

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes of the 2nd Meeting of the 2020 Interim

July 23, 2020

Call to Order and Roll Call

The 2nd meeting of the Program Review and Investigations Committee was held on Thursday, July 23, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Lynn Bechler, Chair, called the meeting to order, and the secretary called the roll. Representative Bechler welcomed Senator Berg to the committee.

Present were:

Members: Senator Danny Carroll, Co-chair; Representative Lynn Bechler, Co-chair; Senators Karen Berg, Tom Buford, Michael J. Nemes, Reginald Thomas, Whitney Westerfield, and Phillip Wheeler; Representatives Chris Fugate, Al Gentry, Steve Riley, Rob Rothenburger, and Walker Thomas.

Guests: Larry Roberts, Secretary, Labor Cabinet; Amy Cabbage, General Counsel, Labor Cabinet; and Josh Benton, Deputy Secretary, Education and Workforce Development Cabinet.

LRC Staff: Greg Hager, Committee Staff Administrator; William Spears; Joel Thomas; and Elizabeth Hardy, Committee Assistant.

Minutes for June 11, 2020

Upon motion by Representative Rothenberger and second by Senator Nemes, minutes for the June 11, 2020 meeting were approved without objection.

Update on Unemployment Insurance

Representative Bechler said that he will start swearing in witnesses at Program Review meetings unless there is an objection. Without objection, he administered the oath to Mr. Benton, Ms. Cabbage, and Mr. Roberts. All affirmed that they would tell the truth.

Mr. Benton, Ms. Cabbage, and Mr. Roberts presented an update on unemployment insurance. Mr. Benton gave an overview of the unemployment insurance program in Kentucky. Because of the formula used for federal funds, Kentucky's very low

unemployment rate prior to the pandemic resulted in reduced federal funding. This led to reductions in staffing and a lack of resources to update technology. Kentucky unemployment insurance technology is outdated. The RFP process for a new system had begun when the pandemic began. Mr. Benton described the process for an unemployment insurance claim. There are 27 variables that can potentially stop, delay, or disqualify a claim. Prior to COVID-19, there was one traditional unemployment insurance program. After COVID-19, eligibility for and duration of unemployment insurance programs was expanded by Kentucky executive orders and the federal CARES Act. Programs created in the Act are funded entirely by the federal government. The number of claims increased exponentially starting in the week ending in March 14. There were more than 100,000 claims per week in 4 weeks. The US Department of Labor waived the waiting week and provided guidance after the Families First Coronavirus Response Act passed. From March 8 to July 11, more than 1 million new claims were filed. A claim does not equal a person; several duplicative claims have been filed. An estimated 600,000 to 650,000 people have filed claims. During this time, approximately 77 percent of eligible new claims have been paid. More than 11 million phone calls were received and more than \$3.2 billion of unemployment insurance funds were distributed.

Mr. Benton summarized the history and status of the Kentucky unemployment insurance trust fund and federal additions to the fund. Kentucky's trust fund was on its way to becoming solvent, but the influx of claims due to the pandemic depleted it.

In response to questions from Senator Carroll, Mr. Benton indicated that he could provide a breakdown of funding from the Kentucky trust fund and the CARES Act. CARES Act funding was specifically for unemployment insurance benefits, but some funding could cover administrative costs.

Continuing the presentation, Mr. Roberts stated that it was recognized in May that the Kentucky trust fund would be depleted by June. Kentucky applied for a federal unemployment insurance loan on June 10 and began receiving advances on the loan: \$215 million in June and \$325 million in July. The state will receive an advance of \$325 million in August. The Kentucky trust fund's balance is \$0 and the balance of the federal unemployment insurance trust fund drawdown is \$102 billion as of July 20. Projected drawdowns are \$425 million by September and \$650 million by December. Mr. Roberts described challenges that unemployment insurance inherited and obstacles that arose during the pandemic. The lack of staff in career centers is why there were no in-person services. The Frankfort office provided in-person services for 5 days starting June 15. In-person services were also provided at pop-up centers in six cities. The Frankfort office now provides in-person services Monday through Friday. Approximately 10,000 people have been helped. There are not enough staff to address all of the claims, which is why the state is now using an outside vendor.

Concluding the presentation, Ms. Cabbage described the Ernst & Young contract, which began July 01. Prior to the contract, approximately 50,000 to 60,000 claims were unprocessed. The 300 contracted Ernst & Young processors have processed approximately 39,000 claims. Adjudicators in state government need to give final approval. Ernst & Young was chosen because it had experience processing unemployment insurance in two states. It reduced the backlog so unemployment insurance staff could provide in-person services.

Representative Bechler asked Mr. Benton to discuss the data breach, what it was, and why there was a delay in reporting it. Benton responded that the Office of Inspector General of the Transportation Cabinet is investigating the incident. On April 23, a phone vendor reported that a claimant had called to say that the claimant could see someone else's documents in their file, including information identifying the other person. The claimant was called and told that this was being investigated. The IT department created a temporary fix by noon and a permanent fix by the end of the day. In the days after April 23, the office received calls from more claimants who said that they were able to see other claimants' personal identification documents prior to April 23. The Office of Inspector General is investigating what occurred after that. Errors were made in the first 72 hours of the incident and the process to notify the attorney general and state auditor was not followed. The legal team and the IT department followed up with claimants affected by the issue. In May, claimants with a security risk were notified. There is no evidence of malicious intent or external penetration of the system; it seems to be system glitch. Mr. Benton expects the Office of Inspector General's report to cover the reasons for the breakdown of reporting in the first 72 hours.

In response to a question from Representative Bechler about when the attorney general and auditor were informed, Mr. Benton said that he could not recall an exact date. The attorney general and auditor contacted the lieutenant governor in May because they had heard of a potential breach. He and others in the office had assumed the defined process and policy were being followed by the IT security and legal teams. Ms. Cabbage said the attorney general and auditor were informed on May 23, which was within 24 hours of the discovery of the misinterpretation of reporting obligation. Education and Workforce Development and the Office of Unemployment insurance have been cooperating with the attorney general and auditor. To date, there is no evidence of financial harm to claimants. New procedures are in place to prevent a reoccurrence.

Representative Bechler asked if the attorney general initiated contact and Mr. Benton said that this was his understanding.

Representative Bechler asked why the responsibility for unemployment insurance was changed from Education and Workforce Development to Labor. Mr. Benton stated there was discussion before the pandemic about organizational change. The governor had made statements that the Office of Unemployment Insurance needed a change in leadership

and be in the Labor Cabinet. Mr. Roberts confirmed there was discussion during the transition period of moving unemployment insurance to the Labor Cabinet, which has experience in handling worker issues. Ms. Cabbage said at the federal level the Department of Labor oversees unemployment insurance.

In response to questions from Representative Bechler regarding the RFP for the technology update, Mr. Benton responded that the deadline to respond to the RFP was extended because of COVID-19 at vendors' requests. They are in the question and answer phase. Mr. Benton estimated that 10 vendors have responded. Mr. Roberts said the original date for a response was August 06. Mr. Benton said the date for a response has been extended to September.

Representative Bechler asked about the percentage of ineligible claims pre- and post-COVID-19. Mr. Benton indicated the best measure is the number of appeals since every claimant has appeal rights. He would get the number. Representative Bechler asked whether Mr. Benton could also get numbers of accepted claims and appealed claims pre- and post-COVID. Mr. Benton said yes.

Representative Bechler asked if claimants are informed why a claim is being delayed. Mr. Benton said the online system indicates whether someone's claim is under investigation but does not provide a reason. Representative Bechler said that he has heard many complaints about the lack of information and questioned why claimants could not be told why their claims were delayed. Mr. Roberts said those providing in-person services and Ernst & Young processors are working with people to address these issues. This is mostly a matter of not having enough staff. Ms. Cabbage said this is one of the problems with the computer system. It only tells claimants their claims are under investigation but does not provide a reason. They want to have a new interface like other states have so claimants can check their claim status online.

In response to Representative's Bechler's questions, Ms. Cabbage said the Ernst & Young contract expires July 26. The contract did not specify a numerical goal for claims to be resolved because it is hard to predict how long each claim will take. They focused on the number of processors with a goal of resolving as many claims as possible. The contract may be extended for a few weeks to resolve continuing claims issues. Representative Bechler asked that the legislature be informed of the cost before the contract is signed.

Representative Bechler asked what needs to be done to get the unemployment insurance trust fund back to normal. Ms. Cabbage said KRS 341 provides for a surcharge for employers based on the balance of the trust fund. KRS 341.295 allows for a surcharge on employers to pay back loans taken out to pay unemployment insurance obligations. During the last recession, the federal government forgave some loans in order to avoid putting the total burden on employers. Mr. Benton stated that SB 150, enacted in 2020,

allows the state to look at alternative revenue sources. None of the presenters offered other suggestions for restoring the unemployment insurance fund.

In response to a question from Senator Westerfield about the number of outstanding claims by month, Mr. Benton estimated there just under 5,000 outstanding claims filed in March, 22,500 for April claims, 19,700 for May claims, and 18,600 for June. Ms. Cabbage stated that it is believed that most of these outstanding claims were processed by Ernst & Young and are waiting for adjudication. She estimated that most of the 30,000 claims processed by Ernst & Young are in this group, an unknown number of which may be duplicates.

In response to a question from Senator Westerfield about the prioritization of claims in the Ernst & Young contract, Ms. Cabbage said the contract prioritized the oldest claims within types of issues.

In response to questions from Senator Westerfield, Ms. Cabbage confirmed that they become aware of the misinterpretation of the reporting requirement on May 23. Mr. Benton said that the investigation by the Office of Inspector General was triggered on May 28. Ms. Cabbage said she hopes the Office of Inspector General report, which is expected any day, will provide clarity for why it took a month to report the data breach. Senator Westerfield asked if anyone can identify who is responsible. Ms. Cabbage responded that they believe it was a failure in the legal department.

Senator Westerfield asked about the higher cost for the Ernst & Young contract compared to a similar contract with Colorado. Ms. Cabbage responded that Ernst & Young had experience negotiating contracts. Kentucky's old technology also takes more time to resolve claims. Total contract cost is \$7.6 million: \$7.4 million for processing claims, \$200,000 for consulting. It works out to about \$100 per claimant, which is a bargain. Resolving these claims is a priority for the administration.

Senator Westerfield agreed that it has been known across multiple administrations that the interface for claimants is unfriendly. All computer systems should be upgraded. Moving the Office of Unemployment Insurance to the Labor Cabinet during a pandemic has led to confusion for legislators and constituents about whom they should contract with issues. He gave an example of a constituent who emails him every day about his unemployment insurance claim. He reiterated that he was unsure why the contract cost is high compared to other states. He requested that the Labor Cabinet communicate better with the legislative branch. He suggested that the legislature get weekly updates regarding outstanding claims. This information would be communicated to their constituents. Mr. Roberts responded that this was a fair assessment and request. They will provide more information to the legislators. There is discussion of reopening career centers on a limited basis.

Senator Nemes stated that he agreed that the Office of Unemployment Insurance belonged in the Labor Cabinet. The state is paying a lot to Ernst & Young and the state still needs to provide final approval for claims. It would have been better to train people to work in the Office of Unemployment Insurance. He said that once this crisis has passed, career centers should go back to being a career center to help people develop skills. He wished Mr. Benton well with his move from the Education and Workforce Development Cabinet. Mr. Benton said that federal law requires that training programs must be in career centers. Mr. Roberts stated the short-term goal is address unemployment insurance and the long-term goals are to do apprenticeships and to address the needs of the workforce.

In response to Senator Carroll's question about whether or not there was a directive to not notify the attorney general, auditor, or state police commissioner about the data breach, Mr. Benton stated that he was not aware of any. Ms. Cabbage confirmed that she did not know of any such directive and that the issue was a misunderstanding of what kind of data breach should be reported. The state police commissioner was informed at the same time as the attorney general and auditor. Mr. Roberts said the Labor Cabinet put out a clear directive afterwards in order to prevent this from happening again.

Senator Carroll asked about the terminated director of the Office of Unemployment Insurance. He asked if his inexperience in this field affected the office's ability to function. Mr. Benton responded that there is a pending personnel investigation and hearing, which limits how much he can say. The former director met the qualifications of the job at the time he was hired. Mr. Benton is unaware of any state that has not had issues with unemployment insurance. This is not any one person's fault. The state had to change the way it operated in the first 6 months of the pandemic. The Office of Unemployment Insurance almost doubled in size. It took the agency time to stabilize operations to meet the demand for services.

In response to Senator Carroll's question of whether anyone was aware of any untrue information put out by anyone in the administration regarding the data breach, Mr. Benton responded that the Inspector General's investigation will identify any untrue information. He said that it has been asserted that he was informed of the data breach a day before, but he did not recall it.

In response to a request from Representative Bechler, Mr. Benton said that he would provide the list of 27 variables that can stop a claim.

Senator Thomas asked for confirmation that the previous administration had cut unemployment insurance staff by 95 and eliminated 31 offices. Mr. Benton said that there was such a reduction with the decrease in federal funding. Mr. Benton also confirmed Senator Thomas' statements that the previous administration had reduced the unemployment insurance budget by 40 percent and eliminated in-person services at career centers. He confirmed Senator Thomas' statement that that this spring the number of claims

increased by 40 times over a 2-week period in March. He agreed with Senator Thomas that the office was overwhelmed with the number of claims in such a short time period. Responding to a question from Senator Thomas, Mr. Benton said that the percentage of eligible claims paid fluctuates but has been as high as 91 percent. Senator Thomas reiterated that the Office of Unemployment Insurance is short staffed and has a small budget, which is why Governor Beshear asked for help. Mr. Roberts said Ernst & Young has skills and assistance that the state could not replicate. Ernst & Young is doing a great job. In response to questions from Senator Thomas, Mr. Roberts said that the unemployment insurance technology system is likely among the worst in state government. Upgrading technology should be a priority. The legislature established a source of funding for this, but no money will go into the fund until the trust fund is replenished. Senator Thomas expressed his support for the KentuckyWired project. Mr. Benton confirmed Senator Thomas' statement that Governor Beshear announced the security breach and has tried to be transparent about it. He also confirmed that there was no financial harm or harm to people's reputations as a result of the data breach. Senator Thomas asked for confirmation that seven in-person career services are operating across the state. Mr. Roberts confirmed the list of cities, but they are temporary pop-up centers. Mr. Roberts said that the Governor will make an announcement soon for an upcoming event in Louisville. Senator Thomas stated that 52 million people were on unemployment insurance in 4 months in the US. The unanticipated number of unemployment insurance claims overran the capabilities of staff. The hard work of the Office of Unemployment Insurance and the Governor is commendable given the lack of resources.

Representative Bechler read a question submitted by Senator Wheeler, who asked whether the federal government will reimburse the state for people who would otherwise have been eligible for unemployment insurance. Mr. Benton responded that individuals who qualified for pandemic-related unemployment benefits were paid directly by the federal government, so there was no need for a reimbursement. Kentucky was reimbursed for the waiting week payment.

In response to Senator Carroll's question concerning untrue information about the data breach, both Mr. Roberts and Ms. Cabbage responded that they were not aware of any false information about the breach. Senator Carroll referenced a story in the *Courier Journal* about the number of unemployment claims. He asked about Governor Beshear's goal to resolve 50,000 claims by the end of July. Ms. Cabbage estimated that about 40,000 claims were resolved and they expect to reach 50,000 claims resolved by Saturday. Senator Carroll asked if phone calls were tracked. Ms. Cabbage said that the calls are logged into a database. Senator Carroll asked about claims that were closed due to a lack of response. Ms. Cabbage did not have the exact number, but she stated that they tried to advertise the phone number so that claimants knew to answer the phone. Mr. Benton also stated that he did not know the number of claims closed because of lack of response from claimants. Senator Carroll said that he had been advised by a member of the governor's staff that about half of the phone calls to claimants were not answered. Mr. Benton stated he did not

have that information. Ms. Cabbage said the Office of Unemployment Insurance and Ernst & Young processors leave a message when they call and a high percentage of claimants return their calls.

Senator Carroll stated that the unemployment offices closed due to the past low unemployment rate. He asked if there was serious consideration to reassess to how the offices provide services. Upgraded technology will allow face-to-face meetings without in-person services. Mr. Roberts said everything is on the table regarding the career centers to create a workable system within budgetary constraints.

Senator Carroll said few vendors are doing unemployment insurance claims and asked why this contract was not bid and why there was not a contract sooner. Ms. Cabbage said the lack of vendor expertise and time sensitivity were the reasons why Ernst & Young was chosen. Mr. Benton said that many of these services have been developed during the pandemic. The initial use of vendors was at the call center. Mr. Roberts said the Office of Unemployment Insurance did not have the ability to respond to everyone. He said that they would have contracted for vendor services sooner if they were available.

Senator Carroll and Representative Bechler wished Mr. Benton well.

Representative Bechler thanked the presenters. He announced that this was the last meeting for Committee Staff Administrator Greg Hager, who is retiring. He and Senator Carroll thanked him for his service. Senator Carroll read the text from the LRC Distinguished Service Award given to Mr. Hager.

The meeting adjourned at 2:59 p.m.