INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND WORKFORCE INVESTMENT

Minutes of the 7th Meeting of the 2018 Interim

November 15, 2018

Call to Order and Roll Call

The 7th meeting of the Interim Joint Committee on Economic Development and Workforce Investment was held on Thursday, November 15, 2018, at 10:00 AM, in the Brown-Forman Room at the Kentucky History Museum in Frankfort, Kentucky. Representative Phillip Pratt, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Phillip Pratt, Co-Chair; Senators Perry B. Clark, Denise Harper Angel, Ernie Harris, Stephen Meredith, Wil Schroder, Reginald Thomas, and Max Wise; Representatives McKenzie Cantrell, Daniel Elliott, Al Gentry, Mark Hart, Joni L. Jenkins, Adam Koenig, Jerry T. Miller, Jason Petrie, Rob Rothenburger, Diane St. Onge, Walker Thomas, and Russell Webber.

Guests: Kate Shanks, Vice President of Policy Development, Kentucky Chamber of Commerce; Tim Gibbs, President and CEO, Ashland Alliance; Chuck Sexton, President and CEO, One East Kentucky; Marc Wilson, Partner, Top Shelf Lobby; Ben Bruebeck, Vice President of Regulatory, Labor, and State Affairs, Associated Builders and Contractors; Kevin Sell, CVO, United Group Services; Vivek Sarin, Executive Officer, Cabinet for Economic Development; Erran Persley, Executive Director of International Affairs and Business Development, Cabinet for Economic Development; Katie Smith, Commissioner of the Department for Financial Services, Cabinet for Economic Development; Joe Lilly, Executive Director of the Office of Marketing and Public Affairs, Cabinet for Economic Development; Brian Mefford, Executive Director of the Office of Entrepreneurship, Cabinet for Economic Development; and Jessica Burke, General Counsel, Cabinet for Economic Development.

LRC Staff: Carla Montgomery, Andrew Manno, Chip Smith, Candice Smith, and Sasche Allen.

Approval of Minutes

A motion to approve the minutes of the October 18, 2018 meeting was made by Representative Diane St. Onge, seconded by Senator Stephen Meredith, and approved by voice vote.

Kentucky Chamber of Commerce

On behalf of the Chamber, Kate Shanks, the Vice President of Policy Development for the Kentucky Chamber of Commerce; Tim Gibbs, the President and CEO of Ashland Alliance; and Chuck Sexton, the President and CEO of One East Kentucky, discussed the importance of transportation infrastructure to economic development. Mr. Gibbs stated that the Commonwealth's competitive advantages and proximity to major markets makes the state attractive to companies considering relocation, and the flow of in state transportation is better than most states. However, after completing a survey of companies in northeastern Kentucky, he found that an overwhelming number of businesses utilize out of state railway services. Therefore, strategic investments have to be made to link all methods of transportation across the state. Mr. Sexton added that the perspective of the private industry has to be taken into consideration along with risk factors. There will be less risks for the private businesses if the state continues to invest in transportation infrastructure, especially in the improvement of Kentucky roadways which are the key to moving goods. Mr. Sexton said that investments in roadways and other modes of transportation have to be made ahead of future economic development opportunities. Ms. Shanks said this issue will be a top priority for the Chamber and business community for the upcoming legislation session.

Project Labor Agreements

Marc Wilson, a partner with Top Shelf Lobby; Ben Bruebeck, the Vice President of Regulatory, Labor, and State Affairs with the Associated Builders and Contractors; and Kevin Sell, the CVO of United Group Services, all spoke in favor of legislation that would eliminate government-mandated project labor agreements (PLAs). The legislation is also known as the Fair and Open Competition Act and was introduced during the 2018 Regular Session as HB 471. According to Mr. Bruebeck, eradicating government-mandated PLAs would benefit all of the state's construction industry, ensure taxpayer dollars are spent effectively, and result in more of the best possible construction projects built at the best possible price. Provisions in a government-mandated PLA can require that union employees be obtained which discourages some merit shop contractors from bidding on projects because this can be harmful to a company's current workforce that chooses not to belong to a union. Based on studies conducted in Massachusetts, Connecticut, New York, New Jersey, California, and Ohio, government-mandated PLAs can increase costs between 12 and 18 percent. Twenty-three states have passed a Fair and Open Competition Act since 2011.

Mr. Sell made remarks based on his perspective as a merit shop contractor and Associated Builders and Contractors member. His company is excluded from some projects that require PLAs because United Group Services is not affiliated with a union. He noted that government-mandated PLAs contradict the passing of Right to Work laws and the repeal of prevailing wage. Mr. Sell said that industry employers take on all of the risk and liability while recruiting new workers in an industry workforce that has a shortage of skilled employees. The shortage is an issue for employers, employees, taxpayers, and many others, but the wording of PLA's does not aid in finding a solution.

Addressing a question from Representative Jerry Miller, Mr. Bruebeck said that if a government entity or quasi-governmental agency solicited bids for a project, a PLA could not be required in procurement documents. However, if a firm won the project contract during the bidding process, then they would be allowed to voluntarily enter into a PLA.

Replying to Representative Mark Hart, Mr. Bruebeck stated that the Fair and Open Competition Acts passed in Iowa, Michigan, Louisiana, and Idaho were challenged and upheld.

Answering a question from Senator Wil Schroder, Mr. Sell explained that the negotiating process begins with the government authority having jurisdiction over the project such as a city, a fiscal court, or a school board. Responding to a follow-up, Mr. Bruebeck clarified that government-mandated PLAs are not common in Kentucky.

Responding to Representative Joni Jenkins, Mr. Bruebeck stated he has reviewed five government-mandated PLA cases in Kentucky that occurred in the last 10 years.

Addressing Representative Diane St. Onge, Mr. Bruebeck said that government mandated PLAs exacerbate the skilled workforce shortage by excluding some workforce development and apprenticeship programs. He stated that union and nonunion members should be able to participate in taxpayer-funded projects. Mr. Sell added that his company does not continue any further if it is made aware that a project it's involved with bidding on requires a government-mandated PLA.

Representative Al Gentry expressed his support for states' rights and local government control and said he was given a better understanding of the proposed legislation by the responses to previous questions.

Replying to Senator Denise Harper Angel, Mr. Bruebeck said the legislation would impact public-private partnerships (P3s). Contractors operating under P3s would be getting state assistance, and therefore those firms would not be able to require a PLA for subcontractors. He said uncertainty lies in a situation where a firm voluntarily wants to use a PLA that is the actual general contractor in a P3, but the legislation can be drafted to address this issue.

Answering a question from Senator Reginald Thomas, Mr. Bruebeck confirmed that there is not a current state law that requires any government, either local or state, to have a government-mandated PLA. Responding to a follow up, Mr. Bruebeck said that the legislation is a proactive measure.

Senator Stephen Meredith commented that although he supports control at the local level, government-mandated PLAs may eliminate transparency.

Addressing a question from Representative McKenzie Cantrell, Mr. Brubeck said that although he previously referenced five government-mandated PLAs, there are likely more. He also confirmed that there was a controversial government-mandated PLA involved with the 2009 construction of Tiger Creek Elementary School in Carter County.

Cabinet for Economic Development Update

Cabinet leadership gave updates on its progress, described areas of emphasis, detailed the incentive program, and discussed goals for the upcoming legislative session. The Cabinet is the primary state agency responsible for encouraging job creation, business retention, and new investment in the state. Since the start of the current administration, there has been $17.2 billion in new investments, more than 47,500 new jobs created, and more than 950 new projects started. Areas within the Cabinet include the Department of Business Development; International Affairs and Business Development; the Office of Entrepreneurship; the Office of Legal Services; the Office of Marketing and Public Affairs; the Office of Workforce, Community Development, and Research; and the Department for Financial Services. Each department head, excluding the Department of Business Development and the Office of Workforce, Community Development, and Research which are currently vacant, described their area of emphasis. Katie Smith, the Commissioner of the Department for Financial Services, did explain that the Department for Business Development is responsible for attracting new investment in Kentucky; and the Office of Workforce, Community Development, and Research is responsible for cultivating growth by developing relationships within the business community and connecting labor supply and employer demand. Erran Persely, the Executive Director of International Affairs and Business Development, said his office is responsible for assisting the state in attracting international investment. Brian Mefford, the Executive Director of the Office of Entrepreneurship, stated that his office works to cultivate an entrepreneurial and small business support system through an array of programs, initiatives, and partnerships. He highlighted the upcoming launching of an entrepreneurial networking program which is a collaboration with the University of Kentucky and University of Louisville. Joe Lilly, the Executive Director of the Office of Marketing and Public Affairs, spoke about the content his office produces to promote the Commonwealth. Jessica Burke, the General Counsel for the Cabinet, explained that her office handles all legal issues and provides general analysis of programmatic and internal administrative issues.

Commissioner Smith detailed her department which provides Cabinet wide services in areas of accounting; budgetary and fiscal affairs; incentive program administration; compliance; and personnel and administrative functions. She went into further detail about the Cabinet's incentive program. All incentive programs are performance based, and each requires approval by the applicable board or committee. Each business participant is monitored for its progress and success. The Kentucky Economic Development Finance

Authority (KEDFA) is responsible for awarding most of the financial incentives offered by the Cabinet. All approved incentive programs are listed and detailed on the Cabinet's website. For the upcoming legislative session Ms. Burke said the Cabinet plans to work with legislators to address fixes to HB 366 and HB 487 that were passed during the 2018 Regular Session, amendments to the Open Records Act, abolishing the Kentucky Industrial Revitalization Act program and rolling it into the Kentucky Reinvestment Act program, and amending the Kentucky Business Investment program.

Responding to an inquiry from Representative Diane St. Onge, Ms. Burke further explained that HB 366 that was passed during the 2018 Regular Session suspended the Angel Tax Credit program immediately while HB 487 suspended the program beginning January 2019. When these bills were reviewed jointly by the Legislative Research Commission's Reviser of Statutes, it was determined that the intent was to suspend the program immediately along with the Kentucky Investment Fund Act program which was not intended. Commissioner Smith added that the start back dates for the programs need to be fixed as well.

There being no further business, the meeting was adjourned at 11:44 a.m.