

1 AN ACT relating to stream and wetland mitigation.

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

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

4 (1) Upon request of any state agency or any other entity, the department may contract
5 with the agency or party to undertake any compensatory mitigation project,
6 including, but not limited to, wetland or stream mitigation.

7 (2) The department may establish and manage wetland or stream compensatory
8 mitigation banks, the purpose of which shall be to restore, create, or enhance
9 wetlands and streams as compensatory mitigation where a state agency or other
10 party is required to provide compensatory mitigation, and where the use of banked
11 mitigation is approved by the agency requiring mitigation. The department may
12 create the bank in advance of requests for banked mitigation credits.

13 (3) There is established and created in the State Treasury the "Kentucky Wetland and
14 Stream Mitigation Fund" for the purpose of restoring, creating, enhancing, or
15 preserving the Commonwealth's wetlands or streams that may be damaged or
16 destroyed due to any project, recovering costs associated with performing these
17 projects, and administering these programs. The fund shall be deemed a trust and
18 agency fund account and made available solely for the purposes and benefits of the
19 Kentucky wetland and stream mitigation projects. The fund may receive state
20 appropriations, gifts, grants, federal funds, revolving funds, and any other funds
21 both public and private. Money deposited in the fund shall be disbursed by the State
22 Treasurer upon the request of the commissioner with the approval of the
23 commission. Any unallocated or unencumbered balance in the fund shall be
24 invested as provided in KRS 42.500(9), and any income earned from the
25 investments, along with the unallocated or unencumbered balance in the fund, shall
26 not lapse.

27 **(4) The Kentucky Wetland Stream and Mitigation Fund shall make a report to the**

Legislative Research Commission by December 1 of each year that describes the in-lieu fee program, the balance of the fund, and the unsatisfied mitigation liability in the service areas of the Commonwealth.

➔Section 2. The Legislative Research Commission is hereby directed to establish the In-Lieu Fee Stream and Wetland Mitigation Task Force. The purpose of the task force is to analyze the In-Lieu Fee program operated by the Kentucky Department of Fish and Wildlife Resources under the current In-Lieu Fee Program Instrument.

(1) The analysis shall:

(a) Identify the current process for delivering compensatory mitigation and compare the process to other states with satisfactory performance records for satisfying compensatory mitigation liabilities;

(b) Identify impediments in the process of delivering mitigation in the In-Lieu Fee program and the consequences of having mitigation liabilities within service areas in the Commonwealth, including the impact of program termination and the issuance of new permits; and

(c) Determine ways to improve the delivery of required compensatory mitigation and satisfy unmitigated liabilities in service areas in the Commonwealth.

(2) The task force shall have the following members, with the final membership of the task force being subject to the consideration and approval of the Legislative Research Commission:

(a) Two members of the House of Representatives chosen by the Speaker of the House of Representatives, one of whom shall be designated as co-chair;

(b) One member of the House of Representatives chosen by the House Minority Floor Leader;

(c) Two members of the Senate chosen by the President of the Senate, one of whom shall be designated as co-chair;

(d) One member of the Senate chosen by the Senate Minority Floor Leader;

1 (e) The District Commander of the Louisville Army Corps of Engineers, or
2 designee;

3 (f) The executive director of the Kentucky Chamber of Commerce, or designee;

4 (g) The commissioner of the Kentucky Department of Fish and Wildlife
5 Resources, or designee;

6 (h) The executive director of the Kentucky Resources Council, or designee;

7 (i) One member submitted by the American Society of Civil Engineers
8 representing civil engineering firms with expertise in compensatory mitigation;

9 (j) One member submitted by the Kentucky Chamber of Commerce representing
10 active mitigation companies; and

11 (k) The president of the Kentucky Association of Counties or designee.

12 (2) The task force shall meet at least four times during the 2021 Interim and shall
13 submit its findings, legislative recommendations, or memorandum to the Legislative
14 Research Commission by November 30, 2021.

15 (3) Provisions of this section to the contrary notwithstanding, the Legislative
16 Research Commission shall have the authority to alternatively assign the issues identified
17 in this section to an interim joint committee or subcommittee thereof and to designate a
18 study completion date.

19 ➔Section 3. Section 2 of this Act shall have the same legal status as a Senate
20 Concurrent Resolution.