INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 5th Meeting of the 2021 Interim

October 21, 2021

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, October 21, 2021, at 11:00 AM, in Room 131 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, Jimmy Higdon, Jason Howell, Gerald A. Neal, Michael J. Nemes, and Damon Thayer; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Al Gentry, Thomas Huff, Matthew Koch, C. Ed Massey, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, Killian Timoney, and Susan Westrom.

Guests: Representative Bobby McCool, Senator Phillip Wheeler, William Woodward, President, Ironworkers Southern Ohio & Vicinity District Council; Derek Clemons, Vice President & General Manager, Stupp Bridge Company; Brian Miller, Executive Vice President, Shad Sletto, Member, Building Industry Association of Northern Kentucky; Eric Gregory, President, Kentucky Distillers Association, Sara Osborne and Chris Nolan, Government Relations, MML&K and Kentucky Distillers Association; and Rick Rand, Commissioner, Max Fuller, Deputy Commissioner, Benjamin Siegel, General Counsel, Department of Housing, Buildings, & Construction.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore

Approval of Minutes from September 23, 2021, Meeting

Senator Adams motioned to approve the minutes from the September 23, 2021, meeting and Representative Timoney seconded the motion. The minutes were approved by voice vote. Chairman Schickel asked for a moment of silence in honor of the passing of Bryce Amburgey's father.

Senator Schickel recognized Senator Neal to introduce special guests visiting the Capitol and attending the committee meeting.

Department of Housing, Buildings, & Construction Update

Rick Rand, Commissioner, Department of Housing, Buildings, and Construction (DHBC) is proposing the reinstatement of industry-specific advisory committees that provide a targeted perspective on trade and industry-specific issues to advise the department on regulatory matters. Specifically, the department would propose a reorganization to establish the following: the Plumbing Advisory Committee – 11 voting members; the Electrical Advisory Committee – 11 voting members; the Heating, Ventilation, and Air Conditioning Advisory Committee – 9 members; the Elevator Advisory Committee – 9 voting members; the Manufactured Housing Advisory Committee – 5 voting members; and the Uniform State Building Code Advisory Committee – 13 or 14 members. He said the department would be introducing a reorganization bill to enact this in the 2022 Regular Session.

The proposal is in response to requests from industry stakeholders. Industry leaders say the current single committee structure has not fostered a productive environment. The DHBC advisory committee, codified at KRS 1989B.032, is overly broad in scope and lacks the industry-specific expertise needed to advise the department in all matters.

Each committee would, at a minimum, meet quarterly. The DHBC must provide 30 days for the committee to review and provide comments on administrative regulations, except for emergency regulations. Committees may provide the DHBC with a formal recommendation regarding a proposed administrative regulation at the first meeting following the close of the 30 day period, but if one is not provided the DHBC may promulgate at its discretion.

Responding to a question from Chairman Koenig regarding why advisory boards need to be created, Commissioner Rand said it makes the process more formal, and the feedback is better as the boards meet quarterly. This input is vital to help shape regulations for the industries they work in. Chairman Koenig looks forward to hearing from the industries.

Responding to a question from Senator Higdon, Commissioner Rand said the trade advisory boards are appealing because they include the people that are interested in a particular regulation, they also provide an opportunity to vet regulations and build consensus. Senator Higdon warned against over regulating the building industry.

Responding to Representative Meredith regarding increased expenses, Commissioner Rand said currently, the advisory board members get a $50 per meeting per diem, plus expenses. With the creation of the new board structure, there will be an additional cost of $6,000 – 7,000, but the cost will be sustained through the regular budget. The DHBC brings in almost all its revenue through fees, there is very limited general fund dollars. Commissioner Rand also said that he is happy to field calls about projects in districts throughout the state. He always welcomes phone calls and is glad to help where he can.

Representative Palumbo said she was looking forward to working with Commissioner Rand and his staff during the upcoming 2022 Regular Session of the General Assembly.

Responding to Representative Santoro, Commissioner Rand said many state agencies lost personnel to attrition and they have not been replaced. He said more people will need to be hired in certain areas to maintain levels of services that industries expect. Representative Santoro said to hire the personnel needed for the upcoming Ford project in Hardin County.

AN ACT relating to welding safety

Representative Bobby McCool, bill sponsor, said this legislation is about following the code book, and leveling the playing field for contractors. It is a simple, but serious bill. It is simple in that it is asking contractors to follow what the design engineer puts forth. The D1.1 code book from the American Welding Society is designed with safety in mind. It only applies to buildings and bridges when recommended by the engineers, and does not apply to all welding applications. He said safety is compromised when code is not followed. This bill would keep welding standards systematic across the board and increase safety.

Mr. Bill Woodward, President, Ironworkers Southern Ohio & Vicinity District Council, said this legislation does not affect training facilities where certifications are received. The employees do not have travel anywhere to take the test, as a welding inspector will come to them. Certifications always stay with the welder. This is a safety issue, and not a union issue. He discussed the collapse of a Paducah school due to poor welding, and noted tax payer money would not be wasted with this legislation in place as it ensures that projects are completed responsibly and efficiently.

Senator Phillip Wheeler said there is a cost to society for following the rules. However, that cost cannot compare to the worth of student lives over implementation of safety issues. This bill simply requires that employers and welders follow the rules put into place by the engineer to help prevent accidents and injuries.

Responding to a question from Chairman Schickel, Derek Clemons, Vice President & General Manager, Stupp Bridge Company, said these requirements already exist in code, and this bill will not reduce safety accidents. He noted the engineer’s document already makes this a requirement so this legislation is redundant. People can ignore the language in the new bill, just like they break the rules now. This bill is well-intentioned, but unnecessary.

Brian Miller, Executive Vice President, Building Industry Association of Northern Kentucky, representing both residential and commercial industrial building developers throughout a 12-county jurisdiction, is opposed to the bill. The association has also operated The Enzweiller Building Institute since 1967 and has a successful history of educating professionals for over 50 years. Courses taught at the institute include welding, taught by highly experienced welding professionals, and yielding certified and employable welders for employers. He said the bill does not address welding safety, nor will it prevent the false certifications of welders. Good inspections result in qualified structures that hold up and have good performance. Professional inspectors are always used across the region which results in a good work product, not simply being inundated with filing additional paperwork.

Shad Sletto, Member, Building Industry Association of Northern Kentucky, said this bill could make buildings less safe instead of more safe. Certifications do not make welders better qualified, and they often become unaffordable. Notably, some certifications are worthless. Ultimately, the employer is responsible for welder performance and the overall safety of the job.

Representative Meredith said it seems this legislation is investing a great deal in the opinion of the engineer, and not the employer. Responding to him, Representative McCool said the engineer does not have welding skills, but does have vast knowledge of the project and its strengths and weaknesses.

Representative Flannery encouraged the members of the committee to support the bill. He believes it is a safety bill, and reminded the committee it passed the House of Representatives last session 95-0.

Senator Thayer said the two sides need to meet and come up with a compromise. The legislation has passed the House of Representatives for several sessions only to die in the Senate. He recommended including Senator Matt Castlen in the discussions, as he has been an opponent of the bill. Representative McCool said he would love the opportunity for an in-depth conversation with all parties. Mr. Woodward said it is a very simple bill that is trying to eliminate the fake certifications of welders.

Private Selection Distilled Spirits

Chris Nolan, Government Relations, MML&K, speaking for the Kentucky Distillers Association (KDA), said KDA has 52 members operating 65 distilleries. The mission since 1880 has been to passionately and responsibly promote, protect and elevate Kentucky's signature bourbon and distilled spirits industry.

Sara Osborne, Government Relations, MML&K, said Kentucky supplies 95 percent of the world's bourbon. It is an $8.6 billion industry, providing 20,100 jobs for Kentucky families. She said the industry has made $5 billion in capital investment in Kentucky.

Additionally, $300 million in local and state taxes were paid in 2010. $1.8 billion has been generated in federal excise taxes from Kentucky bourbon.

Mr. Nolan said bourbon is more popular than ever and it is fueling incredible growth to benefit all of Kentucky. However, Kentucky bourbon is facing unprecedented challenges at home and abroad. These include: exorbitant taxes; trade wars and tariffs; the COVID global pandemic; an unsustainable regulatory environment; and increased competition in other states.

The KDA recognizes change is not without angst and controversy. Recently, the legislature has tackled several significant alcohol bills. Kentucky laws are outdated, and the KDA has to continually adapt if Kentucky is to maintain its distilling dominance. Bourbon feels intrinsically connected to Kentucky, as 95 percent of bourbon on the market is made here, but it does not have to come from Kentucky. With bourbon booming, barriers to entry decreasing, and craft distillers thriving, the 95 percent made in Kentucky is starting to drop, as bourbon distillers pop up nationwide.

Kentucky is falling behind as the number of distilleries in the United States grew 146 percent between 2014 and 2019. Every other state has lower taxes on spirits production than Kentucky. Other states have also adapted quickly in changing laws, adding privileges and reducing fees to attract the next generation of distillers, jobs, and investment. Kentucky cannot afford to lose its distilling monopoly, and must continually adapt to stay at the forefront, otherwise it would cost jobs, capital investment, tourism dollars, and tax revenue. Ten years ago, 43 percent of distilling jobs were located in Kentucky, and today the number is 30 percent.

Ms. Osborne said a need of the bourbon industry is to eliminate the discriminatory barrel tax, or make it refundable and/or transferable. Other needs include: reducing distilling's overall tax burden to keep it competitive with other states; removing regulatory obstacles that restrict growth allowing Kentucky to compete with other states; and providing parity with beer and wine.

In 2014, the General Assembly made the policy decision to refund the discriminatory barrel taxes to the state's growing bourbon industry. House Bill 445 created the Bourbon Barrel Tax Reinvestment Credit. Since the vast majority of barrel taxes are paid at the local level, distillers were offered a non-refundable corporate income tax credit for the amount of ad valorem barrel tax dollars paid in the previous year. Distillers must reinvest the credited dollars into certain capital improvements at their Kentucky facilities.

The KDA strongly urges the elimination of the barrel tax in its entirety, with the state keeping local community revenue whole. An alternative is to allow distilleries to realize the entire credit by making it refundable or transferable. This will incentivize distilleries to continue investment, which helps offset mounting tariff impacts, Kentucky's high spirits tax burden, and competition from other states. Bourbon is Kentucky's signature industry, and its capital investments and employment justifies the use of refundable or transferable credits, similar to film and historic preservation credits.

Bourbon provides a return on investment. Alcohol tax revenue in Kentucky increased from $125 million in 2010 to more than $300 million in 2020, a 140 percent increase. Prohibition ended 88 years ago, but many of its laws and policies are still on the books in Kentucky. It is time to remove regulatory obstacles that restrict growth.

Finally, private barrel selections are the future of the industry because every individual barrel, no matter the mash bill or location in a warehouse, is unique in flavor and one-of-a-kind. Consumer demand is driving the popularity of private barrels, and these distillery programs are growing tremendously. The ABC has reviewed the practice and said Kentucky businesses need statutory authority to continue these events because they could be viewed as violating Tied House Rules. The legislature must codify this practice in statute if the private barrel selection programs are going to continue after April 2022.

Creating parity with small farm wineries and microbreweries is essential. Allow distillers to have off-site tasting rooms with full retail privileges; allow distillers to sell bottles at fairs, festivals and farmers markets; and offer free samples up to 1.75 ounces. Beer and wine producers have these privileges. The bill also allows retail licensees, including distilleries, to create and sell barrel-aged cocktails.

Responding to Senator Adams, Mr. Nolan said there will be a tax and revenue bill that is not in the committee meeting folders that will need to be vetted with leadership and the Appropriations and Revenue Committee. 22 RS BR 104, which has been discussed in detail and included in the meeting packets, includes the private barrel and parity issues, but leaves the tax issue out.

Responding to Representative Bratcher, Eric Gregory, President, KDA, said this bill’s objective is attracting new distilleries to Kentucky, as well as retaining current ones. Kentucky needs similar laws in order to compete with other states. Mr. Nolan said the distilleries would get a refundability of tax credits very similar to what Kentucky provided for the film industry. The tax credit would not be indefinite. Barrel taxes are separate from inventory taxes.

Responding to Representative Miller, Mr. Nolan said there would be no statutory limits on restaurants and bars on to how many private barrels they could buy. It is a self-imposed free market limit.

Responding to Senator Thayer, Mr. Gregory said the ABC Board will give private barrel selection programs a grace period until the end of the 2022 Regular Session. The ABC Board is not standing in the way, but rather wants the fixes to be grounded in statute and done legally. Senator Thayer does not like a regulatory agency trying to dictate to the General Assembly what it needs to do, but agrees this needs to be fixed permanently.

Senator Higdon said there are 10 million barrels of bourbon stored in Kentucky, and more than half are stored in his district. Responding to a question from Senator Higdon, Mr. Gregory said the ad valorem tax and the barrel tax are the same thing. Senator Higdon worries about investment if you completely make the tax refundable. Mr. Gregory said $33 million will immediately go back into facilities, construction, and creating new jobs. He also mentioned the Bourbon Barrel Tax Reinvestment Credit and the explosion of new barrels created due to this investment. If Kentucky invests even more back into the facilities, it would create more jobs, and could produce up to 12-15 million barrels stored in Kentucky in the near future.

Responding to Representative Gentry, Mr. Gregory said he is worried about the tariffs imposed on exporting Kentucky bourbon into European markets. Kentucky has lost $200-300 million in exports. The tariffs need to be removed quickly or it could hurt the state for a generation.

With no further business before the committee, the meeting adjourned at 12:25 p.m.