

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:010. Public Restrooms.

RELATES TO: KRS 211.970, 211.990, 381.780 [~~211.180~~]

STATUTORY AUTHORITY: KRS 194A.050, 211.180, 318.160 [~~211.090, 211.990~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) requires[authorizes] the cabinet [for Human Resources] to regulate the sanitation of public restrooms. KRS 318.160 authorizes the cabinet to review all applications for construction, installation, or alteration when a sewage subsoil drainage system or other type of on-site sewage disposal system that does not have a surface discharge is used. This administrative regulation provides standards for public restrooms in order to protect the health of the public.

Section 1. Definitions. [~~The following definitions shall apply in the interpretation and enforcement of this administrative regulation:~~]

(1) "Cabinet" is defined by KRS 211.970(2).

(2) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a system installed on a parcel of land under the control or ownership of a person that accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit, distribution devices, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of:

1. A conventional system enhanced by shallow trench or bed placement;

2. Artificial drainage systems;

3. Dosing;

4. Alternating lateral fields;

5. Fill soil over the lateral field; or

6. Other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of:

1. A sewage pretreatment unit;

2. Necessary site modifications;

3. Wasteload modifications; and

4. A subsurface soil treatment and dispersal system using methods and technologies other than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank that provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system or connection to a municipal sewer.

(3) "Person" is defined by KRS 211.970(6).

(4) [~~means the Cabinet for Human Resources and the local health department having jurisdiction and their duly designated representatives.~~]

(2)] "Public restroom[~~rest room~~]" means a facility that provides toilet and hand-washing fa-

ilities for the general public.]

~~(3) "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system (or part thereof) and is designed and constructed so as to digest organic matter through a period of detention that allows the liquids to discharge into the soil outside the tank through a system of open joints or perforated piping, or a seepage pit].~~

Section 2. General Requirements for Public Restroom~~[Water Flushed Toilet]~~ Facilities. If public restroom~~[water flushed toilet]~~ facilities are provided for the accommodation of the public or patrons at public places:

(1) The floors shall be of smooth construction and relatively impervious to water.

(2) The walls and ceilings shall:

(a) Have a smooth washable surface;

(b) ~~[and shall]~~ Be painted or finished in light color; and

(c) ~~[shall]~~ Be maintained in good condition.

(3) All openings shall be effectively screened against flies and other insects.

(4) All doors shall be self-closing.

(5) The plumbing installations shall comply with 815 KAR Chapter 20~~[the state plumbing code]~~.

(6) All wastes resulting from ~~[flush]~~ toilets, lavatories, or other fixtures shall be disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Energy and Environment Cabinet or Cabinet for Health and Family Services~~[Natural Resources and Environmental Protection Cabinet]~~.

(7) An adequate supply of toilet tissue shall be provided at each restroom~~[toilet]~~ facility at all times.

(8) The rooms shall be adequately lighted and ventilated.

(9) If drinking water is provided, it shall be from a source approved by the Energy and Environment~~[Natural Resources and Environmental Protection]~~ Cabinet.

(10) If drinking fountains are provided, they shall be installed in accordance with 815 KAR Chapter 20 and~~[to the state plumbing code and shall be]~~ maintained in a sanitary manner.

(11) The use of a~~[the]~~ common drinking cup is prohibited.

(12) Hand-washing facilities, including running water, soap, and individual cloth or paper towels, or other method for drying hands approved by the cabinet, shall be provided.

(13) The use of a~~[the]~~ common towel is prohibited.

(14) All trash or refuse shall be kept in nonabsorbent containers and removed from the premises as frequently as necessary to prevent an unsanitary condition from developing. A covered waste container shall be provided in each women's restroom~~[toilet]~~ facility.

(15) The rooms, including all fixtures ~~[therein]~~, shall be kept clean, in good repair, and free from dust, dirt, insects, and other contaminating material.

Section 3. [Earth Pit] Privies. (1) Outdoor toilets or privies~~[(earth pit privies)]~~ not connected to a public sewerage system or on-site system~~[septic tank]~~ shall be prohibited within the boundaries of cities of the first or second class as provided by KRS 381.780.

(2) In other areas, if water under pressure is not available, ~~[earth pit]~~ privies may be used for the accommodation of the public or patrons at a public place provided they comply with 902 KAR 10:081, 10:085, and the following requirements:

(a)~~[(4)]~~ Construction of ~~[pit]~~ privies:

1.~~[-~~

(a) The privy~~[pit]~~ shall not be located within 100 feet of any source of water supply;

~~2. [and shall have a capacity of not less than fifty (50) cubic feet and shall be not less than four and one-half (1/2) feet or more than six (6) feet deep, measured from the original ground surface.~~

~~(b) The pit shall be lined with curbing of sound lumber, concrete, or other material approved by the cabinet and extend to the full depth of the pit.~~

~~(c) The floor and seat riser shall be constructed of impervious material or tongue and groove lumber, and in a manner to exclude insects and rodents;~~

~~3.[-] The seat riser shall be so constructed and bonded with the floor as to prevent seepage through the riser onto the floor and the seat opening shall be elevated at least twenty (20) inches above floor level; and~~

~~4.[-~~

~~(d) The superstructure of the privy shall be constructed of substantial material fastened solidly to the floor.~~

~~(b)[(2)] Maintenance of [pit] privies:~~

~~1.[-(a)] The floor, seat, and other fixtures shall be kept in good repair and clean at all times;~~

~~2.[-(b)] An adequate supply of toilet tissue shall be provided; and~~

~~3.[-(c)] If the pit is filled to within eighteen (18) inches of the floor, the pit shall be cleaned or a new pit shall be constructed. Old pits shall be filled and mounded with earth.~~

~~(d) The privy shall be adequately ventilated.~~

(c) No person shall install a new or replace an existing on-site sewage disposal system if a publicly or privately owned treatment facility capable of treating the pollutants to be discharged is available pursuant to 902 KAR 10:085 Section 13(2)(a),(b) and 401 KAR 5:037 Section 2(5)(b).

STEVEN J. SLACK, MD, MBA, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the standards for the sanitation and construction of public restrooms, including outdoor toilets or privies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure public restrooms are provided in a safe and sanitary manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the sanitation of public restrooms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the sanitation of public restrooms as required by KRS 211.180(1)(c) by establishing the minimum standards for a public restroom and an outdoor toilet or privy.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the authorizing statutes and defined terms, removes the provisions for an earth pit type privy, and adds the prohibition against installing an on-site sewage system if a publicly or privately owned sewage treatment works is available.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure all public restrooms, including outdoor toilets and privies, continue to operate in a safe and sanitary manner.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for the sanitation of public restrooms as authorized by KRS 211.180; and provides for cabinet personnel to review construction plans as allowed by KRS 318.160.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in ensuring all public restrooms, including outdoor toilets and privies, are designed and constructed in a safe and sanitary manner as authorized by KRS 211.180.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public or private owned places of business offering restrooms to the general public, affects all other types of public restroom facilities, and affects all individuals utilizing public restrooms. This administrative regulation also affects all environmental management staff of the local health departments who conduct inspections of public restrooms or review construction plans.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Business entities who offer a restroom to the general public will need to be aware of the design and construction provisions in this administrative regulation. Local health department staff will also need to be aware of the provisions for public restrooms when an inspection is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs for complying with this administrative regulation cannot be determined. There would be a cost associated with any new construction that allows for a public restroom. There would also be a cost associated with any modification

or renovation to a facility that currently provides a public restroom.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the provisions of this administrative regulation, all public and private entities offering a public restroom can assure patrons of a safe and sanitary facility.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in initial costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds are the source of funding for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation equally affects all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts all local health departments conducting inspections and the Environmental Management Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.180, and 318.160.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The total costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs associated with this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):
Other Explanation: