

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 6th Meeting of the 2021 Interim

November 15, 2021

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Transportation was held on Monday, November 15, 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 October 5, 2021 meeting were approved.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Karen Berg, C.B. Embry Jr., Paul Hornback, 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, David Hale, Samara Heavrin, Regina Huff, Thomas Huff, Savannah Maddox, Bobby McCool, Shawn McPherson, Charles Miller, Sal Santoro, Tom Smith, Cherlynn Stevenson, Ashley Tackett Laferty, Walker Thomas, Susan Westrom, and Buddy Wheatley.

Guests: Representative James Tipton, State Representative, District 53; Steve Blackistone, State and Local Liaison, National Transportation Safety Board; Jennifer Smith, CEO & Co-Founder; Stopdistractions.org; Kathy Strack; Senator Ralph Alvarado, State Senator, District 28; Jennifer Steger, Victim Advocate; Jennifer Kirchner, Executive Director, Kentuckians for Better Transportation (KBT); and Andrew McNeil; Visiting Fellow, Bluegrass Institute for Public Policy Solutions

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

Boating Safety/ Bill Request (BR) 351

Senator Ralph Alvarado, State Senator, District 28, and sponsor of BR 351, and Jennifer Steger, victim advocate, spoke to the committee on the measure, which would require boating safety training for all adult boaters in the Commonwealth. The bill recognizes safety certifications from other states or the Coast Guard, allows for out-of-state boaters to get temporary certification, and exempts persons who have owned boats for five or more years. Ms. Steger shared her personal story of a loved one, who was killed in the summer of 2021 when his jet ski collided with a boat on Cave Run Lake. Mr. Joseph Reed was a 43 year old loving father who had 30 years of boating experience. The other party that was involved in the accident was not an experienced boater. This accident prompted

Ms. Steger to come before the committee, to advocate for a law change in boater safety, as it is legal to purchase, launch, and control a boat in the water at age 18, with no experience, training, or certification.

Boating activity across the United States rose significantly during the COVID- 19 Pandemic. Fatality rates rose 25 percent in recreational vessels in 2020, compared to 2019, and accidents rose by 26 percent. Seventy-seven percent of recreational boating fatalities occurred on vessels where the operator did not receive boating safety instruction. Current Kentucky law requires a safe boating certification only for children ages 12 to 17 years old. A chart was provided that showcased the age of the water vessel operator and the deaths and injuries that occurred while boating. Ms. Steger also shared a chart of injuries and deaths based on operator experience level. The chart showed that injuries and deaths significantly decreased after approximately seven years of experience.

Kentucky would be the first landlocked state to require a boater education course for all boaters. There are currently seven states touching coastal waters that require all boaters to take an approved boater safety education course. States are also raising the age of mandatory boater education courses to eventually include all boaters for future generations. Fifteen states require adult boaters under a specific age to take a course, with the age being 39 in Ohio, 32 in Tennessee, and 35 in West Virginia.

In closing, Senator Alvarado, as well as Ms. Steger agreed that all Kentucky boaters operating a vessel should know the laws of the water regardless of age, experience level, or horsepower of vessel and encouraged the passage of BR 351.

Representative Hale expressed his condolences as Mr. Reed was a part of his community. He added he believed the provisions in Senator Alvarado's BR 351 are appropriate and needed. In response to a question asked by Representative Hale concerning exemptions, Senator Alvarado stated there is a series of exemptions in the bill, and one of the exemptions is having proof of motor boat or watercraft registration in the person's name for the previous five years. Representative Hale stated he has spoken to several fish and wildlife officers as well as the commissioner, and they are on board with the proposed legislation.

In response to question asked by Representative Fleming concerning a boater safety course he had previously taken, Ms. Steger stated that course is mandatory for ages 12 to 17, and voluntary for age 18 and over. She added the course takes approximately five hours to complete, and can be completed online or in person. There is a test that is administered at the end of the course and you must receive a score of 80 percent to pass.

In response to a question asked by Co-Chair Upchurch concerning visitors from other states such as Ohio, which does not have a boating safety course requirement, operating their watercraft in Kentucky. Senator Alvarado stated in the proposed bill that

there is an exemption for a temporary license for such instances. At a cost of \$5 the person can take a 10 question exam, (of which they must answer eight of those questions correctly) to receive a temporary license to operate a watercraft in Kentucky for 14 days.

Representative Bridges expressed his concern on how tourism could be affected if the proposed legislation passed.

Senator Yates expressed his concern that there is no insurance requirement in Kentucky for operating a boat. He added that lack of requirement may be something that needs to be evaluated and added to the legislation as another level of accountability and protection for boaters.

Hands Free Driving/ BR 828

Representative James Tipton, State Representative, District 53, and sponsor of BR 828 explained his proposed hands-free legislation.

Ms. Kathy Strack shared her personal testimony concerning distracted driving. Her brother Mark Sevilla was killed in a distracted driving incident involving a semi- tractor trailer. She advocated for the passage of BR 828 in honor of her brother.

Steve Blackistone, State and Local Liaison, National Transportation Safety Board (NTSB) spoke in favor of the measure. The NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation, such as railroad, highway, marine, and pipeline. The NTSB determines the probable cause of each accident they investigate and make safety recommendations aimed at preventing future accidents and crashes. Their accident investigations have clearly shown that distraction is a growing and life-threatening problem in all modes of transportation. Bill Request 828 can be an important step towards changing the culture of driving while distracted by portable electronic devices.

More than 36,000 people were killed on our nation's highways in 2019, and the National Highway Traffic Safety Administration estimates that nine percent of those fatalities involved distracted drivers and were completely preventable. The accident investigations, safety studies, and research performed by NTSB paint a clear picture. Mr. Blackistone cited the March 26, 2010, crash on I-65 near Munfordville, Kentucky, in which a tractor-trailer went off the left side of the interstate, crossed the median, and collided with a 15-passenger van that was traveling in the opposite direction. Eleven people, including the truck driver, died. The investigation found that the truck driver had used his telephone to make and receive calls, or to send and receive text messages, a total of 69 times while driving in the 24-hour period prior to the accident, and it was determined that he failed to maintain control of his vehicle because he was distracted by using his cell phone at the time of the crash.

The NTSB called for a nationwide ban on the use of portable electronic devices by all drivers while driving. Changing drivers' behavior will undoubtedly require a cultural shift, and that shift will require a three-pronged approach including better laws, education, and enforcement. Public education continues to be important for reaching drivers, operators, and safety-critical personnel about the dangers of distractions, but education campaigns must be built on a foundation of strong laws and effective, visible enforcement. Past safety campaigns have shown that laws aimed at changing behavior are much more likely to have long-term success when combined with high-visibility enforcement and public information campaigns. For example, only 14 percent of vehicle occupants used seat belts before states started passing laws requiring them. After laws were enacted, belt use jumped to 59 percent in approximately 8 years. Today, with stronger seat belt laws, high-visibility enforcement, and education campaigns, daytime seat belt use is 90 percent.

Jennifer Smith, CEO & Co-Founder; Stopdistractions.org spoke in favor of BR 828. She stated Stopdistractions.org is a non-profit organization dedicated to eliminating the devastation that results when a loved one is killed or injured in a distracted driving crash. The organization brings together victims, victim survivors, foundations, and the general public to build awareness and recognition to distracted driving.

Ms. Smith stated that 24 states as well as Washington D.C., have hands-free laws, including Kentucky's surrounding states of Tennessee, West Virginia, Virginia, Illinois, and Indiana. She stated driver/cellphone interactions have increased 57 percent from 2014 to 2019. How drivers are using their cell phones is also changing, as people no longer just talk or text on their phone, they FaceTime, watch streaming services, stream live, play games, etc., all contributing to the usage increase.

The proposed hands-free bill will ban the use of hand-held cell phones while driving. A person can still use GPS, and make and take calls hands-free. The hands-free law gives law enforcement and the public a clear interpretation of the law, if the phone is in your hands, then are you in violation.

Data from states which have adopted hands-free laws were cited. Georgia passed a hands-free law in July 2018, and since then, traffic fatalities are down 3.4 percent from 2017 to 2018 (the largest decrease in ten years.) Phone use while driving dropped 22 percent in the first month. A 15 percent reduction in commercial motor vehicle fatalities has been realized since 2017. Tennessee also enacted a hands-free law in July, 2019. From July to December of 2018 compared to July to December of 2019, distracted driving crashes are down 3.84 percent. As of February 2020, overall fatalities in the state were down 9.6 percent, and crashes were down 4.1 percent. Overall, in twelve states, traffic fatalities have decreased 16 percent within two years of passing handheld device bans.

In conclusion, Representative Tipton stated the current laws are unenforceable, as expanded language is needed due to people not just texting and driving anymore. He added he is unaware of any organized or individual opposition, with overwhelming public support as shown by polling. He stated the law will work as the data supports a reduction in crashes, fatalities, insurance rates, and cell phone usage.

In response to a question asked by Chairman Higdon, Representative Tipton stated he has seen statistics on citations that have been issued since the passage of the no texting and driving law and over the 11 year period since the passage of that law, there has been a little over 10,000 citations issued.

In response to a question asked by Representative Bratcher, Representative Tipton stated his proposed legislation does not prevent someone from talking on their phone while driving, rather the person must not hold the device in their hand or on any part of their body while doing so. The use of Bluetooth, earpieces, and mounts are ways to utilize phones while remaining hands-free. He added if law enforcement sees a device in a driver's hand, they can issue a citation.

In response to a question asked by Representative Fleming concerning who bears responsibility for the education of Kentucky citizens on the new legislation if passed, Representative Tipton stated if the legislation is enacted, there will be a three month period where individuals would only receive a warning and not a citation. He added he has been in touch with KYTC to encourage education of the public on this issue. There is no actual provision in the proposed legislation on who would be responsible for the education of the public on this new law.

Senator Turner stated he is not in favor of the proposed hands-free legislation in its current form.

Kentucky's Transportation Needs

Jennifer Kirchner, Executive Director, Kentuckians for Better Transportation (KBT) introduced herself as the new Executive Director of KBT, and gave an overview of Kentucky's transportation needs. Ms. Kirchner stated KBT was established in 1977, and is one of the oldest membership associations of its kind in the United States. The KBT members represent a broad and diverse network of professionals focused on improving transportation including airports, highways, public transit, rail, and waterways. Members include transportation professionals, local governments, economic development advocates and manufacturing and logistics companies.

The main goal of KBT is to achieve sustainable funding for all modes of transportation and policies that ensure mobility, promote economic growth, and improve quality of life. Sustainable funding is needed because KBT believes in a judicious use of resources or resource planning, which involves analyzing resources and funds in a region

or budget and providing equitable distribution. Mobility recognizes integration and connectivity. This applies to a person commuting to work on Kentucky's roads and bridges, cargo from Kentucky's international airports or global shipping hubs, exports by rail or riverport, and rural Kentuckians using public transit to travel to appointments. Mobility and sustainability lead to a prosperous economy that functions efficiently and provides a favorable quality of life for Kentucky citizens.

Kentuckians for Better Transportation has five major objectives to achieve their stated goal: 1.) build support for revenue increases over the next two years; 2.) build resilient and modern transportation systems which includes wise investment; 3.) continue effective planning, and well-built safe communities; 4.) focus on the connection between transit and economic vitality; and lastly, 5.) focus on their internal operations for staff and board members.

As an example of KBT's melding of transit, leadership, and economic development, Ms. Kirchner pointed to the organization's annual mid-year event this June. Joby Aviation, a globally traded aerospace company, was invited to attend. Joby is developing electric vertical takeoff and landing aircraft that it intends to operate as an air taxi service by 2023. Ms. Kirchner stated KBT turned the invitation into a whirlwind tour of aviation assets and presentations about robust aviation education programs, and connected the dots to not only be a location for Joby to provide their services but a manufacturing site as well.

Ms. Kirchner added electric vertical take-off and landing (eVTOLs) and aviation are not the only transit sector that has witnessed the electrification of transportation. Just recently, Ford was welcomed to Glendale-Hardin County with a historic investment in a battery manufacturing plant. The switch to electric is desirable, affordable, and the next step in the modernization of transportation. It is imperative that Kentucky embraces this technology, makes plans to utilize federal funds, and captures the opportunities afforded. Kentucky is a state that is advantageously located within the United States and in order to maximize Kentucky's growth in the logistic industry, we must engage in this movement. Ms. Kirchner added that Kentucky must explore and modernize current revenue streams such as electrical vehicle fees, additional charging station locations, and a move to a true user system of measuring vehicles miles traveled or road user charges.

Ms. Kirchner stated KBT strives to be an unbiased, nonpartisan voice that provides facts and data to educate and advocate for transportation issues statewide. It is KBT's intention to be the credible, collaborative, informative, and inclusive resource to be utilized as legislators to help ask questions and find the right answers to promote all modes of transportation in the Commonwealth.

In response to a question asked by Representative Wheatley concerning the utilization of the newly passed federal infrastructure bill funding, and specifically the \$10 billion in transportation infrastructure funds coming to Kentucky, Ms. Kirchner stated

while the funding is very needed and welcome, it will only chip away at a small portion of the things that need to be accomplished. She stated good maintenance and repair will be able to be accomplished because of the funding, but Kentucky still needs to capture the advancement and modernization that is required. She further stated that an issue that is being realized is that a lot of the federal funds will require a match. Some states are able to match more than the required percentage, putting Kentucky at a disadvantage on a competitive level.

Representative Wheatley stated anything KBT can do to help move along the Brent Spence Bridge project would be welcomed.

Senator Wheeler stated there are some privacy concerns on tracking vehicle miles traveled. Ms. Kirchner stated cell phone usage tracks more information than what she has seen with the technology being used to track vehicle miles traveled. She added in some states the tracking is nothing more than car registration information and an odometer reading. She added she has not seen anything that would result in privacy issues.

Kentucky Transportation Cabinet (KYTC) Contracting

Andrew McNeill, Visiting Fellow, Bluegrass Institute for Public Policy Solutions, spoke to the committee concerning single-bid contracts. It is Mr. McNeill's perspective that a lack of competition on the bidding of road contracts for Kentucky's construction projects within KYTC requires examination and reform. Mr. McNeill stated that since the beginning of 2021, 151 single-bid contracts have been awarded in 62 counties, to 18 different companies that have exceeded the KYTC engineers estimate. Single-bid contracts are overwhelmingly awarded for asphalt paving or asphalt resurfacing. The total value of these awarded contracts were \$173.8 million.

Mr. McNeill cited a scholarly journal article entitled "Single Bidders and Tacit Collusion in Highway Procurement Auctions" David Barrus and Frank Scott (2015) which examined the bidding history of four construction companies in four central Kentucky counties from 2005 to 2007. The study cited evidence that the four companies restricted their bids to particular counties even when projects in other counties were closer to their plants. A chart was provided for the same four counties cited in the Barrus and Scott article that showed the total contracts awarded, competitive bids awarded, single-bids awarded, and to whom the single-bids were awarded in 2019 to 2021.

Mr. McNeill gave a recommendation that the General Assembly direct the Auditor of Public Accounts to audit KYTC's bidding practices. He stated competition maximizes the value of every dollar dedicated to road construction and maintenance. He stated that KYTC must do more to create competitive bidder markets, and that the cabinet would benefit from an outside examination of their bidding practices, prompting reforms to enhance competition.

In response to a question asked by Chairman Higdon, Mr. McNeill stated he has not done calculations on contracts that were underbid.

Representative Smith asked if the lack of competition was because of startup costs of construction companies. He added what he does not want to see, is encouragement from other states to bid against Kentucky companies.

Representative Heavrin asked for Mr. McNeill to present to the committee accurate data that would include single-bid projects. She stated it was her opinion that he has only presented his narrative and it's important to have all of the data, including over-bid and under-bid projects. In response to a question asked by Representative Heavrin, Mr. McNeill stated he has had conversations with KYTC and highway contractors about the bidding process.

Co-chair Upchurch provided an example of a bridge project where the engineer estimates were not high enough and the contractors spoke with the engineers which resulted in the contractors being correct in their estimate. Therefore, posing the question of how many contracts have been examined, as the state engineer might not always be correct. He added that there may be some reasons as to why these bids came in over the estimates.

Co-chair Upchurch echoed Representative Heavrin's comments. He added there may be several variables that need to be taken into consideration for the differences of pricing on projects.

In response to a question asked by Senator Yates, Mr. McNeill stated from information that would be gathered from an audit, there is likely a better process or better ways to approach bids that would draw multiple bidders as opposed to single bidders.

In response to a question asked by Representative Westrom, Mr. McNeill is unsure if any parent companies have bid against themselves due to owning several different conglomerates.

Representative Hale requested data that was newer than the presented data from 2005 to 2007. He also added that several companies have the same parent companies and should not be expected to compete against themselves, reiterating Representative Westrom's point. Mr. McNeill stated an audit would show valid reasons for why these single-bid contracts existed.

Representative Hale stated in August of 2021, there were two single-bid projects that were let in Kentucky, that lead to \$2.5 million in savings. He added he believed Mr. McNeill brought some skewed information before the committee while referencing the \$7.8 million in overspending due to single-bid projects, also while not looking into savings that have occurred in the single-bid process.

Representative Santoro stated KYTC is extremely transparent and the cabinet employs outstanding contractors. He added that there will be several single-bid contracts due to the nature of the job.

Correspondence

Written correspondence was provided to committee members on KYTC driver license issuance (including an updated issuance map), as well as updated information on KSP driver testing, and driver testing regional sites. Also provided was a LRC staff update on the status of billboard regulations (603 KAR 10:040E.)

Administrative Regulations

Administrative Regulations 605 KAR 001:030, 605 KAR 001:035, and 605 KAR 001:215 were discussed. Representative Huff questioned the doubling of fees from the automobile dealers. Carlos Cassady, Director of the Kentucky Motor Vehicle Commission stated the costs of operating and sustaining the Kentucky Motor Vehicle Commission was evaluated and the cost increase was necessary. No objections were raised on the regulations, and the regulations were not found to be neither deficient nor deferred.

With no further business to come before the committee, Chairman Higdon adjourned the meeting at 3:08 P.M.