

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 2nd Meeting of the 2020 Interim

July 7, 2020

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Transportation was held on Tuesday, July 7, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll. The minutes from the Committee's June 2, 2020 meeting were approved.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Ralph Alvarado, C.B. Embry Jr., Stephen Meredith, Brandon Smith, Johnny Ray Turner, and Mike Wilson; Representatives Terri Branham Clark, Randy Bridges, Chris Fugate, Al Gentry, Robert Goforth, David Hale, Chris Harris, Samara Heavrin, Kathy Hinkle, Thomas Huff, Derek Lewis, Savannah Maddox, Russ A. Meyer, Rick Rand, Sal Santoro, Maria Sorolis, Cherlynn Stevenson, Jim Stewart III, Ashley Tackett Laferty, and Walker Thomas.

Guests: Senator Phillip Wheeler; Erik McPeek, Pike County Trail Commission; Cliff Smallwood Pike County Trail Commission; Donnie Scaggs, Pike County Trail Commission; Jason Tackett, Pike County Commissioner; Ronnie Robertson, Pike County Commissioner; Mark Treesh, Executive Director, Insurance Institute of Kentucky; Matt Cole, Acting Commissioner, Department of Vehicle Regulation, Kentucky Transportation Cabinet (KYTC); Jim Gray, Secretary, KYTC; Mike Hancock, Deputy Secretary, KYTC; Robin Brewer, Budget Director, KYTC.

LRC Staff: John Snyder, Brandon White, Dana Fugazzi, and Christina Williams

Permitting of All-Terrain Vehicles for Limited Highway Use

Senator Wheeler, along with his guests, Pike County Trail Commission members Erik McPeek, Cliff Smallwood, and Donnie Scaggs, and Pike County Commissioners Jason Tackett, and Ronnie Robertson, gave a brief update on the 2021 Session Bill Request 160 (BR 160) which entails the permitting of all-terrain vehicles for limited highway use. Senator Wheeler stated that in the 2020 Session of the General Assembly, Senate Bill 75 was introduced and passed through the Senate. BR 160 is the same as Senate Bill 75 GA version. He also added that he intends to prefile BR 160.

Senator Wheeler stated the possibilities of all-terrain vehicle (ATV) tourism in Eastern Kentucky are very exciting and show a lot of potential. He provided the Committee with an executive summary and a brief run-down of the economic impact that the Hatfield-McCoy Trail System has had in southern West Virginia. Southern West Virginia in many ways has shown similar economic trends as Eastern Kentucky because of the downturn of the coal industry. He added that a trail system would not only help showcase the beautiful countryside of Eastern Kentucky but would help boost the local economy as well.

Bill Request 160 permits limited use of certain off-highway vehicles (OHVs) on state and county roadways for the purposes of further developing the trail system in Eastern Kentucky. Senator Wheeler stated that in the 2018 Session of the General Assembly, Representative Chris Fugate spearheaded the effort to establish the Kentucky Mountain Regional Trail Authority, which has made great strides towards bringing ATV tourism to Eastern Kentucky. In Pike County, there is a separate local trail authority (the Pike Country Trail Commission) that has taken further steps such as leasing, purchasing, and mapping properties for the intent of developing a trail system. Senator Wheeler stated one of the impediments to really utilizing this for economic development, is that while there are vast tracks of property that are leased and purchased by the Trail Authority, they would require some use of county and state roads to be able to travel from trail to trail.

Senator Wheeler stated that current Kentucky law permits the operation of an ATV on roadways for no more than two-tenths of a mile as perpendicular as possible to crossing a roadway. The statute was designed to permit riders to get where they needed to go. Due to the limited scope and that these properties are farther apart than two-tenths of a mile, it is going to be necessary to expand the statute in order to fully access the trail system. Senator Wheeler stated in order to attract out-of-state drivers to utilize the trail system that is being envisioned, road access on county and state roads is a necessity. Although the enforcement of the two-tenths of a mile law has been liberal, out-of-state visitors will need to know they can operate their vehicle in a safe and lawful manner.

Senator Wheeler stated that BR 160 allows counties to identify the necessary roads to develop the trail system and vote whether to designate those roads as trail roads. The KYTC does maintain veto power over all state highways and some county roadways as they analyze the data to decide whether the decision made by the county was in fact safe for riders on the system. It is mandated that KYTC responds to a local government within 30 days when petitioned to allow OHV use on a state roadway, so the system can proceed in a safe and expedited manner. Senator Wheeler added that a permit system has been devised whereby out-of-state riders would purchase a decal, similar to what they use on the Hatfield-McCoy trail, for \$50 per year, which would allow them to travel all of the designated roads in Eastern Kentucky. In-state residents can purchase the permit for \$25 a year. A portion of that fee is remitted to KYTC so that appropriate signage can be erected along the roadways for the designated roads.

Senator Wheeler referenced the meeting materials that were uploaded to the LRC website that provides an idea of the impact that a recreational trail system could have in Eastern Kentucky. The Hatfield-McCoy Trail System shows that the economic impact in 2019 was approximately \$39 million and was estimated to be over \$40 million in 2020. There were approximately 60,000 annual permit sales for riders for the Hatfield-McCoy system and that 90% of those sales are coming from out-of-state riders.

Senator Wheeler stated in Pike County alone, there are more documented miles of trail system than there are in the entire Hatfield-McCoy Trail system. To some degree the Hatfield-McCoy system is experiencing an overload. By passing this bill, it would allow Kentucky to act as a sort of relief valve for the Hatfield-McCoy system and bring some money into Kentucky. In some ways this could increase the business for the Hatfield-McCoy system due to the fact that some people would be passing through on their way to other trails. Senator Wheeler stated Pike County is in a unique position as it sits in the middle of two trail systems, West Virginia's Hatfield-McCoy Trail System and the Spearhead Trail System in Virginia. By establishing a trail system in Pike County, Kentucky would be able to connect the trail systems from three states. Senator Wheeler stated there is not only a Pike County vision, but also a regional vision for the trail system as well.

Senator Wheeler stated that because OHVs are going to be on the roadway, it is essential that not only are the riders protected, but other vehicles on the roadway are as well. There is a requirement in the bill for people that choose to operate OHVs on the roadway purchase minimum insurance. Mark Treesh, Executive Director, Insurance Institute of Kentucky (IIK), encourages the idea for the OHVs to be insured like motorcycles where personal injury protection (PIP) is optional so that the insurance could be more affordable for people. Additionally, all passengers under the age of 18 would be required to wear a helmet.

Jason Tackett, Pike County Commissioner, Chairman of the Pike Country Trail Commission, updated the Committee on the progress that has been made towards the trail system, and where they would like to see the system in the future. Commissioner Tackett stated they worked on a trail that spans from eastern Pike County to the Pike County/Letcher County line. There are approximately 740 miles of trail, in Pike County. In West Virginia there is not 740 miles of trail between six counties. Commissioner Tackett stated it is his hope that at the conclusion of the trail development, there will be approximately 1,400 miles of trail throughout Pike County. Having these trails would help replenish revenue lost due to the decline of the coal industry.

Erik McPeek, Pike County Trail Commission stated that a goal is to tie several counties that would like to participate together using these trails. He reiterated that the revenue stream in Eastern Kentucky does need to be replaced and creating a trail system, would be the easiest and fastest way to help the citizens of Eastern Kentucky.

Chairman Higdon stated he has received feedback on the bill, especially after it was debated in the Senate in the 2020 Session, questioning why there would be an allowance of OHVs on the roadways. He added that legislation was passed in 1998 that allowed KYTC and a city or county to designate a roadway for the use of ATVs (KRS 189.515). He added that what BR 160 does is give guidance to the Cabinet, counties, and cities, to be able to ok the use of ATVs in a trail system. Chairman Higdon stated that BR 160 puts in place safety precautions such as the requirement that ATVs have headlights, taillights, seatbelts, and a roll bar. It also requires anyone under the age of 18 to wear a helmet, and anyone who operates ATVs on the highway be at least 18 years of age and have a valid driver's license.

Representative Chris Fugate stated he appreciated Senator Wheeler's efforts in the development of SB 75 and BR 160. He added that meetings were held with KYTC and the former administration to try to establish guidelines for the trail system and the use of OHVs on roadways as well. Representative Fugate stated that he appreciated all the counties in Southeast Kentucky and that the Trail Authority is moving forward in a positive direction. He added that the Hatfield-McCoy System and the Spearhead Trail system are allowing the use of ATVs on the roadway and that BR 160 is needed as it would have a big economic impact on Eastern Kentucky. Representative Fugate appreciates the support from the legislators across the state for this legislation.

Representative Chris Harris also wanted to express his gratitude to Senator Wheeler for the development of SB 75 and BR 160 and to Representative Fugate for his part in the advancement of SB 75 in the 2020 Session. Representative Harris stated as a former Magistrate and when he was on the Pike County Fiscal Court, he was in full support of the trail system and the use of ATVs on roadways and continues to support it. It is a real opportunity for Eastern Kentucky to fill the gap that the coal industry has left.

Representative Chris Harris stated he wants to promote the type of trail authority that West Virginia has, as there is one authority over all the county trails instead of on a county-by-county approach, which would make it difficult to enforce the regulations.

Representative Kathy Hinkle also thanked Senator Wheeler and Representative Fugate for their contribution to the advancement of BR 160 and the trail systems in Eastern Kentucky. Utilization of the trails is a big economic opportunity for that portion of the state.

Representative Ashley Tackett Laferty shared her excitement and support for the trail system and reiterated that it would be a big economic driver for Eastern Kentucky. She also thanked Senator Wheeler and Representative Fugate for their contribution in establishing the regional trail system that connects Eastern Kentucky.

Chairman Higdon asked Senator Wheeler to elaborate on the differences between what is being proposed in BR 160 and what states such as West Virginia and Tennessee are doing. Senator Wheeler stated when research was being done for SB 75, a model like what Tennessee uses was studied which requires licensing and other registration requirements that did not necessarily fit with Kentucky's model of registering vehicles. Because of that, the Tennessee model was moved away from and the West Virginia model was explored. The West Virginia model utilizes a permit and a decal system for which a decal must be placed on the vehicle as well as the helmet of the riders instead of actually licensing and registering the vehicles. Going with the West Virginia model would not require the vehicle to be registered in Frankfort and the paperwork that accompanies that process.

Senator Wheeler stated that BR 160 does not take away the idea of a regional trail authority, but it would allow a county to go ahead and designate certain roadways for OHV use so that the county could proceed at the speed they are ready. He reiterated that the requirements that are in BR 160 would apply to any OHV that is operated on Kentucky roadways allowing for the uniformity that is desired. In closing, Senator Wheeler stated Pike County has suffered as the costs of services offered to its residents have increased, and the coal severance dollars are lost, making it difficult to provide the citizens the basic needs that they have. The passage of BR 160 would allow Kentuckians to utilize the natural wonders of the county in a way to support its own people. He added that he appreciates the bipartisan support he has received to revive the economy of Eastern Kentucky.

Mark Treesh, Executive Director, Insurance Institute of Kentucky (IIK) spoke on BR 160. The IIK is the state trade association representing property and casualty insurance companies and life insurance companies. Members of the IIK work toward policies that educate, support, and assist the Kentucky insurance consumer, market, and industry. Among other issues, IIK works to promote highway safety. Director Treesh stated that some members of the IIK have some serious concerns about the highway safety aspect of allowing OHVs (which includes ATVs with seatbelts and roll bars as specified in BR 160) on roadways. The concerns are that OHVs are not designed for highway use; and therefore should be restricted from being on the highways as much as possible.

Director Treesh stated that West Virginia statute 17F-1-1 prohibits the OHVs from operating on a road or highway with a center line or more than two lanes except to cross the road. However, some restricted use is permitted on roads without a center line or with two lanes for a distance of up to 10 miles to travel "between a residence or lodging and off-road trails, fields and areas of operation, including stops for food, fuel, supplies and restrooms..." Director Treesh stated that the IIK realizes that the goal of this legislation is to promote economic development, and that legislation is usually a balancing act between competing interests. He added that IIK sincerely appreciates Senator Wheeler's efforts to improve the legislation to gain their support during the 2020 session. However, the

highway safety aspect of increasing the highway use of OHVs is one that is hard for them to overcome.

Chairman Higdon requested that Director Treesh consult with some of the members of IIK to try to estimate a ballpark figure on what insurance would cost for a person who wanted to participate in the trails utilizing ATVs.

In response to a question asked by Representative Tackett Laferty concerning the option of waiving PIP insurance, Senator Wheeler stated that option would be for the owner to waive PIP, but that liability insurance would still cover other passengers.

Matt Cole, Acting Commissioner, Department of Vehicle Regulation, KYTC spoke on BR 160. Commissioner Cole stated KYTC understands the economic impact it would have on Kentucky, and the Cabinet especially likes that the use of the trails would highlight Kentucky's natural resources to out-of-state travelers. Commissioner Cole stated KYTC is in favor of the absence of the titling requirement of ATVs in BR 160. KYTC would like for proof of insurance to be part of the application process in the County Clerk's office whereas the County Clerk would make a copy of that to be kept on file. The Cabinet is in favor of KRS 189.515 that was mentioned of the ability for ATVs to traverse the roadways, but keep that interaction to a minimum. The Cabinet also is in favor of the current language in BR 160 that allows for an additional lane to be explored. We understand the interaction between off-road vehicles and passenger vehicles will occur. He stated some concerns that the Cabinet has with the language in BR 160 is that some of the manufacturers of these vehicles have clearly stated they are not safe for on-road usage. In conjunction with the Federal Regulation 43 CFR 8340, the off-road vehicle usage is prohibited on highways. Those concerns are where legal issues would arise being that the proposed law would not be in compliance with federal regulations. The Department of Vehicle Regulation receives over \$700 million per year in federal funds with continued compliance, and they want to ensure that whatever action is taken that it does not jeopardize those funds. Commissioner Cole stated KYTC would like to see more detailed information on the total number of signs and locations that KYTC would be required to provide and what funds have been earmarked for the Cabinet to cover that expense. The paramount concern is public and highway safety, if Kentucky allows the interaction of the OHVs and passenger vehicles, the reality that comes with those small vehicles if they collide with passenger vehicles must be realized.

Update on Highway Contracting for July

Before updating the Committee on highway contracting for the month of July, Jim Gray, Secretary, KYTC paid tribute on behalf of the Cabinet to the first KYTC Secretary Calvin Grayson who had recently passed away.

Secretary Gray stated KYTC has announced lettings for July. The Cabinet had suspended lettings in May and June due to the unprecedented decline in revenue in March,

April, and May. The estimated value of July's letting is approximately \$25 million. Secretary Gray stated that John Moore, Assistant State Highway Engineer for Project Development is responsible for the lettings process. He added that the letting process depends on the revenues that are incoming and June revenues are still being fully calculated. KYTC is anticipating over the course of the next few months to have lettings of approximately \$30 million per month, which would annualize to approximately \$350 million for the fiscal year.

Secretary Gray spoke about current cash balances. KYTC is approximately \$70 million below the cash balance of this time last year. A big piece of the cash balance issue has been influenced by there being \$1.9 billion worth of uncompleted work currently on the books. He explained that means there are contracts in place with work still to be completed by the contractors and KYTC to be billed for and pay for that work. Secretary Gray stated when there is a combination of uncompleted work, the work that the Cabinet is currently trying to let, combined with severely compromised revenues, it explains why the lettings values are what they are.

Secretary Gray thanked the industry partners for working together and helping as KYTC has faced the brutal facts of their reality. He added that any encouragement that can be given to Kentucky's congressional delegation to help provide federal funding for KYTC would be appreciated.

Chairman Higdon stated the IJC on Transportation's next Committee meeting would be held on August 18, 2020 at 1:00 P.M. in room 171 of the Annex. He reminded the Committee members that the option to videoconference in would be available for that meeting as well as the rest of the meetings throughout the Interim. With no further business to come before the Committee, Chairman Higdon adjourned the meeting at 2:07 P.M.