

# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

## Minutes of the February Meeting

February 10, 2020

### Call to Order and Roll Call

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 10, 2020, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senator Alice Forgy Kerr; Representatives Deanna Frazier and Tommy Turner.

Guests: Rosemary Holbrook, Donna Shelton, Personnel Cabinet; Beau Barnes, Teachers; Retirement, Jeremy Branham, Richard Dobson, Gary Morris, Department of Revenue; Carrie Bass, Victoria Hale, Katherine Rupinen, Kentucky Retirement Systems; Anthony Gray, Larry Hadley, Board of Pharmacy, Brian Clark, Eric Gibson, Rich Storm, Department of Fish and Wildlife Resources; Melissa Duff, Department for Environmental Protection; Amy Barker, Parole Board; Doug Gott, Dale Hamblin, Robert Swisher, Department of Workers' Claims; DJ Wasson, Department of Insurance; Max Fuller, David Moore, Benjamin Siegel, Department of Housing, Buildings, and Construction; Julie Brooks, Ron Horseman, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Douglas Beard, Laura Begin, Department for Community Based Services.

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

The Administrative Regulation Review Subcommittee met on Monday, February 10, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2:120 & E. Incentive programs. Rosemary Holbrook, assistant general counsel, and Donna Shelton, executive director, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1

and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to incorporate by reference the Employee Suggestion Form. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:125. Omitted contributions. Beau Barnes, deputy executive secretary and general counsel, represented the system.

In response to questions by Co-Chair West, Mr. Barnes stated that this administrative regulation allowed a member who had missed a payment to pay subsequently and allowed a member to reinstate a refunded account. The agency amendments consisted of technical corrections.

At the January 13, 2020 meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: to amend the TITLE and the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and the RELATES TO paragraph to make technical corrections; and (2) to delete Section 3 in its entirety. Without objection, and with agreement of the agency, the amendments were approved.

Department of Revenue: Sales and Use Tax; Service and Professional Occupations

103 KAR 26:080. Dentists and dental laboratories. Jeremy Branham, tax policy and research consultant, Division of Sales and Use Tax; Richard Dobson, executive director, Office of Sales and Excise Taxes; and Gary Morris, executive director, Office of Tax Policy, represented the department.

103 KAR 26:120. Advertising agencies.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:020. Blueprints and copies.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 27:120. Photographers, photo finishers, and x-ray labs.

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

Selective Excise Tax; Motor Fuels

103 KAR 43:101. Repeal of 103 KAR 043:100.

In response to questions by Co-Chair West, Mr. Dobson stated that 103 KAR 43:100 was being repealed because the statutory provisions were sufficient without an administrative regulation. This action was not removing tax deductions for farmers.

Kentucky Retirement Systems: General Rules

105 KAR 1:149 & E. Quasi-governmental employer cessation window. Carrie Bass, staff attorney supervisor; Victoria Hale, staff attorney; and Katherine Rupinen, interim executive director, Office of Legal Services, represented the systems.

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 4, 6, 10, 12, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:250. Participation of county attorney employees.

In response to questions by Co-Chair Hale, Ms. Hale stated that the authorizing statute gave the county attorney, based upon the revenue source for a given employee, the initial authority to determine which system was appropriate for the employee. The systems had ultimate auditing authority, which served as oversight to this process. The change of systems for an employee would be based on changes to duties or funding status.

In response to a question by Co-Chair West, Ms. Hale stated that it was uncommon for employees to transfer among systems.

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 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:445. Electronic ballots in Trustee elections.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

**BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:020. Examination. Anthony Gray, general counsel, and Larry Hadley, executive director, represented the board.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. Brian Clark, deputy commissioner; Eric Gibson, director of law enforcement; and Rich Storm, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Storm stated that the underlying administrative regulation provided more opportunities for hunters commensurate with similar opportunities in other states. Hunters had requested these changes.

In response to a question by Co-Chair West, Representative Turner stated that the subcommittee substitute changed provisions from a .243 caliber to a 6.5 mm rifle, because that was the more common firearm for hunting coyotes. The subcommittee substitute also deleted the requirement for written permission from landowners for hunting on private land. This change was the result of concerns about practicality and liability.

In response to a question by Senator Kerr, Co-Chair West stated that there were liability concerns for landowners regarding written permission for hunting on private land. Representative Turner stated that it could also be difficult to obtain written permission from a landowner for hunting on private land. For example, a landowner might be absent. Representative Turner thanked the department for making these revisions.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 13 and 14 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 7 to modify the caliber of rifle allowed and remove the requirement that hunters hunting on private land carry written permission from the

landowner. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Division for Air Quality: Permits, Registrations, and Prohibitory Rules

401 KAR 52:100. Public, affected state, and U.S. EPA review. Melissa Duff, director, represented the division.

In response to questions by Co-Chair West, Ms. Duff stated that this administrative regulation established provisions for public notice regarding Title V Permits. The proposed amendment allowed public notice via the cabinet's Web site in lieu of publication in a newspaper; however, public notice through newspaper was not prohibited. This proposal was based on a federal change and was expected to save the cabinet money.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Parole Board

501 KAR 1:071E. Repeal of 501 KAR 001:070. Amy Barker, assistant general counsel, represented the board.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:260. Treatment guidelines. Doug Gott, chief administrative law judge; Dale Hamblin, Jr., general counsel; and Robert Swisher, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Swisher stated that this administrative regulation pertained to medical treatment for workplace injuries and occupational disease. House Bill 2 from the 2018 Regular Session of the General Assembly required this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clarify that nothing in this administrative regulation shall affect the right of an employer to participate in a managed health care system. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17:480. Uniform evaluation and reevaluation of providers. D. J. Wasson, executive advisor, represented the department.

In response to a question by Co-Chair West, Ms. Wasson stated that this administrative regulation incorporated a form that unnecessarily required photographic identification to be submitted in person. That portion of the form was revised.

A motion was made and seconded to approve the following amendments: (1) to amend material incorporated by reference and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend material incorporated by reference to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings, and Construction: Plumbing

815 KAR 20:010. Definitions for 815 KAR Chapter 020. Max Fuller, staff attorney; David Moore, commissioner; and Benjamin Siegel, general counsel, represented the department.

In response to a question by Co-Chair West, Mr. Fuller stated that most of the changes to administrative regulations in this package were technical, including repealing and reorganizing requirements. Mr. Moore stated that substantive changes to the plumbing code included adding tracer wires to water services in order to find those lines in the future and adding drain pans to water heaters on wood floors and attics that were above drop ceilings in order to protect structures.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to add a definition for “water heater.” Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:020. Parts or materials list.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:030. Plumbing licenses.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:050. Installation permits.

A motion was made and seconded to approve the following amendments: (1) to incorporate the Plan Application Form by reference; and (2) to amend Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:055. Water heating devices.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:060. Quality, weight, installation, and storage of materials.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 5 through 7, 9, and 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:070. Plumbing fixtures.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, 11, and 12 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:080. Waste pipe size.

815 KAR 20:090. Soil, waste, and vent systems, traps, and clean-outs.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 6, 9, 11, 15, 18, 24, 28, 34, 35, and 38 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:111. Repeal of 815 KAR 020:071, 815 KAR 020:072, 815 KAR 020:073, 815 KAR 020:074, 815 KAR 020:078, 815 KAR 020:084, 815 KAR 020:100, and 815 KAR 020:110.

815 KAR 20:120. Water supply and distribution.

A motion was made and seconded to approve the following amendments: to amend 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.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 22 and 23 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:150. Inspection and tests.

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

815 KAR 20:170. Manufactured home and mobile home community waste system distribution and connections.

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

815 KAR 20:180. Special connections.

815 KAR 20:195. Medical gas piping installations.

A motion was made and seconded to approve the following amendments: to amend 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.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Administration and Financial Management: Local Health Departments**

902 KAR 8:070. Recruitment, examination, and certification of eligible applications for local health departments. Julie Brooks, regulation coordinator, and Ron Horseman, branch manager, represented the division.

In response to questions by Co-Chair West, Mr. Horseman stated that 902 KAR 8:070 and 8:090 created some ability to establish market-based wage increases for nurses



for local health department recruiting and retention. Ms. Brooks stated that 902 KAR 8:060, which was considered at a previous subcommittee meeting, gave local health department's authority to make salary adjustments for recruitment and retention. Mr. Horseman stated that that process involved requesting, in five (5) percent increments, increases to the standard pay grade based on the inability to fill a position, retain employees, or receive applications for employment. Approval of the request was based on comparable salaries at other facilities. Increments were made by five (5) percent, but multiple increments could be requested at one (1) time.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to incorporate a form by reference. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

902 KAR 8:096. Local health department employee performance evaluation program.

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

A motion was made and seconded to approve the following amendment: to amend Section 9 to authorize the appointing authority to approve sick leave without pay in certain circumstances, instead of requiring the appointing authority to do so. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 8:140. Appointment of a health officer or a public health department director of a local health department.

Department for Medicaid Services: Division of Fiscal Management: Hospital Service Coverage and Reimbursement

907 KAR 10:840 & E. Hospital Rate Improvement Program. Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to align adjustment procedures with KRS 205.6406. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support:  
Supplemental Nutrition Assistance Program

921 KAR 3:050. Claims and additional administrative provisions. Douglas Beard, division director, and Laura Begin, regulation coordinator, represented the division.

In response to questions by Co-Chair West, Ms. Begin and Mr. Beard stated that the program had been using one (1) form for all notices regarding overpayment of a benefit. That form included information on hearing rights; however, notices after the initial notice should not have referenced hearings because the deadlines would have passed. The program created a subsequent notice form that did not include information on hearing rights.

The following administrative regulations were deferred or removed from the February 10, 2020, subcommittee agenda:

COUNCIL ON POST SECONDARY EDUCATION: Interstate Reciprocity  
Agreements

13 KAR 4:010. State Authorization Reciprocity Agreement.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Board of Dentistry

201 KAR 8:550. Anesthesia and sedation.

Board of Veterinary Examiners

201 KAR 16:500. Code of ethical conduct for veterinarians.

201 KAR 16:510. Fees for veterinarians.

201 KAR 16:512. Fees for veterinary technicians.

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

201 KAR 16:516. Fees – other fees.

201 KAR 16:520. Approved veterinary colleges; approved programs for veterinary technicians.

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

201 KAR 16:540. Application requirements for veterinarians and veterinary technicians.

201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

201 KAR 16:560. Certification as an animal euthanasia specialist.

201 KAR 16:570. License renewal for veterinarians and veterinary technicians.

201 KAR 16:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.

201 KAR 16:580. Board issued licenses and certificates, inactive and retired statuses.

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

201 KAR 16:600. Prescription and dispensation of drugs for animal use.

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

201 KAR 16:700. Material incorporated by reference.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:185. Hunter education.

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian: Livestock, Poultry, and Fish

302 KAR 22:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish.

302 KAR 22:020. Restriction of transportation of livestock, poultry, and fish.

302 KAR 22:040. Carcass transport and composting.

302 KAR 22:070. Restrictions on biological materials in Kentucky.

302 KAR 22:080. Feed restrictions.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:091. Repeal of 401 KAR 005:090.

Division of Air Quality: General Standards of Performance

401 KAR 63:010. Fugitive emissions.

JUSTICE AND PUBLIC SAFETY: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission

500 KAR 15:010 & E. Motorcycle safety education program.

Parole Board

501 KAR 1:040 & E. Parole revocation hearing procedures.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030E. Ignition interlock.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission

739 KAR 2:140. Fire department reporting requirements.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department for Technical Education: Management of the Kentucky TECH System

780 KAR 2:060. Discipline of students.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes.

Division of Audits and Investigations: Controlled Substances

902 KAR 55:130. Electronic prescribing of controlled substances.

Department for Medicaid Services: Division of Provider Integrity

907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program.

Office of Human Resource Management: Division of Employee Management: Administration

920 KAR 1:070. Deaf and hard of hearing services.

Division of Child Care: Day Care

922 KAR 2:090. Child-care center licensure.

922 KAR 2:100. Certification of family child-care homes.

The subcommittee adjourned at 1:45 p.m. The next meeting of the subcommittee is tentatively scheduled for March 9, 2020, at 1 p.m.