



Post Office Box 1070
Frankfort, Kentucky 40602
502-875-2428
ashley@kyrc.org
audrey@kyrc.org
www.kyrc.org

Mr. Chairman, members of the committee, my name is Audrey Ernstberger, and I am a staff attorney with the Kentucky Resources Council. The Council, as many of you know, is a nonprofit Kentucky organization providing legal and technical assistance without charge to citizens and community groups on a range of environmental and energy related issues.

I appreciate this opportunity to appear before you in opposition to one aspect of the bill. I've shared the concern with Representative Bowling regarding Section 3 of the bill, which would selectively override the ability of local communities both with and without planning and zoning, to reasonable regulate asset mining operations for off-site noise impacts.

The first concern is the lack of limitations on size or noise levels for "home digital asset mining," and the possibility that the Section could be read to override local ordinances regarding nuisance activities in counties without planning and zoning.

Section 3(1) of the bill provides that:

"Home digital asset mining shall be allowed when: (a) Compliant with the most lenient noise pollution local ordinance for a residential zoning designation; or 8 (b) There is no local ordinance regarding zoning."

HB 741 Section 1 defines "home digital asset mining" as digital asset mining occurring in an area zoned for residential use. This definition is inconsistent with Section 3(1), since "home digital asset mining" is defined as that activity occurring in a residentially zoned area while Section 3(1) provides that it shall be allowed in areas where there is no zoning.

If you have ever read any of the news reports regarding local noise impacts from digital mining operations, which employ trailers full of computer equipment and emit audible noises that can be very disruptive of other land uses, you would share our concern first, that the determination of when and whether such a use is comparable with a residential zoning designation is a matter for local government, and not one to be selectively mandated by the General Assembly. These activities are problematic in residential areas, and the lack of any upper bound on the size, scale, and noise generation allowed under this bill is of real concern.

Also, by stating that such use shall be allowed in residential areas provided it meets the least restrictive noise standards alone, the bill could easily be read to provide that such uses

don't have to comply with all of the other standards applicable to developments in residential areas, including setbacks, height restrictions, historic overlays, etc.

Section 3(1) is problematic also for counties with no planning and zoning, since it mandates that digital asset mining is allowable anywhere in any county where there is no planning and zoning and does not provide for any local regulation for nuisance impacts on nearby land uses.

Section 3(2) is also problematic, since it provides that a digital asset mining business "shall be allowed when compliant with the most lenient noise pollution local ordinance for an industrial zoning designation," again removing from local determination what level of noise is appropriate for light, heavy, or other industrial classification, and mandating that the least rather than average or most protective of such noise standard apply.

Of similar concern is Section 3(3) which allows a change of zoning for home digital asset mining or a digital asset mining business by going through notice and comment established by the local government.

Changes in zoning require more than notice and comment. They require a demonstration that one of three criteria are met, and require an opportunity for a hearing, taking of evidence, cross-examination, and findings based on the record. The reference to "notice and comment" alone could be read to allow zoning changes to support digital asset mining without full compliance with applicable zoning requirements of the local government and Chapter 100.

Finally, Section 3(3)(b) provides that on judicial review, a decision regarding a change in zoning could be reversed on a finding that the change "occurred to discriminate against the home digital asset mining or a digital asset mining business."

Respectfully, it is the changes to existing law that are proposed in Section 3 that are discriminatory – they favor the conducting of digital asset mining over other land uses, and would override the ability of local communities to determine how best to integrate this type of land use into other residential, commercial, or industrial uses in order to best protect the opportunity of all residents to use their own properties to maximum benefit without adversely affect that concomitant right of their neighbors.