

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 2nd Meeting of the 2020 Interim

July 8, 2020

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Appropriations and Revenue was held on Wednesday, July 8, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Christian McDaniel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Christian McDaniel, Co-Chair; Representative Steven Rudy, Co-Chair; Senators Tom Buford, Matt Castlen, Rick Girdler, David P. Givens, Stan Humphries, Alice Forgy Kerr, Morgan McGarvey, Stephen Meredith, Gerald A. Neal, Michael J. Nemes, Dennis Parrett, Robin L. Webb, Stephen West, and Phillip Wheeler; Representatives Lynn Bechler, Danny Bentley, Myron Dossett, Joseph M. Fischer, Kelly Flood, Jim Glenn, Mark Hart, Angie Hatton, Jason Nemes, Ruth Ann Palumbo, Melinda Gibbons Prunty, Brandon Reed, Steve Riley, Rob Rothenburger, John Sims Jr, Wilson Stone, James Tipton, and Susan Westrom.

Guests: Amy Cubbage, General Counsel, Labor Cabinet; Josh Benton, Deputy Secretary, Labor Cabinet; Eric Friedlander, Secretary, Cabinet for Health and Family Services; Carrie Banahan, Chief Analyst for Health Policy, Cabinet for Health and Family Services; Aaron Thompson, President, Council on Postsecondary Education; and Shaun McKiernan, Director of Budget and Finance, Council on Postsecondary Education.

LRC Staff: Jennifer Hays, Cameron Childress, Sarah Watts, and Chase O'Dell

Unemployment Insurance Update

Amy Cubbage, General Counsel, Labor Cabinet; and Josh Benton, Deputy Secretary, Labor Cabinet, provided an Unemployment Insurance Update.

Josh Benton testified that there had been a significant number of staffing reductions in Unemployment Insurance (UI) over the past several years. A request for proposal (RFP) for a new technology system for UI was released in February of this year. The unemployment office budget decreased from \$41 million in 2010 to \$25 million in 2018. The operating budget for the unemployment insurance office comes from the federal

government. Reductions in the budget led to the repurposing of employees and the closing of several local centers.

Mr. Benton stated that UI is designed in federal legislation to be thorough rather than fast. There are 27 variables that can potentially stop a claim. UI eligibility has been expanded to non-traditional workers. The duration of claims has also been extended from 26 weeks to 39 weeks.

The Pandemic Unemployment Assistance (PUA) federal program has been established to provide benefits to individuals who do not typically qualify for UI. The Pandemic Unemployment Compensation (PUC) federal program provides an additional \$600 a week to individuals receiving UI. The PUC program is set to expire at the end of July.

From December 8, 2019, to March 7, 2020, almost 45,000 new claims were filed in Kentucky. During the same time, almost \$110 million of UI funds were distributed. As of March 7, 2020, the Kentucky UI trust fund had a balance of almost \$600 million.

Over 930,000 new claims were filed between March 8, 2020 and June 6, 2020. Roughly 550,000 individuals filed claims. An average of 2,000 to 3,000 duplicate claims are filed every day. Over 90 percent of eligible claims have received an initial payment. Of the claims that are left, there are 300,000 to 400,000 issues that need to be resolved. As of June 6, 2020, \$2.4 billion in UI funds have been distributed. The Kentucky UI trust fund balance is now at zero dollars. As of June 5, 2020, the Federal UI trust fund balance was at \$1.3 billion.

The UI division has had a challenge with being understaffed. Kentucky has contracted with vendors to assist with answering UI calls. It can take three to six months for someone to have a good grasp on how to manage a UI claim.

Kentucky is one of roughly 20 states that have had to take out a loan due to a depleted UI trust fund balance. Kentucky was approved for an \$865 million loan from the federal government in June, 2020. That amount will cover the fund through August.

Amy Cabbage testified that the Labor Cabinet has been handling day-to-day management of the Office of Unemployment Insurance for the past four weeks. The number of claims processors has been increased from 40 to 100.

The Commonwealth has contracted with the accounting firm Ernst & Young to assist in processing claims. Ernst & Young has slightly over 200 employees processing claims and will soon have 100 more. Without outside assistance, it would take four to six months for the Office of Unemployment Insurance to get through the claims backlog. The

contract should save Kentucky more than \$15 million. The cost of additional assistance is covered under federal CARES Act funding.

In response to a question from Senator West, Mr. Benton testified that the Office of Unemployment Insurance has not provided in-person services since 2017. He continued to say that unemployment insurance staff has not stopped processing claims.

In response to a question from Representative Rudy, Mr. Benton stated that individuals who have not received their first unemployment check will receive back pay. In response to a follow-up question, Mr. Benton stated that individuals will still receive back pay for the \$600 a week PUC benefit if their claim was not processed until after July 31.

In response to a question from Representative Nemes, Ms. Cabbage testified that the existing statutory scheme in Kentucky Revised Statutes (KRS) Chapter 341 gave the administration the ability to obtain a loan from the federal government. Responding to a follow-up question from Representative Nemes, Ms. Cabbage stated that KRS 341.240, 341.295, 341.611, 341.612, and 341.614 set forth the different funds and how they are funded through existing taxes.

In response to a question from Representative Tipton, Mr. Benton stated that within KRS 341.270 there is an employer tax rate schedule for UI which is based upon the reserve ratio of the UI trust fund. He continued to say that the Commonwealth's loan from the federal government is interest free and that payments are not due until after January 1, 2021. The payment schedule will be quarterly. Ms. Cabbage added that the employer rate will change to Schedule E beginning January 1, 2021.

In response to a question from Representative Hart, Mr. Benton stated that the UI trust fund balance reached zero dollars in mid-June. The Commonwealth has utilized the federal loan since then. The loan is expected to sustain the trust fund until August.

In response to a question from Senator McDaniel, Ms. Cabbage stated that the administration expects it will have to seek additional federal funds for the trust fund. In response to another question from Senator McDaniel, Mr. Benton stated that the administration should have a forecast of how much it expects to request by the end of July. In response to a follow-up question, Mr. Benton said that roughly \$40 million a month was paid out of the UI trust fund before COVID-19.

In response to questions from Senator Meredith, Mr. Benton testified that the data breach to UI occurred inside the technology system. There were a handful of reports that a claimant had seen another individual's information. There is no indication that someone externally was trying to access information to use it for harm. It is unclear how many people saw someone else's information. The conversations about moving UI to the Labor Cabinet

had begun prior to the breach. In response to another question, Ms. Cabbage said that Ernst & Young is not involved in system security.

In response to a question from Senator Nemes, Ms. Cabbage testified that the contract with Ernst & Young is for \$7.4 million for the month of July. The firm was selected because of its experience with UI in other states. The administration believes that the contract will quickly provide 300 processors to work through the backlog of claims.

In response to a question from Senator Buford, Mr. Benton testified that the phone system has been a challenge since day one. The decision was made in March to have a centralized phone number. In response to another question from Senator Buford, Mr. Benton stated that ongoing eligibility evaluations can stop an individual's payments depending on how they answer particular questions. He continued to say that conversations are being held to determine how to streamline the claimant referrals coming to the Legislative Research Commission (LRC).

In response to a question from Senator Givens, Mr. Benton stated that there is \$16 million available to pay for a new technology system. Proposals should be received within the next few months. In response to another question from Senator Givens, Mr. Benton stated that looking back, more help was needed in adjudicating and processing claims than in the call center.

In response to a question from Representative Prunty, Ms. Cabbage stated that the \$865 million loan is for the UI trust fund to pay claimants. Other CARES Act funding will be the source of funding for the contract with Ernst & Young. The \$865 million loan for the trust fund is strictly for traditional UI claims.

In response to a question from Senator McGarvey, Ms. Cabbage testified that Ernst & Young is providing 300 employees for claims processing. Ms. Cabbage estimated that it would take at least a year for the Office of Unemployment Insurance to train another 300 UI staff. In response to a follow-up question, Ms. Cabbage stated that in the administration's judgement the contract with Ernst & Young was the best and cheapest way to work through the claims backlog.

In response to a question from Senator Wheeler, Mr. Benton testified that the Education and Workforce Development Cabinet could not detail LRC staff to its agency to assist in processing claims. In response to a follow-up question, Ms. Cabbage stated that LRC staff could not be detailed due to a combination of federal requirements and separation of powers issues.

In response to a question from Representative Hatton, Mr. Benton testified that the public workforce system in Kentucky is dependent upon federal dollars for operating. The lower the unemployment rate, the less workforce dollars a state receives. He continued to

say that Kentucky should consider providing state level resources to stabilize the ebbs and flows of federal funding. In response to another question, Mr. Benton stated that an RFP for improving the UI system was not issued for three years because a certain amount of funds had to be collected before the RFP could be issued.

In response to a question from Senator Castlen, Mr. Benton testified that there were not vendors available to provide adjudication services earlier during the pandemic.

In response to a question from Senator McDaniel, Mr. Benton testified that the payments to non-traditional employees and the provision that payments begin on the first week were in the governor's executive order and Regular Session 2020 Senate Bill 150, which expanded eligibility for UI benefits, and were also rolled up in the CARES Act, which passed later. By the time Kentucky received CARES Act funding, it was paying benefits to those who are not traditionally eligible through federal funds. In response to another question from Senator McDaniel, Mr. Benton stated that the only program expiring July 31 is the additional \$600 a week. The PUA goes through the end of the year.

In response to a question from Senator West, Ms. Cabbage testified that the contract with Ernst & Young was an emergency procurement that was not competitively bid. The administration hopes that at least 80 percent of the backlog will be completed by the end of July. In response to another question, Ms. Cabbage stated that the administration hopes it will not have to renew the contract after July, but that it will remain flexible.

In response to a question from Senator McDaniel, Mr. Benton stated that the Education and Workforce Development Cabinet became aware of the security breach on April 23. In response to another question, Mr. Benton said that the breach was not reported until a request was made by the auditor's and attorney general's offices. In response to further questions, Mr. Benton testified that the cabinet did not initially report the incidents because its internal investigations were still trying to determine whether there was a breach. Mr. Benton stated that the cabinet's legal team reviewed whether or not to report the incidents as a breach.

In response to a question from Representative Hart, Ms. Cabbage testified that the cost for extending the contract with Ernst & Young for August would depend on the volume of work under the contract.

Ms. Cabbage agreed to forward Senator Meredith's suggestion that the administration enter into separate contracts for claims processing and system review, so that other vendors can participate in the process.

Kynect/Health Benefit Exchange

Eric Friedlander, Secretary, Cabinet for Health and Family Services; and Carrie Banahan, Chief Analyst for Health Policy, Cabinet for Health and Family Services, discussed the Kynect/Health Benefit Exchange.

Carrie Banahan testified that Governor Andy Beshear sent a declaration letter of intent to the Centers for Medicare & Medicaid Services (CMS) on June 16th to transition to a state-based exchange beginning January 1st, 2022. Kentucky implemented a state-based exchange in 2013 known as Kynect. Through Kynect, over 500,000 people were enrolled into Medicaid and qualified health plan coverage.

In 2017, Kentucky became a state-based exchange on the federal platform. This required individuals to use the federal exchange to apply for qualified health plan coverage. To support federal exchange operations, a user fee is included in an individual's premium amount. In 2018, Kentuckians paid a three percent user fee, totaling \$9.8 million. In 2019, the fee increased to 3.5 percent.

Several states are transitioning from the federal exchange to a state-based exchange. Benefits of transitioning to a state-based exchange include providing Kentuckians a reduction in premium amounts, allowing for greater flexibility and autonomy than a federal exchange, and more. The state-based exchange can be reestablished without any system development costs.

Federal funding in the Kynect health benefit exchange decreased over time from \$49 million in Fiscal Year (FY) 2015 to 0 in FY 2019. By using the federal exchange Kentucky is a net-payer to the federal government, as opposed to receiving federal funds.

In response to a question from Representative Flood, Secretary Friedlander stated that some funds are being made available to local health departments to assist with increasing testing.

In response to a question from Senator McDaniel, Ms. Banahan stated that a one percent broad-based assessment collected annually on insurers funds the operations of the exchange. There will be a one-time system cost of five million dollars in order to reestablish the state-based exchange. Secretary Friedlander stated that potential savings will pay for the cost to reestablish the exchange. In response to another question from Senator McDaniel, Secretary Friedlander expressed his belief that existing statutes on maximizing federal funds give the authority to move to a state-based exchange.

Update on Federal COVID 19 Funding

Aaron Thompson, President, Council on Postsecondary Education; and Shaun McKiernan, Director of Budget and Finance, Council on Postsecondary Education (CPE), provided an update on Federal COVID-19 Funding.

President Thompson testified that Kentucky's public colleges and universities are estimated to have incurred \$144,853,700 in costs and lost revenues during FY 2020. This equates to 17% of the state general fund dollars allocated to public colleges and universities for the year.

Housing and dining refunds and credits accounted for over 50 percent of costs incurred by public colleges and universities. Tuition costs were not refunded, because classes continued on an online format. The public postsecondary education system lost \$21.5 million in tuition and fee revenues in FY 2020. Another \$17.2 million in 'other' revenues were lost.

The CARES Act provided two major pools of funding to colleges and universities. The first fund is the Higher Education Emergency Relief Fund (HEERF). The second fund is the Governor's Education Emergency Relief Fund (GEERF). Forty-five percent of HEERF funding is reserved for emergency cash grants to students. Another 45 percent of the funding is reserved for institutional grants. Kentucky received \$156 million from the HEERF.

Kentucky's postsecondary system has awarded 76.9 percent of the \$55 million reserved for students through the HEERF. All funds must be distributed directly to students for emergency needs such as food, shelter, childcare, and more.

Fifty-six percent of the \$54.5 million in funds reserved for institutions through the HEERF have been disbursed. These funds are intended to cover significant COVID-19 related costs.

Kentucky received \$43.8 million through the GEERF. CPE received \$13.8 million to administer to higher education institutions. GEERF dollars can be used for purposes such as enhanced online programming, targeted financial aid for high-need students, and more.

There will be minimal to no tuition increases throughout the system in the 2020-2021 academic year. The proposed system average tuition increase will be 0.7 percent for the upcoming academic year. This will be the lowest increase in decades.

In response to a question from Senator McDaniel, President Thompson stated that Kentucky State University received an additional \$2,358,412 for serving minority and low-income students. Shaun McKiernan testified that the funds to institutions for serving minority and low-income students were not included in the \$110 million that went to public institutions through the other pools of HEERF funds. In response to another question from Senator McDaniel, President Thompson stated that Kentucky State University has not disbursed as much of its student grants as other institutions because it found logistical issues such as incorrect addresses on some student applications. In response to a follow-up

question from Senator McDaniel, Mr. McKiernan stated that the Kentucky Community & Technical College System (KCTCS) has not disbursed much of its institution grant, because it does not have dining or housing expenses. KCTCS is also being cautious with how it spends its funds. He continued to say that Kentucky State University did not provide a specific response for why it has not disbursed much of its institution grant. In response to another question from Senator McDaniel, President Thompson testified that these funds will lapse back to the federal government if they are not utilized.

In response to a question from Senator Givens, President Thompson discussed the importance of keeping tuition low in Kentucky.

In response to a question from Representative Nemes, President Thompson stated that HEERF funds went to public and private postsecondary institutions in Kentucky.

With no further business before the committee, the meeting was adjourned at 3:09 p.m.