedicated to public use.

No changes proposed.
178.415. Fee simple title in county -- Minimum width. -- When the fiscal court has made a determination in accordance with the provisions of KRS 178.410 that the road, street, or highway has been dedicated to public use, the county shall have a fee simple title to the part of the road, street, or highway which the plat, filed in the office of the county clerk, indicates as being for street purposes. However, if the road, street, or highway is dedicated in accordance with the provisions of KRS 178.405, and a plat does not exist, then the fiscal court shall establish a fifty (50) foot minimum width as a condition precedent to dedication to public use.

*No changes proposed.*
178.420. Maintenance by county works department. -- The county works department shall maintain a road, street or highway which it has acquired pursuant to the provisions of KRS 178.405 to 178.425 in the same manner as it maintains any other county road.

No changes proposed.
178.425. Applicability to dead-end passways. -- The provisions of KRS 178.405 to 178.425 do not apply to any private road, street, or highway while it exists as a dead-end passway with less than four (4) lots that are not platted. At the time such passway is no longer a dead-end passway, the provisions of KRS 178.405 to 178.425 shall become applicable.

No changes proposed.
178.990. Penalties. -- (1) Any county road engineer who fails to comply with the provisions of KRS 178.050 shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each offense.

(2) Any county road engineer who makes a change in the location of a road without complying with the provisions of this chapter shall be fined no less than twenty-five dollars ($25.00).

(3) Any person who injures a sidewalk constructed under the provisions of KRS 178.290 and fails to repair or replace the sidewalk shall be fined not less than four dollars ($4.00) nor more than fifty dollars ($50.00).

(4) Any owner or occupier of a dam who fails to comply with the provisions of KRS 178.300 shall be fined two dollars ($2.00) for every twenty-four (24) hours of noncompliance. Where a milldam is carried away or destroyed, the owner or occupier shall not be subject to the fine until one (1) month after the mill has been put in operation.

(5) If a fiscal court or county judge/executive wilfully fails to perform any duty required of it by the provisions of this chapter, except KRS 178.170 and 178.210 to 178.240, every member of such court concuring in the failure shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100) by the circuit court of the county.

(6) All fines imposed by this chapter shall be paid into the county road fund, except that in the case of privately owned road or bridge, the fines shall accrue to the owner.

(7) No fines imposed by this chapter shall bar action for damages for breach of contract.

Purpose of Revisions - The proposed revisions are consistent with the changes proposed in KRS 178.060 and 178.060.