

1 AN ACT relating to water resources.

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

3 ➔Section 1. KRS 151.100 is amended to read as follows:

4 As used in KRS 151.110 to 151.460 and 151.990~~], the words listed herein shall have the~~  
5 ~~following respective meanings, unless another or different meaning or intent shall be~~  
6 ~~clearly indicated by the context]:~~

- 7 (1) ~~{The word }~~"Authority" ***means***~~[shall mean]~~ the Water Resources Authority of  
8 Kentucky;
- 9 (2) ~~{The word }~~"Cabinet" ***means***~~[shall mean]~~ the Energy and Environment Cabinet;
- 10 (3) ~~{The word }~~"Stream" or "watercourse" ***means***~~[shall mean]~~ any river, creek or  
11 channel, having well defined banks, in which water flows for substantial periods of  
12 the year to drain a given area, or any lake or other body of water in the  
13 Commonwealth;
- 14 (4) ~~{The word }~~"Diffused surface water" ***means***~~[shall mean]~~ that water which comes  
15 from falling rain or melting snow or ice, and which is diffused over the surface of  
16 the ground, or which temporarily flows vagrantly upon or over the surface of the  
17 ground as the natural elevations and depressions of the surface of the earth may  
18 guide it, until such water reaches a stream or watercourse;
- 19 (5) ***"Groundwater"***~~{The word "Ground water" or "subterranean water"}~~ ***means***~~[shall~~  
20 ~~mean]~~ all water which fills the natural openings under the earth's surface, including  
21 all underground watercourses, artesian basins, reservoirs, lakes, and other bodies of  
22 water below the earth's surface;
- 23 (6) ~~{The word }~~"Floodway" ***means the channel of a river, stream, or other***  
24 ***watercourse and the adjacent land areas that must be reserved in order to***  
25 ***discharge the base flood without cumulatively increasing the water surface***  
26 ***elevation more than a designated height***~~[shall mean that area of a stream or~~  
27 ~~watercourse necessary to carry off flood water as determined by the secretary];~~

- 1 (7) ~~{The word }~~"Floodplain" **means**~~{shall mean}~~ the area in a watershed that is  
2 **susceptible to being inundated by floodwaters from any source**~~{subject to~~  
3 ~~inundation}~~;
- 4 (8) ~~{The word }~~"Watershed" **means**~~{shall mean}~~ all the area from which all drainage  
5 passes a given point downstream;
- 6 (9) ~~{The word }~~"Domestic use" **means**~~{shall mean}~~ the use of water for ordinary  
7 household purposes, and drinking water for poultry, livestock, and domestic  
8 animals;
- 9 (10) ~~{The word }~~"Water resources project" or "project" **means**~~{shall mean}~~ any structural  
10 or nonstructural study, plan, design, construction, development, improvement, or  
11 any other activity including programs for management, intended to conserve and  
12 develop the water resources of the Commonwealth and shall include all aspects of  
13 water supply, flood damage abatement, navigation, water-related recreation, and  
14 land conservation facilities and measures;
- 15 (11) ~~{The word }~~"Withdraw" or "withdrawal" of water **means**~~{shall mean}~~ the actual  
16 removal or taking of water from any stream, watercourse, or other body of public  
17 water;
- 18 (12) ~~{The word }~~"Dam" **means**~~{shall mean}~~ any artificial barrier, including appurtenant  
19 works, which does or can impound or divert water, and which either:
- 20 (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the  
21 stream or watercourse at the downstream toe of the barrier, as determined by  
22 the cabinet; or
- 23 (b) Has or will have an impounding capacity at maximum water storage elevation  
24 of fifty (50) acre-feet or more;
- 25 (13) "Embankment dam" **means**~~{shall mean}~~ any dam constructed of excavated natural  
26 materials or of industrial waste materials;
- 27 (14) "Gravity dam" **means**~~{shall mean}~~ a dam constructed of concrete or masonry that

1 relies on its weight for stability;

2 (15) ~~{The word }~~"Person" **means**~~{shall mean}~~ any individual, public or private  
3 corporation, political subdivision, government agency, municipality, copartnership,  
4 association, firm, trust, estate, or other entity whatsoever;

5 (16) "Secretary" **means**~~{shall mean}~~ the secretary of the Energy and Environment  
6 Cabinet;

7 (17) "Authorized representative" **means**~~{shall mean}~~ an individual specifically  
8 authorized by the secretary to act ~~on~~~~{in}~~ his **or her** behalf;

9 (18) ~~{The word }~~"Reservoir" **means**~~{shall mean}~~ any basin which contains or will  
10 contain the water impounded by a dam;

11 (19) "Owner" **means**~~{shall mean}~~ any person who owns an interest in, controls, or  
12 operates a dam; ~~{and}~~

13 (20) "Livestock" **means**~~{shall mean}~~ cattle, sheep, swine, goats, horses, alpacas, llamas,  
14 buffaloes, and any other animals of the bovine, ovine, porcine, caprine, equine, or  
15 camelid species; **and**

16 **(21) "Base flood" means the elevation of surface water resulting from a flood that has**  
17 **a one percent (1%) chance of equaling or exceeding that level in any given year.**

18 ➔Section 2. KRS 151.110 is amended to read as follows:

19 (1) (a) The conservation, development, and proper use of the water resources of the  
20 Commonwealth of Kentucky have become of vital importance as a result of  
21 population expansion and concentration, industrial growth, technological  
22 advances, and an ever increasing demand for water for varied domestic,  
23 agricultural, industrial, municipal, and recreational uses. It is recognized by  
24 the General Assembly that excessive rainfall during certain seasons of the  
25 year causes damage from overflowing streams. However, prolonged droughts  
26 at other seasons curtail **domestic**, industrial, municipal, agricultural, and  
27 recreational uses of water and seriously threaten the continued growth and

1 economic well-being of the Commonwealth. The advancement of the safety,  
2 happiness, and welfare of the people and the protection of property require  
3 that the power inherent in the people be utilized to promote and to regulate the  
4 conservation, development, and most beneficial use of the water resources. It  
5 is hereby declared that the general welfare requires that the water resources of  
6 the Commonwealth be put to the beneficial use to the fullest extent of which  
7 they are capable, that the waste or nonbeneficial use of water be prevented,  
8 and that the conservation and beneficial use of water be exercised in the  
9 interest of the people. Therefore, it is declared the policy of the  
10 Commonwealth to actively encourage and to provide financial, technical, or  
11 other support for projects that will manage~~[control and store]~~ our water  
12 resources in order that the continued growth and development of the  
13 Commonwealth might be ensured~~[assured]~~. To that end, it is declared to be  
14 the purpose of KRS Chapters 146, 149, 151, 224, 262, and KRS 350.029 and  
15 433.750 to 433.757 for the Commonwealth to permit, regulate, and participate  
16 in the construction or financing of facilities to store surplus surface water for  
17 future use; to conserve and develop the groundwater~~[ground water]~~ resources  
18 of the Commonwealth; to require local communities to develop long range  
19 water supply plans; to protect the rights of all persons equitably and  
20 reasonably interested in the use and availability of water; to prohibit the  
21 pollution of water resources and to maintain the normal flow of all streams so  
22 that the proper quantity and quality of water will be available at all times to  
23 the people of the Commonwealth; to provide for the adequate disposition of  
24 water among the people of the Commonwealth entitled to its use during  
25 severe droughts or times of emergency; to prevent harmful overflows and  
26 flooding; to regulate the construction, maintenance, and operation of all dams  
27 and other barriers of streams; to prevent the obstruction of streams and

1 floodways by the dumping of substances therein; to keep accurate records on  
2 the amount of water withdrawal from streams and watercourses and  
3 reasonably regulate the amount of withdrawal of public water; and to engage  
4 in other activities as may be necessary to conserve and develop the water  
5 resources of the Commonwealth of Kentucky, and to ensure adequate supply  
6 of water for domestic, agricultural, recreational, and economic development  
7 uses.

8 (b) The cabinet shall:

- 9 1. Provide leadership in water use efficiency for all water uses;
- 10 2. Promote conservation;
- 11 3. Offer technical assistance and conduct research;
- 12 4. Be the lead agency with other state and local agencies to incorporate  
13 conservation measures and incentives into their programs;
- 14 5. Sponsor "technology transfer sessions" on water conservation to  
15 commercial and industrial operations;
- 16 6. Provide leadership to communities looking for information and methods  
17 for coping with the issues of growth and water supply;
- 18 7. Provide recommendations and leadership for water resources, on-farm  
19 and rural community drought and water assessment, monitoring, and  
20 improvement for agricultural purposes; and
- 21 8. Have the authority to receive and disperse federal, state, and other funds  
22 for the purpose of water resources, on-farm and community drought and  
23 water assessment, monitoring, and improvements.

24 (c) Paragraph (b) of this subsection~~[(1)(b)]~~ shall not be construed as changing  
25 the relationship between the cabinet and the Kentucky River Authority and  
26 their respective responsibilities for oversight of the Kentucky River as set out  
27 in KRS 151.700 and 151.720.

1 (2) It is a finding of the General Assembly that groundwater is an important but  
2 vulnerable natural resource of this state, that the majority of rural Kentuckians rely  
3 exclusively on groundwater for drinking, and that groundwater is inextricably  
4 linked to surface waters which may also serve as a drinking water resource. It is  
5 also a finding that groundwater is a resource equally vital for agricultural,  
6 commercial, and industrial purposes and that useable groundwater is critical to the  
7 future development of these industries. Therefore, it shall be the policy of this state  
8 to manage groundwater for the health, welfare, and economic prosperity of all  
9 citizens.

10 ➔Section 3. KRS 151.112 is amended to read as follows:

11 (1) The cabinet shall develop a comprehensive and systematic planning process for the  
12 long-range management and orderly development of the Commonwealth's water  
13 resources. The planning process shall generate over each biennium a plan for the  
14 implementation of specific goals and management objectives for the cabinet to  
15 achieve in meeting the Commonwealth's water needs. The biennial plan shall serve  
16 as the basis for the cabinet's budgeting process in allocating resources to the state's  
17 water resource programs. The planning process shall be developed to:

18 (a) Protect, conserve, develop, and utilize the water resource in a manner  
19 consistent with the Commonwealth's duties for management of natural  
20 resources, the public's right to clean water, and the preservation of the natural,  
21 scenic, cultural, historic, and aesthetic values of the environment;

22 (b) Provide a coordinated framework for cooperation among federal, interstate,  
23 state, and local government agencies in the planning and management of  
24 water resources, in a manner consistent with KRS Chapter 147 and KRS  
25 224.10-100(13);

26 (c) Be both anticipatory of future needs and reactive to current needs~~[problems]~~;

27 (d) Provide for public involvement in the establishment of the comprehensive and

1 systematic planning process, in plan development and implementation, and  
 2 the allocation and prioritizing of resources for water resource management  
 3 and development;~~and~~

4 (e) Establish a process for the collection and coordination of data regarding  
 5 surface water and groundwater~~ground water~~ availability and quality,  
 6 including the presence of point and nonpoint sources of pollution, instream  
 7 flow information, withdrawal and use information, an assessment of flood  
 8 damage and storm water management problems, and an identification and  
 9 assessment of future data needs; and

10 (f) Request technical assistance from any agency or organization the cabinet  
 11 deems necessary to carry out its duties as established in this chapter.

12 (2) The continuous planning process shall include goals and objectives for  
 13 groundwater~~ground~~ and surface water quantity and quality management in order  
 14 to assess the effectiveness of current programs in addressing the comprehensive  
 15 water needs of the Commonwealth and to gauge the need for new or different  
 16 programs to recommend to the General Assembly for legislation.

17 ➔Section 4. KRS 151.116 is amended to read as follows:

18 The cabinet shall promulgate administrative regulations to carry out the program and  
 19 shall consult with the Cabinet for Economic Development and the Kentucky  
 20 Infrastructure Authority in developing those regulations. The administrative regulations  
 21 shall set out the details which are to be included in the water supply plans, the procedure  
 22 for counties and their municipalities and public water systems to apply for financial  
 23 assistance to pay for the plans, and the criteria and process by which the cabinet will  
 24 approve plans. The cabinet shall assemble all information in a uniform database available  
 25 to all agencies and concerned entities.

26 ➔Section 5. KRS 151.120 is amended to read as follows:

27 (1) Water occurring in any stream, lake, groundwater~~ground water, subterranean~~

1 ~~water~~ or other body of water in the Commonwealth which may be applied to any  
2 useful and beneficial purpose is hereby declared to be a natural resource and public  
3 water of the Commonwealth and subject to control or regulation for the public  
4 welfare as provided in KRS Chapters 146, 149, 151, 262 and 350.029 and 433.750  
5 to 433.757.

6 (2) Diffused surface water which flows vagrantly over the surface of the ground shall  
7 not be regarded as public water, and the owner of land on which such water falls or  
8 flows shall have the right to its use. Water left standing in natural pools in a natural  
9 stream when the natural flow of the stream has ceased, shall not be regarded as  
10 public water and the owners of land contiguous to that water shall have the rights to  
11 its use.

12 ➔Section 6. KRS 151.125 is amended to read as follows:

13 The secretary shall exercise the following authority and powers:

14 (1) ~~{To}~~Administer and enforce the provisions of this chapter and all rules and  
15 regulations and orders promulgated thereunder;

16 (2) ~~{To}~~Conduct or obtain investigations, research, experiments, training programs and  
17 demonstrations, and to collect and disseminate information relating to the safe  
18 construction, operation, or maintenance of dams and reservoirs;

19 (3) ~~{To}~~Adopt, after giving public notice and affording an opportunity to all interested  
20 persons to appear and offer evidence at a public hearing in connection therewith,  
21 general rules and *administrative* regulations for flood control and water resources,  
22 *and minimum standards for floodplain management, deemed*~~{ which he deems}~~  
23 necessary to accomplish the purposes of this chapter. Such rules and *administrative*  
24 regulations, which shall have the force and effect of law, shall be of uniform  
25 application as far as practicable, but they may take proper account of differences in  
26 topography, geology, soil conditions, climate, hydrology, and use of the reservoir  
27 and the lands lying in the floodplain downstream from the dam;

- 1 (4) ~~{To}~~ Adopt, *in accordance with KRS Chapter 13A* ~~{without notice or hearing}~~, rules  
2 and *administrative* regulations with respect to procedural aspects of hearings, the  
3 filing of reports and orders, the issuance of *inspection reports* ~~{certificates of~~  
4 ~~inspection}~~, construction permits, water withdrawal permits, and other procedural  
5 matters;
- 6 (5) ~~{To}~~ Issue orders requiring the adoption by an owner of remedial measures  
7 necessary for the safety of life, or public or private property, or for carrying out the  
8 provisions of this chapter, or rules and *administrative* regulations issued  
9 thereunder;
- 10 (6) ~~{To}~~ Examine and approve or disapprove applications for construction permits for  
11 the construction, enlargement, repair, or alteration of a dam;
- 12 (7) ~~{To}~~ Establish standards for the safe construction, enlargement, repair, alteration,  
13 maintenance, or operation of a dam or reservoir. Such standards shall be issued in  
14 the form of *administrative* regulations as described in subsection (3) of this section;
- 15 (8) ~~{To}~~ Make such investigations or inspections as necessary to determine the  
16 condition of a dam to *ensure* ~~{insure}~~ compliance with any provisions of this  
17 chapter, including the right to enter at any time upon an area affected for such  
18 purposes and the right of ingress and egress across intervening properties;
- 19 (9) ~~{To}~~ Order the suspension or revocation, after warning, of any *inspection*  
20 *report* ~~{certificate of inspection}~~, construction permit, or water withdrawal permit  
21 for failure to comply with any of the provisions of this chapter or with any rules,  
22 *administrative* regulations, or orders adopted pursuant thereto, or with any of the  
23 conditions contained in or attached to the *inspection report* ~~{certificate of~~  
24 ~~inspection}~~, construction permits, or water withdrawal permits;
- 25 (10) ~~{To}~~ Order the immediate cessation of any act that is started or continued without a  
26 construction permit or water withdrawal permit as required by ~~{the provisions of}~~  
27 this chapter; *and*

1 (11) To institute and prosecute all such court actions as may be necessary to obtain the  
2 enforcement of any order issued by the cabinet in carrying out the provisions of this  
3 chapter.

4 ➔Section 7. KRS 151.220 is amended to read as follows:

5 The cabinet shall:

- 6 (1) Undertake for and as the official agency of the state, such studies and prepare such  
7 reports and recommendations as may be necessary to establish a statewide program  
8 of flood control, ~~{(including major drainage)}~~, and a statewide program for the  
9 development of water resources;
- 10 (2) Study and review for the state as its official agency, all survey reports, engineering  
11 reports, and other reports concerning or affecting water related projects within the  
12 state which are proposed for construction by the federal government, the state  
13 government or any agency or subdivision thereof, or which will involve the  
14 expenditure of federal or state funds, and which might affect flood control or the  
15 development of water resources of the state, and to act as the official representative  
16 of the state in any representations, recommendations, or requests to Congress or the  
17 General Assembly concerning such projects or the priority which should be  
18 accorded them with relation to the statewide program;
- 19 (3) Make a continuous water resources study of data from other existing state or federal  
20 agencies and such other sources as may be available. From such studies, the cabinet  
21 shall formulate conclusions and recommendations for use by the Commonwealth in  
22 assuring the maximum beneficial use of the water resources of the Commonwealth;
- 23 (4) Cooperate with any local, state, or federal agency, or the agencies of any other state  
24 engaged or proposing to engage in any work which will affect or be affected by the  
25 functions of the cabinet and may lend to or receive from any such agency such  
26 financial assistance as may be necessary within the limits of authorized  
27 expenditure;

1 (5) Have, for flood control and water resources development purposes, jurisdiction over  
 2 all streams within or bordering upon the state. The cabinet shall have the authority  
 3 to establish and enforce floodways along such streams;

4 (6) Have authority to accept and use cooperative agreements, ~~gifts, contributions,~~  
 5 ~~donations and~~ grants, and other contributions; and

6 (7) Be the official state agency for determination of stream mileage.

7 ➔Section 8. KRS 151.250 is amended to read as follows:

8 (1) Notwithstanding any other provision of law, no person and no city, county, or other  
 9 political subdivision of the state, including levee districts, drainage districts, flood  
 10 control districts or systems, or similar bodies, shall commence the construction,  
 11 reconstruction, relocation, or improvement of any dam, embankment, levee, dike,  
 12 bridge, fill, or other obstruction, ~~[(except those constructed by the Kentucky~~  
 13 ~~Transportation Cabinet, [Department of Highways) across or along any stream, or]~~  
 14 in the floodplain or floodway of any stream, unless the plans and specifications for  
 15 such work have been:

16 (a) Submitted by the person or political subdivision responsible for the  
 17 construction, reconstruction, or improvement; ~~and [such plans and~~  
 18 ~~specifications have been]~~

19 (b) Approved in writing by the cabinet and a permit issued.

20 However, the cabinet by administrative regulation may exempt those dams,  
 21 embankments, or other obstructions which are not of such size or type as to require  
 22 approval by the cabinet in the interest of safety or retention of water supply.

23 (2) No person, city, county, or other political subdivision of the state shall commence  
 24 the filling of, or place a building, barrier, or obstruction of any sort in, any area in  
 25 the floodplain or floodway ~~[with earth, debris, or any other material, or raise the~~  
 26 ~~level of any area in any manner, or place a building, barrier or obstruction of any~~  
 27 ~~sort on any area located adjacent to a river or stream or in the floodway of the~~

1 ~~stream so that such filling, raising or obstruction will in any way affect the flow of~~  
 2 ~~water in the channel or in the floodway of the stream]~~ unless plans and  
 3 specifications for such work have been submitted to and approved by the cabinet  
 4 and a permit issued as required in subsection (1) above.

5 (3) Nothing in this section is intended to give the cabinet any jurisdiction or control  
 6 over the construction, reconstruction, improvement, enlargement, maintenance, or  
 7 operation of any drainage district, ditch, or system established for agricultural  
 8 purposes. **However, the cabinet may require approval prior to construction of**  
 9 **structures, dams, embankments, levees, bridges, fill, or other construction related**  
 10 **to agricultural operations that impact the base flood of a stream**, ~~or to require~~  
 11 ~~approval of the same except where such obstruction of the stream or floodway is~~  
 12 ~~determined by the cabinet to be a detriment or hindrance to the beneficial use of~~  
 13 ~~water resources in the area, and the person or political subdivision in control thereof~~  
 14 ~~so notified].~~

15 **(4)** The Department for Natural Resources through KRS Chapter 350 shall have  
 16 exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams,  
 17 levees, embankments, dikes, bridges, fills, or other obstructions across or along any  
 18 stream or in the floodway of any stream which structures are permitted under KRS  
 19 Chapter 350 for surface coal mining operations.

20 ➔Section 9. KRS 151.260 is amended to read as follows:

21 (1) All applications for permits required by KRS 151.250 shall be in the form and  
 22 manner prescribed by the cabinet.

23 (2) Unless waived by the cabinet, all plans and specifications submitted for approval  
 24 shall be drawn by an engineer, licensed to practice as a professional engineer under  
 25 the provisions of KRS Chapter 322.

26 (3) Upon receipt of all plans and specifications, the cabinet shall notify the applicant in  
 27 writing within twenty (20) working days **for a floodplain permit application, and**

1 within forty-five (45) working days for a dam permit application, either that the  
 2 permit will be issued or denied, or that certain modifications in the plans or  
 3 specifications must be made before a permit will be issued.

4 (4) The secretary may establish, by administrative regulation promulgated pursuant  
 5 to KRS Chapter 13A, a requirement for the owner of any dam classified by the  
 6 cabinet as high hazard, moderate hazard, or significant hazard to develop,  
 7 exercise, and maintain an emergency action plan certified by the owner of the  
 8 dam.

9 ➔Section 10. KRS 151.293 is amended to read as follows:

10 (1) Within sixty (60) days of completion of an on-site inspection of an existing dam,  
 11 the cabinet shall prepare an inspection report~~[may either grant a certificate of~~  
 12 ~~inspection, or deny the certificate of inspection]~~ and notify the owner in writing~~],~~  
 13 ~~stating the reasons for denial].~~

14 (2) ~~[In deciding whether or not a certificate of inspection should be issued, the cabinet~~  
 15 ~~shall take into account all pertinent facts and conditions, but shall not issue a~~  
 16 ~~certificate unless the following conditions have been met:~~

17 (a) ~~The proposed action in the judgment of the cabinet will be conducted in such a way~~  
 18 ~~that the safety of the public is adequately provided for;~~

19 (b) ~~All information requested by the cabinet has been provided; and~~

20 (c) ~~The changed flow of the stream or level of the reservoir will not significantly~~  
 21 ~~interfere with a beneficial use by other water users.~~

22 (3) ~~In granting a certificate of inspection, ]~~The cabinet may impose such conditions  
 23 relating to the inspection, operation, maintenance, alteration, repair, use, or control  
 24 of a dam or reservoir as it determines are necessary for the protection of public  
 25 health, safety, or welfare.

26 (3)~~(4)~~ The cabinet may establish hazard categories for dams based on downstream  
 27 floodplain use, size, or type of dam, or other criteria, and may impose different

1 conditions or types of conditions on the approval of dams or reservoirs in the  
2 different categories. The hazard categories in all cases shall be based only on the  
3 actual risk imposed by the dam.

4 ~~(4)~~<sup>(5)</sup> The cabinet may utilize the results and information provided by or for the  
5 United States Army Corps of Engineers pursuant to the provisions of **Pub. L.**  
6 **No.**~~[Public Law]~~ 92-367 if the information is not more than one (1) year old at the  
7 time of use.

8 ~~(5)~~<sup>(6)</sup> **Inspection reports**~~[Certificates of inspection]~~ shall be for a definite period of  
9 time, not to exceed five (5) years, as determined by the cabinet and stated on the  
10 **inspection report**~~[certificate]~~. In determining the period of inspection, the cabinet  
11 may take account of any circumstances pertinent to the situation, including, but not  
12 limited to, the size and type of dam, topography, geology, soil conditions,  
13 hydrology, climate, use of the reservoir, the lands lying in the floodplain  
14 downstream from the dam, and the hazard category of the dam.

15 ~~(6)~~<sup>(7)</sup> The cabinet may modify **an inspection report**~~[a certificate of inspection]~~ or  
16 the conditions attached to it. Such modification shall become effective ninety (90)  
17 days following issuance by the cabinet of a revised **inspection report**~~[certificate]~~,  
18 except when the cabinet finds that a state of emergency exists and that life or  
19 property would be endangered by delay. In case of an emergency declared by the  
20 cabinet, the new conditions shall be effective immediately.

21 ~~(7)~~<sup>(8)</sup> Specific guidelines for issuance and renewal of **an inspection**  
22 **report**~~[certificate of inspection]~~ for earth embankment dams shall be provided by  
23 administrative regulations which shall address at least the following areas:

24 (a) The hydraulic capacity requirements for each category of dam shall be  
25 provided. The probable maximum precipitation as determined by the **National**  
26 **Oceanic and Atmospheric Administration or another scientific evidence-**  
27 **based means**~~[United States Weather Service]~~ shall be used only where it can

- 1 be clearly demonstrated that failure of the dam by overtopping would result in  
2 greater loss of life than would occur if the dam did not exist and only for  
3 small watersheds, since such large rainfall events are not expected to occur  
4 over large areas. The cabinet shall provide a table of factors that reduce this  
5 rainfall appropriately for larger watersheds;
- 6 (b) Minimum criteria for the embankment stability of the dam, including  
7 consideration of such factors as steepness of slopes, strength of materials, and  
8 earthquake loadings shall be specified;
- 9 (c) Variance procedures for applicable hydraulic and stability considerations shall  
10 be included for, but not limited to, variances to hydraulic criteria where only a  
11 small number of persons are at risk and where a reliable, effective emergency  
12 preparedness system will be installed; where a risk analysis demonstrates that  
13 at rainfall levels less than that specified in the administrative regulation there  
14 is no risk that actually results from the dam; where an owner can demonstrate  
15 that the dam substantially conforms to the criteria in the administrative  
16 regulation; and, for dams that pose a risk of economic damages only, where  
17 the owner provides indemnification against potential damages;
- 18 (d) Before any variance is issued, the affected public shall be notified of the  
19 cabinet's intended action and allowed to make known any objections or  
20 concerns that it might have;
- 21 (e) Whenever the owner of a dam has requested a variance and the request has  
22 not been granted or has not been granted in the manner requested, the owner  
23 or aggrieved party may petition the cabinet to have the variance request  
24 reviewed and a final determination made by the cabinet. If not satisfied by the  
25 final determination of the cabinet, the party may seek administrative remedy  
26 from the cabinet under the provisions of KRS 151.182;
- 27 (f) Items of general maintenance of a dam and all its appurtenances shall

1 include provisions for at least the following: dams shall be mowed regularly;  
2 dams shall be free of trees and brush; animal burrows shall not be allowed on  
3 dams; slides, erosion and cracks that could pose problems to dams shall be  
4 properly repaired; action shall be taken to alleviate excessive wetness and  
5 abnormal seepage; appurtenances that are necessary for the proper operation  
6 and maintenance of the dam shall be kept in proper working condition;

7 (g) Provisions shall be made whereby the cabinet will allow for staged renovation  
8 of dams that do not meet the criteria of the administrative regulations and  
9 shall clearly identify the circumstances under which staging is allowable and  
10 set a maximum time limit that may be allowed for bringing the dam into  
11 compliance. Other provisions shall require the owner to develop and maintain  
12 an emergency action plan, to provide interim insurance, bonding or other  
13 indemnification, and on a frequent basis as specified by the cabinet, to inspect  
14 the dam and report to the cabinet the status of any facilities or conditions of  
15 concern; and

16 (h) If the cabinet has previously required a dam to be upgraded to meet a certain  
17 dam safety standard, it shall not require that the dam be upgraded again  
18 because of a change in the administrative regulation with regard to that same  
19 standard. However, if the owner proposes substantial construction on the dam  
20 or if the dam must be repaired due to indications of distress or to partial  
21 failure, the cabinet may require the owner to bring the dam into full  
22 compliance with current standards.

23 ~~(8)~~~~(9)~~ The cabinet shall establish guidelines on a case-by-case basis for gravity dams  
24 and other types of dams that are unusual to the Commonwealth, and shall follow  
25 recognized engineering practice.

26 ~~(9)~~~~(10)~~ Plans and specifications submitted to the cabinet shall be the responsibility of  
27 and signed by an engineer licensed by the Commonwealth and experienced in the

1 design and construction of dams, as determined by the cabinet.

2 ➔Section 11. KRS 151.310 is amended to read as follows:

3 No person, city, county, or other political subdivision of the state shall deposit or cause to  
4 be deposited any matter that will in any way restrict or disturb the flow of water in the  
5 channel or in the floodway of any stream except where a permit has been issued for  
6 construction under KRS 151.250, or to encroach on the reservoir area of any dam~~[~~  
7 ~~authorized by the Congress of the United States, or]~~ under the jurisdiction of the  
8 Commonwealth, or any of its political subdivisions.

9 ➔Section 12. KRS 151.600 is amended to read as follows:

- 10 (1) The **cabinet shall administer National Flood Insurance Program-related**  
11 **activities, by developing**~~[water resources authority shall develop]~~ a public  
12 information program for use by local units of government which will assist them in  
13 the development of **floodplain**~~[flood plain]~~ management and flood hazard  
14 mitigation programs. The **cabinet**~~[authority]~~ shall make the public information  
15 program available statewide and easily accessible.
- 16 (2) The public information program shall be designed to increase public awareness and  
17 community responsiveness toward **floodplain**~~[flood plain]~~ management and shall  
18 include, but not be restricted to, the following:
- 19 (a) **Floodplain**~~[Flood plain]~~ information training workshops for local officials  
20 and citizens;
- 21 (b) **Floodplain**~~[Flood plain]~~ information booklets describing **floodplain**~~[flood~~  
22 ~~plain]~~ management, including flood warnings, overall preparedness, flood  
23 insurance, and flood proofing of buildings; and
- 24 (c) Model **floodplain**~~[flood plain]~~ development ordinances for adoption by local  
25 governmental units.

26 ➔Section 13. The following KRS section is repealed:

27 151.230 Minimum standards for flood plain management to be set by administrative

1 regulation -- Local application and effect.