

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 6th Meeting of the 2022 Interim

November 10, 2022

Call to Order and Roll Call

The 6th meeting of the Legislative Oversight & Investigations Committee was held on Thursday, November 10, 2022, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jason Nemes, Co-Chair, Senator Danny Carroll, Co-Chair (remote); Senators Morgan McGarvey, Michael J. Nemes, Wil Schroder, Brandon Storm, and Max Wise; Representatives John Blanton, Ken Fleming, Steve Riley, Scott Sharp, and Lyn Bechler, Vice-Chair.

Guests: Steve Shannon, Executive Director, Association of Regional Programs, Inc.; Rebecca A. Norton, Executive Director, Kentucky Justice and Public Safety Cabinet, Office of Financial Management Services; Michael G. Adams, Secretary of State; Jennifer Scutchfield, Assistant Secretary of State; Karen Sellers, Executive Director, Kentucky State Board of Elections; Richard House, Assistant Executive Director, Kentucky State Board of Elections; Taylor Brown, General Counsel, Kentucky State Board of Elections; and Jason Denny, President, Kentucky County Clerk's Association.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts Chris Hall, Joel Thomas, Ryan Brown, Taylor Johnston, Jeremy Skinner, Shane Stevens, William Spears, McKenzie Ballard; Jacob Blevins, and Jennifer Luttrell, Committee Assistant.

Minutes for October 13, 2022

Upon motion by Senator Nemes and a second by Representative Sharp, the October 13, 2022, meeting minutes were approved without objection.

Co-Chair Nemes announced that, in addition to its statutory obligations, the committee is looking into: 1) K-12 selection of textbooks and instructional materials, 2) procurement processes related to asphalt contracts, 3) processes regarding the emergency removal of children from their parents, and 4) recent incidents at the Jefferson Regional Juvenile Detention Center and other juvenile detention centers.

Staff Report: Kentucky Child Fatality And Near Fatality External Review Panel (2022 Update)

Committee Analysts Jeremy Skinner and Jacob Blevins presented the staff report “Kentucky Child Fatality And Near Fatality External Review Panel 2022 Update,” which provided a background of the panel and discussed the methods, findings, and recommendations of the report. Staff’s full presentation is available on the Legislative Oversight and Investigations Committee Webpage.

Co-Chair Nemes noted that last year’s review of the panel was rather alarming and led to legislation being passed (SB 97/2022 Regular Session), which addressed many of the identified concerns. He asked whether those problems had now been fixed one year later. Mr. Skinner responded that most of the problems identified in the 2021 report had either been addressed or are in the process of being addressed. Responding to the same question from Co-Chair Nemes, Mr. Shannon stated that the legislation added needed structure to the panel’s reporting process by requiring agencies to either take action on panel recommendations or to explain why actions were not taken.

Turning to the current study, Mr. Shannon said that the panel has been very responsive to the report and agreed with staff’s findings and recommendations. He noted that operationalizing some recommendations may be difficult. For example, he noted that panel members volunteer their time to meet monthly and that forming workgroups outside of these meetings would be challenging, but the panel will try to figure this out. The panel is also eager to work with the Kentucky Board of Medical Licensure. He stated that the Justice and Public Safety Cabinet will begin providing panel members quarterly updates on budgeting and staffing, since this information is important to panel members. He noted that the panel is working on hiring an epidemiologist to assist in the panel’s analysis of cases. He added that the panel has worked with the Department for Community Based Services to add the use of Naloxone as an indicator of a near fatality and is currently working on a definition of torture.

Co-Chair Nemes asked what things still need to be addressed and what the General Assembly can do to help. Mr. Shannon said that staffing may become a problem as the number of cases increase. He noted that the panel in the past reviewed about 20 cases each quarterly meeting; they now review 20 cases each month. The panel spends about eight to nine minutes on each case, according to Mr. Shannon.

Responding to Co-Chair Nemes’ request to explain to the general public why the panel exists and the importance of the work it does, Mr. Shannon said the panel reviews cases where children have been maltreated, sometime resulting in death, to ascertain why it happened and how such instances can be avoided in the future. For example, Mr. Shannon noted that the panel has brought to light the real dangers of unsafe sleep habits and has brought to the forefront the impact of drug abuse in homes with children.

Upon a motion by Representative Blanton and a second by Representative Sharp the committee report was adopted without objection (roll-call vote).

Committee Testimony (not related to assigned study topics)

State Election Process

Co-Chair Nemes called Secretary of State Michael G. Adams and Assistant Secretary of State Jennifer Scutchfield to the table.

Secretary Adams opened his remarks by stating that the November 2022 election was successful and he thanked the general assembly for its role in fully funding the election, expanding voter access, and further tightening election security. He noted, however, that numerous things put a real strain on Kentucky's election infrastructure, including: 1) county clerk's offices being besieged with labor-intensive open records requests only a few short months before the November 2022 election, which he believed were strategically aimed at disrupting preparations for the general election; 2) law suits filed by candidates who had lost the primary election by a wide margin; and 3) nine county clerks who quit prior to their terms expiring. Secretary Adams continued by stating despite their attempts, the malefactors who spread misinformation were debunked by election officials and rebuked by voters; adding that high voter turnout is a reflection of the people's confidence in our election laws and officials.

Turning to a discussion about what can be learned from the November 2022 general election, Secretary Adams stated that early voting works and does not appear to be a partisan issue, with more than 250,000 voters taking advantage of this option in relative proportion to the partisan affiliation of Kentucky voters. He said that early voting works, but also noted that it did not seem to have reduced long lines on election day, with more than four times as many voters voting than those who voted during the three early voting days combined. However, he mentioned that the voter lines would have been much longer had it not been for the three days of early voting. He concluded that in order to reduce lines, the state needs more voting locations, not more voting days. He said this can be accomplished by either granting counties the flexibility to consolidate voting locations with approval by the Governor and Secretary of State or by passing a statutory formula for determining the minimum number of voting locations needed per county. He mentioned that he is neutral regarding which approach is used to reduce long lines. Finally, he stated that recount abuse must stop, which may include addressing a loophole in the newly passed recount law, in order to prevent frivolous lawsuits.

Secretary Adams concluded his opening remarks by stating that none of the losing candidates in Kentucky's November 2022 general election are falsely alleging suppression, nor are voters calling into question the security of Kentucky's election process. He believes this reflects citizen's confidence in our voting system.

While Karen Sellers, executive director, Richard House, assistant executive director, and Taylor Brown, general counsel of the state board of elections approached the testimony table, Co-Chair Nemes played a video showing a long line of people, including elderly people in wheelchairs, waiting to vote at South Oldham County Middle School. He commented that such lines are completely unacceptable and effectively amounts to voter suppression. He added that long lines caused voters to leave and noted that he and the Speaker of the House contacted the Secretary of State's office before the election and asked them to reject Oldham County's plan. He stated that the secretary took the plan before the state board of elections and they did not reject the plan.

Responding to Co-Chair Nemes' question about how to ensure such suppression does not happen again, Ms. Sellers said that her office had reached out to all 120 counties to ensure that clerks were prepared for higher turnout, but that all plans were approved.

She said that the lines that had unexpectedly occurred would be taken into account in future plans. Mr. House added that the state board of elections would be working with county clerk offices to review the plans again and to search for ways to implement better training for poll workers to better manage larger voter groups.

When asked by Representative Fleming why no state board of elections members were present at the meeting, Ms. Sellers said that she did not realize the committee wanted board members to attend, but could have invited one. Representative Fleming then asked why the board had rejected requests by elected officials to increase the number of voting locations, to which Mr. Brown responded that the board's default position was to rely on county clerks' knowledge of their local needs and available resources. He said that because county clerks have had such a difficult time recruiting poll workers, many took the chance to consolidate polling locations when given the opportunity.

Asked by Co-Chair Nemes whether the state board of elections had rejected any county plan, Mr. House said some plans had been sent back for revisions, but all plans were eventually approved.

Representative Fleming asked what factors the board considered when determining whether a county's plan needs more voting locations. Mr. House said that the board looks at the geographic location of voting centers and uses the figure of 4,200 voters per day at each polling location as a baseline for judging the adequacy of each county's plan. Co-Chair Nemes commented that Oldham County has 59,000 registered voters and had 5 voting locations, which puts the number of voters at all locations "triple" the estimated number of total voters, when using the 4,200 vote number. He noted that this cannot be explained away by saying it is a new process, because the same thing happened in the primary elections, which was brought to the board's attention.

Representative Blanton stated that the video was very shocking and wondered how many people did not vote because of the longer lines. He mentioned several problems that he felt must be addressed, including increased pay for poll workers, the need to enforce the 100 foot rule when voting machines are used, and cracking down on potential voter fraud, with respect to voters taking photos of their election ballot, as well as cultural acceptance of such behavior. He further noted that the length of ballots containing the full language of an amendment played a role in long lines at voting centers.

Representative Riley asked Co-Chair Nemes what time the last person at the Oldham County site shown in the video had voted. Co-Chair Nemes said that he did not know, but noted that police had shut down the parking lot because there were no available spots. Representative Fleming commented that the last voter voted around 7:20pm.

Mr. House responded to Senator Wise's question about whether the lengthy ballot had caused problems. More specifically, he said this was the first time Kentucky has ever had such a large ballot, which contributed to the long lines. He stated that his office is in contact with vendors to ensure ballot-reading machines are able to accommodate larger ballots in the future. He noted that they are encouraging on-demand ballot printing rather than pre-printed ballots, which should reduce problems related to ballot length.

In addition to accessibility and integrity, Representative Fleming stated that reporting quickly and accurately is paramount and he believes that the state board of

elections had moved backwards on this issue, by moving the system in-house. He added that a better job has to be done on reporting, and that the committee will be requesting a report over the next couple of months in terms of what will be done to correct these issues. Mr. Brown noted that Kentucky had moved everything in-house after the 2020 election to improve election integrity and that the November 2022 general election was the first time this new system had been used. He said he did not know of any domestic provider that would be better than their in-house operation. He said that ultimately what mattered are the numbers certified by the county clerks to the Secretary of State and then to the state board of elections, which then issues the certificates of nomination. Co-Chair Nemes agreed that final certification is important, but that results should be reported timely and accurately as well.

Co-Chair Nemes said that inaccurate numbers presented on television were an issue and needed to be avoided because it results in conspiracy theories. Mr. Brown said that the numbers presented on television are not always those from the state system, but from other media outlets that employ what is known as “stringers” or “runners.” Speed is valued, but integrity of numbers is more valued, according to Mr. Brown.

Co-Chair Nemes asked why the election certification process could not be transferred to the Secretary of State’s Office so that voters are able to hold them accountable. Mr. Brown said that making that move would require increased funding for IT staff and other resources.

Senator Nemes said that he did not believe the argument that counties are having difficulty hiring poll workers because, prior to the option to consolidate voting localities, counties had enough poll workers to staff more locations. He continued by saying that he believed giving voters the option to vote at any polling station in their district was a good idea. Mr. Brown said that well-funded counties, such as Jefferson, did not have the same problem with pay that other counties experienced. For example, Jefferson is able to pay poll workers up to \$300 per day. Ms. Sellers added that each county party chair provides county clerks with the names of potential poll workers. She noted that during the past two elections, the number of people on these lists was insufficient to adequately staff polling locations. So, county clerk’s offices were left to find additional workers to meet staffing needs. She added that poll worker pay is one of the more important issues each county is experiencing. Co-Chair Nemes stated that he will have some written follow-up questions related to the discussion.

Representative Bechler stated that long lines have always been a problem ever since he has been able to vote; so, it is not a new problem. Referencing Ms. Seller’s point about county party chairs submitting poll worker names, he noted that not all counties have two parties in place, which is something that should be considered moving forward.

Trey Grayson, Legislative Agent for the Kentucky County Clerk’s Association, and Jason Denny introduced themselves. Mr. Denny stated that many of the problems discussed today are tied to funding and staffing. He noted that many counties have to rely on revenue generated from motor vehicle registration and deed recordings to staff their offices. He noted that other problems that need to be addressed include the length of the ballot, the text

of amendments, and voters' use of phones in polling places. He emphasized that the accuracy of the vote count is more important than the speed of the vote count.

Co-Chair Nemes stated that the speed of the count is also important to protect the integrity of the vote.

Mr. Denny stated that funding is the primary issue at the county clerk offices as well as the ability to hire poll workers. Deed recording and motor vehicle revenue allows some counties to better afford additional poll workers and other staff. He stated that the length of the ballot was problematic, which they had never seen before. The vendor did not realize until late, that different paper stock had to be ordered so one piece of paper can be used. The complexity of the ballot and resulting confusion caused voters to take longer than five minutes each to vote. In addition, he stated that the 100 foot rule should be consistent across the state, whether voters are voting in an early voting center or voting on Election Day. It should apply on every voting method used in the state. Mr. Denny, as the Anderson County Clerk, was challenged by the state board of elections to add one voting location to the Anderson County Plan. He stated the use of phones by voters in the booth is an additional issue that has to be addressed. Co-Chair Nemes stated that although speed is not the most important factor, it is still very important for the integrity of the process.

Mr. Grayson said that election officials probably underestimated the impact of a longer ballot on the length of lines at voting stations as they approved county plans for the November general election. He added that in order to keep voting lines the same length when a long ballot takes twice as long to fill out requires twice as many resources. Moving on to a discussion about early voting, Mr. Grayson noted that the pandemic reshuffled historic voting patterns and that we are starting to see a trend towards more people choosing to vote early. This requires counties to reconsider where they are allocating their limited resources to accommodate this new trend. Mr. Denny said that in states that have had early voting for a longer time, about 50% of voters used early voting.

Representative Blanton suggested considering the recruitment of young people from universities, colleges, and high school to serve as poll workers to increase their engagement in the political process.

In response to Representative Fleming's question about the demographics of typical poll workers, Mr. Denning stated that poll workers are trending towards younger people because of the pandemic. Representative Fleming mentioned they may consider working with businesses and corporations to use their employees to serve as poll workers.

Co-Chair Nemes recognized Representative Bechler for his service to the Commonwealth and congratulated him on his retirement. Representative Bechler acknowledged the Co-Chair's words and posed an additional question to Secretary Adams regarding the security of drop boxes. Secretary Adams generally stated that ballot harvesting is a felony in Kentucky, that drop boxes are under video surveillance, and that only about two percent of Kentucky voters cast absentee ballots. Representative Bechler asked that they give serious consideration to reviewing the security of drop-box voting because he believes it is problematic, given the rise in absentee voting. Secretary Adams made a final comment on the 95% of voters who typically vote at the ballot box.

Co-Chair Nemes adjourned the meeting.

