

2016 Interim

# LEGISLATIVE

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RECORD

## City street funding issue rolls before committee

by Rebecca Hanchett  
*LRC Public Information*

Cities want more state road aid, according to testimony given to state lawmakers last month, and local officials say they have a plan to get it that won't hurt counties. But not all lawmakers seemed convinced, with some requesting more information about the proposal.

The Kentucky League of Cities' plan would set an \$825 million cap on state road funds distributed through a state 1948 revenue-sharing formula called the "Fifths Formula"—the formula on which distribution of county road aid and rural secondary road funding is based. Revenue-sharing dollars allocated to local governments above that cap under the proposal would be split between cities and unincorporated areas based on population and road miles, KLC officials told the Interim Joint Committee on Local Government on Oct. 26.

Rep. Jim DuPlessis, R-Elizabethtown, told KLC he has been told that Kentucky's counties don't agree with the proposal. He also said setting a cap could be a problem several years down the road.

"I think that cap, if there is some cap, needs to also have an inflationary increase as well—That's the kind of thing I think the

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## Charter schools discussed by legislative panel

by Jim Hannah  
*LRC Public Information*

The Interim Joint Committee on Education's last meeting of the year was dominated by a discussion on charter schools – publicly funded independent schools established under the terms of a charter with a local or state authority.

An educator from Louisiana testified on Nov. 14 on how New Orleans used charter schools to transform the city's school system after Hurricane Katrina devastated the city in August 2005.

"In the context of New Orleans, we feel like we have had some successes," said Dana Peterson, deputy superintendent of external affairs for the New Orleans Recovery School District, a special statewide school district administered by the Louisiana Department of Education. "We certainly had a long way to go when we started. We still have a long way to go before we can claim ultimate success."

The school district utilizes charter schools to promote change, Peterson said. He added that the district doesn't manage schools directly. He said it authorizes charter schools and then holds them accountable.

Sen. Danny Carroll, R-Paducah, asked what those accountability standards were.

"Our schools are held to the same accountability standards that traditional public schools are in our state," Peterson said. "Our state almost 20 years ago enacted an accountability system that was designed to hold schools accountable for the performance of students. Our charter schools are held to that same standard."

He said that in many instances charter schools in Louisiana are held more accountable



Sen. Stephen West, R-Paris, asks a question during the Nov. 14 meeting of the Interim Joint Committee on Education.

than traditional public schools. "In many cases, traditional schools do not always receive the same repercussions for consistently underperforming," Peterson said, adding that in certain areas of his state traditional public schools underperform year after year.

Rep. Hubert Collins, D-Wittensville, asked if teachers are required to be certified in the charter schools.

"Charter schools do have the latitude to hire noncertified teachers but teachers have to work towards those certifications," Peterson said. "Many of our schools work with organizations that provide an alternative pathway to teacher certification."

Co-chair Rep. Derrick Graham, D-Frank-

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# Charter schools, from page 1

fort, asked what successes had been achieved. Peterson said over a 10-year period the percent of students performing at grade level in reading and math was raised to 59 percent from 23 percent.

“That is a recognition of tremendous progress,” Peterson said, adding that there is still a lot of work to be done. “No one would claim success with roughly four out of 10 of our students not being on grade level.”

Kentucky Education Commissioner Stephen Pruitt testified that the Kentucky Board of Education will hold a special board meeting on Nov. 28 to discuss allowing charter schools in Kentucky.

He said a representative of the Education Commission of the States, a Denver-based non-

partisan group, will give a nationwide perspective on where charter schools stand. Several researchers on the topic will also present their findings.

“I thought it was important that our board really have a deep grounding of what it means to have charter schools,” Pruitt said.

When Rep. Jim DeCesare, R-Bowling Green, asked if the public would be allowed to speak at the special meeting, Pruitt said there would be another meeting in December for public comment.

“We need to make sure we have open and frank discussions about this from both sides of the issue,” DeCesare said. “I would encourage you and the board to have those discussions as well and open those meetings up to allow people to come and speak.”

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“Our schools are held to the same accountability standards that traditional public schools are in our state.”

**Dana Peterson**  
Deputy Superintendent of  
External Affairs, New Orleans  
Recovery School District

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# Cities, from page 1

county judge-executives and KACo (Kentucky Association of Counties) would probably be interested in working with together,” DuPlessis said.

Committee Co-Chair Rep. Steve Riggs, D-Louisville, said the committee needs a simplistic, written definition of the Fifts Formula and other pertinent information from KLC, which KLC Deputy Executive Director J.D. Chaney said will be provided to the panel. “We will include all that: the legislative agenda, the formula of Fifts, the way it works with the new proposal... we’ll get all that together,” he said.

The proposed \$825 million cap would be based on 2014 state gas tax receipts that Chaney called the “very highest level ever” of gas tax receipts figured into the formula. Setting the cap at that level, he said, would hold counties “harmless,” or essentially allow them to continue receiving the funding they already enjoy. Previous KLC road fund proposals had considered taking some of revenue sharing dollars away from the counties and reallocating it to cities, he reminded lawmakers.

Senate Majority Floor Leader Damon Thayer, R-Georgetown, asked what percentage of city road budgets KLC hopes to fund with state road dollars. Chaney said there is no set percentage proposed—only a system that he said would hopefully, in time, be “more fair” to cities.

“It still favors counties,” he said. “64.2 percent of that new money above \$825 million

would still go to counties and 35.8 percent would go to cities, instead of (the current) 18 percent. So no, we’re not here asking the General Assembly to give us 100 percent of funds—but there’s no set percentage at all.”

KLC President and Sadieville Mayor Claude Christensen said Kentucky cities spend around \$250 million a year on construction and maintenance of city streets, yet receive less than \$60 million in state road aid. Those funds are provided through the state municipal road aid program, founded in the 1970s, which is based on population and not the Fifts Formula.

Christensen said his city of Sadieville had to use around 13 percent of its general fund dollars to cover street work last fiscal year. The city had a total budget of \$287,000 yet only received \$5,837 in municipal road aid from the state to cover \$41,730 in street repairs.

“Some years, in fact most years, we just can’t afford to do any street work. We have to wait until it’s really bad and we have no choice,” he said. At the same time, he said Kentucky counties have received more road aid than they needed in recent funding cycles.

“We’re not interested in harming the counties. We’re just interested in having enough to do what we need to do in the cities,” said Christensen.

The road fund proposal is KLC’s top legislative priority for the 2017 session of the General Assembly, with pensions, tax options, drug abuse concerns, prevailing wage and unfunded mandates rounding out the list.



Rep. Jim DuPlessis, R-Elizabethtown, asks questions during the Oct. 26 meeting of the Interim Joint Committee on Local Government.



# Public defenders seek help

by Rebecca Hanchett  
*LRC Public Information*

Kentucky's public defenders are "workhorses" who need better pay, and more help, to represent the hundreds of thousands of indigent clients assigned to them each year, a state legislative panel heard this month.

Funding was proposed by Governor Matt Bevin during the 2016 legislative session that would have funded salaries for 44 additional public defenders, Kentucky Department of Public Advocacy chief Ed Monahan told the Interim Joint Committee on Judiciary on Nov. 4, but that funding was "unfortunately" not in the final budget, he said.

"It would have allowed us to have a higher return on investment had we gotten the funding because cases would have been resolved sooner. Counties would have saved money on jail costs. Victims would have been happier because the case was resolved..." Monahan told the committee. He asked lawmakers to reconsider beefing up funding for his agency by granting a 23 percent increase in pay to public defenders, Commonwealth's attorney and county attorney over the next biennium and increasing the number of public defender offices from 33 to 57 statewide.

Even the most talented lawyer would struggle to handle an average of 460 new cases assigned to each of Kentucky's public defenders in recent years, Monahan told the committee.

"We are the workhorses," he said, telling lawmakers that the agency's total number of new trial cases is up 2.9 percent to nearly 158,000 cases with the state covering around \$267 for each of those cases. "We're very proud of what we're doing, but we need help."

He also asked lawmakers to increase funding for private attorneys who help with felony cases that public defenders aren't ethically able to handle, saying those individuals only receive \$327 on average per case. "They do it out of the goodness of their heart after we ask them to do it," said Monahan.

Changes to criminal law are also being requested by Monahan and representatives from the Kentucky Association of Criminal Defense Lawyers who also testified before the committee. Both Monahan and the KACDL explained that they are seeking several changes to the law including reform to the state penal code, a body of statutes that Monahan called "out of whack in many different ways." KACDL's Rebecca DiLoreto said her group wants a penal code task force created to tackle comprehensive reform of the 42-year-old penal code language.

"We think it's important to have the Judiciary chairs and those of you present involved in



Rep. Mary Lou Marzian, D-Louisville, makes a point during the Nov. 4 Interim Joint Committee on Judiciary meeting.

that. We also believe it's important to have the expertise of law professors and practitioners," said DiLoreto.

DiLoreto said work on the code will take time and change should come slowly, adding that KACDL agrees the next legislative session is "not the ideal time" to make major alterations to the code.

KACDL also expressed concerns with victim's rights legislation known as Marsy's Law that has passed in California and Illinois. The legislation, named for stalking and murder victim Marsalee Nicholas, proposes including a victim's bill of rights in state constitutions—an action that requires a state's voters to pass an amendment to their constitution. Similar legislation was sponsored by Judiciary Committee Co-Chair Sen. Whitney Westerfield, R-Hopkinsville, under Senate Bill 175 last session, although the bill failed to pass.

Saying that Kentucky crime victims now have over 150 statutory rights and a codified bill of rights, KACDL President-Elect Amy Hannah argued against passage of Marsy's Law legislation in Kentucky. A state constitution should only be amended in rare cases, she told lawmakers.

"The measure that is being proposed isn't necessary," she said. "We don't change the constitution and have an amendment because one office or one specific case didn't get handled appropriately."

Westerfield said he must "respectfully disagree" with KACDL on Marsy's Law. "But since I'm going to file it again... I'm sure we can debate it then, and so we will."

## Let some prisoners drive, lawmakers are asked

by Jim Hannah  
*LRC Public Information*

A limited number of federal prisoners could be behind the wheel on Kentucky's roadways if the General Assembly makes a change in state law suggested by the U.S. Federal Bureau of Prisons.

"Today's request would allow a small number of inmates to obtain a driver's license and contribute to an inmate work program that is vital to the continued operation of the Bureau of Prison facilities in Kentucky," Scott Butcher of the U.S. Bureau of Prisons said during the Oct. 4 meeting of the Interim Joint Committee on Transportation.

The five institutions the bureau operate in Kentucky are the U.S. Penitentiary at Big Sandy, U.S. Penitentiary at McCreary, the Federal Correctional Institution at Manchester, the Federal Correctional Institution at Ashland and the Federal Medical Center at Lexington.

Butcher said the change in the law would allow prisoners to drive so the bureau employees, earning up to \$30 per hour, could be utilized to do essential tasks in a fiscal climate where little money is available for new hires.

He said the change would allow prisoners to drive to off-site jobs to learn employable skills and earn a taxable income. Butcher said one goal of the program is to reduce the rate of recidivism or the likelihood of returning to prison. Currently, one in three people released from federal prison will return.

Some of the states in which inmates can get a driver's license include Florida, Pennsylvania, Texas and Virginia. Butcher said more than 200 state IDs and more than 150 driver's licenses were issued just in Florida just in 2014.

"Why can't Kentucky be a part of the re-entry efforts needed to better prepare our inmate population for return to society?" Butcher said. "Not only will getting a license help them work their daily job, but it will prepare them for Day One of their release to go and find suitable employment."

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# 2017 REGULAR SESSION CALENDAR

## 2017 REGULAR SESSION CALENDAR

### JANUARY – PART I

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 Part I Convenes (1)	4 (2)	5 (3)	6 (4)	7
8	9	10	11	12	13	14
15	16 Martin Luther King, Jr. Day	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

### FEBRUARY – PART II

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7 Part II Convenes (5)	8 (6)	9 (7)	10 Last day for new bill requests (8)	11
12	13 (9)	14 (10)	15 (11)	16 (12)	17 Last day for new Senate bills (13)	18
19	20 Presidents' Day HOLIDAY	21 Last day for new House bills (14)	22 (15)	23 (16)	24 (17)	25
26	27 (18)	28 (19)				

Denotes break between Parts I and II. Bill drafts may be requested during this period for introduction when Part II convenes.

( ) Denotes Legislative Day

## MARCH

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 (20)	2 (21)	3 (22)	4
5	6 (23)	7 (24)	8 (25)	9 (26)	10 Legislative Holiday	11
12	13 Legislative Holiday	14 Concurrent (27)	15 Concurrent (28)	16 VETO	17 VETO	18 VETO
19	20 VETO	21 VETO	22 VETO	23 VETO	24 VETO	25 VETO
26	27 VETO	28 Legislative Holiday	29 (29)	30 SINE DIE (30)	31	

# 2016

# Kentucky

# General Assembly

## Senate

**Julie Raque Adams (36)**

213 S Lyndon Lane  
Louisville, KY 40222  
(LRC) 502-564-8100  
(Home) 502-744-9264

**Ralph Alvarado (28)**

3250 McClure Road  
Winchester, KY 40391  
(LRC) 502-564-8100

**Joe Bowen (8)**

2031 Fieldcrest Dr  
Owensboro, KY 42301  
(LRC) 502-564-8100  
(Home) 270-685-1859

**Tom Buford (22)**

409 W Maple St  
Nicholasville, KY 40356  
(LRC) 502-564-8100  
(LRC FAX) 502-564-2466  
(Home) 859-885-0606  
(Home FAX) 859-885-0606

**Jared Carpenter (34)**

PO Box 100  
Berea, KY 40403  
(LRC) 502-564-8100

**Danny Carroll (2)**

220 Cimarron Way  
Paducah, KY 42001  
(LRC) 502-564-8100  
(Home) 270-703-8025

**Julian M. Carroll (7)**

702 Capitol Ave  
Annex Room 254  
Frankfort, KY 40601  
(LRC) 502-564-8100

**Perry B. Clark (37)**

5716 New Cut Rd  
Louisville, KY 40214  
(LRC) 502-564-8100  
(Home) 502-366-1247

**C.B. Embry Jr. (6)**

PO Box 1215  
Morgantown, KY 42261  
(LRC) 502-564-8100  
(Home) 270-791-1879  
(Work) 270-526-6237

**Carroll Gibson (5)**

PO Box 506  
Leitchfield, KY 42755  
(LRC) 502-564-8100  
(Home) 270-230-5866

**Chris Girdler (15)**

702 Capitol Ave  
Annex Room 209  
Frankfort, KY 40601  
(LRC) 502-564-8100

**David P. Givens (9)**

PO Box 12  
Greensburg, KY 42743  
(LRC) 502-564-8100

**Denise Harper Angel (35)**

2521 Ransdell Ave  
Louisville, KY 40204  
(LRC) 502-564-8100  
(Home) 502-452-9130

**Ernie Harris (26)**

PO Box 1073  
Crestwood, KY 40014  
(LRC) 502-564-8100  
(Home) 502-241-8307

**Jimmy Higdon (14)**

344 N Spalding  
Lebanon, KY 40033  
(LRC) 502-564-8100  
(Home) 270-692-6945

**Paul Hornback (20)**

6102 Cropper Rd  
Shelbyville, KY 40065  
(LRC) 502-564-8100

**Stan Humphries (1)**

763 Sinking Fork Rd  
Cadiz, KY 42211  
(LRC) 502-564-8100  
(Home) 270-522-0195

**Ray S. Jones II (31)**

PO Drawer 3850  
Pikeville, KY 41502  
(LRC) 502-564-8100  
(Work) 606-432-5777  
(Work FAX) 606-432-5154

**Alice Forgy Kerr (12)**

3274 Gondola Dr  
Lexington, KY 40513  
(LRC) 502-564-8100  
(Home) 859-223-3274

**Christian McDaniel (23)**

PO Box 15231  
Latonia, KY 41015  
(LRC) 502-564-8100

**Morgan McGarvey (19)**

2250 Winston Ave  
Louisville, KY 40205  
(LRC) 502-564-8100  
(Home) 502-589-2780

**Gerald A. Neal (33)**

462 S 4th St  
Meidinger Twr, Ste. 1250  
Louisville, KY 40202  
(LRC) 502-564-8100  
(Home) 502-776-1222  
(Work) 502-584-8500  
(Work FAX) 502-584-1119

**Dennis Parrett (10)**

731 Thomas Rd  
Elizabethtown, KY 42701  
(LRC) 502-564-8100  
(Home) 270-765-4565

**Dorsey Ridley (4)**

4030 Hidden Creek Dr  
Henderson, KY 42420  
(LRC) 502-564-8100  
(Home) 270-826-5402  
(Work) 270-869-0505  
(Work FAX) 270-869-0340

**Albert Robinson (21)**

1249 S Main St  
London, KY 40741  
(LRC) 502-564-8100  
(Home) 606-878-6877

\* Members of the Kentucky General Assembly may also be contacted by calling 502-564-8100.

**John Schickel (11)**

2147 Natches Trace  
Union, KY 41091  
(LRC) 502-564-8100

**Wil Schroder (24)**

25 Observatory Pointe Dr  
Wilders, KY 41076  
(LRC) 502-564-8100

**Dan “Malano” Seum (38)**

1107 Holly Ave  
Fairdale, KY 40118  
(LRC) 502-564-8100  
(Home) 502-749-2859

**Brandon Smith (30)**

124 Craig Street  
Hazard, KY 41702  
(LRC) 502-564-8100  
(Home) 606-436-4526  
(Home FAX) 606-436-4526

**Robert Stivers II (25)**

207 Main St  
Manchester, KY 40962  
(LRC) 502-564-8100  
(Home) 606-598-8575  
(Work) 606-598-2322  
(Work FAX) 606-598-2357

**Damon Thayer (17)**

105 Spyglass Dr  
Georgetown, KY 40324  
(LRC) 502-564-8100

**Reginald Thomas (13)**

702 Capitol Ave  
Annex Room 229  
Frankfort, KY 40601  
(LRC) 502-564-8100  
(LRC FAX) 502-564-0777

**Johnny Ray Turner (29)**

849 Crestwood Dr  
Prestonsburg, KY 41653  
(LRC) 502-564-8100  
(Home) 606-889-6568

**Robin L. Webb (18)**

404 W Main St  
Grayson, KY 41143  
(LRC) 502-564-8100  
(Home) 606-474-5380

**Stephen West (27)**

202 Vimont Ln  
Paris, KY 40361  
(LRC) 502-564-8100

**Whitney Westerfield (3)**

700 South Main Street  
PO Box 1107  
Hopkinsville, KY 42241  
(LRC) 502-564-8100  
(Work) 270-885-7671

**Mike Wilson (32)**

631 Washington Ave  
Bowling Green, KY 42103  
(LRC) 502-564-8100

**Max Wise (16)**

130 High Point Crossing  
Campbellsville, KY 42218  
(LRC) 502-564-8100



# 2016 Kentucky General Assembly

## House

<b>Rocky Adkins (99)</b>	PO Box 688 Sandy Hook, KY 41171 (LRC) 502-564-8100 (Home) 606-738-4242 (Work) 606-928-0407 (Work FAX) 606-929-5913
<b>Lynn Bechler (4)</b>	2359 Brown Mines Rd Marion, KY 42064 (LRC) 502-564-8100 (Home) 270-988-4171
<b>Linda Belcher (49)</b>	4804 Hickory Hollow Lane Shepherdsville, KY 40165 (LRC) 502-564-8100 (Home) 502-957-2793
<b>Johnny Bell (23)</b>	108 N Green St Glasgow, KY 42141 (LRC) 502-564-8100 (Home) 270-590-0110 (Work) 270-651-7005
<b>Robert Benvenuti III (88)</b>	2384 Abbeywood Rd Lexington, KY 40515 (LRC) 502-564-8100 (Home) 859-421-1464
<b>Kevin D. Bratcher (29)</b>	10215 Landwood Dr Louisville, KY 40291 (LRC) 502-564-8100 (Home) 502-231-3311
<b>George Brown Jr. (77)</b>	424 E Fourth Street Lexington, KY 40508 (LRC) 502-564-8100 (Home) 859-312-7513
<b>Regina Bunch (82)</b>	179 Mountain St Williamsburg, KY 40769 (LRC) 502-564-8100 (Home) 606-549-3439
<b>Tom Burch (30)</b>	4012 Lambert Ave Louisville, KY 40218 (LRC) 502-564-8100 (Home) 502-454-4002
<b>Denver Butler (38)</b>	PO Box 9041 Louisville, KY 40209 (LRC) 502-564-8100 (Work) 502-817-3044
<b>John Carney (51)</b>	202 Southside Dr. Campbellsville, KY 42718 (LRC) 502-564-8100 (Home) 270-403-7980
<b>Larry Clark (46)</b>	5913 Whispering Hills Blvd. Louisville, KY 40219 (LRC) 502-564-8100 (Home) 502-968-3546
<b>Hubert Collins (97)</b>	72 Collins Dr Wittensville, KY 41274 (LRC) 502-564-8100 (Home) 606-297-3152
<b>Leslie Combs (94)</b>	245 E Cedar Dr Pikeville, KY 41501 (LRC) 502-564-8100 (Home) 606-444-6672

<b>Tim Couch (90)</b>	PO Box 710 Hyden, KY 41749 (LRC) 502-564-8100 (Home) (606) 672-8999
<b>Will Coursey (6)</b>	285 Oak Level Elva Rd Symsonia, KY 42082 (LRC) 502-564-8100 (Home) 270-851-4433
<b>Ron Crimm (33)</b>	PO Box 43244 Louisville, KY 40253 (LRC) 502-564-8100 (Home) 502-245-8905 (Work) 502-400-3838
<b>Jim DeCesare (21)</b>	PO Box 122 Rockfield, KY 42274 (LRC) 502-564-8100 (Home) 270-792-5779 (Work) 270-792-5779
<b>Mike Denham (70)</b>	306 Old Hill City Rd Maysville, KY 41056 (LRC) 502-564-8100 (Home) 606-759-5167
<b>Bob M. DeWeese (48)</b>	6206 Glen Hill Rd Louisville, KY 40222 (LRC) 502-564-8100 (Home) 502-426-5565
<b>Jeffery Donohue (37)</b>	PO Box 509 Fairdale, KY 40118 (LRC) 502-564-8100 (Work) 502-439-6175
<b>Myron Dossett (9)</b>	491 E Nashville St Pembroke, KY 42266 (LRC) 502-564-8100 (Home) 270-475-9503
<b>Jim DuPlessis (25)</b>	102 Utah Ct Elizabethtown, KY 42701 (LRC) 502-564-8100
<b>Daniel Elliott (54)</b>	16923 Forkland Rd Gravel Switch, KY 40328 (LRC) 502-564-8100 (Home) 859-332-4204
<b>Joseph M. Fischer (68)</b>	126 Dixie Place Ft Thomas, KY 41075 (LRC) 502-564-8100 (Home) 859-781-6965 (Work) 513-794-6442
<b>Kelly Flood (75)</b>	121 Arcadia Park Lexington, KY 40503 (LRC) 502-564-8100 (Home) 859-221-3107
<b>David Floyd (50)</b>	102 Maywood Ave Bardstown, KY 40004 (LRC) 502-564-8100 (Home) 502-350-0986
<b>Jim Glenn (13)</b>	PO Box 21562 Owensboro, KY 42304 (LRC) 502-564-8100 (Home) 270-686-8760

<b>Jim Gooch Jr. (12)</b>	714 N Broadway B2 Providence, KY 42450 (LRC) 502-564-8100 (Home) 270-667-7327 (Work FAX) 270-667-5111
<b>Derrick Graham (57)</b>	702 Capitol Ave Annex Room 367 Frankfort, KY 40601 (LRC) 502-564-8100 (Home) 502-223-1769
<b>Jeff Greer (27)</b>	PO Box 1007 Brandenburg, KY 40108 (LRC) 502-564-8100 (Home) 270-422-5100 (Home FAX) 270-422-5100
<b>David Hale (74)</b>	1 Hales Ln Wellington, KY 40387 (LRC) 502-564-8100 (Home) 606-768-3474
<b>Chris Harris (93)</b>	719 Forest Hills Rd Forest Hills, KY 41527 (LRC) 502-564-8100 (Home) 606-237-0055
<b>Richard Heath (2)</b>	438 Millers Chapel Rd Mayfield, KY 42066 (LRC) 502-564-8100 (Home) 270-705-7539 (Work) 270-247-2210 (Work FAX) 270-247-2304
<b>Jeff Hoover (83)</b>	PO Box 985 Jamestown, KY 42629 (LRC) 502-564-8100 (Home) 270-343-2264 (Work) 270-343-5588
<b>Dennis Horlander (40)</b>	1806 Farnsley Rd, Ste 6 Shively, KY 40216 (LRC) 502-564-8100 (Home) 502-447-2498 (Work) 502-447-9000
<b>Cluster Howard (91)</b>	476 Kings Ridge Jackson, KY 41339 (LRC) 502-564-8100
<b>Kenny Imes (5)</b>	4064 US 641 N Murray, KY 42071 (LRC) 502-564-8100
<b>Joni L. Jenkins (44)</b>	2010 O'Brien Ct Shively, KY 40216 (LRC) 502-564-8100 (Home) 502-447-4324
<b>James Kay (56)</b>	PO Box 1536 Versailles, KY 40383 (LRC) 502-564-8100
<b>Dennis Keene (67)</b>	1040 Johns Hill Rd Wilders, KY 41076 (LRC) 502-564-8100 (Home) 859-441-5894
<b>Kim King (55)</b>	250 Bright Leaf Dr Harrodsburg, KY 40330 (LRC) 502-564-8100 (Home) 859-734-2173

# 2016 Kentucky General Assembly

<b>Martha Jane King (16)</b>	Lake Malone 633 Little Cliff Estates Lewisburg, KY 42256 (LRC) 502-564-8100 (Home) 270-657-2707 (Home FAX) 270-657-2755
<b>Adam Koenig (69)</b>	No 12 170 Harrington Ct Erlanger, KY 41018 (LRC) 502-564-8100 (Home) 859-653-5312
<b>Stan Lee (45)</b>	PO Box 2090 Lexington, KY 40588 (LRC) 502-564-8100 (Home) 859-252-2202 (Home FAX) 859-259-2927
<b>Brian Linder (61)</b>	16 Ridgeview Cir Dry Ridge, KY 41035 (LRC) 502-564-8100
<b>Mary Lou Marzian (34)</b>	2007 Tyler Ln Louisville, KY 40205 (LRC) 502-564-8100 (Home) 502-451-5032
<b>Donna Mayfield (73)</b>	2059 Elkin Station Rd Winchester, KY 40391 (LRC) 502-564-8100 (Home) 859-745-5941
<b>Tom McKee (78)</b>	1053 Cook Rd Cynthiana, KY 41031 (LRC) 502-564-8100 (LRC FAX) 502-564-0152 (Home) 859-234-5879
<b>David Meade (80)</b>	PO Box 121 Stanford, KY 40484 (LRC) 502-564-8100
<b>Reginald Meeks (42)</b>	PO Box 757 Louisville, KY 40201 (LRC) 502-564-8100 (Work) 502-741-7464
<b>Michael Meredith (19)</b>	PO Box 292 Brownsville, KY 42210 (LRC) 502-564-8100 (Work) 270-597-6049
<b>Russ A. Meyer (39)</b>	106 Lone Oak Drive Nicholasville, KY 40356 (LRC) 502-564-8100
<b>Suzanne Miles (7)</b>	PO Box 21592 Owensboro, KY 42304 (LRC) 502-564-8100
<b>Charles Miller (28)</b>	3608 Gateview Cir Louisville, KY 40272 (LRC) 502-564-8100 (Home) 502-937-7788
<b>Jerry T. Miller (36)</b>	PO Box 36 Eastwood, KY 40018 (LRC) 502-564-8100
<b>Terry Mills (24)</b>	690 McElroy Pk Lebanon, KY 40033 (LRC) 502-564-8100 (Home) 270-692-2757
<b>Phil Moffett (32)</b>	812 Brookhill Rd Louisville, KY 40223 (LRC) 502-564-8100

<b>Tim Moore (26)</b>	417 Bates Rd Elizabethtown, KY 42701 (LRC) 502-564-8100 (Home) 270-769-5878
<b>Rick G. Nelson (87)</b>	117 Gumwood Rd Middlesboro, KY 40965 (LRC) 502-564-8100 (Home) 606-248-8828 (Home FAX) 606-248-8828
<b>Lewis Nicholls (98)</b>	1205 Main St Greenup, KY 41144 (LRC) 502-564-8100 (Home) 606-473-6607
<b>David Osborne (59)</b>	PO Box 8 Prospect, KY 40059 (LRC) 502-564-8100 (Home) 502-228-3201 (Work) 502-645-2186
<b>Sannie Overly (72)</b>	340 Main St Paris, KY 40361 (LRC) 502-564-8100 (Home) 859-987-9879
<b>Darryl T. Owens (43)</b>	1018 S 4th St, Ste 100 Louisville, KY 40203 (LRC) 502-564-8100 (Home) 502-584-6341
<b>Ruth Ann Palumbo (76)</b>	10 Deepwood Dr Lexington, KY 40505 (LRC) 502-564-8100 (Home) 859-299-2597
<b>Marie Rader (89)</b>	PO Box 323 McKee, KY 40447 (LRC) 502-564-8100 (Home) 606-287-7303 (Work) 606-287-3300 (Work FAX) 606-287-3300
<b>Rick Rand (47)</b>	PO Box 273 Bedford, KY 40006 (LRC) 502-564-8100 (Home) 502-255-3392 (Work) 502-255-3286 (Work FAX) 502-255-9911
<b>Jody Richards (20)</b>	817 Culpeper St Bowling Green, KY 42103 (LRC) 502-564-8100 (Home) 270-842-6731
<b>Steve Riggs (31)</b>	PO Box 24586 Louisville, KY 40224 (LRC) 502-564-8100 (LRC FAX) 502-564-6543
<b>Tom Riner (41)</b>	1143 E Broadway Louisville, KY 40204 (LRC) 502-564-8100 (Home) 502-584-3639
<b>Bart Rowland (53)</b>	PO Box 336 Tompkinsville, KY 42167 (LRC) 502-564-8100
<b>Steven Rudy (1)</b>	350 Peppers Mill Drive Paducah, KY 42001 (Home) 270-744-8137 (LRC) 502-564-8100

<b>Sal Santoro (60)</b>	596 Walterlot Ct Florence, KY 41042 (LRC) 502-564-8100 (Home) 859-371-8840 (Home FAX) 859-371-4060
<b>Dean Schamore (10)</b>	120 Ball Park Rd Hardinsburg, KY 40143 (LRC) 502-564-8100
<b>Jonathan Shell (36)</b>	PO Box 138 Lancaster, KY 40444 (LRC) 502-564-8100
<b>John Short (92)</b>	PO Box 1133 Hindman, KY 41822 (LRC) 502-564-8100 (Work) 606-785-9018
<b>Arnold Simpson (65)</b>	112 W 11th St Covington, KY 41011 (LRC) 502-564-8100 (Home) 859-581-6521 (Home FAX) 859-261-6582 (Work) 859-261-6577
<b>Kevin Sinnette (100)</b>	PO Box 1358 Ashland, KY 41105 (LRC) 502-564-8100 (Home) 606-324-5711 (Home FAX) 606-329-1430
<b>Rita Smart (81)</b>	419 W Main St Richmond, KY 40475 (LRC) 502-564-8100 (Home) 859-623-7876
<b>Diane St. Onge (63)</b>	PO Box 17351 Lakeside Park, KY 41017 (LRC) 502-564-8100
<b>Fitz Steele (84)</b>	176 Woodland Ave Hazard, KY 41701 (LRC) 502-564-8100 (Home) 606-439-0556 (Home FAX) 606-439-0556
<b>Jim Stewart III (86)</b>	545 KY 223 Flat Lick, KY 40935 (LRC) 502-564-8100 (Home) 606-542-5210
<b>Wilson Stone (22)</b>	1481 Jefferson School Rd Scottsville, KY 42164 (LRC) 502-564-8100 (Home) 270-622-5054
<b>Greg Stumbo (95)</b>	PO Box 1473, 108 Cassidy Dr Prestonsburg, KY 41653 (LRC) 502-564-8100 (Home) 606-886-9953
<b>Chuck Tackett (62)</b>	134 Robinson Ln Georgetown, KY 40324 (LRC) 502-564-8100 (Home) 502-868-1438

# 2016 Kentucky General Assembly

## Jeff Taylor (8)

1814 Hopper Ct  
Hopkinsville, KY 42240  
(LRC) 502-564-8100  
(Home) 270-886-4543

## Tommy Thompson (14)

PO Box 458  
Owensboro, KY 42302  
(LRC) 502-564-8100  
(Home) 270-926-9736  
(Work) 270-926-1740  
(Work FAX) 270-685-3242

## James Tipton (53)

8151 Little Mount Rd  
Taylorsville, KY 40071  
(LRC) 502-564-8100

## Tommy Turner (85)

175 Clifty Grove Church  
Somerset, KY 42501  
(LRC) 502-564-8100  
(Home) 606-274-5175

## Ken Upchurch (52)

PO Box 969  
Monticello, KY 42633  
(LRC) 502-564-8100  
(Home) 606-340-8490

## David Watkins (11)

1280 Taransay Drive  
Henderson, KY 42420  
(LRC) 502-564-8100  
(Home) 270-826-0952  
(Home FAX) 270-826-3338

## Gerald Watkins (3)

4317 Pines Rd  
Paducah, KY 42001  
(LRC) 502-564-8100  
(Home) 270-558-5139

## Jim Wayne (35)

1280 Royal Ave  
Louisville, KY 40204  
(LRC) 502-564-8100  
(Work) 502-451-8262

## Russell Webber (49)

PO Box 6605  
Shepherdsville, KY 40165  
(LRC) 502-564-8100  
(Home) 502-543-8209

## Susan Westrom (79)

PO Box 22778  
Lexington, KY 40522  
(LRC) 502-564-8100  
(Work) 859-266-7581

## Addia Wuchner (66)

PO Box 911  
Burlington, KY 41005  
(LRC) 502-564-8100  
(Work) 859-525-6698

## Brent Yonts (15)

232 Norman Cir  
Greenville, KY 42345  
(LRC) 502-564-8100  
(Home) 270-338-6790  
(Work) 270-338-0816  
(Work FAX) 270-338-1639

## Jill York (96)

PO Box 591  
Grayson, KY 41143  
(LRC) 502-564-8100  
(Work) 606-474-7263  
(Work FAX) 606-474-7638

**\* Members of the Kentucky General Assembly may also be contacted by calling 502-564-8100.**

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### INTERIM JOINT COMMITTEE ON TRANSPORTATION

#### Minutes of the 5th Meeting of the 2016 Interim

October 4, 2016

##### Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Transportation was held on Tuesday, October 4, 2016, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Hubert Collins, Chair, called the meeting to order, and the secretary called the roll. The minutes from the Committee's September 6, 2016 meeting were approved.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Hubert Collins, Co-Chair; Senators Jared Carpenter, C.B. Embry Jr., Gerald A. Neal, Albert Robinson, Brandon Smith, Johnny Ray Turner, and Mike Wilson; Representatives Leslie Combs, Tim Couch, Donna Mayfield, Tom McKee, Charles Miller, Jerry T. Miller, Terry Mills, Marie Rader, Sal Santoro, John Short, Arnold Simpson, Jim Stewart III, Tommy Turner, and Addia Wuchner.

Senator Dorsey Ridley and Representative David Watkins attended the meeting via videoconference.

Guests: John-Mark Hack, Commissioner, Department of Vehicle Regulation, Kentucky Transportation Cabinet; Kevin Pula, Policy Specialist, National Conference of State Legislatures

LRC Staff: John Snyder, Dana Fugazzi, Elizabeth May, and Christina Williams.

##### Update on REAL ID and Status of Kentucky's Request for Extension

John Mark Hack, Commissioner, Department of Vehicle Regulation, Kentucky Transportation Cabinet, testified about REAL ID and Kentucky's request for an extension to be in compliance with the REAL ID Act. Commissioner Hack stated that 25 states or territories are compliant with the REAL ID program and 31 states or territories are non-compliant or have extensions that expire October 10, 2016. Kentucky requested an additional extension August 31, 2016, and a revised extension on September 30, 2016. A copy of that extension request was provided to the committee. Kentucky is compliant with most REAL ID provisions. Commissioner Hack provided a handout indicating the provisions with which Kentucky is compliant.

Kentucky is in compliance with several requirements of the REAL ID regulations. The state requires non-U.S. citizens who apply for a driver's license to use a different location to apply for the license than the location used by other citizens in order to allow the cabinet to verify their identity and current immigration status. Kentucky does not grant driver's licenses or identification cards to non-U.S. citizens who are in the country without lawful immigration status. The physical card that Kentucky uses for a driver's license and an identification card has the

security features required by the REAL ID law and regulations. Commissioner Hack stated the only feature that Kentucky licenses and ID cards lack is the distinguishing mark between the REAL ID compliant credential and a non-compliant credential. That feature is not available because a dual system has not been established.

Commissioner Hack stated a Department of Homeland Security (DHS) requirement for an extension is that a territory or state must demonstrate substantial progress toward enhancing the security of the ID credentials. He highlighted four areas where he feels Kentucky has made such progress.

With respect to section 37.25 (a) (2) of the regulations, which requires reverification of an applicant's social security number and lawful status prior to ID issuance, the Commonwealth uses Social Security Online Verification Program (SSOLVE) and Systematic Alien Verification for Entitlements Program (SAVE) systems to re-verify the applicant's social security number and lawful status.

With respect to section 37.29 of the regulations, which does not permit an individual to hold more than one REAL ID document and no more than one driver's license, KRS 186.412 (16) prohibits any person from having more than one driver's license. The Kentucky driver's license application requires all applicants to attest, under applicable state and federal criminal and civil penalties, that they do not currently have a license or identification card from another state or jurisdiction. If the applicant holds a credential from another state or jurisdiction, he or she is required to submit either a clearance letter from that state or jurisdiction, or surrender the driver's license or ID credential issued by the other state or jurisdiction. Commissioner Hack stated he is aware of at least two REAL ID compliant states that employ a comparable system. The Problem Driver Pointer System (PDPS) is also utilized to identify drivers under current suspension by another state or jurisdiction. The Commercial Driver License Information System (CDLIS) is utilized to determine if CDL applicants hold a CDL issued by another state or jurisdiction. In addition, KYTC is actively investigating the requirements, including necessary resource allocations and operational changes, to join the State-to-State (S2S) Verification System to further enhance the security of credential issuance. Depending on the financial resources necessary to modify Kentucky's current information technology systems, a legislative appropriation may be necessary for the Commonwealth's S2S participation.

Section 37.41 of the regulations indicates that compliance involves having a documented security plan for the Department of Motor Vehicle (DMV) operations. Commissioner Hack stated this security plan will be enabled by legislative authority to develop a central issuance system for driver's licenses and IDs, which the cabinet plans to request from the Kentucky General Assembly during the 2017 Session.

Kentucky's documented security plan will be included in the Certification Package per section 37.55.

The state also must have protections that ensure the security of personally identifiable information. As part of the central issuance system described above, KYTC plans to implement a "scan and capture" system to secure social security numbers and birth certificate information of those citizens voluntarily applying for a REAL ID, compliant driver's license, or ID. The ability to implement this process is contingent on legislative approval of the request to transition to a central issuance system, a request the cabinet anticipates making during the next legislative session.

Commissioner Hack highlighted areas that will still need to be addressed with respect to section 37.41(b)(4), which requires states to implement documented procedures for controlling access to facilities and systems involved in the enrollment, manufacture, production and issuance of driver's licenses or IDs. Kentucky's full compliance with this provision is also dependent on a transition to a central issuance system. If the request is granted, the documented procedures will be included in the documented security plan for operations per section 37.41.

One provision that Kentucky is working towards is ensuring the physical security of the locations where driver's licenses and identification cards are manufactured or produced, as well as the security of document materials and papers of which such cards are produced. Kentucky's contract with the driver's license and ID credential manufacturing vendor expires in January 2017. Because of the timing of the administration transition and the requirements of Kentucky's state procurement code, the cabinet plans to request a one-year extension of the contract. During this one-year extension, KYTC intends to develop a request for proposals from driver's license and ID manufacturers that will include a condition for consideration of full compliance with this provision. Kentucky's full compliance with this provision is contingent upon legislative approval of the request to become a central issuance state.

Kentucky also must conduct name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions or have an alternative procedure approved by DHS. Commissioner Hack stated that, in a new central issuance system that is contingent on legislative approval, a fully compliant background check system will be developed and implemented for new employees. KYTC intends to partner with the Kentucky Administrative Office of the Courts to develop a fully compliant background check system for current employees in covered positions.

Kentucky must also submit a final certification package that will be submitted after compliance of all outstanding provisions has been achieved. If the state chooses to issue both compliant and noncompliant documents, it must be clearly be stated as such on the face of the noncompliant document and in the machine readable zone that the card. The card must also incorporate a unique design or color indicator that clearly distinguishes them from compliant licenses and identification cards. Commissioner Hack stated that, under a new central issuance system,

Kentucky intends to offer noncompliant documents and to make their issuance strictly voluntary. A system will be developed that produces credentials that are clearly distinguishable as noncompliant or compliant through unique designs, a color indicator, or a combination of the two.

Commissioner Hack stated that, if the extension for Kentucky to become REAL ID compliant is granted, it will allow an additional 12 months for continued progress toward modernizing a Kentucky's driver's license issuance system and enhancing its security. If the extension is not granted by October 10, 2016 or renewed at a later date, cumulative enforcement measures will remain in effect through successive phases. As of October 11, 2016, Kentucky driver's licenses or IDs will not be accepted at DHS's Nebraska Avenue Complex (NAC) headquarters. If the extension is not granted as of January 10, 2017, Kentucky's driver's licenses or IDs may not be accepted at some federal facilities, including military installations and all nuclear power plants. As of January 22, 2018, Kentucky driver's licenses or IDs will not be acceptable for boarding federally regulated commercial aircraft for domestic flights if the extension is not granted or later renewed.

Commissioner Hack stated that access needed for activities directly relating to safety and health or life preserving services, to law enforcement, and to constitutionally protected activities, including legal and investigative proceedings, will not be affected, including access to the social security administration, veteran's affairs, and federal court houses. Individuals not required to present identification where it is not currently required to be presented, such as the use of identification needed to gain access to a federal facility like the public areas of the Smithsonian or national parks will also not be affected. Federal agencies may accept other forms of identification documents such as a U.S. passport or passport card. Prohibitions do not affect other uses of driver's licenses or identification cards including licenses and cards from noncompliant states that are unrelated to official purposes as defined in the REAL ID Act, including voting, registering to vote, or applying for or receiving federal benefits.

In response to a question asked by Representative Short concerning the major issues Governor Bevin had with 2016 SB 245, Commissioner Hack stated that Governor Bevin heard more constituent outcry of concern on the REAL ID Act and SB 245 than any other bill. Due to the Governor's newly elected status, as well as trying to enact a budget plan, Governor Bevin felt it necessary to reevaluate the provisions involved in SB 245 and therefore was unable to sign the bill. Commissioner Hack stated there were concerns documented by the American Civil Liberties Union (ACLU) as well as Take Back Kentucky and several other organizations. He said he cannot speak for any organization that voiced concerns but that there were some concerns on the understanding and implications of the federal law that were not necessarily accurate. Governor Bevin stated in his SB 245 veto message that he would like to take a proactive approach to communicate with those stakeholders in a transparent way about those provisions.

In response to a question asked by Representative

Short concerning the suggested changes to SB 245 for consideration during the 2017 Regular Session, Commissioner Hack stated he is unprepared to go through a list of changes but would welcome the opportunity to do so at a future date. He said there are several provisions of the bill that represent great improvements to the system of issuance and how business is conducted in the Department of Vehicle Regulation.

In response to a question asked by Representative Jerry Miller concerning the issue of homeless Kentuckians having difficulty obtaining driver's licenses or IDs due to the lack of a permanent address, Commissioner Hack stated a memorandum was sent that stated homeless shelter and halfway house addresses should be acceptable forms of addresses in order for a citizen to obtain a driver's license or and ID.

Representative Combs voiced her concern over the SB 245 veto given that the cabinet and all necessary parties were involved in the drafting of the bill, and the bill was public knowledge. She asked whether, if the extension is not granted and legislation were passed at the beginning of 2017, it would be acceptable to DHS to consider Kentucky REAL ID compliant. Commissioner Hack stated there are no DHS provision prohibiting it from granting an extension after denial of a previous request. He said he cannot speak for DHS but that he feels that, if Kentucky is compliant with the provisions through legislation, it would be acceptable.

Co-Chair Harris stated that, as the sponsor of SB 245, he received numerous letters and emails voicing concerns about REAL ID and he believes those correspondences are mostly due to citizens being uninformed about REAL ID. He reiterated that REAL ID had been discussed by the General Assembly with various open meetings for at least two years, and that the bill's drafter had been in constant contact with KYTC to discuss the issues. Co-Chair Harris suggested a possible Transportation Committee meeting within the three week break of the 2017 Session to educate citizens on REAL ID.

Commissioner Hack stated that, in the context of convening stakeholders communicating about SB 245, he is accountable to Governor Bevin, to the legislature, and the people of the Commonwealth. He added he cannot speak on what was done within the previous administration, but he vowed to convene the stakeholders and said that the perspectives of everyone will be considered in a collaborative effort.

Representative Jerry Miller stated that the ACLU had concerns about SB 245 involving 4<sup>th</sup> amendment rights and privacy issues. Constituents felt that SB 245 provided a false sense of security, that it was an overreach of the federal government, and that the costs associated with implementing SB 245 and the REAL ID Act were too high. Representative Jerry Miller stated that he saw no need to provide non-citizens with a REAL ID even if they were in the country legally. He said he does not believe the bill was fully debated by the General Assembly due to the late hour passage of the bill and it not being fully debated on the floor of the House of Representatives. Amendments were filed that were not germane and two amendments were filed that were not debated

fully as well.

**NCSL Presentation on Motor Fuels Taxes and Their Long-Term Sustainability, including Alternatives being Explored in Other States**

Kevin Pula, Policy Specialist, National Conference of State Legislatures (NCSL), testified on issues pertaining to motor fuels taxes and alternatives being explored in other states. Mr. Pula moderated a session titled “Gearing Up, Transportation Funding for the Future” at the NCSL conference in August. Over 120 session attendees, including legislators, legislative staffers, stakeholders and private sector individuals, were asked for the three most pressing transportation issues in their states. The answers varied, but money, maintenance, funding, and congestion were among the most common responses. The attendees were asked about transportation as a legislative priority. Eighty-six percent said that transportation is either in the top five or the number one issue.

A chart from the American Society of Civil Engineers 2013 Infrastructure Report Card showed Kentucky’s rank in comparison to surrounding states on several issues. Kentucky ranks in the 7<sup>th</sup> percentile on major roads in poor condition, while Illinois and Ohio rank in the 15<sup>th</sup> percentile. The lowest ranking states were Tennessee and Virginia at the 6<sup>th</sup> percentile. Kentucky ranked at 8.7 percent in structurally deficient bridges, compared to the highest ranking of West Virginia of 13.2 percent and the lowest ranking of 5.8 percent in Tennessee. For functionally obsolete bridges, Kentucky had the highest percentile at 22.7 percent and Illinois had the lowest percentile of functionally obsolete bridges at 7.4 percent. Kentucky’s estimated costs to motorists were \$315.11 per year compared to West Virginia’s highest costs of \$469.23 per year and Tennessee at the lowest at a cost of \$225.34 per year.

Mr. Pula provided a chart that highlighted statistics and trends in transportation that reiterate the importance of states in the transportation arena. In all levels of government that fund highways and transit, the average annual own-source spending by level of government is 25 percent, funding by federal government at an estimated \$54 billion, 40 percent funding by state funds at \$84 billion, and the remaining 35 percent of funding coming from local entities at approximately \$75 billion. Mr. Pula stated that surface transportation investment has been declining since 2002. State spending has decreased by approximately 15 percent, and overall spending has decreased by 12 percent in 2012 dollars. The Congressional Budget Office has evaluated the spending levels since 2003 and found that, even while nominal spending was at 44 percent on transportation funding, real spending on specific price indexes of infrastructure has fallen by 9 percent.

Mr. Pula stated that 56 percent of all transportation spending is on new capacities or expansion. States are spending nearly 60 percent of their dollars on operations and maintenance and 40 percent on expansion. Federal dollars have been applied toward expansion or capital programs at 95 percent. These figures were also evaluated by the American Association of State Highway and Transportation Officials (AASHTO), which estimates that state DOTs spend approximately 71 percent

of funds on system preservation and 29 percent on expansion.

Mr. Pula said that the 2015 Fixing America’s Surface Transportation (FAST) Act is a \$305 billion, 5-year reauthorization of the federal program. There was a 5 percent funding increase in 2015. The increase will grow to 15 percent for highways by 2020. There was an 8 percent increase for transit funding in 2015 that will grow to 18 percent. The short term spending bill that Congress passed through December 9, 2016 included pre-FAST Act numbers. The FAST Act provided no new user-based revenues for the Highway Trust Fund. The Congressional Budget Office estimated that, by the end of term for this bill, there will be a \$70 billion shortfall between federal gas tax revenues and what is being authorized in federal government spending. Congress therefore identified “pay-fors” which included \$53.3 billion from the Federal Reserve Surplus Account, \$6.9 billion in reduced Federal Reserve Stock Dividend payments, and \$6.2 billion from sale of Strategic Petroleum Reserve.

The FAST Act provides changes to federal programs including a \$2 billion increase to the Surface Transportation Block Grant Program by 2020 and a percentage split adjustment. There will also be lowered project size requirements and an increased share going to rural projects for the Transportation Infrastructure Financing and Investment Act. Funding of alternative grants will be funded at \$95 million in competitive grants and mileage-based user fee pilots.

Mr. Pula stated that, according to the NCSL/AASHTO 2011 Transportation Governance and Finance Report, over 50 different mechanisms were found that could be used for funding transportation, including such mechanisms as fuel taxes, several other types of taxes and fees, and private contributions. Federal and state governments rely heavily on gas tax revenue to fund highways. A motor fuel tax structure chart was provided for reference and comparison between fixed cent-per gallon and variable indexing structures. Since 1993, there has been a decreasing value of state gas taxes until 2011 where a slight increase was realized. Only 13 states have raised their gas taxes by more than 10 cents per gallon since 1993. Fifteen states have not raised the gas tax in over 20 years. Motor fuel tax revenues account for 1.6 percent (2011 number) of total state and local general revenues, down from 2.3 percent in 1993. The small increases that have been seen have lagged behind growing funding needs. The goal is to increase the Corporate Average Fuel Economy (CAFE) standards to 54.5 miles per gallon by 2025, an increase of nearly 70 percent since 2012. Fully realizing these efficiencies would further erode fuel tax revenues.

As many as 33 states have considered legislation related to state gas taxes in 2016. About half of the legislation would explicitly increase the state tax rate. To date, there has not been any legislature that has approved a gas tax increase in 2016. Eighteen states and the Washington D.C. have enacted legislation since 2013 to increase their gas taxes. Of those eighteen states, there does not appear to be a strong demographic, regional, or political trend. In 2015, Georgia, Idaho, Iowa, Nebraska, South Dakota,

Utah, and Washington enacted gas tax increases. The increases for each state range from 6 cents per gallon to 11.9 cents per gallon, a percentage increase of anywhere from 28 percent to 53 percent increase. Kentucky’s motor fuels tax provides for 56 percent of state user revenues for state and local roads.

Mr. Pula stated 19 states, representing 54 percent of the U.S. population, now index their state motor fuels tax. In 2013, Massachusetts (later repealed), Maryland, Pennsylvania, Virginia, Vermont, and Washington D.C. all enacted legislation to index their motor fuels tax aggressively. Wyoming chose to keep a fixed structure in 2013. In 2014, three states mildly indexed their motor fuels tax. Rhode Island decided to index but with no immediate increase, New Hampshire enacted a fixed increase based on CPI trends and Massachusetts voters repealed the 2013 indexing measure. In 2015, Georgia adjusted their motor fuels tax by using CPI and CAFE standards, Michigan used inflation, North Carolina used population and CPI standards, and Utah utilized a percentage of retail tax. All of those states chose to index. Idaho, Iowa, Nebraska, South Dakota, and Washington chose to use fixed increases. Kentucky adjusted a percentage on wholesale tax to implement a price floor and limit losses. When asked how states have successfully implemented indexing, several states responded that they demonstrated the need and the proper use of revenues for improved transportation infrastructure. Mr. Pula added there has been a trend for states to utilize lockbox legislation, where the money that is raised for transportation revenues are dedicated either constitutionally or statutorily to transportation funding only as to not allow any diversions.

Mr. Pula stated there have been several states that have implemented non-gas tax options. In 2016, Alabama restructured allocation mechanisms, meanwhile their funding bill is currently being considered. Also in 2016, Indiana arranged for budget reserve transfers and a local wheel tax. Nebraska implemented a gas tax increase in 2015 and in 2016 created a fund to manage new revenues. South Carolina moved \$200 million of various transportation fees from the General Fund to the Transportation Trust Fund and the State Infrastructure Bank restructure to allow up to \$2.2 billion in bonds. Rhode Island instituted a commercial vehicle only toll and the use of GARVEE bonds. In 2015, Connecticut utilized \$2.8 billion in bonding as a non-gas tax option. Georgia, Idaho, Michigan, and Wyoming all implemented electric vehicle fees. Also in 2015, Delaware increased various DMV fees and taxes, Georgia added a hotel and local option tax, Michigan implemented general fund transfers and various fee increases, Massachusetts utilized \$200 million in bonding, North Dakota utilized oil and gas tax revenue, and Texas utilized an oil and gas severance tax.

Mr. Pula said that, in reference to electric vehicle fees, Georgia’s fee is highest at \$200 per fee. Idaho and Michigan impose fees on hybrid vehicles. He provided a chart that broke down the national fraction, percentage of vehicles in the state, and the estimated number of personal electric vehicles registered per month for ten states that impose electric vehicle fees. Also included in the chart was each of the ten states



and their estimated annual revenue acquired from the electric vehicle fees. Mr. Pula stated there are currently 45 states that levy a cent per gallon tax on alternative fuels. Thirteen states allow alternative fuel vehicle owners to pay a user fee in lieu of the tax. The alternative fuel tax/fee in Arizona is 4 percent of the vehicle's value, in Arkansas it is \$164, in California is \$36, and in Kansas is a mileage-based user fee or a pre-paid permit.

Tolling is another system utilized throughout several states. Toll networks by mileage within a state shows that Ohio, Indiana, and Illinois, which are all neighboring states to Kentucky are within the top 10 network toll lanes in the country. Toll network revenues show that the New Jersey Turnpike Authority has the highest revenue from tolls at an estimated \$1.413 billion, and the Harris County Toll Road Authority in Texas has the lowest revenue from tolls at an estimated \$560 million.

Pay per mile or mileage based user fees is an option some states are reviewing. OreGo in Oregon has a pay per mile pilot that has the ability to consist of 5,000 volunteers and is the largest pilot. So far, approximately 1,000 volunteers have taken part in the pilot program, which charges 1.5 cents per mile driven, followed by a rebate from the gasoline tax on gas purchased. California has a 9-month road charge pilot that began in the summer of 2016. Washington has a steering committee to study the feasibility of the road user charge program. Illinois has a bill sponsored by Senate President Cullerton (SB 3267) which has been postponed dealing with a road user charge. Mr. Pula stated that the FAST Act, section 6020 offers \$95 million in competitive grants to study mileage based user fees or road user charges. The United States Department of Transportation has supported various other small pilots.

In 2016, there was approximately \$14.2 million awarded in federal grants, and eight programs funded, as well as the testing of a variety of approaches for surface transportation system funding alternative program selections. The Hawaii Department of Transportation received a nearly \$4 million grant to test a user fee collection based on manual and automated odometer readings at inspection stations. The California Department of Transportation received a \$750,000 grant to test a pay-at-the pump/charging station charge. Delaware, Minnesota, Missouri, Oregon, and Washington received study grants.

Transportation ballot measures for November of 2016 include proposed constitutional lockboxes in Illinois and New Jersey. In Maine the utilization of \$100 million in bonds will be on the ballot, and in Nevada the indexing of local fuel taxes to inflation will be on the ballot. In 2015, ballot measures included the creation of a state infrastructure bank in Louisiana, an \$85 million bond package in Maine, a large-scale transportation package in Michigan (failed), and in Texas a \$2.5 billion General Fund transfer to transportation. The average percentage of approved transportation funding ballot measures from 2005 to 2015 was approximately 72 percent.

Mr. Pula stated that there are proposed gas tax increases in at least 12 states in 2016, and none have yet to pass. California's transportation budget is being

debated, and there is potential for a special session in Minnesota. He encouraged members to visit NCSL's deep dive funding website located at <http://www.ncsl.org/bookstore/state-legislatures-magazine/deep-dive-transportation-funding.aspx>.

In response to a question asked by Co-Chair Harris, Mr. Pula stated he is in unsure who sets the CAFE standards but will acquire that information and supply it to the committee.

In reference to Representative McKee's interest in alternative fuel sources, Mr. Pula stated he could provide more detailed information and connect him with a colleague at NCSL who knows more.

Representative Combs reiterated that New Jersey has proposed a gas tax increase of 23 cents per gallon. She encouraged members to remember that for future discussions.

With no further business, the meeting was adjourned at 2:21 p.m.

## **INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 6, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, October 6, 2016, at 10:30 AM, at BPM Lumber, LLC, 24 Seeley Road, London, KY. Senator Jared Carpenter, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Fitz Steele, Co-Chair; Senators C.B. Embry Jr., Ray S. Jones II, John Schickel, Brandon Smith, Johnny Ray Turner, Robin L. Webb, and Whitney Westerfield; Representatives Hubert Collins, Tim Couch, Daniel Elliott, Chris Harris, Reginald Meeks, Tim Moore, Rick G. Nelson, Lewis Nicholls, John Short, Jim Stewart III, and Jill York.

Guests: Chris Zinkhan, Chief Executive Officer, The Forestland Group; David Samford, Partner Goss Samford, PLLC; and Bob Bauer, Executive Director, Kentucky Forest Industries Association.

LRC Staff: Tanya Monsanto, Stefan Kasacavage, and Marielle Manning.

Upon motion made by Co-Chair Steele and seconded by Senator Schickel, the September 1, 2016 minutes were approved by voice vote and without objection.

#### **The Case for Kentucky Forests**

Chris Zinkhan, Chief Executive Officer, The Forestland Group, discussed his organization and the economic value of Kentucky's forestlands. The Forestland Group is the third largest private landowner by acreage in the United States. There are more than 12.4 million acres of forest in Kentucky with over 1,200 logging firms and 700 wood-processing facilities. The direct economic impact of Kentucky's timber and hardwood industry is over \$9 billion and more than 28,000 jobs. Mr. Zinkhan explained the role of U.S. hardwood lumber in the global markets and his company's practical research of bat species in

Kentucky.

Responding to Senator Webb, Mr. Zinkhan stated that 90 percent of the largest timberland owners in the U.S. are not vertically integrated corporations. The Forestland Group has purchased over 4.5 million acres since 1995 and sold about 1 million acres. The Forestland Group generally buys land during volatile times and manages the forestlands sustainably over time in order to sell them for profit at a later date. The Forestland Group owns some wildlife management areas that can be publically accessed.

In response to Co-Chair Steele, Mr. Zinkhan said The Forestland Group identifies bat roosting trees and avoids those areas while harvesting for timber. The University of Kentucky is two years into a three-year study on the Indiana bat.

Responding to Representative Nicholls, Mr. Zinkhan stated that secondary processors are processors of cabinets, furniture, pulp, and paper.

#### **Kentucky's Energy Mix...Going Forward**

David Samford, Partner, Goss Samford, PLLC, discussed the state of the energy industry in Kentucky. With regard to regulation of utilities, Kentucky law has been generally stable and coherent over the last 80 or 90 years. Mr. Samford explained the importance of using biomass as a carbon-neutral energy feedstock, which does not count against proposed carbon dioxide limits in the state. He encouraged members to continue to be champions of biomass and to recognize that it has an important role in the future of Kentucky's energy mix.

Senator Carpenter commented on the small amounts of biomass waste seen at BPM Lumber and how the sawmill is a good demonstration of how biomass is used. Senator Carpenter stated that biomass is a diverse energy provider and thanked David Samford for his testimony.

Senator Smith thanked Richard Sturgill for his work in the lumber industry and for hosting the meeting.

#### **Timber Theft Update**

Bob Bauer, Executive Director, Kentucky Forest Industries Association, gave an update on the state of timber theft in the Commonwealth. He explained a recent Kentucky Supreme Court ruling regarding timber theft that he believes should be addressed by legislative action from the General Assembly.

In response to Representative Nicholls, Mr. Bauer explained that two-thirds of stolen timber cases deal with property issues between landowners and loggers.

Senator Jones requested a copy of a study mentioned by Mr. Bauer that discussed fines and penalties associated with timber theft. Mr. Bauer said that staff would be given a copy of the study.

There being no further business, the meeting was adjourned. The documents distributed during the meeting are available in the LRC Library.

## **INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**

### **Minutes of the fifth Meeting of the 2016 Interim**

October 19, 2016

#### **Call to Order and Roll Call**

The fifth meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, October 19, 2016, at 10:00 a.m., in Room 129 of the Capitol Annex. Senator Julie Raque Adams, Co-Chair, called the meeting to order at 10:05 a.m., and the secretary called the roll.

Present were:

**Members:** Senator Julie Raque Adams, Co-Chair; Representative Tom Burch, Co-Chair; Senators Ralph Alvarado, Julian M. Carroll, David P. Givens, Jimmy Higdon, Alice Forgy Kerr, Reginald Thomas, and Max Wise; Representatives Robert Benvenuti III, George Brown Jr., Bob M. DeWeese, Joni L. Jenkins, Mary Lou Marzian, Reginald Meeks, Phil Moffett, Tim Moore, Russell Webber, Susan Westrom, and Addia Wuchner.

**Guests:** Terry Brooks, EdD, Executive Director, Kentucky Youth Advocates; Grant Smith, PhD, Bellarmine University; Clifford Maesaka, DDS, President and CEO, Delta Dental of Kentucky; Tammy York Day, Chief Operating Officer, Delta Dental of Kentucky; Bob Babbage, Babbage Cofounder; Phil Poley, Managing Director, Accenture; Paula Saenz, Out of Home Care Branch Manager, Division of Protection & Permanency, Department for Community Based Services, Cabinet for Health and Family Services, and Project Manager of the Fostering Success Program; Glenda Wright, Graduate, 2016 Fostering Success Program; Eric Clark, Executive Advisor and Legislative Director, Office of the Secretary, Cabinet for Health and Family Services.

**LRC Staff:** DeeAnn Wenk, Ben Payne, Jonathan Scott, Sarah Kidder, and Gina Rigsby.

#### **Making Smiles Happen: 2016 Oral Health Study of Kentucky's Youth**

Terry Brooks, EdD, Executive Director, Kentucky Youth Advocates, stated that oral health of children is a gateway to in finding other health issues. Delta Dental of Kentucky partnered with the Kentucky Youth Advocates and the University Louisville School of Dentistry through the Making Smiles Happen initiative to conduct a new statewide survey of children's oral health. A dentist went to 60 schools across five regions of the Commonwealth to directly observe the mouths of 2,000 third and sixth graders. The study found the percentage of third and sixth graders in need of dental care had increased since the first study conducted by the University of Kentucky in 2001. Geography and socioeconomic status are significant factors for oral health. Children in low-income families are more likely to not have visited a dentist in a year or more, to experience a toothache, to have tooth decay, and to have urgent dental care needs. Oral health is a significant issue for young people in Kentucky. Access to oral health has increased, but oral health outcomes have declined.

Grant Smith, PhD, Bellarmine University, stated that the data collected included a self-administered questionnaire completed by parents and an in-person oral screening of students by a dentist and assistant. Two out of five third and sixth graders had untreated cavities, and over half of them do not have sealants.

Clifford Maesaka, DDS, President and CEO, Delta Dental of Kentucky, stated that recommendations from the study are to 1) develop comprehensive goals and objectives for a statewide

oral health plan; 2) launch regional networks to develop local, data-driven solutions; 3) establish school-based sealant programs in all high needs schools; 4) promote oral health literacy campaigns; and 5) collect state and county-level oral health data regularly. Everyone needs to recognize there is a need for better oral health before it becomes a priority. Even though children may have health coverage, children who were part of the survey may not have had a local dentist who accepted Medicaid because of low reimbursement rates that have not changed in years.

Tammy York Day, Chief Operating Officer, Delta Dental of Kentucky, stated that a statewide plan will not help, because there are different needs in different regions of the Commonwealth. It takes everyone collaborating to find solutions.

In response to a question by Senator Adams, Dr. Brooks stated that there would not be a mandate to require children's teeth be sealed, but the goal is to make it accessible for children who would otherwise not have access to dental care. Ms. York Day stated that parents need to be educated about the benefits of good oral health.

In response to questions by Senator Julian Carroll, Dr. Brooks stated that in 2000, the Children's Health Insurance Program (CHIP) started covering dental benefits for children eligible for Medicaid. The Medicaid expansion does not cover dental benefits for children. More dental problems are being detected because of better access to dental care. The 2016 study was based on the same specifications of the 2001 oral health study. One way legislators can help is by adopting the CDC standards for an oral health plan.

In response to questions by Representative Westrom, Dr. Maesaka stated that dentists are not the only ones who have put sealants on teeth. There is a need to educate everyone about good oral health for the entire mouth. There are a lot of underserved areas of the Commonwealth.

In response to questions by Senator Givens, Dr. Smith stated that parents reported if their child had access to dental care and an oral exam was physically done on children. The oral exam would have more conclusive evidence of dental issues.

In response to a question by Representative Jenkins, Dr. Smith stated that the correlation between a parent who visits a dentist and a child who visits the dentist because a parent is seen visiting a dentist was not part of the study. Dr. Maesaka stated that the value a parent sees in dental care affects a child's value in seeing a dentist.

In response to a question by Senator Alvarado, Dr. Maesaka stated that dental varnishings are a great temporary solution, and parents need to be educated about the value of fluoride varnish. Ms. York Day stated that people trust someone locally who would recommend better dental care.

In response to a question by Representative Wuchner, Dr. Brooks stated that more needs to be done to make sure parents know about dental issues and the importance of getting good dental care. The Health Access Nurturing Development Services (HANDS) program is a good way to educate new parents about the importance of getting good oral health care for a child as early as possible.

Senator Higdon stated that low-income children are affected more by bad oral health because parents buy more soda with SNAP benefits. SNAP benefits should not be given to recipients all at once, because it does not last the entire month.

In response to a question by Senator Thomas, Dr. Brooks stated that the Rural Health Coalition is looking at career options to expand oral health professions and to help incentivize dentists to practice in rural areas.

Representative Burch stated that local health departments need to be funded to help with better dental access.

#### **Approval of Minutes**

A motion to approve the minutes of the September 21, 2016, meeting was made by Representative Burch, seconded by Senator Julian Carroll, and approved by voice vote.

#### **Consideration of Referred Administrative Regulations**

The following administrative regulations were referred to the committee for consideration: **201 KAR 22:045** – establishes continued competency requirements and procedures by the Board of Physical Therapy; **201 KAR 32:030** – establishes fees for licensure as a marriage and family therapist or marriage and family therapist associate; **910 KAR 1:210** – establishes a statewide Long-term Care Ombudsman Program; and **921 KAR 1:420** – establishes procedures for distribution of child support payments. A motion to accept the administrative regulations was made by Representative Burch, seconded by Representative Marzian, and accepted by voice vote.

#### **Diabetes Issues Update**

Representative Joni Jenkins stated that according to the Institute for Alternative Futures (IAF), Projected Percentage of Population in Kentucky with Diagnosed Diabetes, 2015-2030, 11.2 percent of Kentuckians were diagnosed with diabetes in 2015. The total will rise to 12 percent in 2020 and 13 percent in 2025. The CDC concludes that 35 to 37 percent of adults age 20 or older have prediabetes. According to the IAF, Projected Economic Impact in Kentucky, 2020, medical costs and non-medical costs including lost productivity will cost Kentuckians \$6.5 billion. Bob Babbage, Babbage Cofounder, stated that the Kentucky Diabetes Prevention Program (DPP) was allocated \$2.475 million from the Department for Public Health within the Cabinet for Health and Family Services. Diabetes Self-Management Education (DSME) shows economic benefit and merits major support. Major increase in diabetes screening in health plans and Medicare will identify new cases. Kentucky's Licensed Diabetes Educator law has been successful. Provider reimbursement is a key issue for the General Assembly and the Governor. Senator Alice Forgy Kerr stated that in 2011, Licensed Diabetes Educators (LDEs) were established in the Kentucky Revised Statutes. There are over 600 diabetes education professionals with 334 being LDEs. Mr. Babbage stated that more Kentuckians are now eligible for diabetes screening and prevention programs.

#### **Transitioning to the Federal Health Benefit Exchange**



Phil Poley, Managing Director, Accenture, stated that in 2011, Accenture worked closely with the Cabinet for Health and Family Services to design and establish and develop a comprehensive operating health benefit exchange, managed the grant and budget process, procured a technology vendor, and manage the overall project. Accenture worked with the Department for Community Based Services to reengineer its business processes across all 133 DCBS field offices. In 2012, Accenture was hired by Covered California to design, develop, implement, and operate the California exchange. In 2013, Accenture was hired by the Your Health Idaho exchange to manage implementation of third party software to support its transition from the federal market base to a state base market place. In January 2014, Accenture took over from another vendor to stabilize, enhance, and operate healthcare.gov and remain as the federal technology vendor. Accenture has worked with nine states, the District of Columbia, and the federal government and remain an exchange leader. In the last open enrollment period, 88 percent of all exchange plan selections in the United States happened on Accenture systems. Ninety-seven of 100 clients have remained with Accenture ten years or more. Accenture serves more than 40 states across a wide variety of domains including integrated eligibility, Medicaid claims processing, child welfare, child support enforcement, pension management, and financial management. Regardless of the client, Accenture approaches exchange work without a policy position on exchanges or the Affordable Care Act (ACA). The goal is to help clients achieve their goals regardless of whether a state based exchange is being established or transitioning to the federal market place.

Communications, seamlessness, and Centers for Medicare and Medicaid Services (CMS) engagement are important when transitioning from a state-base exchange to a federal-base exchange. Any major transition requires concise, tailored, and extensive communications. Health insurance is confusing and the complexity is multiplied for individuals enrolled in exchange plans who must also understand both insurance and the intricacies of subsidy eligibility. Current kynect enrollees must complete the eligibility enrollment process on the federal market place in order to retain coverage. States have not been given the opportunity to automatically enroll state-base exchange consumers in federal exchange plans. Kentucky must develop and disseminate messages tailored to specific consumer scenarios and targeted where most effective. Messages must be succinct, easy to understand, and with a clear call to action. Medicaid adds complexity to the communications task. Kentucky must make sure consumers know how to access benefits and management of the benefits will change as a result of the transition.

The transition to the federal exchange should be seamless as possible. With the move to the federal market, Kentuckians seeking coverage will first be screened for Medicaid eligibility. If someone qualifies for Medicaid, the case will be transferred to the Cabinet for Health and Family Services. Some Kentuckians who come to CHFS seeking benefits will be deemed ineligible for Medicaid but potentially

eligible for federal exchange subsidies will need to be referred to the federal exchange to apply for benefits. Both of these circumstances represent a disruptive change from the existing process. A mitigation for this disruption is to collaborate with CMS on establishing the smoothest possible transfers between Kentucky and CMS to do as much as possible to minimize the efforts consumers must take on their own behalf to access benefits while moving from one system to another.

Efforts to establish clear and effective communications and seamless transitions will help consumers access and retain coverage, but only if Kentucky and CMS are on the same page. The lack of alignment leads to consumer confusion and potential coverage interruptions. In addition, lack of alignment could also lead to inaccurate Medicaid eligibility screening by the federal exchange which would add to consumer confusion. It is important for states to establish working relationships at the data and operations level which will support a smoother transition while establishing the foundation needed going forward to manage the ongoing Medicaid account transfer from the federal exchange to Kentucky.

In response to questions by Senator Julian Carroll, Mr. Poley stated that currently Accenture does not have any contracts in Kentucky. Accenture has not responded to any recent procurement request, but are available to the Commonwealth given its prior history with CHFS.

In response to questions by Senator Thomas, Mr. Poley stated that he did not have data on how many consumers will lose coverage when Kentucky transitions to the federal exchange. Transitions can be disruptive and cause people to fall through the cracks.

#### **Fostering Success**

Paula Saenz, Out of Home Care Branch Manager, Division of Protection & Permanency, Department for Community Based Services, Cabinet for Health and Family Services, and Project Manager of the Fostering Success Program, stated that Fostering Success is a statewide employment initiative to hire and empower current and former foster youth funded through the federal Temporary Assistance for Needy Families (TANF) block grant. Forty-nine young adults completed the initial ten-week summer program to become an Office Support Assistant in a local DCBS office. The salary is \$10 per hour and requires a high school diploma or GED. In 2016, the National Youth Transitional Database identified 297 eligible youth eligible for the Fostering Success program. Eighty-one young adults were hired between June 1, 2016 and July 1, 2016, and 34 were able to extend their employment up to nine more months because supervisors rated them equivalent to or higher than other Office Support Assistants. Of the 81 participants, 50 are currently committed to the cabinet, 6 were adopted, and 25 exited foster care on or after their 18<sup>th</sup> birthday.

Glenda Wright, Graduate, 2016 Fostering Success Program, stated that she is getting ready to graduate from Murray State University with a Bachelor's degree. She has learned a lot from everyday experiences working at the DCBS office and has a brighter outlook on the future. The program helps

build a better relationship with the cabinet because some are hardened by bad experience with the cabinet. She said people need to believe in foster youth so they can believe in themselves.

Eric Clark, Executive Advisor and Legislative Director, Office of the Secretary, Cabinet for Health and Family Services, said that the cabinet collaborates with the Workforce Development Cabinet, Labor Cabinet, Xerox, Kentucky Youth Advocates, and True Up. True Up is a groundbreaking initiative to empower young people in foster care to gain the critical life skills they need to make a successful transition from a structured environment to self-sufficiency in our communities. True Up, founded in 2011, is a landmark partnership among foster care agencies that serve as surrogate parents for hundreds of children and teens in Kentucky who are committed to help youth transition from agency care to independent living. True Up is a caring family of foster care alumni who have faced the challenges of getting jobs, continuing their education, starting lives and building families who have succeeded and are giving back. Key barriers of the Fostering Success program are transportation, financial literacy training, and job readiness training.

The next steps are to design and pilot a match savings program in conjunction with the Fostering Success Program, implement statewide job readiness and financial literacy trainings to Fostering Success employees, continue to coordinate resources with the Labor Cabinet and Workforce Development Cabinet, and partner with private employers to participate in the Foster Success program.

Senator Adams stated that foster children are not kids to be thrown away, and the stigma needs to be lifted about them.

In response to a question by Representative Jenkins, Ms. Saenz stated that the cabinet would follow the graduates to see if this program made a difference in their lives.

In response to questions by Representative Westrom, Ms. Wright stated that her brothers were two of the 34 youth whose employment was extended and both cars have been paid off.

#### **Adjournment**

There being no further business, the meeting was adjourned at 11:50 a.m.

## **INTERIM JOINT COMMITTEE ON AGRICULTURE**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 7, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Agriculture was held on Friday, October 7, 2016, at 10:00 AM, in Seay Auditorium, University of Kentucky, Lexington, KY. Senator Paul Hornback, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Paul Hornback, Co-Chair; Representative Tom McKee, Co-Chair; Senators C.B. Embry Jr., Dennis Parrett, Damon Thayer, and Stephen West; Representatives Lynn Bechler, Denver Butler, Mike Denham, Myron Dossett, Kelly Flood, Derrick Graham, Richard Heath, James Kay, Kim



King, Martha Jane King, Michael Meredith, Terry Mills, David Osborne, Tom Riner, Bart Rowland, Steven Rudy, Dean Schamore, Rita Smart, Wilson Stone, Chuck Tackett, Jeff Taylor, James Tipton, Tommy Turner, and Susan Westrom.

**Guests:** Representatives from the UK College of Agriculture, Food and Environment, Drew Graham, Assistant Dean, Dr. Nancy Cox, Dean, Dr. Rick Bennett, Associate Dean for Research and Director of Kentucky Agricultural Experiment Station, Dr. Quinton R. Tyler, Assistant Dean and Director of Diversity, Dr. Richard Coffey, Chair, Department of Animal and Food Science, Dr. Subba Reddy Palli, Chair, Department of Entomology, Dr. Grayson Brown, Department of Entomology, Dr. Stephen Dobson, Department of Entomology, Dr. Seth DeBolt, Distillation, Wine and Brewing Program, Dr. Mick Peterson, Director of Equine Program and Ryan Quarles, Commissioner of Agriculture.

**LRC Staff:** Lowell Atchley, Kelly Ludwig, Stephen Kasacavage, and Marielle Manning and Susan Spoonamore, Committee Assistants.

The August 27, 2016 minutes were approved by voice vote upon motion by Representative Rudy and second by Senator Thayer.

The September 14, 2016 minutes were approved by voice vote upon motion by Senator Thayer and second by Representative Rudy.

#### **Welcome and Opening Remarks:**

Drew Graham, Assistant Dean, UK College of Agriculture, Food and Environment, introduced Dr. Nancy Cox, Dean, UK College of Agriculture, Food and Environment. Dr. Cox stated that the UK College of Agriculture, Food and Environment is helping farmers to market local food. She said that UK has a partnership with Aramark Dining Service to provide "The Food Connection," which helps to get more local food into UK dining halls. For the years 2015 and 2016, there has been a 17 percent increase in foods purchased from local farmers. UK and Aramark no longer consider Coke, ice and Pepsi as local foods. UK is working with local beef producers to help market their beef products throughout Kentucky. The university is training farmers who produce fruits and vegetables to complete required paperwork in order to sell to a bigger food service system.

Dr. Rick Bennett, Associate Dean for Research and Director of the Kentucky Agricultural Experiment Station, stated that the external grants received over the year was \$39 million, setting a record. Research at the UK College of Agriculture reaches all counties in the state. There is a true partnership among research, extension specialists, and county agents. The Grains and Forage Center of Excellence in Princeton will be a showcase for the state.

In response to Chairman Hornback, Dr. Bennett said that a philanthropist director was hired to work with members of the UK College of Agriculture and Research.

In response to Representative Tipton, Dr. Bennett said that the College is still committed to the industrial hemp program. Dr. Bennett said that the research is being used to look at agronomic applications and looking forward to growing the program.

Dr. Quinton Tyler, Assistant Dean and Director

of Diversity, UK College of Agriculture, Food and Environment, said that diversity was the reality of Kentucky and the University of Kentucky. He said that 54 percent of the students in the College of Agriculture are female. Dr. Tyler stated the College has been innovative and creative in the programs that are offered to the students. He stated that he served as National Professional President of the organization, "Minorities in Agriculture, Natural Resources and Related Sciences. Eighteen years ago, the organization only had five members and now it is one of the largest with more than 137 members. The current National Professional President is from UK and presides over 75 chapters in 38 states. Students are being retained and are developing into premier diverse next generation of agriculture leaders. The organization represents over 40 companies, higher education institutions, and government agencies. The University of Kentucky is in the process of developing a partnership with the national FFA. The organization consists of a junior management program that educates youth in the importance of agriculture through 4-H and FFA. Dr. Tyler explained that the organization will be hosting a Women's Empowerment Luncheon that will highlight the accomplishments of women in agriculture. Furthermore, the organization is working with the Governor's Minority College Preparation Program.

In response to Representative Smart, Dr. Tyler said that extension has the Women in Agriculture Leadership Conference. UK has a diversity network that consists of UK and Kentucky State University employees.

#### **Update on Research Programs**

Dr. Richard Coffey, Chair, Department of Animal and Food Sciences, shared information about a new facility, The Dairy Housing, Teaching and Research Facility. The facility is a deep-bedded loose housing system (compost bedding packed barn). The bedding consists of approximately 12 inches of sawdust. Twice a day, a compost turner goes through the bedding to keep it dry and clean. There are 90 dairies in Kentucky that have this type of barn. The housing system works well for smaller dairy farms. UK is only one of two land grant facilities to have the housing system. The system will allow researchers to test cow comfort, cow well-being and health. One such comfort includes rubber mats at the feeding area. The cows are monitored for behavioral, physiological, and feeding behavior. For instance, cows can be monitored as to how many steps they take a day, rumination time, room and temperature, chewing time and more. Data collected thus far shows that the somatic cell count has dropped from 421,000 to 113,000. Another important figure is that milk production increased from 79.7 pounds herd average per day to 91.9 pounds per day.

In response to Chairman Hornback, Dr. Coffey said that the barn is cleaned out entirely about once a year.

Dr. Subba Reddy Palli, Chair, Department of Entomology, University of Kentucky, and Dr. Stephen Dobson, Department of Entomology Dr. Grayson Brown, Department of Entomology, discussed their research programs. Dr. Palli said that the Entomology Department is considered a premier Entomology department in the nation. The research conducted ranges from fundamental to applied research in the

field. The department is discovering new ways to control insects without harming the environment. The department is also researching honey bees and other pollinators to improve their health. The department is looking at ways to improve lawn care and eliminate golf course pests.

Dr. Dobson, Medical Livestock Entomologist, said that in 1989 the department was able to identify the first outbreak of the West Nile virus. The department is now looking at increasing insecticide resistance and looking at climate change and insects coming in to the United States that are spreading several diseases such as Zika. There is a challenge in developing new ways to combat these diseases.

Dr. Brown, Public Health Entomologist, said that he works closely with the state Public Health Department. The Department trains emergency response teams throughout the state as well as public health workers on mosquito identification. In March, the department organized a large international summit in Brazil, and last month it organized a global meeting from leaders around the world. The department also researches epidemiological abatement.

In response to Senator Parrett, Dr. Dobson said he is seeing resistance to certain insecticides because there have been no new active ingredients developed for the past 30 years.

In response to Chairman Hornback, Dr. Palli said that a lot of progress has been made over the last five years to reduce the loss of honey bees and other pollinators. Dr. Palli said he is optimistic that the problems could be eliminated over the next few years.

Dr. Seth DeBolt, Distillation, Wine and Brewing Program, University of Kentucky, said that over 76 small wineries have emerged in Kentucky since the late 1990s. There is also a growth in craft and brewing distilling. UK has an undergraduate program which is helping students realize that there are opportunities available to them in the distillation, wine, and brewing industry. There is also an opportunity for research and specialty crops in agriculture. Cider is the fastest growing element of the craft brewing industry. Research is needed to help the growers and industry re-establish itself in Kentucky by developing new varieties of apples and grapes. Dr. DeBolt said that research is ongoing in the bourbon industry. There are excellent paying jobs in the industry that require a science background. Dr. DeBolt hopes that UK will develop a Master's Program.

In response to Chairman Hornback, Dr. DeBolt said that a barrel containing bourbon is only used one time due to the lack of wood sugar content. It is also the law.

In response to Representative McKee, Dr. DeBolt said the goal of the large brewing companies is to create consistency. The craft industry has different goals. Consumers want taste variations that the craft industry can supply. The craft industry's survival will depend upon local consumers.

In response to Representative Kay, Dr. DeBolt said that it is important to abide by the laws and get the correct licenses before going into the craft business.

In response to Representative Meredith, Dr. DeBolt said the program at Western Kentucky University is exciting for the college and community.

In response to Representative Taylor, Dr. DeBolt said he is not aware of any Kentucky brewery using 100 percent Kentucky products. The Kentucky Distillers' Association is working with small distilleries to allow sales at the cellar door.

Dr. Mick Peterson, Director of Equine Program, University of Kentucky, said that he will begin as Director of the Equine Program in January. The Kentucky brand is huge for the entire agricultural sector which includes bourbon and horseracing. There is no place in the world that has a research university that is sitting at the center of breeding, racing, and the equestrian sport. The University of Kentucky embodies research, teaching, and extension, which originated at land grant universities. The equine program opens many different types of opportunities for students. The foal crop for 2016 is up 2 percent over last year, and next year's projection looks the same.

Representative Graham requested that legislators include more funding for higher institutions of learning in the next budget.

Representative Denham said he is concerned about the Animal and Plant Health Inspection Service (APHIS) and a new regulation on horse soring. The new regulation could have a serious negative impact on the show horse industry.

There being no further business, the meeting was adjourned.

## INTERIM JOINT COMMITTEE ON EDUCATION

### Minutes of the 4th Meeting of the 2016 Interim

September 12, 2016

#### Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Education was held on Monday, September 12, 2016, at 10:00 AM, in Room 154 of the Capitol Annex. Senator Mike Wilson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Mike Wilson, Co-Chair; Representative Derrick Graham, Co-Chair; Senators Julie Raque Adams, Jared Carpenter, Danny Carroll, Alice Forgy Kerr, Gerald A. Neal, Johnny Ray Turner, Stephen West, and Max Wise; Representatives Linda Belcher, George Brown Jr., John Carney, Leslie Combs, Jeffery Donohue, Kelly Flood, David Hale, Cluster Howard, James Kay, Brian Linder, Mary Lou Marzian, Reginald Meeks, Charles Miller, Marie Rader, Tom Riner, Sal Santoro, Rita Smart, Jim Stewart III, Wilson Stone, Gerald Watkins, and Addia Wuchner.

Legislative Guests: US Senator Lamar Alexander, Tennessee; Senate President Robert Stivers.

Guests: Wayne Young, KASA; Erin Klarer, KHEAA; Annissa Franklin, Urban League; Todd Allen, KDE; Jim Evans, Superintendent Lee County Schools; Bob Rowland, KASA; Kevin Sorice and Leib Lurie, Kids Read Now.

LRC Staff: Jo Carole Ellis, Janet Stevens, Joshua Collins, Yvette Perry, Avery Young, and Christal White.

#### Approval of Minutes

On a motion by Representative Stone and a second by Representative Donahue, minutes of the August 15, 2016, meeting were approved by voice vote.

#### Non-Traditional Instruction Program

David Cook, Director of the Division of Innovation and Partner Engagement, Office of Continuous Improvement and Support, Kentucky Department of Education (KDE), said the Non-Traditional Instruction (NTI) program was enacted by the Kentucky General Assembly in 2011 for school districts who miss a significant number of school days due to weather or other emergencies. The pilot provided districts an opportunity to conduct classes through NTI methods when schools were closed.

Mr. Cook said the five districts who applied for the original pilot for 2011-2012 were Leslie, Letcher, Owsley, Powell, and Wolfe. Letcher, Owsley, Powell and Wolfe each were subsequently approved for NTI days. During the 2012-2013 and 2013-2014 school years, only Owsley and Wolfe chose to continue in the program and requested NTI days. In 2015, Leslie reapplied and was accepted into the program. Districts must apply every year to be considered for the NTI program.

Mr. Cook said the pilot's eligibility requirements on the number of days missed limited the participating districts to eastern Kentucky. In 2014, the pilot program was amended with the enactment of HB 211, which allowed all 173 Kentucky school districts to apply for non-traditional student attendance days by lifting the requirement for districts to have missed more than 20 days per year for three years. All districts can now apply to use 10 days of NTI, although they are not required to use all of those days.

For the 2014-2015 school year, 15 districts applied to the Commissioner to participate in the program. Of the 15 applications, 13 were approved, and two were denied based on deficiencies in the applications. Of the two applications that were not approved, one district reapplied in 2014-2015 and was approved, and one district chose not to re-apply.

For the 2015-2016 school year, 44 districts were approved for the program from 52 submitted applications. This included the 13 districts from 2014-2015, plus 31 additional districts.

For the 2016-2017 school year, 72 applications were approved for the program from 77 submitted applications. This included the 44 districts from 2015-2016 and 28 additional districts. Mr. Cook said the program expansion alleviated an equity issue and has been beneficial. He said the participating districts provide evidence of student participation and learning to the Commissioner of Education. If approved, the district does not have to make up the approved days.

Mr. Cook said the NTI program application process begins in the spring of each year and covers 12 areas of emphasis: delivery of instruction, access to online resources, access to equitable materials, how the NTI program learning parallels to regular instructional days, individualized educational plans (IEP), program services plans, gifted student service plans, gathering information for evidence of learning, a professional learning plan, how certified and

classified staff will report their time, and how facilities with reciprocal agreements affect the program.

Applications are scored against a four-point rubric to determine the applicants that will be recommended to the State Board of Education and the Commissioner for approval. As a requirement for NTI program recommendation, applicants must average a minimum score of proficiency of at least 3.0 on the 4.0 rubric scale on all questions. Applications not approved are returned to districts with feedback regarding deficiencies, recommendations for improvement, and encouragement to apply again in future years.

Mr. Cook said the NTI implementation process provides the districts flexibility as to how the program is used, with the option of running consecutive days or skipping days. Most districts use a blended model of instructional delivery that allow students to complete assignments online or as a paper assignment, based on their at-home internet connectivity.

During the monitoring process, each district provides written documentation, which includes lesson plans from all grade levels; samples of student work from elementary, middle, and high school; copies of teacher logs recording interaction with students; copies of teachers' reports regarding student participation; and completed assignments.

After submission of the written documentation, KDE conducts site visits, including interviews with administrators, teachers, parents, and students. The group is asked about the process and the values found in the program. Following site visits, a random review of the district's written documentation is conducted.

Mr. Cook said the academic benefits of the NTI program are continuity, reduction of learning loss, engaging student and teachers, and evidence of learning. The program's non-academic benefits include increasing communication between parents and teachers; interacting with community via social media; teaching time management, independence, and problem solving to children; providing an entry point into blended learning; and avoiding the make-up days at the end of the school year.

Three instruction methods are digital learning, blended learning, and project-based learning. Digital learning tools include providing Edmodo, Blackboard, and Google Classroom; posting tutorial videos and activities on the website; and enabling teachers to maintain a digital presence. Blended learning tools include documenting projects and activities and posting electronically, and flipping the classroom approach. Project-based learning entails cross-curricular teams building long-term projects, and students working on projects when not in school.

Mr. Cook said there are challenges for districts, including funding, curriculum and technology. Regarding funding, there is no monetary allowance for transportation or food reimbursement, and there is no average daily attendance (ADA) for comparison from previous years for NTI days. The curriculum challenges include compliance of IEP/504 and the process of reviewing and enrichment versus providing new content. Technology challenges include some households having multiple students but only one electronic device or households with no internet or



device access.

Mr. Cook said the oversight challenges KDE faces are flexibility for implementation of the program and the inability to monitor in person. Although the monitoring can be done electronically, most monitoring is done after the fact. He said specifically tying the program to achievement improvement has been a challenge and an outside evaluation by Regional Education Lab (REL) is doing a study of the program. KDE has found it difficult to determine what part of the result is due to achievement growth as a result of NTI program compared to traditional learning. Mr. Cook said REL believes some of the better ways to evaluate the program are quality of work produced and the way in which the program is implemented and evaluated locally.

Mr. Cook said the REL team will evaluate the following areas as it relates to the NTI program: when days are used by the districts, what takes place during the day, who participates, do districts believe KDE provides adequate support, and how the days impact student outcomes. The variation ranged from two districts that used zero days up to eight districts that used all 10 of their days.

Data indicates that, while the average rate of student participation in NTI based on completed assignments is 94 percent, the average teacher participation rate is 99 percent, based on logs, time on computer, and time on phone with students and parents. Multiple measures of evidence include review of learning outcomes, results, daily staff duties, and sample lesson plans.

Kenny Bell, Wolfe County Superintendent, said Wolfe County is one of the original NTI instruction pilot districts. He said his district has more school-age child poverty than the entire state, and due to more frequently missed days and the lack of internet or devices, the closing of schools in poverty stricken areas increases the gap. With an NTI achievement rate of 94 to 95 percent, Wolfe County is among the top 10 percent for improvement in Kentucky during the pilot program. With NTI, snowbound days keep students involved in learning activities and engaged in technology. Positive comments from teachers, parents, and students demonstrate that the program is working in Wolfe County.

Mike LaFavers, Boyle County Superintendent, said that in 2014-2015, which was his district's first year of NTI, five days of NTI were used, and three days were used last year. The powerful components Boyle County found regarding NTI are: no need to reduce school calendar days; provide incubators for ideas to see what digital learning looks like and push those ideas forward; deeper learning methods for engaging students in critical thinking activities; and student-centered, inquiry-based learning methods. The work completion rate of 98 percent during NTI exceeded the daily attendance rate of 95 percent.

In response to a question by Representative Flood, Mr. Cook said the application process has been modified. Representative Flood said that the challenge of funding for districts should fall back on the General Assembly.

In response to a question by Representative Graham, Mr. Cook said the school lunch program is FDA operated, and Owsley County was included as

one of the original pilots because the need to provide meals as well as instruction on NTI days is critical.

In response to a question by Representative Graham, Mr. Cook said statewide connectivity to the internet is close to 80 percent, and high-speed internet access is available. The superintendents said the challenge is getting devices to the students. Representative Graham said it is important for parents to be well-versed about the program and understand the need for students to continue work assignments during snow or emergency days, and he is encouraged by the rate of success.

Representative Riner commended KDE for the success of NTI because it provides a policy for snowbound and illness emergencies and provides a back-up policy for major natural or man-made emergencies that may force district closure for longer periods of time.

In response to a question by Senator Carroll, Mr. Bell said technology in Wolfe County has expanded among teachers, parents, and students. To determine needs on NTI days, he instituted a mandate that each parent in the entire district be contacted. Mr. LaFavers said his district calls students and provides a learning management system called Converge, similar to Blackboard, but more K-12 friendly. The students access that site and communicate with teachers by text or email. Information provided through a survey indicated 90 percent of children have access to internet, where the information can be obtained. Students who lack internet access are offered a pre-planned paper packet of the lesson.

Instead of using the previous year's ADA figures as attendance data for NTI days, Representative Stone suggested that the participation rate could be used.

In response to a question from Representative Stone, Mr. Cook said contract staff compensation can be shifted from the school-year calendar to summer, and classified workers can earn professional development that makes up for some of the time.

In response to Representative Howard's question, Mr. Cook said it would be possible to incorporate a hybrid model when students are out of school in which teachers could get students started, the students would continue, and the teachers could facilitate upon returning to the classroom.

Representative Carney said the NTI can be used for a flu epidemic and much more. The NTI is a very positive program due to the quality of instruction and higher participation rates. He encouraged superintendents to present data to elected officials in the community.

Representative Combs referred to Chairman Graham's comments regarding districts in eastern Kentucky who are more greatly affected due to internet access, technology, greater fiber speeds, and a more affordable price. Improvements in these areas will benefit both education and economic development.

In response to Senator Wise's question, Mr. Cook said the minimum participation rate that schools must achieve is a district and local school board decision. The participation rate should be within two or three points of the district's regular attendance rate and does not feel there is any abuse in the system of pulling students out of regular class to complete the NTI days when no technology devices are available at

home. Districts set up times that are built into study times so as not to pull students away from regular class instruction.

#### **Presentation: Every Student Succeeds Act**

Senate President Robert Stivers introduced U.S. Senator Lamar Alexander, two-term Governor of Tennessee, Secretary of Education under President George Herbert Walker Bush, and three-term U.S. Senator. Senator Alexander has been recognized for his work in education for several years, most recently receiving the newly created James Madison Award to recognize members of Congress who support federalism and the 10<sup>th</sup> Amendment of the U.S. Constitution guaranteeing states' rights. He said Senator Alexander would talk about the Every Student Succeeds Act (ESSA) and, in conjunction with that, President Stivers said the Senate will again make education accountability a priority bill and use SB 1 as the framework for defining the standards, looking at a new system of accountability, and returning more control to local systems.

Senator Alexander said Kentucky lawmakers have an opportunity to do what it wants with its future education policy with the passage of ESSA, which replaced the NCLB Act signed by President Bush in 2002. Senator Alexander said the U.S. Department of Education (USDE) has become a national school board over the last 15 years, making states jump through hoops on education policy to receive Title 1 money. Concerns about the federal government's overreach regarding how states set education standards and policy have been addressed in ESSA.

Senator Alexander said ESSA erased the mandate of states having Common Core academic standards, as the resistance came because Washington was telling states what to do. The concept of adequate yearly progress is now moot, as is federal testing-based accountability and the federal school turnaround plan. Kentuckians will see the implementation of the Act over the next few years. States will submit their new Title I plan to the federal government between now and July 2017, and implement the plan upon its acceptance. He urged state senators and representatives to formulate their plans with lawmakers, superintendents, local school boards, and teachers. Deciding how to improve schools and education policies will return to the state with implementation of ESSA.

Representative Graham commended Senator Alexander for the bipartisan efforts of the Act and said Kentucky has set its own state standards and education policy, crafted with a coalition of educators, businesses, and legislators. He said that, as education evolves, the Kentucky core standards will change.

Senator Alexander said Kentucky lawmakers have a rare opportunity to change Kentucky's future educational policy with the passage of ESSA for three reasons. The first reason is NCLB and its long overdue reauthorization were replaced by ESSA. Secondly, it is an opportunity for every state to write a new Title 1 plan. Title 1 funding for Kentucky is about \$215 million dollars, but Kentucky spends \$7.5 billion on education. The law and rules being discussed are for 3 percent of the money. Kentucky will be writing a new plan before July 2017, so there is ample time to get it right. Thirdly, it is an unusual opportunity because



a new coalition of people who normally disagree on education have come to a consensus with ESSA. The National Education Association (NEA) and the American Federation for Teachers (AFT) are strongly in favor of ESSA, which provides an opportunity for a coalition, comprised of governors, chief state school officers, superintendents, school boards, principals, parents, and teachers, to create a new plan about Kentucky's future in elementary and secondary education.

Senator Alexander said after the NCLB act was implemented in 2002, Race to the Top came next in 2009, and in 2011 came the conditional waivers, long after Congress had realized the law was unworkable. Under these systems, all schools in the country appeared to be "failing schools." To manage the status, most states applied for a waiver from NCLB. At that time, the Education Secretary agreed to the waiver, but only in exchange for Washington to be able to dictate standards, tests for standards, federal accountability, and teacher evaluations, which created an enormous backlash from the states.

Senator Alexander expressed concerns about proposed ESSA regulations. The law must be implemented in the manner written by Congress. The proposed regulations from USDE threaten the consensus of the coalition that developed and overwhelmingly supported the bill.

The first regulation of concern regards the supplementing, not supplanting, funding provision. ESSA provides that federal money received must be in addition to what the districts are already spending. Regardless, the legislation specifically prohibited the USDE from deciding how to spend state and local money with the receipt of Title 1 money, which has been proposed in regulation. Senator Alexander said he will adamantly oppose this.

Senator Alexander said he is working with the White House and USDE Secretary to make the regulations consistent with law. One of the advantages of the new law is it includes a period of stability, which will prevent Washington from changing the rules for a specified period of time. The proposed regulations raise questions about whether Washington will try to grade academic standards on schools that are succeeding or failing.

Senator Alexander suggested working with a broad coalition of teachers, superintendents, and others between now and July 2017 to determine what is best for Kentucky. He said 90 percent of the minimum requirements the law should include are most likely being followed today in Kentucky. The state should not allow the U.S. Secretary of Education to become a national schoolboard chairman. He stressed the importance of being very outspoken regarding this topic.

Senator Alexander said it is important to recognize the difference between a federal regulation and federal guidance. A regulation has the force of law; federal guidance is only a suggestion and does not have to be followed.

Senator Alexander said each state should have a good balance in the number of state rules compared to federal rules. ESSA presents an opportunity to look at KDE's rules and ensure there are not too many state rules that may intimidate local school districts.

If the USDE does not approve the state's ESSA plan, a rationale must be provided along with an opportunity for hearing, review, and resubmission. If the USDE still rejects, Kentucky can involve the courts.

Senator Alexander said an opportunity is provided for states to assert themselves and recognize the path to higher standards and better teaching, but the real accountability lies through Frankfort and local school boards and classroom teachers and not through Washington, D.C.

In response to a question by Chairman Wilson, Senator Alexander said Kentucky should form a coalition to set its own standards, tests, and teacher evaluations and determine what the state's educational future should look like. Kentucky has been a leader in the past in many education areas and should continue on that path.

In response to a question by Senator Wise, Senator Alexander said that in the ESSA provisions regarding comprehensive support for lower performing schools, KDE is not required to initially intervene, but KDE approves the school district plan, monitors that plan, and decides what constitutes acceptable improvement. If progress is not made in four years or less, the USDE advises action but will not dictate to KDE what action to take.

In response to a question by Representative Watkins, Senator Alexander said it is essential to have more than one test to adequately cover accountability and competency. A single test used to judge teachers and schools is not feasible; however, the 17 federally mandated, Kentucky-designed tests in reading, math, and science are only one indicator of a teacher's performance. Many mandated state tests may be construed as over testing but are being given to prepare students for the single federal test, which will not be necessary once law is passed. Senator Alexander said he agrees that over-testing is a problem.

In response to a question by Representative Smart, Senator Alexander said the success experienced in the priority school process in Kentucky will not change under the new federal act. KDE will continue to identify the bottom 5 percent and provide assistance to those districts. Under the new law, underperforming schools must be identified to qualify for federal money, but the plan for correction should be Kentucky's decision.

In response to a question by Representative Stone, Senator Alexander said if local agencies need an extension of time to be fully compliant as implementation goes forward, Kentucky could request additional time. The USDE secretary proposed a regulation that would have compressed the application schedule more than Senator Alexander and Senator Murray felt is appropriate. The deadline should allow states sufficient time to establish the coalition and make recommendations. Failure to submit the plan before July 2017 will result in funds being lost for an entire school year. Representative Stone said progress in education is Kentucky's highest priority and accuracy should be assured.

Representative Graham commended Senator Alexander and Senator Murray, who co-sponsored ESSA, for their bi-partisan efforts and emphasized non-partisan voting is essential for the important issue of education. Success in educational policies

contributes to our economic development success. The Kentucky Core Standards are based on Kentucky knowledge and information gathered by engagement from parents, teachers, and the education community. Commissioner Pruitt has traveled throughout Kentucky to obtain input from schools, businesses, and the financial community. This input is crucial for policy development. Senator Alexander emphasized the need for parties to work together and make compromises for the common good of their citizens to get positive results on such an important issue. Better schools equal better jobs, but compromise between parties is important.

In response to Representative Flood's question, Senator Alexander said the federal government's role in holding Kentucky accountable to the goals that were set is reflected in a number of provisions in the new law. Title 1 dollars must meet certain criteria, including tests must be challenging, underperforming schools must be identified and submit a corrective plan, and results of the tests must be published and categorized by groups. He suggested a way to ensure federal dollars help the poorest children is to allow federal dollars to follow each Kentucky low-income child to the school the child chooses to attend.

Representative Carney thanked Senator Alexander for his insight on regulation issues and expressed his excitement for ESSA. He reported that Kentucky requires the 17 federal tests plus social studies at the state level, although there is some testing following local regulations.

Senator Alexander commended the testimony of Commissioner Pruitt before the U.S. Senate Education Committee on ESSA on behalf of Kentucky. He testified about the importance of adhering to the law the way it is written and the importance of having a coalition, including consultation with educators.

In response to Senator Carroll's question, Lindsay Fryer, Senior Education Policy Advisor to Senator Alexander, said the law is very clear that students with disabilities cannot be left behind and must be included in all aspects of Kentucky's education system. There is some flexibility for students with the most significant cognitive disabilities to take an alternative assessment. Senator Alexander said there is not as much flexibility in this area as he would like, and he is also concerned with the lack of federal funding for children with disabilities.

In response to Chairman Wilson's question, Senator Alexander said there is a strong charter school provision and strong bi-partisan support in the U.S. Senate Education Committee. Charter schools are public schools in which teachers have more freedom to teach and parents have more freedom to choose the school. ESSA and the appropriation bills increase support for the startup and funding of charter schools. The topic of early childhood created a big difference of opinion, but compromises were made. Republicans argued that the federal government is already spending \$22 billion per year on early childhood education and that communities and states should be allowed to take that money and let it follow the children in a more effective way. Democrats argues that a federally funded universal preschool education program is needed. Ms. Fryer said the compromise is that the Health and Human Services Department is

working with the USDE to provide money to states to allow them to coordinate existing funding streams that are related to early childhood education and to allow for additional needs for children once the money is coordinated. Senator Alexander suggested that Kentucky look at the federal dollars coming into Kentucky and ensure that the flexibility for expenditure is effective.

There being no further business, the meeting was adjourned at 12 p.m.

## **SPECIAL SUBCOMMITTEE ON ENERGY**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 21, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Special Subcommittee on Energy was held on Friday, October 21, 2016, at 10:00 AM, at the H.L. Spurlock Station, East Kentucky Power Cooperative, Maysville, KY. Representative Dean Schamore and Senator Jared Carpenter, Co-Chairs, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair, and Representative Dean Schamore, Co-Chair; Senators Brandon Smith, Johnny Ray Turner, and Robin L. Webb; Representatives Rocky Adkins, Leslie Combs, Tim Couch, Jerry T. Miller, Sannie Overly, and Tom Riner.

Guests: Don Mosier, Executive Vice President and COO, and Joe VonDerHaar, Plant Manager, East Kentucky Power Cooperative, H.L. Spurlock Station.

LRC Staff: D. Todd Littlefield, Janine Coy-Geeslin, and Susan Spoonamore, Committee Assistant.

#### **Welcome and Introductory Presentation**

Mr. Mosier described East Kentucky Power Cooperative as one of the largest electric generation and transmission (G&T) cooperatives. EKPC is not-for-profit and is owned by 16 rural distribution cooperatives. The mission statement is to safely deliver reliable, affordable energy to the owner-members. EKPC employs 711 people and serves 1.1million customers. Its owner-member cooperatives serve 87 counties in Kentucky. The two key coal-fired generating facilities are the H.L. Spurlock Station, which employs 230 employees, and the John Sherman Cooper Station in Burnside, Kentucky. The J.K. Smith Station in Trapp, Kentucky and the Bluegrass Generating Station in LaGrange, Kentucky are powered by natural gas.

Mr. Mosier explained that EKPC joined the PJM Interconnection system in 2013. EKPC sells all of its power into that system and buys back out of it. EKPC recently filed for a Certificate of Public Convenience and Necessity (CPCN) for a new 8.5 MW solar facility on 60 acres in Winchester that would have 32,000 panels. As part of a strategic plan, EKPC is diversifying its portfolio. A significant concern is navigating the Environmental Protection Agency's regulations on coal. Another issue is the abundance of shale gas resources that will keep natural gas prices low, at least in the near future.

In response to Representative Overly, Mr.

Mosier said that the J.K. Smith Station is located in Clark County.

Mr. Joe VonDerHaar stated that the H.L. Spurlock Station has approximately 230 EKPC employees who work in operations, maintenance, engineering, and planning. The Spurlock Station burns approximately 4.5 million tons of coal and one million tons of limestone per year. The station has four planned outages per year so the units can be cleaned and checked.

In response to Representative Couch, Mr. VonDerHaar said that, if implemented, the clean power plan would have a substantial negative impact on the Spurlock Station.

In response to Representative Miller, Mr. VonDerHaar said that the Spurlock Station is compliant with every rule of the EPA except for the clean power plan. EKPC is working on effluent limitation guidelines (ELG) in order to comply with the EPA rules. Units 1 and 2 cost more per megawatt than units 3 and 4, but not much.

In response to Representative Riner, Mr. VonDerHaar said that all EKPC stations are computer dependent. Power stations would be vulnerable to electromagnetic pulses or solar flares. He said that another EKPC representative would need to talk to discuss electromagnetic pulses or solar flares. EKPC has an initiative for cyber and physical security. Mr. Mosier said that he belongs to the PJM membership team for international security. The subject of electromagnetic pulse is a national security issue.

In response to Co-Chair Representative Schamore, Mr. Mosier said that EKPC is involved with Kentucky Homeland Security and that EKPC is committed to ensuring cyber and physical security. Representative Schamore said that the Kentucky National Guard has a cyber unit team that can be deployed.

Mr. Mosier explained that the control systems to the units that are on the tour, are not connected to the outside world. Mr. VanDerHaar stated that EKPC is a member of the North American Electrical Reliability Council (NERC).

In response to questions from several legislators, Mr. Mosier said that the International Paper Company relies on the H.L. Spurlock Station for power and steam. The two facilities employ 500 people. The H.L. Spurlock Station serves approximately 500,000 customers. The two coal stations burn about four million tons of coal per year, and one million of that is Kentucky coal. The coal units always have about 50 to 60 days worth of coal on-site. The next generation asset will be a natural gas combined cycle plant, but EKPC is looking at other types of technology. EKPC does not have a research and development department. EKPC will contract with major architect engineers for specialized needs.

There being no further business, the meeting was adjourned.

## **INTERIM JOINT COMMITTEE ON EDUCATION**

### **Subcommittee on Postsecondary Education Minutes of the 3rd Meeting of the 2016 Interim**

September 12, 2016

#### **Call to Order and Roll Call**

The 3rd meeting of the Subcommittee on Postsecondary Education of the Interim Joint Committee on Education was held on Monday, September 12, 2016, at 1:05 p.m., in Room 131 of the Capitol Annex. Representative Cluster Howard, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Cluster Howard, Co-Chair; Senator Gerald A. Neal; Representatives George Brown Jr., Leslie Combs, Kelly Flood, Derrick Graham, James Kay, Tom Riner, Rita Smart, and Gerald Watkins.

Legislative Guests: Representative Arnold Simpson.

Guests: David Adkins, Kentucky Community and Technical College System; Dr. Carl Rollins, Executive Director and CEO, Kentucky Higher Education Assistance Authority and Student Loan Corporation; Erin Klarer, Vice President of Government Relations, Kentucky Higher Education Assistance Authority and Student Loan Corporation.

LRC Staff: Joshua Collins, Maurya Allen, and Yvette Perry.

Approval of minutes of the August 15, 2016 meeting was tabled until the next meeting due to lack of quorum. Chairman Howard informed members that color copies of the materials from last month's meeting were included in members' folders this month.

#### **Presentation: Implementation of the Work Ready Scholarship**

Dr. Carl Rollins, Executive Director and CEO, Kentucky Higher Education Assistance Authority and Student Loan Corporation (KHEAA/SLC), and Ms. Erin Klarer, Vice President of Government Relations, KHEAA/SLC, testified about KHEAA's recommendations regarding the implementation of the Work Ready Scholarship program. Dr. Rollins compared the proposed Work Ready Scholarship program to Tennessee's similar program, Tennessee Promise. Tennessee Promise is a "last dollar in" scholarship, meaning that any other aid a student receives is applied to college costs first and then the Tennessee Promise program covers what is left of the first two years of community college. This essentially makes the first two years of college free and provides an excellent advertising slogan, even if it is not entirely accurate. This kind of program would not serve many of the lowest income students because a majority of their community college costs are already covered by other scholarships and grants, such as the PELL grants, the College Access Program (CAP), and the Kentucky Education Excellence Scholarship (KEES). The Work Ready Scholarship is most applicable for students from middle to moderate income levels who do not receive as much need-based tuition assistance.

Representative Simpson asked approximately how many students were already completely covered by other awards and therefore would not benefit from the Work Ready Scholarship. Dr. Rollins answered that he did not have that data at hand, but would provide it to staff to distribute to members. He said it would be a significant number of students who either receive a full PELL grant and a full CAP award, or a



partial PELL and full CAP award, which would cover community college tuition for at least two years.

Representative Smart asked if there was a limit to PELL grant availability, such as a cap to the number of students who could receive assistance from that program. Dr. Rollins stated that the maximum award amount for a PELL grant scholarship is \$5,700 per year but, because it is a federally supported program, there is no limit to the number of individuals who can receive the grant. PELL grants are need-based, and the award amount is determined based on the student's Free Application for Federal Student Aid (FAFSA). KHEAA requires students to complete a FAFSA before receiving any CAP or KTG award. Tennessee Promise participants are also required to complete a FAFSA and, currently, Tennessee ranks highest in percentage of high school students completing it. Kentucky ranks about tenth, and completion of the FAFSA would be required to participate in the Work Ready Scholarship. This ensures that the student is receiving the maximum of all other awards before the state provides its "last dollar in" amount. This aspect is particularly attractive to taxpayers.

Dr. Rollins discussed the aspects of the Tennessee Promise program that could pose potential barriers to student participation if they were part of the Work Ready Scholarship program. Tennessee Promise participants are required to complete a community service component and to meet regularly with a mentor. The mentoring program is cumbersome. Two large volunteer organizations were provided where students could sign-up for mentoring, and one group could not get enough volunteer mentors to support all students. Dr. Rollins suggested that, if mentoring is to be incorporated into the Work Ready Scholarship program, the schools that students are attending should mentoring, which perhaps could be funded by the General Assembly. Approximately 25 percent of Tennessee students who applied for Tennessee Promise scholarships used their awards; the low percentage may be because the community service and mentoring requirements posed significant challenges. Dr. Rollins said that he did not want to discourage students from doing community service or participating in mentoring, but he suggested that a method for that would have to be included in the program.

Dr. Rollins proposed two important ways that Kentucky's Work Ready Scholarship should differ from Tennessee Promise. First, KHEAA recommends targeting specific college degree and certification programs as a way to drive students into needed workforce development programs. He highlighted healthcare, manufacturing, and business and information technology as areas of highest demand in Kentucky that could serve as the starting focus of the program. By limiting the career pathways supported by the program, it would limit its scope in the beginning. It would be easier to change or expand the program later to include additional degree pathways than it would be to constrict the program from supporting all pathways to only a select few. Secondly, KHEAA proposes opening eligibility requirements to include part-time and returning students. This would allow adult students, not just high school graduates, to participate and encourage those who may not have

considered or completed a postsecondary education to do so now. Students would be eligible for up to five semesters worth of tuition, but could potentially spread that over a greater number of semesters as required.

In regards to funding, the Work Ready Scholarship has an appropriation of \$15.9 million for fiscal year 2018 in the most recent biennial budget. 2016 House Bill 626 provided a framework for the program but was vetoed. There were several provisions of that bill that would have been problematic, and Dr. Rollins hopes that those can be corrected in the next session. The first was a provision mandating students have a minimum 2.5 GPA at the end of their first semester or their scholarship would be converted to a loan. This was seen as worrisome as it could result in students with fair grades accruing sizable loans in a very short amount of time.

Representative Simpson asked if it was correct that the budgetary allocation remained but the parameters were still being decided. Dr. Rollins said that was the case, and he was working with the Council on Postsecondary Education (CPE), Kentucky Community and Technical College System (KCTCS) and Education Secretary Heiner to make some recommendations regarding those parameters to the legislature so that they might be considered in the next session. He has not yet reached out to members of the General Assembly but looks forward to having those discussions.

Representative Graham asked for the rationale for requiring a relatively high GPA at the end of just one semester rather than looking at a more cumulative GPA at the end of a student's first full year. Dr. Rollins was unsure of the reasoning and theorized that it was something that had been hastily decided near the end of the 2016 session. He said that he had asked for the requirements to be a 2.0 GPA at the end of a year because he felt that would be more reasonable. The target group for this scholarship would be those with a GPA between 2.0 and 3.0 because it has been well-documented that GPA is highly correlated with family income, and this scholarship is designed for those with a moderate family income.

Representative Combs stated that students should only be evaluated following the first full year because there is so much that a high school student has to adapt to in the first semester that could affect GPA negatively. Even great high school students can stumble in their first semester as college students. Dr. Rollins agreed that the first semester is a time of big transition and that taking away scholarship money while simultaneously giving a student a loan to repay is not a practice Kentucky wants to start. He said that loss of scholarship is enough motivation to prompt students to maintain sufficient GPAs to complete their degrees and that a scholarship-to-loan stipulation is not necessary.

The second provision of House Bill 626 that would have been a problem, had it not been vetoed, was providing for tuition at any institution in Kentucky, including private universities, with no ceiling. As a remedy, KHEAA proposes that all Kentucky public or non-profit postsecondary institutions with workforce-needed certificate, diploma, or associate degree programs be included, but there should be a

maximum award limited to the Kentucky Community and Technical College System (KCTCS) full-time, in-state tuition rate. This would not restrict a student to only attending KCTCS, but would provide an upper boundary for award amounts. Combined with other grants and awards, it could still provide for full tuition at even a private college or university. Dr. Rollins discussed how this could also be useful in the expansion of the program to include adult students, another aspect not provided for in House Bill 626, by allowing a five semester award to be spread over more than five semesters for part-time students.

Representative Simpson asked if that would affect availability of funding for high school students. Dr. Rollins said it would not if KHEAA's recommendation to limit the Work Ready Scholarship to select degree and certificate programs was also incorporated. That recommendation would also allow KHEAA/SLC to gather data on the Work Ready Scholarship usage and forecast more accurately how much funding would need to be appropriated for future years and for potential expansion. KHEAA can very accurately predict the amount of KEES money needed annually and would hope to do the same with the Work Ready Scholarship. Representative Simpson stated that perhaps a proviso to serve all full-time, high school graduates prior to awarding any scholarship to part-time students would be satisfactory to all parties.

KHEAA's final recommendation and point of difference from House Bill 626 is a non-lottery funding source for the Work Ready Scholarship, as well as the Dual Credit Scholarship. The CAP, KTG, and KEES programs are all funded from lottery proceeds. Had lottery money not been allocated to the new Dual Credit Scholarship and set aside for the Work Ready Scholarship, KHEAA could have almost fully funded the CAP and KTG programs. Adding these demands on the lottery funds long term will significantly impact these other programs already serving the most financially disadvantaged students.

Representative Kay agreed that raiding the lottery funds for other programs has been limiting Kentucky's ability to serve the poorest students. He asked how many students could have been provided awards with the approximately \$30 million provided to the Dual Credit Scholarship and the Work Ready Scholarship over the next biennium. Dr. Rollins said he did not know the exact number, but it would have been a lot. Representative Kay stressed that if the Work Ready Scholarship and the Dual Credit Scholarship had been funded from general funds, leaving the existing lottery supported programs unharmed, Kentucky would be able to do much more for students. Dr. Rollins agreed and said that the KEES, CAP, and KTG programs work well together with the federal PELL grant. For its size, Kentucky is very generous to students and covers a sizable number of students. However, since 2009, these programs have not received full lottery funds, which has limited the number of students served.

Chairman Howard asked if focusing only on degree programs in workforce-needed areas would potentially prompt students to choose a major based on getting aid rather than on true interest in that profession. Dr. Rollins answered that there is a high likelihood that some students will select programs for



that reason, however, the proposed recommendation is a way to keep the program small in the beginning. Also, it is a way for the program to stay true to its purpose of being a way to increase the number of work-ready graduates. It is an encouragement to become trained in a degree program that can go to work upon graduation.

Representative Simpson asked if there is any tracking of the academic progress and graduation rates of those receiving need-based financial aid. Dr. Rollins answered that KHEAA/SLC does not track that data, apart from continued use of KEES awards. He said that the Kentucky Center for Education and Workforce Statistics might have that data. Dr. Rollins emphasized that the Work Ready Scholarship should not limit access for students, especially low income students, who often will not pursue postsecondary education if they must take out a loan of any kind.

With no further questions, Chairman Howard thanked Dr. Rollins for his presentation. The meeting was adjourned at 1:42 p.m.

## INTERIM JOINT COMMITTEE ON EDUCATION

### Minutes of the 5th Meeting of the 2016 Interim

October 10, 2016

#### Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Education was held on Monday, October 10, 2016, at 12:09 p.m., at Jackson Independent School in Breathitt County, Kentucky. Representative Derrick Graham, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Mike Wilson, Co-Chair; Representative Derrick Graham, Co-Chair; Senators Danny Carroll, Jimmy Higdon, Alice Forgy Kerr, Reginald Thomas, and Johnny Ray Turner; Representatives Regina Bunch, John Carney, Hubert Collins, Leslie Combs, Jeffery Donohue, Kelly Flood, Cluster Howard, Brian Linder, Mary Lou Marzian, Tom Riner, Rita Smart, Jim Stewart III, and Wilson Stone.

Legislative Guests: Senator Brandon Smith; Representatives Joni Jenkins and Arnold Simpson.

Guests: Mike Genton, Superintendent, Jenkins Independent Schools; Wayne Young, Executive Director and General Counsel, Kentucky Association of School Administrators.

LRC Staff: Jo Carole Ellis, Joshua Collins, and Maurya Allen.

Approval of minutes of the September 12, 2016 meeting was tabled until the next meeting due to lack of quorum.

Representative Howard and Senator Smith welcomed the committee to their home district and recognized guests from the local education districts including Mr. Mike Genton, Superintendent, Jenkins Independent Schools, Mr. David Gibson, Superintendent, Breathitt County Schools, and Mr. Jim Yount, Superintendent, Jackson Independent Schools. The committee also welcomed Mr. Teddy Edmonds, a former State Representative for House District 91 who was in attendance. Mr. Yount

welcomed the committee to his school and thanked the staff and students who had assisted with the setup and luncheon.

#### Presentation: No Kid Hungry KY

Ms. Tamara Sandberg, Executive Director, Kentucky Association of Food Banks, Mr. Reid Livingston, No Kid Hungry KY Coordinator, and Ms. Tabitha Napier, Breathitt County Schools Food Service Director, discussed the No Kid Hungry KY campaign.

Ms. Sandberg directed attention to a state map highlighting the seven food banks in the Kentucky Association of Food Banks and the areas they serve. She thanked members for their efforts in assuring funding for the association in the state budget. Food banks feed one in seven Kentuckians every year and serve all 120 counties. Last year, member food banks distributed 58 million meals. Over 220,000 children, or one in five, face hunger every day in Kentucky. About 30 percent of the student population in Breathitt County faces hunger. The counties with the highest percentages however are Wolfe (37 percent), Harlan (32 percent), and Clay (31 percent). Recent surveys show that 91 percent of homes with food insecurity purchase unhealthy food because it is cheaper. In a majority of homes, mothers will go without meals in order to provide more for their children or will water down foods such as milk and soup to make it last longer. This, unfortunately, also dilutes the nutritive quality of the food. In 67 percent of homes, parents are forced to choose between paying utilities and buying food, and in 69 percent of homes, parents are forced to choose between buying medication and buying food.

Food insecurity and childhood hunger has many long term consequences for children including higher incidence of poor health and hospitalization, lower test scores in reading and math, lower cognitive development, and challenges with mental health and peer interactions. Childhood hunger results in higher education costs. Addressing childhood hunger can have positive effects by helping to break the cycle of poverty in rural Kentucky.

Ms. Sandberg said that the Kentucky Association of Food Banks and the No Kid Hungry KY campaign are looking to increase awareness of the Summer Food Service Program. The program is federally funded through the USDA and reimburses providers who serve free meals to children and teens in low-income areas during the summer months when school is out. It is administered in the state through the Kentucky Department of Education (KDE). The program Breathitt County schools is an example of a program in action in that students come to locations such as schools, churches, and community centers to receive meals. A typical meal may be a deli sandwich, baked chips, and juice or milk. The program has been very effective and is advertised through radio and print media.

A problem in Breathitt County has been the inability of some students to travel to the sites to receive meals. To address this, the district seeks to purchase a bus to convert into a mobile site that could travel to the students. However, the district cannot afford a bus, and the purchase is not reimbursable through the program. Other problems include staffing

shortages and school locations being closed in the summer for cleaning and repairs.

Ms. Sandberg mentioned the backpack food program at Breathitt County, which provides food for children in need over a weekend. Children appreciate these services.

Mr. Reid Livingston discussed the No Kid Hungry KY campaign, which is a collaborative effort between state agencies, school districts, higher education, and nonprofit organizations to address childhood hunger by increasing access to federal nutrition programs among Kentucky's children. The 2016 goal of the campaign was a 10 percent increase in sponsors, sites, and meals served. Strategies implemented to reach that goal included increasing awareness of the program among families, engaging community organizations to serve and promote summer meals, and engaging schools to serve and promote summer meals. The collaborative developed a new logo and tagline for use in promotional materials, increased visibility through the use of social media and billboards, broadcast celebrity radio spots, distributed press releases to local news outlets, created a tool kit for use by sites to help with promotion, and reached out to local farmers' markets. The efforts were focused this year on six target counties: Bell, Clay, Gallatin, Jefferson, Lawrence, and Rockcastle.

Mr. Livingston was pleased to report that the results are highly encouraging. The number of meals served increased by 15 percent, the number of sites increased by 30 percent, and the number of sponsors increased by 8 percent. In total, 129 new sites were established in the target counties this year. The collaborative hopes to build on the successes of this year by reaching out to state-wide agencies next year and encouraging successful schools to serve as models and mentors for new schools. The four counties that are without any summer food program service are Carlisle, Hickman, Henry, and Larue. The collaborative hopes to work with school, nonprofit, and government/military sponsors to find ways to address this so that every child has an opportunity to receive summer food service.

Representative Howard asked if there was any kind of program to provide meals to students in the winter on days when schools close due to inclement weather. Ms. Napier answered that Owsley County was currently participating in a pilot program where they either took meals to snowbound students or opened the school site to allow students who could come a place to eat. However, those programs also face the challenges of impassable roads. She hopes that the pilot program can expand to include other rural counties in the near future.

Senator Wilson asked if the No Kid Hungry KY collaborative had solicited any funding contributions from local commercial businesses, particularly to assist in the purchase of a bus for mobile feeding. Mr. Livingston said the collaborative did not currently but that it is a good idea for the future. The collaborative has looked into programs to assist in the leasing of vehicles or mini-grants for the purchase of buses but so far a practical way to finance mobile feeding sites has not been found. Ms. Napier said that the difficulty is not simply finding an inexpensive bus, but that significant modifications would need to be made to

remove the seats, install tables and food prep areas, and convert the space into a full “feeding site” as required by program guidelines.

Representative Marzian commented that this discussion reminded her of former representative Paul Mason who would say that “children cannot learn if they are hungry or their teeth hurt.” In a time when there are concerns about Medicaid expansion and use of government funds, this is a shining example of tax dollars at work for good. She hopes to see continued support for this kind of program.

Representative Collins asked who had established the seven food bank districts and whether the largest district, which appeared to include many of the counties with highest need, was adequately served by its one food bank, God’s Pantry. Ms. Sandberg answered that Food Service America had established the districts about 20 years ago based on distribution of food banks and need. God’s Pantry serves the largest area, which does have the highest need, because it is the largest and has the most resources to distribute. She feels that they are equal to the challenge and all of the food banks in the association meet the needs of their districts adequately, regardless of size.

Senator Higdon spoke of his service on the Childhood Obesity Task Force and the startling evidence that children facing hunger and receiving SNAP benefits also have higher incidence of obesity. He advocated for more distribution days of benefits so that families did not have to budget so far in advance and would be less likely to purchase the unhealthy foods that have longer shelf life.

Senator Thomas referred to his visit to God’s Pantry and its impressive 40,000 square foot facility. The warehouse and associated distribution centers move a massive amount of food. He encouraged members to visit God’s Pantry.

Chairman Graham thanked the presenters for their testimony and work, and reflected on the time spent campaigning to include funding in the budget for their worthwhile mission. He apologized that it was not near enough, but it was a start. He encouraged members to visit and volunteer in their local district food banks to see in person the kind of difference they make.

#### **Presentation: Every Student Succeeds Act Update**

Mr. Stephen Pruitt, Commissioner, KDE, and Ms. Rhonda Sims, Associate Commissioner, Office of Assessment and Accountability, KDE, testified regarding the work on a new accountability system in alignment with the federal Every Student Succeeds Act (ESSA). Commissioner Pruitt thanked the members for coming to a district where they could recognize three schools on the distinguished list. He recognized Breathitt County Schools for having its first elementary school on the distinguished list. Chairman Graham congratulated the commissioner for the commendation he received from U.S. Senator Lamar Alexander at the previous committee meeting for making Kentucky a leader in ESSA implementation.

Commissioner Pruitt said that, since he last spoke to the committee, representatives from Toyota and the National Association for the Advancement of Colored People (NAACP) have been added

to the accountability system steering committee. Additionally, once the system is ready for public comment, local interest groups will conduct focus sessions to gather industry/business and minority group feedback. Many of the steering committee meetings have been spent getting everyone to the same level of understanding regarding what accountability is and what it means to education.

The Systems Integration group has just begun the process of blending recommendations from the other groups into a cohesive system. The Consequential Review group has not yet begun to work; Commissioner Pruitt stated that this would be a very interesting panel to watch as it attempts to “poke holes” in the system and discover any unintended side effects that could occur upon implementation. This is a very unique but ultimately very useful panel to have as a part of the process. The Regulatory Committee will seek to support the General Assembly and the state board in their work by identifying statutes or administrative regulations that may need to be changed to align with the new system. Six regulations were repealed in the last year; the process of regulatory review will continue.

In the first few meetings of the steering committee groups, it was discovered that more time was needed, so meetings have expanded from half-day to whole-day sessions. More meeting days have been added to the calendar. He referenced a handout outlining upcoming meeting dates and assured members that he will keep them apprised as more dates are confirmed. The KDE website will also be maintained to keep the meeting process and results as open to the public as possible.

Commissioner Pruitt reiterated the sentiment that the new system does not want to rely too heavily on the state tests, and the committee is focused on accountability and limitations. He is attempting to change the conversation regarding assessment and accountability toward educating and assessing the whole child. The goal is not to use accountability as a hammer but as a flashlight to identify what is happening in schools and know what is going wrong as well as what is going right. He mentioned how the School Improvement group has been reevaluating how schools enter the priority process and how the Assessment group has been using a broader understanding of assessment to include student scores on Advanced Placement tests and attainment of industry/technical certifications. The Assessment group has also been looking to ensure that tests align with standards and ways to focus on critical thinking skills rather than rote fact memorization. The College and Career Readiness group is also expanding to consider more than college placement exams but also industry/technical certifications and seeking ways to track students beyond high school into college to truly understand whether students are well prepared for college success.

The Education Innovation group has been considering competency based assessment, “test when ready,” approaches and how districts can work together to share models of educational innovation. The Access and Opportunity group has been looking into ways of closing the achievement gap by providing more and better opportunity for students including

advanced level coursework and more engaging learning environments with greater community involvement. Commissioner Pruitt said that it had been encouraging to see a combined theory of action among the groups and a common vision towards the same themes. The Kentucky Board of Education has a plan for a special meeting in January for a first reading of the related ESSA regulations and a second reading in February. However, this could change if the U.S. Department of Education adjusts the timeline for implementation, which should be known by December.

Representative Flood said that it appeared the new system would be layering on top of the existing accountability system, and this was an opportunity for KDE to evaluate and change the system. She is encouraged by the repeated reference to innovation, adaptability, and flexibility that the new system would have. The current system has done well in remembering how valuable an individual child is and she hoped that could be maintained. Commissioner Pruitt answered that data collection will be even better with the new system, allowing for a more detailed approach to individual student success. He stressed that part of the process has been asking the steering groups to forget the old system entirely and envision accountability from the ground up. The goal will be to integrate new ideas from that process with the very best aspects of the old system. Flexibility will be key; his goal as commissioner is to find a way to say “yes” more often to schools.

Representative Stone thanked Commissioner Pruitt for his commitment to visiting all of Kentucky. In reference to an earlier statement regarding graduation rates, he mentioned that a school in his district recently had 100 percent college and career ready status for their students upon graduation. He asked what the projected goal for Kentucky is likely to be in regards to college and career readiness. Commissioner Pruitt answered that it is unclear at this time because it would depend on the precise definition of college and career readiness in the system. The previous program, Diploma Plus, has expired, and a new similar program is likely to replace it. Once it is clear what that looks like, it will be easier to decide on a target percentage for the state.

Senator Higdon commended the commissioner on his approach to assessment using creativity and flexibility, especially in regards to college and career readiness. He also discussed the shortage of CDL certified bus drivers. He said that teaching CDL courses in area technology centers to 18-year-old drivers, who can be certified to drive intrastate routes, would be an innovative way to address the needs of the Commonwealth. Commissioner Pruitt said he would take that under advisement because career and technical education is very important. He hopes the new system will be able to take into account the needs of each area of the state in terms of industry/technical shortages.

Commissioner Pruitt said that he will begin another tour of the state in March. There will be a big announcement from KDE toward the end of November. Ms. Sims said that the first meeting of the Consequential Review committee will be November 1, 2016.



### **Presentation: 2016 HB 15 Implementation**

Mr. Bob King, President, Council on Postsecondary Education (CPE), and Ms. Lee Nimocks, Vice President for Policy, Planning & Operations, CPE, testified about the implementation of training for university board members as required in 2016 House Bill 15. CPE is connected to all universities and colleges, even though the colleges and universities are not a unified system. It had become apparent to CPE that when things went wrong at a university it could often track back to a failure of the board members to understand their roles. In an effort to train and inform board members, House Bill 15 directs CPE to develop a six hour curriculum covering the role of CPE, the CPE strategic agenda and accountability system, the respective institution's mission, budget, and finances, strategic plans and campus priorities, institutional policies and procedures, board fiduciary responsibilities, legal considerations including open records and open meetings requirements, and ethical considerations arising from board membership.

Additionally, in accordance with House Bill 15, CPE must provide continuing education for all board members either in person or electronically. New board members must complete the training within one year of appointment, and completion of the orientation program is a condition of board service and eligibility for a second term. CPE must notify the General Assembly of new board members who do not complete training requirements within the first year. Private governing board members are not required to participate but may choose to participate. The final provision of the bill is that CPE must approve the campus specific orientation programs before they can be implemented.

A stakeholder work group was developed comprised of CPE members, campus and board representatives, and the bill sponsor/representative. Campus presidents and current board chairs and vice chairs were also invited to participate in the steering group. The Association of Governing Boards and other state higher education boards, particularly those of Texas, Virginia, and West Virginia, were also useful for providing guidance and models of similar board orientation requirements. Through discussion and review, the work group found that trustees need more orientation on SACS accreditation processes/requirements, shared governance, Roberts Rules of Order, open meeting/records laws, fiduciary responsibilities, communications training, federal regulations (particularly Title IV and Title IX), the budget and policy-making process in Frankfort, and the role, statewide strategic agenda, and performance funding of CPE.

It was also found that board members like the Trusteeship Conference and value the opportunities it creates to interact and network. CPE will continue to offer the conference every two years (due to budget constraints) but will also seek to provide an annual meeting of board chairs and vice chairs to share best practices. More consistency is needed across institutions in regards to board training curriculum, which this seeks to address. Part of the six hours of training should be provided by CPE and part should be provided by the institution. The proposed delivery plan will address training curriculum, delivery

method, certification procedure and annual report, campus orientation programs review and approval, and continuing education programs.

Mr. King outlined these five sections. The content for the training curriculum will be based on several elements including House Bill 15 requirements, components in current orientation programs, and legal requirements. Colleges and universities will provide campus-specific information and materials for their respective board members, and CPE will coordinate and develop state-level curriculum in partnership with campus and board professionals. There will be in-person and on-line delivery options. The in-person option will be held at a central Kentucky location and be offered in the fall. This first year it will be held in Frankfort. In years when the Trustee Conference is held, it will be offered as a pre-conference workshop in order to reduce traveling and housing expenses for attendees. An optional networking session will also be incorporated whenever possible. This will be the preferred method of delivery. The online option is expected to debut in spring of 2017 and will be available to those who are unable to attend the in-person session. The curriculum will remain the same and incorporate video clips, case studies, and lessons. A certificate of completion will be provided to attendees of either state-level method and to attendees of the campus level orientation sessions. A report on those who have not completed both parts of the orientation program in their first year of board membership will be made to the General Assembly annually.

House Bill 15 also requires CPE to approve all campus orientation programs. CPE will review and approve each campus program every five years. If a program is substantially revised within those five years, another review and approval by CPE will be required. Continuing education opportunities are also provided by CPE. The first is the Governor's Conference on Postsecondary Education Trusteeship, which is sponsored by CPE and campuses. Attendance of all board members is not required but is strongly encouraged. This conference is held biennially due to budget constraints, but could be held annually upon mutual decision of all contributing parties. The second is the annual meeting of board chairs and vice chairs. This is held at the request of current chairs and vice chairs. If possible, it will be offered in conjunction with state-level new member orientation to enable networking opportunities. This year there are plans for a reception at the Governor's mansion following the November training since the members are the Governor's appointees.

Mr. King provided a list of implementation dates for the new sessions. The first state-level orientation will be November 30, 2016, in Frankfort, with online orientation available in the spring of 2017. The first certification report will be made to the General Assembly in August 2017. Campus-level orientation began in August 2016 and will continue through August 2017. The completion report for campus-level training will be due to CPE on August 11, 2017. Campus orientation programs must be submitted to CPE by December 31, 2016, for approval. CPE will review and approve plans by February 2017.

Representative Smart asked if campus

orientation programs were approved by the campus Board of Regents prior to submission to CPE. Mr. King answered that he is uncertain. The plans are to be developed by campus personnel, however, so it is likely the Board of Regents will have an opportunity for input. Ms. Nimocks said it is not a requirement of the bill and that they are due to CPE by December. Mr. King said he expects to hear from members of the Board of Regents if something is found to be deficient in a campus orientation program plan.

Representative Simpson asked how this was affecting the community and technical college system, particularly in regards to their recent concerns about the appropriate role of regional boards. Mr. King answered that the regional boards of the Kentucky Community and Technical College System (KCTCS) are limited to an advisory role, and according to the law do not have any fiduciary responsibilities. As this orientation is aimed primarily at increasing the fiduciary knowledge of board members, KCTCS regional board members have not been included. A similar training program may be valuable to them, but they are not required to participate. Representative Simpson commented that the regional boards have valuable insight on the evaluation of the KCTCS president and budget needs and should potentially be added to this legislation in some way. Representative Graham indicated that he would take that under advisement and work with members of the committee to incorporate KCTCS regional boards in an appropriate way.

Senator Carroll asked about the disparity in education and fiduciary understanding among board members. Ms. Nimocks answered that, in general, most existing training programs focus on budgeting, accountability, respective campus mission, and open records/meetings law. There is a great deal of commonality among existing programs. This seeks to enhance and unify the education currently being done.

Representative Howard asked about the confusion surrounding the centralization of services at KCTCS in regards to SACS accreditation of individual campuses. Mr. King reiterated that local advisory boards could use a training program but it would be different in content to that provided the central board members. The individual KCTCS campuses are better served as units under the central board, especially in regards to budgetary requests. He said it should be made clear for accreditation what the individual campus roles are versus the centralized office.

Senator Thomas said he visited the Gatton College of Business opening at the University of Kentucky and was impressed by the state of the art building and instructional space. He was also impressed with the private fundraising efforts which allowed for it to be built and recognized Senator Kerr for her inspiring words on philanthropy which benefits both the receiver and the giver. He cautioned, however, that all universities cannot and should not be expected to self-finance projects. It will have negative consequences on the future of higher education if they cannot expect some assistance from the state budget.

The final agenda item was review of administrative regulation 702 KAR 7:065 Designation



of agent to manage middle and high school interscholastic athletics. Mr. Chad Collins, General Counsel, Kentucky High School Athletics Association (KHSAA), was present to answer any questions.

There being no questions and no further business, the meeting was adjourned at 2:04 p.m. The next meeting of the committee will be November 14, 2016, at 1:00 p.m. in Frankfort, Kentucky. Senator Wilson will preside.

## **INTERIM JOINT COMMITTEE ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 13, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Thursday, October 13, 2016, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Albert Robinson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Albert Robinson, Co-Chair; Senators Perry B. Clark, C.B. Embry Jr., Carroll Gibson, Ernie Harris, Christian McDaniel, Gerald A. Neal, Dennis Parrett, Whitney Westerfield, and Max Wise; Representatives Linda Belcher, Regina Bunch, Tom Burch, Larry Clark, Leslie Combs, Tim Couch, Ron Crimm, Kenny Imes, James Kay, Martha Jane King, Tim Moore, Rick G. Nelson, Tom Riner, Dean Schamore, Rita Smart, Jeff Taylor, and Russell Webber.

Guests: Major General Stephen R. Hogan, The Adjutant General; Representative Tom Burch, Frank E. Konermann, and Ben Swager, Administrator, Thompson-Hood Veterans Center; Mark Bowman, Executive Director, OKVC.

LRC Staff: Erica Warren, Jessica Zeh, Jonathan Philpot, and Rhonda Schierer.

#### **Kentucky National Guard Update**

General Hogan gave a PowerPoint presentation for the Kentucky National Guard (KYNG) update. The PowerPoint presentation is part of this official record in the Legislative Research Commission Library. General Hogan said that the briefing is about the federal portion of guard duties in terms of current operations and future operations. The mission statement for the KYNG is the same with the two important words being relevant and ready. Senior staff articulated four priorities for the KYNG staff, known as Plan 105: (1) federal mission proficiency; (2) state mission proficiency, including responsibility to natural disasters, civil disturbances, and major infrastructure failures; (3) relevance to the U.S. Army and Air Force; and (4) soldiers, airmen, and family readiness, which is the most difficult of the issues.

The strategic trends on the Army side are all going through a Budget Control Act in which the Army Guard is scheduled to reduce from 342,000 to 315,000 nationally. That could potentially mean that the Kentucky Army could lose 1,400 of roughly 6,700 soldiers. Active component and reserve component training relationships are now part of the whole force Army concept. There are two units that are going to

be with the 101<sup>st</sup> Division and they will be assigned as needed. The whole force Army concept with the active component will make the guard more ready and relevant.

The strategic trends on the Air Force side are limited C-130H models that are over 20 years old. There are two different avenues for modernization: (1) limited modernization of the C-130H models themselves or (2) getting brand new air frames. Kentucky is hoping for brand new air frames or C130J, Juliet models. The Air Force Special Operations Command FY18 growth will add 41 personnel to 123<sup>rd</sup> Special Tactics Squadron, and cyber growth offers the potential to grow the 223<sup>rd</sup> Intelligence Flight from 16 to 71 and become a squadron.

General Hogan explained that soldier and airman readiness includes a community partnership liaison, state tuition assistance, and behavioral health assistance. The KYNG is going to have every armory and every community attach a responsible, highly respected retired guardsman to be a legacy mentor. That individual will be able to give perspective on both training and management, but also be a kind voice to the soldiers and airmen who are having a difficult time. Requests for tuition assistance have increased but are still under budget. Behavioral health has to do with responding to the soldier if he has any issues returning from deployment or any military service. There are many initiatives to support behavioral health issues, including applied suicide intervention skills training. There have been 618 trained through this service.

General Hogan indicated that KYNG has 56 armories within 52 communities statewide and 12 maintenance facilities. There are three state training sites. KYNG may not need all the facilities. The Louisville armory at the fairgrounds and the Maysville armory have been closed. Although KYNG was looking at closing three armories in 2017, they have learned recently that the Army is going to award a few units to some deserving states and General Hogan feels that Kentucky is most deserving. For that reason, he is going to keep some of the armories open until the realization of that process. The two armories that are completely underutilized are in Henderson and Russellville. There is a plan to move all 56 armories into a regional readiness concept in Burlington, Richmond, Paducah, and Morehead. The next four that KYNG plans to invigorate are in Louisville, Bowling Green, Somerset, and Lexington/Winchester area.

In response to a question from Senator Harris, General Hogan stated that the J models have gone to active component issues as a priority. General Bullard clarified that C130H avionics are over 20 years old and the second oldest in the Air Force now. The active duty switched to all J models which was a violation of trust with the National Guard. The active duty is supposed to be concurrent and proportional to the Air National Guard in the fielding of equipment and the active duty. Funding from Congress is being sought to modernize the avionics in the C130H models as they can no longer fly overseas after 2019 without the new avionics package. General Bullard stated that the ultimate goal is to capitalize to the C130Js.

In response to a question from Representative

Smart regarding the Youth Challenge Program, General Hogan explained that KYNG is working with the local school board to get accredited so that the youth can leave the program with a diploma.

#### **Thompson-Hood Veterans Center Staffing Concerns**

Representative Tom Burch brought forth a constituent, Frank E. Konermann, who is a member of the advisory board at the Thompson-Hood Veterans Center. Representative Burch explained that it was brought to his attention recently that there are staffing concerns at the Thompson-Hood Veterans Center. There are 282 beds, and only 232 can be filled due to staffing issues. The center cannot afford to pay staff what other facilities can near Lexington due to the fact that the Kentucky Personnel Cabinet has set salaries and most other facilities that are not under the government policy offer higher starting salary ranges. This makes it very difficult to compete.

In response to a question from Representative Clark, Mr. Konermann stated that the decline in staff has been going on since 2014 or longer.

In response to a question from Representative Smart, Mr. Konermann referred to Mr. Ben Swager, the Administrator of the Thompson-Hood facility. Mr. Swager stated that the Thompson-Hood facility has at least another 35 beds that it could fill if it was adequately staffed and authorized. He stated that is not an issue with budget funding, but rather is an issue with the state personnel policy and the starting salaries being offered a pay scale structure for the state. A registered nurse pay range in the private sector starts at \$24-\$32 an hour. Thompson-Hood's entry level starts under \$22 an hour. He is authorized for 16 registered nurses and only has 3 on the payroll due to the need for higher pay.

In response to a question from Chairman Robinson, Mr. Swager stated that he has a waiting list of 23 veterans who could be housed at Thompson-Hood Veterans Center if there were appropriate staffing levels.

In response to Representative Clark, Mr. Swager stated that the center had reached out to universities for internships and other avenues, but when talking to them about salary, employees go to facilities that can pay more.

In response to a question from Representative Dossett, Mr. Swager stated that, ideally, Thompson-Hood wants to have 4.0 hours of care per patient per day but is averaging around 3.2 hours per day due to staffing.

In response to a question from Representative Belcher, Mr. Swager stated that something that could help is for the nursing homes to be exempt from the Kentucky Personnel Cabinet salary range.

In response to a question from Representative King, Mark Bowman stated that the center is interested in getting together with her to go to the National Conference of State Legislatures task force that she serves on. Representative King stated that this would allow them to look at a 50 state situation and help with ideas of implementation. Representative King said she would love to partner to help get answers that would allow more veterans a place in the nursing homes.

There being no further business, the meeting

was adjourned.

## INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

### Minutes of the 4th Meeting of the 2016 Interim

October 26, 2016

#### Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on Local Government was held on Wednesday, October 26, 2016, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Joe Bowen, Co-Chair; Representative Steve Riggs, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, Stan Humphries, Christian McDaniel, Morgan McGarvey, Dorsey Ridley, Albert Robinson, Dan “Malano” Seum, and Damon Thayer; Representatives Linda Belcher, George Brown Jr., Ron Crimm, Mike Denham, Jim DuPlessis, Richard Heath, Cluster Howard, Adam Koenig, Brian Linder, Tom McKee, Michael Meredith, Russ A. Meyer, Phil Moffett, Jonathan Shell, Arnold Simpson, Chuck Tackett, James Tipton, Jim Wayne, and Susan Westrom.

**Guests:** Jonathan Steiner, Mayor Claude Christensen, Mayor Jim Barnes, J.D. Chaney, Kentucky League of Cities, Robert Gold, Rick Skinner, Mayor of Williamstown, Martin Voiers, Mayor of Flemingsburg, Jeff Edwards, Mayor of Monticello, Susan Barto, Mayor of Lynden, Mike Weaver, Mayor of Radcliffe, Brian Traugott, Mayor of Versailles Wayne Turner, Police Chief, Bellview, Kentucky, Shellie Hampton, Kentucky Association of Counties, Vince Lang, Kentucky County Judge/ Executives Association, and Ron Wolfe, Association of General Contractors.

**LRC Staff:** Mark Mitchell, Joe Pinczewski-Lee, John Ryan, and Jay Jacobs.

#### Approval of Minutes

Upon the motion of Representative Tackett, seconded by Representative Belcher, the minutes of the September 28, 2016 meeting were approved.

#### Co-chair’s Remarks Regarding Jail Overcrowding

Representative Riggs drew the members’ attention to a series of articles in the members’ packets regarding the situation of jail over-crowding.

#### Kentucky League of Cities’ Legislative Platform for the 2017 Session of the General Assembly

John Steiner, Executive Director and CEO of the Kentucky League of Cities (KLC) said that Kentucky cities, rather than KLC staff, developed the 2017 platform. The city classification reform bill of 2014 helped extend maximum flexibility for cities for self-governance, but there is yet more work to do including assuring equal opportunity for all cities regardless of size and engaging in revenue diversification.

Mayor Claude Christensen, President of KLC, said that KLC’s agenda represents months of due diligence from the 62-member board. The board provides guidance to KLC staff who, in turn, work with the legislators. The board wishes to take a

constructive and collaborative approach to the issues before it.

Earlier in the month, the board met and ranked more than 25 issues. The highest-ranked issue is the road funding formula. In 1948, the General Assembly established the county road aid and rural secondary road funding formula. In 1972, the municipal road aid program was created. Population shifts to cities and other factors render the formula as being out of date. Each year cities spend more than \$250 million on the construction and maintenance of more than 10,000 miles of city streets. Transportation Cabinet figures show that in fiscal year 2014, cities received less than \$60 million—less than a quarter of the cost of constructing and maintaining cities roads—from the road aid fund. During the last fiscal year, Sadieville received \$5,837 dollars from the road aid fund. It spent \$41,730 of general fund moneys on road maintenance. Sadieville’s total budget is \$287,000. Most years Sadieville cannot afford to do any street maintenance. The previous two years it spent \$51,000 and \$65,000 on road maintenance, most of which came from the general fund.

Over the same time period, counties spent less than \$290 million and received almost \$325 million in road aid moneys.

The outdated funding formulas do not take into account lane miles travelled, or other measures related to use and or maintenance. KLC is proposing to change the formula from past proposals to allocate moneys to local governments with higher traffic counts and that have more frequent needs. The new method will preserve the existing “formula of fifths” until revenues exceed \$825 million to ensure that no moneys are taken from the counties. One half of the funds in excess of that amount would be distributed based on the population living in incorporated areas versus unincorporated areas. The other half would be based on road miles in incorporated areas versus unincorporated areas.

The second priority is County Employees Retirement System (CERS) and anti-spiking legislation reform. Kentucky cities support the separation of the CERS from the Kentucky Retirement Systems (KRS). According to a pension system study by R.V. Kuhns, Inc., KRS is on track to undergo serious financial hurdles that include: “persistent funding shortfalls, elevated contribution levels, unsustainable payout ratios, and in the worst case scenario, the potential for a complete depletion of assets.” KRS is the worst-funded system in the U.S., but CERS is on an upward trajectory seeing its funding ratio increase while employer contributions have decreased. The Kuhns study sees the probability of CERS being fully funded in about 20 years. CERS pays nearly 63 percent of the total administrative expenditures of KRS. These expenditures include lawsuits filed against the system, salaries of employees, and fees and other administrative costs.

The KLC board of directors voted to make anti-spiking legislation modifications a legislative priority. The language presently in law has resulted in a cost to Kentucky cities through September 2016 of \$1.5 million. Nearly 3,400 spiking bills have not yet been evaluated. KLC supports maintaining the provisions that prohibit the abuse and exorbitant artificial spikes,

while making considerations for legitimate increases in compensation where appropriate.

Kentucky cities need the full spread of revenue options necessary for today’s economic challenges. KLC seeks to expand the restaurant tax to all cities in lieu of net profits or gross receipts taxes on the restaurants. Cities would retain up to 75 percent of the revenues, with the remaining 25 percent going to local tourism commissions. All Kentucky cities and tourism agencies should be equals when it comes to the tools available to their leadership. The KLC board of directors believes that adjusting the restaurant tax will allow for more direct investments in the community that are focused on economic growth. Cities would be required to use the revenue that they retain for the construction, operation, and maintenance of infrastructure that supports local tourism, recreation, and economic development. In 2014, the restaurant tax generated about \$13.8 million for tourism commissions. If all cities were to enact a 3 percent tax on restaurants, tourism commissions would receive at least \$43.5 million for marketing, allowing them to enhance tourism across the Commonwealth.

Drug abuse continues to plague and damage Kentucky cities. Its consequences have a devastating impact on the citizens’ quality of life—not only individually, but also from an economic and workforce development issue. In 2013, the KLC board adopted the following statement and continues to stand behind it today: “All citizens of every city in the Commonwealth of Kentucky are impacted by drug abuse. Drug abuse and its social, criminal and economic consequences have a devastating negative impact on the quality of life in communities across the state. Therefore, the Kentucky League of Cities strongly supports legislation that proactively addresses drug abuse and its consequences.” Cities have been strong advocates for legislation in the past dealing with this issue.

Kentucky cities have been vocal in the past to see current prevailing wage law repealed. A current, state-sponsored study shows that prevailing wage law can cost cities up to 30 percent more on construction projects subject to prevailing wage law as compared to construction projects not subject to it. Prevailing wage law offers no guarantee of a higher skilled labor or better work. Repealing this law means tax dollars could be stretched.

The KLC board believes that protecting home rule is the likely the most important tenet of their agenda. KLC will oppose any unfunded mandates that allow one governmental entity to freely spend tax revenue raised by another governmental entity without consequence. KLC will support legislation that will prohibit the General Assembly from making mandates to any local government unless the mandate is fully funded by the state or the programs are approved for funding by a vote of the local legislative body.

Mayor Jim Barnes, First Vice-President of KLC, said KLC favors increasing police and fire incentive pay, as was done in the most recent budget, to \$4,000, as well as allowing an administrative reimbursement for the costs associated with the increased incentive which could cost all cities as much as \$5 million a year.



The Local Investments for Transformation (LIFT) tax is a tool that will allow cities to not only grow their economies and create jobs, but will also give city leaders a chance to engage their citizens in the process. The LIFT tax will allow city leaders to build the building, and the proposed restaurant tax expansion will allow city leaders to support the building. Both taxes must go hand-in-hand. It is hard for small communities to both build the building and to maintain the building once built.

KLC will oppose the extension of the occupational license tax crediting provisions that were enacted in the final hour of 2014 and 2016 legislative sessions. KLC wishes to work with the members of the General Assembly and the Kentucky Association of Counties on this issue.

There are many issues that cause economic development not to happen. Limited revenue is one such issue. KLC wishes to look at increasing revenue without putting burdens on everyone else.

KLC wishes to be involved in criminal justice reforms, newspaper advertisement reforms, police body camera legislation, workers compensation legislation, and solid waste planning and local government investments therein.

In response to a question from Senator Bowen, Mayor Christensen said that to his knowledge separating CERS from KRS could render the spiking issue moot from the General Assembly's point of view.

In response to a question from Senator Seum, Mayor Christensen said that cities receive no funds from the federal government for roads.

In response to a question from Senator Humphries, Mayor Christensen said that counties would not receive less money from the presently proposed road aid reformulation. The formula does not change until gas tax revenues exceed \$825 million. Under the previous proposal, counties would have lost a share of the funding.

In response to a comment from Senator Humphries, Mayor Christensen said that he understood that counties have unmet funding needs for road projects, as do cities, but some cities, such as his own, have very limited revenue options to dedicate for road projects. City classification "2.0" is working to "level the playing field."

In response to a question from Representative Riggs, J.D. Chaney, Deputy Director of KLC, explained the formula of fifths as it exists presently in statutory law. At the time the formula was established, there was an attempt to develop rural roads. The current KLC proposal only seeks to modify the formula to direct more of the road fund to urban areas when revenues exceed \$825 million, whenever that may occur.

In response to a question from Representative DuPlessis, Mr. Chaney affirmed that KLC is open to working with KACo, the General Assembly, and the executive branch, and noted that the \$825 million is the highest level of gas tax receipts received historically.

Representative DuPlessis commented that he did not want a policy that created problems for the future and that consideration should be given to synchronizing any caps in the proposed formula to changes in the value of the dollar.

In response to a question from Senator

McDaniel, Mr. Steiner said that publication reform efforts are non-partisan, and cities of all sizes are in favor of it. Newspapers oppose it because of the loss of advertising revenues.

In response to another question from Senator McDaniel, Mr. Chaney said that KLC would be in favor of maintaining notices for a longer period online that currently required of print advertising in lieu of a larger newspaper publication, as was set out in SB 101 which Senator McDaniel sponsored recently.

Senator McDaniel noted LRC's Program Review and Investigations Committee's study of publication costs for local governments.

In response to a question from Representative Moffett, Mr. Chaney said that 2013 SB 2 made an incredible CERS funding trajectory change and provided a stabilization of employer contribution rates. However, not all the implications of the spiking language were realized at the time. The goal of the spiking language was to prevent employers and employees from colluding to artificially spike their compensation to increase their retirement benefits. The language did not anticipate such scenarios as leaving work under the Family and Medical Leave Act (FMLA) or absences under workers compensation that qualify for a "spike" in the law. There are several non-abusive, legitimate situations that the language catches that result as a bill being sent from KRS to the cities to pay for the costs associated with that spike. Other states cap the creditable compensation, rather than having the difference paid-in.

Representative Wayne suggested that KLC host a summit where national and other trends and perspectives can be analyzed comprehensively to correct the road fund issues for the long term, rather than for a shorter-term fix.

In response to a question from Representative Tackett, Mayor Christensen said that Sadieville spent \$41,000 this year, \$51,000 last year, and \$65,000 the year before that for roads. Sadieville plans to spend \$33,000 for roads next year and receives \$5,800 each year from the road fund. Sadieville's general budget is typically around \$280,000.

Representative Brown noted that the funding needs and other needs of both the urban areas and the rural areas must be considered to improve the quality of life for all Kentuckians.

In response to a question from Senator Thayer, Mr. Chaney said that the KLC board of directors did not set a percentage of cities' road construction and maintenance costs that cities would prefer to see the road fund finance.

Representative Meredith suggested looking at printing costs for all local governments. He would like to see consideration for eligibility regarding electronic media that is not recognized under the present publications language.

Representative Simpson commented that the issue behind the road tax was one of tax fairness for tax payers. The presently unfair formula will eventually be addressed at some point based upon population trends.

There being no further business, the meeting was adjourned at 11:32 a.m.

## INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Minutes of the 4th Meeting of the 2016 Interim

October 26, 2016

### Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on Wednesday, October 26, 2016, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Brent Yonts, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, Stan Humphries, Christian McDaniel, Albert Robinson, and Damon Thayer; Representatives, Kevin Bratcher, Leslie Combs, Joseph Fischer, Jim Gooch Jr., Derrick Graham, Kenny Imes, James Kay, Mary Lou Marzian, David Meade, Reginald Meeks, Phil Moffett, Lewis Nicholls, Sannie Overly, Tom Riner, Steven Rudy, Sal Santoro, Kevin Sinnette, Rita Smart, Diane St. Onge, Tommy Turner, Ken Upchurch, and Jim Wayne.

Guests: Chief Justice John D. Minton, Jr. and Katie Shepherd, Kentucky Supreme Court; Senator John Schickel; Brad Montell, Andy Hightower, and Bridget Papalia, Education and Workforce Development Cabinet; and Ashli Watts, Kentucky Chamber of Commerce; Representative Susan Westrom.

LRC Staff: Judy Fritz, Kevin Devlin, Alisha Miller, Karen Powell, Roberta Kiser, and Peggy Sciantarelli.

The minutes of the September 28 meeting were approved without objection, upon motion by Representative Santoro.

### Judicial Redistricting

Guest speakers were Chief Justice John D. Minton, Jr., and Katie Shepherd, Chief of Staff, Kentucky Supreme Court, and Senator John Schickel. They discussed judicial redistricting and the Kentucky Judicial Workload Assessment Interim Report that was presented to the legislature in February 2016. The report was compiled by the National Center for State Courts (NCSC), using data from a 2015 comprehensive judicial workload assessment of circuit, family, and district courts of the Commonwealth of Kentucky. (Copies of the study and Chief Justice Minton's remarks are on file with LRC staff.)

Chief Justice Minton said that judicial redistricting is controversial and challenging. Judicial circuits and districts have remained largely untouched since the passage of the Judicial Article in 1976. There is no question that the Commonwealth has undergone significant changes in caseload and population. The court system has not always kept up with those changes. He asked the legislature to include in the 2014 judicial branch budget bill a directive to undertake a judicial workload assessment for the purpose of eventually formulating a redistricting plan. The Kentucky Court of Justice and the Administrative Office of the Courts contracted with NCSC to help conduct a weighted caseload study.

Unlike redistricting for legislative boundaries,



judicial redistricting cannot be accomplished on the basis of population. The process is more difficult because it impacts commonwealth's attorneys as well as judges. It is the type of caseload—not population—that ultimately determines the workload of trial court judges. For four weeks in the spring of 2015, circuit, family, and district judges used an online program to log their time regarding the handling of cases and taking care of judicial duties outside of court. This was likely the first judicial time study ever conducted in Kentucky. Despite the burden of recording every minute of every workday for a month, 95 percent of judges participated. The results were formulated to determine implied judicial need for each jurisdiction. Using this data, NCSC compiled a time study report that included case weights and measured workloads for each phase of a case and its jurisdiction. The Judicial Time Study was followed up with site visits to courts in several jurisdictions. This initial process took about 18 months and provided critical information regarding weighted caseloads and implied judicial needs. The data was subsequently evaluated by the Kentucky Judicial Workload Assessment Committee (JWAC), comprised of judges from each level of the court system, circuit court clerks, commonwealth's attorneys, and legislators from throughout the state. Smaller "Delphi" groups of circuit, family, and district judges also reviewed the data for accuracy. The weighted caseload and implied judicial need data was compiled by NCSC into the January 2016 report that was presented to the legislature. The report was thoroughly vetted by the JWAC members and the Supreme Court.

Chief Justice Minton said some jurisdictions are significantly under-judged or over-judged. He cited as an example the family court for Lincoln, Pulaski and Rockcastle Counties, where caseloads are the highest in the state. Data from the time study determined the implied judicial need for that family court is 2.18, which means that the one family court judge in that circuit is doing the work of 2.18 family court judges—a situation that is not sustainable and must be addressed. In other areas of the state there are two judges where the implied judicial need is less than one.

The second phase of the project is to present a comprehensive judicial redistricting plan to the General Assembly in 2017, using the collected data to either redraw circuit and district boundary lines or reallocate judicial resources across the state—or a combination of the two. JWAC members have met three times since May 2016 to discuss and review various redistricting plans. After the last meeting on October 4, the members were asked to vote for one of two plans to be submitted to the Supreme Court. They overwhelmingly voted for what is known as "Plan A," which the Court will consider in early November.

The plan recommended by JWAC would do the following: make no changes until 2022, when all circuit and district judges are on the ballot; bring family court to all but eight jurisdictions; realign a limited number of boundary lines and reallocate existing resources; combine circuits and districts that are currently different; reduce the number of circuits from 57 to 55; and calculate the appropriate number of judges by using a 1.4 implied judicial need as the

cutoff to determine where more than one judge is needed. The plan would not impact every county or jurisdiction or require additional judgeships to be approved and funded. It would not accomplish the goal of statewide family court but would come close.

Chief Justice Minton acknowledged that judges and commonwealth's attorneys in some legislative districts may be affected by the plan. He encouraged the committee members to keep the big picture in mind, which is a state court system positioned to meet the needs of citizens in every county. He said he looks forward to working with the legislature to agree on a final plan for judicial redistricting in the coming months. The singular goal of redistricting is to ensure that Kentucky's judicial resources are allocated appropriately. This will require adding resources in jurisdictions with heavy caseloads and reducing resources in jurisdictions with lighter caseloads. The data is based on sound research principles, and best practices were applied when compiling and analyzing the information. The redistricting plan that is ultimately proposed will be solidly rooted in objective research and reflect the input of key stakeholders throughout Kentucky.

Senator Schickel, who introduced judicial redistricting legislation in past legislative sessions, acknowledged that judicial redistricting will be difficult politically. He said he supports the efforts of Chief Justice Minton and is impressed by the NCSC report. It will be easy to allocate additional resources where they are needed; the hard part of the process will be to remove resources from an area. It is important that resources be reallocated properly. The General Assembly should be supportive of the process and be ready to "take some heat" because there will be difficult decisions ahead. Senator Bowen expressed appreciation to Senator Schickel for his role in promoting judicial redistricting.

When asked by Senator Bowen, Chief Justice Minton said he did not know the exact date of the last judicial redistricting, but it was probably at least 40 years before the court system was overhauled in 1976 with passage of the Judicial Article.

When Representative Bratcher asked about legal requirements for redrawing judicial district boundaries, Chief Justice Minton said the one person/one vote principle that governs the size of legislative districts has not been applied generally to judicial redistricting, as referenced in an opinion by former Chief Justice Palmore many years ago. There may be some correlation between population and caseload in an area, but that is not always the case. Areas of light population may have a heavier caseload. It is not a matter of constitutional imbalance but rather the wise use of resources and ensuring that the court of justice as much as possible provides a uniform level of service and delivery of justice across the commonwealth.

Senator Thayer complimented Senator Schickel for his past judicial redistricting legislation, which was a priority of the Senate in the last legislative session. He said the issue will likely be a priority in 2017 and that he is glad to see Chief Justice Minton and Senator Schickel approaching the issue in the same direction. When he asked why the realignment of districts would be delayed until 2022, Chief Justice Minton said that an elected official's term in office

cannot be modified before the term expires, and all circuit and district judgeships will be on the ballot in 2022. In order to avoid disruption in the system as much as possible, that would be the logical turning point for establishing new district boundaries and will likely be the recommended effective date when the redistricting plan is presented. In the meantime, the constitution grants the Chief Justice authority to make temporary changes if necessary. Redistricting will require a lot of adjustments. Commonwealth's attorneys, who have six-year terms and are on a different election cycle, will also be impacted. They have been involved in discussions throughout the process, and minimal disruption is anticipated for commonwealth's attorneys.

Responding to Representative St. Onge, Chief Justice Minton confirmed that additional judges would not be required and that no judges would be removed. He said he did not have the numbers with him regarding which districts have excessive caseloads. In districts with more judges than the implied need dictates, judges would perhaps become available for reassignment to areas with greater need. The primary reason for going through the difficult and challenging redistricting process would be to maintain a court system that best serves the commonwealth.

Responding to Representative Yonts, Chief Justice Minton said he did not know where the reduction in circuits would occur. Ms. Shepherd said there would be two fewer circuits, but about 6-8 circuit judges may be reallocated to family courts. The NCSC research study showed that there are too many district and circuit judges but not enough family court judges.

Representative Yonts asked whether the plan would impact the distance citizens travel to reach court. Chief Justice Minton said that because there are courthouses in every county, citizens would still use their local courthouse.

Representative Nicholls said that when he was a judge he served two counties. He asked whether the caseload study had considered judges' travel time. Chief Justice Minton responded affirmatively. He said there are several multi-courthouse circuits that require significant travel time by judges. Travel was considered important and was a factor in determining judges' workload.

Representative Graham said he knows that redistricting will be difficult politically. He has been thinking about an approach used in some states—that is, to form a commission that would have direct input in the redistricting process. It could include legislators, commonwealth's attorneys, members of the judicial branch, and others who work in the legal system. The purpose would be to remove politics from the process while ensuring that the right thing is done for the judicial branch. Chief Justice Minton said he appreciates that thought. He said there is a great emphasis to resist change and leave things as they are. It was felt that it would be easier to accomplish change through use of objective data. The workload study has attempted to do that. There were site visits to courts, and Delphi "think tank" groups were created to look at the data and determine whether the numbers made sense. Subsequently, JWAC, which included stakeholders from across the state, vetted

the information, and he is confident that the numbers arrived at are fair.

When asked by Senator Humphries, Chief Justice Minton said he believes the process has included input and good representation from all areas of the state. The far eastern and western areas were expected to be especially impacted by any analysis because they have suffered the greatest population loss of probably any place in the Commonwealth. JWAC included a larger representation from regions that would be impacted the most, which gave them a strong voice in shaping the NCSC report. He said that since he has served as chief justice, there has not been enough money to expand the state court system. He feels a great obligation to more effectively allocate resources and increase the number of family courts. This could not happen with the existing complement of judges.

Senator Humphries, based on concerns he has heard in some of the counties he represents, asked whether the redistricting plan could allow communities to “opt out” if they did not wish to go through the process of having a family court in their counties. Chief Justice Minton said he had not thought about local options for family court as a possibility but that there is an obligation to try to configure any system as much as possible to meet the needs of communities. The primary obligation is to ensure that the citizenry is appropriately serviced and that every citizen in the Commonwealth has equal access to the courts. Answering another question from Senator Humphries, he said that factors such as potential growth and decreases in population were considered when establishing 1.4 implied judicial need as the cutoff for determining the appropriate number of judges.

Representative Overly said that judicial redistricting is desperately needed and that a data driven approach was the fairest way to approach the task. She appreciates the fact that JWAC included members of the legislature and also spoke of her desire that family court will ultimately be available to all Kentuckians. Chief Justice Minton said he hopes there will be sentiment in the General Assembly to make that happen. He noted that Representative Nicholls and Senator Whitney Westerfield had participated in JWAC.

Senator Robinson suggested that the misdemeanor/felony crime classifications should be reexamined; that administrative and staffing changes are needed in the court system; and that the caseload imbalance could be improved through policy change and statutory or administrative regulation amendment. Chief Justice Minton and Senator Robinson agreed that they could meet later to discuss these matters, and Senator Bowen thanked Senator Robinson for his input on the issues.

Senator Bowen asked about the potential for bringing family court to Daviess County, his home county. Chief Justice Minton said the redistricting plan that is proposed would try to accomplish expansion of family court to meet the implied need for family court in as many counties as possible, including Daviess County.

Senator Bowen thanked Chief Justice Minton and Senator Schickel for their testimony and for the

work they have done.

#### **Workforce Investment Transparency**

Guest speakers were Brad Montell, Deputy Secretary; Bridget Papalia, General Counsel; and Andy Hightower, Senior Policy Advisor - Education and Workforce Development Cabinet; and Ashli Watts, Vice President of Public Affairs, Kentucky Chamber of Commerce.

Ms. Watts said that over the past few years, members of the Kentucky Chamber have expressed growing concern about transparency and accountability relating to the expenditure of public funds for workforce programs. Some of those concerns have focused on the distribution of funds by Kentucky’s area development districts (ADDs). Transparency and accountability are key to ensuring that nearly \$175 million of ADD funds are distributed correctly and effectively. Many ADDs do an excellent job handling these public funds, but there are well documented concerns with some of these entities. Passage of legislation to ensure that all ADDs operate properly will not only help restore public trust but also help improve workforce training programs that are urgently needed in Kentucky. She said that in 2016, legislation sponsored by Representative Susan Westrom (introduced as HB 438) passed both the House and Senate but died the last night of session. The Chamber is committed to advocating for this important legislation again in the upcoming session. The issue has been vetted and has support across party lines.

Ms. Watts said the Chamber looks forward to working on this effort with Deputy Secretary Montell, the State Government Committee, leaders of the employer community, the area development districts, workforce training providers, and others to ensure that Kentucky has strong and effective programs that will be made even better with increased transparency and accountability.

Mr. Montell said the Cabinet appreciates the efforts of Ms. Watts and the Chamber and members of the General Assembly for their leadership and efforts in this important issue. The Cabinet has been working diligently to address the concerns and to develop appropriate guidelines for oversight and compliance of ADDs so that they will be able to provide much needed services with the available funding and build strong workforces in Kentucky communities.

He said there was public outcry after then Auditor of Public Accounts Adam Edelen released a scathing examination of one of the state’s ADDs in March 2014. That report found that the ADD engaged in activities that were beyond its statutory authority and/or activities that appeared to create conflicts of interest. The ADD did not report possible criminal violations, violated procurement policies, and did not have internal controls in place to prevent excessive and unnecessary expenditures, including travel and business reimbursement. Significant noncompliance was identified relating to management of federal grants. Bonuses were paid to employees with grant funds. The ADD utilized an outdated accounting system, leading to a lack of internal controls over the system.

The report was not an indictment of all ADDs. The Cabinet appreciates the partnership it shares

with the ADDs and acknowledges the vital work they are doing. Many are doing an outstanding job. Since issuance of the Auditor’s report the Cabinet has established an 18-month corrective action plan with the ADD, the local workforce investment board, and the chief local elected officials. As part of that corrective action plan the Office of Employment and Training (OET) conducted outside monitoring and analysis of documentation to determine whether funds were improperly expended or inadequately documented. A final determination was issued by the Cabinet earlier in 2016 that included multiple findings and demanded repayment of approximately \$900,000 in funds for which proper documentation could be found. The final determination has been challenged by the ADD and is currently before an administrative hearing officer. The Cabinet has also instituted new drawdown procedures in its interaction with all ADDs across the state. It now requires that all supporting documentation be provided to the Cabinet for review and in advance of any distribution of funds. The Cabinet is in the process of determining what regulatory changes can be made and intends to introduce those changes. Subsequent to issuance of the report, activities of another ADD are now making headlines. It is undeniable that these issues need to be addressed both statutorily and through administrative regulation to safeguard against activities like those in question. The Cabinet joins with the Chamber in calling for increased transparency and will seek statutory language to clarify conflicts of interest between board members, boards, fiscal agents, and service providers. The language should also clarify federal and state procurement expectations and additional reporting measures that will increase accountability. The Cabinet looks forward to working with the State Government Committee and with individual members in the House and Senate to draft the needed legislation.

Senator Bowen said that as society becomes more complex, and as the services provided and their funding become more complex, there is no question that taxpayers are demanding more transparency in government and all its subdivisions.

Representative Yonts asked whether there is any evidence of criminal activity in the investigations that have occurred and, if so, what is being done about it. Ms. Papalia said the Cabinet internally has been looking at whether there have been criminal violations, and questions have been referred to the Office of the Attorney General. At this time she is not able to comment on the investigations. Responding to further questions from Representative Yonts, Ms. Papalia said it is fair to say that investigation of the ADDs is ongoing. However, inappropriate behavior at additional ADDs has not been specifically identified at this point. The Cabinet is continuing to monitor ADDs across the state. A program implemented on July 1, 2016, requires submission in advance of receipts, invoices and reimbursement requests, and the documentation is being closely reviewed by cabinet personnel before funds are distributed.

Representative Yonts said he was told that the largest county in the Barren River had dissolved its connection with the ADD and that some personnel who remained supportive of the ADD were rewarded

with trips. Ms. Papalia said that had not been brought to her attention but that she will look into it.

When Representative Smart asked whether outcome data is required of program participants, Ms. Papalia said they are in the process of identifying performance measures for the ADDs, for reporting to the Cabinet on a regular basis. They are currently awaiting federal guidance on how several of the grant funds can be administered under WIOA (Workforce Innovation and Opportunity Act). New regulations were issued earlier in 2016; implementation guidance is expected to be received sometime in November. It should include performance measures required by the federal government, which will be incorporated into those at the state level. Some amount of performance review was previously required under the Workforce Investment Act and WIOA through the monitoring process.

Representative Smart asked Mr. Montell whether his new position in the executive branch will enhance his pension. She said she does not intend this as a personal question but because she knows he has been a champion for transparency in the retirement systems. Mr. Montell said his pension is not being enhanced and that he is glad to explain the reason why. To avoid reciprocity between the two systems, he is postponing receipt of benefits in the legislative plan until age 62. If he began receiving his legislative retirement prior to age 62, the early retirement penalty would reduce his legislative benefit. He said a signed notarized statement is in his personnel file, stating that he will not jointly take retirement from both systems on the same date. This will prevent reciprocity between the two systems. Representative Smart thanked him for the explanation and said she is proud of him. Senator Bowen said he appreciates the good question and the good explanation.

Representative Meeks complimented Mr. Montell for the honest debate and dialogue they had shared as legislators. He went on to say that he was in possession of an October 21 e-mail that states that the OET regional program manager for the northern Kentucky area will be adding the KentuckianaWorks area—which is in Jefferson County—to her area of responsibility. He questioned whether this would be best for governing and regulating activity in Jefferson County. [Note: KentuckianaWorks, an agency of Louisville Metro Government, is the Workforce Development Board for the Greater Louisville region consisting of Jefferson, Bullitt, Henry, Oldham, Spencer, Shelby and Trimble counties. Funding is primarily provided by the U.S. Department of Labor and the WIOA, through the Kentucky Education and Workforce Development Cabinet and Louisville Metro Government.]

Mr. Hightower said that due to the retirement of a state employee and the hiring freeze put in place in early 2015 due to budgetary issues remaining from the previous administration, responsibilities are being shared in order to provide the best service. The operators of KentuckianaWorks will continue to provide direction and choose policy. Control will remain local. In accordance with the Personnel Cabinet organizational chart, duties are being shared in order to provide the right organizational leadership while complying with the hiring freeze. The Cabinet

seeks to strengthen local control across the workforce system in Kentucky. To the extent possible, control is in the hands of the Workforce Development Board, which consists of local citizens and local business and labor leaders. Representative Meeks said his concern relates to local management and local supervision. He would appreciate it if Mr. Hightower would provide more information about this matter and share the information with the entire Jefferson County delegation. Mr. Hightower said he would be happy to.

Senator Raque Adams said, as a member of the Jefferson County delegation, she is not aware of the e-mail and would like to receive some clarity on the matter. She and Representative Meeks agreed to meet later to discuss it in person.

When Representative Moffett asked about the amount of funding for the ADDs, Mr. Hightower said approximately \$23-\$26 million in federal WIOA funds comes through the Cabinet to its local partners. Local partners are not all ADDs.

Senator Thayer defended the role of northern Kentucky as a strong economic engine in the Commonwealth. He said that repeal of legislative/executive retirement reciprocity has been a priority of the Senate for a number of years. He complimented Mr. Montell for his stance on reciprocity and congratulated him on his new position in the executive branch.

Representative Graham also congratulated Mr. Montell and said he had served his constituents well as a legislator.

Senator Bowen reminded the committee of the opportunity to participate in ADD meetings; by doing so, they can better educate themselves on activities and issues relating to the ADDs.

With business concluded, the meeting was adjourned at 2:38 p.m.

## **INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM**

### **Minutes of the 4th Meeting of the 2016 Interim**

October 20, 2016

#### **Call to Order and Roll Call**

The 4th meeting of the Interim Joint Committee on Economic Development and Tourism was held on Thursday, October 20, 2016, at 11:00 AM, at the Kentucky Horse Park. It was a joint meeting with the Interim Joint Committee on Labor and Industry and the Interim Special Committee on Tourism Development. Senator Alice Forgy Kerr, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative John Short, Co-Chair; Senators Perry B. Clark, Chris Girdler, and Jimmy Higdon; Representatives Lynn Bechler, Kevin D. Bratcher, Leslie Combs, Tim Couch, Jim DeCesare, Mike Denham, Jeffery Donohue, Daniel Elliott, Richard Heath, Dennis Horlander, James Kay, Dennis Keene, Kim King, Brian Linder, Tom McKee, Terry Mills, Ruth Ann Palumbo, Arnold Simpson, Fitz Steele, and Russell Webber.

Guests: Laura Prewitt, Executive Director,

Kentucky Horse Park; Jonathan Lang, Deputy Executive Director, Kentucky Horse Park; Hood Harris, President, AT&T Kentucky; Megan McLain, Transportation Cabinet; Gwen Pinson, Finance and Administration Cabinet; Leigh Powers, Tourism, Arts and Heritage Cabinet.

LRC Staff: John Buckner, Chip Smith, and Karen Brady.

#### **Minutes**

A motion was made and seconded to approve the minutes from both the August and September meetings and carried by voice vote.

#### **Kentucky Horse Park**

Laura Prewitt gave an overview of the Horse Park, which opened in 1978. The Horse Park has 77 full-time employees, is a true working horse farm, and has over 900,000 visitors annually. At 1,224 acres, the Horse Park is considered one of the best equestrian venues in the world. The park hosts over 200 equestrian events a year, but also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park also offers concerts, can serve as a wedding venue, and can host receptions, races, and other various events.

Ms. Prewitt discussed the Horse Park as a brand and the park's future. Marketing efforts focus on Man O' War's 100 year anniversary, a run-walk club, cemetery crawl, education outreach, and riding camps.

Ms. Prewitt and other staff have compiled a list of \$10 million in capital projects for reinvestment in core park facilities. These projects are important for the park to maintain certain events (such as the Rolex) and attract new ones. The park is trying to do a better job of identifying group sales events.

The Horse Park wants to create a very good guest experience so that visitors will want to return. The park is focusing on great customer service.

Ms. Prewitt discussed the Legacy Trail, which has been expanded from downtown Lexington to the Kentucky Horse Park and extends to Scott County. The trail is a great tourist attraction for the community.

In response to a question from Senator Higdon, Ms. Prewitt said there is a problem with the boilers in Alltech Arena. Seven boilers are in the process of being replaced. Ms. Prewitt stated that the Horse Park has energy management savings policies.

Responding to a question from Representative Denham, Ms. Prewitt spoke discussed the Horse Park's main competition, Tryon International Equestrian Center in North Carolina. Tryon is an hour from any airport, which is a major drawback.

In response to questions from Representative Smart, Ms. Prewitt stated that the Horse Park has always had a parking fee from which the park receives a large amount of revenue. There are four restaurants at the park that are open seasonally. She discussed the campground and said its infrastructure is 40 years old. The campground needs electrical and water upgrades to be competitive.

Responding to a question from Representative Palumbo, Ms. Prewitt stated the Man O' War festival will start March 15, 2017 and end November 6, 2017.

#### **AT&T Infrastructure and Investment Update**



Hood Harris stated that, two years ago, the General Assembly took the first step towards updating Kentucky's outdated telecommunications laws. 2015 HB 152 passed to spur telecom modernization with the goal of increasing investment in high-speed internet infrastructure and job creation.

By the end of 2016, AT&T will have expanded its fiber-optic network to bring more Kentuckians access to the latest in 4G wireless services through the construction of 32 new cell sites. In addition, AT&T has made over 750 enhancements to existing sites. AT&T coordinated with the Kentucky Department of Education to bring fiber-based, high-speed internet to all 173 school districts in Kentucky. This established Kentucky as the first state to meet new higher speed standards for school districts.

AT&T has certified 15 industrial parks across the state as AT&T Fiber Ready, which is a designation that gives economic development officials a huge advantage by raising awareness about the available fiber infrastructure for prospective industries and site selection consultants.

Through participation in the FCC Connect America Fund, AT&T is aggressively deploying high-speed internet capable facilities in rural parts of the state. Over the next six years, high-speed internet will be brought to 84,000 new customer locations in rural Kentucky.

FCC data shows that 82 percent of Kentucky voice connections are now over something other than a traditional landline.

In response to a question from Representative Keene, Mr. Harris stated that the FCC informs AT&T about areas in the state that are underserved or unserved for internet service.

In response to a question from Representative Bechler, Mr. Hood stated that AT&T is required to meet 40 percent of the locations that the FCC has identified as being underserved or unserved by the end of next year, and is required to meet all of the locations in the three years following that.

Responding to a question from Representative Miller, Mr. Hood discussed about a program AT&T has rolled out named Access. Under the program, if an individual is on the Supplemental Nutrition Assistance Program, Access provides 10 meg service for \$10/month, or 5 meg for \$5/month. There is no installation fee or equipment fee, and the program includes a Wi-Fi router.

In responding to a question from Representative Tipton, Mr. Hood explained that part of the criteria for which areas get prioritized are consumer demand and existing network infrastructure.

Responding to a question from Representative Nicholls, Mr. Hood stated that utilizing P3 legislation for state parks has been reviewed but there are no plans for it.

In responding to a question from Representative Short, Mr. Hood stated that AT&T is communicating with the administration and SOAR to find ways to use the infrastructure already in place in eastern Kentucky. AT&T is in the process of building three new towers on the Mountain Parkway.

#### **P3 Legislation**

Megan McLain, Gwen Pinson, and Leigh Powers gave an overview on P3 legislation. Benefits of P3s

include efficiency, private industry expertise, reduced risk and cost to taxpayers, and satisfying a public need or benefit. Any agency that uses P3 projects has the ultimate responsibility of ensuring that all of the qualifications are met.

Various criteria are used to determine if a P3 is the most advantageous method of awarding and administering a capital project or other contract. The first set of criteria are qualitative considerations, which include looking at risk allocation, timeliness and efficiency, benefits gained/not gained with a P3, public interest, and the urgency of the project.

There are three regulations related to the Transportation Cabinet. One is regarding the procurement method for P3s, one is regarding unsolicited proposals, and one is regarding how to decide if a P3 is the correct method for a project. Additional transportation qualitative considerations are whether the P3 provides additional options for financing, whether it is complies with federal requirements, and whether it will have long term effects on toll rates and excess toll revenue.

P3 procurements will be conducted pursuant to competitive negotiation (KRS 45A.080). The Transportation Cabinet's process is slightly different.

Another aspect of P3 legislation is the ability for private industry to submit an unsolicited proposal. A valid unsolicited proposal must be independently generated, be prepared without government involvement, and include sufficient detail to determine benefits to an agency or local government.

In response to a question from Representative Smart, Ms. Pinson stated that the federal government has used P3s for many of the national parks and that they have been very successful.

In response to a question from Representative Denham, Ms. Pinson said she could not discuss any specific unsolicited proposals that state agencies have received.

Responding to a question from Senator Clark, Ms. Powers and Ms. Pinson discussed the handling of state employees under P3 and privatization scenarios. Before an agency can undertake a P3 project that would involve displacement of ten or more employees, the privatization analysis would have to be gone through first. Representative Combs stated that, in these scenarios, the number one goal is not to displace state employees. The intent is actually that employees will be better off and have more opportunities.

There being no further business, the meeting adjourned at 12:45 p.m.

## **TOURISM AND DEVELOPMENT**

### **Minutes of the 3rd Meeting of the 2016 Interim**

October 20, 2016

#### **Call to Order and Roll Call**

The 3rd meeting of the Tourism and Development Subcommittee was held on Thursday, October 20, 2016, at 11:00 AM, at the Kentucky Horse Park. It was a joint meeting with the Interim Special Committees on Economic Development and Tourism and Labor and Industry. Representative Rita Smart, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Chris Girdler, Co-Chair; Representative Rita Smart, Co-Chair; Senators Alice Forgy Kerr and Johnny Ray Turner; Representatives James Kay, Jerry T. Miller, Lewis Nicholls, and John Short.

**Citizen Members:** Vicki Fitch, Janette Marson, Lori Saunders, Prakash Maggan, and Mitchell Pearson.

**Guests:** Laura Prewitt, Executive Director, Kentucky Horse Park; Jonathan Lang, Deputy Executive Director, Kentucky Horse Park; Hood Harris, President, AT&T Kentucky; Megan McLain, Transportation Cabinet; Gwen Pinson, Finance and Administration Cabinet; Leigh Powers, Tourism, Arts and Heritage Cabinet.

**LRC Staff:** Karen Brady, John Buckner, and Chip Smith.

#### **Minutes**

A motion was made and seconded to approve the minutes from both the July and August meetings and carried by voice vote.

#### **Kentucky Horse Park**

Laura Prewitt gave an overview of the Horse Park, which opened in 1978. The Horse Park has 77 full-time employees, is a true working horse farm, and has over 900,000 visitors annually. At 1,224 acres, the Horse Park is considered one of the best equestrian venues in the world. The park hosts over 200 equestrian events a year, but also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park also offers concerts, can serve as a wedding venue, and can host receptions, races, and other various events.

Ms. Prewitt discussed the Horse Park as a brand and the park's future. Marketing efforts focus on Man O' War's 100 year anniversary, a run-walk club, cemetery crawl, education outreach, and riding camps.

Ms. Prewitt and other staff have compiled a list of \$10 million in capital projects for reinvestment in core park facilities. These projects are important for the park to maintain certain events (such as the Rolex) and attract new ones. The park is trying to do a better job of identifying group sales events.

The Horse Park wants to create a very good guest experience so that visitors will want to return. The park is focusing on great customer service.

Ms. Prewitt discussed the Legacy Trail, which has been expanded from downtown Lexington to the Kentucky Horse Park and extends to Scott County. The trail is a great tourist attraction for the community.

In response to a question from Senator Higdon, Ms. Prewitt said there is a problem with the boilers in Alltech Arena. Seven boilers are in the process of being replaced. Ms. Prewitt stated that the Horse Park has energy management savings policies.

Responding to a question from Representative Denham, Ms. Prewitt spoke discussed the Horse Park's main competition, Tryon International Equestrian Center in North Carolina. Tryon is an hour from any airport, which is a major drawback.

In response to questions from Representative Smart, Ms. Prewitt stated that the Horse Park has

always had a parking fee from which the park receives a large amount of revenue. There are four restaurants at the park that are open seasonally. She discussed the campground and said its infrastructure is 40 years old. The campground needs electrical and water upgrades to be competitive.

Responding to a question from Representative Palumbo, Ms. Prewitt stated the Man O' War festival will start March 15, 2017 and end November 6, 2017.

#### **AT&T Infrastructure and Investment Update**

Hood Harris stated that, two years ago, the General Assembly took the first step towards updating Kentucky's outdated telecommunications laws. 2015 HB 152 passed to spur telecom modernization with the goal of increasing investment in high-speed internet infrastructure and job creation.

By the end of 2016, AT&T will have expanded its fiber-optic network to bring more Kentuckians access to the latest in 4G wireless services through the construction of 32 new cell sites. In addition, AT&T has made over 750 enhancements to existing sites. AT&T coordinated with the Kentucky Department of Education to bring fiber-based, high-speed internet to all 173 school districts in Kentucky. This established Kentucky as the first state to meet new higher speed standards for school districts.

AT&T has certified 15 industrial parks across the state as AT&T Fiber Ready, which is a designation that gives economic development officials a huge advantage by raising awareness about the available fiber infrastructure for prospective industries and site selection consultants.

Through participation in the FCC Connect America Fund, AT&T is aggressively deploying high-speed internet capable facilities in rural parts of the state. Over the next six years, high-speed internet will be brought to 84,000 new customer locations in rural Kentucky.

FCC data shows that 82 percent of Kentucky voice connections are now over something other than a traditional landline.

In response to a question from Representative Keene, Mr. Harris stated that the FCC informs AT&T about areas in the state that are underserved or unserved for internet service.

In response to a question from Representative Bechler, Mr. Hood stated that AT&T is required to meet 40 percent of the locations that the FCC has identified as being underserved or unserved by the end of next year, and is required to meet all of the locations in the three years following that.

Responding to a question from Representative Miller, Mr. Hood discussed about a program AT&T has rolled out named Access. Under the program, if an individual is on the Supplemental Nutrition Assistance Program, Access provides 10 meg service for \$10/month, or 5 meg for \$5/month. There is no installation fee or equipment fee, and the program includes a Wi-Fi router.

In responding to a question from Representative Tipton, Mr. Hood explained that part of the criteria for which areas get prioritized are consumer demand and existing network infrastructure.

Responding to a question from Representative Nicholls, Mr. Hood stated that utilizing P3 legislation for state parks has been reviewed but there are no

plans for it.

In responding to a question from Representative Short, Mr. Hood stated that AT&T is communicating with the administration and SOAR to find ways to use the infrastructure already in place in eastern Kentucky. AT&T is in the process of building three new towers on the Mountain Parkway.

#### **P3 Legislation**

Megan McLain, Gwen Pinson, and Leigh Powers gave an overview on P3 legislation. Benefits of P3s include efficiency, private industry expertise, reduced risk and cost to taxpayers, and satisfying a public need or benefit. Any agency that uses P3 projects has the ultimate responsibility of ensuring that all of the qualifications are met.

Various criteria are used to determine if a P3 is the most advantageous method of awarding and administering a capital project or other contract. The first set of criteria are qualitative considerations, which include looking at risk allocation, timeliness and efficiency, benefits gained/not gained with a P3, public interest, and the urgency of the project.

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P3 procurements will be conducted pursuant to competitive negotiation (KRS 45A.080). The Transportation Cabinet's process is slightly different.

Another aspect of P3 legislation is the ability for private industry to submit an unsolicited proposal. A valid unsolicited proposal must be independently generated, be prepared without government involvement, and include sufficient detail to determine benefits to an agency or local government.

In response to a question from Representative Smart, Ms. Pinson stated that the federal government has used P3s for many of the national parks and that they have been very successful.

In response to a question from Representative Denham, Ms. Pinson said she could not discuss any specific unsolicited proposals that state agencies have received.

Responding to a question from Senator Clark, Ms. Powers and Ms. Pinson discussed the handling of state employees under P3 and privatization scenarios. Before an agency can undertake a P3 project that would involve displacement of ten or more employees, the privatization analysis would have to be gone through first. Representative Combs stated that, in these scenarios, the number one goal is not to displace state employees. The intent is actually that employees will be better off and have more opportunities.

There being no further business, the meeting adjourned at 12:45 p.m.

## **INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 20, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Labor and Industry was held on Thursday, October 20, 2016, at 11:00 AM, at the Kentucky Horse Park in the Alltech Arena. This was a joint meeting with the Interim Joint Committee on Economic Development and Tourism and the Special Interim Committee on Tourism Development. Senator Alice Forgy Kerr, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Alice Forgy Kerr, Co-Chair; Senators Perry B. Clark, Chris Girdler, and Jimmy Higdon; Representatives Lynn Bechler, Linda Belcher, Larry Clark, Jeffery Donohue, Jim DuPlessis, Dennis Horlander, Joni L. Jenkins, Adam Koenig, Mary Lou Marzian, Jerry T. Miller, Terry Mills, Tom Riner, John Short, Jim Stewart III, and James Tipton.

**Guests:** Laura Prewitt, Director, Kentucky Horse Park; Jonathan Lang, Deputy Executive Director, Kentucky Horse Park; Hood Harris, President, AT&T Kentucky; Leigh Powers, General Counsel and Executive Director of the Office of Legal Affairs, Kentucky Tourism, Arts, and Heritage Cabinet; Megan McLain, Assistant General Counsel, Kentucky Transportation Cabinet; Gwen Pinson, General Counsel, Kentucky Finance and Administration Cabinet.

**LRC Staff:** Carla Montgomery, John Buckner, Adanna Hydes, Andrew Manno, Chip Smith, Sasche Allen, and Karen Brady.

#### **Approval of Minutes**

A motion to approve the minutes of the August 18, 2016 meeting was made by Representative Donohue, seconded by Representative Koenig, and approved by voice vote.

A motion to approve the minutes of the September 14, 2016 meeting was made by Representative Donohue, seconded by Representative Koenig, and approved by voice vote.

#### **Kentucky Horse Park**

Laura Prewitt gave an overview of the Horse Park, which opened in 1978. The Horse Park has 77 full-time employees, is a true working horse farm, and has over 900,000 visitors annually. At 1,224 acres, the Horse Park is considered one of the best equestrian venues in the world. The park hosts over 200 equestrian events a year, but also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park also offers concerts, can serve as a wedding venue, and can host receptions, races, and other various events.

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In responding to a question from Representative Tipton, Mr. Hood explained that part of the criteria for which areas get prioritized are consumer demand and existing network infrastructure.

Responding to a question from Representative Nicholls, Mr. Hood stated that utilizing P3 legislation for state parks has been reviewed but there are no plans for it.

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In response to a question from Representative Denham, Ms. Pinson said she could not discuss any specific unsolicited proposals that state agencies have received.

Responding to a question from Senator Clark, Ms. Powers and Ms. Pinson discussed the handling of state employees under P3 and privatization scenarios. Before an agency can undertake a P3 project that would involve displacement of ten or more employees, the privatization analysis would have to be gone through first. Representative Combs stated that, in these scenarios, the number one goal is not to displace state employees. The intent is actually that employees will be better off and have more opportunities.

There being no further business, the meeting adjourned at 12:45 p.m.

## **INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**

### **Minutes of the Sixth Meeting of the 2016 Interim**

November 2, 2016

#### **Call to Order and Roll Call**

The sixth meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, November 2, 2016, at 1:00 p.m. at the Galt House, Rivue Tower, Archibald Room, Third Floor, 140 North 4<sup>th</sup> Street, Louisville, Kentucky. Senator Julie Raque Adams, Co-Chair, called the meeting to order at 1:12 p.m., and the secretary called the roll.

Present were:

**Members:** Senator Julie Raque Adams, Co-Chair; Representative Tom Burch, Co-Chair; Senators Ralph Alvarado, Tom Buford, Danny Carroll, Julian M. Carroll, Jimmy Higdon, Alice Forgy Kerr, and Reginald Thomas; Representatives George Brown Jr., Joni L. Jenkins, Mary Lou Marzian, Reginald Meeks, Darryl T. Owens, David Watkins, Russell Webber, and Susan Westrom.

**Guests:** Betsy Johnson, President, Kentucky Association of Health Care Facilities; Terry Skaggs, Chief Financial Officer, Wells Health Systems; Eugene Hargis, Melodie Bingham and Rhonda Houchens, Hargis & Associates; Debra Finneran, Masonic Homes Kentucky; Sheila Schuster, Kentucky Mental Health Coalition; Gail McGibbs, Hillcrest Health & Rehabilitation; Melissa Bentley and Jill Raymen, Preferred Care; Rebecca Cooley, Windsor Care Center; Rick Hendrickson, Redbanks Colonial Terrace; Kathy Meadows, Emily Jones-Gray, and Mary Akins, Mountain Manor of Paintsville; Teresa Barnett, Friendship Health & Rehabilitation; Cory Meadows, Kentucky Medical Association; Maribeth Shelton and Vickie Dyer, Cumberland Valley Manor; Kathy Hall and Michelle Jarboe, Management Advisors; Melissa Sparks, Hyden Health and Rehabilitation; Brad Woods, Crystal Hamilton, and Billie Brewer, Bardstown Health and Rehabilitation; Jackie Carlin, Rivers Edge Nursing and Rehabilitation; Stephen Raines and Tracie Branham, Preferred Care Partners; Laura Greekmore, Williamsburg Health & Rehabilitation; Kem Delaney-Ellis, Norton



Healthcare; Chris Chirumbero, Amanda Jackson, and John Muller, Carespring; Gwen Cooper, Centerstone; Sam Hutchinson, Life Care; Susan Arnold, Management Advisor; Brian Jagers, Somerwoods; Todd Lacksourn, OTSUKA; Joe Mashni, Med Care; Karen King, Lee Specialty Clinic; Yvonne W. Cook and Tammy London, Glenview Health Care; Thomas Davis, Golden Living; Rebecca Eubanks, Genesis; Dorothy (Lisa) Biddle-Riffer, Scared Heart Home; Benita Dickenson, Preferred Care Management; Lainie Brinkley, Brighton Cornerstone, Sarah S. Nicholson, Kentucky Hospital Association; Truly Pennington, Grand Haven; Lisa Johnson and Melinda Calaway, Kentucky Partners Management Group; Crystal Janes, Green Acres Health Care; Kim Nay, Woodland Oaks; Sherri Craig, KentuckyOne Health; Janine Lehman and Greg Wells, Wells Health Systems; David McKenzie, McKenzie Healthcare; Mark Bowman and Martha Workman, Kentucky Department of Veterans Affairs; Amelia Prater, Wolfe County Health & Rehabilitation; Michelle Essex, Loretto Mother House; Janie Cunningham, Bradford Square; Cathy Hamblen, Carespring Health Care; Rebecca Hamblin, Corbin Health & Rehabilitation; JoAnne Tinsley, MedCare Pharmacy; Steve Bruin, citizen; Sally Baxter, Simpson Lane; Terri Myers and Sherri Likens, Glenview Health Care' Shannon Spencer, Bridgepoint Center; and Steve McKinley, Crestview Center.

LRC Staff: DeeAnn Wenk, Ben Payne, Jonathan Scott, Sarah Kidder, Becky Lancaster, and Gina Rigsby.

#### **Presentation by the Kentucky Association of Health Care Facilities**

Betsy Johnson, President, Kentucky Association of Health Care Facilities, stated that the Kentucky Association of Health Care Facilities (KAHCF) was established in 1954 and is the primary association that represents propriety and nonproprietary nursing facilities and personal care homes across the Commonwealth. KAHCF provides a wide variety of services to member facilities including legislative and regulatory activities, professional development, statewide recognition programs, media relations, research, and advocacy initiatives. There are 281 nursing facilities and 88 personal care homes currently serving over 36,000 residents. Nursing facilities and personal care homes provide over 30,000 Kentucky jobs. There is at least one nursing facility located in all 120 counties. Nursing facilities provide \$200 million in state and local taxes. Kentucky has the highest level of acuity of all 50 states in long-term care settings. Long-term care is now a major provider of in-patient and out-patient rehabilitative services. Today, the long-term care population is younger and stays for a shorter period of time due to the availability of short-term rehabilitation services in long-term care. Many individuals receiving services from long-term care facilities return to their own home after a rehabilitative stay. Kentucky is required to administer the Medicaid program in compliance with the Federal Medicaid Act. Federal law requires Medicaid applications for the disabled to be determined within 90 days and 45 days for all other applicants.

Terry Skaggs, Chief Financial Officer, Wells Health Systems, and Vice-Chair of the Board of

Directors of the KAHCF, stated that according to the 2016 KAHCF Medicaid pending survey, the projected Medicaid pending balance for the participating nursing facilities that accept Medicaid was \$3,741,554 in February 2015 and \$20,751,294 in September 2016. Families and responsible parties have returned to the model of using the local DCBS offices to process eligibility. Recertifications for residents already in nursing facilities as a result of system issues have been extended through 2016. As long as billing efforts are made, providers will be allowed to bill past the one-year timely filing deadline. KAHCF asked for Medicaid approval to provide a Medicaid Payment Advance for those facilities who qualify to alleviate the adverse effect of the Medicaid pending issue. To qualify for a Payment Advance, a provider must have Medicaid pending claims over 60 days equal to at least \$250 per nursing facility bed. Repayments for all providers would begin six months following the receipt of the last payment advance due in six equal monthly installments.

Ms. Johnson stated that all of Kentucky's bordering states have enacted some form of medical liability reform legislation even though Kentucky has not enacted the same legislation. A 2015 Long Term Care General Liability and Professional Liability Actuarial Analysis showed that Kentucky's loss rate has increased from \$2,150 in 2007 to a projected \$9,350 in 2015. Since 2008, claim severity in Kentucky has been above \$340,000 per claim. In 2014, the loss rate as a percentage of the per diem Medicaid reimbursement rate was 14.66 percent. Kentucky's high cost of liability may be related to its lack of restrictions on tort actions. The state Constitution prohibits limits on non-economic damages and there are no statutes concerning qualifications of expert witnesses, certificates of merit, pre-trial alternative dispute resolution, or limits on attorney fees. Legislation introduced in the 2016 Regular Session included Senate Bill 6 relating to medical review panels, Senate Bill 2015 relating to truth in advertisement, and House Bill 554 relating to medical malpractice.

Mr. Skaggs stated that long-term care facilities are reimbursed by Kentucky's Medicaid program through a price-based system designed to accurately assess each resident's care needs and allow the state to accurately predict nursing facility costs. Nursing providers have been paid one-tenth of one percent for inflation for the past three years. As a result, the KAHCF proposed a provider tax increase to fund an inflationary adjustment that was shared with the Department for Medicaid Services. The proposal assumes that the entire tax increase and federal match are used to pay for the proposed inflationary increase and reimburse the Medicaid share of the tax. The annual impact of the provider tax proposal would increase taxes by 62 cents per non-Medicare day, providing a total of \$4.4 million in taxes. With a federal match, it would generate \$14.9 million in funding annually, allowing for an inflationary increase of 1.1 percent for providers in addition to the reimbursement of the Medicaid share of the tax. The KAHCF provider tax proposal would be implemented on November 1, 2016 and end on June 30, 2017.

In response to a question by Senator Adams, Mr.

Skaggs stated that the provider tax proposal would help with costs.

In response to questions by Senator Danny Carroll, Mr. Skaggs stated that the provider tax would increase the Medicaid rate for nursing facilities by 1.1 percent, but the state would not be out any money.

In response to questions by Senator Thomas, Mr. Skaggs stated that KAHCF is proposing to increase the provider tax imposed on healthcare facilities up to the maximum allowed to help increase the federal Medicaid match. The tax revenues would go into the general fund to pay for the state Medicaid reimbursement match and then would be reimbursed to healthcare facilities.

In response to a question by Representative Marzian, Mr. Skaggs stated that profits vary by facility. He will obtain the information and provide it to the committee.

In response to questions by Representative Burch, Mr. Skaggs stated that in a 100-bed facility, the salary of the lowest paid worker and the CEO would vary by facility. Ms. Johnson stated that healthcare facilities, for the most part, are dependent upon Medicaid funding, and Medicaid reimbursement has not kept up with inflation costs and has made it difficult to attract and keep qualified workers. The Certificate of Need (CON) has been a huge issue.

In response to questions by Senator Alvarado, Mr. Skaggs stated that the average number of beds per facility is approximately 100. Ms. Johnson stated that KAHCF has not collected information on the amount of lawsuits filed against nursing facilities. Nursing facilities are the most regulated healthcare provider. Kentucky needs to enact truth in advertising laws. Senator Alvarado requested that the KAHCF provide information on the number of lawsuits and the amounts paid out by nursing home providers.

In response to questions by Senator Thomas, Mr. Skaggs stated that if one facility is closed one facility can be built with the same number of beds. The price-based system was designed to be updated periodically and require an annual inflationary adjustment. Ms. Johnson stated that there is a difference between an assisted living facility and a nursing facility.

In response to a question by Representative Westrom, Mr. Skaggs stated that it varies between facilities, but 10 percent to 15 percent of residents have private pay insurance.

#### **Minutes**

A motion to approve the minutes of the October 19, 2016 meeting was made by Senator D. Carroll, seconded by Senator Higdon, and approved by voice vote.

#### **Adjournment**

There being no further business, the meeting was adjourned at 2:02 p.m.

## **INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS**

### **Minutes of the 5th Meeting**

#### **of the 2016 Interim**

October 14, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Licensing and Occupations was held on Friday, October 14, 2016, at 10:00 AM, in Room 129 of the

Capitol Annex. Representative Dennis Keene, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator John Schickel, Co-Chair; Representative Dennis Keene, Co-Chair; Senators Joe Bowen, Tom Buford, Julian M. Carroll, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Christian McDaniel, Dan “Malano” Seum, and Damon Thayer; Representatives Tom Burch, Denver Butler, Larry Clark, Jeffery Donohue, Daniel Elliott, Joni L. Jenkins, Adam Koenig, Reginald Meeks, Charles Miller, Jerry T. Miller, David Osborne, Ruth Ann Palumbo, Sal Santoro, Arnold Simpson, Diane St. Onge, and Susan Westrom.

**Guests:** Representative John Carney; Jessica Estes, DNP, APRN-NP, Vice President, Coalition of Nurse Practitioners and Nurse Midwives; Nathan Goldman, General Counsel, Kentucky Board of Nursing; Kristi Parris, MD, Kentucky Board of Medical Imaging and Radiation Therapy; Christy Trout, Commissioner, Trina Summers, Distilled Spirits and Wine Administrator, Carol Beth Martin, Malt Beverages Administrator, Steve Humphress, General Counsel, Department for Alcohol Beverage Control; Jennifer Doering, Chas Seligman Distributing Company; George Clark, Clark Distributing Co. Inc.; Betty Whittaker, Executive Director, Kentucky Manufactured Housing Institute; Jamie Hylton, Manager and Vice President of Hylton Sales and Rental; Andrew Rutherford, President, Kristi Hall, Kentucky Academy of Physician Assistants.

**LRC Staff:** Tom Hewlett, Bryce Amburgey, Jasmine Williams, Michel Sanderson, and Susan Cunningham.

#### **Approval of minutes from September 9, 2016 meeting.**

A motion to approve the minutes of the September 9, 2016 meeting was made by Senator Schickel and seconded by Representative Santoro. The motion was adopted by voice vote.

#### **Advanced Practice Registered Nurses (APRNs) review of HB 296 from 2016 Regular Session**

Representative John Carney said the purpose of HB 296 was to amend the definition of “Practitioner of the Healing Arts” so that it would include APRNs. Under current law, the definition includes those practicing medicine, osteopathy, dentistry, podiatry, optometry, and chiropractic. In rural Kentucky, APRNs provide a vital service for health care. Adding APRNs to the definition of “Practitioner of the Healing Arts” would not expand their scope of practice would will align the regulations with APRNs’ current practice.

Jessica Estes, DNP, APRN-NP, President Elect for Kentucky Coalition of Nurse Practitioners and Nurse Midwives, said that last fall the coalition became aware that administrative regulation 902 KAR 20:260, Special Health Clinics, was being amended to exempt “Practitioners of the Healing Arts” so that the professionals in private practice would not be considered specialty clinics. This meant that APRNs who are in private practice, but not included in the definition of “Practitioners of the Healing Arts,” would be considered to be operating a special health clinic and would experience unnecessary burden and costs.

Many APRNs in primary care would have a hard time meeting the regulatory requirements. After help from Representative Mary Lou Marzian, the APRNs were exempted from the regulation. It is the concern of the APRNs that a future statute or regulation would be amended to exempt “Practitioner of the Healing Arts” and have a negative impact on APRNs. Adding them to the definition of “Practitioner of the Healing Arts” would not expand scope of practice but would be a correction to change the statute to mirror modern practice.

HB 296 does not grant authority to APRNs to open pain clinics, as the Kentucky Society of Anesthesiologists asserted. Also, the Kentucky Board of Nursing has determined that APRNs are educationally prepared and clinically competent to utilize fluoroscopy in their practice.

Ms. Estes said that the Kentucky Board of Medical Imaging and Radiation Therapy’s statement that adding APRNs to the definition of “Practitioner of the Healing Arts” would allow them to supervise all licensees in the performance of all procedures is an over generalization. APRNs do not seek supervision that would involve evaluation of job performance, but they need to be able to give general directions during the procedure. The Kentucky Board of Nursing notified the Kentucky Board of Medical Imaging and Radiation Therapy by letter that APRNs were within their scope of practice in utilizing fluoroscopy and the equipment required to perform fluoroscopic procedures.

In response to a question from Senator McDaniel, Ms. Estes said that all other professionals included in “Practitioner of the Healing Arts” do not necessarily practice with the same level of anesthesiology that APRNs currently have.

Pam Hagan, Kentucky Board of Nursing, APRN Practice Education Consultant, said the Kentucky Board of Nursing is responsible for licensing nurses, including APRNs. KRS 314.131 allows the board to issue advisory opinions on those practices. In response to inquiries, the board has issued those opinions specifically on fluoroscopies performed by nurse anesthetists and nurse practitioners. The APRN works with the medical imaging personnel who are operating the equipment. In 2015, the board advised that this is within the scope of practice and that the APRN is qualified to supervise the medical imaging technologist when assisting the APRN in these procedures. However, the Board of Medical Imaging and Radiation Therapy issued a letter to its licensees saying that APRNs could not supervise those technicians.

Representatives of the Board of Nursing and the Board of Medical Imaging and Radiation Therapy have agreed to meet to resolve this issue.

Dr. Kristie Paris, RN, BSN, MD, FACR, said there is a need for APRNs in Kentucky, but allowing APRNs to supervise technicians during a procedure raises concerns. Fluoroscopy is not the same as taking a chest x-ray. The potential for harmful radiation exposure is a real danger when equipment is operated by those without appropriate education and training. It is important that those performing these procedures through the operation of radiation-emitting devices or those supervising medical imaging or radiation

therapy personnel be appropriately educated in the safe utilization of that radiation. The inclusion of APRNs in the definition of “Practitioner of the Healing Arts” would exempt them from RT licensure and allow them to operate radiation-producing equipment or administer ionizing radiation for the purpose of medical imaging or radiation therapy. Also, they would be allowed to supervise all licensees in the performance of all procedures. Currently, there is no educational training in the APRN DNP (Doctor of Nursing Practice) or Masters curriculum covering radiation physics, radiobiology, radiation safety, or radiation management. There is a radiological nurse who is certified in radiation protection, biology, pathology, and patient exposure, but these nurses are not allowed to supervise procedures.

In response to a question from Senator McDaniel, Dr. Paris said that, in her opinion, APRNs would become equivalent to a licensed physician if APRNs are defined as a “Practitioner of the Healing Arts.” Placing APRNs in a supervisory role over medical imaging therapists would conflict with federal and state guidelines.

In response to a question from Representative Burch, Dr. Paris stated that the scope of practice for APRNs allows them to perform and supervise radiological procedures, including radiation oncology.

In response to a question from Representative Westrom, Dr. Paris said APRNs do not bill for patients for radiology, but they are allowed to interpret radiology procedures.

Senator Carroll advised Dr. Paris that both professions should meet and work out their differences.

In response to a question from Representative Jenkins, Nathan Goldman, General Counsel for the Kentucky Board of Nursing said there is a disagreement with the APRN telling the technician how to position the instrument being used. Dr. Paris added that there is a definition of supervision in regulation.

#### **Department of Alcoholic Beverage Control follow up on SB 11**

Christy Trout, ABC Commissioner, said that, when evaluating SB 11, there are three areas of focus: local responsibility, economic development, and partnerships with the industry and other government agencies, such as the Department of Agriculture.

SB 11 eliminated population requirements in two areas: any incorporated city may hold a local option election; and any city or county can enact ordinances to permit Sunday alcohol sales. ABC also has initiated a simultaneous renewal schedule, with the exception of Louisville, and an economic hardship exception was included for any local community that has a restaurant with limited seating.

This led to a major increase in local option elections. Since July of this year, there have been 23 local option elections, and there are seven more pending. Hundreds of license applications have been filed with the department. Twenty counties remain completely dry.

Regarding economic development, SB 11 created two new licenses. The department has received an application for a “pedal pub” from Covington and



expects to receive an application from Lexington and another from Louisville. This allows patrons to board the pedal pub with an unopened package and drink while on the pub in nondescript containers.

The Rectifier license was divided into A and B to reduce the cost to small producers. The Class A rectifier produces greater than 50,000 gallons annually, the Class B license is for those who produce less than 50,000.

Due to the increase in popularity of microbreweries, SB 11 increased the production cap on malt beverages to 50,000 barrels per year. Microbrewers can also sell their product by the package and by the drink at fairs and festivals located in wet territories. Distilleries have also seen an increase due to the authorization of a moist precinct local option election. They may also acquire an NQ3 license for retail sale by the drink.

Small farm wineries have an increased production cap from 50,000 gallons per year to 100,000 gallons per year. They are allowed to “custom crush” fruit from other small farm wineries. There are three wineries offering this service.

Bed and Breakfast Inns may apply for an NQ3 license to sell alcoholic beverages to registered overnight guests. Since July 15, three Bed and Breakfast Inns have applied for this license.

In response to a question from Senator Buford, Steve Humphress said a fiscal court cannot pass an ordinance to allow a restaurant in the county, outside city limits to sell alcohol. If the county is moist, there would have to be a local option election to authorize alcohol sales. Further, there could be a limited restaurant election county wide, however, there cannot be a limited restaurant precinct election.

In response to a question from Representative Clark, Ms. Trout said there have been a number of regulations filed. Mr. Humphress said the only regulation pending deals with providing refrigerated coolers to retailers.

Senator Thayer commented that the new commissioner is very capable of performing an important job. The committee is supportive of free enterprise, and alcohol is heavily regulated in Kentucky.

Jennifer Doering, Chas. Seligman Distributing Company, said that the distributors support of many of the things in SB 11. However, there was language added toward the end of the session regarding refrigerated coolers, allowing a distributor or brewer to give away refrigerated coolers. Distributors were included in the bill without their knowledge or comment. Distributors are not in favor of this and see it as giving away something of value. It is a violation of the checks and balances that guide the three tier system of alcohol distribution. This erosion introduces into Kentucky a pay-to-play relationship between the brewers, distributors, and the retailers. The language is a benefit to large brewers and potentially gives a pressure point to distributor compliance.

George Clark, Clark Distributing Company, a Miller Coors distributor, said allowing a brewer or distributor to give free refrigerated coolers to a retailer is an assault on the three tier system of checks and balances. This system is recognized as the basic foundation of Kentucky statutory law. It is in direct

conflict with KRS 244.590. This statute explicitly prohibits a brewer or distributor from furnishing, giving, renting, lending or selling to a retailer any equipment to affect the choice of product. This change is also in direct conflict with the Alcohol and Tobacco Tax and Trade Bureau, who regulate alcohol federally. As drafted, this change will only lead to commercial bribery or pay-to-play. The distributors will seek to remove refrigerated coolers in 2017.

Senator Schickel commented that a bill like SB 11 required tremendous consensus in order to move it forward. He encouraged Ms. Doering and Mr. Clark to work with ABC on regulations regarding the coolers.

Senator Thayer said Senator Schickel worked very hard on SB 11. The cooler provision was added late in the House. If it had been removed, it would have killed the bill. In order for the good provisions to be passed, the Senate left that provision in the bill. Senator Schickel's advice is very strong and a regulation could be the solution.

Representative Clark said he was upset by Mr. Clark's comments regarding bribery, and he could have better said that the bill brought an unlevel playing field. The committee's integrity did not need to be called into question. He said that the tone does not serve the industry very well.

#### **Kentucky Manufactured Housing Institute.**

Betty Whittaker, Executive Director, Kentucky Manufactured Housing Institute, said that a bill passed in 2000 that allowed for a title on a manufactured home to be surrendered and become part of the real property deed or deed of trust. This gave consumers the opportunity to receive mortgage interest rates. However, when a person surrendered a title on a single section home, because the title became part of the property deed, there is no longer a title to sell the single section home apart from the property. Other states have made a provision to allow selling the home by filing an affidavit with the county clerk. This allows the owner to pull the home away from the property, file with the PVA to acquire a title, and trade-in or sell the single wide and purchase a multi-section or build.

Jamie Hylton, Manager and Vice President of Hylton Sales and Rentals, Ivel, KY, said this past spring a customer wanted to upgrade a home. The person wanted to trade the current home for a larger one. However, the local bank said that there was no title on the trade-in because the title had been surrendered. Therefore, he could not sell the trade-in sitting on his lot.

Ms. Whittaker said that the Institute had met with county clerks and had been provided with language that other states have used to allow home owners to separate their house from the property in order to obtain a title for the house.

#### **Physician Assistant Prescriptive Authority.**

Senator Buford said 49 states allow Physician Assistants to write controlled substances prescriptions. Kentucky is the only exception, and he has requested a bill to change this. The University of Kentucky is supportive of this legislation.

Kristi Hall, Kentucky Academy of Physician Assistants (PA), said that the legislature has eliminated restrictions on the PA profession that were negatively impacting patient access to care. The PA mission is to

eliminate all restrictions so that PAs in Kentucky can practice medicine to the full extent of their training. In the 2017 legislative session, KAPA will be seeking to modify prescription authority for PAs to prescribe schedule II – V controlled substances. This will allow PA-Physician teams to serve patients in a more efficient manner. Kentucky is the only state where PAs cannot prescribe controlled medications. Missouri and West Virginia are exceptions where the PAs are allowed to only write prescriptions for schedule III – V. Over 50 percent of students who graduate as PAs in Kentucky leave to practice in other states where there are fewer restrictions on PA practice. Three universities in Kentucky have PA programs: UK, The University of the Cumberlands, and Sullivan University. The training model is based on the physician medical model training and is Master's level, with extensive graduate training in pharmacology. PAs must pass a National certification in order to practice. All PAs must pass a new re-certification every ten years.

Physician Assistants in Kentucky graduate with a thorough understanding of controlled substances, and that foundation improves with clinical practice. Students are familiar with electronic medication databases, including Meth-Check and Kentucky All Schedule Prescription Electronic Record (KASPER). Under proposed legislation to prescribe controlled substances, a supervising physician and PA would be required to submit an application to the Kentucky Board of Medical Licensure for approval. PAs would also be required to register with the federal DEA, and the state KASPER system. This legislation is not a mandate and physician/PA teams who do not want the authority are not required to submit an application.

This legislation will allow a supervising physician to authorize a PA to prescribe controlled substances. The physician/PA team best determines the level of authority that is needed to give the most efficient care to their patients. PA prescriptive authority for schedule medication will also provide more accurate tracking of controlled prescriptions. Modified prescriptive authority in Kentucky will not only improve patient access to health care, but will reduce the loss of PAs to other states. APRNs have had prescriptive authority for schedule II – V in Kentucky since 2006. The proposed legislation will remove a discrepancy in health care access for Kentuckians. Previous PA legislation has been supported consistently.

In response to a question from Representative Jerry Miller, Andrew Rutherford, President, Kentucky Academy of Physicians Assistants said that in his first job in Cadiz, KY, due to needs of providers, he was the only provider. If there was a patient with broken bones, he would have to refer that patient to another emergency facility because he was unable to prescribe pain medication. This incurs more billing. Also, certain procedures that PAs are trained to do need sedation medication, which is schedule II medication. Most supervising physicians are onsite.

Senator Buford commented that patients in Kentucky who want to receive these controlled schedule prescriptions will cross borders to states that allow this authority. They will come back to Kentucky with a large supply of a controlled substances. What they do not need they will sell. Allowing them to obtain that prescription in Kentucky will not lead to



an excessive amount of the drug.

In response to a question from Senator Schickel, Ms. Hall said PAs will only be able to prescribe opiate based prescriptions if their supervising physician authorizes them to do so. Senator Schickel opined that current legislation has not solved the drug problem, rather it has made it worse. There is an historical crisis in Kentucky with opiate based products.

Representative Koenig commented that he does not know what schedule II – V drugs are and would like more information. Ms. Hall said that currently PAs prescribe all non-schedule medication, which is any medication that does not have the potential for abuse. She said she would provide the information Representative Koenig requested.

In response to a question from Representative Elliot, Ms. Hall said the difference in training between a Nurse Practitioner and a Physician Assistant is the training model. PAs follow the physician model. However, the level of training is no different than the Nurse Practitioner.

In response to a question from Representative Jenkins, Mr. Rutherford said PAs are trained about the misuse of opiate substances and the addictiveness of those drugs.

Senator Schickel announced that the next meeting for Licensing and Occupations will be November 28, at 10:00 AM at Turfway Park in Latonia. Further, there will be a meeting, Thursday, December 15<sup>th</sup>, 10:00 AM in Room 129 in the Capitol Annex.

There being no further business, the meeting was adjourned at 11:26 AM.

## **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs Minutes of the 3rd Meeting of the 2016 Interim**

October 25, 2016

### **Call to Order and Roll Call**

The 3rd meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, October 25, 2016, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Reginald Meeks, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, Christian McDaniel, Morgan McGarvey, Dorsey Ridley, Albert Robinson, and Dan “Malano” Seum; Representatives Kevin D. Bratcher, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, and Mary Lou Marzian.

Guests: Ashlea Christiansen, State Director, Marsy’s Law for Kentucky; Eileen Recktenwald, Executive Director, Kentucky Association of Sexual Assault Programs; and “Lisa.”

LRC Staff: Judy Fritz, Karen Powell, Kevin Devlin, Roberta Kiser, and Terisa Roland.

### **Approval of Minutes**

The minutes of the September 27, 2016 meeting were approved without objection, upon motion by

Senator McDaniel and second by Senator Seum.

### **Marsy’s Law for Kentucky**

Task force members heard testimony given by victim advocates of “Marsy’s Law” supporting the law. Senator Bowen said time ran out in the House of Representatives last session before a bill codifying victims’ rights, known as Marsy’s Law, could be called for a vote. Victim advocates pledged to make it a priority for 2017.

Kentucky is among 18 states that have not passed Marsy’s Law, named after Marsy Nicholas, who was stalked and killed by her ex-boyfriend on her college campus in California.

After Nicholas’ death, the accused boyfriend confronted Nicholas’ mother and brother at a grocery store. Her relatives had no idea he had been released on bail.

If passed, Marsy’s Law would require an amendment to the state’s constitution that would keep victims informed of court proceedings, bail-setting for the accused, and parole board hearings. While many of these notifications are carried out by Commonwealth’s attorneys’ offices or victim advocates, the law would ensure procedural rights are in place for victims and their families.

Kentuckians could vote on the amendment in the November election of 2018 according to Ashlea Christiansen, Kentucky state director for Marsy’s Law.

Senator Whitney Westerfield sponsored the bill last session and is currently working on a version of the bill that will be filed for the 2017 legislative session.

A victim who only wished to be identified as “Lisa” spoke about her 20-year abusive marriage that ended with her husband raping her.

After she wore a wire, met him in a restaurant and recorded him admitting to the crime, her husband later accepted a plea offer to an amended misdemeanor assault charge instead of felonious rape.

The victim said she felt powerless as the prosecutor negotiated the plea deal without her input. If passed, the constitutional amendment would allow victims more of a voice in the process.

“Lisa” said the prosecutor reminded her she was simply a witness in this case. It was the Commonwealth of Kentucky versus her husband, and in so many words, said she had no say. Though this crime was committed against her, her feelings did not matter. She had no voice.

“Lisa” said that, at a later time, the prosecutor had informed her that she and her husband’s high-powered extremely well known defense attorney had agreed on a plea deal. The man who thoughtfully planned her drugging and rape and who admitted it on tape, and who had abused her for 20 years, would serve no time in jail.

After hearing about Marsy’s Law, “Lisa” felt hopeful that other women would not endure the same feeling of hopelessness. In the court of law, she said, her husband had more rights as the accused than she did as the victim.

Had Marsy’s Law been in place, “Lisa” would have been permitted to stand before the court at the plea hearing, and after putting her emotional and physical safety on the line for the Commonwealth, she could have said that she did not agree with the

plea deal that had been worked out between the state and the defendant’s counsel.

“Lisa” said her input may or may not have had an impact on the case, but she would have been heard by the court system and her voice would not have been silenced.

Eileen Recktenwald, Executive Director of the Kentucky Association of Sexual Assault Programs, and several task force members said during the hearing that the bill will be a priority in the upcoming legislative session.

A hard copy of materials from this meeting will be available in the Legislative Research Commission Library.

After a short discussion of responses and comments, and with no further business, the meeting was adjourned at 1:30 p.m.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection Minutes of the 4th Meeting of the 2016 Interim**

October 27, 2016

### **Call to Order and Roll Call**

The 4th meeting of the Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, October 27, 2016, at 10:00 AM, in Room 149 of the Capitol Annex. Representative Jeffery Donohue, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jeffery Donohue, Co-Chair; Senators Perry B. Clark, Stan Humphries, and Alice Forgy Kerr; Representatives Terry Mills, Marie Rader, Dean Schamore, and John Short.

Guests: Bennett Knox, Administrator, Jefferson Memorial Forest and Executive Director, Wilderness Louisville, Inc.; Bill Steele, Director, Kentucky Division of Forestry; Floyd Willis, Fire Chief, Kentucky Division of Forestry; Eric Gracey, Manager, Reforestation and State Forest Branch, Kentucky Division of Forestry; and Peter Goodmann, Director, Kentucky Division of Water.

LRC Staff: Katherine Halloran, Greg Troutman, and Jenny Wells.

### **Jefferson Memorial Forest**

Mr. Knox presented an overview of the Jefferson Memorial Forest and the various ways it acquires funding.

In response to questions from Sen. Clark, Mr. Knox confirmed that Jefferson Memorial Forest still has a relationship with Boy Scouts. Wilderness Louisville, Inc. is a friends group that was established in 2013. Jefferson Memorial Forest has utilized some federal funding through the Land and Water Conservation Fund and the Recreational Trails Programs Grant.

### **Tree Nurseries and the Fire Suppression Program**

Mr. Steele, Mr. Willis, and Mr. Gracey presented on the status of tree nurseries and the fire suppression program.

In response to questions from Chair Donohue, Mr. Steele stated that the Division of Forestry's decrease in staff since 2006 was a result of budget reductions. Mr. Willis stated that in some cases fires are started to divert attention away from an area where marijuana is growing. Two-thirds of the forest fires in Kentucky are due to arson.

In response to questions from Rep. Schamore, Mr. Gracey noted that inmate labor is utilized to harvest seedlings. Mr. Steele noted that White Oaks typically don't reach maturity for about 80 years.

#### **State-Owned Dams**

Mr. Goodman presented on the status of dams owned by the Commonwealth.

In response to a question from Chair Donohue, Mr. Goodman stated that high hazard and moderate hazard dams are inspected once every two years while low hazard dams are inspected every three years.

There being no further business before the subcommittee, the meeting was adjourned at 11:31 AM.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Budget Review Subcommittee on Human Resources**

### **Minutes of the 4th Meeting of the 2016 Interim**

October 27, 2016

#### **Call to Order and Roll Call**

The fourth meeting of the Budget Review Subcommittee on Human Resources of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, October 27, 2016, at 10:00 AM, in Room 169 of the Capitol Annex. Representative Joni L. Jenkins, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Joni L. Jenkins, Co-Chair; Senator Carroll Gibson; Representatives Tom Burch, Mary Lou Marzian, Jim Wayne, and Addia Wuchner.

Guests: Stephen Miller, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Jill Hunter, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Betsy Johnson, President, Kentucky Association of Health Care Facilities; Terry Skaggs, Chief Financial Officer, Wells Health Systems; Jason Bailey, Executive Director, Kentucky Center for Economic Policy; Emily Beauregard, Executive Director, Kentucky Voices for Health; Adam Meier, Deputy Chief of Staff for Policy, Office of the Governor; John Watkins, Deputy Executive Director, Kentucky Office of Health Benefit and Information Exchange, Cabinet for Health and Family Services; and Representative Derrick Graham.

LRC Staff: Miriam Fordham, Jonathan Eakin, and Amie Elam.

#### **Transition to Federal Health Benefit Exchange**

Adam Meier, Deputy Chief of Staff for Policy, Office of the Governor, provided an update on the transition to the Federal Health Benefit Exchange.

Mr. Meier included information regarding completed milestones, websites, education and outreach, and a budget projection update.

In response to questions from Senator Gibson, Mr. Meier said that the premium differences between the remaining carriers are based on actuarial presumptions made by each carrier. The remaining carriers are reacting to the market when setting premiums. United Health, Baptist Health, Aetna, and Wellcare left the exchange market this year. The companies are making business decisions based on federal government policies. He said there is little that could be done at the state level to incentivize companies to stay.

In response to questions from Representative Wayne, Mr. Meier said that the Governor's administration renewed the contract with the same kynector agencies. The kynectors had some different training and certification requirements. The advertising contract was not canceled, but it expired. Funds for advertising were federal dollars provided for the rollout. Advertising funds went from \$6-\$7 million to \$200,000. Mr. Meier said that he would provide to the committee information regarding the average premium increase and the average tax credit.

In response to a question from Representative Wuchner, Mr. Meier said plan options are on the Department of Insurance's website. In-Person Assistors (IPAs) will be tasked with educating consumers on what each plan does and the costs associated.

In response to questions from Chair Jenkins, Mr. Meier said that healthcare.gov has a 24-hour call center.

#### **Medicaid Re-Enrollment**

Stephen Miller, Commissioner, Department for Medicaid Services, provided an update on Medicaid re-enrollment. Mr. Miller discussed the 90-day window that enrollees have to change Managed Care Organizations (MCOs).

In response to a question from Chair Jenkins, Mr. Miller said that Medicaid has a passive enrollment. If users take no action, then they remain with the same MCO.

#### **Medicaid Issues Facing Kentucky's Long-Term Care Community**

Betsy Johnson, President, Kentucky Association of Health Care Facilities (KACHF), and Terry Skaggs, Chief Financial Officer, Wells Health Systems, testified on the pending Medicaid issues that are facing Kentucky's long-term care community. The presentation included KACHF's proposal to alleviate Medicaid pending issues and a proposal for providing advance payments to providers.

In response to a question from Representative Wayne, Mr. Skaggs said that in 2014, families lost the ability to go to local Department for Community Based Services (DCBS) offices to make a Medicaid application. Staff is working on the backlog of applications, and there is significant progress being made. Commissioner Miller said that much time and effort has gone into trying to correct the backlog issues. He stated that many families never responded to the cabinet's requests for information (RFIs). There is no provision for issuing interim payment. The cabinet believes a better and faster solution is to fix

the system and get rid of the backlog rather than issue interim payments that may not be approved by CMS.

#### **Medicaid Section 1115 Waiver Proposal**

Jason Bailey, Executive Director, Kentucky Center for Economic Policy, and Emily Beauregard, Executive Director, Kentucky Voices for Health, discussed issues surrounding the Medicaid Section 1115 Waiver Proposal. Mr. Bailey discussed Medicaid expansion. Ms. Beauregard discussed Medicaid changes under the current administration and the impact on enrollees.

In response to a question from Representative Wuchner, Ms. Beauregard said that enrollment assisters have done a great job helping consumers navigate the system and educating them on how to use their benefits.

In response to questions from Chair Jenkins, Mr. Bailey said that Kentucky's hospital provider tax is frozen and does not keep up with revenue growth rates. Mr. Bailey added that other states have increased the provider tax while in Kentucky the provider tax is decreasing.

There being no further business before the subcommittee, the meeting was adjourned at 11:54 a.m.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE Budget Review Subcommittee on Transportation**

### **Minutes of the 3rd Meeting of the 2016 Interim**

October 27, 2016

#### **Call to Order and Roll Call**

The third meeting of the Budget Review Subcommittee on Transportation of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, October 27, 2016, at 11:00 AM, in Room 129 of the Capitol Annex. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative Leslie Combs, Co-Chair; Senators Christian McDaniel, Dennis Parrett, and Robin L. Webb; Representatives Dennis Keene, Sal Santoro, and Jim Stewart III.

Guests: Morgan Judy, Chairman, Kentuckians for Better Transportation and Executive Vice President, Judy Construction; Andrew Aiello, General Manager, Transit Authority of Northern Kentucky; Beecher Hudson, President, Kentucky Public Transit Association and Chief Executive Officer, Louisville Wheels Transportation, Inc.; Juva Barber, Executive Director, Kentuckians for Better Transportation; and, Robin Brewer, Executive Director, Office of Budget and Fiscal Management, Kentucky Transportation Cabinet.

LRC Staff: Justin Perry, Jeffrey Schnobrich, and Spring Emerson.

#### **Effect of Toll Credits on Public Transportation**

Morgan Judy, Chairman, Kentuckians for Better Transportation (KBT) and Executive Vice President, Judy Construction, provided a brief overview of KBT. Beecher Hudson, President, Kentucky Public



Transit Association and Chief Executive Officer, Louisville Wheels Transport, provided an overview of public transportation in the Commonwealth. Andrew Aiello, General Manager, Transit Authority of Northern Kentucky (TANK), discussed funding for public transportation in the state and at TANK, provided a comparison of per capita funding for public transportation in Kentucky relative to other states, and discussed the effect of toll credits on TANK.

In response to questions from Senator McDaniel, Mr. Aiello explained that the Federal Highway Administration (FHWA) and the Kentucky Transportation Cabinet (KYTC) had an agreement whereby the state earned toll credits for expending state dollars in certain specific circumstances. As a result, FHWA provided Kentucky hundreds of millions of dollars in toll credits, to be used in future federal projects as matching funds. There have been discussions between the FHWA and the KYTC about how that toll credit amount was determined, what formula was used, and what the proper balance of those toll credits is. It was previously thought that the credits would last for decades, but a recent recalculation has indicated that balance to be considerably lower than expected. It is estimated that the balance of toll credits will be gone by the year 2020.

In response to a question from Senator McDaniel, Ms. Barber said toll credits used for transit flow through the Office for Transportation Delivery at KYTC. Ms. Brewer explained that toll credits are treated as a separate pot of funding. She said there is a maintenance of effort test, which requires that the amount of state funds spent on long-term capital improvements and investments in the highway system increase from year to year. If that test is passed, then it becomes possible to qualify for toll credits in that year, if long-term capital improvement investments in a toll facility are made.

In response to a question from Representative Keene, Mr. Aiello said both metro and rural areas will be impacted by the loss of toll credits.

In response to a question from Representative Santoro, Mr. Aiello said local counties may have difficulties finding additional revenues to match federal funds, if toll credits are not available. He stated that part of his goal in raising this issue is that no one be surprised in 2020 when difficult decisions will have to be made.

In response to a question from Representative Santoro, Mr. Hudson emphasized that rural transit agencies will be affected, and that limits to the availability of public transportation could become an economic development issue.

In response to a question from Chair Combs, Ms. Brewer said the Transportation budget would not be impacted until mid-2020. She added that fiscal year 2016 is the last year KYTC will earn toll credits and all of that is from the Louisville-Southern Indiana Ohio River Bridges project in the amount of \$215 million to \$218 million.

In response to a question from Representative Keene, Mr. Aiello said in order to raise public transit fares in Northern Kentucky, the governing board of TANK would have to approve the increase. This is typically done when fuel prices increase. If fares are

increased by a considerable amount, ridership will decrease.

In response to a question from Chair Combs, Ms. Barber said public-private partnerships could be considered for capital improvements.

A motion was made by Co-Chair Wise to approve the minutes of the June 23, 2016 and September 19, 2016 meetings. The motion was seconded by Representative Keene, and the minutes were approved without objection.

#### **Update on Road Fund**

Robin Brewer, Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet, provided a summary of FY16 financials and discussed Road Fund Cash Balance projections for FY17 and FY18.

In response to a question from Chair Combs, Ms. Brewer said the plan is to accelerate projects from the Pause 50 program as the cash balance improves. She explained that August is the most difficult month due to the cyclical nature of Road Fund cash, due to large amounts going out for payments on bonds, Revenue Sharing, and other large amounts. The beginning cash balance is lower now than it has been in previous years.

There being no further business before the subcommittee, the meeting was adjourned at 12:00 PM.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

### **Budget Review Subcommittee on General Government, Finance, and Public Protection**

#### **Minutes of the 2nd Meeting of the 2016 Interim**

October 27, 2016

#### **Call to Order and Roll Call**

The second meeting of the Budget Review Subcommittee on General Government, Finance, and Public Protection of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, October 27, 2016, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Rita Smart, Co-Chair; Senator Johnny Ray Turner; Representatives Adam Koenig, Steve Riggs, and Tom Riner.

Guests: Mike Harmon, State Auditor, Auditor of Public Accounts; Alice Wilson, Assistant State Auditor, Auditor of Public Accounts; Sara Beth Gregory, General Counsel, Auditor of Public Accounts; and, Libby Carlin, Executive Director, Office of Technology and Special Audits, Auditor of Public Accounts.

LRC Staff: Ray Griffith, Stephanie Rich, Seth Dawson, and Jennifer Beeler.

#### **Impact of SB 168 and Discussion of Ongoing Issues**

Mike Harmon, State Auditor, Auditor of Public Accounts (APA); Alice Wilson, Assistant State Auditor, APA; Sara Beth Gregory, General Counsel, APA; and, Libby Carlin, Executive Director, Office of

Technology and Special Audits, APA, provided a brief overview of the impact of Senate Bill 168 and ongoing issues.

In response to a question from Representative Smart, Ms. Gregory said the main issue with excessive spending by the Department of Criminal Justice Training (DOCJT) at Eastern Kentucky University (EKU) was that more than \$500,000 each year was being spent from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF) on the publication and distribution of a law enforcement magazine, which is a large amount and should have been dedicated to law enforcement training and incentives. There were no written agreements to clarify the authority for using restricted KLEFPF monies to make those payments and no clarity as to whether ECU or the DOCJT were supposed to be responsible for those building and maintenance issues.

In response to questions from Chair Carroll, Ms. Gregory said the decision that no laws were violated was made through discussions with law enforcement agencies. It was determined that some of the potential conflicts of interest should be sent to the Legislative Ethics Commission for review. Auditor Harmon said there had been over \$56 million swept from the KLEFPF at one time over a twelve-year period, which may have caused the increase in taxes. He said there is a set procedure to determine the amount of the tax, rather than doing a full assessment.

In response to a question from Representative Koenig, Auditor Harmon said about two-thirds of the 1.8 percent insurance premium surcharge goes toward the KLEFPF, and about one-third goes to the fire fund. Representative Koenig stated that the rate is determined by the Commissioner of the Department of Revenue, but should be the responsibility of the legislature. Representative Riggs agreed.

In response to a question from Chair Carroll, Auditor Harmon said his office audits each state agency.

In response to a question from Representative Riggs, Auditor Harmon said county governments are audited annually. In some instances, county governments are allowed to go through a local Certified Public Accountant for those audits; however, the APA staff audits those local governments every four years. Representative Riggs commented that the APA should be required and be given the resources to perform the larger audits on a regular basis.

In response to a question from Chair Carroll, Auditor Harmon said his office maintains a good working relationship with the Attorney General, and refers cases to that office when necessary.

In response to a question from Representative Smart, Ms. Gregory said the Department for Local Government would be responsible for training local government elected officials.

In response to a question from Chair Carroll, Auditor Harmon said most people are honest and want to do the right thing. He said the APA provides a valuable service to those who sincerely want to get back on track.

A motion was made by Representative Riggs to approve the minutes of the August 1, 2016 meeting. The motion was seconded by Representative Koenig, and the minutes were approved without objection.



There being no further business before the subcommittee, the meeting was adjourned at 11:01 AM.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 27, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, October 27, 2016, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Christian McDaniel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Christian McDaniel, Co-Chair; Representative Rick Rand, Co-Chair; Senators Ralph Alvarado, Danny Carroll, Chris Girdler, Stan Humphries, Morgan McGarvey, Dennis Parrett, Wil Schroder, Brandon Smith, Robin L. Webb, Stephen West, and Max Wise; Representatives Linda Belcher, John Carney, Larry Clark, Leslie Combs, Ron Crimm, Mike Denham, Jeffery Donohue, Myron Dossett, Kelly Flood, Marie Rader, Bart Rowland, Sal Santoro, Dean Schamore, Arnold Simpson, Wilson Stone, Tommy Turner, Jim Wayne, and Addia Wuchner.

Guests: Adam Caswell, Northern Kentucky University; Wayne D. Andrews, President, Morehead State University; Beth Patrick, Morehead State University; David Eager, Kentucky Retirement Systems; Beau Barnes, Kentucky Teachers' Retirement System; Sandra Dunahoo, Commissioner, Department of Local Government; Amy Barnes, Executive Director, Office of State Grants, Darren Sammons, Staff Attorney, Department of Local Government.

LRC Staff: Jennifer Hays, Charlotte Quarles, Eric Kennedy and Jennifer Beeler.

#### **Approval of the Minutes**

Senator Alvarado made a motion, seconded by Representative Santoro, to approve the minutes of the September 19, 2016, meeting. The motion carried by voice vote.

#### **Testimony Regarding University Pension Costs**

Representatives from Northern Kentucky University, Morehead State University, Kentucky Retirement Systems and Kentucky Teachers' Retirement Systems gave brief overviews of the impact of University contributions into the retirement system programs.

The representatives from Northern Kentucky University and Morehead State University explained that, due to the increase in retirement system contributions and the decrease in state appropriations, there have been revenue lost and jobs eliminated. Several universities who participate in the retirement system programs have started seeking out third party vendors to outsource work, usually hourly employees limited in their ability to find other employment in the region.

#### **Testimony on the Joint Funding Administration**

Secretary Dunahoo and Amy Barnes with the Department of Local Government (DLG) explained that the Joint Funding Administration was originally created as a way to unify funding to the Area Development Districts (ADDs) from multiple state and federal sources. The number of participating agencies has declined over the years. The Department of Local Government executes Memoranda of Agreements with each of the 15 ADDs.

Secretary Dunahoo stated that the Joint Funding Administration includes both federal and state dollars. Funds included are state general fund appropriation, economic development administration, community development block grant and Appalachian regional commission match funding.

Secretary Dunahoo said that DLG has been working on a new formula in order to distribute funds to the ADDs. DLG has brought the ADDs together to get feedback and are now working on developing the fairest way to distribute funds.

#### **Discussion on the costs associated with services required by agencies**

Janice Tomes and Greg Harkenrider with the Office of the State Budget Director said that the costs associated with services required by agencies are the costs of elections (Board of Elections), expert witness fees and other costs (Attorney General's Office), county costs (Finance and Administration), and jail per diem and jail design fees (Justice and Public Safety Cabinet).

Ms. Tomes stated that all these are necessary government expenses (NGEs). The authority to spend funds on certain expenses is provided in the enacted budget without a sum-specific appropriation amount. Funds come from the General Fund Surplus Account or the Budget Reserve Trust Fund.

With no further business before the committee, the meeting adjourned.

## **PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

### **Minutes**

October 13, 2016

#### **Call to Order and Roll Call**

The Program Review and Investigations Committee met on Thursday, October 13, 2016, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Terry Mills, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Terry Mills, Co-Chair; Senators Julie Raque Adams, Tom Buford, Dan "Malano" Seum, Reginald Thomas, Stephen West, and Whitney Westerfield; Representatives Ruth Ann Palumbo, Rick Rand, Arnold Simpson, Chuck Tackett, and Jeff Taylor.

Guests: David T. Thompson, Executive Director, Kentucky Press Association; Marc A. Wilson, Partner, Top Shelf Lobby; Ken Meng, Executive Director of Office of Tax Policy & Regulation; Tom Crawford, Director of Office of Property Valuation, Department of Revenue; James D. Chaney, Deputy Executive Director, Kentucky League of Cities; and Shellie Hampton, Director of Governmental Relations,

Kentucky Association of Counties.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall; Colleen Kennedy; Van Knowles; Jean Ann Myatt; Chris Riley; William Spears; Shane Stevens; Joel Thomas; and Kate Talley, Committee Assistant.

#### **Minutes for August 12, 2016**

Upon motion by Representative Taylor and second by Senator Carroll, the minutes of the September 8, 2016, meeting were approved by voice vote, without objection.

#### **Study Topics for 2017**

Senator Carroll explained that study topics for 2017 will be chosen at the next meeting. Each caucus will choose one topic.

#### **Staff Report: Cost and Policy Considerations for State-Mandated Local Public Notices**

Van Knowles said that public notice is any effort by government to inform the public about an action, event, or circumstance that members of the public might want or need to know about. The report covers notices that the state requires local jurisdictions to publish. More than 200 statutes mandate public notice for local jurisdictions. He cited examples from KRS Chapter 424, which describes when and how often different types of notices should be published and how the newspaper is selected. It details what some notices must contain and who must publish them. KRS 424.380 allows citizens to challenge governmental acts in court if notice was not provided according to the requirements of the chapter.

Local jurisdictions do not track spending on state-mandated notices separately from spending for other types of notices and advertising, so most numbers shown in the report are estimates. Only about a third of counties and cities responded with usable information to the questionnaires sent by Program Review staff. Information about school districts' newspaper advertising was taken from their accounting system, but those numbers do not separate spending for state-mandated notices.

The report shows the estimated public notice spending of individual counties, cities, and school districts as a percentage of each's total general government spending. For example, Sadieville, with a population of 313, spent \$1,500 on public notices in 2014 out of \$297,000 in general government spending—about half of 1 percent. Louisville/Jefferson County spent \$193,000 on public notices out of nearly \$1 billion in general government spending—2 hundredths of 1 percent. The smaller city spent 25 times more, relatively speaking.

School districts have been spending less than other local jurisdictions, but many will have significant increases in the cost of state-mandated notices as of FY 2017. Budget language that had exempted them from publishing full financial statements and school report cards in the newspaper for the past 13 years was vetoed in the 2016 budget bill.

Local jurisdictions are required to advertise public notices in a specific newspaper called the qualified newspaper. Most counties have a local newspaper that is the qualified newspaper, and most cities, school districts, and other districts publish in the same newspaper as the county. Newspapers must publish notices at the lowest rate offered to other

customers.

Small cities tend to spend proportionately more as a share of revenue than larger cities. This is an issue especially in Jefferson and Kenton Counties because newspapers there have the highest advertising rates. Cities have the option of using direct mail, and a few small cities have found it to be less expensive than newspaper advertising.

Delinquent tax advertisements are among the most expensive types of notices, but some of the cost is recovered through a fee added to the tax claims. The Department of Revenue developed a cost recovery formula, but on average it recovers approximately 34 percent of the cost by the end of the tax sale season. Recommendation 3.1 of the report is that the department should consider modifying the delinquent tax advertising cost recovery formula and procedures in order to make the formula more effective for all counties.

The cost of posting notices on the Internet can be negligible. Local governments that already have websites could include notices at little or no additional cost. A website hosting public notices should meet standards for security, timeliness, and accessibility. Kentucky Interactive, the company that runs Kentucky.gov, offers free web pages to local governments and could host a simple statewide public notice website at no cost. Using the state's official website would address issues of security and accessibility.

Utah operates a statewide public notice website with custom-built search features for \$7,000 per month. Shared among all local jurisdictions in Kentucky, a similar amount would be less than \$10 per month.

Newspaper readership patterns have changed in the past 20 years, but they continue to reach more people than the Internet in some groups, especially older citizens. Internet use is increasing and it is more likely to reach younger citizens. Internet availability is expanding, but it is still not available in homes everywhere in the state. Libraries provide access to newspapers and the Internet. Mobile phones provide additional ways to access the Internet.

When government actively wants to reach as many people as possible, it uses larger ads and may require more than one advertisement. The intent is to put the information in front of "browsers," people who are not looking for it. Reaching newspaper browsers can be expensive. Most state-mandated public notices are small, use fine print, and are concentrated in the classified sections of newspapers. This is a more passive approach than using larger ads. If notices are placed on the Internet, there is no provision to reach casual browsers.

"Seekers" are people who are looking for public notices. Seekers can find online notices easily using online search engines. Search tools do not always help find a specific notice, but they will find public notice webpages and websites.

Kentucky and several other states already provide some combined newspaper and Internet options for public notices. One of the most significant is the delinquent tax notice option, in which the newspaper ad includes the Internet address of the online notice. Other statutes say that the newspaper ad must refer

the reader to a location or place where information or documents can be found, but it is unclear whether the information or documents may be online.

Statute is unclear about the control that a governmental entity must have over a website containing a public notice document. Another policy question is whether to place notices on local websites or a statewide website. Website accessibility requirements could be established—how easy should it be to find, and how reliable should access to it be.

Recommendation 6.1 is that to ensure compliance with legislative intent in current and future statutes, the General Assembly may wish to consider clarifying the following questions:

- When may the Internet be a place or location that may be advertised as the location of public notice details?
- What government control of a public notice website is needed?
- Should a public notice website be local or statewide?
- How easy should it be to find online notices?

Nine states have adopted a proposal from newspaper associations to operate statewide public notice websites. Individual newspapers usually are required to participate in order to continue to publish public notices. Public notices must still appear in newspaper advertisements, which remain the official notice. The website is not required to be complete, accurate, or timely. In most of the states, other website requirements were not mentioned. Local governments continue to pay for newspaper advertising under these plans. If considered in Kentucky, the state might mandate certain features, such as required newspaper participation, guarantee of online posting, free posting and access, a built-in search tool, prominent links to the site from newspaper websites and local government websites, exclusion of non-notice content, security, and reliability.

No states allow all public notices to be posted online. Kentucky and some states have a few specific online-only options. In Kentucky, localities may adopt the Model Procurement Code, which allows them to use the Internet for requests for bids and proposals. School districts post detailed financial reports on the Internet.

If public notices were no longer in newspapers, it would be important to ensure they are available and accessible at the times and for the periods required. Local officials would have to be held responsible for posting online notices in the same way they are responsible for publishing notices in newspapers. It would be good to have a method of removing and archiving older notices.

Recommendation 6.2 is that if it decides to allow Internet-only public notices, the General Assembly may wish to consider how to prove that notices were posted and available unaltered for the specified period of time, when to remove older notices, and how to archive them.

Because government and citizens have different interests depending on the type of public notice, it might be helpful to decide how to best inform affected citizens separately for each type or category of notice. It might be better for some types of notice to be printed in newspapers, for others to be posted

online, and for others to be in both media. The choices for a particular type of public notice would balance the needs of local governments and citizens, the capabilities of the media, and the cost.

In response to questions from Senator Westerfield, Mr. Knowles said Kentucky Interactive does not have information about cities or counties that have their own websites, though Kentucky.gov is a free option. Some web hosts are not universally accessible due to security issues. There is not an existing mechanism of accountability for the process, but Recommendation 6.2 addresses this issue. The Department of Libraries and Archives requires a paper copy and digital photo for archiving purposes.

Representative Mills commented that only a third of cities and counties responded to the questionnaires.

In response to a question from Representative Palumbo, Mr. Knowles explained that some states that have online websites operated by the newspaper association hold the newspaper accountable.

In response to a question from Senator Carroll, Mr. Knowles said Kentucky Interactive provides Kentucky.gov at no cost, provided that it can package and resell the information. Cities and counties are responsible for posting information and the content. Accountability is similar to that for newspapers. If the posting involves an act of government and is not posted correctly, it could be voided.

Mr. Thompson said there are nine states with mandated state websites. If a newspaper does not post on these websites, it loses the right to publish public notices. Kypublicnotices.com is a statewide website available for newspapers to publish online. Of 145 qualified newspapers, 131 have posted notices at any given time. Many companies bidding on public projects use the website.

In response to questions from Senator Carroll, Mr. Wilson said that the report showed that less than 1 percent of local spending is used on public notices. Mr. Thompson said weekly publications would feel the impact most if notices were moved online, likely losing one to two employees. There is no standard rate across the state for public notices. KRS 424 only requires it be the lowest advertising rate.

In response to a question from Senator Seum, Mr. Thompson said utilities are only required to publish public notices when a rate change is made. A stop work order does not require a public notice.

In response to questions from Senator Westerfield, Mr. Wilson said newspaper readership is up due to a growing online presence. Mr. Thompson said that, when he started working at the Kentucky Press Association in 1983, there were 174 newspapers in the state; there are now 171. Circulation has declined but readership has increased.

Representative Mills commented that broadband access in his area is a problem. More people read the newspaper there than view it online.

In response to questions from Senator Carroll, Mr. Thompson said there will be a time when more newspapers will be online than in print. Newspapers have not discovered how to make money online. All but three of 171 newspapers have online versions. Mr. Wilson said if transparency and accountability are important, the government should look to the private



sector.

Representative Taylor commented that there is a state of critical mass that will be reached at any given time on a case-by-case basis. Local jurisdictions will need to make these decisions.

In response to a question from Representative Mills, Mr. Crawford said the delinquent tax advertisement recovery formula was included in legislation enacted in 2009. A survey of county clerks is done each year to determine how many bills remain unpaid. Over the past 2 or 3 years, 50 percent of the bills remain unpaid. This percentage was added to the bill the following year to recoup some of the revenue loss. The Kenton County clerk paid \$16,568 for advertising delinquent tax bills for 2015; \$16,065 was recovered. In 2016, the Kenton County clerk paid \$14,229 and has recovered \$14,826 so far this year. The Boyle County clerk spent \$968 this year on advertising and has recovered \$1,126. The formula is working.

In response to a question from Senator Carroll, Mr. Crawford said that the current method of publishing names in newspapers is effective in collecting delinquent taxes. It also allows those who purchase tax bills to see what is available.

In response to a question from Senator Buford, Mr. Crawford agreed that it would be appropriate for local governments to decide to post public notices in newspapers, online or both, though online only is not a current option.

Representative Simpson commented that the intention of the current process of publishing public notices is notification. The primary concern is not the cost for government.

Mr. Chaney said that a 2014 bill was an attempt to address this issue. SB 101 provided for a transition to a newspaper notice, but with full documentation being posted online. This would have allowed for a choice; it was not mandated. A small percentage of a local government revenue is not trivial; city officials look for any cost savings available. Cities want to be accountable and ensure transparency to their citizens. The citizens need access to the information to be able to make informed decisions and be in compliance. SB 101 addressed requirements for online notices. This report creates a framework for discussion among members of the Kentucky League of Cities and the Kentucky Press Association.

In response to a question from Senator Buford, Mr. Chaney explained that most cities collect their own taxes. They have a choice between publishing the delinquent tax list and then publishing it three times or advertising in the newspaper and posting on the Internet. Most city clerks find the 3 week advertisement is most effective.

Ms. Hampton agreed with Senator Buford that it would be great to have more ability at the local level. Depending on the area, some people receive their news from a physical paper; others access it online. Counties have an interest in keeping their residents informed. County clerks are supportive of their local papers.

Representative Mills commented that this is a complicated topic. Legislation should not have unintended consequences. There must be a balance

between citizen participation and being cost conscious.

Upon motion by Representative Simpson and second by Senator Buford, the Cost And Policy Considerations For State-Mandated Local Public Notices report was adopted by a roll call vote.

The meeting was adjourned at 11:21 AM.

## CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

### Minutes

October 18, 2016

#### Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee meeting was held on Tuesday, October 18, 2016, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Chris Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Chris Harris, Co-Chair; Senators Julian Carroll, Chris Girdler, Stan Humphries, and Christian McDaniel; and Representatives Steven Rudy and Jim Wayne.

Guests: Ms. Elizabeth Baker, Planning Director, University of Kentucky; Mr. Scott Aubrey, Director of Real Properties, Finance and Administration Cabinet; Mr. Ryan Barrow, Executive Director, Office of Financial Management; Mr. Denis Frankenberger, Louisville-based businessman; and Mr. J. Bruce Miller, Senior Partner/CEO, J. Bruce Miller Law Group, Louisville.

LRC Staff: Josh Nacey, Committee Staff Administrator; Julia Wang, Analyst; and Jenny Wells, Committee Assistant.

#### Approval of Minutes

Representative Rudy moved to approve the minutes of the September 20, 2016 meeting. The motion was seconded by Senator Carroll and approved by voice vote.

#### Correspondence Items

Mr. Nacey reported on one correspondence item which is a letter from the committee to Western Kentucky University (WKU) stating that the committee tabled the proposed Med Center Health Sports Medicine Complex at the September meeting.

#### Information Items

Mr. Nacey reported on six informational items. The first two items relate to the same WKU Med Center project. The first item is a copy of the Request for Proposals (RFP) that WKU issued for the project. The cover letter to the committee notes that the pre-existing Letter of Intent (LOI) has been rendered null and void.

The second item is a letter from the Finance Cabinet to Mr. Jonathan Miller of Frost Brown Todd, LLC. Mr. Miller had filed a protest against the proposed WKU Med Center project on behalf of a group of doctors in Bowling Green. The letter is the cabinet's adjudication of the protest which states: (1) the cabinet did not have jurisdiction over the protest because the Letter of Intent between WKU and the Medical Center was non-binding between the parties; and (2) since the project is now being competitively bid, the controversy is moot.

The third item is the semi-annual report of the

Kentucky Asset/Liability Commission (ALCo) which discusses the state's investment and debt portfolios and associated interest rate derivative contracts.

The fourth item includes the quarterly status reports on capital projects for the Administrative Office of the Courts, the Commonwealth Office of Technology, the Finance and Administration Cabinet, and the universities that manage their own capital construction programs.

The fifth item is an article recently published from the Bond Buyer stating that the recent Kentucky Supreme Court ruling against the Governor's cuts to the universities budgets is considered by Moody's credit agency to be a credit-negative.

The final information item is an update to a question posed in the September meeting. During that meeting, additional information was requested on a tunneling project near a historic property in Jefferson County. The request was made in light of recent articles in the Courier Journal about the Drumanard estate. According to the Courier Journal, the 50-acre property sits in the path of the East End Bridge. Twin tunnels have been built underneath the property as a connection to the new span that is set to open by the end of the year. The Transportation Cabinet has since provided staff some background information on the matter.

The property is listed on the National Register of Historic Places. The tunnel was constructed to go beneath this property so as to avoid problems with Section 4(f) of the U.S. Department of Transportation Act of 1966. The state purchased the property for \$8.3 million. The appraised value was \$6.8 million. Since the time that the state bought the property, an historic preservation easement was placed on the land. The easement restricts what owners can do with the property. No development or other major changes are allowed without the consent of the State Historic Preservation Officer. So far, that office has spent approximately \$250,000 in repairs as a result of easement inspections and yearly reviews. No action was required.

Representative Harris commented that he would like to know why the state would pay \$8.3 million for a property that was appraised for \$6.8 million and whether Transportation funds were used for the project.

Senator McDaniel commented that, when the project began, this property was not an historic property on the register, but it achieved that designation when the project moved forward. Senator McDaniel said that he did not know if this process was approved by the Commonwealth or if it was a federal issue.

Representative Harris requested that staff provide further information based on the questions and comments in regards to the project.

#### Project Report from the Universities

Ms. Elizabeth Baker, Planning Director, University of Kentucky (UK), reported the purchase of two items of medical equipment in excess of \$200,000. The first item is the purchase of the Selenia Dimensions Genius Mammography System, 3D. This device will offer high-resolution digital images from inside the body. This equipment's breast screening capabilities is expected to increase breast cancer



detection by up to 41 percent and reduce false positives by up to 40 percent. The mammography system will be located at the Markey Cancer Center. The cost is \$413,100 and was paid in cash with restricted funds. No action was required.

The second item is the purchase of the Zeiss LightSheet Microscope. This equipment will be used for imaging of thick or living biological specimens. There is no other dedicated lightsheet instrument at UK or elsewhere in Kentucky. The equipment will be located at the Don and Cathy Jacobs Science Building Biology Imaging Center. The cost of the microscope is \$599,697 and was paid in cash with \$597,054 in NIH funds and \$2,643 in UK restricted funds. No action was required.

#### **Lease Reports from Finance and Administration Cabinet**

Mr. Scott Aubrey, Director, Finance and Administration Cabinet, reported on one item which is for a leasehold modification on behalf of the Energy and Environment Cabinet, the Education and Workforce Development Cabinet, and the Department of Education. These modifications will be at the new state office building which is also known as the "300 Building." The building was originally proposed to accommodate 1,500 staff from various state offices located at Fair Oaks and the Capital Plaza Tower. The actual staff and office that would move into the new office building were not identified until after the design was complete. Since those agencies have moved, they have identified the improvements that are needed to meet their programmatic needs. The modifications included installation of additional electrical and data outlets for training rooms, conference room, and other areas. The total cost of these improvements is \$46,840. Due to the funding arrangements of the project, the Finance Cabinet was unable to modify the lease agreement. However, the executed document still allowed for a Tenant Improvement Fund to be utilized for the tenant agencies to allow them to operate more effectively.

Representative Harris said that, although action is not required under the statute, action is recommended due to the culmination of these projects exceeding the statutory limits of \$50,000. Additionally, Representative Harris said that, for transparency and full disclosure to the members and to the public, the committee will treat the leasehold modification as an action item.

Senator Humphries moved to approve the leasehold modification, and the motion was seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

#### **Project Report from the Finance and Administration Cabinet**

Mr. Nacey reported on three new, unbudgeted projects, from the Department of Military Affairs. The first project is for the Construct Range Bypass Road at Wendell H. Ford Regional Training Center located in Greenville, KY. The cost of the project is \$831,700 and is 100 percent federally funded from the Department of Defense (DoD). The project consists of constructing approximately 2,630 feet of gravel roadway, including earthwork, grading, debris removal, seeding, erosion control, and instillation of roadway culverts and headwalls. The road will have

a 2 inch thick asphalt surface layer on a 4 inch thick asphalt base layer along the length of the roadway.

The second project is for the Medical Command Building Expansion (MEDCOM) at Boone National Guard Center located in Frankfort, KY. The \$1,079,600 appropriation is 75 percent federally funded from the Department of Defense (DoD) and 25 percent funding from Agency restricted funds from the Combined Clothing Distribution Facility. The project involves the expansion of approximately 3,000 sq. ft. for housing the medical command unit. The work consists of, among other things, exterior work, interior work, bathroom facilities, and a high efficiency heat pump.

The final project is for the Convert Former Army Support Facility (AASF) to Readiness Center at the Boone National Guard Center located in Frankfort, KY. The \$1,254,400 appropriation is 75 percent federally funded from the DoD and 25 percent funded by restricted funds from the Combined Clothing Distribution Facility. The building was constructed in the 1970s and has been replaced by the new AASF building. The renovation will convert the old building for administrative use and will allow Military Affairs to relocate from leased office space into the Boone National Guard Center. The project consists of replacing existing finishes, mechanical and electrical systems, new masonry walls, new carpet and tile, new cast-in-place concrete weapons vault, and replace overhead doors with insulating metal wall panels.

Senator McDaniel moved for all projects to be considered as one vote, and the motion was seconded by Senator Humphries. The motion was approved by voice vote.

Senator McDaniel moved to approve the three projects, and the motion was seconded by Representative Rudy. The motion passed by a roll call vote of 7 yeas, 0 nays.

#### **Report from the Office of Financial Management**

Mr. Ryan Barrow, Executive Director, Office of Financial Management (OFM) reported on one item for the Cabinet for Economic Development which was for the Kentucky Economic Development Finance Authority (KEDFA) Healthcare Facilities Revenue Bonds, Series 2016 (Masonic Homes Independent Living II, Inc.) project located in Louisville, KY. Proceeds from this bond issue will finance the acquisition, construction, installation, and equipping of healthcare and health related facilities consisting of independent and assisted living units to be located on the Masonic Homes campus in Louisville, and to refund bonds previously issued for similar facilities in the same location. Proceeds from this bond issue are \$140,000,000, an interest rate of 4.67 percent, and final maturity date of October, 2051.

Representative Wayne moved to approve the bond issue, and the motion was seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Mr. Barrow reported on three items for the Office of Financial Management. The first item was for the Kentucky Housing Corporation (KHC) Tax-Exempt Multifamily Housing Revenue Bonds, Series 2016. Proceeds from this bond issue will finance the acquisition, rehabilitation, and equipping of Downing

Place Apartments, a 193 unit property located in Lexington, KY. A public hearing was conducted September 14, 2016 and the estimated date of sale is December 3, 2016. Proceeds from this bond issue are \$13,000,000, an interest rate of .95 percent, and it has a term of 2 years.

Senator McDaniel moved to approve the bond issue, and the motion was seconded by Representative Rudy. The motion passed by a roll call vote of 7 yeas and 0 nays.

The second item was for Morehead State University General Receipts Bonds, 2016 Series B. Proceeds from this bond issue will be used to finance the "Construct Food Service/Retail & Parking" as authorized in HB 303 of the 2016 Regular Session. This is a \$6.6 million general receipts transaction, multi-phase project, in which this is the final phase. The interest rate of this bond issue is 2.916 percent, the estimated date of sale is November 9, 2016, and the closing date is November 30, 2016.

Senator Carroll moved to approve the bond issue, and the motion was seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

The final item was for the Turnpike Authority of Kentucky (TAK) Economic Development Road Revenue and Revenue Refunding Bonds (Revitalization Projects), Series B and Series C. Proceeds from the 2016 Series B bonds will permanently finance up to \$125 million in Road Fund-supported projects authorized by the 2010 Extraordinary Session of the GA in HB 3, and the Series C bonds will advance refund potentially \$50,945,000 of the Authority's Economic Development Road Revenue Bonds (Revitalization Projects), 2011 Series A Bonds. These issues will have a 20 year amortization and an interest rate of 2.91 percent. No action was required.

In response to questions from Representative Wayne, Mr. Barrow said that the debt service will be paid by the state Road Fund to fund projects that were in various budget bills for state funded projects and will allow those projects to go forward. While the GA has authorized a full \$125 million for those projects, the Transportation Cabinet estimates approximately \$50 million in needs over the next several months. Several of these projects are Cabinet projects while others are federal projects.

In response to questions from Representative Harris, Mr. Barrow said that there was a time when Kentucky had a number of turnpikes and collectors, which is no longer the case, with the exception being the Louisville-Southern Indiana Ohio River Bridge. TAK can be compared as a sister agency of the State Property and Buildings Commission which routinely is used for issuing bonds as a legal entity in regards to general funds and agency funds.

#### **New School Bond Issues with School Facilities Construction Commission (SFCC) Debt Service Participation**

Mr. Barrow reported on nine (9) school bond issues with SFCC debt service participation. One issue will finance school renovations and the remaining eight will refinance previous bond issues. No tax increase is necessary to finance these projects. Representative Rudy moved to approve the bond issues, and the motion was seconded by Senator

McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

#### **New School Bond Issues with 100 Percent Locally Funded Debt Service Participation**

Mr. Nacey said that four local school bond issues were reported to the committee. The bonds are 100 percent locally funded. One issue will fund a new high school construction and the remaining three will refinance previous school bonds. All of these school bond issues are supported by 100 percent local debt service. No tax increases were involved. No action was required on this item.

#### **Debt Issuance Calendar**

Mr. Nacey said that the updated debt issuance calendar was included in the members' folders.

#### **Discussion Item**

Representative Harris said the last item on the agenda would be a discussion on the Louisville Arena Authority (LAA). In August, this committee decided to wait until today's meeting in order to include Representative Wayne who could not attend the August meeting in which the LAA was brought up for discussion regarding the financing of the arena. The topic has been an issue with this committee several times over the last three years. The event that triggered such an interest was the apparent forgiveness in 2013 of several million dollars of negative impact reimbursement from the LAA to the Kentucky State Fair Board (KSFB). Representative Harris said that last year, an informal opinion by the Attorney General (AG) indicated, among other things, that the LAA was not obligated to repay the negative impact reimbursement to the KSFB. In addition, the full LRC issued an RFP in an attempt to hire an independent consultant to review the financing of the arena. No action has been taken by LRC on the request for the RFP. Representative Harris said that, given the confluence of events since late last year, such as the legislative session and the appointment of new co-chairs of this committee, the members thought it would be best to bring this issue back to the forefront to renew the discussion.

Representative Wayne commented further by stating that, after seeking an opinion from the former AG and also requesting a state audit of the arena's finances by the former state auditor, the issue before the committee still has not been resolved. Under the requirements of the budget bill that authorized the arena, the LAA was required to pay for the losses incurred by KSFB due to the loss of activities to the arena. In the fall of 2013, testimony was given in front of this committee from the LAA stating the debt would be paid and this has not been done. Representative Wayne said that there remain several concerns and questions that needs to be addressed and answered: (1) the status of the arena's finances and whether complete audit by the state auditor is needed to determine the arena's fiscal stability, (2) whether state-run authorities, such as the KSFB, have legal authority to forgive a debt that has been required by the legislature. Representative Wayne said that the committee should ask the new state auditor to review the issue once again, other than an outside source, in order to determine the stability of the LAA's budget. Lastly, Representative Wayne said that the committee should seek a new AG opinion regarding KSFB's

forgiveness of the negative impact reimbursement.

Mr. Denis Frankenger, a Louisville-based businessman said that, according to the most recent financial statement of the LAA for 2015, the two subsidies, Louisville Metro Government and the state TIF, amounted to \$9.8 million and 8.1 million, respectively. An analysis of the actual operating revenues of the arena amount is \$8.3 million. Mr. Frankenger said that the arena lost \$17.2 million last year which equates to approximately \$1.4 million per month. Mr. Frankenger said that amount has been consistent each year since the inception of the arena in 2010 and these losses are largely covered by the public subsidies. Mr. Frankenger commented that he unsure as to why the state would want to do an audit or pay for an outside firm. Under the terms and conditions of the Louisville Metro Government subsidy of the LAA, which is included in the bond prospectus, if there are two consecutive years of the maximum amount that the Louisville Metro Government pays, Louisville Metro Government has the right and the responsibility to require the LAA to have an outside audit conducted by a national firm familiar with arenas. Mr. Frankenger said that, to date, more than \$100 million of KY tax payer funds have gone to subsidize the arena, which is a privately owned corporation, along with \$349 million worth of bondholder capital having built the arena. This amount was in addition to the \$75 million that the state paid as a grant to purchase the property. The Arena cost \$403 million to build, including land and equipment, and the lease with the University of Louisville (U of L) appears to be the problem. The lease contains provisions where U of L receives up to 88 percent of all the revenues. Further, Mr. Frankenger said that it seems unrealistic that a \$403 million arena has a tenant receive up to 88 percent of all the revenues. Lastly, Mr. Frankenger said that, with \$17.2 million of loss this past year, in addition to the university's profits of more than \$20 million a year on arena-related activities net of expenses, it appears the arena is a conduit by which taxpayer dollars are funneled through and into the U of L Athletic Association. It is a taxpayer scam.

In response to questions from Senator Carroll, Mr. Frankenger said that each year, the state TIF and the Louisville Metro Government use taxpayer dollars to subsidize the operation of the arena. The arena lost \$17.2 million this past year while the public subsidies were approximately \$17.9 million. Mr. Frankenger said that he believes the agreement between U of L and the arena is invalid because there were many unreported conflicts of interest in regards to the directors of the LAA; more than half were closely associated with the university and some were directors of the university. Mr. Frankenger said that U of L's attorney was on the board of the tenant and more than 50 percent of the original directors were closely associated with the university. Additionally, Mr. Frankenger said the bond debt itself is \$839 million. To date, there has been 2.3 percent of \$171 million paid in bond debt-service and applied to the principle; 98 percent of principle is still owed. Further, Mr. Frankenger said that this year and every succeeding year, the principle is approximately \$23 million in bond debt-service. By

the year 2020, that bond debt will increase by \$6.2 million. Lastly, Mr. Frankenger said that, within the next 24 months or sooner, the arena will default.

In response to more questions from Senator Carroll, Mr. Frankenger said that in order to preserve the arena, the lease must be renegotiated. Under the current conditions of the lease, wherein the arena loses \$17 million and the university receives most of the profits, the arena cannot survive financially. The arena has done everything possible to pay bond debt even to the point that it has exhausted the Maintenance and Renovation Account, which is supposed to be at \$3 million and is presently at zero.

Mr. J. Bruce Miller, Senior Partner and CEO, J. Bruce Miller Law Group, spoke of the difficulty of bringing an NBA team to Louisville. Recently, CBS Sports indicated that Seattle and Louisville were the two most likely candidates for NBA expansion franchises. Mr. Miller said that, according to CBS Sports, the main problem was the lease that the university has with the arena and the gross revenue that U of L takes from the arena. Mr. Miller said he had been in discussions with other individuals who have concluded that the arena is going to go bankrupt. Mr. Miller said that the arena's YUM! Brands corporate headquarters has moved to Plano, TX, with some office facilities remaining in Louisville. YUM! Brands \$13 million, 10-year commitment for naming rights, which amounts to \$1.3 million per year, will expire in a year and a half. Additionally, Mr. Miller said that Section 47 of the lease, provides that if the arena goes bankrupt, the university has the right of first refusal to purchase the arena. The concern is that no bankruptcy judge will allow the university to purchase the arena. Mr. Miller said that he has had discussions with a person interested in renovating Freedom Hall to avoid state bonding capacity. However, the renovation of Freedom Hall would not alleviate the issue of having a bankrupt arena in downtown Louisville. In conclusion, Mr. Miller stated that, in addition to a remodeled Freedom Hall, the city of Louisville and the state of Kentucky would have a bankrupt arena that cannot be sold. In addition, bondholders could possibly sue in an adversarial-proceeding, the arena and the state for allowing a situation where the bondholders have invested in a bond issue where 88 percent of the revenues were taken by U of L. This action could potentially affect the bond holders' tax status for the reason that some of these bonds are tax-exempt bonds.

In response to several questions from Representative Harris, Mr. Frankenger said that U of L receives a percentage from all activities at the arena, including concerts and other activities, with the NCAA providing 50 percent of each of its events. Mr. Miller said that the university's basketball team pays \$10,000 per game for rent on a building that cost \$350 million to build.

Mr. Frankenger said that the public is subsidizing the losses at the present time. Louisville Metro Government puts in its maximum of \$9.8 million per year and the state TIF was \$8.1 million in 2015. Adding the two amounts together equals to the loss this past year. Mr. Frankenger said that the TIF was overstated in the original bond prospectus and was virtually double what the actual amount has been



over the course of the past 8 years. Originally, the TIF was a 6 sq. mile area and, which was not recognized until later, a negative due to other companies moving out and taking the totals of sales taxes and property taxes down. Mr. Frankenberger said that a plan was put in place which reduced the 6 sq. miles to 2 sq. miles. This amounted to an 86 percent reduction in size of the TIF district. Mr. Frankenberger said that by having made the reduction retroactive to the previous fiscal year, the TIF increased. The TIF of the first year was projected to be \$4.5 million and it was actually \$618,000; the second years' projection was \$6.6 million, but was actually \$2.1 million. Every year the shortfall is between \$4 and \$6 million from what was projected with the result being that the state TIF has produced \$35 million less than projected.

Mr. Frankenberger said that the LAA has said it is not going to pay the state the negative impact reimbursement. The LAA's 2015 financial statement, in addition to the last 2 to 3 years, specifically states that it intends to honor its agreement with the KSFB to settle all debts for a total of \$1.47 million. The out-of-pocket expenses showing due on the statement \$1.9 million. After several arguments about that amount, the KSFB discounted \$555,000 which brought that amount down to \$1.47 million. At the time, the terms with the arena were that this amount be paid promptly to the KSFB. Lastly, Mr. Frankenberger said that, in these three and half years, the LAA has paid \$200,000 of this \$1.47 million.

In response to a question from Senator McDaniel, Mr. Frankenberger said that the \$1.4 million that was agreed upon by the LAA to be paid to the KSFB for providing management and staffing of the arena, to date, has not been paid. The argument was that the KSFB did not do a good job at managing the arena causing it to lose money.

In response to another question from Senator McDaniel, Mr. Frankenberger said that the revenues from the arena's activities goes to the U of L Athletics Association specifically.

Senator McDaniel commented that he recalls that as a result of the loss to the university, to the Commonwealth, and to the KSFB and Freedom Hall, in Budget Session 2014, the legislature had to authorize additional funding because the KSFB could not make debt service.

Representative Wayne said that, while he respects Mr. Jim Host, under whose leadership the arena was built, and in recognizing Mr. Frankenberger's request for an independent audit, he believes that the seriousness of the arena's finances calls for the committee to first write a letter to the state auditor, Mr. Mike Harmon, asking for a complete financial audit of the LAA. Lastly, Representative Wayne said that this committee, as the overseer of capital projects and bond issues, is the proper authority to seek an audit.

Senator McDaniel moved that staff draft a letter to the Auditor requesting a complete financial audit of the LAA and bring the letter to the next meeting for approval, and the motion was seconded by Senator Carroll. The motion was approved by roll call vote of 5 yeas, 0 nays.

Senator Carroll commented that getting an investor that is interested in investing in the

arena, rather than Freedom Hall, and by providing leadership to save the state the embarrassment that would come from the bankruptcy of the Arena, would be an advantage of saving the arena. Senator Carroll said that speaking with the Governor could be the leadership that is needed in this instance.

With there being no further business, the meeting adjourned at 1:10 p.m.

## FREE-ROAMING HORSE TASK FORCE

### Minutes of the 3rd Meeting of the 2016 Interim

October 18, 2016

#### Call to Order and Roll Call

The 3rd meeting of the Free-Roaming Horse Task Force was held on Tuesday, October 18, 2016, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Fitz Steele, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Fitz Steele, Co-Chair; Senator Robin L. Webb; Representative John Short; Phillip Brown, Ginny Grulke, Jonathan Lang, David Ledford, David Moss, and Lori Redmon.

Guests: Clay Larkin, Partner, Dinsmore Law Firm; David Fugate, DVM, West Liberty Veterinary Clinic; Walker Logan, DVM, Logan Veterinary Services, PLL; Vicki Woodruff, Kentucky Department of Agriculture, Office of the State Veterinarian; and Jeff Harmon, Deputy General Counsel, Kentucky Energy and Environment Cabinet.

LRC Staff: John Ryan, Tanya Monsanto, Jasmine Williams, and Becky Lancaster.

#### Presentation of Solutions and Recommendations Regarding Free-Roaming Horses

Phillip Brown, Chief of Staff and Legislative Liaison, Tourism, Arts, and Heritage Cabinet, noted that his remarks incorporate thoughts and comments from the Kentucky Department of Fish and Wildlife, Dr. Karen Waldrop, as well as the Kentucky Horse Park. Research shows that the current economic impact of Kentucky's horse economy is \$4 billion a year. The Department of Travel and Tourism's most recent impact survey states tourism has a \$13.1 billion impact on Kentucky per year with ten percent of tourists attending horse related activities. The Kentucky Derby has a \$400 million annual economic impact on Kentucky. The Kentucky Horse Park has a \$240 million annual impact on Kentucky's economy. There does not appear to be a landscape level biological impact caused by horses in eastern Kentucky at this time. Unattended horses can negatively impact wildlife locally by displacing elk and other wildlife. Free-roaming horses can affect elk hunting and wildlife viewing access opportunities on a local scale because typically elk will move out once horses move into an area. Kentucky has 1.4 million acres of elk restoration zones. Overgrazing by horses can affect the local elk and wildlife habitat.

The cabinet and its agencies have fundamental concerns with building tourism around what is

unavoidably illegal behavior by private horse owners and about the legitimacy any actions by the cabinet to promote free-roam horses would convey to that illegal activity. The Kentucky Horse Park is concerned that glamourizing free-roaming or feral horses may lead owners to think it is ok to let horses loose and the Commonwealth condones such activity not withstanding current state law. The cabinet recommends that the task force, at a minimum, should obtain better data on the size of the current herds in eastern Kentucky before proceeding with a solution.

Representative Steele recognized that the Office of the State Veterinarian, through Dr. Robert Stout, provided written comments to the task force.

Clay Larkin, Partner, Dinsmore & Shohl LLP, testifying on behalf of the Kentucky Coal Association (KCA), stated mining is regulated by the surface mining control and reclamation act, a federal statute, and Kentucky Revised Statute (KRS) Chapter 350. KRS Chapter 350 is specific to the mining industry with a goal to return mine lands to their pre-mining land use and capability. The statute requires operators to perform reclamation including backfilling, seeding, grading, and revegetating the mine land. In order to secure that reclamation work is completed, the operator is required to post a performance or reclamation bond at the time it applies for a permit. The reclamation bond is established in an amount sufficient to insure that the state could execute the reclamation if the operator could not complete the reclamation. Reclamation bonds are often posted as cash collateral or certificates of deposit, not just surety bonds.

The ability to get the bonds released when reclamation is complete is crucial to the financial wellbeing of the coal companies and people in eastern Kentucky. Bond release occurs in three phases. Phase one bond release involves backfilling, grading, topsoil replacement, and revegetation, including the initial seeding. Once phase one steps are complete the operator can receive 60 percent of the reclamation bond. Free-roaming horses become an issue in phase one because it is a massive financial undertaking to hydro-seed and do the planting that is necessary to obtain the bond release. Horses can undo all that work by grazing in the area. Hydro-seeding must then be done again in the next planting season, a vicious cycle that continues when horses roam free on the property. Phase two, twenty five percent of the bond, is largely related to revegetation again. Phase three is the remaining 15 percent of the bond and relates to whether the post-mining land use capability has been completely accomplished.

Bond release inspections are a public process. The operator has to plan the inspection in advance, at least 30 days, to allow for people impacted by the bond release decision to be available to accompany inspectors on the inspection. The coal industry and the citizens need reclamation of mine lands to be completed. Reclamation cannot be completed with interference from free-roaming horses that continue to disturb and destroy vegetation. Mr. Larkin stated the federal government is heavily involved in the way our state administers its bonding program, it

has required our state to adopt a bond pool to back stop the individual bonds. The federal government is also involved in whether that fund is solvent and is putting a lot of pressure on Kentucky to get those bonds released.

Representative Steele commented that it is too expensive for coal companies to have to repeat hydro-seeding. Coal companies are still one of the first places people go for monetary support for schools and disasters.

In response to a question from Senator Webb, Mr. Larkin stated he did not have the number of bonded properties on hand but could provide that information to the task force. Free-roaming horses on mine reclamation sites have been an issue in Martin County and Pike County.

#### **Approval of the Minutes from the August 23, 2016 Meeting**

A motion to approve the minutes of the September 20, 2016 meeting was made by Representative Short, seconded by Phillip Brown, and approved by voice vote.

In response to questions from Ginny Grulke, Mr. Larkin stated he did not have any data on the damage of reclamation sites due to deer, elk, or other wildlife. Reclamation is accomplished to the designated post-mining land use and takes into account the species that were on the property before the mining began. Grazing habits are different between elk and horses.

David Ledford commented that the grazing habits of elk and horses are dramatically different. Elk do not eat vegetation into the dirt but horses will eat vegetation into the dirt. He has seen mine properties with hundreds of elk grazing with fresh reclamation and no issues with regrowth. Mr. Ledford stated many horses do not show up on mine land until reclamation has begun.

Representative Steele commented that a permit package is specific to the property. The vegetation will vary and must account for deer, bear, elk, and horses on the property.

In response to questions from Dave Moss, Mr. Larkin stated that phase one of the mine reclamation process begins with moving dirt back to the mine site. Moving the dirt has to take place during a construction season, it cannot happen all year round. If the grass is eaten all the way to the dirt, depending on the time of year, the vegetation may not be able to be immediately replanted. The Energy and Environment Cabinet is not only looking to see that the revegetation process has started but also measuring the success of vegetation growth. Phase one of bond release can last a year or longer. Phase three bond release could take several years to complete depending on the permit package. Mr. Larkin stated a large operation's mine reclamation cost could be millions of dollars because it is a significant earth moving project. The hydro-seeding costs alone are hundreds of thousands of dollars because it involves major equipment.

In response to a question from Lori Redmon, Mr. Larkin stated that if a person has a geographic description of a particular mine reclamation area, the Energy and Environment Cabinet, Department for Natural Resources, Division of Mine Permits would be able to pull the permit file to identify the permittee. The permittee will know who the land

owners are because they have leases and ownership relationships with those land owners. Regulations require that a reclamation site be marked with a permit number. A person can input a permit number into a publicly available internet database, the Surface Mining Information System, and get more detailed information regarding the permit.

Senator Webb commented the reclamation site should be marked with the permit number and the holder of the permit. The signs should be placed around the perimeter of the site and one could call the Division of Mine Permits in Frankfort to get more information.

Representative Steele commented the permit signs are required to be within a particular distance from each other and should be readily available in case of an accident in the area.

#### **Local Veterinarian Recommendations Concerning Free-Roaming Horses**

David Fugate, DVM, West Liberty Veterinary Clinic, stated the West Liberty Veterinary Clinic has satellite offices located in Morgan, Breathitt, Magoffin, and Floyd counties. There are only four or five resident veterinarians who work with horses in approximately 15 to 20 counties in eastern Kentucky. There were seven free-roaming horses brought to the West Liberty Veterinarian Clinic because it is one of the only clinics in eastern Kentucky able to house horses for care. All seven, including four mares in foal, were adopted out. Castrating stallions should be a priority in solving the free-roaming horse issue. He has spoken with clients who can no longer afford to feed or care for their horses who choose to turn the horse out to allow the horse to search for food. Dr. Fugate believes this is a better choice than leaving a horse tied in a 10' x 10' stall and no option for food. Horses will eat new grass to the dirt instead of older, taller grass on reclaimed mine sites as well as in pastures.

Walker Logan, DVM, Logan Veterinary Services, PLLC, stated it is not reasonable to expect people to stop dropping off horses or that horses will disappear from mine sites. Free-roaming horses present a huge risk to public safety when roaming into the roads. They are reproducing faster than they are disappearing. There is a public sense of ownership and need for the horses to be in eastern Kentucky.

Dr. Logan suggested the task force examine issues such as the use of birth control in mares, gelding stallions and colts, establishing horse ownership or lack thereof, if horse is termed abandoned can it be gelded legally, best practices for injury assessment, lameness and care for mares in foal that may also have a yearling nursing. She advised the task force to discuss solutions that would strengthen laws and make them more enforceable so that people will not release their horses as often. Some horses cannot be caught or tamed however, some can be reestablished into good domesticated situations but that process takes a lot of time, effort, and resources.

Senator Carpenter commented that a reoccurring issue is how to identify owners and distinguish if horses have been left to graze for a short amount of time or have they been abandoned. If the horses cannot be counted, marked, or identified, it will be difficult to monitor the horses' status. Funding for

gelding clinics may be hard to find, but if the horses do not stop reproducing the herds will be always be growing and eventually be too hard to manage.

In response to questions from Senator Webb, Dr. Fugate stated the state should give local authorities the jurisdiction to geld horses if they have been on reclaimed mine land more than 30 days and the owner has not cared for the horse. He has participated in many free gelding clinics. The best places to educate the population to not turn out a stallion or to advertise free gelding clinics are in hot spot areas where events put free-roaming horses in the media's spotlight. For example, after three free-roaming horses were shot in the Greasy community, local media ran several stories about the incident. Churches and liquor stores are the best places to put signs up to notify the public of horses on a stray hold.

In response to questions from Senator Webb, Lori Redmon stated the Greasy incident crossed over both Martin and Johnson counties. The KHS worked with animal control officers in both counties and the Johnson County Judge-Executive signed the stray hold or "taker-up" form for the remaining seven horses in the area. She understood that the county was the "taker-up" and asked KHS to hold the horses for 15 days. The KHS did not legally own horses until after the 15 day hold. It was Johnson County's responsibility to comply with the statute to scan, chip, and advertise the horses on the state website for stray hold horses.

Senator Webb commented that she wrote the stray hold statute and it is more complicated than just holding a horse for more than 15 days. She is concerned the law is not being followed. The designation of who specifically is the "taker-up" needs to be reviewed. She stated the stray designation was not created for free-roaming horses but they now fall under the umbrella of the stray hold provision. The stray hold provision is a protective mechanism that has been expanded upon to protect private property, the horse, and the owner. Policy makers need to address a variety of situations when a stray designation is given.

Senator Carpenter commented that even though there are no stray horses in his area, unwanted or abandoned horses exist because there is no market for the horses. If someone wants a horse, that person should take care of it and not allow it on someone else's property. People should not let horses go for six months or longer and not check on them. Some people take advantage of the free gelding clinics.

Dr. Fugate commented that most of his clients are responsible horse owners. The population of horses he serves are more companions and trail riding horses rather than economic drivers such as thoroughbred horses. He has gelded horses in the free clinics that would not have been gelded otherwise. Members should not label people who use the free clinics because it is human nature to use something that is free. Kentucky will need to employ experienced cowboys to round up free-roaming stallions that need to be gelded.

Senator Carpenter added that if the State pays for a gelding clinic, it should have stipulations so people do not take advantage of the free gelding clinics.

Lori Redmon commented that geld clinics were



designed to be a bridge plan to geld horses presented by an owner and be able to start conversations with owners in the area because the KHS does not have access to the free-roaming horses. KHS wants the owners to know that it is there to help them. Free gelding clinics have helped generate relationships with people in eastern Kentucky that have horses and horses in need have gotten assistance.

In response to questions from Lori Redmon, Dr. Logan stated handling horses that are free-roaming or feral takes a person with a very specific skill set. She knows fewer than five people who are qualified to safely handle a wild horse. One must be able to rope a horse, have a facility to safely and substantially maneuver it from place to place. A person handling a wild horse must have the ability to approach the horse in a barn aisle, get their hands on it to pull blood for tests, vaccinate it, deworm it, and do an exam to determine if a mare is pregnant. Approaching a full grown adult wild horse is a dangerous task.

Representative Steele commented that the task force is scratching the surface on the work to be done concerning free-roaming horses. The state, different cabinets, and agencies are aware of the ongoing problem. The Energy Cabinet should work on bond releases to the coal companies if there are free-roaming horses on the mine land now but not when the permit and bonding were issued.

John Ryan read the draft copy of the Free-Roaming Horse Task Force findings and recommendations as follows:

1.The Free-Roaming Horse Task Force finds that the existence of a free roaming horse population is a potential source of tourism revenue for the localities where the population is located.

2.The Free-Roaming Horse Task Force finds that free roaming horses are feral horses and are not necessarily abandoned horses or livestock as defined by the Kentucky Revised Statutes. The Kentucky General Assembly should clarify the differences between the two definitions and should consider adding a definition for “free-roaming horse.”

3.The Free-Roaming Horse Task Force finds that the Kentucky General Assembly should designate a state agency with responsibility for determining the size of the free roaming horse population in a manner that best protects the health and safety of the horses and the communities within which the free roaming horses reside.

4.The Free-Roaming Task Force finds that the Kentucky Horse Council should work collaboratively with stakeholder groups and representatives of state and local agencies toward a common goal of protecting the health and safety of the free roaming horses and reducing the free-roaming horse population in the Commonwealth.

5.The Free-Roaming Horse Task Force recommends increasing the capacity and accessibility of existing free gelding services offered by equine welfare agencies by allocating state funding or adjusting state policies to facilitate private donation funding.

6.The Free-Roaming Horse Task Force finds that any state agency with responsibility over free-roaming horses also shall be charged with determining methods to determine what percentage of free roaming horse

herd growth is acceptable and, to curtail the size of the free roaming horse population including but not limited to gelding clinics, contraceptives for mares, and culling the number of stallions.

7.The Free-Roaming Horse Task Force recommends that any state agency charged with responsibility over free roaming horses should examine whether strict prohibitions on the practice of turning out or pasturing domesticated horses should be enacted by the Kentucky General Assembly.

8.The Free Roaming Horse Task Force finds that an interim joint committee of jurisdiction or subcommittee thereof should continue to study the problems of domesticated horse abandonment, the health and safety of free roaming horses, the methods of animal identification for purposes of establishing property ownership, adherence to animal care standards, free roaming horse breeding operations and owner accountability, and liability in cases of injury or property destruction.

9.The Free-Roaming Horse Task Force recommends that the Kentucky General Assembly (a) increase fines and penalties for the abandonment of horses on private lands or lands without the landowner's consent, and (b) consider the adequacy of other current laws and update if necessary.

10.The Free-Roaming Horse Task Force encourages the cooperative use of corral pens, tools, supplies, and equipment needed to manage the free-roaming horse and abandoned horse population through local area development districts (ADDs).

11.The Free-Roaming Horse Task Force encourages the development of an information sharing network that will connect various educators, agencies, and service providers with horse owners, local animal control, and other county officials who have responsibility for managing the free-roaming horse population.

12.The Free-Roaming Horse Task Force finds that whereas a lack of funding has proven to be a factor in dealing with free-roaming horses, the task force further recommends exploring additional avenues of potential funding to deal with short- and long-term solutions for the management of free-roaming horses.

Senator Webb commented that the task force is going to pay extreme attention to definitions, effects on private property interests, and the horse itself. Definitions are important under the law and the way our laws are structured to protect everyone's interests including the horse. She said that ADDs must cooperate, sheriff departments and county judge-executives should receive continuing education.

In response to a question from Ginny Grulke, Representative Steele stated that input and comments regarding the findings and recommendations should be sent to John Ryan or the task force staff. If people have legislation ideas or legal definition changes in mind, they should contact legislators so they may pre-file legislation.

#### **Adjournment**

There being no further business, the meeting was adjourned at 2:17 p.m.

## **EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE**

### **Minutes of the 4th Meeting of the 2016 Interim**

October 18, 2016

#### **Call to Order and Roll Call**

The 4th meeting of the Education Assessment and Accountability Review Subcommittee was held on Tuesday, October 18, 2016, at 10:00 AM, in Room 169 of the Capitol Annex. Representative James Kay, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative James Kay, Co-Chair; Senators Alice Forgy Kerr and Gerald A. Neal; Representatives Linda Belcher and Mary Lou Marzian.

Legislative Guests: Representatives Derrick Graham and Arnold Simpson.

Guest: Mardi Montgomery, Education Workforce Development Cabinet.

LRC Staff: Josh Collins, Janet Stevens, Avery Young, and Christal White.

#### **Presentation: Achievement Gaps in Kentucky Schools**

Chairman Kay said the EAARS committee approved the Office of Education Accountability's (OEA) report on achievement gaps in Kentucky public schools last year and will discuss the differences in educational outcomes associated with students' race, ethnicity, economic background, and learning disabilities.

Bart Liguori, Director of Research, OEA, introduced Dr. Deborah Nelson and Logan Rupard, OEA analysts, who presented an overview of the achievement gaps in Kentucky schools.

Dr. Nelson said the study analyzes Kentucky achievement gaps at the state and local levels and compares the gaps to national levels. The data is also used to examine issues associated with gaps in national literature. The study includes focus on data and policy issues relevant as Kentucky prepares to revise their accountability system to comply with core requirements of the Every Student Succeeds Act (ESSA), the federal law that guides state policy as related to gaps. The study concludes many Kentucky schools have narrowed gaps, although challenges remain predominantly in the highest-poverty schools where out-of-school factors such as student mobility and homelessness affect achievement gaps. The study found critical in-school factors affecting achievement gaps were school and district leadership.

The report contains recommendations related to identifying gaps with the revised accountability system of aligning and simplifying policies related to achievement gaps and emphasizing recruitment, preparation, and support of leaders in higher-poverty schools.

Dr. Nelson said achievement gaps are defined as lower educational outcomes associated with race or ethnicity (black, Hispanic, American Indian or Native American); lower income (those eligible for free or

reduced-price lunch (FRPL)); and learning difference (disability and individualized education program (IEP) and limited English proficiency (LEP)). In the state accountability system, students are often combined into a single, non-duplicated gap group so that every student counts only once, regardless of how many groups with which they are associated. She said while gender is identified as a potential gap group in state law, federal law does not require that information. However, the OEA report does include gender-based differences.

Dr. Nelson said a variety of state and federal laws and regulations relevant to gap students are in place. OEA's report focuses on issues directly related to the achievement gap through assessment and accountability including setting and monitoring goals, identifying schools with large gaps or low overall achievement for improvement, and outlining consequences for identified schools. Per ESSA, Kentucky regulations must be in compliance with regards to assessment and accountability by 2018. Although state law KRS 158:649 has similar goals as ESSA, Kentucky law requires all school and district plans to address achievement gaps, regardless of whether identified for improvement.

Dr. Nelson said FRPL rates for all gap students exceed the state average. Out-of-school achievement gap factors which are linked to poverty and educational performance are identified as poor health, nutrition, psychological stress, and access to resources. Resources include a family's social networks and access to a broad vocabulary in the home. In-school factors link poverty with student achievement due to the environment within the school. In higher-poverty schools, students are more likely to be taught by new or less experienced teachers. The strong relationship between out-of-school factors and educational outcomes have brought educational scholars and advocates to disagree somewhat about the extent to which schools alone can close the achievement gaps.

Dr. Nelson said at the national level, 48 percent of black and Hispanic students attend higher-poverty schools. The percentage of black students in Kentucky who attend higher-poverty schools is slightly less than their national counterpart, and the percentage is much less for Hispanic students. Forty-four percent of black students attend majority non-white schools, compared to 27 percent of Hispanic students, which is different in Kentucky than in national studies.

Mr. Rupard said data relevant to measuring the achievement gap includes: the performance of gap group students compared to state averages for all students; the performance of gap group students compared to national counterparts; and the school-level gaps between students who are white, black, and Hispanic. The combined reading and math gap for elementary, middle, and high school levels indicates black students were approximately 20 percentage points behind at all levels, while Hispanic and FRPL students are 10 percentage points behind. Student with an IEP or LEP were over 20 points behind in elementary and over 30 points behind in middle and high school. This data represents only one year and does not include trend data.

In 2015, of the percent of students scoring proficient or distinguished on K-PREP math at

elementary school level, FRPL students represent almost two-thirds of all students tested, and a single FRPL student may be counted in other gap groups. Non-gap students, or students who do not fall into any of the gap categories, outperform the all-student average of 48.8. The non-gap student average is 69.9 percent. FRPL students range 10 percentage points behind the all-student average. In math, 30.5 percent of black students and 37.8 percent of Hispanic students score at proficient or distinguished, compared with 51.7 of white students, which is slightly higher than all students. Similar trends were seen in middle and high school in reading.

Proficiency rates for elementary math from 2012 to 2015 showed all groups increased over the period, but not all improved at the same pace. In 2012, the gap between that all-student average and black students was 18 percent. In 2015, the gap grew to 18.3 percent. Hispanic students also fell further behind while FRPL students closed the gap slightly. Non-gap students improved more than the all-student average over the same time frame.

Mr. Rupard said in 2015, 24 percent of Hispanic students scored at the lowest level of novice in elementary math and nine percent scored at the highest level of distinguished, indicating that 2.7 times as many Hispanic students scored novice as compared to distinguished. Comparing all students, 18 percent scored novice and 16 percent scored distinguished, with a ratio slightly above one, indicating more students scored novice than distinguished. Values less than one would indicate more students scored distinguished than novice. All gap groups experienced ratios above 2.5 percent at every level, while non-gap and white students had several values less than one percent.

Beginning in December 2014, KDE initiated an extensive cross-agency effort to focus on the department's goal of closing the achievement gaps. This effort sought improvement through comprehensive planning of 30-60-90-day plans, positive behavioral interventions and supports, and improving teacher effectiveness through the Professional Growth and Effectiveness System (PGES).

Mr. Rupard said that a statute requires examination of gender gaps. The average high school reading proficiency rate for females was 13 percent higher than males. In math, females also outperform males, although the gap is not as large.

Although larger gender gaps exist in some schools, this information is not included formally in the state's accountability system, which led to OEA's first recommendation that KDE should provide an equity analysis to schools and local boards identifying substantive differences among the various groups as required by statute.

Mr. Rupard said the four-year cohort graduation rates for all groups range from 94 percent for non-gap students, to 66 percent for IEP students, a difference of 28 percent. While 66 percent is lower than the other groups, Kentucky's IEP and LEP students graduate at higher rates than national counterparts. College and Career Readiness (CCR) rates are lower for every gap group. Eighty-two percent of graduating non-gap students meet CCR requirements while only six percent of graduating LEP students meet

those requirements, with a difference of 76 percent compared to non-gap students. The difference between graduation and CCR rates for all groups ranges from 12.2 for non-gap students to 61.5 for LEP students.

Dr. Nelson said the National Assessment of Educational Progress (NAEP) is the only assessment that allows for a comparison of student outcomes among all 50 states. NAEP data indicates that all Kentucky gap groups outperform their national counterparts in 4<sup>th</sup> grade reading. In 8<sup>th</sup> grade reading, FRPL and Hispanic students outperform their national counterparts. Kentucky Hispanic students rank highest in nation in 8<sup>th</sup> grade reading and the gap between Kentucky Hispanic students and white students in 8<sup>th</sup> grade reading is the smallest in the nation. In math, Kentucky gap groups generally perform similar to or below their national counterparts. No single state has the highest performing gap groups in multiple grades and subjects and the full report indicates states which are the highest performing in particular grades and subjects. Compared to national counterparts on NAEP and ACT comparison states, Kentucky Hispanic students perform at or above, while Kentucky black students perform at or below. In the degree to which they are enrolled in a non-white majority poverty school, it is unclear whether the difference between black and Hispanic students compared to their national counterparts reflects in-school policies or out of school factors. Kentucky graduation rates are higher than national averages for all gap groups and are among highest in nation for FRPL students.

Dr. Nelson said NAEP assesses all 50 states, plus the District of Columbia and the Department of Defense Educational Activity (DoDEA) schools, comprised of children of military families. The highest performing were the DoDEA schools, which were established in 1946 to ensure that children from military families would not be forced to attend segregated schools near military bases. DoDEA schools are the highest performing NAEP jurisdiction for black and Hispanic students in 4<sup>th</sup> and 8<sup>th</sup> grade reading and math. In addition, DoDEA schools either have or among the smallest gaps between white and black students, or white and Hispanic students. Although it is unclear what accounts for these results, DoDEA schools differ from public schools in that more teachers have advanced degrees and DoDEA schools are less regulated than public schools. For example, DoDEA schools have not been subjected to the No Child Left Behind (NCLB) Act and will not be subjected to ESSA. Student performance in DoDEA schools may be reflected by social and economic factors in military communities, considering DoDEA students have at least one working parent, guaranteed housing and health care, and the schools serve as hubs in communities that are well integrated. While DoDEA schools do not provide any clear answers about policies that might affect achievement gaps, they raise the possibility that social and economic policy, along with educational policy, play a role.

Dr. Nelson said that, on average, students in all gaps groups perform below the average for all students in the state. Poverty is well known to affect performance, especially in the highest-poverty



schools.

Dr. Nelson said that, in 19 percent of schools, FRPL students perform at or above the state average, while one percent of schools have FRPL students scoring greater than 30 percent below state averages. The report also divides schools in to those with greater than or fewer than 75 percent of students living in poverty. Although some elementary and middle schools with greater than 75 percent FRPL students are performing above or far above average for FRLP students, only two such high schools are included, and each performed far below the state ACT average of 23.

Dr. Nelson said KDE is required to report test scores for schools with more than ten Hispanic students. Twenty-six percent of these schools with reportable scores are at or above the state average for all students. Five percent of these schools are greater than 30 percentage points below the state average. The report shows that no middle or high school with greater than 75 percent FRPL students has Hispanic students scoring above the state average.

Dr. Nelson said that, in reviewing similar data for black students, ten percent of schools with reportable scores are scoring at or above state average for all students, while 15 percent of such schools are greater than 30 points below the state average. This indicates that a greater percentage of reportable schools with black students are far below the state averages than above the state average. No middle or high school above 75 percent FRPL students is performing at or above state averages.

The report contains a variety of data related to challenges that are faced by highest-poverty schools, which include out-of-school factors as well as in-school factors. Out-of-school factors include homelessness and mobility. In-school factors include teacher attrition and experience.

Homeless students are those defined as those who are living in temporary or unsafe conditions, or living with family or friends. The percentage of homeless students in the highest-poverty schools is eleven times greater than the lowest poverty schools. Chronically absent students are those who miss at least ten percent of enrolled days with either excused or unexcused absences. The percentage of chronically absent students is more than four times as great in the highest-poverty schools as compared to the lowest poverty schools.

Mobile students are defined as those who attend at least two schools during the same year. Student mobility rates are more than four times greater in highest-poverty schools versus lowest poverty. Many of the students included in the chronically absent and mobile groups would also be the same students who are homeless, since homeless students are more likely to be chronically absent and mobile. The report does not contain any recommendations about homeless, chronically absent, or mobile data. However, it appears the data shows the challenges facing students cannot likely be addressed through the education sector alone. Policy discussions about issues affecting educational gaps should include more than educators. Many school and district leaders are engaged in discussions about issues such as housing that may affect all of the indicators mentioned.

Dr. Nelson said out-of-school factors can impact in-school factors, such as how teacher labor markets favor lower-poverty schools. Perceptions of favorable working conditions are among the many issues that affect teacher labor markets. Lower-poverty schools may be favored due to students in the highest-poverty schools experiencing more unstable home environments. The report shows highest-poverty schools have much higher attrition rates and higher percentages of new and less-experienced teachers, especially in those highest-poverty schools with higher percentages of non-white students. Research shows that a key factor affecting a teacher's willingness to continue teaching in a particular school is the quality of the school's leadership.

In reviewing one elementary school of distinction, 65 percent of all students were proficient in reading and math as compared to the state's all-student average of 52 percent. However, performance among students within the same school indicated large gaps in proficiency among white and black students. Although the state accountability system is intended to identify schools with large gaps, the system would compare the school's black students to other black students in the state. Unless the comparison ranks the school's students very low, the school would not be identified for achievement gaps. Average in-school gaps are larger in schools with distinguished status. In distinguished schools, the report shows 26 percent had white/black gaps greater than 30 percentage points and 14 percent had white/Hispanic gaps greater 30 percentage points.

OEA recommended regulation revisions related to school accountability by suggesting that KDE consider rewards for schools with small in-school gaps or consequences for those with very large gaps, compared to the state.

Dr. Nelson said that, during analysis of 42 Comprehensive School Improvement Plans (CSIPs) and 25 Comprehensive District Improvement Plans (CDIPs) through site visits to ten school in six districts, including over 50 teacher and classroom instruction observations, OEA found that districts and schools are not fully compliant with KRS 158.649.

Through the comprehensive school planning process, local schools and districts are required to analyze gap group data, set targets to reduce gaps in particular groups, and develop associated strategies to meet those targets. In monitoring how districts are approaching the comprehensive plan, OEA found that most schools and districts do not set targets for particular groups, but develop strategies or targets primarily for non-duplicated gap group or IEP students, and superintendents do not appear to be reporting schools that have failed to meet targets.

Dr. Nelson said policy requirements are complicated for comprehensive planning for closing gaps, due to overlapping state and federal laws. KRS 158.649 requires setting goals by local schools and districts, while ESSA requires KDE to set goals at the state level.

Dr. Nelson said local leaders are more attentive to requirements associated with the accountability system under ESSA. OEA recommends that, in revising 703 KAR 5:225, KDE should consider specifically incorporating key elements of KRS

158.649 that are not required by ESSA. For example, the regulation should require schools and districts through CSIPs and CDIPs to identify in-school achievement gaps and include strategies to address them. OEA suggests that, after the new accountability system is finalized, the General Assembly should revise KRS 158.649 to align requirements and reduce duplication with the new accountability system.

In response to Representative Graham's request for a more simplistic explanation, Dr. Nelson said the easiest way to address goal setting is to require schools to analyze all of the data and identify all groups having substantive gaps. CSIPs and CDIPs must include a biennial target for all of the various groups where gaps occur. OEA's Overview of Achievement Gaps in Kentucky Schools Report, page 75, table 5.1, provides examples of a CSIP and CDIP and looks at the achievement data to identify the substantive gaps with associated targets. The table summarizes all targets for unduplicated gap groups and the statute requires acknowledgement of all gap groups.

In response to Chairman Graham's question, Dr. Nelson said the chart represents all schools in all urban and rural districts for which there were reportable scores.

In response to Senator Neal's questions, Dr. Nelson said OEA's interpretation of the statute regarding an unduplicated category is they are all grouped together in terms of goal setting, where each of the groups has goals assigned individually. The statute requires schools to break down any discernable gaps and create an improvement plan. Senator Neal expressed frustration with the large gaps still present after many years. OEA suggested recommendations that it believes will be helpful. Chairman Kay said that, because the subject matter and relating information is of deep concern and utmost importance, KDE Commissioner Stephen Pruitt will be available for questions after the presentation.

In response to Representative Marzian's question, Dr. Nelson said CSIP is developed by the school council according to Kentucky law, which devolves much of the decision-making authority to schools. The council includes principals, teachers, parents, and community members, and the districts develop a CDIP with similar requirements.

Dr. Nelson referred to Senator Neal's question and said OEA reviewed all research in other states to understand what is happening and how it would help understand Kentucky data. This is an issue that researchers and policymakers have struggled with for over 50 years, and a clear and concise answer is not available.

In response to Representative Graham's question, Dr. Nelson said when reviewing DoDEA schools who have experienced success in reducing achievement gaps, there is no systematic research or evidence the schools on military bases had access to early childhood education or all-day kindergarten. Dr. Nelson said information indicated teachers may have more advanced degrees, although the content area is unknown. OEA visited one district that placed a huge emphasis on early childhood education and learned that black and Hispanic students performed better; however, OEA did not look at this information

across the board systematically. Representative Graham suggested all useful data must be gathered and reported to determine practices in successful districts and which are the best practices to close achievement gaps. He emphasized that accountability from every level of education will help decrease gaps and provide a highly trained and skilled workforce for competitive businesses to be attracted to Kentucky.

Chairman Kay said EAARS has the ability to supplement and re-evaluate and gather additional information and data going forward relating to these and other study topics regarding the achievement gap.

Dr. Nelson said compliance with the statute requires CSIPs and CDIPs to include specific targets and an analysis of the documents to ensure compliance. Referring to Senator Neal's previous question regarding disaggregation of data, Dr. Nelson said KDE does a thorough job of providing districts and schools with complete data as well as providing suggested goals for every gap group.

Dr. Nelson said the CSIPs and CDIPs must include strategies for closing gaps, along with the data found that supports the need for those strategies. Again, a concern is these plans are focusing on the unduplicated gap groups in the state accountability system rather than the particular gap groups, although many do contain plans for IEP students. Just because a strategy does not appear in the plan does not mean schools are not addressing the gap; strategies not reflected in a CSIP or CDIP may be in use. Conversely, a school or district may identify strategies to reduce gaps, but may never engage those strategies. Although the statute requires superintendents to monitor gap reductions targets and report schools that have failed to close gaps, OEA found this information is not being reported consistently.

Dr. Nelson said KRS 158.649 requires each school to identify its substantive gaps and set its own goals for reducing those gaps for each group, which must be approved by the superintendent. Schools across the state must decide whether they have gaps and implement improvement goals; however, federal law requires the KDE to set interim achievement goals for all of the gap groups. In the revision of the state accountability system, KDE will identify the target for every gap group in every school, which will allow school leaders to know if goals have been met, as required by federal law. With state law allowing the school to set their own goals, superintendents are in the position of getting state accountability data on all gap groups to know whether the goals are being met with the criteria set forth, followed by goals developed at the school level for each gap group. The federal government is requiring KDE to set statewide goals while state law requires schools to set their own gap reduction targets and for superintendents and boards to monitor those goals, which gets complicated.

Regarding complications with the achievement of targets, Dr. Nelson said one set of criteria is developed at local level while at the same time criteria is set by federal government requires the state to set goals for all students. From a superintendent's point of view of monitoring the performance of gap groups in their schools, superintendents focus more on federal accountability because the accountability system is associated with funding and consequences

more than with rewards. Additionally, with the focus on NCLB and ESSA, some newer principals and superintendents are more familiar with the accountability system and less familiar with the state law governing CSIPs and CDIPs.

Dr. Nelson said there are some elements of the state law that exceed federal ESSA provisions, which require that schools identified for improvement make plans to address gaps. Kentucky state law requires all schools to include plans, whether or not they are identified for improvement. After the new accountability system is finalized, OEA suggests the General Assembly may wish to revise KRS 158:649 to align requirements and reduce duplication and overlap with the new accountability system.

In response to Representative Simpson's questions, Dr. Nelson said the state can recommend consequences for districts if schools continually fail to meet their goals and professional development funds may be deployed. However, federal laws differ, which creates another complicated and confusing environment for district and school leaders to track. Representative Simpson said that it appears to be an endless cycle of promulgating regulations, requirements, and modifications without achieving the core challenge of improving gaps. Dr. Nelson said that, for the last 14 years, KDE has taken many steps to identify novice reduction and attempt to address gaps. She gave an example of one success story leading to reduction in gaps as a result of KDE modifications and interventions in a higher poverty district which received intensive KDE assistance for years and made substantial strides and outcomes for FRPL students. However, the educators interviewed considered comprehensive planning to be sufficient in itself to reduce gaps.

Dr. Nelson said that, in revising regulations for the accountability system, OEA recommends the department consider incorporating elements of state law which are not directly required by ESSA. All school and district plans address achievement gaps regardless of whether they are identified for consequence. OEA recommends that after the new accountability system is finalized, the General Assembly may wish to revise the statute to align requirements and reduce duplication and overlap within the systems.

Dr. Nelson said comprehensive gap reduction planning can be a very effective tool. She referred to KDE's assistance regarding 30, 60, or 90-day plans and the shortage of high school math teachers. Also, the length of compliance document, inflexible software, and monitoring of plans present other challenges.

OEA recommends in revising 703 KAR 5:225, KDE should consider reducing the number of specific elements that are required in every CSIP. OEA also recommends the role of district leaders in monitoring CSIPs and school improvement in general should be clarified, especially those in schools identified for consequences. Some of the elements currently required in all CSIPs could instead be included as elements that must be systematically monitored in all schools. District leaders are much closer to the situation, yet the regulation does not specify their role.

While site visits were designed primarily to

explore the effects of comprehensive planning, Dr. Nelson said the most striking data collected was not related to planning but to local leaders. OEA's findings are consistent with previous reports completed and with national research. OEA found that school improvement is less likely to be successful without effective local leadership such as high expectations, high support, trusting and positive relationships among students and staff, and flexible and efficient use of resources.

In analyzing gap narrowing regarding disproportionate discipline data, Dr. Nelson said male, special education, black, and FRPL students are more likely to receive disciplinary consequences for the same action. Staff and students should be held to high standards of behavior and respect. In larger gap groups, teachers reported principals may be reluctant or unwilling to discipline certain groups of student, or may not record all disciplinary incidents, having an unintended negative consequence and affecting the perception of building leadership.

Regarding gaps in enrollment in advanced classes, one principal had led an effort to determine why few black students enrolled in advanced classes and to institute strategies to improve participation. Following that effort, many more black students enrolled and test scores improved. In contrast, if students are enrolled in advanced classes but the material is not truly advanced, it is not beneficial to students. OEA observed very low rigor in advanced classes that contained many gap students in one school site visit, which raises concerns that grades in highest-poverty schools may be less predictive of test scores.

Dr. Nelson said gap-closing schools with high expectations for teachers and high support from principals resulted in colleagues who were eager to remain or transfer into those schools. In contrast, larger gap-group schools with principals who expected teachers to implement multiple initiatives, without sufficient support, resulted in requests for transfers to other schools.

OEA's final recommendations concern recruiting, preparing, and supporting leaders in highest-poverty schools and districts. Dr. Nelson said that, while high quality leadership is important in all settings, it is especially critical in higher-poverty settings which require special skills and characteristics. She said there is limited state focus on preparing leaders for highest-poverty settings; however, ESSA includes a variety of funding sources to support this priority. One recommendation is that KDE should prioritize school improvement grants and awards for districts and other entities that are focused on developing leadership in highest need settings. In establishing decision criteria for awarding Title I school improvement grant awards under ESSA, OEA recommends that KDE consider the degree to which districts and other entities propose to recruit, prepare, and support principals and other school leaders in highest-poverty schools. OEA recommends that KDE encourage eligible entities to apply for ESSA national priority grant awards available under Section 2243 to fund school leadership recruitment and support.

Two additional recommendations by OEA emerge from communication oversights during the



last several years while Kentucky compliance with federal law was governed by a waiver from NCLB rather than by the federal law itself. OEA observed that identification of focus schools deviated slightly from the method described in regulation and the distribution of federal school improvement funds was not consistent with information on the KDE website. OEA recommends KDE always include up-to-date information on its website about methods used to identify schools for comprehensive improvement or targeted assistance under ESSA, and methods used to distribute federal funds to those schools. OEA also recommends KDE should report to EAARS instances of conflict between ESSA law, regulation, or guidance, and state law or regulations.

Many Kentucky schools have narrowed gaps, but challenges remain in highest-poverty schools, where out-of-school factors invite broader policy discussions. School and district leadership is a critical factor. Policy recommendations include addressing in-school gaps, aligning and simplifying policies, and emphasizing leadership in higher-poverty settings.

On motion by Representative Belcher and second by Representative Marzian, the report on Achievement Gaps in Kentucky School was adopted by voice vote.

#### **Approval of August 16, 2016 and September 20, 2016 Minutes**

On a motion by Representative Belcher and second by Representative Marzian, the minutes of the August 16, 2016, meeting were approved by voice vote.

On a motion by Representative Marzian and second by Representative Belcher, the minutes of the September 20, 2016, meeting were approved by voice vote.

#### **Acceptance of Reports**

On a motion by Representative Belcher and second by Representative Marzian, the Kentucky Safe Schools report, as presented at the September 20, 2016, meeting, was approved by voice vote, as presented at the September 20, 2016, meeting.

On a motion by Representative Belcher and second by Representative Marzian, the 2015 District Data Profile Report, as presented at the September 20, 2016, meeting, were approved by voice vote.

#### **Other Business**

Representative Belcher said that, while teachers must be included in the gathering of information, writing the CSIPs, and subsequent monitoring, she has concern as to the amount of time required to complete the process.

Chairman Graham said that, while all tests do not measure ability, he feels training teachers, administrators, and principals in forming relationships in postsecondary institutions is important to maintain stability on all levels, as they are connecting with children from different backgrounds and income levels.

In response to Representative Simpson's question, KDE Commissioner Stephen Pruitt said the department's number one issue is the achievement gap. KDE's pillars are equity, achievement and integrity. The commissioner said he is appalled by the achievement gap both in Kentucky and nationally. He commended KDE for the work they have achieved

but admitted much improvement is still needed moving forward. The idea of novice reduction came about because there was a recognition that schools were not meeting the needs of students, which created an initiative to work very closely with a small group of districts to think about decision making in terms of courses, instruction, curriculum, and digging deeper into what is creating some of the achievement gaps. Kentucky has spent 50 years trying to achieve this goal which ends with more testing, which indicates it is not working.

Commission Pruitt said there is a focus on improving instruction, helping improve decision making, and getting more students of color into advanced course work such as AP and IP as well as second and third year CTE courses.

Commission Pruitt said ESSA gives Kentucky a new opportunity to streamline what has been tried before and feels there is too much of emphasis on compliance and less on accountability.

Commission Pruitt says it is time to stop talking about the achievement gap and take action. It is imperative a cumulative effort to correct the gap by involving communities, KDE, and policymakers. Combining test scores and gap groups is needed to determine what grade and subject areas are affected.

In response to Representative Simpson's question, Commissioner Pruitt said under the new federal law significant deficiencies are assigned as a priority status, which allows KDE an opportunity to give more directives and have a greater influence. The rhetoric must be changed from what can be legally done and what is right to do. While Kentucky has a moral obligation to educate children, high stakes accountability and high stakes assessment is leading to high stakes for students and their education. When discussing consequences, the manner in which improvement is being performed is important, as simply being on a list has not made a notable difference. He also acknowledges that having lower level classes does not help close the achievement gap, but is a disservice to the students. He said making citizens understand the problem is crucial.

Representative Belcher said that, while discussing state and local levels, it is important to get down to the school level. She is concerned that, with SBDM authority, how teachers can get needed training while still directing focus on what needs to be done. Commissioner Pruitt said the rhetoric and the relationships need to be changed. There is often much authority that is unused, and many times the relationship needs to be leveraged between the SBDM council to the district. District implementation of CDIPs is based on school plans. He would like to see the districts working more closely with the development of the SBDM to form a coherent district focus. Accountability should be about shared responsibility, and KDE's responsibility requires a change in monitoring, being able to hold people accountable but at the same time allowing superintendent flexibility.

There being no further business, the meeting was adjourned at 12:00 p.m.

## **GOVERNMENT NONPROFIT CONTRACTING TASK FORCE**

### **Minutes of the 5th Meeting of the 2016 Interim**

October 24, 2016

#### **Call to Order and Roll Call**

The 5th meeting of the Government Nonprofit Contracting Task Force was held on Monday, October 24, 2016, at 11:00 AM, in Room 131 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Chair; Senator Stephen West; Representatives Dennis Horlander, and Addia Wuchner; Norman Arflack, Promod Bishnoi, Cyndee Burton, Danielle Clore, Samantha Davis, Andrew English, Robert Jones, Mardi Montgomery, Judy Piazza, and Michelle Sanborn.

Guests: Bart Baldwin, President & CEO, Bart Baldwin Consulting.

LRC Staff: Judy Fritz, Daniel Carter, Van Knowles, and Jay Jacobs

Andrew English moved to approve the September 26, 2016 meeting minutes. Mardi Montgomery seconded the motion. The motion carried with a voice vote.

#### **Task Force Progress In Other States**

Representative Patti Bellock, a member of the Illinois General Assembly, gave an overview via teleconference about her experience and perspective of working with the Nonprofit Contracting Task Force in Illinois which resulted in House Bill 2.

House Bill 2 was enacted in 2013 and was the vehicle leading to Illinois becoming a national model for nonprofits contracting with a state. Illinois was recognized by the White House as the first state in the nation with legislation requiring the implementation of a comprehensive set of standards and mandating transparency and accountability throughout the entire grant life cycle. The nonprofit community and government staff were included in this process which had been ongoing for three years. Illinois recognized that billions of grant dollars were coming into the state and House Bill 2 created the Illinois Single Audit Commission. The findings of the Single Audit Commission created the Grant Accountability and Transparency Act.

The two main ideas that came out of the commission were transparency and uniformity. The grant process had no common application, no common grant agreement, and a lack of transparency, no uniform administrative rules, and no lists noting non-compliance. The commission focused on how the federal government administered and managed grant money. The mindset was if the grantees were held to a higher standard when they applied for a federal grant then the state should also be held to a similar standard with regard to state grant money. The second prong in 2013 House Bill 2 was the creation of the centralized grant management union that would be housed within the Governor's Office of the management of the budget. That unit would provide the grantors and the grantees uniformity. This was major reform and it has saved Illinois billions of dollars.

In response to questions by Ms. Clore, Representative Bellock stated that it is critical to

involve nonprofits in the process from the beginning. The nonprofits were initially worried that the changes were going to be duplicative, paperwork oriented, and an overall strain on them to be able to provide services to their clients. The state government agencies also thought it would be more work for them.

In response to a question by Representative Wuchner, Representative Bellock stated that the guidelines for each stage of the grant lifecycle are posted on the GATA website at <http://www.illinois.gov/gov/budget/cases/grantsaccountability.aspx>.

In response to a question by Mr. English, Representative Bellock stated that the grant criteria are the same for federal and state level grants. Having the same criteria for both builds accountability and transparency. Providing accurate data is key to enforcement and drives decision making.

In response to questions by Ms. Clore, Representative Bellock stated that there was resistance in implementing and mirroring the OMB Guidelines but it has saved Illinois billions of dollars. In Illinois indirect costs are paid the same for federal and state grants.

In response to a question by Ms. Montgomery, Representative Bellock stated that there is a monitoring process that derived from GATA but she is not aware of how many people are employed in the monitoring office.

In response to a question by Ms. Sanborn, Representative Bellock stated that managed care organizations are included but she is not aware of the connection.

In response to a question by Ms. Phillips, Representative Bellock stated that every agency within the state and every group that would be given a grant is included in GATA. It is very comprehensive.

In response to a question by Representative Wuchner, Representative Bellock stated that GATA is housed in the Governor's Office of the budget.

#### **Nonprofit Contracting and Managed Care Organizations (MCOs)**

Veronica Cecil, Deputy Commissioner of the Department for Medicaid Services with the Cabinet for Health and Family Services, gave an overview about cost reimbursement, prompt payment, and payment processes with Managed Care Organizations.

In response to questions by Senator West regarding non-compliance, Ms. Cecil stated that there are some penalties being issued but most are being resolved with letters of inquiry and corrective action plans. The department has not implemented 2016 Senate Bill 20 (AN ACT relating to Medicaid provider appeals and declaring an emergency), which passed during the 2016 Regular Session. Administrative regulations will be filed with LRC by November 15<sup>th</sup>. MCOs are trying to put practices in place that ensure that they are appropriately denying claims. Prior to Senate Bill 20 there were not many penalties but the Department of Insurance did charge interest if prompt payment was violated.

In response to a question by Ms. Sanborn, Ms. Cecil stated that the complaint form can be general but specific examples should be included.

In response to a question by Mr. Jones, Ms. Cecil stated that the department has tried to standardize some of the processes and forms but it gets

complicated with managed care. The department is currently working on an online provider portal which should alleviate some of the delays in enrollment for the providers.

#### **Changes in Contracts Mid-Stream**

Cyndee Burton, Administrator with Matthew 25 AIDS Services gave an overview of how government contract changes and late payments affect nonprofits. She referenced a grant that was to be used for HIV testing that was significantly reduced.

In response to questions by Representative Wuchner, Ms. Burton stated the reduction of funds was due to a three percent reduction in funding from the Centers for Disease Control and Prevention, as well as well, as a reduction in state funding. The nonprofit continued its deliverables for HIV testing and discontinued Hepatitis C testing after all the test kits were used. After Hepatitis C testing was discontinued, those clients were referred to local health departments for that test, but most local health departments do not administer it. Those clients most likely will go without Hepatitis C tests, and 54 percent of the tests that were administered prior to the cuts were positive.

In response to a question by Senator West, Mrs. Burton stated that the high Hepatitis numbers are related to injection drug use.

Michelle Sanborn, President of the Children's Alliance (Alliance), gave an overview of contractual changes to the Private Child Caring (PCC) Agreement and how those changes affect nonprofits that provide those services.

In response to a question by Ms. Clore, Ms. Sanborn stated that the Alliance is being paid less than full cost currently and that cuts have reduced funds even more.

Bart Baldwin, President and CEO with Bart Baldwin Consulting, gave a broad overview of how mid-stream changes affect a nonprofits overhead and the ability to provide efficient and high quality services.

In response to a question by Representative Horlander, Mr. Baldwin stated that change orders allow for unforeseen expenses that are incurred in contracts.

In response to questions by Ms. Clore, Ms. Burton stated that, because the cut on the small grant was a small amount, it was not worth the risk of losing the larger grants. Ms. Sanborn stated that, over time, not getting reimbursed ads up and can force some nonprofits out of business. Mr. Baldwin stressed that it is very important to fund services in the budget and not to assume that the budget from the executive branch will be enough to keep the quality of services at a high level. Cutting services can cost the commonwealth more money because the services still must be available.

In response to a question by Representative Wuchner, Mr. Baldwin stated that there is a limit on how much money a nonprofit agency can raise privately and the level of private fundraising varies by the services that the nonprofit provides. Ms. Sanborn stated that there is a variety of levels of fundraising across the agencies she works with. Ms. Burton stated that about two percent of her budget is raised from private funds.

In response to a question by Ms. Clore, Mr. Baldwin stated that there has to be a balance on what is determined to be a reasonable cost and not be solely up to the nonprofit to fill the gap in the government's budget. Ms. Burton stated that many grant requirements limit the percentage that may be spent on administration. Her fear is that agencies will start to limit what can be spent on infrastructure and development.

#### **Ways to Improve Contract Processes and Contract Payments in Kentucky**

Ms. Clore would like to see better data collection.

Senator Wise announced that the last meeting will be on Tuesday, November 15 at p.m. The task force will be discussing and voting on recommendations. Recommendations must be limited to the issues that have been discussed during our task force meetings. Some of the suggestions that have been mentioned thus far are:

- Increased training for both nonprofits and state agencies;
- Clearer definitions;
- Explore streamlining of contracting and auditing processes;
- Explore and address gap between state and federal indirect cost reimbursement rates;
- Mirror all or part of OMB Uniform Guidance regulations in Kentucky; and
- Collaboration between cabinets for consistency and expectations.

Task force members wanting to add recommendations by email may do so by November 1. No written recommendations will be accepted after November 1. Recommendations by email must be sent to Senator Wise, Representative Meyer, and Government Nonprofit Task Force staff.

A copy of the PowerPoint presentation and other meeting materials are part of the task force's official record in the Legislative Research Commission Library. There being no further business, the meeting was adjourned at 12:51 p.m.

## **MEDICAID OVERSIGHT AND ADVISORY COMMITTEE Minutes**

October 19, 2016

### **Call to Order and Roll Call**

The Medicaid Oversight and Advisory Committee meeting was held on Wednesday, October 19, 2016, at 1:30 PM, in Room 129 of the Capitol Annex. Senator Ralph Alvarado, Chair, called the meeting to order at 1:35 PM, and the secretary called the roll.

Present were:

**Members:** Senator Ralph Alvarado, Co-Chair; Senators Julie Raque Adams, Morgan McGarvey, and Dan "Malano" Seum; Representatives Robert Benvenuti III, Joni L. Jenkins, and Ruth Ann Palumbo.

**Guests:** Stephen P. Miller, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Veronica Cecil, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services; Sarah Comley, Director of Central Billing Office, Clark Regional Medical Center; and Bob Thomas, Billing



Manager, Clark Regional Medical Center.

LRC Staff: Jonathan Scott and Becky Lancaster.

**Approval of Minutes from June 17, 2015, September 16, 2015, August 17, 2016, and September 21, 2016 Meetings**

A motion to approve the minutes of the June 17, 2015, September 16, 2015, August 17, 2016, and September 21, 2016 meetings was made by Senator Raque Adams, seconded by Senator Seum, and approved by voice vote.

**Presentation and Discussion of Managed Care Organizations Profit Margins and Contracts**

Stephen P. Miller, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, stated Medicaid provides coverage for approximately 1,377,000 Kentuckians including 435,700 children. Approximately 90 percent of enrollees are covered under Medicaid Managed Care. Medicaid Expansion (ACA) covers approximately 440,300 people and approximately 802,400 people are covered under Traditional (Non-ACA). For fiscal year 2013, the total Managed Care Organizations (MCOs) capitated payments were \$3.2 billion, and for fiscal year 2016 the total was almost \$6.9 billion, a substantial increase.

The Department of Medicaid Services (DMS) spends approximately 70 percent of each dollar with MCOs. The other 30 percent deals with the waiver population and long-term care. There have been no fiscal reports on the MCOs contracts that became effective July 1, 2016 because the quarter ended on September 30, 2016. The ACA expansion rate changed with a 9 percent decrease. There was an overall 4 percent decrease in the total rate change per member per month for the state fiscal year (SFY) 2017, first quarter.

Veronica Cecil, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, stated the new MCOs contract are six-month contracts. DMS raised the minimum medical loss ratio (MLR) to 90 percent, with a 75/25 (MCO/DMS) split between 86 percent and 89 percent. SFY 2015 contracts had a minimum MLR of 85 percent, with an 80/20 (MCO/DMS) split for 84 percent and below for the non-ACA population. Previous contracts had a risk corridor for the ACA population, mandated by Centers for Medicare and Medicaid Services (CMS), so there could be a shared loss or shared gain in what was happening with the ACA population. The previous risk corridor had a target MLR of 87 percent with a plus or minus of 5 percent. If the MCOs spent under the 82 percent then there was a premium refund that would come back to the state. However, if the MCOs spent over 92 percent an additional payment was sent to the MCOs. The new contracts effective July 1, 2017 changed that provision to align with the MLR for the entire Medicaid population required by DMS.

In the new contracts, DMS required the use of either Interqual or Milliman for the majority of the services provided, except for some specific services for behavioral health. DMS clarified that the executive management had to be based in Kentucky. The new contracts require the use of a common prior authorization and appeal form. DMS will

have a common prior authorization form for both prescription and non-prescription services. The 2016 Kentucky General Assembly passed Senate Bill 20 that added an external, independent third party review process and an appeal to an administrative hearing for providers. DMS is in the process of finalizing that process, the anticipated date for filing the regulation is November 15, 2016. The new contracts require MCOs to contract with at least one Federally Qualified Health Center (FQHC) and one Rural Health Clinic (RHC) in each region. The new contracts were restructured with penalties to focus on timeliness, completeness, and accuracy.

Commissioner Miller stated that, for calendar year (CY) 2015, Kentucky ranked highest in nation for Medicaid managed care profits. The underwriting ratio operated with an 11.3 percent profit while the national average was 2.6 percent profit. DMS reduced premium rates to help bring the profit number closer to the national average. The rate reduction is an actuarial process that calculates rates based on the historical costs of all the MCOs. All five of the MCOs are paid the exact same rate for an individual within that rate sale within a region, there is no distinction between MCOs. The rates are not dictated but based on choices that are given to DMS by an independent actuary, then approved by CMS. The average margin range from Milliman is approximately at a low of 2 percent to a high of 28 percent.

The contract and rate review process is ongoing because the current contracts end on December 31, 2016. Aon, the actuary for DMS, is now calculating and developing new rate ranges. DMS does not anticipate any material changes in the contracts, however there are certain issues DMS will want to clarify to incorporate the CMS managed care final rule where required and appropriate. His goal, as Medicaid commissioner, is to get the five MCOs operating very close to the national average and maintain quality standards in the upper quartile.

Representative Benvenuti commented that the goal of Medicaid needs to be to get able-bodied people to work so they are able to provide health insurance for themselves and their families. Other agencies with very important missions like Child Protective Services and the Kentucky State Police should not allow Medicaid, no matter how efficient DMS becomes at managing it, to consume the entire state budget.

In response to questions from Senator Alvarado, Deputy Commissioner Cecil stated she does not have the data as to where Kentucky's Medicaid programs rank nationally in terms of quality care. DMS looks at Healthcare Effectiveness Data and Information Set (HEDIS) scores. Senator Alvarado stated the HEDIS score measures things that physicians have to report such as diabetic measures, blood pressure control, and hospitalizations. Commissioner Miller stated he does not have a breakdown of individual MCO profits, only the margin range of 2 percent to 28 percent but could provide that information at a later date. Commissioner Miller stated that if Kentucky had been at the national average of profit over 2014 and 2015 that would have equaled approximately \$1 billion over two years. Deputy Commissioner Cecil stated there is some fall back that happens with the

minimum MLR and the risk corridor but it does not equal a \$1 billion. Unfortunately, DMS does not get to the recoupment process for at least a year or after the end of a fiscal year. For instance, DMS just called back some money on behalf of the ACA for the federal government from the calendar year 2014, as a result of the risk corridor of the MCOs.

Senator Alvarado commented that he does not have issues with MCOs making profits but his perception as a provider is that the MCOs are not doing what they are supposed to be doing to get large profit ratios. He is concerned that Kentucky's medical spend margin is approximately 5 percent lower than the national average. In regards to the lower administrative loss ratio, he hopes that Kentucky is very efficient at administration. However, he is concerned that providers are not getting paid and that providers may not have the adequate administration staff needed.

In response to questions from Senator Alvarado, Commissioner Miller stated DMS is tracking information regarding the five percent spending difference. DMS drove the change from an 85 percent MLR in previous contracts to the current 90 percent MLR. The MCOs on average will have to spend 90 cents of every premium dollar on medical related items. If the MCOs do not, DMS will claw back money so the MCOs profit cannot come just as a result of MLR. MCOs have modified operations to accommodate the changes. DMS cannot allow a continued high margin of profit to come in at the expense of care or lack thereof for Medicaid members. However, DMS and Medicaid are working in a partnership with five MCOs and must make sure that they have a reasonable amount of profit margin that is not excessive.

Deputy Commissioner Cecil stated there is no specific language in the new contracts that prevent MCOs from using money for non-medical items like baby strollers or baby showers to incentivize people to sign up with specific MCOs. The issue has been brought to their attention for clarification as to whether or not those are expenses can be considered as administrative expenses. DMS wants to make sure that Kentucky tax payers are not paying for such items.

Deputy Commissioner Cecil stated that the credentialing process is not fully unified between the five MCOs. DMS is working on the provider portal that will allow for an opportunity for the enrollment process to be consistent and a lot quicker. The National Committee for Quality Assurance (NCQA) gives the MCOs the guidelines under which it must credential providers. DMS started to monitor closer if the MCOs were processing the provider credentialing applications within 90 days and would inquire if there were issues. Generally, applications not approved within 90 days were still awaiting additional information. DMS is trying to hold the MCOs more accountable to the 90 day timeframe.

Deputy Commissioner Cecil testified that DMS is monitoring provider payments and handling provider complaints if MCOs do not send payments in a timely manner. DMS follows its penalty process by sending an inquiry, sending a letter of concern, creating a corrective action plan, and if not resolved

with the provider in a timely manner, then penalties could be assigned to the MCO. Prior to July 1, 2016 the Department of Insurance (DOI) handled prompt payment complaints.

In response to questions from Senator Seum, Commissioner Miller stated he is not aware if Kentucky is losing smaller, independent providers due to the MCOs slow pay processes but there have been complaints and concerns raised regarding this issue. He stated the smaller providers do not have the capital to sustain and carry the cash flow needed if payments are being sent out 90 days after the claim, if not denied. Deputy Commissioner Cecil stated that CMS required the new MCO contracts to clarify that the use of subcontractors outside of the United States is prohibited.

#### **Provider Billing Issues**

Sarah Comley, Director of Central Billing Office, Clark Regional Medical Center, stated her billing office covers the Bourbon Community Hospital, Clark Regional Medical Center, Jackson Purchase Medical Center and Logan Memorial Hospital physician offices and ten rural clinics. The rural clinics are required to see Medicaid patients regardless whether the claims get paid or not. The total accounts receivable outstanding with the Kentucky Medicaid managed care plans are approximately \$3.1 million. The unpaid claims date back to 2014 for services provided by the physician offices. Aetna Better Health of Kentucky and WellCare of Kentucky are responsible for two-thirds of the outstanding balance. The billing office has tried to resolve the payment issues through multiple phone conferences and emails with no resolutions.

In addition, Kentucky Medicaid can take six to nine months to complete the credentialing process but they will make the provider effective date retroactive for purposes of claims payment that have accumulated. However, Kentucky MCOs do not follow the same process, the MCOs credentialing process does not begin until the Kentucky Medicaid credentialing is complete. After Kentucky Medicaid's process is completed, there could be an additional three to six months before the MCOs credentialing process is complete and the provider effective date for the MCOs does not correspond with the Kentucky Medicaid effective date. Instead the MCOs assign an effective date for the month that a clean application was submitted therefore, for many providers there is the possibility of at least 6 months of unpaid services.

In response to questions from Senator Alvarado, Ms. Comley stated the \$3.1 million outstanding balance includes services from 40 to 50 physicians that work in rural health clinics. She stated that if a provider applied for credentialing April 1 and immediately started seeing patients that Kentucky Medicaid will pay retroactively for visits from April 1. However, the MCOs will not retroactively pay claims so providers are basically giving patients free service.

In response to questions from Senator Raque Adams, Ms. Comley stated the delay in payment is in part due because the Medicare credentialing must happen first, which means a provider would have to do a change of ownership. Once that is complete, then the provider can proceed with Medicaid credentialing. For example, the billing office's Medicaid effective

date is April 2014 however they did not receive the letter stating that information until June 2015. The office is still working on getting paid for patients seen from April 2014 to June 2015. Typically claims are denied because of taxonomy, provider's tax ID were not loaded or updated to a specific group, or other administrative type errors. The billing office schedules calls with WellCare of Kentucky twice a month and sends them provider information regularly to try to resolve the errors and have the claims paid.

In response to questions from Senator Alvarado, Ms. Comley stated that once a provider completes their notes electronically, it shows up in a queue for the staff to submit the claim. The claim will go to Emdeon to be reviewed and checked for errors. If errors such as ID numbers, taxonomy, physicians not loaded, or other errors are detected the claim is sent back to the office to correct. If the claim is sent to the payer, the MCOs, it is processed for payment or denied. Denied payments are usually for taxonomy because different MCOs have varying requirements to allow for the payment of claims. Taxonomy are codes used for diagnosis, level of billing, and how the providers are credentialed. All the claim payment processes are completed electronically. MCOs have also denied claims initially because the provider is termed or not associated with a specific group of providers when in fact the provider is with the group of providers. The office must then go through several steps and agencies to prove that the provider is associated with the provider group, usually taking 10 to 15 days if not denied again. The billing office has a similar case in the Mayfield office that has been in transition for three months.

In response to questions from Senator Seum, Ms. Comley stated the billing office has worked with LifePoint and has been to the DOI regarding issues with WellCare with no resolutions. She stated the \$3.1 million is a moving target because the MCOs are not paying older claims but may pay new claims.

In response to questions from Representative Benvenuti, Ms. Comley stated that claims waiting on credentialing approval were retroactively paid in fee-for-service Medicaid but now the claims are denied by the MCOs. She agreed with Representative Benvenuti that it was intended for the MCOs to follow a standard policy or at least to certain base line of policy and that is not the case because retroactive claims are not being paid. She agreed with Representative Benvenuti that if a healthcare provider makes an investment and hires a new practitioner, they do so now realizing that they will be paying the salary and expense of that practitioner for five to seven months. The provider will not be getting paid for the MCOs patient encounters, which in some counties make up the vast majority of their encounters until they are ultimately credentialed. She stated the MCOs maintain that billing offices can call and get a prior authorizations, for each claim individually, but that has not been successful.

Representative Benvenuti commented that is unrealistic to expect a healthcare provider to essentially provide free-services for five to seven

months.

Senator Alvarado requested Commissioner Miller to return to testimony table. Senator Alvarado stated that he located information that states the five Medicaid MCOs percentage of profit margins for 2015 by provider: CoventryCares of Kentucky, better known as Aetna Better Health of Kentucky, at 25 percent, WellCare of Kentucky at 9 percent, Passport Health Plan at 2 percent, Anthem at 23 percent, and Humana at 10 percent. The average of the five MCOs at 11.6 percent. The information also stated the five Medicaid MCOs percentage of MLR for 2015 by provider: CoventryCares of Kentucky, better known as Aetna Better Health of Kentucky, at 65 percent, WellCare of Kentucky at 83 percent, Passport Health Plan at 91 percent, Anthem at 72 percent, and Humana at 81 percent. The average of the five MCOs at 11.6 percent.

In response to questions from Senator Alvarado, Commissioner Miller stated the information could be correct, that it may not be exact to what Milliman calculated but it does show the range for who is at the highest and lowest.

In response to questions from Senator Seum, Commissioner Miller stated that when the state contracts with a MCO, the MCO then contracts with a hospital. However, if the MCO refuses to adhere to the contract with the hospital it is not in breach of contract with the state and that is a problem.

#### **Adjournment**

There being no further business, the meeting was adjourned at 2:28 PM.

## **2016 KENTUCKY WORKERS' COMPENSATION TASK FORCE**

### **Minutes of the 3rd Meeting of the 2016 Interim**

October 21, 2016

#### **Call to Order and Roll Call**

The 3rd meeting of the 2016 Kentucky Workers' Compensation Task Force was held on Friday, October 21, 2016, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Alice Forgy Kerr, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative Chris Harris, Co-Chair; Senator Dennis Parrett, Representative Adam Koenig; Steve Barger, Chris Bartley, John Bolton, Carl Breeding, JD Chaney, Joe Dawahare, Rick Fouts, Ched Jennings, Michelle Landers, Bill Londrigan, Commissioner Dwight Lovan (ex-officio), Deputy Secretary Mike Nemes as representative for Secretary Derrick Ramsey (ex-officio), Jeff Roberts, Melissa Stevens, Lori Sullivan, and Tim Wilson.

Guests: General Reuben Jones, Executive Director, Kentucky Workers' Compensation Funding Commission; Renee Haddix, Director of Audit and Collections, Kentucky Workers' Compensation Funding Commission; Louie Hord, Director of Fiscal Operations, Kentucky Workers' Compensation Funding Commission; Dr. John J. Guarnaschelli, M.D., F.A.C.S., FAANS (L); Dr. Russell L. Travis, M.D., F.A.C.S., FAADep; and Dr. James R. Bean, M.D.

LRC Staff: Carla Montgomery, Andrew Manno, and Sasche Allen.



### **Approval of Minutes**

A motion to approve the minutes of the September 16, 2016 meeting was made by Representative Adam Koenig, seconded by Senator Dennis Parrett, and approved by voice vote.

### **2017 Assessment Rates Update**

General Reuben Jones, Executive Director, Kentucky Workers' Compensation Funding Commission, gave an update of the 2017 assessment rates with some of the background behind the results and legal requirements. The purpose of the Funding Commission is to manage, invest, and control the resources that are collected to pay workers' compensation. General Jones' presentation focused on the control aspect, which requires that assessment rates be set yearly.

The special fund is required to be fully funded by 2029 and the fund is on track to meet that deadline. When setting the rates, the board of directors was presented with calculations by actuary staff that included an optimistic estimate and a point estimate. In 2015 the optimistic figure was chosen of 5.51 percent, however, for 2016 the point figure of 6.29 percent was adopted.

The legal basis of the coal workers' pneumoconiosis fund differs from the special fund. It requires the Funding Commission to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate must be set as to receive 50 percent of the needed revenue from each assessment. In 2014 an optimistic scenario was chosen of 5.18 percent, and again in 2015 with a nearly tripled increase to 14.82 percent. The recommended rates for 2016 ranged from a pessimistic scenario of 172.81 percent down to an optimistic scenario of 62.12 percent.

The funding commission researched the causes of the significant impact on the assessment rates of the coal workers' pneumoconiosis fund. One factor driving the increase was the assessment history. For a period of 16 years the assessment rates ranged from zero to one percent. There have been decreases in the number of coal employers, coal severance tonnage, and coal employees. As a result, there has been an increase in the number of claims and awards with an increase in the severity of the claims. Other factors include investment returns, Environmental Protection Agency regulations, a decrease in coal purchases, the Chinese influence in the coal market, and political impacts.

General Jones reviewed several charts and graphs that illustrated the changes in the coal industry and the coal workers' pneumoconiosis fund over the years. There has been a 46.83 percent decrease in active coal companies and a 43.78 percent decrease in severed coal tonnage since 2010. Since 2010 the number of coal employees has declined by 44.53 percent. Also since that time, coal workers' pneumoconiosis claims filed have increase by 302 percent, while the increase in actual awards has increased by 6500 percent. He pointed out that from 2013 to 2016 the known liability has increased from 12.3 million to 26.9 million. A primary concern for the Funding Commission is the return on investment that is used for the payment of

workers' compensation and the administration of the program. In 2011 there was a 16.41 percent return on investment, however, 2016 shows a return on investment of 1.46 percent.

After considering the options, the board of directors adopted the alternative optimistic rate for the coal workers' pneumoconiosis fund of 49.50 percent. This was the lowest rate that would meet the legal requirement for funding the coal workers' pneumoconiosis fund. The board also adopted an alternative optimistic assessment on coal tonnage of \$0.4174.

All assessments for 2017 meet legal requirements and were approved on September 30, 2016 and become effective January 1, 2017. The first payments are due April 30, 2017.

Addressing a question from Mr. Joe Dawahare, General Jones said the payments are based on this year's payroll.

In response to Mr. Ched Jennings, General Jones stated that his presentation mainly focused on the coal workers' pneumoconiosis fund because it has the most substantial changes. He reiterated that the liability of the special fund should be fully funded by 2029. General Jones also confirmed that the current liability of the coal workers' pneumoconiosis fund is roughly \$55 million. General Jones said there have not been recent discussions about getting rid of the liability by moving it to the private sector, however, Deputy Secretary Mike Nemes added that he was aware of discussions, and the Labor Cabinet is always open to suggestions. Mr. Jennings said he did have some suggestions for recommendations for this matter. He had several other questions about the special fund and General Jones and his staff will be following up with Mr. Jennings and the task force with that information.

Responding to Mr. Bill Londrigan, Mr. Louie Hord confirmed that the present value of the coal workers' pneumoconiosis fund is approximately \$14 million and is primarily funded by coal employers and the assessment in severed coal.

Answering a question from Mr. Joe Dawahare, General Jones stated that 23 coal operating companies have gone out of business since 2015, but the responsible amount for the remaining operators does not increase because the rates are set for each year.

**Dr. John J. Guarnaschelli, M.D., F.A.C.S., FAANS (L)**

Dr. Guarnaschelli is a neurosurgeon who has been practicing in Louisville for 43 years. Approximately 10 percent of his patients have workers' compensation claims or potential claims. He explained that a neurosurgeon is a subspecialist that deals with lesions of the brain, spine, and peripheral nerves. There are two training programs in the state for neurological surgery, which are housed at the University of Louisville and the University of Kentucky. The minimum length of training for a neurosurgeon after medical school is seven years. Dr. Guarnaschelli said the existing training programs are very well monitored by the resident review board to ensure each trainee has adequate surgical experience in all areas including vascular and functional.

Most of the workers' compensation patients that Dr. Guarnaschelli sees are those who have trauma to

the head, neck, or peripheral nerves. These patients have experienced injuries that involved lifting, bending, twisting, falling, hits to the head or neck, and even motor vehicle accidents. Patients are eventually referred to a neurosurgeon after seeing other medical providers for a surgical evaluation.

Dr. Guarnaschelli noted that workers' compensation injuries are different than other injuries in several ways. First, issues like causation have to be addressed. The main difficulty with causation is deciding whether the injury at work is the primary cause of the symptoms that have led to medical treatment or if there is a preexisting issue. Another issue that has to be addressed is appropriateness of imaging such as X-rays, computed tomography (CT) scans, and magnetic resonance imaging (MRI). At a certain age, all of these scans will show normal formations of abnormalities, but it must be determined if the patient has an active or passive preexisting disease.

A third issue is determining if the treatment is appropriate and necessary. A patient may see the neurosurgeon, a primary care physician, a physical therapist, a chiropractor, a pain management specialist, or even a yoga instructor. The question is whether seeing these different providers is reasonable. Also involved with this issue is deciding if surgery is absolutely necessary. Dr. Guarnaschelli explained a fourth issue that makes workers' compensation patients different from his normal patients, which is the maximum medical improvement status. He said that according to the American Medical Association (AMA) guidelines, maximum medical improvement is the time at which an injured worker's medical condition has stabilized and further functional improvement is unlikely, despite continued medical treatment and physical rehabilitation.

Once a maximum medical improvement rate is obtained, then it is determined if there is an impairment rating that is appropriate. In Kentucky doctors depend on a series of textbooks and guidelines provided by the AMA. They make a quantitative decision based on those guidelines. Dr. Guarnaschelli pointed out that states such as Indiana and Tennessee are use other guidelines to make determinations. Another issue at this point that is of concern is prescribing medications and determining which medications are appropriate. Finally, the doctor is also asked to determine any restrictions that the worker may have after returning to work.

**Dr. Russell L. Travis, M.D., F.A.C.S., FAADep**

Dr. Travis has been a neurosurgeon for over 40 years and also performs independent medical evaluations (IMEs). He said his goal is determining what is best for the patients and basing his advice on facts. He describes himself as a conservative surgeon. According to Dr. Travis, there are several problems with the workers' compensation system. One problem is the frequency of drug screenings for opioids. It is unnecessary to do drug screenings at every appointment; they should only be given at random as long as the patient is reliable. Another issue with the workers' compensation system is the lack of evidence-based guidelines. Specific guidelines would allow for doctors to know with certainty the appropriate time to start treatment, how much treatment is appropriate,

and when to stop that treatment.

Dr. Travis said that there is an opioid epidemic in the United States. Pain has become a sixth vital sign; however, pain is an emotional response. Prescribing opioids should be centered on evidence based medicine and set guidelines. A study has concluded that epidural steroid injections are inappropriate and do not give permanent relief. Pain management centers and others prescribing opioids are benefiting instead of the patient, similarly to the doctors that administer epidural steroid injections. Other forms of treatment that need to have some guidelines include lumbar spine fusions and sacroiliac (SI) joint fusions.

Dr. Travis stated that there should be a medical director within the Department of Workers' Claims to assist in making determinations between competing medical opinions. Although Dr. Travis has great respect for administrative law judges (ALJs), he said that there should be someone with a medical background to advise the ALJs. Overall, there are numerous sets of guidelines that the system could use to make determinations that already exist. Dr. Travis said that too many lumbar fusions are performed, and surgical guidelines would be helpful.

Reasoning was provided for adopting the sixth edition of the AMA guidelines. Each chapter of the sixth edition has the same methodology, unlike the fifth edition. There is also a difference in determining impairment ratings. The Workers' Compensation Research Institute (WCRI) research should be used in reference to the system. Dr. Travis thinks that its comparative research amongst various states can be helpful in making beneficial changes to the system.

Dr. Travis indicated that SI joint injections are mostly unnecessary unless a patient has arthritis. In addition, evidence-based guidelines would assist in determinations of causation in workers' compensation claims and in cases involving cumulative trauma.

**Dr. James R. Bean, M.D.**

Dr. Bean had a differing opinion of the use of guidelines. He said that the implementation of set guidelines would prevent him from providing proper care to the patient. Usually with set guidelines there are no exceptions even if the guidelines do not apply to all situations. Also, adopting a statewide legislatively recognized set of guidelines would mean they would be the law and presumptively correct. Exceptions to guidelines must be acknowledged.

He addressed a case study as an example of the problems he faces in attempting to obtain approval for medical treatment such as surgery. Utilization review cites Official Disability Guidelines (ODG) and issues a report based upon the review of the surgical recommendation. There is no room for variation or appeal which handicaps the physician. The ODG guidelines have recently been disqualified. Treating doctors are not irrelevant in the decision making process. He noted why guidelines are used but urged caution in adopting them. There must be flexibility.

Dr. Travis said that the ODG guidelines are based on literature. California, Tennessee, and Texas adopted a combination of guidelines instead of just one. This allows a state to choose different aspects of each set. There are appeals if surgery is denied. A state cannot afford to develop its own guidelines. However, there must be guidelines to reduce unnecessary

surgeries.

In response to a question from Representative Adam Koenig, Dr. Travis explained the basis of the ODG guidelines, which are evidence-based written guidelines for medical treatment. Representative Koenig said there have been many disagreements about which edition of the AMA Guides should be used. He assumed the guidelines are updated for a reason and asked for the opinion of each speaker on the AMA Guidelines. Dr. Bean noted that he was astounded that the fifth edition increased the impairment for cervical surgeries. Dr. Guarnaschelli noted similarities between the fifth and sixth editions. Dr. Travis stated that most states have now adopted the sixth edition, which is a mixture of the fifth and fourth editions and is an attempt to go back to reasonable impairment ratings. The fifth edition included a huge increase in impairment to the spine. The sixth edition gives an impairment based upon the result.

After a question from Mr. Joe Dawahare, Dr. Bean spoke about unnecessary surgeries and the need for guidelines. Dr. Bean said that there may be a way to pre-screen treatment decisions. He would like to see a more expedited process for approval of treatment. It is wrong that professional judgement is not acknowledged when a simple back surgery is recommended. The denials come from a doctor who has never seen the patient. The doctor must be trusted, but he knows that is not entirely possible. Dr. Travis noted many doctors perform unnecessary back fusions.

Co-Chair Chris Harris asked the panel whether the problem with obtaining requested treatment extends beyond the workers' compensation system to the entire medical community. Dr. Bean agreed that it extends beyond workers' compensation. Dr. Travis noted other states have guidelines to assist with the problem while Kentucky does not have guidelines.

Following a questions from Mr. Ched Jennings, Dr. Travis elaborated on the number of unnecessary surgeries performed in workers' compensation. Dr. Travis explained studies regarding unnecessary surgeries. Mr. Jennings asked if the push for guidelines is an attempt to control costs. Dr. Travis stated the purpose of guidelines is to ensure proper treatment of patients. Dr. Guarnaschelli was asked if he is frustrated by utilization review denials of treatment. He stated that most denials are due to lack of documentation that eventually get resolved. He has never had a patient physically affected by a delay in treatment but the delay can frustrate the patient. Dr. Bean indicated that it is very frustrating to have treatment delayed by a denial. He noted that delays in treatment can be months and in such cases the ability of the patient to return to work is affected. Dr. Bean and Dr. Travis debated the credibility of studies and literature regarding the effect of delay in medical treatment.

Ms. Melissa Stevens asked about expediting treatment requests and implementing treatment guidelines in coordination with creation of a medical director within the Department of Workers' Claims. Dr. Bean indicated such a set up could work if there was a trustworthy director that could assist with treatment recommendations or forward that request

to and expert panel of doctors for an opinion.

Mr. Tim Wilson asked how delays in treatment in workers' compensation compare to those outside of workers' compensation. Dr. Bean noted the delay is the same. Mr. Wilson asked if guidelines are taught in medical school. Dr. Bean stated that physicians often are not familiar with the guidelines until in practice. Dr. Travis said that he speaks to neurosurgical residents at the University of Kentucky, but there is no strict training on guidelines. In response to a question from Mr. Wilson regarding ethical consideration of guidelines, Dr. Bean noted his ethical obligation is to the patient, not the guideline. He must pursue treatment that will help his patient. Dr. Travis stated that guidelines must have language that indicates that a doctor is not subject to a malpractice lawsuit if guidelines are followed. Mr. Wilson asked Dr. Bean if it is possible to pigeon-hole patients into guidelines. Dr. Bean said that all cases cannot be pigeon-holed. Individual judgements must be considered. There are exceptions to all guidelines. Dr. Travis noted that reviews should be done by specialists and Dr. Bean indicated that surgical review should not be undertaken without peer to peer review with the requesting surgeon and the reviewing specialist.

Mr. Jeff Roberts asked if specialists have treatment guidelines. Dr. Bean noted that the orthopedists have treatment guidelines that are credible. Dr. Guarnaschelli was asked if the sixth edition of the AMA Guides considers the occupation of the injured worker and he noted it does not. He stated that occupational disability differs from permanent impairment rating. Mr. Roberts and Dr. Travis discussed a case in which surgery was turned down based upon a reviewing doctor even though the defense evaluator approved the surgery. Dr. Travis noted he requests all past records and diagnostic tests before reviewing a case for surgery.

Mr. Steve Barger asked the panel what steps can be taken to make sure injured workers receive appropriate medical care and make the system more user friendly. Dr. Bean stated that guidelines are helpful for initial treatment. Specialists need to review various guidelines and address what treatment is necessary beyond initial treatment in each specialty. Dr. Guarnaschelli indicated that most workers' compensation patients receive good care, sometimes too much care in certain instances. He would not be opposed to a selected group of medical providers that provide quality medical care. Dr. Travis indicated that system becomes adversarial when care exceeds necessary levels or a surgery is unnecessary. A medical director could help steer care to proper facilities. Bad care is worse than no care. There needs to be a way to determine where good care can be found and get the patients to those providers. Another problem to address is why many good doctors will not take workers' compensation patients.

Ms. Melissa Stevens asked if there was a way to get the medical community to approve treatment guidelines. Dr. Travis noted all specialties must review the guidelines and see what combination of guidelines would work. Dr. Bean noted there must be a dedicated multidisciplinary panel to go through all of the guidelines and reach a consensus.

There being no further business, the meeting was adjourned at 12:17 p.m.



# 2017 Prefiled Bills

**BR22** - Representative Brent Yonts  
(6/15/2016)

AN ACT relating to crimes and punishments.

Amend KRS 532.090 to establish gross misdemeanors as a new category of misdemeanor offense and set penalty range; amend KRS 439.340 to make parole mandatory for Class D offenders who are not violent offenders or sexual offenders and have not committed any violent acts while incarcerated; amend KRS 218A.135 to require that certain findings specific to the defendant be utilized in pretrial release decisions; amend KRS 532.080 to make persistent felony offender sentencing discretionary; amend KRS 534.070 to increase jail credit for fines; amend KRS 530.050 to create three-tiered offense of nonsupport; amend KRS 24A.110 to ensure that jurisdiction over gross misdemeanor cases is in the District Court; amend various sections of the Kentucky Revised Statutes to conform; repeal KRS 431.060.

(Prefiled by the sponsor(s).)

**BR32** - Representative Lewis Nicholls  
(11/3/2016)

A JOINT RESOLUTION designating the "Greenup County Korean War Veterans Bridge" in Greenup County.

Direct the Transportation Cabinet to designate a bridge on United States Highway 23 in Greenup County as the "Greenup County Korean War Veterans Bridge."

(Prefiled by the sponsor(s).)

**BR33** - Representative Lewis Nicholls  
(11/3/2016)

A JOINT RESOLUTION directing the Transportation Cabinet to honor the life and memory of Pulitzer Prize-winning journalist Richard Whitt by erecting signs on United States Highway 23 in Greenup County that read "Home of 1978 Pulitzer Prize Winner Richard Whitt."

Direct the Transportation Cabinet to erect signage on United States Highway 23 in Greenup County that read "Home of 1978 Pulitzer Prize Winner Richard Whitt."

(Prefiled by the sponsor(s).)

**BR34** - Representative Lewis Nicholls  
(11/3/2016)

A JOINT RESOLUTION directing the Transportation Cabinet to erect a sign on United States Highway 23 denoting Greenup County as the "Home of 1984 Kentucky Poet Laureate Clarence 'Soc' Clay."

Direct the transportation Cabinet to erect a sign declaring Greenup County as the "Home of 1984 Kentucky Poet Laureate Clarence 'Soc' Clay."

(Prefiled by the sponsor(s).)

**BR35** - Representative Jerry Miller  
(8/22/2016)

AN ACT relating to the filing deadline for candidates running for a seat in the General Assembly.

Amend KRS 118.165 to change the filing deadline for candidates for offices to be voted for by the electors of more than one county and for members of Congress and members of the General Assembly from the last Tuesday in January, to the Tuesday prior to the third Monday in January; amend KRS 117.055 and 118.215 to conform.

(Prefiled by the sponsor(s).)

**BR58** - Representative Michael Lee Meredith,  
Representative Jim DeCesare  
(6/28/2016)

AN ACT relating to the Bowling Green Veterans Center, making an appropriation therefor, and declaring an emergency.

Authorize to the Department of Veterans' Affairs federal funds and bond funds in fiscal year 2016-2017 for the construction of the Bowling Green Veterans Center nursing home; establish conditions; provide that if debt service is required it shall be a necessary government expense to be paid from the general fund surplus account or the budget reserve trust fund; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR59** - Representative Daniel Elliott  
(8/1/2016)

AN ACT relating to prescriptive authority for physician assistants.

Amend KRS 311.856 and 311.858 to permit physician assistants to

prescribe and dispense controlled substances.  
(Prefiled by the sponsor(s).)

**BR62** - Representative Kenny Imes  
(9/28/2016)

AN ACT relating to travel required for certain state employees.

Amend KRS 18A.115 to require certain nonmerit employees to travel to Fulton or Hickman County and to Pike, Martin, or Letcher County prior to being appointed and every four years thereafter.

(Prefiled by the sponsor(s).)

**BR63** - Representative Kenny Imes  
(9/28/2016)

AN ACT proposing an amendment to Section 32 of the Constitution of Kentucky relating to terms of members of the General Assembly.

Propose to amend Section 32 of the Constitution of Kentucky to prevent Senators from serving more than four consecutive terms of office and Representatives from serving more than eight consecutive terms of office, whether complete or partial terms, and prevent a legislator from serving more than sixteen consecutive years in the General Assembly, regardless of the house in which he or she served, beginning in 2018 for newly elected members only; allow legislators to resume service after two years have elapsed since leaving office; provide ballot language; submit to voters for ratification or rejection.

(Prefiled by the sponsor(s).)

**BR64** - Representative Kevin Bratcher  
(9/21/2016)

Direct the Legislative Research Commission to establish a task force to develop a strategy and funding mechanism to provide care for medically fragile adults with intellectual and developmental disabilities and report findings for referral to the appropriate committees.

(Prefiled by the sponsor(s).)

**BR66** - Representative Daniel Elliott  
(9/22/2016)

AN ACT relating to retirement benefits for legislators.

Amend KRS 6.505 to close the Legislators' Retirement Plan to new members effective August 1, 2017; prohibit current legislators from participating in the Legislators' Retirement Plan on or after August 1, 2017; provide that current and future legislators shall only participate in the Kentucky Employees Retirement System for any service to the General Assembly occurring on or after August 1, 2017.

(Prefiled by the sponsor(s).)

**BR68** - Representative Sannie Overly  
(7/13/2016)

AN ACT relating to credit freezes for consumers.

Create a new section of KRS 367.363 to 367.365 to define "protected person," "record," "representative," and "sufficient proof of authority"; require a consumer reporting agency to place a security freeze on a protected person's record or report upon proper request by a representative; require the freeze to be placed within 30 days of receiving the request; set forth when the credit reporting agency is required to remove the freeze; allow the credit reporting agency to charge a fee under certain circumstances; establish penalties for violations.

(Prefiled by the sponsor(s).)

**BR69** - Senator Mike Wilson  
(7/15/2016)

AN ACT relating to the Bowling Green Veterans Center, making an appropriation therefor, and declaring an emergency.

Authorize to the Department of Veterans' Affairs Federal Funds and Bond Funds in fiscal year 2016-2017 for the construction of the Bowling Green Veterans Center nursing home; establish conditions; provide that if debt service is required it shall be a necessary government expense to be paid from the General Fund Surplus Account or the Budget Reserve Trust Fund Account; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR71** - Representative Regina Bunch  
(7/19/2016)

AN ACT relating to family member visitation rights.

Repeal and reenact KRS 405.021 to grant visitation to family members if it is in the child's best interest based on listed factors.

(Prefiled by the sponsor(s).)

**BR73** - Representative Rick Nelson  
(7/15/2016)

AN ACT relating to a tax credit for volunteer firefighters.

Create a new section of KRS Chapter 141 to establish a \$1,000 refundable income tax credit for certain volunteer firefighters; declare the purpose of the credit; require annual reporting to the Legislative Research Commission to evaluate the impact of the credit; amend KRS 141.0205 to provide the ordering of the credit and to make technical corrections.

(Prefiled by the sponsor(s).)

**BR74** - Representative Rick Nelson  
(8/5/2016)

AN ACT relating to promise zone tax incentives.

Amend KRS 139.570 to allow additional compensation for sellers in the promise zone; create a new section of KRS Chapter 141 to allow an income tax credit for qualified employees equal to the individual income tax on wages earned in the promise zone, not to exceed \$2,400; allow an income tax credit for qualified employers in an amount equal to \$100 for each employee working within the promise zone; require reporting by the Department of Revenue to the Legislative Research Commission; amend KRS 141.0205 to order the new tax credits; create a noncodified section to set forth the purpose of the Act and describe actions previously taken by the federal government.

(Prefiled by the sponsor(s).)

**BR75** - Representative Kevin Bratcher, Representative Joseph Fischer, Representative John Carney, Representative Jim DuPlessis, Representative Dennis Horlander, Representative Kenny Imes, Representative Stan Lee, Representative Bart Rowland, Representative James Tipton, Representative Russell Webber  
(7/6/2016)

AN ACT relating to hate crimes.

Amend KRS 532.031, relating to an offense committed as a result of a hate crime, to include offenses committed against an individual because of the individual's actual or perceived employment as a city, county, state, or federal peace officer, member of an organized fire department, emergency medical services personnel; provide that "emergency medical services personnel" is defined as in KRS 311A.010; enumerate that members of an organized fire department or

emergency medical services personnel includes volunteer members if the violation occurs while the volunteer is performing duties with an organized fire department or emergency medical services personnel.

(Prefiled by the sponsor(s).)

**BR80** - Representative Joni Jenkins  
(8/2/2016)

AN ACT relating to the Kentucky educational excellence scholarship.

Amend KRS 164.7871 to name the Kentucky educational excellence scholarship the "Arch Gleason Kentucky Educational Excellence Scholarship"; amend KRS 164.7874 to conform.

(Prefiled by the sponsor(s).)

**BR81** - Representative Jerry Miller  
(8/17/2016)

AN ACT relating to spas.

Amend KRS 241.010 to define the term "spa" within the alcoholic beverage control statutes as a beauty salon employing at least ten cosmetologists, not including contractors or those renting booths or chairs within the beauty salon; direct that a properly licensed professional perform any spa services requiring an occupational license for that service; prohibit the spa definition from limiting or restricting any practitioner from engaging in services authorized under that person's license; define "beauty salon," "cosmetologist," and "cosmetology" as used in the spa definition; amend KRS 243.086 to allow a spa to obtain a Nonquota Type 3 (NQ3) alcohol drink license; limit alcohol by the drink sales at a spa to only those guests who are receiving at least an hour of one of the primary services offered by the spa; amend KRS 244.085 to add spas to the list of alcohol by the drink establishments that are exempt from the prohibition against minors remaining on the premises.

(Prefiled by the sponsor(s).)

**BR84** - Representative Kevin Bratcher  
(7/22/2016)

Declare state sovereignty over powers not given to the federal government by the United States Constitution; demand that the federal government cease mandates beyond constitutionally delegated powers; prohibit federal legislation requiring state passage of laws under threat of penalties or sanctions; distribution of copies of the Resolution to designated officials.

(Prefiled by the sponsor(s).)



**BR86** - Representative James Kay  
(9/15/2016)

AN ACT relating to the independence and transparency of the board of trustees of the Kentucky Retirement Systems and declaring an emergency.

Amend KRS 12.028 to prevent the Governor from effecting any reorganization of the Kentucky Retirement Systems board of trustees; amend KRS 63.080 to prevent the Governor from removing trustees of the Kentucky Retirement Systems, except upon conviction of a felony or for a finding of an ethical violation as provided under KRS 61.645; amend KRS 61.645 to change the composition of the Kentucky Retirement Systems board of trustees to eight elected trustees and five appointed trustees, removing one gubernatorial appointment and the secretary of the Personnel Cabinet from the board; limit the definition of “investment experience”; provide that a vacancy of an elected trustee shall be filled upon a vote of a majority of the remaining elected trustees and that the vacancy shall be filled within 90 days; place the Kentucky Retirement Systems under the Model Procurement Code; establish that any raises to Kentucky Retirement Systems staff be no higher than KRS Chapter 18A employees; require disclosure of all holdings, fees, and commissions by individual investment managers, require the Kentucky Retirement Systems to report returns net of fees; require disclosure of all contracts or offering documents and contract disclosure of investment contracts to the board, the Auditor of Public Accounts and the Government Contract Review Committee; establish a ban on placement agents; amend KRS 61.650 to impose on the Kentucky Retirement Systems board of trustees, staff, and contract investment advisors the CFA Institute Codes of Conduct; amend KRS 12.020 and 18A.035 to make technical and conforming amendments; provide a delayed effective date for the changes to the board composition, direct the Kentucky Retirement Systems to hold elections and prescribe the initial terms of office for the new elected members; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR89** - Representative Myron Dossett  
(10/13/2016)

AN ACT relating to railroad companies and making an appropriation therefor.

Amend KRS 277.990 to increase the fine for a violation of KRS 277.200, relating to a railroad company obstructing a highway, street, or navigable

stream to \$5,000 for each offense; transfer 50 percent of each fine collected to the law enforcement agency that issued the citation.  
(Prefiled by the sponsor(s).)

**BR92** - Representative Myron Dossett  
(11/17/2016)

AN ACT relating to exemptions from workers’ compensation coverage.

Amend KRS 342.650, concerning exemptions from workers’ compensation, to include lawn services as well as maintenance, repair, remodeling, or similar work for not more than 20 days on a private home or on the premises of a business that employs no other workers subject to workers’ compensation laws.

(Prefiled by the sponsor(s).)

**BR94** - Representative John Short  
(7/27/2016)

AN ACT relating to the property tax on unmined coal.

Amend KRS 132.820 to establish a standard value for unmined coal reserves that have not been mined during the 10-year period immediately preceding the assessment date, for purposes of state and local property taxes on unmined coal assessed on or after January 1, 2018, setting the standard value thereof at zero unless information is available that warrants any deviation; require the Department of Revenue to prepare an informational document explaining the basis of this tax, the valuation procedures used, and the procedure for taxpayers to follow to appeal assessments; amend KRS 131.190 and 134.546 to conform; make technical corrections.

(Prefiled by the sponsor(s).)

**BR95** - Representative John Short  
(8/17/2016)

AN ACT relating to a tax credit for volunteer firefighters.

Create a new section of KRS Chapter 141 to establish a refundable income tax credit for certain volunteer firefighters; declare the purpose of the credit; require annual reporting to the Legislative Research Commission to evaluate the impact of the credit; amend KRS 141.0205 to provide the ordering of the credit and to make technical corrections.

(Prefiled by the sponsor(s).)

**BR97** - Senator Reginald Thomas  
(8/3/2016)

AN ACT relating to general principles of justification.

Create a new section of KRS Chapter 503 to incorporate the “no duty to retreat” provisions elsewhere in the chapter; amend KRS 503.050, 503.055, 503.070, and 503.080 to require a reasonable belief that defensive force is necessary before it is justified; change the term “great bodily harm” to “serious physical injury” as used throughout the Penal Code; amend KRS 503.060 to require an initial aggressor to retreat before the use of force can be justified; repeal KRS 503.120.

(Prefiled by the sponsor(s).)

**BR103** - Senator Reginald Thomas  
(8/3/2016)

AN ACT relating to oaths.

Amend KRS 6.072 to require witnesses appearing before a committee, subcommittee, or task force of the General Assembly to take an oath prior to giving testimony.

(Prefiled by the sponsor(s).)

**BR110** - Representative Chuck Tackett  
(9/8/2016)

AN ACT proposing an amendment to Section 170 of the Constitution of Kentucky relating to exemptions from taxation.

Propose an amendment to Section 170 of the Constitution of Kentucky to exempt from taxation property of certain veterans’ organizations if the entity has qualified for exemption from federal income tax; submit to voters.

(Prefiled by the sponsor(s).)

**BR111** - Senator John Schickel  
(8/30/2016)

AN ACT relating to operator’s license testing.

Amend KRS 186.480 to require the Department of Kentucky State Police to make a driver’s manual available in printed or electronic format that contains the information needed for an operator’s license examination; require that the manual have a section regarding an applicant’s conduct during interactions with law enforcement officers; require that the operator’s license examination include the applicant’s knowledge regarding conduct during interactions with law enforcement officers.

(Prefiled by the sponsor(s).)

**BR112** - Representative Kenny Imes  
(9/28/2016)

AN ACT relating to administrative regulations.

Amend KRS 13A.010 to amend the definition of “administrative regulation” and to define “last effective date”; amend KRS 13A.040 to require the regulations compiler to maintain a list of all administrative regulation numbers and their corresponding last effective dates; amend KRS 13A.220 and 13A.222 to make conforming changes to enable the renewal of an administrative regulation; amend KRS 13A.310 to provide that, beginning July 1, 2017, an ordinary administrative regulation shall expire 7 years after its last effective date; provide that an administrative regulation that has a last effective date prior to July 1, 2012, shall expire on July 1, 2019; establish duties of regulations compiler; and establish requirements for an administrative body that does not want an administrative regulation to expire.

(Prefiled by the sponsor(s).)

**BR113** - Representative Stan Lee  
(10/18/2016)

AN ACT relating to interscholastic extracurricular activities.

Create a new section of KRS Chapter 158 to authorize participation in a public school interscholastic extracurricular activity by a home school; establish criteria for participation therein.

(Prefiled by the sponsor(s).)

**BR114** - Representative Chris Harris  
(10/13/2016)

AN ACT relating to unclaimed life insurance policies.

Amend 304.15-420 to clarify the retroactive application of the Unclaimed Life Insurance Benefits Act.

(Prefiled by the sponsor(s).)

**BR115** - Representative Rick Nelson  
(7/26/2016)

AN ACT relating to expungement.

Amend KRS 431.073 to reduce filing fee for felony expungement from \$500 to \$200.

(Prefiled by the sponsor(s).)

**BR118** - Representative George Brown Jr.  
(11/17/2016)

AN ACT relating to criminal histories of job applicants.

Create a new section of

KRS Chapter 344 to 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.”

(Prefiled by the sponsor(s).)

**BR123** - Representative Jeffery Donohue  
(8/22/2016)

AN ACT relating to railroads.

Create a new section of KRS Chapter 277 to require two-person crews on trains or light engines used in connection with the movement of freight; establish civil penalties for failure to have a two-person crew.

(Prefiled by the sponsor(s).)

**BR124** - Representative Jeffery Donohue  
(8/22/2016)

AN ACT relating to public procurement.

Create new sections of KRS Chapter 45A to set forth findings of the General Assembly and establish policy of the Commonwealth of Kentucky to promote the Kentucky and United States economies by requiring a preference for iron, steel, and manufactured goods produced in Kentucky and the United States; define “manufactured in Kentucky,” “manufactured in the United States,” “Kentucky,” and “United States”; require preference for iron, steel, and manufactured goods made in Kentucky in construction and maintenance contracts and subcontracts; provide for a waiver of the Kentucky preference requirement; require preference for iron, steel, and manufactured goods made in the United States if the Kentucky waiver is granted; provide for a waiver of the United States preference requirement; establish a short title of “Kentucky Buy American Act”; amend KRS 45A.343, 45A.352, 65.027, 162.070, 164A.575, 176.080, and 424.260 to require compliance with the Kentucky Buy American Act.

(Prefiled by the sponsor(s).)

**BR125** - Representative Jeffery Donohue  
(8/8/2016)

AN ACT relating to day reporting programs.

Create a new section of KRS Chapter 533 to authorize the use of day reporting programs in criminal sentencing.

(Prefiled by the sponsor(s).)

**BR127** - Senator Reginald Thomas  
(10/19/2016)

AN ACT relating to arrest-related deaths.

Amend KRS 72.025 to add deaths which occur during arrest to cases which are investigated by the coroner; create a new section of KRS Chapter 72 to require coroners to notify the Medical Examiner’s Office of arrest-related deaths and require an annual public report; amend KRS 72.020 to conform.

(Prefiled by the sponsor(s).)

**BR132** - Senator Reginald Thomas  
(8/26/2016)

AN ACT relating to superintendent screening committee membership.

Amend KRS 160.352 to require the appointment of a school equity council member to the superintendent screening committee, if an equity council exists; allow a board to add a high school student to the superintendent screening committee.

(Prefiled by the sponsor(s).)

**BR133** - Senator Reginald Thomas  
(11/3/2016)

A CONCURRENT RESOLUTION recognizing the importance of diversifying energy sources for generating electricity in Kentucky.

Recognize the importance of diversifying energy sources for generating electricity in Kentucky; encourage the development of a statewide energy strategy.

(Prefiled by the sponsor(s).)

**BR134** - Senator Dennis Parrett  
(9/15/2016)

AN ACT relating to kinship care.

Amend KRS 605.120 to permanently establish a kinship care program.

(Prefiled by the sponsor(s).)

**BR135** - Representative Dennis Keene  
(9/23/2016)

AN ACT relating to child abuse and neglect.

Create a new section of KRS Chapter 199 to establish the central registry for child abuse and neglect; establish definitions; establish requirements for operation of the registry; provide that the Act be known as Sophie’s law.

(Prefiled by the sponsor(s).)



**BR138** - Senator Reginald Thomas  
(9/20/2016)

AN ACT relating to wages.

Amend KRS 337.010 to increase the applicable threshold of employees of retail stores and service industries from \$95,000 to \$500,000 average annual gross volume of sales for the employer; amend KRS 337.275 to raise the state minimum wage to \$8.20 per hour on July 1, 2018, \$9.15 per hour on July 1, 2019, and \$10.10 per hour on July 1, 2020, and to raise the state minimum wage for tipped employees to \$3.05 per hour on the effective date of the Act, \$3.95 per hour on July 1, 2019, and \$4.90 per hour on July 1, 2020; include anti-preemption language permitting local governments to establish minimum wage ordinances in excess of the state minimum wage.

(Prefiled by the sponsor(s).)

**BR141** - Representative Fitz Steele  
(8/18/2016)

AN ACT relating to the property tax on unmined coal.

Amend KRS 132.820 to exempt unmined coal reserves from state and local property taxation if on January 1 of any tax year the owner or lessee of the reserve does not hold a valid permit from both the state and federal governments to mine coal from the reserve, and does not anticipate that coal will be mined from the reserve at any point during the tax year; amend KRS 131.190 to conform; make technical corrections; apply to property assessed on and after January 1, 2018.

(Prefiled by the sponsor(s).)

**BR142** - Representative Fitz Steele  
(8/18/2016)

AN ACT relating to coal severance revenues.

Amend various sections in KRS Chapter 42 to distribute 100 percent of coal severance revenues among the coal-producing counties on the basis of the tax collected on coal severed or processed in each respective county; amend KRS 143.090, 164.7890, and 164.7891 to make conforming changes; repeal KRS 42.490, relating to transfer of county fund balances.

(Prefiled by the sponsor(s).)

**BR143** - Representative Fitz Steele  
(8/18/2016)

AN ACT relating to sales and use tax

holidays and declaring an emergency.

Create a new section of KRS Chapter 139 to establish a three-day sales and use tax holiday during the first weekend in August in 2017, 2018, 2019, and 2020 to exempt clothing, school supplies, school art supplies, computers, and school computer supplies; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR145** - Senator John Schickel  
(8/30/2016)

AN ACT relating to a board of directors of a college within the Kentucky Community and Technical College System.

Amend KRS 164.350 to require the board of directors of a community and technical college to approve biennial budget requests and to accept or reject donations of land or funds to the college; amend KRS 164.600 to change the terms of office for members of boards of directors; hold members of boards of directors harmless for proper actions and require that they be provided legal counsel upon request; require an outside agency or foundation associated with a college to notify the local board of directors of upcoming meetings, to conduct open meetings, to publicly disclose all financial documents, including donations and moneys raised and expended, and to prohibit the agency's or foundation's citizen members from having a conflict of interest or being a relative of a college employee.

(Prefiled by the sponsor(s).)

**BR147** - Representative Kim King  
(9/14/2016)

AN ACT relating to sex offender registrants.

Amend KRS 17.545 to prohibit sex offender registrants from being on the grounds of a publicly owned playground without advance written permission.

(Prefiled by the sponsor(s).)

**BR148** - Representative Kim King  
(9/14/2016)

AN ACT relating to legislative procedures for state fiscal measures.

Create a new section of KRS Chapter 6 to require roll call votes on any state fiscal measure, including an appropriation or revenue-raising measure, voted upon in the Senate or House or a committee thereof; require identification of any state fiscal measure by the director of the Legislative Research Commission, or upon a determination by the Senate or House or a committee of either;

require separate vote for any state fiscal measure.

(Prefiled by the sponsor(s).)

**BR149** - Representative Kim King  
(9/14/2016)

AN ACT relating to foreign law.

Create a new section of KRS Chapter 454 to establish legislative intent that the rights of an individual afforded under the Constitutions of the Commonwealth and the United States take precedence over the application of any foreign law in any judicial or quasi-judicial proceeding; define specific terms; strictly construe waivers of constitutional rights; provide exceptions for corporate entities; prohibit choice of venue outside of the Commonwealth or United States to preserve the constitutional rights of the person against whom enforcement is sought.

(Prefiled by the sponsor(s).)

**BR150** - Representative Kim King  
(8/30/2016)

AN ACT relating to school notification of persons authorized to contact or remove a child.

Create a new section of KRS Chapter 620 to require the Cabinet for Health and Family Services, if the cabinet is granted custody of a dependent, neglected, or abused child, to notify the school in which the child is enrolled of persons authorized to contact the child or remove the child from school grounds.

(Prefiled by the sponsor(s).)

**BR151** - Representative Kim King  
(8/30/2016)

AN ACT proposing an amendment to Section 42 of the Constitution of Kentucky relating to compensation for members of the General Assembly.

Propose to amend Section 42 of the Constitution of Kentucky to prohibit members of the General Assembly from receiving legislative pay for a special session that has been called by the Governor because the General Assembly adjourned without passing a state budget; submit to the voters with ballot question.

(Prefiled by the sponsor(s).)

**BR152** - Representative Kim King  
(8/12/2016)

AN ACT relating to pawnbrokers.

Amend KRS 226.040 to require pawnbrokers to record daily transaction

information and also provide the information on an online service accessible by law enforcement agencies.

(Prefiled by the sponsor(s).)

**BR156** - Senator John Schickel  
(10/11/2016)

AN ACT relating to a sales and use tax exemption for currency and bullion.

Amend KRS 139.480 to exempt from sales and use tax sales or purchases of bullion or currency made on or after July 1, 2017, but before July 1, 2021.

(Prefiled by the sponsor(s).)

**BR157** - Representative Jody Richards  
(8/26/2016)

AN ACT relating to the Bowling Green Veterans Center, making an appropriation therefor, and declaring an emergency.

Authorize to the Department of Veterans' Affairs Federal Funds and Bond Funds in fiscal year 2016-2017 for the construction of the Bowling Green Veterans Center nursing home; establish conditions; provide that if debt service is required it shall be a necessary government expense to be paid from the General Fund Surplus Account or the Budget Reserve Trust Fund Account; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR166** - Representative Tim Couch  
(9/20/2016)

Urge the United States Environmental Protection Agency to prioritize compliance assistance over current enforcement practices.

(Prefiled by the sponsor(s).)

**BR172** - Senator Reginald Thomas  
(10/28/2016)

AN ACT relating to the regulation of firearms and ammunition by local governments.

Create a new section of KRS Chapter 65 to allow urban-county governments and consolidated local governments to regulate firearms and ammunition to reduce gun violence, except when state or federal law preempts local governance; amend KRS 65.870 to conform.

(Prefiled by the sponsor(s).)

**BR176** - Senator Danny Carroll  
(9/19/2016)

AN ACT relating to nuclear power.

Amend KRS 278.600 to require that nuclear power facilities have a plan for the storage of nuclear waste rather than a means of permanent disposal and to add definitions of "storage," "low-level nuclear waste," and "mixed nuclear waste"; amend KRS 278.610 to allow certification if the facility and its plans for waste storage are approved by the Nuclear Regulatory Commission; eliminate the requirement that the facility have a plan for disposal of high-level nuclear waste; eliminate the requirement that cost of waste disposal be known; eliminate the requirement that the facility have adequate capacity to contain waste; give the Public Service Commission authority to hire a consultant to perform duties relating to nuclear facility certification; prohibit construction of low-level nuclear waste disposal sites in Kentucky except as provided in KRS 211.852; direct the Energy and Environment Cabinet to review regulations required for permitting nuclear facilities and report to LRC; repeal KRS 278.605, relating to construction of nuclear power facilities.

(Prefiled by the sponsor(s).)

**BR177** - Senator Danny Carroll  
(10/6/2016)

AN ACT relating to jailers and declaring an emergency.

Amend KRS 441.245 to require fiscal courts to detail the duties and compensation of the jailer for the upcoming year; require a quarterly report by the jailer of the duties performed; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR178** - Senator Danny Carroll  
(10/6/2016)

AN ACT relating to licensing fees for the sale of alcoholic beverages.

Amend KRS 243.075 to allow cities with a population of less than 20,000, and counties that do not have a city with a population greater than 20,000, to impose a regulatory license fee on the sale of alcoholic beverages; grandfather in cities and counties imposing a regulatory license fee prior to the effective date of the Act.

(Prefiled by the sponsor(s).)

**BR179** - Senator Danny Carroll  
(9/19/2016)

AN ACT relating to the law enforcement and firefighters foundation programs and making an appropriation therefor.

Amend various sections of KRS Chapter 15 and KRS 95A.250, relating

to the Kentucky Law Enforcement Foundation Program fund and the Firefighters Foundation Program fund, to increase the annual supplement payment to local governments for qualifying law enforcement officers and firefighters from \$3,000 to \$4,000 beginning July 1, 2018; provide a reimbursement to local governments to reimburse for required contributions to the employee pension system resulting from the supplement increase; provide partial compensation for local government administrative expenses; amend KRS 95A.262 to increase the annual allocation to volunteer fire departments from the Commission on Fire Protection Personnel Standards and Education from \$8,250 to \$11,000 beginning July 1, 2018; APPROPRIATION.

(Prefiled by the sponsor(s).)

**BR180** - Senator Danny Carroll  
(9/19/2016)

AN ACT relating to the tracking of drug convictions.

Amend KRS 218A.202 to require the Administrative Office of the Courts to forward drug conviction data to the Cabinet for Health and Family Services for inclusion in the KASPER electronic monitoring system.

(Prefiled by the sponsor(s).)

**BR183** - Representative Tim Couch  
(9/13/2016)

AN ACT relating to greater public awareness of taxes levied by school districts.

Amend KRS 157.440, 157.621, 160.470, 160.473, and 160.476 to expand the existing public hearing requirements for property taxes levied by school district boards of education to apply to all property tax rates rather than only rates exceeding the calculated compensating tax rate; require notice of the public hearings to be posted on the school district Web site in addition to the required newspaper advertisement.

(Prefiled by the sponsor(s).)

**BR184** - Representative Tim Couch  
(9/13/2016)

AN ACT relating to the property tax on unmined coal.

Amend KRS 132.820 to exempt unmined coal reserves from state and local property taxation if on January 1 of any tax year the owner or lessee of the reserve does not hold a valid permit from both the state and federal governments to mine coal from the reserve, and does not anticipate that coal will be mined from the reserve at any point during



the tax year; amend KRS 131.190 to conform; make technical corrections; apply to property assessed on and after January 1, 2018.

(Prefiled by the sponsor(s).)

**BR185** - Representative Jill York  
(9/19/2016)

AN ACT relating to the use of local government economic assistance fund moneys.

Amend KRS 42.472 to partially restrict the use of local government economic assistance fund (LGEAF) moneys distributed to counties from oil and natural gas to the repair and maintenance of streets and roads; EFFECTIVE July 1, 2017.

(Prefiled by the sponsor(s).)

**BR186** - Senator Gerald Neal  
(9/9/2016)

AN ACT relating to firearms.

Create a new section of KRS Chapter 527 to prohibit the unlawful storage of a firearm.

(Prefiled by the sponsor(s).)

**BR190** - Representative Brent Yonts  
(10/28/2016)

AN ACT relating to the transparency of the state retirement systems and declaring an emergency.

Amend KRS 21.540 to require the Judicial Form Retirement System, which administers the Legislators' Retirement Plan and the Judicial Retirement Plan, to post descriptive and financial information to the system's Web site, and to require the release of legislative retirement data of Legislators' Retirement Plan members who are active members of the General Assembly as of January 1, 2017; amend KRS 61.645 to specify that investment fee and commission reporting requirements for Kentucky Retirement Systems shall include profit sharing, carried interest, and partnership incentives; provide that Kentucky Retirement Systems may not have to disclose contracts on a Web site if disclosure would result in a competitive disadvantage, but require those contracts to be released to the trustees, State Auditor, Governor and members of the General Assembly subject to a confidentiality agreement; make technical amendments; amend KRS 161.250 to specify that investment fee and commission reporting requirements for the Kentucky Teachers' Retirement System (KTRS) shall include profit sharing, carried interest, and partnership incentives; provide that KTRS may not have to disclose contracts on a Web site if disclosure would result in a

competitive disadvantage, but require those contracts to be released to the trustees, State Auditor, Governor and members of the General Assembly subject to a confidentiality agreement; amend KRS 7A.220 to change composition of Public Pension Oversight Board; amend KRS 12.028 to prevent the Governor from effecting any reorganization of the Kentucky Retirement Systems or Kentucky Teachers' Retirement System boards of trustees; amend KRS 63.080 to prevent the Governor from removing trustees of the Kentucky Retirement Systems, except upon conviction of a felony or for a finding of an ethical violation as provided under KRS 61.645; amend KRS 12.020 and 161.430 to make technical and conforming amendments; declare an EMERGENCY.

(Prefiled by the sponsor(s).)

**BR191** - Representative James Kay  
(9/15/2016)

AN ACT relating to retirement benefits for legislators.

Amend KRS 6.505 to close the Legislators' Retirement Plan to new members effective August 1, 2017; prohibit current legislators from participating in the Legislators' Retirement Plan on or after August 1, 2017; provide that current and future legislators shall only participate in the Kentucky Employees Retirement System for any service to the General Assembly occurring on or after August 1, 2017.

(Prefiled by the sponsor(s).)

**BR195** - Senator Gerald Neal  
(9/23/2016)

AN ACT relating to juries.

Amend KRS 29A.040 to add holders of personal identification cards issued within a county to the master list of potential jurors for that county.

(Prefiled by the sponsor(s).)

**BR196** - Senator Gerald Neal  
(9/23/2016)

AN ACT relating to juror pay.

Amend KRS 29A.170 to increase juror pay and expense allowance; amend KRS 32.011 to conform; repeal KRS 32.070, relating to expense allowances for jurors.

(Prefiled by the sponsor(s).)

**BR199** - Senator C.B. Embry Jr.  
(10/4/2016)

AN ACT relating to timber theft.

Amend KRS 364.130 to specify that a person, regardless of state of mind or whether the person believes to be authorized or not, is liable for three times the stumpage value of the timber and three times the cost of any damages to property when he or she takes the timber of another without legal right or color of title.

(Prefiled by the sponsor(s).)

**BR200** - Representative John Short  
(10/18/2016)

AN ACT relating to the Eastern Kentucky Veterans Center, making an appropriation therefor, and declaring an emergency.

Authorize to the Department of Veterans' Affairs Federal Funds and Bond Funds in fiscal year 2016-2017 for the construction of the Eastern Kentucky Veterans Center nursing home in Magoffin County; establish conditions; provide that if debt service is required it shall be a necessary government expense to be paid from the General Fund Surplus Account or the Budget Reserve Trust Fund Account; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR201** - Representative Russ Meyer  
(10/6/2016)

AN ACT relating to controlled substances.

Amend 218A.010 to provide definitions for "fentanyl" and "fentanyl derivative"; amend KRS 218A.020 to allow the Office of Drug Control Policy to request that the Cabinet for Health and Family Services schedule fentanyl analogues not approved for human use by the United States Food and Drug Administration; amend KRS 218A.050 to include fentanyl analogues not approved for human use by the Food and Drug Administration as a Schedule I controlled substance; amend KRS 218A.142 to create the offense of aggravated fentanyl trafficking; amend KRS 218A.1412 to increase the penalties for trafficking in fentanyl.

(Prefiled by the sponsor(s).)

**BR202** - Representative Jeff Taylor  
(11/17/2016)

AN ACT relating to prescription drugs.

Create a new section of KRS 218A.005 to 218A.391 to establish that a practitioner shall not issue a prescription for a narcotic drug for more than seven days unless

specific circumstances exist.

(Prefiled by the sponsor(s).)

**BR204** - Representative Dennis Keene  
(11/4/2016)

AN ACT relating to notification of the expiration date of an instruction permit, operator's license, or personal identification card.

Create a new section of KRS 186.400 to 186.640 to require the Transportation Cabinet to notify holders of operator's licenses, instruction permits, and personal ID cards of the impending expiration of these documents 45 days prior to their expiration; allow notice by electronic or postal mail; allow license and ID card holders to provide electronic mail addresses for notification or opt out of notification; clarify that nonreceipt of a notice shall not constitute a defense to any offense regarding an expired permit or license.

(Prefiled by the sponsor(s).)

**BR209** - Senator Gerald Neal  
(9/23/2016)

AN ACT relating to juries.

Amend KRS 15.733 to allow the disqualification of a prosecuting attorney from the retrial of a case due to discriminatory jury selection practices; create a new section of KRS Chapter 27A to require the Administrative Office of the Courts to collect and report data on the race, ethnicity, and sex of members of juries.

(Prefiled by the sponsor(s).)

**BR210** - Representative Joseph Fischer  
(9/23/2016)

AN ACT relating to controlled substances.

Amend KRS 218A.1412 to make trafficking in any amount of fentanyl or carfentanil subject to elevated penalties.

(Prefiled by the sponsor(s).)

**BR215** - Senator John Schickel  
(10/14/2016)

AN ACT relating to crimes and punishments.

Amend KRS 431.005 to permit a peace officer to make an arrest for a violation of KRS 508.030, assault in the 4th degree, when the violation occurs in a hospital and the officer has probable cause; amend KRS 431.015 to conform.

(Prefiled by the sponsor(s).)

**BR222** - Representative Myron Dossett  
(10/13/2016)

AN ACT relating to railroad companies and making an appropriation therefor.

Amend KRS 277.990 to increase the fine for a violation of KRS 277.200, relating to a railroad company obstructing a highway, street, or navigable stream, to \$2,500 for each offense; transfer 50% of each fine collected to the law enforcement agency that issued the citation.

(Prefiled by the sponsor(s).)

**BR225** - Representative Jill York  
(9/19/2016)

AN ACT relating to promise zone tax incentives.

Amend KRS 139.570 to allow additional compensation for sellers in the promise zone; create a new section of KRS Chapter 141 to allow an income tax credit for qualified employees equal to the individual income tax on wages earned in the promise zone, not to exceed \$2,400; allow an income tax credit for qualified employers in an amount equal to \$100 for each employee working within the promise zone; require reporting by the Department of Revenue to the Legislative Research Commission; amend KRS 141.0205 to order the new tax credits; create a noncodified section to set forth the purpose of the Act and describe actions previously taken by the federal government.

(Prefiled by the sponsor(s).)

**BR238** - Representative Myron Dossett  
(10/6/2016)

AN ACT relating to a reduction of motor vehicle property tax rates for certain disabled veterans.

Create a new section of KRS Chapter 132 to reduce the property tax rate levied on and after January 1, 2018, by the state and by local taxing jurisdictions on motor vehicles owned by totally disabled veterans, whose disability is service-connected, to 50 percent of the tax rate levied on other motor vehicles by the relevant taxing jurisdiction, except in the case of historic motor vehicles.

(Prefiled by the sponsor(s).)

**BR242** - Senator Joe Bowen  
(10/18/2016)

AN ACT relating to retirement and declaring an emergency.

Amend KRS 21.540 to require the

Judicial Form Retirement System, which administers the Legislators' Retirement Plan and the Judicial Retirement Plan, to post descriptive and financial information to the system's Web site; amend KRS 61.645 to specify that investment fee and commission reporting requirements for the Kentucky Retirement Systems shall include profit sharing, carried interest, and partnership incentives; provide that the systems may not have to disclose contracts on a Web site if disclosure would result in competitive disadvantage but require those contracts to be released to the trustees, State Auditor, and the LRC Govt. Contract Review Committee; subject the systems to KRS Chapter 18A regarding personnel; subject hiring of executive director to Senate confirmation; make technical amendments; amend KRS 161.250 to specify that investment fee and commission reporting requirements for the Kentucky Teachers' Retirement System must include profit sharing, carried interest, and partnership incentives; provide that the Teachers' Retirement System may not have to disclose contracts on a Web site if disclosure would result in competitive disadvantage, but require those contracts to be released to the trustees, State Auditor, and the LRC Govt. Contract Review Committee; amend KRS 161.340 to make hiring of executive secretary subject to Senate confirmation; amend various KRS sections to place all state retirement systems under Model Procurement Code regarding contracts and clarify ban on placement agents; amend KRS 7A.220 to increase the membership of the Public Pension Oversight Board; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR243** - Senator Gerald Neal  
(10/4/2016)

AN ACT relating to expungement.

Amend KRS 431.073 to reduce filing fee for felony expungement from \$500 to \$200; allow the court to waive all or any portion of the fee if an applicant is indigent or financially unable to pay; amend KRS 431.078 to allow the court to waive all or any portion of the filing fee for misdemeanor, violation, or traffic infraction expungement if an applicant is indigent or financially unable to pay.

(Prefiled by the sponsor(s).)

**BR246** - Representative Kenny Imes  
(10/13/2016)

AN ACT relating to the disclosure of public retirement information.

Amend KRS 61.661, 161.585, and 21.540 to require the disclosure, upon



request, of the retirement benefit information of current and former members of the General Assembly, including their name, status, and projected or actual retirement benefit payments and benefits from Kentucky Retirement Systems, Kentucky Teachers' Retirement System, Legislators' Retirement Plan, and the Judicial Retirement Plan.

(Prefiled by the sponsor(s).)

**BR247** - Representative Kenny Imes  
(10/13/2016)

Urge the United States Congress to amend Title II of the Social Security Act to repeal the Government Pension Offset Provision.

(Prefiled by the sponsor(s).)

**BR248** - Representative Kenny Imes  
(10/13/2016)

AN ACT relating to the Kentucky Teachers' Retirement System board of trustees.

Amend KRS 161.250 to increase the Kentucky Teachers' Retirement System board membership from nine members to 11 by adding two elected trustees who are retired members; amend KRS 161.300 to conform; provide that the election of the two new retired members shall occur so that the initial term of office will begin July 1, 2017.

(Prefiled by the sponsor(s).)

**BR254** - Representative Dean Schamore  
(10/26/2016)

AN ACT relating to Kentucky educational excellence scholarships and declaring an emergency.

Create a new section of KRS 164.7871 to 164.7885 to provide KEES scholarships to students enrolled in a registered apprenticeship program; define student eligibility; direct the Kentucky Higher Education Assistance Authority to promulgate regulations for awarding the scholarships; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR257** - Representative Addia Wuchner,  
Representative Marie Rader  
(10/28/2016)

AN ACT relating to fishing license exemptions.

Amend KRS 150.170 to remove the sport fishing license exemption for resident farmland owners and create a new sport fishing license exemption for private landowners and their spouses, dependents,

tenants, and invited guests when fishing on their property from ponds or lakes that do not allow fish entry from or exit to public waters.

(Prefiled by the sponsor(s).)

**BR260** - Senator Christian McDaniel  
(11/16/2016)

AN ACT relating to the disclosure of public retirement information.

Amend KRS 61.661, 161.585, and 21.540 to require the disclosure, upon request, of the retirement benefit information of current and former members of the General Assembly, including the member's name, status, and projected or actual retirement benefit payments and benefits from the Kentucky Retirement Systems, the Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, and the Judicial Retirement Plan.

(Prefiled by the sponsor(s).)

**BR268** - Senator Julian Carroll  
(10/28/2016)

AN ACT relating to death certificates.

Amend KRS 213.076 to require a certificate of death or a provisional certificate of death to include the section and lot number of the grave space if a body is interred in a cemetery; require the cemetery or cemetery company to provide the section and lot number to the funeral director, or person acting as such; designate that the requirements of this Act shall be known as Lil's Law.

(Prefiled by the sponsor(s).)

**BR277** - Representative John Short  
(10/27/2016)

AN ACT relating to veterans nursing homes and declaring an emergency.

Prohibit the authorization of Federal Funds or Bond Funds for the construction of a state veterans nursing home unless the facility will accommodate the total unused number of beds allotted to the Commonwealth by the United States Department of Veterans Affairs; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR296** - Representative Jim Gooch Jr.  
(10/25/2016)

AN ACT relating to the allocation of severance tax revenues to local governments.

Amend KRS 42.450 to increase the amount of minerals severance and processing taxes distributed to local governments through the local government

economic assistance fund (LGEAF) to 100% of taxes collected, from the current 50%, over a five-year period; amend KRS 42.4582 and 42.4585 to similarly increase the amount of coal severance and processing taxes distributed to local governments through the local government economic development fund and LGEAF to 60% and 40% of taxes collected, from the current 35% and 15%, respectively, over the same five-year period.

(Prefiled by the sponsor(s).)

**BR298** - Representative Jim DuPlessis  
(11/21/2016)

AN ACT relating to enhanced secure identity documents and making an appropriation therefor.

Amend KRS 186.410 to specify that the Transportation Cabinet is the issuing agency for operator's licenses and personal identification cards; allow applications through alternative technology; establish a base renewal period of 8 years for operator's licenses and personal ID cards; require drivers under 18 who apply for an instruction permit to enroll in a driver education course; repeal and reenact KRS 186.412 to set forth the application process for citizens and permanent residents to apply for operator's licenses and instruction permits; identify the information required in the application process; require electronic scanning of supporting documents used in the application process; create a new section of KRS 186.400 to 186.640 to set forth the application process for immigrants who can show proof of legal presence to apply for operator's licenses and instruction permits; require that immigrants applying for an operator's license apply with the Transportation Cabinet instead of the circuit clerk; require verification through the SAVE alien verification system; require an immigrant with a change in status to update information with the Transportation Cabinet within 10 days; state that licenses issued under this section are good for the length of time a person's visa is valid or 8 years, whichever is shorter; specify that if an immigrant does not have a date certain on his or her immigration status, the license issued will be valid for 1 year; create a new section of KRS 186.400 to 186.640 to set forth the application procedures for citizens and permanent residents to apply for personal identification cards; create a new section of KRS 186.400 to 186.640 to set forth the application procedures for immigrants who can show proof of legal presence to apply for personal identification cards, with the similar limitations and restrictions as for operator's licenses; create a new section of KRS 186.400 to 186.640 to establish the form and

composition of operator's licenses and personal identification cards, including the requirements for photographs taken; specify that name changes through marriage, divorce, or other name changes conform to an applicant's name on file with the Social Security Administration; create a new section of KRS 186.400 to 186.640 to establish procedures and fees for the child ID program; create a new section of KRS 186.400 to 186.640 to establish procedures for the issuance of personal identification cards or operator's licenses to inmates being released from state and federal correctional institutions and individuals on probation and parole; create a new section of KRS 186.400 to 186.640 to allow renewal by mail for active duty members of the military stationed outside the Commonwealth; allow a 90-day extension for active duty military members returning home to renew their licenses; set forth procedures and requirements for the issuance of a "veteran" notation on an operator's license or personal ID card; create a new section of KRS 186.400 to 186.640 to require the Transportation Cabinet to develop a system of voluntary enhanced secure licenses and personal ID cards; identify features of the system; give all applicants, including individuals coming into Kentucky from another state, the option to apply for an enhanced secure identity document; allow current holders of nonenhanced secure identity documents the option to apply for an enhanced secure identity document; allow individuals ineligible under federal standards for an enhanced secure identity document to apply for a nonenhanced secure identity document; set same fees for both enhanced secure and nonenhanced secure identity documents; clarify that electronic connectivity with agencies or organizations be limited to the minimum amount of data necessary to verify data presented by the applicant, process the application, and produce and distribute the identity documents, and limit data-sharing as required under the federal Driver's Privacy Protection Act; require the KYTC to promulgate administrative regulations to set standards for the voluntary enhanced secure identity document system; create a new section of KRS 186.400 to 186.640 to set forth the documents required to apply for an enhanced secure identity document; amend KRS 186.401 to redefine "driver's license" and define "operator's license"; amend KRS 186.4101 to allow the Transportation Cabinet, within the first 4 years of the effective date of the Act, to issue identity documents with terms of both 4 and 8 years in order to accommodate the transition to an 8-year issuance period; amend KRS 186.4125 to require a certified copy of a birth certificate to apply for a voluntary

enhanced secure identity document; retain existing language allowing the use of an original hospital birth certificate for a nonenhanced secure identity document; require the KYTC to apply to DHS for a waiver for an exception to allow hospital birth certificates to be used for voluntary enhanced secure identity documents; amend KRS 186.442 to clarify procedures for the issuance of a restricted "Kentucky Only" operator's license; amend KRS 186.450 to set the term of a motorcycle instruction permit to 2 years instead of 1 year with one allowable 1-year renewal; repeal and reenact KRS 186.531 to set fees for instruction permits, operator's licenses, and personal identification cards; set forth the distribution of fees; specify that the fees for a 4-year license issued within the first 4 years after the effective date of the Act shall be 50% of the fee listed, with all distributions subsequently reduced by 50%; specify that fees for identity documents applied for using alternative technology shall be distributed in the same manner as identity documents applied for with the circuit clerk; set forth procedures for voluntary donations to promote organ donation; establish donation levels of \$2 for an 8-year document and \$1 for a document with a term of less than 8 years; require donations to be forwarded to the Kentucky Circuit Court Clerks' Trust for Life and appropriate funds to promote an organ donation program; clarify that a person who wishes to rescind a declaration of making an anatomical gift should contact the Trust for Life rather than the person's circuit clerk; create a new section of KRS Chapter 27A to establish the circuit court clerk salary account; set forth streams of income including a portion of fees under Sections 21 and 24 of the Act; appropriate money in the fund to hire additional deputy circuit clerks and provide salary adjustments to deputy circuit clerks; create a new section of KRS Chapter 174 to establish the KYTC photo license account; set forth stream of income, including a portion of the fees under Section 21 of this Act; appropriate moneys in the fund for the purpose of verifying, creating, and distributing enhanced secure identity documents; amend KRS 186.540 to clarify that fees for corrected licenses be set as provided in Section 21 of the Act; require the Transportation Cabinet to issue a corrected license free of charge to an individual who is mailed an identity document that contains an error; repeal, reenact, and renumber KRS 186.6401 as KRS 186.635 to conform and to bring the section into the statutory range dealing with operator's licenses; amend KRS 281A.170 to require that a commercial driver's license contain a denotation that the license either does or does not comply with the requirements of the

REAL ID Act and can be used for federal identification purposes; set an 8-year term for CDLs; amend KRS 281A.120 to clarify that only citizens and permanent residents of the United States are eligible to receive a CDL; amend KRS 281A.150 to set forth the fees established by the Transportation Cabinet for application and issuance of CDLs and eliminate outdated references; amend KRS 186.010 to define "identity document" and "enhanced secure"; adjust the effective date so that Section 10, which requires the establishment for a voluntary enhanced secure identity document system by the KYTC, will take effect on the regular effective date for legislation from the 2017 Regular Session, with other sections of the Act taking effect January 1, 2019; amend KRS 15A.358, 186.4125, 186.430, 186.435, 186.440, 186.480, 186.490, 186.520, 186.535, 186.570, 186.579, 189.011, 281A.140, and 281A.160 to conform; repeal KRS 186.495 and 186.5315; EFFECTIVE 1/1/2019; APPROPRIATION.

(Prefiled by the sponsor(s).)

**BR300** - Representative Michael Lee Meredith, Representative Denver Butler  
(10/25/2016)

AN ACT relating to supplements paid to police officers, professional firefighters, and qualified volunteer fire departments, declaring an emergency, and making an appropriation therefor.

Amend KRS 15.460 to increase the annual supplement paid to qualified police officers out of the Kentucky Law Enforcement Foundation Program fund from \$3,000 to \$4,000; amend KRS 95A.250 to increase the annual supplement paid to qualified professional firefighters out of the Firefighters Foundation Program fund from \$3,000 to \$4,000; amend KRS 95A.262 to increase the annual allotment to qualified volunteer fire departments from \$8,250 to \$11,000; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR315** - Senator John Schickel  
(11/1/2016)

AN ACT relating to library district boards.

Amend KRS 173.480, relating to public library districts' initial board appointments, to allow a county judge/executive with the approval of the fiscal court to appoint the first members of the newly created library board when any of the prospective appointees presented to the judge, in the judge's opinion, are not suitable; amend KRS 173.490,



relating to public library districts, to allow a county judge/executive with the approval of the fiscal court to appoint members or fill vacancies of the library board when any of the prospective appointees presented to the judge, in the judge's opinion, are not suitable; amend KRS 173.725, relating to petition-created library districts' initial board appointments, to allow a county judge/executive with the approval of the fiscal court to appoint the first members of the newly created library board when any of the prospective appointees presented to the judge, in the judge's opinion, are not suitable; amend KRS 173.730, relating to library districts created by petition, to allow a county judge/executive with the approval of the fiscal court to appoint members or fill vacancies of the library board when any of the prospective appointees presented to the judge, in the judge's opinion, are not suitable.

(Prefiled by the sponsor(s).)

**BR316** - Senator Joe Bowen  
Nov 10-WITHDRAWN

**BR318** - Representative Jeffery Donohue  
(10/27/2016)

AN ACT relating to tax credits for airport noise mitigation.

Create a new section of KRS Chapter 141 to establish a refundable income tax credit for the costs of mitigating noise from a commercial airport for taxable years beginning on or after January 1, 2017, but before January 1, 2021; amend KRS 131.190 to require certain information to be submitted to the Legislative Research Commission; amend various chapters in the Kentucky Revised Statutes to make conforming changes; amend KRS 141.0205 to order the credit.

(Prefiled by the sponsor(s).)

**BR320** - Representative James Tipton  
(11/2/2016)

AN ACT relating to autopsy records.

Create a new section of KRS Chapter 72 to limit lawful distribution of autopsy photographs, images, video, or audio recordings to specified persons and agencies; amend KRS 72.992 to provide penalty for violating the prohibition on dissemination of autopsy photographs, images, or video or audio recordings.

(Prefiled by the sponsor(s).)

**BR327** - Representative Arnold Simpson  
(11/15/2016)

AN ACT relating to the Kentucky

Driver Manual.

Create a new section of KRS Chapter 186 to direct the Office for the Blind to provide the Department of Kentucky State Police with language regarding visually impaired and blind pedestrians to be added to the Kentucky Driver Manual.

(Prefiled by the sponsor(s).)

**BR332** - Representative Jerry Miller  
(11/10/2016)

AN ACT relating to planning and zoning.

Create a new section of KRS Chapter 100 to set requirements for filing a supersedeas bond for appeals of Circuit Court decisions before the case is transferred to the Kentucky Court of Appeals.

(Prefiled by the sponsor(s).)

**BR383** - Representative Jim DuPlessis  
(11/21/2016)

AN ACT relating to patient notification of mammogram results showing dense tissue.

Create a new section of KRS 214.550 to 214.556 to require the provider of mammography services to provide information to a patient on breast density when appropriate; permit the Department for Public Health to provide updates to the definition of "dense breast tissue" if appropriate.

(Prefiled by the sponsor(s).)

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\* - denotes primary sponsorship of BRs

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### **Home Rule**

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- Jailers, compensation and duties detailed for upcoming fiscal year, quarterly reports of - BR177
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other energy reserves, amendment of valuation  
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**Taxation, Income--Individual**

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Airport noise mitigation, income tax credit for - BR318  
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**Taxation, Sales and Use**

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Additional compensation for sellers in promise zone - BR74; BR225  
Bullion and currency, exempt, July 1, 2017 - BR156  
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Greenup County Korean War Veterans Bridge, designation of - BR32  
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Obstruction  
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Prisoners,  
from page 3

Committee Co-chair Sen. Ernie Harris, R-Prospect, asked if the bureau knew if recidivism rates went down in other states, like Florida, when they started issuing driver’s licenses to prisoners. Butcher said he didn’t have that information with him.

Federal prisoners that are physically and mentally capable are required to participate in a work program, Butcher said. Most have jobs inside the facility such as working at the commissary. Butcher said only prisoners having two years or less to serve on their sentence would be considered for driver’s licenses.

“For the sake of public safety and perception, the inmate cannot be convicted of severe offenses such as murder, kidnapping, robbery or any sexual offenses,” he said while discussing what prisoners would be eligible for driver’s licenses.

The prisoners would drive bureau-owned vehicles insured by the federal government. Their driving duties could also include such tasks as driving released prisoners to the local bus station.

After hearing that prisoners would get to keep their driver’s licenses upon release, Committee Co-Chair Rep. Hubert Collins, D-Wittensville, expressed concern that those felons would not initially be able to afford Kentucky’s mandatory car insurance.

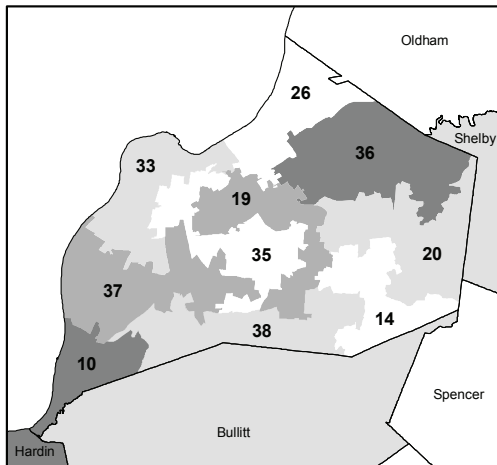
“That would cause a big problem,” he said.  
Sen. Whitney Westerfield, R-Hopkinsville, asked exactly what language in the statutes needs to be changed for prisoners to be able to get driver’s licenses. Butcher said prisoners need to be allowed to use their prison address when applying for a driver’s license. He added that the U.S. Census already counts federal prisoners as Kentucky residents.

“There are some parts I would like to get ironed out, but I like the general concept of this,” Westerfield said of the proposal.

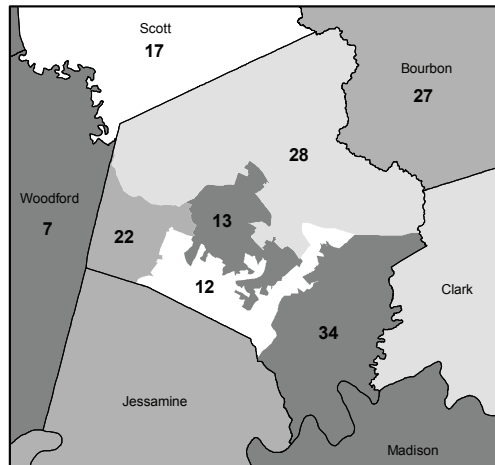
Harris said he thought the proposed change in the law would find a “good reception” in the state legislature.

“Anything we can do to encourage people, allow them to move back and become full citizens, I think is the right way to go,” he said. “Hopefully we can get something passed this time. If not, at least we can get the discussion going so we can get it done as soon as possible.”

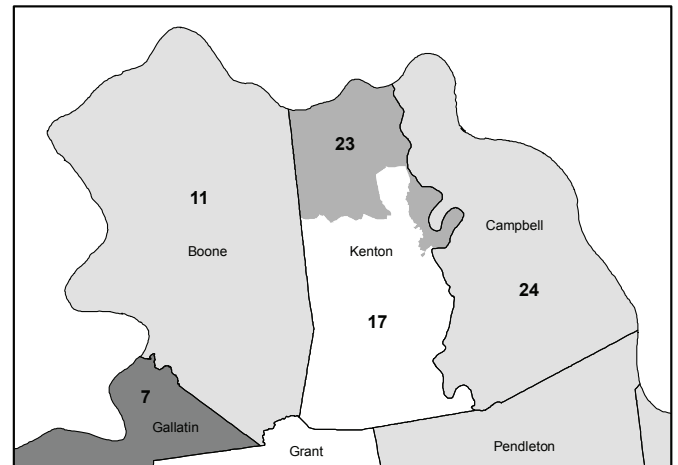




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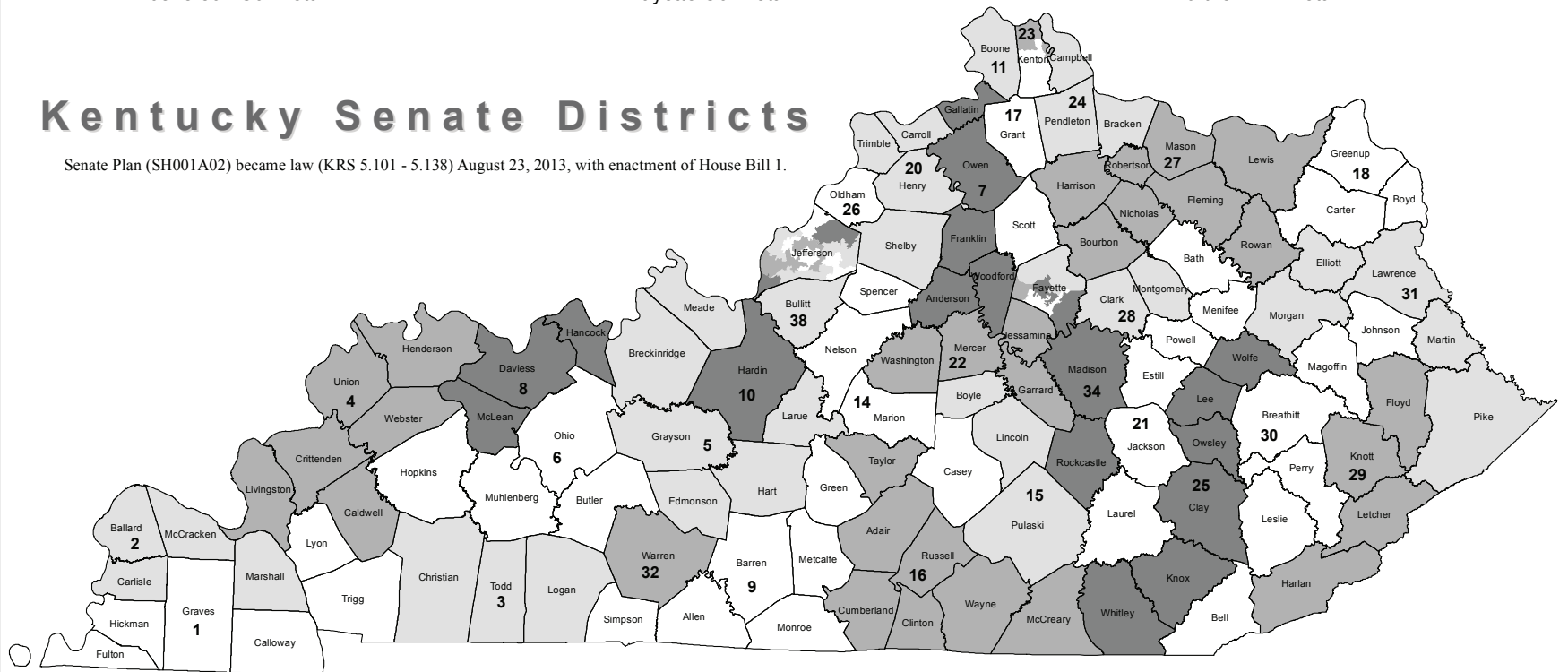
Fayette Co. Detail



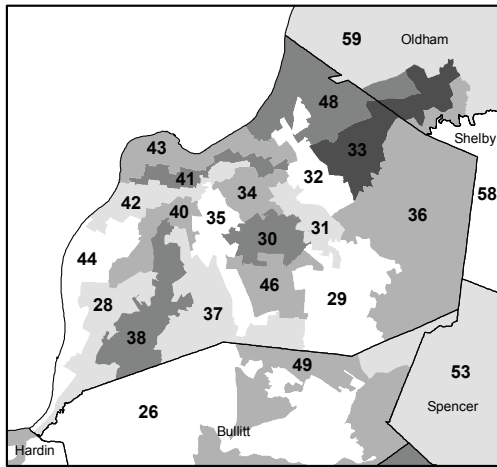
Northern KY Detail

# Kentucky Senate Districts

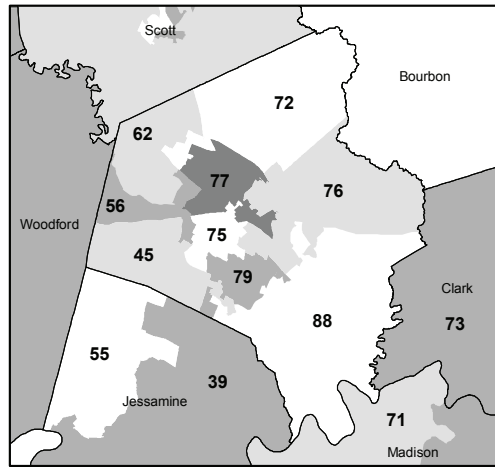
Senate Plan (SH001A02) became law (KRS 5.101 - 5.138) August 23, 2013, with enactment of House Bill 1.



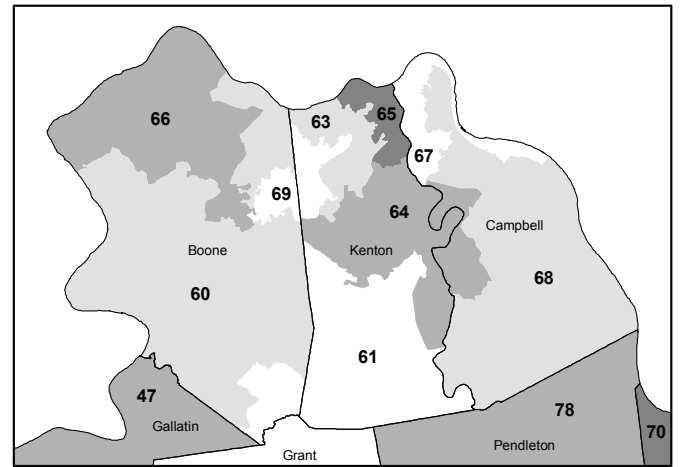
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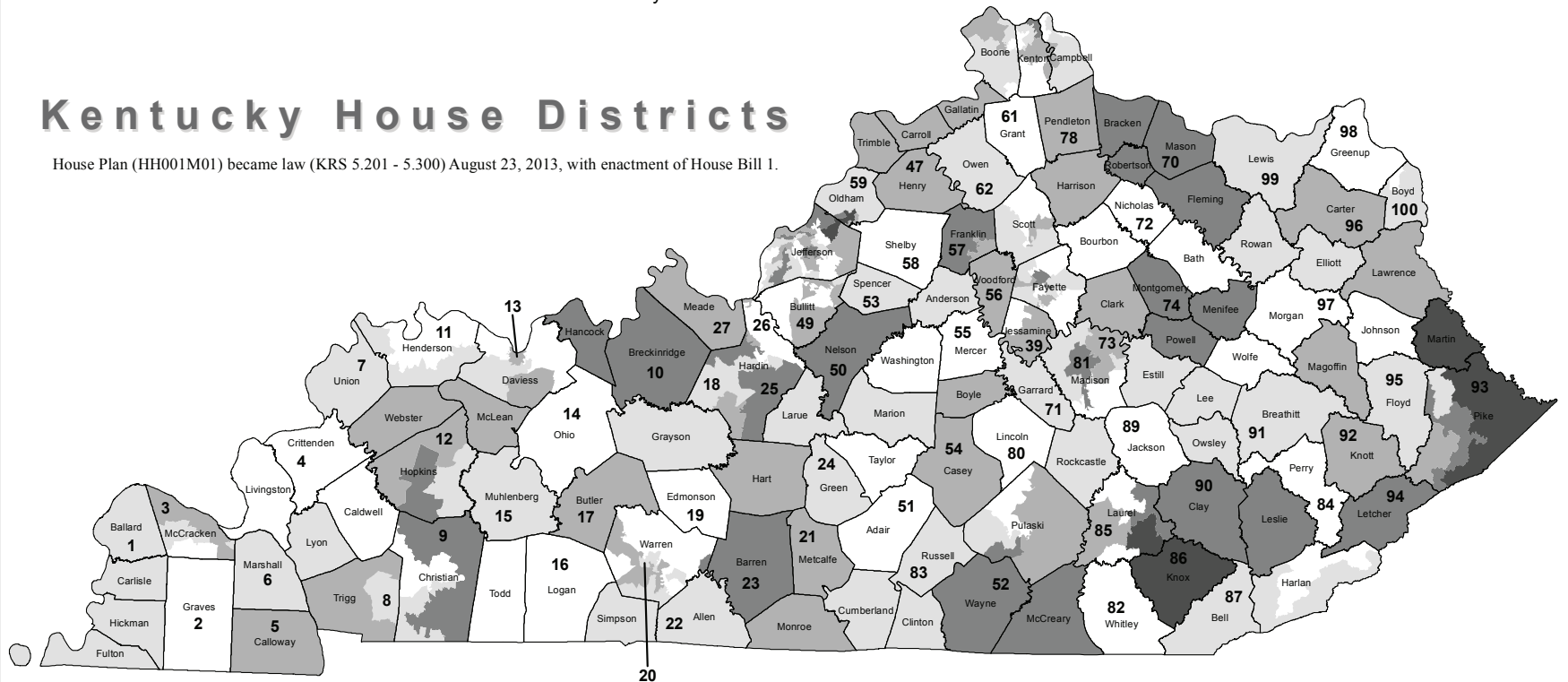
Fayette Co. Detail



Northern KY Detail

# Kentucky House Districts

House Plan (HH001M01) became law (KRS 5.201 - 5.300) August 23, 2013, with enactment of House Bill 1.



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Director  
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Robert Jenkins  
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Rob Weber  
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Joe Cox  
Publications and Printing  
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Rebecca Mullins  
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Public Information Staff:  
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