

INTERIM JOINT COMMITTEE ON AGRICULTURE

Minutes of the 4th Meeting of the 2020 Interim

September 17, 2020

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Agriculture was held on Thursday, September 17, 2020, at 8:30 AM, in Room 171 of the Capitol Annex. Representative Richard Heath, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Paul Hornback, Co-Chair; Representative Richard Heath, Co-Chair; Senators Stan Humphries, Robby Mills, Dennis Parrett, Damon Thayer, Stephen West, and Whitney Westerfield; Representatives George Brown Jr, Kelly Flood, Joe Graviss, Mark Hart, Kim King, Matthew Koch, Phillip Pratt, Brandon Reed, Rachel Roberts, Steven Rudy, Dean Schamore, John Sims Jr, Wilson Stone, Nancy Tate, Walker Thomas, James Tipton, and Susan Westrom.

Guests: Julie Brooks, Regulation Coordinator, Department for Public Health; Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services; Kelli Rodman, Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services; Dr. Chad Lee, Director, Grain and Forage Center of Excellence, UK College of Agriculture, Food, and Environment; Laura Knoth, Kentucky Small Grain Growers Association; Billy Van Pelt, American Farmland Trust; Sam Halcomb, Walnut Grove Farms; Chris Poynter, Woodford Reserve; Chris Morris, Master Distiller, Woodford Reserve; Brian Brandt and Scott Franklin, American Farm Land Trust; and Keith Rogers, Chief of Staff, Kentucky Department of Agriculture.

LRC Staff: Stefan Kasacavage, Kelly Ludwig, Nathan Smith, Susan Spoonamore, Committee Assistant.

The August 27, 2020 minutes were approved without objection, upon motion made by Representative Reed and seconded by Representative Koch.

Update of Administrative Regulation Related to Food Establishments

Julie Brooks, Regulations Coordinator, Department for Public Health explained the timeline in the regulation process for food service establishment fees. An amendment was filed to 902 KAR 45:110 in June and the public comment period ended August 31. The

Department is working through the statement of consideration that will be filed with the Legislative Research Commission (LRC) by October 15, 2020. She said the language in House Bill 129 gave the Department until December 31, 2020, to file an amendment to the regulation to raise food service establishment fees by 25 percent. The other part of the amendment removes the food manufacturing fees from that regulation and those fees will be promulgated through 902 KAR 45:180 (a new administrative regulation). The new regulation was filed on June 4, 2020, and the Department received approximately 450 comments on that regulation. A statement of consideration will also be filed with the LRC. Ms. Brooks stated that once the statements of considerations are filed, the regulations will go before the Administrative Regulations Review Subcommittee in November, and then move on to the second committee either this December or March, 2021. Ms. Brooks said the food manufacturing fee structure is being changed to a risk model that will include income brackets for manufacturers.

In response to Representative Graviss, Ms. Brooks said the authority to increase fees for food processing establishments is in KRS 217.125 (2). The authority to increase food service and establishment fees is in KRS 217.125 (4). The authority to change to a risk based model, goes back to the Food and Drug Administration's (FDA) classification of food manufacturing.

Representative Graviss said he was concerned about the Cabinet going against the intent of House Bill 129 from the 2020 regular session. Some of the fees contained in the proposed fee structure will be more than some farmers make in a year. Ms. Brooks stated that the Department would take another look at the proposed fee structure.

In response to Representative King, Ms. Brooks said the Department would address all comments received, and those would be listed in the statement of consideration for both 902 KAR 45:110 and 902 KAR 45:180.

In response to Representative Reed, Ms. Brooks said that there are 176 firms that fall within the income level of \$100,000 and \$1,000,000. She said she would provide to staff the number of firms listed under the income level of \$100,000 and income greater than \$1,000,000.

Senator West stated that there should be fee decreases instead of increases, especially in light of food shortages during a pandemic.

Senator Hornback stated that the Department should be focused on the health and well-being of all Kentuckians, which means the availability of fresh produce. The proposed fee increases work against the producers and consumers.

Representative Graviss said that even though this proposal was much better than the first proposal, it is still inappropriate to promulgate administrative regulations that go

beyond the limitations set in House Bill 129. Representative Graviss asked if the co-chairs would consider doing a letter to the Department listing the concerns and comments of the committee.

Ms. Brooks stated that the comment period on the regulation ended in August. Although, she said the Department would take a look at the written comments already received and the comments made in today's meeting and possibly make some changes.

Ms. Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, stated that the committee's comments would not be included in the record, but could be considered in making changes to the regulation. The Statement of Consideration deadline is October 15, 2020, therefore there is not enough time to revise and add comments.

In response to Representative Tate's question about why the fee increases are so important to do right now, other than generating additional revenue, Ms. Brooks stated that House Bill 129 has a time limit of December 31, 2020, in order for the Department to file a fee increase.

In response to Representative Tate, Ms. Kelli Rodman, Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, stated that House Bill 129 contains language that changes to the regulations must be done by the end of 2020.

Senator Thayer asked the Department to consider what consumers are dealing with in this pandemic before implementing massive fee increases. He also asked the co-chairs to send a joint letter to all the interested parties to formalize, in writing, the bipartisan concerns discussed by the committee.

Senator Parrett stated that if the Department decides to apply the three-tiered structure, then apply the rules of House Bill 129.

In response to Senator West, Ms. Rodman stated that she will have to review the legislation to see if a fee increase is mandated.

In response to Senator West, Ms. Rodman said that increased fees would not go into effect until 2022, pending agreement of the committee of jurisdiction.

Representative Pratt stated that increasing fees from \$125 to \$2,500 would devastate small businesses. Ms. Rodman said that the proposed fee structure was being looked into.

Representative Tate said that she would be willing to do an amendment to the bill in order to eliminate this type of activity in the future.

Overview of the Kentucky Commercial Rye Crop Initiative

Mr. Billy Van Pelt, Senior Director of External Relations, American Farmland Trust (AFT), stated that AFT was founded in 1980. AFT speaks for the land and the people who grow the nation's food. The AFT has three priorities: protecting agricultural land, promoting sound farming practices, and keeping farmers on their land. Mr. Van Pelt explained that commercial quality rye was once widely cultivated in Kentucky. Over the years, the production of rye almost ceased because farmers decided to produce row crops like corn and soybeans. Due to recent research, funding, and interest of farmers and distillers, growing cereal rye could provide additional revenue for the farmers and provide rye for making bourbon. The Kentucky Commercial Rye Cover Crop Initiative had two goals: to determine how to best grow cereal rye as a high-quality grain crop and to develop a network of farmers and buyers of cereal rye. The AFT would be partnering with the Kentucky Agricultural Development Fund, the University of Kentucky, the Kentucky Small Grain Growers Association, and Dendrifund. The goal is to enroll 20 farmers for the 2020-2021 season who will grow over 500 acres of rye. Mr. Van Pelt said that AFT and its partners have raised cash and in-kind contributions of \$450,429 to support the ongoing success of the project.

In response to Senator Hornback, Laura Knoth, Executive Director, Kentucky Small Grain Growers Association, said that farmers from across the state are interested in the Rye Crop Initiative. She said that farmers would be required to install weather stations, have their crops tested, send in samples, and provide feedback. She confirmed that the mentioned farmer from Hickman County does not have a relationship with the distillers.

Dr. Chad Lee, Director, Grain and Forage Center of Excellence, UK College of Agriculture, Food and Environment, said that last year Brown Forman Reserve bought three loads of rye from three different farmers, and are looking to expand to other distilleries. If rye can be grown successfully at a high quality, it would be fitting to see rye move into the distillers market and expand into other markets. The University of Kentucky is in the process of developing genetics that would produce seeds conducive to growing conditions in Kentucky. If Kentucky can have wheat and rye crops for cover crops and both crops are able to bring in cash flow, then that would be great for farmers to sell at local markets.

Mr. Chris Morris, Master Distiller, Woodford Reserve, said that their corn supply is being purchased from local farmers, but their purchase of rye is being purchased from outside of Kentucky. The Rye Crop Initiative is a good project, but distillers are more interested in the flavor of the rye.

Sam Halcomb, Walnut Grove Farms, said that the project would help farmers to diversify crop rotation, help with soil health, and add to market diversity.

In response to Representative King, Dr. Lee said he was not aware of rye being an added product for human consumption, other than bourbon. Ms. Knoth said that there is rye bread.

In response to Senator West, Dr. Lee and Ms. Knoth stated that the distilleries currently get rye from Canada and Europe. Ms. Knoth stated that the Small Grain Growers Association is working to help research on breeding and developing a Kentucky Rye that grows well in Kentucky and that will provide the flavor profile desired by the distilleries.

In response to Representative Flood, Dr. Lee said that the biggest challenge for growing rye in Kentucky is high temperatures. The seeds obtained from Germany are for cooler weather conditions. He said the need for water is not that great since wheat and rye have long root systems.

In response to Representative Koch, Dr. Lee stated that it was possible to harvest rye and still use for straw bedding.

Comments regarding Administrative Regulations

In response to Representative Graviss, Keith Rogers, Chief of Staff, Kentucky Department of Agriculture, reminded members that it is a federal law for hemp to contain no more than 0.3 percent THC. Chairman Heath noted that he agreed that the THC level should be raised from 0.3 to 1 percent especially when even poor quality marijuana is near 10 percent THC.

Co-Chairman Hornback responded by saying that no matter the set percentage, there would always be a farmer who would be just barely over the allowed percentage. In response to Senator Hornback, Mr. Rogers explained that the United States Department of Agriculture (USDA) released the interim final rule on October 31, 2019, putting in place the process by which a state would submit a state plan for approval by the USDA. KDA worked through November, December, and January to get the state plan submitted, but there were some issues that would have negatively impacted the Kentucky hemp industry – such as post-harvesting testing. At the last minute, KDA decided to not submit a state plan and to continue operating under the old plan of the pilot program. The regulations were redone in order to operate the 2020 hemp program, which are listed on the agenda. Mr. Rogers said KDA had submitted a new state plan and filed new regulations that would take effect in 2021. He said KDA is waiting for a response from the USDA on the 2021 plan.

In response to Senator Hornback, Mr. Rogers said that under new legislation from the 2019 session, KDA was authorized to use the Breathitt Diagnostic Center for testing along with the University of Kentucky.

In response to Representative Graviss, Mr. Rogers said that the fee structure for farmers, included in the regulations, were lower if farmers applied online. He also stated that the hemp program, as of July 1, 2019, has been self-sufficient.

In response to Representative Sims, Mr. Rogers said that there are several hemp farmers who did not get paid for their crop last year, but he did not know the exact number of farmers who did not get paid.

Meeting adjourned.

Review of Referred Regulations

Kentucky Department of Agriculture

302 KAR 022:050 Stockyards

302 KAR 050:012 Repeal of 302 KAR 50:040 and 302 KAR 50:050

302 KAR 050:020 Policies and procedures for hemp growers

302 KAR 050:030 Policies and procedures for hemp processors and handlers

302 KAR 050:055 Sampling and THC testing; post-testing actions; disposal of noncompliant harvests

302 KAR 050:060 Fees for the Hemp Licensing Program