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President Pro Tempore

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Majority Floor Leader

Morgan McGarvey
Minority Floor Leader

Julie Raque Adams
Majority Caucus Chair

Reginald Thomas
Minority Caucus Chair

Mike Wilson
Majority Whip

Dennis Parrett
Minority Whip



LEGISLATIVE RESEARCH COMMISSION
State Capitol 700 Capital Avenue Frankfort, KY 40601

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Jay D. Hartz
Director

MEMORANDUM

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Speaker, LRC Co-Chair

David Meade
Speaker Pro Tempore

Steven Rudy
Majority Floor Leader

Joni L. Jenkins
Minority Floor Leader


Suzanne Miles
Majority Caucus Chair

Derrick Graham
Minority Caucus Chair

Chad McCoy
Majority Whip

Angie Hatton
Minority Whip

TO: Senate and House Standing Committees on Transportation

FROM: Jay Hartz, Director 

SUBJECT: Administrative Regulations

DATE: March 2, 2022

At its February 7, 2022, meeting, the Administrative Regulation Review Subcommittee completed its review of the following administrative regulation: 603 KAR 005:150.

Pursuant to the provisions of KRS Chapter 13A, this regulation has been assigned to the Senate and House Standing Committees on Transportation for review. Pursuant to KRS Chapter 13A, the committees have ninety (90) days from the date of this assignment to review this regulation.

The Subcommittee minutes will be delivered to your committee staff upon completion. The material considered by the Subcommittee in its review is attached to the appropriate administrative regulation.

Attachments

cc: Administrative Regulation Review Subcommittee
John Snyder

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MEMORANDUM

TO: Senator Robert Stivers, President of the Senate
Representative David Osborne, Speaker of the House
Members of the Legislative Research Commission

FROM: Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
Administrative Regulation Review Subcommittee

RE: Report of the Administrative Regulation Review Subcommittee

DATE: March 2, 2022

Members: Senators Julie Raque Adams, Ralph Alvarado, Stephen West, and David Yates and Representatives Randy Bridges, David Hale, Deanna Frazier, and Marylou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Johnna Ballinger, Michael Wilson, Department of State; Stafford Easterling, Personnel Board; Carrie Bass, Wendi Pierce, Jeff Pritchett, Liza Welch, Public Pensions Authority; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Brian Clark, Steven Fields, Department of Fish and Wildlife Resources; Amy Barker, Michael Murrell, Kenneth Sandusky, Matthew Johnson, Kentucky State Police; Jon Johnson, Kyle Ray, Niki Sizemore, Ricky Sizemore, Amy Utterback, Department of Highways; Sam Flynn, Robin Maples, Chuck Stribling, Labor Cabinet; Joshua Newton, Department of Alcoholic Beverage Control; Abigail Gall, Shaun Orme, Chad Thompson, Department of Insurance; Waqas Ahmed, Shan Dutta, Marc Guilfoil, Bruce Howard, Jennifer Wolsing, Kentucky Horse Racing Commission; Kelli Rodman, Cabinet for Health and Family Services; Julie Brooks, Jennifer Burt, Erica Brakefield, Jessica Davenport, Department for Public Health; Lee Guice, Veronica Judy-Cecil, Lisa Lee, Angie Parker, Jonathan Scott, Department for Medicaid Services; Laura Begin, Leigh Dixon, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Monday, February 7, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

502 KAR 45:150. Physical Fitness Test (PFT).

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 5:150. Encroachment permits. Jon Johnson, assistant general counsel, and Ricky Sizemore, branch manager, represented the department.

In response to questions by Co-Chair West, Mr. Johnson stated that this administrative regulation updated the permitting manual. Mr. Sizemore stated that the changes were minor and clarified encroachment procedures. New restrictions were not being established.

LABOR CABINET: Occupational Safety and Health

803 KAR 2:321E. Occupational health and environmental control. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, occupational safety and health standards federal – state coordinator, represented the cabinet.

In response to a question by Co-Chair West, Mr. Stribling stated that these administrative regulations were filed on an emergency basis because the cabinet inadvertently failed to provide certification for related administrative regulations governing similar subject matter.

803 KAR 2:426E. Stairways and ladders.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:415. Direct shipper license. Joshua Newton, general counsel, represented the department.

Department of Insurance: Health Insurance Contracts

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements. Abigail Gall, regulation coordinator; Shaun Orme, executive advisor; and Chad Thompson, general counsel, represented the department.

In response to questions by Co-Chair West, Ms. Gall stated that this administrative regulation was being amended to address provider agreements unrelated to pharmacy benefit managers. Technical changes were necessary related to this and another administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:575. Pharmacy benefit managers.

In response to a question by Senator Alvarado, Ms. Gall stated that the sixty (60) day window was previously a requirement of this administrative regulation and was being moved within the text for better organization of the provisions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 5 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 17:590. Annual report on providers prescribing medication for addiction treatment.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 5:150. Encroachment permits.

RELATES TO: KRS 176.050(1)(i), 177.047, 177.103, 177.106

STATUTORY AUTHORITY: KRS 176.050(1)(i), 177.047, 177.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the Department of Highways to promulgate administrative regulations for the care and maintenance of roads after they have been constructed. KRS 177.047 requires that any person who intends to lay conduit, pipes, poles, or wires over or under a city street that is part of the state-maintained system of highways do so in accordance with administrative regulations of the Department of Highways. KRS 177.106 requires any person to obtain a permit for any encroachment to the right-of-way of any state highway. This administrative regulation provides the policies and procedures in maintenance of highways to allow encroachments onto a highway or right-of-way.

Section 1. Incorporation by Reference.

(1) Kentucky Transportation Cabinet, Permits Manual, as revised and effective September 17, 2021~~[May 2, 2019]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law Monday through Friday between 8 a.m. and 4:30 p.m. at:

- (a) Kentucky Transportation Cabinet, Office of Human Resource Management, Organizational Management Branch, Frankfort, Kentucky 40622;
- (b) Kentucky Transportation Cabinet, Division of Maintenance, Permits Branch, 200 Mero Street, 3rd Floor East, Frankfort, Kentucky 40622; or
- (c) Any of the twelve (12) highway district offices.

JIM GRAY, Secretary

JAMES BALLINGER, P.E., State Highway Engineer

APPROVED BY AGENCY: November 12, 2021

FILED WITH LRC: November 15, 2021 at 10:28 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. EST on January 25, 2022, via video teleconference. Members of the public wishing to attend may utilize the following link:

CONTACT PERSON: Larisa Plecha, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, Fax (502) 564-5238, email larisa.plecha@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Larisa Plecha

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit onto the Department of Highways right-of-way.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will establish the regulatory requirements of KRS 176.050(1)(i).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

By providing updates to the Incorporation by Reference section that is currently outdated.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to provide updates to the Incorporation by Reference section that is currently outdated.

(c) How the amendment conforms to the content of the authorizing statutes:

This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will assist in the effective administration of the statutes by providing updates to the Incorporation by Reference section that is currently outdated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects the Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for an encroachment permit. (4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Each of the regulated entities will have to comply with the updated Permits Manual. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no additional costs or fees as a result of this amendment. (c) As a result of compliance, what benefits will accrue to the entities: The Department of Highways, individuals, and

businesses will now have up-to-day information in the Incorporation by Reference section.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No answer provided.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No answer provided.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

No answer provided.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis:

There is no cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Road Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

No, all encroachment permit applicants will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

KYTC Department of Highways, Division of Maintenance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 176.050(1)(i), 177.047, 177.106

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on the expenditures and revenues of a state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year?

This administrative regulation is not expected to generate costs.

(d) How much will it cost to administer this program for subsequent years?

This administrative regulation is not expected to generate costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):No revenues will be generated by this program.

Expenditures (+/-):No expenditures will be generated by this program.

Other Explanation:

n/a