

# HOUSE STANDING COMMITTEE ON TRANSPORTATION

## Minutes of the 1st Meeting of the 2024 Regular Session

February 13, 2024

### Call to Order and Roll Call

The fourth meeting of the House Standing Committee on Transportation was held on February 13, 2024, at 12:00 PM in Room 154 of the Capitol Annex. Representative John Blanton, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Representatives John Blanton, Chair; Jonathan Dixon, Vice Chair; Representatives Josh Branscum, Randy Bridges, Adrielle Camuel, Daniel Elliott, Ken Fleming, David Hale, Samara Heavrin, John Hodgson, Thomas Huff, Mary Beth Imes, Derek Lewis, Bobby McCool, Kimberly Poore Moser, Amy Neighbors, Rachel Roberts, Tom Smith, Ashley Tackett Laferty, Walker Thomas, Ken Upchurch, Bill Wesley, and Wade Williams.

Guests: Jason Nemes, State Representative, District 33, Majority Whip; Victor B. Maddox, Counsel for Special Litigation, Office of Attorney General Russell Coleman; Mike Hancock, Deputy Secretary, Kentucky Transportation Cabinet; Kevin Bratcher, State Representative, District 29; Ashley Tackett Laferty, State Representative, District 95; Mark Elkins, State Chairman, Brotherhood of Locomotive Engineers; David Hall, Director of Government Affairs, CSX Railroad; William Downey, Director of Government Affairs, RJ Corman Railroad Group

LRC Staff: John Snyder, Dana Fugazzi, Ashley Nash, Christina Williams, and Riley Kelly.

### Discussion of Kentucky's Lawsuit Against the FHWA Over Rules Requiring States to Establish Targets for Reducing On-Road Emissions

Victor B. Maddox, Counsel for Special Litigation, Office of Attorney General Russell Coleman, briefed the committee on Kentucky's lawsuit against the Federal Highway Administration (FHWA) over rules requiring states to establish targets for reducing on-road emissions. On December 7, 2023, the FHWA published a new rule, informally known as the "Emissions Rule", which requires the Kentucky Transportation Cabinet (KYTC) and each Metropolitan Planning Organization (MPO) in the Commonwealth to track greenhouse gas (GHG) emissions, set declining targets for CO<sub>2</sub> emissions that the Commonwealth must try to reach, monitor the emissions, and to prepare reports to the FHWA. More specifically, the Emissions Rule requires KYTC and the MPOs within the Commonwealth of Kentucky to "establish declining targets for reducing CO<sub>2</sub> emissions generated by on-road mobile sources." Currently, targets for the first four-year period are supposed to be established

Committee meeting materials may be accessed online at <https://apps.legislature.ky.gov/CommitteeDocuments/95>

and reported to FHWA by KYTC no later than March 29, 2024. MPOs in Kentucky are required by the Emissions Rule to set targets no later than 180 days after KYTC establishes its target. Prior to December 7, 2023, with the publication of the Emissions Rule, no federal regulation required KYTC to measure, monitor, or establish declining targets for mobile emissions of CO2.

On December 22, 2023, the Attorney General filed a lawsuit on behalf of the Commonwealth seeking to declare the Emissions Rule invalid because it is arbitrary and capricious under the Administrative Procedure Act, violates the Major Question Doctrine, violates the Spending Clause, and violates the principles of federalism by infringing on the sovereignty of the States (Commonwealth of Kentucky et. al. v. Federal Highway Administration, et. al., No. 5:23-cv-00162-BJB-LLK (W.D. Ky. 2023). Twenty other states joined the lawsuit as plaintiffs. Texas has filed its own lawsuit in federal court in Texas. The parties have agreed that the Emissions Rule will not be enforced until March 29, 2024. Judge Beaton will hold a hearing on March 7, 2024.

On February 9, 2024, the Commonwealth and the 20 other Plaintiff States filed a motion for summary judgment. Briefing will be complete by March 4, 2024 and the court will issue a decision on the merits on or before March 29, 2024. A copy of the full suit as well as the motion for summary judgement are available under materials on the House Transportation Committee's website: <https://apps.legislature.ky.gov/CommitteeDocuments/95/>.

Mike Hancock, Deputy Secretary, KYTC stated that KYTC is monitoring the situation and has taken no definitive action to implement the proposed requirement due to the pending lawsuit. However, if a ruling that is made states the proposed requirements must be met, the KYTC will comply, as it does for all relevant federal regulations.

Both Mr. Maddox and Deputy Secretary Hancock answered member's questions. Chairman Blanton thanked the presenters for their testimony and mentioned the committee would continue to monitor the issue.

## **Bill for Discussion Only**

### **HB 33**

#### ***AN ACT relating to railroad operations.***

**Sponsor:** Representative Kevin D. Bratcher

House Bill 33 was discussed by its sponsor Representative Kevin Bratcher. Appearing with Representative Bratcher was Representative Ashley Tackett Laferty, District 95, and Mark Elkins, State Chairman, Brotherhood of Locomotive Engineers, who also spoke in favor of the measure. House Bill 33 requires a crew of at least two persons during the operation of a train. David Hall, Director of Government Affairs, CSX Railroad and William Downey, Director of Government Affairs, RJ Corman Railroad Group spoke in opposition of the

measure. After brief discussion and questions by members, no vote was taken on House Bill 33.

**Adjournment**

With no further business to come before the committee, Chairman Blanton adjourned the meeting at 1:14 P.M.