INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 5th Meeting
of the 2020 Interim

October 20, 2020

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Transportation was held on Tuesday, October 20, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll. The minutes for the Committee's September 15, 2020 meeting were approved.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Ralph Alvarado, Karen Berg, C.B. Embry Jr., Stephen Meredith, Johnny Ray Turner, and Mike Wilson; Representatives Terri Branham Clark, Randy Bridges, Al Gentry, Robert Goforth, David Hale, Chris Harris, Samara Heavrin, Kathy Hinkle, Thomas Huff, Derek Lewis, Savannah Maddox, Sal Santoro, Maria Sorolis, Cherlynn Stevenson, Jim Stewart III, Ashley Tackett Laferty, and Walker Thomas.

Guests: Jim Gray, Secretary, Kentucky Transportation Cabinet (KYTC); M. Chad LaRue, Executive Director, Kentucky Association of Highway Contractors, Inc. (KAHC); Lee Lingo, Executive Director, Kentucky Association of Manufacturers (KAM); J.D. Chaney, Executive Director, Kentucky League of Cities (KLC); Shellie Hampton, Legislative Director, Kentucky Association of Counties (KACo); Rick Taylor, President, Kentucky Trucking Association; Jason Siwula, Assistant State Highway Engineer, KYTC

LRC Staff: John Snyder, Brandon White, Dana Fugazzi, and Christina Williams

Introductory Remarks

Jim Gray, Secretary, Kentucky Transportation Cabinet (KYTC) made opening remarks and thanked members of the Committee for allowing the Cabinet to appear before the Committee. On behalf of the KYTC, Secretary Gray pledged continued cooperation with the General Assembly.

Kentucky Highway Contractors report – including response to Covid -19 issues

M. Chad LaRue, Executive Director, Kentucky Association of Highway Contractors, Inc. (KAHC) spoke on both the impact of Covid - 19 and persistent underfunding has on KAHC members. Mr. LaRue stated there is a transportation funding crisis in Kentucky. There was $74.6 million less state road funding in Fiscal Year (FY)

2020 than in FY 2019. Of that $74.6 million, $32 million is from the drop in motor fuels tax revenue.

Through the first quarter of FY 2021, state road funding is up approximately $7.8 million compared to the first quarter of FY 2020, but motor fuels tax revenue is down nearly $10.8 million. The reduction in revenue hinders KYTC's ability to deliver the program. The highway construction account is the balancing account for KYTC which means that all revenue losses directly impacts their ability to make improvements and repairs to Kentucky's transportation system. This has a direct impact on KAHC members. The Kentucky Association of Highway Contractors is KYTC's biggest partner in delivering needed repairs and improvements to the transportation system. Mr. LaRue stated the drop in the motor fuels tax directly impacts county and city governments' ability to maintain their transportations systems due to 26% of the motor fuels tax revenues going directly to them for that purpose.

Mr. LaRue stated the pandemic triggered an incredible slowdown in KYTC's ability to fund transportation work. A chart was provided that showcased letting numbers from 2004 to 2021. This chart showing projected letting totals for calendar year 2020 of $450 million, was later corrected in the meeting to an estimate between $600 million and $700 million.

While the Covid - 19 pandemic has caused a noticeable impact to the industry, it has only exacerbated an already existing transportation funding crisis, which became an issue when the motor fuels tax rate dropped in 2015. After that drop, it took until 2019 to approach previous funding levels last seen in 2014; this does not account for inflation. Despite overall revenues returning to previous highs, motor fuels tax revenues are still $144.5 million less than in 2014, leaving a $37.6 million impact to county and city governments.

Mr. LaRue stated because of Covid - 19, FY 2020 ended with overall state road fund revenues returning to FY 2016 levels, and the motor fuels tax portion returning to FY 2011 levels. A chart was also provided to show Kentucky annual state road fund and motor fuels tax levels from FY 2004 to FY 2020.

In closing, Mr. LaRue stated KYTC does not have sufficient funding to maintain and improve the current transportation system. KAHC members will see fewer business opportunities with state, county, and city governments, which puts at risk highway construction companies that employ thousands of Kentuckians in well-paying jobs across the Commonwealth.

Mr. LaRue stated the highway contracting industry strongly encourages the administration and legislature to work together to find a solution that will provide the increased funding needed for KYTC and county and city governments to provide a safer, more efficient transportation system for Kentucky's citizens and businesses. These investments will save lives on roadways and will make Kentucky more attractive to current and future businesses. The byproduct of these investments for the highway construction industry is an adequately funded, stable construction program that affords them the opportunity to continue to employ thousands of Kentuckians as they maintain and rebuild our transportation system.

Chairman Upchurch reiterated the seriousness of the transportation funding issue and stated in working towards a solution, he believes the Governor should take the lead on this issue as Executive Branch leadership is needed.

Representative Heavrin recognized Mr. LaRue as being a District 18 native and thanked him for his service in helping move Kentucky forward.

In response to a question asked by Senator Alvarado, Mr. LaRue stated his perspective is that there is a combination of reasons for the decrease in lettings. He stated that it is not uncommon to see volatility year after year, and it is also not uncommon to see a little bit of a ramp-up in the end of an administration, and a drop down at the beginning of a new administration. He elaborated that it seems after an administration has some years of experience behind them, they gain a comfort level of pushing to get the funds out the door with a tighter budget. A new administration, however, is trying to get their bearings and figure out what a big budget is, what a big cabinet is, and also trying to figure out how much money is available. There is a certain amount of conservatism in a new administration. Mr. LaRue stated that the current Governor Beshear administration had a "double-whammy" of sorts in that the administration was dealing with those normal issues as well as the onset of the Covid - 19 pandemic. The pandemic caused a lot of uncertainty about the incoming funding levels.

In response to a question asked by Senator Alvarado, Mr. LaRue stated that the asphalt metric is different for each state depending on their program and what products and materials they use. He added that from an overall transportation revenue standpoint, there is a similar drop in revenues in surrounding states. He stated that the benefits surrounding states have had going into the pandemic is that within the past three years they have addressed raising transportation investment. Because of this, surrounding states are in a better financial position as it relates to transportation funding.

Co-Chair Higdon commended Secretary Gray, and Deputy Secretary Mike Hancock on being reliable and available when called upon.

Lee Lingo, Executive Director, Kentucky Association of Manufacturers (KAM), addressed the Committee. Mr. Lingo stated that the manufacturing industry requires safe and well-maintained roads in order to deliver products to their destination. As the pandemic hit, there was a scramble to obtain masks, toilet paper, and groceries. The manufacturing industry helped refill those empty shelves.

Mr. Lingo stated that every product begins at a city or county level. Many products go to other cities or counties for the continuation of build or processing; therefore local roads are frequently utilized. The manufacturing industry employs roughly 250,000 Kentuckians. Because of the Covid - 19 pandemic, the industry took a hit and now stands at approximately 230,000 employees. There are approximately 4,500 manufacturing related entities in Kentucky. Mr. Lingo stated for every job in manufacturing, there are three jobs created to support that job. That figure does not include people that make the roads or drive the trucks.

Mr. Lingo stated that ensuring safe roads is critical. He added that for every minute that a truck is idle or unable to pass quickly and efficiently on a road costs a significant amount of money. That cost is passed on to the consumers. Not only is proper funding for well-built roads needed, but maintenance funds for older roads must also be kept up to par. It is important to note that not only does the state need to have proper transportation funding, but the cities and counties do as well. In conclusion, Mr. Lingo stated that even though you might not be using those roads, those roads are being used for you.

J.D. Chaney, Executive Director, Kentucky League of Cities (KLC), spoke to the Committee on the Covid - 19 impact on KLC. Mr. Chaney stated populations continue to grow in Kentucky cities, but transportation funding has remained stagnant. The shift of more Kentuckians moving into cities began in the 1970s, and currently more than 58% of the state's population live in a city.

Mr. Chaney stated cities maintain 10,000 miles of public roads. State and federal funds only provide approximately one-third of the cost of maintaining those thoroughfares. City spending on streets and roads climbed 36% from FY 2010 to FY 2019, while state and federal support dropped nearly 24%. Mr. Chaney stated city streets are more expensive to build and maintain due to requirements such as curbs and gutters, Americans with Disabilities Act (ADA)-required sidewalks, storm water drains, underground utilities, bike lanes, traffic sensors, and even more extensive milling requirements.

Mr. Chaney stated cities were already dealing with a decline in road fund dollars before the pandemic, which has only exacerbated the problem. Earlier this month the Office of the State Budget Director announced that motor fuels receipts fell 9.6% in September and have declined 5.3% for the year. The motor fuels tax is the only portion of the road fund shared with local governments. Municipalities received between $4.5 million and $7.5 million less in road aid than budgeted in FY 20. Current allocations amount to only 20% of the costs that cities spend each year, yet many cities are operating on unsustainably long replacement cycles to make their budgets balance.

Mr. Chaney referenced potential road funding formula modernization. The current Formula of Fifths was established in 1948 and is used for the County Road Aid and Rural Secondary Aid programs. The legislature later created the Municipal Road Aid Program in 1972. In FY 2020, the current formulas allocated 40.5% of gas tax revenues to counties and rural roads and 7.7% to municipalities and about one-third of all counties for "urban" roads that are outside city limits.

Looking towards the future in highway financing legislation proposed during the last three sessions of the General Assembly, KACo and KLC agreed to language dividing motor fuels tax revenue subject to revenue sharing that exceeds the historical high in revenues ($825 million in FY 2014) at 13% equally to the County Road Aid and Municipal Road Aid programs. The agreement does not impact the Rural Secondary Aid program, which would still receive 22% of motor fuels collected.

Currently, 61% of yearly vehicle miles traveled in Kentucky are on rural roads, yet counties and rural areas receive 85% of road aid revenue. Urban roads account for 39% of vehicle miles traveled, but cities only receive 15% of the state's road aid allocations. City leaders face a growing crisis as road funding continues to decline. Mr. Chaney stated that modernizing the state's road funding formula is the top legislative priority for cities in the 2021 session. The agreed upon proposal holds counties harmless, produces more revenue, and ensures safer, better maintained roads throughout the Commonwealth.

Shellie Hampton, Legislative Director, Kentucky Association of Counties (KACo), spoke to the Committee on the impact Covid - 19 has had on KACo. Ms. Hampton stated KACo's membership consists of all fifteen-hundred elected county officials in the state. Transportation investment is the number one issue that KACo members intend to pursue for the upcoming 2021 Legislative Session of the General Assembly.

Ms. Hampton stated the Kentucky Infrastructure Coalition was formed four years ago to unite manufacturers, farmers, engineers, and local leaders who see the promise an investment made today in transportation infrastructure can have for collective futures. Ms. Hampton stated KACo is proud to be a founding member and is honored to present to the Transportation Committee.

Earlier this year, KACo conducted their second annual listening tour of the Commonwealth, where every county-elected official is invited to share what is foremost on their minds, what are they dealing with, and KACo is able to ask what they can do to help respond to constituents needs. The vital need for increased transportation funding was a consistent topic at each of this year's eleven stops.

Ms. Hampton stated that counties own half of all the roads and a third of all the bridges in Kentucky. She added that transportation funding is critical to ensure safe, efficient access within and between counties. With each passing year Kentucky does not make this investment, it becomes all the more essential as catch-up is played for economic development, safety, and quality of life issues.

Many fiscal courts have had to extend the time between road and bridge maintenance due to increased costs, decreased County Road Aid, and revenue shortfalls that have been exacerbated by Covid - 19. Ms. Hampton stated every committee meeting she has watched during the 2020 Interim has included testimony on the impact the pandemic has had on every issue brought to the table. The onset of Covid - 19 has created more issues for the General Assembly to address during the 2021 Session, just as it has for county officials in every county. Tentative talk of cuts are circulating and that fortunately, the tax paid on gasoline is one that people living outside of Kentucky help pay, and it is not reliant on state general funds to replenish. As a state that has not raised revenues through legislation, Kentucky is in fact an outlier, specifically when stacked against states such as Indiana, Tennessee, Virginia, and North Carolina.

According to the American Association of State Highway Transportation Officers, since 2013, 36 states have raised transportation revenues. In 2015 the bleeding was stopped on how low the rate could actually drop, which stopped an imminent $292 million loss in revenue that year, but $200 million a year has been lost since.

Ms. Hampton stated that Representative Sal Santoro has filed legislation in the last three Sessions that would begin to address critically needed funding for state and county transportation projects and maintenance, as well as county roads and bridges. The data supports a gas tax increase, as 88% of the members polled support an increase, and 40% support an increase greater than the number proposed in prior bills.

Ms. Hampton stated that KACo members will continue to have conversations concerning the need for funding the priority projects in their county. When the public calls about a road or ditch that needs repair, members inform them that user fees paid at the pump help provide the means to cover the ever-increasing costs of asphalt, ditches, culverts and repairs, and that funding is not what it once was. Ms. Hampton reiterated that investments must be made in order for Kentucky state and county governments to provide a safer, more efficient transportation system.

In response to a question asked by Representative Thomas, committee staff explained the adjustable gas tax was put in place in the early 1980's. It set the minimum average wholesale price of gas at approximately $1.11 a gallon. The actual price did not exceed that minimum amount until 2004. From 2004 to 2013, almost without exception, the state saw the maximum 10% increase annually. This is how the gas tax went from 16.4 cents per gallon to its high of over 33 cents per gallon. When the price of gas fell precipitously, the legislature set the minimum average wholesale price at $2.17, effectively freezing the tax rate at 24.6 cents per gallon.

Kentucky Trucking Association report – including response to Covid - 19 issues

Rick Taylor, President, Kentucky Trucking Association (KTA) spoke to the Committee on how Covid - 19 has impacted the Kentucky trucking industry. In 2018 there were almost 110,000 trucking industry jobs in Kentucky. In 2019, over 13,000 trucking companies were located in the Commonwealth, and they paid $670 million in state and federal highway taxes and fees.

Mr. Taylor stated at the onset of the pandemic, around April or May, approximately 83% of normal commercial transportation activity was still taking place. Eventually, there was a sharp decline in those numbers. Parts of the trucking industry are doing well even though capacity is tight due to some carriers shutting down or running less trucks. Ecommerce expectations are at an all-time high, and retailers are restocking.

Mr. Taylor stated truck tonnage fell 8.9% in August compared to 2019 levels. This year is the fifth consecutive year that levels have fallen. Heavier industrial loads are factored into tonnage as not all freight is created equal. Fleets hauling for retailers are doing well while those hauling industrial products are seeing lower freight volumes. The movement of essential consumer goods and medical supplies on a local and regional level increased approximately 13%. An increase in final mile services was also seen.

Mr. Taylor stated 50% of companies experienced lower to much lower freight levels, 28% of companies experienced about the same freight levels, and 22% of companies experienced higher freight levels. Companies supplying manufacturing facilities experienced a negative impact due to shutdowns. Companies hauling petroleum saw a decrease in business due to stay at home orders. According to Bob Costello, Chief Economist, American Trucking Association, freight volumes are still expected to grow by 36% between 2020 and 2031.

Mr. Taylor stated trucking volumes are expected to rebound in 2021, rising 4.9% next year, and then growing 3.2% per year on average through 2026. He stated spot market rates were down 25% in April from the previous year. They are now up 17%. He added that spot market rates are determined by the ratio of the number of loads in the market compared to the number of trucks available to move the freight.

Mr. Taylor informed the Committee of the Covid - 19 impact on professional truck drivers. Personal protection equipment and sanitization products were needed by drivers.

Some states also closed rest areas and/or truck stops, resulting in major challenges for some drivers. Some facilities that were open, only allowed for a limited capacity of visitors. Another challenge faced by professional drivers was that several restaurants were closed. Semi-trucks exceed the height requirements of drive thrus, and no walk-up customers are permissible in drive thrus, therefor they could not be utilized. On a positive note, Mr. Taylor stated traffic congestion was down due to the lack of commuter traffic.

In response to a question asked by Co-Chair Higdon, Mr. Taylor gave a brief breakdown on some of the taxes and fees that truck drivers are required to pay. He stated trucker drivers pay weight distance tax, motor fuels tax, diesel fuel tax, registration fees, federal excise tax on new equipment and tires, and a few other smaller fees such as the unified carrier registration fee. As requested, Mr. Taylor promised to provide the Committee members with a breakdown of payment of those taxes and fees and how Kentucky compares to other states.

Mr. Taylor highlighted some issues that KTA would like the General Assembly to consider in the 2021 Session. There is an unnecessary trip that has to be made to clerk's offices to pay the extra $30 registration certificate fee for vehicles 44,001 lbs. or greater, three $1.00 bucket fees, and the $1.00 childcare assistance account fee. Registration is completed on-line, decals and/or plates are mailed, and temporary tags are printed. The preferred solution to this issue is to eliminate the $30 fee as proposed in the previous two infrastructure bills House Bill 517 (2019) and House Bill 580 (2020). He offered an alternative solution, which was to keep the fee, but payment at the clerk's office would be optional, or the fee could be paid online.

Another proposed legislation would be to prevent measures taken by motor carriers to improve safety from being considered in evaluating a worker's status as an independent contractor or employee. The problem is that requiring independent contractors (ICs) to use certain safety technologies or monitoring their driving behavior, and coaching them based on it can be viewed as exercising employer like control. This serves as an unnecessary impediment to carriers utilizing some safety measures with their ICs. This type of legislation has passed in Tennessee, Arkansas, Indiana, and Georgia. The legislation is supported by UPS and FedEx. AAA found that video based onboard safety monitoring could prevent 63,000 crashes, 17,700 injuries, and 293 deaths each year. This would encourage deployment of safety technologies and make our highways safer. It would not change the state's test for classifying a worker, or mandate that a motor carrier or IC use this technology.

Mr. Taylor stated KTA would like to see legislation to help prevent failure to equip claims. He stated possible language could state "An owner operator, lessor, or lessee of a commercial motor vehicle as defined in 49 CFR 390.5 shall not be liable in a bodily injury or wrongful death action for not equipping the commercial motor vehicle with safety technology not required by federal or state laws or regulation." He stated that collision avoidance technology such as side cameras or lane departure notification, auto braking, etc. are not required by law, but plaintiff attorneys argue that they should have had it on the vehicle and therefore they failed to equip the vehicle.

Safety Measures in Highway Work Zones

Jason Siwula, Assistant State Highway Engineer, KYTC updated the Committee on safety measures in highway work zones. In 2019 there were eight work zone deaths in Kentucky, which were five more than in 2018. The number of work zone documented crashes also rose approximately 20% in 2019 from 2018. KYTC has recently engaged stakeholders from the Cabinet and federal agencies and formed a committee to look at challenges and opportunities to better plan, design, administer and perform work within work zones in Kentucky. The Work Zone Committee is evaluating ideas to improve safety (both worker and highway), traffic flow, as well as driver understanding and compliance of work zone traffic control.

An item that KYTC is working on is experimental striping in several work zones. In an effort to improve work zone safety, KYTC secured approval from the Federal Highway Administration for the use of orange pavement markings on two I-75 widening projects north of Corbin and London. The primary benefits of the orange pavement markings are expected to be lower speeds due to a continuous warning that motorists are still within the limits of a work zone and less driver confusion due to improved demarcation of the intended travel path in transition areas.

Mr. Siwula stated that KYTC was recently awarded a small innovation grant from the Federal Highway Administration focused on implementing an initiative called “Smarter Work Zones” which addresses technology needs and the opportunity to implement them through work zones. Some of those work activities are being evaluated now that KYTC plans to implement during the next construction season.

With no further business to come before the Committee, Chairman Upchurch adjourned the meeting at 2:28 P.M.