

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 6th Meeting of the 2019 Interim

December 16, 2019

Call to Order and Roll Call

The sixth meeting of the Interim Joint Committee on State Government was held on Monday, December 16, 2019, at 3:00 PM, in Room 154 of the Capitol Annex. Representative Jerry T. Miller, Chair, called the meeting to order and the secretary called the roll. Representative Miller introduced a new member of the committee, Representative Samara Heavrin.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Morgan McGarvey, Robby Mills, Albert Robinson, Damon Thayer, and Johnny Ray Turner; Representatives Tina Bojanowski, Jim DuPlessis, Larry Elkins, Joseph M. Fischer, Derrick Graham, Joe Graviss, Richard Heath, Samara Heavrin, Derek Lewis, Scott Lewis, Jason Nemes, Jason Petrie, Rick Rand, Steve Sheldon, James Tipton, and Les Yates.

Guests: Senator Jimmy Higdon; Representative Buddy Wheatley; Bryan Taylor, Lawrenceburg Police Department; Bart Powell, Anderson County Department of Public Safety; T. J. Gilpin, Kentucky Transportation Employees' Association; and Tony McGaha, Kentucky Association of Transportation Engineers.

LRC Staff: Alisha Miller, Brad Gross, Daniel Carter, Kevin Devlin, Roberta Kiser, Karen Powell, and Peggy Sciantarelli

Approval of Minutes

The minutes of the November 21, 2019, meeting were approved without objection, upon motion by Representative Heath.

Public Pension Oversight Board Recommendations

Senator Jimmy Higdon and Representative DuPlessis, Co-chairs of the Public Pension Oversight Board (PPOB), discussed the annual recommendations that were approved at the PPOB December meeting.

The following 10 recommendations were approved:

#1 – The PPOB should study and evaluate the amortization methods/policies state systems are using to pay off unfunded liabilities, and the impact of layering/stacking of future actuarial gains/losses; (recommended by Representative Miller)

#2 – The Teachers’ Retirement System (TRS) should report carried interest at the asset class level; (recommended by Representative Miller)

#3 – In 2020, the PPOB should evaluate: (1) adding the State Treasurer to the PPOB membership; and (2) adding legislators as nonvoting members of the Kentucky Retirement Systems (KRS) and TRS boards; (recommended by Senator Higdon)

#4 – The PPOB should examine issues and potential solutions to KRS concerns regarding who pays the health insurance premium costs of retirees who have service in multiple state-administered retirement systems; (recommended by Senator Higdon)

#5 – The PPOB should examine the level of funding requests for TRS relating to both the pension and retiree health funds and how the 2020 experience study would impact these costs; (recommended by Senator Higdon)

#6 – The PPOB should semiannually request that the Kentucky Deferred Compensation Authority provide updates on plan participation, asset levels, and performance; (recommended by Senator Higdon)

#7 – Legislation should be enacted to convert the Kentucky Employees Retirement System-Nonhazardous (KERS-NH) employer contribution amounts from a payroll-based model to a liability-based model—similar to measures included in BR 292, prefiled for the 2020 Regular Session; (recommended by Representative DuPlessis)

#8 – Based upon the State Auditor’s finding regarding compliance with SB 2 (2017 RS), legislation should be enacted to address the problems of: (1) reporting of carried interest; (2) posting of investment contracts online; and (3) the gating process for redacting information from contracts; (recommended by Senator Higdon)

#9 – The Kentucky Retirement Systems housekeeping measures that were presented to PPOB in November 2019 should be enacted; (recommended by Representative Miller)

#10 – The General Assembly should budget sufficient funds to pay the full actuarially required contribution rates to the KERS, State Police Retirement System (SPRS), and TRS pension funds. (recommended by Senator Higdon and Representative DuPlessis)

Responding to a question from Representative Tipton regarding recommendation #10, Senator Higdon said it is correct that currently TRS is the only system that is not statutorily required to pay the full actuarially required contribution.

Discussion of Prefiled Legislation

20 RS BR 463

Representative Buddy Wheatley discussed BR 463, which he prefiled on November 18, relating to changing beneficiaries after retirement in state-administered retirement systems. The bill would allow a KRS retiree who experiences a qualifying event, including marriage, remarriage, the birth or adoption of a child, or the death of a designated beneficiary, to elect to change his or her beneficiary and optional payment plan; and expand the qualifying events for which a TRS retiree may elect to change his or her beneficiary and optional payment plan to also include a birth or adoption of a child. The election to change beneficiary must be made within 120 days of the qualifying event.

Representative Wheatley said the intent of the legislation is to equalize benefits for KRS and TRS members. It would mainly involve an administrative function and would have no actuarial impact. Currently, TRS retirees are allowed—but KRS retirees are not—to change beneficiary if they experience a qualifying event. For TRS, the bill adds birth or adoption of a child as a qualifying event. It specifies a 120-day window for members of both systems, whereas the existing window for TRS is only 60 days.

Senator Schroder said he filed similar legislation in the past and had the impression at that time that the administrative burden would have been significant. Representative Wheatley said TRS had received only 20 requests for beneficiary change as of mid-November this year, and he does not believe the legislation would cause a rigorous administrative burden.

20 RS BR 224

Representative Tipton discussed BR 224, which he prefiled on November 12, relating to dually employed retirement system members. The bill would provide that if a member is working in a regular full-time hazardous duty position that participates in KERS or the County Employees Retirement System (CERS) and is simultaneously employed in a nonhazardous position that is not considered regular full-time, the member shall participate solely as a hazardous duty member and shall not participate under the nonhazardous position unless he or she makes an election within 30 days of taking employment in the nonhazardous position. The provisions would only apply to prospective nonhazardous employment occurring on or after the effective date of the Act.

Representative Tipton said that during the summer he was contacted by Anderson County Judge Executive Orbrey Gritton regarding the county's difficulty in filling EMS positions, which participate in the CERS-nonhazardous system. These positions could be filled on a part-time basis by police officers and sheriff deputies—who participate in the

CERS-hazardous system—but, in doing so, they would forfeit credit in the hazardous duty system.

Bryan Taylor, Chief of Police in Lawrenceburg KY, and Bart Powell, Director of Emergency Management in Anderson County, testified in support of BR 224. Chief Taylor explained that in 2007 and 2008 he was a full-time deputy sheriff under the hazardous duty retirement system but had worked part-time for four months for the jailer in a nonhazardous position. He later learned that, as a result of the part-time job, he lost four months of credit toward his hazardous duty tier-1 retirement. He said other officers who worked for him also had forfeited hazardous duty credit because of their part-time work in the nonhazardous system.

Mr. Powell said that if a hazardous duty employee works only one day of the month in a nonhazardous position, the entire month would be credited to the nonhazardous system. He cited examples of hazardous duty employees in Anderson County who planned to retire in the hazardous system but had to work additional months in order to compensate for their nonhazardous part-time work in emergency services. He said there is a massive shortage of EMTs and paramedics in Anderson County, but persons who are qualified to fill the vacant positions are unwilling to do so because it would negatively affect their hazardous duty retirement. He urged the committee to consider what he believes would be an easy regulatory fix to address the problem.

Representative Tipton said that, based on his conversations with officials at the Kentucky League of Cities and the Kentucky Association of Counties, this appears to be an issue statewide.

Representative Graviss said there is a dangerous shortage of staff for the emergency services positions, and he hopes for speedy passage of BR 224 in the 2020 regular session. He thanked Representative Tipton and the Anderson County officials for bringing the issue forward.

Representative Tipton said KRS officials did not indicate any major issues with BR 224 before he prefiled it, but he intends to follow up with them. Representative Miller said that an actuarial analysis would probably not be necessary.

Representative Graham said he believes the legislation should be enacted, and he applauded Representative Tipton and the speakers for their efforts.

Representative Sheldon spoke in support of the legislation and questioned whether it possibly could be made retroactive. When he inquired about the number of employees affected, Mr. Powell said his department has 40 employees—22 full-time—but does not know how many would be affected statewide. He reiterated that there is a severe shortage of paramedics in Kentucky. Chief Taylor said he has 15 officers, and five would be affected

by the legislation. Representative Tipton said it would not be feasible to make the bill retroactive because of the administrative burden it would involve.

Senator Schroder said the issue addressed in BR 224 is a problem across the board, including in his home county, Campbell. He looks forward to helping with passage of the legislation.

20 RS BR 461

Representative Tipton discussed BR 461, which he prefiled on December 9, relating to state employee compensation. The bill would provide for an annual cost-of-living adjustment (COLA) for state employees, with the adjustment being the average of the consumer price index for the two calendar years prior to the biennium, and not less than zero.

Representative Tipton said KRS Chapter 18A states that an annual increment of not less than five percent of the base salary or wages shall be granted to each state employee; however, that has not happened in recent history. In today's economy five percent is probably not feasible, but it must be recognized that the state depends on the services provided by its dedicated employees. The state must also compete with the private sector for good quality employees. BR 461 changes "increment" to "cost-of-living adjustment" and would tie the annual increase to the consumer price index. The 2018 annual CPI was 2.4 percent; as of October 2019, it was 1.8 percent. Passage of BR 461 will not make up for the many years without a salary increase, but it is a start, although there is no guarantee that it will be included in the new budget.

T. J. Gilpin, President, Kentucky Transportation Employees' Association (KTEA), and Tony McGaha, President, Kentucky Association of Transportation Engineers (KATE), testified in support of BR 461. Mr. McGaha's testimony included a slide presentation entitled "Rethinking the Annual Increment."

Mr. Gilpin said that KTEA and KATE include about 2,000 Transportation Cabinet employees and that KTEA is the largest state employee organization in Kentucky. Wage stagnation is a crisis in state government. During the past several years of a robust economy state employee salaries have remained relatively flat. The last time state employees received a full five percent increment was in 2001. KTEA and KATE have tried for the last several years to have it included in the biennial budget. They are aware of the pension crisis and now realize that state government can no longer afford a five percent increment.

Mr. McGaha said that state government awarded an engineering salary adjustment five years ago. At that time a salary study of all 50 states ranked Kentucky Transportation Cabinet engineers 49th or 50th, and a 2019 study finds that ranking unchanged. The cabinet has approximately 450 engineers, and during the past five years 118 have retired, with 36 choosing early retirement and some becoming employed in another state. In that same time

period, the cabinet granted 96 scholarships to incoming freshmen; 72 completed the program and were employed full-time in the cabinet. Since then, 16 have resigned. Only three fulfilled their work obligation, and 13 reimbursed the cabinet in order to choose other employment. Thus the cabinet lost 118 engineers but only gained 56 from the incoming students. The scholarship program usually averages 150 applications each year but in 2019 received only about 82. Future interest in working as an engineer for Kentucky state government is starting to wane.

Mr. McGaha said he is branch manager for project delivery and preservation in District 7, Lexington, which covers all construction and maintenance for Fayette, Jessamine, Scott and Woodford Counties. Staffing the maintenance crews has become difficult. The starting pay for an entry level maintenance employee is \$13.27/hour. Most county government maintenance crews pay more than that and even have annual cost-of-living adjustments. Mr. McGaha said that West Virginia recently granted its state employees a five percent cost-of-living adjustment. According to Jeffrey Fleck, Executive Director of the West Virginia Consolidated Public Retirement Board, back-to-back pay raises appear to be persuading many West Virginia state employees and teachers to postpone retirement.

Mr. Gilpin emphasized that experience does matter and that Kentucky needs to ensure that there are experienced employees in the field. Many Transportation Cabinet jobs require specialized training, degrees, and professional licenses. The cabinet has the ability to hire contract workers, but the cost is much higher, and there would still be need for oversight by experienced and knowledgeable state employees. He said that he and Mr. McGaha appreciate Representative Tipton's help by filing BR 461. They urge the General Assembly to find money in the upcoming biennial budget to fund the cost-of-living adjustments. They said the pay increases are desperately needed and would greatly improve the cabinet's ability to provide needed services. Providing cost-of-living adjustments would also restore one thing that many state employees are missing—and that is "hope."

Representative Tipton said he will request an official fiscal note. Preliminary numbers provided by budget staff indicate that every one percent increase in the CPI would cost \$11.9 million. Staff also informed him that the statute in question does not cover LRC or judicial branch employees; historically, when an increment was given, those employees were granted the same increment. To include LRC and judicial branch employees would cost an additional \$2.4 million for each one percent increase, for a total cost of approximately \$28.5 million for each year of the biennium.

Senator Thayer said the speakers made a good presentation and make a valid case. He is aware of the struggles and met earlier in the day with Transportation Secretary Gray, who also spoke of the problem. He said it is just a matter of finding the money. The General Assembly must strike a balance in the budget and cannot afford to jeopardize the progress that has been made in pension funding. When someone retires early there is a cost to the

pension system because they are no longer making their employee contribution. Regarding the 36 Transportation engineers who retired early, he said he would be interested to know what the pension contribution savings would have been if they had not retired early, which could help offset the cost of a COLA. He suggested that perhaps the speakers could provide that information to the State Government Committee co-chairs.

Representative DuPlessis said he thinks BR 461 is a good bill, and he thanked Representative Tipton and the speakers. He said many of the Transportation employees are doing dangerous work for little money. It is necessary for the General Assembly to continue funding pensions, which play a large role in employee compensation. He does not know the answer but is hopeful the General Assembly can find a way to fund cost-of-living increases.

Representative Graviss said he appreciates the efforts of Representative Tipton and the speakers. He thinks BR 461 is a good bill that would help both the retirement systems and the Commonwealth. He said the KRS actuary, GRS Retirement Consulting, has said that Kentucky cannot sustain the payroll losses it has been experiencing and still effectively meet its statutory obligation to provide services to citizens of the Commonwealth. Though some say the state cannot afford the pay increases, he believes the state cannot afford to not provide them. Kentucky needs to recruit and retain good workers and take care of its workforce, and that would be a good way to start.

Discussion concluded, and the meeting was adjourned at 3:05 p.m.