**General Government Committee**
*Ed Lane - Chair*
*Jay McChord – Vice Chair*
*Steve Kay*
*Chris Ford*
*K. C. Crosbie*
*Doug Martin*
*George Myers*
*Jerry Southers – Staff (258-3207)*
*Scott Seymour – Staff (258-3221)*

# AGENDA

## GENERAL GOVERNMENT

## February 1st, 2011

## 1:00 P.M.

1. Utility Franchises – Barberie

   a. Synopsis of Utility Franchises (pg. 1)
   b. Current Utility Franchises (pg. 2)
   c. KRS 278.020, 278.040 (pg 3 - 6)
   d. Kentucky Constitution Sections 163 & 164 (7 – 8)

2. Update on Internal Audit Board – Members/Charter/Bylaws/State Auditor Report – B. Sahli

   a. January 24, 2011 Letter from Ms Jennifer Burke, Internal Audit Bard Acting Chair re: Internal Audit Board Bylaws (pg 9 – 10)

   b. State Auditor – Internal Audit Recommendations (pg 11 – 12)

3. Employee Wellness Programs – CM McChord

4. New Business Items
   a. CM Ed Lane's Memo to Councilmembers Dated January 24, 2011 (pg 13)

"**The General Government committee, to which shall be referred matters relating to the general administration of government; the Department of Law; the Department of General Services; each department's respective divisions; and, any related partner agencies**."

## UTILITY FRANCHISES

- The Public Service Commission (PSC) has exclusive jurisdiction over utility rates and services. Cable television is not considered a utility by the PSC, and is instead regulated at the federal and local (limited) level.

- The PSC also dictates the service areas for each utility.

- A utility (including cable television) is required to have jurisdictional (local government) consent in order to place its facilities within the public rights-of-way or on public property.

- A franchise agreement is the legal mechanism for granting the utility the use of the public right-of-way. Franchises are:

  - non-exclusive
  - advertised and bid out as an ordinance/resolution (negotiated in advance)
  - 20 years or less in duration (including extensions)
  - Uniform as to each respective type of utility

- Lexington is compensated through a franchise fee applied to certain defined gross revenues related to the utility's provision of services within Fayette County. Telecommunications and cable utilities are excluded from paying this fee this pursuant to the state telecommunications tax law.

  - the franchise fee is a separate line item on the bill
  - current fee on newer franchises is 3%.(plus permitting cost at option of utility)
  - Lexington could defend increasing the fee to 5% (including permit fees)

- Lexington adopted a comprehensive regulatory scheme pertaining to public-right-of-way regulation and permitting (Chapter 17C of the Code) in 2002 which also applies to franchisees. This has been incorporated by reference into each franchise agreement entered into since it was adopted.

- Lexington currently has franchise agreements for water (multiple), electric (multiple), gas (multiple), telecommunications (multiple), and cable television (Insight).

- Current franchise agreements range in duration from 3 years (electric, gas, telecommunications to 20 years (KAW water).

## CURRENT UTILITY FRANCHISES

**Natural Gas** (Ordinance No. 135-2008)

Franchise Fee is 3% with ability to add in additional permit fees. Expire on July 16, 2011.

Columbia Natural Gas of Kentucky, Inc. (Resolution No. 448-2008)
Delta Natural Gas Company, Inc. (Resolution No. 449-2008)

**Electric** (Ordinance No. 175-2008)

Franchise Fee is 3% with ability to add in additional permit fees. Expire on August 21, 2011.

Kentucky Utilities Company, Inc. (Resolution No. 504-2008)
Clark Energy Cooperative, Inc. (Resolution No. 505-2008)
Bluegrass Energy Cooperative Corporation (Resolution No. 506-2008)

**Telecommunications** (Ordinance No. 240-2008)

No franchise fee (State tax). Expire on December 8, 2011.

Windstream Kentucky East, LLC (Resolution No. 755-2008)
Inter Mountain Cable, Inc. (Resolution No. 756-2008)
TW Telecom of Kentucky, LLC (Resolution No. 37-2009)
Terablue, Inc. (Resolution No. 573-2009)
Level 3 Communications, LLC (Resolution No. 38-2009)

**Cable Television** (Ordinance No. 301-2007 (5 year extension to 1992 franchise))

No franchise fee (State tax). Expires on September 3, 2012

Insight Kentucky Partners, II, LP

**Water**

Franchise Fee is 3% (KAW raised in 2003 (Ordinance No. 262-2003)). Expire in May 2015.

Kentucky-American Water Company (Resolution No.'s 146-95 & 200-95)
Spears Water Company, Inc. (Ordinance No. 009-99 & Resolution No. 257-99)

**278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Severability of provisions.**

(1) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement. The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth. The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:

(a) The replacement or upgrading of any existing electric transmission line; or

(b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or

(c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.

(3) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(4) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

(6) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.

(7) Subsection (6) of this section shall not apply to any acquisition of control of any:

(a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (6) of this section;

(b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or

(c) Utility pursuant to the terms of any indebtedness of the utility, provided the issuance of indebtedness was approved by the commission.

(8) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.

(9) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 137, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 75, sec. 1, effective July 13, 2004. -- Amended 2001 Ky. Acts ch. 35, sec. 1, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 388, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 144, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 102, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 3, effective July 15, 1988; ch. 22, sec. 5, effective July 15, 1988; ch. 335, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 368, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 5, effective July 15, 1982; ch. 130, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 6, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 388, sec. 3. -- Amended 1972 Ky. Acts ch. 83, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-25.

**278.040 Public Service Commission -- Jurisdiction -- Regulations.**

(1) The Public Service Commission shall regulate utilities and enforce the provisions of this chapter. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.

(2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(3) The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

**Effective:** July 15, 1982

**History:** Amended 1982 Ky. Acts ch. 82, sec. 7, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 8, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 2, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 3952-2, 3952-12, 3952-13, 3952-27.

# Kentucky Constitution

## Section 163

**Public utilities must obtain franchise to use streets.**

No street railway, gas, water, steam heating, telephone, or electric light company, within a city or town, shall be permitted or authorized to construct its tracks, lay its pipes or mains, or erect its poles, posts or other apparatus along, over, under or across the streets, alleys or public grounds of a city or town, without the consent of the proper legislative bodies or boards of such city or town being first obtained; but when charters have been heretofore granted conferring such rights, and work has in good faith been begun thereunder, the provisions of this section shall not apply.

**Text as Ratified on: August 3, 1891, and revised September 28, 1891.**
**History: Not yet amended.**

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# Kentucky Constitution

## Section 164

### Term of franchises limited -- Advertisement and bids.

No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding twenty years. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids. This section shall not apply to a trunk railway.

**Text as Ratified on: August 3, 1891, and revised September 28, 1891.**
**History: Not yet amended.**

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Lexington-Fayette Urban County Government
OFFICE OF INTERNAL AUDIT

# MEMORANDUM

DATE: January 24, 2011

TO: Linda Gorton, Vice-Mayor

CC: Ed Lane, Internal Audit Board Member
George Myers, Internal Audit Board Member
Richard Maloney, Internal Audit Board Member
Rebecca Langston, Internal Audit Board Member

FROM: Jennifer Burke, Internal Audit Board Acting Chair

RE: Internal Audit Board Bylaws

Dear Vice-Mayor Gorton:

This memorandum is provided to brief you on the status of the creation of Internal Audit Board Bylaws recommended by the State Auditor in her October 4, 2010 report to the Lexington-Fayette Urban County Government.

The Internal Audit Board met on December 6, 2010 and considered a draft version of Board Bylaws. Some changes were recommended, and Internal Audit Director Bruce Sahli was prepared to present those changes to the Board in its scheduled January 14, 2011 meeting. In a January 13, 2011 e-mail, Board member George Myers asked that the Board postpone this meeting until February 2011 so that appointments to fill the Board vacancies created by the departure of Linda Rumpke and Dewitt Hisle could be made. Mr. Myers stated it was imperative that the composition of the Board be complete before we proceeded. The January 14, 2011 Board meeting was therefore cancelled at his request.

Please be assured that the Internal Audit Board takes the development and adoption of its Board Bylaws very seriously and will address this matter as expeditiously as possible. It is the intention of the Internal Audit Board to meet again and consider the adoption of the Board Bylaws once these vacancies have been filled. Please advise if you have any questions.

Sincerely,

Jennifer F. Burke

Jennifer F. Burke
Acting Chair, Internal Audit Board

# Recommendations

| | |
|---|---|
| Pg 57 | LFUCG should develop procedures as to when and how information provided in a confidential manner to the external or internal auditors should be reported and to which entities and persons. |
| Pg 59 | LFUCG should develop procedures to inform the Council of confidential issues brought to the attention of the external auditors. |
| Pg 59 | A procedure should be established for possible fraud allegations to be communicated to the Office of Internal Audit for disclosure to the Internal Audit Board |
| Pg 62 | The full Audit Board should be informed in a closed session of allegations that come to the attention of Internal Audit |
| Pg 62 | The Audit Board should obtain independent legal counsel when dealing with matters that may create a conflict on interest for employees within the Department of Law |
| Pg 62 | A confidentiality statement be signed by all Audit Board members to ensure confidentiality when needed to allow for full disclosure to the Board members |
| Pg 64 | LFUCG should amend 63-2002 to expand the number of Internal Audit Board members by increasing the number of members from the community at large with as goal that a majority be constituted by community at large members |
| Pg 64 | The amended ordinance should limit the number of consecutive terms that voting Board members and the Chair can serve, as well as, criteria under which a Board member can be removed |
| Pg 64 | The amended ordinance should specify that the Board select the Chair from the community at large members |

**Recommendations (continued)**

| | |
|---|---|
| Pg 64 | The LFUCG Internal Audit Board should adopt bylaws and rules that reflect Ord 63-2202 |
| Pg 64 | Bylaws should address confidentially issues, conflicts of interest, criteria for entering into a closed session, and action necessary to consistently "supervise, coordinate, evaluate, monitor, and implement the internal audit function." |
| Pg 64 | The bylaws and rules should be presented for Council approval. |
| Pg 64 | The bylaws should require the Internal Auditor to periodically report audit findings and other issues to the Council's Budget & Finance Committee, or other committee as desired by the full Council |
| Pg 67 | LFUCG should implement a process to receive, distribute, investigate, and resolve anonymous concerns from its employees and citizens |
| Pg 68 | The Office of Internal Audit should develop policies, rules, or procedures to address concerns, issues, or potential fraud allegations reported by external auditors, anonymous complaints, and others. |
| Pg 68 | A process should be developed to ensure appropriate communication to the Internal Audit Board and to protect a complainant's confidentiality, unless otherwise required by law to disclose this information |
| Pg 68 | All the policies, rules, or procedures should be submitted to the Council for review and approval as required by the Charter of the Office of Internal Audit |

**Jerry Southers**

**From:** Scott Seymour
**Sent:** Monday, January 24, 2011 3:03 PM
**To:** Council Members (Email)
**Cc:** Council Staff (Email)
**Subject:** FW: General Gov. Cmte.
**Attachments:** Gen Gov Items.pdf

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**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**
*Lexington, Kentucky*

***Ed Lane, 12th District***

January 24, 2011

To - Councilmembers

Since the General Government Committee is a new entity, as chair, I am taking the position that any items related to General Government that were pending in other committees prior to 1/3/11 are now inactive.

If you have an item that was under consideration in a prior committee that you wish to place into the General Government Committee, please send me a memo providing detailed information regarding the matter so it can be provided to the new members of this committee for their review and consideration.

The information provided should provide adequate detail and clearly stipulate the issue to be reviewed by the General Government Committee.

Please advise if you have any questions or comments in this regard.

Thanks,

Ed Lane
Chair
General Government Committee

Copy: Rebecca Langston
Jerry Southers
Scott Seymour