

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the January Meeting

January 10, 2023

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 10, 2023, 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 Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and David Yates; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

Guests: Michael Adams and Jennifer Scutchfield, Office of the Secretary of State; Taylor Brown, State Board of Elections; Graham Gray, Farrah Petter, and Jon Grate, Auditor of Public Accounts; Robert B. Barnes, Teachers' Retirement System; Carrie Bass and Jessica Beaubien, Kentucky Retirement Systems; Lois Ann Disponett and August Lincoln Pozgay, Real Estate Authority; Marc Kelly, Board of Social Work; William Brab, Jeremy Sylvester, and Zachary Zimmerer, Board of Registration for Professional Geologists; Steven Fields, Jenny Gilbert, Rich Storm, and Dan Figert, Department of Fish and Wildlife Resources; Abigale George, Clint Quarles, and Ryan Burnette, Department of Agriculture; Michael Kennedy, Division of Air Quality; Amy Barker and Amelia Howell, Justice and Public Safety Cabinet; Jonathan Scott, Department for Medicaid Services; Rachael Ratliff, Department for Behavioral Health, Development and Intellectual Disabilities; and Laura Begin and Andrea Day, Department for Community Based Services.

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

Administrative Regulations Reviewed by this Subcommittee:

SECRETARY OF STATE: Filings

030 KAR 009:010. Forms. Michael Adams, Secretary of State, represented the office.

In response to a question by Co-Chair West, Secretary Adams stated that this administrative regulation was in response to House Bill 336 from the 2020 Regular Session

of the General Assembly, which established the deadline for filing the name and address of the Lieutenant Governor running mate for a governor's race. This administrative regulation established and incorporated that form.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

STATE BOARD OF ELECTIONS: Electronic Voting Systems

031 KAR 002:030E. E-Poll book product certification. Taylor Brown, general counsel, represented the board.

In response to questions by Co-Chair West, Mr. Brown stated that electronic poll books were replacing hand-signed rosters for voting purposes. There was currently only one certified vendor in Kentucky for electronic poll books, Tenex, which was located in Tampa, Florida. Pursuant to this emergency administrative regulation, the board had received four applications for vendor certification, including Tenex.

031 KAR 002:030. E-poll book product certification.

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:050. Audits of fiscal courts. Jon Grate, chief of staff, and Farrah Petter, assistant state auditor, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

102 KAR 001:361E. Disability retirement for TRS Tier 4 members with less than five years of service. Robert Barnes, general counsel and deputy executive secretary, represented the system.

In response to a question by Co-Chair West, Mr. Barnes stated that House Bill 258 from the 2021 Regular Session of the General Assembly established a new, fourth retirement tier, TRS 4.

102 KAR 001:361. Disability retirement for TRS Tier 4 members with less than five years of service.

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

Kentucky Retirement Systems: General Rules

105 KAR 001:071. Repeal of 105 KAR 001:070. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

105 KAR 001:371. Repeal of 105 KAR 001:370.

105 KAR 1:451E. Quasi-governmental employer reports on independent contractors and leased employees.

105 KAR 001:451. Quasi-governmental employer reports on independent contractors and leased employees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 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: Real Estate Commission

201 KAR 011:121. Standards of professional conduct. Lois Ann Disponett, chair, and August Pozgay, general counsel, represented the board.

In response to questions by Senator Yates, Mr. Pozgay stated that neither this administrative regulation nor the incorporated material addressed members, partnerships, or Limited Liability Companies with minority or percentage ownership in real estate purchasing groups. Disclosures were required for licensees of the commission. The amendment to this administrative regulation removed the requirement to disclose former clients involved in transactions. Ms. Disponett stated that this administrative regulation was being amended to clarify who constituted an agent.

In response to questions by Co-Chair West, Ms. Disponett stated that the Seller Disclosure applied to residential property of four units or less. Mr. Pozgay stated that the agency would follow up with this subcommittee regarding to whom the Agency Disclosure applied.

In response to a question by Representative Grossberg, Ms. Disponett stated that a “former prospective client” was established if there was a written offer signifying a true fiduciary responsibility.

In response to questions by Representative Bridges, Mr. Pozgay stated that the term, “retained,” did not necessarily imply that any payment had been made, but that there was a formalized relationship. Ms. Disponett stated that a buyer’s agent would not be paid by a buyer. Mr. Pozgay stated that payment was not a component of the disclosure form.

A motion was made and seconded to approve the following amendments: to amend Section 11 to revise incorporated forms for clarity and to align form content with current regulatory provisions. Without objection, and with agreement of the agency, the amendments were approved.

Board of Registration for Professional Geologists

201 KAR 031:010. Fees. William Brab, chair, and Jeremy Sylvester, board counsel, represented the board.

In response to questions by Representative Frazier Gordon, Mr. Brab stated that fees were last increased in 2001 and 2009. The fee increase was to address an office cost increase of approximately \$20,000 per fiscal year.

201 KAR 031:031. Repeal of 201 KAR 031:030.

In response to a question by Co-Chair West, Mr. Brab stated that this administrative regulation established a grace period for temporary licensure in 1994 and 1995. There had been no requests or records of requests for this licensure; therefore, this administrative regulation was being repealed.

201 KAR 031:040. Applications and examinations.

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

201 KAR 031:050. Renewals.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, and 6 to comply with the drafting and formatting requirements of KRS

Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 002:015. Feeding of wildlife. Steven Fields, staff attorney; Dan Figert, assistant director of wildlife; and Rich Storm, commissioner, represented the department.

301 KAR 002:075. Wildlife rehabilitation permit.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4 and 6 through 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.

301 KAR 002:081. Transportation and holding of live native wildlife.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:082. Transportation and holding of live exotic wildlife.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 through 7 and 9 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 10(5)(c) to establish conditions for euthanasia for confiscated wildlife. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Organic Agricultural Product Certification

302 KAR 040:010. Certification of organic production, processing, or handling operations. Ryan Burnette, division director; Abigale George, Organic Program specialist; and Clint Quarles, attorney, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that Organic Program fees, which had not been adjusted since at least 2004, were doubling. Fees were intended to recoup expenses for the program, such as costs for gas and vehicles. This

program generally operated under a financial loss to the agency. Mr. Burnette stated that the fee for an organic certified crop farm was going from \$250 to \$500; however, with the U.S.D.A. cost-sharing program, the expense for the farm would continue to be \$250. The applicants were able to apply for the federal cost-sharing funds through the application or as part of an inspection.

In response to questions by Senator Thayer, Mr. Burnette stated that there was widespread support for these increases because the department fees continued to be far lower than what private entities charged. The department did not have a letter from the industry stating that the fees would not be passed on to consumers. Co-Chair West clarified that industry preferred that the department continued to implement this program because it would otherwise cost more.

Senator Yates stated that costs could be lowered if more competition were available in the organic industry. If the program ceased, competition would likely be reduced, which would seem to keep costs high.

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

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 063:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list. Michael Kennedy, division director, represented the division.

In response to questions by Co-Chair West, Mr. Kennedy stated that 1-Bromopropane was a solvent used to clean metals and other materials. Adding 1-Bromopropane to the list was expected to have no immediate impact because emissions control was not a requirement of adding the contaminant to the list.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:050. Luther Luckett Correctional Complex. Amy Barker, assistant general counsel, and Amelia Howell, program administrator, represented the office.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to clarify provisions and comply with

the drafting 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 Medicaid Services: Payments and Services

907 KAR 003:160. Specialized children's services clinics. Jonathan Scott, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Mr. Scott stated that, moving forward, this would be a fee-for-service benefit that bypassed the MCOs. The department had the statutory authority for this, and many of the child advocacy centers were not participating with the MCOs. Only approximately half were participating with an MCO, and the department endeavored to ensure that this provider type was fully able to participate without barriers. Out of approximately 15 child advocacy centers, only 7 or 8 were fully participating. Senator Raque Adams clarified that the cabinet did not increase the reimbursement rate. Senate Bill 8 from the 2022 Regular Session of the General Assembly required increased reimbursement for child advocacy centers.

In response to a question by Senator Thayer, Mr. Scott and Senator Raque Adams stated the department was complying with Senate Bill 8 from the 2022 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 2 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Developmental Health, Developmental and Intellectual Disabilities: Sub-stance Abuse

908 KAR 001:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities. Rachael Ratliff, regulation coordinator, represented the department.

Department for Community Based Services: Daycare

922 KAR 002:165. Employee Child Care Assistance Partnership. Laura Begin, regulation coordinator, and Andrea Day, division director, represented the department.

In response to a question by Co-Chair West, Ms. Begin stated that House Bill 499 from the 2022 Regular Session of the General Assembly established the Employee Child Care Assistance Partnership, which intended to help employers obtain and maintain

children in childcare. The cost of childcare was often the most salient decision point in determining employment and continuation of employment.

A motion was made and seconded to approve the following amendments: to amend: (1) Section 3 to comply with the drafting requirements of KRS Chapter 13A; (2) Section 8 for clarity; (3) Section 9 to update the edition date of material incorporated by reference; and (4) the material incorporated by reference for consistency with this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair West introduced new subcommittee members in order of seniority, including: Senator Damon Thayer, Representative Derek Lewis, and Representative Daniel Grossberg. Representative Hale had resigned as Co-Chair of this subcommittee, and it was necessary to elect a replacement House Co-Chair to complete the unexpired portion of that term. Representative Frazier Gordon made a motion, seconded by Representative Bridges, that Representative Derek Lewis be nominated for House Co-Chair. Representative Lewis accepted the nomination. Representative Bridges made a motion, seconded by Representative Frazier Gordon, to end House Co-Chair nominations and elect Representative Lewis by acclamation. Representative Lewis was endorsed as House Co-Chair of the subcommittee.

The following administrative regulations were deferred or removed from the January 10, 2023, subcommittee agenda:

OFFICE OF THE ATTORNEY GENERAL: Department of Law: Office of Consumer Protection

040 KAR 002:150. Cremation forms and inspections.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules

105 KAR 001:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:360. Naloxone dispensing.

201 KAR 002:380E. Board authorized protocols.

201 KAR 002:380. Board authorized protocols.

201 KAR 002:450. Unprofessional conduct of a pharmacy permit holder.

Board of Licensure for Long-term Care Administrators

201 KAR 006:060. Fees.

Board of Dentistry

201 KAR 008:520. Fees and fines.

201 KAR 008:601. Mobile dental facilities and portable dental units.

Board of Social Work

201 KAR 023:016. Temporary permission to practice. Marc Kelly, executive director, represented the board.

In response to a question by Co-Chair West, Mr. Kelly requested deferral of this administrative regulation to the February 2023 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

201 KAR 023:051E. Renewal, termination, reinstatement of license.

EDUCATION AND LABOR CABINET: Department of Education: Charter Schools

701 KAR 008:010. Charter school student application, lottery, and enrollment.

701 KAR 008:020. Evaluation of charter school authorizers.

701 KAR 008:030. Charter school appeal process.

701 KAR 008:040. Conversion charter school petition, conversion, and operation.

701 KAR 008:050. Charter school funding.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:280. Registration, utilization review, and internal appeal.

806 KAR 017:290. Independent External Review Program.

Department of Financial Institutions: General Provisions

808 KAR 001:170. Licensing and registration.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Health Services and Facilities

902 KAR 020:470. Kentucky heart attack response and treatment recognition process.

Department for Medicaid Services

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

907 KAR 001:680. Vaccines for children program.

Payments and Services

907 KAR 003:010. Reimbursement for physicians' services.

Medicaid Eligibility

907 KAR 020:050. Presumptive eligibility.

Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 002:006. Technical requirements for the Kentucky Transitional Assistance Program (KTAP).

921 KAR 002:500. Family Assistance Short Term (FAST).

921 KAR 002:510. Relocation Assistance Program (RAP).

921 KAR 002:520. Work Incentive (WIN).

The subcommittee adjourned at 2 p.m. The next meeting of this subcommittee was tentatively scheduled for February 14, 2023, at 8 a.m.