

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 4th Meeting of the 2018 Interim

October 24, 2018

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on Wednesday, October 24, 2018, at 1:00 PM, in Room 154 of the Capitol Annex. Representative DJ Johnson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Jerry T. Miller, Co-Chair; Representative DJ Johnson, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Albert Robinson, and Damon Thayer; Representatives Lynn Bechler, Kevin Bratcher, Tom Burch, McKenzie Cantrell, John Carney, Joseph M. Fischer, Derrick Graham, Mark Hart, Richard Heath, Dennis Horlander, Reginald Meeks, Phil Moffett, C. Wesley Morgan, Jason Nemes, Jason Petrie, Rick Rand, Jody Richards, Bart Rowland, Tommy Turner, Ken Upchurch, and Jim Wayne.

Guests: Bradford Queen, office of the Secretary of State; John Steffen, Emily Dennis, Craig Dilger, and Elizabeth Weber - Registry of Election Finance; County Clerks Kenny Barger, Don Blevins, Jr., Tina Browning, Lynn Hesselbrock, and Bobbie Holsclaw; William May, Kentucky County Clerk's Association; and Kathryn Gabhart and Michael Board, Executive Branch Ethics Commission.

LRC Staff: Alisha Miller, Roberta Kiser, Michael Callan, Daniel Carter, Kevin Devlin, Jennifer Hans, Karen Powell, and Peggy Sciantarelli.

Approval of Minutes

The minutes of the September 26, 2018, meeting were approved without objection, upon motion by Senator Bowen.

Kentucky Secretary of State/State Board of Elections – Update and Legislative Agenda for the 2019 Session.

Bradford Queen, Director of Communications, Office of the Secretary of State, was guest speaker. He focused on offices on the ballot and important dates in the 2018 election cycle, Kentucky election turnout history, absentee voting, military and overseas voters, candidate deadlines for the 2019 primary and general elections, e-poll books, and 2019 legislative proposals.

Offices up for election in 2018 include all U.S. representatives, 19 state Senate seats, 100 state House seats, the District 3 Supreme Court seat, all 115 district judges (27 counties), Commonwealth's attorneys, circuit court clerks, property valuation administrators, and other county and city officials. October 30 is the last date to request a mail-in absentee ballot for the November 6 general election. November 13 at 4:00 p.m. is the deadline for requesting a recanvass. The State Board of Elections will meet no later than November 26 to certify the vote totals.

Turnout statewide for the 2016 general election was 59.1 percent. Turnout was 30.7 percent in 2015, when the governor, lieutenant governor, and state constitutional officers were on the ballot. For the 2014 mid-term election, turnout was 46.4 percent; it was 49.1 percent for the 2010 mid-term. Kentucky mid-term election turnout is generally in the 40 percent range. As of October 22, absentee ballots issued for the 2018 general election totaled 32,569.

More than 10,000 ballots have been requested by military and overseas voters since the 2014 launch of Kentucky's online portal "GoVoteKY.com." For the 2018 general election, 2,148 ballots have been sent through the portal. Kentucky military and overseas voters have resided in 118 Kentucky counties, 37 states, two territories, and more than 100 countries.

The earliest date to file for office and affix signatures for the 2019 primary and general elections is November 7, 2018. The 2019 filing deadline for party candidates is January 29 at 4:00 p.m. The primary election date is May 21, and the general election will be on November 5.

The Secretary of State and the Kentucky Board of Elections are focusing on the use of electronic polling books (e-poll books) to replace traditional paper registration books at precincts. It has been a 3½ year effort to bring e-poll book technology to the Commonwealth, utilizing federal funding through the Help America Vote Act (HAVA). Pilot projects were conducted during the 2016 primary and general elections in seven counties—Boyle, Floyd, Franklin, Jefferson, Kenton, Madison, and McCracken. E-poll books, which are devices similar to an iPad, were utilized in those counties in the 2018 primary election and were placed in every precinct in Franklin and Madison counties. Statewide, 37,241 voters checked in with e-poll books at precincts in the 2018 primary election. Driver's license scan was the method of identification for 90.5 percent of the voters. In Franklin and Madison Counties 94 percent of the voters were identified by ID scan.

For the 2019 legislative session, the Secretary of State intends to propose legislation to remove the excuse requirement for in-person absentee voting but retain the requirement to open in-person absentee voting no later than 12 working days before Election Day,

remove the 4:00 p.m. deadline for online voter registration and allow online registration until midnight, and allow delivery of absentee ballots to voters by e-mail in emergency circumstances. Mr. Queen mentioned the emergency situation of firefighters who worked a forest fire in southern Kentucky in 2016 and were unable to vote through usual procedures.

Responding to Representative Johnson, Mr. Queen explained that absentee ballots can be transmitted electronically to military and overseas voters. When county clerks receive a ballot request, they electronically transmit a link to the ballot, which the voter must print, fill out, and return by mail to the county clerk's office prior to Election Day.

Representative Miller said the emergency ballot proposal could be helpful to the United Parcel Service pilots in his district, who are often called on without prior notice. He asked about the timeline for requesting an emergency absentee ballot. Mr. Queen said he believes an emergency ballot would apply in that type of situation. He is unsure of the timeline but would be happy to obtain more information.

Representative Nemes commended the Board of Elections and county clerks for their work to ensure that elections are conducted fairly, and he complimented the online portal implemented by Secretary Grimes. He said he is concerned about allegations of lack of compliance with the federal consent decree that directed the Commonwealth of Kentucky to remove the names of ineligible voters from official voter registration lists. He also asked Mr. Queen whether he thinks legislation is needed to assure compliance with the consent decree and election law. Mr. Queen said that the Secretary of State's office and the Board of Elections are working with the U. S. Department of Justice on a compliance plan. Maintaining voter rolls is expensive, and the State Board of Elections in past budget cycles has not received the funding requested for that purpose. Almost a half million voters have been removed from the rolls because of death, felony conviction, incompetency, or personal request. In order to update the voter list, the Board of Elections in June sent nonforwardable mailers to 617,000 registered voters who have not voted in four election cycles or made any change in their registration. More than 200,000 mailers have been returned as undeliverable. After the November 2018 election, those voters will be sent a second mailer that is forwardable. Voters who are subsequently placed on an inactive list can be removed from the registration books after not voting in two more federal elections. Kentucky is participating with the Electronic Registration Information Center (ERIC), a multi-state partnership for improving the accuracy and efficiency of state voter registration systems. The Center helps identify voters who are not registered but are eligible to vote. Mr. Queen said he does not know when the consent decree compliance plan will be finalized but that the Board of Elections website includes information regarding the voter list maintenance program. Representative Johnson said the State Government Committee anticipates receiving an update on the compliance plan during the 2019 session.

Representative Meeks asked about Kentucky's history regarding voter fraud and election irregularities. Mr. Queen said that Secretary Grimes takes reports of election fraud seriously. When she assumed office she established an election integrity task force of state, federal and local officials. It includes representation by the Kentucky Attorney General, the U.S. attorneys for the eastern and western districts of Kentucky, the FBI, and Kentucky State Police. Many of the calls received by the task force are questions about election process. Reports of irregularities are referred to the Attorney General. The Secretary of State and the Board of Elections do not have authority to investigate election offenses. The Secretary of State's office met recently with the task force, in anticipation of the approaching general election. When Representative Meeks said the committee might want to invite testimony from the task force, Representative Johnson said that is a good suggestion.

Representative Bechler inquired about the cost to implement e-poll books. Mr. Queen said the cost for statewide implementation is paid entirely from federal funds allocated through HAVA. Kentucky budgeted \$5.5 million toward the project and implementation came in under budget—at about \$4 million, he believes. He said he would be happy to follow up with the exact numbers.

Representative Wayne asked about funds that have been requested and received since 2009 to maintain the voter rolls. Mr. Queen said he does not have the numbers at hand but believes the budget request was underfunded approximately \$1 million per year. Representative Wayne said that because of the underfunding, the legislature has not been helping the Secretary of State's office in its efforts to comply with the federal court order.

Representative Miller said it troubles him that Kentucky elections are being exposed to fraud. He said probably 1,000 people who no longer live in his district are still listed on the voter rolls. Mr. Queen said that, with the exception of credit cards, the required identification must include a photo and signature of the voter. Precinct election officials are also allowed to identify voters by personal acquaintance.

Senator McGarvey asked whether the Department of Justice found actual violations by the Secretary of State's office and whether specific instances of fraud have been discovered. Mr. Queen said he does not know. Funding has not been sufficient to monitor the number of voters who move out of state. In regard to other reasons for purging legal voters, Kentucky is complying with state and federal law. He is not aware any instances of voter impersonation, which is exceedingly rare nationwide.

When asked by Representative Burch, Mr. Queen said that the information used to remove the names of voters who have died is supplied by the state's Office of Vital Statistics. Representative Burch said it has been his practice to notify the county clerk when he learns someone in his district has moved away. He believes that in most instances that would have prompted removal from the voter list. He acknowledged that the process is

now more complicated but questioned how someone could have moved out of a precinct for an extended period of time without the voter's registration being challenged.

Senator Harper Angel said she is impressed with e-poll books and the proactive move by the Secretary of State to use federal funds to implement them. She looks forward to more e-poll books being used in Jefferson County. Mr. Queen said that e-poll books are a popular election administration solution. A number of states use them, but he does not know the exact number.

Representative Graham said that about a year ago county clerks indicated to legislative committees that the state's election system is secure, and he believes they would apprise legislators of suspected ballot fraud or abuse. He has concern that some members of the committee think illegitimate ballots have been cast. Attention should be directed instead on attempts to limit citizens' fundamental right to vote.

Representative Nemes said he does not think there is an attempt to suppress the right to vote nor that anyone present is alleging that improper ballots were cast. Questions have arisen whether Kentucky is complying with the 1993 National Voter Registration Act (NVRA), which was signed by President Clinton. He also said it would be a federal violation for a county clerk to remove a voter from the rolls merely on someone's word.

Representative Nemes said he is a member of the Appropriations and Revenue Committee and that the Secretary of State did not bring the need for additional funding to the committee's attention during the budget process. The Department of Justice's investigation found that since 2009, Kentucky has not sent statutorily required notices to registrants under the change of address process contemplated by the NVRA and state law. The investigation also found that since 2015, Kentucky has not removed registrants through the statutorily prescribed process, and the Secretary of State agreed that there were violations. Representative Nemes said he does not expect Mr. Queen to respond to his earlier question whether state law needs to be changed to allow the Secretary to comply with federal law and the consent decree but that the Secretary's office needs to bring any suggested statutory change to the General Assembly's attention.

Representative Wayne said it is his understanding that the Secretary of State has been working with the Justice Department in order to show that there is a problem in Kentucky. In so doing, she has tried to exhibit to the General Assembly the need for funds to correct the problem. He is a member of the Appropriations and Revenue Committee and, in his opinion, the 2018 budget process was one of the most closed he has ever experienced. He suggested that everyone stop pointing fingers and work together to fix the problem for the common good of Kentucky.

Representative Johnson said he expects this conversation to continue and that the Secretary of State or her representative will be asked in the future to testify about the compliance plan. He thanked Mr. Queen for his testimony and a good presentation.

Registry of Election Finance – Update and Legislative Agenda for 2019

Craig Dilger, Chairman; Elizabeth Weber, Vice-Chair, John Steffen, Executive Director; and Emily Dennis, General Counsel, were present from the Registry.

Mr. Dilger said that the Registry's goal for the 2019 legislative session is to have mandatory electronic filing enacted for all candidates. There were 6,343 candidates in the 2018 primary election cycle. There are 7,462 candidates in the 2018 general election, with 1,559 raising \$3,000 or more in campaign finance funds. Only 106 of those candidates are e-filers.

The regulatory function of the Registry has changed over time. The budget has been reduced significantly. In an effort to be efficient, both staff and spending have been reduced. The Registry previously had 20 employees but now has only 12 full-time staff and one part-time employee. There is also one vacancy. It has become physically impossible to provide needed information to the public, candidates, and the media in a timely fashion. It is necessary to require mandatory electronic filing of campaign finance reports in order to successfully and appropriately provide transparency to the citizens of the Commonwealth.

Mr. Dilger said that the legislature granted requested funds to update the Registry's computer system. The new system should be ready and functional to handle electronic filing from every candidate in the 2020 election cycle. That is a great step forward and provides an opportunity for mandatory electronic filing to be established across the board. When the system goes live in the 2020 election cycle, candidates will be able to file campaign finance reports from a smartphone. The process will be simple and relatively mistake-proof. Electronic filing will be web-based and will be accessible from any computer, tablet, or smartphone. Terminals for filing will also be available at the Registry and at public libraries. Mandatory electronic filing will provide transparency and fairness in the way information is reported and available. It will level the playing field and make the process transparent for everyone involved. Candidates can file electronically via the Internet, or they can bring their reports to the Registry on disk or other electronic storage medium for uploading by Registry staff. When mandatory electronic filing for candidates for statewide office was put in place by HB 90 (2012 RS), it was a great help. It allowed the Registry and staff to address problems or omissions before voters go to the polls. Beginning in 2017, candidates who raise \$3,000 or less are not required to file a campaign finance report.

Mr. Dilger said the current election cycle so far has run fairly smoothly, and he has no issues to report. The updated computer system will be helpful, and the Registry is

grateful that it received funding for that purpose. The majority of states now require electronic filing. It was required in 30 states in the 2016 election cycle. Mississippi is the only state with no electronic filing, and it was begun only recently in West Virginia.

Senator Thayer said he has always filed electronically. He sponsored the bill that enacted mandatory electronic filing for statewide offices, and he has tried for years to get mandatory electronic filing passed for all races. He is committed to requiring mandatory electronic filing. Without it, the Registry staff is under a tremendous burden, and it is difficult for information to reach candidates, media, and the public. Those who decry the influence of money in politics should want electronic filing because it brings more transparency to the election process.

Senator Thayer said the current election cycle has been a disaster with respect to transparency. Some candidates have still not filed their 60-day pre-primary report. He named two 2018 candidates—a Republican candidate for Senate and a Democrat running for county judge/executive—who have not filed the required reports, with no apparent consequences. He said the voters should know that those candidates are breaking the law, and he questioned what can be done to improve enforcement when the law is not followed. Mr. Dilger said additional enforcement options would be helpful, but he believes that mandatory electronic filing is the answer. With the new computer system that will soon come online, failure to file a timely report would be readily apparent to everyone who accesses the system. Transparency demands that everyone know as soon as possible before an election whether a candidate is complying with the law. Mr. Steffen said that because of the flood of paperwork, staff does not have time to monitor late filings. He agreed that the new filing system and mandatory electronic filing will speed up the entire process.

Senator Thayer asked about ease of use of the new computer system. He said the current e-filing system is cumbersome and archaic and requires candidates to purchase software. Mr. Dilger said the new system is simple to use and will provide portals for free access. Senator Thayer said he looks forward to working with the Registry to accomplish mandatory electronic filing.

Representative Carney commended everyone at the Registry for always being willing to help. He said the new technology should make e-filing simpler and that he will support legislation to make it mandatory.

Representative Graham asked about the decline in the number of staff. Mr. Dilger said it was due to attrition, budget cuts, and also inefficiencies that needed to be addressed. For a while staff was able to combine duties but now cannot keep up with the paperwork. Representative Graham said that transparency is important and that the legislature should work in a bipartisan fashion to provide the Registry with funds to hire additional staff. This would not only increase transparency but should allow time for staff to monitor compliance.

Senator Thayer said that it would be helpful to have more staff under the current reporting system, which requires staff to keystroke hundreds of paper reports. Under the new technology and with mandatory e-filing, he does not think personnel or budget would be an issue. Information would be made available quickly, and staff would be able to check compliance, deal with enforcement, and handle other duties. If the Registry has reasons to add personnel for compliance and enforcement, he would be open to that, but in terms of transparency he does not see a need to spend money to increase staff. Representative Graham clarified that he had suggested increasing Registry staff for purposes of investigating compliance.

Representative Johnson said he is glad that the new technology will be in-house rather than through a third-party vendor. Based on his personal experience, he hopes the new system for e-filing will include an “auto fill” feature for the start and end dates. He thanked the guests for their testimony and a helpful presentation.

Kentucky County Clerk’s Association – Update and Legislative Agenda for the 2019 Session

Guest speakers were Don Blevins, Jr., Fayette County Clerk, Lynn Hesselbrock, Spencer County Clerk, and William May, Mayor of Frankfort and Executive Director of the Kentucky County Clerk’s Association (KCCA). Mr. May introduced Mr. Blevins and Ms. Hesselbrock as co-chairs of the KCCA election committee.

Mr. Blevins said that county clerks supported HB 273 and HB 274 in the 2018 legislative session. Both bills passed the House and the Senate but were vetoed by the governor. KCCA is again supporting that legislation for introduction for the 2019 session. HB 273 would ensure that any qualified voter who voluntarily removes his or her name from the voter registration list after December 31 and who subsequently wishes to register to vote prior to the next scheduled primary, shall not be considered as a "newly registered voter" for purposes of party eligibility. Some voters are canceling their registration after December 31 and “re-registering” with a different party in order to vote in that party’s primary election. Clerks would like to close this “loophole” in current law, which requires that a voter who wants to change party affiliation after December 31 must wait until after the primary election. HB 274 would require mail-in absentee ballot application requests to be received by the county clerk by the close of business 14 days before an election; permit a county clerk to transmit an application for a mail-in absentee ballot to the voter by electronic mail; and require cancellation of a mail-in absentee ballot no later than 14 days before the election.

Mr. Blevins said it has become difficult for county clerks to fill election officer positions. Under current law election officers cannot change party affiliation for a year prior to appointment. They are supposed to be appointed by March 20, which means they would not be allowed to change party for almost a year and a half before the date of the

primary. County clerks also would like persons registered as independents to serve as election officers; they are currently allowed to serve only as emergency replacements. Election law requires all four election officer positions to include both a Democrat and a Republican. Most county clerks are able to meet that requirement. Demographics are shifting, however, and disparity in party numbers makes it difficult for some counties to recruit four workers from each major party.

Ms. Hesselbrock said that 1,700 voters switched parties in Spencer County in 2017, which made it difficult to recruit precinct workers. The aging population and the long work hours also were a factor. KCCA supports legislation to amend KRS 117.045(9) to allow election officers to change party before December 31 rather than a year prior to the March 20 appointment date. The current prohibition is antiquated and creates barriers to achieving parity among precinct workers. She thinks many smaller counties are experiencing similar changes in voter registration.

Mr. Blevins said that SB 101, which was enacted in the 2018 regular session, required a candidate for school board to provide a high school transcript as evidence of high school graduation. Persons who attended high schools that no longer exist are unable to obtain a transcript, and KCCA would like to have the law amended to allow other documents to suffice as proof of graduation.

Representative Johnson asked for an update regarding recent e-notary proposals, which would allow a notary public to perform a notarial act by means of communication technology. Mr. Blevins said that the National Association of Secretaries of State task force chaired by Secretary of State Grimes for the purpose of developing standards for remote/online notarial acts has been meeting during the summer. The task force has released draft bill language, which will be reviewed at their final meeting on November 19.

There were no further questions, and Representative Johnson thanked the speakers.

Election Security – Voting Machines

Madison County Clerk Kenny Barger, Trimble County Clerk Tina Browning, and Jefferson County Clerk Bobbie Holsclaw discussed utilization of new voting equipment in their counties.

Ms. Browning said that Trimble County purchased used Hart eSlate voting equipment in 2009 that was manufactured in 2002. The software was upgraded and the lithium batteries were changed in 2013. The machines were due for maintenance again in 2017, but there was a cost associated with the maintenance. She was impressed with the secure features of the Verity Touch Writer which Hart presented at the 2016 KCCA fall conference. The machine allows people with disabilities to vote independently. The Verity is never directly connected to the Internet or to any other systems which connect to the

Internet. Data such as voter registration, poll books, and election night reporting systems are never directly connected to Verity. Hart voting systems has never been and will never be remotely accessible by Hart or anyone else. External card drives or other devices cannot be inserted by voters into the Hart loading device. Data is stored in multiple redundant locations, ensuring no loss of data and easy detection of any attempt to manipulate the data. Ms. Browning said she felt the Verity Touch Writer equipment was best suited for use in Trimble County. It would make Trimble an all-paper county. Each machine has a battery backup in case of power failure and will run for approximately two hours on battery backup. The equipment was purchased in March 2017 and used for the first time during the 2018 primary election. The poll workers liked the machines and thought they were easy to operate, especially for the voter. On Election Day the election returns came into the clerk's office quicker than in previous elections.

Mr. Barger said that Madison County had been a Hart customer but switched before the 2018 primary to Election Systems & Software (ES&S) in order to provide a paper backup for all votes. The ES&S machine is ADA-compliant and is not connected to any other piece of equipment. The equipment is 100 percent secure and cannot be manipulated. His opinion is that election security is mainly a problem in smaller elections that have lower turnout and lower vote totals, where a mere three miscast votes could sway an election.

Ms. Holsclaw said that Jefferson County is also an ES&S customer and bought new equipment a year ago. It was used for the first time during the 2018 primary. The previous equipment was about 20 years old and was still good, but it was becoming almost impossible to replace the parts. She is very happy with the new equipment, which cost a little more than \$3 million. The poll workers liked the equipment and felt that it was easier to use. She is confident that the November 6 general election in Jefferson County will go smoothly, and she is proud of the nonpartisan manner in which her county conducts elections.

Representative Johnson clarified that today's testimony was not intended to promote any equipment manufacturer but rather to discuss security, reliability, and maintainability of election equipment.

Representative Rand said that Ms. Browning is the county clerk in his district and does an excellent job. He is confident that she and all the county clerks are interested in running elections smoothly and fairly. He is relieved to know that the new machines are not connected to the Internet and that there are precautions to ensure the integrity of Kentucky's elections.

Representative Miller complimented Ms. Holsclaw for running an outstanding office. He said the precinct officers in Middletown, his district, are models of efficiency. He is also glad to know that there is paper backup. Ms. Holsclaw credited the previous

county clerk and county board of elections for their insistence on always having paper backup, which provides the safest and most secure election system.

There was no further discussion, and Representative Johnson thanked the speakers for their testimony.

Administrative Regulation Review

Kathryn Gabhart, Executive Director, and Michael Board, General Counsel, were present from the Executive Branch Ethics Commission. At its September 11, 2018, meeting the LRC Administrative Regulation Review Subcommittee reviewed and amended the Ethics Commission's administrative regulations 9 KAR 1:015 & E (pre-administrative proceedings) and 9 KAR 1:030 & E (administrative proceedings). On October 3, the regulations were subsequently assigned to the Interim Joint Committee on State Government for secondary review. Ms. Gabhart briefly explained the regulations, and there were no questions from the committee.

Representative Johnson thanked the speakers. Business concluded, and the meeting was adjourned at 2:51 p.m.