

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 2nd Meeting of the 2022 Interim

July 19, 2022

Call to Order and Roll Call

The second meeting of the Interim Joint Committee on State Government was held on Tuesday, July 19, 2022, at 1:00 PM, in Room 154 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 Denise Harper Angel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, McKenzie Cantrell, Derrick Graham, Richard Heath, Samara Heavrin, Mary Beth Imes, DJ Johnson, Matthew Koch, Scott Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Tom Smith, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: Steven Pulliam, Executive Branch Ethics Commission; Jenni Scutchfield, Office of Secretary of State; Karen Sellers, State Board of Elections; Brandon Clifton and Tucker Omel, ES&S (Election Systems & Software); Bobby Gantley and Ross Roberson, Harp Enterprises, Inc.; and Steven Sockwell, Hart InterCivic, Inc.

LRC Staff: Alisha Miller, Daniel Carter, Andrew Salman, Shannon Tubbs, and Peggy Sciantarelli.

Approval of Minutes

A motion to approve the minutes of the June 21, 2022, meeting was seconded and passed without objection by voice vote.

Consideration of Referred Administrative Regulation – 9 KAR 1:070 (Standards of ethical conduct for transition team members and disclosure form)

The Executive Branch Ethics Commission's proposed administrative regulation 9 KAR 1:070 was referred to the Interim Joint Committee on State Government on June 1, 2022, after review and approval by the Administrative Regulation Review Subcommittee on May 10, 2022. The regulation establishes a code of conduct for constitutional officer transition teams and the forms which transition team members are required to file with the Executive Branch Ethics Commission. Steven Pulliam, General Counsel, Executive

Branch Ethics Commission, provided a brief synopsis of the regulation. Committee members had no questions, and discussion concluded.

Overview of Election Security

Guest speakers were Jenni Scutchfield, Assistant Secretary of State, and Karen Sellers, Executive Director, State Board of Elections. Ms. Scutchfield provided an overview of election security, as outlined in her PowerPoint presentation.

Over the past 2½ years, more than 110,000 deceased voters have been removed from the voter rolls. Other security improvements under the Secretary of State include the use of photo identification for voting, absentee ballot tracking, enhanced signature verification, a ban on ballot harvesting, the move to paper ballots, video surveillance of voting machines, and an expanded audit process.

No Kentucky voting equipment is ever connected to the Internet. By law, poll workers include both Democrats and Republicans appointed by the State Board of Elections. Currently, there are 4,000 voting precincts. Results are driven to county clerks' offices, where computers not connected to the Internet are used to tabulate numbers. Only official results are used to certify winners of elections. This process takes several weeks, and unofficial results on election night are provided only as a convenience for the public.

Hand-counting of ballots would result in fraud and would delay the results by weeks. In 1940, Kentucky voters amended the state constitution to allow for voting machines to be used after experiencing fraud as a result of hand-counting.

County boards of elections, which are bipartisan, appoint an accuracy board that tests every voting machine prior to elections to certify that they work as intended and will accurately report the votes. County clerks, county boards of elections, and precinct election officers maintain additional safeguards by documenting the chain of custody of machines.

In 2022, the General Assembly mandated that all counties must update their election equipment to allow for the use of voter-verified paper ballots by 2024. Using federal funds and an additional \$25 million appropriated by the General Assembly during the 2022 regular session, counties have updated nearly all voting machines to accommodate paper ballots. A few counties have not yet converted to paper ballots, but paper ballots will be used statewide by 2024.

Because of legislation passed by the Kentucky General Assembly, Kentucky will conduct risk-limiting audits after every election, which means that a hand-count of paper ballots will be compared against the machine count. The State Board of Elections is implementing a risk-limiting audit for use after the November 2022 elections. Objective, nonpolitical review of the elections process is the goal of the audits.

The bar scans on ballots are not connected to the voter. The bar codes on ballots ensure that the scanners recognize the ballot style and the contests to be tabulated. The voting systems are designed to protect against tampering during voting, system storage, and transport. Each machine uses physical and system access controls, including lockable doors, tamper-evident seals, and access codes.

Multiple safeguards are in place to protect the integrity of the ballot. These include a requirement that county clerks maintain a record of the number of ballots issued to each precinct and that they create a ballot accountability statement. A certification of election totals is signed by members of the county boards of election and faxed to the Secretary of State's Office. Precinct election sheriffs' post-election reports are provided to the grand jury and county clerks. County boards of elections' post-election reports are sent to both the grand jury and the State Board of Elections.

Election equipment is certified by the Election Assistance Commission (EAC), and the State Board of Elections certifies equipment from a list approved by the EAC. Both agencies are bipartisan. Currently, the only election equipment vendors certified by the State Board of Elections are ES&S (Election Systems & Software); Hart InterCivic; and Microvote, which is currently not being used. Each county purchases its equipment through an RFP process. The EAC requires that systems be able to tabulate 1.5 million votes without error.

Concluding her presentation, Ms. Scutchfield emphasized that questions or concerns about the integrity of Kentucky elections should be directed to county clerks, the State Board of Elections, or the Secretary of State.

Ms. Sellers stated that members of the public may observe the accuracy testing of voting machines, and she encouraged this observance during the months leading to the November general election. In addition to the \$25 million appropriated by the General Assembly, the State Board of Elections has designated \$6.7 million from an agency security fund for use in upgrading voting machines. To date, 11 counties have not yet upgraded their voting equipment.

Representative Bratcher commented that Kentucky's election systems are safe and secure, but there are still questions regarding election issues. He stressed that the legislature is the voice of the people, and it advocates for the right to question and inquire. Ms. Scutchfield stated that the Secretary of State's office absolutely welcome questions.

In response to a question from Senator Thayer, Ms. Scutchfield stated that she does not have specific numbers with her but can get them for the committee, and she does not know whether those numbers would reflect a change in political party affiliation. There are multiple reasons for removing voters from the rolls. For example, a voter can notify the county clerk that they have moved. Notification from the Administrative Office of the

Courts and the federal courts that the voter has committed a felony is also a cause for removal. Kentucky's membership in the Electronic Registration Information Center (ERIC) is a primary source of information. ERIC compiles data from states' Transportation Cabinets and boards of elections. If the data shows that voters may have changed location, they are sent an NVRA (National Voter Registration Act) mailing. The first purge or removal under the NVRA will occur after the November 2022 general election. ERIC also provides access to the Social Security death index.

Representative Graham commended the speakers for being honest and direct and for letting everyone know that Kentucky elections are protected. Responding to a question from Representative Graham, Ms. Sellers stated that she did not have exact numbers but believes that voting occurred at the precinct level in probably a dozen counties. A majority of counties—well over 100—also had vote centers. The Board of Elections received very few, if any, complaints regarding the use of vote centers versus precincts. Ms. Scutchfield stated that turnout was light for the 2022 primary election, but she does not know whether that can be attributed to polling location. When asked about the 11 counties that have not yet upgraded their voting equipment, Ms. Sellers stated that those counties are not concentrated in any particular area of the state.

Responding to questions from Representative Johnson, Ms. Scutchfield stated that currently paper ballots are lacking only for ADA-accessible machines. Ms. Sellers stated that there should be major improvement in cleaning the voter rolls after the November 2022 general election and that the cleanup could possibly be completed within the next four to eight years.

Responding to questions from Representative Smith, Ms. Scutchfield and Ms. Sellers clarified the timelines and procedure relating to early and absentee voting and use of the online portal.

In response to a question from Senator Wheeler concerning the availability of financial resources to help rural counties purchase additional voting equipment, Ms. Sellers stated that counties who choose to buy more equipment could access additional funding through the State Board of Elections' \$6.7 million agency security fund, as well as the \$12.5 million appropriated in the 2022 legislative session.

Voting Systems

The guest speakers from Election Systems & Software (ES&S) were Brandon Clifton, Senior Vice President of Government Affairs, and Tucker Omel, Senior Sales Engineer. Harp Enterprises, Inc. was represented by Bobby Gantley, President, and Ross Roberson, Vice President of Sales. Steven Sockwell, Vice President of Corporate Communications, was present from Hart InterCivic Inc. The speakers' presentation included a display of voting equipment.

Mr. Clifton stated that ES&S is an American-owned and operated company based in Omaha that supplies technology to 23 Kentucky counties. Nationwide, ES&S has served in 1,600 county-level jurisdictions. All ES&S equipment and software undergoes security, functionality, accessibility, usability, and environmental testing by ES&S and the U.S. Election System Commission (EAC), in addition to the Commonwealth of Kentucky's own certification process. Every ES&S system undergoes rigorous testing by independent federal test labs accredited by the National Institute of Standards and Technology (NIST). ES&S continues to submit updated versions of its software to the EAC for testing and approval on a regular and consistent basis. ES&S conducts thorough and pervasive penetration testing of its hardware and software, using tools that are considered industry standard and best practice in the field. ES&S also engages in third-party independent testing to validate security and the supply chain and to ensure that no back-door tampering has occurred.

ES&S is working with industry partners to create the nation's first Coordinated Vulnerability Disclosure Program (CVDP) for elections equipment, designed to provide even greater third-party and independent testing. All ES&S tabulation firmware and software are housed domestically and written exclusively within the United States, and all final hardware configuration of voting machines is performed in the United States. ES&S voting machine components are produced in secure, ISO-9001 (International Organization for Standardization) certified manufacturing facilities, and the entire voting system is managed by a secure engineering change order and control process. The Commonwealth of Kentucky does not allow the transfer of unofficial election results via modem or other cellular connectivity, and ES&S equipment in Kentucky does not support the ability to connect via modem. Concluding his opening statement, Mr. Clifton stated that the goal of ES&S is to offer its constituents and customers as perfect an election as possible.

Mr. Gantley, Mr. Roberson, and Mr. Sockwell were next to speak. Their testimony included a PowerPoint presentation entitled "Hart InterCivic – Advancing Democracy, Together."

Mr. Sockwell stated that Hart InterCivic is a full service election technology vendor that has been in business for more than 109 years. The company focuses exclusively on elections and supports state and local election officials. The company has more than 840 customers across 20 states and does not do business outside the United States. The product that Hart sells in Kentucky through its partnership with Harp Enterprises reflects relatively fresh 5-year-old technology. Hart systems have always been made in America, and the primary facility is less than two miles from Hart's headquarters in Austin, Texas. Annual surveys dating back to 2009 reflect overall customer satisfaction of 90 percent. Hart employees undergo comprehensive background checks, receive ongoing cybersecurity training, and participate in Department of Homeland Security election security roundtables. Hart collaborates with a broad community of stakeholders regarding election security,

including the National Association of Secretaries of State and the National Association of State Election Directors.

Hart's Verity products are never connected to the Internet and provide a voter verifiable paper audit trail. Voter choices are never encoded in barcodes, all devices offer plain-language audit logs, and products are fully accessible for voters with disabilities. In the areas of hardware, software, and auditability, Hart believes that Verity products feature the most secure system in the industry. Full-sized ballots and bilingual ballot summaries provide for a better voter experience. Election officials are able to pre-print ballots before an election or print them on demand as voters arrive.

Mr. Gantley testified that Harp Enterprises, founded in 1972, has been in business in Kentucky for 50 years and currently provides services to 97 of the 120 counties. All services are performed at its Lexington, Kentucky, facility, and nothing is outsourced. The company services and supports, and is the official reseller of, voting equipment manufactured by Hart InterCivic. Harp Enterprises became partners with Hart in 2004.

Mr. Gantley stated that the 11 counties that have not yet upgraded their equipment currently utilize the Hart Legacy HVS system, which has a non-paper-verifiable trail. They will be upgraded to the Hart Verity voting system before 2024. Those counties are colored green on the map in the slide presentation; counties shown in blue have already upgraded. Responding later to Representative Blanton, Mr. Gantley explained that the "white" counties on the map are serviced by ES&S.

The services performed by Harp Enterprises include training classes for precinct election officers statewide for every election. Every database is tested for accuracy. Harp provides on-site election day support if requested by a county. The USB drives that record votes are hand-delivered and never mailed to customers. Harp employees physically set up databases at election sites, and every election includes 3-5 trips to the 97 counties serviced by Harp.

When Representative Miller asked for assurance that voting equipment cannot be connected to the Internet, Mr. Roberson said there is no modem for connectivity to the Internet, and no malware can be placed on the machines. He explained the various locks and seals and other measures that prevent tampering with the equipment. Mr. Omel provided additional details regarding machine security and stated that only proprietary USB devices from ES&S would be recognized by a machine. If a USB drive that is foreign to the machine—or even one from a prior election—were inserted, the machine would shut itself down automatically.

Responding to Senator Southworth, Mr. Sockwell and Mr. Omel explained how the use of poll books coordinates with the voting system and the connection of ballots to the voter. In response to Sen. Southworth's question about post-election expanded audit, Ms.

Sellers stated that the Secretary of State is using a consultant to help prepare the audit model. As provided in the relevant 2022 legislation, the risk-limiting audit will begin with a pilot program. Six counties are participating in the work group that is developing the model for the audit, which is to be performed after the upcoming November general election. Counties were randomly selected based on size and the election vendors who service the counties. Senator Southworth stated that some of her constituents have concerns about election machines being vulnerable, and they want paper ballots and hand-counting of votes at the precinct level. She spoke about the benefits afforded by paper ballots, and she expressed concern that the risk-limiting audit will focus on only six counties, leaving the other 114 counties open for possible fraud.

Representative Tipton stated that he has visited the Hart facility in Lexington and believes the public would feel more secure about the voting process if they could view the technology. Also, when he visited Tampa, Florida, during an NCSL conference, he was able to visit an election headquarters that uses the ES&S system. At Representative Tipton's request, Mr. Omel explained in detail the technology and security features of the voting system devices that are physically transported to county clerks' offices for tabulation after an election. Mr. Sockwell stated that the process is very similar for Hart systems. If a removable drive were lost, a replacement can be created. The system is smart enough to know whether it is looking at an original or a replacement, and it would not count both.

Representative Nemes stated that he believes Kentucky elections are secure. He also stated that hand-counting of ballots would be the best friend of a fraudster and the worst thing for the elections process. However, hand counting would not be a problem in the audit process. He is grateful to the Jefferson County Clerk, Bobbie Holsclaw, that the county utilizes voting precincts, as well as voting centers. Another county which he represents no longer has precincts, and he has received a lot of complaints about that. He believes that county clerks should be encouraged to use voting precincts.

Representative Nemes questioned why the previous owner of his Louisville residence is still registered to vote at that address; although, the previous owner has not lived there for eight years. Ms. Scutchfield stated that, hopefully, this might be corrected after the next general election, as part of the NVRA (National Voter Registration Act) vote maintenance process. A voter has to be proactive to remove himself or herself, and until recently, the process of removing voters without their "signature" through the federally-approved process has not been done since 2009. Responding to a question from Senator Nemes. Ms. Scutchfield stated that federal law prevents removal of voters without their signature, and Kentucky law follows the federal law. When Representative Graham asked about the possibility of other states assisting in the removal process, she said that the best way to promote coordination between states is to encourage them to join ERIC (Electronic Registration Information Center.). She noted that neighboring state Indiana is currently not a member.

Representative Graham stated that the discussion and information provided to the committee today convinces him that Kentucky's election process is safe and secure. He said it is important to make this known to the people of the Commonwealth—and across the country. He thanked the election officials and vendors for what they do and for their participation in today's meeting.

Representative Bratcher asked about the role of ERIC in the registration process. Ms. Scutchfield testified that the membership agreement with ERIC provides for lists of unregistered eligible voters to be sent out at least every two years. Trey Grayson, a Lexington attorney and former secretary of state, was invited to the speakers' table. He testified that he was in office when ERIC was created. He briefly described the organization's work and said that each member state has a board of directors and an executive director who would be able to answer questions about ERIC. Ms. Sellers stated that it is part of the membership agreement with ERIC to reach out to people to register to vote and that in February the State Board of Elections sent out information provided through ERIC.

Representative Bratcher said people have complained about delays in getting results from the 2022 primary election. Ms. Sellers stated that the State Board of Elections made the conscious decision to create its own election night reporting system and no longer uses an outside vendor for election night reporting. This should hopefully make the public feel more secure about elections. She apologized for the delay in reporting. She said the system was new at the time, but it is in the process of being enhanced for the November general election.

There was discussion of the rumored conspiracy regarding the reporting of vote totals in the 2019 governor's race. Ms. Scutchfield explained that changes in the votes reported by the media was due to their mistake in entering the numbers. The news stations typically do not get their information from the election night reporting site of the State Board of Elections but instead use runners who go to the precincts and then text vote totals to the newsroom. Representative Bratcher said he was initially concerned about the rumors but later understood that the problem was just a matter of a reporting error. He does not mind a delay in reporting, but the vote totals must be 100 percent accurate when they are released.

Responding to Representative Johnson, Ms. Scutchfield confirmed that there is no computer connectivity involved in the process used by counties to certify election results to the Secretary of State.

Senator Thayer expressed concern about the trend to use super voting precincts. He stated that their continued spread and the reduction in polling sites will disenfranchise rural voters. He prefers the traditional precinct system and pleaded with county clerks and the

Board of Elections to be judicious in their decisions regarding voting centers. He stated that he believes Kentucky's elections are secure and safe and that today's testimony has proven that. He further stated that spreading disinformation about the electoral process is detrimental and suppresses voter turnout.

Senator Thayer stated that allegations have been made about the ability of voting machines to "switch" votes. He asked the representatives from ES&S, Harp Enterprises, and Hart InterCivic whether there is any evidence that Kentucky's voting machines have been tampered with by an outside entity in an effort to change the results of Kentucky elections. Both Mr. Sockwell and Mr. Clifton responded "No."

Senator Mills thanked the speakers and encouraged committee members to inspect the voting equipment displayed in the meeting room. There were no additional questions, and the meeting was adjourned at 2:45 p.m.