

# INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

## Minutes of the 4th Meeting of the 2020 Interim

September 22, 2020

### Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on Tuesday, September 22, 2020, at 10:30 AM, in Room 171 of the Capitol Annex. Senator Wil Schroder, 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, Stan Humphries, Christian McDaniel, Morgan McGarvey, Robby Mills, Michael J. Nemes, and Damon Thayer; Representatives John Blanton, Tom Burch, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Larry Elkins, Kelly Flood, Derrick Graham, Joe Graviss, Richard Heath, Samara Heavrin, Joni L. Jenkins, Matthew Koch, Derek Lewis, Scott Lewis, Mary Lou Marzian, Patti Minter, Jason Nemes, Jason Petrie, Attica Scott, Steve Sheldon, James Tipton, Ken Upchurch, Russell Webber, and Lisa Willner.

Guests: Representative Kim Moser; Laura Hendrix, Emily Dennis, and Dave Nicholas, Kentucky Legislative Ethics Commission; and Robert Jenkins, LRC Staff.

LRC Staff: Alisha Miller, Michael Callan, Roberta Kiser, and Peggy Sciantarelli.

### Approval of Minutes

A motion to approve the minutes of the August 27, 2020, meeting was seconded and adopted without objection.

### Discussion of HB 168 (2020 RS), Relating to Legislative Ethics

Representative Kim Moser discussed HB 168 (2020RS), which she sponsored to propose changes to the legislative code of ethics that were recommended by the Kentucky Legislative Ethics Commission (LEC). Laura Hendrix, LEC Executive Director, assisted in the discussion. Emily Dennis, LEC Counsel and LEC Chair Dave Nicholas were also present.

Representative Moser said that in 2018 she and former Representative Ken Fleming participated in a group that examined harassment issues in the legislature. They co-sponsored HB 9 (2018 RS) to specifically make sexual harassment or discrimination an ethical violation, as recommended by the LEC. During the 2020 regular session, in

conjunction with LRC staff input, she and Representative Kelly Flood co-sponsored HB 168, to make recommended changes to the ethics code. That legislation passed the House, but due to timing and language issues, it did not pass the Senate. Some of the recommendations included in HB 168, however, were enacted in SB 157.

Representative Moser said that, currently, the ethics code contains no specific ethical prohibitions against sexual harassment or discrimination by legislators or lobbyists and no specific language to guide legislators or legislative lobbyists or legislative staff in making a complaint. The LEC has been applying general provisions of the code to address sexual harassment. Building on the provisions of HB 168 and input given during the 2020 session, she hopes to file legislation for the 2021 regular session that would make sexual harassment or discrimination by legislators or legislative agents against legislators, legislative agents, or legislative employees ethical misconduct. It would not include LRC directors, as done in previous bills, because it appears that issues relating to the director should be addressed by the LRC, as the employer. It would specifically define sexual harassment and discrimination as those acts that are unlawful under existing federal and state case law. It would give specific examples of prohibited conduct, such as unwanted or unwelcome sexual advances or sexually demeaning behavior. It would require, as with all other ethics complaints, a sworn complaint to be filed under penalty of perjury. The complaint would be investigated by the LEC and go through the same process as other ethics complaints—including a preliminary determination of probable cause; a hearing, if there is probable cause; and the right to counsel and ability of the alleged violator to be heard. The penalties for ethical misconduct would be the same as they are currently: a fine of \$2,000, public reprimand, and a possible recommendation to the House or Senate for further action such as censure or expulsion. For a lobbyist, the LEC could revoke the ability to lobby for up to five years. Representative Moser said it was recently brought to her attention that House leadership has been working on a human resources/anti-harassment policy that is geared toward personnel matters.

Ms. Hendrix thanked Representative Moser for agreeing to sponsor legislation for the LEC and for making it a bipartisan effort. She said that for many years the LEC has recommended that the ethics law be amended to include a specific provision to make discrimination and sexual harassment an ethical violation and to specifically prohibit such conduct by legislators and legislative lobbyists. The LEC feels that defining it specifically, rather than relying on “catch-all provisions,” would help the General Assembly, employees, and the public to understand that there is a standard. The legislation would require a formal complaint, signed under penalty of perjury that could be made against a legislator or a lobbyist by another legislator, legislative staff, or lobbyist. The complainant could still go to the LRC, Senate or House leadership, the courts, the federal EEOC, or the Kentucky Human Rights Commission.

Ms. Hendrix said the legislation would not replace the LRC in-house personnel policy. The intent is to provide a safe and protected workplace, to ensure that concerns are

addressed fairly and independently, and to ensure that everyone would be aware of the standard and know what is expected of them. The LEC feels that issues relating to the LRC director are not within its jurisdiction and should properly be addressed by the LRC.

Ms. Hendrix noted that SB 157, sponsored by Senator Schroder, adopted an LEC recommendation to change the annual ethics training for legislators from three hours to two hours, in recognition of the fact that they now have another one-hour training relating to workplace harassment and workplace issues. Concluding her opening statement, she said that the LEC is happy to continue working closely with the General Assembly and the LRC.

Representative Tipton said he appreciates the work of Representative Moser, Representative Flood, and former Representative Fleming, and he finds it troubling and somewhat embarrassing that their ethics legislation had not yet passed. He asked about the language issue that may have stalled HB 168 in the Senate. Representative Moser said she was not directly involved in the conversations and did not have full clarity regarding the language issue.

Representative Graviss said he is grateful for the effort and the perseverance of Representative Moser and Representative Flood. He believes it is the responsibility of elected officials to serve as role models for the type of behavior that constituents expect—and to work together in a bipartisan fashion to achieve results that make a difference. He suggested that the proposed changes to the ethics code could perhaps serve as a model to be adopted by other organizations.

Representative Burch said he worked for General Electric for 39 years and that any manager who was accused of sexual harassment was fired immediately. He likened members of the General Assembly to “managers” who are in positions of power. He said that no one—whether in the executive or the legislative branch—should have to work in fear of being harassed. He urged passage of the ethics legislation and suggested that a companion bill should be filed in the Senate.

Representative Miller thanked Representative Moser for her persistence and asked whether she is aware of any objections to the legislation in the Senate. She said she had not had any direct conversations in that regard. Representative Miller also expressed thanks to Representative Flood and former Representative Fleming.

Senator Schroder asked about the consequences of not paying the \$2,000 fine for a violation. Ms. Hendrix said that the LEC could take a violator to court for not paying a fine or failing to comply with rulings of the LEC. She believes that has happened in a couple of cases. She said the LEC would not have the power constitutionally to deem a legislator ineligible to run again for office. There could be a public reprimand, and the LEC could

vote to recommend further action by the House or Senate, such as censure or expulsion. For violation by a lobbyist, the LEC could revoke the ability to lobby for up to five years.

There were no additional questions, and Senator Schroder thanked Representative Moser and Ms. Hendrix for their testimony.

### **Overview of the Fiscal Note and Fiscal Statement Process**

Robert Jenkins, LRC staff, gave an overview of the fiscal note and fiscal statement process. His testimony included a PowerPoint presentation. He also provided a memorandum dated September 17, 2020, entitled “Overview of Fiscal Note and Fiscal Statement Process.” The memorandum explains the various types of fiscal impact statements and also includes a history of the process as it has evolved from its early roots.

Mr. Jenkins said that in 1969, LRC staff looked at what other states were doing in regard to fiscal notes, and in 1976 the General Assembly enacted its first rule on fiscal notes. The process has grown since then. Senate Rule 52 and House Rule 52 currently establish the system governing the fiscal statement process. The term “fiscal impact statement” refers to fiscal note (FN), actuarial analysis (AA), local mandate (LM), corrections impact statement (CI), and health benefit mandate (HM).

Mr. Jenkins explained in the summary sheet of his memorandum that a fiscal note identifies the monetary impact on state revenues and/or expenditures. An actuarial analysis identifies changes to benefits, participation in benefits, or the actuarial accrued liability of any state-administered retirement system. A local mandate identifies the estimated impact of a bill’s changes to local government revenues or expenditures. A corrections impact statement identifies the impact of a bill’s changes to incarceration at local and state correctional facilities, supervision, or treatment services provided by the Department of Corrections. A health benefit mandate identifies the fiscal impact on health benefit plans.

Mr. Jenkins said that bill sponsors have the obligation to request fiscal notes. Bill drafters, at the time of drafting, identify whether a bill needs an actuarial analysis, corrections impact statement, health mandate, or local mandate. If the sponsor does not ask for a fiscal note, or if the bill drafter does not indicate that a bill needs a fiscal statement, the committee chair, a majority of the committee, or a majority of the chamber can ask for completion of a fiscal note or one of the other fiscal statements. He described in detail the process to be followed by LRC staff, legislators, and legislative committees when requesting and creating fiscal impact statements. He explained that health mandate analyses are completed by the Department of Insurance, actuarial analyses for bills that affect the financial liability of the public retirement systems are completed by the systems’ actuaries, and corrections impact statements are prepared by the Department of Corrections.

Senator Schroder said he appreciates the time that Mr. Jenkins has devoted to assembling this information. He said that during the 2020 legislative session he spoke with both the House and Senate committee chairs about the need for a fiscal impact statement on a certain bill that was referred to their committees. He learned that the bill had already passed through committee and that it was too late for the chairs to request the statement. He asked whether there is written guidance that can be referenced regarding timing of requests for fiscal notes and fiscal statements. Mr. Jenkins said the only rule would be what is indicated in the House and Senate rules—that is, in the House, “the chair of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill prior to posting”; in the Senate, “the chairman or a majority of the committee to which a bill has been referred may require that a fiscal statement be attached to the bill prior to final committee action.” He said he has heard several committee chairs say they would like to be able to request a fiscal note on bills that are not in their possession. He said that this issue perhaps could be considered for possible clarification in the rules.

Senator Schroder asked about the cost associated with preparation of fiscal impact statements. Mr. Jenkins said the number of analyses requested has been increasing and that the retirement systems and the Department of Insurance have expressed some concern about the cost involved. He said he is not sure of the total dollars involved but that those costs are borne by the retirement systems and the Department of Insurance.

Representative Miller said that actuarial analyses are a big cost driver because they involve payment to an outside consultant. He advised the committee that he sponsored HB 194 during the 2020 session, relating to actuarial analysis on retirement bills. That bill passed the House but remained in a Senate committee. For 2021, he has prefiled BR 225, which also relates to actuarial analysis on retirement bills.

Senator Alvarado said he is concerned about the number of fiscal statements being requested during legislative sessions, the number that are actually completed and utilized, and the amount of staff time involved. Mr. Jenkins said he does not have those numbers with him but that they were higher in 2020 than during several previous sessions. There appears to be an upper trend over the last few years. He offered to get those numbers to share with the committee. He explained that five employees work on local mandates during a legislative session. Fiscal notes are completed in-house by the Budget Review staff and the Appropriations and Revenue staff. There is also a secondary level of review, coordinated by committee staff administrators, for health benefit mandates and local mandates.

Representative Tipton asked whether it is correct that fiscal impact statements are supposed to reflect the difference in fiscal impact between current law and the new legislation—whether it would be a plus or a minus. Mr. Jenkins said that is correct, generally speaking. The statements look at what currently happens and how that is either increased or decreased by the changes in the bill. Representative Tipton said he filed HB

143 during the 2020 session, dealing with pay increases for state employees. State law currently stipulates a five percent annual increase. HB 143 would have based that increase on the consumer price index (CPI)—the difference between the five percent and the projected CPI. However, the fiscal note based the amount of the increase on the precedent of what has been done in recent years. Mr. Jenkins said it would be based on existing law—the existing statute that calls for a five percent increase—but it would also be based on the most recent budget bill, which is also law. Representative Tipton thanked Mr. Jenkins for the clarification.

Senator Schroder said that a member who is attending remotely has asked why bill drafters do not identify bills that need fiscal notes. Mr. Jenkins said that, according to Rule 52 in both chambers, “the sponsor of a bill which, if enacted, would affect the revenues or expenditures of state government generally, may at any time by request cause the staff of the LRC to analyze and prepare a fiscal statement for the measure.” He said that if the General Assembly would ever want to give that responsibility to bill drafters, he believes it could be accomplished.

Senator Schroder asked whether there is any information on the General Assembly or another website regarding the cost of preparing actuarial analyses. Mr. Jenkins said he does not believe there is a link on the General Assembly website but that he could contact the retirement systems to get that information. Senator Schroder said he would instead defer this question to the Public Pension Oversight Board, which is going to meet later today.

There were no further questions, and the meeting was adjourned at 11:25 a.m. (Earlier in the meeting, Senator Schroder announced that discussion of the 2021 Kentucky Employees’ Health Plan had been a late addition to the agenda but that the Personnel Cabinet requested that it be postponed until a future meeting.)