

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the Fourth Meeting of the 2023 Interim

September 26, 2023

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on September 26, 2023, at 11:00 AM in Room 149 of the Capitol Annex. Representative David Hale, Chair, called the meeting to order, and the secretary called the roll. Representative Johnson recognized students of the Grace Christian Academy in Owensboro who viewed the meeting via KET.

Present were:

Members: Representatives Kevin D. Bratcher Co-Chair; David Hale Co-Chair; Senators Greg Elkins, Denise Harper Angel, Amanda Mays Bledsoe, Christian McDaniel, Michael J. Nemes, Brandon J. Storm, Damon Thayer, Phillip Wheeler, and Gex Williams; Representatives Chad Aull, Adam Bowling, Josh Branscum, 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, Savannah Maddox, Kimberly Poore Moser, Steve Rawlings, Nancy Tate, James Tipton, Russell Webber, and Susan Witten.

Guests: Karen Sellers, Richard House, and Taylor Brown, State Board of Elections; and Chauncey Morris, Kentucky Thoroughbred Association.

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

Approval of Minutes - August 24 meeting

A motion by Senator Storm to approve the minutes of the August 24 meeting was seconded and passed without objection by voice vote.

State Board of Elections - Voter List Maintenance

Guest speakers from the State Board of Elections (SBE) were Karen Sellers, Executive Director; Richard House, Assistant Director; and Taylor Brown, General Counsel. They testified under oath. Their slide presentation provided information on key provisions of the National Voter Registration Act (NVRA) 52 USC section 20507(c); Kentucky law (KRS 117.015, KRS 116.112, and KRS 116.113); member states of the Electronic Registration Information Center (ERIC); the 2018 US District Court consent judgment; and the postcards used for list maintenance mailings.

The NVRA requires that in the administration of voter registration for elections for federal office, each state shall ensure that eligible applicants are registered to vote in an election, and states shall conduct a general program that makes a reasonable effort to remove the names of ineligible voters from official lists of eligible voters. In KRS 116.112 Kentucky has established

such a program. KRS 117.015 directs SBE to administer the election laws of the state and supervise registration and purgation of voters.

Kentucky is one of 25 states that are members of ERIC—a nonprofit, nonpartisan membership organization created in 2012 by state election officials and funded and governed by the participating states. ERIC provides U. S. Postal Service national change of address reports, cross-state mover and in-state update reports, reports of deceased voters, and possible duplicate registrations.

In 2017, the nonprofit organization Judicial Watch, Inc. sued then Secretary of State Alison Lundergan Grimes, alleging that the NVRA's required voter list maintenance was not happening in Kentucky, evidenced by the fact that the state had more voter registrations than residents of voting age. In 2018, the US Department of Justice (DOJ) joined the case as an intervening plaintiff. As the case continued on, meaningful voter list maintenance continued to be neglected, leading to a backlog of ineligible voters clogging the voter rolls—a backlog that is still being addressed. In July 2018, the parties entered into a consent judgment that was set to expire October 31, 2023. On September 9, 2020, with current Secretary of State Michael Adams having assumed office, and a new statutory scheme for independence of the State Board of Elections in place, the Secretary and the State Board agreed with Judicial Watch and the DOJ to extend the expiration date to March 31, 2025.

KRS 116.113 provides for removal of a voter's name upon notice of death, declaration of incompetency, notification that a person has registered to vote out of state, or notification from the Administrative Office of the Courts that a person has been convicted of a felony. Mr. Brown stated that SBE suggests amending KRS 116.113 to include notification from the DOJ regarding felony conviction, and to allow SBE to remove a registration upon notification from either AOC or the DOJ that an individual has been found incapable of serving as a juror due to lack of citizenship status.

Concluding his presentation, Mr. Brown stated that in February—the first time that SBE conducted a purge pursuant to the NVRA and current state law—more than 127,000 registrations that were proven inactive were removed from Kentucky's voter rolls. Since 2020, SBE has sent out over 830,000 postcards.

In response to questions from Representative Hodgson, Mr. Brown stated that SBE provides yearly list maintenance reports on its website. They expect to meet the September 30 deadline specified in the consent decree for making list maintenance and other information publicly available.

Representative Hodgson questioned why only 12,000 voters have been purged due to death, when about 200,000 people have died in Kentucky. Mr. Brown stated that SBE has to rely on information provided by the Social Security master death index file, state vital statistics, county clerks, and other sources. Ms. Sellers said she had not examined the statistics but believes the COVID pandemic could have affected the accuracy and timely reporting of information.

Representative Aull commended SBE for continuing to participate in the ERIC program. He also asked about the procedure for reporting voter deaths. Mr. House explained that SBE gets weekly updated lists of deaths from the Kentucky Office of Vital Statistics and that county clerks perform list maintenance daily at the local level. He acknowledged that the number of reported deaths seems low and stated that SBE would reexamine those numbers.

Representative Graham emphasized the importance of citizens having access to the right to vote. Mr. Brown stated that it is a goal of their list maintenance efforts to never remove any voter that should rightfully be on the voter rolls.

Representative Bratcher suggested that SBE try to find a good alternative source for the information currently supplied by ERIC, because he believes that program is “on life support.”

Representative Johnson stated that it has often been brought to his attention that Daviess County has more registered voters than eligible adults living in Daviess County. He questioned when this discrepancy might be resolved. Mr. Brown said he could not give an exact date, but that as more federal elections pass, the numbers will become more in line—likely within the 2020 decade. This percentage oddity is also found in other Kentucky counties.

Representative Tipton clarified that local county clerks cannot purge a registered voter but can only submit the information to SBE. When he asked about the procedure for verifying citizenship of voters, Mr. Brown explained that SBE does not research individual citizenship status.

Representative Decker stated that some states use the Systematic Alien Verification for Entitlement (SAVE) program to verify citizenship status of registered voters. Although the program is not intended for voter roll maintenance, she asked that SBE look into the merits of the program and report back to the committee. Mr. Brown responded affirmatively.

Discussion of 23 RS HB 500

Representative Richard Heath, primary sponsor of 23 RS HB 500, discussed similar legislation which he plans to propose during the 2024 Regular Session. He was accompanied by Chauncey Morris, Executive Director, Kentucky Thoroughbred Association. They testified under oath. HB 500, relating to agricultural land, passed the House during the 2023 Regular Session, with a vote of 85-9, but was not heard in the Senate.

Representative Heath stated that HB 500 arose from growing concern about foreign investment. It draws inspiration from similar measures adopted by other states and nations like Australia. In 2023, 15 states—Alabama, Arkansas, Florida, Idaho, Indiana, Louisiana, Mississippi, Montana, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, Virginia, and West Virginia—enacted legislation addressing foreign ownership of agricultural land. Many of these states were addressing concerns regarding the purchase or attempted purchase of large tracts of agricultural land near military installations. He recounted examples of purchases near Grand Forks Air Force Base in North Dakota, Laughlin Air Force Base in Texas, and Travis Air Force Base in California.

HB 500 prohibits the purchase of agricultural land by nonresident aliens, foreign businesses, agents, trustees, and fiduciaries associated with governments listed in federal code 22 C.F.R. sec 126.1.—Belarus, Burma, China, Cuba, Iran, North Korea, Syria, and Venezuela. The bill allows state authorities to evaluate foreign acquisitions for any potential security threats. It is a proactive step to identify and mitigate risk, strengthen the United States' overall security posture, and help prevent market manipulation by foreign nations. It also serves as a practical safeguard for food security.

In response to concerns that have been expressed, Representative Heath stated that the bill is being revised to elevate transparency in the process. Per a suggestion from Mr. Morris, it would also establish a 5-member foreign investment review board (FIRB), similar to a successful model used by Australia. The FIRB would emphasize national security and agricultural integrity and would be able to grant conditional approval, impose restrictions, and outline penalties for noncompliance in a transparent manner subject to public scrutiny. The board would include the Secretary of Economic Development Cabinet, the Commissioner of Agriculture, the executive director of the Office of Homeland Security and the State Treasurer—or their designees—and a citizen with expertise in real estate appointed by the Legislative Research Commission. The legislation would not discourage foreign investment from nations that are not on the federal codes list, nor would it prevent expansion by foreign-owned business already located in Kentucky. Concluding his presentation, Representative Heath stated that he is starting to promote the legislation early in order to receive feedback and suggestions from industry and experts and members of the legislature. To his knowledge, Kentucky realtors are taking a neutral position on the legislation.

Mr. Morris stated that the thoroughbred industry is not currently adversely affected by the type of foreign investment addressed in the legislation. However, the intent of the bill is to mitigate risk, and he believes it accomplishes that.

Representative Graham said he believes the legislation addresses a federal rather than a state government issue. Representative Heath agreed. He stated that the bill is a preemptive strike to protect Kentucky and its farmland. Hopefully, the legislation will attract attention at the federal level.

Representative Graham expressed concern about the bill's impact on families who move to Kentucky and buy property for purposes of educating their children. Representative Heath responded that the bill only applies to persons associated with a foreign government.

Representative Johnson stated he thinks the legislation is important, but he questioned whether it goes far enough, since there are properties other than agricultural land that are adjacent to military installations and other sensitive areas. Representative Heath responded that he does not have a good answer for that but is open to suggestion.

Representative Gooch commended Representative Heath for bringing the bill. He also expressed concern about other important issues facing the nation, such as prime farmland being converted for energy purposes and corn crops being used for fuel instead of food production when some people in the world are starving.

Representative Hale stated that the bill is a good proposal, and he agreed that it is a federal issue that needs to be brought to the forefront.

Representative Hale announced that the next meeting would be on Tuesday, October 24. There was no further business, and the meeting was adjourned at 12:13 p.m.