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# INTERIM RECORD

A SUMMARY OF INTERIM ACTIVITIES

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## Kentucky's First Pandemic-Era Special Session Wraps

by Jim Hannah - *LRC Public Information*

FRANKFORT – The Kentucky General Assembly flexed its powers to shape the state's COVID-19 response during a three-day special session lawmakers gaveled to a close on Sept. 10.

The governor called the extraordinary session after the state Supreme Court ruled that a lower court incorrectly blocked laws limiting the executive branch's emergency powers. Lawmakers used the opportunity to extend some emergency executive actions, eliminate others, try new strategies to mitigate COVID-19 and provide relief to institutions strained by the pandemic. Those include schools, hospitals, nursing homes and businesses.

Lawmakers stressed they would monitor the implementation of the legislation and the evolving pandemic during the remainder of the interim, the period between regular sessions where lawmakers study, propose and prefile bills. Legislators will have an additional opportunity to act when they return for the 2022 Regular Session in early January.

The actions taken during the special session break down into the following categories, including one non-pandemic related measure:

Education: Senate Bill 1 will prioritize in-person learning at public schools while shifting



Senate President Robert Stivers, R-Manchester, explains  
Senate Bill 3 during a legislative committee hearing on Sept. 10.

decisions about COVID-19 protocols to locally-elected school boards, including whether students should wear a mask.

The first provision will allow school districts to waive a requirement of 170 instructional days in

favor of 1,062 instructional hours. That will let schools adjust starting and ending times to make up for lost days.

It will not add additional non-traditional instruction days, but instead create 20 so-called



temporary remote instruction days through the end of the year for a specific class, grade, building or entire school stricken by COVID-19. This will prevent an entire district from shutting down when a COVID-19 outbreak happens among a particular group within the district.

The measure will also require local health departments to develop a so-called test-to-stay model for school districts. That's where a student who may have been exposed to COVID-19 at school gets tested for the virus each morning before class instead of quarantining.

To address staffing shortages, SB 1 will make it easier for retired teachers to return to the classroom, in some cases as soon as 30 days after retiring. The retirees could make up to 10% of a district's teaching staff under the provision.

A final provision will stabilize school funding. Many districts were looking at budget shortfalls because state funding is based, in part, on average daily attendance. And that measurement has plunged because of students out sick or quarantined.

SB 1 passed by a 28-8 vote in the Senate and 70-25 vote in the House.

Health care: Senate Bill 2 will declare the statewide facemask mandate void but encourage vaccinations, COVID-19 testing and greater access to monoclonal antibody treatments, such as Regeneron.

A second provision will require Kentucky's public universities to develop and initiate public awareness campaigns encouraging people to get vaccinated. One focus will be on developing partnerships with athletes, coaches and health care providers to promote the vaccine's benefits.

A third will assist health care providers, jails, prisons, homeless shelters and local health departments in acquiring COVID-19 tests. A fourth will make it easier to administer the vaccine at the offices of primary care physicians. A fifth will allow paramedics to work in hospitals to relieve a nursing shortage.

The bill will also establish safety protocols for so-called essential compassionate care visitors in long-term care facilities during pandemic-induced lockdowns. They could be a family member, legal guardian or close friend.

SB 2 passed by a 26-10 vote in the Senate and 69-24 vote in the House.

Expenses: Senate Bill 3 will redirect more than \$69 million from the federal American Rescue

Plan Act to the Kentucky Cabinet for Health & Family Services. The money was leftover from the repayment of a federal loan to Kentucky's Unemployment Insurance Trust Fund. The loan was taken out to cover a surge of pandemic-related unemployment claims.

The money will be used to help health care providers, schools and others to implement provisions of SB 1 and SB 2. These include the purchase of COVID-19 tests, the establishment of regional monoclonal antibody treatment centers and test-to-stay programs in schools.

SB 3 passed by a 36-0 vote in the Senate and 84-8 vote in the House.

Extending emergency executive actions: House Joint Resolution 1 modified some of the governor's executive orders and extends many of them through Jan. 15. The resolution also extended a state of emergency order for Nicholas County, which is recovering from flash flooding, for another 30 days.

The orders addressed in the resolution included protections from price gouging, expansion of nutrition assistance, allowing flexibility for retired first responders to return to work, allowing state and local governments to conduct business and meetings virtually and more.

HJR 1 also extended COVID-19 liability protection for businesses and allowed certain flexibilities regarding unemployment insurance.

HJR 1 was adopted on the first day of the special session by a 92-3 vote in the House and 32-4 vote in the Senate.

Economic development bill: Senate Bill 5 was the only legislation that passed during the special session that contained no pandemic-related provisions. It will appropriate \$410 million of the \$1.7 billion surplus in Kentucky's trust fund to offer economic development incentives for projects valued at \$2 billion or more.

Some incentives will be in the form of forgivable loans. Economic development officials testified that the incentives will be paid out over time to ensure any project meets the required job and wage targets. Those officials said there will also be a claw-back provision if the project doesn't meet the targets.

Sponsors of the legislation said a non-disclosure agreement prevented them from releasing too many details, but that Kentucky is in the running for at least one mega project eyeing Hardin County. Supporters repeatedly compared SB 5

to state economic development incentives the General Assembly passed in the late '80s that brought Toyota's first American assembly plant to Georgetown. It is now the world's largest Toyota manufacturing facility where the Lexus ES350, Avalon, Camry and some hybrid counterparts are assembled.

SB 5 passed by a 30-3 vote in the Senate and 91-2 vote in the House.

With the governor's signing of HJR 1, SB 3 and SB 5 and the General Assembly's overriding of vetoes on SB 1 and SB 2, the measures went into effect immediately.





# Lawmakers Approve Joint Resolution Extending COVID-19 Emergency Orders

by Jordan Hensley - *LRC Public Information*

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FRANKFORT— The Kentucky General Assembly kicked off the 2021 extraordinary session on Sept. 7 by extending many of the COVID-19 related executive orders issued by Gov. Andy Beshear.

Lawmakers in both the House and Senate voted overwhelmingly to adopt House Joint Resolution 1, which modifies some of the governor's executive orders and extends many of them through Jan. 15. The resolution also extends a state of emergency order for Nicholas County, which is recovering from flash flooding, for another 30 days.

While introducing HJR 1, House Speaker David W. Osborne, R-Prospect, said it is similar to House Joint Resolution 77 from the 2020 Regular Session.

"These are all executive orders that are in the public space already," Osborne said. "These are things that the governor has asked to be extended. No, we didn't extend every single one he asked us to extend, but every order in here is already an existing order."

Osborne described the orders in the resolution as "very beneficial." They include protections from price gouging, expanding nutrition assistance, allowing flexibility for retired first responders to return to work, allowing state and local governments to conduct business and meetings virtually and more.

Osborne said HJR 1 also addresses extending the provisions of two bills— one from the 2021 Regular Session and another from the 2020 Regular Session. One provided COVID-19 liability protection for businesses. The other allowed certain flexibilities in regards to unemployment insurance.

HJR 1 was adopted by the House by a 92-3 vote after lawmakers voted to waive rules that require a bill or resolution to undergo three readings on three separate days before receiving final passage.

Rep. McKenzie Cantrell, D-Louisville, was one of the legislators to explain her "yes" vote. Cantrell said while she voted against HJR 77 from the 2021 Regular Session because she found it arbitrary, she decided to vote yes on HJR 1 since the legislature will be back in session by the Jan. 15 expiration date.

HRJ 1 was also introduced and adopted by the Senate today by a 32-4 vote.

"The need is real," Senate President Pro Tempore David P. Givens, R-Greensburg, said

while explaining what necessitated the resolution. "Across our commonwealth we have families, citizens and communities struggling with the reality of COVID, something we had never heard of 18 months ago, something we didn't know existed, something that remains a challenge."

Sen. Ralph Alvarado, R-Winchester, voted for the resolution but expressed concern over a section he said would allow nurse practitioners to write more prescriptions for narcotics.

"There are a lot of other good things in this resolution, but prescribing more controlled substances does nothing to help us treat COVID more rapidly or effectively," he said.

Senate Minority Floor Leader Morgan McGarvey, D-Louisville, voted for the resolution but said he feared it still restricted the executive branch from using all its resources to combat the virus.

"What this virus has shown us is that it does not know the bounds of legislation or political party," McGarvey said. "Because of that, I want to make sure we do everything while we are here to make sure we do not have to come back."

Behsear issued a proclamation on Sept. 4 calling the Kentucky General Assembly into extraordinary session to tackle issues related to the pandemic, a state of emergency for Nicholas County and funding for certain economic development projects.

Earlier this year, lawmakers approved legislation to limit how long certain executive orders can remain in effect before they require legislative approval. That included orders that place restrictions on the function of schools, businesses or nonprofits.

If the governor wishes to extend those types of executive orders beyond 30 days, he or she must call the legislature into an extraordinary session.

Beshear signed HJR 1 shortly after its passage.



House Speaker David W. Osborne, R-Prospect, discusses the details of House Joint Resolution 1 during the House Standing Committee on State Government meeting on Sept. 7.



# Legislative Panel Hears Testimony On Issues Facing Kentucky Hospitals

by Jordan Hensley - *LRC Public Information*

LOUISVILLE— Lawmakers heard testimony Aug. 26 on how staffing shortages are impacting Kentucky's hospitals and how they can help.

The Interim Joint Committee on Health, Welfare and Family Services met at the Kentucky State Fair where Nancy Galvagni, president of the Kentucky Hospital Association, highlighted a growing issue with transporting patients.

Citing experts in the field, Galvagni said that fewer ambulances are available to transport patients from one hospital to another due to staffing shortages and the high demand for ambulance services.

"Across the state, hospitals are discovering that many times when we call, the ambulance simply doesn't come," said Galvagni. "Patients who have suffered from strokes, severe burns or even suicide attempts are languishing for hours and sometimes days at a hospital emergency room waiting for transport to the appropriate level of care."

Galvagni said hospitals understand being short staffed because they are facing the same issue. The COVID-19 pandemic has only made the nationwide nursing shortage worse, and nurses, along with other hospital staff, are burnt out.

"They have mental distress through having to work longer shifts, taking on more patients and that has led to retirements and resignations," Galvagni said.

Since nearly every hospital in the country is having this issue, Kentucky's hospitals are running low on funds to hire travel nurses, she said, adding that "few hospitals can pay \$150 to \$200 an hour for traveling nurses to fill the gaps."

Galvagni said one option is a state regulation that allows hospital employees to work outside their scope of practice, under supervision. Funding to help hospitals recruit and retain staff would also be helpful, she added.

Committee co-chair Sen. Ralph Alvarado, R-Winchester, said he'd like to see those

suggestions in writing now because lawmakers are in the process of formulating plans to address these issues.

Alvarado also asked the hospital association to help with the logistics of setting up locations for monoclonal antibody treatment. He said the therapy is free, in large supply and highly effective in reducing the length of COVID-19 illness and likelihood of hospitalization. Galvagni said yes.

"We're gonna have to have regional locations; somewhere where people can get that administered and hopefully keep them from being admitted to the hospital," Alvarado said.

Alvarado, who is a physician, urged those watching the meeting to get a COVID-19 vaccine and to seek monoclonal antibody treatment as soon as possible once diagnosed with COVID-19 to reduce the risk of hospitalization.

Both the COVID-19 vaccine and monoclonal antibody treatments are free to everyone regardless if you have health insurance.





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# Committee Meetings

## INTERIM JOINT COMMITTEE ON AGRICULTURE

### Minutes of the 2nd Meeting of the 2021 Interim

August 26, 2021

#### Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Agriculture was held on Thursday, August 26, 2021, at 10:00 AM, in the Conference Room, Freedom Hall, Louisville, 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 Richard Heath, Co-Chair; Senators Matt Castlen, Jason Howell, Dennis Parrett, Damon Thayer, Robin L. Webb, Stephen West, Whitney Westerfield, and Max Wise; Representatives Josh Calloway, Jonathan Dixon, Myron Dossett, Daniel Fister, Derrick Graham, Mark Hart, Mary Beth Imes, Kim King, Matthew Koch, Nima Kulkarni, Shawn McPherson, Phillip Pratt, Felicia Rabourn, Josie Raymond, Brandon Reed, Cherlynn Stevenson, Nancy Tate, and Walker Thomas.

Guests: Mayor Greg Fischer, Louisville Metro/Jefferson County; David Beck, President and CEO, Kentucky Venues; and Haley B. Wheeler, Miss Kentucky 2021.

LRC Staff: Stefan Kasacavage, Kelly Ludwig, Nathan Smith, and Susan Spoonamore, Committee Assistant.

#### Welcome and Update on Louisville Metro/Jefferson County Programs

Mayor Greg Fischer stated that Louisville restaurants continue to partner with, and support, local farmers and producers in order to provide high-quality, nutritious food to consumers. He said that small business grants have helped to keep many businesses from closing their doors permanently. One area that has not reached its full potential in helping tourism is the bourbon industry. There is a global demand for the products and only a few global markets have been tapped.

#### Report on the Kentucky State Fair Board

David Beck, President and CEO, Kentucky Venues, stated that the Kentucky Department of Agriculture, the University of Kentucky, and the Kentucky Department of Tourism have made good partners in assisting with many of the events held each year at the State Fair. He said that several events held during the year help to bring in revenue. The State Fair has a budget of approximately \$54 million, but revenues continue to be down due to COVID. Mr. Beck said that Kentucky Venues is constantly recruiting new events to the fairgrounds. He stated that there are still critical infrastructure and security issues that need to be addressed such as repairing

asphalt or laying new asphalt, installation of cameras throughout the grounds, and power grid lines that need to be updated.

There being no further business, the meeting adjourned.

## INTERIM JOINT COMMITTEE ON APPROPRIATIONS & REVENUE

### Budget Review Subcommittee on Education Minutes of the third Meeting of the 2021 Interim

August 4, 2021

#### Call to Order and Roll Call

The third meeting of the Budget Review Subcommittee on Education of the Interim Joint Committee on Appropriations and Revenue was held on Wednesday, August 4, 2021, at 11:00 AM, in Room 154 of the Capitol Annex. Representative James Tipton, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representatives James Tipton, Co-Chair, and Steve Riley, Co-Chair; Senators Christian McDaniel, and Dennis Parrett; Representatives Kim Banta, Tina Bojanowski, Randy Bridges, Ken Fleming, Kelly Flood, Regina Huff, Bobby McCool, and Charles Miller.

Guests: Eugene Hutchins, CEO/Executive Director, Kentucky Higher Education Assistance Authority/Kentucky Higher Education Student Loan Corporation; Becky Gilpatrick, Director of Student Aid Services, Kentucky Higher Education Assistance Authority; Ted Franzeim, Senior Vice President of Customer Relations, Kentucky Higher Education Assistance Authority/Kentucky Higher Education Student Loan Corporation; Mary R. Harville, President/CEO, Kentucky Lottery Corporation; Maggie Garrison, Vice President and Corporate Controller, Kentucky Lottery Corporation; Howard B. Kline, Executive Vice President and Chief Financial Officer, Kentucky Lottery Corporation; Stacy Bassett, Senior Director of State Government Relations, The College Board; and Dr. George Hruby, Executive Director, Collaborative Center for Literacy Development, University of Kentucky.

LRC Staff: Jennifer Krieger, Seth Dawson, Nick Peak, Savannah Wiley, Liz Columbia and Amie Elam

#### Kentucky Lottery Corporation

In response to a question from Chair Tipton, Ms. Harville said that she is confident in the sales and transfer projections the lottery has made for the upcoming biennium.

In response to a question from Representative Bojanowski, Mr. Kline said that last year \$286.1 million was appropriated to the Kentucky Higher Education Assistance Authority (KHEAA). Ms.

Harville added that statute dictates the percentage that is allocated to KHEAA.

In response to a question from Senator McDaniel, Mr. Kline answered that the Kentucky Educational Excellence Scholarship (KEES) reserve is unclaimed money that is transferred to the Finance Cabinet quarterly. He added that the money is held in trust to be used if there is a funding deficit. Ms. Harville said that the lottery was able to exceed consensus forecasting group estimates through vending and online initiatives.

In response to a question from Representative Fleming, Ms. Harville said there are approximately 2,000 lottery vending machines. She added that 1,470 are being equipped with cashless functionality.

#### **Kentucky Higher Education Assistance Authority**

In response to a question from Chair Tipton, Ms. Gilpatrick said that there is a concern that funds for Work Ready Scholarships will run out. She added that awards go to students who are not eligible for other types of student financial aid. Ms. Gilpatrick said that scholarship applications are increasing.

In response to a question from Representative Fleming, Mr. Hutchins stated that need-based scholarships allow students to further their education without incurring levels of debt they would never be able to repay. Mr. Hutchins said that there are 13 outreach counselors stationed throughout the Commonwealth. These counselors identify and communicate with students and families about planning and paying for higher education.

#### **The College Board**

In response to a question from Senator McDaniel, Ms. Bassett said that the College Board takes its nonprofit status very seriously. She added that surpluses are reinvested back into serving students.

#### **Collaborative Center for Literacy Development**

In response to a question from Representative Bojanowski, Dr. Hruby said that he would provide the syllabus for literacy development courses to the committee.

There being no further business before the subcommittee, the meeting adjourned at 12:41 p.m.

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

### **Minutes of the 3rd Meeting of the 2021 Interim August 4, 2021**

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

The 3rd meeting of the Budget Review Subcommittee on Human Resources of the Interim Joint Committee on Appropriations & Revenue was held on Wednesday, August 4, 2021, at 11:00 AM, in Room 129 of the Capitol Annex. Representative Danny Bentley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen Meredith, Co-Chair; Representative Danny Bentley, Co-Chair; Senators Ralph Alvarado, Karen Berg, and Danny Carroll;

Representatives Adam Bowling, Deanna Frazier, Kimberly Poore Moser, Melinda Gibbons Prunty, Steve Sheldon, Russell Webber, and Lisa Willner.

Guests: Dr. Sarah Vanover, Ph.D., Director, Division of Child Care, Department for Community Based Services, Cabinet for Health and Family Services (CHFS); Dr. Steven Stack, Commissioner, Department for Public Health (DPH), CHFS; Jan Chamness, Director, Division of Women's Health, DPH, CHFS; Sara Jo Best, MPH, President, Kentucky Health Department Association, Director, Lincoln Trail District Health Department; and Scott Lockard, Director, Kentucky River District Health Department.

LRC Staff: Miriam Fordham, Kevin Newton, and Benjamin Thompson

#### **Approval of Minutes**

Senator Meredith moved to approve the minutes from the July 7, 2021 meeting of the subcommittee. Senator Carroll seconded the motion, and the minutes were approved without objection.

#### **Overview of American Rescue Plan Act (ARPA) Funding for Child Care Providers**

Dr. Vanover provided an update on ARPA funding and the use of stabilization payments to support child care providers.

In response to questions from Senator Meredith, Dr. Vanover noted that the goal of having a tiered system for stabilization payments are to encourage a higher quality of care within early childhood education, rather than penalize those who pay a higher starting wage. Dr. Vanover stated that many providers that are expected to apply for the second and third tiers of the plan already pay the required starting wage. Dr. Vanover said that some tier 1 facilities have chosen to pay a retention bonus to employees. Sixty-five of Kentucky's one hundred and twenty counties are considered child care deserts, meaning there is not enough child care to adequately serve the population, mostly in rural areas.

In response to questions from Senator Carroll, Dr. Vanover confirmed that the increased starting pay requirement for tier two and tier three stabilization payments applies to all staff in the facility, not just those who work directly with the children.

In response to questions from Representative Bowling, Dr. Vanover said that the stabilization payment that a child care provider receives will depend on its capacity, rather than a flat rate for everyone. Every provider signs a contract regarding the use of ARPA funds. If funds are found to have been misused, then that provider would be responsible for repaying the misused portion of funding.

In response to questions from Representative Moser, Dr. Vanover stated that she did not believe the Department for Community Based Services would have need to eliminate any programs.

#### **Update on Implementation of 2020 House Bill 129 and Funding for Foundational Public Health Programs**

Dr. Stack, Ms. Chamness, and Ms. Best provided information regarding the implementation of Kentucky's Public Health transformation.

In response to a question from Senator Meredith, Mr. Lockard agreed that a lot of things can be done at the local level to increase health outcomes.

In response to a question from Chair Bentley, Ms. Best confirmed that additional general fund would be necessary to sustain the core public health foundation services in the 2022-2024 Fiscal Biennium.

There being no further business before the subcommittee, the meeting was adjourned at 12:43 PM.

## **COUNTY CLERK OFFICE MODERNIZATION TASK FORCE Minutes of the 3rd Meeting of the 2021 Interim August 25, 2021**

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

The 3rd meeting of the County Clerk Office Modernization Task Force was held on Wednesday, August 25, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jason Howell, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Robby Mills, Robin L. Webb, and Phillip Wheeler; Representatives Randy Bridges, Patrick Flannery, and Ashley Tackett Laferty.

Guests: Dan Mosley, Harlan County Judge Executive; Todd Ruckel, Executive Director, County Judge Executive Association; David Livingston, Scott County Magistrate; JC Young, Executive Director, County Magistrates & Commissioners Association; Debbie Donnelly, Hardin County Clerk; and Barry Tuemler, Kentucky Land Title Association.

LRC Staff: Roberta Kiser, Randall Roof, and Lisa W. Moore

#### **Approval of Minutes from July 21, 2021 Meeting**

Senator Wheeler motioned to approve the July 21, 2021, minutes, seconded by Senator Mills, passed by voice vote.

#### **County Fiscal Courts**

##### **County Judge Executive Association**

Dan Mosely, Harlan County Judge Executive, said the county judges, commissioners, and magistrates from across the Commonwealth support the modernization of county clerk offices and are committed to working with the county clerks to modernize records. The pandemic exposed many weaknesses for businesses and government, but these are turning into strengths with the implementation of the right leadership teams.

The work to modernize the county clerk offices has been in the pipeline prior to the pandemic and storage fee in many Kentucky counties. The storage fee passed in 2019, and collected by county clerks in 2020, was supported by county governments where funding is always an issue.

##### **County Magistrate & Commissioners Association**

David Livingston, Scott County Magistrate, said the association consists of 164 elected county magistrates and county elected commissioners across the Commonwealth. County magistrates and county



commissioners collectively serve as the legislative body of the county. Fiscal courts provide the financial oversight of the county government as assigned in statute.

Mr. Livingston said 2020 was an odd year for local governments, and some revenue categories were very difficult to project. He stated Scott County projected 30 percent less revenue because budget planning was so difficult. It is difficult to determine if revenue increased because of the implementation of the document storage fee or because of the sheer volume of all fees collected by the county clerk's office. The county clerks would have a better breakdown of collections per fee. In some counties if the document storage fee increased revenues for a county clerk's office, it does not necessarily mean it was turned over to the fiscal court's office at the end of the year. He did note that not every county saw an increase in excess fees, as some of the funds were utilized by the county clerks with fiscal court approval for normal business upgrades and record retention. Counties that have small offices and were forced to close due to the pandemic may have seen negative impacts. One year of data, especially in a 2020 pandemic year, is hard to judge.

Mr. Livingston said county fiscal courts are committed to working with county clerks on all projects including elections, record retentions, and other services provided by the office. Modernization of records will take time, and fiscal courts may have to find additional pools of resources to fund the remaining cost of the project. Lastly, the county clerk is the caretaker of the records as defined in statute. The county clerk will continue to work closely with the fiscal courts and be an advocate for local government services.

In response to Senator Wheeler, Mr. Mosley said each county breakdown of fees is different as well as fiscal year start-up costs. Some counties report receiving \$0 and some receive thousands back from their county clerks. Mr. Livingston added that a one size fits all approach will not work for counties across Kentucky.

In response to Chairman Meredith, Mr. Mosely said Harlan County generated in excess of \$26,000 that was collected from the document storage fee and turned in to the county clerk. The adjusted costs for employee salaries, and the rising costs of health insurance and pension obligations are issues that need funds.

In response to Senator Howell, Mr. Mosely said the Harlan County clerk estimated that it would cost approximately \$750,000 to bring the county clerk office online, although that figure was not substantiated. This is a cost to digitize the records basically from scratch and there have been no discussions on the cost of electronic filing. The clerks are open to moving online but are concerned about finding the revenue. The \$26,000 extra being generated through the document storage fee is not going to cover all the costs.

J.C. Young, Executive Director, County Magistrates & Commissioners, said there is no sweeping of funds by counties. He said that is a term used by budget staff and others at the state level. Excess funds are turned over at the end of the year.

Chairman Meredith commented on understanding the importance of excess fees to county budgets. He said any real action will revolve around the permanent storage fee in the near term. There was a bill filed in the 21RS of the General Assembly that established this fee to help cover the costs of county clerk office modernization efforts, and would not be subject to the excess fee rules. Mr. Livingston said the permanent storage fee is not going to cover the cost of digitizing the records and other funds will have to be provided through the fiscal court. If so, they would like oversight on the fees that should be going to the modernization as well. Chairman Meredith also mentioned obtaining grant and pandemic funds through the library and archives and distributing throughout the county clerk offices. He said all options will be considered as part of the process to get modernization efforts underway.

#### **County Clerk Fee Polling**

Debbie Donnelly, Hardin County Clerk, stated that Hardin County operates on a 75/25 percent budget. The 75 percent is designated for salaries, insurance, and pensions and administered through the Finance and Administration Cabinet, and the 25 percent monies are given to the fiscal courts on a quarterly basis. Any excess funds at the end of the term are turned in to the fiscal courts as well. The county clerks always begin a new term with \$0 and must have their budgets approved through the fiscal courts. In January the clerks often rely on the vehicle registration dollars to make payroll for that month.

In response to Senator Wheeler, Ms. Donnelly said counties that are over 70,000 turn in all excess monies to the fiscal court at the end of the county clerk's elected term. Counties that have populations under 70,000 are required to submit the excess funds at the end of each year.

In response to Senator Wheeler regarding county clerk satisfaction with budgeting issues, Ms. Donnelly said the system in place works very well. The document storage fee needs to stay with the county clerks until the end of their term, regardless of county size, to help maintain and run the office. This includes e-recording, especially since some counties are starting from scratch and others have new hardware and software.

#### **Title Opinions**

Barry Tuemler, Kentucky Land Title Association, said the purchase of land or a home is often one of the biggest purchases of a buyer's life and having a clean title is essential. A title insurance policy is the contract of indemnity between the title insurance company (the underwriter) and the insured owner of real estate or the mortgage, wherein the company insures the good and marketable title to the property. A title opinion is a legal opinion issued by an attorney wherein the attorney sets out the current status of title to real estate and confirms that the owner has good title to the property, subject to certain exceptions.

Mr. Tuemler said in order to facilitate real estate closings here in Kentucky, title insurance policies and title opinions are required by mortgage lenders as well as the buyers of real estate. Most lenders will not enter into a mortgage loan agreement without assurances that their mortgage interest is in "first and best" position in the event of a default by the borrower. The

issuance of a title insurance policy and title opinions is based upon the ability to effectively search the land records in the county clerk's office in the county where the property lies. The search standards for residential property is 30 years, commercial property is 60 years, and a mineral rights search is back to patent.

In order to effectively search the title to real estate, the online records should include copies of the following documents: deeds; mortgages; UCC/fixture filings; plats of subdivided property; all covenants, conditions, and restrictions that related to real property; easements; leases; recorded powers of attorney; land contracts; wills; affidavits that affect/clarify the title to property; and all recorded liens including, judgment liens, state tax liens, federal tax liens, homeowner's association and condominium liens, recoupment and unemployment liens, lis pendens notices, child support liens, bail bonds, and civil penalty liens. City and county tax records, including records of delinquent taxes, are usually monitored and maintained by the County Sheriff's office or the specific municipality, as opposed to the Clerk's office. Chairman Meredith clarified the timeframes for some of the documents including 15 years for lis pendens notices, 5 years for bail bonds, and 10 years for civil penalty liens.

In response to Senator Howell, Mr. Tuemler said title searchers give as much credence to the online records as they do the physical records located in the county clerk's office. It is his opinion that the online index is just as good as in person with the rare exception of a few county clerks that have issues. He also said filing records online is just as valid as delivering them or mailing to the county clerk's office. Senator Howell said it could eventually eliminate real time issues and make the process quicker and more reliable by submitting documents online.

In response to Senator Wheeler, Mr. Tuemler said judgment liens cannot be renewed for longer periods over 15 years. He noted the UCC/fixture filing and federal liens can be renewed within a 10-year period.

In response to Representative Bridges, Mr. Tuemler said Kentucky does not have a marketable title act like some other states. In Ohio, they have a marketable title act that says anything before a 40-year period that turns up in a search cannot affect a good title to a property. In Kentucky, by custom and industry practice, time periods of 30 year searches have been established for residential property, and 60 years for a commercial property. Chairman Meredith said many of the recorded liens have statutes of limitations specifically set in statute.

In response to Senator Mills, Ms. Tabatha Clemons, Grant County Clerk, said Grant County is a non-fee pooling county and she starts at \$0 in January. She pays ad valorem, delinquent, and deed transfer taxes to the fiscal courts on a monthly basis, and gives them excess fees yearly. She said some county clerks have taken out personal loans or written personal checks in order to make payroll. Mr. Denny said he reimburses the Anderson County fiscal court about a month after payroll is paid, and they are fine with that as the working relationship is strong.

With no further business before the committee, the meeting adjourned at 2:15 p.m.

# CHILD WELFARE OVERSIGHT AND ADVISORY COMMITTEE

## Minutes

August 11, 2021

### Call to Order and Roll Call

The Child Welfare Oversight and Advisory Committee meeting was held on Wednesday, August 11, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative David Meade, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Julie Raque Adams, Co-Chair; Representative David Meade, Co-Chair; Senators Karen Berg, Denise Harper Angel, and Whitney Westerfield; Representatives Kim Banta, Lynn Bechler, and Josie Raymond.

**Guests:** Christa Bell, Executive Advisor, Misty Sammons, Director, Division of Administrative and Financial Management, Laura Begin, Staff Assistant, Department for Community Based Services, Cabinet for Health and Family Services; Kelli Rodman, Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services; Mary Carpenter, Director, Veronica Sears, Branch Manager, Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services; and Perry A. Newcom, Judge Executive, Crittenden County, Kentucky.

**LRC Staff:** Ben Payne, Lead Staff, Samir Nasir, Becky Lancaster, and Amanda DuFour.

### Approval of Minutes

A motion to approve the minutes of the July 15, 2021, meeting was made by Senator Westerfield, seconded by Senator Harper Angel, and approved by voice vote.

### Prevention Services for Families – Update on the State Fiscal Year 2021-2022

#### Appropriation

Christa Bell, Executive Advisor, Department for Community Based Services (DCBS), Cabinet for Health and Family Services (CHFS), discussed the historic challenges for DCBS along with the families and children served. She discussed various prevention opportunities and initiatives supported by the Family First Prevention Services Act (FFPSA) and other funding sources. She reviewed the number of families and children served by the FFPSA evidence-based practice programs and services. She discussed the number of children in the custody of or committed to CHFS from June 2015 to June 2021. She reviewed possible causes in the rise and fall of those numbers. She reviewed the number of children placed in out-of-home care with relatives. She went over DCBS prevention, out-of-home care (OOHC), and adoption expenditures. She discussed the relation between each of the categories for state fiscal years (SFY) 2019, 2020, and 2021. She discussed how the increase in investments to prevention services directly affects the decrease in expenditures for OOHC and adoption costs. She explained the differences between primary, secondary, and tertiary prevention efforts.

Ms. Bell testified how the additional funding appropriated for SFY 2022 by the FFPSA will be used for expansion. She discussed details regarding the Family Preservation Program (FPP) services and area served. She reviewed the Kentucky Strengthening Ties and Empowering Parents (KSTEP) program goals and the number of families and children served. She testified about the Multisystemic Therapy (MST) pilot programs and the partnership with Medicaid and three providers. She discussed the increase in the amount of flex funds available through the FPP. She discussed the efforts of DCBS to expand primary and secondary prevention efforts with a portion of the FPP funds and the Community Based Child Abuse Prevention (CBCAP) federal funds. She discussed the community response of reporting child abuse and neglect to DCBS. She reviewed DCBS' overall goal to strengthen families and prevent child abuse and neglect. She concluded her presentation with the challenges involving the additional appropriations.

In response to questions from Senator Berg, Ms. Bell stated that MST programs are approved for at-risk youth ages 12 to 17 years old. She stated that the licensure board for clinical social workers has partnered with DCBS to implement FFPSA requirements related to qualified treatment programs. DCBS has been working on a request for proposals to allow the opportunity for higher rate settings that may help with provider recruitment and retention.

In response to questions from Representative Bechler, Ms. Bell stated that DCBS began to expand evidence based programs beyond northeastern Kentucky by using data regarding substantiation characteristics. DCBS does intend to prioritize expanding the KSTEP program to rural areas including western Kentucky. DCBS does not have a firm timeline for the decision to expand evidence based programs to western Kentucky.

In response to questions from Representative Meade, Ms. Bell stated that DCBS has received federal funds through the Family First Transition Act to be used by September 30, 2025. DCBS plans to use that funding to help sustain expansions if needed. She stated that in 2026, the federal reimbursement rate will match the state's federal medical assistance percentage (FMAP) rate that is approximately 70 percent. She stated that DCBS' total prevention costs for SFY 2019 was \$15,388,227, SFY 2020 was \$21,808,628, and SFY 2021 was \$24,906,636. She stated that DCBS created the Prevention Collaborative with community partners, providers, and stake holders. DCBS is using the Prevention Collaborative to develop a formal plan for primary and secondary prevention. FPP is only one program under FFPSA and there are other opportunities for providers to serve families. She stated that the families that are referred for FPP services must have a child at risk for entry into out-of-home care absent the provision of those services. She stated that families must meet the criteria for the specific evidence based service that will be provided. She stated that families with immediate or on-going safety threats are too great for FPP services and are not appropriate. She stated that there are areas of the state with waiting lists for FPP services and out-of-home care may have been prevented if the FPP services were available. She stated that the largest

number of substantiations are for neglect with only a small percent of substantiations for physical or sexual abuse. She stated that the MST pilot program is the only new service supported by a portion of the FFPSA. The FFPSA funds will be used towards all other existing prevention services and programs.

### Adoption Process, Cost, and Timelines for Related Family Members and Foster Parents

Perry A. Newcom, Judge Executive, Crittenden County, Kentucky, testified in detail about his family's journey to gain custody of and adopt his biological granddaughter. He discussed the process of working with DCBS, how the adoption took longer than expected, and the legal and financial barriers his family faced during the adoption process. He submitted recommendations to CHFS to help families seeking permanency for children that have been placed with relatives or foster parents in out-of-home care.

In response to questions and comments from Representative Bechler, Judge Newcom stated that CHFS has not submitted the fee for the home inspection prior to the adoption. He stated that generally the fee for DCBS to complete a home inspection for adoption is \$800 to \$1,000. He stated that due to COVID-19 restrictions, the home inspection was done virtually. He stated that the fee for an attorney for the birth father was \$250 and for the birth mother was \$417. He stated that the attorney for each birth parent was appointed by CHFS but he paid the fees. He stated that when he initially received emergency custody of his granddaughter he had frequent interactions with DCBS but no further interaction with DCBS once permanent custody was awarded to him until consideration for adoption.

Mary Carpenter, Director, Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services, reviewed the responsibilities of DCBS Adoption Services Branch. She gave an update on the number of children in out-of-home care. She discussed data regarding the length of time a child may be in out-of-home care until involuntary or voluntary termination of parental rights (TPR) occurs. She reviewed the regulation information regarding the requirement of presentation summaries for adoption. She explained what is required in a presentation summary. She discussed the criteria necessary for a foster family to receive an adoption subsidy. She reviewed the three components within the subsidy. She discussed other benefits available to adoptive families and children such as a medical card, adoption tax credit, tuition waivers, and educational training vouchers. She went over the steps regarding the adoption petition and the adoption finalization.

Ms. Carpenter discussed the number of finalized adoptions from 2014 to 2021. She discussed Post Adoptive Placement Stabilization Services (PAPSS) that focus on families who may be at risk of an adoption disruption. She presented information on the Kentucky Adoption Profile Exchange (KAPE) program, formerly known as Special Needs Adoption Program (SNAP). She reviewed various KAPE tools and resources. She updated the committee on DCBS successes related to presentation summary packets, E-filing TPR petitions, and the collaboration with



the Administrative Office of the Courts (AOC). She reviewed the barriers related to TPR appeals, obtaining court dates, DCBS staff turnover, and obtaining social security cards.

In response to questions and comments from Representative Meade, Ms. Carpenter stated that the average time it takes a child to be legally eligible for adoption is 33 months. She stated that it generally takes six to nine months from TPR to adoption. She stated that there are no delays in completing presentation packets. She stated that social workers are working on presentation packets prior to TPR. She stated that a TPR request will account for a child's cumulative time in out-of-home care.

In response to questions and comments from Representative Bechler, Ms. Carpenter stated that the data in the presentation summary represents the average length of stay for a child in state custody until TPR is achieved. The length of time a child is in foster care begins when the child is legally placed in the custody of the state. She stated that she can provide how Kentucky compares to other states regarding the length of time for children in state custody. She stated that the increased number of pending TPRs is a result of the COVID-19 pandemic. She stated that during the pandemic some judges were hesitant to hold virtual TPR hearings and that some judges have not returned to face-to-face court hearings. DCBS is working through those issues with the AOC. Veronica Sears, Branch Manager, Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services, stated that pending TPR cases are contested and non-contested cases.

#### **Adjournment**

There being no further business, the meeting was adjourned at 2:55 PM.

## **INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND WORKFORCE INVESTMENT**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 26, 2021

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

The 3rd meeting of the Interim Joint Committee on Economic Development and Workforce Investment was held jointly with the Interim Joint Committee on Tourism, Small Business, and Information Technology on Thursday, August 26, 2021, at 1:00 PM, in the ULA Ballroom in Freedom Hall at the Kentucky State Fair. Senator Phillip Wheeler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Wil Schroder, Co-Chair; Representative Russell Webber, Co-Chair; Senators Rick Girdler, Robby Mills, Adrienne Southworth, Brandon J. Storm, Reginald Thomas, Phillip Wheeler, Mike Wilson, and David Yates; Representatives Shane Baker, Kim Banta, Lynn Bechler, Tina Bojanowski, Josh Bray, George Brown Jr., Josh Calloway, McKenzie Cantrell, Chris Freeland, Al Gentry, Mark Hart, Thomas Huff, DJ Johnson, Kim King, Nima Kulkarni, William Lawrence, Matt Lockett, Bart

Rowland, Scott Sharp, Steve Sheldon, and Ashley Tackett Laferty.

**Guests:** David Beck, President and CEO, Kentucky Venues; Mike Berry, Secretary, Tourism, Arts, and Heritage Cabinet; Mike Mangeot, Commissioner, Department of Tourism, Tourism, Arts, and Heritage Cabinet; Russ Meyer, Commissioner, Department of Parks; Craig Potts, Executive Director, Kentucky Heritage Council, Tourism, Arts, and Heritage Cabinet; Kim Baker, Kentucky Performing Arts, Tourism, Arts, and Heritage Cabinet; Ashli Watts, President and CEO, Kentucky Chamber of Commerce; Charles Aull, Senior Policy Analyst, Kentucky Chamber of Commerce.

**LRC Staff:** Andrew Manno, Audrey Ernstberger, Kirk Smith, and Sasche Allen.

#### **Approval of Minutes**

A motion to approve the minutes of the July 27, 2021 meeting was made by Representative Josh Calloway, seconded by Senator Robby Mills, and approved by voice vote.

#### **Update from Kentucky Venues**

The Kentucky State Fair Board is the governing body of Kentucky Venues, the entity which operates the Kentucky Exposition Center and the Kentucky International Convention Center. Prior to the COVID-19 pandemic, Kentucky Venues hosted more than 300 events a year, including the Kentucky State Fair and the World's Championship Horse Show. About 68 percent of hotels in the region are occupied yearly due to events taking place at the Kentucky Exposition Center or the Kentucky International Convention Center. The properties include 2.1 million square feet of indoor space and more than 430 acres of outdoor space. Kentucky Venues works with the Kentucky General Assembly and various area boards and commissions to host exhibitions, conventions, trade shows, public gatherings, cultural events, and other functions to advance the state's agriculture and tourism industries and economy while serving the entertainment, cultural, and educational interests of the public. Expansions and updates have been completed at both Kentucky Venues properties, but improvements are still needed such as security modernization, infrastructure enhancements, and parking lot repairs.

Answering a question from Senator Phillip Wheeler, David Beck, the President and CEO of Kentucky Venues, explained that recent power outages at the Kentucky Exposition Center were due to the outdated infrastructure of the facility.

Replying to questions from Representative Al Gentry, Tony Schreck, Chief Financial Officer of Kentucky Venues, stated that even after a reduction in expenses and assistance from the General Assembly, there is still a \$10 million deficit due to losses caused by the COVID-19 pandemic. Answering a follow up question, Mr. Beck said the recent mask and facial covering requirements issued by the Governor for visitors entering any executive branch office does apply to Kentucky Venues properties. Although the guidelines are posted for those individuals entering the facilities, it has been difficult to enforce the policy for Kentucky Venues staff. Mr. Beck added that the Kentucky Venues properties have been utilized for emergency services during the COVID-19 pandemic.

#### **Tourism, Arts, and Heritage Cabinet Update**

The Tourism, Arts, and Heritage Cabinet is comprised of 13 agencies, some of which include Kentucky Venues, the Department of Tourism, the Department of Parks, the Kentucky Heritage Council, and Kentucky Performing Arts. The Cabinet is dedicated to promoting and marketing the state as a premier travel destination and collaborates with local tourism partners to bring millions of visitors to the Commonwealth each year. In response to the COVID-19 pandemic, over the last 18 months the Cabinet has provided temporary housing for first responders and frontline healthcare workers; provided temporary housing for low acuity patients to relieve pressure on hospitals; served as safe early and Election Day voting sites; served as COVID-19 testing and vaccination distribution sites; and is currently offering travel incentives to encourage COVID-19 vaccination. Although the COVID-19 pandemic caused tourism to decline both nationally and statewide, the Commonwealth began to recover sooner than some surrounding states and had an estimated 67.8 million visitor trips in 2020. As a result of the ongoing COVID-19 pandemic, about 62 percent of people currently feel comfortable going on vacation, about one in four have reported that the delta variant has negatively impacted upcoming travel plans, and around 34 percent feel that COVID-19 will greatly impact travel decisions for the next six months. Additionally, about 27 percent of people prefer to travel by car, 21 percent feel that travel plans could be postponed due to the delta variant, and about 40 percent utilize the Center for Disease Control or federal health experts for domestic travel decisions. Despite the effects of the pandemic, the tourism industry had an \$8.9 billion direct economic impact in 2020 with \$625 million in state and local taxes and supported over 75,000 jobs. The 67.8 million visitor trips in 2020 generated \$5.9 billion with visitor dollars being spent on lodging, food and beverage, retail, and transportation.

#### **Workforce Issues**

The Kentucky Chamber of Commerce conducted labor force research to identify long term trends and issues within the state's workforce. The Chamber's final report, *20 Years in the Making: Kentucky's Workforce Crisis*, shows workforce challenges are worse in Kentucky than almost any other state in the nation, most issues existed prior to 2020 but were heightened by the COVID-19 pandemic, and multiple interrelated factors contribute to low workforce participation rate. Over the last 20 years, the Commonwealth's workforce participation has been on a steady decline, but as a result of the pandemic, the workforce participation rate fell to about 56 percent. As of June 2021, 43.7 percent of adults were not participating in the state's workforce. The decline in participation rates mirrors national trends over the last two decades, but there is a significant gap between the national average and the Commonwealth's average. In terms of regional workforce participation rates, Kentucky ranks almost last amongst surrounding states, with only West Virginia having a lower rate. Root causes of challenges within the workforce include the retirement boom; employer demand and skills gaps; lack of access to child care; health and

substance use disorders; infrastructure, transportation, and broadband hurdles; incarceration, re-entry, and criminal records; benefit cliffs and social safety net programs; and slow population growth.

#### **Announcement**

Senate President Robert Stivers, House Speaker David Osborne, House Minority Floor Leader Joni Jenkins, Senate Minority Floor Leader Morgan McGarvey, and Executive Director of the National Conference of State Legislatures (NCSL) Tim Storey announced the NCSL Legislative Summit 2024 would be held in Louisville.

There being no further business before the committee, the meeting adjourned.

## **INTERIM JOINT COMMITTEE ON EDUCATION**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 3, 2021

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

The 3rd meeting of the Interim Joint Committee on Education was held on Tuesday, August 3, 2021, at 11:05 a.m., in Room 149 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, Co-Chair; Representative Regina Huff, Co-Chair; Senators Danny Carroll, David P. Givens, Denise Harper Angel, Jimmy Higdon, Alice Forgy Kerr, Stephen Meredith, Gerald A. Neal, Adrienne Southworth, Robert Stivers, Reginald Thomas, Stephen West, and Mike Wilson; Representatives Shane Baker, Kim Banta, Tina Bojanowski, Jennifer Decker, Jeffery Donohue, Myron Dossett, Scott Lewis, C. Ed Massey, Bobby McCool, Charles Miller, Melinda Gibbons Prunty, Steve Riley, Killian Timoney, James Tipton, Russell Webber, Richard White, and Lisa Willner.

**Guests:** Karen Lukasile, American Family Association; Matthew Singleton, American Family Association; Ruth Ann Shumate-Reed, American Family Association.

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

#### **Approval of Minutes**

Following the welcome of special guests, including Representative Decker's sister and brother-in-law, Senator Meredith made a motion to approve the minutes of the July 6, 2021, meeting. Senator Wilson seconded the motion and it passed by voice vote.

#### **Curriculum: Public Engagement, Authority, and Decision-Making Preparing Students of all Races to Achieve Greatness**

Mr. Ian Rowe, Resident Fellow, American Enterprise Institute, was present remotely to speak about a different approach to student achievement. As an educator, he founded a public charter elementary school network in New York City and network of International Baccalaureate high schools. His focus has largely been on low-income black and Hispanic students whose parents wanted their children to achieve the American Dream. Many families have

faced racial discrimination and challenges but believe that a great education will open doors. He shared data from the National Assessment for Educational Progress (NAEP) Data Explorer, specifically the scores of Kentucky 8<sup>th</sup> graders in reading proficiency, which illustrated that less than 40 percent of Kentucky's white students scored proficient. The achievement gap for black and Hispanic students has remained the same for nearly two decades. However, over the same span of time all educational reform organizations have had closing the achievement gap as a key element of their objectives. This obsession with closing gaps has failed to close any gaps and has not substantially improved overall achievement levels. He illustrated nearly 27,000 white students, nearly 2,700 Hispanic students, and nearly 4,700 black students did not read at proficient levels according to the NAEP exams. Even accounting for the fact that white students make up a much larger segment of the population, it is important to look at actual student counts. These raw numbers underscore the collective failure to teach literacy and build verbal proficiency across all races.

He argued that this proves there is not just one cause for low proficiency rates for black and Hispanic students since systemic racism is unlikely to be the cause of low performance among white students. The multi-decade obsession with closing achievement gaps for minority students has brought in a mono-causal mode of thinking, which has crowded out the ability to identify solutions across categories. Focus on topics such as critical race theory (CRT) has become a distraction from focus on the genuine literacy crisis faced by all students. To begin his brief discussion of CRT, he quoted the definition he uses, pulled from the original source material: "Unlike traditional civil rights which embraces incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order including equality theory, legal reasoning, enlightenment rationalism and neutral principles of constitutional law." He said he was opposed to any ideology that by definition questions equality theory, which encompasses equal rights, equal protection under the law, and equality of opportunity. In education, approaches that force faculty into professional development and encourage students to identify as oppressor or oppressed are problematic. Instead of the race-based approaches, Mr. Rowe introduced his "Distance to 100" approach.

The Distance to 100 model emphasizes the gap between 100 percent proficiency and current performance for all students. This calls into question why less than one-third of students across the United States are failing to achieve reading proficiency. There is significant overlap among the reasons why even white children are not achieving proficiency and why the gaps for minority students remain. Mr. Rowe also spoke about the importance of school choice and teaching teachers how to teach content rich curriculum. He said it is critically important for kids to know they live in a good country that is not hostile to their dreams. Schools should promote family ideals and move from persecution to prosperity. There are incredible stories of resilience in the history of the United States, which the 1776 Unites organization proposes are more important and valuable than the historical perspective offered in the 1619 Project

curriculum. The 1776 Unites curriculum features Rosenwald Schools and other lessons on those who were born into slavery and became millionaires. Mr. Rowe said this curriculum is widely used to support character formation for children. It teaches not only about the legacy of slavery and Jim Crow but also the progress made to move past those times. This curriculum is also used to improve literacy. In his opinion, CRT is a major distraction from real progress in literacy. Schools need to change their strategies from closing the gaps to a focus on raising overall achievement levels. Focus on literacy will prepare all students to aim high and set ambitious goals for our country.

Chair Wise thanked Mr. Rowe for his testimony and asked where schools can find the 1776 Unites curriculum. Mr. Rowe said it is available on their website and has two components, a historical portion and a portion looking to the future.

Representative Bojanowski said a score of proficient on the NAEP assessment does not necessarily equate to reading at grade level; it is actually a significantly higher level of reading ability. However, she agrees that the focus on closing gaps is problematic, especially when combined with the emphasis on high stakes testing. There needs to be a shift in pedagogy toward a deeper learning situation that engages all students. Mr. Rowe agreed that the NAEP assessment is problematic but does provide a baseline of comparison among states. There is a legacy from No Child Left Behind that all students should read and do math at grade level that unfortunately resulted in a loss of content rich curriculum, especially in social studies and science. Obsession about exams led to an idea that content does not matter. We know now that is not the case, and better early literacy initiatives are necessary. He discussed briefly a program that implemented home-based literacy programs for 18 month olds and their caregivers to build skills not just for the child but for the caregiver as an in-home reading coach.

Responding to questions from Representative Willner, Mr. Rowe said most charter schools in his area are publicly funded and supported by non-profit networks. The funding is similar to a traditional model with per-pupil allocations. Private donations have helped to close funding gaps between state funds and the actual needs to educate students well. Part of his goal in founding his schools was demonstrating that the same children from the same environment in inner city New York City could achieve better outcomes with less money.

Responding to questions from Senator Thomas, Mr. Rowe agreed there should be dialogue and debate to get to resolution for all. When there is disparity based on race, class, or gender, it should be investigated but the reason for that disparity may not be because of a single factor. These issues are very complex. Mono-causal thinking presumes that because there is disparity among groups, it must be because of that difference. In the entire country, there has never been a majority of even white students to achieve reading proficiency. If we hone in on that, we can find some overlap. This is not to say race is not an issue, it is saying there may be more than one cause and we need to address them all to advance as



a country.

In response to a question from Representative Banta, he said the cost per pupil in New York incorporates teacher salaries, unlike how per-pupil allocations are typically reported in Kentucky.

Responding to questions from Representative Decker, Mr. Rowe said that in terms of things that concern him about schools, children being taught CRT comes close to the bottom of his list. Any time there is a proposal to ban topics it is highly problematic. It is worse than compelled speech which requires teachers to include specific elements in their classrooms. It is much better to expose ideas that are problematic and allow debate. Banning is a slippery slope, and America is based on free expression of ideas. He would much rather look at literacy and teaching a rich history in the early grades to give students a foundation for success. Representative Decker commented that having schools focus on CRT is a distraction, but the legislature can work to remove that distraction.

Responding to a question from Senator Southworth, Mr. Rowe said one of the challenges with CRT is the number of definitions being used. Different individuals and groups change their position on the theory based on these definitions. Starting with the definition given earlier, it is a sophisticated legal theory that is more appropriately debated at the higher education level. He encouraged the members to nail down the definition before prohibiting anything. School history curriculum should not focus exclusively on the good or bad aspects of history, and a shifting definition that would apply to robust teaching of history in 1<sup>st</sup> grade would be problematic.

#### **Student Assignments and Public Input**

Parent representatives Beanie Geoghegan and Miranda Stovall were present to give their perspectives on student assignments and public input on curriculum. Ms. Geoghegan said her family has been part of the school system for many years. Her students had a wealth of quality education in elementary but struggled in magnet middle school. She said there was a troubling lack of quality reading materials used in middle school. There also appeared to be a lot of classroom discussion spent on topics that did not appear to meet standards. Social justice topics do not prepare students for their future. Students should be educated, not indoctrinated. She claimed this is a widespread problem across the state where parents find a lack of transparency with their schools and a lack of curriculum standardization. She feels that discussion of white supremacy is problematic in advanced English classes. There also appears to be no opportunity for students to present opposing points of view. She expressed concern about not knowing who approved these classroom topics and wants to know why the principles woven in our founding documents are not being spoken in schools.

Ms. Stovall expressed her concerns about the lessons being taught in school and who approves them. She said this information should be readily and easily found for parents, but currently it is not. She also expressed concern about assignments during non-traditional instruction conducted during the pandemic closures such as a “Race Card” project assigned to her student. When she had questions about curriculum there were no answers on the school or district

website. In site-based decision making (SBDM) committee minutes there is a lack of transparency regarding curriculum decision making. There are no notes on what was discussed or approved. Racial equity policies for elementary schools mention project-based learning experiences embedding social justice, and she is troubled to see pages with the same narrative regarding social justice and no opposing viewpoints. Parents should be notified before these assignments are given and have complete control over how discussions regarding certain current events are had with their students. She also opposes the indoctrination of students with theories and ideologies and wants to know what happens behind the closed school doors. Lack of communication from the district will result in parents moving away from schools. Her local school board appeared to have zero concern with what parents have to say. She reiterated that parents simply want transparency and for school boards to include parents in curriculum decisions.

Responding to a question from Chair Wise, Ms. Geoghegan said she emailed teachers throughout the year, always remaining polite and respectful. However, her concerns were never addressed regarding why classics were not part of the language arts curriculum her student was receiving. She did not reach out to the SBDM, but she also did not understand where the breakdown of communication occurred. She wants more transparency from the school and more parent representation in curriculum discussions.

Representative Bojanowski commented that as an educator, she wants students to think critically, as do all educators. It is troubling to hear parents use the term indoctrination which implies a lack of critical thinking. Fostering critical thinking is one of an educator’s primary goals and is a critical skill needed in today’s workforce.

Senator Givens commented that he would like more information about the processes by which parents can make concerns known in order to get their concerns and questions addressed.

#### **Curriculum Authority and Decision-Making**

Marcia Seiler, Acting LRC Deputy Director, Office of Education Accountability, and Bryan Jones, Investigations Division Manager, Office of Education Accountability, were present to discuss the statutory authority granted to different parties regarding curriculum decision making.

Ms. Seiler began with KRS 158.645 which, combined with KRS 158.6451, was part of the 1990 Kentucky Education Reform Act (KERA). KERA was a significant overhaul to education in the state and curriculum decision-making was designated to the local level. KRS 158.645 sets out the eight capacities students should acquire through public education and KRS 158.6451 further outlines seven tenants that schools should emphasize in curriculum and work toward with students. This includes such tenants as “apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives.” In subsection two of that same statute, it states that “the Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment

strategies developed pursuant to this section and KRS 158.645 and KRS 158.6453.” She shared with members the KDE website address where the model curriculum framework required by statute can be found. She said it is a very thorough but interesting document and includes a description of the topics discussed earlier. Kentucky Academic Standards (KAS) contain the minimum requirements of what students should know at the end of each grade level. These two documents form a foundational framework of what should be learned in public schools. Curriculum connects the work of classroom teachers to the standards and sets up what will happen in the classroom during the school year. Some documents and instructional materials which can be used in the classroom are also laid out in the framework.

In KRS 156.160, KDE is given the responsibility to promulgate regulations to establish the KAS, and in KRS 160.345, the SBDM statute, schools are tasked with creating SBDM committees. There are approximately 1,100 schools in Kentucky and approximately 800 SBDMs. This discrepancy is because some schools do not need a SBDM. Each SBDM consists of two parents elected by parents in the school, three teachers elected by the teachers, and the principal or another administrator who sits as chair of the committee. Each member serves a one-year term. By statute, if the school has 8 percent or greater minority population, there shall be an election for a minority member. Further, in subsection two of the SBDM statute, the school council shall adopt 11 policies to be implemented by the principal. The determination of curriculum is one of those policies, as is the planning and resolution of issues regarding instructional practices. In paragraph (g), the school council is tasked with selection of instructional materials and texts and in paragraph (j), there are specifics regarding the desegregation of data by demographic.

Ms. Seiler also provided members with the website links to training and guidance materials provided to members of SBDMs. Members are required to have training and that guidance largely comes from KDE or from the Kentucky Association of School Councils (KASC). KRS 158.6453 outlines the policy for the review of standards and assessments. Beginning in the 2017-18 school year, KDE is required to implement the process for review of standards and perform the review every 6 years thereafter. This process ensures the assessments align with the KAS. The review process is open and transparent to allow all Kentuckians to participate because the General Assembly recognized how critically important transparency is to this process.

Next, Ms. Seiler directed members’ attention to the website address for the KAS where members can find the model framework, broken down by grade and subject, as well as a link to the timeline for standards review. Currently, the standards for science are in process, with arts and humanities set to begin the process in December 2021. The standards for reading, writing, and math completed review and went into effect in March 2019. The next review on those standards will be in 2025. The regulation containing the social studies standards went into effect in July 2019 and also will be reviewed again

in 2025. The process for how the standards are reviewed, including who is involved and when, can also be found online in the document “KDE Standards Implementation Guideline.” Broadly, three groups are developed to perform the standards review: Advisory Panels, Standards Review Committees, and the Overall Standards and Assessments Process Review Committee. The membership of these groups can also be found online.

In addition to statutes, there are also regulations of note for curriculum discussions including KAR 704 3:305 which establishes the minimum 22 credits required for high school graduation. Also of note is KRS 158.649, which defines achievement gaps and how schools use gap data to align curriculum. Administrative regulation KAR 704 3:540 is the uniform academic course codes, managed by KBE, which are used to create accurate data. Lastly, dual credit courses are established in KRS 164.098 and KRS 158.007, where a class gives high school and college credit. This statute allows for dual credit courses to be offered in person or online, by qualified teachers/faculty, during or outside the school day. There were also several examples given of the legislature requiring curriculum outside of the standards in various statutes, for example KRS 158.6450, which requires instruction in voter registration and election procedures.

Responding to questions from Representative Tipton, Ms. Seiler said if a school has a SBDM, they make the curriculum decisions for that school. If a school is struggling, there may be a process through which the local school board steps in to make those decisions. Mr. Jones said the SBDM meetings are public meetings and subject to open meeting laws. Ms. Seiler also explained that curriculum development training is statutorily required for SBDM members and KASC provides some of those training materials.

Representative Banta commented that while KAS are clearly laid out online, often local school boards also set policies that can sway what school councils decide. She wanted to remind everyone that school boards are an elected body, many of which are often re-elected without challenge. School Boards and SBDM are not mutually exclusive, but they do work together.

In response to a question from Representative Decker regarding KRS 156.445, Ms. Seiler said instructional resources are a separate issue, and KDE maintains the textbook list specified that statute. For questions about the penalty for using materials not on that list, members will need to ask a KDE representative.

Responding to a question from Representative Gibbons Prunty, Ms. Seiler said as a non-partisan staffer she could not offer any opinion or feedback on whether there was too heavy a focus on achievement gaps in schools.

In response to a question from Senator Southworth, Mr. Jones said the school councils approve curriculum, textbooks, and instructional materials. Ms. Seiler said the specificity of those policies vary greatly from school to school, even sometimes in the same district. There also seems to be variance between grades, with some schools being more proscriptive in elementary school and more flexible in their policies for high school. Data on

these policies is not gathered by KDE for comparison between schools.

Responding to a question from Senator Givens, Ms. Seiler read KRS 160.345 (2)(g), “The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school’s needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the library media center and the purchase of instructional materials, information technology, and equipment.”

#### **Kentucky Science Center**

Mike Norman, Chief Executive Officer, Kentucky Science Center; Mellisa Blankenship, Director of Education, Kentucky Science Center; Amy Paris, Communications Manager, Kentucky Science Center; and Laura Owens, Senior Partner, JYB3Group, were present to share the story of the Kentucky Science Center in Louisville. Mr. Norman said the science center strives to not only encourage science literacy among children but to enhance lifelong learning for adults. He often hears that it is a place to go for families or school trips, but it is more than that. The work of doing science extends beyond their front door. Staff travel throughout the Commonwealth creating an impact in all counties through digital learning, camps, and other hands-on science presentations.

The Kentucky Science Center was founded as a cabinet of curiosities in 1871 and has grown to be the largest hands-on science center in the state. In 2002, the General Assembly named it the state’s science center and the name was changed in 2012 to honor its statewide focus. Today, they have a series of travel programs and educational outreach which offer off-site programming and impact 75,000 children annually. In 2020, there was increased need for digital programming because of the pandemic. The science center stepped up and created Science Youth Summits for high school students to expand and enrich their at-home learning with content created by science industry professionals. This expanded digital model greatly increased access for students all across the state. The science center continues to leverage partnerships with other organizations to extend programming, such as their work with the Kentucky Department of Libraries and Archives to bring “Science and Play To-Go” programs to local libraries. Outreach efforts such as this increases capacity for early childhood learning opportunities. With a wide array of careers in science, technology, engineering, arts, and math (STEAM) available to today’s youth, it is important to increase exposure to science through interaction with the science center. Science matters and creates a prepared workforce because science is for all. He encouraged members to come see them in Louisville or to seek them out when they come into their districts to see first-hand what the Kentucky Science Center has to offer.

Chair Wise agreed that lifelong learning is critical to the Commonwealth today and into the future.

Representative Bojanowski said she has taken many school groups to the science center and it is always a great trip. It tricks kids into learning, and she thanked them for all their great work.

#### **Administrative Regulation Review – 703 KAR 5:280**

Chair Wise introduced the administrative regulation regarding school improvement procedures which had been referred to the committee following review by the Education Assessment and Accountability Review Subcommittee. Present to answer questions from the Kentucky Department of Education were Dr. Kelly Foster, Associate Commissioner, Office of Continuous Improvement and Support; Dr. Matthew Courtney, Policy Advisor, Office of Continuous Improvement and Support; and Todd Allen, General Counsel. There were no questions from the committee and no action was necessary.

Chair Wise announced the next meeting of the committee will be Tuesday, September 7, 2021, at 11:00 a.m. in Annex Room 149. With no further business to come before the committee, the meeting adjourned at 12:56 p.m.

## **INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 26, 2021

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

The 3rd meeting of the Interim Joint Committee on Health, Welfare, and Family Services was held on Thursday, August 26, 2021, at 8:30 AM, at the Kentucky State Fair, 937 Phillips Lane, Louisville, Kentucky. Senator Ralph Alvarado, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Ralph Alvarado, Co-Chair; Representative Kimberly Poore Moser, Co-Chair; Senators Julie Raque Adams, Karen Berg, Danny Carroll, David P. Givens, Denise Harper Angel, Jason Howell, Alice Forgy Kerr, Stephen Meredith, Michael J. Nemes, and Max Wise; Representatives Danny Bentley, Adam Bowling, Josh Bray, Tom Burch, Ryan Dotson, Daniel Elliott, Ken Fleming, Deanna Frazier, Mary Lou Marzian, Melinda Gibbons Prunty, Felicia Rabourn, Josie Raymond, Steve Riley, Scott Sharp, Steve Sheldon, Nancy Tate, Russell Webber, Susan Westrom, and Lisa Willner.

**Guests:** Kristi Putnam, Chief of Staff to the Chief Executive Officer and President, Ramel Bradley, Director of Outreach, AppHarvest; Dr. Connie White, Deputy Commissioner for Clinical Services, Department for Public Health, Cabinet for Health and Family Services; John Inman, Chief Policy Officer, Teresa Cooper, Director of Government Affairs, Kentucky Primary Care Association; Wayne Linscott, Chief Executive Officer, Tara Stanfield, Chief Integrated Care Officer, HealthFirst Bluegrass Community Health Center; Pam Spradling, Director of Strategic Planning and Development, Big Sandy Community Health Center; Tammy Collett, Regional Director, Mountain Comprehensive Community



Health Center; Nancy Galvagni, President, Bud Warman, Vice President, Member Engagement, Melanie Moch, Vice President, Information Services, Kentucky Hospital Association; and Todd Trapp, Assistant Director, Division of Family Support, Department for Community Based Services, Cabinet for Health and Family Services.

**LRC Staff:** DeeAnn Wenk, Ben Payne, Chris Joffrion, Samir Nasir, Becky Lancaster, and Hillary Abbott.

#### **Approval of Minutes**

A motion to approve the minutes of the July 21, 2021, meeting was made by Senator Nemes, seconded by Senator Meredith, and approved by voice vote.

#### **AppHarvest**

Kristi Putnam, Chief of Staff to the Chief Executive Officer and President, AppHarvest, discussed AppHarvest's mission to build a resilient food system for America in Appalachia and reasons why the need for such a system is growing. She reviewed how AppHarvest has proposed establishing a new local supply chain; and how controlled environment agriculture works to solve agriculture's biggest environmental and social issues regarding labor, efficiency, pesticides, runoff, food waste, and climate. She discussed the number and growth of AppHarvest employees from 2018 to 2021. The number of companies working as a supply chain provider for AppHarvest in different counties, and how Kentucky can lead in the AgTech Ecosystem industry.

Ramel Bradley, Director of Outreach, AppHarvest, discussed the rural and urban connection regarding economic and food insecurities and health outcomes. He reviewed AppHarvest's partnership with Kentucky State University and the Carter G. Woodson Academy Container farm launch in Lexington. Ms. Putnam discussed using American Rescue Plan Act (ARPA) funding in six eligible areas to address rural and urban food deserts and company highlights regarding the Morehead operations, new farm development, and non-dilutive capital.

In response to questions and comments from Senator Alvarado, Ms. Putnam stated that the Netherlands is approximately the size of Eastern Kentucky and the second largest exporter of fresh produce in the world.

In response to questions and comments from Senator Meredith, Mr. Bradley stated that a food desert is an area or community that does not have access to fresh, affordable foods and grocery stores are scarce. Ms. Putnam stated that she can provide information that specifically defines a food desert and the per capita by county data food deserts in Kentucky.

In response to questions and comments from Representative Bentley, Mr. Bradley stated that AppHarvest grows tomatoes hydroponically using a drip irrigated, close loop system with a 10 acre retention pond to collect rain water. Mr. Bradley stated that AppHarvest has a partnership with Mastronardi Produce to grade the tomatoes.

In response to questions and comments from Representative Gibbons Prunty, Mr. Bradley stated that AppHarvest has partnered with six high schools in Eastern Kentucky to teach students about their process. Students partner with restaurants in their

community to supply produce and completed an event that highlighted foods grown by the students.

In response to questions and comments from Representative Dotson, Ms. Putnam stated that Mastronardi Produce is the distributor for AppHarvest.

In response to questions and comments from Representative Raymond, Ms. Putnam stated that AppHarvest opened in October of 2020 and discussed earnings expectations.

#### **Kentucky Health Metrics Update on Chronic Diseases**

Dr. Connie White, Deputy Commissioner for Clinical Services, Department for Public Health (DPH), Cabinet for Health and Family Services (CHFS), discussed Kentucky's chronic disease status per America's health rankings in 2020 and the use of community health workers to improve health outcomes.

In response to questions and comments from Senator Alvarado, Dr. White stated that Kentucky has indoor, smoke-free policies in some communities but not in the entire state.

In response to questions and comments from Senator Meredith, Dr. White stated that DPH is reviewing what foods are put into the boxes that are given to people. She stated that community health workers are required to have a high school diploma or a GED and must complete trainings to achieve the community health worker status. She stated that the Alzheimer's association has meetings with DPH regarding Alzheimer and dementia care and caregiver. She stated that there is no grant funding for active Alzheimer and dementia research or work by DPH.

In response to questions and comments from Representative Fleming, Dr. White stated that Kentucky has increased colon cancer screenings along with other states.

In response to questions and comments from Representative Sheldon, Dr. White stated that DPH is trying to get a vaping ban in the 100 percent tobacco free schools and communities that are smoke free.

In response to questions and comments from Representative Bentley, Dr. White stated that a higher number of sexual partners could put someone at a higher risk of being exposed to human papillomavirus (HPV).

In response to questions and comments from Representative Bowling, Dr. White stated that the annual American Health Rankings addresses states that have changed rankings and notes by what degree. States with similar social settings typically have around the same rankings in health outcomes each year.

In response to questions and comments from Representative Raymond, Dr. White stated that most of DPH efforts has been to making sure people receive cancer screenings, chronic disease checkups, and childhood vaccinations.

#### **Primary Care Services and Community Health Workers**

John Inman, Chief Policy Officer, Kentucky Primary Care Association (KPCA), reviewed KPCA's mission. He discussed that KPCA offers services, behavioral and physical health services, dental services, outreach programs, and school clinics.

Wayne Linscott, Chief Executive Officer, HealthFirst Bluegrass Community Health Center, reviewed HealthFirst Bluegrass Community Health Center's mission, status, sites, and project projections. Tara Stanfield, Chief Integrated Care Officer, HealthFirst Bluegrass Community Health Center, reviewed the common issues that community health workers (CHWs) deal with and the supports that CHWs provide to community members. She reviewed the future goals for CHWs to also be staff with relatable life experience.

Pam Spradling, Director of Strategic Planning and Development, Big Sandy Community Health Center, discussed how CHWs at Big Sandy Community Health Center assist clients with coordinating care, home visits, clinic visits, telehealth visits, phone calls, health education, navigation services, and links to community resources to help alleviate barriers to better health outcomes. She testified that CHWs are eligible to be certified through DPH with continuing education units each year.

In response to questions and comments to Representative Moser, Ms. Spradling stated that CHW services are not billable however, Big Sandy Community Health Center is able to bill Medicare for chronic care management when CHWs are working under direct supervision of a provider.

Tammy Collett, Regional Director, Mountain Comprehensive Community Health Center, testified about an experience of a CHW working with a patient to overcome specific needs and challenges to properly take required medications.

In response to questions and comments from Senator Berg, Ms. Collett stated that her center pays CHWs an average of \$15 per hour and with the new CHW certification the center, they may be able to employee someone without a clinical background.

In response to questions and comments from Senator Alvarado, Ms. Spradling stated that the CHWs 40 hour training is provided by the Appalachian Kentucky Healthcare Access Network. She stated that her center does not require CHWs have a medical background.

#### **Health Care Issues Facing Kentucky's Hospitals and Their Patients**

Nancy Galvagni, President, Kentucky Hospital Association (KHA), discussed the stress Kentucky hospitals are facing from the flood of COVID-19 patient admissions. Most patient admissions to the intensive care units and patients on ventilators are unvaccinated. She discussed the nursing shortage, the growing need for access to ambulance services, and reviewed the impact of COVID-19 on behavioral health and substance use disorder (SUD) issues. She discussed the rise in the use of opioids and other drugs during the COVID-19 pandemic. She discussed the compliance with the federal transparency law and gave a brief update on the hospital rate improvement plan.

In response to questions and concerns from Senator Alvarado, Ms. Galvagni stated that a plan needs to be put together to ensure an appropriate workforce going forward.

In response to questions and concerns from Senator Meredith, Ms. Galvagni stated that KHA's goal is to serve the patient not to run ambulance

services unless there is no other choice.

In response to questions and concerns from Senator Carroll, Ms. Galvagni stated that the Kentucky Board of Emergency Medical Services regulates ambulance services regarding staffing the ambulances.

In response to questions and concerns from Representative Willner, Ms. Galvagni stated that she has also heard that ambulance services are not being provided for some mental health or behavioral health calls and that some people are not transferred to hospitals with mental health units.

In response to questions and concerns from Representative Moser, Ms. Galvagni stated that there were several things done during the pandemic that would continue to be helpful.

In response to questions and concerns from Senator Carroll, Ms. Galvagni stated that she has not heard of hospitals prioritizing vaccinated patients over non-vaccinated patients. She stated that hospitals are working together to get all patients treated at a facility.

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

The following referred administrative regulations were placed on the agenda for consideration: **201 KAR 002:061 Proposed** - Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints; **201 KAR 026:115 Proposed** - Definition of psychological testing; **201 KAR 026:121 Proposed** - Scope of practice and dual licensure; **201 KAR 026:125 Proposed** - Health service provider designation; **201 KAR 026:130 Proposed** - Grievances and administrative complaints; **201 KAR 026:155 Proposed** - Licensed psychologist: application procedures and temporary license; **201 KAR 026:171 Proposed** - Requirements for clinical supervision; **201 KAR 026:180 Proposed** - Requirements for granting licensure as a psychologist by reciprocity; **201 KAR 026:185 Proposed** - Requirements for granting licensure as a psychologist to an applicant licensed in another state; **201 KAR 026:190 Proposed** - Requirements for supervised professional experience; **201 KAR 026:200 Proposed** - Education requirements; **201 KAR 026:230 Proposed** - Examinations and applications; **201 KAR 026:250 Proposed** - Employment of a psychological associate; **201 KAR 026:280 Proposed** - Licensed psychological associate: application procedures and temporary license; **201 KAR 026:290 Proposed** - Licensed psychological practitioner: application procedures; **201 KAR 026:310 Proposed** - Telehealth and telepsychology; **201 KAR 032:030 Proposed** - Fees; **201 KAR 032:035 Proposed** - Supervision of marriage and family therapy associates; **201 KAR 032:060 Proposed** - Continuing education requirements; **201 KAR 035:010 Proposed** - Definitions for 201 KAR Chapter 35; **201 KAR 035:020 Proposed** - Fees; **201 KAR 035:025 Proposed** - Examinations; **201 KAR 035:040 Proposed** - Continuing education requirements; **201 KAR 035:050 Proposed** - Curriculum of study; **201 KAR 035:055 Proposed** - Temporary registration or certification; **201 KAR 035:070 Proposed** - Supervision experience; **201 KAR 035:075 Proposed** - Substitution for work experience for an applicant for

certification as an alcohol and drug counselor; **201 KAR 035:080 Proposed** - Voluntary inactive and retired status; **907 KAR 001:038 Proposed** - Hearing Program coverage provisions and requirements; **922 KAR 001:490 Proposed** - Background checks for foster and adoptive parents and relative and fictive kin caregivers; **922 KAR 002:300 Proposed** - Emergency child care approval; and **922 KAR 005:020 Proposed** - Batterer intervention provider certification standards. The administrative regulations above have been reviewed by the committee.

#### **Legislative Hearing on the Community Services Block Grant (CSBG) Preliminary State Plan**

Todd Trapp, Assistant Director, Division of Family Support, Department for Community Based Services, Cabinet for Health and Family Services, gave an overview of the federal fiscal year (FFY) 2020-2021 Community Services Block Grant (CSBG) Preliminary State Plan. A motion to approve the FFY 2020-2021 CSBG Preliminary State Plan was made by Senator Meredith, seconded by Representative Bentley, and approved by voice vote.

#### **Adjournment**

There being no further business, the meeting was adjourned at 10:57 AM.

## **INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES**

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

September 2, 2021

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

The 4th meeting of the Interim Joint Committee on Health, Welfare, and Family Services was held on Thursday, September 2, 2021, at 11:30 AM, in Room 149 of the Capitol Annex. Representative Kimberly Poore Moser, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Ralph Alvarado, Co-Chair; Representative Kimberly Poore Moser, Co-Chair; Senators Julie Raque Adams, Karen Berg, Danny Carroll, David P. Givens, Denise Harper Angel, Jason Howell, Alice Forgy Kerr, Stephen Meredith, and Max Wise; Representatives Danny Bentley, Adam Bowling, Josh Bray, Tom Burch, Ryan Dotson, Daniel Elliott, Ken Fleming, Deanna Frazier, Mary Lou Marzian, Melinda Gibbons Prunty, Felicia Rabourn, Josie Raymond, Steve Riley, Scott Sharp, Steve Sheldon, Nancy Tate, Russell Webber, Susan Westrom, and Lisa Willner.

**Guests:** Jennifer Washburn, Owner, iKids Childhood Enrichment Center; Betsy Johnson, President, Kentucky Association of Health Care Facilities, Kentucky Center for Assisted Living; Nancy Galvagni, President, Kentucky Hospital Association; Dr. Joseph Flynn, Chief Administrative Officer, Norton Medical Group, Physician-In-Chief, Norton Cancer Institute; Tim Veno, President, Chief Executive Officer, LeadingAge Kentucky; and Joseph McConnell, Senior Vice President of Laboratory Science, Aditxt.

**LRC Staff:** DeeAnn Wenk, Ben Payne, Chris Joffrion, Samir Nasir, Becky Lancaster, and Hillary Abbott.

#### **Child Care Center Administrative Regulations During COVID-19**

Senator Danny Carroll, testified that throughout the COVID-19 pandemic child care centers have focused on staff training, cleaning, sanitizing, limiting access, wearing masks and completing regular assessments of children and staff. He reviewed the number of regulated child care programs with positive COVID-19 cases in children and staff. He discussed that he is working on a bill to prioritize the development of children during a pandemic.

Jennifer Washburn, Owner, iKids Childhood Enrichment Center, discussed her program's success in fighting the COVID-19 virus by implementing health and safety practices. She testified that the costs of implementing all precautions and rising child care program expenses could prove to be a financial hardship for many families. She discussed barriers for her center including various issues related to masking two year old and three year old children and staffing shortages.

In response to questions and comments from Representative Fleming, Ms. Washburn stated that prior to the COVID-19 pandemic her center's revenue source was private pay and during the pandemic she was able to add the stipend money from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The teachers at her center will be at a \$13.00 an hour rate of pay by November 1, 2021. Her facility is accredited and many teachers have their Child Development Associate (CDA) credential. She would need to do more research on the test and stay procedures for children before implementing into her program.

In response to questions and comments from Senator Berg, Ms. Washburn stated that most of the four year olds will keep masks on in her center. She stated that 100 percent of her full-time staff is vaccinated and that only four of her part-time assistants are unvaccinated. Senator Carroll stated that in his and other child care centers, behavioral issues have significantly increased since wearing masks have been required.

In response to questions and comments from Senator Alvarado, Ms. Washburn stated that the bill he is working on for child care centers will follow the World Health Organization (WHO) guidelines regarding mask recommendations for children.

In response to questions and comments from Representative Tate, Ms. Washburn stated that the age of her staff varies. She has started to see an increase in aggressive behaviors in young children since on the onset of children and teachers wearing masks.

In response to questions and comments from Representative Dotson, Ms. Washburn stated that she would hope that child care centers within a community would reach out to each other but there is no system to validate why a child or parent may switch locations. She must investigate various information to make sure children allowed to attend her center are not supposed to be quarantining from school or another center. Vaccinations are not mandated for her employees.

#### **COVID-19 Immunity**



Senator Ralph Alvarado discussed problems with the politicization of public health issues that contribute to inconsistent guidance and contradictory information. He testified that COVID-19 vaccinations recommended by government and health care providers are a potentially life-saving, preventative measure.

Joseph McConnell, Senior Vice President of Laboratory Science, Aditxt, discussed Aditxt technology to monitor immune status in order to identify individuals who may be vulnerable to COVID-19. He reviewed the AditxtScore™ immune monitoring platform. He discussed the findings of studies on immune monitoring for COVID-19.

In response to questions and comments from Representative Moser, Mr. McConnell stated that the Aditxt technology's goal is to be able to provide each individual with data regarding their immune status related to COVID-19. Aditxt has the capacity for thousands of tests per day and has laboratory partners in the area. He explained how immune tests are different than antibody tests.

In response to questions and comments from Senator Berg, Mr. McConnell stated that there is some data to show how antibody levels rise and fall over time, and there is much individual variation. Data is being generated regarding what specific antibody level will protect individuals from active disease.

In response to questions and comments from Representative Gibbons Prunty, Mr. McConnell stated that it would be wise to get antibody testing before and after cancer treatments, because some drugs may cause immunosuppressions.

In response to questions and comments from Senator Meredith, Mr. McConnell stated that tests show that COVID-19 vaccine outcomes parallel flu vaccine outcomes.

In response to questions and comments from Representative Bentley, Mr. McConnell stated that IGD immunoglobulins are not typically used in laboratory monitoring and IGE immunoglobulins are used to establish an allergic response.

In response to questions and comments from Representative Willner, Senator Alvarado explained that immunity can vary among people who have been vaccinated.

In response to questions and comments from Representative Marzian, Mr. McConnell stated that antibody levels typically do not change in a week or a month. It depends on the individual, but usually the antibody level is maintained for at least six to eight months.

#### **Emergency Measures to Address COVID-19**

Nancy Galvagni, President, Kentucky Hospital Association (KHA), discussed the unprecedented surge in COVID-19 hospitalizations caused by the delta variant. She discussed that hospitals are competing to hire staff to fill the gaps of care. She gave recommendations for the legislature to assist hospitals.

Dr. Joseph Flynn, Chief Administrative Officer, Norton Medical Group, Physician-In-Chief, Norton Cancer Institute, testified regarding COVID-19 vaccinations, monoclonal antibody treatments, and identifying patients at risk.

Betsy Johnson, President, Kentucky Association

of Health Care Facilities, Kentucky Center for Assisted Living, testified to the number of skilled nursing facility residents testing positive with COVID-19 and the long-term care (LTC) workforce shortage crisis. She discussed how the Centers for Medicare & Medicaid Services (CMS) federal mandate singles out skilled nursing facilities and places skilled nursing facilities at a significant disadvantage when competing for workers.

Tim Veno, President, Chief Executive Officer, LeadingAge Kentucky, discussed potential policies and uses for the American Rescue Plan Act (ARPA) funds to ensure continuity of care. He discussed options to assist in the maintenance and recruitment of the LTC workforce. Investments are needed for LTC facility improvements.

In response to questions and comments from Representative Moser, Ms. Galvagni stated that hospitals would be open to allowing paramedics to help with shift work to relieve overworked nurses.

In response to questions and comments from Representative Bray, Ms. Galvagni verified that ICU beds are near capacity, because there is not enough staff to accommodate all licensed beds in hospitals. Some hospitals are adding the COVID-19 vaccine to the existing vaccination requirements to try to keep staff from being quarantined, available for work, and for the safety of the patients.

In response to questions and comments from Representative Gibbons Prunty, Dr. Flynn stated that people who have COVID-19 symptoms within 10 days can receive an infusion of monoclonal antibodies; however, receiving the treatment as soon as possible can help with a positive outcome.

In response to questions and comments from Senator Meredith, Ms. Johnson stated that licensed beds are being closed, there has been a closure of a LTC facility, and with the federal vaccine mandate there could be more closures. Senator Alvarado stated that other states have already devoted money to staff retention, and Kentucky is losing healthcare workers to other states due to low pay rates.

In response to questions and comments from Senator Carroll, Ms. Johnson stated that if a county is at the red level the unvaccinated staff at a LTC facility are getting tested twice a week, PPE is being worn constantly, and LTC facilities' have isolation wings. Senator Alvarado stated that the Johnson and Johnson COVID-19 can be stored in a doctor's office.

In response to questions and comments from Senator Wise, Dr. Flynn stated that there has been spike in children being admitted to the ICU at Norton Children's Hospital due to COVID-19 and respiratory syncytial virus infection (RSV).

In response to questions and comments from Representative Bray, Ms. Galvagni clarified that quarantining staff that have not been vaccinated is only part of the staffing issue, hospitals have also lost staff due to resignations. Dr. Flynn stated that hospitals are following Centers for Disease Control and Prevention (CDC) guidelines regarding quarantining and testing of vaccinated and unvaccinated healthcare workers.

#### **Adjournment**

There being no further business, the meeting was adjourned at 2:21 PM.

## **INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 12, 2021

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

The 3rd meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, August 12, 2021, at 10:00 AM, in Room 131 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Jimmy Higdon, Jason Howell, Christian McDaniel, Gerald A. Neal, and Michael J. Nemes; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Thomas Huff, Matthew Koch, C. Ed Massey, Chad McCoy, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Ruth Ann Palumbo, Phillip Pratt, Sal Santoro, Killian Timoney, and Susan Westrom.

Guests: Senator Whitney Westerfield; Martin Harris, Josh Gaines, Council of State Governments Justice Center; State Representatives Mark Hart, D.J. Johnson, Norma Kirk-McCormick, and Richard White; Mr. Eric Sherman, PMP, Southeast Regional Liaison, Department of Defense, Military Community & Family Policy; and Brandy Cantor and Chris Nolan, MML&K Government Solutions.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore

#### **Approval of minutes from June 17 and July 19, 2021, meetings**

Representative Koenig motioned to approve the minutes from June 17 and July 19, 2021 meetings, and Representative Burch seconded the motion. Motion carried and the minutes were adopted by voice vote.

#### **Fair Chance Licensing**

Senator Westerfield testified that second chance licensing improves access to good-paying licensed jobs for Kentuckians with criminal records. He sponsored Senate Bill 120 (RS 2017) which implemented several best practices, and since then several other state have adopted additional reforms. As the Commonwealth focuses on economic recovery, these measures strengthen employment opportunities, allow businesses to hire from a broader talent pool, and saves taxpayer money through reduced recidivism and incarceration.

Martin Harris, Legal Fellow, Council of State Governments (CSG) Justice Center, said they work in all 50 states to uphold justice, offer second chances, and ensure safe and healthy communities. The CSG Justice Center is a national, nonprofit, nonpartisan organization that combines the power of a membership association, representing state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. The economic mobility team is assisting in conducting a landscape

analysis of all 50 states. The key areas include assisting states in economic recovery, enhancing good paying jobs, and improving reentry and public safety in providing businesses with qualified candidate pools.

Mr. Harris said providing pre-application determinations to prospective applicants so they know whether their record is disqualifying before investing in the training and education for the license is a practice that Kentucky should consider. The state should also consider barring non-convicting dispositions and closed records, including arrests not followed by conviction, juvenile adjudications, and pardoned, sealed, or expunged records. Another option would be to add evidence of rehabilitation to “relevant factors” required in assessment. Current law requires boards to notify rejected applicants that “evidence of rehabilitation may be considered upon reapplication.” Many states, however, include “evidence of rehabilitation” as a specific factor that must be assessed as part of the initial decision to grant or reject an applicant based on criminal history. Limiting consideration of older convictions after a period of conviction-free years, and less serious offenses, such as non-violent misdemeanors is another option to consider.

Mr. Josh Gaines, Project Manager, Economic Mobility, CSG Justice Center, testified that he was in support of fair chance licensing and was available to answer questions from committee members.

Responding to a question from Representative Koenig, Senator Westerfield said there is not a bill draft at this time. Representative Koenig said the pre-application component makes a lot of sense, but his concern is that this would be an additional burden to many boards that over the last several years have been allowed to increase fees by regulation because they are running low on funds. Senator Westerfield said he had no problem with the state charging the applicant a reasonable fee for the pre-application process to offset costs to the boards. Mr. Gaines also supports a nominal fee to the applicant to cover the cost of a review and this is a very common practice within other states.

#### **Military Spouse Licensure Portability**

Representatives Norma Kirk-McCormick, Mark Hart, and D.J. Johnson will sponsor upcoming licensing compacts legislation for different professions. Mr. Eric Sherman, PMP, Southeast Regional Liaison, Department of Defense, Military Community and Family Policy, said many military spouse professionals must relicense each time they move to a new state with their active-duty spouse. States can facilitate the ability of professionals, including military spouses, to work across state lines by enacting occupational licensure interstate compacts. An increasing number of occupations are establishing interstate compacts to support: common understanding of standards; states sharing authority and responsibility over occupational-based practices; “privilege to practice” policies allowing members to work in other compact states; allowing endorsements for a license transfer, primarily based upon changing legal residence; and tele-practice opportunities using technology to work across state boundaries. The

Defense State Liaison Office assists national state boards and membership associations in educating legislators on the benefits of their licensure compacts to the military community. The coronavirus pandemic demonstrates that interstate licensure compacts can provide a permanent solution to leveraging underused medical talent to meet labor shortages in high-need areas.

Representative Hart said the bill draft for the Emergency Medical Services (EMS) profession is forthcoming. He said as soon as the draft is available, he will have it emailed to all committee members.

Representative Johnson gave a personal experience and is very supportive of compacts for military spouses, and he will be sponsoring the bill draft including occupational therapists.

Responding to a question from Senator Higdon, Mr. Sherman said he is not sure how many other states have signed on to this compact, but will get the information to committee members. Senator Higdon said the Licensing, Occupations, and Administrative Regulations committee is the appropriate place for the compacts. Representative Kirk-McCormick said she would be facilitating her bill draft on the fast track.

Responding to a question from Representative Banta, Mr. Sherman said the interstate compact does not change the standards developed in Kentucky for a particular profession. Representative Hart said the compact will still require participants in the EMS field to follow the scope of practice in Kentucky, it just makes the process less cumbersome. Representative Banta would like a tutorial explaining the process to participants. Senator Schickel encouraged the sponsors to get the bills prefiled so they can be vetted sufficiently.

#### **Server Age Limits for Alcohol**

Representative Richard White said allowing adults 18 years of age and older to serve alcohol provides an opportunity for businesses to expand their employees. Terry Fritzer, restaurant owner, said West Virginia has incorporated this and has had no problems. This does not allow people under 20 to bartend in Kentucky.

Responding to a question from Senator Higdon regarding grocery store owners hiring people under 18 years of age, Senator Schickel said the language can be changed in the bill to clarify this issue for grocery store owners as this was not the intent. Representative White said he will check into it and change any language that needs to be clarified so grocery store employers can hire employees under 18 years of age.

#### **2021 RS HB 340 AN ACT relating to radon safety**

Representative Bratcher said radon is attributable to 22,000 lung cancer cases in America a year. He said this legislation raises awareness to the issue, repeals the radon program advisory committee, and creates a Kentucky Board of Radon Safety. This mirrors the traditional board appointment process of the other boards, and includes seven board seats with four radon professionals and one public health professional. The realtors and home builders will have non-voting seats on the board, and are very supportive of the bill.

Responding to a question from Chairman Schickel, Brandy Cantor, MML&K Government Solutions, said this bill was carried over from 21RS

General Assembly in order to give the legislation due diligence.

Responding to a question from Senator Higdon, Chris Nolan, MML&K Government Solutions, on behalf of the Kentucky Association of Radon Professionals, said the amount of licensees and the license fees that are paid for certification will generate enough funds to make the program self-sufficient. There are also federal EPA dollars, and other federal funds, that Kentucky can utilize for the program. Senator Higdon said radon is a silent killer. Parts of Kentucky have extremely high radon levels, and the public needs to be educated on the issue. He also said giving subpoena power is a piece of the bill that needs to be properly vetted and should be given on a limited basis. Ms. Cantor said the program is being moved from the Department of Public Health to Professional Licensing in the Public Protection Cabinet (PPC). The subpoena power language mirrors the language that is in about 20 other boards that are in the PPC. Chairman Schickel said subpoena power should be limited as it is a powerful tool. Representative Koenig said a surprisingly large number of boards have subpoena power.

With no further business before the committee, the meeting adjourned at 10:55 a.m.

## **INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 26, 2021

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

The 3rd meeting of the Interim Joint Committee on Local Government was held on Thursday, August 26, 2021, at 11:00 AM, in South Wing C, Rooms 101 and 104 of the Kentucky Fair and Exposition Center, in Louisville, Kentucky. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Robby Mills, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives Danny Bentley, Josh Bray, George Brown Jr., Jonathan Dixon, Jeffery Donohue, Ken Fleming, Deanna Frazier, Regina Huff, Mary Beth Imes, DJ Johnson, Matt Lockett, Jerry T. Miller, Rachel Roberts, and Walker Thomas.

**Guests:** Ryan Quarles, Commissioner of Agriculture; Representative Norma Kirk-McCormick, 93<sup>rd</sup> House District; Mayor Greg Fischer, Louisville Metro Government; Brian O’Neill and David Howser, Kentucky Association of Fire Chiefs; Keith Sanders, Edmonson County Ambulance Service; Bryanna Carroll, Director of Public Affairs, Kentucky League of Cities; Lt. Col. Mike Sutt, Anchorage-Middletown Fire Department and EMS; Mayor Les Stapleton, City of Prestonsburg; and Michael Poynter and Chuck O’Neal, Kentucky Board of Emergency Medical



Services.

**LRC Staff:** Mark Mitchell, Joe Pinczewski-Le Christopher Jacovitch, and Cheryl Walters.

#### **Approval of Minutes**

Upon the motion of Senator Alvarado, seconded by Representative Roberts, the minutes from the July 20, 2021, meeting were approved.

#### **Welcome Remarks**

Mayor Greg Fischer, Louisville Metro Government, welcomed the committee to Louisville. Mayor Fischer told members that Louisville has been allocated \$388 million from the American Rescue Plan Act (ARPA), and have outlined five focus areas as ARPA priorities: homelessness and affordable housing; workforce development and small business support; health investments; public safety investments; and premium pay for frontline workers. ARPA is a great opportunity to make significant community impact and lasting change but this is a one-time opportunity and cannot be used as a long-term structural tax. Mayor Fischer thanked Representative Meredith for his work on championing tax reform locally.

Louisville Metro's Civilian Review and Accountability Board was signed into ordinance in December 2020. The board creates a new layer of independent review to Louisville Metro Police Department (LMPD) disciplinary matters and will oversee the work of the Office of Inspector General, which will have the authority to investigate incidents of improper conduct by any members of the LMPD.

#### **Firefighter Retiree Health Insurance Costs**

Mr. Brian O'Neill, Legislative Director for the Kentucky Professional Fire Fighters, addressed the impending crisis in Kentucky for any government employees hired after July 1, 2003. He told the committee that although he would be using firefighters and the hazardous duty system in his examples, the crisis includes all hazardous and non-hazardous city, county, and state employees.

In 2003, the legislature made a change in the retiree health insurance program. Rather than providing a health insurance plan, new employees would get a monthly credit towards purchasing the state health insurance plan. This is not money that can be used towards any plan on the market, it is only a credit towards the plans that the state offers.

For hazardous duty employees, that credit is \$15 a month multiplied by the number of years of service (non-hazardous is \$10), and there is a built in cost of living adjustment of 1.5 percent per year. So in 2023, when the first affected hazardous duty members are eligible to retire, they will have a credit of \$21.30 per month, times 20 years of service, which equals \$426 per month to be used towards a health care plan. The legislature believed that the credit would keep pace with the cost of insurance, but it has not.

Mr. O'Neill compared two hypothetical firefighters: firefighter A was hired in June of 2003, and firefighter B was hired in August of 2003. Both are planning to retire in September of 2023. Both of them were hired by the same department, took the same risks, were exposed to the same tragedies and hazards, and carry those physical and emotional scars with them. They earned a similar salary and are retiring with the same pension benefit—a monthly

check of \$3,000.

Firefighter A will have a choice of health insurance plans, whether single, married, or family plan; and the monthly premiums will be covered. Firefighter B will be provided a \$404 credit to purchase a health care plan through the state system—not on the open market, they must shop at the company store. The current monthly cost for a family plan ranges from \$1,500 to \$1,840. A married plan is only slightly less at \$1,375 to \$1,650. If a middle of the road family plan is picked at \$1,673 per month and apply the \$426 credit, firefighter B will have to pay \$1,247 per month just to have health insurance—an amount that is greater than most people's house payment and auto payment combined. If they and their family never get sick, never get injured, they will still be paying \$14,964 per year to have an insurance plan. That accounts for 42 percent of their pension check and leaves them with just \$1,753 per month in take home pay before taxes.

This is a serious crisis that will start impacting hazardous duty employees in 2023 and the non-hazardous employees in 2030. That means there is still time to act. The state's public servants deserve better, and the Commonwealth of Kentucky can do better.

Mr. David Howser, Assistant Fire Chief for the St. Matthews Fire Department, and Legislative Committee Chair of the Kentucky Association of Fire Chiefs (KAFC), discussed the increased Tier One B, Two, and Three retired firefighter health insurance costs and the associated impact on the fire service in Kentucky. Over the years, it has been widely expressed that public employees typically receive lower pay in comparison to similar professions in the private sector, but that the lower pay was balanced by what many considered a better defined benefit pension program. For those hired after 2003, they are truly a public servant working for lower pay and a minimal pension plan.

The difficulties of getting ambulance service is in part due to low pay and a lack of a good pension plan. Surveys point to part of the problem being low pay and the lack of a good pension plan.

Recruitment of individuals to join Kentucky's fire service becomes more difficult every day. Due to the lack of volunteer firefighters, which is another big issue in itself, fire departments have to cast a far net to recruit new trained employees. The urban or suburban areas near the state's larger cities and Northern Kentucky, due to larger tax bases, are able to pay more and lure employees away from the smaller or more rural areas.

Firefighters, and all public employees, have exhibited a passion to serve the Commonwealth. Many have probably done this due to that passion but also knowing they had a quality pension plan, making up for the reduced take home pay in comparison to their private sector counterparts.

Any change or adjustment to any Kentucky Public Pensions Authority plan could result in an increase in the actuarial required contribution. Mr. Howser urged the committee to study what can be done to at least adjust the health insurance credit system for all public employees who began serving the Commonwealth on or after July 1, 2003.

#### **EMS Recruitment and Retention**

Mr. Keith Sanders, Director of the Edmonson County Ambulance Service, discussed Edmonson County's demographics and noted that their service provides one 24-hour ambulance and one 16-hour ambulance. Staffing is the greatest challenge. The Edmonson County EMS has eight full-time employees, five of those work at another EMS agency either full-time or as necessary. The others either work a full time job outside of EMS or they are students.

There is difficulty in recruiting people into the EMS profession because they are required to pay, out of their own pocket, up to \$1,000 in tuition for the Emergency Medical Services (EMS) program. An Advanced Emergency Medical Technician (AEMT) course is twice that. Paramedic tuition is around \$8,000 to \$10,000. Kentucky Educational Excellence Scholarship (KEES) money should be allowed to be applied to any Kentucky Board of Emergency Medical Services (KBEMS) approved EMS initial licensure program, regardless of whether it is at a Kentucky university or college. There is not a lot of incentive to work for EMS because there is a larger out-of-pocket tuition outlay for little pay in return. Paramedics have similar financial costs for training as nurses, but for \$10 an hour less pay. The pay level has to be raised. Currently most fast food workers start out making more money than Emergency Medical Technicians (EMTs). EMTs typically start between \$11 and \$12 per hour.

EMTs provide more services than simply transporting people. They staff a rolling emergency room.

EMS in Kentucky is in danger of collapsing. Services are stretched thin. Mutual aid agreements with other jurisdictions cannot guarantee uninterrupted service.

There are two potential solutions that would help with recruitment and staffing. The first would be to create an advancement pathway or educational bridge program to allow an AEMT to advance to paramedic without repeating material that was covered in AEMT class. This, in conjunction with a bridge from paramedic licensure to registered nurse, would create a definitive pathway for career advancement. The second would be to allow re-employment of retired County Employees Retirement System (CERS) paramedics. Kentucky should create a program for paramedics that is similar to the Kentucky State Police Trooper-R program that would allow CERS retired paramedics to return to employment with CERS participating agencies without penalizing the retiree or the agency that employs the retiree.

Representative Kirk-McCormick said that pay needs to be increased, and Medicaid reimbursement for ambulance runs needs to be increased. The hours are long and the job is hazardous.

Representative Brown told Mr. Sanders that the legislature may be able to assist with legislation. He asked Mr. Sanders to get information to committee staff on how the legislature can help. Representative Brown stated that something may definitely be done about the re-employment of retired paramedics.

In response to a question from Senator Alvarado, Mr. Sanders said his EMTs transport patients to Warren, Grayson, and Barren counties. Transporting

patients from the hospital back to their homes varies by the county and the hospital. Switching a truck from being staffed for eight hours to 16 hours, combined with the reduction in overtime and increased transport opportunities essentially paid for the additional costs at the time which was roughly \$100,000. Not being able to transport “returns” impacts finances. It costs the same amount, less gas, to keep a staffed truck in the garage as it does when it is making runs, so transporting patients, even with the \$80 non-emergency Medicaid reimbursement amount, reduces the average cost per run. The service tries not to make non-emergency runs unless there is a vehicle available for emergency runs either in the garage or through an agreement with another agency. Making non-emergency runs helps bring in money.

Representative Meredith commented that his community is considered an urban area for Medicaid reimbursement, despite his community’s small size. This affects reimbursement levels for eligible runs.

Ms. Bryanna Carroll, Director of Public Affairs, with the Kentucky League of Cities (KLC), told the committee that the paramedic shortage threatens the health and welfare of citizens. KLC and local EMS officials first testified before the committee in 2019 on how limited training programs, time, and costs of accreditation have all combined to create the problems. Cities are continuing to report the same concerns. Cities often pay the cost of training, only to have newly certified paramedics leave for a higher paying job in the private sector. To exacerbate the problem, the state has shifted paramedic training into more of a college academia setting that the previous vocational focus.

Lt. Col. Mike Sutt, Deputy Chief of the Anchorage-Middletown Fire Department and EMS, told the committee that only four local governments are currently training their own EMS personnel—there are 13 such sites statewide. It takes 2,000 hours of training for an emergency medical responder to become a paramedic. Working EMTs often struggle to find the time to attend paramedic school. Cost can also be a deterrent—an 18 month paramedic program costs \$9,000 using a program within the Kentucky Community and Technical College System (KCTCS). Over a three-year period, from 2016 to 2020, Kentucky produced 448 paramedics. Considering there are 120 counties in Kentucky that is only four per county.

An additional challenge is that Kentucky uses the National Registry of Medical Technicians as the state’s sole certifying exam site—a requirement not used by some neighboring states. Once paramedics are certified, many choose to leave the ambulance service for increased pay, better retirement, and career advancement. This can skew Kentucky’s numbers, as many certified paramedics do not work on an ambulance. KLC data shows that outside of Louisville, only around nine percent of paramedics employed by cities do not also serve as a firefighter.

KLC is seeking an assessment of Kentucky’s current educational infrastructure to determine if its current system of training and certifying paramedics is serving the needs, capable of keeping up with demand, and working for the overall safety of the public.

Mayor Les Stapleton, City of Prestonsburg, said

that skilled and knowledgeable people in paramedic positions is important. His city is able to offer retirement, other benefits, and better pay to attract and keep personnel. The private industry does not provide enough personnel. Prestonsburg must call Paintsville and Pineville for mutual aid. Prestonsburg emergency responders can be at a scene within three minutes. Once they have prepared the injured for transport, they then wait a long time for the ambulance to arrive for transport to the hospital.

The City of Prestonsburg applied for a certificate of need (CON) to provide its own ambulance service on January 24, 2020, but cannot get a hearing on the application. The Cabinet for Health and Family Services simply takes the applications in order, with no process in place for emergency situations. Local governments should be able to declare an emergency situation and bypass the CON process to get qualified service providers to serve the government. Cities urge legislators to establish an emergency calls CON bypass process for communities that are suffering because of inadequate response time. There is value in the CON process, but local governments sometimes need these emergency services to be approved more quickly.

Senator Nemes commented that there is a need for CONs and that the red tape should be reduced. The Bullitt County Judge/Executive started an apprenticeship program for EMTs that may benefit other localities.

In response to a question from Representative Miller, Mayor Stapleton stated that he would advocate for KEES money to be used for EMS programs that are conducted in facilities other than in Kentucky universities or colleges.

Senator Wheeler commented that the paramedic shortage is definitely impacting the safety of rural citizens.

In response to a question from Senator Wheeler, Mayor Stapleton said that volunteer firefighters are valuable, in that most become EMTs through the fire service and will work with ambulance services. Making it financially viable for them to continue to become EMTs is helpful.

Senator Alvarado noted that Kentucky was one of around four states that conducted CONs and that there is a proposal to conduct a nonsubstantive review of the CON process to be undertaken and that this may serve to provide some suggestions for improvements to the process.

Mr. Chuck O’Neal, Deputy Director of Administration, Kentucky Board of Emergency Medical Services (KBEMS) said that Kentucky, as well as states across the nation, are experiencing a shortage of appropriately trained and credentialed EMTs and paramedics. Lack of EMS personnel availability on ground ambulances places the health and safety of the citizens of Kentucky at risk, also reducing the capacity of ground ambulance availability for interfacility transfers. A recent study by KBEMS shows that while over 14,500 EMS professionals are certified and licensed in Kentucky, only approximately half of these individuals are employed by a ground ambulance service.

In 2018, KBEMS, in collaboration with the KBEMS Education Committee and the KAFK,

formed a paramedic accreditation task force to allow for the flow of information across paramedic educational programs. One of the work products of this task force was to survey certified and functioning EMTs in Kentucky, and to identify perceived barriers to completing paramedic education. The top five barriers identified, in order of response, were work and school schedules conflicts; no desire to become a paramedic; time commitment or length of service; little increase of pay or incentive pay; and lack of financial aid availability.

To better understand provider turnover and conduct provider retention efforts, KBEMS began studying EMS attrition in 2016. The top five reasons for allowing an EMS license or certification to expire in 2016 were, in order of response, retirement; low salary or poor benefits package; relocation of residence; external factors, such as not being one’s choice to leave EMS; and poor management or hostile workplace. Additional years of attrition reports were included in the information presented to the committee.

Ground ambulance services operated in both the public and private sector are having significant difficulty competing with hospitals for paramedics. Hospitals are offering sign-on bonuses and hazard pay that local governments simply cannot afford.

KBEMS suggests the following actions be taken: earmark additional dollars bolstered from 2018 House Bill 8 dealing with Medicaid reimbursement by local governments to enhance EMS salaries, benefits, and student loan forgiveness programs; consider non-traditional work schedules; evaluate upward mobility options for EMS staff, especially in rural agencies, but as well as in suburban ones; and support federal and state student loan forgiveness programs for EMS personnel.

A 2019 Kentucky EMS salary survey noted the following starting EMS salaries in Kentucky: average entry level pay for EMTs was \$11.88; \$13.30 for AEMTs; and \$15.62 for paramedics. It is apparent that, nationally, EMS providers are no longer willing to work for the compensation packages available. Local governments must find revenue streams to significantly enhance EMS salary and benefit packages to remain competitive.

Additional areas of action include provision of childcare assistance; provision of EMS mental health services; provision of wellness initiatives; consideration of alternative retirement plans; evaluation of alternative accreditation programs for EMS educational programs; and provision of educational and financial incentives for continued work in the ground ambulance sector.

In response to a question from Senator Alvarado, Mr. O’Neal stated that the regulation to allow other staff to ride along in ambulances was removed because it is allowed through federal law, which supersedes state law, rendering the state regulation unnecessary.

In response to a question from Representative Meredith, Mr. O’Neal said KBEMS endorses the use of KEES money being used for EMT programs that are not within the traditional college and university system.

In response to another question from Representative Meredith, Mr. Michael Poynter,



Executive Director of KBEMS, stated that emergency regulations were implemented last year, because of COVID, to allow inactive or retired paramedics to be recertified without charge and testing and to come back to work. The process is presently closed, but could be reopened if necessary.

Representative Meredith commented that if there continues to be a shortage of paramedics, then retirees should still be allowed to come back to work, not just due to COVID.

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

## **INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**

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

#### **of the 2021 Interim**

September 1, 2021

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

The 4th meeting of the Interim Joint Committee on Local Government was held on Wednesday, September 1, 2021, at 10:00 AM, in Room 149 of the Capitol Annex. The Committee met jointly with the Interim Joint Committee on State Government. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives Danny Bentley, Josh Bray, George Brown Jr., Jonathan Dixon, Jeffery Donohue, Ken Fleming, Deanna Frazier, Regina Huff, Mary Beth Imes, DJ Johnson, Adam Koenig, Matt Lockett, Mary Lou Marzian, Jerry T. Miller, Brandon Reed, Rachel Roberts, and Walker Thomas.

Guests: Daniel Cameron and Chad Meredith, Office of the Attorney General; Cookie Crews and Robyn Bender, Justice and Public Safety Cabinet; and Jim Daley, Kentucky Jailers Association.

LRC Staff: Mark Mitchell, Alisha Miller, Michael Callan, Andrew Salman, and Peggy Sciantarelli.

#### **Discussion of Kentucky Supreme Court Ruling**

The guest speaker was Daniel Cameron, Attorney General for the Commonwealth of Kentucky. He was accompanied by a member of his staff, Solicitor General Chad Meredith. Attorney General Cameron updated the committee regarding the August 21, 2020, ruling of the Kentucky Supreme Court in the case, *Cameron v. Beshear*.

Mr. Cameron stated that the Governor initiated *Cameron v. Beshear* in February when he filed in Franklin Circuit Court, seeking to invalidate SB 1, SB 2 and HB 1, the newly enacted legislation placing checks and balances on the Governor's emergency power. The Governor asked the Franklin Circuit Court to enjoin the legislation, and the circuit court did so—first by entering a temporary restraining order and, later in March, a temporary injunction. After the General Assembly enacted HJR 77, the Franklin Circuit Court

expanded the temporary injunction, including that legislation as well. Mr. Cameron said that after the Franklin Circuit Court entered a temporary injunction, his office asked the Court of Appeals for relief from that injunction. Recognizing the public importance of the case, the Court of Appeals recommended that the matter be transferred to the Supreme Court. The Supreme Court granted transfer of the case and heard oral arguments on June 10.

On August 21, the Supreme Court issued its decision, holding that the Franklin Circuit “abused its discretion in issuing the temporary injunction.” Therefore, it reversed the Franklin Circuit Court and remanded the case with instruction to the Circuit Court to dissolve that injunction. In evaluating this case, the Supreme Court looked at whether any of the parties to the lawsuit would be irreparably harmed by a decision. The Governor claimed that he would suffer harm because the new legislation, if it went into effect, because it would reduce his power. The Supreme Court rejected this argument because the Constitution does not expressly give the Governor any emergency powers. This means that the governor is not injured in any legal sense when the General Assembly places limits or checks and balances on emergency powers. The Supreme Court found that the public would be injured if the challenged statutes do not go into effect which is a well-established rule of law that the nonenforcement of a statute constitutes irreparable harm to the public and the government.

The second factor the Supreme Court looked at was whether the Governor's claim involved a substantial question on the merits. In asking whether the claim had legal merit, the Supreme Court determined generally that the Governor's claim had no legal merit. The Supreme Court first took up the Governor's claim that the new legislation violates the separation of powers. Because the Governor only has the emergency powers given to him by the General Assembly, the Supreme Court said it does not violate the separation of powers for the legislature to define and place limits on the Governor's emergency powers.

The Supreme Court examined the Governor's claim that the new legislation infringes on his discretion to call special sessions by limiting the state of emergency to 30 days. In the Governor's view, the 30-day limit would force him to call a special session, thereby taking away his discretion. The Supreme Court expressed great skepticism about this claim, finding that the assertion that the Governor would be forced to call a special session every 30 days is not credible. The Supreme Court felt that it did not have enough information about this claim to opine on its merit, so the Supreme Court declined to make a definitive pronouncement concerning the constitutionality of the 30-day limitation.

Next, the Supreme Court evaluated the Governor's claim that SB 1 violates his executive supremacy under Section 69 of the Constitution, by requiring the Attorney General's consent in any suspension of statute during emergencies. The Supreme Court rejected this claim, concluding that SB 1, Section 4, constitutes a valid exercise of the General Assembly's authority to suspend a statute. The Supreme Court then turned to the claim that the new legislation is arbitrary. The Supreme Court

rejected that claim, too, finding that the Governor has no standing to make such a claim. Finally, the Supreme Court ruled against the Governor's claims that SB 1 was unconstitutional special or local legislation. After evaluating the merits of the Governor's claims, the final element of the Supreme Court's analysis involved balancing the equity and the public interest. It had little trouble in determining that both the equity and the public interest weighed in favor of adherence to the new legislation.

According to the Rules of Civil Procedure, the Supreme Court's decision will become final 21 days after it was issued. When that happens, the matter will officially be back in front of Franklin Circuit Court, with instructions for the injunction to be dissolved. In the meantime, the Circuit Court has instructed the parties to provide it with a status report no later than September 7.

Mr. Cameron said that the issue before the Supreme Court was whether the Franklin Circuit Court's temporary injunction was proper. The decision is precedential, meaning that its reasoning is binding on the lower court. On all but one claim, the Supreme Court's reason leaves no room to conclude anything but that the statutes are constitutional. The only claim that the Supreme Court did not find to be meritless was the one about the 30-day limitation on emergencies. The Supreme Court simply concluded that it needed more information before making a decision.

Mr. Cameron said that, while the Supreme Court did not officially declare the statutes constitutional, he is confident after reviewing the court's reasoning, that the only potential obstruction of the 30-day limitation on a state of emergency will be upheld. The only way the Governor could prevail on his other claim would be for the Supreme Court to reverse itself, and that would be exceptionally unusual, especially considering that its decision against the Governor in affirming the legislature's authority was unanimous.

On or before September 13, the Franklin Circuit Court's injunction will dissolve, rendering SB 1, SB 2, HB 1, and HJR 77 enforceable. In the meantime and beyond, the Boone County Circuit Court's injunction precludes the Governor from doing anything that would contravene or violate these laws. The Supreme Court spoke clearly in its opinion when it said: “As we have noted time and again, so many times that we need not provide citation, the General Assembly establishes the public policy of the Commonwealth.” With this language the Supreme Court reaffirmed the legislature's unique ability to represent the diversity of the Commonwealth. Concluding his remarks, Mr. Cameron said he is hopeful that the Governor and the General Assembly, moving forward, can find consensus on what is needed to protect Kentuckians. Representative Meredith thanked Mr. Cameron for his helpful, detailed summation of the Supreme Court ruling.

In response to a question from Senator Alvarado regarding the opinion that judges sometimes inject politics in their decision-making, Mr. Cameron replied that it is his responsibility to make sure that he is respectful of all members of the judiciary, though he may vigorously disagree with some decisions that are made—whether at the circuit court, court of appeals, and even the Supreme Court level. He said it

is not uncommon for a trial court, or even the Court of Appeals, to get things wrong and for reversals to occur. He thinks the Supreme Court made the point that the legislature holds the keys in terms of statutory authority and the ability to change emergency powers. This should hopefully empower the legislature as it considers its role in continuing to fight the virus.

Representative Wheatley said he hopes the legislature and the executive branch can continue to work collaboratively. He raised the question whether the legislature should have the power to call itself into session, a topic of past arguments on the floor of the House and the Senate. He also spoke about the necessity for the governor to call a special session in order to put in place the results of collaborative work with the legislature. Mr. Cameron said the Supreme Court made it clear that discretion resides with the legislature to place limits on the governor's emergency powers, and the Constitution grants the governor express power to call a special session. He said he hopes the legislature and the governor can continue to work together during times of emergency and will be able to agree on how to ultimately handle additional measures to confront COVID-19.

When asked by Senator Nemes, Mr. Cameron said the Franklin Circuit Court should lift the injunction no later than September 13 and should not be able to place any conditions on dissolution of the injunction.

Representative Nemes said that the Supreme Court ruling represents a seminal moment in the relationship between the legislature and the executive branch. The governor argued that he alone got to declare when an emergency exists, how to respond to that emergency, and how long his declared emergency exists. The Supreme Court, in a very strong opinion, stated, "In fact, non-enforcement of a duly-enacted statute constitutes irreparable harm to the public and the government." The court also said, "Furthermore, the assertion that the Governor would be forced to call a special session every 30 days is not credible." That argument was considered and unanimously thrown aside by the Kentucky Supreme Court. Representative Nemes asked the Attorney General to comment on the magnitude of the opinion and its importance in establishing the policy-making rights of the legislature. Mr. Cameron responded that the Supreme Court recognized that the framers of the Kentucky Constitution wanted to have a robust legislature that would be "in the driver's seat" relating to statutory change. It is also important to note that the Supreme Court repeatedly expressed the point that the Governor has no inherent or implied authority and that his authority is derived from statute.

Senator Thayer said that for the first time during his tenure in the General Assembly, Kentucky has an attorney general who is willing to defend the actions of the General Assembly, the people's branch of government. He said that the bills in question that were vetoed by the Governor had emergency clauses and went into effect after the vetoes were overridden by the legislature. He questioned whether the Governor had followed the law during the intervening time between passage of the bills into law and the recent ruling of the Supreme Court that upheld the laws. Mr. Cameron said there is an open question whether the

governor was faithfully executing the laws during that intervening time period, but he is not willing to pass judgment on the Governor without taking the issue under advisement. Viewed from the Governor's perspective, the laws were stayed in Franklin Circuit Court; viewed from another perspective, the ruling by the judge in Boone County would have enjoined the Governor from doing anything that was inconsistent with the bills that were passed.

Representative Smith asked whether there is an opinion or research relating to businesses requiring employees to be vaccinated against COVID-19. Representative Meredith said he believes that issue is a matter of public policy that has not been addressed at this point—and which the Attorney General may or may not wish to address. Mr. Cameron said he does not believe his office has received any inquiries regarding that question. He is not able to comment further at this point, without looking specifically at an actual opinion request, or specific factual information related to a vaccine requirement in a private business.

Representative Meredith asked about KRS Chapter 39A, with respect to extending the time period for emergency declarations. Mr. Cameron said that the statutes (39A.090) provide a mechanism for local governments to request an extension of a 30-day period—for up to 90 days, he believes. There were no more questions, and Representative Meredith thanked Mr. Cameron and Mr. Meredith.

#### **Discussion of Issues Relative to COVID-19 in Kentucky Correctional Facilities**

The guest speakers were Jim Daley, Campbell County jailer and President of the Kentucky Jailers Association; Cookie Crews, Commissioner, Kentucky Department of Corrections, Justice & Public Safety Cabinet; and Robyn Bender, General Counsel, Justice & Public Safety Cabinet.

Mr. Daley said that beginning in March 2020, jails began having a lot of problems and issues that required significant changes to operations at local detention facilities. With those changes came substantial costs. The emergency orders from the executive branch and the Supreme Court had a major impact. Some of the increased costs suffered by jails and counties are intangible. The Campbell County jail has a budget this year of approximately \$17 million and is the largest employer in the county. Full service jails are very expensive, and county fiscal courts are tasked with that cost by statute. However, the greatest cost to Campbell County has been the loss of a 20-plus year sergeant and a three-year deputy to COVID.

Mr. Daley said that, as an elected jailer, he does not control who is admitted, how long they are there, or when they are released. He does not control his own budget. All of that is set by statute. It is particularly true for every full-service jail and becomes an item of contention for many detention facilities. He is extremely fortunate, in that Campbell County has a wonderful fiscal court and a wonderful judge/executive. Because of jailers' lack of control, most jails are not equipped to deal with quarantine or other issues relating to COVID. For a long time the Campbell County jail did not have any issues and then suddenly had 200 people infected by COVID. Within one month the jail was COVID-free. Today, approximately 18 people in the jail are COVID-

positive. Even prior to COVID, it was difficult to hire people for jail work. The jail is a potential 656-bed facility that currently has about 450 inmates. Campbell County has a suggested capacity of 85 for deputies but is down by 50 due to COVID. These intangible costs—not seen from the outside—are personnel-related. Overtime is another big issue. In July 2020, the monthly overtime bill was \$80,000, due to a shortage of staff, and the fiscal court had to step up and put that money into the jail. In July 2021, the overtime budget was \$30,000. For the year 2020, the total spent for overtime was \$698,543; so far, the 2021 cost of overtime is \$601,312. Some staff have quit because they cannot take a vacation. Due to staff shortages, there are people on-call every week. They not only have to worry about their own health but also the health of their families.

Transport between jails for the last 18 or 19 months was temporarily shut down because of COVID and may have to be shut down again. Campbell County had to bear the cost of implementing virtual court. Without virtual court, inmates have to be transported, because some judges want the person in front of them. Online visits for attorneys have to be set up and maintained. Because of its number of state inmates, Campbell County has to do that for counties throughout the state which is expensive. Mr. Daley said he hired his own IT staff person to deal with the issue, at a cost of \$60,000, plus the cost of benefits and equipment. He felt it was his facility's duty because it holds inmates from all over the state.

Mr. Daley said that his jail received a call from the Department of Corrections regarding a need to limit visitations, but a couple of jails have been written up, upon inspection, for not allowing visitation. Campbell County had to stop faith-based services, substance use treatment, and monoclonal reconnection therapy. Those programs are really needed in local jails. Campbell County was planning to start them again but had to shut them down again because of renewed problems with COVID and the new variant.

Mr. Daley said that all of the changes that were required were made with no extra funding from the Commonwealth, and jail revenue has taken a drastic hit from the pandemic. He paid the county police department for several months to supply people to work in the jail. His prison account for 2021 lost \$1.6 million in revenue that would have been received for housing state inmates. He said he has those figures broken down by month, and he offered to share that information.

Mr. Daley said that passage of HB 556 during the 2021 regular session was supposed to provide an extra \$2/day per diem for the duration of COVID. However, not a single county facility has received any of the funding outlined in that bill, and the Department of Corrections has recently communicated that expenses are not recoverable without a line itemization of the expenses. Campbell County has a great jail staff and a fiscal court that takes care of a lot of things relating to funding, but smaller jails do not have the ability to do that. It is a very expensive process, and they would not be able to provide numbers to substantiate all the expenditures.

Responding to questions from Representative Matt Lockett, Mr. Daley said he can only speak for



the Campbell County Detention Center, which has a mask mandate and also checks temperatures when people come in. In-person visitation has stopped, but attorneys can meet with their clients online. They can also provide written materials for the jail to pass on to their clients. About 50 percent of jail staff have been vaccinated. Vaccination is offered every day, and a lot of state inmates choose to be vaccinated. At least a dozen staff or inmates have had COVID and recovered. Two died. He does not have that information for other facilities.

In response to a question from Representative Moser about utilization of substance use disorder beds that are contracted with various vendors around the state by the Department of Corrections, Mr. Daley said he does not know the answer to that and does not know of any problems or questions about that from other jailers. Representative Moser said there are inmates who could benefit from that treatment. Use of those beds would also help alleviate overcrowding issues in jails and is an issue that should be reviewed.

Senator McDaniel spoke about the budget impact of the jail's loss of revenue for state inmates who leave the jail. Mr. Daley confirmed that, because of lack of staffing, he shipped out about 85 state inmates a couple of months ago. Senator McDaniel said that jails should have received money that was allocated to begin setting up videoconferencing with the court system, and Mr. Daley said they "had not seen a dime." Senator McDaniel also spoke about the legislature's appropriation of monies to defray costs related to COVID. He suggested that the Department of Corrections should begin to reconsider its position and not decide that those who serve on the front line deserve less.

When Representative Deanna Frazier asked about vaccination rates in the jails, Mr. Daley said there was a slow start, with some jails being late in having the ability to get the vaccinations. In northern Kentucky the health departments acted quickly, and the Campbell County jail has vaccinated about 50 percent of its current population. Also, many released inmates have been vaccinated.

In response to a question from Representative Tate about policies relating to quarantine, Mr. Daley said there is no statewide quarantine policy for jails. In Campbell County, inmates are quarantined for seven days when they come in, but that may be changing to 10 days because of the influx of new cases. If inmates have symptoms, they are placed in a separate quarantine area for another 10 to 15 days. He discussed the guidelines in more detail and stated that the decisions are made at the local level.

Responding to Representative Stevenson, Mr. Daley discussed the protocols for protecting inmates from COVID. He noted that they include housing COVID-positive inmates together and requiring inmates to wear masks when outside their cells.

Representative Adam Koenig asked about the visitation policy. Mr. Daley said that jails are doing visitation in different forms. His jail does not currently have in-person visitation. Every facility is different. Kenton County, for example, has a beautiful facility that has the ability move people around and that has a nice visitation area. A lot of jails do not have that. Representative Koenig also stated that it is time

for the legislature to seriously consider increasing the per diem for jail staff on a permanent basis, not just COVID-related.

Representative Derek Lewis said that the jails in his district—Clay, Laurel, and Leslie Counties—are also struggling as a result of COVID, and he also echoed Senator McDaniel's concerns about defraying expenses.

There were no more questions, and Representative Meredith thanked Mr. Daley for his testimony. The next speakers were Cookie Crews, Commissioner of the Department of Corrections, and Robyn Bender, General Counsel for the Justice and Public Safety Cabinet.

Ms. Crews said that the first COVID-positive test of an inmate occurred in April 2020. Dealing with the virus has been extremely hard for staff. Last year, 48 inmates and five staff were lost to COVID. Around April 2020, the prisons began vaccinating the vulnerable group of ages 60 to 80 and later began to vaccinate staff and the general inmate population. Currently, the vaccination rate for the inmate population has increased to 83.02 percent, but the rate at individual institutions can range from 35 percent to 75 percent. There are efforts to test staff twice a week if they are unvaccinated. Ms. Crews expressed concern for the health and safety of staff and their families. The prisons continue to do mask wearing and testing. When inmates enter the system, each is given a rapid test after leaving the bus. They are tested again twice after seven-day intervals.

Responding to Representative Decker, Ms. Crews said she does not have the information with her about the number of inmates that have recovered from COVID but offered to get that information, broken down by institution. Regarding treatment protocols, this is dealt with on a case by case basis whether the person is vaccinated or unvaccinated.

Responding to Representative Heavrin, Ms. Crews said that the power at the Peewee Valley facility was restored the previous night. The power structure has not been fixed, but power is being provided by generators.

Representative Johnson said he would appreciate receiving information about the percentage of staff and guards that have been vaccinated and the percentage that have had COVID and recovered. Ms. Crews said she can only speak generally. It depends on the location in the state. In Oldham County, for instance, the three prisons have a vaccination rate of 50-70 percent. In the eastern part of the state, the rate is probably about 32-34 percent and around 40 percent in the west. She offered to get the number of COVID recoveries for Representative Johnson.

Responding to Representative Lockett, Ms. Crews confirmed that personal protective equipment is provided as needed. When he asked about factors contributing to staff shortages, Mr. Crews said it is a combination of things. Because of COVID, people are worried about their families. She also spoke about the relatively low pay, the long hours, and the unpleasant aspects of dealing with prisoners.

When Representative Moser asked about the use of substance use disorder beds contracted to vendors, Ms. Crews said that those are being utilized to the best of the Corrections Department's ability. She thinks all

the beds are filled but offered to get that information. She believes that inmates are getting substance use treatment but that COVID has slowed the process down. Sometimes when inmates leave, due to the pandemic, it may cause them to reconnect with their families as opposed to going to a halfway house.

Representative Moser discussed Regeneration and monoclonal antibody infusion, which are treatments available for individuals who test positive if they meet certain criteria. She asked whether DOC would consider use of these treatments. They have been shown to reduce severe illness and hospitalization. Ms. Crews responded affirmatively. Representative Moser said the treatment should be utilized and she would be happy to assist any effort to expand use of the treatment.

Senator Alvarado urged anyone who has not been infected to get a vaccination. Even those who have been infected that may have an adequate antibody response should get a vaccine as a booster to their immune level. He also said that the nursing home environment is also struggling with staffing issues, with about 36,000 clinical beds in the state.

Representative Walker Thomas said he would like to know how many non-US residents are in the state's prison system this year, compared to last year, and how many might have tested positive for COVID. Ms. Bender agreed to get that information.

Responding to questions from Representative Tipton, Ms. Crews said that 83.02 percent of inmates have been vaccinated. Regarding the vaccination rate of state prisoners in local jails, she said she would probably not have information on them until they actually enter the prison system. As to inmate capacity at the institutions, she said she does not know the capacity last year but can get that information. Today the capacity is 10,027, with 1,645 of those inmates being vaccinated. Ms. Bender said she believes the population in March 2020 was approximately 12,000 but that she would get that information for Representative Tipton.

Representative Koenig suggested that there was some ambiguity in previous testimony regarding visitation policy. Ms. Crews said that DOC does not provide direction for county jails.

Representative Meredith asked about public health guidance that was provided by the Justice & Public Safety Cabinet and the Department of Public Health. He said it seems as though the Jailers Association may have been working from those guidelines. Ms. Bender described documents from various agencies and government offices that addressed guidance for visitation in penal institutions and said that the Department of Corrections did not issue a directive about jail visitation.

Senator Robin Webb asked about opportunities for vaccination at the prison institutions. Ms. Crews said that vaccination is voluntary. They are given one-on-one information about what it would mean to them as an individual and why getting vaccinated is recommended. Senator Webb also asked whether accurate reporting data is available regarding state inmates that are in county jails. Ms. Crews said she would get an answer to that for Senator Webb.

Responding to Representative Tate, Ms. Crews briefly discussed how COVID has impacted services

to the inmates. She said that early on during the pandemic most programs were shut down for about a year, but all programming and education shifts have now been restored.

Responding to Senator Southworth, Ms. Crews said that unvaccinated inmates are able to have visitation. In order to provide stability and safety, visitors are required to be vaccinated. The plan is to gradually open up visitation to children and eventually the unvaccinated, but they have not reached that point yet. Senator Southworth said she heard from a constituent that a child was not allowed to be included in a visit that took place via Zoom. Ms. Crews said that should not have happened and that children should be able to visit via Zoom. Her plan is to fully restore visitation in person at some point. It is important both to the inmate and to family members.

Representative Meredith asked whether any local jails that house state prisoners have requested help because of overcrowding. Ms. Crews said that small jails are not able to quarantine like they should, and from time to time DOC has removed state inmates from jails that reach out to DOC. In the early days of COVID, several jails requested help. One request, she recalled, came from Nelson County. When Nelson County was able to house them, the inmates were shipped back.

There being no further business, the meeting was adjourned at 12:08 p.m.

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

### **Minutes of the 3rd Meeting of the 2021 Interim August 5, 2021**

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

The 3rd meeting of the Interim Joint Committee on Natural Resources and Energy was held on Thursday, August 5, 2021, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators C.B. Embry Jr., Denise Harper Angel, John Schickel, Adrienne Southworth, Johnnie Turner, Robin L. Webb, Whitney Westerfield, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Randy Bridges, Tom Burch, McKenzie Cantrell, Myron Dossett, Ryan Dotson, Jim DuPlessis, Patrick Flannery, Chris Fugate, DJ Johnson, Norma Kirk-McCormick, Mary Lou Marzian, Suzanne Miles, Melinda Gibbons Prunty, Attica Scott, Pamela Stevenson, Bill Wesley, and Richard White.

**Guests:** Lee Crume, President and CEO, Northern Kentucky Tri-Ed; John Cox, Manager, Public Affairs, Kentucky Chamber of Commerce; Rich Storm, Commissioner, Kentucky Department of Fish and Wildlife Resources (KDFWR); Rob Lewis, Engineer, FILO program, KDFWR; Scott Porter, Legal Staff, KDFWR; George Howard, CEO, Restoration Systems; and Tom Fitzgerald, Director,

Kentucky Resources Council.

**LRC Staff:** Stefan Kasacavage, Tanya Monsanto, Janine Coy, and Rachel Hartley.

#### **Economic Development and the Role of the Fee-In-Lieu-Of Program**

John Cox stated the Clean Water Act (CWA) requires a company to obtain a Section 404 permit for a project from the United States Army Corps of Engineers (USACE) if construction will disturb a stream or wetland. In the last 10 years, about 450 Kentucky development projects have required the Section 404 permit, and obtaining the permit can sometimes take years.

The Kentucky Chamber of Commerce became involved with the process of obtaining permits about a year ago. Problems were discovered in the permitting process that could potentially deter companies from investing in projects in Kentucky. The KDFWR currently manages the process and is backlogged. A company can speed up the permitting process by paying the Fee-In-Lieu-Of (FILO) to KDFWR. In 2019, the FILO program had approximately \$148 million.

There are currently nine counties in northern Kentucky, and all or parts of 15 eastern Kentucky counties have limited access to the FILO program.

Lee Crume stated FILO needs to spend funds in the same or adjoining watershed where the disturbance necessitating the FILO payment occurred. Also, the credits need to be more affordable.

Senator Webb stated the primary goal should be to maintain the purpose of the CWA.

In response to Senator Schickel, Mr. Crume stated there are zero credits available for northern Kentucky.

In response to Representative Gooch, Mr. Crume stated the KDFWR is working with USACE to create a larger pool of credits.

#### **Fee-In-Lieu-Of Program's Regulatory Arm: KDFWR and USACE**

Rich Storm stated the FILO program provides a mechanism to help ensure sustainability in land development. Kentucky's FILO program operates within a mitigation framework under the control of the USACE. The FILO program restores water quality and habitat as well as supporting hundreds of jobs in Kentucky.

To date, the FILO program has restored more than 130 miles of streams and added 6,300 acres of wildlife management areas. Since September 2020, the FILO program has purchased over 4,300 acres of projects in the following counties: Boone, Boyd, Clay, Clinton, Cumberland, Elliott, Graves, Jackson, Lewis, Morgan, Monroe, and Rowan. Currently, there are 49 pending projects with more than 2,900 acres under contract. The FILO program's current balance is \$166 million, and 85 percent is already obligated to projects.

Scott Porter stated the basic premise of the Section 404 permitting program is that no discharge shall be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the discharge would cause the nation's waters to be significantly degraded.

The definition of waters in the United States was revised and extremely limited in scope during the

Trump administration. Under the revisions, the CWA expressly excludes certain waters and water features from the definition, which significantly affects Kentucky.

In 2008, the CWA was amended to establish a preferential order for mitigation. If a mitigation bank, in good standing, exists within a service area, the permit applicants are directed to use mitigation banks. If there is no established mitigation bank in good standing within a service area, permit applicants are directed to use the FILO program or perform their own mitigation.

Funds collected by the FILO program are restricted by federal rules, and the expenditures are subject to USACE approval. FILO funds are used to acquire mitigation properties and to design, construct, monitor, and manage mitigation and restoration projects.

In response to Representative Gooch, Mr. Lewis stated the problem is starting the projects, not finding them. Mr. Porter stated acquisition can slow the process.

In response to Senator Southworth, Mr. Lewis stated funds are not allocated until USACE has approved. The funds remain unspent until the bidding for construction begins.

Senator Wheeler criticized USACE regarding a project in his district and stated funds should be used where they are needed most.

#### **The Role and Function of Mitigation Banks**

George Howard stated mitigation is rooted in the CWA. The North Carolina Division of Mitigation Services is very successful. Since 1996, the program has received \$569 million in payments from developers and built more than 649 compensatory mitigation sites.

The solution that emerged in North Carolina is not complex and required no legislation. It was a change in the contracting and procurement approach. Over a period of five years, North Carolina moved from distributed contracting to a more risk adverse system where mitigation providers with private employees guarantee the mitigation.

Mr. Howard gave the following recommendations for Kentucky's FILO program:

Issue "Full Delivery" requests for proposals (RFPs) in the areas with the greatest backlog.

Empower and encourage the FILO program employees, through statute, if necessary, to administer full delivery contracts.

Add the necessary employees and adjust compensation and to attract and retain licensed professionals to administer a comprehensive purchasing program.

Allow contractors to purchase the necessary land rights at free market prices; do not burden the land acquisitions with state procurement rules and appraised prices. This is a fantastic opportunity for rural landowners.

Place the risk of compensatory mitigation credit delivery and all the unanticipated issues that arise at environmental restoration projects on the private sector, and not on the FILO program.

Involve the Transportation Cabinet. No road work should ever be paused or reconsidered due to mitigation. Kentucky has a statewide FILO program



and the Transportation Cabinet should utilize it.

Petition the USACE to support Kentucky in cleaning up its balance of unfulfilled credits using the full delivery method.

The committee should request a detailed accounting and definition of the “allocated” dollars. What stage is the project or watershed in? How much money has been spent on “allocated” projects and on what? This information could be used to determine how much “allocated” funding is available for full delivery.

Finally, after analysis of the data, and successful pilot RFPs, determine a point where “allocated” funds should be re-programmed to full delivery RFPs. This should be at least half of the unfulfilled balance of mitigation credits paid for by the public, or any project more than five years old, whichever is greater.

Tom Fitzgerald stated a mitigation bank is an aquatic resource area that has been restored, established, enhanced, or preserved for the purpose of providing compensation for unavoidable impacts.

Historically, the mitigation was the responsibility of the permittee. Because mitigation must be completed before commencing new projects, many of the mitigation projects were not of great quality and implementation of economic development projects was delayed. In response, USACE developed mitigation tools and separated the responsibility of mitigation from the permit. The changes benefited all parties involved.

The FILO program should be revisited and adjusted to ensure development and land use changes do not occur at the cost of sacrificing clean water and fisheries.

Mr. Fitzgerald stated there are two concerns: (1) to recognize, support, and encourage the efforts of the private sector to create and expand the use of mitigation banks and (2) to consider a range of options to shorten the temporal lag between when the fee is paid and when the money is spent.

In response to Senator Wheeler, Mr. Howard stated Kentucky’s FILO program can be improved and should operate as efficiently as possible.

There being no further business, the meeting was adjourned.

## **PARI-MUTUEL WAGERING TAXATION TASK FORCE**

### **Minutes of the 3rd Meeting of the 2021 Interim September 13, 2021**

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

The 3rd meeting of the Pari-Mutuel Wagering Taxation Task Force was held on Monday, September 13, 2021, at 3:00 PM, in Room 169 of the Capitol Annex. Representative Adam Koenig, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, Denise Harper Angel, Christian McDaniel, and Stephen West; Representatives Al Gentry, Matthew Koch, and Jason Petrie.

Guests: Jason Bailey, Executive Director,

Kentucky Center for Economic Policy; Mike Anderson, President, Churchill Downs Racetrack; and Vince Gabbert, Vice President, Strategic Initiatives & Legislative Affairs, Keeneland Association Incorporated.

LRC Staff: Tom Hewlett, Jennifer Hays, Grant Minix, and Chase O’Dell.

#### **Approval of Minutes**

A motion was made by Representative Koch, seconded by Senator McDaniel, to adopt the minutes of the August 9, 2021, meeting. The motion carried by voice vote.

#### **Effective Tax Rate for Historical Horse Racing**

Jason Bailey, Executive Director, Kentucky Center for Economic Policy; and Mike Anderson, President, Churchill Downs Racetrack, discussed the effective tax rate for historical horse racing.

Jason Bailey testified that Kentucky has a tax on historical horse racing (HHR) of 1.5 percent of the handle. In the most recent year, 91 percent of total handles returned to the public. Net commission of handles totaled 7.2 percent in the same year. A majority of HHR tax revenues go to industry funds. The remainder of tax revenues go to the general fund.

Handles on HHR have grown dramatically, from \$373 million in fiscal year 2015 to \$4.6 billion in fiscal year 2021. There were an average of 3,824 HHR terminals running in fiscal year 2021, which grew up to 5,000 as of July, 2021. The payout percentage with HHR machines is very similar to slot machines in other states.

It is more typical to tax on net wagering rather than on handles. In nearby states where there is a tax on net wagering, rates are much higher. In Kentucky, revenues from the handle tax totaled 17.3 percent of gross commissions that operators earned in fiscal year 2021, making the effective tax rate on HHR 17.3 percent of gross commissions. Of that 17.3 percent, more than half goes to the various industry funds, with less than half going to the general fund. When considering only revenues that go to the general fund, the effective tax rate on HHR as a share of gross commission is 7.7 percent.

In response to a question from Representative Koenig, Mr. Bailey stated that the conversation concerning an appropriate HHR tax rate should start with the four bills or amendments which were introduced in the 2021 regular session.

In response to a question from Senator McDaniel, Mr. Bailey testified that the effective tax rate he presented represents the bottom line of what is reported to the Horse Racing Commission. He continued to say that the Kentucky Thoroughbred and Kentucky Standardbred development funds include purse supplements. Mr. Bailey continued to state that it is difficult to call the regulation requiring a contract between tracks and the horsemen’s associations a tax, because there is no minimum contribution or duration required by the regulation. Essentially, 92 percent of the income on commission goes back to the industry in various forms, while eight percent goes to the general fund.

Senator Thayer stated that the model of requiring tracks to contract with horsemen’s associations is the model used nationwide, and is governed by federal law. In response to questions from Senator Thayer,

Mr. Bailey stated that he has a master’s degree in public finance and has been looking at economic issues in Kentucky for over 20 years. He continued to say that he operates a non-profit organization that has a payroll with 10 employees. Mr. Bailey said that he has never worked at a racetrack. Senator Thayer stated that the effective tax rate on horse racing is much higher than the 1.5 percent rate established by the General Assembly. He continued to say that HHR is taxed in Kentucky similarly to other states. HHR is also taxed similar to how other states tax casino and slot operations. In response to another question from Senator Thayer, Mr. Bailey testified that he has never run a for-profit business.

In response to a question from Representative Koenig, Mr. Bailey testified that several of the industry funds are capped, and would have received higher revenues if not for the cap. In response to another question, Mr. Bailey said that he used fiscal year 2021 data because it was the most recent year, as well as because there was growth in volume in that year.

Mike Anderson testified that a statutory excise tax of 1.5 percent of handle exists on all money wagered on historical horse races. Revenues from this excise tax are distributed between numerous research programs, funds, and the general fund. The breed development funds are essential to the growth Kentucky’s horse industry.

Kentucky administrative regulation requires each racetrack association to enter into an agreement with the respective breed horsemen’s associations to establish the allocation of a portion of the take-out to purse money. These regulatory obligated contracts with horsemen are required in order to operate HHR machines, as well as live racing and simulcast racing.

Purse money is statutorily established in some of the states Kentucky competes against. In Kentucky, all contracts with racetrack associations are tied to 15 percent of net revenue. Net revenue is calculated as takeout, minus free play and excise taxes. Contracts typically run for 10 years. The excise tax combined with the purse money obligated under the regulatory requirements form the effective tax rate.

If \$100 is wagered on a HHR in Kentucky, with an average takeout rate of 8.66 percent, \$8.66 is returned to the track, while \$91.34 is returned to the public via allocated wagering pools and is paid out to the winners. In order to incentivize customers to wager on HHR, tracks will issue free play, which averages approximately 15 percent of takeout or one percent of handle. Free play is a marketing tool used to drive traffic into the facility and is common practice for the gaming industry as a whole.

The Kentucky excise tax is applied on the total handle. After payout, free play, and the excise tax are applied, tracks are left with an average of \$5.86 of the initial \$100 wager. When factoring these, the effective excise tax rate on cash takeout becomes 20.4 percent. The contractual purse obligation for tracks in Kentucky is equivalent to an 11.9 effective tax rate of takeout after free play. When factoring the excise tax and contractual purse obligation, the combined effective tax rate becomes 32.3 percent of revenue for the racetrack.

Kentucky’s borders are surrounded by direct

casino or video lottery competition. These states hold competitive gaming advantages over Kentucky due to their slot machines, card and table games, and sports wagering.

Kentucky's effective tax rate is already on the high-end of rates compared to border states.

In response to a question from Senator McDaniel, Mr. Anderson testified that the federal regulation requires that a contract be enacted between horsemen associations in each respective state and the track associations in order to conduct simulcasting across state borders. In response to another question, Mr. Anderson stated that racetracks must contract with local and state horsemen's associations in accordance with regulatory guidelines. The rate established by these purse contracts varies between states and rarely fluctuates. In response to a final question from Senator McDaniel, Mr. Anderson said that to remain competitive Kentucky should continue what it has been doing. The passage of Senate Bill 120 has allowed racetracks to continue to invest in their businesses, which will continue to increase the total handle of HHR.

In response to a question from Representative Gentry, Mr. Anderson stated that it is necessary to consider the mandatory contractual purse agreements with horsemen's associations to compare the competition between Kentucky and other states, some of which have statutory purse components. Representative Gentry stated that HHR has saved the horse racing industry in Kentucky. In response to another question, Mr. Anderson stated that he was unsure whether there were licensing fees for HHR machines.

Representative Koch stated that horsemen like HHR because it has allowed the business to grow. He continued to say that the industry is taxed heavily.

In response to a question from Representative Koenig, Mr. Anderson stated that most other states that Kentucky is competing against do not tax free play as Kentucky does.

Senator Thayer discussed the benefit of how prize purse winnings trickle throughout Kentucky's economy. Senator Thayer stated that Kentucky is taxing HHR at a rate similar to, or higher than, surrounding states. He continued to question why Kentucky would want to increase taxes on a signature industry such as horseracing. In response to a question from Senator Thayer, Mr. Anderson testified that Churchill Downs pays payroll taxes, occupational taxes, property taxes, and more, which amount to a significant amount of tax dollars to the commonwealth.

#### **Current and Future Capital Investments at Kentucky's Tracks**

Vince Gabbert, Vice President, Strategic Initiatives & Legislative Affairs, Keeneland Association Inc., discussed current and future capital investments at Kentucky's tracks.

Vince Gabbert testified that in the last three years, there has been significant investment at Kentucky Downs. Every market and facility is experiencing growth. Significant investment has translated to permanent jobs as well as construction jobs and occupational and local taxes. The amount of demand in Kentucky for stalls is at an all-time high. The actions of the General Assembly have helped

drive this demand.

The purse structure in Kentucky is unique because tracks fund the bulk of it. Purses since 2018 have grown significantly, especially for those who are breeding and racing horses in the commonwealth.

In response to a question from Senator Thayer, Mr. Gabbert stated that each racetrack association goes through a licensing process with the Horse Racing Commission, which is funded by the racetracks through unclaimed pari-mutuel tickets and assessments. On average, each HHR facility has 220 to 280 full-time employees. The cost to own and operate an HHR machine could range from \$11,000 to \$17,000 per machine. Senator Thayer spoke to the economic impact of the industry's \$1.5 billion of investments.

With no further business before the committee, the meeting was adjourned.

### **COMMISSION ON RACE & ACCESS TO OPPORTUNITY**

#### **Minutes of the 2nd Meeting of the 2021 Interim**

August 18, 2021

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

The 2nd meeting of the Commission on Race & Access to Opportunity was held on Wednesday, August 18, 2021, at 3:00 PM, in Room 171 of the Capitol Annex. Representative Samara Heavrin, Co-chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator David P. Givens, Co-Chair; Representative Samara Heavrin, Co-Chair; Senators Karen Berg and Whitney Westerfield; Representatives George Brown Jr., Nima Kulkarni, and Killian Timoney; Hannah Drake, Ricky Jones, and Erwin Roberts.

Guests: Laurie Dudgeon, Director, Administrative Office of the Courts; Rachel Bingham, Executive Officer, Administrative Office of the Courts; Patrick Carrington, Coordinator, Administrative Office of the Courts; Ladeidra Jones, Chair, Kentucky Parole Board; Aaron Thompson, President, Council on Postsecondary Education; Bill Payne, Vice President for Finance and Administration, Kentucky Council on Postsecondary Education; Travis Powell, Vice President and General Counsel, Council on Postsecondary Education; and Dawn Offutt, Diversity Director, Kentucky Council on Postsecondary Education.

LRC Staff: Alisha Miller and Elishea Schweickart.

#### **Parole in Kentucky**

Ladeidra Jones, Chair of the Kentucky Parole Board, began the presentation by giving the members information on racial disparity in Kentucky's parole system.

In 2020 the total inmate population was 20,125. This total included:

16 Native Americans or Alaskan Native;  
31 Asian or Pacific Islander;  
249 Biracial;  
4380 Black or African American;

293 Hispanic or Latino;  
14 unknown; and  
15,142 White.

In 2020 the parolee population was approximately 10,243. This included:

5 Native Americans;  
27 Asian or Pacific Islander;  
91 Biracial;  
1886 Black or African American;  
101 Hispanic or Latino;  
1 unknown; and  
8124 White.

Ms. Jones stated in 2020, 2,790 Black or African American inmates were released with 304 recidivated with a new commitment and 483 returned on a technical violation, while 14,356 White inmates were released with 1,669 recidivating with a new commitment and 3,659 returned on a technical violation.

Responding to a question from Representative Brown, Ms. Jones stated that Black/African American inmates make up about twenty percent of the inmate population and about eighteen percent of the parolee population.

Responding to a question from Senator Westerfield, Ms. Jones stated that she would get the commission members data on women incarcerated and on parole in Kentucky.

Responding to a question from Senator Givens, Ms. Jones said the 2020 inmate total was the total for the entire year.

Ms. Jones concluded by stating that they hope to increase trainings aimed at confronting implicit bias and correcting racial disparities in the system.

#### **Minority Sentencing**

Laurie Dudgeon, Rachel Bingham, and Patrick Carrington, from the Administrative Office of the Courts (AOC), presented on minority sentencing in Kentucky. Ms. Bingham stated that since the 2014 Regular Session Senate Bill 200 that reformed juvenile justice, AOC has found that the reforms have been successful. Children in the system have had increase in opportunity and more diversion. Also, children with low level misdemeanor offenses have been able to be kept out of the system. Ms. Bingham also pointed out that while these reforms were particularly effective for white children, they were less effective for black children.

Ms. Dudgeon stated that once the data came out after the reforms in 2014, AOC began to meet regularly with the Juvenile Justice Oversight Committee. Also, in 2014 the Disproportionate Minority Contact in Kentucky: Statewide Assessment Report was released by the Department of Justice Administration Research Team at the University of Louisville. In 2017, Senator Westerfield made a request to all of Kentucky's child serving agencies to start voluntarily reporting data involving racial and ethnic disparities, and AOC began to report information they had. This information included education, data collection and analysis, local action planning, and ongoing assessment and improvement.

Mr. Carrington spoke about the Diversity, Equity, and Inclusion Statement and Policy at AOC. This policy lets employees know that equal treatment and respect is important. Mr. Carrington also stated that AOC believes this policy puts them in the best



position possible to properly serve the diverse populations in Kentucky. AOC is also currently working on a leadership program that will give students at Kentucky State University an internship at AOC.

In 2019 the Kentucky Court of Justice (KCOJ) partnered with the Jefferson County Racial and Fairness Commission to participate in a series of community engagement sessions called Court Talks. During these sessions, Representatives of KCOJ spoke with the public about their positions and gave the public an opportunity to voice any questions or concerns they may have about the judicial system.

In 2020, the KCOJ created the William E. McAnulty award, named after the first Supreme Court Justice in the state of Kentucky. This award recognizes African American leaders within the organization. The 2020 recipient has been with KCOJ for over 40 years.

Ms. Bingham stated that AOC tries to really study the data they receive and use it to improve racial disparity issues within the court system. Focus has been given to track recidivism and understand what may or may not influence offenders. Ms. Dudgeon stated that she believes AOC does a good job at tracking race data, and they do have some limited ability to capture economic data. There is also a current underutilization of Kentucky's specialty court programs, which include Drug Court, Mental Health Court, and Family Recovery Court. Race data from the specialty court programs show that 39 percent of the white population received referrals and 30 percent were non-white. Ms. Bingham stated that accessibility and appeal were large barriers for drug court, along with federal restrictions. National pretrial data from the Bureau of Justice Statics has not been available since 2002.

AOC has utilized the data they receive to improve their organization. These improvements include workforce development, local action plans to better serve Kentucky counties, multiple trainings, and web-based juvenile justice data for public viewing. Trainings include:

- Implicit Bias;
- Cultural Collisions;
- Racial Trauma Dialogues; and
- Antiracism.

AOC also created a Racial and Ethnic Disparities Tool Guide. This contains a four step model for employees to follow. These steps include: identify, construct, institutionalize, and reevaluate.

Responding to a question from Senator Westerfield, Ms. Dudgeon stated that they will get the commission information on the average age of Class A and Class B felony offenders. She also stated that not having a misdemeanor probation in Kentucky is a problem.

Responding to a question from Chair Givens, Ms. Dudgeon stated that AOC has data sharing commitments with multiple agencies in Kentucky, but data sharing needs to be improved.

Responding to a follow-up question from Chair Givens, Ms. Bingham stated that some trends they see have been centered on disproportionality and AOC is working with Kentucky counties to improve this issue.

Responding to a question from Senator Berg, Ms. Dudgeon said that AOC is working to make sure their diversion program is equally accessible to every child, despite their race. Also, many charges are mandatorily diverted by Kentucky statute.

Responding to a question from Representative Kulkarni, Ms. Dudgeon said AOC would get the commission data for sentencing by gender.

Representative Kulkarni also requested to receive available data from the Department of Corrections and information on the impact of decriminalization of marijuana in Jefferson County.

**Minority Postsecondary Graduation Rates**

Aaron Thompson, President of the Council on Postsecondary Education (CPE), spoke to the commission on postsecondary education. President Thompson briefly commented on the previous AOC presentation, stating that many of the issues criminal offenders and the community face could be helped by higher education. Kentucky has set a goal of having 60 percent of the workforce with a postsecondary credential or higher by the year 2030. This percentage is connected with having a thriving workforce and economy. Kentucky continues to surpass the growth rate, by almost double, that is needed to reach the states 60 percent goal. In order to reach this goal CPE has set up framework, which includes: strategic agenda, which sets goals for all public campuses aligned to the overall state goal; diversity policy, which helps campuses set and meet goals specifically targeted to increase the success of underserved and underrepresented populations; and performance funding, which rewards campuses.

Dr. Payne spoke about the performance funding formula. In Kentucky, there is a university funding model and an identical funding model used for the Kentucky Community & Technical College System (KCTCS). The performance formula used is: 35 percent for student success, 35 percent for course completion, 10 percent for academic support, 10 percent for institutional support, and 10 percent for maintenance/operations. Each institution's share of what they produce determines what its distribution will be from each funding pool. This formula also helps campuses focus on certain goals, which include:

- Increasing retention and timely completion;
- Undergraduate degrees and credentials;
- Increasing degrees earned by low income and underrepresented minorities; and
- More degrees and credentials in fields that garner higher wages upon completion.

President Thompson stated that CPE is also using the performance funding formula to close opportunity and achievement gaps, pushing institutions to help those who have been historically disenfranchised. Premiums included in the funding model for minority students, low income students, and STEM+H degrees can slightly change every year, but CPE feels they have developed one of the largest incentive premiums thus far.

Currently, Kentucky only has about 50 percent of high school graduates attending college, and many adult learners not engaging in higher education. There are also many areas within the state not completing

degrees at the rates that they need to. When looking at the overview of enrollment, Kentucky is down almost 16 percent in overall enrollment population, but up 6.4 percent in underrepresented minorities. Graduation rates are also up, but another need is increasing low-income underrepresented minority graduation rates at both the universities and KCTCS. Currently, Kentucky is up 30.6 percent on overall degree attainment, and 60.1 percent on underrepresented minorities' degree attainment. Bachelor's Degrees awarded by public universities is up 18 percent overall and 59 percent for low-income and underrepresented minorities.

Ms. Offutt stated that, overall, Kentucky institutions are doing a lot to facilitate change and progress. Some of these changes include taking a more holistic look at student success, targeted recruiting practices aimed toward low-income and underrepresented minority students, increasing outreach via organizations and activities, focusing on the transition to postsecondary education through academic readiness and bridge programs, increased focus on advising, and faculty/staff training. CPE is also in the process of piloting their cultural competency certification initiative with campuses this coming fall.

Dr. Ricky Jones stated that he appreciated the work that has been done, but he cautioned against using a performance based funding. He stated that this is a model driven on credit hour production, which can be problematic on a number of levels. He also cautioned people on the focus on STEM because of the negative effect that is having on the humanities, arts, and sciences. Dr. Jones stated that the information from the presentation is good to hear, but he also encouraged people to look at value-added programs.

Responding to a question from Representative Kulkarni, President Thompson stated that international students are a part of the diversity policy. He also stated that there are also several colleges in Kentucky that are working with refugee students to place them in programs and get them into the workforce.

Responding to a question from Senator Berg, President Thompson stated that both race and poverty contribute to educational gaps.

**Adjournment**

With there being no further business, the meeting was adjourned at 4:37 PM.

**UNEMPLOYMENT INSURANCE REFORM TASK FORCE**  
**Minutes of the 3rd Meeting**  
**of the 2021 Interim**  
August 30, 2021

Call to Order and Roll Call

The 3rd meeting of the Unemployment Insurance Reform Task Force was held on Monday, August 30, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Michael J. Nemes, Co-Chair; Representative Russell Webber, Co-Chair; Senators Ralph Alvarado, Brandon J. Storm, Mike Wilson,

and David Yates; Representatives Josh Branscum, McKenzie Cantrell, Phillip Pratt, and Scott Sharp.

**Guests:** Mike Harmon, Kentucky Auditor of Public Accounts; Sara Beth Gregory, Chief of Staff, Office of the Auditor of Public Accounts; Jon Grate, General Counsel, Office of the Auditor of Public Accounts; and Joe Horvath, Senior Fellow, Foundation for Government Accountability.

**LRC Staff:** Andrew Manno, Drew Baldwin, Kirk Smith, Sasche Allen, and Helen McArthur.

#### Approval of Minutes

A motion to approve the minutes of the July 27, 2021, meeting was made by Senator Alvarado, seconded by Senator Nemes, and approved by voice vote.

#### Unemployment Insurance Audit

Per KRS 43.060, the Auditor of Public Accounts (APA) does an annual audit of the Commonwealth of Kentucky's Annual Comprehensive Financial Report (ACFR) in accordance with generally accepted accounting principles. In December 2020, the APA issued a Qualified Audit Opinion on the Unemployment Insurance Fund because of the internal control environment and an unknown amount owed to those who filed for unemployment insurance benefits during FY 2020. The APA conducts the Statewide Single Audit of Kentucky (SSWAK) to meet the Federal Single Audit Act requirement that applies to all state and local governments expending federal awards of \$750,000 or more. Volume I of the SSWAK, which was released in February 2021, reports the financial and internal control findings from the ACFR audit. Out of the 25 findings for FY 2020, more than half involved the Office of Unemployment Insurance and the Unemployment Insurance Fund. Volume II of the SSWAK, which was released in April 2021, reports on compliance with federal requirements for federal awards. Out of 21 findings for FY 2020, eight of those involved the Office of Unemployment Insurance and the Unemployment Insurance Fund and identified \$670.7 million in questioned costs, including the \$655 million in unemployment insurance benefits paid during FY 2020.

The COVID-19 pandemic presented major challenges for unemployment insurance systems across the country. As a result three federal unemployment insurance programs were created by the CARES Act that included Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC). PUA funded unemployment benefits for claimants who historically have not been eligible for traditional unemployment insurance. In order to pay claims as quickly as possible, the Office of Unemployment Insurance determined that anyone who applied for PUA benefits and was deemed eligible, would receive the minimum PUA benefit. In addition, PUA claims were automatically backdated by the Office of Unemployment Insurance to March 1, 2020, which resulted in claimants being paid benefits for weeks when they were potentially still employed. PEUC provided 13 weeks of additional unemployment benefits to eligible individuals whose traditional unemployment benefits had been exhausted. FPUC provided an additional \$600 of benefits per week to all eligible claimants receiving at

least \$1 of traditional unemployment compensation, PUA, or PEUC.

The Office of Unemployment Insurance implemented an auto pay policy in an attempt to distribute benefit payments to unemployed individuals more quickly. According to Auditor Mike Harmon, this decision may have led to federal violations. The implementation of the auto pay feature eliminated the control requiring claimants report the weekly wage information needed to determine whether they were actually eligible for benefits. Long time employees of the Office of Unemployment Insurance and Commonwealth Office of Technology staff expressed concerns about the policy. Auto pay was in effect two weeks for traditional unemployment insurance and eight weeks for PUA. During this time, \$17.8 million was paid in traditional unemployment benefits, \$129.9 million was paid in PUA benefits, and \$507.7 million was paid in FPUC benefits. While not all of these payments were improper, they were all paid in an environment conducive to improper or fraudulent payments which may have led to some full-time state employees receiving unemployment insurance payments.

Auditors selected a sample of 37 full-time state employees who filed for and received unemployment insurance benefits. Of the 37 state employees, 16 were found to have been paid traditional unemployment insurance and FPUC for loss of part-time jobs despite still being employed full time by the state. There was a total net overpayment of \$116,978 in the sample. Auditors also found that 10 employees within the Office of Unemployment Insurance, accessed their own unemployment insurance claims within the system, which violated Office of Unemployment Insurance policies. It could not be determined whether the employees had lifted stops on their own accounts, but, given the potential for wrongdoing, this finding was referred to the office of Attorney General and the Executive Branch Ethics Commission. The auditors also reviewed a random sample of 99 claim weeks and found that incorrect amounts were posted to employer accounts and benefits were not calculated correctly during 31 of the sampled claim weeks. These errors cumulatively amounted to \$17,830 in overpayments and \$1,926 in underpayments. In addition, \$18,867 was overpaid because the Office of Unemployment Insurance backdated PUA and FPUC claims to March 1, 2020.

Federally mandated and state required monthly system security checks were not performed, and the unemployment insurance mainframe performed various tasks that were undocumented. System updates and software changes were pushed through with improper and missing documentation, lack of testing, and implementation in contravention of the Office of Unemployment Insurance's policies. The agency also failed to report data breaches as required by Kentucky Revised Statutes. Treasury Offset Program (TOP) collections were also improperly suspended on April 6, 2020, and had not resumed as of February 17, 2021. States are required to use TOP to collect unemployment compensation debts that remain uncollected one year after becoming due. In May 2020 and February 2021, the U.S. Department of Labor notified the Office of Unemployment Insurance

that TOP collections could not be suspended. The Office of Unemployment Insurance also failed to provide ACFR estimates for accounts payable in a timely manner. Ultimately, those estimates ranged from \$88.9 million to \$2.08 billion. Auditors also noted issues with the Office of Unemployment Insurance's backlog of unemployment insurance claims and an excessive amount of unread emails from claimants.

The APA issued an adverse opinion on Kentucky's compliance with federal unemployment insurance program requirements based on the findings detailed in SSWAK, Volume II. An adverse opinion is the worst opinion that can be issued following an audit. The Office of Unemployment Insurance findings were significant enough to indicate the Commonwealth did not materially comply with the federal requirements for the unemployment insurance program. All SSWAK findings are uploaded to a clearinghouse that reports the information to federal oversight agencies. The FY 2021 ended on June 30, 2021 and the APA will release SSWAK reports for FY 2021 in early 2022.

Answering questions from Representative Webber, Auditor Harmon reiterated that long time Office of Unemployment Insurance employees and Commonwealth Office of Technology staff advised leadership within the Office of Unemployment Insurance at the time not to use the auto pay function that eliminated the control requiring claimants to report the weekly wage information needed to determine whether they were actually eligible for benefits. Also, employees accessed their own accounts even though staff are trained not to do so. If stops were removed from those accounts, there was no way for the APA to determine who lifted those stops.

Replying to Senator Nemes, Sara Beth Gregory, Chief of Staff for the Office of the Auditor of Public Accounts, stated the APA's audit did not determine whether specific codes, only available to leadership within the Office of Unemployment Insurance, were needed to lift stops in the unemployment insurance system.

Addressing a question from Representative Pratt, Auditor Harmon said that some issues could have been avoided if federal regulations and the Office of Unemployment Insurance's policies had been followed

Responding to questions from Representative Sharp, Ms. Gregory confirmed that the auditors found that stops had been removed in the unemployment system but could not view who actually lifted those stops. In response to a follow up question, Auditor Harmon said he could not confirm if warnings concerning the auto pay feature were given by nonpolitically appointed staff to politically appointed staff of the Office of Unemployment Insurance.

Answering questions from Representative Cantrell, Ms. Gregory explained that it is alarming if you extrapolate the potential for miscalculation to the full scope of how many claims were processed considering the auditors found issues with 31 out of the 99 claim weeks that were sampled for analysis. The goal of the APA was to identify issues with processing within the Office of Unemployment Insurance, and not to determine the total of any miscalculations.



Responding to Senator Alvarado, Auditor Harmon indicated he was aware of two data breaches that were not reported in a timely manner. Ms. Gregory added that the Office of Unemployment Insurance was under the Education and Workforce Development Cabinet in FY 2020, when data breaches occurred.

#### Constituent Testimony

Representative Sharp and one of his constituents, Jeremy Boyles, testified regarding Mr. Boyles's difficulties receiving unemployment insurance benefits and obtaining an in-person appointment with the Office of Unemployment Insurance that is in close proximity to his residence. Mr. Boyles has not received any benefits since initially filing an unemployment insurance claim in January 2021, and traveling to Ashland for an in person appointment.

Senator Nemes informed Representative Sharp and Mr. Boyles that the Office of Unemployment Insurance is now offering a telephone appointment option for unemployment insurance claimants who are unable to travel to locations that have available in person appointments.

#### Issues Related to Unemployment Insurance Reform

According to Joe Horvath, a Senior Fellow with the Foundation for Government Accountability (FGA), unemployment insurance is intended to be assistance for laid off workers, intentionally temporary and limited, modeled after insurance, and paid for by payroll taxes on employers. Unemployment insurance is not a long term full wage replacement, workforce development, a form of disability, or paid for by employees. FGA has compared the Commonwealth to Florida, North Carolina, and Georgia when considering necessary changes to the unemployment insurance system. Those states recreated their unemployment insurance systems to be more competitive after the Recession of 2008. Mr. Horvath discussed several policies that have been successful in these states, including indexing. An indexing policy would tie the maximum number of unemployment insurance benefit weeks to the state unemployment rate. Florida passed legislation in 2012 implementing an indexing policy which cut the maximum number of benefit weeks to 9.2, decreased program costs from \$333 million to \$80 million, reduced employer unemployment insurance taxes to \$1.50 per \$1000, and increased the state's trust fund solvency from -\$1.7 billion to \$3.9 billion. According to FGA's projections, Kentucky could increase its unemployment insurance trust fund by \$567 million over three years and decrease the average unemployment insurance tax by 17.3 percent over five years if indexing legislation were to be adopted. Other policies that could possibly help repair the Commonwealth's unemployment insurance system that have been enacted in other states include more rigorous work search requirements and a job referral program.

Responding to remarks made by Representative Pratt, Mr. Horvath explained that once aid such as CARES Act and American Rescue Plan Act funds are removed, appropriate policies should be put in place and proper incentives should be aligned to prioritize reemployment of individuals instead of only providing temporary monetary measures.

Answering a question from Representative

Webber, Mr. Horvath stated the business community strongly supported the indexing policy in Florida but was uncertain whether it was part of larger bipartisan reform.

There being no further business before the committee, the meeting adjourned at 2:31 p.m.

## INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

### Minutes of the 3rd Meeting

#### of the 2021 Interim

August 26, 2021

#### Call to Order and Roll Call

The third meeting of the Interim Joint Committee on State Government was held on Thursday, August 26, 2021, at 2:30 PM, at the Kentucky State Fair in the Expo Center. Representative Kevin D. Bratcher, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Mary Beth Imes, DJ Johnson, Matthew Koch, Derek Lewis, Scott Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Tom Smith, Pamela Stevenson, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: Representative Josh Branscum; Representative Patrick Flannery; Representative Matt Lockett; Jared Dearing, Karen Sellers, and Taylor Brown, State Board of Elections; Chris Cockrell, Kentucky County Clerk's Association (KCCA); Kenny Barger, Madison County Clerk; Jason Denny, Anderson County Clerk; Frank Friday, office of the Jefferson County Clerk; Mark Meckler and Mary Jo Wedding, Convention of States Action; Theresa Camoriano, Louisville Tea Party; Chase Martin and Bryan Sunderland, Foundation for Government Accountability; and Trey Grayson, Frost Brown Todd LLC.

LRC Staff: Michael Callan, Alisha Miller, Daniel Carter, Shannon Tubbs, and Peggy Sciantarelli.

#### Recognitions in Memorium

Representative Koch called for a moment of silence in honor of U.S. service members who died today during the Afghanistan evacuations. Representative Miller asked for a moment of silence in memory of former state Representative Larry Brent Yonts, who passed away on August 20.

#### Approval of Minutes

A motion to approve the minutes of the July 20 meeting was adopted without objection.

#### Update—21RS HB 574, AN ACT relating to elections and making an appropriation therefor.

Representatives Jennifer Decker, James Tipton, and Josh Branscum discussed HB 574, which was

enacted during the 2021 Regular Session. The following staff of the State Board of Elections participated in the discussion: Jared Dearing, Executive Director; Karen Sellers, Assistant Executive Director; and Taylor Brown, General Counsel. The following county officials were also guest speakers: Chris Cockrell, Montgomery County Clerk and President of the Kentucky County Clerk's Association (KCCA); Jason Denny, Anderson County Clerk and First Vice President of KCCA; Kenny Barger, Madison County Clerk; and Frank Friday, Government Affairs Director, office of the Jefferson County Clerk.

Representative Decker said it was her goal—and the goal of her co-sponsors Representative Branscum and Representative Tipton—to strengthen the integrity of elections in Kentucky and boost voter confidence in the electoral system. They intend to offer another bill to prohibit Kentucky's voting system from being connected to the internet or any other external network. Responding to a question, Representative Decker confirmed that no voting system in the Commonwealth is currently capable of that type of connection, but she and her co-sponsors want to assure voters that such connectivity is prohibited in Kentucky.

Representative Branscum said that HB 574 is probably the most comprehensive election reform that has occurred in a long time, and he was pleased to be able to help develop the legislation, along with Representative Decker, Representative Tipton, the State Board of Elections, county clerks, and the Secretary of State and his staff. He said that those closely involved with the legislation met recently to discuss its implementation and current status and to consider possible needed refinements. They look forward to additional discussions during the interim in anticipation of the 2022 legislative session.

Representative Tipton thanked Representative Decker and Representative Branscum for the opportunity to work with them on HB 574. He said the legislation is not a "re-write" but is an attempt to identify areas that can be strengthened and improved.

Mr. Dearing said that immediately after passage of HB 574 the process of creating emergency regulations began. It was felt that emergency regulations were needed because of concern about possible special elections. The emergency regulations promulgated new policies and practices to enable county clerks to maintain elections and create election plans—and to work with the State Board of Elections, the Secretary of State, and other stakeholders during that process. He said that Kentucky is fortunate to have some of the best local election administrators in the country. Also, Kentucky was able to pass election law in an overwhelmingly bipartisan manner. As requested by the Board of Elections, HB 574 provides for the use of risk-limiting audits, a type of post-election audit that allows attorneys and the state to work together and randomly sample a sufficient number of paper ballots to ensure confidence in policies and procedures. This provision will hopefully be implemented in time for the 2022 mid-term elections.

When Representative Nemes asked about the requirement for the Attorney General to audit a random sampling of six counties after a re-election,

Mr. Dearing said that process is outside the purview of the State Board of Elections, which is not an investigative body. The statutes governing that process are dealt with by the Attorney General's office, in conjunction with KCCA. The audits usually look at absentee ballots to determine whether there are allegations of fraud. Holistically, they may also look at the entire election based on criteria set forth by the Attorney General's office.

In response to Representative Graham, Mr. Dearing described the post-election analysis process. He confirmed that the process is handled internally by Kentucky officials who are responsible for holding and administering elections. He said that, by codifying it in law, the legislature has allowed for a very transparent process—which includes public viewing of the randomization for pulling the ballots, the sample sizes, and how ballots are pulled at the county level. Over the last four years the Board of Elections has been updating counties to a fully paper-based system. During the presidential election cycle, they were able to move all counties to a paper-based system. Ballot marking devices are still an important part of the process, to ensure that voters with disabilities are able to cast ballots effectively. Some counties may utilize machines that cannot receive a paper record—mostly using them for accessibility purposes—but they are still on a paper-based system. Mr. Dearing emphasized the importance of continuing to fund the elections system as critical infrastructure, in order to ensure security, transparency, and access to the ballot.

The county officials made brief opening statements. Mr. Cockrell said that with the HB 574 structure in place, county clerks have been in the learning process and are at the point now where they are starting to “see it form together.” Many are working with the school boards and with local government entities. Mr. Denny said that Kentucky's elections last year were some of the most successful ever seen on the voting center model. Clerks want to build on that success. Mr. Barger emphasized the importance of making it known that voting equipment in the counties is not connected to the internet. Mr. Friday said that Jefferson County has about 200 voting locations. He spoke of the importance of having sufficient voting centers and the benefit of allowing “no excuse” early voting.

Representative Bratcher spoke of the importance of working together in a bipartisan manner. He said the efforts of Representative Wheatley and others who worked with Representatives Decker, Tipton, and Branscum were much appreciated.

Senator Thayer said he carried HB 574 in the Senate and encouraged bipartisan support for the bill. He is hearing talk of changes to HB 574, and he cautioned that any follow-up legislation should be only for purposes of “clean up.” He would oppose any additional policy changes, especially regarding increasing the number of days of early voting. Because he understood that some voters are unable to get to the polls on election day, he reluctantly agreed to provide for three days of early voting in HB 574. In response, Mr. Cockrell said that county clerks are not contemplating any extension of early voting days. They are not considering any major changes in the

future—only “cleanup.”

Responding to questions from Representative Smith, Mr. Cockrell, Mr. Denny, and Mr. Barger explained the absentee voting process. Mr. Cockrell said that the online portal increases security and is less cumbersome for county clerks. The online portal is a secure measure to ensure that the mail-in “excuse” ballot is for the right person. He noted that it is a felony to lie on an absentee ballot application.

Senator Thayer said that the 2020 election involved once-in-a-lifetime pandemic voting procedures devised by two people—the Secretary of State and the Governor. He stated that decisions about the manner in which an election is held belong to the General Assembly. He also suggested that “mail-in voting” should correctly be called “absentee voting” in order to avoid the possible negative connotation associated with the term “mail-in voting.”

Representative Nemes said he trusts Kentucky's county clerks and believes they run honest elections. He said it is important to have integrity in elections—and also the perception of integrity. Many of his constituents who are acting in good faith do not trust elections. He inquired about the post-election audit of six counties. Mr. Denny said Anderson County had the highest turnout this year of any county and was chosen for the post-election audit. The processes in other counties are like those in Anderson County. He described the various audit procedures, which includes an accuracy check of the machines and certification of accuracy by the county board of elections.

Representative Nemes said that 24 counties in Kentucky had been identified as having potential election anomalies. He believes those anomalies can be explained, but he and Senator Julie Raque Adams, on behalf of their constituents, have written a letter to the Attorney General, asking for a random audit of six of the 24 counties that were identified. They did not include Anderson County.

Representative Nemes said he believes Governor Beshear won the election in 2019. However, some TV viewers saw numbers transpose on the TV screen, raising questions for voters about the legitimacy of the election. Mr. Cockrell said that, to the best of his knowledge, it was just an accident and was corrected in the live feed. Also, vote totals reported by the media are unofficial until they are certified. Mr. Dearing emphasized that news media report data from different sources. They do not certify elections and are not involved in the certification process.

Representative Stevenson thanked the county officials for their work during the pandemic. She said that election law is not about making it easier to campaign for office—it is about making sure that democracy is available to all who are legally certified to vote. Discussion concluded, and Representative Bratcher thanked the speakers.

#### **Convention of States (COS) Project**

The guest speakers representing COS were Representative Matt Lockett; Mary Jo Wedding, Kentucky State Director, Convention of States Action; and Mark Meckler, President of Citizens for Self-Governance and President of Convention of States Action. (There was a contingent of COS supporters present in the audience.) Theresa Camoriano, a patent attorney and President of the Louisville Tea Party,

gave opposing testimony.

Representative Lockett said when he was asked to carry a bill about COS and an Article V convention, his reaction was an absolute “yes.” He said when the country carries almost a \$30 trillion debt, it is time for the states to step in and say that enough is enough. The federal government has acted in an irresponsible manner. The COS website states that the root of the frustration felt by citizens across America is that the federal government does whatever it wants and that citizens can do nothing about it. It is a systemic problem that requires a systemic solution. A convention of states to propose constitutional amendments is the solution—the people's final check on Washington, DC, to be exercised through state legislators. The COS project resolution seeks to do this by using a tool given to the states in Article V of the U.S. Constitution. It calls for an Article V convention to propose amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and members of Congress.

Ms. Wedding spoke in support of the COS project. She said it is part of a state legislator's responsibility to call a constitutional convention. The COS petition has 35,000 signers who believe that defending the Constitution is also defending their liberty. She said there are some conservative citizens who do not wish to sign the petition but remain supporters of Article V.

Mr. Meckler urged the committee members to support a constitutional convention. He said that 72 percent of all Americans are dissatisfied with the federal government. They feel that it is too big and does too much. He said Article V of the US Constitution gives states the power to call a Convention of States to propose amendments. The only argument he hears against calling a convention is that it would be a “runaway” convention that would put the entire constitution at risk. He said that is false. It takes 34 states to call a convention and 38 to ratify any proposed amendments. The COS website states that “the convention would only allow the states to discuss amendments that limit the power and jurisdiction of the federal government, impose fiscal restraints, and place term limits on federal officials.”

Ms. Camoriano spoke in opposition of calling a convention. She said that people have a false sense of security if they believe that a “runaway” convention could not happen. The Constitution already reins in the federal government. The problem is that people today are ignoring the Constitution. The upside of an Article V convention is zero—it would not make people respect the Constitution. The downside is huge. There would be no end to the problems that could result from an Article V convention. It would be a total unknown that would risk the loss of people's First Amendment, Second Amendment, and other rights. She is sympathetic to those who want an Article V convention but suggested taking a better path. She proposed three “R's”—remember, respect, and rebuild: remember that everyone needs to pull together to make the country work; respect the life, liberty, and property of everyone; and respect the Constitution and the rule of law. She asked the committee members to not support the calling of an



Article V convention.

Representative Bratcher said he has respect for the COS project and also for the Louisville Tea Party. He thought it would be helpful to hear from both sides in order to have an understanding before moving forward.

Representative Tipton said he understands that there are other Article V convention groups. He asked how many states have adopted the COS resolution. Mr. Meckler said there are three primary groups promoting an Article V convention. Currently, 15 states have passed the COS resolution in both chambers, another eight states have passed it in one chamber, and 49 states have filed the resolution. COS is the only group that has a national grassroots movement, with 35,000 supporters in Kentucky, more than five million nationally, and about 1,000 people currently joining the movement each week.

Responding to comments from Representative Nemes, Ms. Comariano said she shares the frustration and is sympathetic to it. The country is divided and that an agreement to an amendment to the Constitution would not happen. What is needed is for the country to rebuild so that people understand that fiscal responsibility has to be the law of the land. The US Constitution is the best in the world, and she does not want to chance “ripping it up.” In response, Mr. Meckler explained why COS is confident that an Article V convention would not be a “runaway.”

Senator Alvarado questioned why the founders of the Constitution would have provided for an Article V convention if they were fearful of what would happen. Ms. Comariano said she is afraid of what might occur and that there is good reason for concern. There has never been an Article V convention to amend the Constitution. It has been talked about in history but rejected because people feared a “runaway” convention. Mr. Meckler spoke briefly in rebuttal.

Representative DuPlessis said he believes there is wide agreement that federal spending is out of control, but he cautioned that law should be legislated based on fact, not fear. He said he does not know whether COS is correct but that he is not going to be dictated to because he is afraid. Discussion concluded, and Representative Bratcher thanked the speakers.

#### **Discussion of “Zuckerbucks”**

The guest speakers were Representative Patrick Flannery; Chase Martin, Legal Affairs Director, Foundation for Government Accountability (FGA); and Bryan Sunderland, FGA State Government Affairs Director. Their testimony included a PowerPoint presentation. Chris Cockrell and Trey Grayson, Legislative Agent for KCCA, were asked later to participate in the discussion.

Representative Flannery said that he and Representative Bratcher had agreed that the issue of Zuckerbergbucks is a topic that should be discussed. He introduced the speakers from FGA. (Note: The Chan Zuckerberg Initiative, spearheaded by the wife of Facebook founder Mark Zuckerberg, was a large funder of the Center for Technology and Civic Life, which awarded grants—or “Zuckerbucks”—to election offices across the country.)

Mr. Sunderland said that FGA is a nonprofit public policy organization that focuses on integrity in social

programs and elections and on limited government that is accountable to the people. He and Mr. Martin appreciate the opportunity to address the committee regarding an important issue—the integrity of the election system and the danger of outside financial influence on the operation of elections. While all of the details remain unclear, private funding of election operations is a threat that FGA strongly believes needs to be addressed.

Mr. Martin said that in 2020, Facebook CEO Mark Zuckerberg and his wife spent nearly \$400 million to fund election activity across the country. They did it through government—local election officers in the states. He said elections are a sacred part of democracy, and public elections should be financed by public money. Private money should be reserved for campaigns and advocacy outside the election system. Mr. Martin said that about \$400 million was granted to more than 2,500 jurisdictions in nearly every state. In order to know how the money was spent and where it was targeted, FGA sent out more than 840 individual public record requests and compiled more than 1,100 documents, including grant award letters and reports. About \$200 million was funneled to state election offices in 37 states.

Mr. Sunderland said that “Zuckerbucks” influenced the election in a partisan manner. Most concerning was that the money was spent on electioneering and other things that had nothing to do with COVID-19 or protecting voters. FGA’s research found that an incredibly small amount was spent on COVID-related equipment. In Arkansas’ Pulaski County, election officials went into schools during the pandemic to register 18-year olds to vote, as part of a Democrat voter registration drive, using a half million dollars of “Zuckerbucks.” In Wisconsin, Democrat activists with direct ties to the Zuckerberg-funded foundation were actually given the key to the ballot storage facility. In Ohio, “Zuckerbucks” were used to pay staff \$3,500 to police Facebook posts and to pay off an \$8,100 Verizon phone bill. It was found that numerous jurisdictions took “Zuckerbucks” without spending them—Miami Dade County, for instance.

Mr. Martin said that “Zuckerbucks” followed Democrats. The counties that received the most money were won by Hilary Clinton in 2016 and by Joe Biden in 2020. In Pennsylvania, 92 percent of the funds went to Democrat strongholds. In Pennsylvania in 2020, the average county won by Donald Trump that received “Zuckerbucks” received about \$1.12 per registered voter, whereas the average county won by Joe Biden received \$4.99 per registered voter. Georgia received \$31 million in “Zuckerbucks” for the general election, and Biden-winning counties received \$7.13 per registered voter, with Trump-winning counties being granted just \$1.91 per registered voter.

Mr. Sunderland said the good news is that this year several states have banned private funding of elections. Four more states are considering a ban this year. In Louisiana, a bill was sent to the governor but was vetoed. At least 15 states this year have moved to fix this problem, but there is a long way to go, with 35 more states still exposed to the threat, including Kentucky. Mr. Sunderland said that FGA has an extensive research library on this topic, and it is updated on a weekly basis.

Responding to comments from Representative Heavrin, Mr. Sunderland said FGA had not done research on how “Zuckerbucks” affected the Commonwealth of Kentucky. The clerks’ association provided several legislators some information indicating that 43 Kentucky counties applied for and received the grant funding. He agreed with Representative Heavrin that the issue should be bipartisan. He said FGA worked on a bill in Tennessee this year that passed with bipartisan support, even though that state had only one county with an instance of misspending. It is FGA’s position that public elections should be funded with public dollars. Representative Heavrin said she trusts Kentucky’s county clerks but thinks it would be useful information and important to know more about how they used the grant funding.

Representative Miller asked whether FGA has or could obtain an accounting of the amounts received by the 43 Kentucky counties and how the funds were used. Mr. Sunderland said that FGA’s extensive research initially focused on some of the key states. He believes the clerks’ association has offered to discuss how the funds received by Kentucky were used, from their perspective.

Representative Wheatley asked about the legality of the private funding. Mr. Sunderland said that information volunteered by the clerks’ association was that 43 counties applied for and received the grant money, but he does not have an accounting of how they spent it. Mr. Cockrell said the “Zuckerbucks” came in the form of a grant and that his county, Montgomery, applied for and received \$15,000, which was used to pay precinct workers. Mr. Grayson, KCCA’s legislative agent, said that when he was Secretary of State, Kentucky received a private grant to build a website to facilitate voting for military and overseas voters, and it was not questioned at the time. He believes it is illegal to accept private grants for elections, but it depends on how they are set up. The grants to the 43 counties were funneled through the county clerk offices and fiscal courts. Representative Wheatley said he believes the funds were received with bipartisan support. When he asked whether there are other nonprofit organizations researching the issue of “Zuckerbucks,” Mr. Martin said not to his knowledge.

Representative Tipton asked whether any state or the federal government has looked into “Zuckerbucks” as an election finance issue. Mr. Sunderland said some states have questioned whether it should be regulated like election finance, and some have banned it altogether. Laws are written differently in states, depending upon the circumstances, but lawmakers have overwhelmingly indicated to FGA that elections should be financed by public dollars.

Responding to Senator Alvarado, Mr. Greyson confirmed that a total of \$1.6 million was received by the State Board of Elections. Senator Alvarado said it would be interesting to have a breakdown of the amounts received by each county.

Mr. Dearing said that the State Board of Elections in a public meeting had discussed utilization of the grant money. It was used primarily to advertise changes in the manner of election during the pandemic and how voters could vote safely. A bipartisan group

of board members and stakeholders decided how the funds were to be spent. He noted, too, that Kentucky had no reports of community spread of COVID-19 during the election cycle.

There were no further questions. Representative Bratcher thanked the speakers, and the meeting was adjourned at 4:48 p.m.

## **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT**

### **Minutes of the 4th Meeting of the 2021 Interim**

September 1, 2021

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

The fourth meeting of the Interim Joint Committee on State Government was held on Wednesday, September 1, 2021, at 10:00 AM, in Room 149 of the Capitol Annex. The committee met jointly with the Interim Joint Committee on Local Government in a special called meeting. Senator Robby Mills, Chair, called the meeting to order, and the secretary called the roll. Senator Mills co-chaired the meeting with Representative Michael Meredith, Co-Chair of the Interim Joint Committee on Local Government.

Present were:

Members: Senator Robby Mills, Co-Chair; Representatives Jerry T. Miller, Co-Chair, and Kevin D. Bratcher, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Adrienne Southworth, Brandon J. Storm, Damon Thayer, and Phillip Wheeler; Representatives John Blanton, Adam Bowling, McKenzie Cantrell, Jennifer Decker, Jim DuPlessis, Joseph M. Fischer, Kelly Flood, Jim Gooch Jr., Derrick Graham, Richard Heath, Samara Heavrin, Mary Beth Imes, DJ Johnson, Matthew Koch, Derek Lewis, Scott Lewis, Savannah Maddox, Patti Minter, Kimberly Poore Moser, Jason Nemes, Attica Scott, Tom Smith, Pamela Stevenson, Nancy Tate, James Tipton, Ken Upchurch, Russell Webber, and Buddy Wheatley.

Guests: Daniel Cameron and Chad Meredith, Office of the Attorney General; Cookie Crews and Robyn Bender, Justice & Public Safety Cabinet; and Jim Daley, Kentucky Jailers Association.

LRC Staff: Alisha Miller, Michael Callan, Andrew Salman, and Peggy Sciantarelli.

#### **Discussion of Kentucky Supreme Court Ruling**

The guest speaker was Daniel Cameron, Attorney General for the Commonwealth of Kentucky. He was accompanied by a member of his staff, Solicitor General Chad Meredith. Attorney General Cameron updated the committee regarding the August 21, 2020, ruling of the Kentucky Supreme Court in the case, *Cameron v. Beshear*.

Mr. Cameron stated that the Governor initiated *Cameron v. Beshear* in February when he filed in Franklin Circuit Court, seeking to invalidate SB 1, SB 2 and HB 1, the newly enacted legislation placing checks and balances on the Governor's emergency power. The Governor asked the Franklin Circuit Court to enjoin the legislation, and the circuit court did so—

first by entering a temporary restraining order and, later in March, a temporary injunction. After the General Assembly enacted HJR 77, the Franklin Circuit Court expanded the temporary injunction, including that legislation as well. Mr. Cameron said that after the Franklin Circuit Court entered a temporary injunction, his office asked the Court of Appeals for relief from that injunction. Recognizing the public importance of the case, the Court of Appeals recommended that the matter be transferred to the Supreme Court. The Supreme Court granted transfer of the case and heard oral arguments on June 10.

On August 21, the Supreme Court issued its decision, holding that the Franklin Circuit “abused its discretion in issuing the temporary injunction.” Therefore, it reversed the Franklin Circuit Court and remanded the case with instruction to the Circuit Court to dissolve that injunction. In evaluating this case, the Supreme Court looked at whether any of the parties to the lawsuit would be irreparably harmed by a decision. The Governor claimed that he would suffer harm because the new legislation, if it went into effect, because it would reduce his power. The Supreme Court rejected this argument because the Constitution does not expressly give the Governor any emergency powers. This means that the governor is not injured in any legal sense when the General Assembly places limits or checks and balances on emergency powers. The Supreme Court found that the public would be injured if the challenged statutes do not go into effect which is a well-established rule of law that the nonenforcement of a statute constitutes irreparable harm to the public and the government.

The second factor the Supreme Court looked at was whether the Governor's claim involved a substantial question on the merits. In asking whether the claim had legal merit, the Supreme Court determined generally that the Governor's claim had no legal merit. The Supreme Court first took up the Governor's claim that the new legislation violates the separation of powers. Because the Governor only has the emergency powers given to him by the General Assembly, the Supreme Court said it does not violate the separation of powers for the legislature to define and place limits on the Governor's emergency powers.

The Supreme Court examined the Governor's claim that the new legislation infringes on his discretion to call special sessions by limiting the state of emergency to 30 days. In the Governor's view, the 30-day limit would force him to call a special session, thereby taking away his discretion. The Supreme Court expressed great skepticism about this claim, finding that the assertion that the Governor would be forced to call a special session every 30 days is not credible. The Supreme Court felt that it did not have enough information about this claim to opine on its merit, so the Supreme Court declined to make a definitive pronouncement concerning the constitutionality of the 30-day limitation.

Next, the Supreme Court evaluated the Governor's claim that SB 1 violates his executive supremacy under Section 69 of the Constitution, by requiring the Attorney General's consent in any suspension of statute during emergencies. The Supreme Court rejected this claim, concluding that SB 1, Section 4, constitutes a valid exercise of the

General Assembly's authority to suspend a statute. The Supreme Court then turned to the claim that the new legislation is arbitrary. The Supreme Court rejected that claim, too, finding that the Governor has no standing to make such a claim. Finally, the Supreme Court ruled against the Governor's claims that SB 1 was unconstitutional special or local legislation. After evaluating the merits of the Governor's claims, the final element of the Supreme Court's analysis involved balancing the equity and the public interest. It had little trouble in determining that both the equity and the public interest weighed in favor of adherence to the new legislation.

According to the Rules of Civil Procedure, the Supreme Court's decision will become final 21 days after it was issued. When that happens, the matter will officially be back in front of Franklin Circuit Court, with instructions for the injunction to be dissolved. In the meantime, the Circuit Court has instructed the parties to provide it with a status report no later than September 7.

Mr. Cameron said that the issue before the Supreme Court was whether the Franklin Circuit Court's temporary injunction was proper. The decision is precedential, meaning that its reasoning is binding on the lower court. On all but one claim, the Supreme Court's reason leaves no room to conclude anything but that the statutes are constitutional. The only claim that the Supreme Court did not find to be meritless was the one about the 30-day limitation on emergencies. The Supreme Court simply concluded that it needed more information before making a decision.

Mr. Cameron said that, while the Supreme Court did not officially declare the statutes constitutional, he is confident after reviewing the court's reasoning, that the only potential obstruction of the 30-day limitation on a state of emergency will be upheld. The only way the Governor could prevail on his other claim would be for the Supreme Court to reverse itself, and that would be exceptionally unusual, especially considering that its decision against the Governor in affirming the legislature's authority was unanimous.

On or before September 13, the Franklin Circuit Court's injunction will dissolve, rendering SB 1, SB 2, HB 1, and HJR 77 enforceable. In the meantime and beyond, the Boone County Circuit Court's injunction precludes the Governor from doing anything that would contravene or violate these laws. The Supreme Court spoke clearly in its opinion when it said: “As we have noted time and again, so many times that we need not provide citation, the General Assembly establishes the public policy of the Commonwealth.” With this language the Supreme Court reaffirmed the legislature's unique ability to represent the diversity of the Commonwealth. Concluding his remarks, Mr. Cameron said he is hopeful that the Governor and the General Assembly, moving forward, can find consensus on what is needed to protect Kentuckians. Representative Meredith thanked Mr. Cameron for his helpful, detailed summation of the Supreme Court ruling.

In response to a question from Senator Alvarado regarding the opinion that judges sometimes inject politics in their decision-making, Mr. Cameron replied that it is his responsibility to make sure that he is respectful of all members of the judiciary, though



he may vigorously disagree with some decisions that are made—whether at the circuit court, court of appeals, and even the Supreme Court level. He said it is not uncommon for a trial court, or even the Court of Appeals, to get things wrong and for reversals to occur. He thinks the Supreme Court made the point that the legislature holds the keys in terms of statutory authority and the ability to change emergency powers. This should hopefully empower the legislature as it considers its role in continuing to fight the virus.

Representative Wheatley said he hopes the legislature and the executive branch can continue to work collaboratively. He raised the question whether the legislature should have the power to call itself into session, a topic of past arguments on the floor of the House and the Senate. He also spoke about the necessity for the governor to call a special session in order to put in place the results of collaborative work with the legislature. Mr. Cameron said the Supreme Court made it clear that discretion resides with the legislature to place limits on the governor's emergency powers, and the Constitution grants the governor express power to call a special session. He said he hopes the legislature and the governor can continue to work together during times of emergency and will be able to agree on how to ultimately handle additional measures to confront COVID-19.

When asked by Senator Nemes, Mr. Cameron said the Franklin Circuit Court should lift the injunction no later than September 13 and should not be able to place any conditions on dissolution of the injunction.

Representative Nemes said that the Supreme Court ruling represents a seminal moment in the relationship between the legislature and the executive branch. The governor argued that he alone got to declare when an emergency exists, how to respond to that emergency, and how long his declared emergency exists. The Supreme Court, in a very strong opinion, stated, "In fact, non-enforcement of a duly-enacted statute constitutes irreparable harm to the public and the government." The court also said, "Furthermore, the assertion that the Governor would be forced to call a special session every 30 days is not credible." That argument was considered and unanimously thrown aside by the Kentucky Supreme Court. Representative Nemes asked the Attorney General to comment on the magnitude of the opinion and its importance in establishing the policy-making rights of the legislature. Mr. Cameron responded that the Supreme Court recognized that the framers of the Kentucky Constitution wanted to have a robust legislature that would be "in the driver's seat" relating to statutory change. It is also important to note that the Supreme Court repeatedly expressed the point that the Governor has no inherent or implied authority and that his authority is derived from statute.

Senator Thayer said that for the first time during his tenure in the General Assembly, Kentucky has an attorney general who is willing to defend the actions of the General Assembly, the people's branch of government. He said that the bills in question that were vetoed by the Governor had emergency clauses and went into effect after the vetoes were overridden by the legislature. He questioned whether the Governor had followed the law during the intervening time

between passage of the bills into law and the recent ruling of the Supreme Court that upheld the laws. Mr. Cameron said there is an open question whether the governor was faithfully executing the laws during that intervening time period, but he is not willing to pass judgment on the Governor without taking the issue under advisement. Viewed from the Governor's perspective, the laws were stayed in Franklin Circuit Court; viewed from another perspective, the ruling by the judge in Boone County would have enjoined the Governor from doing anything that was inconsistent with the bills that were passed.

Representative Smith asked whether there is an opinion or research relating to businesses requiring employees to be vaccinated against COVID-19. Representative Meredith said he believes that issue is a matter of public policy that has not been addressed at this point—and which the Attorney General may or may not wish to address. Mr. Cameron said he does not believe his office has received any inquiries regarding that question. He is not able to comment further at this point, without looking specifically at an actual opinion request, or specific factual information related to a vaccine requirement in a private business.

Representative Meredith asked about KRS Chapter 39A, with respect to extending the time period for emergency declarations. Mr. Cameron said that the statutes (39A.090) provide a mechanism for local governments to request an extension of a 30-day period—for up to 90 days, he believes. There were no more questions, and Representative Meredith thanked Mr. Cameron and Mr. Meredith.

#### **Discussion of Issues Relative to COVID-19 in Kentucky Correctional Facilities**

The guest speakers were Jim Daley, Campbell County jailer and President of the Kentucky Jailers Association; Cookie Crews, Commissioner, Kentucky Department of Corrections, Justice & Public Safety Cabinet; and Robyn Bender, General Counsel, Justice & Public Safety Cabinet.

Mr. Daley said that beginning in March 2020, jails began having a lot of problems and issues that required significant changes to operations at local detention facilities. With those changes came substantial costs. The emergency orders from the executive branch and the Supreme Court had a major impact. Some of the increased costs suffered by jails and counties are intangible. The Campbell County jail has a budget this year of approximately \$17 million and is the largest employer in the county. Full service jails are very expensive, and county fiscal courts are tasked with that cost by statute. However, the greatest cost to Campbell County has been the loss of a 20-plus year sergeant and a three-year deputy to COVID.

Mr. Daley said that, as an elected jailer, he does not control who is admitted, how long they are there, or when they are released. He does not control his own budget. All of that is set by statute. It is particularly true for every full-service jail and becomes an item of contention for many detention facilities. He is extremely fortunate, in that Campbell County has a wonderful fiscal court and a wonderful judge/executive. Because of jailers' lack of control, most jails are not equipped to deal with quarantine or other issues relating to COVID. For a long time the Campbell County jail did not have any issues and

then suddenly had 200 people infected by COVID. Within one month the jail was COVID-free. Today, approximately 18 people in the jail are COVID-positive. Even prior to COVID, it was difficult to hire people for jail work. The jail is a potential 656-bed facility that currently has about 450 inmates. Campbell County has a suggested capacity of 85 for deputies but is down by 50 due to COVID. These intangible costs—not seen from the outside—are personnel-related. Overtime is another big issue. In July 2020, the monthly overtime bill was \$80,000, due to a shortage of staff, and the fiscal court had to step up and put that money into the jail. In July 2021, the overtime budget was \$30,000. For the year 2020, the total spent for overtime was \$698,543; so far, the 2021 cost of overtime is \$601,312. Some staff have quit because they cannot take a vacation. Due to staff shortages, there are people on-call every week. They not only have to worry about their own health but also the health of their families.

Transport between jails for the last 18 or 19 months was temporarily shut down because of COVID and may have to be shut down again. Campbell County had to bear the cost of implementing virtual court. Without virtual court, inmates have to be transported, because some judges want the person in front of them. Online visits for attorneys have to be set up and maintained. Because of its number of state inmates, Campbell County has to do that for counties throughout the state which is expensive. Mr. Daley said he hired his own IT staff person to deal with the issue, at a cost of \$60,000, plus the cost of benefits and equipment. He felt it was his facility's duty because it holds inmates from all over the state.

Mr. Daley said that his jail received a call from the Department of Corrections regarding a need to limit visitations, but a couple of jails have been written up, upon inspection, for not allowing visitation. Campbell County had to stop faith-based services, substance use treatment, and monoclonal reconnection therapy. Those programs are really needed in local jails. Campbell County was planning to start them again but had to shut them down again because of renewed problems with COVID and the new variant.

Mr. Daley said that all of the changes that were required were made with no extra funding from the Commonwealth, and jail revenue has taken a drastic hit from the pandemic. He paid the county police department for several months to supply people to work in the jail. His prison account for 2021 lost \$1.6 million in revenue that would have been received for housing state inmates. He said he has those figures broken down by month, and he offered to share that information.

Mr. Daley said that passage of HB 556 during the 2021 regular session was supposed to provide an extra \$2/day per diem for the duration of COVID. However, not a single county facility has received any of the funding outlined in that bill, and the Department of Corrections has recently communicated that expenses are not recoverable without a line itemization of the expenses. Campbell County has a great jail staff and a fiscal court that takes care of a lot of things relating to funding, but smaller jails do not have the ability to do that. It is a very expensive process, and they would not be able to provide numbers to substantiate all the

expenditures.

Responding to questions from Representative Matt Lockett, Mr. Daley said he can only speak for the Campbell County Detention Center, which has a mask mandate and also checks temperatures when people come in. In-person visitation has stopped, but attorneys can meet with their clients online. They can also provide written materials for the jail to pass on to their clients. About 50 percent of jail staff have been vaccinated. Vaccination is offered every day, and a lot of state inmates choose to be vaccinated. At least a dozen staff or inmates have had COVID and recovered. Two died. He does not have that information for other facilities.

In response to a question from Representative Moser about utilization of substance use disorder beds that are contracted with various vendors around the state by the Department of Corrections, Mr. Daley said he does not know the answer to that and does not know of any problems or questions about that from other jailers. Representative Moser said there are inmates who could benefit from that treatment. Use of those beds would also help alleviate overcrowding issues in jails and is an issue that should be reviewed.

Senator McDaniel spoke about the budget impact of the jail's loss of revenue for state inmates who leave the jail. Mr. Daley confirmed that, because of lack of staffing, he shipped out about 85 state inmates a couple of months ago. Senator McDaniel said that jails should have received money that was allocated to begin setting up videoconferencing with the court system, and Mr. Daley said they "had not seen a dime." Senator McDaniel also spoke about the legislature's appropriation of monies to defray costs related to COVID. He suggested that the Department of Corrections should begin to reconsider its position and not decide that those who serve on the front line deserve less.

When Representative Deanna Frazier asked about vaccination rates in the jails, Mr. Daley said there was a slow start, with some jails being late in having the ability to get the vaccinations. In northern Kentucky the health departments acted quickly, and the Campbell County jail has vaccinated about 50 percent of its current population. Also, many released inmates have been vaccinated.

In response to a question from Representative Tate about policies relating to quarantine, Mr. Daley said there is no statewide quarantine policy for jails. In Campbell County, inmates are quarantined for seven days when they come in, but that may be changing to 10 days because of the influx of new cases. If inmates have symptoms, they are placed in a separate quarantine area for another 10 to 15 days. He discussed the guidelines in more detail and stated that the decisions are made at the local level.

Responding to Representative Stevenson, Mr. Daley discussed the protocols for protecting inmates from COVID. He noted that they include housing COVID-positive inmates together and requiring inmates to wear masks when outside their cells.

Representative Adam Koenig asked about the visitation policy. Mr. Daley said that jails are doing visitation in different forms. His jail does not currently have in-person visitation. Every facility is different. Kenton County, for example, has a beautiful

facility that has the ability move people around and that has a nice visitation area. A lot of jails do not have that. Representative Koenig also stated that it is time for the legislature to seriously consider increasing the per diem for jail staff on a permanent basis, not just COVID-related.

Representative Derek Lewis said that the jails in his district—Clay, Laurel, and Leslie Counties—are also struggling as a result of COVID, and he also echoed Senator McDaniel's concerns about defraying expenses.

There were no more questions, and Representative Meredith thanked Mr. Daley for his testimony. The next speakers were Cookie Crews, Commissioner of the Department of Corrections, and Robyn Bender, General Counsel for the Justice and Public Safety Cabinet.

Ms. Crews said that the first COVID-positive test of an inmate occurred in April 2020. Dealing with the virus has been extremely hard for staff. Last year, 48 inmates and five staff were lost to COVID. Around April 2020, the prisons began vaccinating the vulnerable group of ages 60 to 80 and later began to vaccinate staff and the general inmate population. Currently, the vaccination rate for the inmate population has increased to 83.02 percent, but the rate at individual institutions can range from 35 percent to 75 percent. There are efforts to test staff twice a week if they are unvaccinated. Ms. Crews expressed concern for the health and safety of staff and their families. The prisons continue to do mask wearing and testing. When inmates enter the system, each is given a rapid test after leaving the bus. They are tested again twice after seven-day intervals.

Responding to Representative Decker, Ms. Crews said she does not have the information with her about the number of inmates that have recovered from COVID but offered to get that information, broken down by institution. Regarding treatment protocols, this is dealt with on a case by case basis whether the person is vaccinated or unvaccinated.

Responding to Representative Heavrin, Ms. Crews said that the power at the Peeewe Valley facility was restored the previous night. The power structure has not been fixed, but power is being provided by generators.

Representative Johnson said he would appreciate receiving information about the percentage of staff and guards that have been vaccinated and the percentage that have had COVID and recovered. Ms. Crews said she can only speak generally. It depends on the location in the state. In Oldham County, for instance, the three prisons have a vaccination rate of 50-70 percent. In the eastern part of the state, the rate is probably about 32-34 percent and around 40 percent in the west. She offered to get the number of COVID recoveries for Representative Johnson.

Responding to Representative Lockett, Ms. Crews confirmed that personal protective equipment is provided as needed. When he asked about factors contributing to staff shortages, Mr. Crews said it is a combination of things. Because of COVID, people are worried about their families. She also spoke about the relatively low pay, the long hours, and the unpleasant aspects of dealing with prisoners.

When Representative Moser asked about the use

of substance use disorder beds contracted to vendors, Ms. Crews said that those are being utilized to the best of the Corrections Department's ability. She thinks all the beds are filled but offered to get that information. She believes that inmates are getting substance use treatment but that COVID has slowed the process down. Sometimes when inmates leave, due to the pandemic, it may cause them to reconnect with their families as opposed to going to a halfway house.

Representative Moser discussed Regeneron and monoclonal antibody infusion, which are treatments available for individuals who test positive if they meet certain criteria. She asked whether DOC would consider use of these treatments. They have been shown to reduce severe illness and hospitalization. Ms. Crews responded affirmatively. Representative Moser said the treatment should be utilized and she would be happy to assist any effort to expand use of the treatment.

Senator Alvarado urged anyone who has not been infected to get a vaccination. Even those who have been infected that may have an adequate antibody response should get a vaccine as a booster to their immune level. He also said that the nursing home environment is also struggling with staffing issues, with about 36,000 clinical beds in the state.

Representative Walker Thomas said he would like to know how many non-US residents are in the state's prison system this year, compared to last year, and how many might have tested positive for COVID. Ms. Bender agreed to get that information.

Responding to questions from Representative Tipton, Ms. Crews said that 83.02 percent of inmates have been vaccinated. Regarding the vaccination rate of state prisoners in local jails, she said she would probably not have information on them until they actually enter the prison system. As to inmate capacity at the institutions, she said she does not know the capacity last year but can get that information. Today the capacity is 10,027, with 1,645 of those inmates being vaccinated. Ms. Bender said she believes the population in March 2020 was approximately 12,000 but that she would get that information for Representative Tipton.

Representative Koenig suggested that there was some ambiguity in previous testimony regarding visitation policy. Ms. Crews said that DOC does not provide direction for county jails.

Representative Meredith asked about public health guidance that was provided by the Justice & Public Safety Cabinet and the Department of Public Health. He said it seems as though the Jailers Association may have been working from those guidelines. Ms. Bender described documents from various agencies and government offices that addressed guidance for visitation in penal institutions and said that the Department of Corrections did not issue a directive about jail visitation.

Senator Robin Webb asked about opportunities for vaccination at the prison institutions. Ms. Crews said that vaccination is voluntary. They are given one-on-one information about what it would mean to them as an individual and why getting vaccinated is recommended. Senator Webb also asked whether accurate reporting data is available regarding state inmates that are in county jails. Ms. Crews said she



would get an answer to that for Senator Webb.

Responding to Representative Tate, Ms. Crews briefly discussed how COVID has impacted services to the inmates. She said that early on during the pandemic most programs were shut down for about a year, but all programming and education shifts have now been restored.

Responding to Senator Southworth, Ms. Crews said that unvaccinated inmates are able to have visitation. In order to provide stability and safety, visitors are required to be vaccinated. The plan is to gradually open up visitation to children and eventually the unvaccinated, but they have not reached that point yet. Senator Southworth said she heard from a constituent that a child was not allowed to be included in a visit that took place via Zoom. Ms. Crews said that should not have happened and that children should be able to visit via Zoom. Her plan is to fully restore visitation in person at some point. It is important both to the inmate and to family members.

Representative Meredith asked whether any local jails that house state prisoners have requested help because of overcrowding. Ms. Crews said that small jails are not able to quarantine like they should, and from time to time DOC has removed state inmates from jails that reach out to DOC. In the early days of COVID, several jails requested help. One request, she recalled, came from Nelson County. When Nelson County was able to house them, the inmates were shipped back.

There was no further business. Representative Meredith thanked the speakers, and the meeting was adjourned at 12:08 p.m.

## **INTERIM JOINT COMMITTEE ON TOURISM, SMALL BUSINESS, AND INFORMATION TECHNOLOGY**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 26, 2021

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

The 3rd meeting of the Interim Joint Committee on Tourism, Small Business, and Information Technology was held jointly with the Interim Joint Committee on Economic Development and Workforce Investment on Thursday, August 26, 2021, at 1:00 PM, in the ULA Ballroom in Freedom Hall at the Kentucky State Fair. Senator Phillip Wheeler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Wil Schroder, Co-Chair; Representatives Kim King, Co-Chair, and Phillip Pratt, Co-Chair; Senators Rick Girdler, Robby Mills, Adrienne Southworth, Brandon J. Storm, Reginald Thomas, Phillip Wheeler, Mike Wilson, and David Yates; Representatives Shane Baker, Lynn Bechler, Tina Bojanowski, Josh Branscum, George Brown Jr., Josh Calloway, Ryan Dotson, Daniel Fister, Chris Freeland, Jim Gooch Jr., David Hale, Richard Heath, Thomas Huff, Norma Kirk-McCormick, William Lawrence, Charles Miller, Ruth Ann Palumbo, Josie Raymond, Brandon Reed, Rachel Roberts, Bart Rowland, Steve Sheldon, Cherynn Stevenson,

Ashley Tackett Laferty, Nancy Tate, Killian Timoney, Bill Wesley, and Richard White.

**Guests:** David Beck, President and CEO, Kentucky Venues; Mike Berry, Secretary, Tourism, Arts, and Heritage Cabinet; Mike Mangeot, Commissioner, Department of Tourism, Tourism, Arts, and Heritage Cabinet; Russ Meyer, Commissioner, Department of Parks; Craig Potts, Executive Director, Kentucky Heritage Council, Tourism, Arts, and Heritage Cabinet; Kim Baker, Kentucky Performing Arts, Tourism, Arts, and Heritage Cabinet; Ashli Watts, President and CEO, Kentucky Chamber of Commerce; Charles Aull, Senior Policy Analyst, Kentucky Chamber of Commerce.

**LRC Staff:** Andrew Manno, Audrey Ernstberger, Kirk Smith, and Sasche Allen.

#### **Approval of Minutes**

A motion to approve the minutes of the July 27, 2021 meeting was made by Senator Mike Wilson, seconded by Representative David Hale, and approved by voice vote.

#### **Update from Kentucky Venues**

The Kentucky State Fair Board is the governing body of Kentucky Venues, the entity which operates the Kentucky Exposition Center and the Kentucky International Convention Center. Prior to the COVID-19 pandemic, Kentucky Venues hosted more than 300 events a year, including the Kentucky State Fair and the World's Championship Horse Show. About 68 percent of hotels in the region are occupied yearly due to events taking place at the Kentucky Exposition Center or the Kentucky International Convention Center. The properties include 2.1 million square feet of indoor space and more than 430 acres of outdoor space. Kentucky Venues works with the Kentucky General Assembly and various area boards and commissions to host exhibitions, conventions, trade shows, public gatherings, cultural events, and other functions to advance the state's agriculture and tourism industries and economy while serving the entertainment, cultural, and educational interests of the public. Expansions and updates have been completed at both Kentucky Venues properties, but improvements are still needed such as security modernization, infrastructure enhancements, and parking lot repairs.

Answering a question from Senator Phillip Wheeler, David Beck, the President and CEO of Kentucky Venues, explained that recent power outages at the Kentucky Exposition Center were due to the outdated infrastructure of the facility.

Replying to questions from Representative Al Gentry, Tony Schreck, Chief Financial Officer of Kentucky Venues, stated that even after a reduction in expenses and assistance from the General Assembly, there is still a \$10 million deficit due to losses caused by the COVID-19 pandemic. Answering a follow up question, Mr. Beck said the recent mask and facial covering requirements issued by the Governor for visitors entering any executive branch office does apply to Kentucky Venues properties. Although the guidelines are posted for those individuals entering the facilities, it has been difficult to enforce the policy for Kentucky Venues staff. Mr. Beck added that the Kentucky Venues properties have been utilized for emergency services during the COVID-19 pandemic.

#### **Tourism, Arts, and Heritage Cabinet Update**

The Tourism, Arts, and Heritage Cabinet is comprised of 13 agencies, some of which include Kentucky Venues, the Department of Tourism, the Department of Parks, the Kentucky Heritage Council, and Kentucky Performing Arts. The Cabinet is dedicated to promoting and marketing the state as a premier travel destination and collaborates with local tourism partners to bring millions of visitors to the Commonwealth each year. In response to the COVID-19 pandemic, over the last 18 months the Cabinet has provided temporary housing for first responders and frontline healthcare workers; provided temporary housing for low acuity patients to relieve pressure on hospitals; served as safe early and Election Day voting sites; served as COVID-19 testing and vaccination distribution sites; and is currently offering travel incentives to encourage COVID-19 vaccination. Although the COVID-19 pandemic caused tourism to decline both nationally and statewide, the Commonwealth began to recover sooner than some surrounding states and had an estimated 67.8 million visitor trips in 2020. As a result of the ongoing COVID-19 pandemic, about 62 percent of people currently feel comfortable going on vacation, about one in four have reported that the delta variant has negatively impacted upcoming travel plans, and around 34 percent feel that COVID-19 will greatly impact travel decisions for the next six months. Additionally, about 27 percent of people prefer to travel by car, 21 percent feel that travel plans could be postponed due to the delta variant, and about 40 percent utilize the Center for Disease Control or federal health experts for domestic travel decisions. Despite the effects of the pandemic, the tourism industry had an \$8.9 billion direct economic impact in 2020 with \$625 million in state and local taxes and supported over 75,000 jobs. The 67.8 million visitor trips in 2020 generated \$5.9 billion with visitor dollars being spent on lodging, food and beverage, retail, and transportation.

#### **Workforce Issues**

The Kentucky Chamber of Commerce conducted labor force research to identify long term trends and issues within the state's workforce. The Chamber's final report, *20 Years in the Making: Kentucky's Workforce Crisis*, shows workforce challenges are worse in Kentucky than almost any other state in the nation, most issues existed prior to 2020 but were heightened by the COVID-19 pandemic, and multiple interrelated factors contribute to low workforce participation rate. Over the last 20 years, the Commonwealth's workforce participation has been on a steady decline, but as a result of the pandemic, the workforce participation rate fell to about 56 percent. As of June 2021, 43.7 percent of adults were not participating in the state's workforce. The decline in participation rates mirrors national trends over the last two decades, but there is a significant gap between the national average and the Commonwealth's average. In terms of regional workforce participation rates, Kentucky ranks almost last amongst surrounding states, with only West Virginia having a lower rate. Root causes of challenges within the workforce include the retirement boom; employer demand and skills gaps; lack of access to child care; health and

substance use disorders; infrastructure, transportation, and broadband hurdles; incarceration, re-entry, and criminal records; benefit cliffs and social safety net programs; and slow population growth.

#### **Announcement**

Senate President Robert Stivers, House Speaker David Osborne, House Minority Floor Leader Joni Jenkins, Senate Minority Floor Leader Morgan McGarvey, and Executive Director of the National Conference of State Legislatures (NCSL) Tim Storey announced the NCSL Legislative Summit 2024 would be held in Louisville.

There being no further business before the committee, the meeting adjourned.

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

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

#### **of the 2021 Interim**

August 24, 2021

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

The 3rd meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Tuesday, August 24, 2021, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Walker Thomas, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator C.B. Embry Jr., Co-Chair; Representative Walker Thomas, Co-Chair; Senators Jimmy Higdon, Alice Forgy Kerr, Stephen Meredith, Robby Mills, Dennis Parrett, Wil Schroder, Brandon Smith, Whitney Westerfield, Mike Wilson, and David Yates; Representatives John Blanton, Kevin D. Bratcher, Myron Dossett, Jim DuPlessis, Chris Freeland, Chris Fugate, Al Gentry, Jim Gooch Jr., Mark Hart, Matthew Koch, Scott Lewis, Savannah Maddox, Bobby McCool, Patti Minter, Scott Sharp, Ashley Tackett Laferty, Bill Wesley, and Buddy Wheatley.

Guests: John Dodd, Distinguished Veteran; Brigadier General Haldane B. Lamberton; Kari and Bryan Jenkins; Brian Jeffers, Deputy Chief, W.R. Castle Fire-Rescue; Michael “Howdy” Kurtsinger, KY Firefighters Association; Greg Motley, Sheriff, Morgan County; Les Stapleton, Mayor, Prestonsburg; Mitch Case, Battalion Chief, City of Pikeville Fire Department; Patrick Bentley, Fire Chief, City of Pikeville Fire Department; Michael Brown, Chief, City of Prestonsburg Fire Department; James Allen, Code Enforcement Officer, City of Prestonsburg; Lee Jackson, Fire Chief, Belfry Volunteer Fire Department; Doug Tackett, Emergency Management Director, Pike County.

LRC Staff: Jessica Zeh, Maurya Allen, and Logan Schaaf

Co-Chair Embry moved to approve the July 21, 2021 meeting minutes. Representative Fugate seconded the motion. The minutes were approved.

#### **Distinguished Veteran**

John Dodd, a veteran of the wars in Korea and Vietnam, spoke about his efforts to preserve military

heritage. He started a program in Harlan County in 2016 to name roads and bridges after veterans. He would like to see this program expanded to all counties in Kentucky.

#### **Kentucky Department of Military Affairs**

Brigadier General Haldane (Hal) B. Lamberton, Adjutant General of Kentucky, delivered an update on the activities of the Kentucky National Guard. These included providing hospital security, using mobile vaccination teams, supporting drive-through testing, and staffing food pantries. Members of the Kentucky National Guard also helped secure the 2020 election in both the primaries and general election. They dressed as civilians to ensure election integrity and safety. Members of the Kentucky National Guard also provided security in Washington D.C. in the aftermath of the events of January 6, 2021.

Recent deployments include Iraq, Poland, Kosovo, the Horn of Africa, and the southwest border of the United States. General Lamberton commended the professionalism of the Kentucky National Guard and said that it is an organization that everyone in the Commonwealth can be proud of.

Active duty military personnel will be vaccinated, but no deadline has been set for the National Guard. They have been using the Moderna vaccine under the Emergency Use Authorization, and will likely mandate it if it receives full approval. The current vaccination rate for the Kentucky National Guard is 43 percent. General Lamberton said that vaccination is key to military readiness, and that a refusal to be vaccinated could result in administrative separation. There are religious exemptions for the vaccine, but these must be approved.

General Lamberton said that the National Guard has been federally funded to respond to the pandemic. This funding was due to end in September but has been extended to continue to support vaccination clinics, food pantries, and hospital security.

Responding to a question from Chair Thomas, General Lamberton said that the National Guard has been tracking the evacuation of refugees out of Afghanistan. Kentucky National Guard airmen went to Wisconsin to operate an airfield and receive refugee planes. The airmen were federalized under Department of Defense authority.

Senator Higdon thanked General Lamberton for the assistance provided by the National Guard during festivals, for crowd and traffic control.

Responding to questions from Representative Gooch, General Lamberton said that there are Kentucky National Guardsmen working on the southwestern border of the United States. They will rotate back in the coming weeks and 210 more soldiers will arrive at the border in October. Although not under his purview, General Lamberton recommended contacting the Kentucky Department of Public Health for information regarding people who have crossed the southern border being relocated in Kentucky.

Responding to a question from Representative Sharp, General Lamberton said that when members of the Kentucky National Guard provided security in Washington D.C. after the events of January 6, 2021, they were prepared for quick response scenarios. They had personal protection items, including body armor and helmets. Firearms were also sent to D.C.

in case of an emergency, but they were not needed, distributed, or used.

Responding to a question from Senator Yates, General Lamberton welcomed the idea of legislation to help students in the National Guard receive credits during times they are unable to attend classes because of National Guard responsibilities.

#### **2022 BR 74 – AN ACT relating to swimming pool operational standards.**

Representative Randy Bridges, District 3, was present to speak in favor of prefiled Bill Request 74 for the 2022 Regular Session. Representative Bridges noted that this bill was 2021 Regular Session HB 46. It is commonly referred to as Ava’s Law. Kari and Brian Jenkins, whose daughter Ava drowned two years ago in a neighbor’s above-ground pool, testified in favor of the bill. They testified that accidental drowning is the leading cause of death for children under five, and if they can prevent the heartache of one family, Ava’s death will have not been in vain.

Representative Bridges expressed his admiration for the Jenkins’ courage and for sharing their pain in service of others. He testified that 30 states have residential pool safety laws. Kentucky requires barriers only for commercial pools. The goal is not to create hardship for homeowners, but to address a public safety issue. While federal laws address main drains for new pools, Kentucky should look into adding laws adapting older pools to the current standards. This bill would require pools to be enclosed by a barrier at least four feet tall, and would require ladders and steps outside of the pool to be able to be secured, locked, or removed when not in use.

Responding to a question from Representative Bratcher, Representative Bridges testified that the penalties for not complying with these safety measures are still being worked out, but could include daily fines. Some exceptions will be allowed for pool owners with adequate pool covers, and for ponds and farm water sources in rural areas.

Representative Gooch said that he also had someone in his district lose their child to drowning. He appreciates the work that has gone into the bill and the exceptions created for rural farm ponds.

Responding to a question from Representative DuPlessis, Representative Bridges said that while he did not have specific data on the danger of drains in residential pools as compared to commercial pools, he noted that newer residential pools often have stronger pumps to accommodate fountains, jets, and other features.

In response to a comment from Representative Hart, Representative Bridges said that for portable pools, gallon ratings could be considered to determine if the pools need to be emptied when not in use.

Responding to Senator Wilson, Representative Bridges said that the goal is not to be overburdening, but to protect children.

#### **BR 171 – AN ACT relating to prohibiting the enforcement of a federal ban or regulation of firearms and declaring an emergency.**

Representative Josh Bray, District 71, was present to speak in favor of prefiled Bill Request 171 for the 2022 Regular Session. Representative Bray testified that BR 171 is a Second Amendment



protection bill. He said that rhetoric from Washington D.C. has upset his constituents. Seventeen other states have passed similar legislation.

Representative Bray said that this bill would prohibit state funds from being used to restrict firearm ownership, and would go into effect in January, 2022.

Responding to a question from Representative Wheatley, Representative Bray said that there has been a discussion about potential legal challenges. This bill would not prevent the FBI, ATF, or any other federal agency from doing their jobs.

#### **Volunteer Firefighter Recruitment**

Representative Bobby McCool, District 97, and Representative Ashley Tackett Laferty, District 95, spoke about volunteer firefighter recruitment. Representatives McCool and Tackett Laferty emphasized the importance of volunteer firefighters, especially for rural counties. Volunteer fire departments operate on small budgets, making recruitment and retention difficult. Representative Tackett Laferty filed a bill in the 2021 Regular Session to institute a \$1000 tax incentive for volunteer firefighters.

Brian Jeffers, Deputy Chief of W.R. Castle Fire-Rescue in Wittensville, KY, spoke about the staffing shortages his department is facing. Michael “Howdy” Kurtsinger of the KY Firefighters Association spoke about the decrease in volunteer firefighting numbers over the last two decades. In 2003, there were 17,000 volunteers. Today there are 12,000, many of whom are career firefighters volunteering on their off days. Greg Motley, Sheriff of Morgan County, spoke about the necessity of volunteer firefighters. They answer medical calls with automated external defibrillators, assist police responding to accidents, direct traffic, and are crucial for small towns. Volunteer firefighters often work in tandem with law enforcement. Most of their funding is through fundraising. Les Stapleton, Mayor of Prestonsburg, testified that Prestonsburg has a paid fire department of 14 full-time and eight part-time firefighters, and 21 volunteers who support the paid personnel. They assist with wrecks, work festivals, help to keep the city moving, and are also invaluable to police officers in rural areas.

Responding to a question from Representative Fugate, Representative Hart and Mayor Stapleton said that insurance companies can and do pay fire departments for responding to fires.

Senator Mills expressed his support for the volunteer firefighter tax credit and said that the bill will likely need to go through the Appropriations and Revenue Committee.

Co-Chair Embry said that volunteer firefighters are critical for the counties he represents, and thanked Representatives McCool and Tackett Laferty for sponsoring legislation to support them.

Other guests supporting volunteer firefighter recruitment were Mitch Case, Battalion Chief of the City of Pikeville Fire Department; Patrick Bentley, Fire Chief of the City of Pikeville Fire Department; Michael Brown, Chief of the City of Prestonsburg Fire Department; James Allen, Code Enforcement Officer for the City of Prestonsburg; Lee Jackson, Fire Chief of the Belfry Volunteer Fire Department; and Doug Tackett, Emergency Management Director of Pike County.

With no further business before the committee, the meeting adjourned at 12:00PM. The next meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection is September 22, 2021, at 10:00AM.

## **CAPITAL PLANNING ADVISORY BOARD**

### **Minutes of the 4th Meeting of the 2021 Calendar**

August 18, 2021

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

The 4th meeting of the Capital Planning Advisory Board was held on Wednesday, August 18, 2021, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Adrienne Southworth, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Adrienne Southworth, Co-Chair; Representative Bobby McCool, Co-Chair; Senator Phillip Wheeler, Representative Derek Lewis; Charles Byers, Carole Henderson, Patsy Jackson, Ryan Neff, Mark Overstreet, and Katie Shepherd.

Guests: Dr. Aaron Thompson, President, Dr. Bill Payne, Vice President of Finance and Administration, and Shaun McKiernan, Director of Finance and Budget, Council on Postsecondary Education; Danny Rhoades, Executive Officer, Court Facilities Department, Administrative Office of the Courts; Katie Smith, Commissioner, Department for Financial Services, Kentucky Cabinet for Economic Development; and Billie Johnson, Executive Director, Office of State and Federal Grants, Aaron Jones, Local Government Advisor, Office of State Grants, Laura Redmon, Budget Manager, Office of Financial Management and Administration, Department for Local Government.

LRC Staff: Shawn Bowen, Korey Sallee, Jennifer Luttrell, and Ashton Thompson.

#### **Approval of Minutes**

A motion to approve the minutes of the July 26, 2021, meeting was made by Senator Wheeler, seconded by Representative McCool, and approved by voice vote.

#### **Information Items**

Ms. Bowen said one information item was included in the meeting materials in response to questions raised at the board’s July 26 meeting regarding proposed capital projects for Kentucky State University.

#### **Amended Capital Plans**

The capital planning system is open for a period of ten days after the monthly board meeting. During that time, agencies may amend their capital plans as needed. Since the July 26 meeting, Northern Kentucky University added one capital project for the 2022-2024 biennium, the Expand/Renovate Regents Hall project, \$2 million private funds and long-term funding. The University of Louisville also added one new project to the 2022-2024 biennium, the Renovate Kentucky Lions Eye Lab project, \$7 million restricted funds.

## **Presentation - Postsecondary Capital Project Review**

As part of the capital planning process, the Council on Postsecondary Education (CPE) is responsible for the review and evaluation of capital construction and information technology (IT) projects submitted by the postsecondary institutions. Dr. Thompson, Dr. Payne, and Mr. McKiernan discussed the review process and the corresponding results.

CPE reviewed the postsecondary institutions’ capital project submissions and recommended a pool funding approach be utilized to address asset preservation projects on the campuses. As such, in its 2022-2024 biennial budget request, CPE plans to request a \$700 million general fund pool for asset preservation. Postsecondary institutions would be required to have a 50 percent match, providing approximately \$1 billion in funding over the biennium.

CPE’s focus represents a much more aggressive approach to funding asset preservation than in previous biennia. The rationale for this proposal is a growing inventory of facilities, infrastructure, and systems in need of asset preservation; increasing construction costs (between 3 percent and 6 percent per year); minimal state investment in asset preservation since 2008 (\$281 million in appropriations or 3.8 percent of need according to the VFA Study); and a need to renovate aging facilities and systems to reduce operating costs through greater efficiencies.

CPE staff were also asked to evaluate IT projects submitted by the institutions. An evaluation committee comprised of public and private sector IT experts reviewed 36 projects; 28 projects were identified as high value, with a total cost of \$179.9 million. In its 2022-2024 budget request, CPE plans to request \$80 million for a technology infrastructure pool.

In response to questions from Senator Southworth, Dr. Thompson replied that over the last five years, the college entrance rate in Kentucky has fallen significantly. Adult learners have either aged out or are not enrolling like they once did. The traditional age population group that are enrolling are staying longer. Retention rates are up to 80 percent at four-year institutions and extremely high at the Kentucky Community and Technical College System. The state’s educational attainment rate has risen in the last five years almost eight or nine percentage points.

Responding to a question from Senator Southworth, Dr. Thompson said for the last two biennia, CPE’s capital budget request included a request for an asset preservation pool. While the need for new construction still exists, the Council’s focus continues to be the preservation of existing postsecondary facilities. There may be at least two or three universities that request new construction projects in their 2022-2024 budget request, and for those institutions, a strong rationale must be given as to why the need for new construction exists.

In response to a question from Senator Southworth, Dr. Payne said if CPE receives authorization in the budget for an asset preservation pool, the funds would be allocated to the institutions based upon recommended funding levels in the Vanderweil Facilities Advisors (VFA) Study, which was completed in 2007 and updated in 2013. CPE is

planning to allocate state funds among institutions based on each institution's share of system total asset preservation need as determined by VFA. Each institution will have the flexibility to use their pool of funding for any asset preservation projects included in the enacted biennial budget. Institutions will be able to fund their highest priority projects or multiple smaller critical campus projects.

Senator Wheeler asked who is responsible for monitoring the expenditures for construction and equipping of new dormitories. He noted that some of these facilities have luxurious accommodations. Dr. Thompson agreed that some of the new dormitories being constructed today are luxurious, but those facilities are constructed without state general funds. Universities use public-private-partnerships to construct and furnish the residence halls. Dr. Thompson stated that the money requested from the state will not be used to construct residence halls.

In response to a question from Representative Lewis regarding postsecondary institutions' long-term plans for cyber security, Dr. Thompson replied that CPE has approved several new cutting edge programs focused on cyber security this past year.

#### **Review of Agency Capital Plans**

The Capital Planning Advisory Board received testimony regarding four state agency capital plans: the Council on Postsecondary Education, the Economic Development Cabinet, the Kentucky Court of Justice, and the Department for Local Government. The testimony included discussion of capital construction, information technology, and equipment needs for the period 2022-2028.

#### Council on Postsecondary Education

Dr. Thompson, Dr. Payne, and Mr. McKiernan gave a brief overview of the CPE capital plan. For the 2022-2024 biennium, CPE identified projects totaling \$3 million general funds, with \$2 million allocated for the College to Career Pathways Portal project and \$1 million for the Upgrade Kentucky Regional Optical Network (KyRON) project.

In response to questions from Senator Southworth, Dr. Thompson said a law was passed in 2010 that allows for the seamless transfer of credits between the two-year programs and the four-year universities. The law has worked well, and if there is an issue that cannot be resolved regarding the transfer of credits, the CPE President will make the final decision. The law does not include the provision of transfer of credits between four-year institutions, and the transfer process is not as seamless, but with the current law in place, those issues may be resolved.

In response to a question from Representative McCool, Dr. Thompson said the placement of KentuckyWired hubs on university campuses reduced infrastructure costs, especially during the Covid-19 pandemic when the digital divide was even wider than thought. Internet access was provided, but the capacity was not; upload and download speeds were inadequate. CPE has included in its current capital plan the Upgrade Kentucky Regional Optical Network Infrastructure project (\$1 million GF). This project will include the purchase of networking equipment to help improve upload and download speeds for postsecondary institutions.

#### Kentucky Court of Justice

Mr. Rhoades and Mr. Byers provided a brief overview of the Kentucky Court of Justice capital plan. For the six-year period, the Court of Justice's capital plan included nine court facility construction and/or renovation/addition projects, totaling \$154,050,000 long-term bonds. For the court facility projects, amounts are appropriated from the general fund for use allowance payments that support the debt service for local bonds issued to construct the projects.

In response to a question from Senator Wheeler, Mr. Byers said it is a challenge to provide the maximum amount of bandwidth needed for video conferencing and zoom capabilities in certain court facilities. These applications are bandwidth intensive; technology is limited by the carriers available in the area. He explained that audio/video recording serves as the official record of the court, and interrupted technology compromises the integrity of the official record. AOC consistently evaluates different carriers to determine the best way to provide the needed technology.

In regard to the Leslie County Court Facility project planned for the first biennium, Representative Lewis said the new facility is needed, and he thanked the Administrative Office of the Courts for being attentive to the needs of Leslie County citizens.

In response to questions from Senator Southworth, Mr. Rhoades said the building program for Leslie County requires a certain amount of square footage for courtrooms and circuit clerk, drug court, pre-trial, and court designated worker offices. They have looked at ways to reduce square footage. The 24,000 square feet proposed for this judicial facility includes space for all court functions; the design reduces the size of the courtrooms, not substantially, but with technology improvements, the courtroom can function with the reduced square footage. Based on the assessment, the amount of space currently occupied in Leslie County is inadequate. Mr. Rhoades said the new facility is consistent with the projected 50 percent growth pattern. There is space for security cueing, security monitoring, holding cells throughout the facility for each courtroom, and three circulation patterns for separating the public, court staff, and prisoners.

In response to additional questions from Senator Southworth, Mr. Rhoades said the county will own the court facility. Bonds are sold locally and payments are spread out over 20 years. The total project cost is \$15,005,000 local bonds, and the general fund use allowance payments that supports the debt service for the local bonds is \$1,241,600. The local bond issuance does not count towards the county's bonding capacity; the bonds are backed by the authorization of the judicial budget.

In response to a question from Senator Southworth, Mr. Rhoades responded that as remote access increases, there will be adjustments moving forward to more hybrid proceedings with fewer spectators, but with litigants, attorneys, judges, and clerk staff in the courtroom. Provisions are being made in a lot of the conference rooms to include large monitors and video capability to handle virtual court proceedings. At this time, there have been no adjustments related to the possibility of all virtual proceedings.

#### Kentucky Cabinet for Economic Development

Katie Smith, Commissioner, Department for Financial Services, gave a brief overview of the cabinet's capital plan. For the six-year period, the capital plan included three proposed projects totaling \$180,000,000. Funds are being requested to finance three grant/loan programs administered by the cabinet: the High-Tech Construction/Investment Pool, the Economic Development Fund Program, and the Kentucky Economic Development Finance Authority (KEDFA).

In response to questions from Senator Southworth, Ms. Smith said as of June 2021, the remaining balance available for projects is \$19 million. The KEDFA loan program is not as popular as the grant programs. Currently, there are about 20 KEDFA loans outstanding with a value of about \$12 million. The loan proceeds are returned to the program to be used for additional loans. The disbursement of grant funds are performance based, and contingent upon the companies meeting the required objectives included in the grant agreement.

#### Department for Local Government

Aaron Jones, Local Government Advisor, Office of State Grants, gave an overview of the department's capital plan. For the six-year period, the capital plan included three Flood Control Matching Fund projects totaling \$18,000,000.

Mr. Jones confirmed to Senator Southworth that the department has \$6 million in bond funds and is requesting \$6 million in general funds for the next three biennia.

#### **Board Discussion of Planning Issues**

As part of the capital planning process, board members select projects they would like to see highlighted in a separate section of the capital plan for funding consideration by the General Assembly. The project selections encompass state general fund projects for the 2022-2024 biennium. Ms. Bowen said three worksheets, containing projects in the categories of new construction; construction to protect investment in plant (maintenance and renovation construction); and information technology, will be e-mailed to members after the meeting. Instructions and a link to the project descriptions will also be provided. Members, if they choose to participate in this portion of the planning process, are to identify up to 15 projects in each category and return to the board's staff no later than September 22 in order for staff to have them ready for the last meeting on October 13.

Senator Southworth said the next meeting will convene on September 15. The meeting will include an open discussion amongst members of their potential project recommendations.

#### **Adjournment**

The next meeting is scheduled for Wednesday, September 15, 2021, in Room 169 Annex starting at 1:00 p.m. There being no further business, the meeting was adjourned at 3:54 p.m.



## **CAPITAL PLANNING ADVISORY BOARD**

### **Minutes of the 5th Meeting of the 2021 Calendar**

September 15, 2021

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

The 5th meeting of the Capital Planning Advisory Board was held on Wednesday, September 15, 2021, at 10:00 AM, in Room 169 of the Capitol Annex. Senator Adrienne Southworth, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Adrienne Southworth, Co-Chair; Representative Bobby McCool, Co-Chair; Senator Phillip Wheeler, Representative Derek Lewis; Pat Abell, Rocky Adkins, J. Michael Brown, Charles Byers, Patsy Jackson, and Mark Overstreet.

**Guests:** Dr. Bill Payne, Vice President of Finance and Administration, Ryan Kaffenberger, Senior Associate for Finance and Budget, and Shaun McKiernan, Director of Finance and Budget, Council on Postsecondary Education.

**LRC Staff:** Shawn Bowen, Korey Saltee, Ashton Thompson, and Christina Williams.

#### **Approval of Minutes**

A motion to approve the minutes of the August 18, 2021, meeting was made by Senator Wheeler, seconded by Representative Lewis, and approved by voice vote.

#### **Introduction of New Board Member**

Senator Southworth welcomed Mr. Pat Abell as a new board member. Mr. Abell is an executive branch appointee, replacing Mr. John Hodgson, whose term expired.

#### **Statewide Capital Improvements Plan-Proposed Content and Organization**

Ms. Bowen discussed the proposed content and organization of the 2022-2028 Statewide Capital Improvements Plan. The capital plan is divided into six sections, and includes the summary, policy recommendations, project recommendations, status reports of state-funded capital construction projects, proposed projects listing, and the appendices. For the current planning period, state agencies and postsecondary institutions submitted 1,348 projects with a dollar value of approximately \$25 billion from all funding sources. General fund dollars account for \$7 billion of the total. By comparison, in 2019, 1,300 projects were submitted with a value of \$22 billion. Projects are submitted in five categories, including maintenance and renovation, new construction, grants/loans, IT and equipment. The majority of the project requests were categorized as maintenance and renovation (47 percent) and new construction (41 percent).

Ms. Bowen said the board's October 13 meeting will include a review of the member-selected project recommendations due September 22, and final approval of the 2022-2028 Statewide Capital Improvements Plan.

#### **Statewide Capital Improvements Plan-Discussion of Project Recommendations**

Board members discussed a variety of projects in the categories of maintenance and renovation, new

construction and IT. Maintenance and renovation projects discussed included those for the Department of Veterans Affairs, Department of Education School for the Blind and School for the Deaf, Justice and Public Safety Cabinet projects related to correctional facilities, Kentucky Department of Parks projects, Kentucky Community and Technical College System (KCTCS) projects, and other postsecondary education institution projects. In addition, the allocation of pool funding for postsecondary asset preservation projects was also discussed.

Mr. Kaffenberger provided clarification as to how the postsecondary asset preservation pool will be allocated if the Council on Postsecondary Education (CPE) receives authorization for pool funding during the next budget cycle. In its 2022-2024 budget request, CPE plans to request a \$700 million bond-funded pool, that when combined with anticipated institutional matching funds of \$350 million, will allow for an approximate \$1 billion pool to address high priority asset preservation projects identified by the institutions. State funds will be distributed based on each institution's share of system total asset preservation need.

In response to a question from Senator Southworth, Mr. Kaffenberger said VFA consultants evaluated the postsecondary facilities and identified the needed asset preservation projects on the campuses. Dr. Payne said the VFA Study took over a year to complete; every campus, including KCTCS sites, was visited.

In response to additional questions from Senator Southworth, Dr. Payne said the two research universities – the University of Kentucky and the University of Louisville, have access to annual giving endowment proceeds and other sources of revenue the comprehensive universities and KCTCS do not have access to. In regard to the distribution of the pool funding, he said in past budget cycles, CPE has requested or recommended a dollar for dollar match, with the exception of one biennium wherein a sliding scale applied, and the research universities were required to provide a larger match than the other institutions.

In response to another question from Senator Southworth, Dr. Payne said he did not know the share of educational cost paid by the student and the state at each institution. He said he would find out, and provide the information to the board before the project recommendations are due September 22.

The board next discussed project recommendations in the category of new construction. Among the projects discussed were the Little Sandy Correctional Complex, the Kentucky State Police Skills Pad, Transportation Cabinet Construct 16 New T-Hangers, Department of Parks new construction projects, new postsecondary education facilities, and the Leslie County court facility.

Senator Southworth questioned the feasibility of constructing new spaces to address prison overcrowding instead of first determining why the prisons are overcrowded. Senator Wheeler said the Little Sandy Correctional Complex is one of the largest employers in Elliott County, one of Kentucky's most disadvantaged counties. It was his understanding that the project will expand the facility, and relieve prison

overcrowding in the more urban areas of Kentucky.

Mr. Adkins said in the last budget, the General Assembly authorized a project to plan and design phase two of the Little Sandy Correctional Facility (\$8 million bond funds). Phase two will expand the capacity of the facility by 816 beds. The project is costly; however, it is a good use of state taxpayer dollars. Little Sandy is the last correctional facility that was built in Kentucky, and all the site work done was in preparation for phase two. He added that there have been meetings with local elected officials in regard to the expansion project. Senator Wheeler said he is fully committed to the project; it is a worthwhile expenditure of state funds, and will bring economic opportunities to Elliott County and the surrounding areas.

In response to a question from Senator Southworth, Mr. Adkins said many of the buildings at Little Sandy were built for the expected expansion of the facility. Other than the construction of the dormitories, he was not sure what additional work is included in phase two.

The board next discussed project recommendations in the category of IT. Among the projects discussed were the CPE Student Portal (College to Career Pathways) project, the Finance and Administration Cabinet eMARS Upgrade and Systems Enhancements project, the Justice and Public Safety Cabinet Case Management System, the Kentucky State Police Emergency Radio System Replacement project, and KentuckyWired projects.

There being no further business to come before the committee, the meeting adjourned at 11:45 AM.

## **CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

### **Minutes**

August 25, 2021

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

The 8th meeting of the Capital Projects and Bond Oversight Committee was held on Wednesday, August 25, 2021, at 3:30 PM, in Room 169 of the Capitol Annex. Senator Rick Girdler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Rick Girdler, Co-Chair; Representative Chris Freeland, Co-Chair; Senators Jason Howell and Robin L. Webb; and Representatives Jason Petrie and Walker Thomas.

**Guests:** Elizabeth Baker, Senior Director, Strategic Capital Planning and Legislative Analysis, University Budget Office, University of Kentucky; Megan Campbell, Executive Director of University Planning, Design and Construction, University of Louisville; Jeff Spoelker, Associate Athletic Director, University of Louisville; Janice Tomes, Deputy State Budget Director, Office of State Budget Director; Brigadier General Brian Wertzler, Interim Executive Director, Department of Military Affairs; Scott Aubrey, Director, Division of Real Properties, Department for Facilities and Support Services; Greg Rush, Vice President for Finance and Administration, Kentucky State University; Sandy Williams, Deputy Executive Director, Kentucky Infrastructure Authority; and

Ryan Barrow, Executive Director, Office of Financial Management.

**LRC Staff:** Shawn Bowen, Committee Staff Administrator; Korey Sallee, Committee Analyst; Ashton Thompson, Committee Assistant; and Jennifer Luttrell, Committee Assistant.

#### **Approval of Minutes**

A motion was made by Senator Howell to approve the June 17 and July 30, 2021, minutes, seconded by Representative Thomas, and approved by voice vote.

#### **Information Items**

Mr. Sallee referenced four information items: correspondence regarding Finance and Administration Cabinet projects and a University of Kentucky lease project submitted to the committee for approval in July, a report of the purchase of medical equipment by Northern Kentucky University, and a local school district bond issue for Monroe County.

#### **Lease Reports from the Postsecondary Institutions**

Ms. Baker submitted a request for a new lease for various UKHC administrative offices and clinics. The university plans to lease 53,368 square feet at an annual cost of \$1,692,299 for a period of 7 years.

A motion was made by Representative Thomas to approve the new UK lease, seconded by Senator Howell, and approved by unanimous roll call vote.

Senator Girdler moved to roll the two University of Louisville leases into one roll call vote, the motion was approved without objection.

Mr. Spoekler submitted a request for a new lease for housing to accommodate the University of Louisville athletic football program. The lease will provide 44 beds for a one year-lease in the amount of \$422,180.

Ms. Campbell next reported an amended lease for the MedCenter One Building. The square footage was reduced from 67,000 to 53,000, and the annual cost was reduced to \$992,757 from \$1,307,609.

A motion was made by Representative Thomas to approve the University of Louisville leases, seconded by Senator Howell, and approved by unanimous roll call vote.

#### **Project Report from the Finance and Administration Cabinet**

Ms. Tomes reported an emergency repair, maintenance, or replacement project for the Department of Military Affairs, Bluegrass National Guard Center, in the amount of \$1,050,000. The State Emergency Operations Center Window Replacement project will be funded from the Capital Construction Surplus Account. The scope of work includes remediation and replacement of security windows with structural defects. The cabinet determined that the remediation replacement work needs to begin soon to prevent further damage.

Responding to a question from Representative Petrie, Ms. Tomes confirmed the security windows are under warranty, and the Finance and Administration Cabinet has filed civil action in the Franklin Circuit Court on behalf of the Department of Military Affairs.

Responding to a question from Representative Petrie, General Wertzler confirmed the issue was a manufacturer defect.

Senator Girdler moved to roll the three Finance

and Administration Cabinet projects into one roll call vote, the motion was approved without objection.

Ms. Tomes reported three new federally-funded capital projects for the Department of Military Affairs: Jackson Readiness Center Interior Restoration project, \$1,900,000; Murray Readiness Center Restoration project, \$1,950,000; and Springfield Readiness Center Latrine Restoration project, \$1,700,000.

Responding to a question from Representative Petrie, Ms. Tomes confirmed all three projects are 100 percent federally-funded through the Army National Guard Cooperative Agreement, and the projects do not require state matching funds.

A motion was made by Representative Thomas to approve the three Finance and Administration Cabinet projects, seconded by Senator Howell, and approved by unanimous roll call vote.

#### **Lease Report from the Finance and Administration Cabinet**

Mr. Aubrey submitted a lease modification request for the Department of Libraries and Archives in Franklin County. The modified lease will add 23,128 square feet of warehouse space at the current rental rate of \$5.41 per square foot. The annual rental cost will increase from \$545,765 to \$670,887.

A motion was made by Representative Thomas to approve the Department of Libraries and Archives lease modification, seconded by Senator Howell, and approved by unanimous roll call vote.

Mr. Aubrey reported four quarterly lease modifications for three leased properties in Franklin County and one in Jefferson: the Cabinet for Health and Family Services added 131 square feet for a network room; the Board of Elections added 200 square feet of storage space; the Office of the Attorney General added 1,540 square feet for a training room; and the Unified Prosecutorial System added six parking spaces to its lease.

Mr. Aubrey reported a lease modification for the Cabinet for Health and Family Services in Franklin County to make minor structural renovations in the network room. An estimate from Moore's Custom Building in the amount of \$8,995 was selected and the total cost was paid pursuant to KRS 56.813.

#### **Bond Issue Report**

Mr. Rush reported the sale of the certificates of participation to pay the costs of constructing a new residence hall for Kentucky State University. The sale occurred on July 27, 2021, and closed on August 3, 2021. The net proceeds were \$58 million, and the net interest rate was reported as 3.19 percent. The certificates were issued on a tax-exempt basis by the developer, CRM Development Company, and have a term of 20 years.

#### **Report from the Office of Financial Management**

##### **Kentucky Infrastructure Authority Loans**

Senator Girdler moved to roll the five KIA loans into one roll call vote, the motion was approved without objection.

Ms. Williams reported five new KIA loans: Fund A Loans-City of Louisa, Lawrence County (increase), \$150,000; City of Paintsville, Johnson County, \$1,500,000; City of Somerset, Pulaski County, \$4,500,000; and Fund F loans-City of Lebanon, Marion County, \$1,602,975; and McKinney Water

District, Lincoln County, \$2,491,916.

A motion was made by Representative Thomas to approve the five KIA loans, seconded by Senator Howell, and approved by unanimous roll call vote.

#### **New Debt Issues**

Senator Girdler moved to roll the three new debt issues into one roll call vote, the motion was approved without objection.

Mr. Barrow reported three new bond issues for the Kentucky Housing Corporation (KHC): Revenue Bonds (Crossing at Mill Creek), Series 2021, \$22,300,000; Conduit Revenue Bonds (Bowling Green Tower), Series 2021, \$22,500,000; and Multifamily Revenue Bonds (Lower Hunter's Trace Project), Series 2021, \$18,500,000.

A motion was made by Representative Thomas to approve the three new debt issues, seconded by Senator Howell, and approved by unanimous roll call vote.

#### **Previous Debt Issues**

Mr. Barrow reported three previous debt issues: KHC Conduit Multifamily Housing Revenue Bonds (Cambridge Square), Series 2021, \$26,000,000; Lexington-Fayette Urban County Government Public Facilities Corporation Lease Revenue Refunding Bonds, Series 2021 (Forward Delivery), \$98,995,000; and Eastern Kentucky University General Receipts Refunding Bonds, Series 2021 A (Forward Delivery), \$12,405,000.

#### **School District Debt Issues with School Facilities Construction Debt Service**

Senator Girdler moved to roll the eight School Facilities Construction Commission (SFCC) school district debt issues into one roll call vote, the motion was approved without objection.

Mr. Barrow reported eight SFCC school district bond issues: Adair County-\$10,660,000; Boone County-\$20,505,000; Dawson Springs Independent (Hopkins County)-\$1,755,000; Grayson County-\$5,605,000; Morgan County-\$7,640,000; Newport Independent (Campbell County)-\$1,490,000 and \$4,754,000; and Pulaski County-\$16,440,000.

A motion was made by Representative Thomas to approve the eight SFCC school district debt issues, seconded by Senator Howell, and approved by unanimous roll call vote.

Senator Girdler announced the upcoming meeting at 3:30 p.m. on September 23.

With there being no further business the meeting adjourned at 4:08 p.m.

## **HOME & COMMUNITY BASED SERVICES WAIVER REDESIGN TASK FORCE**

### **Minutes of the 3rd Meeting of the 2021 Interim August 23, 2021**

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

The 3rd meeting of the 1915c Home & Community Based Services Waiver Redesign Task Force was held on Monday, August 23, 2021, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Steve Riley, Chair, called the meeting to order, and the secretary called the roll.



Present were:

**Members:** Senator Julie Raque Adams, Co-Chair; Representative Steve Riley, Co-Chair; Senators Danny Carroll, Stephen Meredith, and Dennis Parrett; Representatives Daniel Elliott, Norma Kirk-McCormick, and Pamela Stevenson.

**Guests:** Aaron Bale, Acquired Brain Injury Long-Term Care Waiver Services Recipient; Linda Klawitter, Speech-Language Pathologist and Owner, Brainwave Neurorehab, PLLC; Kristal Vardaman, PhD, MSPH, Policy Director and Tamara Huson, MSPH, Analyst, Medicaid and CHIP Payment and Access Commission; Pam Smith Director of Community Alternatives, Department for Medicaid Services (DMS), Cabinet for Health and Family Services (CHFS); Jeff Edwards, Division Director, Protection and Advocacy Division, Department of Public Advocacy.

**LRC Staff:** Ben Payne, Hillary Abbott, and Samir Nasir.

#### **Approval of the Minutes**

A motion to approve the July 26, 2021, minutes was made by Senator Adams and seconded by Senator Meredith.

#### **The Importance of Waiver Services and Barriers to Care**

Aaron Bale, acquired brain injury long-term care waiver services recipient and his speech-language therapist, Linda Klawitter presented an overview of the barriers to care Aaron has faced as a waiver recipient. Ms. Klawitter spoke to the barriers she has faced serving waiver participants. The barriers include staffing shortages, lack of transportation, and the limited and arbitrary number of service hours that are not person-centered. Mr. Bale stated that he is dependent on the services that the waiver provides him, yet given the staffing shortages and barriers that Ms. Klawitter stated, there are days he fears none of the services he needs will be provided. Ms. Klawitter stated that waiver redesign needs to be person-centered accounting for provider flexibility to ensure all participants being served have their needs met.

#### **1915(c) HCBS Waiver Redesign Options**

Pam Smith, Director of Community Alternatives, Department for Medicaid Services, Cabinet for Health and Family Services, presented an overview of the 1915(c) waiver redesign process, the steps in the redesign process already made by DMS, and ways the General Assembly can help.

In response to questions and comments from Senator Meredith, Ms. Smith stated that the timeline for moving forward with the rate methodology will be broken up into multiple parts and the Cabinet will be first moving ahead with a rate study of increasing all waivers. The larger rate study does not have a definitive start time. Ms. Smith stated that the reason there were winners and losers from the previous rate study was because it was conducted within a budget neutral framework. CHFS has decided that there are too many changes that need to be made to take a budget-neutral approach. Ms. Smith stated that she agrees that the cost of doing nothing is too great and pledges to keep working hard for the waiver recipients and providers.

In response to questions and comments from

Senator Adams, Ms. Smith stated that the first step would be to look at what it would take to increase all waivers in order to be rate equal and once all waivers are equal, the next step would be to look into what particular services need rate increases.

In response to questions and comments from Representative Riley, Ms. Smith stated that Kentucky's Appendix K, is directly tied to the state of emergency declaration. Ms. Smith stated that she is not able to speak to vaccine mandates and their possible impact on waiver provider labor shortages.

In response to questions and comments from Senator Meredith, Ms. Smith stated that CHFS would be looking to bring in community partners to help with the redesign.

In response to questions and comments from Senator Carroll, Ms. Smith stated that the reimbursement rate discrepancies between waivers in case management stand out as an item that needs to be looked at closely in the upcoming rate study.

#### **HCBS Waiver Waiting List Management**

Kristal Vardaman, PhD, MSPH, Policy Director and Tamara Huson, MSPH, Analyst, Medicaid and CHIP Payment and Access Commission, (MACPAC) presented a national overview of Medicaid waiver waitlists including statistics, solutions, and common barriers, providing context for the waiver waitlist in Kentucky.

Senator Meredith stated that the MACPAC presentation shows that the long waiver waitlist demonstrates greatly what the cost of doing nothing is and the need to address the waitlist sooner rather than later.

Pam Smith, Director of Community Alternatives, Department for Medicaid Services, Cabinet for Health and Family Services, presented an overview of the 1915(c) waiver waitlist in Kentucky, detailing the unique barriers facing the Kentucky Medicaid multi-year waiver waitlist and ways DMS plans to address the wait list.

In response to questions and comments from Senator Carroll, Ms. Smith stated that there is a targeted set of criteria that has to be met to be placed on any waitlist and each waiver has their own targeted criteria. Ms. Smith added that all waivers, except the Supports for Community Living (SCL) waiver, use a mix of assessments; SCL uses a validated assessment tool. Ms. Smith stated that a goal of waiver redesign is to create a universal, validated assessment for all waivers that follow the participant and their changing needs.

In response to questions and comments from Senator Meredith, Ms. Smith stated that the projected funding requested to get the waiver program out of the red, would be around \$45 million, but the amount needed to eliminate the waitlist is difficult to tell because more research is needed to be done to verify the actual number of people on the waitlist.

#### **Community Integration and Meeting the Needs of Vulnerable Kentuckians**

Jeff Edwards, Division Director, Protection and Advocacy Division, Department of Public Advocacy, presented an overview of Kentucky's Protection and Advocacy (KPA) system, the client-directed approach KPA advocates to protect Kentuckians with disabilities, including those receiving waiver

services created as a result of *Olmstead v. L.C.*. Mr. Edwards addressed KPA's concerns with Kentucky's 1915(c) waiver programs, including low-provider pay rate, accessibility and service barriers, and lack of a person-centered approach. Mr. Edwards stated that while great progress has been made to keep many clients out of institutions, if staffing shortages persist, Kentucky runs the risk of having to serve clients in an institution instead of in the community which would be in violation of the *Olmstead Act*.

Representative Riley stated that he and Co-Chair Adams have made sure to have a waiver participant be the first speaker at every meeting of the Task Force because hearing their voice and experiences is vital to ensuring the Task Force takes the proper steps forward.

#### **Adjournment**

There being no further business, the meeting was adjourned at 3:30 pm.

## **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

### **Minutes of the August Meeting**

August 10, 2021

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

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 10, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Alice Forgey Kerr, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

**Guests:** Cassie Trueblood, Education Professional Standards Board; Carrie Bass, Michael Board, Kentucky Retirement Systems; Leanne Diakov, Eric Fuchs, Board of Medical Licensure; Robert Andrew, Phil Dietz, Chuck O'Neal, John Wood, Board of Medical Emergency Medical Services; Dave Dreves, Steven Fields, Chris Garland, Department for Fish and Wildlife Resources; David Atha, Matt Cole, Tiffany Duval, Jon Johnson, Larissa Plecha, Transportation Cabinet; Todd Allen, Matthew Courtney, Kelly Foster; Board of Education; Erin Bravo, Sam Flynn Anthony Hudgins, Office of Unemployment Insurance; Robin Maples, Chuck Stribling, Occupational Safety and Health; John Ghaelian, Douglas Gott, Dale Hamblin, Robert Walker, Department of Workers Claims; Abigail Gall, Betsy Davis-Stone, Department of Insurance; Julie Brooks, Department for Public Health; Brittany Allen, Justin Dearing, Department of Behavioral Health, Developmental and Intellectual Disabilities; and Laura Begin, Department for Community Based Services.

**LRC Staff:** Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

The Administrative Regulation Review Subcommittee met on Tuesday, August 10, 2021, and submits this report:

**Administrative Regulations Reviewed by this Subcommittee:**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates**

16 KAR 3:060. School counselor, provisional and standard certificates, all grades. Cassie Trueblood, counsel and policy advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Educator Preparation**

16 KAR 5:020. Standards for admission to educator preparation.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Alternative Routes to Certification**

16 KAR 9:090. University based alternative certification program for teachers of world languages.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 2, 4 through 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules**

105 KAR 1:270. Federal tax withholding or direct rollover of funds for eligible distributions. Carrie Bass, staff attorney supervisor, and Michael Board, executive director, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph, Sections 1 through 6, and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**BOARDS AND COMMISSIONS: Board of Medical Licensure**

201 KAR 9:290. Interpretation and application of KRS 311.901(1) and KRS 311.903(4). Leanne Diakov, counsel, and Dr. Fuchs, member, Athletic Trainer Subcommittee, represented the board.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1, 3, 4, 8, and 10 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services**

202 KAR 7:201. Emergency Medical

Responders. Robert Andrew, director of education and training; Phil Dietz, board chair; Chuck O'Neal, deputy executive director; and John Wood, attorney, represented the board.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

202 KAR 7:401. Paramedics.

202 KAR 7:540. Emergency Medical Services data collection, management, and compliance.

202 KAR 7:601. Training, education, and continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 8, 11, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Chris Garland, division director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, the amendment was approved.

**Game**

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

In response to a question by Co-Chair Hale, Mr. Garland stated that, in the past, there had been problems with elk causing property damage. Hunting pressure had caused elk to shift their behavior, and the property damage had no longer been a major issue. The department had not received requests for permits related to elk damage to property; therefore, those provisions were being deleted.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

A motion was made and seconded to approve the following amendments: to amend Sections 7 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 9 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration**

601 KAR 2:233. Kentucky Ignition Interlock Program; participants and device providers. Matt Cole, commissioner; Tiffany Duvall, budget specialist; Jon

Johnson, assistant general counsel; and Larisa Plecha, staff attorney, represented the department.

In response to a question by Co-Chair West, Mr. Johnson stated that this administrative regulation was in response to Senate Bill 85 from the 2019 Regular Session of the General Assembly.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Office of Chief State School Officer**

701 KAR 5:100. School-based decision making guidelines. Todd Allen, general counsel; Dr. Matthew Courtney, policy advisor; and Dr. Kelly Foster, associate commissioner, represented the board.

In response to questions by Co-Chair West, Dr. Foster stated that this administrative regulation consolidated requirements, clarified procedures, created a timeline for submission of the school-based decision making model application, established a standardized effective date for newly approved site-based models, and aligned provisions with those in the authorizing statute. Dr. Courtney stated that the alternative model application process was being streamlined to reduce paperwork. Districts would be able to have nonvoting members without submitting applications for those members. Dr. Foster stated that nonvoting members sometimes included students, classified instructional members, certified teachers, and other school staff members. It was unnecessary for nonvoting members to complete applications. Changes to this administrative regulation complied with the authorizing statute.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**LABOR CABINET: Office of Unemployment Insurance**

787 KAR 1: 360. Overpayment waivers. Erin Bravo, deputy general counsel; Sam Flynn, general counsel; and Anthony Hudgins, deputy executive director, represented the office.

In response to a question by Co-Chair West, Mr. Flynn stated that this administrative regulation was necessitated by Senate Bill 7 from the 2021 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:011. Repeal of 803 KAR 002:018. Sam Flynn, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, federal – state coordinator, represented the department.

803 KAR 2:041. Repeal of 803 KAR 002:040.

803 KAR 2:060. Employer responsibility to post notice.



A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:062. Employer responsibility when employee is exposed to toxic substances or harmful physical agents.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:070. Inspections.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:110. Employer and employee representatives.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:122. Abatement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 3, 5 through 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 10 related to incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:125. Posting of citation.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:127. Failure to correct violation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:130. Informal conference.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:140. Contest of citation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were

approved.

803 KAR 2:170. Variance and interim order.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 through 6, 8 through 11, and 14 through 25 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:181. Recordkeeping and reporting occupational injuries and illnesses.

803 KAR 2:220. Refusal to work when dangerous condition exist.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:230. Pay during inspection activity.

803 KAR 2:250. Discrimination.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:306. Occupational health and environmental control.

803 KAR 2:308. Personal protective equipment.

803 KAR 2:310. Medical services and first aid.

803 KAR 2:423. Stairways and ladders.

803 KAR 2:435. Supply lines in excess of 600 volts.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:440. Cranes and derricks in construction.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Department of Workers' Claims**

803 KAR 25:021. Individual self-insurers. Sam Flynn, general counsel; John Ghaelian, general counsel; Dale Hamblin, assistant general counsel; and Robert Walker, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Hamblin stated that this administrative regulation did not make self-insurance more difficult. Provisions were added for voluntarily surrendering a certificate.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3 and 5 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a Web link to the agency's forms. Without objection,

and with agreement of the agency, the amendments were approved.

803 KAR 25:091. Workers' compensation hospital fee schedule.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to delete: (a) two (2) definitions; and (b) provisions for reimbursement for surgical implants and surgical hardware. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:220. Guaranty funds.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete outdated language; and (2) to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Trade Practices and Frauds**

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. Abigail Gall, regulation coordinator, and Elizabeth Stone, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Life Insurance and Annuity Contracts**

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Health Insurance Contracts**

806 KAR 17:580. Definition of health care provider.

In response to a question by Co-Chair West, Ms. Stone stated that the department added a definition for pharmacies because "licensed pharmacist" was already defined. This would require insurance companies to enter into insurance contracts with pharmacies that wished to do so.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Workers' Compensation Self-Insured Groups**

806 KAR 52:030. Workers' compensation self-insured group rate, rule and for filings.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO

and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Communicable Diseases**

902 KAR 2:221E. Repeal of 902 KAR 002:220. Julie Brooks, regulation coordinator, represented the department.

**Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse**

908 KAR 1:390. Voluntary Employer Substance Use Program (VESUP). Dr. Brittany Allen, division director, and Justin Dearing, program administrator, represented the department.

**Department for Community Based Services: Supplemental Nutrition Assistance Program**

921 KAR 3:026E. Repeal of 921 KAR 003:025. Laura Begin, regulation coordinator, represented the department.

921 KAR 3:027E. Technical requirements.

**The following administrative regulations were deferred or removed from the August 10, 2021, subcommittee agenda:**

**STATE BOARD OF ELECTIONS: Statewide Voter Registration**

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

**Kentucky Infrastructure Authority**

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

**BOARDS AND COMMISSIONS: Board of Medical Licensure**

201 KAR 9:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

**Board of Licensure for Professional Art Therapists**

201 KAR 34:070. Inactive status.

**TRANSPORTATION CABINET:**

**Department of Vehicle Regulation: Motor Vehicle Commission**

605 KAR 1:030. Applications.

605 KAR 1:035. Facilities requirements.

605 KAR 1:130. Procedures.

605 KAR 1:215. Licensing fees.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Exceptional and Handicapped Programs**

707 KAR 1:340. Procedural safeguards and state complaint procedures.

**LABOR CABINET: Department of Workplace Standards: Occupational Safety and Health**

803 KAR 2:325. General industry standards.

**Workers' Claims**

803 KAR 25:165. Electronic data interchange vendor approval.

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 25:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

**PUBLIC PROTECTION CABINET: Department of Insurance: Fees and taxes**

806 KAR 4:010. Fees of the Department of Insurance.

**Agents, Consultants, Solicitors, and Adjustors**

806 KAR 9:025. Licensing process.

**Trade Practices and Frauds**

806 KAR 12:120. Suitability in annuity transactions.

**Rates and Rating Organizations**

806 KAR 13:150. Property and casualty rate and rule filings.

**Health Insurance Contracts**

806 KAR 17:070. Filing procedures for health insurance rates.

806 KAR 17:085. Minimum standards for short-term nursing home insurance policies.

806 KAR 17:100. Certificate of filing for provider-sponsored networks.

806 KAR 17:150. Health benefit plan rate filing requirements.

806 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

806 KAR 17:511. Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510.

**ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities**

807 KAR 5:015. Access and attachments to utility poles and facilities.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Payments and Services**

907 KAR 3:005. Coverage of physicians' services.

907 KAR 3:010. Reimbursement for physicians' services.

907 KAR 3:060. Ambulance provider assessment program.

**Department for Community Based Services: Supplemental Nutrition Assistance Program**

921 KAR 3:060. Administrative disqualification hearings and penalties.

**Child Welfare**

922 KAR 1:300. Standards for child-caring facilities.

922 KAR 1:380. Standards for emergency shelter child-caring facilities.

922 KAR 1:390. Standards for residential child-caring facilities.

The subcommittee adjourned at 1:40 p.m. The next meeting of this subcommittee is tentatively scheduled for September 14, 2021, at 1 p.m.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the 2nd August Meeting

August 17, 2021

#### Call to Order and Roll Call

The 2nd August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 17, 2021, at 10:00 AM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Ralph Alvarado and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

Guests: Todd Allen, Jean Glass, Lu Young, Department of Education; Audrey Gilbert, Pragya Upreti, (High School Students) Kentucky Student Voice Team; Shannon Stocker, Parent; Elizabeth Park, FCPS Parent; Karen Worthen, Citizen; Ray Arnold (& kids), Parents in Madison County; Chuck Eddy, Self; Rebecca Blankenship, Parent; Tony Wheatley, Self & Children of Kentucky; Katie Basham, Parent; Jarrod Burgess, Teachers & Students; Sarah Durand, Bluegrass Institute for Public Policy; Rita Yates, Children and Kentucky Prayer Coalition; Chris Henning, District 2 & Self; Dawn Perkins, Founder of Let Them Play Movement; Terri Conen, Self; Marcie Timmerman, Parent, Advocate; Wes Duke, Eric Friedlander, Department for Public Health; and Senator Danny Carroll.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

The Administrative Regulation Review Subcommittee conducted a supplemental meeting on Tuesday, August 17, 2021, and submits this report:

The subcommittee determined that the following effective emergency administrative regulations were deficient pursuant to KRS 13A.030(2)(a):

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education**

702 KAR 1:195E. Face coverings in school facilities. Todd Allen, general counsel; Dr. Jason Glass, commissioner; and Professor Lu Young, board chair, represented the department. Ray Arnold, parent; Nathan Arnold, student; Lincoln Arnold, student; Katie Basham, parent; Rebecca Blankenship, parent; Chuck Eddy, citizen; Audrey Gilbert, high school student, Kentucky Student Voice Team; Cassidy Stocker, student; Shannon Stocker, parent; Marcie Timmerman, parent advocate; Pragya Upreti, high school student, Kentucky Student Voice Team; and Kristen Worthen, parent, appeared in support of this administrative regulation. Jarrod Burgess, parent; Terri Conen, parent; Sarah Durand, Bluegrass Institute for Public Policy; Chris Henning, citizen; Elizabeth Park, attorney; Dawn Perkins, founder, Let them Play; Dr. Chuck Thurston, board-certified emergency room physician; Delvin Williams, parent; and Rita Yates, Kentucky Prayer Coalition, appeared in opposition to this administrative regulation.



In response to a question by Co-Chair West, Dr. Glass stated that the policy of universal face coverings in schools had generated significant differences of opinion. The Kentucky Board of Education used data in determining the appropriateness of this policy. Because of the evolving of the virus, rather than begin a new policy, this administrative regulation established a return to universal face coverings in schools, which was the policy during the previous school year. Face covering policies had been effective in order to continue in-person instruction for students, teachers, and staff. This was a difficult decision for the board, and the board considered local control and decision-making and personal health decisions were important values; however, the board was required to balance those values with the need to protect the health and safety of students, especially our most vulnerable students. Universal face coverings in Kentucky schools would help reduce viral transmission rates and protect Kentucky's medical resources.

Professor Young stated that, while face coverings alone were not a singularly effective strategy against coronavirus, a layered mitigation approach led to returning students to a safe, in-person learning environment. Vaccinations of school personnel, social distancing, hand hygiene, sanitation, and universal face coverings in schools formed a comprehensive mitigation strategy. Universal face coverings in schools should reduce the number of students and school personnel who would be required to quarantine after viral exposure. The Kentucky Board of Education was statutorily required to promulgate administrative regulations as necessary or advisable. Based on expert guidance from the Centers for Disease Control and Kentucky public health officials, the Kentucky Board of Education determined unanimously that this administrative regulation was necessary and advisable. The board had no intent to extend the face covering policy longer than was necessary to reduce viral transmission, quarantine days, and sick days that kept students from in-person instruction.

Pragya Upreti stated that she was a senior at Lafayette High School and a co-leader of the Kentucky Student Voice Team. The team strongly supported a universal face covering policy for schools as established in this administrative regulation. The Kentucky Student Voice Team conducted a survey of 10,000 students from 119 Kentucky Counties. The survey demonstrated that students' shared experiences pertaining to virtual instruction included a devolution in academic standards and achievement; increased responsibilities at home and work; social isolation; technological challenges, such as inconsistent Wi-Fi services; challenges regarding planning for future education; and physical, financial, and emotional instability. Returning to in-person instruction also included challenges, including anxiety pertaining to students without face coverings in various situations.

Audrey Gilbert stated that she was a junior at Frankfort High School and a co-leader of the Kentucky Student Voice Team. Because Frankfort High School eliminated the virtual option for students for this coming academic year, many students had anxiety about becoming infected with or transmitting coronavirus and returning to in-person instruction, and dealing with encounters with students without

face coverings. The Kentucky Board of Education's administrative regulation addressed the anxiety of many students. Mandating universal face coverings in schools would keep schools open for in-person instruction, while failure to do so would put schools and communities at risk.

Shannon Stocker stated that her daughter, student Cassidy Stocker, was currently battling brain cancer, was in active chemotherapy treatment, and was immunocompromised. There were many medically fragile students in Kentucky. Cassidy stated that she experienced anxiety about becoming infected with coronavirus if this administrative regulation were lifted. Ms. Stocker stated that this administrative regulation was used by Cassidy's oncology team to decide that Cassidy would be able to return to in-person instruction. Universal face coverings in schools was not a personal choice because refusal to observe these requirements put the community at risk. Medically fragile students deserved the protection of this administrative regulation.

Kristen Worthen stated that her family kept her school-aged children home last school year in order to protect their medically fragile brother from infection by coronavirus. The children's education suffered during virtual instruction. The delta variant was impacting children more than at any other time during the pandemic, and face coverings were an effective mitigation method; therefore, this was not the time to lift this administrative regulation. Without a requirement in place, it stood to reason that COVID-cautious families would wear face coverings and other families would not, which would place all at risk.

Katie Basham, public school parent, stated that her 11 year old son was too young to be vaccinated against coronavirus. Pre-pandemic Kentucky led the nation in schoolchildren being raised by grandparents and great grandparents, who might be at increased risk of negative outcomes from infection by coronavirus. These caregivers deserved the opportunity to raise their charges in a healthy environment. Some school districts were already seeing the beginning of staffing shortages, which could be exacerbated if Kentucky eliminated universal face coverings in schools. For the health and safety of Kentucky's children, please uphold this administrative regulation.

Rebecca Blankenship stated that, as stepmother to seven children, five of whom were school aged, she supported this administrative regulation. Because many children were too young to be vaccinated against coronavirus, it was too early to relax universal face covering requirements for schools. If we fail to vote to uphold this administrative regulation, we should be prepared to accept the list of Kentuckians who would die as a result, including teachers, parents, grandparents, and children.

Chuck Eddy requested that the subcommittee uphold this administrative regulation. Coronavirus was contagious, transmissible, and deadly, and because of the delta variant, more schoolchildren were becoming infected. Approximately 620,000 Americans and at least 7,451 Kentuckians had died from coronavirus. Face coverings were an important and necessary way to reduce the spread and to allow in-person instruction. Half of the children in schools were under 12 years old and ineligible for vaccination. 2,100 new cases of coronavirus were reported in

Kentucky on August 16, 2021. 548 of those cases were persons under 18 years of age. Twenty-five percent of new cases were children.

Chris Henning, Bullitt County resident, stated that universal face coverings for schools was a bad decision. There was extensive data to support not requiring that schoolchildren wear face coverings. The Declaration of Independence listed repeated injuries and usurpations by the British Crown, including two that were synonymous with the actions of Governor Beshear and the Kentucky Department of Education. He has refused his ascent to the laws and combined with others to subject us to a jurisdiction foreign to our Constitution and acknowledged by our laws, giving his ascent to their acts as pretended legislation. Citizens should have the equal choice to wear a face covering or not in order to adhere to the principles of liberty. As a veteran of this nation, Mr. Henning found it shameful that we were not following our founding documents. Our oath stated that we were to follow the Constitution. Have courage and stop being afraid. If face coverings worked, why haven't face coverings worked?

Dr. Chuck Thurston stated that he had worked as a physician for almost half a century in nine (9) states and in many countries. He spent the last year as a COVID ICU hospitalist managing ventilators and pronouncing hundreds of people deceased. He worked at Billie Jean King, 471 FEMA Hospital, in New York City, where hydroxychloroquine was used and, to his knowledge, no one died. He proceeded to work in the Rio Grande area, where hydroxychloroquine was not used and there was a 75 to 95 percent death rate. All the patients who died had been wearing face coverings. Dr. Thurston states that face masks do not work especially since most are not N95 masks or properly worn. All of his patients who died in El Paso were allergic or had a relative who was allergic to Lisinopril. The primary mode of coronavirus spread was not respiratory, but through touch. Face coverings would not help the medically fragile or immunocompromised. Our creator endowed us with the rights and mechanisms to sabotage viruses. Viruses did not mutate; they were sabotaged by the cell. Social distancing and face coverings eliminated that sabotage of the virus by the cell.

Elizabeth Park stated that she approached this matter from a product liability and product safety perspective. If we assumed that face coverings worked and could protect the medically fragile, was it safe for healthy children to wear face coverings for long periods of time? Face coverings were intended for brief use, not for use for nine hour periods. This might constitute product misuse. Research indicated questions regarding the safety of extended face covering use, but not enough investigation had been conducted. There might be long-term neurological effects that show up later in life from oxygen deprivation and too much carbon dioxide.

Marcie Timmerman stated that she was a public school parent, a PTA member, and a person with a disability and an autoimmune disorder. Her ability to work was directly related to upholding this administrative regulation. She was not equipped to home school. Her son was a second grader who was too young for vaccination against coronavirus

but who had no difficulties wearing a face covering. Because her medication for her autoimmune disorder significantly weakened her immune system, she was especially susceptible to death from coronavirus infection, even after vaccination, including boosters. This administrative regulation made it possible to send her son to school for in-person instruction; therefore, she and many parents, teachers, and schoolchildren supported universal face coverings in schools during the pandemic.

Ray Arnold stated that he felt great after being vaccinated and hoped to be able to vaccinate his children before universal face coverings in schools was lifted. Parents in Madison County had been unable to vote for school board members since the pandemic began; therefore, parents had no real choice regarding school mitigation measures to prevent coronavirus. In Mr. Arnold's opinion, most parents believed that coronavirus was a serious threat. Students who lived in poverty had been unable to participate effectively in virtual instruction. There might be potential legal liability related to schools losing insurance coverage. He asked the subcommittee to table this discussion until the court system resolved this dispute or until Kentucky was out of the coronavirus red zone. Nathan Arnold, aged 11, wanted to wear face coverings in school even though he was anxious about going to school amid the pandemic even with face covering requirements in place. Lincoln Arnold, aged eight, presented artwork he had produced that depicted a person with a face covering and a person without a face covering.

Delvin Williams stated that he had three children in the school system. Cloth face coverings had been proven to be insufficient protection against coronavirus. While most schoolchildren wore the cloth face coverings; even, N95 face coverings were insufficient protection against viruses. As was stated in earlier testimony, this country was founded on freedom, and we should have freedom of choice whether our children would wear a face covering in school or not. His children would prefer not to wear the face coverings, but had complied in order to avoid school disciplinary action. He was opposed to this administrative regulation. This should be a personal choice, and he believed that most people agreed.

Terri Conen stated that she was a mother of two students from McClean County. The members of the Kentucky Board of Education were not elected and had been appointed by Governor Beshear. This gave the appearance that the school board might not be acting solely in the interest of the children, but might be a partisan arm of the Governor. Members of Ms. Conen's small rural community rarely wore face coverings throughout the pandemic, but coronavirus outbreaks had been few. According to the Cabinet for Health and Family Services' Web site, McClean County had a total case rate of zero and two-tenths percent, while Jefferson County's rate was listed at seventeen and 17.3 percent. Imposing the same restrictions on rural and urban areas was ill considered. There were costs to this policy, including effects on children from not seeing each other's faces, treating each other like lepers to be avoided, and fearing reactions from adults if they coughed or sneezed. How were children expected to learn to enunciate? These policies could have long-term effects that were not being

considered in this debate. Ms. Conen advocated for a class-action lawsuit against policy makers if there were negative long-term effects for children because of these policies.

Jarrod Burgess stated that his wife was a public school teacher and he had two children in the public school system in Western Kentucky. He agreed with Commissioner Glass that there was a wide difference of opinion about this policy. Freedom and the United States Constitution was not open to opinion; these were rights given by God. Mr. Burgess said that officials were taking away his right to determine what was best for his children. He had the liberty to raise his children the way he saw fit.

Rita Yates, Kentucky Prayer Coalition, stated that she was speaking on behalf of the children who did not have a voice in this debate. Ms. Yates was retired critical care nurse for almost 30 years and was trained in the proper use of face coverings. There was a lot of improper use by the public of personal protective equipment, including pulling at a face covering and not being changed frequently. The standards established by the Kentucky Board of Education allowed for almost anything tied to the face to constitute a face covering. Face coverings did not protect against coronavirus. Proper hand hygiene and keeping hands away from the face were more protective than misused face coverings. Coronavirus was a real disease that was best avoided by being conscious of our environment and using protective equipment properly. Sweden was the only western country that did not shut down, mandate face coverings, or close schools and not one child perished. We had the liberty to choose for ourselves and should have the right to choose what was best for our children. She stated that the lawlessness of Kentucky's Governor should not go unchecked, as he was under an injunction by the Boone County Circuit Court.

Dawn Perkins, founder of Let them Play, stated that, beginning August 2020, children's anxiety levels became concerning to her. If we could play sports, we could go to school. Student athletes were students first. No one addressed mental health or overall wellbeing. Children were educated virtually, and all sports were put on hold. Let them Play became involved with House Bills 208 and 563 and Senate Bill 128 from the Regular Session of the General Assembly. Let them Play believed that unproven face coverings might have mental health effects on children. The Governor had dismissed our children and the leadership in local districts in the name of public health. This administrative regulation was rushed quickly and unexpectedly through the back door and was unnecessary because a 30 day mandate was already in place. Superintendents had been overruled by the Kentucky Board of Education. Children's needs varied by region, and this policy should be a decision for local districts. Where was the end game and where were the children's mental health briefings?

Sarah Durand of the Bluegrass Institute for Public Policy, stated that coronavirus posed a smaller risk to children than influenza. The Kentucky Board of Education had never issued a face covering mandate for influenza. This administrative regulation was filed as an emergency to avoid public comment and to usurp local control. Educators had access to

this vaccine before higher-risk groups in order to avoid the current situation. Some school boards and superintendents weighed the minimal health risks to children against the negative psychological and learning consequences and chose to leave face covering decisions to parents. It was not the role of the Kentucky Board of Education, the Governor, or the Centers for Disease Control to make health decisions for her children. Face coverings had negative impacts on children. This administrative regulation should be found deficient because it did not meet the criteria for an emergency. It should go through the proper process required by law, which provided for adequate vetting of this policy.

In response to a question by Co-Chair West, Dr. Glass stated that individual rights ended at the point where the rights of others became affected. Established speed limits and restaurant health and safety precautions, for example, were appropriate. The Kentucky Board of Education was operating pursuant to the authority established by KRS 156.160, which directed the board to promulgate administrative regulations that were "necessary or advisable for the protection and physical welfare of public schoolchildren." This authority was separate from the Governor's authority pursuant to KRS Chapter 39A, which authorized Executive Orders. The Kentucky Board of Education was appropriately appointed, confirmed, and empowered to promulgate this administrative regulation. There was a comment period for this emergency administrative regulation, and appropriate notice was conducted in accordance with state law. Experimental and correlational studies, including a study by researchers at Duke University, demonstrated that face coverings were effective reducing the probability of transmission and should be used in combination with other virus-mitigation strategies. In Sweden, face coverings had been voluntary, rather than mandatory, and Sweden had the worst per-capita coronavirus mortality in Europe. The American Academy of Pediatrics stated that face coverings could be worn safely by children two years and older, including most children with underlying health conditions. This administrative regulation considered short-term and long-term impacts of this policy and weighed those concerns against protecting the health and safety of students and the preservation of their opportunities for in-person instruction, which were the primary values. Mr. Allen stated that the board complied with KRS Chapter 13A, which provided for a public comment process for this administrative regulation.

In response to questions by Co-Chair West, Dr. Glass stated that face coverings could be worn by most young children safely for the school day. Face coverings were used effectively last academic year, and the board was unaware of any claims of negative effects. Professor Young stated that this administrative regulation authorized face covering removal outdoors and at times of social distancing. The Kentucky Board of Education members were not health experts; therefore, the board relied on expert medical advice and data. Dr. Glass stated that face coverings were also authorized for removal for articulation in learning to read. Mr. Allen stated that this administrative regulation was authorized by KRS



156.160, not the Governor's Executive Order.

Co-Chair West stated that, pursuant to Senate Bill 2 from the 2021 Regular Session of the General Assembly, the Governor had a limited amount of time to promulgate an administrative regulation to effectuate an Executive Order. If this administrative regulation was promulgated solely based on the authority established by KRS 156.160 and the Governor's Executive Order did not have an administrative regulation promulgated thereto, the Executive Order would become null and void. Mr. Allen stated that the authority the board relied upon to promulgate this administrative regulation was KRS 156.160, not the Governor's Executive Order issued pursuant to KRS Chapter 39A.

In response to questions by Co-Chair West, Dr. Glass stated that a noncompliant school would be assessed based on the level of noncompliance. Individual student noncompliance would be addressed through the school's code of conduct procedures, the same as in the previous academic year. Noncompliance by staff would be addressed through established human resources procedures and possibly through licensure board disciplinary action. Institutional noncompliance by a board, district, or superintendent would be addressed based on the penalties established in the Executive Order or through licensure disciplinary action. If many students became quarantined or ill due to noncompliance, attendance data, which was tied to funding, would be affected. There might also be repercussions related to maintaining liability insurance. Professor Young stated that this administrative regulation did not establish special enforcement. Noncompliance would be addressed as would be noncompliance with other administrative regulations promulgated by the board. Mr. Allen stated that Section 2 of this administrative regulation required superintendents to develop and implement procedures to ensure compliance. If penalties were implemented, notice and due process procedures would apply. In the interim between academic years, more information was available to develop a layered mitigation method to operate schools safely. Schools did not have adequate space for social distancing; however, the board had learned that social distancing could be relaxed if face coverings were worn. Professor Young stated that in-person instruction in a safe environment was the board's primary priority to return students to school for this academic year.

In response to questions by Co-Chair Hale, Dr. Glass stated that, as requested by the Local Superintendents Advisory Council, the board considered tabling this policy and working with localized models. Based on the board's mandate established in KRS 156.160, the board determined that this was not a local matter because most of Kentucky (all except six (6) counties) was in the coronavirus (COVID-19) red zone. The board was unaware of any response from the Local Superintendents Advisory Council. The board believed that, due to the delta variant and the fast-approaching beginning of the academic year, the situation was too dire to table. Dr. Glass hoped that the face covering policy would not need to be in place for the entire school year, and the board planned to lift the policy once it was safe to

do so. This administrative regulation was in place for 270 days as established in KRS Chapter 13A, and the board established in their motion a trigger to lift this policy if appropriate. Mr. Allen stated that this administrative regulation could be withdrawn at any time if it became safe to lift this policy.

Senator Alvarado stated that he was a board-certified pediatrician. Coronavirus would not be ending; this virus would continue, like influenza. The Kentucky Board of Education consisted of unelected individuals, while local school boards were elected.

In response to questions by Senator Alvarado, Dr. Glass stated that he believed the parents of Kentucky, the superintendents, and the local school boards loved their children and that he cared about the wellbeing of all Kentucky children.

Senator Alvarado stated that the board did not seem to trust parents and neither did the Governor. Why was the board not asking for input from experts, such as pediatricians? Many superintendents were not commenting on this policy because they were in fear of retribution against their jobs or their districts' funding. This was a matter of process and policy, not an opposition to face coverings themselves.

In response to questions by Senator Alvarado, Mr. Glass stated that staff of the Kentucky Department of Education were not medical experts; therefore, they relied on expert advice from the Centers for Disease Control, the American Academy of Pediatrics, the American Medical Association, and the Kentucky Department for Public Health.

Senator Alvarado stated that Governor Beshear, in his veto response to House Bill 1 from the 2021 Regular Session of the General Assembly, had indicated that Centers for Disease Control guidelines were not intended to be prescriptive for administrative regulations or law. In response to a question by Senator Alvarado, Dr. Glass agreed that some countries had more experience dealing with the delta variant than the United States. Senator Alvarado stated that The World Health Organization and the United Nations Children's Fund recommended adherence to local standards related to mitigation against coronavirus infection. There was limited research on face coverings for children under six years of age; therefore, the Centers for Disease Control and the United Nations Children's Fund recommended that children under six years of age should not be required to wear face coverings. They additionally listed factors to consider before requiring face coverings for children six to 11 years of age. Medically fragile children were at risk from influenza, as well as coronavirus. Vaccination, not face coverings, was the solution to increasing population immunity.

In response to questions by Senator Alvarado, Mr. Glass stated that he was unaware of how many teachers had been vaccinated against coronavirus (COVID-19). The board was not currently considering mandatory vaccinations for teachers and school staff. Senator Alvarado stated that this was an issue for local districts.

Representative Marzian stated that House Bill 1 from the 2021 Regular Session of the General Assembly authorized Kentucky to match the Centers for Disease Control guidelines for addressing coronavirus. She worked thirty-eight years in nursing, including being an ICU nurse. Nursing staff were

exhausted and frustrated from the current caseload due to coronavirus, much of which was unnecessary and the result of vaccine hesitancy and the refusal to wear face coverings. Concerns about the effect of face coverings on children's mental health should also apply to children's mental health in situations of child abuse and domestic abuse, especially because Kentucky ranked first in national incidents of child abuse and domestic abuse. She thanked the board for this policy on behalf of her district.

Senator Yates thanked Senator Alvarado for raising the issue of using the Centers for Disease Control guidelines. House Bill 1 from the 2021 Regular Session of the General Assembly authorized Kentucky to match the Centers for Disease Control guidelines. In response to questions by Senator Yates, Mr. Glass stated that the board's decision to promulgate this administrative regulation was unanimous. The board consisted of diverse members from both parties. Face coverings were a mitigation method, and Kentucky should be doing whatever was practical to maintain in-person instruction this academic year. Many students experienced difficulties with virtual instruction. The Kentucky Chamber of Commerce was in support of this administrative regulation for economic reasons. Senator Yates thanked the subcommittee for raising this issue for discussion. He noted that this subcommittee could not stop this administrative regulation from remaining in effect.

Senator Alvarado stated that House Bill 1 from the 2021 Regular Session of the General Assembly gave local districts the option whether or not to match Centers for Disease Control guidelines.

Representative Bridges stated that Dr. Glass referenced people in the schools knowing best and the phrase, "in good faith." In response to questions by Representative Bridges, Dr. Glass stated that people in the schools knew what to do in terms of mitigating against coronavirus. He had been appointed by the Kentucky Board of Education, who were in turn appointed by Governor Beshear and confirmed by the Kentucky Local superintendents were better suited to make these decisions than appointed members of a board, who were not working directly with schools and students. The recommendations of superintendents went unconsidered, and some were fearful of retribution. He questioned whether the actions of the board were sincerely for the health and wellbeing of the children or whether this policy was the directive of a higher governing power.

In response to questions by Co-Chair West, Dr. Glass stated that this administrative regulation was promulgated pursuant to KRS 156.160, not under authorization of the Governor's Executive Order.

Co-Chair West stated that this subcommittee could not strike down an administrative regulation. KRS Chapter 13A authorized three actions the subcommittee could take which are to request deferral, request withdrawal, or find an administrative regulation deficient. An administrative regulation found deficient could remain effective upon decision by the Governor. Deficient administrative regulations could then be found null and void by the legislature. A finding of deficiency indicated the intent of legislators regarding that policy.

In response to a question by Co-Chair West, Dr. Glass stated that the department declined to withdraw this administrative regulation. Professor Young stated that the board also declined to withdraw this administrative regulation.

Senator Alvarado made a motion, seconded by Representative Bridges, to find this administrative regulation deficient. Co-Chair West opened the floor for discussion on the motion.

Senator Alvarado stated that he was not opposed to face coverings and that he supported vaccinations. He believed that this policy should be for the local level. Many experts stated that it was inappropriate for very young children down to the age of (2) years old to wear face coverings. It was in many cases easier to potty train a two (2) year old in a month than to train a two (2) year old to safely wear a face covering.

Co-Chair Hale stated that he was not opposed to face coverings. He encouraged those who wanted to wear face coverings to wear them properly. He was not opposed to vaccinations and believed vaccinations were the solution to public immunity but also believed vaccination to be a personal health choice. Local school boards and superintendents were the appropriate people to direct these policies, not the unelected Kentucky Board of Education appointed by the Governor. Many superintendents and school boards were in disagreement with this policy and feared retribution for their opposition. House Bill 1 from the 2021 Regular Session of the General Assembly was passed by the legislature, vetoed by the Governor, and that veto was overridden by the General Assembly. Because the Governor did not like that legislation, he began litigation. Those bills had been with the courts without a ruling for months. This agency was flouting the decisions made by the legislature. These decisions represented the voice of the people of Kentucky. The Governor was also an elected representative; however, one (1) person did not have the ability to overrule the legislative process. A finding of deficiency of this administrative regulation would be equally ignored by the Governor and the Kentucky Board of Education. Legislators had a duty, and the Executive Branch was not implementing the decisions made by the General Assembly.

Representative Frazier stated that either we had a representative government with local officials who had the power to act locally or we did not.

Representative Bridges stated that there were no guidelines or metrics. What positivity rate would trigger this policy to be lifted by the board? The board should establish definitions and guidelines for consideration by local districts. Pertaining to transmission rates, students did not mingle among schools as, for example, restaurant patrons. This was a matter for local districts, and counties with a shared border were zoned differently with regard to coronavirus positivity rates. Freedom was not a baseless consideration.

Co-Chair West stated that this subcommittee was about due process and the rule of law. The Constitution and the rule of law applied, especially during time of a pandemic. This administrative regulation was not passed by the General Assembly and received no due diligence. The biggest concern was that this administrative regulation had no penalty

provisions for noncompliance and no provisions for due process; therefore, he advocated that this administrative regulation be found deficient. The department was making the rules and penalties up as they went. Previous administrative regulations pertaining to face coverings were found deficient by this subcommittee based on these same concerns. This administrative regulation was arbitrary, and our Constitution and the Kentucky Bill of Rights, Section 2, disallowed arbitrary power.

A roll call vote was conducted and, with five votes to find this administrative regulation deficient and two votes against deficiency, this administrative regulation was found deficient.

Representative Marzian explained her no vote. This was a case of political theatre, not healthcare. Sixty-nine percent of Americans supported face covering mandates. This was a matter of protecting our children's health and ensuring in-person instruction. Coronavirus would not be limited by county boundaries. It would continue to spread, and medical resources would collapse.

**CABINET FOR HEALTH AND FAMILY SERVICES:** Department for Public Health: Division of Epidemiology

902 KAR 2:213E. Childcare standards for covering the face in response to declared national or state public health emergency. Wes Duke, general counsel, and Eric Friedlander, secretary, represented the division. Chuck Eddy, citizen, appeared in support of this administrative regulation. Melanie Barker, owner of ABC Children's Academy and developer of the Kentucky Association of Childcare Owners; Senator Danny Carroll, daycare operator; and Tony Wheatley, parent and member of Constitutional Kentucky; appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Mr. Friedlander stated that the policy of universal face coverings in childcare facilities was recommended by the Centers for Disease Control and the American Academy of Pediatrics and was an important strategy to reduce transmission of coronavirus and keep children present in preschool and childcare settings. Vaccines were the solution to establishing general public immunity. He urged everyone to get vaccinated. Currently, most children were too young for vaccination. Until vaccination was available for younger children, the goal was to use mitigation methods to keep them as safe as possible. Mitigation methods for childcare settings included sanitization, hygiene, face coverings, and social distancing. Kentucky was experiencing spikes in infection, hospitalizations, and ICU. There was a concern that medical resources were quickly being outpaced by patients infected with coronavirus. There were currently seventeen children hospitalized in Kentucky because of coronavirus. That was more hospitalized children in Kentucky than at any other time during the pandemic. This was a matter of our common humanity. He thanked parents of medically fragile children because it was a very difficult task.

Chuck Eddy supported this administrative regulation for childcare facilities, including requiring face coverings for children two years and older. Twenty-five percent of yesterday's newly reported

coronavirus patients were for children under the age of 18. Children could transmit the virus to parents and grandparents who are caregivers to children. Coronavirus was easily transmissible, highly contagious, and deadly. Failure to uphold this policy would likely result in the closure of childcare facilities. These closures would have negative impacts on the economy and on the parents who would miss work to care for these children.

Melanie Barker, owner of ABC Children's Academy and developer of the Kentucky Association of Childcare Owners, stated that two and three year olds could not consistently wear face coverings properly. Children older than three were somewhat better at wearing face coverings, but enforcement was still impractical. It was impossible to keep the face coverings sanitary and to enforce the requirements. It was good to encourage face coverings, but not practical to force this mandate. The majority of time in childcare settings was now spent enforcing the face covering requirements, rather than in educating. A cardiologist client stated to her that this mandate was inappropriate for young children aged two to four. This policy should be lifted immediately.

Tony Wheatley, parent to five daughters, two of whom were medically fragile, stated that he was with Constitutional Kentucky and that he and his daughters would never wear a face covering if they had a choice. Children could not wear face coverings properly for long periods of time. He was trying to develop an alternative school, and 1,100 families had expressed interest in attending an alternative school. Citizens should have the right to wear a face covering or not and should have the right to determine whether or not their children would wear a face covering. He thanked the subcommittee for defending the Constitution.

Senator Danny Carroll, daycare operator, stated that it was counterintuitive to expect a two or three year old to wear a face covering properly. Four and five (5) year olds were somewhat more able to wear the face coverings. He reiterated the earlier testimony of Melanie Barker. This policy was making the situation worse, not better, and would mean the entire day would be spent putting face coverings back on and washing hands. That would be the extent of the development for the children each day. This policy was neither productive nor safe because broken face coverings included parts, such as rubber bands, that were dangerous for young children. He was not opposed to face coverings, but this was a decision for parents. It was unclear whether or not the administration had consulted childcare providers to determine if this policy was practical. This policy was more stringent than Centers for Disease Control guidelines, which stated that only unvaccinated children two years of age and older should wear the face coverings. This situation would have been better addressed with a team approach from both branches of government that included input from childcare providers. This policy was inconsistent and unfair to parents and especially to young children.

In response to a question by Co-Chair West, Mr. Friedlander stated that the department was attempting to implement the recommendations from the Centers for Disease Control and the American Association of Pediatrics.



In response to questions by Senator Alvarado, Mr. Friedlander stated that this administrative regulation required face coverings for children two years of age and older as they were able to wear them. Senator Alvarado stated that he had concerns about hazards, such as choking, related to face coverings worn by very young children.

In response to questions by Senator Alvarado, Mr. Friedlander stated that the Department for Public Health was not responsible for licensing childcare facilities, with the exception of some food establishment components. The Office of Inspector General, in collaboration with the Department for Community Based Services, was responsible for licensing childcare facilities. The department had consulted across the cabinet, including the Division of Childcare, through the general counsel regarding this policy. Mr. Friedlander and Mr. Duke were unaware whether or not childcare operators were consulted regarding this policy. Neither had directly consulted childcare operators. Mr. Duke stated that the cabinet had broad authority pursuant to KRS 214.020, 211.180, and several other statutes, regarding communicable diseases in the Commonwealth, including quarantine and other authority. The Kentucky Board of Education seemed better suited to promulgate an administrative regulation establishing universal face coverings in schools; however, if necessary, it could be argued that the Department for Public Health also had authority to do so, as would local health departments through local ordinances. Waivers regarding the choking and suffocation risks to young children wearing face coverings were required last year. Because there was an exemption for children who could not wear face coverings safely, the waivers were not being used this year. A good faith effort pertaining to encouraging young children wearing face coverings would be similar to a good faith effort with encouraging them to wear shoes. The department had tried to be reasonable with this administrative regulation.

In response to questions by Co-Chair West, Mr. Duke stated that the cabinet had no intention this year to require waivers regarding the choking and suffocation risks to young children wearing face coverings. Childcare facilities themselves, as a contractual matter, did not seem to be prohibited from requiring the waivers. Mr. Friedlander stated that a willfully noncompliant childcare facility was subject to licensure action in conjunction with due process as established in KRS Chapter 13B. Mr. Duke stated that childcare requirements were enforced pursuant to 922 KAR 2:190, which established a hearing process. The cabinet intended to work closely with childcare facilities to assist with compliance, answer questions, and alleviate fears of overbearing enforcement. The goal was health and safety. This administrative regulation did not cross reference 922 KAR 2:190 or KRS Chapter 13B. The cabinet decided to use the authority already existing in 922 KAR 2:190 and KRS Chapter 13B. Because Senate Bills 1 and 2 and House Joint Resolution 77 from the 2021 Regular Session of the General Assembly were part of pending litigation, with competing injunctions in place, it was difficult to determine the outcome. The cabinet would comply with any Kentucky Supreme Court order. The cabinet did not believe that the preliminary injunction by

the Boone Circuit Court made this administrative regulation void for lack of legal authority because there was a competing injunction by the Franklin Circuit Court. Both injunctions were awaiting a decision by the Kentucky Supreme Court.

In response to questions by Senator Alvarado, Mr. Duke stated that “childcare center” and “family home” were defined in another existing administrative regulation. This policy would not include, for example, children in Sunday school. Mr. Friedlander stated that there were developmental and behavioral affects from dealing with coronavirus across all age spectrums.

In response to questions by Co-Chair Hale, Mr. Friedlander stated that this policy was necessary because the delta variant was causing an unprecedented spike in infections, hospitalizations, and ICU use. More children were being affected than at any time during the pandemic. Vaccines were the solution, but they were not yet available for young children.

In response to questions by Co-Chair West, Mr. Friedlander stated that there was ongoing research regarding the effects of face covering mandates. This situation would be studied for many years. So far, the preponderance of the evidence was on the side of wearing face coverings because of their efficacy in reducing the transmission of disease. There had been spread of coronavirus within childcare facilities because the delta variant was far more contagious. Co-Chair West stated that after previous face covering mandates were implemented, there were significantly more coronavirus cases. He stated that he hoped that this would not be the case with these mandates.

Co-Chair Hale made a motion, seconded by Senator Alvarado, to find this administrative regulation deficient. Co-Chair West opened the floor for discussion on the motion.

Co-Chair West stated that this administrative regulation was the same as those face covering mandates previously found deficient by this subcommittee. This administrative regulation was silent regarding penalties and due process. The message that this sent to childcare providers was that failure to comply would result in a lost license. While the cabinet said it would work with providers, this administrative regulation did not include provisions for that. As Attorney General Daniel Cameron stated, the Governor, like everyone else, was bound to the law. The Governor was enjoined and prohibited from issuing this administrative regulation. Because the Constitution and the rule of law still applied, Co-Chair West advocated that this administrative regulation be found deficient.

A roll call vote was conducted and, with five votes to find this administrative regulation deficient and two votes against deficiency, this administrative regulation was found deficient.

Senator Alvarado explained his yes vote. He stated that children aged two to five were too young for requirements for face coverings. This administrative regulation did not include the latitude the cabinet had stated it would employ. This promised latitude was not uncommon in healthcare settings, but was sometimes abandoned in situations of noncompliance.

Representative Bridges explained his yes vote. The word, “preponderance,” which meant “a greater weight,” had been used today; however, the

preponderance should rest with the health and safety concerns for children. Senator Alvarado was an expert in this area and, if he believed that this was inappropriate, then Representative Bridges agreed that this age group was too young to require face coverings.

Other Business: Co-Chair West welcomed new subcommittee member, Senator Ralph Alvarado.

The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee was tentatively scheduled for September 14, 2021, at 1 p.m.

## **MEDICAID OVERSIGHT AND ADVISORY COMMITTEE**

### **Minutes**

August 17, 2021

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

The meeting of the Medicaid Oversight and Advisory Committee was held on Tuesday, August 17, 2021, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Daniel Elliott, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen Meredith, Co-Chair; Representative Daniel Elliott, Co-Chair; Senators Ralph Alvarado, Danny Carroll, Jimmy Higdon, and Morgan McGarvey; Representatives Jim Gooch Jr., Melinda Gibbons Prunty, Steve Sheldon, and Lisa Willner.

Guests: Representative Kimberly Moser; Dr. Liza Creel, Director, Commonwealth Institute of Kentucky, Associate Professor, School of Public Health and Information Sciences, University of Louisville; Lisa Lee, Commissioner, Department for Medicaid Services, Cabinet for Health and Family Services, Robin Kinney, Associate Commissioner, Office of Finance and Operations, and Lindsey Kimbleton, Federal Program Specialist, Kentucky Department of Education; Troy Walker, President, Kentucky Ambulance Providers Association; and Gretchen Davis, Chief Executive Officer, Opportunity Center of Muhlenberg County.

LRC Staff: Chris Joffrion, Hillary Abbott, and Amanda DuFour.

#### **Approval of Minutes**

A motion to approve the July 21, 2021, minutes was made by Senator Meredith, seconded by Representative Prunty, and was approved by a voice vote.

#### **University of Louisville, Commonwealth Institute of Kentucky**

Dr. Liza Creel, Director of the Commonwealth Institute of Kentucky (CIK), gave an overview of the applied research the Commonwealth Institute conducts including but not limited to regional and state health outcomes and medical delivery system analysis. Dr. Creel discussed the opportunity for a partnership between the General Assembly and the Commonwealth Institute.

In response to questions and comments from Senator Meredith, Dr. Creel stated that there is an opportunity for the Commonwealth Institute researchers to look at other Medicaid delivery models and what that would look like in Kentucky. Dr. Creel

stated that CIK researchers are currently focusing on social determinants of health and the impact on public health which could be expanded to include different healthcare delivery systems.

In response to questions and comments from Representative Prunty, Dr. Creel stated that CIK's research focus is driven by responses to call for research proposals and funding appropriations and stated that if the committee was interested in CIK completing a Medicaid comparative study, the committee can contact her directly.

In response to questions and comments from Representative Elliott, Dr. Creel stated that the CIK is funded by multiple entities and can be commissioned by special interest groups for specific projects.

#### **School-Based Medicaid Services**

Department for Medicaid Services Commissioner Lisa Lee and Robin Kinney, Associate Commissioner of the Office of Finance and Operations, Kentucky Department of Education, presented an overview of Kentucky's school-based Medicaid program and responded to the 2019 federal Department for Health and Human Services (HHS), Office of Inspector General (OIG) audit.

In response to questions and comments from Senator Meredith, Commissioner Lee stated that all providers under DMS have access to the child's medical records, including services provided to the student in the school-based-Medicaid program, in the KYHEALTHNET electronic medical record system, ensuring that there is not a disruption to the continuity of care. Commissioner Lee stated that the school-based Medicaid program was created through a carve-out of the Medicaid managed care program which means that managed care organizations are not facilitating the care in the schools.

In response to questions and comments from Senator Meredith, Associate Commissioner Kinney stated that while the OIG report is concerning, changes have been made since the period the report covered, which was 2014-2018, and many issues highlighted by the OIG in the report have been addressed.

In response to questions and comments from Representative Prunty, Ms. Kimbleton stated that KDE employs professional medical coders to ensure that services being billed are coded properly and reimbursement is reflective of the services rendered.

In response to questions and comments from Representative Elliott, Commissioner Lee stated that the disconnect and misunderstanding caused by the OIG report is in part due to HHS and OIG being different agencies to Centers for Medicare and Medicaid (CMS), and that CMS has not found the same deficiencies in the program that HHS and OIG have found.

In response to questions and comments from Representative Willner, Commissioner Lee stated that the time period the report covered, as well as OIG and HHS not being aware of the talks that DMS has been having with CMS, is why there was no resolution from the submitted appeal.

In response to questions and comments from Senator Alvarado, Associate Commissioner Kinney stated that she will follow-up with the number of

nurses that serve the school system. Ms. Kimbleton stated that telehealth has been a success in school-based medical care and that it has expanded access to care in rural communities. Associate Commissioner Kinney added that KDE will look into telehealth stations in schools as an option for communities that do not have medical resources to spare.

In response to questions from Representative Moser, Commissioner Lee stated that DMS is working with KDE to come up with solutions to the claim errors found in the OIG report such as creating universal protocols in the claim process and making billing tied to the school to avoid a student of the same name being rejected for services despite being in a different district.

#### **Medicaid Reimbursement for Ambulance Providers**

Troy Walker, president of the Kentucky Ambulance Provider's Association presented an update on the impact of 20RS House Bill 8 on Kentucky's ambulance providers and discussed Medicaid reimbursement rules for ambulance providers and the issues facing ambulance providers from the COVID-19 state of emergency.

In response to questions and comments from Representative Gooch, Mr. Walker stated that the provider tax payment that 20RS House Bill 8 implemented, is made after the assessment which should result in a profit, for ambulance providers. Mr. Walker added that due to House Bill 8, \$47 million has come into the Kentucky Emergency Medical Services (EMS) industry.

In response to questions and comments from Representative Prunty, Mr. Walker stated that the under 20RS HB 8, EMS providers pay a 5.5 percent assessment on off every emergency run but are reimbursed at 200 percent of the Medicaid rate for Medicaid emergency transport.

In response to questions and comments from Representative Willner, Mr. Walker stated that while he cannot speak for all providers, the main reason non-emergency transportation for behavioral health patients is not offered, is due to staffing shortages and an inability to be reimbursed.

#### **Barriers to Behavioral Health Services**

Gretchen Davis, CEO of the Muhlenberg Opportunity Center, a Medicaid multi-specialty group, discussed barriers to providing care with managed care organizations such as credentialing, staffing, and prior authorizations. Ms. Davis stated that the Opportunity Center lost over \$200,000 due to not having prior authorizations. Ms. Davis added that access to transportation is limited and this has prevented clients from getting to the Opportunity Center to receive services.

Senator Alvarado stated that he would like Commissioner Lee to be made aware of the issues Ms. Davis is having with MCOs so that those issues can be addressed.

#### **Adjournment**

There being no further business, the meeting adjourned at 4:30 pm.

## **LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE**

### **Minutes of the 3rd Meeting of the 2021 Interim**

August 12, 2021

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

The 3rd meeting of the Legislative Oversight and Investigations Committee was held on Thursday, August 12, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Jason Howell, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Brandon J. Storm, Reginald Thomas, and Max Wise; Representatives Lynn Bechler, John Blanton, Ken Fleming, Angie Hatton, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: Dr. Aaron Thompson, President, Council on Postsecondary Education (CPE); Dr. Bill Payne, Vice President, Finance and Administration, CPE; Dr. Paul Czarapata, President, Kentucky Community and Technical College System (KCTCS); Lewis Diaz, Chair, Eastern Kentucky University (EKU) Board of Regents; Greg Rush, Vice President, Finance and Administration, Kentucky State University (KSU); Candace Raglin, Director, Human Resources, KSU.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Joel Thomas, Greg Daly, Chris Hall, Jeremy Skinner, Shane Stevens, Van Knowles, Jacob Blevins; and Ashley Taylor, Committee Assistant.

#### **Minutes for July 16th, 2021**

Upon motion by Representative Fleming and second by Senator Nemes, the minutes for the July 16th, 2021, meeting were approved without objection.

#### **Staff Report: Postsecondary Education Administrator Compensation**

Legislative Oversight staff members William Spears and Joel Thomas presented an analysis of postsecondary education administrator compensation. The staff presentation reviewed the results of the analysis of compensation over time and compared it to a standardized national median average.

The memorandum and presentation slides are available on the Legislative Oversight and Investigations Committee webpage.

Representative Nemes stated there do not appear to be significant problems identified by staff. In response to a question from Representative Nemes, Mr. Spears stated that the comparison group was a sample of universities from across the nation, across different types of schools, and consisted of about 1,000 universities.

Mr. Spears explained that Morehead State University was not in the same comparison group as the University of Kentucky (UK) or the University of Louisville (UofL). Morehead falls under the master's group whereas the other two universities fall in the doctoral group. In response to a question from



Representative Nemes, Mr. Spears stated that these comparisons were from across the country and not just in big cities, so the comparison will be different in different areas. He explained that median salaries were used, which control for high and low salaries.

In response to a question from Representative Nemes, Mr. Spears stated committee staff received raw numbers regarding changes in indirect compensation. He explained that staff did not speak with the institutions directly but did receive feedback through the Council on Postsecondary Education.

In response to a question from Senator Carroll, Mr. Spears stated that he is generally okay with the data provided, but there is somewhat of a concern regarding the use of actual salary amounts. He explained that it can be confusing in situations where people leave or do not stay at an institution for an entire year. Additionally, some categories being combined in the data set made it difficult to separate specific data. Senator Carroll agreed with Representative Nemes, saying he expected to see more concerns with the results of the study but did not see any alarming trends.

Dr. Thompson, President for CPE, thanked the committee for the budget increase last year and explained that it has been useful in increasing student success. He added that higher education is the most direct correlation to an educated work force and economic development.

Dr. Thompson said the state institutions have had the lowest tuition increases in almost 30 years. In 2021, the residential undergraduate tuition rates only increased by 0.7 percent, and for this coming year the overall increase will be at 1.1 percent, which is significantly below inflation. Dr. Thompson reported that state institutions have been closing achievement gaps and that the credentials are up. Since 2014, minority credentials are up 40 percent; science, technology, engineering, and math (STEM) was up 30 percent; and short-term certificates were up 9.5 percent in 2020 and up 110 percent since 2005.

Dr. Thompson acknowledged that the staff did a good job on the report. He stated there is value in analyzing compensation levels across campus administrators, as this helps to show the value of the institutions and provides information that helps Kentucky institutions remain competitive with institutions in other states. He made a point that CPE has no direct authority in the hiring process or setting salaries but that it does work closely with the institutions.

Dr. Thompson commented on a number of positive elements of the staff study such as using nationally recognized sources, using appropriate methods such as time series analysis and peer group comparisons, and using median salary data as a method of peer group comparison. He expressed the importance of table 2 of the presentation, because it helps to explain the changes in compensation from 2015 to 2019, as well as highlights that comparing data across institutions is a complex process.

Dr. Thompson shared the limitations that CPE found in the study. He explained that the study found large increases and decreases in compensation, but it did not include an analysis of the root causes. He also noted that the study analyzed actual amounts

paid instead of annualized salaries, which could result in skewed data due to high turnover and frequent changes in job titles. He expressed concern regarding comparison data and noted that it is important to consider all the details when comparing universities. Dr. Thompson felt this was an excellent study and the staff did a very good job with the data that was available to them.

Dr. Czarapata said he has served as the President for Kentucky Community and Technical College Systems for four months. He compared KCTCS to a franchise headquarters stating that it runs centralized systems for member institutions, which creates efficiencies and economies of scale, such as centralized payroll, networking, information technology, accounting, legal, benefits, and learning management systems. He noted that these tasks and responsibilities require specialists, which is why, in some cases, their salaries appear higher. Dr. Czarapata pointed to table 6 of the staff presentation noting that KCTCS had made dramatic changes to salaries within the system office and he plans to make sure things run as efficiently as possible.

Mr. Diaz, Chair of the ECU Board of Regents, thanked Legislative Oversight staff and the committee for the study. Mr. Diaz explained that the study would help ECU's board to evaluate its budget and compensation, as well as help the institution remain competitive in hiring for administrative positions. Mr. Diaz noted that in 2020, ECU went through a turnover in presidency and negotiated a new contract with the current president. In this process, the board compared salaries of similar regional colleges both in Kentucky and outside of Kentucky and used that to set compensation. Mr. Diaz stated that ECU applied the principals of performance-based funding within the president's contract, which tied the president's compensation to the success of the university.

Representative Blanton stated that the study is a comparative analysis of administrators and asked if there is something similar for professors working at the universities and colleges. Dr. Thompson explained that they do have comparative analysis for educators and they base it on rank and tenure. Representative Blanton asked if the committee could receive a copy of this data, and Dr. Thompson replied that the information would be provided.

Representative Blanton noted that the staff study found that some institutions have made compensation and expenditure decreases over time while others have experienced increases. He noted that he thought the institutions were possibly top heavy, meaning more interested in compensating administrators than teachers.

In response to a question from Representative Blanton, Dr. Thompson responded that indirect compensation benefits such as country club dues come out of general funds. Dr. Thompson asked Mr. Diaz to discuss the country club dues related to ECU.

Mr. Diaz first responded to an earlier assertion from Representative Blanton that institutions were pricing out middle class students. To this point, Mr. Diaz noted that ECU had held tuition at zero percent over the last year. He noted ECU's BookSmart program that provides all students their textbooks as part of tuition. In regard to paying country club

dues as a form of indirect compensation, Mr. Diaz pointed out that the country club in question was the Arlington Golf Course, which is owned by ECU, so the use of its dues as a form of compensation was not technically an expenditure. He also noted that the university president uses the country club to engage with other leaders and alumni to raise funds. Mr. Diaz stated that the cost of bad leadership far exceeds the compensation paid to a great leader. Dr. Thompson also responded to Representative Blanton's assertion that institutions were pricing out middle class students, saying that since 2012, student debt has been going down for Kentucky students.

Representative Nemes noted that, on slide 7 of the staff presentation, ECU had the most amount of money going to students and least going to administrative staff.

In response to a question from Representative Nemes, Mr. Spears responded that country club dues were only an aspect of a compensation package at ECU and that the amount of compensation the dues accounted for range from \$900 to \$3,000. Mr. Spears also noted that the compensation was typically offered to athletic administrators, academic affairs officers, university presidents, and chief executive officers.

Senator Nemes noted that he was pleased to see that Dr. Thompson had instituted a policy of letting students know what they can expect to earn with various degrees. He also commented that he was glad to see the overall decreasing cost of student tuition.

In response to a question from Senator Nemes, Dr. Czarapata responded that KCTCS was doing a lot with apprenticeships and had added another 12 companies, but there had been no discussion of an official transfer of programs to KCTCS. Dr. Czarapata noted that some companies do not like the overhead of managing apprenticeships, so KCTCS is working to take over some of that responsibility.

Representative Nemes commented that the committee appreciated the transparency they had shown and that the responses were helpful. He explained that he had looked at UofL compensation and found the explanations of compensation reasonable. He again commended all universities for their transparency.

Representative Nemes pointed to slide 7 of the staff presentation and noted that Northern Kentucky University had opted out of the state pension system and, as a result, had seen expenditures drop. He noted that KSU's spending on personnel costs had risen. Representative Nemes inquired as to why things at KSU had not improved, noting that the legislature wants KSU to get back on its feet and asked what the legislature could do to help.

Representative Nemes stated he was proud of Kentucky State University and all state universities and colleges and noted that KSU has a historically unique mission. Dr. Thompson stated that the Governor had asked CPE to look at the budget at KSU and work toward getting the institution's debts paid. Dr. Thompson noted that he was committed to KSU and agreed on its importance as Kentucky's only state historically black university. Dr. Thompson noted that they were currently reviewing KSU's financial situation and would be coming back to discuss it with the legislature once the review was complete.

In response to a question from Representative Nemes, Dr. Thompson noted that they need to develop a strategy for KSU to develop centers of excellence at the institution. Dr. Thompson asserted that KSU can be a central part of training teachers, STEM-H programs, and helping with the state government workforce. Dr. Thompson stated that KSU is the institution at the state capital and questioned if we could create more connections between KSU and state government. Dr. Thompson then turned the discussion over to Mr. Rush of KSU to discuss financial information.

In response to a question from Representative Nemes, Mr. Rush pointed to slide 7 of the staff presentation and noted that it referred to the total of all payroll compared to expenditures. Mr. Rush commented that part of KSU's mission is to be a small university with a nurturing environment. As a result, KSU tends to have more staff due to a higher faculty-to-student ratio and having more support services for students. Mr. Rush explained that KSU is currently going through a review of financials and would have more information and recommendations for the committee in the next few weeks. Mr. Rush noted that KSU is likely to continue to have higher staff expenditures than other institutions due to its mission.

Representative Nemes responded that the committee will be looking closely at KSU moving forward and working to help improve it after the seemingly intractable problems that have existed for the institution over time.

Senator Thomas expressed that he is proud that the legislature increased appropriations this year for state educational institutions for the first time since 2008. He noted that this resulted in no tuition increases for the first time in a long time. He expressed his desire that Dr. Thompson would return to the legislature again to ask for another increase in appropriation in the next state budget. Senator Thomas also noted that Dr. Thompson had done a great job as president of KSU during his tenure. Senator Thomas also agreed with other committee members in noting that he saw nothing in the staff study of compensation that was out of line or caused alarm.

Senator Thomas commented that Kentucky's universities now compete with the most prestigious universities in the nation and, therefore, compensation at these institutions must be in the same ballpark as those universities, which costs money. Senator Thomas noted Mr. Diaz's comment that the cost of bad leadership exceeds the cost of good leaders, noting that ECU presidents have gone on to lead major universities.

With respect to the discussion of ECU's country club dues, Senator Thomas noted that all of the top 250 universities give their leaders access to country clubs and contended that this was the cost of doing business.

Senator Carroll noted that the original inspiration for the staff compensation study and was instigated by then-Senator Dan Seum. Senator Carroll recalled that the main issue was not that salaries were necessarily too high but instead that the compensation structure was top heavy in nature and resulted in compensation for administrators being higher than that for educators.

Senator Carroll reported that he believed that Senator Seum took issue with the total amount spent on administration being exorbitant.

In response to Senator Carroll, Dr. Thompson commented that the increase in administrative costs had come in the form of student and academic support roles and that it was important to remember that administrators do many different things. Dr. Thompson said that he believed Senator Seum was concerned about high-level administrative positions, but there had been very little change in the compensation for those roles. Dr. Thompson asserted that the majority of administrative compensation increases had come from those in student support roles.

In response to a question from Representative Nemes, Mr. Spears responded that with current data, staff did not feel confident in commenting on Dr. Thompson's assertion regarding the nature of compensation increases for positions in student support services. Mr. Spears noted that the data staff analyzed for the report dealt only with higher-level administrators and not administrators in student support positions.

Representative Nemes recalled that Senator Seum had originally been talking about UofL which, according to the staff report, has seen compensation reductions over time.

Senator Thomas noted that he wanted to comment on the situation at KSU. He shared that he had a rich family legacy with KSU and that the legislature and the state needed KSU to thrive. Senator Thomas pointed out that KSU had a 150-year legacy in Kentucky and that, although it has had recent financial problems, he believed they could be addressed and that KSU could thrive.

In response to Senator Thomas' assertion, Dr. Thompson stated that they have been working to build KSU's Kentucky student base. He also stated that they owe it to KSU to help it thrive.

Dr. Thompson asserted that the state needed to raise faculty salaries across the board and reiterated that a major component of the solution to Kentucky's economy and the COVID-19 outbreak is the state education system. He noted that he currently feels very good about the status of the institutions and appreciated the committee and staff for the excellent study and expressed admiration for the methodology of the study.

The meeting was adjourned at 2:25 p.m.

## **PUBLIC PENSION OVERSIGHT BOARD**

### **Minutes of the 5th Meeting of the 2021 Interim**

July 20, 2021

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

The 5th meeting of the Public Pension Oversight Board was held on Tuesday, July 20, 2021, at 3:00 PM, in Room 154 of the Capitol Annex. Representative Jim DuPlessis, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Jim DuPlessis, Co-Chair; Senators

Robby Mills, Gerald A. Neal, Dennis Parrett, and Mike Wilson; Representatives Derrick Graham, Jerry T. Miller, James Tipton, Russell Webber, and Buddy Wheatley; Joseph Fawns, Mike Harmon, John Hicks, and James M. "Mac" Jefferson.

Guests: David Eager, Executive Director, and Erin Surratt, Executive Director, Office of Benefits, Kentucky Public Pensions Authority; and Beau Barnes, Deputy Executive Secretary and General Counsel, Teachers' Retirement System.

LRC Staff: Brad Gross, Jennifer Black Hans, and Angela Rhodes.

#### **Approval of Minutes**

Senator Wilson moved that the minutes of the June 24, 2021, meeting be approved. Senator Mills seconded the motion, and the minutes were approved without objection.

Representative DuPlessis had the committee observe a moment of silence for the passing of Representative Bam Carney.

### **Overview of Sick Leave Programs and Impact of Bonuses on Pension Payments – Kentucky Public Pensions Authority**

Erin Surratt, Kentucky Public Pensions Authority (KPPA), began the presentation by giving an overview of how sick leave and bonus payments are used to determine pension benefits for all systems under KPPA. She started with sick leave and discussed how the use of sick leave is different based on a member's participation date or tier. Tier 1 members with a participation date prior to September 1, 2008, who are participating in the Kentucky Employees Retirement System (KERS) or the State Police Retirement System (SPRS), have an unlimited amount of sick leave that may be converted into service credit for benefit purposes and that service can be used toward determining retirement and health insurance eligibility. Tier 2 KERS and SPRS members with a participation date on or after September 1, 2008, but prior to January 1, 2014, are limited to 12 months of sick leave service credit and that service cannot be used toward determining retirement and health insurance eligibility. Tier 3 KERS and SPRS members, along with Tier 3 County Employees Retirement System (CERS) members, with a participation date on or after January 1, 2014, are not eligible for sick leave service credit. For Tier 1 and 2 CERS members, sick leave service credit/benefits are optional with the employer, with Tier 2 CERS members subject to the same limitations noted for KERS and SPRS members.

In response to a question from Representative DuPlessis regarding costs to employers, Ms. Surratt offered an example of how sick leave would work. In Tier 1, for a person age 55 with 27 years of service, 12 months of sick leave, and a final compensation of \$50,000, the cost to the KERS employer to fund the 12 additional months of service credit would be \$12,000.

Ms. Surratt continued with sick leave for Tier 2 members with a participation date on or after September 1, 2008, but prior to January 1, 2014, stating that sick leave is limited to 12 months between KERS, CERS, and SPRS for purposes of determining monthly benefits. It does not count towards retirement eligibility or health insurance benefits, and the last



participating employer pays total cost. Under Tier 3, for members participating on or after January 1, 2014, there is no sick leave credit toward retirement benefits.

In response to questions from Representative Graham, Ms. Surratt stated KPPA would follow-up with member participant data and the breakdown by number of employees and cost for each tier.

Ms. Surratt discussed bonus payments. State statutes governing the KPPA systems provide that lump sum bonuses, severance pay, or employer-provided payments for purchase of service credit must be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). So, for example, a \$5,000 bonus in FY 2022 to a school board employee who has 120 months of service credit would be prorated over all 10 years of service by adding \$500 to each fiscal year salary. Further, bonus payments are not exempt from pension spiking.

In response to a question from Representative Graham, Ms. Surratt stated that a one year bonus would likely not cause a spike to occur, but bonuses over several years could do so.

In response to a comment from Representative Tipton, Ms. Surratt confirmed that, in the case of a classified employee participating in CERS who receives a bonus from the school board, the initial cost of the retirement benefit associated with that bonus would be paid by the county school board in the employer's contribution.

David Eager, KPPA, discussed and answered a question from the April meeting regarding the favorable impact of the markets on the pension systems. Between June 24 and June 30, 2021, the change of assets was about one tenth of 1 percent favorable. He provided charts to demonstrate the estimated impact of the FY 2021 investment returns on the unfunded accrued actuarial liability/funded ratio and the employer contribution dollar amount/percentage for KERS nonhazardous plan. He advised caution when relying on the FY 2021 returns, as they represent a one-time windfall and will be averaged by 5-year smoothing.

In response to a question from Mr. Jefferson regarding whether there is a method the actuaries use to estimate the future value of bonuses and sick pay relative to how that compensation will be reflected in the funded ratio, Mr. Eager stated the actuaries have not made such a calculation at this time, but that they can isolate that cost. In response to a follow up question regarding sick pay and bonus rules, Ms. Surratt stated that for sick leave the actuarial value is calculated upon retirement, and the last employer pays the full actuarial cost within a month.

In response to Senator Higdon's comment that some of the budget surplus should be used to pay off the SPRS' unfunded liability, which is currently \$757 million, Mr. Eager stated that the idea is something KPPA has reviewed.

Representative DuPlessis stated that the discussion of sick leave and bonuses and their impact on retirement costs was prompted by news that the Jefferson County School Board was using some of its federal stimulus funding to award teachers a \$5,000 bonus.

#### **Overview of Sick Leave Programs and Impact**

#### **of Bonuses on Pension Payments – Teachers' Retirement System**

Beau Barnes, Teachers' Retirement System (TRS), began his presentation by updating the Public Pension Oversight Board that the investment returns are now at 30 percent with about \$5 billion added to the pension fund, whereas in March they were at 22 percent with about \$4 billion in assets added to the pension fund.

As background, Mr. Barnes discussed member and state contributions. The member contributes 12.855 percent of salary with 9.105 percent going to pension and 3.75 percent going to retiree health care. The state contributions depend on a member's participation date: 13.105 percent of salary for participation before 7/1/2008 (12.355 pension/life; 0.75 retiree healthcare) and 14.105 percent of salary for participation after 7/1/2008 (13.355 pension/life; 0.75 retiree health care).

Mr. Barnes described the basic retirement formula to help explain how bonuses and sick leave work. A member's annual benefit is calculated based on the total service credit times the statutory retirement multiplier times the final average salary. The final average salary is one element of the annuity calculation formula, which creates an average using the high five or three salaries.

Mr. Barnes discussed the formula for the sick day calculations for school district teachers. Only school districts can use unused sick leave as salary credit and may compensate retiring employees for up to 30 percent of their accumulated sick leave, which is then included in the member's final average salary. Universities and other employers are not permitted to do so. Starting January 1, 2022, sick leave will not be used for purposes of defined benefit retirement calculations for new teachers. He also discussed how sick leave impacts retirement by comparing an example of a member who has sick leave and a member with no sick leave.

In response to a question from Representative DuPlessis, Mr. Barnes stated that in his calculation example, he used the high five salary. Mr. Barnes stated he would follow up with an example using a high three salary.

Mr. Barnes discussed how sick leave is funded. When used as salary credit for retirement calculation purposes, sick leave is funded from 3 sources: (1) member contributions at 9.105 percent on the amount of sick leave included in final average salary; (2) employer contributions at 12.305 percent on the amount of sick leave included; and (3) the remaining cost is paid by state (amortized since fiscal 1999), which is about \$32.5 million, with a total cost of \$36 million from all funding sources for retirees who retired in 2020.

In response to questions from Representative DuPlessis, Mr. Barnes agreed that out of the \$36 million, the members are paying about \$1.5 million and the taxpayers are paying the remainder. In response to a follow up question, Mr. Barnes stated that when the plan was established, they would not have contemplated sick leave. Sick leave was added as a benefit in the mid-90s, and it is a benefit that falls outside the statutory range for the inviolable contract.

In response to questions from Senator Higdon,

Mr. Barnes agreed that there are more members that retire with the high three salary average, which requires 27 years of service and being at least 55 years of age. Senator Higdon asked for other examples to include the high three calculations, higher salaries, and more sick leave. In response to a follow up question, Mr. Barnes agreed that the state's cost of \$32.5 million is about 1 percent of payroll.

Mr. Barnes discussed the 10-year historical information going back to 2011, including the year of retirement, percentage and number of members receiving sick leave payments, average sick leave payment, average added to monthly annuity, full actuarial cost, average cost per member, and annual payment.

Mr. Barnes discussed historical sick leave schedules, balances, and the amounts of annual remaining payments for years 2003 to 2022.

Mr. Barnes discussed the estimated future costs based on recent assumption changes. He explained that the future cost is based on the estimated number of retirees receiving sick leave multiplied by the average cost per retiree less the estimated contributions received on the sick leave payout. He gave estimates over a 20 year period. In total, the annual amortization payment for sick leave is about \$60 million.

In response to a question from Representative DuPlessis, Mr. Barnes stated that the estimated future costs are based on the most recent experience study with the new investment rate of return/discount rate of 7.1 percent.

Mr. Barnes discussed bonuses and raises for teachers. This year was different due to the federal funds available to school districts, and a lot of the districts used those funds to pay bonuses ranging from \$300 to the highest of \$5,000 in Jefferson County. Most of the bonuses being paid across the district will not be used for retirement calculation purposes, because most teachers will not be retiring in the near term, so the bonus is less likely to be included in the final average salary. Also, out of those bonuses, TRS will collect 12.855 percent from the member and 13.105 percent from state.

In response to a question from Representative DuPlessis, Mr. Barnes stated that 1,900 members retired last year out of approximately 75,000 full and part-time teachers.

Mr. Barnes continued, explaining that the use of these bonuses could still be limited by the TRS anti-spiking law. If the anti-spiking law does apply, a teacher would have to delay retirement for four years to see a retirement benefit, and there would be no impact or reduced impact if the teacher retires before four years. Also, if the anti-spiking provisions apply, both the member's and the state's contribution is refunded.

In response to a question from Representative Higdon, Mr. Barnes agreed that in 2020, for those members receiving sick leave payments at retirement, an average of \$200 per month or \$2,400 per year was added to the annuities of those members.

In response to a question from Senator Higdon, Mr. Barnes explained that "Green Box" dollars are amortized payments that the Commonwealth has been making over and above the fixed statutory 13.105 percent to pay off prior benefits offered many years

ago, including COLAs above 1.5 percent awarded prior to 2008. Green box payments total about \$60 million a year. In response to a follow up question, Mr. Barnes stated that the anti-spiking provision in KRS 161.220(9) limits increases in compensation during the last three years before retirement to no greater than highest percent rank and step increase received for the school district. So, the value of a bonus in a single year would only be included in a member's final average salary if the member worked an additional four years.

In response to a question from Representative Tipton regarding the balance remaining on the Green box dollars, Mr. Barnes stated that the installment payments include interest, and the Commonwealth could save money by paying off the lump sum and not paying the interest. The interest rate is 7.1 percent. The total amortization payment is about \$60 million a year. In response to a follow up question, Mr. Barnes stated that there have always been statutory limitations for retired teachers returning to work. Recently, TRS tightened the language in its statutes (2021 housekeeping bill) and regulations regarding retired reemployed members to ensure compliance with federal tax law.

In response to a question from Representative DuPlessis, Mr. Barnes stated that, before TRS started getting full funding in 2017, TRS would have to avoid certain long term investments due to being in a negative cash flow and could not take full advantage of market opportunities.

With no further business, the meeting was adjourned.

## **PUBLIC PENSION OVERSIGHT BOARD**

### **Minutes of the 6th Meeting of the 2021 Interim**

August 30, 2021

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

The 6th meeting of the Public Pension Oversight Board was held on Monday, August 30, 2021, at 10:00 AM, in Room 154 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Jimmy Higdon, Co-Chair; Senators Christian McDaniel, Robby Mills, Gerald A. Neal, Dennis Parrett, and Mike Wilson; Representatives Derrick Graham, Jerry T. Miller, Jason Petrie, James Tipton, Russell Webber, and Buddy Wheatley; Mike Harmon, James M. "Mac" Jefferson, and Sharon Mattingly.

**Guests:** Beau Barnes, Deputy Executive Secretary and General Counsel, Teachers' Retirement System. David Eager, Executive Director, and Rebecca Adkins, Executive Director, Office of Operations, Kentucky Public Pensions Authority.

**LRC Staff:** Brad Gross, Jennifer Black Hans, and Angela Rhodes.

#### **Approval of Minutes**

Senator Wilson moved that the minutes of the July 20, 2021, meeting be approved. Representative Webber seconded the motion, and the minutes were

approved without objection.

#### **Discussion of PPOB Request to LRC Regarding Actuarial Audit per KRS 7A.250(8)**

Senator Higdon discussed actuarial audits for each of the system actuaries to be conducted once every five years as required under KRS 7A.250(8). He offered an explanation of an actuarial audit and the request-for-proposals (RFP) process necessary for the Public Pension Oversight Board to hire an actuarial firm. Under 7A.240, the funding for the actuarial audit shall be paid by the state-administered retirement systems. For this meeting, the PPOB members were asked to vote to request that the Legislative Research Commission (LRC) expend funds to hire an actuary upon authorization from the Senate President and Speaker of the House.

In response to questions from Senator Wilson, Senator Higdon stated the specific differences in cost between a Level 1 or Level 2 or Level 3 actuarial audit is not known, but generally, a Level 1 is the most expensive and a Level 2 is less expensive. In a follow up question, Senator Higdon stated that the RFP process will assure the bidding actuaries are qualified.

In response to a question from Representative Miller, Senator Higdon noted LRC staff's response that most actuarial firms that conduct valuations of public retirement systems also conduct actuarial audits depending on the scope of the RFP.

In response to a question from Representative Tipton, Senator Higdon stated that this is the first actuarial audit conducted under KRS 7A.250(8), which was added to the PPOB's duties in 2016 and required to be conducted every five years. He added that the reason for a Level 2 audit is to look at the accuracies of the previous actuarial valuations by using a sampling of data from the systems.

In response to a question from Senator Wilson, Senator Higdon stated staff would look into whether the RFP can seek bids for a Level 1 as well as Level 2 audit.

Representative Miller asked that the PPOB exclude the three actuaries that are already involved with system consulting and audits.

Representative Tipton moved that, per its authority under KRS 7A.250, the PPOB request that LRC expend funds to hire an actuary for an actuarial audit of the state-administered retirement systems. Senator Wilson seconded the motion, and the motion was approved without objection. Auditor Harmon abstained.

#### **TRS Sick Leave/Payment Information Follow-up**

Beau Barnes, Teachers' Retirement System (TRS), began his presentation by announcing the fiscal year end return of 29.59 percent net of fees.

In response to a question from Senator Higdon, Mr. Barnes stated that the 29.59 percent will be subject to a five-year smoothing and will show all periods above 7.5 percent now.

Mr. Barnes advised that he was appearing to explain the so-called "Green Box" dollars funded by the state budget, and what is included in those expenditures. Generally speaking, the "Green Box" dollars describe payments coming out of the General Fund for prior benefit adjustments. First, he discussed sick leave payments. Starting in the 1990s, the state

moved from paying for sick leave benefits by lump sum to paying for them on an amortized basis. Mr. Barnes presented the payments for the beginning amortization year (2003 through 2022), the balance as of June 30, 2021, the annual payment for fiscal year 2022, and the year of last payment.

In response to a question from Senator Higdon, Mr. Barnes explained the accumulation of the amortized costs and stated that the total outstanding sick leave balance is \$433,180,254 with an annual payment of \$63,493,200.

In response to a question from Senator McDaniel, Mr. Barnes stated that the balance for each amortization year is what is incurred by the retirees who retire in the respective amortization year, not a cumulative amount from previous years. In response to a follow up, Mr. Barnes agreed that the annual payment is calculated at the same assumed rate of return internal to the system.

In response to a question from Representative Miller, Mr. Barnes agreed that the 20-year amortization period was in the budget bill starting in the late 90s.

In response to a question from Senator Higdon, Mr. Barnes stated that the total annual amortization payment is \$63,493,200.

In response to a question from Representative Tipton, Mr. Barnes agreed that there is a 7.5 percent interest payment on the \$433,180,254. In response to a follow up, Mr. Barnes stated that the annual payment, without debt, would be around \$44 million, but he would provide the accurate amount at a later time.

Mr. Barnes discussed other payments included in the "Green Box" dollars, including supplemental cost-of-living adjustments (COLAs) over the statutory 1.5 percent, which were paid on an amortized basis starting in 2003 through 2008, and non-single subsidies for health insurance, which were amortized beginning in 2012. For each category, Mr. Barnes provided the beginning amortization payment amount, balance as of June 30, 2021, annual payment for fiscal year 2022, and year of last payment. He noted that the COLAs last payment will be in 2027 and the non-single subsidies' last annual payment is for the current fiscal year 2022.

In response to a question from Senator Mills, Mr. Barnes stated that the budget request will be adjusted down from the \$63 million.

In response to a question from Senator Higdon, Mr. Barnes stated that there is nothing preventing the balances for sick leave, supplemental COLAs, and non-single subsidies to be paid off in a lump sum earlier than the schedule amortized date. If those debts were paid off with a lump sum total of \$570,266,111 as of June 30, 2021, it would result in a reduction of approximately one percent of the actuarially required contribution (ARC) or about \$37 million less per year.

In response to a question from Representative Miller, Mr. Barnes stated that the "Green Box" dollar payments for fiscal year 2022 do not reflect the actuarial changes adopted by the TRS board this summer. However, any increase in the payment resulting from those changes could be offset by the extraordinary return for year-end 2021.

Next, Mr. Barnes discussed the impact of sick leave credit on the annual retirement pension benefits for retired teachers and their survivors. Statistics were



presented, which included a range of annual pension payments between \$10,000 and \$250,000 or more, with nearly half of beneficiaries falling in the \$50,000 to \$75,000 range, number of annuitants/beneficiaries, total share of pension payments, final average salary of group, average service credit, average annual benefit, and average sick days paid.

In response to a question from Senator Higdon, Mr. Barnes agreed that the higher pay range was attributed to high amounts of sick days and a higher salary.

In response to a question from Representative Wheatley, Mr. Barnes stated that about 90 percent of retirees stay within Kentucky, but he did not have percentages for other states. In response to a follow up question, Mr. Barnes stated that he will provide data regarding retiree dollar amounts being spent in Kentucky.

Mr. Barnes discussed the formula for how retirement allowances are calculated. The final average salary is one element of the annuity calculation formula, which creates an average using the high five or three salaries, and is defined in KRS 161.220(9). Total service credit times the statutory multiplier times final average salary equals the annual benefit.

Mr. Barnes discussed how sick leave impacts final average salary and, therefore, the retirement allowance. For school district teachers, sick leave can be converted into salary credit for the last year of employment. For teachers hired on or after July 1, 2008, there is a 300 day cap for sick leave, and for new tier teachers hired on or after January 1, 2022, sick leave shall not be used for defined benefit calculation purposes. He explained the sick day calculation, which is a three step process: (1) the contract salary divided by contract days equals the daily rate; (2) the daily rate times the local policy (school board option to compensate from 0 to max 30 percent) equals the sick day value; and (3) the sick day value times the number of unused sick days equals the final payment. The final payment is then incorporated into the member's last annual salary for the retirement allowance calculation.

In response to a question from Representative Wheatley, Mr. Barnes stated that, based on the three high salaries, the formula would give you the final average salary.

In response to a question from Senator Higdon, Mr. Barnes stated that he believes that some districts roll in unused personal days into sick days.

Mr. Barnes discussed how sick leave impacts retirement. He provided example scenarios with 27 years of service on high 5 and high 3 salaries.

In response to a question from Representative Miller, Mr. Barnes stated that the leave payment in the example is based on the last annual salary not the final average salary. In response to a follow up question, Mr. Barnes stated that the school district is responsible for the lump sum sick leave costs for school districts at 30 percent of the daily rate, and the Commonwealth pays the actuarial cost of having the sick leave cost included in their retirement allowance.

In response to a question from Senator Higdon, Mr. Barnes stated that with the new assumptions, including reducing the discount rate, there will be

some differences to the amortized sick leave payments. However, with the exceptional annual return in 2021, it is difficult to predict the final result.

In response to a question from Senator Mills, Mr. Barnes agreed that, if sick days were paid by the school district when the teacher retired and were not rolled into the teacher's last year of calculated salary, the Commonwealth's cost of sick days would be alleviated. In response to a follow up question, Mr. Barnes stated that the Commonwealth will see some relief from sick leave costs associated with the changes made for members hired after July 1, 2008, who have their sick leave capped at 300 days, and through HB 258 and the new tier for teachers hired on or after January 1, 2022, which eliminates sick leave being used for defined benefit calculation purposes.

In response to a question from Representative Miller, Mr. Barnes stated that the school district is responsible for the lump sum financial sick leave payment at retirement and the Commonwealth, by statute, is responsible for the actuarial costs of having that payment applied to their last year's salary for retirement calculation purposes.

Mr. Barnes concluded his presentation on how sick leave impacts retirement with various factor ranges, such as, salary, unused sick days, final average salary years, leave payment, and final average salary.

#### **KPPA Update on HB 8 Implementation**

David Eager, Kentucky Public Pensions Authority (KPPA), began his presentation by introducing Ed Owens, the CEO of County Employees Retirement System. Mr. Owens introduced himself and stated that he is excited to use his skills in this new role.

Mr. Eager began the overview of HB 8 with the calculation of the employer contribution rate. He discussed the four points of importance that HB 8 addresses: (1) decreasing payroll and declining membership as a result of downsizing, outsourcing, and contract employment; (2) a continuation of the same initial calculation of the unfunded accrued liability (UAL) each year; (3) a shift from using projected payroll in order to eliminate the impact of decreasing payroll; and (4) the adoption of the UAL level-dollar percentage requirement, establishing an employer's percentage share of the UAL based on the 2019 valuation. Mr. Eager then gave an example for an employer in the Kentucky Employees Retirement System non-hazardous plan using the fiscal year 2019 total unfunded liability of \$19.2 billion. Lastly, Mr. Eager went over the appeal process, subsidies, and what entities are not eligible to appeal.

Ms. Adkins discussed the entities who are eligible to appeal. She stated that 47 employers have appealed, which represents 26,060 members with a total 2019 liability of \$2.4 billion. There were a total of 5,189 members whose employment was appealed by the agencies with a total 2019 liability of \$366,308 million. She stated that the majority of the appeals were based on three reasons: (1) the agency is not last employer, (2) the employee was under contract with executive branch, and (3) the employee worked previously at a state mental health facility.

Ms. Adkins gave a summary of appeal concerns, such as calculation validation; federal funding, which requires a percent-of-pay calculation; a

misunderstanding of liability calculations; and a lack of understanding of how HB 8 did not assign a specific liability dollar amount to each employer, but rather a percentage. KPPA has also received protest letters, rather than appeals, from approximately 12 agencies, who have paid but reserve the right to mount a legal challenge. There have also been some late payments in July. She noted that at this time no concerns have been identified that will require legislation.

Ms. Adkins concluded with contribution comparisons for July 2020 compared to July 2021 for payroll, employee count, employer contribution, contribution rate, UAL payment, and total employer contribution. Despite a declining payroll and decrease to the employee count, the total employer contribution did go up. So, HB 8 is working as intended.

In response to a question from Senator Higdon, Mr. Eager stated quasi-governmental agencies will need to have at least 60 percent of payroll by fiscal year 2023 and 2024, or the agencies loses their subsidies.

With no further business, the meeting was adjourned.

## **TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE**

### **Minutes of the 6th Meeting of the 2021 Interim**

August 18, 2021

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

The 6th meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, August 18, 2021, at 10:00 AM, in Room 129 of the Capitol Annex. Senator C.B. Embry Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator C.B. Embry Jr., Co-Chair; Representative Myron Dossett, Co-Chair; Senators Paul Hornback, Dennis Parrett, Robin L. Webb, and Whitney Westerfield; Representatives George Brown Jr., Kim King, Phillip Pratt, Brandon Reed, and Rachel Roberts.

**Guests:** Brian Lacefield, Executive Director, Kentucky Office of Agricultural Policy (KOAP); Bill McCloskey, Deputy Executive Director, KOAP; Paulette Akers, Director, Division of Conversation, Department for Natural Resources, Energy and Environment Cabinet; and Ellen H. Cartmell, Tobacco Prevention and Cessation Program Manager, Kentucky Department for Public Health, Cabinet for Health and Family Services.

**LRC Staff:** Stefan Kasacavage, Nathan Smith, Kelly Ludwig, and Rachel Hartley.

#### **Kentucky Office of Agricultural Policy Report**

Brian Lacefield stated there has been a resignation from the Agricultural Finance Corporation and Commissioner Quarles has appointed a new member, Dan Flanagan.

Bill McCloskey described the Agricultural Development Board's projects for July under the program. Mr. McCloskey highlighted programs





including the County Agricultural Investment Program (CAIP), Deceased Farm Animal Removal, Next Generation Farmer, and Youth Agriculture Incentives Program (YAIP).

The requested program amendments discussed included:

Caldwell/Lyon Counties Cattlemen's Association requested an additional \$29,888 in Caldwell County funds for CAIP. The board recommended approval, which would bring the program total to \$123,678.

Taylor County Cattlemen's Association requested an additional \$104,000 in Taylor County funds for CAIP. The board recommended approval, which would bring the program total to \$230,334.

Kenton County Farm Bureau requested an additional \$59,797 in Kenton County funds for CAIP. The board recommended approval, which would bring the program total to \$124,797.

Clark County Conservation District requested an additional \$25,000 in Clark County funds for CAIP. The board recommended approval, which would bring the program total to \$175,000.

Meade County Cattlemen's Association requested an additional \$13,620 in Meade County funds for CAIP. The board recommended approval, which would bring the program total to \$82,501.

The projects discussed included:

Dowdy's Custom Meat Processing LLC was approved for up to \$250,000 in state funds, as a forgivable loan, to renovate its existing processing facilities to become United States Department of Agriculture-certified and to purchase processing equipment. This project is a Meat Processing Investment Program Level 3 in Graves County.

RedLeaf Biologics, Inc was approved

for up to \$485,020 in state funds, as a direct loan, for the construction of a commercial pilot processing facility and to purchase a harvester for red sorghum used to produce unique botanical extracts.

Dave Fair (Fair's Custom Meat Processing) was approved for up to \$2,494 in state funds to purchase a dual chamber vacuum. This will be a Meat Processing Investment Program Level 2 Project in Grant County.

J. Anderson Farms was approved for up to \$12,335 in Pulaski County funds for a feasibility study to look at the potential impact of a cull cow processing plant in southern Kentucky.

Lincoln County Fiscal Court was approved for up to \$32,441 in county funds for a Dodge Ram 5500 diesel truck with hydraulic bed for the county's deceased animal removal service.

Christian County Agricultural Extension Foundation, Inc. was approved for up to \$15,000 in Christian County funds for a commercial kitchen.

Hindman Settlement School was approved for up to \$5,445 in Knott County funds to expand the Farmers Market.

#### **Presentation from the Division of Conservation on the Usage of Tobacco Settlement Funds**

Paulette Akers stated the state cost share program was established in 1994 and started receiving tobacco settlement funds in 2000. The funds provide financial assistance to farmers at a 75 percent reimbursement rate with the assistance of local conservation districts. There are funds that are returned every year due to canceled projects or an overestimation of cost. These funds are appropriated in the next fiscal year.

There are currently \$4,096,088 in unobligated funds, which will be available in January 2022. The cut off for Fiscal Year 2021 funding is November 15, 2021.

In response to Representative King, Ms. Akers stated there is no general fund allocation for the cost share program.

In response to Senator Webb, Ms. Akers stated livestock and manure-related projects should be prioritized; however, fencing, water pipelines and tanks, and heavy use area improvement projects are frequently funded.

#### **Kentucky Tobacco Prevention and Cessation Program**

Ellen H. Cartmell stated the Tobacco Prevention and Cessation Program is funded by the Master Settlement funds and two grants from the Centers for Disease Control and Prevention (CDC). In fiscal year 2021 and 2022, there was an allocation of \$2 million each year, which was a 43 percent decrease from previous funding levels. The largest portion of the funding goes directly to local health departments.

The goals of the Tobacco Prevention and Cessation Program are prevention, helping Kentuckians who want to quit tobacco products, and protecting Kentuckians from secondhand smoke.

Tobacco use is the leading cause of preventable death and disability in Kentucky. Every year, smoking is the cause of death for nearly 8,900 Kentuckians. Smoking is estimated to cost Kentucky \$1.92 billion in direct health care costs. According to the CDC, for every \$1 invested in comprehensive tobacco control programs, Kentucky will get a \$55 return on investment.

There are two evidence-based and proven campaigns tested in focus groups with Kentucky teens: Down and Dirty and Behind the Haze. The Down and Dirty campaign was cut due to the decreased appropriation. There is not enough funding to implement every strategy that works, nor to fund every community in need.

There being no further business, the meeting was adjourned.



# 2022 Prefiled Bills

**BR22** - Representative Kim Banta  
(6/2/2021)

AN ACT relating to crimes and punishments.  
Repeal KRS 510.100, relating to sodomy in the fourth degree; amend KRS 194A.380 and 532.031 to conform.  
(Prefiled by the sponsor(s).)

**BR40** - Representative Jerry Miller, Representative Brandon Reed  
(8/11/2021)

AN ACT relating to changes in pension payments due to overtime worked during a local emergency and declaring an emergency.  
Amend KRS 61.598 to exempt from the anti-pension spiking provisions any overtime directly attributable to a local government emergency in which the Governor calls in the Kentucky National Guard; make amendments retroactive to May 30, 2020; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR43** - Representative Buddy Wheatley  
(6/17/2021)

AN ACT relating to cremation.  
Amend KRS 367.97501 to create definition for “alkaline hydrolysis,” amend the definition of “cremation” to include “alkaline hydrolysis,” and amend the definition of “cremation container” to include alkaline hydrolysis; amend KRS 367.97514 to correct statutory reference; make conforming amendment to KRS 316.010.  
(Prefiled by the sponsor(s).)

**BR45** - Representative Lisa Willner, Representative Kim Banta, Representative Joni Jenkins, Representative Nima Kulkarni, Representative Attica Scott  
(6/1/2021)

AN ACT relating to civil rights.  
Amend KRS 344.010 to include definitions for “sexual orientation” and “gender identity”; amend KRS 344.020, relating to the purpose of the Kentucky’s civil rights chapter, to include a prohibition against discrimination because of sexual orientation and gender identity; amend KRS 344.025, 344.040, 344.050, 344.060, 344.070, and 344.080, relating to prohibited discrimination in various labor and employment practices, to include sexual orientation and gender identity; amend KRS 344.100 and 344.110 to conform; amend KRS 344.120 and 342.140, relating to prohibited discrimination in places of public accommodation and advertisements therefor, to include sexual orientation and gender identity; amend KRS 344.170, 344.180, 344.190, 344.300, and 344.310, relating to the state and local human rights commissions, to include prohibition

of discrimination on the basis of sexual orientation and gender identity in the scope of their powers and duties; amend KRS 344.360, 344.370, 344.380, and 344.680, relating to prohibited discrimination in certain housing, real estate, and other financial transactions, to include sexual orientation and gender identity; amend KRS 344.367, relating to prohibited discrimination in certain insurance sales, to include sexual orientation and gender identity; amend KRS 344.400, relating to prohibited discrimination in certain credit transactions, to include sexual orientation and gender identity; make various technical amendments; amend KRS 18A.095 to conform.  
(Prefiled by the sponsor(s).)

**BR49** - Representative Lisa Willner, Representative Kim Banta, Representative Joni Jenkins, Representative Nima Kulkarni, Representative Attica Scott  
(6/1/2021)

AN ACT relating to youth mental health protection and declaring an emergency.  
Create a new section of KRS Chapter 210 define sexual orientation and gender identity change efforts, mental health professional, and public funds; to prohibit mental health professionals from engaging in sexual orientation and gender identity change efforts with a person under 18 years of age or a person who is 18 years or older who is an adult as defined in KRS 209.020 or a ward as defined in KRS 387.510; require violations to be subject to board discipline; prohibit public funds from being used for sexual orientation and gender identity change efforts; create a new section of KRS Chapter 211 to require the Department for Public Health to develop, produce, and disseminate educational materials regarding sexual orientation and gender identity change efforts; permit the cabinet to contract for the educational materials; add the short title “Youth Mental Health Protection Act”; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR53** - Representative Danny Bentley, Representative Patti Minter  
(8/4/2021)

AN ACT relating to the establishment of emergency insulin programs and declaring an emergency.  
Create various new sections of KRS Chapter 211 to define terms; establish the Urgent-Need Insulin Program and the Continuing Access to Insulin Program; establish eligibility guidelines; establish the application process; establish the process by which insulin is dispensed to eligible individuals; establish the responsibilities of insulin manufacturers; establish the responsibilities of the Kentucky Board of Pharmacy for administering the program; require manufacturers to annually report certain information to the board; require the board to

report certain information to the General Assembly upon request; establish penalties; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR60** - Representative Joseph Fischer, Representative Melinda Prunty, Representative Lynn Bechler, Representative Mark Hart, Representative Kim King, Representative Savannah Maddox, Representative Felicia Rabourn, Representative Brandon Reed, Representative Richard White  
(6/1/2021)

AN ACT relating to public education and declaring an emergency.  
Amend KRS 158.183 to require a local board of education or board of a public charter school to ensure that no public school or public charter school offers any classroom instruction or discussion that incorporates designated concepts related to race, sex, and religion; provide that a school district employee that violates the prohibition is subject to disciplinary action; authorize the Attorney General to enforce the prohibition; authorize a penalty of \$5,000 for each day a violation persists after the Attorney General issues notification that a violation has occurred; require the commissioner of education to deduct the penalty from funds distributed to a school district; create a new section of KRS Chapter 164 to provide that no student enrolled at a public postsecondary education institution shall be required to engage in any form of mandatory gender or sexual diversity training or counseling; title the Act the “Education Non-Discrimination Act”; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR61** - Representative Phillip Pratt  
(8/11/2021)

AN ACT relating to crimes and punishments.  
Amend KRS 519.010 to add definition of “emergency response”; amend KRS 519.040 to increase the penalties for falsely reporting an incident that results in an emergency response; create a new section of KRS Chapter 41 to provide for a civil cause of action for damages arising from the false reporting of an incident; amend KRS 134.127 to conform.  
(Prefiled by the sponsor(s).)

**BR65** - Representative Brandon Reed, Representative Lynn Bechler, Representative Jennifer Decker, Representative Thomas Huff, Representative Savannah Maddox, Representative Felicia Rabourn  
(6/10/2021)

AN ACT relating to SARS-CoV-2 documentation.  
Create a new section of KRS Chapter 61 to prohibit a governmental body from requiring persons to provide vaccine passports to enter or obtain service

from the governmental body; create a new section of KRS Chapter 160 to prohibit a school from requiring persons to provide vaccine passports to enter or obtain service from the school; create a new section of KRS Chapter 164 to prohibit a university board from requiring persons to provide vaccine passports to enter or obtain service from the university; create a new section of KRS Chapter 214 to prohibit a business entity from requiring persons to provide vaccine passports to enter or obtain service from the business entity; create a new section of KRS Chapter 214 to allow the Cabinet for Health and Family Services to impose of fine not to exceed \$5,000 per violation of this Act.  
(Prefiled by the sponsor(s).)

**BR69** - Representative Matt Lockett, Representative Shane Baker, Representative Lynn Bechler, Representative Josh Calloway, Representative Jennifer Decker, Representative Ryan Dotson, Representative Daniel Fister, Representative Jim Gooch Jr., Representative Mark Hart, Representative Thomas Huff, Representative Kim King, Representative Norma Kirk-McCormick, Representative Jerry Miller, Representative Melinda Prunty, Representative Felicia Rabourn, Representative Nancy Tate, Representative Walker Wood Thomas, Representative Bill Wesley, Representative Richard White  
(6/4/2021)

AN ACT relating to prohibited instruction and declaring an emergency.  
Amend KRS 158.183 to require a local board of education or board of a public charter school to ensure that no public school or public charter school offers any classroom instruction or discussion that promotes designated concepts related to race, sex, and religion; provide that a school district employee that violates the prohibition is subject to disciplinary action; amend KRS 164.348 to prohibit classroom instruction or discussion that incorporates designated concepts related to race, sex, and religion at public postsecondary education institutions; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR91** - Senator Reginald Thomas  
(9/2/2021)

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 and to define "small employer" and "large employer"; amend KRS 337.275 to incrementally raise minimum wage for small and large employers to \$12.00 an hour and \$15.00 an hour respectively; include anti-preemption language permitting local governments to establish minimum wage ordinances in excess of the state minimum wage.  
(Prefiled by the sponsor(s).)

**BR96** - Representative Patti Minter, Representative Attica Scott  
(8/19/2021)

AN ACT relating to student loan servicers.  
Establish Subtitle 12 of KRS Chapter 286 and create sections thereof to define terms; establish licensing requirements for certain student loan servicers; establish requirements for student loan servicing activities; require student loan servicers to comply with applicable state and federal law; establish fines for violations of the subtitle; establish a private right of action for violations of the subtitle; permit the commissioner of the Department of Financial Institutions to monitor risk to consumers relating to servicing student loans; require the commissioner to designate a student loan ombudsman; set forth requirements for student loan ombudsman; amend KRS 452.005 to conform; state that provisions of this Act shall be severable.  
(Prefiled by the sponsor(s).)

**BR97** - Representative Patti Minter, Representative Joni Jenkins, Representative Rachel Roberts  
(6/1/2021)

AN ACT relating to civil rights.  
Amend KRS 344.010 to include definitions for "sexual orientation" and "gender identity"; amend KRS 344.020, relating to the purpose of the Kentucky's civil rights chapter, to prohibit discrimination on the basis of sexual orientation or gender identity; amend KRS 344.025, 344.040, 344.050, 344.060, 344.070, and 344.080, relating to prohibited discrimination in various labor and employment practices to include discrimination on the basis of sexual orientation or gender identity; amend KRS 344.100 and 344.110 to conform; amend KRS 344.120 and 342.140, relating to prohibited discrimination in places of public accommodation and advertisements therefor, to include discrimination on the basis of sexual orientation or gender identity; amend KRS 344.170, 344.180, 344.190, 344.300, and 344.310, relating to the state and local human rights commissions, to include prohibition of discrimination on the basis of sexual orientation or gender identity in the scope of their powers and duties; amend KRS 344.360, 344.370, 344.380, and 344.680, relating to prohibited discrimination in certain housing, real estate, and other financial transactions, to include discrimination on the basis of sexual orientation or gender identity; amend KRS 344.367, relating to prohibited discrimination in certain insurance sales, to include discrimination on the basis of sexual orientation or gender identity; amend KRS 344.400, relating to prohibited discrimination in certain credit transactions, to include discrimination on the basis of sexual orientation or gender identity; make various technical amendments; amend KRS 18A.095 to conform.  
(Prefiled by the sponsor(s).)

**BR98** - Representative Patti Minter, Representative Pamela Stevenson, Representative Rachel Roberts  
(6/10/2021)

AN ACT relating to Women Veterans' Appreciation Day.  
Create a new section of KRS Chapter 2 to designate June 12 as Women Veterans' Appreciation Day in the Commonwealth.  
(Prefiled by the sponsor(s).)

**BR102** - Representative Patti Minter, Representative Cherlynn Stevenson, Representative Rachel Roberts  
(6/17/2021)

AN ACT relating to state benefits for veterans.  
Amend KRS 12.245, 12.354, 14A.1-070, 16.040, 40.010, 40.310, 40.650, 42.0146, 148.0211, 158.105, 158.140, 161.048, 164.512, 164.515, 186.041, and 186.416 to make certain LGBTQ and qualifying veterans eligible for state veterans' benefits.  
(Prefiled by the sponsor(s).)

**BR106** - Representative Savannah Maddox, Representative Mark Hart, Representative Shane Baker, Representative Kim Banta, Representative Lynn Bechler, Representative Josh Calloway, Representative Jennifer Decker, Representative Ryan Dotson, Representative Joseph Fischer, Representative Daniel Fister, Representative Regina Huff, Representative Thomas Huff, Representative William Lawrence, Representative Matt Lockett, Representative Felicia Rabourn, Representative Nancy Tate, Representative Walker Wood Thomas, Representative Bill Wesley, Representative Richard White  
(6/21/2021)

AN ACT relating to immunization disclosure.  
Create a new section in KRS Chapter 336 to prohibit public entity employers from requiring employees and applicants from disclosing his or her immunization status; create a new section in KRS Chapter 164 to prohibit postsecondary schools from requiring a student, staff, or faculty member to disclose his or her immunization status; amend KRS 344.120 to include the discrimination on the basis of "immunization status" as an unlawful practice; create a new section in KRS Chapter 365 to prohibit a business from requiring customers to disclose his or her immunization status as a condition for service or entry upon the premises; create a new KRS Chapter 214 to prohibit a public entity from creating standardized documentation with the purpose of certifying vaccination status; amend KRS 214.036 to allow objection to immunization on the basis of "conscientiously held beliefs".  
(Prefiled by the sponsor(s).)

**BR119** - Representative Lisa Willner, Representative Joni Jenkins, Representative Nima Kulkarni, Representative Attica Scott  
(6/1/2021)

AN ACT relating to health education.  
Repeal and reenact KRS 158.1415 to require each school district to provide healthy relationship education instruction to all public school students; establish minimum requirements for the instruction;



establish minimum requirements for the healthy relationship curricula and instructional materials; prohibit a school or school district from restricting the ability of an instructor to answer a question related to the instruction; require that a school make the healthy relationship curricula and instructional materials available upon the request of a parent or guardian and establish a procedure for a parent or guardian to opt a student out of the instruction; require the Kentucky Board of Education to promulgate administrative regulations necessary to implement, administer, and enforce this section; require the Kentucky Board of Education to promulgate administrative regulations requiring that each school district submit a report on healthy relationship instruction in the district biennially; require the Kentucky Department of Education to maintain a list of recommended healthy relationship curricula and instructional materials; permit a parent or guardian to file an enforcement action in Circuit Court.  
(Prefiled by the sponsor(s).)

**BR125** - Representative Danny Bentley, Representative Patti Minter  
(8/4/2021)

AN ACT relating to coverage for diabetes treatment. Amend KRS 304.17A-148 to require that cost sharing for noninsulin drugs and certain equipment and supplies necessary for the treatment of diabetes not exceed certain cost-sharing thresholds; EFFECTIVE January 1, 2023.  
(Prefiled by the sponsor(s).)

**BR133** - Representative Kim Banta  
(6/2/2021)

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 terms of office, not including partial terms of two years or less, and to prevent members of the House of Representatives from serving more than six terms of office, not including partial terms of two years or less, beginning with those elected in November 2024; provide ballot language; submit to voters for ratification or rejection.  
(Prefiled by the sponsor(s).)

**BR134** - Representative Kim Banta  
(6/14/2021)

AN ACT relating to CPA licensure. Amend KRS 325.240 to give the State Board of Accountancy the authority to establish a scholarship program; grant former and current members of the board, its agents, and employees immunity from suit for performing discretionary acts when performed in good faith; amend KRS 325.280 to allow CPAs from other states who did not obtain a license in their home state within five years of passing the CPA exam to get a Kentucky license.  
(Prefiled by the sponsor(s).)

**BR135** - Representative Kim Banta  
(6/8/2021)

AN ACT relating to boating safety. Amend KRS 235.285 to require individuals born on or after January 1, 1975, to possess a safe boating certificate prior to operating a personal watercraft or motorboat on the waters of the Commonwealth; provide for exemption certificates; delay enforcement and require courtesy warnings for violations until July 1, 2023; amend KRS 235.990 to conform.  
(Prefiled by the sponsor(s).)

**BR140** - Representative Chris Freeland, Representative Kim Banta, Representative Jennifer Decker, Representative Ken Fleming, Representative Kelly Flood, Representative Thomas Huff, Representative C. Ed Massey, Representative Phillip Pratt, Representative Melinda Prunty, Representative Rachel Roberts, Representative Cherynn Stevenson, Representative Susan Westrom, Representative Richard White, Representative Lisa Willner  
(6/8/2021)

AN ACT relating to torture of a dog or cat. Amend KRS 525.135, relating to torture of a dog or cat, to add specific acts to definition of torture; make all violations a Class D felony; make each act of torture prosecutable as a separate offense; make the exemptions applicable only where there is no intent to cause, increase, or prolong the pain and suffering of the dog or cat.  
(Prefiled by the sponsor(s).)

**BR142** - Representative Attica Scott  
(6/17/2021)

AN ACT relating to the taxation of feminine hygiene products. Amend KRS 139.010 to define “feminine hygiene products”; amend KRS 139.480 to exempt from sales and use tax the sale or purchase of feminine hygiene products; apply to sales or purchases made on or after August 1, 2022.  
(Prefiled by the sponsor(s).)

**BR147** - Representative Rachel Roberts, Representative Patti Minter  
(8/3/2021)

AN ACT relating to maternal mental health. Create a new section of KRS Chapter 211 to require all hospitals or alternative birthing centers offering obstetric services or licensed health care providers, including nurse midwives or certified professional midwives, to provide each maternity patient with information on maternal depression and available resources; require the Cabinet for Health and Family Services to post on its Web site information about providers who assist with maternal depression.  
(Prefiled by the sponsor(s).)

**BR154** - Representative Ryan Dotson, Representative Melinda Prunty, Representative Shane Baker, Representative Josh Calloway, Representative Jennifer Decker, Representative Daniel Fister, Representative Thomas Huff, Representative Norma Kirk-McCormick, Representative Brandon Reed, Representative Scott Sharp, Representative Bill Wesley, Representative Richard White  
(6/11/2021)

AN ACT relating to athletics. Amend KRS 156.070 to require KHSAA to promulgate administrative regulations or bylaws requiring schools to designate all interscholastic athletics based upon the biological sex of the students eligible to participate; prohibit male students from participating in girls’ athletics; establish how to designate biological sex; prohibit designated agencies from entertaining complaints or investigations of policies; create a cause of action against a school that violates these provisions; create a new section of KRS Chapter 164 to require a public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association to designate all intercollegiate and intramural athletics authorized by the institution based on biological sex of students eligible to participate; require that institutions prohibit male students from participating in womens’ athletics; prohibit designated agencies from entertaining complaints or investigations of policies; create a cause of action against a postsecondary institution that violates these provisions; title the Act “Fairness in Womens’ Sports Act.”  
(Prefiled by the sponsor(s).)

**BR159** - Representative Daniel Fister  
(6/29/2021)

AN ACT relating to food products. Amend KRS 217.015 to add dried coffee and tea to the definition of home-based processor.  
(Prefiled by the sponsor(s).)

**BR162** - Representative Bill Wesley  
(6/25/2021)

Direct the Cabinet for Health and Family Services to establish policies and reports related to children in out-of-home care during the COVID-19 pandemic.  
(Prefiled by the sponsor(s).)

**BR171** - Representative Josh Bray, Representative Kim Banta, Representative Daniel Fister, Representative Thomas Huff, Representative Brandon Reed, Representative Russell Webber  
(6/25/2021)

AN ACT relating to prohibiting the enforcement of a federal ban or regulation of firearms and declaring an emergency. Create a new section of KRS Chapter 237 to prohibit identified entities from enforcing federal firearm

bans; prohibit identified entities from adopting rules, regulations, or ordinances that require enforcement of federal firearm bans; and prohibit identified entities from allocating public resources or moneys in the enforcement of federal firearm bans; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR172** - Representative Josh Bray, Representative Josh Branscum  
(7/2/2021)

AN ACT relating to biometric data collection practices.  
Create a new section of KRS Chapter 369 to define terms; require private entities to develop and comply with a retention and destruction schedule for biometric identifiers and information; prohibit private entities' collection, trade, and disclosure of biometric information with limited exceptions; create a standard of care for private entities collecting biometric information; create a civil cause of action for violations.  
(Prefiled by the sponsor(s).)

**BR180** - Representative Rachel Roberts  
(8/27/2021)

AN ACT relating to coverage of mental health wellness examinations.  
Create a new section of Subtitle 17A of KRS Chapter 304 to define terms; require certain health insurance policies to provide coverage for an annual mental health wellness examination of at least 45 minutes provided by a mental health professional; require the coverage to be no less extensive than coverage for medical and surgical benefits; require the coverage to comply with the Mental Health Parity and Addiction Equity Act of 2008; provide that coverage shall not be subject to cost-sharing requirements; amend KRS 164.2871 to require self-insured employer group health plans provided by the governing board of a state postsecondary education institution to comply with the mental health wellness examination coverage requirement; amend KRS 205.522 to require the Medicaid benefits to comply with the mental health wellness examination coverage requirement; amend KRS 205.6485 to require the Kentucky Children's Health Insurance Program to comply with the mental health examination coverage requirement; amend KRS 18A.225 to require the state employee health plan to comply with the mental health coverage requirement; require the Cabinet for Health and Family Services to seek federal approval if they determine that such approval is necessary; EFFECTIVE, in part, January 1, 2023.  
(Prefiled by the sponsor(s).)

**BR185** - Representative Bobby McCool, Representative Lisa Willner  
(8/4/2021)

AN ACT relating to student mental health.  
Amend KRS 159.035 to require a local school district's attendance policy to include provisions for

a student's mental or behavioral health status.  
(Prefiled by the sponsor(s).)

**BR191** - Representative Richard White  
(9/8/2021)

AN ACT relating to assisted reproduction.  
Create a new section of KRS Chapter 510 to create the crime of fraudulent assisted reproduction; define terms; authorize a civil action; establish penalty; amend KRS 311.597 to add fraudulent assisted reproduction to the list of violations that may cause a doctor to lose his or her medical license.  
(Prefiled by the sponsor(s).)

**BR192** - Representative Adam Bowling  
(8/5/2021)

AN ACT relating to resource recovery.  
Amend KRS 224.1-010 to redefine "disposal," "municipal solid waste disposal facility," "waste site or facility," "waste," and "solid waste management facility"; define "advanced recycling," "advanced recycling facility," "depolymerization," "gasification," "post-use polymer," "pyrolysis," "recovered feedstock," and "solvolysis"; amend KRS 109.012 to redefine "solid waste," "solid waste management," and "solid waste management facility."  
(Prefiled by the sponsor(s).)

**BR201** - Representative Attica Scott  
(6/30/2021)

AN ACT relating to discriminatory practices against a person.  
Amend KRS 344.010 to provide definitions of "protective hairstyle" and "race" that include traits historically associated with race; amend KRS 158.148 to provide that school disciplinary codes shall prohibit discrimination on the basis of race; establish the short title of "C.R.O.W.N. Act".  
(Prefiled by the sponsor(s).)

**BR203** - Senator Gerald Neal  
(6/18/2021)

AN ACT relating to state holidays.  
Amend KRS 2.147 and 18A.190 to make June 19, also known as "Juneteenth National Freedom Day," a state holiday for state employees.  
(Prefiled by the sponsor(s).)

**BR208** - Representative Daniel Fister, Representative Norma Kirk-McCormick, Representative William Lawrence, Representative Richard White  
(7/19/2021)

AN ACT relating to the taxation of firearms and ammunition.  
Amend KRS 139.010 to add definitions of "firearm" and "ammunition"; amend KRS 139.480 to exempt firearms and ammunition from sales and use tax and require reporting related to the exemption; amend

KRS 131.190 to allow reporting by the Department of Revenue; EFFECTIVE August 1, 2022.  
(Prefiled by the sponsor(s).)

**BR209** - Representative Richard White  
(7/28/2021)

AN ACT relating to transportation.  
Amend KRS 189.030 to require the illumination of headlamps on motor vehicles during any period of precipitation that necessitates the use of windshield wipers by motorists; specify that there will be a courtesy warning period until January 1, 2023.  
(Prefiled by the sponsor(s).)

**BR210** - Representative DJ Johnson  
(9/2/2021)

AN ACT relating to limited X-ray machine operators.  
Amend KRS 311B.020 to redefine "limited X-ray machine operator" and "medical imaging technologist" to provide limited exemptions from the place-of-employment restrictions on limited X-ray machine operators.  
(Prefiled by the sponsor(s).)

**BR211** - Representative Shane Baker  
(8/4/2021)

AN ACT relating to religion.  
Amend KRS 39A.100 to exclude houses of worship from emergency condemnation authority; prohibit a governmental entity from prohibiting religious services during an emergency to a greater extent than imposed on other organizations or businesses that provide essential services; require a compelling governmental interest to place a burden on a religious organization; prohibit a governmental entity from taking any discriminatory action against a religious organization on the basis that the organization is religious; define "discriminatory action," "governmental entity," "religious organization," and "religious services"; allow a religious organization to assert a violation of this section as a claim against a governmental entity or as a defense and waive sovereign, governmental, and qualified immunity to the extent of liability under the section; set out remedies available to a religious organization; require construction in favor of protecting free exercise of religion; require a religious organization to bring an action no later than two years from the date the person should have known of the discriminatory action.  
(Prefiled by the sponsor(s).)

**BR226** - Representative Josh Branscum  
(7/6/2021)

AN ACT relating to school facilities.  
Amend KRS 157.455 deleting the Kentucky efficient school design trust fund; delete reporting requirement for efficient design; amend KRS 198B.060 to allow local plan review, inspection and enforcement of educational facilities; repeal KRS



162.062, which requires new public school buildings to provide sufficient water bottle fillings station and drinking fountains.  
(Prefiled by the sponsor(s).)

**BR238** - Representative Kim Banta  
(7/9/2021)

AN ACT relating to medicaid coverage for individuals with mental illness.  
Create a new section of KRS 205.565 to 205.647 to allow treatment for adults under age 65 in psychiatric residential facilities and hospitals to be claimed as a service; and require the Cabinet for Health and Family Services or the Department for Medicaid Services to request federal authorization for a waiver if necessary.  
(Prefiled by the sponsor(s).)

**BR254** - Representative Attica Scott  
(7/20/2021)

AN ACT relating to implicit bias in perinatal care. Amend KRS 211.680 to expand the scope of the legislative intent and findings; create new sections of KRS Chapter 211 to define terms; require licensed health facilities under KRS Chapter 216B to provide each patient with written information regarding the patient's rights and implement an evidence-based implicit bias program for all health providers involved in the perinatal care of patients within those facilities; require the Department for Public Health to track data on maternal death and severe morbidity.  
(Prefiled by the sponsor(s).)

**BR255** - Representative Attica Scott  
(7/20/2021)

AN ACT relating to pregnant inmates. Amend KRS 196.173 to allow an inmate who is known to be pregnant or who has given birth in the last six weeks access to reasonable accommodations for the provision of available certified professional midwifery services or doula services.  
(Prefiled by the sponsor(s).)

**BR256** - Representative Attica Scott  
(7/20/2021)

AN ACT relating to Medicaid coverage for doula services.  
Create a new section of KRS Chapter 205 to require the Department for Medicaid Services and any managed care organization with whom the department contracts for the delivery of Medicaid services to provide coverage for doula services; establish training and education requirements for doulas; permit the department to promulgate administrative regulations; require the Cabinet for Health and Family Services or the Department for Medicaid Services to seek federal approval if they determine that such approval is necessary.  
(Prefiled by the sponsor(s).)

**BR257** - Representative Attica Scott  
(7/14/2021)

AN ACT relating to Medicaid coverage for lactation support services and breastfeeding equipment.  
Create a new section of KRS Chapter 205 to require the Department for Medicaid Services and Medicaid managed care organizations to provide coverage for lactation counseling, lactation consultation, and breastfeeding equipment; require the Cabinet for Health and Family Services or the Department for Medicaid Services to request federal authorization for a waiver if necessary.  
(Prefiled by the sponsor(s).)

**BR267** - Representative Shawn McPherson  
(8/9/2021)

AN ACT relating to the promotion of organ and bone marrow donation.  
Create a new section of KRS Chapter 141 to establish the employers' organ and bone marrow donation tax credit; amend KRS 141.0205 to provide the ordering of the credit; amend KRS 131.190 to allow disclosure of certain information on the credit to the Legislative Research Commission; declare short title to be the Living Organ and Bone Marrow Donor Assistance Act of 2022.  
(Prefiled by the sponsor(s).)

**BR275** - Representative James Tipton, Representative Steve Riley, Representative Kim Banta, Representative Jennifer Decker, Representative C. Ed Massey, Representative Bobby McCool, Representative Melinda Prunty, Representative Josie Raymond, Representative Attica Scott, Representative Lisa Willner  
(9/9/2021)

AN ACT relating to full-day kindergarten. Amend KRS 158.060 to remove language that allows for half-day kindergarten programs; amend KRS 157.320, 157.360, and 158.030 to conform.  
(Prefiled by the sponsor(s).)

**BR301** - Senator John Schickel  
(9/1/2021)

AN ACT relating to the Kentucky Educational Excellence Scholarship.  
Amend the definition of "KEES Award" in KRS 164.7874 to include a dual credit course award amount; amend KRS 164.7879 to provide a dual credit course award amount to high school students who graduate from a nonpublic secondary school not certified by the Kentucky Board of Education.  
(Prefiled by the sponsor(s).)

**BR306** - Representative Buddy Wheatley  
(9/15/2021)

AN ACT relating to elections.  
Amend KRS 117.087 and 118.035 to extend the ending voting hours from 6 p.m. to 7 p.m.  
(Prefiled by the sponsor(s).)

**BR334** - Representative Norma Kirk-McCormick  
(9/9/2021)

AN ACT relating to the Licensed Professional Counseling Compact.  
Create a new section within KRS Chapter 335.500 to 335.599 to declare the purpose of the Licensed Professional Counseling Compact; establish definitions; establish requirements for states that want to enter the compact; recognize a multistate licensure privilege to practice for licensed professional counselors; establish provisions for active duty military personnel or their spouses; recognize a multistate licensure privilege to practice for licensed professional counselors in any member state via telehealth; establish procedures for adverse actions a home and member state can take against a licensed professional counselor; create the Counseling Compact Commission; establish and elect an executive committee; provide immunity for party states, officers, employees, or representatives of the commission who act in accordance with the compact; require the commission to create, maintain, operate and use a coordinated database and reporting system containing, licensure, adverse actions, and investigative information on all licensed individuals in member states; establish procedures for rulemaking; authorize the commission to attempt to resolve disputes related to the compact that arise among member states and between member and non-member states; allow the compact to go into effect on the date the compact is enacted into law in the tenth member state; establish withdrawal procedures for a member state that withdraws from the compact; provide severability for any provision in the compact that is contrary to the constitution of any party state or of the United States or the applicability to any government, agency, person, or circumstance.  
(Prefiled by the sponsor(s).)

**BR348** - Representative Norma Kirk-McCormick  
(8/6/2021)

AN ACT relating to the operation of a motor vehicle using a bioptic device.  
Amend KRS 186.578 to provide options for in-state and out-of-state drivers coming to Kentucky regarding the removal of a daytime-only restriction in the licensee's previous state for drivers using a bioptic device; amend KRS 186.579 to comply and to specify the evaluations must be performed by the Office of Vocational Rehabilitation.  
(Prefiled by the sponsor(s).)

**BR353** - Representative Felicia Rabourn, Representative Savannah Maddox, Representative Shane Baker, Representative Lynn Bechler, Representative Kevin Bratcher, Representative Josh Calloway, Representative Jennifer Decker, Representative Ryan Dotson, Representative Mark Hart, Representative Regina Huff, Representative Thomas Huff, Representative William Lawrence, Representative Matt Lockett  
(8/23/2021)

AN ACT relating to workers' compensation and declaring an emergency.  
Amend KRS 342.0011 to define "COVID-19"; create a new section of KRS Chapter 342 to establish workers' compensation liability in instances where employers require vaccination against COVID-19 as a condition of employment and the employee develops an adverse reaction to the vaccine; create a rebuttable presumption that an adverse reaction was caused by the COVID-19 vaccine if it was not present prior to and arises within 14 days of receipt of the vaccine; retroactive to December 14, 2020; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR358** - Representative Lynn Bechler, Representative Mark Hart, Representative Thomas Huff  
(8/18/2021)

AN ACT relating to immunizations.  
Amend KRS 344.010 to define "immunization"; amend KRS 344.040 to prohibit employers from discriminating against an individual who declines immunization or requiring immunization as a condition of employment or inquiring as to the employee's immunization status; create a new section of KRS Chapter 338 to prohibit an employer from requiring an employee or applicant for employment to be immunized or inquiring regarding immunization status.  
(Prefiled by the sponsor(s).)

**BR359** - Representative Lynn Bechler, Representative Mark Hart, Representative Thomas Huff, Representative Savannah Maddox, Representative Felicia Rabourn  
(8/16/2021)

AN ACT relating to facial coverings in educational settings.  
Amend KRS 199.896 to provide that the license or certification of a child-care center shall not be refused or revoked for refusing to require facial coverings; amend KRS 199.898 to provide that parents and guardians of children enrolled in licensed, certified, or publicly funded child care facilities have a right to refuse facial coverings on behalf of their children without any retribution; create a new section of KRS Chapter 158 to prohibit requiring facial coverings on any public school premises, on school-sponsored transportation, or at a school-sponsored event; create a new section of KRS Chapter 164 to prohibit requiring facial coverings on property owned, leased, or operated by public postsecondary education institutions; provide exceptions for healthcare licensing board requirements imposed prior to January 1, 2020, and clinical research settings.  
(Prefiled by the sponsor(s).)

**BR367** - Representative Kim King  
(8/13/2021)

AN ACT relating to pari-mutuel tax.

Amend KRS 138.510 to impose a 1.5% surtax on historical horse races, on or after October 1, 2022; amend KRS 138.513 to impose a 2.5% surtax on advance deposit account wagers; amend KRS 138.530 and 230.750 to conform.  
(Prefiled by the sponsor(s).)

**BR370** - Senator David Yates  
(9/1/2021)

AN ACT relating to theft of mail matter.  
Amend KRS 514.140 to include common carriers and delivery services in protection against theft of mail matter.  
(Prefiled by the sponsor(s).)

**BR376** - Representative Cherlynn Stevenson  
(9/1/2021)

AN ACT relating to chronic pain treatments.  
Create a new section of Subtitle 17A of KRS Chapter 304 to establish that any health benefit plan issued or renewed in the Commonwealth that provides coverage for hospital, medical, or surgical expenses shall include coverage for chronic pain treatments provided by a licensed professional; create a new section of KRS Chapter 205 to require Medicaid and Medicaid managed care organizations to include coverage for chronic pain treatments provided by a licensed professional; amend KRS 218A.172 to require that a health care practitioner discuss and refer or prescribe alternative chronic pain treatments before initially prescribing or dispensing a controlled substance; EFFECTIVE January 1, 2023.  
(Prefiled by the sponsor(s).)

**BR377** - Representative Cherlynn Stevenson  
(9/1/2021)

AN ACT relating to family care leave.  
Amend KRS 337.010 to define "family care leave," "family member," "health care provider," "same employer," and "serious health condition"; create a new section of KRS Chapter 337 to prohibit employers from preventing an employee to take family care leave; to entitle employee to family care leave for the birth of a child or to take care of a family member and establish parameters.  
(Prefiled by the sponsor(s).)

**BR379** - Representative Cherlynn Stevenson  
(9/1/2021)

AN ACT relating to health care to provide for an all-payer claims database and making an appropriation therefor.  
Create a new section of KRS Chapter 194A to require the executive director of the Office of Health Data and Analytics to establish an advisory committee to make recommendations regarding the creation and implementation of a Kentucky all-payer claims database; establish the Kentucky all-payer claims database fund; require the executive director to establish the database if certain conditions are met; set forth requirements for the database; amend

KRS 304.2-100 to require the commissioner of the Department of Insurance to assist; create a new section of Subtitle 99 of KRS Chapter 304 to require the commissioner to promulgate administrative regulations designating the assessment of a fine for persons that do not comply with reporting requirements; establish short title; permit the executive director to make an application for a grant under 42 U.S.C. sec. 247d-11; APPROPRIATION.  
(Prefiled by the sponsor(s).)

**BR384** - Representative Mark Hart, Representative Lynn Bechler, Representative Felicia Rabourn  
(9/1/2021)

AN ACT prohibiting vaccination requirements for postsecondary education students.  
Create a new section of KRS Chapter 164 to prohibit a public postsecondary educational institution from requiring a student to receive certain vaccinations unless the student is participating in an educational program that involves the delivery of health care services.  
(Prefiled by the sponsor(s).)

**BR427** - Representative Attica Scott  
(9/13/2021)

AN ACT relating to curriculum.  
Amend KRS 156.160 to require public middle and high school curriculum to include instruction on the history of racism.  
(Prefiled by the sponsor(s).)

**BR430** - Representative Thomas Huff, Representative Lynn Bechler, Representative Kevin Bratcher, Representative Jennifer Decker, Representative Ryan Dotson, Representative Russell Webber, Representative Richard White  
(8/30/2021)

AN ACT relating to death benefits for first responders, making an appropriation therefor, and declaring an emergency.  
Amend KRS 61.315 to create a presumption that first responders who die of COVID-19 do so while in the line of duty and thus qualify for death benefits; apply subsection retroactively; APPROPRIATION; EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR432** - Representative Richard White  
(9/2/2021)

AN ACT relating to workers' compensation and declaring an emergency.  
Amend KRS 342.0011 to define "COVID-19"; create a new section of KRS Chapter 342 to establish workers' compensation liability in instances where employers require vaccination against COVID-19 as a condition of employment and the employee develops an adverse reaction to the vaccine; create a rebuttable presumption that an adverse reaction was caused by the COVID-19 vaccine if it was not present prior to and arises within 14 days of receipt



of the vaccine; retroactive to December 14, 2020;  
EMERGENCY.  
(Prefiled by the sponsor(s).)

**BR440** - Representative Kevin Bratcher,  
Representative Ken Fleming, Representative Jerry  
Miller, Representative Jason Nemes  
(9/2/2021)

AN ACT relating to school resource officers.  
Amend KRS 158.4414 to require the assignment  
of school resource officers to schools by August 1,  
2022.  
(Prefiled by the sponsor(s).)

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\* - denotes primary sponsorship of BRs

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