

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 3rd Meeting of the 2018 Interim

August 30, 2018

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, August 30, 2018, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Christian McDaniel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Christian McDaniel, Co-Chair; Representative Steven Rudy, Co-Chair; Senators Ralph Alvarado, Danny Carroll, David P. Givens, Stan Humphries, Morgan McGarvey, Gerald A. Neal, Dennis Parrett, Wil Schroder, Brandon Smith, Stephen West, and Max Wise; Representatives Rocky Adkins, Matt Castlen, Jim DeCesare, Myron Dossett, Ken Fleming, Kelly Flood, David Hale, Russ A. Meyer, Suzanne Miles, Jason Nemes, Ruth Ann Palumbo, Jody Richards, Sal Santoro, Arnold Simpson, James Tipton, Russell Webber, Susan Westrom, and Jill York.

Guests: Charles Snavely, Secretary, Energy and Environment Cabinet (EEC); Bruce Scott, Deputy Secretary, Energy and Environment Cabinet; Lona Brewer, Office of Energy Policy (OEP); Daniel P. Bork, Commissioner, Department of Revenue; Richard Dobson, Executive Director, Office of Sales and Excise Taxes; Jennifer Hays, Committee Staff Administrator, LRC Appropriations and Revenue Committee; Amit Shanker, Legislative Committee Analyst, LRC Appropriations and Revenue Committee.

LRC Staff: Jennifer Hays, Cynthia Brown, Amit Shanker, Micah Johnson, and Chase O'Dell.

Approval of Minutes

Representative Palumbo moved that the minutes of the July 26, 2018, meeting be approved. Representative DeCesare seconded the motion, and the minutes were approved by voice vote.

Volkswagen Mitigation Settlement Fund

Charles Snavely, Secretary, Energy and Environment Cabinet (EEC); Bruce Scott, Deputy Secretary, Energy and Environment Cabinet; and Lona Brewer, Office of Energy Policy (OEP), reviewed the Volkswagen Mitigation Settlement Fund.

Secretary Snavely testified that between 2009 and 2016, Volkswagen (VW) cheated on emissions testing for certain VW and Audi light duty diesel engines. A court settlement with the Department of Justice (DOJ) in 2016 provided funds for mitigating the adverse effects due to the NOx emissions that came from those engines. Approximately 3,621 vehicles registered in Kentucky were affected by the Volkswagen Settlement. Most of the affected vehicles were registered in the Louisville Metro area and Northern Kentucky area.

Secretary Snavely said that Volkswagen agreed to pay over \$14 billion to settle the litigation. Most of the funds were used to buyback or modify the specific vehicles that were involved. Secretary Snavely stated that \$2.7 billion was to be distributed to the states in proportion to the number of vehicles sold in those states for grants to remediate the effects of the excess NOx emissions. Kentucky's total allocation from the settlement is \$20,378,649. There is a 10 year time frame to expend the funds. The 10 year window started October 2, 2017.

Secretary Snavely testified that the intended use of the fund money is for mitigating ozone – which is a product of NOx emissions – and for the replacement of existing diesel engines. The Energy and Environment Cabinet (EEC) has proposed to allocate at least 80 percent of funds to transit bus grants. The EEC has also proposed that 15 percent of funds be allocated to expanding infrastructure for light duty zero emission vehicles.

Bruce Scott explained that the Volkswagen Mitigation Settlement funds cannot be appropriated and authorized without the express authority of the General Assembly.

In response to a question from Representative Miles, Secretary Snavely explained that diesel engines do not have to be replaced with a zero emission engine. In response to a follow-up question, Secretary Snavely stated that school buses are eligible to apply for the same funding as other public transit.

In response to a question from Representative Tipton, Bruce Scott said that the EEC needed clarification on whether or not the trust fund plan needed to be approved by the entire general assembly. In response to a follow-up question, Lona Brewer stated that over 500 comments were received in regards to the Volkswagen Mitigation Settlement Trust Fund. In response to another follow-up question, Bruce Scott explained that the trust mandates that priority is given to areas with the highest NOx emissions.

In response to a question from Senator West, Bruce Scott stated that the Governor designated the EEC to be responsible for developing the trust fund plan.

In response to a question from Representative Rudy, Secretary Snavely said that the fund money will remain for 10 years until it is approved for spending by the general assembly. In response to another question from Representative Rudy, Lona Brewer stated that there is no record on how much volume goes through every charging station in

Kentucky due to many of them being privately owned. Lona Brewer went on to say that some of the charging stations are generalized.

In response to Senator McDaniel, Secretary Snavely stated that increased energy demand would lower prices.

Sales Tax for Online Purchases

Daniel P. Bork, Commissioner, Department of Revenue; and Richard Dobson, Executive Director, Office of Sales and Excise Taxes, reviewed House Bill 487, Wayfair, and sales tax for online purchases.

Commissioner Bork testified that the Supreme Court fundamentally changed the landscape for online retailers on June 21, 2018 with the Wayfair decision. He explained that House Bill 487 enacted a remote retailer economic nexus standard similar to South Dakota's. The Department of Revenue has put guidance on their website instructing retailers that meet the transaction or receipt thresholds to register for collection and remittance of Kentucky sales and use tax. Retailers have until October 1 to register for collection of sales and use tax.

Richard Dobson stated that there are seven Certified Service Providers (CSP) certified with the Streamlined sales and use tax governing board.

In response to a question from Senator McDaniel, Commissioner Bork stated that a retailer with a nexus in a non-streamlined state would have to collect sales tax on sales to someone located in a streamlined state. Commissioner Bork continued to say that a retailer with a nexus in a streamlined state would have to collect sales tax on sales to someone located in a non-streamlined state if that state had laws requiring collection of sales tax on online purchases.

In response to a question from Senator Carroll, Commissioner Bork testified that Kentucky has taken steps to identify retailers that are not registered. Richard Dobson testified that each member-state of Streamlined has access to a central database of registered retailers. In response to a follow up from Senator Carroll, Commissioner Bork stated that the punishment for non-compliance will be the same as it is with every other tax.

In response to a question from Senator McDaniel, Commissioner Bork stated that the Government Accountability Office (GAO) estimated Kentucky revenues ranging from \$93 million to \$140 million could be received from online retail sales tax. Commissioner Bork stated his belief that actual revenues would not be as high as predicted due to Kentucky already receiving revenues from some retailers voluntarily collecting and remitting sales tax through Streamlined.

In response to a question from Representative Adkins, Commissioner Bork said that any online retailer that has an obligation must register and begin to collect sales tax by October 1.

In response to a question from Senator Givens, Richard Dobson testified that because the nexus standard was changed by the Wayfair decision, the contract with Certified Service Providers (CSPs) will be renegotiated.

Legalization of Sports Betting

Jennifer Hays, Committee Staff Administrator, LRC Appropriations and Revenue Committee; and Amit Shanker, Legislative Committee Analyst, LRC Appropriations and Revenue Committee, reviewed and discussed the possible legalization of sports betting.

Amit Shanker testified that Congress passed the Professional and Amateur Sports Protection Act (PASPA) in 1992. PASPA effectively outlawed sports betting nationwide. *Murphy v. NCAA* struck down PASPA in its entirety. *Murphy v. NCAA* did not affirmatively legalize sports betting, rather it allowed states to legalize sports betting.

Jennifer Hays testified that Nevada legalized wagers for sports bets from online websites in 2013. Wagers on all professional sporting organizations as well as the collegiate activities that are governed by the NCAA are accepted in Nevada. The Nevada Gaming Commission is charged with regulation of the entire industry.

Nevada collected approximately \$16 million in receipts from sports betting in 2017. Jennifer Hays testified that most of the \$4.8 billion wagered in Nevada in 2017 was returned in the form of payouts. Jennifer Hays said that the margin in the industry is four or five percent. Jennifer also stated that the federal excise tax on wagers is 0.25 percent.

Jennifer Hays said that the Kentucky state lottery and charitable gaming are authorized under section 226 of the Kentucky constitution.

In response to a question from Representative Fleming, Jennifer Hays stated that Nevada's gaming commission has many more employees than Kentucky's racing commission.

Information from Last Meeting

Chairman McDaniel reviewed information received from the last meeting.

List of Reports Received Since July, 2018

Chairman McDaniel reviewed reports received since the last meeting.

With no further business before the committee, the meeting was adjourned.