

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 2nd Meeting of the 2021 Interim

July 6, 2021

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Transportation was held on Tuesday, July 6, 2021, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll. The minutes from the June 1, 2021 meeting were approved.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Karen Berg, C.B. Embry Jr., Brandon Smith, Brandon J. Storm, Johnnie Turner, Phillip Wheeler, Mike Wilson, and David Yates; Representatives Tina Bojanowski, Josh Branscum, Kevin D. Bratcher, Randy Bridges, Jonathan Dixon, Ken Fleming, Robert Goforth, David Hale, Samara Heavrin, Thomas Huff, Derek Lewis, Savannah Maddox, Bobby McCool, Shawn McPherson, Charles Miller, Tom Smith, Cherlynn Stevenson, Ashley Tackett Laferty, Walker Thomas, Susan Westrom, and Buddy Wheatley.

Guests: Sarah Jackson, REAL ID Project Manager, Kentucky Transportation Cabinet (KYTC); Matthew Cole, Commissioner, Department of Vehicle Regulation, KYTC; Steve Coffey, Office of Information Technology, KYTC; Captain Marshall Johnson, Commander, Driver Testing Branch, Kentucky State Police (KSP); Major Nathan Day, Director, Division of Commercial Vehicle Enforcement, KSP; James Nelson, Group Controller, Bluegrass Group, Enterprise Holdings; John McCarthy, Founder, Managing Partner, McCarthy Strategic Solutions; Ethan Wilson, Counsel on Behalf of Turo; Jon Van Arsdell, Head of Government Relations, Avail, an Allstate Company; James Higdon, Consultant, MML&K Government Solutions; Chris Nolan, Consultant, MML&K Government Solutions; and Seth D. Cutter, Director, Communications and Government Affairs, CVG Airport; and Godwin Onodu, Director, Department of Vehicle Regulation, KYTC.

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

Update on Driver's License Issuance / Establishment of KYTC Regional Offices

Sarah Jackson, REAL ID Project Manager, KYTC updated the committee on the transition from county-by-county driver license issuance to the establishment of KYTC

regional offices. To date, 18 regional offices have been established throughout the Commonwealth. There are two additional regional offices opening soon, one in Hopkinsville and one in Manchester. The KYTC is in various stages of developing a final wave of regional offices that should consist of an additional 10 to 11 more offices. Those locations will be revealed once leases are signed. Many factors go into selecting a regional location such as population, geography, location in relation to other regional sites, access from nearby counties, out-of-county workforce numbers, access to main roads, and available space and timelines. Originally, there was a plan set in place for a total of 15 regional offices. That number has since grown and there is a plan to establish a total of 30 regional offices. Ms. Jackson stated even when the establishment of the offices has been completed, KYTC will constantly monitor and evaluate if more are needed, budget permitting.

Matthew Cole, Commissioner, Department of Vehicle Regulation, KYTC updated the committee on the transitioning of Circuit Clerk duties. The rate at which the transition is occurring is approximately ten counties per month. The goal is to have 60 of the 120 Circuit Clerk's duties transitioned by September 2021. The KYTC is now issuing more than half of the licensing documents. The Circuit Clerks seem to be pleased with the progress and transition.

Steve Coffey, Office of Information Technology, KYTC gave a brief demonstration on how to renew credentials online.

In response to a question asked by Senator Berg, Commissioner Cole stated the online renewal system could be utilized by students who are out of state for school, but their license will be mailed to their residential license address.

In response to a concern raised by Chairman Higdon, as well as Senator Berg, Commissioner Cole stated there is not currently a system in place for someone to walk people through the online renewal process who may not be comfortable utilizing the internet, or may not have internet access, however, it is something that can be evaluated for the future. Commissioner Cole also stressed the online renewal system is as easy as ordering products online from such websites as Amazon. He stated KYTC is coordinating with local officials to have already owned computers set up with internet access for renewals if needed. He also reiterated people can use the online renewal system from their cell phones. There is also a phone number that shows up if the pages fails for any reason. If that occurs, that number could be used to help walk people through the renewal process.

In response to a concern voiced by Senator Smith, Ms. Jackson stated the regional offices are currently set up to take only debit or credit cards. It is understood that the statute requires the KYTC to accept cash and checks. However, they have not yet been able to set up for that, mainly because of the use of temporary staffing at these locations. The KYTC is working earnestly towards providing those accommodations.

In response to questions asked by Representative Bratcher, Ms. Jackson stated you can still currently fly domestically without REAL ID compliant documents. The REAL ID deadline has now been pushed back to May 2023, and that the initial REAL ID issuance must be done in-person with the proper documentation, however, after the initial issuance, REAL ID renewals will be able to be made online, if none of the applicant's information has changed.

In response to a concern raised by Representative Branscum, Ms. Jackson stated KYTC is working diligently to fill the geographical gaps that exist in regional office locations.

In response to a questions asked by Representative Smith, Ms. Jackson stated requests for regional offices have been made by legislators and constituents alike, and those requests are considered and Commissioner Cole stated travel time is taken into consideration as well as population and geographic location.

Representative Smith voiced his concern on having constituents driving three to five hours in order to renew their credentials. Commissioner Cole stated they will not have people driving that far as the rest of the regional offices are built and the portable pop-up units are utilized.

In response to a question asked by Representative Tackett Laferty concerning the mobile pop-up units and where and how often they will be visiting locations, Commissioner Cole stated they are currently coordinating that program with local officials so there is a collaborative approach in finding the best places to go. Ms. Jackson reiterated that House Bill 453 did set a minimum number of times a pop-up unit must visit each county annually, based on population.

In response to a question asked by Senator Smith, Commissioner Cole stated the REAL ID information that is being collected is stored in the Kentucky Driver License Information System (KDLIS), which is maintained by KYTC and the Commonwealth Office of Technology (COT).

Update on Driver Testing / Establishment Regional Testing sites

Captain Marshall Johnson, Commander, Driver Testing Branch, Kentucky State Police (KSP) and Major Nathan Day, Director, Division of Commercial Vehicle Enforcement, KSP, updated the committee on driver testing and the establishment of regional testing sites. Captain Johnson stated the establishment of regional driver testing sites is heavily tied into the Circuit Clerks handing their issuance responsibility over to KYTC. Driver testing, including vision screening, road testing, and permit testing, will remain the responsibility of KSP. In an effort to support KYTC and streamline the transitioning process, KSP is also going to regionalize their testing services. It is the goal

of KSP to have a driver testing presence at each of the KYTC regional sites. In some cases, KSP has already made the decision to regionalize testing in advance of the transition of licensing services, which allows for the maximization of resources and to provide a more efficient testing process. It is the hope of KSP that by doing so, the result is greater efficiency and expanded availability as it relates to testing appointments. The regional model allows for testing to be offered all day Monday through Friday.

The KSP has announced regional testing sites in Catlettsburg, Columbia, Frankfort, Elizabethtown, Jackson, Morehead, Prestonsburg, and Somerset. Additional offices are under development in connection with KYTC. Just as it is the goal of KYTC to have regional offices within reasonable traveling distances, it is the goal of KSP as well, so that constituents and testing administrators do not have to drive long distances for testing. While the transition is occurring, KSP will continue to work with local officials so there is no interruption in testing services.

In response to a question asked by Chairman Higdon, Captain Marshall stated constituents will begin to move into the issuance process after they are done testing with KSP.

In response to a question asked by Chairman Higdon concerning consideration to allow people to take their permit test online, Captain Marshall stated KSP is in the process of implementing a large scale update to the auto test system which will increase efficiency. He added that many counties only offer a written test on paper, and KSP will be moving to an electronic version of that all over the state as well as implementing the use of tablets.

In response to a concern voiced by Representative McCool, Captain Marshall stated the road test course is not specific to a road, street, or highway, however, it is specific to standards provided by the American Association of Motor Vehicle Administrators.

Discussion on Peer to Peer (P2P) Vehicle Rental

James Higdon, Consultant, MML&K Government Solutions introduced Chris Nolan, Consultant, MML&K Government Solutions; Ethan Wilson, Counsel on Behalf of Turo; and Jon Van Arsdell, Head of Government Relations, Avail, an Allstate Company who all spoke on P2P vehicle rental.

Mr. Van Arsdell stated Avail currently operates 11 P2P car sharing platforms across the country and is looking to expand that number. Mr. Van Arsdell stated that P2P car sharing is similar to Airbnb but for vehicles. Avail's platforms allow for individuals who own vehicles to put them on a platform so that they can be borrowed by neighbors, travelers, or businessmen for a temporary period of time, while the owners of the vehicles get to earn income for the sharing of their vehicle that they have paid for.

Mr. Van Arsdell stated an issue that has been discussed is the proper regulatory structure for P2P car sharing. In 2020, the General Assembly considered House Bill 494, which would have established an insurance and consumer protection framework for P2P rentals. The proposal, which is based off of the National Council of Insurance Legislators (NCOIL) model, was developed by a consensus among P2P car sharing companies, insurance companies and their trade associations, the car rental industry, and insurance regulators. House Bill 494 would have ensured that during this process that there will never be an insurance gap. The bill provides flexibility that the coverage required under a state law would be covered by either the driver's policy, the owner's policy, the platform's policy, or some combination of the three. Avail includes coverage within their pricing model.

In dealing with consumer protection, Avail ensures that they have recall notification requirements, license verification requirements, and requires our platforms to buy roadside assistance for the drivers of the vehicles. In closing, Mr. Van Arsdell stated the industry is requesting proper regulation, but he believes it's important to enact this across the country so that protection is put into place for everyone during the sharing process.

Mr. Wilson addressed the committee concerning P2P sharing on behalf of Turo. Turo is an internet-based, P2P car sharing platform that connects car owners with those in need of transportation such as neighbors, families, students, workers, vacationers, or anyone with the need or desire, for transportation. On the Turo platform, car owners, or "Hosts," have 100 percent pricing power over their vehicles and can earn extra income while at the same time allowing more drivers, or "guests" to have access to an existing supply of vehicles in Kentucky. Guests can choose from hundreds of different makes, models, and price points to find the perfect car for their specific transportation needs.

In previous legislative sessions, there has been discussion about what the tax structure for P2P car sharing looks like compared to traditional rental car services in the Commonwealth. Mr. Wilson stated there has been much misinformation and confusion as to tax parity and how tax is applied to P2P car sharing.

Mr. Wilson stated KRS 138.460 levies a 6 percent motor vehicle usage (MVU) tax on the retail price of motor vehicles at the time the vehicle is titled or registered. Turo hosts in Kentucky have paid MVU tax when purchasing their vehicles. Rental car companies are also subject to this same 6 percent MVU tax; however, these companies have an option as to how this 6 percent tax is paid. Pursuant to KRS 138.463, traditional rental car companies, defined in statute as "U-Drive-Its", can either: pay the 6 percent MVU tax upon the retail price of the motor vehicle at the time of purchase or they may collect the MVU tax of 6 percent from their customers as calculated on the gross rental charges paid by the customer (on a per-transaction basis.)

Mr. Wilson raised concerns that assessing 6 percent MVU tax on P2P car sharing, when the MVU tax on those vehicles has already been paid at the time of purchase, would almost certainly be viewed as double taxation and draw a legal challenge. Mr. Wilson stated that making P2P car sharing subject to Kentucky's MVU tax twice, once on the front-end at the time of purchase and again on the back-end on a per-transaction basis, would represent a huge competitive advantage for traditional rental car companies. In reality there is taxing parity right now between P2P car sharing and traditional rental car platforms with regards to the MVU tax. Kentucky is one of very few states that does not apply a separate excise tax on the rental car industry. If a new, separate tax is contemplated by the legislature next session, it would only make sense to apply it to both P2P car sharing and traditional rental car on a go-forward basis.

In response to a concern voiced by Senator Wheeler regarding the lack of taxes being paid by the rental services, particularly taxes that would help the Road Fund, Mr. Higdon responded that the MVU tax is just one component on the whole tax spectrum. He added that "hosts" who receive income from the rental platforms receive a 1099 at the end of the year and report that as taxable income on an individual basis. He also added that the gasoline that is used in these rental vehicles are subject to motor fuels tax, therefore they are contributing to the Road Fund.

In response to a question asked by Representative Fleming regarding costs associated with P2P transactions, Turo charges a 3rd party service fee between the platform and the hosts that would be customer paid. The host is paying a fee for the insurance coverage that is provided. No sales taxes are charged on these transactions.

James Nelson, Group Controller, Bluegrass Group, Enterprise Holdings, spoke to the committee on P2P vehicle rentals. Mr. Nelson stated Enterprise Holdings employs over 950 Kentuckians, have more than 90 locations around the Commonwealth, and have a fleet of nearly 12,000 cars and trucks. Enterprise Holdings has invested \$3 billion in the last several years in technology to better and more seamlessly serve their customers. All rental car companies make their vehicles available through online applications. The difference between Enterprise and a P2P platform is the source of the vehicles. Car rental places own the vehicles, whereas P2P platforms outsource vehicles owned by others. Mr. Nelson stated P2P platforms are to car rentals what Airbnb is to hotels. Unlike Airbnb, P2P companies are not committing or remitting any taxes or airport related fees.

Mr. Nelson stated that in his opinion, while an individual vehicle owner may pay a 6 percent MVU tax in Kentucky when purchasing a vehicle, the intent behind that purchase is largely to use that vehicle as one's personal use, not for revenue generating purposes. Also, P2P vehicle rentals can increase the amount of time and number of vehicles on the

road. The renters of these private vehicles should therefore also contribute to the Road Fund the same way as they would if they were renting from rental car companies.

Enterprise is advocating that Kentucky should apply that 6 percent MVU tax to P2P transactions because a vehicle purchased for private use is now being used for a completely different purpose, a revenue generating purpose. This fee would be applied to the transaction and ultimately paid by the renter. No additional responsibility would be placed to the vehicle owner. These revenues would also go to the Road Fund. Other states such as Nevada, Florida, and Arizona have recently enacted laws with taxes applicable to P2P transactions.

Chairman Higdon stated in his research 18 states have passed the NCOIL legislation that deals with the insurance portion of the transaction. He added five states currently do tax the rental of the P2P vehicles. Chris Nolan, Consultant, MML&K Government Solutions said states that addressed taxation in their legislation did so because they levied an excise tax on rental car companies. Currently, in Kentucky, rental car companies and P2P vehicle owners are only paying usage tax. Kentucky does not have an excise tax on rental car transactions, so there is no need to level the playing field in this area.

Representative Thomas raised a concern for electric vehicles being used on the P2P sharing platforms, therefore no gasoline is being used for in vehicles and their fair share of motor fuels tax is not being paid or going towards the Road Fund.

In response to a question asked by Representative Thomas as to the safety requirements for P2P rental vehicles, Mr. Wilson stated all vehicles on the Turo platform have to undergo a safety check and that a safety component is also part of the NCOIL legislation.

In response to a question asked by Senator Berg, Mr. Nelson stated the 6 percent MVU tax that Enterprise charges on each rental may accumulate to the point where it exceeds the MVU tax it would have paid, if paid at the time of purchase.

In response to a question asked by Representative Heavrin, Mr. Nelson stated not to his knowledge has Enterprise ever asked for a refund on “U-Drive-Its”, or usage tax. Representative Heavrin requested to know if this has ever happened in the past before Mr. Nelson began employment with Enterprise.

Seth D. Cutter, Director, Communications and Government Affairs, CVG Airport spoke on behalf of the Chief Executive Officers (CEOs) of the Commonwealth’s three largest commercial service airports, CVG, Louisville Muhammad Ali International Airport, and Lexington’s Blue Grass Airport. On behalf of those three CEOs, Mr. Cutter shared the joint perspective and position of the airports where P2P car rental companies are concerned, since many of these types of transactions take place on or at airports.

Airports in Kentucky operate within the provisions of KRS Chapter 183. Within these statutes, the Commonwealth has given airports the authority and responsibility to regulate commercial activity on airport property. The state has not regulated the way in which airports structure specific transactions with private operators on airport properties, primarily because airports and the airport business is highly regulated by the federal government, the state has not been involved in the specifics of commercial airports' business transactions. Because of existing state statute that gives airports authority to regulate business activity at the airports, they are committed to creating a level playing field for all companies seeking access to and offering services at the airport. The airports work collaboratively and closely with all businesses, including car rental companies to plan, finance, and implement capital improvements for which debt has been issued in some cases.

Mr. Cutter stated there may be interest to create minimum standards for P2P car rental companies to operate at Kentucky airports, but the CEOs of the three major airports do not believe state statute needs to detail provisions applicable to airports and these companies. These P2P car rental companies, like any other commercial operators, are already required to enter into an agreement with each airport operator

Other states have adopted legislation that outlines P2P operations at airports. If the General Assembly pursues legislation on this topic and elects to include provisions related to P2P car rental companies at airports, the airports urge the General Assembly to remain broad and high-level in any proposed statutory language. Three general provisions would be sufficient and stipulate that:

1. P2P car rental companies seeking to operate on an airport must enter into an agreement with each airport operator before commencing activity;
2. Such agreements would stipulate there be a financial exchange for the privilege of operating at the airport. P2P car rental companies should be treated in a manner similar to other like businesses. If airports and P2P car rental companies desire to designate areas where P2P transactions take place, standard airport rental and lease rates would apply; and
3. In order to protect the traveling public, P2P car rental companies should meet industry-standard requirements for insurance and indemnification coverage. These agreements would also require P2P car rental companies to regularly provide airport operators with adequate data for audit and compliance purposes (such as vehicle and transaction information).

In response to a question asked by Senator Berg, Mr. Cutter stated Transportation Network Companies (TNCs) have operating agreements at each airport.

Chairman Higdon stated P2P is an important discussion, and as technologies progress and things evolve, it is an issue that needs to be addressed sooner rather than later.

Administrative Regulations 601 KAR 001:113 and 601 KAR 023:030 were reviewed by the committee. Neither regulation was found to be deficient or deferred. No objections were raised. In response to a question asked by Representative Huff concerning speed title exceptions in 601 KAR 023:030, Godwin Onodu, Director, Department of Vehicle Regulation, KYTC, stated the speed title exceptions are for the 48 hour requirement by statutes which is in KRS 186.170. The exception is because of instances such as holidays or postal services delays. Refund requests were being received because the individual said they did not receive the certificate of title within three days, when the issue was researched they realized maybe it was because of long holiday weekends or postal service issues.

With no further business to come before the committee the meeting was adjourned at 2:55 P.M.