

AN ACT relating to stream restoration and mitigation funds and making an appropriation therefor.

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

➔Section 1. KRS 150.255 is amended to read as follows:

- (1) Upon request of any state agency or any other entity, the department may contract with the agency or party to undertake any compensatory mitigation project, including, but not limited to, wetland or stream mitigation.
- (2) The department may establish and manage wetland or stream compensatory mitigation banks, the purpose of which shall be to restore, create, or enhance wetlands and streams as compensatory mitigation where a state agency or other party is required to provide compensatory mitigation, and where the use of banked mitigation is approved by the agency requiring mitigation. The department may create the bank in advance of requests for banked mitigation credits.
- (3) There is established and created in the State Treasury the "Kentucky Wetland and Stream Mitigation Fund" for the purpose of restoring, creating, enhancing, or preserving the Commonwealth's wetlands or streams that may be damaged or destroyed due to any project, recovering costs associated with performing these projects, **funding infrastructure projects that preserve and enhance the aquatic resources of the Commonwealth,** and administering these programs. The fund shall be deemed a trust and agency fund account and made available solely for the purposes and benefits of the Kentucky wetland and stream mitigation projects, **including infrastructure projects.** The fund may receive state appropriations, gifts, grants, federal funds, revolving funds, and any other funds both public and private. Money deposited in the fund shall be disbursed by the State Treasurer upon the request of the commissioner with the approval of the commission. **Twenty-five percent (25%) of in-lieu fees contributed to the fund by permittees for compensatory mitigation projects shall be allocated solely for use on**

infrastructure projects that preserve or enhance the aquatic resources of the Commonwealth. Any unallocated or unencumbered balance in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments, along with the unallocated or unencumbered balance in the fund, shall not lapse.

(4) As used in this section, "infrastructure project" means the extension of sewer lines, the extension of water lines, improvements to existing sewer and water infrastructure, roadway improvements that incorporate green infrastructure, and repair and maintenance of regional storm water systems, natural features, and waterways.

➔Section 2. KRS 151.611 is amended to read as follows:

- (1) A Stream Restoration and Mitigation Authority may be established for any HUC 10 watershed in the Commonwealth. Each authority formed under this section shall be a public body corporate and politic with the authority to:
  - (a) Sue and be sued;
  - (b) Enter into contracts with public and private individuals and corporations and engage in cooperative agreements with federal, state, and local governments or agencies, utilities, special districts, and nonprofit organizations for the performance of its duties and functions under KRS 151.610 to 151.615;
  - (c) Employ personnel as needed, as its fiscal resources may allow, and use the services of volunteers individually or through agreement with governmental agencies, nonprofit organizations, or foundations;
  - (d) Receive and expend funds from any source, including but not limited to private donations, charitable contributions, public grants, 404 In-lieu Fee Program, and appropriations from the General Assembly; and
  - (e) Acquire, sell, and hold real interests in property.
- (2) Nothing in KRS 151.610 to 151.615 shall be construed to empower or authorize an

authority established under KRS 151.610 to 151.615 to exercise regulatory powers with respect to water resources or water quality. An authority established under KRS 151.610 to 151.615 shall not be vested with the power of eminent domain.

- (3) It is the preference of the General Assembly that funds contributed by a permittee under a Section 404 Permit into an in-lieu fund for a project designed for stream restoration and mitigation be utilized within the watershed where the adverse effects occur. The General Assembly recognizes that conservation and protection of the water resources of the Commonwealth, including streams, rivers, wetlands, and riparian habitats, may involve, in addition to restoration and enhancement of aquatic and riparian habitat, proper management of wastewater and stormwater, and abatement of pre-existing sources of pollution. **Therefore, each authority shall allocate twenty-five percent (25%) of moneys received into an in-lieu fund for use solely on infrastructure projects that preserve or enhance the aquatic resources of the Commonwealth.** Where an authority has been qualified by the USACE to manage an in-lieu fee or other compensatory mitigation arrangement that is approved after July 15, 2008, under Section 404, and to the extent that the USACE and the Mitigation Review Team has approved the use of such funds for elimination of pre-existing sources of pollution, the authority may expend **the remaining seventy-five percent (75%)**~~[a portion]~~ of the funds for **non-infrastructure projects**~~[those purposes]~~, provided that the:
- (a) Funds spent on water quality improvements are a component of a stream or wetland restoration plan for replacement of aquatic resource functions and values; and
  - (b) Project has been reviewed and approved by the USACE and the Division of Water as being consistent with Sections 404 and 401 of the Clean Water Act.
- (4) Nothing in KRS 151.610 to 151.615 shall preclude the authority, when acting as an approved qualified organization managing an in-lieu fee arrangement approved after

July 15, 2008, from combining funding from other sources with in-lieu fees in order to achieve efficiencies in stream restoration or mitigation.

**(5) As used in this section, "infrastructure project" means the extension of sewer lines, the extension of water lines, improvements to existing sewer and water infrastructure, roadway improvements that incorporate green infrastructure, and repair and maintenance of regional storm water systems, natural features, and waterways.**