

Memorandum

To: Wesley Sydnor
Valerie Lucas
Doug Kimbler
Paul Maron
Mindy Scott
Joe Pavoni
Admin@cleanwaterprofessionals.org

From: Carl W. Breeding
Lloyd R. (Rusty) Cress, Jr.
Bert May
Austin Wicker

Telephone: (502) 352-4610
Fax: (502) 352-4609
E-mail: carl.breeding@dinsmore.com
rusty.cress@dinsmore.com
bert.may@dinsmore.com
austin.wicker@dinsmore.com

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Re: Kentucky Legislative Update

Political Backdrop

The 2020 session of the Kentucky General Assembly has reached its midpoint and is approaching the final stretch. As a reminder, the last days to file new bills in the House and Senate are March 3 and March 4, respectively. When the universe of bills becomes complete, we will then need to be on the lookout for amendments to existing bills that append new concepts or existing concepts that have failed to move in the original form.

Action on the House version of the biennial budget will likely occur on Tuesday. Budget-focused legislators intend to work through the weekend to craft the final product. We expect the Senate to act quickly on their version so the two versions can be ironed out in conference committee before the veto recess.

Activity on Issues of Interest

Retirement

Income Exclusion – HB 35 (Rep. R. Huff) would increase the pension income exclusion from \$31,110 to \$41,110. HB 35 resides in Appropriations & Revenue.

Dually Employed System Members – HB 89 (Rep. J. Tipton) provide that if a member is working in a regular full-time hazardous duty position that participates in the Kentucky Employees Retirement System or the County Employees Retirement System and is simultaneously employed in a nonhazardous position that is not considered regular full-time, the member shall participate solely as a hazardous duty member and shall not participate under the nonhazardous position unless he or she makes an election within 30 days. HB 89 passed the

House with a Committee Substitute and was received in the Senate. The bill resides in Senate State & Local Government.

Military Pension Exclusion – HB 92 (Rep. W. Thomas) would exclude United States military retirees' pension income from income taxation. HB 92 was recommitted to Appropriations & Revenue.

Military Pension Exclusion – HB 95 (Rep. C. Massey) would exclude United States military retirees' pension income from income taxation. HB 95 resides in Veterans, Military Affairs, and Public Protection.

Beneficiary Change – HB 104 (Rep. B. Wheatley) would allow a retiree who experiences a qualifying event to elect to change his or her beneficiary. HB 104 passed the House with a Committee Substitute and floor amendment, and has been received in the Senate.

Employer Contribution – HB 171 (Rep. J. DuPlessis) would change the employer contribution rate to a “level dollar theory” from a strictly percentage basis. HB 171 resides in Senate State & Local Government.

Actuarial Analysis on Bills – HB 194 (Rep. J. Miller) would establish additional requirements for the completion of the actuarial analysis required for bills pertaining to state-administered retirement systems. HB 194 resides in Senate State & Local Government.

Housekeeping – HB 207 (Rep. J. Miller) is the housekeeping legislation for the Kentucky Retirement Systems. HB 207 resides in Senate State & Local Government.

Income Exclusion – HB 212 (Rep. A. Tackett Lafferty) would increase the pension income exclusion from \$31,110 to \$41,110. HB 212 resides in Appropriations & Revenue.

Repeal and Replace Unconstitutional Provisions – HB 235 (Rep. J. Graviss) would repeal the provisions of SB 151 enacted in 2018 that were declared unconstitutional and void by the Kentucky Supreme Court and reenact those provisions to return them to their original pre-SB 151 language. HB 235 resides in State Government.

Disability Benefits – HB 412 (Rep. J. Blanton) would increase minimum duty-related disability benefits from 25% to 75% of the member's monthly average pay while expanding other related benefits. HB 412 was reported favorably from State Government with a Committee Substitute.

Free CERS – HB 484 (Rep. R. Webber) would change the structure of the board that controls the Kentucky Retirement System (KRS) and create an independent board to govern County Employees Retirement System (CERS). There is currently a 17 member board with 10 appointed by the Governor, two elected by KERS members, three elected by CERS members, one elected by State Police Retirement System (SPRS) members and the Secretary of the Personnel Cabinet. CERS has the majority of the money and the majority of the participants in the KRS but has only a 3/17 representation on the board. The bill creates an eight-member board specifically for CERS, adds language prohibiting discharging pension liabilities in bankruptcy and does not change benefits or the inviolable contract. HB 484 resides in Local Government.

Income Exclusion – SB 14 (Sen. C. Embry Jr.) would increase the pension income exclusion from \$31,110 to \$41,110. SB 14 resides in Appropriations and Revenue.

Reciprocity Between KRS and TRS – SB 172 (Sen. D. Parrett) would require KRS to apply reciprocity for a person retiring for a second time after waiving retirement benefits to return to a full-time position covered by TRS. SB 172 resides in State & Local Government.

Environment and Energy

Rate Affordability – HB 126 (Rep. A. Hatton) would include rate affordability when the PSC is determining fair, just and reasonable utility rates. HB 126 resides in Natural Resources and Energy.

Net Metering – HB 323 (Rep. J. DuPlessis) would allow eligible electric generating facilities beginning service after the effective date of the initial net metering rate order issued by the PSC but before December 31, 2024, to maintain the same net metering rates as eligible generating facilities beginning service before the effective date of the initial order until December 31, 2029. HB 323 resides in Natural Resources & Energy.

Public Water and Wastewater System Infrastructure Task Force – HCR 88 (Rep. J. Gooch) would reestablish the Task Force to continue evaluation of public policy to address Kentucky’s public water and wastewater systems. HCR 88 was reported favorably from Natural Resources & Energy and has had its first reading.

Renewable Energy Portfolio Standards – HJR 91 (Rep. T. Bojanowski) would direct EEC to study the economic impact of renewable portfolio standards and other renewable energy policies in all states and the applicability and feasibility of adopting new renewable energy policies that support economic growth in Kentucky. HJR 91 resides in Natural Resources & Energy.

Establish Working Group in the Infrastructure Task Force – HJR 98 (Rep. J. Graviss) would establish a working group within the Public Water and Wastewater System Infrastructure Task Force and would reestablish the Task Force. HJR 98 resides in Natural Resources and Energy.

Residual Landfill Exemption – SB 16 (Sen. C. Embry Jr.) would modify the definition of “waste disposal facility” to specify that all residual landfills are included in the process of local determination and remove the exception for private facilities that dispose of waste on their own private property. SB 16 resides in Natural Resources and Energy.

Residual Landfill Exemption – SB 22 (Sen. C. Embry Jr.) would delete incidental or residual waste facilities from the exclusion in the description of waste management facilities; allow fiscal courts to license solid waste landfills and residual landfills and assess increased fees for accepting wastes outside of the waste planning area. SB 22 resides in Natural Resources and Energy.

Redistribution of Littering Fines – SB 164 (Sen. P. Wheeler) would designate 100% of a new open dumping, littering or criminal littering fine to be paid to the county where the violation occurred and includes littering and open dumping as crimes subject to local code enforcement. SB 164 resides in Appropriations & Revenue.

Reestablish Public Water and Wastewater Infrastructure Task Force – SCR 152 (Sen. P. Wheeler) would reestablish the task force for the 2020 interim. SCR 152 is posted for passage in the Regular Orders of the Day for March 2, 2020.

Operations

Key Infrastructure – HB 44 (Rep. J. Gooch) would clarify the definition of facilities, change the penalty to a Class D felony for criminal mischief and impose vicarious liability for those financing the activity. HB 44 has had two readings and resides in the Senate Rules Committee.

Cost Efficient Regulations – HB 68 (Rep. R. Wiederstein) would establish procedures to adopt the most cost-effective regulation alternative for those having a major economic impact. HB 68 resides in Licensing, Occupations, & Administrative Regulations.

Procurement Preferences – HB 114 (Rep. J. Donohue) would create procurement preferences under KRS 45A for iron, steel and manufactured goods produced in Kentucky and the United States. HB 114 resides in State Government.

Advertisement Option – HB 195 (Rep. J. Miller) would allow local government and agencies of a local government to post required advertisements on a web site after a one-time advertisement is published in an actual newspaper. HB 195 has been assigned to Senate State & Local Government.

Kentucky Plane Coordinate System – HB 302 (Rep. J. DuPlessis) would delete reference to the Kentucky Coordinate System of 1983 and replace it with the Kentucky State Plane Coordinate System. It provides for implementation of the change. HB 302 resides in Senate State & Local Government.

Open Meetings – HB 309 (Rep. M. Sorolis) would allow an agency or the Attorney General to vacate actions taken at an improperly noticed meeting. It would allow recovery of costs and attorney's fees by a court. HB 309 resides in State Government.

Constitutional Right to Clean Environment – HB 334 (Rep. M. Cantrell) would amend the Constitution of Kentucky establishing a right of the people to have clean air, pure water, and for the Commonwealth to be required to preserve the natural, scenic, historic, and esthetic values of the environment for the benefit of all Kentuckians. HB 334 resides in Elections, Const. Amendments & Intergovernmental Affairs.

Water District Commissioners – HB 446 (Rep. J. Gooch) changes annual salary references to annual compensation and would allow the PSC to grant reasonable extensions of time for water district commissioners to complete their training requirements for good cause shown. HB 446 resides in Local Government.

Special Purpose Governmental Entities Taxes – SB 5 (Sen. Alvarado) increases or new *ad valorem* taxes or fees would be reviewed by the county or city where located. SB 5 has been reported favorably by State & Local Government with a committee substitute and has passed the Senate. It has been posted in House Local Government.

Constitutional Amendment to Limit Damages – SB 51 (Sen. Alvarado) would place on the ballot an amendment to the Constitution to allow the General Assembly to limit noneconomic damages for injuries and to provide statutes of limitation. SB 51 resides in State & Local Government.

On-Site Sewage Disposal Systems – SB 103 (Sen. Castlen) would reduce the minimum acreage requirement to qualify as a "farmstead" from ten acres to five acres for the purposes of on-site sewage disposal system requirements. SB 103 has passed the Senate and been received in the House. The bill has been assigned to House Local Government.

Executive Branch Ethics – SB 157 (Sen. W. Schroder) is an Executive Branch Ethics Commission proposal to define “financial impact” and refine other definitions to include real parties in interest. SB 157 resides in State & Local Government.

Call Before You Dig – SB 165 (Sen. P. Hornback) expands the state’s 811 program requiring the implementation of “positive response” while not requiring mandatory membership in the Kentucky Contact Center. SB 165 resides in Economic Development, Tourism, and Labor Committee.

Open Records – SB 217 (Sen. T. Buford) would include utilities regulated by PSC as a “public agency” only for purposes of public records. SB 217 has been assigned to Natural Resources & Energy.

Call Before You Dig Version 2 – SB 228 (Sen. W. Schroder) would, among other things, require a positive response from operators of underground facilities; and define the timing of operator responses; as well as excavator start dates. SB 228 has not yet been assigned to a committee.

Employment

Employers Not to Consider Criminal History – HB 43 (Rep. G. Brown) would prohibit employers from considering criminal history as part of the initial job application. HB 43 resides in Economic Development & Workforce Investment.

Prevailing Wage – HB 77 (Rep. N. Kulkarni) would create a prevailing wage for all public work projects. HB 77 resides in Economic Development & Workforce Investment.

Drug Screening – HB 102 (Rep. J. Sims) would prohibit discrimination based on a positive drug screen for cannabidiol or tetrahydrocannabinol. HB 102 resides in Economic Development & Workforce Investment.

Previous Salary – HB 109 (Rep. S. Westrom) would make it discriminatory to ask questions about previous salary or wages and other related actions. HB 109 resides in Economic Development & Workforce Investment.

Work Schedules – HB 121 (Rep. M. Cantrell) would require employers to give a good-faith estimate of hours to be worked and related actions on scheduling. HB 121 resides in Economic Development & Workforce Investment.

Leave for Crime Victims – HB 122 (Rep. M. Cantrell) would prohibit discharge or retaliation against an employee who is a crime victim when the employee takes leave to attend related proceedings. Other related actions are also prohibited. HB 122 resides in Economic Development & Workforce Investment.

Earned Paid Sick Leave – HB 123 (Rep. M. Cantrell) would require employers to provide earned sick leave along with other related actions. HB 123 resides in Economic Development & Workforce Investment.

Medical Marijuana – HB 136 (Rep. J. Nemes) would legalize medical marijuana and establish a system to regulate the legalization. HB 136 has passed the House with a Committee Substitute, eight floor amendments and a title amendment. It now resides in the Senate.

Parental Leave – HB 176 (Rep. J. Raymond) would require employers with 50 or more employees to provide 12 weeks paid parental leave to those employed at least one year. HB 176 resides in Economic Development & Workforce Investment.

Workers' Comp Medical Benefits – HB 211 (Rep. A. Tackett Laferty) would require an employer to pay medical benefits at the time of injury and thereafter during disability instead of 780 weeks. HB 211 resides in Economic Development & Workforce Investment.

Collective Bargaining – HB 231 (Rep. M. Cantrell) would allow employees of Kentucky to collectively bargain. HB 231 resides in State Government.

Leave for Crime Victims – HB 330 (Rep. M. Cantrell) would prohibit employers from discharging or retaliating against an employee who is a crime victim when the employee takes leave to attend proceedings associated with a crime. HB 330 resides in Economic Development & Workforce Investment.

Adoption Leave – HB 390 (Rep. S. Heavrin) would require employers to offer the same leave policies to adoptive parents as provided to birth parents. HB 390 was posted for passage in the Regular Orders of the Day for February 27, 2020.

Misclassified Workers – HB 397 (Rep. J. Nemes) would refine the classification of construction industry workers as employees or independent contractors. HB 397 resides in Economic Development & Workforce Investment.

Minimum Wage – SB 13 (Sen. R. Thomas) would increase the threshold of employees of retail stores and service industries from \$95,000 to \$500,000 average gross volume of sales and stage increase in the minimum wage culminating at \$15.00 an hour on July 1, 2027. Tipped employees would also receive increases. SB 13 resides in Appropriations & Revenue.

Hemp-Derived Products – SB 65 (Sen. R. Webb) would provide protections against discrimination against users of hemp-derived products. SB 65 resides in Licensing, Occupations & Administrative Regulations.

Drug Free Workplace - SB 96 (Sen. P. Clark) would require public employers to have an appeals process for an employee who violates a drug-free policy using legal industrial products. SB 96 resides in Economic Development, Tourism and Labor.

Employment Discrimination on Smoking – SB 98 (Sen. J. Schickel) would remove protections against employment discrimination based on an individual's smoking status. SB 98 resides in Judiciary.

Substance Use Disorder Treatment – SB 173 (Sen. M. Castlen) would encourage employment of workers who participate in employer-sponsored substance use disorder treatment. SB 173 has been reassigned to Health & Welfare.

Attached please find a spreadsheet summarizing the status of bills we are tracking on your behalf. Please do not hesitate to contact us with any questions you may have.

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