

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 7th Meeting of the 2021 Interim

November 22, 2021

Call to Order and Roll Call

The seventh meeting of the Interim Joint Committee on State Government was held on Monday, November 22, 2021, at 1:00 PM, in Room 149 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; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, McKenzie Cantrell, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Mary Beth Imes, DJ Johnson, Matthew Koch, Scott Lewis, Savannah Maddox, Reginald Meeks, Patti Minter, Kimberly Poore Moser, Attica Scott, Tom Smith, Pamela Stevenson, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: John Hicks, Office of State Budget Director; Kerry Harvey, Justice and Public Safety Cabinet; Steven Evans, Bath County school district; Chelsey Couch, School Facilities Construction Commission; and Representative Norma Kirk-McCormick.

LRC Staff: Alisha Miller, Daniel Carter, Michael Callan, Shannon Tubbs, and Peggy Sciantarelli.

Approval of Minutes and Guest Recognition

The minutes of the October 19, 2021, meeting were approved without objection, upon motion by Representative Johnson. Representative Smith recognized Mr. Bob Mitchell, from Congressman Hal Rogers' office, in the audience.

Discussion of Proposed Coronavirus Capital Projects Fund

Senator Mills noted that Bath County schools were included in the 13 school districts targeted for ARPA (American Rescue Plan Act) funding through the appropriation in HB 556 (21RS).

Steven Evans, Bath County School Superintendent, stated that Bath County has a middle school that is over 100 years old, a beautiful building that is a centerpiece of

downtown Owingsville and loved by the citizens. The building's condition is beyond normal upkeep, and a major renovation is necessary. There are problems with the air conditioning, flooring, mold in the basement, etc. When he took office, the district originally planned to build a new facility and renovate the old building for alternative use. However, the district lacks the bonding capacity to do so. When the federal funds were allotted, Bath County received \$7.1 million. The school district needs more than \$12 million in renovations—including a high school renovation. Based on the \$7.1 federal funding that was directed to Bath County, the local planning committee changed the district service plan from a new build to renovation of the old middle school building. The district was advised that there would be a 60-90 day moratorium. Eventually, at a meeting attended by the district's facilities director, Dr. Nelson, and the Finance Director, Ms. Combs, it was announced that the funding was gone—the reason being that the funding was designed more for community buildings, not school buildings. When asked by Senator Mills, Mr. Evans said he was surprised when it was learned that the funds would no longer be available.

Representative Koch, whose district includes Bath County, stated that the building in question is a staple of the community and the needed renovation is also a health issue. In his opinion, the federal funds were intended for such use, and he thinks the administration needs to take a second look at funding needed by Bath County.

When asked by Representative Blanton, Mr. Evans stated that he did not know the exact amount but that the school district, when revising its building plan, probably spent several thousand dollars in anticipation of receiving the \$7.1 million. He clarified that most of the job was started before he became superintendent last July. Representative Blanton said the point he wants to make is that the district spent money out of pocket in expectation of the committed funding.

Responding to Senator Storm, Mr. Evans said that it was about two weeks ago that the district learned the funds would not be available.

Representative Tipton read for the record part of the November 19, 2021, letter from the Governor's Office relating to the ARPA funding issue: "The SFCC met on June 2, 2021, and voted to issue additional offers of support to thirteen school districts, implementing the appropriation made in House Bill 556. Recognizing that the final federal guidance had not yet been published, the offers of support were expressly conditioned on availability of the federal funds underlying the appropriation. The school districts were notified that there was no projection of when the federal funds might be received. Twelve of the school districts accepted the tentative offers of assistance. Representatives of my administration and the staff of the SFCC held a ZOOM conference with leadership of the subject school districts on July 26, 2021. The school districts received an update on the status of the federal funding supporting the House Bill 556 appropriation. They were advised that the final federal guidance had not yet been published. Absent the guidance, it

was uncertain as to when, or if, the federal funding would be available. The school districts were advised that, given the uncertainty it might be unwise to make any preliminary expenditures related to the affected projects.” When asked by Representative Tipton, Mr. Evans said he was not aware of the possibility that the funding might not be available. Representative Tipton said he wished to clarify that the administration is giving a different version of accounting for the funding.

Discussion of the Impact of the Biden Administration’s Federal Guidance Disqualifying Expenditures of the FY 2021-2022 Kentucky Budget

Guest speakers were John Hicks, State Budget Director, and Kerry Harvey, Secretary of the Justice and Public Safety Cabinet. Senator Mills asked Mr. Hicks to discuss the November 19, 2021, letter from Governor’s Office’s to President Stivers and Speaker Osborne in order to provide more clarity regarding use of the \$127 million ARPA Coronavirus Capital Projects Fund appropriation contained in 2021 Regular Session HB 556.

Mr. Hicks testified that in March 2021, the American Rescue Plan Act was passed. It included two new programs for the Coronavirus State Fiscal Recovery Fund and the Coronavirus Capital Projects Fund. The Governor and the General Assembly reviewed the legislative text together and agreed on a recommendation to appropriate \$127 million for urgent need schools through the School Facilities Construction Commission and \$58 million for projects in the next phase of the Capitol building renovation. Secretary Harvey was asked to lead the school construction projects and work with the School Facilities Construction Commission (SFCC) and the Department of Education.

In May 2021, the U.S. Department of Treasury issued a Statement on Purpose and Process relating to the Coronavirus Capital Projects Fund. The statement indicated that the Capital Projects Fund was targeted to increasing internet connectivity, rather than capital projects that enabled work, education, and health monitoring. The Governor personally spoke with Secretary of the Treasury, Janet Yellen and the White House lead on implementing ARPA, Gene Sperling, and strongly expressed his disagreement with the targeting of that statement, and explaining the rationale for Kentucky’s proposed \$127 million for urgent need school projects. Mr. Hicks stated that he also had conversations with officials from the U.S. Department of Treasury. Official federal guidance on the use of the Coronavirus Capital Projects Fund was not received until September 10, 2021. The guidance did permit the use of the Fund for “multi-purpose Community Facility Projects” in addition to broadband infrastructure and digital connectivity projects.

Secretary Harvey stated that HB 556 mandated that offers of assistance were to be made to fund projects that were ranked the highest on the Kentucky Facilities Inventory and Classification report as of February 27, 2020. It was to provide gap funding in order for districts to actually build projects that were already on the drawing board, that were already prioritized as of February 27, 2020. The Commission’s role was important but was

largely ministerial because HB 556 already identified the projects that would be funded. The Commission met on June 2 and voted to extend additional offers of assistance to 13 Kentucky school districts. Ultimately, 12 of those districts accepted. Those offers were expressly conditioned on actual availability of federal funds. As of June 2, there was still optimism that the money would be available and that the projects would proceed as envisioned by HB 556.

Mr. Harvey stated that after analysis of the final guidance issued by the U.S. Treasury Department, it was concluded that the 12 school projects would not likely meet the criteria for funding from this particular source of federal money. The guidance indicated that a project, in order to be eligible for funding, must meet all three of the following criteria—directly advance work, education, and health care monitoring. The guidance specifically notes that, unlike broadband projects, school projects are not presumed to be eligible. The guidance also requires that in order for projects to be eligible the project must address an issue or solve a problem that was brought about by the COVID pandemic, or was brought to light by the COVID pandemic. The 12 projects to be funded according to HB 556 were on the drawing board and on the state priority list prior to the COVID pandemic. Based on analysis of the guidance, the school districts were informed that the projects were unlikely to qualify for funding from that pot of federal money. The school districts were also informed that Governor Beshear fully supports the projects and that he intended to work with the General Assembly to identify additional sources of funding. Throughout the process it was communicated to the school districts that the offers of assistance were conditioned upon actual availability of the federal funding and that it would be unwise to begin spending money on those projects until the situation was clarified.

Mr. Hicks stated that the Governor's recommended solution to the problem is to switch the appropriation of the \$127 million to the SFCC for the 12 school projects from the Coronavirus Capital Projects Fund to the Coronavirus State Fiscal Recovery Fund. One eligible use of the State Fiscal Recovery Fund is for "revenue losses," with the funds being directed to eligible governmental services. Based on a preliminary calculation of revenue loss as of December 31, 2020, the Commonwealth will have approximately \$220 million that will be eligible to be used for the "provision of government services." One example of government services in the federal guidance is "pay-go" or cash funding of capital projects, which fits with the planned \$127 million for school construction projects. Alternatively, the use of the \$127 million for broadband deployment projects from the Coronavirus Capital Projects Fund also fits with that Fund's eligible uses. The Governor's recommendation is, basically, to subtract the \$127 million from the Coronavirus Capital Projects Fund and shift it to the Coronavirus State Fiscal Recovery Fund for school projects, and do the reverse for the broadband projects. The same amount of money appropriated by the General Assembly would remain intact. Switching the two sources of funding will require action by the General Assembly. The Governor would encourage that

this action take place in the early days of the 2022 regular session, and it would not impact other parts of the budget.

When Senator Mills questioned whether future response or legal action by Kentucky might be envisioned, Mr. Hicks said that although the Governor's administration disagreed with the approach taken by the federal guidance, they believe it to be final and do not expect any adjustments will be made to the guidance.

Responding to Representative Blanton and Representative Tipton, Mr. Harvey listed the school districts involved and said he believes it was the Hart County school district that did not accept the funding offer.

When asked by Representative Tipton, Mr. Hicks confirmed that the state has approximately \$1 billion of ARPA funds remaining to be appropriated.

Senator Wheeler stated that although the school projects may have already been planned, some of the problems they were facing bear directly with safety measures that might also have to do with COVID—such as clean air and being in a safe facility without exposure to the hazards of the virus. Mr. Hicks said there is no question that they may be related to public health, but they may not meet all the criteria mandated in the guidance. Mr. Harvey agreed that the projects are vitally important and should be completed.

Representative Wheeler asked whether construction of new facilities—for example, vocational schools with health care oriented events—might meet the federal guidelines. Mr. Harvey said the guidance is complicated, but he suspects it might be possible if the facility is designed to meet all the criteria in the federal guidance.

Senator Alvarado expressed his distrust with the administration and said that the legislature is getting mixed messages from the Governor regarding the availability of ARPA funds. To substantiate that, he quoted from a September Courier Journal news article written by Joe Sonka that includes statements attributed to the Governor relating to the use of ARPA funding.

Senator Mills asked whether there is confidence about the accuracy of the previously mentioned amount of revenue loss, since the state has had record revenue and record amounts going into the rainy day fund. Mr. Hicks said that the general perception of what has happened to state tax revenue is correct. However, he is confident about the stated revenue loss, given the way that the federal guidance allowed for the loss calculation.

Senator Southworth said that schools are a core component of providing services to communities, especially in rural areas. She spoke about the needs of small communities, the importance of internet connectivity and health care services, and the need to advocate for rural communities at both the state and national levels.

Representative Kirk-McCormick stated that she is disappointed in what has taken place with regard to the ARPA funding and that it is critical that everyone involved do what they can to correct the situation. She also asked to be kept informed of future developments relating to the funding. Mr. Harvey said that the Governor and Director Hicks have formulated a plan that will result in completion of these very important projects, and he hopes that they move forward with alacrity.

Representative Miller stated that his and Representative Bratcher's legislative districts include two Chapter 75 fire districts that offer EMS services. In that role they provided standby EMS services for vaccine mega-sites, and they have had a lot of COVID-related costs that have impacted their revenue, yet they are not eligible for metro allocation of ARPA funds. These fire districts have submitted requests to the Beshear administration for ARPA funds to offset their lost revenue and added costs related to COVID. He asked whether the administration has reviewed the requests and if they will be included in the forthcoming budget request. Mr. Hicks said he is familiar with the requests and has had group discussions with those two fire districts regarding possible eligible use of the State Fiscal Recovery Fund for the cost the districts have endured as a result of COVID. Their request is important, and he does not want to diminish it, but there have been many requests in the last several months directed toward the remaining \$1 billion of ARPA funds. He said there will be a lot of decisions to be made, for very legitimate purposes. Representative Miller urged Mr. Hicks and the state budget office to look favorably upon the fire districts' request.

Senator Mills introduced Ms. Couch and stated that in her role as Executive Director of the School Facilities Construction Commission she had authored one of the letters that communicated information to school superintendents about the ARPA funding. Ms. Couch stated that the commission was in constant communication with the districts in an effort to keep them apprised of what was happening. Responding to Representative Tipton, she said that unmet needs for school facilities in the Commonwealth totals a little more than \$6 billion, according to a recently issued report.

Senator Mills thanked the speakers. He said that the legislature, as representatives of their communities, need to be kept informed. The point of today's meeting is that the General Assembly needs more communication, not less, in order to ensure that funds are being properly spent. It is the legislature's role to appropriate funds, and the members want to see them spent as intended.

Senator Mills noted that Representative Miller's prefiled bills, 22 RS BR 40 and 22 RS BR 341, that are listed on the agenda will be discussed later in the afternoon at the meeting of the Public Pension Oversight Board. State Government Committee members are welcome to attend that discussion. There was no further business, and the meeting was adjourned at 2:14 p.m.