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LEGISLATIVE RESEARCH COMMISSION

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Director

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MEMORANDUM

TO: Senate Standing Committee on Transportation
House Standing Committee on Transportation

FROM: Jay D. Hartz, Director

SUBJECT: Administrative Regulations

DATE: February 7, 2024

At its January 8, 2024, meeting, the Administrative Regulation Review Subcommittee completed its review of the following administrative regulation: 603 KAR 005:155.

Pursuant to the provisions of KRS Chapter 13A, this regulation has been assigned to the Senate Standing Committee on Transportation and the House Standing Committee on Transportation. 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 Derek Lewis, Co-Chair
Administrative Regulation Review Subcommittee

RE: Report of the Administrative Regulation Review Subcommittee

DATE: February 7, 2024

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; and Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Carrie Bass, Jessica Beaubien, Kentucky Public Pension Authority; Eden Davis, Board of Pharmacy; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Representative Steve Bratcher; Lisa Biddle-Puffer, Mary Hayes, Kentucky Association of Health Care Facilities; Joe Jurgensen, Management Systems of Kentucky; Hank Cecil, Marc Kelly, Board of Social Work; Michelle Sanborn, Children's Alliance; Steven Shannon, Community Mental Health Centers; Brenda Rosen, National Association of Social Workers, Kentucky Chapter; Sara Boswell Janes, Dr. Charles Pemberton, Board of Licensed Professional Counselors; Eddie Sloan, John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, Rich Storm, Department of Fish and Wildlife Resources; Jon Johnson, Ricky Sizemore, Transportation Cabinet; Todd Allen, Board of Education; Marni Gibson, Gary Stephens, Department of Financial Institutions; David Lovely, Valerie Moore, Office of the Inspector General; Jonathan Scott, Department for Medicaid Services; Kelli Blair, Department for Income Support; Laura Begin, Todd Trapp, and Andrea Day, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Monday, January 8, 2024, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

TRANSPORTATION CABINET: Department of Highways: Traffic

603 KAR 005:155, Vegetation management. Jon Johnson, assistant general counsel, and Ricky Sizemore, engineering specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 7 to comply with the drafting 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

(Amended at ARRS Committee)

603 KAR 5:155. Vegetation management.

RELATES TO: KRS 176.010(2), 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a vegetation management permitting process for the removal and pruning of vegetation, on department right-of-way.

Section 1. Definitions.

(1) "Advertising device" is defined by KRS 177.830(5).

(2) "Department" is defined by KRS 176.010(2).

(3) "Person" means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, cooperative, or any other group or combination acting as an individual or unit.

Section 2. Vegetation Management Permit Eligibility.

(1) A permit for vegetation management to remove or prune vegetation, including vegetative obstructions to the visibility of an advertising device, located on public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet ~~ff~~ shall be obtained from the department, in accordance with this administrative regulation, prior to entry or disturbance of the right-of-way.

(2) An applicant shall apply to the department for a permit for vegetation management to remove or prune vegetation by submitting a completed Application for Encroachment Permit, TC 99-1A form, to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management.

(3) An application for a permit to remove or prune vegetation shall be considered by the department if the proposal:

- (a) Improves the safety of the traveling public;
- (b) Is necessary to eliminate hazards to personal property;
- (c) Enhances visibility for the travelling public;
- (d) Eliminates an unsightly condition and improves roadway aesthetics; or
- (e) Removes undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.

(4) A permit to remove or prune vegetation shall not be issued for the purpose of increasing visibility of ~~any~~ advertising device currently in violation of KRS Chapter 177 or KAR Title 603.

(5) Access to department right-of-way to perform vegetation management shall be from private property unless otherwise specified as part of the permit.

Section 3. General Requirements for Vegetation Management.

(1) An applicant requesting a permit for vegetation management to remove or prune vegetation shall submit:

- (a) A completed Application for Encroachment Permit, TC 99-1A form;
- (b) A general description of work to be performed;
- (c) A location map;

- (d) A detailed and scaled drawing showing the location of the vegetation proposed to be removed or pruned;
 - (e) The name, address, and phone number of the contractor that will be performing the work;
 - (f) A signed release from property owners whose property lines front the right-of-way where the vegetation management is proposed;
 - (g) A signed consent from a private property owner that gives the applicant access from the private property to the work site;
 - (h) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;
 - (i) Evidence of bonding maintained until released by the department; and
 - (j) Proof of liability insurance equal to or more than \$1 million.
- (2) The following applicants are exempt from Section 3(1) (f), (g), (i), and (j) of this administrative regulation:
- (a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or
 - (b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.
- (3) An applicant shall:
- (a) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;
 - (b) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;
 - (c) Remove and dispose of cut material and debris from the state right-of-way as stated in the permit issued by the department;
 - (d) Fill, grade, and compact a hole or void created by the performed work with top soil;
 - (e) Use a seeding and erosion control plan;
 - (f) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department;
 - (g) Perform work during the time frame stated in the permit; and
 - (h) Reimburse the department for any costs incurred associated with the vegetation removal and pruning permit.
- (4) Work shall not be performed until a permit is issued by the department.
- (5) If a tree approved to be pruned dies related to executing the permit for vegetation management, the department shall require the permittee to remove the dead tree from department right-of-way, mitigate for the loss of vegetation, and restore department right-of-way.
- (6) If damage occurs to vegetation not included in the permit for vegetation management, the department shall require the permittee to mitigate for the loss of vegetation and restore department right-of-way.
- (7) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the permit for vegetation management.
- (8) The permittee shall indemnify the department and the Transportation Cabinet pursuant to the permit if claims are brought against the department or Transportation Cabinet by third parties for damages sustained in the course of executing a permit for vegetation management.
- (9) Tree removal or pruning shall not be performed from June 1 to July 31.

Section 4. Mitigation.

- (1) An applicant shall be required to mitigate as part of a permit for vegetation management for removal of any tree with a five (5) inch or greater diameter at breast

height (dbh), except:

- (a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or
- (b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.

(2) For mitigation, the applicant shall make a ~~payment~~[contribution] to the Kentucky Transportation Cabinet (KYTC) where the funding shall be used by KYTC to re-plant native trees at KYTC Stream and Wetland Mitigation sites or KYTC Pollinator Plots[Kentucky Natural Lands Trust (KNLT), www.knlt.org]. KYTC Stream and Wetland Mitigation sites are established in priority watersheds within Kentucky where aquatic threatened or endangered species are known to exist, and these sites exist to in-part protect the water quality of the streams in which these species occur. KYTC Pollinator Plots are established in an attempt to curb the listing of pollinator species on the Threatened or Endangered Species List.

(3) The department shall calculate the ~~payment~~[contribution] amount based on the lesser amount of \$150 for each tree removed with a five (5) inch or greater diameter at breast height (dbh) or \$2,000 per acre[pursuant to the department's Indiana Bat Conservation Memorandum of Agreement with the United States Fish and Wildlife Service].

(4) The department shall not approve a permit for vegetation removal prior to receiving proof of the required ~~payment~~[contribution] from the applicant.

Section 5. Notice of Violation; Appeals.

(1) The department shall provide notification by certified letter if a violation of this administrative regulation has occurred.

(2) A person aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B.

(a) The request shall be made in writing within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If a request for an administrative hearing is not received by the department or the violation is not remedied within (30) days of notice, the department shall take action to impose penalties as established in Section 6 of this administrative regulation.

Section 6. Penalties.

(1) Any person who violates this administrative regulation shall:

(a) Be subject to a civil penalty as established in KRS 177.106;

(b) Mitigate for loss of vegetation in accordance with Section 4 of this administrative regulation; and

(c) Be responsible for all costs associated with the restoration of the department right-of-way to an acceptable condition including the required remedial measures provided for in Section 3(3) of this administrative regulation.

(2) The department shall deny or revoke a permit that contains false or misleading information.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Encroachment Permit", TC 99-1A(4), October 2020; and

(b) ["Indiana Bat Conservation Memorandum of Agreement", September 2012; and]

~~(c)~~ "Standard Specifications for Road and Bridge Construction", June 1, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort,

Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Transportation Cabinet's Web sites at:

(a) <https://transportation.ky.gov/Permits>; and

(b) <https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

FILED WITH LRC: January 8, 2024

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel,
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40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.