

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 2nd Meeting of the 2023 Interim

July 24, 2023

Call to Order and Roll Call

The second meeting of the Interim Joint Committee on State Government was held on Monday, July 24, 2023, at 11:00 AM, 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 David Hale, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Karen Berg, Greg Elkins, Denise Harper Angel, Amanda Mays Bledsoe, Christian McDaniel, Michael J. Nemes, Brandon J. Storm, Damon Thayer, and Gex Williams; Representatives Chad Aull, Josh Branscum, Josh Calloway, Beverly Chester-Burton, Jennifer Decker, Robert Duvall, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Keturah Herron, John Hodgson, Thomas Huff, Mary Beth Imes, DJ Johnson, Matthew Koch, Kimberly Poore Moser, Steve Rawlings, Josie Raymond, Nancy Tate, James Tipton, and Susan Witten.

Guests: Victor Maddox and Blake Christopher, Office of the Attorney General; Allison Ball, Lorrان Ferguson, and Matt Frey, Office of the State Treasurer; John Hicks, Office of the State Budget Director; and Holly Johnson and Sam Ruth, Finance and Administration Cabinet.

LRC Staff: Daniel Carter, Shannon Tubbs, Christina Gordley, and Peggy Sciantarelli.

Audience Recognition

Representative Raymond recognized members of her family who were attending from out of town.

Approval of Minutes

A motion by Representative Johnson to approve the minutes of the June 20 meeting was seconded and passed without objection by voice vote.

Update From the Attorney General's Office (OAG)

Victor Maddox, Deputy Attorney General, gave an overview of major litigation pursued by the agency. In the Supreme Court, the OAG is defending SB 3 and HB 2, redistricting legislation enacted during the 2022 Regular Session. After a trial in Franklin

Circuit Court in April 2022, the Supreme Court accepted transfer of the appeal in that case, and it will be argued on September 19, 2023. The office is currently defending in the U.S. Sixth Circuit Court of Appeals the challenge to 2023 RS SB 150; an Act relating to children. The Sixth Circuit Court issued a stay of a similar case passed in Tennessee and consolidated Kentucky's case with the Tennessee case. That case will be argued within the next six weeks and should be decided by September 30.

The OAG has successfully defended the legislature's passage of the Human Rights Protection Act and the fetal heartbeat law. In June 2022, the Jefferson Circuit Court issued an injunction, and on August 1 the OAG obtained a stay of that injunction from the Court of Appeals. The Supreme Court issued an opinion ruling that the challenge to that law did not have what is called "third party standing," and Planned Parenthood abortion providers voluntarily dismissed their case.

The OAG is defending SB 7 in Franklin Circuit Court, Division 1. SB 7 prevents the automatic payroll deduction for payment of labor organization dues and political contributions. A similar challenge to the law was brought in the Jefferson Circuit Court, and the OAG intervened in that case. The OAG is defending the challenge to the constitutionality of the Kentucky public charter school law; the constitutionality of 2022 RS SB 1, relating to the authority of the Jefferson County School Board to manage its day to day operations; the challenge to 2021 RS HB 563, which created the educational opportunity pilot program; the "gray machine" legislation, which is being challenged as unconstitutional in Franklin and Jefferson Circuit Courts; and a challenge to 2023 RS SB 126, which would allow a change of venue whenever the constitutionality of a statute is challenged—cases that are currently heard in Franklin Circuit Court.

The OAG has recently issued an opinion to address what is considered flawed guidance issued by the Kentucky Department of Education regarding interpretation of 2023 RS SB 150. The opinion addresses the state law provisions, and the premise that school boards that follow the law would be violating federal law under Title IX.

The OAG has been implementing settlements in the opioid litigation cases and has confirmed settlements to bring more than \$840 million to the Commonwealth—which is evenly split between the State Treasury and local governments. Many of those cases were filed by the previous administration, but three additional cases were brought after Attorney General Cameron took office. The case against CVS settled for \$940,500,000 and the suit against Allergan was settled for almost \$49 million. The OAG negotiated with Walmart without filing a lawsuit and settled that case for \$53.5 million. The work of the Kentucky Opioid Abatement Advisory Commission is ongoing. There has been one round of awards, with another round expected in September. If the case involving Purdue Pharma is affirmed by the 2nd Circuit Court of Appeals, another \$50 million will be coming to Kentucky. There are also other cases being negotiated.

The OAG has obtained a stay of the Biden administration’s “good neighbor rule,” which would have imposed a federal rule, through the EPA, rejecting the state’s implementation plan, adversely affecting the state. They have also obtained a stay of the Biden administration’s “waters of the United States” rule, which would diminish the Kentucky General Assembly’s power to pass laws and rules and regulations governing Kentucky waters and adjacent lands. A ruling is yet to come on the merits of that case.

The OAG has had some success in its challenge to the “net zero priorities” that are being imposed at the federal level with the purpose of eliminating the use of fossil fuels. Altogether, the OAG has either filed or joined more than 25 lawsuits against rules and regulations of the Biden administration.

Since Attorney General Cameron has been in office, the consumer protection office has investigated 7,414 price gouging complaints. States of emergency that have been in place either throughout the Commonwealth or in select counties since March 2020—relating to the pandemic, tornadoes, flooding, and the winter storm of December 2022—are still in effect and have led to price gouging complaints. After the tornadoes in western Kentucky, the OAG was instrumental in the creation of a contractor registration program in the affected counties to ensure that local residents would be dealing with approved reputable contractors. The counties involved were Graves, Caldwell, Hopkins, Muhlenberg, and a few others. The Office of Senior Protection has handled over 8,400 cases involving consumer complaints. That office alerts people to scams and helps avert problems that target seniors.

Concluding his remarks, Mr. Maddox stated that the OAG appreciates the support of the legislature. The agency budget was increased by about \$3 million from 2022 to 2023. The funds have been used to hire more staff, to open offices in London and the Bowling Green area, and to create a renewed presence in the Prestonsburg office. Needed additional staff have been assigned to the Jefferson County office.

Blake Christopher, OAG Senior Counsel, discussed the current legislative priorities of the agency. They are proposing to amend language in KRS Chapter 446, relating to interpretation of statutes, to more accurately reflect legislative intent. Some legislators are now working on draft legislation to that effect.

KRS 15.291 and 15.293 may need to be amended to provide a plan for dispersal of funds that Kentucky receives from opioid settlement cases that are currently in bankruptcy proceedings and to ensure that Kentucky meets necessary qualifications for receipt of those monies.

The OAG has received considerable feedback regarding construction of solar farms by utilities. KRS Chapter 100 provides that a utility can declare eminent domain and bypass local government approval, whereas private entities wanting to create a solar or wind farm

are required to get local government approval. There may be an opportunity to amend the statutes to protect the amount of developmental land in small towns that may become subject to solar and wind farms in the future and provide for local government control in those areas.

In response to Representative Bratcher, Mr. Maddox stated that he does not know the specific number of cases currently before the Supreme Court—or which case has been there the longest. He believes there are at least a dozen cases and that four are scheduled for argument by the end of September. Representative Bratcher expressed concern and dissatisfaction regarding the length of time the Supreme Court is taking to decide cases, with some cases potentially being before the court longer than a year.

Update From the Kentucky State Treasury

Allison Ball, State Treasurer, gave an overview of activities in the State Treasury during her term of office. She was accompanied by Lorrان Ferguson, Deputy State Treasurer and Chief of Staff, and Matt Frey, the Treasury's Communications Director and Policy Advisor.

Ms. Ball described her role's core function as a "watchdog" to assure that bills get paid in the Commonwealth. This includes taking care of bank deposits for the Commonwealth; dealing with federal, state, and local tax withholding for state employees; recording, monitoring, and reconciling all transactions in the state depository and checking account; and dealing with financial aspects relating to various state boards. Unclaimed property has been a primary focus for her. The Treasury has returned \$168 million in unclaimed property while she has been in office, with \$89 million returned during her first term. The process has been modernized and made more efficient, always while monitoring for possible fraud or other problems. Handling of smaller claims has been sped up considerably. Kentucky is the first state in the country to determine how to handle unclaimed cryptocurrency and is now a model for the nation. The Treasury has been able to stop a variety of attacks on the Commonwealth and received national attention for stopping a \$5 million sophisticated fraud attempt.

Ms. Ball stated that, in partnership with the state of Ohio, she launched Stable Kentucky, a savings and investment program for people with disabilities. The program has about 1,000 participants. She discussed her efforts and support for legislation that created the Kentucky Financial Empowerment Commission (KFEC) and legislation that made a financial literacy course or program a high school graduation requirement. The KFEC is fully supported by the private sector. Through the Treasury's work with the KFEC, a free program is available for high schools in the Commonwealth to teach financial literacy. KFEC also provides financial literacy training to local governments and other groups throughout Kentucky.

Ms. Ball stated that countering the environmental, social, and governance investment practices (ESG) movement in order to protect investments in the Commonwealth has been a major initiative. She has worked with the Attorney General to clarify that it is illegal in Kentucky to invest in ESG. During the 2022 Regular Session, the General Assembly enacted SB 205, relating to state dealings with companies that engage in energy company boycotts—often referred to as the fossil fuel boycott bill. Kentucky is now the strongest anti-ESG state in the union.

Ms. Ball discussed her recommendations for the future. She stated that the Kentucky Financial Empowerment Board’s presence in the Federal Reserve receives support from the St. Louis Federal Reserve but, hopefully, will also be provided support from the Cleveland Federal Reserve. Currently, the Treasury has statutory authority to issue administrative regulations only relating to unclaimed property. She suggested that the Treasury should be given authority to issue regulations relating to its other operations, which are now governed only in internal policy. She believes it would be worthwhile in the future to create an unclaimed property trust fund for receipt and investment of unclaimed property monies received in the Treasury.

Ms. Ball noted that, as Treasurer, she serves on the boards of the Deferred Compensation Authority, the Kentucky Financial Empowerment Commission, the Kentucky Lottery, the State Investment Commission, the Kentucky Asset Liability Commission, and the Teachers’ Retirement System.

Senator McDaniel complimented Ms. Ball for her work—especially in the area of unclaimed property—and for helping the Treasury to become more financially independent.

Representative Aull stated that he had worked for a former state treasurer in the area of unclaimed property for many years. He asked about the total amount currently in the unclaimed account. Ms. Ball stated that it is approximately \$800 million and was probably a little over \$500 million when she became Treasurer.

When Representative Tipton asked Ms. Ball for her perspective relating to the Teachers’ Retirement System (TRS) unfunded liability, she stated that it is in better shape now than before she became as a board member. She believes that TRS is now on good footing and that the commitment of the General Assembly has been a major contributing factor.

Representative Decker referred to Ms. Ball as a “superstar” among state treasurers. She stated that she was glad to see that confirmed by others when Ms. Ball was recognized for her accomplishments at a meeting of the Association of State Treasurers.

There were no additional questions, and discussion concluded.

Overview of the Capitol and Annex Renovations

The guest speakers were John Hicks, Secretary of the Governor's Executive Cabinet and State Budget Director; Holly Johnson, Secretary of the Finance and Administration Cabinet; and Sam Ruth, Commissioner, Department for Facilities and Support Services, Finance and Administration Cabinet.

Mr. Hicks stated that \$287 million is the overall cost of the project to renovate the state capitol. Of that amount, \$260 million was appropriated in the two-year budget passed by the General Assembly in 2022. Earlier elements of the project—mechanical and electrical upgrade design and exterior renovation of the dome—were funded from prior budgets. EOP and NPDP are the architectural and engineering firms selected for the project. Design of the full project is well underway and should be completed by February 2024, with construction bids to be let in the spring of 2024. Completion of the entire project is estimated to take 3½ years.

Secretary Johnson stated that the Finance and Administration Cabinet began preliminary discussions earlier this year with current occupants of the Capitol Building—the Governor's Office, the Secretary of State, the Attorney General, Court of Justice, and LRC—about the process and timing of relocating during construction. Discussions will continue as the plans are finalized. The Finance and Administration Cabinet is examining relocation options to meet the space needs of the Capitol building occupants. This will likely involve the leasing of privately owned space, with concrete dates and locations yet to be determined. The sequence of construction projects will impact the timing for moving the Capitol occupants.

Mr. Hicks advised that the project budget will cover the additional costs for leased space that will be needed. The architectural firm and the Finance and Administration Cabinet are considering various options to accommodate meetings of the General Assembly during construction. The judicial branch is also considering options to accommodate the needs of the Court of Justice.

In response to questions from Senator Mills, Mr. Hicks commented that the start of the 3½ year construction period would commence after bids are let in the spring. Mr. Ruth stated that contractors were chosen through the usual bidding process. He does not recall whether there were multiple bidders but agreed to get that information for Senator Mills.

Discussion concluded and Senator Mills thanked the speakers. He announced that the next meeting of the committee would be at the State Fair on Thursday, August 24. The meeting was adjourned at 11:52 a.m.