

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 5th Meeting of the 2019 Interim

November 21, 2019

Call to Order and Roll Call

The fifth meeting of the Interim Joint Committee on State Government was held on Thursday, November 21, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Albert Robinson, Damon Thayer, and Johnny Ray Turner; Representatives Tina Bojanowski, Tom Burch, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Larry Elkins, Joseph M. Fischer, Kelly Flood, Joe Graviss, Richard Heath, Scott Lewis, Mary Lou Marzian, Reginald Meeks, Jason Nemes, Jason Petrie, Attica Scott, Steve Sheldon, Ken Upchurch, and Les Yates.

Guests: Michael Adams, Secretary of State-Elect; John Steffen, Registry of Election Finance; Don Blevins, Fayette County Clerk; Gabrielle Summe, Kenton County Clerk; and Eric Lycan and Joanna Decker, LRC staff.

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

Approval of Minutes

The minutes of the October 3, 2019, meeting were approved without objection, upon motion by Representative Heath.

Welcome of Secretary of State-Elect

Michael Adams, Secretary of State-Elect, was invited to speak to the committee. He will assume office in January 2020.

Mr. Adams discussed his background and qualifications. He said that Secretary of State Allison Lundergan Grimes and her staff have been gracious and helpful to him and his transition team. His transition team includes Democrats and progressives, and he welcomes their perspective.

Mr. Adams stated that his conservative campaign platform had three main focuses—addressing the turmoil within the office of Secretary of State, cleaning the voter rolls by removing the names of the deceased and nonresidents, and enacting a law to require a photo ID for voting in Kentucky elections. The neighboring states of Indiana, Tennessee and Virginia, and some other states, require a photo ID.

His goal is to quietly do his job in a professional manner, restore confidence in the office and the elections process, and reassure all parties that he will be fair and cognizant of their concerns. He wants to rebuild the relationship of his office with the State Board of Elections and to work with local officials, especially county clerks. He will demand integrity from his staff and will assess whether structural changes are needed.

Mr. Adams said he wants to make it easy to vote. A recent MIT study of all 50 states looked at the wait time at polling sites and found a significant rise in waiting times for Kentucky voters between 2014 and 2018. It also found that wait time is longer nationwide for people in poor neighborhoods. He intends to research whether that is a problem in Kentucky that needs to be remedied. He fully supports restoration of voting rights to convicted felons who have paid their debt and believes this should be done by passage of a constitutional amendment rather than executive order. Kentucky is under a court order to clean the voter rolls, and federal and state law require this to be done on a regular basis. It is also his goal to have a photo ID requirement implemented in 2020.

Representative Bratcher voiced approval for requiring photo ID. He said the right to vote is sacred, and he hopes that the political parties and everyone in Kentucky will be able to work together and have confidence in the government.

Senator Thayer congratulated Mr. Adams on his election and said he looks forward to working with him. He asked about the timeline for cleaning the voter rolls and complying with the federal consent decree. Mr. Adams said Kentucky law prohibits purging the voter rolls within 90 days of an election. He believes it is reasonable that the voter rolls can be cleaned prior to the November 2020 general election, but, if possible, he would like to have it done in time for the 2020 primary elections.

Senator Thayer said he is happy that voter ID is a legislative priority of the secretary-elect. In states where a voter ID law has been upheld, a key component with respect to constitutionality is the requirement for government to cover the cost of the ID for those who cannot afford it. He and Senator Mills have been working on a voter ID bill that will include that cost directive. They will also work with Senator McDaniel to have funding included in the budget. The estimated cost is \$250,000-\$300,000 annually. Senator Thayer said he and Senator Mills are prepared to share a copy of the proposed bill with the secretary-elect and receive his input before it is filed for the 2020 session. Mr. Adams agreed that providing for a free ID needs to be included in the legislation in order to be judged constitutional if challenged in court. He said it is also the humane thing to do.

Senator Thayer said he could support a constitutional amendment to restore the voting rights of felons if it requires a reasonable crime-free waiting period before rights are restored. It should also only be available for certain types of crimes.

Representative Miller suggested that the ability to vote early should be expanded to make voting easier for persons who have a conflict with their work schedule, such as first responders, medical personnel, and airline pilots. Mr. Adams said he agrees with that but does not support unlimited early voting. Some states that have unlimited early voting have found that it has not met expectations.

Representative DuPlessis inquired about plans to purge the voter rolls, which is a priority for him. Mr. Adams said it is a matter of law, and he intends to do it. This function was last performed during the tenure of Secretary of State Trey Grayson. To comply with the federal consent decree will probably require negotiations with Judicial Watch, the U. S. Department of Justice, and other involved parties. His goal is to clean the voter rolls prior to the 2020 primary elections but, more likely, this will not be completed until the November general election.

Senator Alvarado said he has heard concerns about the potential for tampering in the new electronic voting systems and the lack of an audit system for transfer of data. Mr. Adams said he has been contacted by election officials and others who are concerned that the systems lack an adequate chain of custody. This is an issue that he wants to assess and which may require a fix, either administratively or by statute. Senator Alvarado also spoke about the potential need for legislation to allow early voting for persons defined as essential medical personnel.

Senator Thayer said he wants to make voting easier but opposes unlimited early voting because it is ripe for fraud and unfair to campaigns that are designed to peak on election day. He asked Mr. Adams his opinion about expanding voting hours or having polls open from 7:00 a.m. until 7:00 p.m. Mr. Adams said there is a crisis in recruitment of enough poll workers. He supports expanding the hours but also would like to make it easier for poll workers, perhaps by dividing the 14-hour shifts into two 7-hour shifts. He would also welcome feedback from legislators regarding changing the law to facilitate voting by mail. He said it would be easy to address the long wait times for early voting in Jefferson County by amending the statutes to allow early voting in the satellite county clerk offices in addition to the county clerk's central office. He intends to offer other suggestions for the General Assembly's consideration to make the voting process easier.

Senator Thayer said that any plans to expand voting hours should be done in conjunction with the input of county clerks and that any changes to early or absentee voting should be viewed with caution. He asked Mr. Adams to review changes that have been made to voting laws over the past few years to determine whether they are working and

whether they are susceptible to fraud or cheating. Mr. Adams replied that vote fraud is real and needs to be taken seriously.

Representative Bratcher thanked Mr. Adams for his attendance and issued him an open invitation to address the committee regarding his concerns or legislative proposals.

Registry of Election Finance – Update and Legislative Agenda

Guest speaker was John Steffen, Executive Director of the Registry of Election Finance. Mr. Steffen said the Registry is continuing to implement the changes enacted in Senate Bill 4 (2019 RS). They do not have a legislative proposal for the 2020 regular session but might have some “cleanup” legislative proposals in 2021, which is not an election year.

Mr. Steffen said that Senate Bill 4 requires mandatory electronic filing of campaign finance reports, and development of the electronic filing system is a work in progress. Shortly before the November election, part of the system became live to enable candidates for the 2020 primary election to file a KREF 001 form. Legislators file this form with the secretary of state, and other candidates file it with county clerks. Creating an account in the new system is fairly painless, and Registry staff will gladly lend assistance. The process works, and approximately 50 accounts have been created thus far. Electronic filing will be required for the first time in the primary election cycle.

Mr. Steffen said the annual report filing deadline is approaching soon. The report will still be filed on paper but must be filed electronically in 2020. The first electronic filing requirement for anyone is the 30-day pre-primary election filing, which will be due in April. That part of the system should be operable after the first of the year, and it can be used as a tool for storing an individual’s campaign finance records. The phone app is not available yet, but the electronic filing system can be accessed through the Registry’s website. The process is expected to be smoother by mobile phone than via computer desktop. He concluded his update by stating that the Registry appreciates the significant improvements and changes that have been made to campaign finance laws in recent legislative sessions.

Representative Bratcher asked whether there is a contingency plan to address problems that might occur with the new system. Mr. Steffen said there were a few minor glitches when the system initially went live, but after multiple tests and retests, he is confident the system will be ready and operable according to schedule. He is pleased with Kentucky Interactive’s work on the system, their resources, and their response time when needed.

Representative Burch said he and his campaign treasurer have tried but been unable to access the system. Mr. Steffen said he will be glad to work with Representative Burch

and that assistance for candidates is available at the Registry office. He explained that registration is a two-step process and that candidates should have their treasurer available at the time they register.

Representative Bojanowski asked whether someone who currently uses a system that is capable of filing electronically will be able to continue using it after the first of next year. Her concern is whether all the data would have to be retyped. Mr. Steffen said that electronic filing will be allowed only on the new system. Candidates will be able to use the same vendor and may export data into the Registry's system if they choose to do so, but it may be a two-step process. Senator Harper Angel said she has always filed electronically and is glad to hear that the data can be exported.

Responding to Representative Flood, Mr. Steffen said that electronic filing involves no fees. The KERF 001 form filed with the secretary of state will have to be on paper, but he advised committee members to register in the new system now in order to address any potential problems that might occur.

There were no further questions, and Representative Bratcher thanked Mr. Steffen for his testimony.

KY County Clerk's Association – Update and Legislative Agenda for 2020

Guest speakers were Don Blevins, Jr., Fayette County Clerk, and Gabrielle Summe, Kenton County Clerk and immediate past president of the Kentucky County Clerk's Association (KCCA). Mr. Blevins is also co-chair of the KCCA elections committee. He said the committee has created a list of practical and noncontroversial ideas for legislative proposals and has been working with Representative Bratcher to sponsor a bill for the 2020 regular session.

Mr. Blevins said that recruiting and retaining election officers has become problematic for county clerks. KCCA is suggesting minor changes that should improve the ability to recruit poll workers. Currently, if someone changes party affiliation, they must sit out a full year in order to serve as an election officer. KCCA proposes that someone may serve as an election officer if the change in party occurs before December 31 of the prior year. Currently, precincts are required to have two election officers from each of the two major political parties. KCCA proposes allowing registered independents to also serve, but still require that the two crucial judge positions include both a democrat and a republican.

Mr. Blevins said that most counties have separate voting equipment and officers for each individual precinct. In voting locations that serve more than one precinct, it would make sense and save a lot of money to consolidate by using fewer sets of machines and requiring fewer sets of officers. This can be done legally now, but KCCA would like to

have enabling legislation to specifically authorize it in statute. Fayette County recently purchased new machines, in preparation for implementing paper ballots next year. By consolidating machine use, Fayette County was able to purchase fewer machines and saved more than \$1 million.

Mr. Blevins said that KCCA has other proposals relating to absentee voting, duplication of paperwork in candidate filing, and other minor changes. A bill should be available for review in the near future.

Senator McDaniel said he looks forward to working with Mr. Blevins, Ms. Summe, and KCCA, and he expressed appreciation for their work and their bipartisan commitment to fairness in elections. There was no further discussion, and Representative Bratcher thanked the speakers.

Legislation Relating to Election Contest Boards

LRC staff guest speakers were Eric Lycan, General Counsel for House Majority Leadership, and Joanna Decker, General Counsel and Senior Policy Adviser for the House Democratic Caucus. Ms. Decker testified on behalf of Representative Rocky Adkins, House Minority Floor Leader.

Ms. Decker said that Representative Adkins would like to express his strong support for the General Assembly to pass legislation to address issues relating to close elections. He believes the draft legislation has potential to resolve problems relating to provisions in current law that provide for a recanvass but not a recount in certain elections.

Mr. Lycan, who spoke on behalf of Speaker Osborne, said that the bill is bipartisan. It is sponsored both by House Speaker David Osborne and House Minority Leader Adkins to try to remedy problems that became apparent after a 2018 House district election. It does so primarily by separating the mechanisms for a regular recount from an election contest that may allege irregularities or voter fraud. It provides for an automatic recount if an election is within half a percentage point or less. The automatic recount removes discretion and politics from the process. The recount is done at the county level by election professionals and would be paid for by the state rather than by the candidates. The current system favors the wealthy candidate who can afford to pay for a recount. The bill provides for election security and a chain of custody for the ballots and the voting machines, which is not addressed in current election contest statutes. The bill will help restore confidence in the integrity of elections.

Representative Bratcher said it alarms him that an election might have to be decided by the General Assembly. It is his understanding that the proposed legislation will provide a process that should prevent that from happening. Mr. Lycan said the bill provides that an appeal of a recount would be directed to the House or Senate chamber, but, in practicality,

very few contests would be filed for a recount after an automatic recount has taken place. Election problems related to other than ballot counting would still be referred to the chamber.

Representative Graviss asked whether a statute or regulation will provide for transparency in the process—who pays the cost of a recount, where the money comes from, and the amount allowed from different sources. Mr. Lycan said there would be transparency, and he believes existing statutes would address those issues. The bill specifically allows political parties, political groups, or political organizations, as defined in statute, to post a bond and pay for recounts, but it must be reported. The automatic recount would be paid for by the state, and an optional recount would be paid for by the candidate.

Responding to questions from Representative Burch, Mr. Lycan discussed the process outlined in the proposed legislation. Ms. Decker stated that Section 153 of the Kentucky Constitution gives the General Assembly power to decide a contested election and that, in the event of a lawsuit, the courts would likely pay close attention to Section 153.

Responding to Representative Miller, Mr. Lycan confirmed that the proposed legislation does not apply to primary elections.

Representative Petrie said that the question is when, not whether, there might be another contested election. He expressed appreciation for the bill and for efforts to establish a bipartisan process to address future close elections.

Representative Nemes clarified that in the District 13 House election, Representative D. J. Johnson, in order to avoid a lawsuit, decided not to proceed with the election contest after the recount produced a tie vote. Regarding the legislation under discussion, he said he is concerned about requiring a recount to be automatic and suggested that it should be discretionary instead. He questioned whether an automatic recount would be in the best interest of the state, considering the length of time it would require. He said that if a recount had been requested in the recent governor's race, the vote might not yet be final. Mr. Lycan said that Representative Nemes' concern is understandable but that in close races the voters deserve assurance that their vote has counted. Under the proposed bill, he believes the recount in the governor's race would have been timely completed. If that is not the case, he acknowledged that Representative Nemes has made an excellent point that needs to be addressed. He said that the time concern would probably only apply to the office of governor because he/she assumes office soon after an election. He noted that House Bill 522 (debated but not passed in the 2019 RS) originally allowed the losing candidate to waive the right to an automatic recount. The House committee removed that provision because of concern about assuring a correct vote count. Representative Nemes said that if the proposed legislation was the law today, he is not sure that Governor-elect

Beshear would be sworn in on December 10. He suggested eliminating the requirement for a recanvass if the legislation is going to require an automatic recount in a governors' race. That would provide additional time to complete the recount. He also said he is not sure he will be able to support the bill.

Responding to questions from Representative Fischer, Mr. Lycan said that HB 522 also applied to gubernatorial elections. Under current law an election for governor can be contested, but there is no provision for a recount. A .5% vote margin is probably the most common standard nationwide for requiring an automatic recount. The proposed draft legislation would allow a candidate to bypass a recount when contesting an election. The cost of the recount in the District 13 election contest was approximately \$10,000. Mr. Lycan agreed when Representative Fischer suggested that the cost of a statewide recount in all House districts might be as much as \$1 million (100 districts x \$10,000).

Representative DuPlessis said a candidate contesting a close election would likely have received substantial campaign donations from supporters, and he does not think the cost should be shifted to the taxpayers. Mr. Lycan pointed out that candidates have the right to put an unlimited amount of their own funds into their campaign account. He also referred to a 2015 Republican gubernatorial primary when a candidate lost by an 83 vote margin and had already received the legal maximum in donations. When Representative DuPlessis suggested that the proposed bill could allow candidates to solicit additional funds from donors who had given the maximum allowed, Mr. Lycan said that would be a good solution. It has been done for recanvasses and recounts at the federal level, even without statutory change, but, in his opinion, would require a statutory change in Kentucky.

Senator Thayer said he wants assurance that the bill would not cede power from the legislature to the courts to decide an election contest. Mr. Lycan said it absolutely would not; any appeal on a recount would go to the legislative chamber in an election contest and not the courts. In his opinion, the courts do not have the power to intervene.

Discussion concluded. Representative Bratcher thanked the speakers.

Proposed Constitutional Amendment Relating to Terms of Office of Members of the General Assembly.

Representative Heath discussed his draft legislation proposing to amend Sections 30 and 31 of the Constitution of Kentucky relating to terms of members of the Kentucky House of Representatives. It has not been prefiled, and he provided copies to the committee. It would provide that members could be elected to four-year terms instead of two-year terms. If enacted, the question would appear on the ballot for the 2020 general election. If the constitutional amendment were to be approved, at the general election in November 2022, and every four years thereafter, candidates in even-numbered House districts would be elected to four-year terms. At the general election in November 2024,

and every four years thereafter, candidates in odd-numbered House districts would be elected to four-year terms.

Representative Heath said he prefers that the legislation be considered as a stand-alone bill, with no amendments. The ballot language has not been determined. He is proposing the bill for three reasons—to address voter confusion, voter fatigue, and legislators’ use of their time. All city, county, and statewide elections are for four-year terms, whereas House members only have two-year terms. To be re-elected, they must constantly raise campaign money, revisiting the same donors. As citizen legislators, most House members have jobs and business responsibilities at home, in addition to their legislative responsibilities, and a significant amount of their time is needed for campaigning. He also said he has consulted with Senator Stephen Meredith, who proposed legislation in the past to change Senate terms from four to six years.

Representative Donohue said he believes House members should have four-year terms but be limited to two successive terms; likewise, Senate terms should be for six years and limited to two successive terms. After serving two terms, House and Senate members should be allowed to run for election in the other chamber. Representative Heath said he has heard that proposal from others, but he is not a proponent of term limits. He said that 60 new members joined the House during the last two years, and he is concerned about the lack of institutional knowledge in the House when terms last for only two years.

Senator Schroder said he thinks the majority of states, like Kentucky, have two and four-year terms, but he would be interested to have information about the length of terms in other states. Representative Heath said that is a good question and that he also would like to have that information. He said it varies from state to state and that in Georgia both the House and Senate have only two-year terms.

Representative DuPlessis said he believes the bill has merit and that he will support it.

Representative Bratcher announced that the committee would meet again on Monday, December 16, at approximately 3:00 p.m., upon adjournment of the meeting of the Public Pension Oversight Board. Business concluded, and the meeting was adjourned at 11:45 A.M.