

DISTRICTS TO MAINTAIN AND OPERATE FLOOD CONTROL WORKS

A GUIDE FROM KLC MUNICIPAL LAW

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DISTRICTS TO MAINTAIN AND OPERATE FLOOD CONTROL WORKS

In order to play any game, you must first learn the rules. The same holds true for the law surrounding districts to maintain and operate flood control works. It is impossible to carry out the duties of districts to maintain and operate flood control works unless you familiarize yourself with the applicable state statutes, as well as your local ordinances, that govern.

Statutes are not contained in some magical spell book. There is no forbidden wisdom in a statutory code book. You do not need a law school education to understand their meaning. We wanted to remove some of the mystique from the law by compiling this simple pdf document. It contains the entire portion of Kentucky Revised Statutes which pertain to districts to maintain and operate flood control works.

Feel free to use this guide in any way that you deem fit. The reason we wanted to present this as a pdf though is because a pdf does have just a little bit of magic, truth be told. A pdf is word searchable. If you have the pdf on a laptop during a meeting and an issue comes up - you can plug the words in and hopefully the relevant portion of the law pertaining to districts to maintain and operate flood control works will pop up. Failing that, you can always call the KLC Municipal Law Department at 800.876.4552.

The KLC Municipal Law Team

104.450 Definitions for KRS 104.450 to 104.680

As used in KRS 104.450 to 104.680, unless the context otherwise requires:

- (1) “Secretary” means the secretary of the Energy and Environment Cabinet of the Commonwealth of Kentucky.
- (2) “Flood control work” means all land, pumping equipment, buildings, motor vehicles, mowing machines, or any other fixtures, tools or equipment a part of or used in connection with a floodwall or other construction designed to protect an area from being flooded.
- (3) “District” means a flood control district organized and created under the terms of KRS 104.450 to 104.680.
- (4) “Board” or “directors” means the board of directors of a flood control district organized and created under the terms of KRS 104.450 to 104.680.
- (5) “Director” means a person appointed as a member of the board of directors as provided in KRS 104.450 to 104.680.
- (6) “Person” means any person, firm, copartnership, association or corporation other than a public corporation.
- (7) “Public corporation” means any county, city, school district, water district or drainage district, and any other governmental agency or political subdivision clothed with the power of levying general or special taxes or issuing bonds payable from special funds.
- (8) “Land” or “property” means real property.

104.460 Power of secretary for energy and environment to establish districts

The secretary, in addition to his other duties and powers, is invested with jurisdiction, power and authority to establish flood control districts in accordance with the provisions of KRS 104.450 to 104.680.

104.470 Districts; when may be established; purpose; boundaries

A flood control district may be established for the purpose of maintaining and operating any flood control works heretofore or hereafter constructed in any city or county of the state. The boundaries of such a flood control district shall be the floodwall or levee and the contour line on the land back of the floodwall or levee of the same elevation as the elevation of the top of the floodwall or levee.

104.480 Petition for district; signature requirements

- (1) Before the secretary shall establish a flood control district, a petition shall be filed with the secretary, containing valid signatures of seventy percent (70%) of those in possession claiming as freeholders within the boundaries of the proposed flood control district. Each joint owner of property shall be counted as a separate freeholder.
- (2) In determining when seventy percent (70%) of the landowners have signed the petition the secretary shall consult with the landowners whose names appear upon the county tax duplicate, which for all purposes of KRS 104.450 to 104.680 shall be prima facie evidence of such ownership. The secretary

shall further require evidence to determine the fact that all signatures on the petition are genuine, and a notification by ordinary mail sent to the respective addresses shown on the petition shall establish the genuineness of a signature if the petitioner so notified fails to report in writing within ten (10) days that he did not sign the petition. When authorized by ordinance, such a petition may be signed by a majority of the governing body of any municipality lying wholly or partly within the proposed district. When so signed by a majority of such governing body the petition shall fill all requirements of representation on the part of the freeholders of the municipality as they appear upon the assessment roll of the municipality, and individuals within the municipality shall not sign the petition.

104.490 Contents of petition

The petition shall contain:

- (1) The proposed name of the district, which shall be "Flood Control District No..... of..... County, (or counties), Kentucky."
- (2) The necessity for maintaining and operating any flood control works of the district and that such maintenance and operation will be conducive to the public health, safety, comfort, convenience or welfare.
- (3) A general description of the flood control works to be maintained and operated and of the territory to be included in the proposed district. The description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient if a reasonably accurate description is given of the territory to be organized as a district by showing the boundaries of such district on a map or by other means. The territory may include one or more political subdivisions or portions thereof, and, except as provided in KRS 104.450 to 104.680, shall not be included wholly within the limits of a single municipality. The territory need not be contiguous if it is so situated that the public health, safety, comfort, convenience or welfare will be promoted by its organization as a single district.
- (4) A prayer for the organization of the district.

104.500 Amendment of petition; multiple petitions

No petition with the requisite number of valid signatures shall be declared void on account of alleged defects, but the secretary may at any time permit the petition to be amended in form and substance to conform to the facts, by correcting any errors in the description of the territory or in any other particular, but shall not add or deduct area except as provided in KRS 104.520. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one (1) petition. All such petitions filed shall be considered the same as though filed with the first petition placed on file.

104.510 Bond or deposit for costs

At the time of filing the petition, or at any time subsequent thereto and prior to the time of the giving of notice by the secretary, as provided in KRS 104.530, the petitioners shall either file bond with the secretary with security approved by him, or deposit cash or securities with him in an amount sufficient to pay the costs in the proceedings thereafter involved. If the secretary at any time during the proceedings is not satisfied that the bond or deposit is sufficient or that the surety on the bond is safe, he may require the execution of an additional bond or the giving of additional surety or an additional deposit within a time to be fixed not less than ten (10) days thereafter, and upon the failure of the petitioners to comply, the secretary may refuse to proceed further and may refuse to organize the district.

104.520 Boundaries of district; determination of; when cities with population of 8,000 or more may be included

- (1) When the petition is filed with the secretary, he shall investigate at once the boundary of the district proposed to be organized, and may, at the cost of the petitioners, cause to be made surveys necessary to establish with reasonable accuracy a boundary that will, in his judgment, accomplish the purpose sought by the creation of the district in a practicable and workable manner, and that will be sufficiently comprehensive to avoid confusion or interference with any other similar district then existing or that may be created. The boundary established by the secretary need not follow the boundary proposed by the petitioners, but if the boundary established by the secretary results in a material change from that proposed in the original petition the petitioners shall secure, in case of a larger or smaller area, the signatures of seventy percent (70%) of the freeholders or owners in the area as established by the secretary.
- (2) Should it be found desirable to include in a flood control district all or a portion of a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census, the governing body of such city shall determine by ordinance whether the city or portion thereof shall be included in the district, or whether the city shall bind itself to pay the taxes levied for the benefits of the district in such area.

104.530 Notice of application for creation of district

When seventy percent (70%) of those qualified within the boundary fixed by the secretary are found to have petitioned for the establishment of a flood control district, and the secretary has established the boundaries thereof, the secretary shall give notice of the application for the creation of the district by publication pursuant to KRS Chapter 424.

104.540 Court action opposing creation of district

Any owner of real property in the proposed district who has not signed the original petition for the creation of the district and who wishes to object to the organization of the district shall, within sixty (60) days after the giving of notice by the secretary, file his petition in the Circuit Court of the county in which the larger part of the proposed district is located, naming the secretary defendant and setting out in the petition his objections to the organization of the district. The secretary shall be represented in the Circuit Court by the county attorney and in the Court of Appeals by the Attorney General and he also may require his defense to be made by the petitioners or some of them. The issues may be made up and the case may be docketed for hearing as in an action for a declaration of rights, and an appeal may be taken and judgment shall become final as provided for in such procedure. The burden of proof shall be upon the plaintiff to show cause why the district should not be organized. If the court renders judgment against the secretary, the judgment shall point out the changes required for the establishment of a district, which, if met by the secretary, shall authorize the creation of the district. If the changes are not met by the secretary, the proposed district shall not be organized unless new proceedings are instituted for the creation of a district, but such new proceedings shall not be instituted for a period of six (6) months after the date of judgment. If the court gives judgment against the plaintiff, the secretary shall organize the district. An appeal taken as authorized in this section shall suspend the judgment until the case has been passed upon by the Court of Appeals and final judgment rendered. Either the plaintiff or the secretary may appeal from the judgment of the Circuit Court to the Court of Appeals, but the secretary shall not be required to make any appeal bond. Except as otherwise provided in this section, the pleadings and practice shall be the same as in other suits in equity.

104.550 Certificate of establishment of district; issuance; filing; general powers of district

If no suit is filed against the secretary under KRS 104.540, or if suit is filed and final judgment in the Circuit Court or on appeal is in favor of the secretary, the secretary shall forthwith declare the district organized into a flood control district and give it a corporate name as provided in KRS 104.490, by which in all proceedings it shall thereafter be known. The secretary shall certify his act to the county clerk of each county in which any part of the district is located, and to the Secretary of State, each of whom shall record the certificate as articles of incorporation. The secretary shall also certify his act to the county judge/executive of each county in which any part of the district is located. The district shall then be a political subdivision and shall have perpetual existence, with power to sue and be sued, contract and be contracted with, incur liabilities and obligations, exercise the right of eminent domain, assess, tax, issue bonds, and do and perform all acts expressly authorized in KRS 104.450 to 104.680 and all acts necessary and proper for the carrying out of the purpose for which the district was created, and for executing the powers with which it is invested.

104.560 Conclusiveness of certificate

The certificate establishing the district shall be deemed final and binding upon the real property in the district, and shall finally and conclusively establish the regular organization of the district against all persons except the state upon suit commenced by the Attorney General. The organization of the district shall not be directly or collaterally questioned in any action except as expressly authorized in KRS 104.450 to 104.680.

104.570 Office and records of district

The secretary shall designate in the certificate the place where the office of the district shall be located, which shall be within the corporate limits of the district if practicable. The place may be changed by the board of directors of the district from time to time, by the certification of the change to the county clerk of each county in which the district is located and the notation thereof on the records of the clerk. The records of the district shall have "Flood Control District Records" printed, stamped, or written thereon. They shall be kept at the office and shall be open to inspection as are the records of the fiscal court.

104.580 Board of directors; appointment; qualifications; term; vacancies; removal of board members

- (1) Within thirty (30) days after the secretary certifies to the county clerk of each county in which the district is located that the district is incorporated, there shall be appointed a board of directors for the district, consisting of five (5) members, which shall control and manage the affairs of the district. If all or part of a city with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census lies within the district, the mayor of such city shall appoint three (3) members of the board of directors, and the county judge/executive shall appoint two (2) members, or if the district lies within two (2) counties, each county judge/executive shall appoint one (1) member, or if the district lies within more than two (2) counties, the county judge/executive of each of two (2) of the counties, in rotation as determined by lot, shall appoint one (1) member. If all or part of two (2) cities with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census lies within the district the mayor of each city shall each appoint two (2) members of the board of directors, and the fifth member shall be appointed by the county judge/executive of the county in which the major portion of the district lies. If all or part of more than two (2) cities with a population equal to or greater than eight thousand (8,000) based upon the most recent federal decennial census lies within the district the mayor of each city shall appoint one (1) member of the board and one (1) additional member shall be appointed by each mayor of the city or cities containing most of the district to make the full number of five (5) directors. If no city with a population equal to or greater than eight

thousand (8,000) based upon the most recent federal decennial census, or part thereof, lies within the district, the county judge/executive shall appoint all five (5) members, or if the district lies in two (2) counties, the county judge/executive of the county in which the major portion of the district is located shall appoint three (3) members and the county judge/executive of the other county shall appoint two (2) members, or if the district lies in more than two (2) counties, the county judge/executive of each county shall appoint one (1) member and one (1) additional member shall be appointed by each county judge/executive of the county or counties containing most of the district to make the full number of five (5) directors. No director shall in any way be associated or connected with the ownership, operation or control of any privately-owned public utility operating within the district. Two (2) of the members of the first board of directors shall hold their offices for one (1) year, and the others shall hold their offices for two (2), three (3) and four (4) years, respectively, from the dates of their appointments, the length of the term of office of each member to be determined by lot at their first meeting. After the expiration of the respective terms of office of the members of the first board of directors, each director shall be appointed and shall serve for a period of four (4) years and until his successor has been appointed and has qualified. Vacancies resulting from any cause other than expiration of a term of office shall be filled only for the unexpired term and until a successor has been appointed and has qualified. The directors shall at all times be residents and real estate owners within the district, and the office of any director who moves his residence outside the district or who ceases to be a real estate owner within the district shall automatically be vacated.

- (2) (a) All appointments by a county judge/executive pursuant to this section shall be with the approval of the fiscal court.
- (b) A member of the board of directors may be removed from office as provided by KRS 65.007.

104.590 Oath and bond of directors

- (1) Each director, before entering upon his official duties, shall take and subscribe to an oath that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be interested in any contract let for the purpose of carrying out any of the provisions of KRS 104.450 to 104.680. The oath shall be filed with the clerk of the county represented by the director or of the county in which is located the city represented by the director.
- (2) Each director shall give a good and sufficient bond, to be approved by the officer appointing him, for the faithful and honest performance of his duties and as security for all moneys coming into his hands or under his control. The cost of the bond shall be paid by the district.

104.600 Quorum of board; how business conducted

A majority of the directors shall constitute a quorum and concurrence of the majority in any matter within the duties of the board shall be sufficient for its determination. All actions taken by the directors shall be by resolution, and in each instance the name and vote of each director shall be recorded in the minutes.

104.610 Officers and employees of board; seal; records; expenses; rules and regulations; civil liabilities; audits; compliance with KRS 65A.010 to 65A.090

- (1) The board of directors shall, upon taking oath, elect one (1) of their members as president of the board, and shall select some suitable person as secretary, who need not be a member of the board. The secretary shall serve as treasurer of the district, or the board may select a treasurer. The selection of the secretary and treasurer shall be evidenced on the minutes of the board, with their compensation. He or they shall serve at the pleasure of the board.

- (2) The board shall adopt a seal, and shall keep in a well-bound book a record of all proceedings, minutes of meetings, certificates, contracts, bonds given by employees, and all corporate acts, which shall be open to the inspection of any owner of property in the district as well as all other interested persons.
- (3) The board of directors shall be the governing body of the flood control district, and shall exercise all the powers and manage and control all of the affairs and property of the district.
- (4) No compensation shall be paid to directors, but each director shall be reimbursed for expenses incurred in attending meetings or for expenses incurred in other activities authorized by the board of directors as necessary for carrying out the purposes of the flood control district.
- (5) The board of directors may adopt all necessary rules and regulations for the proper management and conduct of the business of the board and of the corporation, and for carrying into effect the other objects for which the district was formed. The board of directors may also make and enforce rules and regulations pertaining to the use by persons of land or properties connected with or a part of the flood control works. All such rules and regulations shall become effective on the date when a notice of their adoption is published pursuant to KRS Chapter 424; such notice shall not contain the rules and regulations in full but shall only summarize their contents and shall state where any interested person may examine the full texts of such rules and regulations.
- (6) The board of directors may recover by civil action from any person or public corporation violating such rules and regulations a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), together with costs. The board may enforce by mandamus or otherwise all necessary and authorized rules and regulations made by it, and may take summary action to remove any improper construction or to terminate any unauthorized practices in connection with flood control works. Any person or public corporation willfully failing to comply with rules and regulations of the board shall be liable for damages caused by such failure and for the cost of renewing or replacing any part of the flood control works damaged or destroyed.
- (7) The board of directors shall have an annual audit made by a certified public accountant, copies of which shall be filed with the Secretary of State and with the county judge/executive of the county or counties in which the flood control district is located.
- (8) The board of directors shall comply with the provisions of KRS 65A.010 to 65A.090.

104.620 Secretary; duties; attestation of records

The secretary shall be the custodian of the seal, minutes and records of the district, and shall assist the board of directors in such particulars as the board directs in the performance of its duties. The secretary shall attest, under the seal of the district, such records as are required of him by the provisions of KRS 104.450 to 104.680, or by any person ordering the same, and shall receive for such transcription the same compensation allowed county clerks for copying records. Any portion of the record so certified and attested shall prima facie import verity.

104.630 Treasurer; duties; bond; countersigning of checks

The treasurer shall keep an accurate account of all money received or disbursed by the district, make periodic accountings and reports thereof as directed by the board of directors, make regular semiannual accountings, assist any auditors employed by the board to check the financial records of the district, sign all checks or vouchers of the district, deposit all funds received in any bank selected by the board, and perform all other functions as chief financial officer of the district as directed by the board. No check or voucher shall be valid until countersigned by the president of the board. The treasurer shall give a good and sufficient bond to the board for the faithful and honest performance of his duties and as security for all money coming into his hands or under his control. The cost of the bond shall be paid by the district.

104.640 Attorney, engineer, and other employees; supplies and equipment

The board of directors may employ an attorney and a chief engineer for the district, who shall hold office at the pleasure of the board and who shall give such bond as is required by the board. The board may employ such other engineers, attorneys, agents and assistants as may be needed, and may prescribe the duties and fix the compensation of all the employees of the district. The board may maintain, furnish and equip an office or offices, and purchase such office supplies, equipment, apparatus, appliances, instruments and tools as are necessary, which, with all other necessary expenditures shall be taken as a part of the cost of maintaining and operating the flood control works. The employment of the engineer, attorney and other personnel for the district shall be evidenced on the minutes of the board, with their compensation, and their term of employment shall be at the pleasure of the board.

104.650 Contracts for work, materials or supplies

All contracts for work, materials or supplies that may exceed one thousand dollars (\$1,000) shall be advertised for bids by publication pursuant to KRS Chapter 424. The contract shall be let to the lowest and best bidder who shall give bonds with approved and ample surety for the faithful performance of the contract. The contract shall be in writing, in duplicate, and shall be accompanied by or refer to plans and specifications for the work to be done, prepared by the chief engineer. The plans and specifications shall be made and considered a part of the contract. The contract shall be adopted by the board and signed by its president and by the contractor, and shall become a part of the records of the district.

104.660 Stream and rain gages, scientific survey, etc.; reports

The board of directors may establish and maintain stream gages and rain gages, and may make such surveys and examinations of rainfall, stream flow and other scientific and engineering subjects as are necessary and proper for the purpose of the district. The board may issue reports of its findings.

104.670 Tax for district, levy and collection of

The board of directors, as soon as duly appointed and qualified, may levy an annual tax of not more than fifteen cents (\$0.15) upon each one hundred dollars (\$100) of assessed valuation of property within the district. This tax shall be certified to the county clerks of the various counties and by them to the respective treasurers of their counties. The tax shall be based upon the last preceding assessment for state and county purposes, its collection shall conform to the collection of taxes for counties, and it shall constitute a lien against the property subordinate only to state, county and city ad valorem taxes, and the same provisions concerning the collection of delinquent taxes for counties shall apply. The tax shall be added by the county clerk, as a separate item, to the next state and county tax bill following the levy of the tax by the board of directors, and shall be collected concurrently with the state and county taxes. Neither the property valuation administrator nor the county clerk shall be entitled to any



additional compensation for services rendered in connection with the listing of property for taxation nor shall the sheriff receive any additional compensation for the collection of the tax.

104.680 Depreciation fund; operation and maintenance fund

The board of directors shall, by resolution, set aside from its annual tax revenue a proper and adequate amount to be deposited into a depreciation fund, which fund shall be used solely for replacing capital equipment, new construction, extensions or additions to the flood control works. The remainder of its annual tax revenue shall be deposited into an operation and maintenance fund to be used solely for operating and maintenance expenses in connection with the flood control works. Money accumulated in the depreciation fund may be invested by the board of directors in the manner authorized by statute for other trust funds and the income from such investments shall be deposited into the depreciation fund.