INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 6th Meeting
of the 2020 Interim

November 17, 2020

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Local Government was held on Tuesday, November 17, 2020, at 9:00 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; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Michael J. Nemes, Damon Thayer, and Johnny Ray Turner; Representatives Danny Bentley, Randy Bridges, George Brown Jr, Jeffery Donohue, Deanna Frazier, Joe Graviss, Cluster Howard, Kim King, Adam Koenig, Jerry T. Miller, Brandon Reed, John Sims Jr, and Ashley Tackett Laferty.

Guests: Madison County Judge/Executive Reagan Taylor, Warren County Attorney Amy Hale Milliken, Jim Henderson, and Shellie Hampton, Kentucky Association of Counties; City of London Mayor Troy Rudder, City of Versailles Mayor Brian Traugott, J.D. Chaney, and Bryanna Carroll, Kentucky League of Cities; Michael Kurtsinger and John Wood, Kentucky Fire Commission.

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

Approval of Minutes

Upon the motion of Representative Miller, seconded by Representative Koenig, the minutes from the October 27, 2020, meeting were approved.

Recognition of Non-Returning Committee Members

Senator Schroder recognized the following Senate members who would not be returning for session: Senators Humphries, Robinson, and Turner. Representative Meredith recognized the following House members who would not be returning for session: Representatives Elkins, Graviss, Howard, Lee, Meyer, Rothenburger, and Sims.

Kentucky Association of Counties' Legislative Platform for the Upcoming 2021 Session of the General Assembly

Mr. Jim Henderson, Executive Director and CEO of the Kentucky Association of Counties (KACo) introduced Madison County Judge/Executive Reagan Taylor, KACo President, and Warren County Attorney, KACo First Vice President.

Judge Taylor told the committee that while it is a short session coming up, there is still help that counties need from the legislature that can only come from a statute change. For the last few months, KACo staff has hosted a listening tour of the Commonwealth to hear from county officials. KACo also polled its members during its annual conference last month, where more than two-thirds of attendees representing 92 counties provided responses. Counties voiced that they are being squeezed to the breaking point, that their hands are tied when it comes to generating the revenue needed to perform all the statutory and constitutional duties required of them, but also that more and more costs are being shifted to them, directly or indirectly, over which they have no control.

Based on the feedback, KACo's board identified its top five legislative priorities for 2021. The board voted transportation funding as its top priority again. In KACo's poll, a majority of the members stated that more than 40 percent of county roads are in need of moderate to significant repair and a quarter of the members said that more than 60 percent of their roads need repair.

Kentucky's road funding consists of several different categories. Counties are given a share of the gas tax category to maintain half of all the roads and a third of the bridges in the state. While the overall road fund has seen some growth, gas tax revenues have declined since a floor on the amount of lost revenue was set in 2015. Many fiscal courts have had to extend the time between road and bridge maintenance schedules due to increased costs and decreased funds. In 2018, counties spent almost $60 million out of their general fund dollars on road and bridges, and this does not include Jefferson or Fayette Counties.

The counties thank Representative Santoro who has sponsored legislation for the last three sessions that would begin to address this need. Fourteen other states have increased their road funds and fees in just the last five years, including the surrounding states of Indiana, Tennessee, Ohio, West Virginia, and Illinois. Representative Santoro's bill included electric vehicles that use the road but do not pay any gas tax. While this will only generate $150,000 in the first year based on last year's bill, it is a forward-looking approach for such a small but growing percentage of all cars on the road today.

Ms. Milliken told the Committee that as COVID-19 has forced an even greater reliance on virtual work, education and healthcare, it has shed light on the pre-COVID issue of the significant stretches of unserved and underserved broadband access, at varying levels but certainly is an issue across the state. While some may consider a lack of broadband a more rural issue, accessibility can be a challenge no matter where one lives. The opposite is also true. Broadband has the power to change lives. Broadband has allowed safe court appearances.

The growth of Kentucky's incarcerated population has far outpaced the state's population growth. Between 2011 and 2019, the state's population grew by two percent. Counties' incarcerated population grew by 31 percent, which means the financial obligation of the state and counties increases. It is well documented that Kentucky has an incarceration problem being driven by addiction and a mental health crisis.

Ms. Milliken noted her county's efforts at minimizing their inmate population, and programs aimed at assisting former inmates toward reintegrating into society, such as a photo I.D. program which is being adopted on a statewide level. There are additional efforts designed to allow inmates to succeed after they are released from jail.

Judge Taylor stated that KACo's final two priorities are intended to seek opportunities to streamline county services, further collaborate with all levels of government, and seek more count revenue flexibility.

Mr. Henderson said that transitioning the sheriff's budget from calendar year to the county fiscal year would be a simple fix to streamline county services and collaborate.

In closing, Judge Taylor stated that counties and the legislature must work together to find solutions for the Commonwealth.

In response to a question from Representative Graviss, Judge Taylor said counties have been promoting their priorities differently by getting all 1,500 members of KACo on board with the priorities and to encourage local officials to reach out to the legislature.

In response to another question from Representative Graviss, Mr. Henderson replied that KACo has been diligent during the interim in regards to Representative Santoro's bill. Results do not happen overnight.

Senator Alvarado commented that the Governor needs to step up especially in terms of infrastructure development. Regarding jails, the state is trying to get Medicaid funding for drug treatment in the jails.

Representative Frazier commented that significant strides have been made in promoting various KACo initiatives.

Kentucky League of Cities' Legislative Platform for the Upcoming 2021 Session of the General Assembly

Mr. J.D. Chaney, Executive Director and CEO of the Kentucky League of Cities (KLC) told the Committee that the League had an ambitious agenda for the 2021 Session. He then introduced City of London Mayor Troy Rudder, KLC President, and City of Versailles Brian Traugott, KLC First Vice President.

Mayor Rudder told the Committee that KLC's agenda follows its principles of advocacy. KLC believes in home rule; seeks adequate, stable, and flexible resources; and promotes economic development.

The success of Kentucky is tied to the success of its local communities, which depend on infrastructure. Cities must have reliable and safe streets and bridges. The issue is funding—cities do not have enough money to take care of vital transportation needs. Over the past five years, 23 states and the District of Columbia faced similar shortfalls, and those states instituted modest gas tax increases. Kentucky has not modified its amount since 2015. Gas tax revenues is the only portion of the Road Fund shared with local governments. City spending on streets and bridges climbed 35 percent FY 2010 to FY2019 while at the same time state and federal road funds dropped 24 percent.

KLC and the Kentucky Association of Counties (KACo) have agreed on a plan to make road funding more equitable. Funds over the FY 2014 high mark of $825 million would be evenly split between the municipal and county road aid programs at 13 percent each. The deal ensures counties and the state do not lose funding, while also providing cities more funds for vital infrastructure.

The need for modernization and diversification of various revenue options is important to cities of all sizes. Only former fourth and fifth class cities, such as the City of London, can currently collect consumption-based restaurant revenue. In the case of London, the revenue exceeded expectations, and brought in even more restaurants because of more recreational opportunities realized from that money. Cities are seeking equal application of this revenue-generating option. Consumption-based restaurant revenue does not increase taxes on businesses because it is paid by consumers who choose to eat in a restaurant. The proposal would eliminate occupational license taxes that restaurant owners currently pay on net profits or gross receipts in communities that elect to collect consumption-based restaurant revenue.

Cities are also seeking the ability to shift local revenue into more of a consumption-based model—instead of the current productivity taxing structure—by permitting a local sales tax. KLC also intends to protect the current crediting of occupational license taxes paid to a city against those owed to its county to ensure residents are not double taxed. KLC opposes any effort to centralize collection of local revenue.

Achieving the modern approaches will require an amendment to Section 181 of the Kentucky Constitution. The 130 year old section impedes the legislature's ability to comprehensively reform local government tax policies, which are heavily reliant on occupational taxes. Cities are looking to the legislature to approve a constitutional amendment that would be on the ballot for voters in the 2022 election.

When companies consider locating in Kentucky, it is the amenities, workforce, and livability of cities that factor heavily into the decision. One economic development tool that cities are advocating for is an increased cap on Kentucky's historic tax credit limit which is currently at $5 million, one of the lowest levels in the country. Increasing the cap to $30 million will help cities restore historic buildings, revitalize communities, create jobs, and improve property values.

Another serious and growing problem in cities is blighted, deteriorated, and vacant properties, which can hurt property values, attract crime and pose a safety risk. KLC research shows that most cities in Kentucky have some blighted properties. Legislation that creates a conservatorship for rehabilitation of qualifying areas will help in the process. Conservatorship would only apply to buildings that have been vacant for a year or more. Rules would be stablished to help courts determine property status, and local governments would develop a plan for rehabilitation and funding of the project. Twenty-two other states have implemented similar legislation, including six of Kentucky's seven contiguous states.

KLC continues to seek modernization of the state's antiquated publication requirement, which costs city taxpayers around $1.4 million a year. In addition to the cost to local taxpayers, mandating that some local governments publish entire documents and notices in a local newspaper limits the ability of a citizen to find the document in one easy location. A publicly owned city website is available to anyone, without the need to buy a newspaper, and it allows documents to be available for a much longer period of time. The legislature passed House Bill 195 during the 2020 Session, but it only pertains to local governments in counties that have a population of 80,000 or more covering 145 cities in nine counties. Smaller communities, which often deal with the most limited budgets, must continue to redirect tax dollars to local newspapers. Newspaper mergers can also affect how much publication costs cities. KLC is not suggesting that local governments be mandated to publish notices on a local website, only that they be given the opportunity to choose what is best for their community and taxpayers.

Mayor Traugott told the Committee that one of the top issues on KLC's agenda was policing procedures. Cities employ around 57 percent of Kentucky's full-time law enforcement officers and handle 74 percent of the state's reported violent crime. Municipalities spend more than $500 million a year in wages and benefits for police services, and support its local public safety officers. KLC urges the legislature to strengthen the state's current decertification law, a KLC initiative passed during the 2019 Session. KLC also supports limiting the use of no-knock warrants. However, KLC will oppose any legislation that eliminates qualified immunity for officers and any bill that limits or hinders the ability of a peace officer to conduct his or her job safely and effectively.

Cities are seeking an amendment to Senate Bill 230, the open records bill passed during the 2019 Session that allows requests to be submitted through email. The measure created some unforeseen issues for city clerks who are being inundated with out-of-state emails. The law could help with numerous out of state requests and attempts to circumvent the discovery process in civil litigations.

KLC continues to support legislation that addresses the criminal aspects of the state's substance abuse issue and those that take a proactive stance on treatment, rehabilitation, training and workforce reentry. KLC is working on a proposal to create a Recovery Ready Communities Program to help ensure cities have the resources to help individuals overcome substance abuse and return to the workforce.

KLC is looking to expand upon the passage of Senate Bill 29 during the 2019 Session, which allowed cities with a population of less than 20,000 to impose a regulatory license fee to help offset the cost of extra policing and regulation that comes with alcohol sales. KLC is advocating for the legislature to level the playing field by making that option available to all municipalities, and to provide amending language for cities in which voters approved an alcohol referendum between July 15, 2014, and July 15, 2017.

KLC is looking for changes to the way the state certifies paramedics and EMTs to improve the hiring of qualified candidates.

Cities seek a change in the reference year in current statute that limits the number of rehired police officers a city may employ, and KLC will pursue a similar program for fire departments.

KLC continues to champion legislation that requires newly elected city officials to receive a one-time, no-cost, three-hour training.

Cities request that a proposed increase in wholesale water rates between municipal utilities and regulated utilities be escrowed during a period of appeal to the Public Service Commission, so taxpayers do not lose out on the potential revenue.

KLC continues to advocate for the safety of its citizens by seeking to limit the policing powers of untrained constables.

To improve efficiencies, city leaders are looking to change how annexation filings are made with the Secretary of State to allow electronic filings.

Municipalities are looking to develop their own physical agility testing program for firefighters.

Home Rule cities want to adopt a 14-day work period of up to 80 hours for city police officers instead of a 40-hour, seven-day work period.

KLC continues to call for legislation that reduces incidents of contractors failing to obtain encroachment permits from the state before doing work along city streets.

Municipalities need a legislative solution for communities that have private ambulance service that is not providing necessary care. Those communities are finding challenges when they file for a certificate of need from the Kentucky Cabinet for Health and Family Services.

Issues with splash parks and pads remain a concern, and KLC will again advocate for legislation that defines how state laws and regulations specifically impact these locations.

KLC is continuing to see local communities deal with defunct homeowner associations and planned-unit developments that do not cover the maintenance of common areas.

KLC is looking to create transportation improvement districts to find new and alternative funding sources for vital projects.

City leaders are urging the legislature to enact measures that block administrative regulations that do not follow proper notification procedures.

KLC is seeking legislation to allow local governments to enact ordinances and regulations that regulate the operation of massage parlors, like most other businesses.

Senator Alvarado commented that he will be filing a bill again that addresses homeowners' associations.

In response to a question from Senator Alvarado, Mr. Chaney explained that cities with defunct homeowners' associations have to use taxpayer money to correct code enforcement problems. It is a burden on cities.

In response to another question from Senator Alvarado, Mr. Chaney said cities would embrace collaboration on dealing with COVID-based policy decisions. There should be more emphasis at the local level to make decisions.

Consideration of Administrative Regulations

The Committee considered referred Administrative Regulations 739 KAR 002:040, survivor benefits for death of a firefighter; and 739 KAR 002:155, Alan "Chip" Terry Professional Development and Wellness Program, promulgated by the Kentucky Fire Commission. Michael Kurtsinger, Legislative Director, represented the Commission and discussed the proposed changes.

There being no further business, the meeting was adjourned at 10:05 a.m.