INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 5th Meeting of the 2022 Interim

October 18, 2022

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Transportation was held on Tuesday, October 18, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll. The minutes from the Committee's September 20, 2022 meeting were approved.

Present were:

Members: Representative Ken Upchurch, Co-Chair; Senators Karen Berg, Brandon Smith, Johnnie Turner, Phillip Wheeler, Mike Wilson, and Max Wise; Representatives Josh Branscum, Kevin D. Bratcher, Randy Bridges, Jonathan Dixon, Ken Fleming, David Hale, Samara Heavrin, Thomas Huff, Derek Lewis, Bobby McCool, Shawn McPherson, Charles Miller, Ruth Ann Palumbo, Tom Smith, Cherlynn Stevenson, Ashley Tackett Laferty, Walker Thomas, and Buddy Wheatley.

Guests: Jeremy Edgeworth, Freight, Rail, and Waterways Coordinator, Division of Planning, Kentucky Transportation Cabinet (KYTC); Jennifer Kirchner, Executive Director, Kentuckians for Better Transportation (KBT); Brian Wright, President, Owensboro Riverport Authority, Chair, Kentucky Association of Riverports (KAR); Andrew Brown, Senior Vice President, General Counsel, Ingram Barge Company; Arlyn Upshaw, Counsel Autonomous Vehicle Industry Association (AVIA); and Kyle Ray, Office of Legal Services KYTC.

LRC Staff: John Snyder, Dana Fugazzi, Ashley Nash, and Christina Williams.

Memorialization of Senator C.B. Embry

Chairman Upchurch shared the passing of one of the committee's valued members, Senator C.B. Embry, who had battled a long-term illness. Senator Wilson spoke a few words about Senator Embry, and the members as well as guests, stood for a moment of silence in his honor.

Presentation of KYTC's Kentucky Riverports, Highway and Rail Freight Study Report

Jeremy Edgeworth, Freight, Rail, and Waterways Coordinator, Division of Planning, presented KYTC's Kentucky Riverports, Highway and Rail Freight Study Report. The two year study entailed two rounds of site visits to Kentucky's public

riverports, three virtual statewide summits, a series of technical memoranda, and a final report. The report assesses the waterborne commerce markets in Kentucky, the current state of Kentucky's riverports, the role that the public riverports play in future economic development, and the potential benefits of investing in Kentucky's public riverport infrastructure.

Kentucky has 1,662 miles of inland waterways, 1,020 of which are commercially navigable, ranking Kentucky 4th in the nation. Kentucky is surrounded on three sides by the commercially navigable rivers of the Mississippi, Ohio, and Big Sandy River, and also the Tennessee, Cumberland, Green and Licking Rivers which are able to move freight. Kentucky's geographic location provides great advantages in being at the center of a vast inland waterways network and at the confluence of several critical inland waterway routes.

Kentucky has seven active public riverports, with three additional ports at differing stages of development. These ports provide critical connections moving goods on and off the rivers. Kentucky's public riverports are supplemented by over 160 private river terminals that provide many of the same services, but often are developed for a single commodity. To help move freight on and off the waterways, Kentucky's public ports and private terminals connect to a network of over 2,674 miles of rail throughout Kentucky, which serves as an important hub connecting five Class I railroads in the western part of the state. The first and last mile connection of Kentucky's freight network rests on Kentucky's 80,000 miles of the public road network.

Waterborne transportation is the most efficient way to move goods. One typical 15 barge tow and towboat moves the freight equivalent of six locomotives and 216 railcars, or 1,250 large tractor trailers. Looking specifically at the freight moved by waterways in Kentucky in 2018, 108 million tons of freight valued at $11.9 billion moved on Kentucky's inland waterways. This would be the equivalent to adding 3.5 million trucks annually to our roadway network.

Overall, Kentucky's long standing waterborne commerce markets in coal, fossil fuels, and minerals have declined at a rate faster than the nation as a whole. Moreover, these waterborne commerce markets are projected in the future to shift even more away from these long-standing commodities. The changes highlight the importance of modernizing Kentucky's public riverports to compete for new, more diverse markets, such as inputs to advanced manufacturing and high technology industries such as plastics, rubber and chemicals, as well as food and livestock.

Kentucky's ports, inland waterways, and inland waterway dependent industries currently support nearly one hundred and ten thousand jobs. This equates to $5.9 billion in personal income, $12 billion in Gross State Product, and $30.7 billion in total output. This gives rise to more than $1.2 billion in state and local tax revenue. Kentucky today faces a

critical choice of whether to invest in maintaining and modernizing the public riverports, or see waterborne commerce play less of a role in Kentucky's economy.

Kentucky's riverports currently have a backlog in unmet preservation needs to simply get the existing infrastructure into a state of good repair. As part of the study, the ports also identified additional modernization and expansion needs to successfully compete for business and serve new markets. The report and all supporting materials can be found online at https://transportation.ky.gov/MultimodalFreight/Pages/Kentucky-Riverports,-Highway-and-Rail-Freight-Study.aspx.

Presentation from the Kentucky Riverport Association

Jennifer Kirchner, Executive Director, Kentuckians for Better Transportation (KBT) and Brian Wright, President Owensboro Riverport Authority, Chair, Kentucky Association of Riverports (KAR), discussed the Riverport Industry in Kentucky. Kentuckians for Better Transportation, which was formed in 1977 is a unified transportation voice with more than 300 members advocating for all modes of transportation. The presenters gave a brief history of the KAR, and highlighted the major products shipped through each riverport. Mr. Wright also emphasized the efficiency of water transport.

Since 2013, the Commonwealth has supported the riverport industry through the Kentucky Riverport Improvement (KRI) Grant Program. The current budgeted allocation is $500,000 annually. The KRI funds are a General Fund appropriation in the Transportation Cabinet budget. The program requires a 50 percent local match. Due to the low KRI funding and the need for a 50 percent match, the grant application effort does not offer a return on investment. A list of the types of projects requested for the KRI Grant Program in 2023 was shown. The total cost of all the projects was just under $1.3 million with total KRI funds requested of $647,000.

A comparison of investments by surrounding states showed that even though Kentucky is ranked 4th in the nation for its waterways, state funding does not reflect this. Kentucky has 11 public port terminals with just $500,000 in state dedicated funds and no State Ports Grant Program, some of the lowest funding in comparison to surrounding states. Most states have both a significantly higher dedicated budget, as well as a grant program.

Mr. Wright highlighted some of the KRI challenges, including inadequate funding, the inability to use those funds to match federal grants or carry funds over to the next fiscal year, and the high 50 percent local match when other KYTC grant programs require a 20 percent local match. He advocated for the use of the now dormant Riverport Trust Fund that was established in 2010, to allow carryover funds as well as federal funds to be put into the fund. For the long-term, utilizing this trust fund will put Kentucky in a better position to leverage dollars with the federal dollars being seen in multiple programs such as the Marine Highway Program and the Port Development Infrastructure Program.

In response to a question asked by Chairman Upchurch, Ms. Kirchner stated the study does a good job of outlining what are the current critical preservation needs and that would be the first thing they would want to see funds appropriated for so that ports can return to being competitive. She added there are different levels of investment after that depending on how aggressively it is decided upon to invest. She further added a sustainable funding stream needs to occur in the future as well.

In response to a question asked by Senator Wilson concerning the water levels of the Ohio River, Mr. Wright stated waters through the locks and dams are being released on the river. He added in the Owensboro area, they are roughly three feet below, but are still passing barges and unloading if they can get up through the Mississippi or come down through the north.

In response to a question asked by Senator Wilson concerning the ownership of the riverports, Mr. Wright stated all of the public riverports are chartered through local government. Mr. Wright stated they are a quasi-government entity and all of the dollars that are made through the port are required by statute to be reinvested into infrastructure.

In response to a question asked by Representative Heavrin, Mr. Wright stated because the barges are only working at half capacity due to water levels, the impact is being felt majorly on grain exports. Grain tenants are looking to stockpile grains and wait for the opportunity to load barges. Farmers are stating that they are seeing $1 to $1.50 per bushel impact on their side due to the limitations. He added along the Mississippi River the corps is doing everything in their power to dig additional channels, but they are limiting the tows. The tow size is being reduced anywhere from 20 to 40 percent in order for them to get through those channels. He added because there is limited amount of rain predicted, this could be a problem for the foreseeable future.

In response to a question asked by Representative Lewis, Mr. Wright stated as of this year, $25 million on the Marine Highway Program was allocated for ports, and those are competitive with blue water ports as well as inland water ports. There is also a Port Development Infrastructure Program (PDIP) that is specific to infrastructure dollars and is above $25 million as well. He added that those dollars have been leveraged in the past, although the ports have to save up for that local fund. Paducah was recently awarded a PDIP Grant, and it took time to be able to leverage their match. Owensboro was awarded $14.4 million in 2018 to improve the last mile between the interstate and river and rail access. Of the $14.4 million, $11.5 was from the Maritime Administration.

In response to a question by Senator Berg concerning transport capacity preparations to accommodate the new economic development drivers that are expected to come into Kentucky, Ms. Kirchner stated she believed there is a lot of unrecognized potential with industrial recruitment and development specifically around the ports, but

most notably in becoming the battery capital of the country, there are opportunities that have not yet been realized.

Presentation from the Ingram Barge Company

Andrew Brown, Senior Vice President, General Counsel, Ingram Barge Company gave a brief explanation about the Ingram Barge Company and its activities within the riverport system. Ingram Barge has been in operation since 1946, is multi-generational family owned, and employs over 2,000 employees, approximately 400 of which live in Kentucky. Ingram Barge has locations strategically located along the river system, operating on over 6,000 miles of river in 18 states, with a major operational hub in Paducah, and has over 4,000 dry and liquid barges, and over 100 boats in active operation. Ingram Barge Company has built over 1,700 new barges since 2007. These barges are 30-year assets and a long-term investment for the industry. The company is also building boats for the first time in many years which are more expensive, and will become, on average, a 50-year asset. Mr. Brown stressed the size advantage and efficiency of barge transportation as opposed to truck and rail.

Mr. Brown stated that the waterways mode of freight transportation is running at approximately 50 percent capacity. The limiting factor is the infrastructure, the locks and dams systems which are all federally managed by the Corps of Engineers, and most of which were built with a 50- year design life. The current average age of the lock and damn facilities is 62 years old. The Infrastructure Investment and Jobs Act (IIJA) included $2.5 billion allocated directly to inland river infrastructure. The Kentucky lock addition is a priority project in IIJA. Even with the funds allocated towards the Kentucky lock from IIJA, there is still a need of $332 million to finish the construction work over the next several years. Remaining costs are a reality for a few other projects as well.

Mr. Brown gave a brief explanation of the Jones Act, also known as the Merchant Marine Act of 1920. This law states that any waterborne cargo commerce moving between two coastal or inland points must be carried aboard vessels that are built in the United States, crewed by U.S. mariners, and owned by U.S. citizens. The law's primary aim is to protect U.S. strategic ship building capabilities and to ensure that the U.S. has a consistent corps of merchant mariners. If Congress were to modify the Jones Act, it would automatically devalue the investment that Ingram Barge and other American companies have made in American-built equipment. Kentucky's rank of 5th among all American states in per capita domestic maritime jobs and 7th in economic impact, is due in large part to the Jones Act and the inland river industry.

Inland intermodal port development is a major driver of economic growth as seamless transitions of containers occur from rail to truck, truck to rail, and then to the riverways as well. These present multiple options for how to bring in raw materials, and how to export goods. Mr. Brown mentioned that Paducah has four major river systems within 30 miles and is within a three-hour drive of major metropolises such as St. Louis,

Nashville, Louisville, and Memphis, making it an ideal site to have an inland intermodal port.

In response to a question asked by Senator Wheeler, Mr. Brown stated Ingram Barge Company has faced regulatory hurdles that needed to be navigated such as installing a fleet of barges or requesting that the channel be dredged.

Representative Bridges thanked Mr. Brown for all the Ingram Barge Company does for the Paducah area and mentioned that he is working on a resolution expressing the General Assembly's support for maintaining the Jones Act.

In response to questions asked by Representative Bridges, Mr. Brown stated due to the regional drought, they are continuing waterway transport operations on a day-to-day basis, and that the Paducah area is a designated duty free zone where goods that would otherwise be subject to a tariff or duty, before re-export, are able to take advantage of not being required to pay the full measure of duty. He added this would be a prime site for an inland intermodal port, although that area does lack the designated container handling cranes that are at larger ports.

In response to a question asked by Senator Berg, Mr. Brown stated that running lights on barges are required due to Coast Guard regulations. Additionally, Senator Berg inquired about the estimated cost to place side running lights on the barges. Mr. Brown was unsure of an estimated cost for the addition of side running lights.

In response to a question asked by Representative Smith, Mr. Brown stated he does not think it is uncommon on some ports to have a through-put fee that is assessed on a per unit basis. He added acquiring a designated gantry crane and a reach stacker for ports would be a step in the right direction.

Legislation Authorizing and Regulating the Use of Fully Autonomous Vehicles on Public Highways (23 RS BR 201)

Arlyn Upshaw, Counsel, Autonomous Vehicle Industry Association (AVIA) discussed fully autonomous vehicles. The AVIA is comprised of the world's leading technology, ridesharing, trucking, and automotive companies, and its mission is to advance and promote the benefits of autonomous vehicles (AVs) and to support the safe and timely deployment of the innovative technology.

There are six levels of automation, the first four of which currently exist, to some degree, on motor vehicles. Level zero is momentary driver assistance such as automatic emergency parking or lane warning. Level one is sustained driver assistance such as adaptive cruise control and lane keeping. The second level is partial automation where a driver must constantly monitor the vehicle. The third level of automation is conditional automation where a driver must be ready to take control of the vehicle upon request. Level

four automation is high automation where the system handles all driving functions and does not require a human driver. These vehicles operate on roads today but are not available for consumer purchase. The last level of automation, level five, is full automation where a system can drive everywhere in all conditions. The term "autonomous vehicle" refers to vehicles at level four or level five automation.

Autonomous vehicles are used in goods delivery, passenger ride hailing services, last-mile transportation services, shuttle services, and long-haul trucking. The benefits of AVs largely revolve around safety, which AVs have the potential to dramatically improve. In 2021, there were nearly 43,000 fatalities from crashes on U.S. roads, up from 36,000 in 2019. Unlike human drivers, AVs do not drive drunk, text while driving, or fall asleep at the wheel. For over a decade, AVs have been tested and deployed in various contexts for tens of millions of miles.

Increased mobility is also a benefit of AVs. They can expand mobility options for Kentucky residents through servicing direct trips to workplaces and other endpoints, providing greater mobility to residents with disabilities and those with limited access to personal vehicles. The AV industry is also creating new jobs and opportunities for workers with a wide array of expertise and educational backgrounds. Autonomous vehicle trucks in particular can help spur $111 billion in aggregate investment spending across the U.S. economy. Autonomous vehicles can increase supply chain efficiency through productivity enhancements, fleet flexibility, and travel time savings.

As for the regulation of AVs, the federal government is responsible for oversight and administering performance and safety standards. The Federal Motor Vehicle Safety Standards (FMVSS) establish preemptive performance standards. The 2021 National Highway Traffic Safety Administration (NHTSA) standing general order requires manufacturers to report crash data. The Federal Motor Carrier Safety Administration (FMCSA) imposes additional regulations on AV trucking. States are responsible for regulating AV operation such as licensing, registration, insurance, and traffic enforcement. A majority of U.S. states expressly authorize AV operation. Some common requirements are minimum insurance requirements for AV operation, being capable of achieving a minimal risk condition, and the submission of a law enforcement interaction plan.

Ms. Upshaw stated Kentucky needs an AV framework because a patchwork of state laws can lead AV operation to cluster in a few states. Autonomous vehicle technology is being deployed in locations that support AV operation, including neighboring states. A state framework authorizing AV deployment would help bring safety, mobility, and efficiency benefits of AVs to Kentucky residents. She then highlighted important elements of model AV legislation.

In response to a series of questions asked by Senator Turner, Ms. Upshaw stated the study that indicated the use of AVs would decrease the cost of the goods, was based on

removing a driver from autonomous trucking in particular because they would not have the limitations of a human driver and compliance hours of service regulations. AVs would be required to complete the administrative tasks and operational requirements that truck drivers are currently required to complete and in the event of a crash or if the vehicle is pulled over by law enforcement, the AV is designed to contact a fleet support specialist to assess the situation and determine follow-up from there.

In response to a question asked by Senator Wilson, Ms. Upshaw stated the AVs are designed to drive better than a human driver. The AVs have been developed to undergo simulations that have calculated what needs to happen under any given scenario that may be encountered.

Consideration of Administrative Regulations

The committee considered administrative regulation 603 KAR 5:155 regarding vegetation management. The regulation was not found to be deficient nor deferred.

With no other business to come before the committee, Chairman Upchurch adjourned the meeting at 2:33 P.M.