INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 1st Meeting of the 2022 Interim

June 21, 2022

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Local Government was held on Tuesday, June 21, 2022, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Christian McDaniel, Michael J. Nemes, Wil Schroder, Brandon J. Storm, and Phillip Wheeler; Representatives Danny Bentley, Josh Bray, George Brown Jr, Jeffery Donohue, Ken Fleming, Deanna Frazier Gordon, Keturah Herron, Mary Beth Imes, DJ Johnson, Matt Lockett, Mary Lou Marzian, Jerry T. Miller, Brandon Reed, Rachel Roberts, and Walker Thomas.

Guests: State Representative Killian Timoney; Allison Brown and Amanda Sayle, Department of Corrections; James Dale and Renee McDaniel, Kentucky Jailers Association; Patti Broadbent, Diane Atchison, and David Kloiber, City of Lexington residents; Linda Bridwell and Karen Wilson, Public Service Commission; Josh Lindblom, Hardin County Jailer; and J.C. Young, Kentucky Magistrates and Commissioners Association.

LRC Staff: Mark Mitchell, Joe Pinczewski-Lee, Christopher Jacovitch, and Cheryl Walters.

Jail Reimbursement

Representative Meredith noted that the Corrections Impact Statement for 2022 HB 211, relating to reimbursements to jails, was not ready in time for the bill to be voted on in Committee so the bill was only discussed. The Department of Corrections (DOC) was invited to present their comments regarding the impact statement at this meeting.

Ms. Allison Brown, Assistant General Counsel with DOC, said that inmate time spent in custody prior to sentencing is paid for by counties. The state begins payment after sentencing for a felony. Pursuant to 2022 HB 211, the state would have had to pay for time spent in custody prior to conviction. The wording in HB 211 would result in a payment regardless of whether an inmate in custody was sentenced to incarceration or received probation. When the corrections impact statement was crafted, the annual estimated cost was between $112 and $138 million dollars as calculated using the per diem of $31.34. During the session, the per diem was increased to $35.34. The revised annual estimated cost based on the new per diem is between $126.9 and $156.4 million.

In estimating the number of individuals sentenced to incarceration, data was used for the past 5 years, as this data is tracked. The yearly average number of days spent in jail over that span equaled 2,062,497.4. Multiplying this number by the new per diem of $35.34 equals $72.89 million, just for individuals sentenced to incarceration.

In estimating the number of individuals sentenced to probation, there is no method for tracking the yearly number of days spent in jail. An alternative method was used. For the previous 5 years of data, there was an average of 129.4 days of jail time for persons sentenced to incarceration. During that same span, there was an average of 11,809 persons sentenced to probation. Multiplying the average number of jail time with the average number of persons sentenced to probation and the new per diem equates to just over $54 million.

A separate estimate was provided for 2021 figures. There were more individuals placed on probation and the number of days spent in jail were higher. It is unclear if this is anomalous. For 2021, the number of days spent is custody increased to 173.5. The number of individuals placed on probation equaled 13,615. Using those 2021 numbers, the estimate equals $83.48 million for people placed on probation.

Ms. Amanda Sayle, Director of Offender Services with the DOC, told the Committee about changes that DOC will need to make if the bill were to become law. The Kentucky Offender Management System would need to be updated to allow invoicing for jail credit only, as offenders may spend time in multiple jails. This will allow each jail to receive the amount due it. An additional staff person, with an annual salary of around $31,000, would be needed to process the credit invoices on a monthly basis. Payments for the amount due would be paid a month after the invoices are submitted due to auditing and processing.

In response to a question from Representative Meredith, Ms. Brown replied there was not a separate incarceration figure for 2021, just probation, but that she could get that figure for Representative Meredith.

In response to another question from Representative Meredith, Ms. Brown could not say for sure why the use of an ankle monitor, or other means of release, would not have been used if a decision were made for a probated sentence. What a person is charged with may not ultimately be what they are convicted of.

In response to a question from Senator McDaniel, Ms. Sayle stated that not all of DOC staff is back working fulltime. Staff works two days a week in the office and three days from home.

In response to another question from Senator McDaniel, Ms. Sayle said staff is continuing to be available even if working from home. Senator McDaniel commented that county jail employees are not afforded that opportunity.

Mr. James Daley, President of the Kentucky Jailers Association and Campbell County Jailer, told the Committee that 2022 HB 211 would have required the Commonwealth to reimburse counties for an inmate's credit for time served against the inmate's state mandatory sentence. KRS 532.120 mandates that all inmates serving time pre-conviction shall be given credit for that time served. The law specifies if the inmates are on home incarceration, they shall get credit for that time.

The Campbell County Detention Center is currently holding 118 pretrial felons. The full capacity of the jail is 656. The total population at present is about 350. An average population of felons equals 230 to 240. An inmate's stay ranges from days to years. Currently, the longest held pretrial felon has been awaiting trial or plea for 888 days, over two years. Campbell County taxpayers have been paying for that inmate's healthcare, transportation, meals, electric, and water for over two and half years with financial help from the state. However, once the inmate's trial is complete, Campbell County taxpayers' loss is the DOC's gain. The inmate will get credit for years of imprisonment and that time will be taken from the sentence. Pre-trial prisoners can spend several hundred to over a thousand days in the facility, and when given credit for time served, local taxpayers pay the cost, rather than the state.

In response to a question from Senator Wheeler, Mr. Daley answered that housing costs vary from jail to jail. In Northern Kentucky, it presently costs $60-plus a day to house an inmate. Previous costs were at $35-$40 per day.

In response to another question from Senator Wheeler, Mr. Daley said that housing a pre-trial prisoner for just under 2,000 days was an exceptional case.

Representative Johnson commented that relative to jail costs, even with the increased per diem, Daviess County is at a $3.3 million shortfall, and it's going to get worse.

In response to a question from Representative Bray, Mr. Daley said as far as Campbell County is concerned, delays for trials could be a result of defense strategies and prosecutor and court staffing problems.

Vegetation Management by Utilities

Ms. Diane Atchison, President of the Lansdowne Neighborhood Association, told the Committee that a utility easement is a designated parcel of land that gives utility companies the right to use the real property of another for a specific purpose. Those easements are vital to supplying the utilities that are used daily. However, should the utilities have the ability to perform extreme measure on easements in a wide area without contacting local government and filing a plan? Does the Kentucky Legislature not have the power and duty to assure the rights of Kentucky residents are protected? Protection and limitations are imperative. The issues under discussion are prompted by the vegetation management plan used by Kentucky Utilities (KU), but apply to all utilities.

In fall, 2020, virtually every tree was clear-cut on Southpoint Drive in Lexington. Southpoint residents were given two weeks' notice through vague wording that KU would be working in their area. The short notice did not allow enough time for residents to work with their homeowner's association. The re-plantings performed by KU after the fact were unsatisfactory. More vegetation maintenance of the 42 miles of transmission lines would be occurring throughout Fayette County. KU indicated that it would proceed as planned without variance from that plan. The Public Service Commission (PSC) and the Kentucky Attorney General's office forwarded the concerns to KU with no response from KU to the homeowners.

There are over 5,400 miles of transmission lines in KU's service area within 77 counties in Kentucky. KU's vegetation maintenance program will remove hundreds of thousands of trees. The program was approved in 2016 by PSC as part of a rate increase request.

The primary concerns of the residents are as follows: the "one size fits all" program implemented by KU is unfair and dangerous to communities; Lexington was not originally notified by KU that over 42 miles of transmission lines in the urban service area would virtually cleared of trees; property owners were not given ample notification or explanation of what would happen on their property; KU notified small areas to keep their plans from being widely known; decisions for areas of the state need to be made as close as possible to the point of service; without legislation to limit the use of easements by utility companies, Kentucky stands to lose significant control over the land; and property owners in Kentucky deserve local input into utilities' plans.

Ms. Pattie Broadbent, Lexington resident, told the Committee that last September, residents received notice about KU's plan for transmission line maintenance, followed by a visit from an arborist who explained what would happen to the trees. Everything maturing at ten feet or more was to be removed; even though, the closest wire to her property was measured at 63 feet from the ground.

Questions that arise are: "Why would a utility damage the neighborhood infrastructure already subject to flooding issues," and "Why have a plan that is more aggressive than national standards." The utility has not made any changes to the vegetation management plan.

Lexington deals with water runoff issues. Removing trees that mitigate these issues will be destructive. KU has indicated that it can remove only hazardous trees only to maintain safe and reliable energy transmission but has continued with its more aggressive approach.

Citizens need a responsible, active, regulatory body to protect the interests of Kentucky. When detrimental situations arise, legislation is needed. Legislation that gives jurisdiction to the local government, closest to the delivery of service, allowing leaders the power to act on the behalf of the communities they serve. Without legislation for protection, Kentucky will remain vulnerable.

Mr. David Kloiber told the Committee that on January 3, 2011, the Environmental Protection Agency (EPA) placed a consent decree on Lexington to manage its waste water. As of September 20, 2021, Lexington has spent $311 million remediating waste water. Trees provide tremendous water absorption that in their absence requires millions of dollars in infrastructure investment to control water runoff.

There is a lack of city control. Removal of trees represents a substantial cost to tax payers far exceeding any savings to the utility. Maintenance costs incurred by utilities are already passed on through regular rate increases. Local leaders have worked hard to negotiate policies that would protect both the utility and the citizens' interests. However, Lexington had very little leverage in negotiations.

The PSC requires that utilities approve a plan for maintenance of the power grid, which includes a wide range of options from trimming to tree removal to herbicide use. The utilities have been given full discretion on which plans to implement without any further oversight from local or state levels. This removes large powers of oversight from the PSC while simultaneously placing the burden of regional engagement and oversight unfairly on the utility.

Lexington, being the first municipality to face this issue, has gone through every legal avenue available to address it. Residents have offered pay for additional trimming services in order avoid full removal from their properties, but the utility has been unwilling to waiver in their position.

Recommendations include the following: residents support the intention of 2022 HB 485 and would like to see it amended to provide more protections and input from local municipalities; within the discretion granted by the PSC, local governments should have some say in what happens to their infrastructure, especially if all methods will provide adequate transmission security by the standards of the PSC; the creation of a new mechanism for local input or oversight in the vegetation management process, requiring either local approval for regional plans, or a well-defined process for local area variances through the PSC; and in considering that all members of the PSC being appointed positions holding unchecked discretion over these issues, additional avenues for accountability on regional variance are in everyone's best interest.

In response to a question from Representative Bray, Mr. Kloiber said roots from the trees prevent soil erosion and absorb water to prevent flooding. Representative Bray noted that utility line maintenance involves more than vegetation maintenance and said that utilities having to conform to conditions imposed by many communities will increase costs all throughout the state.

In response to a question from Representative Fleming, Mr. Kloiber stated that the city has reached out to Louisville regarding their tree canopy issue. Lexington has been advised that it has little control over tree maintenance within utility easements.

In response to a question from Representative Bentley, Ms. Atchison said an arborist has been consulted prior to the execution of the maintenance activities.

Ms. Linda Bridwell, Executive Director of the PSC, told the Committee that PSC's mission is to foster the provision of safe and reliable services at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competency. Since 1934, the primary statutory directive of utility regulation in Kentucky revolves around fair, just and reasonable rates, and adequate, efficient, and reasonable service. Most everything in utility regulation relates to those principles.

The agency has a quasi-judicial function in regulating the 1,100 utilities under its jurisdiction. The PSC does not regulate municipal utilities, with some limited exceptions, nor does it regulate cooperatives served by the Tennessee Valley Authority (TVA). The relevant statutes and regulations include KRS 278.042, KRS 278.010(14), and 807 KAR 5:041.

PSC's role in utility vegetation management is to ensure jurisdictional utilities provide reliable service to its customers. In doing so, utilities submit vegetation management plans and reliability reports which are posted on-line. Persistent problems might require more PSC oversight. Vegetation management expenses, if deemed prudent or reasonable during PSC review, are eligible for recovery in customer rates. Utilities are required to provide details regarding vegetation management expenses, but the PSC does not oversee vegetation management operations.

There are three administrative cases which guide vegetation management issues. The first was in 2006 relating to reliable provision of service by utilities. In 2011, a case was opened wherein the PSC looked at utility reporting requirements. In 2009, Hurricane Ike and other weather events near that time prompted another case opening.

Vegetation management costs include escalating expenditures occurring among all utilities because of significant increase in labor, fuel, and equipment costs. Those costs vary across utilities for many reasons including location, miles of lines, and topography. Costs can range from hundreds of thousands to $20 million or more a year. Costs of deferred vegetation management include degraded service reliability; service restoration; vegetation growth and control; vegetation removal; maintenance outside of regular vegetation management cycle; liability when damages or outages occur; and increased insurance premiums to cover risks.

In response to a question from Representative Miller, Ms. Bridwell stated that the PSC does not provide guidelines for vegetation maintenance. The National Electric Safety Code and the Federal Energy Regulatory Committee aid in the provision of guidelines for the removal of vegetation, but the utilities develop their plans as they believe will best maintain reliability.

In response to a question from Representative Bray, Ms. Bridwell said franchise agreements could be an avenue in controlling vegetation management issues.

In response to a question from Representative Lockett, Mr. Kloiber said approval was received from KU to plant the original trees in Lansdowne and Southpoint which have now been removed by KU.

Regarding Representative Bray's earlier question, Mr. Kloiber answered that franchise agreements only apply to distribution lines and not transmission lines.

In response to a question from Representative Meredith, Ms. Bridwell replied that 22 cooperatives are regulated by PSC, and four utilities are investor owned and are regulated by PSC.

Representative Meredith expressed concerns that if local controls in a particular local jurisdiction were expressed that increased maintenance costs to the utility, ratepayers beyond the local jurisdiction may also be responsible for paying for those increased costs.

Representative Meredith announced that the next meeting of the Committee would be held on July 19th.

There being no further business, the meeting was adjourned at 11:30 a.m.