

Memorandum

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From: Carl W. Breeding
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Re: Kentucky Legislative Update

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Political Backdrop

The General Assembly only met one day this week because of a shortened schedule due to COVID-19 concerns. The current schedule is for the body to meet two more times before *sine die* adjournment – April 1 and either April 14 or 15. On Thursday, several committees met to pass last minute legislation. The free conference committee on the biennial budget has been meeting. The revenue projections on which the current language is based were created on December 1, 2019. However, new estimates are that the revenue will be \$115.7 million less in the first year and \$174.7 million less in the second year. Without new revenue sources, the budget will need to be trimmed substantially. Leaders intend to have the budget considered in each chamber on April 1.

Governor Beshear signed an executive order closing all “non-life-sustaining businesses” to in-person traffic by March 26 at 8 p.m. Businesses that can stay open still need to practice safe social distancing. The businesses that can stay open include: grocery stores, drug stores and pharmacies, banks, hardware stores, agricultural operations, gas stations, media, businesses needed for transportation, logistics, shipping, delivery and pick-up, housing, building and construction, laundry, financial services, home-based care and services, professional services, manufacturing and other businesses key to national interests or life-sustaining goods or services, and those covered under the federal critical infrastructure sector. This is a link to the order: https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf.

COVID-19 Relief – SB 150, which began as a bill to prohibit surprise medical billing, was amended in House committee to delete the substance of the bill and add provisions to provide relief based upon COVID-19 that: authorizes boards, commissions, and agencies that have licensing, permitting, and fee requirements to extend the renewal times for those; encourages the Governor to pursue federal funds; provide relief from unemployment insurance requirements and hold the employer harmless; automatically adopts any tax filing deadline extensions adopted by the federal government; expands telehealth to all healthcare providers; authorizes occupational therapists and physical therapists to see patients despite the ban on elective procedures; and allows restaurants to sell alcohol by the drink with take-out orders. The bill was referred to a conference committee and the committee added the following provisions: extend unemployment eligibility for those who are not otherwise eligible to receive the benefits and extend employer contribution deadlines; waive penalties and interest for late filing of taxes; grant the Governor authority to waive various fees and fees relating to unemployment insurance; require that state tax payment dates align with federal payment dates as it relates to individual income tax and corporate tax; suspend the requirement to obtain temporary restricted CDL licensure for farm-related services; allow telehealth services by certain providers for new patient visits and require insurance coverage; give flexibility for healthcare providers in performing urgent and emergent procedures; establish immunity for healthcare providers who in good faith render care or treatment during this state of emergency; extend the deadline for responding to open records requests; suspend open meetings laws to allow for live teleconference meetings; establish immunity for businesses that make or provide personal protective equipment or personal hygiene supplies that do not do so in the normal course of their businesses; and, provide that the state board of medical licensure and emergency medical services and nursing can waive or modify certain laws to allow providers from out-of-state to come to practice in the state.

Activity on Issues of Interest

Retirement

Retirement Bills Still Active

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.

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 has passed out of the House and has been assigned to Senate State & Local Government.

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 has passed out of the House. It resides in Senate State & Local Government and has had two readings.

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 has passed out of the House, resides in Senate State & Local Government and has had two readings.

Housekeeping – HB 207 (Rep. J. Miller) is the housekeeping legislation for the Kentucky Retirement Systems. HB 207 has passed out of the House and resides in Senate State & Local 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 has been posted for passage in the Orders of the Day. A floor amendment has been filed to the Committee Substitute, but the bill has been recommitted to Appropriations & Revenue.

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 has passed out of the House with a Committee Substitute and has been received by the Senate. It was reported favorably, has four floor amendments filed to it and is in the Orders of the Day for passage. It was passed by the Senate with a committee substitute and floor amendments 3, 4 and 5. It has been delivered to the Governor.

Forfeiture of Benefits with Sexual Offense Conviction – HB 644 (Rep. D. Osborne) would require forfeiture of retirement benefits if convicted of sexual activity with a minor. The member would be entitled to the return of their own money contributed plus accrued interest. This applies to all Kentucky Retirement Systems. HB 644 resides in State Government and has been posted for a hearing.

Recalculation of Actuarially Accrued Liability Contribution Amortization – SB 249 (Sen. C. McDaniel) currently, employers in SPRS, KERS and CERS must pay to each respective retirement system an amount equal to the sum of the “normal cost contribution” and the “actuarially accrued liability contribution” (AALC). This bill proposes that the AALC, beginning with the 2019 actuarial valuation, shall be computed by amortizing the total unfunded actuarial accrued liability over a closed period of thirty (30) years, except that any increase or decrease in

the actuarially accrued liability occurring after the completion of the 2019 actuarial valuation shall be amortized over a closed period of twenty (20) years. The bill also removes “level dollar amortization method” language from the statute. SB 249 has been passed by the Senate. It was reported favorably by House Appropriations & Revenue with a Committee Substitute and has had two readings. It is in Rules with two floor amendments pending floor action.

Retirement Bills with No Activity

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.

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.

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.

Benefit Calculation When KERS Employer Leaves System – HB 558 (Rep. R. Goforth) applies to vested Tier I and Tier II employees of an employer who has ceased participation in KERS who, based upon the employer's choice, are no longer eligible to participate in KERS and are required to participate in an alternative retirement plan following the agency’s cessation date. They would be able to use service credit earned in an alternative retirement to plan determine eligibility for retirement benefits from KERS, but not the amount of benefits, and for purposes of reducing early retirement penalties in the system. For example, if you were a Tier I employee and had 20 years in the system when your employer left the system, you continue to work another 7 years in a non-KERS employer sponsored system. You would not be penalized for retiring with less than 27 years but your retirement factor would only be multiplied by the 20 years you worked in the KERS system. HB 558 has been assigned to State Government.

One Year Extension for Quasi-Governmental Agencies – HB 592 (Rep. J. Graviss) would extend the deadline by one year for quasi-governmental agencies to leave the retirement system. HB 592 resides in State 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

Environment and Energy Bills Still Active

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 has passed the House and resides in Senate Natural Resources & Energy.

Reestablish Public Water and Wastewater Infrastructure Task Force – SCR 152 (Sen. P. Wheeler) would reestablish the task force for the 2020 interim. SCR 152 passed the Senate and has been posted for a hearing in House Natural Resources & Energy. The committee could not achieve a quorum on March 19, 2020, so the bill and proposed Committee Substitute have not been considered. The bill was not included on the agenda for a scheduled committee meeting on March 26, 2020.

Environment and Energy Bills with No Activity

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.

Utility Rates and Cost Recovery – HB 584 (Rep. C. Harris) would, among other things, set a residential fixed customer charge to recover no more than fixed capital costs for metering, billing, service connections, and customer service for electric, natural gas, and water utilities; define “customer charge;” include affordability as a criterion for utility rates and establish that the policy of the Commonwealth is to require costs to be reasonable and to provide for their recovery; require the Public Service Commission to balance the interests of the utility, investors, and consumer in establishing fair, just, reasonable, and affordable rates. HB 584 resides in Natural Resources & Energy.

Healthy Soils Program – HB 591 (Rep. J. Graviss) would, among other things, establish a Healthy Soils Program and a Healthy Soils Program fund in the Department for Natural Resources, Division of Conservation. The bill would require the department to provide technical advice and assistance and assist with soil health assessments and soil health plans. HB 591 resides in Natural Resources and Energy.

Water District Regulation – HB 594 (Rep. J. Graviss) would, among other things, establish eligibility requirements for members of a water district, water association, and joint water

commission; require online training and continuing education hours for water commissioners; require the Kentucky Public Service Commission to develop best management practices for governing bodies of public water and wastewater utilities and establish penalties for failure to meet training and eligibility requirements. HB 594 resides in Natural Resources & Energy.

On-Site Sewage Disposal Systems – HB 614 (Rep. J. Graviss) would require the department to notify property owners with on-site sewage disposal systems by mail every two years of the need to maintain the system; require department to conduct information campaign to increase public awareness at least once every two years; require department to promulgate regulation to outline policy to maintain list of properties serviced by on-site sewage disposal systems. HB 614 resides in Health and Family Services.

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.

Urge Governor to Declare an Emergency in Martin County – HR 122 (Rep. C. Harris) would urge the Governor to declare a State of Emergency in Martin County, Kentucky and to make emergency funds available to resolve the county’s water crisis. HR 122 resides in Natural Resources & 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.

Operations

Operations Bills Still Active

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 passed the House and Senate. It has been signed by the Governor.

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 passed the House and Senate, and been delivered to the Governor.

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 has passed the House and Senate. It has been delivered to the Governor.

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 passed out of the House with a Committee Substitute and a floor amendment. It has been assigned to Senate State & Local Government. It has been reported favorably by Senate State & Local Government with a committee substitute. It is on the Consent Calendar with one reading.

Interlocal Cooperation Agreements – HB 570 (M. Meredith) would allow public agencies to participate in Interlocal agreements; define “interlocal agency,” “local government,” and “public agency;” create a new sections to set protocols for establishing an interlocal agreement; establish that an interlocal agreement may be for sharing revenues and add certain utilities to the list subject to an interlocal agreement. HB 570 was reported favorably out of Local Government with a Committee Substitute and passed the House. It is in Senate State & Local Government and has one reading. It was reported favorably by Senate State & Local Government to the Consent Calendar and has two readings.

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 passed out of the Senate and House, and been delivered to the Governor.

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. The bill has passed out of the Senate and reported favorably by House Local Government. It has two readings.

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 was been reported favorably by State & Local Government with a Committee Substitute and was passed by the Senate. It is in House State Government and has one reading. It was reported favorably by House State Government, has two readings and a floor amendment has been filed.

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 was reported favorably by Economic Development, Tourism,

and Labor Committee with a Committee Substitute. The Committee Substitute combines parts of SB 228 with the original bill. It has been recommitted with two readings.

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 been assigned to Economic Development, Tourism, & Labor. Much of SB 228 has been combined into SB 165.

Prohibit Executive Agency Lobbyists Contributions – SB 270 (Sen. R. Stivers) would prohibit executive agency lobbyists from contributing to the campaigns of candidates for Governor, Lieutenant Governor, Treasurer, Secretary of State, Attorney General, Auditor, and Commissioner of Agriculture. SB 270 resides in State & Local Government.

Operations Bills with No Activity

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.

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.

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.

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.

Annual Fee for Special Purpose Governmental Entities – SB 241 (Sen. R. Mills) would establish an annual fee for a special purpose governmental entity's use of the property valuation administrator's assessment. SB 241 resides in State & Local Government.

Procurement – SB 255 (Sen. R. Girdler) would require that any governmental body that accepts a proposal be limited to increasing the project price with the winning bidder by no more than ten percent or a new request for proposals shall be initiated. SB 255 resides in State & Local Government.

Employment

Employment Bills Still Active

Medical Marijuana – HB 136 (Rep. J. Nemes) would legalize medical marijuana and establish a system to regulate the legalization. HB 136 has passed out of the House and resides in Senate Judiciary.

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 passed the House, was sent to the Senate, and has been reported favorably by Senate Economic Development, Tourism, & Labor. It has two readings.

Misclassified Workers – HB 397 (Rep. J. Nemes) would refine the classification of construction industry workers as employees or independent contractors. HB 397 has been reported favorably by Economic Development & Workforce Investment with a Committee Substitute, passed out of the House and has been assigned to Senate Economic Development, Tourism & Labor.

Substance Use Disorder Treatment – SB 173 (Sen. M. Castlen), which encourages employment of workers who participate in an optional employer-sponsored substance use disorder treatment and provide certain immunities to the employer, passed the Senate. However, the text of the bill was surprisingly appended to SB 191 (which was stripped of its contents) along with the content of HB 406 in a surprise meeting of the House Licensing & Occupations Committee. SB 191 passed the full House and is now in a Conference Committee.

Accrued Paid Sick Leave – SB 282 (Sen. M. McGarvey) would require employers to provide accrued paid sick leave to employees. SB 282 has been assigned to Economic Development, Tourism & Labor.

Employment Bills with No Activity

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.

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.

Employee Privacy – HB 585 (Rep. C. Harris) would require an employer to provide prior written notice to its employees if it engages in electronic monitoring of employees. HB 585 was assigned to Small Business & Information Technology.

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.

Employee Misclassification – SB 250 (Sen. P. Wheeler) would establish a process to determine whether an individual is an employee or an independent contractor. SB 250 resides in Economic Development, Tourism, and Labor.

Compensation of Executive Branch Employees – SB 269 (Sen. R. Stivers) would limit the amount of compensation an employee who has not retired from any of the state administered retirement systems and who is appointed to a position in the Executive Branch by the Governor to 25% above any prior state service compensation. SB 269 has been Withdrawn.

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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