

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 4th Meeting Of the 2022 Interim

September 27, 2022

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Local Government was held on Tuesday, September 27, 2022, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Robby Mills, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Damon Thayer, and Phillip Wheeler; Representatives Danny Bentley, Josh Bray, Jeffery Donohue, Ken Fleming, Deanna Frazier Gordon, Mary Beth Imes, DJ Johnson, Adam Koenig, Matt Lockett, Mary Lou Marzian, Jerry T. Miller, Brandon Reed, Rachel Roberts, and Walker Thomas.

Guests: Tom Crawford and Cathy Thompson, Department of Revenue; David O'Neill, Fayette County PVA; Kellie Lang, Franklin County PVA; Tabatha Clemons, Grant County Clerk; Jason Denny, Anderson County Clerk; Debbie Donnelly, Hardin County Clerk; Chris Cockrell, Montgomery County Clerk; Trey Grayson, Kentucky County Clerks Association; Mack Bushart, Property Valuation Administrators Association; Calloway County Judge/Executive Kenneth Imes; Stuart Baird, SMI; and Bryanna Carroll, Kentucky League of Cities.

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

Approval of Minutes

Upon the motion of Senator Alvarado, seconded by Representative Lockett, the minutes from the July 19 and August 25, 2022 meetings were approved.

Online Tangible Personal Property Tax Filing System

Mr. Tom Crawford, Director, Division of Local Support, Office of Property Valuation, Department of Revenue (DOR), told the Committee that DOR would implement and manage an online system for tangible personal property returns, recommended by the Property Valuation Administrator task force and envisioned by 2022 SB 232 should it be authorized by the General Assembly.

Ms. Cathy Thompson, Director, Division of State Valuation, Office of Property Valuation, Department of Revenue, stated that DOR, Office of Property Valuation, administers a centralized ad valorem system for processing tangible personal property taxes. The current system developed in 1988 provides the Property Valuation Administrator (PVA) offices the ability to manually enter tangible returns for their respective counties. The tax roll is produced at the state level and sent to the counties to maintain for retention purposes and for producing tax bills.

An on-line filing system for tangible property tax returns would serve to allow taxpayers and taxpayer representatives to file their business personal property tax returns via an on-line portal. The returns filed online would then be available electronically for each county's tax roll program.

There are currently two systems which include the Tangible Property Tax System (TPT), which is used by PVAs, and Omitted Property Tax System (OPT) which is used by DOR. There are more than 101,000 returns manually statewide. Returns filed after the statutory due date are processed in the OPT by DOR. There are more than 10,200 returns processed annually in the OPT system and numerous audits of business personal property. In fiscal year 2021, \$31.7 million was collected with \$17.9 million of that having been distributed to local taxing jurisdictions.

Examples of tangible personal property tax return were shown and discussed via a PowerPoint presentation.

The adoption of an on-line tangible property system in lieu of the centralized mainframe system, will result in increased efficiencies for all parties. The amount of manual data entry would be reduced and it would eliminate duplication efforts. Tax rolls can then be produced efficiently to assist local taxing jurisdictions in setting tax rates, and provide cost savings concerning mailing and processing returns.

Additional benefits of electronic filing include convenience, security, accuracy, and proof of filing. Taxpayers and authorized agents would have the ability to review historic returns and certain information could be already filled out on future returns.

The OPT is used to process omitted personal property taxes and bill for audits. Since a portion of the omitted tangible collections must be distributed to the local jurisdictions, state and local tax rates must be maintained by the system. Of the two systems, the OPT is much more complex.

Ms. Kellie Lang, Franklin County PVA, stated that her office has four full-time employees and two part-time employees. It takes one full-time employee to enter the data, which happens from January through May. Another employee checks the information that

is entered, which is very time consuming. The online tax filing system would greatly benefit the PVAs.

Mr. David O'Neill, Fayette County PVA, said his office has 18 full-time employees and a couple of part-time employees. His office process around 7,500 tangible tax returns each year. He agreed that the on-line tax filing would benefit the PVAs.

In response to a question from Senator Mills, Mr. Crawford stated that there are two components for tax filing at present--the TPT, and OPT. A vendor that frequently works with local officials has been consulted for an estimated price for on on-line tangible property tax system. The vendor has not yet completed their estimate. The back end costs dealing with the OPT are expected to be greater than the front end costs dealing with the TPT. The department will share that estimate when it is received from the vendor.

Update on the Progress of the County Clerks' Recorded Instrument Electronic Filing Portal

Ms. Tabatha Clemons, Grant County Clerk, thanked the members of the General Assembly for passing 2022 SB 135, which modernizes the handling of recorded instruments.

Mr. Jason Denny, Anderson County Clerk, told the Committee that SB 135 requires that county fiscal courts establish a separate account into which clerks will transfer \$10 fees that are collected until the county clerk seeks payment for expenditures relating to recorded instruments. The payments are to be made by the county upon presentation of an invoice to the county treasurer without fiscal court approval.

The Auditor's Office provided guidance to the clerks about how they planned to audit the \$10 separate fee accounts. The office opined that fiscal court approval was not needed before payment. The clerk need only present an invoice to the county treasurer for the treasurer to pay the invoice. While a clerk and fiscal court could jointly decide to use a purchase order system, if desired, the clerk is not required to use one according to guidance from the Auditor's office. In addition, the office confirmed that recurring payments do not need to be on the fiscal court's standing orders, because the fiscal court itself doesn't play a role in the approval or disapproval of payments from the account.

The Auditor's Office confirmed that they will only audit fiscal courts with regard to the \$10 fee separate accounts for the following reasons: if the payment was made to the vendor in a timely manner after the clerk presents the invoice to the treasurer; if the account had all of the \$10 fees properly deposited into it and contained no other deposits; and if expenditures were made in the appropriate amounts based upon valid receipts. The clerks will be audited separately to ascertain if the expenditures themselves were appropriate.

The auditor's guidance came after the Department for Local Government (DLG) issued guidance calling for fiscal court approval before any payments could be made from the \$10 fee separate account. DLG's incorrect guidance continues to create confusion despite the clear language of SB 135.

Despite this confusion, in most counties, the new treatment of the \$10 fee is being implemented as envisioned in the bill.

However, some county treasurers have refused to establish a separate account to hold the \$10 fee saying that the fees should stay with the county clerks.

Other concerns exist, also. In western Kentucky, a county treasurer has refused to pay any invoices unless the county clerk asks for payment at a fiscal court meeting. Another fiscal court reduced that clerk's budget by the yearly estimated amount of \$10 fees collected.

County clerks would appreciate any help to ensure that SB 135 is implemented correctly in all counties.

Mr. Chris Cockrell, Montgomery County Clerk, stated that there are concerns with the Kentucky Department of Libraries and Archives' (KDLA) grant process. While communication between KDLA and clerks about deadlines and upcoming grant opportunities has improved, KDLA staff are still too often nitpicking grant applications and updating policies without informing clerks, as opposed to providing assistance to ensure that applications can be approved and the money can be used as intended.

KDLA is also turning down qualified applications. Staff refuse invitations to attend the association's monthly in-person trainings because they generally are working from home. Ms. Debbie Donnelly, Hardin County Clerk, was told that she was not eligible to receive funding to help with converting digital images to microfilm for permanent storage.

Ms. Donnelly noted that when she applied for the grant, she was told that it had to be for converting files for 2014 and earlier. She needed funding for converting recent filings, so she will reapply.

Mr. Cockrell said Mr. Denny was able to get funding for microfilm conversion after two application cycles. Another county was told that it could not use KDLA funding to pay for digitization because that was modernization, not historic preservation.

Clerks serving on the grant approval committee, who forfeit their ability to secure grants for their offices to serve the Commonwealth, are given a handpicked list of grants to review. KDLA staff have already selected the grants that they want awarded.

KDLA is preparing to issue its latest grant funding application. The clerks hope that some of these issues will be resolved.

In light of the state librarian's pending retirement, the clerks' hope that the state librarian's successor will be chosen from duly qualified candidates.

Ms. Clemons stated that counties are moving towards meeting the first SB 135 deadline to offer a portal for filing recorded instruments electronically by June 30, 2023. Approximately 56 counties currently offer such a portal. Around 115 counties are under contracts with vendors to offer one. Since 2020, over 60,000 documents have been electronically recorded in counties that accept electronic filing. Those clerks with portals, as well as the vendors, are using their acquired knowledge base to assist counties with problems.

The appropriation in the recently approved budget for financial assistance becomes effective the day after the June 30, 2023 deadline. The clerks request that deadline be pushed back by six months so that the counties needing extra assistance beyond the \$10 fee and KDLA money—especially the small counties—can access that money to be able to meet the requirement. A six-month delay for the first deadline should be all that is required.

Ms. Donnelly has identified a few minor clean-up changes that need to be made. The clerks will work with the business stakeholders and legislators to make these changes.

The clerks are concerned that the vendors will be overwhelmed in the rush of all the counties to convert millions of documents. It is hoped that the financial designations and protocols associated with the bill will address the issue, but only if the money is actually unlocked. It is important for fiscal courts and KDLA to follow the letter and spirit of SB 135 as has been outlined.

In response to a question from Representative Meredith, Ms. Clemons replied that the status of the five remaining counties that do not have contracts with vendors is unknown, however the clerks are aware of the deadlines and are, perhaps, concerned about making the changes, and getting funding. Vendors and other clerks are making efforts to assist them in meeting the deadlines.

In response to a question from Senator Mills, Ms. Clemons answered that for each document filed in the clerk's office, \$1 is paid to the clerk and transferred to the KDLA fund for the grant program. Regarding the difficulties with the grant payouts discussed earlier, conversations have been taking place, and communication has improved.

Senator Mills announced that the next meeting of the Committee would be October 25th.

There being no further business, the meeting was adjourned at 10:40 a.m.