

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 5th Meeting of the 2022 Interim

October 25, 2022

Call to Order and Roll Call

The fifth meeting of the Interim Joint Committee on State Government was held on Tuesday, October 25, 2022, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Michael J. Nemes, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, McKenzie Cantrell, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Kelly Flood, Jim Gooch Jr., Richard Heath, Samara Heavrin, Keturah Herron, DJ Johnson, Matthew Koch, Scott Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Tom Smith, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: Representative Mark Hart; Representative William Lawrence; Karen Sellers and Richard House, State Board of Elections; Jennifer Morrell, The Elections Group; Phil Adkins, Morehead Utility Plant Board; Cindy Batson, RN; John Kall, DMD; Mary Ann Burch, Kentucky Dental Hygienists' Association; and Jonathan Rich, DMD, Kentucky Dental Association.

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

A motion to approve the minutes of the September 27 meeting was seconded and passed without objection by voice vote.

Water Fluoridation

Representative Mark Hart discussed his 2023 proposed legislation (BR 278), relating to water fluoridation programs. He stated that the bill would not prohibit the use of fluoride, but it would allow the governing bodies of water systems subject to regulation by the Cabinet for Health and Family Services to decide whether to participate in water fluoridation programs. He noted that the committee has been provided copies of HB 361, identical legislation that was filed during the 2022 Regular Session. Representative William Lawrence spoke briefly about why he supports the legislation.

Mr. Adkins stated that the chemicals used to fluoridate Kentucky's tap water are not pharmaceutical grade quality. Fluorosilicic acid and other fluoridation chemicals are considered hazardous by the Occupational Safety and Health Administration (OSHA), as noted in the "Hawkins Safety Data Sheet," provided to the committee. Another drawback to fluoridation is the cost. It is an unfunded mandate, and the Morehead utility's projected cost for the current budget year will be close to \$30,000—almost 10 percent of the chemical feed budget for the entire year. Mr. Adkins stated that he and others in the water industry also object to fluoridation on ethical grounds. It serves no purpose in water treatment and does not improve water quality.

Dr. Kall provided his personal letter to the committee, explaining his opposition to water fluoridation. He acknowledged, for the record, that the committee has also received letters from organizations that advocate for water fluoridation—the Kentucky Public Health Association, the Kentucky Dental Association, and others.

Dr. Kall stated that a 2015 review of water fluoridation by the international organization Cochrane [a global independent network of researchers, professionals, patients, careers, and people interested in health] indicated that there is little contemporary evidence evaluating the effectiveness of water fluoridation to prevent caries and that available data is predominantly from studies conducted prior to 1975. A 2016 McLaren study showed an increase in decay rate in Calgary, Canada, after fluoridation ceased, but in a subsequent study, scientists were critical of the broad study. Dental decay had been trending upward in years prior to Calgary's cessation of fluoridation. Charts adapted from Harvard Public Health Magazine show a decrease in tooth decay from 1975 to 2014 in countries that do not fluoridate their water, as well as in countries that do fluoridate.

Concluding his presentation, Dr. Kall stated that studies from the past five years, published in peer-reviewed medical scientific journals, and which were funded by the National Institutes of Health (NIH), have shown a decrease in the IQ of children who live in communities with fluoridated water. The mandate to fluoridate water is ignoring cautionary principles that should be in the forefront of health care. Fluoridation is mass medication without informed consent.

Responding to Representative Tipton, Dr. Kall stated that studies relating to fluoride have been conducted by PhD-level scientists at various institutions and have been published in peer-reviewed journals, including JAMA, the Journal of the American Medical Association. Miss Batson stated that Dr. Bruce Lanphear recently gave federal testimony about the toxicity of fluoride in drinking water. He was also instrumental in setting global policy regarding lead poisoning. Another notable published source of information is Dr. Linda Birnbaum, former chief of NIH.

Responding to questions from Representative Bratcher, Ms. Batson confirmed that Kentucky is one of only 13 states that require fluoride to be added to drinking water. Other states have various types of fluoridation regulation, but Kentucky's is the most stringent. She noted that bottled water is not as closely regulated as tap water and that most bottled water does not contain fluoride.

Representative Blanton voiced his concerns about the addition of fluoride to community tap water. He stated that he fully supports BR 278 and would like to co-sponsor the legislation.

Representative Heath stated that he grew up in an area where wells were the source of drinking water. He believes that people who relied on well water have fared just as well as those who had access to treated water.

Responding to Representative Decker, Dr. Kall stated that the general theme of the Harvard Public Health Magazine article about the downward trend in tooth decay, was that the trend was downward regardless of whether the water was fluoridated. Generally, the downward trend was due to improvements in personal hygiene and diet and the introduction of antibiotics. Dental education of the public also helped, and some studies have suggested that the primary factor was the use of fluoridated toothpaste, which grew tremendously worldwide during the 1970s and 1980s.

Responding to Representative Wheatley, Mr. Adkins stated that whether fluoride residue is present in water line blockage would depend on an individual system's water chemistry, and it would differ throughout the state. When Representative Wheatley asked whether states are trending toward more or less use of fluoride, Ms. Batson said there is not a good answer. Some states are adding fluoridation and some are moving away from fluoridation.

Senator Southworth spoke in support of BR 278. She said the information provided to the committee about fluoridation—and also the toxicity of chlorine—is extremely helpful to her. Representative Hart stated that he has been working on the 2023 legislation with Senator West and expects that a companion bill will be filed in the Senate.

Senator Alvarado contended that BR 278 would not allow decisions regarding fluoridation to be made at the local level. He represents Bath County, one of the eight counties served by the Morehead Utility Plant Board. Participation in optional water fluoridation programs in those eight counties would be decided only by the water system's governing body in Rowan County.

Representative Hart stated that Kentucky counties currently do not have a say regarding water fluoridation. Under BR 278, decisions about fluoridation would be made by local governing bodies of individual water systems instead of on a statewide basis. Local

referendums and community forums to receive feedback from counties might also be involved. The bill does not specify how local water producing bodies would determine their decisions.

Senator Alvarado questioned some of the study references that were mentioned. He pointed out that many nationally recognized medical organizations support the use of fluoride in drinking water—for example, the Harvard School of Medicine, the Harvard School of Dental Medicine, The American Academy of Pediatrics, the World Health Organization, and the American Medical Association. Dr. Kall stated that he believes cautionary principles are being ignored, and it can take a long time to undo indoctrination that has occurred in medical and dental training. The adequacy of data and the design of studies in the 50s, 60s, and 70s are legitimate concerns, according to Cochrane. Although Cochrane acknowledges there is evidence that water fluoridation can provide some benefit, the evidence is questionable. Senator Alvarado countered that there are many smart people who know how to interpret studies and data, and they have differing views. He named several contemporary studies and stated that there is a lot of current and modern data that recognizes the benefit of fluoridation.

Ms. Burch, a representative from the Kentucky Dental Hygienists' Association, said that she was a practicing dental hygienist for 42 years. Her main focus was prevention of dental disease in her patients. Community water fluoridation has been a cost effective tool in prevention of dental decay. Fluoride in water systems is monitored daily by the state Department of Public Health. She is advocating for the dental health of all Kentuckians, but especially those in poor communities who are not able to afford regular dental care. Water fluoridation is a consistent means to provide prevention of dental decay. Community water fluoridation has been a safe, reliable, and cost effective preventive measure to keep teeth strong and reduce cavities by at least 25 percent. Providing consistent fluoride access in the water supply is the best use of taxpayer dollars to maintain dental health in Kentucky communities.

Dr. Rich stated that he is immediate past president of the Kentucky Dental Association and has been practicing dentistry in Grant County for 20 years. Patients' oral and overall health is a dentist's top priority, and preventing disease before it starts is the number one goal. Water fluoridation is considered one of the top 10 public health measures in the 20th century and, by some measures, has decreased the cost of dental care as much as 50 percent. The most conservative estimates indicate that every dollar spent on water fluoridation yields \$38 in reduced dental cost. This single public health measure has done more than any other to level disparities in oral health.

Dr. Rich discussed naturally occurring sources of fluoride, the systemic and topical effects of fluoride, and fluoride use in other countries. He acknowledged that dental fluorosis and illness or disease can result from excessive fluoride use, but he noted that

large studies and systemic reviews do not support the association of those diseases with fluoride water consumption.

Dr. Rich stated that his patients who live in rural areas without access to a public water system—as well as those who drink only bottled water—demonstrate a higher cavity rate. Tooth decay is the number one chronic disease in American children. Studies have demonstrated the cost savings afforded by water fluoridation, even in small communities. The ability of water fluoridation to improve the lives of Kentuckians is perhaps immeasurable.

Risk Limiting Audit Pilot Program

Karen Sellers, Executive Director, State Board of Elections; Richard House, Assistant Executive Director, State Board of Elections; and Jennifer Morrell, Partner, The Elections Group, presented on risk limiting audits.

Ms. Morrell provided an overview of risk-limiting audits (RLAs). She stated that RLAs are nationally recognized as a reliable method to validate the integrity of voting equipment, verify the accuracy of results, and detect and correct outcome-changing errors in vote tabulation. An RLA is a post-election tabulation audit that examines a random sample of voted ballots to provide a statistical level of confidence that the outcome of an election is correct. All ballots—from every precinct, every machine—have an equal chance of being selected for audit. Unlike traditional audits, RLAs are designed to escalate to additional rounds of auditing, and ultimately a full hand recount, if discrepancies are discovered.

Under the leadership of the State Board of Elections, a working group for the RLA pilot project was formed and has been meeting since the beginning of the year. The participating counties are Anderson, Fayette, Henderson, Johnson, Kenton, and Madison. In addition to the State Board of Elections staff, the working group includes a member of the Secretary of State's office, representatives from voting systems used in Kentucky, and former secretary of state Trey Grayson.

Ms. Morrell explained in detail the mechanics of an RLA. She noted that the “risk limit” is the maximum possible chance that the audit will fail to detect and correct an incorrect election outcome. It is often expressed as a percentage, usually 1-10 percent. A ballot manifest is a spreadsheet or paper log that documents how many ballot cards the voting system has scanned and where they are located. It is created independent of the voting system.

Concluding her overview, Ms. Morrell stated that the goals of Kentucky's RLA pilot program are to create a safe environment for county officials to learn how RLAs work; to become familiar with RLA terms, definitions, and procedures; to develop an RLA method

that works in Kentucky; and to develop specific RLA procedures and a ballot manifest that will work in every county.

Responding to Representative Nemes, Ms. Morrell briefly spoke about her involvement with recounts in Colorado and the potential impact of recounts that occurred after Kentucky's 2022 primary election.

In response to Representative Johnson, Mr. House discussed procedures for the post-election audit that will take place after the November general election. He stated that the pilot program will be examining the U.S. Senate race, since it will appear on every ballot.

Responding to questions from Senator Southworth regarding pages 14, 16, and 23 of the slide presentation, Ms. Morrell explained in detail how ballot manifests and other documents are created and interpreted as part of a post-election audit.

In response to a question from Representative Miller on what is anticipated for the future after completion of the pilot program, Mr. House stated the State Board of Elections will compile a report of the results and then provide the report and recommendations to the General Assembly. The process is new. One possible direction in the future might be to conduct another RLA or to have all 120 counties participate in an RLA. Ms. Morrell said that some states—Ohio, for example—make RLAs optional. There are a variables to consider when determining a target contest, such as geographic proximity or whether a race is close or highly contested.

Responding to questions from Senator Mills, Mr. House stated that the RLA will take place within each participating county's jurisdiction. Ms. Morrell said that the length of time to complete an RLA can vary. If the target race is close and requires a lot of ballots to be examined, it may require from two days to a full week. Under the best of circumstances it can be done in one day. The risk limit percentage, which impacts sample size, is another variable that could impact the time needed to complete an RLA.

When asked by Representative Bratcher, Mr. House confirmed that the pilot program will be conducted by staff in the county clerks' offices.

When Representative Smith questioned the terminology for requesting an absentee ballot on the portal, Ms. Sellers confirmed that the absentee voting excuses listed on the portal—as they are currently worded—would permit a voter to obtain an absentee ballot, and the ballot could be voted via a drop box. Ms. Morrell stated that early absentee voting and use of drop boxes worked well in elections which she administered in Utah and Colorado. Mr. House said that thus far approximately 70,000 of the 3.5 million Kentucky voters have applied for absentee ballots—fewer than in recent years.

Representative Nemes stated that 70,000 absentee ballot requests seems to be a high number, when compared to pre-COVID years. He requested that the State Board of Elections provide him with the number of absentee ballot requests from 2018 to the present. Ms. Sellers said she would be happy to get that information for Representative Nemes.

Ms. Sellers and Mr. House agreed with Representative Decker when she stated that the excuse terminology for requesting an absentee ballot via the online portal had been written to comply with the Americans with Disabilities Act (ADA). They also agreed with her that the bar codes assigned to absentee ballot requests act as a safeguard against ballot harvesting, which would be a felony according to previous elections enactments.

Responding to questions from Representative Decker, Mr. House stated that the reason the State Board of Elections announced in advance which counties would participate in the RLA pilot program was in order to be transparent about the process. He also confirmed that the Attorney General's audit would take place as scheduled, separate from the RLA. Ms. Morrell pointed out that the RLA is an unofficial audit and will be nonbinding. It is simply a learning exercise, with the potential to eventually become an official auditing method.

When Representative Decker asked whether it would be possible for the counties participating in the RLA to skew the findings in order to have a good result, Ms. Morrell explained how the pseudorandom number generator helps to ensure transparency and legitimacy in the RLA process.

Representative Blanton stated his biggest concern is the possible fraudulent use of mail-in absentee ballots. A clerk in one of the counties he represents told him that over 400 mail-in ballots have been received, which is a high number for a small county. He believes mail-in ballots would be easier to manipulate, and he recommended stringent examination of that voting option. He said everyone should have the opportunity to vote, but it needs to be done safely and fairly.

Representative Gooch said he believes there was definitely fraud in the 2020 presidential election. There were reports in other states that the number of persons voting in some precincts was greater than the number of registered voters. There were also reports that votes by absentee ballot exceeded the number of ballots that were mailed out. Ms. Morrell discussed her personal experience in jurisdictions where she has worked with canvass boards. She said she is not aware of any state or local canvass boards that were able to identify the type of discrepancies mentioned by Representative Gooch.

With no further business, the meeting was adjourned at 2:54 p.m.