

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 5th Meeting of the 2018 Interim

November 28, 2018

Call to Order and Roll Call

The fifth meeting of the Interim Joint Committee on State Government was held on Wednesday, November 28, 2018, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Jerry T. Miller, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representatives DJ Johnson, Co-Chair, and Jerry T. Miller, Co-Chair; Senators Ralph Alvarado, Christian McDaniel, Morgan McGarvey, Albert Robinson, and Wil Schroder; Representatives Kevin Bratcher, Tom Burch, McKenzie Cantrell, John Carney, Joseph Fischer, Derrick Graham, Mark Hart, Richard Heath, Dennis Horlander, Mary Lou Marzian, Phil Moffett, C. Wesley Morgan, Jason Petrie, Rick Rand, Jody Richards, Bart Rowland, Ken Upchurch, and Jim Wayne.

Guests: Kathryn Gabhart, Executive Branch Ethics Commission; Allison Ball and Noah Friend, State Treasury; Mike Harmon and Sara Beth Gregory, office of Auditor of Public Accounts; and Gerald Hoppmann and Melinda Hill, Finance and Administration Cabinet.

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

Approval of Minutes

A motion to approve the minutes of the October 24 meeting was seconded and passed without objection, by voice vote.

Executive Branch Ethics Commission – Discussion of 19 RS BR 420 (J. Miller), An Act Relating to Executive Branch Ethics

Representative Miller said he prefiled BR 420 to promote consistency in applying the executive branch Code of Ethics. The bill is similar to legislation that passed the House during the 2018 regular session but failed in the Senate because it included provisions relating to the KFC Yum Center. Those provisions have been removed from BR 420.

Kathryn Gabhart, Executive Director, Executive Branch Ethics Commission, discussed BR 420 and provided a handout summarizing the legislation. BR 420 amends

KRS 11A.010 to expand and update the definitions of “officer” and “public servant” in the Code of Ethics. Members of the State Board of Elections, Parole Board, Workers’ Compensation Board, Kentucky Occupational Safety and Health Review Commission, and the Kentucky Claims Commission are coded in the personnel system as “salaried” and “full-time.” They receive a salary and health, retirement, and life insurance benefits and, with the exception of the State Board of Elections, are included in the current definition of “officer.” Board of Elections members receive benefits and a starting salary of \$12,600 per year but are not currently covered by the Code of Ethics. The new language would add the Board of Elections, and any salaried boards or commission created in the future, to the definition of “officer” and “public servant.” The new language defines “salaried” and also adds full-time, nonseasonal contract employees to the definition of “officer” and “public servant.”

When asked by Representative Miller, Ms. Gabhart said that the five salaried boards/commissions are not paid on a per-meeting basis. The beginning annual salary is \$12,000 for the Kentucky Occupational Safety and Health Review Commission and is \$18,900 for the Kentucky Claims Commission.

Representative Miller said he hoped that a representative of the Secretary of State would participate in the discussion of BR 420. When he spoke to Secretary Grimes earlier in the day, she indicated she might be able to send someone to testify. Senator Bowen said he is disappointed that the state’s chief election officer or a representative of the Board of Elections did not attend the meeting. There was no further discussion, and Representative Miller thanked Ms. Gabhart for her testimony.

Kentucky State Treasury – Legislative Agenda for the 2019 Session

Allison Ball, State Treasurer, was guest speaker. Noah Friend, General Counsel for the State Treasury, accompanied her. Ms. Ball said her first priority is protecting taxpayer dollars. During her tenure the Treasury has returned almost \$70 million in unclaimed property. The STABLE Kentucky program is continuing to grow and has been improved to conform with opportunities available at the federal level. There has been an increase in the amount of allowed contributions to STABLE.

Ms. Ball discussed her legislative agenda for 2019. She said financial literacy is a major cause for her. She is grateful for passage of HB 132, enacted during the 2018 regular session. HB 132 set as a requirement for public high school graduation completion of one or more courses or programs that meet financial literacy standards, beginning with the entering ninth grade class of the 2020-2021 school year. The first item on her “wish list” for the 2019 legislative session is passage of a bill to create a financial empowerment corporation in which Kentucky would partner with the private sector to provide more resources for financial literacy. The financial empowerment corporation would be designated as 501(c)(3) nonprofit and would be privately funded. Ms. Ball said she has

agreements from the private sector for two-year funding. She has also created a Financial Empowerment Coalition that focuses on financial literacy empowerment and education.

Ms. Ball said the statutes relating to unclaimed property need to be updated. There have been changes since Kentucky enacted its version of the Revised Uniform Unclaimed Property Act via HB 394 (2018 regular session). The Treasury has been in discussion with other states regarding the best way to deal with unclaimed cryptocurrency. The Treasury's proposal would be to liquidate it upon receipt, similar to the method for handling unclaimed stocks. This would probably be the safest way and easiest way to deal with digital property, an issue that needs to be addressed in the near future. The Treasury would also like to clarify the long accepted interpretation that mineral proceeds—oil, gas or coal—are not unclaimed property by having it codified in statute.

Claims for unclaimed property are currently paid from the abandoned property fund, which is a part of the general fund. The Treasury proposes creation of a separate and distinct nonseverable trust for unclaimed property. In the future all claims for unclaimed property could be paid from the trust. Under current accounting practices there is an unacceptable risk that the payment of claims could adversely affect the budget and the general fund. This risk could be eliminated by a trust to manage and pay claims. The trust would also help secure and protect people's property. The Treasury has consulted with State Budget Director William Chilton and others regarding how to establish the trust.

Several states are allowing tax deductions for STABLE accounts as an investment incentive for people with disabilities and their family members. The Treasury plans to propose a \$5,000 individual deduction and a \$10,000 family deduction.

The Treasury is going to propose two simple "cleanup" bills. SB 126, enacted during the 2018 regular session, relating to the Commonwealth Council on Developmental Disabilities, cited an old federal law; a correction is needed to cite the modern version of the 2000 law. Legislation will also be proposed to codify continuance of the STABLE Kentucky program, which was launched by Treasurer Ball in December 2016.

Representative Miller complimented Ms. Ball for her work relating to financial literacy. He also commented that persons in the education field have spoken to him about the need for caution when proposing additional requirements on schools. There was no further discussion, and he thanked Ms. Ball for her testimony.

Office of Auditor of Public Accounts – Legislative Agenda for the 2019 Session

Guest speakers were Mike Harmon, Auditor of Public Accounts, and Sara Beth Gregory, chief of staff in the Auditor's office. They discussed activities of the agency and legislative proposals for 2019.

Mr. Harmon said that SB 144, enacted during the 2018 regular session, allows county clerks and sheriffs to satisfy statutory audit requirements and save money on their audit costs by entering into an agreed-upon procedures engagement (AUP) performed by the Auditor rather than a full financial statement audit. This lower cost option is only available to officials who did not have any reported findings in a prior audit. If there are risk factors, the Auditor's office has discretion to perform a standard audit. The office is in the process of implementing SB 144 and has begun receiving applications for AUP audits from clerks and sheriffs. It is estimated that AUPs will cost 25-50 percent less than standard audits; they will also allow audit staff to operate more efficiently by having to spend less time on low-risk audits. In 2015, there were no negative findings for about half of county sheriffs' and two-thirds of county clerks' offices, which means they would likely qualify for an AUP.

During the 2017 regular session, HB 189 was enacted. It was known as the area development district (ADD) transparency bill. The Auditor's Office worked on the legislation with Representatives Jim DeCesare and Susan Westrom, the Kentucky Chamber of Commerce, and the ADDs. HB 189 gives the Auditor's Office the right of first refusal to perform the annual audits of area development districts. If a private firm performs the audit, the Auditor's Office has the right to review the working papers and the audit prior to release. For the first time, the Auditor's Office is reviewing ADD audits, starting with FY 2018. The review process has been smooth thus far, and the office will continue to work with the ADDs to ensure that the process is efficient for everyone. The Auditor is authorized to audit ADDs if there is a need to address concerns or more closely examine specific issues.

Mr. Harmon said his office's potential legislative agenda for 2019 is not yet finalized, but recruitment and retention of audit staff is a major issue. All audit staff are required by statute to have at least a bachelor's degree, and most are required to have completed at least 20 hours of accounting. It is a challenge to hire individuals with those qualifications who are willing to work for a starting salary of approximately \$33,500. In addition, the office is not allowed to interview college students for entry-level positions until they are within 30 days of receiving their degree. Private sector employers are not bound by this restraint. Internship programs are one of the best recruiting tools, but current law is an obstacle to hiring interns to assist with audit work. Mr. Harmon said he would like to propose legislation—which he would term the “auditor recruitment bill”—to amend KRS 43.030 to make the bachelor's degree requirement apply only to auditors who have merit employee status under KRS Chapter 18A. The statutory degree requirement would apply when a new auditor completes the six month initial probation. This would enable more competitive and improved recruiting of interns who can assist with audit work.

Mr. Harmon discussed the findings of the Auditor's special examination of the Administrative Office of the Courts (AOC), released in July 2018, and the special examination of the Kentucky Communications Network Authority and KentuckyWired,

the statewide broadband project announced in 2014. For the first time in AOC's history, it was the subject of a comprehensive external audit or examination. One of the audit recommendations is that the General Assembly require an annual independent audit of AOC. The report on Kentucky Wired was released in September 2018. It revealed that the taxpayers of Kentucky are liable for almost \$1.5 billion over 30 years for a project that initially was supposed to be a \$30 million investment. One way to help avoid a similar situation in the future would be to reinstate a requirement that the General Assembly approve P3 (public/private partnership) projects with a cost higher than \$25 million. P3 legislation that was passed during the 2018 regular session postponed until 2020 the effective date of the P3 approval requirement. Another consideration would be to provide additional limitations and oversight requirements before bonds can be issued by KEDFA (Kentucky Economic Development Finance Authority). There are currently no limitations on the amount of debt that KEDFA can issue. The authority of the LRC Capital Projects and Bond Oversight Committee is limited and is subject to overrule by the Finance and Administration Cabinet secretary.

Mr. Harmon said that the Auditor's office stands ready to be a resource for legislators and would be happy to meet with anyone interested in filing legislation relating to the special examination reports. His office has an open door policy to address questions or concerns. Tips about waste, fraud, or abuse can also be reported via the SAFE-house link on the auditor.ky.gov website.

Representative Wayne commended Mr. Harmon and Ms. Gregory for their openness and for doing a good job. He said Mr. Harmon has a solid record of professionalism and that he should consider being more aggressive when promoting his legislative agenda. Senator Bowen also commended the speakers for doing excellent work.

Responding to questions from Senator Bowen, Mr. Harmon said costs for the majority of audits are paid by the entity being audited and that almost two-thirds of his agency's revenue comes from the audits they perform. Ms. Gregory said the hourly rate for audits is set each year, based on budget considerations and workload. For 2019, the hourly rate is \$84 for state agency work and \$65 for county audits. The rate disparity between state and county audits has been carried over from prior administrations.

Senator Bowen asked about audit charges when an entity with a good operating record becomes, not by choice, the subject of an audit that results in no negative. Ms. Gregory said that the bill for an audit generally reflects whether it was a clean audit or one with issues. There are not many situations when a bill is unreasonably large if the entity did not have problems. There is no charge when the office does an assessment of allegations that is not followed up with an audit.

Mr. Harmon said he believes the audit work of his staff is comparably as good as that of private firms, and it is done at lower cost. The bill for his office's audit relating to

the University of Louisville was approximately \$185,000. By comparison, subsequent private auditing has so far cost over \$2 million.

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

Prefiled Legislation

Representative Miller discussed 19 RS BR 202, An Act relating to reemployment of elected officials, which he prefiled on October 15. The bill would amend KRS 61.637 to provide that if an elected official participating in one of the systems administered by Kentucky Retirement Systems retires and is elected to the same office within 12 months of retiring, his or her retirement shall be voided. (Senator Bowen presided during Representative Miller's testimony.)

Representative Miller said this issue came to his attention when certain elected county officials retired after they learned they would not be opposed for reelection. They then returned to the same position after being reelected. In his opinion this action would violate the prohibition on retirees having a prearranged agreement for reemployment.

Senator Bowen said the incidents cited by Representative Miller had prompted public outcry in his district and other parts of the state. He applauded him for addressing the issue.

Senator McDaniel also commended Representative Miller and said he looks forward to working with him to promote BR 202. He also wishes that it could apply retroactively.

Representative Wayne said he thinks that the filing of BR 202 is an excellent idea. When he asked whether the bill had been discussed during the 2018 regular session, Representative Miller said that, to his knowledge, the new language in BR 202 was not included in any previously filed legislation.

TipLine.KY.gov

Guest speakers from the Finance and Administration Cabinet (hereinafter referred to as Finance Cabinet) were Gerald Hoppmann, Executive Director, Office of Policy and Audit, and Melinda Hill, Chief of Staff. They provided laminated TipLine wallet cards for distribution to the committee and staff. The testimony included a PowerPoint presentation.

Ms. Hill said that Mr. Hoppmann spearheads the TipLine project. Calls and e-mails are continuing to be made through the tip line web portal, and the Finance Cabinet works with agencies across the state to resolve the issues that are reported.

Mr. Hoppmann said the project was launched in May 2017. To date, 378 reports have been filed. Reports come into the system primarily through the Internet and telephone.

The system has received 300 calls so far, for a total of 4,115 minutes. The majority of these relate to human resources and financial matters. Seventy percent of the reports have been resolved; eight percent have been dismissed because there was insufficient evidence to substantiate the report.

Reports come in only to the Finance Cabinet or the Personnel Cabinet, via toll-free hotline, Internet or fax. The vendor is Red Flag Reporting, an ethics hotline service provider based in Akron, Ohio. The Finance Cabinet has 25 system users, and the Personnel Cabinet has two users. There are 25 other cabinet users who deal with personnel or human resources related issues; 22 other cabinet users handle nonpersonnel-related issues. Calls to the Finance Cabinet come in to the executive director of 11 internal offices. The cabinet may investigate the reports or refer them to other agencies. The caller making the report can choose to remain anonymous. The Personnel Cabinet's assistance on the tip line project has been instrumental and is appreciated.

The initial press release announcing creation of the tip line was followed by e-mail notifications from the Personnel Cabinet and a news editorial by the Finance Cabinet secretary. The Tipline logo appears on the Finance Cabinet, Personnel Cabinet, and Kentucky.gov websites. It is also advertised on social media and through wallet cards and distribution of posters to county and local government offices. The Finance Cabinet will continue working with other cabinets to promote the tip line and will be conducting additional training sessions for users of the system. A planning and customization team meets periodically to consider problems that may necessitate changes to the system's architecture. So far the system has worked successfully.

When Representative Miller asked about the timeline for continuance of pending cases, Mr. Hoppmann said that pending cases are routinely followed up after approximately two weeks in the system. The Finance Cabinet is in regular contact with other cabinets that have been referred cases and works constantly to ensure resolution of reports. The goal is to resolve at least 75-80 percent of cases but to increase that percentage in the future. When reports initially do not provide sufficient information, a request for additional information is sent; if it is not received, the case is closed but can be reopened if the information is provided later. There were no further questions, and Representative Miller thanked Mr. Hoppmann and Ms. Hill for participating in the meeting.

Departing Committee Members

Representative Graham voiced appreciation for Representative Richards and Representative Wayne, who are retiring from the General Assembly. He said they have mentored him, and he complimented them for their achievements for their communities and the Commonwealth. Representative Miller also thanked them for their service and their dedication.

Representative Miller thanked his co-chair, Senator Bowen, who is retiring from the General Assembly, and the committee recognized him with a round of applause. Representative Miller expressed appreciation for the service of all the members of the committee who will not be returning in January.

Senator Bowen said he appreciates the opportunity to serve in the legislature and that it has been an honor and a pleasure to serve as chair of the State Government Committee. He expressed appreciation to committee staff and recognized Senator Schroder, who will succeed him as chair.

Business concluded, and the meeting was adjourned at 2:10 p.m.