

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY

Minutes of the 1st Meeting of the 2020 Interim

June 4, 2020

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Natural Resources and Energy was held on Thursday, June 4, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Brandon Smith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Matt Castlen, Robby Mills, John Schickel, Reginald Thomas, Johnny Ray Turner, Robin L. Webb, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Terri Branham Clark, R. Travis Brenda, Randy Bridges, Myron Dossett, Jim DuPlessis, Daniel Elliott, Chris Fugate, Cluster Howard, Derek Lewis, Suzanne Miles, Melinda Gibbons Prunty, Josie Raymond, Cherlynn Stevenson, Jim Stewart III, Richard White, and Rob Wiederstein.

Guests: Rebecca Goodman, Secretary, Energy and Environment Cabinet; John Lyons, Deputy Commissioner, Department for Environmental Protection; and Gordon Slone, Commissioner, Department for Natural Resources.

LRC Staff: Stefan Kasacavage, Janine Coy, Tanya Monsanto, and Rachel Hartley.

Changes to Regulatory Enforcement Policy in Response to COVID-19

Secretary Rebecca Goodman stated the Energy and Environment Cabinet (EEC) has had success with the Healthy at Home Initiative and has been able to accomplish approximately 80 percent of the Cabinet's functions. These functions include: inspections, investigations, responding to complaints, and responding to environmental disruptions. The EEC is now transitioning to the Healthy at Work Initiative.

Deputy Commissioner John Lyons stated the EEC has implemented a program called Regulatory Flexibility. The program is modeled from a March 26, 2020, memorandum from the United States Environmental Protection Agency. The memorandum is retroactive to March 13, 2020, and it is a temporary policy regarding enforcement flexibility due to COVID-19 that will allow Kentucky to take a more specific approach.

On May 15, 2020, Secretary Goodman issued a memorandum outlining the policy for regulated entities impacted by COVID-19 to request enforcement flexibility for environmental obligations. The policy has been extended to June 30, 2020. The conditions of the policy include the following steps: regulated entities are obligated to ensure compliance with requirements; if compliance is not possible then the EEC should be notified; and documentation of noncompliance and actions to ensure compliance must be submitted to the EEC. There have been 61 requests for regulatory flexibility.

Commissioner Gordon Slone stated COVID-19 has contributed to a slight decrease in permitting actions in Kentucky's coal mining industry. The mining and mineral extraction industry was deemed a life-sustaining business.

In response to a question from Senator Thomas, Secretary Goodman stated when a request to waive noncompliance is received, it is reviewed by a regulatory flexibility committee. If a regulated entity can demonstrate that COVID-19 is the impediment to achieving compliance then the request can be approved. All requests received have been approved.

In response to a question from Senator Webb, Commissioner Slone stated the Department for Natural Resources (DNR) has received three complaints regarding mine practices due to COVID-19. The complaints are that protocols for social distancing were not being followed, and personal protective equipment was not being provided. The DNR has investigated, and two of the complaints received from Pike County were unfounded.

In response to a question from Senator Wheeler, Commissioner Slone stated there is an existing statute, KRS 337:200, which requires mining and construction companies to furnish a performance bond to assure payment of all wages to employees. The Labor Cabinet is enforcing the statute.

In response to a question from Representative Gooch, Secretary Goodman assured the committee that EEC staff is working with regulated entities to keep them in business.

In response to a question from Senator Smith, Commissioner Slone stated there are approximately 70 mines operating in Kentucky.

Representative Gibbons-Prunty advocated to the Tennessee Valley Authority Board on May 7, 2020, to consider increasing clean coal technology in Paradise, Kentucky.

There being no further business, the meeting was adjourned.