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TO: MEMBERS
 Interim Joint Committee on Transportation

FROM: Dana Fugazzi
 Senior Legislative Analyst
 Transportation Committee

DATE: August 31, 2021

SUBJECT: 603 KAR 10:040E Advertising Devices

HB 328 from the 2021 Legislative Session, which established a regulatory system for outdoor advertising devices, required the Transportation Cabinet to draft administrative regulations related to these devices. In response to this directive, the Transportation Cabinet filed 603 KAR 10:040E on July 30, 2021.

Status of Administrative Regulation

As is customary, the Transportation Committee staff completed its initial review of the regulation, and the Administrative Regulation Review Subcommittee staff is working with the Transportation Cabinet on any concerns. A public hearing on 603 KAR 10:040E is scheduled for September 22, 2021, at the Transportation Cabinet. Written comments on the regulation will be accepted through September 30, 2021.

It should be noted that pursuant to KRS 13A.190, the Transportation Cabinet can amend the emergency regulation following public comments. The amended after comments version shall become effective upon filing and not require a statement of emergency. The Administrative Regulation Review Subcommittee will still review the regulation, and after that review is completed, the regulation will be referred to the Transportation Committee, which will also review the regulation. Therefore, when the regulation comes before the committee, it may contain changes that are not reflected in the current version.

Lawsuit from Outdoor Advertising Companies

On August 6, 2021, four advertising device companies filed suit in the United States District Court for the Eastern District of Kentucky alleging that 603 KAR 10:040E is unconstitutional and as such has damaged the companies and will continue to do so in its current form. The companies asked for a temporary restraining order against the Transportation Cabinet to preclude enforcement of the emergency regulation. Procedurally, the Court treated the motion as a request for a preliminary injunction instead of a temporary restraining order and set it for a hearing.

On August 16, 2021, the Court ordered that the Transportation Cabinet respond by August 27, 2021, to the companies' motion. The companies were given until September 3, 2021, to reply to any response provided by the Cabinet. A hearing in this matter is scheduled for September 8, 2021.

The Transportation Committee staff will continue to monitor the regulation and keep the Transportation Committee updated as needed.