

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 5th Meeting of the 2020 Interim

October 27, 2020

Call to Order and Roll Call

The fifth meeting of the Interim Joint Committee on State Government was held on Tuesday, October 27, 2020, at 10:30 AM, in Room 171 of the Capitol Annex. Representative Jerry T. Miller, Chair, called the meeting to order, and the secretary called the roll.

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, Christian McDaniel, Morgan McGarvey, Robby Mills, Michael J. Nemes, Damon Thayer, and Johnny Ray Turner; Representatives John Blanton, Tom Burch, McKenzie Cantrell, Jeffery Donohue, Jim DuPlessis, Joseph M. Fischer, Kelly Flood, Jim Glenn, Derrick Graham, Joe Graviss, Samara Heavrin, Joni L. Jenkins, Matthew Koch, Derek Lewis, Scott Lewis, Mary Lou Marzian, Patti Minter, Jason Nemes, Jason Petrie, Attica Scott, Steve Sheldon, James Tipton, Ken Upchurch, Russell Webber, and Lisa Willner.

Guests: Representative Josie Raymond; Gerina Whethers and Reina Diaz-Dempsey, Personnel Cabinet; Mark Carter, Cabinet for Health and Family Services; T. J. Gilpin, Kentucky Transportation Employees' Association; Tony McGaha, Kentucky Association of Transportation Engineers; and Angela Hardison-Breckinridge.

LRC Staff: Alisha Miller, Michael Callan, Roberta Kiser, and Peggy Sciantarelli

21 RS BR 344 (J. Nemes) AN ACT Relating to Paid Parental Leave

Representative Nemes discussed 21 RS BR 344, which he prefiled for the 2021 Regular Session. Representative Josie Raymond accompanied him and testified in support of the bill. Ms. Angela Hardison-Breckinridge also spoke in support of the bill. The summary of BR 344 states that it would create a new section of KRS Chapter 18A to allow employees of the Commonwealth of Kentucky a paid leave of absence of 12 weeks for the birth or adoption of a child and establish requirements for the paid leave of absence. Representative Miller noted that the meeting materials include a document in support of BR 344 from A Better Balance, a nonprofit advocacy organization.

Representative Nemes said that a lot of states have already passed similar legislation, and in late 2019, Democrats and Republicans in Congress came together and passed the legislation for federal workers. He and Representative Raymond are bringing this bill, because it is “pro-Kentucky family,” “pro-Kentucky jobs,” and, most importantly, “pro-Kentucky baby.” It is a simple bill which provides that any state employee who has been employed for more than 52 weeks can have 12 weeks of paid parental leave if they have a child by birth or adoption. It would apply to both parents, as is the case in most other states. The employee would have no diminution in seniority or benefits that they might have earned by continuing to work every day.

Representative Raymond said that paid leave gives a family peace of mind in order to focus on the baby during this important but short period in life. Without paid parental leave, mothers may go back to work before they have physically recovered. Nationwide, about 25 percent of mothers go back to work within two weeks of giving birth. Most day cares will not take an infant until it is at least six weeks old. When parents can stay home and focus on the baby, breast feeding rates increase, parental stress is much lower, and, most critically, there is a reduction in infant deaths and hospitalizations. She said she gave birth three times while working for three different employers. She received paid leave one time, and it helped her to feel calmer and more secure. Because paid parental leave leads to reduced infant mortality, she felt that this is something that the legislature needs to address as soon as possible. Paid parental leave creates stronger bonds within the family, and dads who are more involved in caring for the child months and years later. Paid parental leave is also a temporary benefit which ensures that people stay attached to the workforce. Women who take paid parental leave are more likely to be working a year later. Companies that can afford to provide paid parental leave are already doing so, because they see the value for families and for their business.

When asked by Representative Blanton, Representative Nemes explained that the 12 weeks of leave must be used within the first 24 weeks but do not have to be consecutive.

When Senator Nemes questioned the need for the father to also be on paid leave, Representative Nemes said that studies show that it is helpful to the baby and to the father’s relationship with the child. Science indicates that it is better to have both paternal and maternal leave. Representative Raymond said that it is important for bonding but also creates a more equitable distribution of child care.

Representative Flood spoke of the importance of shared responsibility, as when she and her husband shared the early weeks when their son was an infant. She said it is also important to recognize that parent gender identity is a less critical factor. When she asked, Representative Nemes clarified that the right to parental leave would apply to individual government employees, with separate rights for the father and the mother.

Ms. Hardison-Breckinridge said she is a doula, a lactation educator, and a birth worker. She is in favor of expanding access to paid family leave. As a birth worker, she has attended over 100 births and provided post-partem support to many families in Kentucky and other parts of the United States. To birth or adopt a child is a profound experience but can also be one of the most traumatizing. Even healthy successful births can be stressful for the body and mind. The U.S. has one of the highest rates of maternal mortality in the developed world, and black mothers are four times more likely to die than white mothers. There is an overwhelming body of evidence to suggest that paid leave is directly tied to reducing rates of infant mortality. She recently supported a black pregnant woman in Kentucky who had a minimum wage job and practically no support system. After a somewhat traumatic birth, she realized she could not go back to work with no one to care for her child. Before long, she ended up losing her home and was living in a shelter with her newborn. Ms. Hardison-Breckinridge said she has endless stories of birth and families and how society has fallen short in supporting them.

Representative DuPlessis said that BR 344 is not just a “feel good” bill. (His further comments were not audible due to technical problems with the sound system.) Representative Nemes said that a parent must certify that they are taking the leave and the reason why. If someone abuses the benefit, they should be fired by the employer. He thinks that BR 344 can be considered a “feel good” bill; it makes him feel a lot better when fewer children die, when Kentucky women are able to breastfeed their children, and when children can read more effectively and on grade level because their parents were able to provide necessary support in the early stage of their lives.

Representative Bratcher said he has a constituent who is possibly being subjected to discrimination, because she used a doula and is breastfeeding. He would like to talk to Ms. Breckinridge later about how the use of alternative methods might lead to discrimination. Representative Miller said that someone will provide contact information to Ms. Hardison-Breckinridge and that he would appreciate her following up with Representative Bratcher. She responded affirmatively. There were no further questions, and Representative Miller thanked the speakers.

2021 Kentucky Employees’ Health Plan (KEHP) and LivingWell Promise

Guest speakers from the Personnel Cabinet were Gerina Whethers, Secretary of the cabinet, and Reina Diaz-Dempsey, Commissioner of the Department of Employee Insurance. They discussed the Kentucky Employees’ Health Plan for 2021. Their testimony included a PowerPoint presentation, which also included information about KEHP’s expansion of coverage in response to COVID-19.

Ms. Whethers stated that, as of September 30, KEHP covers 292,703 members; 180,165 are active employees and pre-65 retirees. School boards comprise 52 percent of the membership, early retirees 24 percent, state agencies 19 percent, and quasi groups five percent.

Ms. Diaz-Dempsey reviewed the health plan for 2021. She said that KEHP annual plan spend is approximately \$1.9 billion and that 95 percent of KEHP expenses are for claims payments. Plan expenses include 63 percent for medical claims; 27 percent for prescription claims; five percent for health reimbursement account (HRA) claims; four percent for medical administration; 0.5 percent for prescription administration expenses; and 0.5 percent for operating expenses. Department of Employment Insurance salaries represent less than one-quarter of a penny for every dollar spent.

For 2021, the employer premium will increase three percent. Employee premiums will also increase three percent, with an average increase of \$6.02/month. The highest increase for employees will be \$20.46/month. There will be no changes in deductibles and out-of-pocket maximums. In LivingWell PPO, the most expensive plan, the copay for specialty visits and the prescription copay will each increase by \$5. These are the first changes to LivingWell PPO since 2014. A two-tier prescription Value Formulary will be in effect for all plans.

StayWell will continue as the wellness vendor in 2021. In April and July 2020, StayWell experienced data breaches and had to temporarily take its website down in order to implement additional security measures. The new wellness platform, beginning in January 2021, is WebMD One. It will provide improved security measures, with knowledge-based authentication.

The 2021 LivingWell Promise must be completed by July 1 in order to earn a premium discount of up to \$40/month for the next plan year. The 2020 deadline for completing the Promise was extended to September 14 in order to qualify for discounts for the 2021 plan year. In 2020, the LivingWell Promise completion rate was 89 percent.

KEHP's response to COVID-19 in 2020 included no member cost share for screening and testing; 100 percent coverage for inpatient and outpatient treatment for COVID-19; approval of early refills on 30-day prescriptions for maintenance medications; extension of pharmacy prior authorizations by 90 days for those set to expire before June 30; increased flexible spending account (FSA) carryovers; extended runout period to April 2020 for FSAs and HRAs; allowance of mid-year FSA changes without a qualifying event; and waiver of member cost share for certain telehealth services through September 30. Ms. Whether's and Ms. Diaz-Dempsey's slide presentation also included a description of KEHP's free and low-cost member benefits: Rethink; SmartShopper; LiveHealth Online; Diabetes Prevention Program; and the Diabetes, COPD, and Asthma value benefits.

Representative Graham asked whether the 2020 extended runout period for carryover of FSA/HRA balances would be in effect also for 2021. Ms. Diaz-Dempsey responded affirmatively.

Senator Alvarado commended KEHP for being able to use 95 percent of expenses for claims payments, with only five percent going toward operating expenses. Ms. Diaz-Dempsey noted that one contributing factor is that the KEHP vendors provide good value for the plan. Senator Alvarado said he appreciates the cabinet's handling of the data breaches in 2020 and asked how quickly the cabinet was able to react. Ms. Whethers said she could not give an exact date but that the response was quick, and it complied with the 72-hour deadline provided in state law. The cabinet researched the cause of the incidents and promptly notified plan members and state agencies. Discussion concluded, and Representative Miller thanked Ms. Whethers and Ms. Diaz-Dempsey for their presentation.

Update on Contact Tracing

Guest speaker was Mark Carter, Executive Advisor in the Department of Public Health (KDPH), Cabinet for Health and Family Services. His testimony included a PowerPoint presentation.

Mr. Carter said that 60 of 61 local health departments (LHDs) now use the Kentucky Contact Tracing and Tracking (KYCTT) System. By mid-November, all 61 will be using the system. Five LHDs currently require additional assistance to use the system. Since the KYCTT System went live in May 2020, the KDPH and LHDs have used the system to investigate and identify COVID-19 patients to assess risk, monitor symptoms, and track potential contacts; to contact potential contacts to notify of possible exposure and assess risk; and to follow up with patients and contacts to help track symptoms and provide support to safely quarantine or isolate. There are 34,115+ initial case investigations either in progress or completed; 59,940+ case follow-ups in progress or completed; 50,471+ patient contact settings that have been created; and 27,328+ active patient contacts that have been created.

The CTI Call Solution functionality allows disease investigators and contact tracers to use their laptops to make telephone calls. It establishes a single KYCTT phone number to be used by Kentuckians and helps the LHDs manage call volume, surges, scam calls, and data tracking. Its use is optional and is being used by a few LHDs. If adopted further, it will ultimately provide a lot of good data, including the number of calls that are made and how long it takes to get an answer. Because most of the LHDs are using their own systems, consolidated call data is not available.

LHDs have participated in live interactive virtual trainings to acclimate and effectively navigate the KYCTT System, utilizing the latest technology updates each week. There is ongoing virtual site support which provides small, open group discussions in which LHDs can ask direct questions about the system. Active office hours are available for LHDs to provide more direct support about KYCTT reporting and CTI call functionality.

Educational materials are available for download in multiple languages on “kycovid19.ky.gov.” The KYCTT system has engaged with many groups, including county judge/executives, chambers of commerce, Rotary organizations, area development districts, and school systems. The KYCTT Change Agent Network provides an open line of communication with local health departments. A weekly Local Health Department Newsletter is distributed to communicate important updates, release notes, and materials that are available for distribution. Efforts continue to focus on informing, promoting, and streamlining COVID-19 and contact tracing communications.

Mr. Carter said that 1,337 persons are deployed in the state to engage in the disease investigation and contact tracing effort. When the pandemic first arrived, there were about 431 staff located within the LHDs; 906 new staff have been added since then. Approximately 200 staff are located in Jefferson County. There are 452 disease investigators, which typically are registered nurses or clinicians. There are 794 contact tracers, 68 state and regional team members, and 23 social support connectors.

Mr. Carter said that the number of cases have begun to tax staffing, but, generally, they are keeping up with efforts to control the disease. There is currently capacity for additional staffing, but if the number of cases continues to increase, it will become more of a challenge. It is important for people to understand and embrace the fact that control of the disease requires an integrated effort. Testing, social distancing, and masking must work together with contact tracing to help stop spread of the disease.

When asked by Representative Miller, Mr. Carter confirmed that data on “hotspots” is being gathered in the LHDs, and it goes to the Department of Health in Frankfort. LHD resources are coordinating the search, and the data is generally available to public health officials.

Representative Jenkins asked whether the initial contract for the contact tracing program is ongoing and whether there are plans to bring it entirely in-house as a state government function. Mr. Carter said that Kentucky is still operating through the staffing contract, with federal funding through the CARES Act. There is a December 30 deadline that would need to be extended by the federal government. He believes the plan at this time is to continue the same staffing arrangements, with perhaps some adjustments.

Representative Marzian asked whether Kentucky will have money to extend the contract if CARES Act money is depleted. Mr. Carter said that there is sufficient funding to take Kentucky well into next year. A deadline of December 30 was placed on using that funding. All that is needed from the federal government is an extension of the date into next year, and he thinks it probably will be extended. The Department of Health is in the process of looking at all funding to determine where there may be some flexibility. In the event that CARES funding is either curtailed or stopped, the department would do its best to maintain as many resources as possible, going into 2021. He said they have not used

mobile apps or electronic contact tracing applications, primarily due to concern about efficacy and privacy. The department will need to look at those as an alternative, should there be a loss of staffing. He is optimistic that will not happen, but there is planning to address that contingency.

Representative Nemes asked where the increase in cases is originating and why the public is not given access to data that is made available to health department experts. Access to that data might help promote more compliance with CDC recommendations and requirements. Mr. Carter said it is his observation that the cases are coming from “all over the place.” The infection spread seems to be broad-based. In terms of the sharing of data, one of the challenges has been to get valid data and to get a better system in place that allows for the real time sharing of that data. It has just been within the last month that all LHDs have come fully on board with the system. He thinks that in the next two weeks there will be much better data that will be actionable and that can be shared more broadly. He believes that the department and the LHDs have done a good job getting the data.

Senator Alvarado asked how much the contact tracing program is costing Kentucky on a monthly basis. Mr. Carter said that it is about \$8.5 million monthly. The department has about \$78 million of CARES money and spent about \$13 million through August 13. He believes \$8.5 million will be the average monthly spend.

Senator Alvarado asked whether there are plans to continue contact tracing of COVID-19 after it comes under control. Mr. Carter said that as the vaccine is rolled out and the infection is being controlled, there will not be a need for 1300 contact tracers. The variable would be the timing--when a vaccine will be available, when there is a reduction in the spread. Part of the department’s contingency plan is to evaluate and anticipate that. The number of tracers could then be reduced to a level that matches the requirements for contact tracing across the state.

Representative Miller said if there is any information that Dr. Stack would like to provide the committee, it will be shared with all of the members. He doubts there will be an opportunity in the November interim joint committee meeting—which is scheduled to be the final meeting—to have him testify, but the committee would appreciate any written statements he would like to make regarding contact tracing, its effectiveness, and what is being done with the information. Discussion concluded, and Representative Miller thanked Mr. Carter for his presentation.

21 RS BR 70 (Tipton, D. Lewis), Relating to State Employee Compensation

Representative Tipton and his co-sponsor, Representative Derek Lewis, discussed BR 70, which they have prefiled for the 2021 regular session. Testifying with them in support of the legislation were T. J. Gilpin, President, Kentucky Transportation Employees’ Association, and Tony McGaha, President, Kentucky Association of Transportation Engineers. The summary of the bill states that it would amend KRS

18A.355 to provide for an annual cost-of-living adjustment for state employees, with the cost-of-living adjustment being the average of the consumer price index (CPI) for the two calendar years prior to the biennium and not less than zero; and amend KRS 18A.110 and 48.130 to conform; effective July 1, 2022.

Representative Tipton said that HB 143, relating to state employee compensation, was heard by the House State Government Committee during the 2020 regular session but was recommitted to the Appropriations and Revenue Committee. Representative Graviss has prefiled similar legislation, BR 180. Under current state law, all state employees are supposed to receive a five percent salary increase every year. The last time this occurred was July 1, 2001. The economy is different today, and the idea of the legislation is to provide a more attainable goal regarding compensation. BR 70 would replace the previous five percent with a CPI factor. The fiscal note on HB 143 was based on a 2.25 percent CPI and compared the 2.25 percent not with five percent but with zero percent. KRS 157.420 provides that certified teachers will receive a raise any time that state employees receive an increase. Historically, when that has happened, classified employees in the school system, as well as legislative and judicial employees, have also been given that same raise. When the 2020 budget bill, HB 352, left the House, it included a provision for a one percent cost-of-living increase in salary for all state employees, including legislative and judicial employees, and certified teachers and classified school employees. Kentucky State Police already has a CPI formula in place. BR 70 differs from HB 143 in that it includes a delayed effective date of July 1, 2022. There is a lot of uncertainty about future revenue, and it was felt to be more prudent to put a delayed effective date in statute.

Mr. McGaha said that from 2014-2019 the Transportation Cabinet lost 118 of 450 engineers and that 28 of the 118 left Kentucky. In the past year, the Cabinet has also lost five directors. Directors—the highest merit positions in the cabinet—are leaving in spite of the uncertain 2020 job market. Mr. McGaha said he is a branch manager in Lexington district 7, covering construction and maintenance for Fayette, Jessamine, Scott, and Woodford Counties. The cabinet is also losing—and having a hard time hiring—maintenance employees. Starting pay for an entry level maintenance employee is \$13.27/hour. His district has a goal of 48 maintenance employees but is currently short 12 positions, with Woodford County having only seven. It is also difficult to retain employees, because there is no cost-of-living increase and because better jobs are available elsewhere.

Mr. Gilpin said the Kentucky Transportation Employees' Association membership has about 1,500 employees in the Transportation Cabinet. The association supports BR 70. It is understood, given the challenges to the state budget—even before COVID-19—that five percent is an unrealistic goal and that using the CPI is a more realistic number.

Representative Graviss thanked Representative Tipton and said he much appreciates their working relationship. Their constituents also appreciate the way legislators from different parties can work together in a bipartisan manner. He said that BR 70 is desperately

needed, and he believes the Governor will be willing to sign the legislation if it is passed by both chambers.

Senator Nemes asked whether the legislation would allow for adjusting the amount of the raise. Representative Tipton said that if BR 70 is enacted and money is not available to meet the CPI, he thinks it is realistic that the provision might continue to be not withstood in a budget bill. BR 70 has a more realistic goal. He believes it also brings to light the difficulty in attracting and keeping quality employees, not only in the Transportation Cabinet, but across state government.

Representative Lewis briefly stated support for BR 70. He said that he and several members of the committee were among the co-sponsors of HB 143 in 2020. His constituents have been reaching out to him in favor of BR 70. It is a good bill that addresses a bipartisan issue, and he hopes that it will be enacted in 2021.

There were no additional questions. The meeting was adjourned at 12:02 p.m.