

# **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT**

## **Minutes of the 3rd Meeting of the 2022 Interim**

**August 25, 2022**

### **Call to Order and Roll Call**

Pursuant to the approval of the President of the Senate and the Speaker of the House, the Senate Standing Committee on State and Local Government, the House Standing Committee on State Government, and the House Standing Committee on Elections, Constitutional Amendments & Intergovernmental Affairs met jointly at the Kentucky State Fair at 11:00 a.m. on August 25, 2022, during the 2022 Special Session. Senator Robby Mills, Chair, Representative Kevin Bratcher, Chair, and Representative Jerry Miller, Chair, called the meeting to order, and the secretary called the roll for each committee. Representative Bratcher served as chair for the meeting. Later in the meeting he recognized staff of the State Board of Elections who were in attendance.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Christian McDaniel, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives Adam Bowling, McKenzie Cantrell, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Keturah Herron, Mary Beth Imes, DJ Johnson, Matthew Koch, Derek Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: John Steffen, Kentucky Registry of Election Finance; Tabatha Clemons, Grant County Clerk; Chris Cockrell, Montgomery County Clerk; and Jason Denny, Anderson County Clerk.

LRC Staff: Alisha Miller, Shannon Tubbs, Daniel Carter, and Peggy Sciantarelli.

### **Welcome from Greater Louisville Inc.**

Ms. Shelby Somervell, Vice President of Governmental Affairs & Communications, Greater Louisville Inc., gave welcoming remarks to the committee.

### **Moment of Silence**

At the request of Representative Bratcher, the committee observed a moment of silence in memory of former Representative Ron Crimm.

## **Overview of Kentucky Registry of Election Finance Software and Systems**

John Steffen, Executive Director, Kentucky Registry of Election Finance, discussed the software and systems used by the Registry. He stated that when he joined the Registry in 2016, the filing system was outdated. Funding was received in the 2016-2018 budget for a project to replace it with an electronic filing system. In September 2017, the Registry entered into an agreement to develop and maintain a new system with Kentucky Interactive, LLC, which had been operating with the Department of Corrections and the Finance and Administration Cabinet under a master agreement with the Commonwealth since 2005. Electronic filing was slated to begin with the 2020 primary election, based on legislation enacted during the 2019 Regular Session. Mr. Steffen said the new system has not been a total failure and has improved since the 2020 primary election, but there have been problems. The public database is not as user friendly as intended. The Registry continues to work daily with the contractor to resolve the problems, and the system seems to be improving slowly but surely. However, he thinks it was built on a bad foundation, and he does not envision it as a long-term system for the Commonwealth.

Mr. Steffen said the Registry has made \$314,000 in payments to Kentucky Interactive but has put further payments on hold until there is progress in correcting the problems. It may be time to consider other options or to replace the system. There have been many successful filings, but the system has also been a source of frustration to the users. Reports that are timely filed sometimes cannot be found in the database. It is an embarrassment to the Registry and the Commonwealth that the system is not 100 percent reliable.

Senator Thayer stated that he sponsored the 2019 legislation that requires electronic submission of campaign finance reports, beginning with the elections scheduled in 2020. Mandatory electronic filing was already a requirement for statewide candidates, but the 2019 legislation required it for all candidates. It is embarrassing to him, as sponsor of the legislation, that its implementation has been botched. The Registry is ultimately responsible, but the vendor, Kentucky Interactive, is mostly at fault. Both novice and experienced users agree that the system is not user friendly and that the accuracy of the information gleaned from it cannot be trusted. Campaign treasurers are having to reach out to the Registry and to the vendor regarding basic functionality concerns. A report cannot be printed before it is filed to double-check it for accuracy, and the search function is practically useless. In his view, Kentucky Interactive has completely failed candidates and the people of Kentucky in fulfilling its charge to provide accurate campaign finance disclosure in a transparent manner.

Senator Thayer said there are no legislative elections in 2023, and perhaps an emergency bill should be passed in January 2023 to pause the 2019 law and revert to paper filing for one year in order to give the Registry an opportunity to rebid the contract with another vendor. Mr. Steffen replied that the old system is gone and that switching back to paper filing would be even more harmful to disclosure and more burdensome to everyone

involved. He thinks the Registry should continue to work with Kentucky Interactive until there is an upgrade or another system can be put in place. He believes developing an RFP for proposals to the private sector for a new system would be a viable option.

In response to a question from Senator Thayer on whether the Registry was allowed to bid the project to other vendors, Mr. Steffen stated that, because of the master agreement, Kentucky Interactive had been the preferred choice. Senator Thayer questioned whether the master agreement would need to be overridden in law in order for the Registry to accept bids from private sector companies. Mr. Steffen responded that, under current procurement law, he believes Kentucky Interactive could be prohibited from bidding on a future project.

Responding to Representative Bratcher, Mr. Steffen acknowledged that he had previously assured that the current system was doable within the agreed upon timeframe; but he was basing that on assurance from the vendor that they could produce what was needed. He is no longer hopeful for that.

Senator McDaniel stated there is no longer confidence in the current system, and there is no other system to go back to. Within the next 60-90 days, it is incumbent upon the Registry to have a remediation plan, which will probably involve removal of the current vendor. In the meantime, Kentucky Interactive needs to provide support for the system. Otherwise, nonperformance under their contract and the potential recoupment of monies will need to be considered. Mr. Steffen responded that the Registry staff suffer the same frustrations. They confer with the vendor frequently and attempt to address all complaints and issues with the system.

Representative Koch stated that he worked with the Registry staff when he sponsored HB 740 (2022 RS). Although there is a lot of frustration with the vendor, he believes members of the General Assembly have high regard for the Registry staff.

Representative Nemes said he had not read the contract, but the problem with the vendor appears to be a breach of contract. Promises that were made were not kept, and significant issues are not being addressed. He believes it is time to move on, to mitigate the damages, and to charge the vendor for what has to be spent to correct the problems.

Representative Gooch discussed his frustrations with the system. He said it is not user-friendly and that first-time candidates running for office would find it especially difficult to navigate.

In response to a question from Representative Tate concerning which technical and user requirements in the master agreement have been met, Mr. Steffen said that the Registry tracks that information and can provide a report.

Senator Southworth stated that the Registry has her support and the support of other members of the General Assembly to move forward in obtaining a contract with qualified IT people who can perform the needed services to political candidates, their constituents, and members of the public.

Representative Miller expressed misgivings about the quality and performance of state government price contracts. In order to find a good electronic filing system, he suggested that Mr. Steffen look at the systems used by his peers in other states. As committee co-chair, he said he would gladly ask the committee to look at this issue in the future.

### **2022 Primary Election Review**

Tabatha Clemons, Grant County Clerk and Treasurer of the Kentucky County Clerk's Association (KCCA); Chris Cockrell, Montgomery County Clerk and past president of KCCA; and Jason Denny, Anderson County Clerk and KCCA President, presented an overview of the 2022 primary election.

Ms. Clemons said that from county clerks' perspective, the 2022 primary election ran smoothly. There were a few minor issues, such as poll workers failing to show up and complaints about electioneering. The May 2022 primary was the first election featuring many of the changes enacted in HB 574 (2021 RS). Those changes included the permanent online portal to apply for an absentee ballot by mail; three days of in-person no-excuse early voting; the use of drop boxes; a ban on ballot harvesting; and the opportunity to have vote centers. In general, the reforms worked very well. Some counties, like Grant, used vote centers; some consolidated their precinct locations; and others used their traditional precincts. County clerks and county boards of elections are now working with the State Board of Elections (SBE) to develop county-specific plans for voting. It is expected that many counties will continue to tweak their election plans.

Statewide, 83 percent of voters voted on election day, and 13 percent voted during the 3-days of no-excuse early voting. Voters have not had an opportunity to be educated about the three days of early voting, and many did not realize it was available. Early voting should increase over time, especially the opportunity to vote on Saturday. Three percent of voters voted absentee by mail or by using a drop box location. One percent voted absentee in person, essentially the same percentage as in the past. Statewide turnout was about 19 percent, which is lower than recent county primary elections. That percentage varied by county, depending on the races that appeared on the ballot.

Mr. Denny spoke about the options available to counties and the flexibility and advantages provided to voters through enactment of HB 564 (2022 RS) and HB 574 (2021 RS). He noted that bipartisan county boards of elections are required to submit their vote plans to the SBE for approval. Vote plans are decided by the bipartisan boards and not by individual county clerks.

Mr. Cockrell said that there are some things that county clerks hope to see addressed in the upcoming legislative session. The provisions relating to electioneering need to be applied also to the 3-day early voting sites. After the 2022 primary election, some candidates requested a recount even though the vote margins were not close and there was no evidence of voter fraud or equipment issues. Even though a candidate must post bond, the amount of additional work that a recount requires of the clerk's office is enormous. Clerks would like to see minimum limits specified for the vote margin in order to qualify for a recount. Current law requires that absentee ballots be sent to a voter's residence. This is an issue that calls for discussion, because the recent flooding in eastern Kentucky has caused many citizens/voters to lose or be temporarily displaced from their homes.

Ms. Clemons testified that funding that was set aside for election equipment during the 2021 Regular Session will be a huge asset to Kentucky counties. Without that funding, all of the legislative changes might not be possible. Clerks especially appreciate the electronic poll book option and the security provided by paper ballot backup. Clerks do not foresee the need for major legislative changes. With the help of the General Assembly, clerks want to continue conversations about how to better educate voters and ways to share county election plans with constituents. Ms. Clemons stated that Kentuckians should feel confident in the election system. Clerks have worked hard to help ensure that elections are safe, secure, and fair. They want to continue doing that, and they appreciate their partnership with the legislature.

In response to comments from Representative Bratcher, there was discussion of how vote recounts cause staffing problems for county clerks and interfere with their preparation for upcoming elections. Mr. Cockrell stated that he believes some of the recounts are frivolous in nature.

Representative Tipton said he is concerned about having ballots for the November general election available for voters who were displaced by the recent eastern Kentucky flooding. He is hopeful that this issue can be remedied legislatively or otherwise. Mr. Cockrell expressed hope that this can be addressed on a short term basis for the affected counties.

Representative DuPlessis spoke in support of having three days of early voting, but he cautioned against extending the number of days. He said candidates spend the majority of campaign advertising funds close to election time.

In response to questions from Representative Nemes, Mr. Denny stated that rules and regulations are currently being set for a pilot program to conduct risk-limiting audits. His county is one of several that have signed up to participate, and the program should be available for the November general election. Mr. Cockrell said that HB 574 provided flexibility to the counties regarding voting at the precinct-level or at vote centers. For a

smaller county like his, it was advantageous to conduct voting at a couple of central locations. Using vote centers also saves money for counties. Reporting, however, is still done at the precinct level. Ms. Clemons stated that county clerks face obstacles in finding enough election officers to serve at precincts. Vote centers provide flexibility to the counties and make it easier to find election officers who are willing to serve. Her county has four vote centers, and she would like to see the option of using vote centers continue for at least two more election cycles.

In response to a question from Senator Southworth concerning whether SBE's approval process considers the cost, staff time, and resources involved in 3-day early voting, Mr. Denny said he does not think there is provision for the state board to make decisions based on cost in individual counties. Fiscal courts are charged with paying the cost, and it is up to the county to decide whether the cost was worthwhile. In Anderson County early voting was greater than 13 percent, and 68 percent voted on election day. He believes that approximately 50 percent of the voters in Anderson County will eventually take advantage of the flexibility and convenience offered by the no-excuse early voting days.

Senator Southworth spoke in support of candidates' right to request a recount. She also expressed disapproval of the inefficiency and inevitable delays involved in the current recount process.

Senator Thayer stated that having three days of early voting seems to be working well. He is glad, however, that county clerks do not plan to request an increase in the number of days. He believes some of the recount requests from the primary election are frivolous and ill intended. Electioneering caused a problem in a Lexington Senate race, and he believes electioneering law needs to be tightened. He would like county clerks to meet with Senator Mills and Representatives Bratcher, Tipton, Decker, and Branscum to develop language to amend the statutes relating to recounts and electioneering so that those issues can be addressed early during the upcoming legislative session.

Representative Wheatley said that having three days of early voting is great, and he believes the early voting percentage will likely increase over time. He would also like to see polling places stay open until 7:00 p.m., like they are in some other states. He stated that Kentucky lags behind almost all the states with respect to voter registration. He is in favor of allowing registration closer to election day and, eventually, allowing same-day voter registration. His greatest concern is getting as many people to vote as possible.

Mr. Denny testified that Anderson County had 74 percent turnout in 2020, and he finds it disheartening when turnout is low. He is able to send out reminder cards to voters in his county, but some fiscal courts and county clerks are not able to do that. Mr. Cockrell said it is his personal opinion that low turnout statistics somewhat reflect the national

“motor voter” law, because many of those who registered after its passage did not intend to vote.

Representative Decker commended the guest speakers for their hard work and dedication to excellence. She said it has been a privilege to work with them, SBE, and the Secretary of State. Kentucky has a safe and secure election system, and it disturbs her to hear allegations of election fraud. That is demeaning to democracy, and disparagement of the election system also negatively affects voter turnout. For the benefit of the public, she suggested that county clerks do more to advertise the outcome of recounts.

Representative Heavrin stated she is interested in reforming the recount process. It took three months to complete one of the recent election recounts, and she has concern about the cost involved. The general public does not recognize all that is involved, and recounts can be a waste of taxpayer dollars. She asked whether the committee could be provided with information about the cost of staff time and state resources required in the recent recount lawsuits, some of which have been deemed frivolous. Ms. Clemons stated she, Mr. Denny, and Mr. Cockrell can work on getting the information. She pointed out that the recount process includes many variables, depending on the number of candidates in the race, whether straight party voting is involved, and the number of counties included. Mr. Denny said an additional variable is that the cost would be five or six-fold in countywide races that take place during a presidential election cycle. Also, different judges set different rules on how a recount takes place.

Responding to Representative Bratcher, Ms. Clemons gave details about a recent recount for the Senate District 24 Republican primary race that included Bracken, Campbell, and Pendleton counties, and a small portion of Kenton County. The recount was held in early August under the supervision of Circuit Judge Dan Zalla. Despite no reported evidence of fraud or irregularity, losing candidate Jessica Neal sought the hand recount, and her campaign posted the bond of approximately \$58,000 to cover the potential cost of the recount. There was no change in the results except for a single vote that was deemed to be an “overvote.”

Senator Wheeler said he is comfortable with allowing three days for early voting. He also spoke about the importance of providing voters with all relevant information about candidates so that they are fully informed when casting their ballot on election day.

Representative Graham said it is the responsibility of elected officials, as leaders within their communities and within the Commonwealth, to ensure that people understand they have a right to participate and vote in elections. It is of utmost importance for them to know that their vote will count. He also commended county clerks across the Commonwealth for working to facilitate the election process.

Representative Bratcher thanked the speakers and announced that the next meeting of the interim joint committee would be on September 27. Discussion concluded, and the meeting was adjourned at 12:52 p.m.