

CHAPTER 196

(HB 513)

AN ACT relating to the provision of wastewater services.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) *"Privately owned small wastewater treatment plant" or "plant" means all or any part of a sewage treatment facility, including the collection system that:*
 - (a) *Is designed to intercept, transport, and treat sewage before discharging it into the environment;*
 - (b) *Is not operated by a local government, special district, or governmental entity, including but not limited to a city, county, charter county, urban-county government, consolidated local government, unified local government, or board or commission operating under KRS Chapters 65, 67, 74, 76, or 220;*
 - (c) *Is not an industrial wastewater treatment plant;*
 - (d) *Is not a system designed to serve an individual household;*
 - (e) *Is not an agricultural operation; and*
 - (f) *Serves a localized customer base such as neighborhoods, developments, apartment or condominium complexes, businesses, or manufactured housing or mobile home parks; and*
- (2) *"Sewage" means the water-carried human or animal wastes from residences, buildings, or other places, together with industrial wastes or underground, surface, storm or other water as may be present.*

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A regarding the issuance or the renewal of a discharge permit under KRS 224.10-100 to an owner of a privately owned small wastewater treatment plant that require a plant's owner to:

- (1) *Obtain and maintain a contract for insurance, or a financial instrument such as a letter of credit, for:*
 - (a) *Fire and extended coverage in an amount deemed sufficient by the cabinet to fully replace the plant or otherwise restore service to the customers served by the plant in the event the plant becomes nonfunctional due to risks such as fire or other natural disasters; and*
 - (b) *Commercial general liability coverage and products and completed operations coverage in an amount deemed sufficient by the cabinet to address potential general liabilities or products and completed operations liabilities;*
- (2) *Implement an asset management plan, the requirements of which shall be developed by the cabinet using nationally known or recognized best practices, methodologies, and guidelines;*
- (3) *Maintain adequate revenue to ensure continuity of service and the ability of the owner to:*
 - (a) *Operate and maintain the plant in a manner to meet all applicable state and federal laws during operation; and*
 - (b) *Implement the asset management plan designated for the plant; and*
- (4) *Conduct a structural analysis of the plant, as necessary.*

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 73 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet may seek to have a receiver appointed to assume the management and operation of a privately owned small wastewater treatment plant if the plant:*

- (a) *Presents a threat or likely threat to the public health or the environment;*
 - (b) *Is in substantial and recurring noncompliance with its discharge permit as issued by the cabinet; or*
 - (c) *The owner is unable or unwilling to operate or to provide for the proper operation of the plant.*
- (2) *If the cabinet, after following the procedures and conducting a hearing in accordance with KRS 224.10-410 or 224.10-420 and the administrative regulations promulgated thereunder, enters an order in which it finds that a plant meets any of the conditions of subsection (1) of this section, and after notification to the Public Service Commission if the plant is a utility as defined in KRS 278.010(3)(f), the cabinet may bring an action in the Franklin Circuit Court for an order attaching the assets of the plant and placing those assets under the sole control and responsibility of a receiver.*
- (3) *Within twenty (20) days after commencing an action in Franklin Circuit Court, the cabinet shall file a certified copy of the record of the administrative proceeding in which the secretary of the cabinet entered his or her findings.*
- (4) *During the pendency of any receivership, the receiver may bring or defend any cause of action on behalf of the owner of the plant as the court may authorize, including an action to raise rates or institute surcharges as necessary to properly operate, maintain, restore, and rehabilitate the plant and to pay the costs, fees, and expenses of the receiver.*
- (5) *The receiver shall control and manage the assets and operations of the plant until the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver to return control of those assets to the plant's owner or to liquidate and transfer those assets as provided by law.*
- (6) (a) *Notwithstanding subsection (2) of this section, the cabinet, after notification to the Public Service Commission if the plant is a utility as defined in KRS 278.010(3)(f), may petition the Franklin Circuit Court to appoint a temporary receiver to operate and manage the assets of the plant meeting the conditions set out in subsection (1) of this section.*
- (b) *After notice to the owner of the plant, and after notification to the Public Service Commission if the plant is a utility as defined in KRS 278.010(3)(f), the court may grant a petition for the appointment of a temporary receiver, on terms and conditions as it deems appropriate, upon a showing by a preponderance of the evidence:*
1. *That the plant is an immediate threat to the public health, safety, or the environment;*
 2. *There is an immediate threat to the continued availability of service to the customers served by the plant; and*
 3. *That the delay required for the cabinet to follow the procedures and conduct a hearing in accordance with subsection (2) of this section would place the public health or safety, the environment, or continued wastewater treatment service at unnecessary risk.*

➔Section 4. KRS 65.240 is amended to read as follows:

- (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by KRS 65.210 to 65.300 upon a public agency.
- (2) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.
- (3) *Any public agency may enter into agreements with another public agency or agencies pursuant to KRS 65.210 to 65.300 to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of its municipal or jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.*

- (4) A state-supported institution of higher education and one (1) or more county or independent public school districts may enter into agreements under KRS 65.210 to 65.300 for the purposes specified in KRS 65.230, notwithstanding any other provision of the statutes restricting, qualifying or limiting their authority to do so.

➔Section 5. KRS 74.407 is amended to read as follows:

- (1) (a) In addition to the other authority which water districts presently have under this chapter, water districts are hereby authorized to acquire, develop, maintain, and operate sewage disposal systems within the confines of their respective districts *or as authorized in paragraph (b) of this subsection*, except that such sewer systems shall not include territory within the boundaries of existing municipal corporations having the authority to provide such sewer services without the consent of such municipal corporations.
- (b) *Water districts may enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the district's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.*
- (2) In the event of annexation of territory within a water district by another municipal corporation authorized to provide sewer systems and services, the water district may continue to provide and charge for sewer services within such newly annexed areas until such annexing municipal corporation makes adequate payment, by negotiation or condemnation, for such sewage disposal facilities owned and operated by the water district. The water district commissioners shall have all of the powers and authority, as regards sewer systems, that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.415.
- (3) If a water district that provides sewer services is also the water supplier, the water district may provide that rates for water service and sewer service be billed simultaneously and may enforce collection of lawful rates and charges for sewer services by discontinuing water service until payment of the delinquent charges, including penalties, interest, and reasonable fees for disconnection and reconnection, is made or some payment arrangement satisfactory to the water district is reached.
- (4) If a water district that provides sewer services is not the water supplier, the water district may enforce collection of delinquent sewer service charges in the manner provided in KRS 96.930 to 96.943.

➔Section 6. KRS 76.080 is amended to read as follows:

The district created under the provisions of KRS 76.010 to 76.210 is empowered:

- (1) To have jurisdiction, control, possession, and supervision of the existing sewer and drainage system of the city forming a district pursuant to KRS 76.010; to maintain, operate, reconstruct, and improve the same as a comprehensive sewer and drainage system; to make additions, betterments, and extensions thereto within the district area; and to have all the rights, privileges, and jurisdiction necessary or proper for carrying such powers into execution. No enumeration of powers in KRS 76.010 to 76.210 shall operate to restrict the meaning of this general grant of power or to exclude other powers comprehended within this general grant.
- (2) To prepare or cause to be prepared and to be thereafter revised and adopted, plans, designs, and estimates of costs, of a system of trunk, intercepting, connecting, lateral, and outlet sewers, storm water drains, pumping and ventilating stations, disposal and treatment plants and works, and all other appliances and structures which in the judgment of the board will provide an effective and advantageous means for relieving the district area from inadequate sanitary and storm water drainage and from inadequate sanitary disposal and treatment of the sewage thereof, or such sections or parts of such system of the district area as the board may from time to time deem proper or convenient to construct, consistent with the plans and purposes of KRS 76.010 to 76.210, and may take all steps the board deems proper and necessary to effect the purposes of KRS 76.010 to 76.210.
- (3) To construct any additions, betterments and extensions to the facilities of the district, within or without the district area, and to construct any construction subdistrict facilities or additions, betterments and extensions thereto, within or without the district area, by contract or under, through, or by means of its own officers, agents and employees. No construction or extensions shall be started within the city forming a district pursuant to KRS 76.010 until, firstly, the city's director of works, and secondly, its board of aldermen have approved the plans. No construction or extensions shall be started in any city with a population greater than three thousand (3,000) but less than one hundred thousand (100,000) based upon the most recent federal decennial census until the governing authorities of such city or cities have approved the plans. No construction or extensions shall be

started in any other part of the county until the plans have been approved, firstly, by the county engineer and, secondly, by the fiscal court.

- (4) To establish, construct, operate, and maintain, as a part of the sewer and drainage system of the district, sewage treatment and disposal plants and systems and all the appurtenances and appliances thereunto belonging. The sewage treatment and disposal plants may be located in the city, or beyond the limits of the city in the county in which the city is located, as the board deems expedient.
- (5) To acquire and hold the personal property the board deems necessary and proper for carrying out the corporate purposes of the district and to dispose of personal property when the district has no further need therefor.
- (6) To acquire by purchase, gift, lease, or by condemnation, real property or any interest, right, easement, or privilege therein, as the board determines necessary, proper and convenient for the corporate purposes of the district, and to use the same so long as its corporate existence continues, and same is necessary or useful for the corporate purposes of the district. Condemnation proceedings may be instituted in the name of the district pursuant to a resolution of the board declaring the necessity for the taking, and the method of condemnation shall be the same as provided in the Eminent Domain Act of Kentucky. When the board by resolution declares that any real property which it has acquired, or any interest therein, is no longer necessary or useful for the corporate purposes of the district, the real property and interest therein may be disposed of.
- (7) To make bylaws and agreements for the management and regulation of its affairs and for the regulation of the use of property under its control and for the establishment and collection of sewer rates, rentals and charges, which sewer rates, rentals and charges, applicable within the limits of a city forming a district pursuant to KRS 76.010, shall be subject to the approval, supervision and control of the legislative body of the city as hereinafter provided.
- (8) To make contracts and execute all instruments necessary or convenient in the premises.
- (9) To borrow money and to issue negotiable bonds and to provide for the rights of the holders thereof.
- (10) To fix and collect sewer rates, rentals, and other charges, for services rendered by the facilities of the district, which sewer rates, rentals, and other charges, applicable within the limits of a city forming a district pursuant to KRS 76.010, shall be subject to the approval, supervision and control of the legislative body of such city as hereinafter provided.
- (11) To enter on any lands, waters and premises for the purpose of making surveys, and soundings and examinations.
- (12) To approve or revise the plans and designs of all trunk, intercepting, connecting, lateral and outlet sewers, storm water drains, pumping and ventilating stations, disposal and treatment plants and works proposed to be constructed, altered or reconstructed by any other person or corporation, private or public, in the whole county, in order to insure that such proposed construction, alteration or reconstruction shall conform to and be a part of a comprehensive sewer and drainage system for the said county. No sewers, drains, pumping and ventilating stations, or disposal and treatment plants or works shall be constructed, altered or reconstructed without approval by the board of the district. Any such work shall be subject to inspection and supervision of the district.
- (13) ***To enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the district's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.***

➔Section 7. KRS 76.231 is amended to read as follows:

- (1) As an alternative to establishing a metropolitan sewer district pursuant to KRS 76.010, any city with a population equal to or greater than twenty thousand (20,000) but less than one hundred thousand (100,000) based upon the most recent federal decennial census, together with the county in which it is located, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county.
- (2) A joint sewer agency shall be established upon the enactment of identical ordinances establishing and setting out the powers of the agency by both the legislative body of the city and the fiscal court of the county.
- (3) All the powers granted a metropolitan sewer district in cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the sewer agency except that these powers may be restricted or qualified in order to conform to the local needs of the county and the city.

- (4) The legislative body of the city and the fiscal court of the county shall establish a schedule of rates, rentals and charges to be collected from all real property served by the facilities of the sewer agency in the manner provided by KRS 76.090. If the city, county, and sewer agency find that local needs warrant, uniformity of rates for all residential property shall not be required for a period of no more than ten (10) years from the date the sewer agency is established under subsection (2) of this section. If for whatever reason the city and county cannot agree to amendments to a rate schedule, the current schedule shall remain in effect until such time as an agreement can be reached.
- (5) For purposes of establishing a schedule of rates, rentals, and charges to be collected, the legislative body of the city and the fiscal court of the county may prescribe by joint ordinance for the creation of a rate adjustment board that shall be comprised of the members of both legislative bodies, sitting as a single body. Upon the creation of a rate adjustment board, a simple majority of the combined membership of the rate adjustment board shall be required to establish rates, rentals, and charges to be collected.
- (6) The joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator or joint board as set out in the establishing ordinances.
- (7) The joint sewer agency may be dissolved only by a joint action of the legislative body of the city and the fiscal court of the county. The establishing ordinance may be amended in the same manner as originally enacted.
- (8) The legislative body of any city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census may by ordinance elect to be within the jurisdiction of a joint sewer agency established pursuant to this section.
- (9) ***The joint sewer agency may enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the agency's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.***

➔Section 8. KRS 76.232 is amended to read as follows:

- (1) A city with a population less than twenty thousand (20,000) based upon the most recent federal decennial census together with the county in which it is located or together with the sanitation district, or any city with a population equal to or greater than twenty thousand (20,000) but less than one hundred thousand (100,000) based upon the most recent federal decennial census together with the county in which it is located or together with the sanitation district, as an alternative to establishing a metropolitan sewer district under KRS 76.010, may jointly establish a sewer agency for the purpose of providing sewer and drainage facilities within the city and the county or within the city and the sanitation district.
- (2) In order to establish a joint sewer agency under this section, the legislative body of the city, the fiscal court of the county, or the governing body of the sanitation district may vote to merge any existing agency or sanitation district or any portion thereof into the jointly established sewer agency or into an existing city or county sewer agency. If the legislative body of the city, fiscal court of the county, or governing body of the sanitation district determines to merge an existing agency or sanitation district into the joint sewer agency, it shall determine a method to satisfy any legal obligations of the existing agency or sanitation district which might be affected.
- (3) A joint sewer agency shall be established upon the enactment of identical agreements establishing and setting out the powers of the sewer agency by all parties establishing the joint sewer agency. Any agreement enacted by a city or county shall be by ordinance. Any agreement enacted by a sanitation district shall be done in the same manner as any other official actions taken by the sanitation district.
- (4) All the powers granted a metropolitan sewer district and cities of the first class by KRS 76.010 to 76.279 may be granted by ordinance to the joint sewer agency except that such powers may be restricted or qualified in order to conform to the local needs of the county, city, and sanitation district.
- (5) The joint sewer agency shall be administered as a separate legal entity or by a jointly appointed administrator, joint board, or one of the merging entities, as set out in the ordinance creating the joint sewer agency.
- (6) The joint sewer agency may be dissolved only by adoption of an ordinance of the legislative body of the city and the fiscal court of the county. The ordinance creating the joint sewer agency shall be amended in the same manner as originally enacted.

- (7) The legislative body of any city with a population of less than twenty thousand (20,000) based upon the most recent federal decennial census may by ordinance elect to be within the jurisdiction of a joint sewer agency established pursuant to this section.
- (8) ***The joint sewer agency may enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the agency's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.***

➔Section 9. KRS 76.325 is amended to read as follows:

The powers of the commission shall be:

- (1) To construct, operate and maintain a sewerage and/or drainage system and sewers and drains within the boundaries of the sewer construction district, or to contract with a metropolitan sewer district for such construction, operation and/or maintenance;
- (2) To provide for disposition of the sewage and/or drainage, and for treatment of sewage, either through its own facilities or by contract with the metropolitan sewer district;
- (3) To clean out, straighten, alter, deepen, fill up or otherwise improve any stream, watercourse receiving sewage, liquid wastes or drainage, located in or out of the district;
- (4) To construct, operate and maintain trunk sewers, intercepting sewers, laterals, siphons, pumping stations, sewage treatment and disposal works necessary for the purposes of the district, through its own facilities or by contract with the metropolitan sewer district;
- (5) To hold, control, acquire by purchase, donation or condemnation any real or personal property necessary for location, construction, operation or maintenance of its works and improvements and easements for rights of way;
- (6) Upon completion of construction of any integral part of the sewer or drainage system, to contract for the operation and maintenance of its works and improvements or easements for rights of way;
- (7) Upon completion of construction of any integral part of the sewer or drainage system, to contract for the operation and maintenance of, and extensions to, such part of the system, with the metropolitan sewer district on a service basis for the users, or, with the approval of the court, to have the territory in such part of the sewer construction district incorporated into the metropolitan sewer district for service as provided to other property within said metropolitan sewer district; ***and***
- (8) ***To enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the district's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.***

➔SECTION 10. A NEW SECTION OF KRS 220.010 TO 220.540 IS CREATED TO READ AS FOLLOWS:

A sanitation district may enter into agreements with another entity or entities to acquire by purchase or lease, any real or personal property, or any interest, right, easement, or privilege therein, outside of the district's jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or maintenance of any sewage, wastewater, or storm water facilities, notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, except as set forth in KRS Chapter 278.

Signed by Governor April 26, 2018.