

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 3rd Meeting of the 2020 Interim

August 27, 2020

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Local Government was held on Thursday, August 27, 2020, at 12:30 PM, in Room SWC 204-205 of the State Fair and Exposition Center in Louisville, Kentucky. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Morgan McGarvey, Robby Mills, Michael J. Nemes, and Johnny Ray Turner; Representatives Danny Bentley, Randy Bridges, George Brown Jr, Jeffery Donohue, Deanna Frazier, Joe Graviss, Cluster Howard, Regina Huff, Kim King, Adam Koenig, Russ A. Meyer, Jerry T. Miller, Brandon Reed, and Ashley Tackett Laferty.

Guests: Ryan Quarles, Commissioner of Agriculture; Mark Iverson, Bowling Green Municipal Utilities; Gary Larimore, Kentucky Rural Water Association; Mike Gunn, Fulton City Manager; Bryanna Carroll and Nancy Yelton, Kentucky League of Cities; Kenneth Imes, Calloway County Judge/Executive; and Shellie Hampton, Kentucky Association of Counties.

LRC Staff: Mark Mitchell, Joe Pinczewski-Lee, and Cheryl Walters.

Approval of Minutes

Upon the motion of Representative Reed, seconded by Senator Nemes, the minutes from the July 28, 2020 meeting were approved.

Governor's Executive Order 2020-323 relating to Utility Cutoffs

Mark Iverson, General Manager of Bowling Green Municipal Utilities (BGMU), told the Committee that he appreciated the opportunity to discuss the impact of the moratorium on utility disconnects and late fees as directed through the Governor's May 8th executive order. BGMU is a city-owned, not-for-profit utility serving the citizens, businesses and institutions of Bowling Green with electric, water, sewer and fiber-optic communication services.

As it relates to the disconnection of utility services, there are two opposing and unenviable options. The first is to allow for disconnections for non-payment to happen, with the concern that financial strain or household displacement for vulnerable persons may occur in the midst of the pandemic. The second is to suspend disconnections and let the balances accumulate to an unmanageable position for those same, targeted customers. At some point in time, there is a tipping point where one of the two bad options out-weighs the other, and we are at or near that point.

The May 8th executive order states that the suspension of disconnects and assessment of late fees will continue until the lifting of the emergency order. No one knows when the order may be lifted. The pandemic may last through the spring of 2021, and there may be customers who have accumulated a year's worth of unpaid utility bills.

Pre-COVID, the March balance of past due balances ran around \$150K to \$200K. Each month, April thru July, BGMU experienced a pay down followed by a peak towards month end ranging from an April peak of \$584K to a July peak of \$700K. Since July 31st, there has been a rapid escalation of total past due balances to \$921K as of Monday morning. That is four times the August balance in 2019 in amount and twice the number of accounts past due. There is a wide misunderstanding about the suspension of disconnection from the customers. There are many who feel that these balances are going to be written off and they will not be responsible to pay. Other utility managers have heard the same thing. Not all of these past due accounts are customers under financial strain. There are customers who are gaming the order. For example, there is an apartment complex where the property manager keeps each unit's utility services in its name, not the tenant's. They collect the utility amounts used from each tenant, but the manager has not paid BGMU since March. Their total past due balance is \$108,000. When asked about their balance, their response is they have the dollars, but since it doesn't cost them anything in late fees and BGMU cannot disconnect for non-payment, they are holding on to it. There are just under 800 residential accounts that are 90 days or more past due; the average amount is \$568. At that pace, they could be facing a balance of \$1,000 by year's end.

This growing balance of past due accounts is not good for customers. Some customers need structure; they wait until something becomes chronic, like a cut-off notice, before they react. Without the pressure of payment and disconnection, they are not seeking help from the many sources available to assist, like LIHEAP and TVA's Assistance Fund. BGMU has seen about one-half of the volume of vouchers from the LIHEAP program, and most of TVA's Assistance Fund remains untapped.

Other states are not necessarily mandating the suspension of disconnection. Twenty-six states never did mandate the suspension of disconnection. As of April 2, 14 state mandates will have expired, leaving only ten states with disconnection mandates. Of those ten, only four, including Kentucky, have orders that expire at the end of the declared emergency or until further notice. Contrasting the administration's approach, TVA,

BGMU's regulator, allowed its local utility boards to make decisions as to how best to respond to their communities, including decisions on cut-offs and late fees.

A TVA study indicated that about 70 percent of the distribution power companies returned to a normal disconnection policy by June's end. Two companies had territory in both Kentucky and Tennessee. The customers in Tennessee did not experience household displacement, and both companies worked with customers to make payments, or the customers paid the balance in full.

No business, utility, or government can sustain itself without collecting the revenues and funding needed to operate and pay obligations. Interestingly, the state is still pursuing and assessing businesses that owe taxes, and assessing late filing penalties as well. BGMU respectfully asks to set aside the order and let local utility boards and staff manage the situation. If the administration cannot see a need to lift the order now, then the following suggested modifications should be considered. Establishing a final end date, an end date that is sooner rather than later, would be a vast improvement. The administration could rework the order to only apply to residential accounts and let utilities return to disconnection and late fee assessment for commercial accounts. One other modification might be to let utilities return to assessing late fees. This would change the calculus for those that are gaming the order. Lastly, allocate and release sufficient CARES Act funds to local governments to apply to past due qualifying customer accounts.

In response to a question from Representative Brown, Mr. Iverson stated that Kentucky utility customers are at a tipping point: that of having the strain of having to pay utility bills immediately, or the added strain of having to pay deferred bills later. Assistance is available but is being underused in regards to the impact from disconnects. Representative Brown commented that he was concerned about people not being able to make payments and advocated for compassion in dealing with those people.

Representative Graviss noted that efforts were underway to assisting citizens and utility companies to get through the pandemic, urging people to reach out to federal congressional members to fund the huge needs of the state and local governments.

Representative Howard commented that there are people who do not intend to pay. Mr. Iverson agreed.

In response to a question from Senator Mills, Mr. Iverson replied that disconnections and late fee issues are happening all over the state.

Ms. Bryanna Carroll, Director of Governmental Affairs with the Kentucky League of Cities (KLC), told the Committee that the COVID-19 pandemic created several challenges for cities. The financial strain currently facing municipal utilities may be one of

the most impactful. Nearly half of all Kentucky cities own at least one utility. Cities spend billions on their operation. \$2.3 billion was spent in FY 2018.

These utilities function on razor-thin margins. They are very capital-intensive, requiring a lot of funding for construction, maintenance and upkeep. In addition to providing vital services such as gas, electric, water and sanitation, these utilities also provide jobs. Municipal water utilities are responsible for roughly 1,600 full-time jobs and more than \$89 million in wages. Municipal wastewater systems employ nearly 900 people full-time and provide more than \$87 million in salaries. Several cities also provide gas and electric, generating a combined \$374 million in sales, and cities are responsible for around \$92 million in solid waste collection and disposal.

The Governor's May 8th executive order, in part, directs all utilities to cease cutoffs for nonpayment and mandates waiving of all late fees for the duration of Kentucky's state of emergency which began on March 6 and is still in effect. Nearly half of all utilities have suspended notifying delinquent customers of their past-due amounts during this public health emergency, and municipal utilities are working with customers to try and identify ways to keep up with their accumulating balances. However, the fact remains that many people are now facing a growing debt that they will struggle to pay, and utilities are facing a financial crisis that threatens their ability to operate.

A KLC survey conducted in conjunction with the Kentucky Municipal Utilities Association (KMUA) and the Kentucky Rural Water Association (KRWA) shows the prolonged abatement of on-time payments is having a significant impact on the operation of these utilities. The number of people not paying their bill is up significantly. Delinquent accounts increased 30% in the past year. From June 2019 to June 2020, the total amounts in arrears increased 34%. The average late payment penalties in June alone was more than \$14,000 per utility. Two-thirds of utilities surveyed reported that the current moratorium on on-time payments is having a negative impact on their operation, with 25% saying it has had an extremely negative effect. These systems have already slashed budgets, delayed capital projects, and have frozen hiring. A majority say they will have to take even more drastic steps, including pay freezes, furloughs and layoffs, if the executive order extends into the next year.

At minimum, municipal utilities need a modification to the Governor's executive order with collaboration on what can be reasonably be done to address the needs of people impacted by the pandemic while also recognizing the revenue reality local utilities face. Many utility operators say they are concerned that some customers falsely believe their bill has been forgiven, instead of delayed, and the misunderstanding has created the potential for abuse by people who simply don't want to pay what they owe. There are also very real revenue concerns in the local communities, due to the pandemic and the financial impact of the forced shutdown. Without additional funds to address these shortfalls, local governments are not in a position to shore up large losses in local utilities.

In closing, Ms. Carroll noted several responses to KLC's survey. The City of Hardin reported it will have to borrow money in order to continue operating if the executive order is extended. The City of Marion warned that the continued practice of delaying payment will only lead to a backlog of customers unable to ever catch up. The City of Caneyville stated that it has no more room to lay off any employees if it is to continue operating. The City of Crab Orchard summed it up by saying that it cannot survive the rest of this year without being able to force customers to pay their bills.

Mr. Mike Gunn, Fulton City Manager, stated that this issue is real, and it is happening where the rubber meets the road—on the cities' streets. The City of Fulton runs a small water, sewer and natural gas utility for 1,724 accounts. The annual billed revenue for the utility is \$2.6 million. The city is currently running at a nine percent delinquency rate on utility accounts. Before the COVID pandemic, the city was running at a two percent delinquency rate. Total unpaid utility accounts dollars are presently around \$60,000. The city also, on average, makes about 18 percent of its revenue on late fees paid after the tenth of the month and then disconnect/reconnect fees on the 20th of the month.

During the pandemic, the city has not been charging late fees or disconnection and reconnection fees, as it has been following the executive order. Natural gas season is just around the corner for the city. Its natural gas sales on average are \$775,000 annually. If the city applies its current delinquency rate and lost revenue from late fees to just that natural gas number alone, it is devastating to the budget. The city's utility fund budget was already strained due to repairs to an aging infrastructure. In 2018, the city borrowed five million dollars on a 20 year bond to upgrade sewer and wastewater infrastructure, because the city was found to be in violation of its state issued permit.

A fact that is not unique to the City of Fulton alone is it has a high percentage of the population living in a rental property. In the City of Fulton, 63 percent of the community live in such a structure and therefore at the end of this pandemic, could simply leave, leaving unpaid utility balances. The city's bad debit write off annually is approximately 0.5 percent to one percent pre-COVID. That number could easily change when the city goes into or through a gas season with no disconnection allowed.

Mr. Gary Larimore, Executive Director of the Kentucky Rural Water Association (KRWA), told the Committee that KRWA joined with KLC and the Kentucky Municipal Utilities Association (KMUA) on the COVID-19 utilities survey mainly because they were getting a number of calls from their membership, which is mainly made up of cities of under 10,000 in population. Those cities were concerned, not only about the financial stability of their utilities, but also of their customers' financial stability. Most of KRWA's utilities are small in nature and have a personal relationship with their customers. They

understand their plight, and are willing and wanting to help them out any way they can, and have been doing so on a regular basis.

In addition to the Governor's Executive Order, the Public Service Commission (PSC) issued an order on March 16 to those utilities under the PSC. The KRWA will be asking the Governor to consider ending this moratorium because it is concerned that the longer it goes on, the worse it is going to be. The KRWA is concerned about a sector of its customers that might not ever be able to pay out the debt they are accumulating. The KRWA is also concerned about a sector of customers that they believe are gaming the system.

In response to a question from Representative Bentley, Ms. Carroll said KLC did not at present have the estimated delinquency costs statewide for cities with populations under 3,000, but that she would research that and provide Representative Bentley with that information.

State Agriculture Commissioner Ryan Quarles was recognized by the Chair and welcomed the Committee to the State Fair and told them about the different events being held.

Conservatorship for Abandoned Properties

Senator Robby Mills, sponsor of SB 225, which was filed in the 2020 Session, explained that communities of all sizes are dealing with a growing problem—blighted and abandoned properties. From homes to businesses and former industrial sites, these locations are often more than a nuisance. They can attract crime, bring down property values and create a fire hazard. How to approach the problem and finding the best way to rehabilitate these properties is an ongoing struggle.

Senate Bill 225 aimed to help communities deal with this problem. The bill permitted the court to appoint a conservator to bring blighted, abandoned and deteriorated buildings that have been vacant for at least one year into local government code compliance. The bill sets guidelines to help the court determine if a building is abandoned and blighted, and it makes local governments responsible for developing a plan for rehabilitation and identification of potential funding. The goal is to give local governments another option to ensure the financial and aesthetic value of the community.

Ms. Bryanna Carroll, Director of Governmental Affairs with the Kentucky League of Cities (KLC), stated that city leaders will say that one of the hardest things they deal with is blighted and vacant properties. KLC recently conducted a City Census, and this issue is one of the topics that was addressed. The survey found that almost all Kentucky cities have some type of abandoned or blighted property they are dealing with, and that within the past two years around half have taken local action. However, the problem grows as a city grows.

While cities have a few options to deal with these areas, many cities, especially those with a population below 1,000, which is a majority of cities in Kentucky, are less likely to utilize current methods. Currently, a city can use code enforcement procedures, create a vacant property review commission, levy higher tax rates on blighted properties, or use eminent domain.

The ability to create a conservatorship for blighted and abandoned properties gives cities a new way to address this problem. Twenty-two states have implemented similar legislation, including six of Kentucky's seven contiguous states. Rehabilitation of an abandoned and blighted property benefits a community by providing for productive reuse, reinstatement of taxable property, and increased property values, in addition to the promotion of affordable housing.

Ms. Nancy Yelton, Legislative Counsel for KLC, told the Committee that KLC has worked for some time on developing the provisions of this legislation and held meetings throughout the 2020 Session with various stakeholders. The current proposed legislation is the result of those meetings.

The bill defines an abandoned and blighted property as a residential, commercial, or industrial building that has been continuously vacant for at least one year with repeated code violations. The building must experience at least three of the following conditions:

- The building has not been brought into compliance with housing, building, or nuisance codes;
- The building is unfit for human habitation or use;
- The building is considered a fire risk;
- Due to neglect or lack of maintenance, the building has become a collecting place for trash and debris, or a haven for rodents and other vermin;
- The building could be used for illicit purposes;
- The building is not secure; and
- The condition of the building substantially negatively affects the economic well-being of neighboring residents or businesses.

Some properties are exempt depending upon factors such as recent acquisition or the existence of outstanding liens.

If these criteria are met, a local government could file a petition with the Circuit Court in the county in which the building is located for appointment of a conservator to take possession of and rehabilitate the property with notice provided to all interested parties. The petition must include copies of all code violations, a preliminary plan for rehabilitation to bring the building into compliance with code requirements, cost estimates, anticipated funding sources, and a timeline for completion. The petition must additionally include the person or entity recommended for appointment as conservator, including the qualifications of the person or entity. A conservator must have experience in the rehabilitation of residential, commercial, or industrial buildings and the ability to provide or obtain the necessary financing.

After a petition is filed, the court must hold a hearing and could appoint a conservator if it finds required conditions are met and the owner of the building has not come forward to make repairs. Following appointment, the conservator would develop a final plan for abatement for submission to the court and all interested parties that could include everything from repairs to potential demolition. Any interested party could comment on or request a hearing on the final plan. The conservator must update the court and all interested parties every six months on the status of the project.

After implementation of the final plan, the conservator may petition the court for authority to sell the property. The court may order sale of the property if the conditions that were grounds for the petition have been corrected and the owner has not successfully petitioned the court for termination of the conservatorship. Any sale of the property would be subject to the supervision and approval of the court.

In response to a question from Representative Miller, Ms. Yelton said the legislation does not address the specific problem of a tax lien being bought at the courthouse door and then the deed of the property not being recorded with the county clerk because the property would not be profitable for them to flip. The issue has not come up but she will look into it.

In response to a question from Representative Koenig, Ms. Yelton stated that the main difference between this legislation and abandoned property legislation that is already on the books is that it would bring in more community involvement, bring more properties back on the tax rolls, and contribute to affordable housing.

In response to a question from Representative Brown, Ms. Yelton replied that the legislation would help prevent gentrification from occurring because the petition for conservatorship has to be first filed by a city or a county which are very aware of

gentrification issues. In contrast, if a property goes through foreclosure auction, then anyone can buy it and do with the property as they please. Representative Brown suggested that the bill address displacement concerns. Senator Mills stated that some language may be added to the bill, and that he would be willing to talk to Representative Brown about his concerns. Ms. Yelton noted that the properties subject to conservatorship only need be brought up to building code standards pursuant to the bill's requirements.

Broadband Internet Resources

Ms. Shellie Hampton, Legislative Director for the Kentucky Association of Counties (KACo) told the Committee that as COVID-19 forced a transition to virtual work at all levels of daily lives, it has shed light on the pre-COVID issue of the significant stretches of unserved and underserved broadband access, at varying levels but certainly an issue for most every county. Government was no exception as fiscal courts adapted to virtual meetings to continue to be transparent and still follow CDC and state health and safety protocols. Broadband access has become the 21st century equivalent of the need for access to electricity in the 20th century. More people are teleworking, using non-traditional instruction (NTI) and virtual learning, and virtually attending General Assembly meetings.

While some consider broadband a more rural issue, accessibility can be a challenge no matter where one lives. For example, parts of Boone, Kenton, Scott and Warren Counties do not have internet service.

Among issues brought up in every KACo Listening Session, directly from its members, was the need for broadband accessibility and affordability.

Calloway County Judge/Executive Kenneth Imes stated that adequate internet coverage in Calloway County is spotty—even in the city of Murray. There are problems with FCC census block data. One person with 25 Mbps/3 Mbps connectivity in a census block counts toward declaring the whole census block as having that level of connectivity. Calloway County is applying for a USDA matching grant to improve access.

Internet dependency is increasing whether it be telemedicine or entrepreneurship. The West Kentucky Telephone Cooperative has put up six hotspots around the county. Farm Bureau put a hot spot on their facility in Murray. People are trying to address the deficiency in many ways.

The 2013 General Assembly passed legislation to relieve big telecommunications of having to run the last mile for landline telephone service. In return they would take the savings and apply them to greater cell phone service and broadband expansion to more rural areas. They must be encouraged to be more participatory in the process.

Kentucky Wired was originally billed as a solution to Calloway County’s internet connectivity needs, but after 100 of millions of taxpayer dollars and years later, the county is now finding out that it was just for the middle mile.

As circumstances pushes Kentucky’s citizens more toward online communications, perspectives need to be changed. One of the Kenton County magistrates expressed recently, “we’ve got natural gas, electricity, and water—things we could get in some other way if need be, but there is no other way to get internet service.” The General Assembly is encouraged to help move the issue forward as soon as possible.

Ms. Hampton noted that KACo’s members will be surveyed to get more specific data on their broadband access, as well as working with other stakeholders to come to the legislature with solutions that will include reducing regulatory and statutory hurdles that will allow innovation and more options for access in less populated, and thus less financially lucrative areas of Kentucky’s counties to provide this service. Funding for Representative Pratt’s 2020 HB 362 is on the wish list.

Senator Mills commented that there will multiple bills filed to address the broadband issue.

Representative Bentley commented that there has to be broadband internet for Eastern Kentucky and the rural areas for economic development. Children do not have internet service on their two-hour long bus commutes, in Greenup County for instance, and miss an opportunity to be doing homework. This is a primary concern for rural areas.

Senator Alvarado commented that the use of Medicaid dollars to subsidize internet costs for telehealth purposes is being explored.

There being no further business, the meeting was adjourned at 1:55 p.m.