

Memorandum

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Re: Kentucky Legislative Update

Political Backdrop

With the close of the second week of the 2021 legislative session, the General Assembly followed through on its intent to override the Governor's vetoes, including vetoes of HB 1 and SB 1, which are bills directed at curbing the Governor's emergency powers. Another bill of note that was overridden was HB 3, which moves venue for challenging the constitutionality of state actions out of Franklin Circuit Court and moves it to the county in which the plaintiff resides.

Immediately after the override of the vetoes, the Governor filed lawsuits seeking injunctive relief on the bills. The Franklin Circuit Court issued a 30 day restraining order on HB 1; however, the order only applies to sections of the bill that deal with the reopening of businesses, schools, and religious organizations. The judge has not taken action on any of the other bills as of yet. We expect this to be drawn out in court.

A bevy of new bills have been filed in both the House and Senate, but the House's main priority now is the state budget. Both chambers passed a continuation budget before they adjourned in January and are expected to work to come to a complete package in the coming days. We expect the focus to remain on the budget and on pushing other priority legislation through the committee process in the coming week. The legislature has used 11 of their 30 working days so far, and must adjourn no later than March 30 according to the Kentucky Constitution.

The schedule for the second part of session has been updated by the Legislative Research Commission and will exclude Mondays as legislative working days, presumably to utilize the 22

remaining legislative working days to their fullest extent and to adjourn by the end of March. The schedule features the following:

- February 10 is the last day for new Senate Bills;
- February 11 is the last day for new House Bills;
- Four “Drafting Days” are added;
- Conference Committees are scheduled to meet March 5-12;
- The veto period is March 17-27; and,
- *Sine Die* is March 30.

Activity on Issues of Interest

Retirement:

Set Dollar Amount – Rep. DuPlessis. HB 8 changes KERS to make employer liability a set dollar amount rather than a percentage. It has been reported favorably with a Committee Substitute from State Government and has one reading.

Dual Employment – Rep. Tipton. HB 52 provides that if a member is working in a regular full-time hazardous duty position in the KERS or CERS and is simultaneously employed in a nonhazardous position that is not considered regular full-time with a different participating employer, 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 of taking employment in the nonhazardous position. It has been assigned to the Committee on Committees.

Actuarial Analysis – Rep. J. Miller. HB 69 would amend KRS 6.350 to establish additional standards and requirements for the completion of the actuarial analysis required for bills pertaining to state-administered retirement systems, including a projection of costs/savings over a 30-year period rather than 20 years. It has been assigned to the Committee on Committees.

Death Benefit Calculation – Rep. J. Miller. HB 87 would apply the alternate death benefit calculation options as written prior to 2009 legislation for deaths occurring prior to retirement and implement a 10% cap on credible compensation growth during a members last five years of employment, among other things. It has been assigned to State Government and has been posted.

Omnibus KTRS Revisions – Rep. J. Miller. HB 113 would make numerous changes to KTRS. It has been reported favorably from State Government and has one reading.

Move New LRP and JRP Members – Rep. Tipton. HB 121, among other things, revises KERS to institute a hybrid cash balance plan and create a new section to close the Legislators’ Retirement Plan (LRP) and Judicial Retirement Plan (JRP) to new members effective July 1, 2021, and to provide that new legislators and judges shall participate in KERS for the duration of their service. It has been assigned to the Committee on Committees.

Pension Income Exclusion – Rep. R. Huff. HB 252 would increase the pension income exclusion from \$31,110 to \$41,110. It has been assigned to the Committee on Committees.

TRS Foundational Benefit Component – Rep. Massey. HB 258 would direct that new members of the Teachers’ Retirement System on or after January 1, 2022, shall receive a foundational benefit component, which shall be a traditional defined benefit plan with risk adjustments, and a supplemental benefit component which shall be a plan based upon the member’s account balance, among other things. It has been passed by the House and received in the Senate.

Fraud Against Retirement Systems – Rep. J. Miller. HB 261 would make a person liable for civil penalties if he or she knowingly submits false or fraudulent claims or fails to report or remit required money, records, or property to the Kentucky Public Pensions Authority (KPPA) in order to obtain retirement benefits from any of the retirement systems. It has been assigned to the Committee on Committees.

Omnibus Changes Separating CERS from KRS – Rep. Webber. HB 9 would create separate retirement benefit, disability benefit, retiree health benefit, and other benefit statutes for the County Employees Retirement System (CERS) apart from the Kentucky Retirement Systems (KRS) as provided in intent language of HB 484 during the 2020 Regular Session. It has been assigned to the Committee on Committees.

Disability Benefit Increase – Sen. McDaniel. SB 169 would increase minimum total and permanent in line of duty or duty-related disability benefits payable to a member of any of the systems administered by the Kentucky Retirement Systems from 25% to 75% of the member's monthly average pay. It has been assigned to the Committee on Committees.

Environment & Energy:

Clean & Healthy Environment – Rep. Raymond. HB 107 would create a Constitutional right to a clean and healthy environment. It has been assigned to the Committee on Committees.

Fair Sewer Charges – Rep. Fischer. HB 124 would prohibit a sanitation district from imposing any fee, tax, surcharge, or other charge for the provision of service to a property unless the property is connected to a sanitary sewer owned or maintained by the sanitation district, there is an approved plan to connect the property to a sanitary sewer owned or maintained by the sanitation district within five years, the property discharges storm water to a storm sewer or storm water improvement owned or operated by the sanitation district, the sanitation district's storm sewer controls storm water that flows to the property, or the person responsible for the charge has contracted with the sanitation district to provide the service; allow the Act to be cited as the “Ensuring Fair Sewer Charges Act.” It has been assigned to the Committee on Committees.

Rate Affordability – Rep. Hatton. HB 127 would, among other things, include rate affordability when determining fair, just and reasonable utility rates. It has been assigned to the Committee on Committees.

Pesticides and Mosquito Control Application – Rep. McPherson. HB 236 would mandate a program for regulating application and notice of application of pesticides for lawn care and mosquito control. It has been reported favorably by Agriculture and is in the Orders of the Day.

City Utility Boards – Rep. Johnson. HB 238 would allow city utilities boards to consist of either three or five members, and to specify the appointment of nonresident utility commission members for utility commissions consisting of three members and five members. It has been assigned to Local Government and has been posted.

Late Payment Charge – Rep. Bray. HB 272 would create a new section of KRS Chapter 278 to allow a water district formed pursuant to KRS Chapter 74 or a water association formed pursuant to KRS Chapter 273 to charge a late payment charge of 10% of the amount billed; specify that the late payment charge meet certain requirements; prohibit the Public Service Commission from modifying, rejecting, or suspending late payment charges established by tariff. It has been assigned to Local Government and has been posted.

Mixing Zones – Rep. Freeland. HB 386 requires that mixing zones for bioaccumulative chemicals of concern established on or before September 8, 2004, remain in effect until explicitly extinguished by the Energy and Environment and requires the Energy and Environment Cabinet to apply rapid and complete mixing when establishing certain permit limitations and conditions for discharges that occur through a submerged high-rate multi-port diffuser or outfall structure. It has been assigned to the Committee on Committees.

Water District Commissioner Training – Rep. Gooch. HB 393 allows the Public Service Commission to grant reasonable extensions of time not to exceed six months for water district commissioners to complete their training requirements. It has been assigned to the Committee on Committees.

Waste Disposal Expansion Notice – Sen. Embry. SB 94 would list all the types of facilities under the definition of “waste disposal facility” and prohibit issuance of a permit to construct or expand a waste disposal facility that will result in substantial additional capacity absent submitting notice of intent to be licensed to the local county fiscal court where the facility is located. It has been assigned to Natural Resources and Energy.

Local Approval of Captive Landfills – Sen. Embry. SB 118 requires local approval of captive landfills if it is located in a county other than where it is generated. It has been assigned to Natural Resources and Energy.

Water and Wastewater Task Force – Sen. Webb. SCR 64 reestablishes the Public Water and Wastewater System Infrastructure Task Force. It has been assigned to the Committee on Committees.

Operations:

Venue for Constitutional Challenges – Rep. Massey. HB 3 establishes the venue for constitutional challenges to statutes, executive orders, regulations, and other cabinet or department orders and establishes procedures for selecting a panel of three Circuit Judges from across the state to hear those challenges. A Senate Committee Substitute revised the bill to state that suits are to be filed in the plaintiff’s home county or Franklin Circuit if the plaintiff resides out of state. HB 3 passed the House, was passed by the Senate with the Committee Substitute, concurred in by the House. It was vetoed by the Governor, the veto was overridden and the bill has been delivered to the Secretary of State.

Medical Marijuana – Rep. Nemes. HB 136 would legalize and regulate medical cannabis. It has been assigned to the Committee on Committees.

Regulation Impacts – Rep. Fischer. HB 144 requires legislative ratification of any administrative regulation having a major economic impact. It has been assigned to the Committee on Committees.

Water Fluoridation – Rep. Hart. HB 159 allows local government entities and special districts to void implementation of the water fluoridation programs administered by the Cabinet for Health and Family Services by legislative action. It has been assigned to the Committee on Committees.

U.S. Preference for PPE – Rep. Koch. HB 214 mandates that personal protective equipment purchased or leased in Kentucky be manufactured or produced in the United States. It has been assigned to the Committee on Committees.

Blockchain Technology Taxation – Rep. Rudy. HB 230 defines various terms relating to commercial mining of cryptocurrency using blockchain technology, provides sales and use tax exemptions on the tangible personal property directly used and the electricity used in commercial mining of cryptocurrency as of the date of approved application. It has been assigned to the Appropriation and Revenue and has been posted.

Sanitation District Service Refusal – Rep. Meade. HB 302 allows a homeowner located in a county served by a sanitation district that has an on-site sewage disposal system approved by the local board of health to refuse sanitary sewer service and not be charged by the district or denied drinking water service. It has been assigned to the Committee on Committees.

Call Before You Dig House Version – Rep. Santoro. HB 303 makes omnibus changes to Call Before You Dig laws. It has been assigned to Natural Resources and Energy.

Emergency Regulation Limitations – Sen. West. SB 2 limits the power of the executive branch to promulgate emergency regulations. This “priority” bill passed the Senate and House in five days and has been vetoed by the Governor. The veto was overridden and the bill has been delivered to the Secretary of State.

Liability Protection – Sen. Stivers. SB 5 provides liability protection for owners of premises and refines the immunity of the state, private persons, volunteers, professional engineers and architects, and persons providing essential services during a declared emergency. This “priority” bill is in Senate Economic Development, Tourism, and Labor and has two readings.

Constitutional Amendment to Limit Damages – Sen. Alvarado. SB 17 would propose an amendment to Section 54 of the Constitution of Kentucky to allow the General Assembly the power to limit noneconomic damages for injuries resulting in death or for injuries to persons or property, and the power to provide statutes of limitation. It has been assigned to State and Local Government.

Limit Medical Damage Costs – Sen. Meredith. SB 54 limits the amounts recoverable for medical costs in tort actions. It has been assigned to Judiciary.

Nullify Regulations Found Deficient – Sen. West. SB 65 nullifies administrative regulations that became effective after being found deficient during the 2020 legislative interim. It has been assigned to State and Local Government.

Medical Cannabis – Sen. West. SB 92 creates various new sections to define terms and exempt the medicinal cannabis program from existing provisions in Kentucky law to the contrary. The Department of Alcoholic Beverage and Cannabis Control would implement and regulate the medicinal cannabis program. It has been assigned to the Committee on Committees.

Water Fluoridation – Sen. West. SB 109 would allow local government entities and special districts to void implementation of the water fluoridation programs administered by the Cabinet for Health and Family Services by legislative action. It has been assigned to the Committee on Committees.

Call Before You Dig Senate Version – Sen. Girdler. SB 14 makes omnibus changes to 811 Call Before You Dig laws. It has been assigned to Economic Development, Tourism, and Labor.

Procurement Eligibility – Sen. Meredith. SB 122 places a five year moratorium on state contracts that were procured with the assistance of someone who was convicted of a crime related to the contract. Also contains a one year revolving door provision for contracting agency personnel. It has been assigned to State and Local Government.

Exemptions to Call Before You Dig – Sen. Howell. SB 172 adds exemptions from the duty to notify under the 811 requirements. It has been assigned to the Committee on Committees.

Kentucky River Authority Membership – Sen. Southworth. SB 179 clarifies membership requirements for Kentucky River Authority. It has been assigned to the Committee on Committees.

Civil Rights:

Traits Historically Associated with Race – Rep. Scott. HB 43 prohibits discrimination against persons based upon a “protective hairstyle” or other traits historically associated with race. It has been assigned to the Committee on Committees.

Punitive Damages – Rep. Minter. HB 93 allows recovery of punitive damages for civil rights violations. It has been assigned to the Committee on Committees.

Sexual Orientation or Gender Identity – Rep. Minter. HB 116 prohibits discrimination based upon sexual orientation or gender identity. It has been assigned to the Committee on Committees.

Sexual Orientation or Gender Identity – Rep. Willner. HB 130 prohibits discrimination based upon sexual orientation or gender identity. It has been assigned to the Committee on Committees.

Employment:

Paid Sick Leave – Rep. Stevenson. HB 32 requires employers to provide earned paid sick leave to employees; provides that employees earn paid sick leave upon the date of hire and can use the leave after being employed for 90 days; sets forth allowable uses of earned paid sick time; designates how notice of need to use sick time is provided by employees. It has been assigned to the Committee on Committees.

Paid Parental Leave – Rep. Raymond. HB 33 requires employers with 50 or more employees to provide 12 weeks of paid parental leave for an employee who has been employed for at least one year; allow an employee to waive the paid parental leave. It has been assigned to the Committee on Committees.

Minimum Wage – Rep. Jenkins. HB 34 establishes a state minimum wage higher than the federal standard. It has been assigned to the Committee on Committees.

Previous Salary or Wages – Rep. Roberts. HB 35 makes it a discriminatory employment action if an employer asks questions about previous salary or wages, relies on previous salary when setting a new salary, or refuses to hire if an applicant does not provide previous salary, with certain exceptions. It has been assigned to the Committee on Committees.

Living Wage – Rep. Donohue. HB 40 requires any employer doing business in Kentucky that receives governmental incentives or subsidies to pay its employees a living wage. It has been assigned to the Committee on Committees.

Public Employee Organization – Rep. Donohue. HB 41 allows public employees to organize, associate collectively, or strike. It has been assigned to the Committee on Committees.

Leave Associated with a Crime – Rep. Sorolis. HB 45 prohibits 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. It has been assigned to the Committee on Committees.

Paid Leave for Birth or Adoption – Rep. Nemes. HB 54 allows employees of the Commonwealth a paid leave of absence of 12 weeks for the birth or adoption of a child and to establish requirements for the paid leave of absence. It has been assigned to the Committee on Committees.

Prevailing Wage – Rep. Gentry. HB 55 creates a prevailing wage law for all public works projects. It has been assigned to the Committee on Committees.

Collective Bargaining – Rep. Wheatley. HB 56 allows employees of the Commonwealth to collectively bargain. It has been assigned to the Committee on Committees.

Medical Benefit Payments – Rep. Raymond. HB 59 requires an employer to pay for medical benefits at the time of injury and thereafter during disability instead of 780 weeks. It has been assigned to the Committee on Committees.

Employer Theft of Wages – Rep. Tackett Laferty. HB 63 creates a crime for employer's theft of wages if there is a failure to pay all wages due, receives a rebate or refund of an employee; also provides the Labor Cabinet expanded authority for inspection and enforcement for employee wages and expands record keeping requirements for employers. It has been assigned to the Committee on Committees.

Discrimination Based on Weight – Rep. Raymond. HB 66 establishes additional protections against employment discrimination based on weight. It has been assigned to the Committee on Committees.

Unemployment Insurance Disqualifications – Rep. Kulkarni. HB 78 prohibits disqualification from unemployment insurance benefits for workers unemployed due to domestic violence, sexual assault, or stalking. It has been assigned to the Committee on Committees.

Family Care Leave – Rep. Stevenson. HB 131 prohibits employers from preventing an employee to take family care leave; to entitle employee to family care leave for the birth of a child or to take care of a family member and establish parameters. It has been assigned to the Committee on Committees.

Increase KRS Disability Benefits – Rep. Blanton. HB 139 increases duty-related disability benefits from retirement systems. It has been assigned to the Committee on Committees.

Same Policies for Birth and Adoptive Parent – Rep. Heavrin. HB 210 requires employers to provide the same leave policies to adoptive parents as they provide to birth parents. It has been assigned to Economic Development and Workforce Investment and has been posted.

“Ban the Box” – Rep. Brown. HB 228 would prohibit employers from considering or requiring disclosure of prior criminal history as part of the initial job application; title the Act “Ban the Box - The Criminal Record Employment Discrimination Act.” It has been assigned to the Committee on Committees.

Waive Unemployment Overpayment Debts – Rep. Kulkarni. HB 240 would waive unemployment insurance overpayment debts if recovery would be against good conscience and the overpayment was due to agency error or not due to fraud by the recipient. It has been assigned to the Committee on Committees.

Bereavement Leave – Rep. Westrom. HB 284 allows use of leave time for parents to grieve the loss of a child under the age of one year. It has been assigned to the Committee on Committees.

Higher Minimum Wage – Rep. Cantrell. HB 358 allows local governments to pass an ordinance setting employees’ minimum wages at a rate higher than that found in state law. It has been assigned to the Committee on Committees.

Workers’ Comp Inclusions – Rep. Cantrell. HB 385 removes exemptions for domestic service employees and agricultural employees from coverage under workers’ compensation. It has been assigned to the Committee on Committees.

Prohibit Required Immunization – Sen. Girdler. SB 37 prohibits required immunization of any person by any state agency or instrumentality; prohibit any immunization of an employee by an employer. It has been assigned to Health and Welfare.

Increased Minimum Wage – Sen. Thomas. SB 41 establishes an increased state minimum wage. It has been assigned to the Committee on Committees.

Prohibit Discrimination for Declining Immunization – Sen. Southworth. SB 98 would prohibit employers from discriminating against an individual who declines immunization or requiring immunization as a condition of employment. It has been assigned to Health and Welfare.

Immunization Exemption – Sen. Wilson. SB 8 would provide exemptions from mandatory immunization for any child, emancipated minor, or adult who, personally or by a parent or guardian, submits a written sworn statement objecting to the immunization based on conscientiously held beliefs or the written opinion of the person’s physician that such immunization would be injurious to the person's health. It has been assigned to Health and Welfare.

Overpayment Waiver of Unemployment Benefits – Sen. Givens. SB 7 provides for a waiver of overpayment of unemployment benefits and allocates CARES money for the overpayments. It has been assigned to the Committee on Committees.

Withholding Union Dues – Sen. Mills. SB 142 requires an authorization for withholding union dues from an employee’s paycheck. It has been assigned to Economic Development, Tourism, and Labor.

Appeals for Violating Drug-Free Policy – Sen. Higdon. SB 144 requires public employers to have an appeals process for an employee who violates a drug-free policy using legal industrial products. It has been assigned to the Committee on Committees.

Workers’ Compensation Liability – Sen. Higdon. SB 157 provides that contractors shall not be liable for payment of compensation to subcontractors with no employees who are not subject to KRS Chapter 342. It has been assigned to the Committee on Committees.

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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