

bylaws, policies, and procedures consistent with the direction provided in the ordinance or state law. HB 309 HCS 1 provides guidelines for closed-session handling of cases, the handling of information and records including confidential material, and records retention. All information and copies *provided* to the board shall not lose their confidentiality and are maintained by the appropriate agency in accordance with state and federal law and subject to the Kentucky Open Records Act by requesting access to the originating agency. Any information and record copies provided to the board for review shall be exempt from the Kentucky Open Records Act and shall be destroyed at the conclusion of the board's examination.

All proceedings, records, opinions, and deliberations of the board shall be privileged and not subject to discovery, subpoena, or introduction as evidence in any civil action in such a way as to identify any person or case. However, evidence may be used in a civil action if discovered independently of the board proceedings.

By majority vote, the board may request the Government Oversight and Audit Committee currently provided for in KRS 67C.103(14) to issue subpoenas to any officer or appointee or any department or division to appear before the Committee and to submit work papers and documents to the Committee. Testimony shall only be taken in executive session unless waived by the person or entity testifying. The board may petition Circuit Court to compel obedience for failure to testify or furnish work papers or documents subpoenaed. The board may administer oaths to witnesses.

Peace officers compelled to testify must do so under the provisions of KRS 15.520, may be represented by a collective bargaining entity; are subject to the fifth and Fourteenth Amendments, and may have legal counsel of their choice present. Testimony resulting from a subpoena shall be deemed coerced regarding self-incrimination protections.

The Government Oversight and Audit Committee may turn over testimony and work papers or documents secured to the board.

Section 2:

The Government Oversight and Audit Committee can approve legal or administrative settlements not contained within the budget involving one million dollars or greater; or consent decrees offered to be entered into by the consolidated local government. Discussions regarding settlements or consent decrees must be held in closed session. Once returning to open session, the committee shall give a summary of what occurred during the closed session.

Widens the scope of the committee's authority to compel testimony to include current appointees and former officers and appointees.

Section 3:

Provides that the mayor of a consolidated local government be elected in **nonpartisan** elections, replacing the current partisan election for mayor. For mayors elected after January 1, 2023, the term limits are decreased from three to two consecutive terms.

Section 4:

Provides that the county attorney may provide only an *advisory* opinion to the legislative body of the consolidated government regarding the form, legality or constitutionality of any legislative action. Prohibits the county attorney from approving legislation prior to its consideration by that legislative body.

Section 5:

The mayor shall make appointments to agencies, boards, and commissioner statute and subject to legislative body approval. The legislative body shall have 60 days to give approval to an appointment, if approval is required by law.

Section 6:

Removes language prohibiting a legislative council member preferring a charge to sit as a member of that council when the charge is tried.

Section 7:

Requires a consolidated government to provide an annual report to the urban service tax district board and the legislative body detailing operating and capital expenditures of each service performed by the consolidated government.

Sections 8-11:

Provides for a deputy chief or assistant chief of a consolidated local government's police force to act as a "designee" in disciplinary matters relative to removal, suspension, or reduction in grade of a nonprobationary officer.

Requires the designee to provide the chief with a copy of the written statement furnished to the officer explaining why the action is being taken. Clarifies the chief is responsible for the designee's actions.

HB 309 HCS 1 will only affect Louisville / Jefferson County Metro Government as they comprise the only consolidated local government in the Commonwealth.

Discussions were had with both the Jefferson County Clerk's Office and the Jefferson County Attorney's Office. Both offices stated no fiscal impact and the Clerk specifically stated going to a nonpartisan election for mayor would entail a slightly different ballot design, and a nonpartisan election may result in a few more people coming out to vote in the primary.

Local governments that choose to create ordinances will incur costs associated with the drafting, publication, indexing and recording of adopted ordinances, and at least every five years, review and eliminate redundant, obsolete, inconsistent, and invalid provisions.

According to Kentucky League of Cities, most cities, especially the smaller ones, retain their city attorney on contract and pay on an hourly basis. Time spent drafting an ordinance is influenced by its complexity and the amount of research that is necessary. In

FY 2020, the average hourly rate was \$107. Rates for legal notices vary greatly depending on the length of the publication, the number of times it needs to be published and the newspaper in which the publication is placed. Therefore, these costs are unknown.

There will be administrative cost related to board proceedings and the recording and storage of records and documents generated by the civilian review and accountability board.

The proposal is silent as to compensation for civilian review and accountability board members and appointees.

There will be cost to Metro Government associated with providing an annual report of operating and capital expenditures to the urban service board. How much of this data can be generated with the current financial system is not known, but costs are expected to be minimum unless major programming cost are involved.

Part III: Differences to Local Government Mandate Statement from Prior Versions

HB 309 HCS 1 keeps the major provisions of HB 309 as introduced with the following changes:

Section 1:

- clarifies that a “board” means a governmental body;
- requires the mayor’s appointee leader of the investigatory office to be approved by the legislative body;
- removes wording requiring potential or ongoing investigations to be discussed in closed meeting and adds wording that “cases” may be discussed in closed meetings;
- deletes wording and clarifies requirements for the handling of information and records;
- all information and records provided to the board are exempt from the Kentucky Open records Act;
- clarifies that the Government Oversight and Audit Committee can compel testimony and the submission of work papers only to themselves;
- peace officers compelled to testify must do so under the provisions of KRS 15.520, may be represented by a collective bargaining entity; are subject to the fifth and Fourteenth Amendments, and may have legal counsel of their choice present. Testimony resulting from a subpoena shall be deemed coerced regarding self-incrimination protections.
- The Government Oversight and Audit Committee may turn over testimony and work papers of documents secured to the board.

Section 2:

The committee can approve legal or administrative settlements not contained within the budget involving one million dollars or greater; or consent decrees offered to be entered

into by the consolidated local government. Discussions regarding settlements or consent decrees must be held in closed session. Once returning to open session, the committee shall give a summary of what occurred during the closed session.

Widens the scope of the committee's authority to compel testimony to include current appointees and former officers and appointees.

Section 3:

After January 1, 2023, the term limits for mayors are decreased from three to two consecutive terms.

Inserts a new Section 4:

Provides that the county attorney may provide only an *advisory* opinion to the legislative body of the consolidated government regarding the form, legality or constitutionality of any legislative action. Prohibits the county attorney from approving legislation prior to its consideration by that legislative body.

Section 7 (previously Section 6):

Clarifies that the annual report provided by the consolidated local government shall go to the urban services tax district board.

Sections 10-11 (previously Sections 9-10):

Conforming language regarding allowing a designee to act on his behalf of the police chief in personnel matters regarding dismissal, suspension, or demotion of a nonprobationary officer. Require the designee to provide the chief with a copy of the written statement furnished to the officer explaining why the action is being taken. Clarifies the chief is responsible for the designee's actions.

Data Source(s): LRC Staff

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 2/25/21