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2017 session produces sweeping results

by Rebecca Hanchett
LRC Public Information

Senate President Pro Tem David Givens, R-Greensburg, at left, speaks with Sen. Gerald Neal, D-Louisville, before a vote on a bill during the 2017 Regular Session of the Kentucky General Assembly. The session ended on March 30.

FRANKFORT – The 2017 regular session of the Kentucky General Assembly ended March 30 shortly before midnight after months of work that led to passage of over 190 bills that will impact most areas of Kentucky life, from public education to the fight against drug abuse.

Most new laws – those that come from legislation that don't contain emergency clauses or different specified effective dates – will go into effect on June 29.

A partial list of bills approved this year by the General Assembly include measures on the following topics:

Abortion. Senate Bill 5 prohibits abortions in Kentucky at or after 20 weeks of pregnancy. The prohibition does not apply in cases where an abortion is required to save the life or prevent serious risk of permanent bodily harm to the mother.

Autopsy photos. House Bill 67 will limit distribution of autopsy photos, videos or other autopsy images to law enforcement, attorneys or others with a right to the information. The measure, named Jack's Law, honors a Kentucky child killed in an accident whose autopsy photos were distributed to the media against his parents' wishes.

Bible literacy. HB 128 will allow schools to offer an elective social studies course on the Bible that teaches biblical content, characters, poetry and narratives and their impact on today's world.

Charter schools. HB 520 will allow publicly funded charter schools to operate in Kentucky beginning next school year. Local school boards would be allowed to authorize an unlimited number of the schools, which will be established by contract and governed by independent boards. A local board's decision regarding charter schools could be overridden by the state school board, although the courts could be called on to review the state board's action. Also included are provisions requiring that teachers and administrators hired to work at the charter schools be state-certified and that the mayors of Louisville and Lexington be allowed to authorize charter schools in their cities upon request.

Coal fields. HB 156 establishes the Kentucky Coal Fields Endowment Authority to fund improvements to infrastructure, water, economic development, public health and technological access in the east and west Kentucky coal regions. Improvements will be funded with $7.5 million in state coal severance dollars, and projects will be selected based on their economic development and job creation potential and their ability to be self-sustaining.

Driver's licenses. HB 410, known as the REAL ID Bill, will create a voluntary travel ID or enhanced driver's license to board airplanes and enter federal facilities, including military facilities, as of Jan. 1, 2019. The legislation is designed to meet anti-terrorism standards in the federal REAL ID Act passed by Congress in 2005. It also spells out rules for issuing a "standard" driver's license, permit or state personal ID card.

Education reform. SB 1 will create new rules for how students are taught and tested and how teachers are evaluated in Kentucky public schools. The legislation will require a review of academic standards in the schools beginning next school year and every six years thereafter while implementing a performance-based assessment of student learning and new benchmarks for measuring college and career readiness.

Emergency vehicles. HB 74 will only allow white light to be emitted from motor vehicle (including motorcycle and moped) headlamps, although non-halogen headlamps will be allowed to emit a slight blue tint if they were factory-installed. The intent of the bill is to make it easier

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for motorists to distinguish emergency vehicles from non-emergency vehicles. Fines will be levied for violations.

Fentanyl and other opioids. HB 333 would create strong penalties for trafficking any amount of heroin, fentanyl, carfentanil and fentanyl derivatives that are destroying Kentucky lives and families. It would also clarify definitions and requirements for the prescription of controlled substances, define prescribing authority within long-term care facilities, and allow the Cabinet for Health and Family Services Office of Inspector General to investigative patterns of prescribing and report irregularities to appropriate authorities.

Hate Crimes. HB 14 will allow an attack on a first responders, such as police, fire fighters and EMTs, to be considered a hate crime. Current state law considers it a hate crime if an attack is based on the victim's race, color, religion, sexual orientation, or national origin.

Hemp. SB 218 is designed to improve the state's industrial hemp production program, first established in 2014. This year marks the Commonwealth's largest industrial hemp crop under the program with more than 12,000 acres approved for production.

Juvenile offenders. Senate Bill 195 will help some juvenile offenders have their criminal records expunged. Currently, children convicted of a misdemeanor must go through a court process to have their records expunged. Senate Bill 195 will create a process for expungement of felony juvenile records two years after the offender reaches adulthood or is released from commitment. However, anyone who has convictions for felony or public offenses in the two years prior to applying for expungement or who has pending charges would not be eligible for expungement.

Labor unions. SB 6 requires public or private employees (with some exceptions under federal law) to request membership in a labor union in writing before they can be enrolled in that organization. It also specifies that dues or fees paid to labor organizations cannot be withheld from earnings without employee approval. Existing agreements between employers, employees and labor unions made before the legislation takes effect would be exempt.

Medical malpractice. SB 4 requires peer review of medical malpractice complaints by medical review panels before medical malpractice cases could go to court. A complaint can bypass the panel and go directly to court only by agreement of all parties.

House Speaker Jeff Hoover, R-Jamestown, at left, discusses a matter with House Minority Floor Leader Rocky Adkins, D-Sandy Hook, at the front of the House chamber during the 2017 Regular Session of the Kentucky General Assembly. The session ended on March 30.

Nuclear power. SB 11 will allow construction of nuclear power plants in Kentucky after vetting by the federal government and state of Kentucky. It also changes requirements for a prospective nuclear power plant's handling of nuclear waste, requiring plants to have an approved plan for nuclear waste storage instead of a federally-approved means of high-level nuclear waste disposal before they can be certified.

Playground safety. HB 38 will ban registered sex offenders from public playgrounds unless they have advanced written permission to be on site by the local government body (city council, etc.) that oversees the playground.

Postsecondary education. SB 153 will establish performance-based funding for state colleges and universities by basing state funding for all but mandated programs on the schools' student success rate, course completion, and operational needs.

Prevailing wage repeal. HB 3 repeals the state's prevailing wage law that dictates the hourly base wage for construction workers hired for certain public works projects.

Primary care agreements. SB 79 will allow patients to enter into contracts with their primary care provider that spell out services to be provided for an agreed-upon fee over a specific period of time. The "direct primary care membership agreement" would not require a patient to forfeit private insurance or Medicaid coverage.

Religious freedom. SB 17 will specify in statute that Kentucky public school and public college and university students have the legal right to express their religious and political views in their school work, artwork, speeches and other ways.

Retirement transparency. SB 3 requires that the retirement benefits of current and former General Assembly members be made public. Disclosure would include the member's name and estimated or actual monthly allowance.

Right to work. HB 1—the House majority's top priority for this session—makes Kentucky the 27th state nationally to enact right-to-work legislation. It prohibits Kentuckians from being required to join labor unions as a condition of employment.

School calendars. SB 50 will allow school districts to use a "variable student instructional year" that would require the same hours of instruction now required by law but allow for fewer school days than the minimum of 170 days that the law requires. Districts could instead use the variable schedule beginning with the 2018-19 school year if their first day of instruction is on or after the Monday closest to Aug. 26.

Ultrasounds during pregnancy. HB 2 requires a woman seeking an abortion to have an obstetric ultrasound of her baby explained to her by her health care provider before she could give required informed consent for an abortion.

Women could decline to see the ultrasound image or hear the fetal heartbeat if they choose.

Lawmakers approve justice reform bill

by Jim Hannah
LRC Public Information

FRANKFORT – Getting freed prisoners back to work and away from crime were the goals of criminal justice reform legislation that received final passage in the last days of this year's regular session of the Kentucky General Assembly.

Known as Senate Bill 120, the legislation contained a series of measures primary sponsor Sen. Whitney Westerfield, R-Hopkinsville, said will discourage felons who have served their time from committing new crimes. The legislation was signed by Gov. Matt Bevin on April 10.

"We could continue to give them a paid vacation for the time they're sitting in (prison) learning to be better criminals," Westerfield said, "or we can do what we can to assist them to be better citizens once they leave."

He said SB 120 was the result of seven months of work by the Criminal Justice Policy Assessment Council, a governor-created group tasked with figuring out how to improve public safety by enhancing the administration of Kentucky's criminal justice system.

SB 120 will allow inmates to work for private companies inside prisons, allow others to leave their prison cells during the day for jobs in their communities and make it easier for ex-prisoners to get professional licenses for everything from cutting hair to fixing leaky pipes.

Westerfield said the goal of SB 120 is to cut Kentucky's 40-percent recidivism rate in half. The bill will also increase workplace participation, he said, adding that Kentucky ranks 47th in that category.

Senate Majority Floor Leader Damon Thayer, R-Georgetown, said the 178-page bill was one of the most vetted during the session because it dealt with two major societal issues: public safety and jobs. Thayer said he supported the bill, in part, because it was endorsed by Kentucky's two largest crime victim's groups and had the support of the state Fraternal Order of Police.

"At the end of the day, 95 percent of people behind bars are getting out someday," Thayer said. "We have an obligation to the victims of those crimes to take steps to return better citizens not better criminals."

Some additional measure in the omnibus bill includes a pilot program to provide drug treatments for inmates about to be released back into society. Any money saved by reducing the state prison's population is to be redirected to programs designed to ease inmates back into civilian life, known as re-entry programs.

Former police officer Sen. Danny Carroll,

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HB 333 cracks down on opioid epidemic

by Rebecca Hanchett
LRC Public Information

FRANKFORT—The 2017 Kentucky General Assembly has taken aim at the state's opioid epidemic by limiting the amount of hydrocodone and other opioid pills that can be prescribed while adding jail time for those who deal in heroin, fentanyl and other opioids on the street.

Lawmakers praised provisions in House Bill 333, sponsored by Rep. Kimberly Poore Moser, R-Taylor Mill, and House Judiciary Chairman Rep. Joseph Fischer, R-Ft. Thomas, that would limit prescriptions for addictive opioid painkillers like oxycodone, fentanyl and morphine to a three-day supply, with exceptions for the terminally-ill and some others. Addiction, said Rep. James Kay, D-Versailles before a House vote on the bill, usually begins at home with a 30-day prescription to prescription opioids, like Percocet or Lortab.

"This pill problem is starting in our medicine cabinets, and we've got to get it under control," he said. "Unfortunately in many, many cases we're not going to stop addiction from happening. But we can stop it from happening in our medicine cabinets. We can stop is from happening in our homes."

HB 333 also addresses the criminal side of the drug epidemic by making it a Class C felony to unlawfully import any amount of fentanyl, fentanyl derivatives or carfentanil, an elephant tranquilizer, into Kentucky with intent to sell or distribute the drugs. Currently, the crime is limited to heroin. Trafficking in any amount of heroin, fentanyl, its derivatives or carfentanil would carry up to 10 years for a first offense, with longer sentences for repeat offenders and those who deal over certain amounts of the drugs.

Anyone convicted of a Class C felony or higher for trafficking heroin, fentanyl, carfentanil or fentanyl derivatives will be prohibited under HB 333 from being released on probation, shock probation, parole, conditional discharge or other form of release until at least 50 percent of his or her sentence has been served. Those convicted of "aggravated trafficking" of large amounts of fentanyl (28 grams or more) of carfentanil or fentanyl derivatives (10 grams or more) would face up to 20 years in prison without a chance for release until at least 50 percent of their sentences are served.

Additionally, HB 333 creates the felony offense of "trafficking in a misrepresented controlled substance" for those who try to pass off fentanyl or its derivatives or carfentanil as a legitimate prescription drug. Trafficking in a misrepresented controlled substance is a Class D felony, carrying one to five years in prison.

Moser said during House floor debate on the bill that these are just a few steps that HB 333 would take to solve what she called the "opioid and addiction crisis" in Kentucky.

"We continue to see increases in overdoses and deaths due to heroin and other opiates," said Moser. She cited data from the Centers for Disease Control and Prevention that shows over 52,000 drug overdose deaths in the U.S. in 2015. "Sixty three percent, or 33,091 of those deaths involved an opioid."

The bill also clarifies some drug definitions under current law, including clarification that the term marijuana does not include industrial hemp under the control of someone licensed by the state to work in industrial hemp or industrial hemp products without "any living plants, viable seeds, leaf materials or floral materials."

Also excluded from the definition of marijuana under HB 333 are cannabidiol, or CBD, products derived from industrial hemp or approved as a prescription medication by the U.S. Food and Drug Administration. Current law already excludes CBD from the definition of marijuana if the CBD is administered under the written order of a physician practicing in association with one of Kentucky's public universities' schools of medicine, or for those participating in a clinical trial. Cannabidiol is a compound found in cannabis that is believe by many to have medical benefits, although it has not yet been FDA-approved.

HB 333 received final passage in the House on an 80-6 vote on March 30. It was signed into law by Governor Matt Bevin on April 10 and will take effect in late June.

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Committee Meetings

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INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

Minutes of the 7th Meeting of the 2016 Interim

December 15, 2016

Call to Order and Roll Call

The 7th meeting of the Interim Joint Committee on Licensing and Occupations was held on Thursday, December 15, 2016, at 10:00 AM, in Room 129 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 Dennis Keene, Co-Chair; Senators Tom Buford, Julian M. Carroll, Denise Harper Angel, Jimmy Higdon, Ray S. Jones II, Christian McDaniel, Dan "Malano" Seum, and Damon Thayer; Representatives Tom Burch, Denver Butler, Larry Clark, Jeffery Donohue, Daniel Elliott, Joni L. Jenkins, Adam Koenig, Reginald Meeks, Jerry T. Miller, David Osborne, Sal Santoro, Arnold Simpson, Diane St. Onge, and Susan Westrom.

Guests: Senator Brandon Smith, Mike DeFrancisco, NITV Federal Services; Kristin Meadors Baldwin, Director of Governmental Affairs, Kentucky Distillers Association; Christy Trout, Commissioner, Carol Beth Martin, Malt Beverage Administrator, Trina Summers, Distilled Spirits Administrator and Steve Humphress, General Counsel, Department of Alcoholic Beverage Control; Paula Schenk, Executive Director, Kentucky Board of Nursing, Rebecca Fotsch, National Council of State Boards of Nursing (NCSBN).

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

Approval of minutes from the October 14, 2016 meeting as well as the minutes from the November 28, 2016 meeting.

A motion was made by Senator Buford, seconded by Representative Keene, to approve the minutes from the October 14, 2016 meeting and the November 28, 2016 meeting. The motion was adopted by voice vote.

Alternatives to Detection of Deception Devices

Senator Brandon Smith said that he has been approached by a constituent about an alternative method to using a polygraph as a lie detector. Kentucky is one of the few states that still uses only the polygraph system.

Mike DeFrancisco, board member of the National Association of Computer Voice Stress Analysts, is currently employed as a fire and explosion investigator in the city of Columbus, Ohio, as well as deputy sheriff in Madison County, Ohio. He told the committee he regularly used the CVSA to solve crimes related to fires and explosions and other investigations. The use of this system has changed the case closure and conviction rates. The ease of use and the instant verification that a person is being truthful or deceitful is paramount in solving crimes. Kentucky is a polygraph only state. By enabling Kentucky to use the CVSA system, Kentucky law enforcement would be equipped with an additional tool to fight crime and protect citizens more efficiently. He said the CVSA is a truth verification detection deception device that is in use in each of Kentucky's contiguous states. The CVSA is also currently used by federal probation officers in Lexington and Louisville. The CVSA is used in 20 countries around the world to assist in fighting crime and terrorism. Some countries receive funding from the United States State Department to train and certify examiners in their countries.

The CVSA is a laptop computer with proprietary software installed to detect truthful and deceptive responses. This system was developed in 1957. It was discovered that when someone was not telling the truth there are micro tremors in their voice. The technology has been expanded through the years. In 2003 the CVSA was added to a tablet computer for use in the military. The CVSA has a 98% accuracy rate and is currently being used by 2,000 law enforcement agencies throughout the United States. There are no language barriers for using this device, and it is compatible with male or female. The training for using the CVSA is approximately 60 hours.

Senator Schickel said that CVSA machines were legal in Kentucky up to 10 years ago when Kentucky changed the standard for lie detection systems. He advised Mr. DeFrancisco to have the company meet with polygraph operators, the Public Protection Cabinet, and the Director of Homeland Security.

In response to a question from Representative Jerry Miller, Mr. DeFrancisco said he cannot answer for the way a polygraph measures in comparison to the CVSA, and that it could be used by Metro Louisville Police at the street level.

In response to a question from Senator Carroll, Mr. DeFrancisco said the CVSA does not have any more evidentiary value in a court of law than a polygraph.

In response to a question from Representative St. Onge, Mr. DeFrancisco said the CVSA is very useful in determining if someone is being truthful or not. Representative St. Onge asked for a list of other agencies that are using the CVSA. Senator Schickel added that he would like to have that list as well.

Senator Schickel said that he was using the privilege of the chair to honor committee members who were leaving the committee with a resolution recognizing their service during their tenure in the legislature. Those members are Representative Denver Butler, Representative Larry Clark, Representative David Floyd, and Representative Brad Montell. Representative Dennis Keene was also honored as he steps down as co-chair. A motion was called for, and the resolutions were unanimously adopted by voice vote.

Kentucky Distillers Association – Discussion of 2017 Legislative Agenda

Kristin Meadors Baldwin, Director of

Governmental Affairs, Kentucky Distillers Association said the association has 33 members. To date, 20 members have received the non-quota 3 license that allows a distillery to sell by the drink. Distillers are expanding not only to enhance the visitor experience but are hiring employees to ensure visitors receive a first-class visit. Mixologists use local ingredients to serve farm fresh cocktails. Distilleries are partnering with communities to showcase their industry.

The industry has nine stops on the Bourbon Trail and 11 stops on the Kentucky Bourbon Trail Craft Tour. Sixteen distilleries are under construction. The board of directors of the KDA has adopted a social responsibility statement regarding a code of conduct, a best practices checklist for events and a visitor center responsibility standard. The board has created a new position, Director of Social Responsibility, to oversee these efforts.

The KDA is asking the 2017 General Assembly for a level playing field for distillers by allowing them the same privilege that small farm wineries and micro-brewers enjoy in participating at fairs and festivals. KDA is asking the legislature to clarify the term "produced" to strengthen production standards for the word Kentucky by stating in statute, "whiskey produced from grains which are cooked, fermented and distilled in Kentucky." KDA would like to modernize penalties for distillers under their retail licenses. Currently, when distillers are penalized, it is under their manufacturers' license even though they are acting as retailers. Finally, KDA is seeking a change in statute to permit the sale of vintage whiskey at retail locations.

Department of Alcoholic Beverage Control – Discussion of 2017 Legislative Agenda

Christy Trout, Commissioner, Department of Alcoholic Beverage Control, said the department wants to clean-up statutory language and consolidate and clarify language that is duplicative. Making statutes easier to understand will help retailers stay in compliance. Changing definitions will clarify what a caterer is, or what a state administrator is. Changing terms such as "field representative" to "investigator" aids in clarity. Another issue is repealing or amending statutes so that they are consistent with court rulings.

Carol Beth Martin, Malt Beverage Administrator, said that the department intends to consolidate old language within statutes, allowing retailers to store distilled spirits and wine in the same manner as beer, and allowing retailers to deliver distilled spirits and wine to match beer privileges. Another example of duplicative language is limited restaurant food sales regarding the number of seats at tables and their sales percentages.

Steve Humphress, General Counsel, said that ABC's legislation will clarify ambiguous statutes regarding minors in bars and the vague language the courts have found to be problematic. The new language will also amend the advertising laws to remove restrictions to protect retailers' first amendment rights. The bill will also group statutes together such as gambling that are now separated by two chapters. The language will simplify licensing terminology to be consistent and clear.

Trina Summers, Distilled Spirits Administrator, said the department would like to provide emergency license suspension powers that will address local community concerns. The department wishes to allow state parks that want to sell specialty bottles to hold an NQ1 quota retail license. The department would like to clarify language regarding cities and counties allowing quota retail drink licenses. There is confusion among local administrator and government officials as to what is permitted and where.

In response to a question from Senator Thayer, Mr. Humphress said currently in order to address violations by licensees, the department is required by Chapter 13B to start administrative proceedings. No license can be revoked until after a hearing it provided. However, KRS 243.560(6) creates an automatic stay; if the retailer appeals, the retailer is allowed to continue business. The retailer has a right to an appeal to Franklin Circuit Court and an additional right to appeal to the Court of Appeals. This could allow a retailer to continue business for up to three years without any penalty. The department is asking for legislation that would allow the department to close a business for cause in dire situations, while still allowing for appeals with the due process in KRS Chapter 13B.

In response to a question from Senator Buford, Ms. Trout said the department is working with the KDA regarding manufacturers acting as retailers. In response to another question from Senator Buford, Ms. Trout said different facilities in an area might have different licenses available to them depending upon whether the territory is wet or moist.

In response to a question from Senator Carroll, Mr. Humphress said KRS Chapter 13B has a specific section regarding an emergency suspension. The enabling statute deals with public safety. Ms. Trout added that there are two separate tracks. The complaint stays the same: however, if there is egregious conduct, this will allow ABC to stop the licensee from doing business for a short period of time.

Representative Meeks said in urban areas there are businesses that cause disruption and repeated complaints. Bad actors use the process to keep their doors open.

In response to a question from Senator Thayer, Mr. Trout said that current law will keep the appeal of the license suspension in Franklin Circuit Court.

Representative St. Onge asked to be provided with information as to why residents in Kentucky cannot send a bottle of bourbon to an out-of-state resident and why a bottle cannot be sent into Kentucky.

Interstate Compact on Nurse Licensure

Rebecca Fotsch, is the Associate Director of State Advocacy and Legislative Affairs at the National Council of State Boards of Nursing (NCSBN). NCSBN is a member organization of all of the state Boards of Nursing and the drafters of the proposed compact as well as the compact that Kentucky is currently a party to. The nursing compact is like the driver's license compact which allows for mutual recognition from state to state. The nurse licensure compact allows a nurse to have one multistate license in the state of residence that permits the nurse to practice in other member states, both physically and electronically. Kentucky has been in the compact for about 10 years.

The enhanced compact now proposed requires a criminal background check. Additionally there are uniform licensure requirements. The eleven licensure requirements are already required in Kentucky. The reason for changes are to make the compact more effective by adding all states. The new compact will enhance telehealth. The enhanced language has been passed in 10 states and 20 states are moving forward with this language this year.

Paula Schenk, Executive Director, Kentucky Board of Nursing, said Kentucky has participated in the current compact since 2006. There are 71,000 nurses in Kentucky who have multistate licenses. If the enhanced compact is not passed in the 2017 session the Kentucky nurses would not be able to practice across borders. The board had a similar bill in the last session that was not able to pass due to concerns regarding rule making.

Senator Schickel commented that he has spoken with Senator Givens regarding concerns about the compact and he hoped that a resolution can be reached. Senator Schickel noted that the committee is going to pass over Agenda Item 7, relating to 804 KAR 11:010. Senator Thayer said he wanted to clarify that Ms. Trout's response to his question regarding appeals held in Franklin Circuit Court was not due to a decision by the commission but rather is in statute. The legislature can change the statute to allow an issue to be held in a local jurisdiction.

Senator Schickel agreed that this issue was across all regulatory bodies.

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

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE

Minutes of the Eighth Meeting of the 2016 Interim

December 14, 2016

Call to Order and Roll Call

The eighth meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, December 14, 2016, at 10:00 a.m., in Room 129 of the Capitol Annex. Representative Tom Burch, Co-Chair, called the meeting to order at 10:07 a.m., and the secretary called the roll.

Present were:

Members: Senator Julie Raque Adams, Co-Chair; Representative Tom Burch, Co-Chair; Senators Ralph Alvarado, Tom Buford, Danny Carroll, Julian M. Carroll, Denise Harper Angel, Jimmy Higdon, Alice Forgy Kerr, and Reginald Thomas; Representatives Robert Benvenuti III, George Brown Jr., Joni L. Jenkins, Reginald Meeks, Phil Moffett, Tim Moore, Ruth Ann Palumbo, David Watkins, Russell Webber, Susan Westrom, and Addia Wuchner.

Guests: Allison Ball, Kentucky State Treasurer; Kevin T. Kavanagh, MD, MS, Board Chairman, Health Watch USA; Mary Kathryn DeLodder, Kentucky Home Birth Coalition; Cherie Sibley, CEO, Clark Regional Medical Center; Lynne M. Saddler, MD, MPH, District Director of Health, Northern Kentucky Independent District Health Department; Tyler Radford, Co-founder, and Hassan Latifilia, Co-founder, Dreamsetters United; Sara Ann Selm, Recipient, Union, Boone County; Matt Holder, MD, MBA, Chief Executive Officer, Henry Hood, DMD, Chief Clinical Officer, and Kristin Compton, DMD, Dental Director, Lee Specialty Clinic; Mimi Kramer; Gisela D. Nelson, Cofounder and Executive

Director, Courtney Lamont Phelps, JD, President, The Christopher Wade Phelps Foundation and Volunteer, Government Affairs Department, Bill Huston, Cofounder and CEO, Our Crowd Rocks, Paul E. Nelson, Sr., Cofounder, Legacy Reentry Corp; Amanda Harding, Jessica Williams, and Paul Daniels, Kentucky Board of Pharmacy; Jennifer Hicks and Stephanie Sharp, Commonwealth Council on Developmental Disabilities; David Wheeler, ResCare; Kelli Williams and Patrick Rork, Accenture; Sarah Nicholson, Kentucky Hospital Association; and Joy Hoskins, Department for Public Health, Cabinet for Health and Family Services.

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

Approval of the Minutes from the November 16, 2016 Meeting

A motion to approve the minutes of the November 16, 2016 meeting was made by Senator Julian Carroll, seconded by Senator Harper Angel, and approved by voice vote.

Consideration of Referred Administrative Regulations

The following administrative regulations were referred to the committee for consideration: **201 KAR 2:045** – establishes the qualifications required for a pharmacy technician to practice under the general supervision of a pharmacist, and establishes the scope of practice for a pharmacy technician; **201 KAR 2:050** – establishes reasonable fees for the Board of Pharmacy to perform all the functions for which it is responsible; **201 KAR 2:351** – repeals 201 KAR 2:350 that regulated home medical equipment providers because it is obsolete; and **921 KAR 1:410** – establishes procedures for collection and enforcement of child support. A motion to accept the administrative regulations was made by Senator Julian Carroll, seconded by Senator Alvarado, and accepted by voice vote.

Kentucky STABLE Program

Allison Ball, Kentucky State Treasurer, stated that STABLE accounts are made possible by the federal Achieving a Better Life Experience (ABLE) accounts. STABLE accounts allow individuals with disabilities to save and invest money without losing eligibility for certain public benefits program like Medicaid, SSI, or SSDI. Earnings in a STABLE Account are not subject to federal income tax, so long as it is spent on qualified disability expenses. STABLE accounts are investment accounts and invested in different options. While money can still be withdrawn whenever it is needed, a STABLE account allows money to grow to save on long-term disability expenses. Although ABLE accounts are available nationwide, STABLE Kentucky is only available to Kentucky residents and are opened at discounted rates. In order to open a STABLE account, a person has to be disabled before 26 years of age. Recipients can deposit between $14,000 and $100,000 per year without losing benefits with a lifetime total of $426,000 without it affecting taxes. More information about STABLE Kentucky accounts can be found at stablekentucky.com.

In response to a question by Senator Danny Carroll, Treasurer Ball stated that Vanguard was chosen to manage the STABLE account and is the same company used by Ohio for its STABLE accounts. Senator Carroll stated that STABLE Kentucky accounts will give parents and families a peace of mind knowing their child will be taken care of after a parent is gone.

Representative Wuchner stated individuals need to be able to have money set aside for expenses.

Multi-Resistant Drug Organisms: The Importance of Reporting

Kevin T. Kavanagh, MD, MS, Board Chairman, Health Watch USA, stated that control of the infection is key. According to the 2010-2011 baseline, the United States is not on track of a 50 percent MRSA bloodstream infection reduction by 2020. There are no firm protocols. Disparity rate should be 20 percent or less. Reporting to the health department is essential for public safety. Patients should know when outbreaks of dangerous pathogens occur in healthcare facilities. Reporting by facility is preferable, but at least regional reporting should be done. Overall days of therapy with antibiotics among hospitalized patients in the United States has not changed significantly between the years of 2006 to 2012. Drug resistant bacteria is a huge problem. Current data sheds doubt that the epidemic is being controlled. More comprehensive and timely data is needed.

Representative Burch stated that there are no drugs to cure MRSA.

In response to questions by Senator Alvarado, Dr. Kavanagh stated that MRSA is not strictly a hospital problem. Antibiotic utilization needs to be curtailed.

Midwifery Draft Legislation – 2017 Regular Session

Representative Russell Webber stated that the bill would establish a Kentucky Board of Midwifery. The goal is to provide a safer environment for mothers and children through the licensure of certified professional midwives. The bill could also provide a cost savings in Kentucky, because home births cost significantly less than other options.

Mary Kathryn DeLodder, Kentucky Home Birth Coalition, stated that in Kentucky, 600 babies are born at home yearly. The bill pertains to certified professional midwives (CPMs) and not to APRN nurse midwives who practice almost exclusively in hospitals. The bill requires specific education requirements at a specific type of school and is not a self study process. CPMs do not prescribe medication and would have the same statutory requirements for malpractice insurance coverage as physicians do in Kentucky. The American Congress of Obstetricians and Gynecologists (ACOG) wants CPMs to be prohibited from performing twin births, breech births, or a birth to a woman who has had a prior C-section. Home birth is not a safe option for every woman because of preexisting medical or other circumstances that do not make them a good candidate. Midwives need to be trained to be able to screen candidates to see if the woman is a good candidate for a home birth. Administrative regulations could be created to say that specific education is required above and beyond the basic education in order for a midwife to attend high-risk births. Administrative regulations could also have clinical requirements on who is a good candidate to have high-risk births at home.

Senator Buford stated that a lot of women are opting to have a home birth. Home births encourage breastfeeding. Whether the legislation is passed or not, home births will continue.

Cherie Sibley, CEO, Clark Regional Medical Center, stated that home births have been around as long as babies have been born. Many have gone well, many have not and the proposed midwifery legislation does not assure the women of Kentucky the quality and safety they strongly deserve for home births. The bill only addresses women who are 100 percent healty and are guaranteed no complications. In 2015, national vital statistics reveal per 100,000 births, 6.3 have a ruptured uterus, 11.9 have to have unplanned hysterectomies, 6.6 are admitted to ICU, and 167 need blood transfusions. Kentucky's infant mortality rate is 6.7 percent and 33rd nationally. How does a home birth accommodate mothers and babies when immediate care is needed to save their lives? The bill does not have provisions for transfer agreements with hospitals for mothers and/or babies. Mothers and babies who need immediate care in specialized areas require specialized teams of people to be on sight to provide the care. If a required transfer agreement is not included, patients would simply be sent by ambulance and taken to an emergency room without all the information needed to care for the patient.

The bill gives broad authority for lay midwives to order diagnostic tests, and does not limit testing to only laboratory tests and ultrasounds, as in other states' laws. Secondly, there is no specified training in the interpretation of laboratory results. The bill asks a certified midwife to interpret ultrasound results that sometimes only a radiologist can interpret. The bill does not contain any requirement for midwives to carry medical liability insurance. If it is not required, the mother has no protection for the cost of potential injury or death to a newborn or the mother caused by a midwife's care. The bill does not set out the circumstances when a patient must be transferred to a hospital or when to consult with a physician. Nurses, anesthetists, doctors, nurse practitioners, respiratory therapists, physical therapists, and audiologists are required to pass a certification test and work under the guidance of a physician and so should certified midwives.

In response to questions by Senator Higdon, Ms. DeLodder stated that 30 other states recognize certified midwives. Kentucky's legislation takes specific parts of Maine's legislation. Currently, there is not a board certified midwives can be placed under.

Senator Alvarado stated that he is not opposed to home delivery, but there are some types of deliveries that carry higher risks. The American Congress of Obstetricians and Gynecologists, the Kentucky Medical Association, the Kentucky Hospital Association, and the Kentucky Coalition of Nurse Practitioners and Nurse Midwives oppose the bill. There should be consensus from all groups. High-risk deliveries such as breech, twins, and vaginal birth after C-section (VBAC) can be very dangerous for the mother and child. Educational requirements should not allow home studies. A low-risk delivery can turn into a high-risk delivery in minutes. Rural settings do not have obstetricians at hospitals ready to handle emergencies and puts the mother's and/or baby's life at risk. Ms. DeLodder stated that the National College of Nurse Midwives are supportive of the bill.

Representative Benvenuti stated that an adult can sacrifice themselves based on their own beliefs about their healthcare, but cannot sacrifice a child's healthcare because of those beliefs. In response to a question by Representative Benvenuti, Ms. DeLodder stated that there are schools accredited by Midwifery Education and Accreditation Council (MEAC) that offers training. The training takes three to five years to finish.

In response to a question by Senator Adams, Ms. DeLodder stated that currently there is not a Board of Midwifery. The Kentucky Board of Nursing licenses APRN midwives.

In response to a question by Senator Thomas, Ms. DeLodder stated that the Kentucky Board of Midwifery is needed to ensure the health and safety of unborn babies.

Representative Burch stated that a woman who knows she will have a high-risk delivery will be under the care of an obstetrician. Unfortunately, not all women have access to healthcare prior to birth.

Senator Alvarado stated that hospitals require doctors to carry medical liability insurance.

Northern Kentucky Health Department - 2015 SB 107

Lynne M. Saddler, MD, MPH, District Director of Health, Northern Kentucky Independent District Health Department, stated that 2015 Senate Bill 107 reduced the independent district board of health from 32 members to 21 and are filled based on population.

Dreamsetters United

Tyler Radford, Co-founder, and Hassan Latifilia, Co-founder, stated that Dreamsetters United was found on October 20, 2016 with a goal to empower youth to be the best possible people they can be by identifying and capitalizing on their abilities and talents. The organization wants to clean up the streets by giving youth visions of change in themselves, guide and show them who they truly are, help them fulfill their dreams, and treat all races, genders, religions, and individuals with disabilities as equals. Children need good role models to look up to and relate with their situations. A lot of people feel powerless about their situations. The organization gives clothes and toys to children in need.

Representative Meeks stated that he would like to partner with them.

Senator Julian Carroll commended Tyler and Hassan to being committed to make a change and told them not to give up until they win.

Representative Benvenuti stated that there is a need for more men to mentor and guide young boys in positive directions, because it will affect the boys the rest of their lives.

Lee Specialty Clinic – 2016 HCR 174

Matt Holder, MD, MBA, Chief Executive Officer, stated that the clinic was named after former State Representative Jimmie Lee of Elizabethtown, a tireless advocate and leading legislative voice for Kentuckians with intellectual disabilities. The clinic serves half of Kentucky's counties and has 1,200 patients. A huge problem with patients is they do not always know what is wrong with them and are misdiagnosed. Funding for the clinic is provided by the federal Centers for Medicare and Medicaid Services (CMS) and the Kentucky Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities.

Henry Hood, DMD, Chief Clinical Officer, and Kristin Compton, DMD, Dental Director, stated that stated that the clinic's patients are medically complex. Some patients have not seen a dentist in years and some never have. Many patients are behaviorally complex and cannot verbally communicate pain, engage in self-injurious behaviors, and lash out at loved ones and care givers with aggressive behaviors. Aggressive behaviors can cause social isolation, complicate residential placement, and cause physicians and dentists to refuse to treat patients. The outpatient center the clinic has used in the past has started to refuse to accept behaviorally challenged patients into its operating room. There are currently 80 patients waiting for services but nowhere to take them.

Mimi Kramer's 35-year old son, Trey, has severe behavioral and intellectual problems. He receives services at the clinic. She has nowhere to take her son for his yearly examination, because no hospital will admit him because of his behavioral and intellectual problems.

In response to questions by Senator Buford, Dr. Holder stated that the General Assembly could enact legislation that would urge the Governor to request the Secretary of the United States Department of Health and Human Services to designate people with intellectual and developmental disabilities as a medically underserved population in the Commonwealth of Kentucky. This designation would help recruit and train providers to serve this population.

In response to a question by Senator Danny Carroll, Dr. Hood stated most dentists have not had any experience with the disabled population.

Michelle P. Waiver Challenges

Sara Ann Selm, Recipient, Union, Boone County, stated that she is a 32-year old spastic quadriplegic with cerebral palsy and scoliosis. She is opposed to the 40 hours per week limit across the board. She uses 60 hours per week and would essentially have to be institutionalized without the extra hours. Her father and aunt help her, but she has been on her own for the most part for approximately 12 years. She has 3 college degrees, but it has been unable to obtain full-time employment.

Senator Danny Carroll stated that the state needs to make sure services are available. The waiting list for the waiver is very long, so if services are discontinued, it would be difficult to get them back quickly. He commended her for her efforts. The focus is to keep people out of institutions and in the community.

Representative Burch stated that the need for services is great for Kentuckians and hoped that her needs can be met.

New Legacy Reentry Corp

Gisela D. Nelson, Cofounder and Executive Director, Courtney Lamont Phelps, JD, President, The Christopher Wade Phelps Foundation and Volunteer, Government Affairs Department, Bill Huston, Cofounder and CEO, Our Crowd Rocks, Paul E. Nelson, Sr., Cofounder, stated that New Legacy is a faith-based community organization that is committed to breaking the cycle of chronic recidivism for male ex-offenders who were previous incarcerated for nonviolent, nonsexual crimes. In addition, New Legacy provides a separate program which attends to the needs of veterans who may face joblessness, homelessness, and medical issues. Currently, the organization offers a 12- to 24-month residential program in a 9,000 square foot facility that addresses the societal stigma and challenges that veteran and non-veteran ex-offenders face as they find substantive ways to integrate successfully back into mainstream society. Spalding University provides forensic psychology, social work, case management, and occupational therapy. Utilizing resources and existing business entities, New Legacy aims to build income and careers for its residents by partnering with local employers, and to provide job skills training and supportive services. The Soft Skills program offers entrepreneur training to residents as well as those in the community who have a desire to become entrepreneurs. The curriculum of the academy includes business plan writing, training in market analysis and business development, and basic leadership skills. The Jeremiah Project provides short-term job skills training and practical, hands on, work experience in the construction industry for male ex-offenders and veterans. The New Legacy Market is a non-profit corporation launched by two experienced local food and produce distributors after an offseason planning process undertaken by several organizations active in the local food movement in Metro Louisville.

In response to a question by Representative Brown, Ms. Nelson stated that funding for New Legacy comes from income from properties owned by her and her husband and donations. Representative Brown stated that recidivism is a huge problem, and the Department of Corrections might be able to provide some financial help for the organization.

Adjournment

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

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE

Minutes of the First Meeting of the 2017 Session Break

January 18, 2017

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on Health and Welfare during the 2017 Session Break was held on Wednesday, January 18, 2017, at 10:00 a.m., in Room 129 of the Capitol Annex. Senator Julie Raque Adams, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Julie Raque Adams, Co-Chair; Representative Addia Wuchner, Co-Chair; Senators Danny Carroll, Denise Harper Angel, Alice Forgy Kerr, Stephen Meredith, and Reginald Thomas; Representatives Danny Bentley, Robert Benvenuti III, George Brown Jr., Larry Brown, Jim Gooch, Joni L. Jenkins, Mary Lou Marzian, Russ Meyer, Kimberly Poore Moser, Darryl T. Owens, Melinda Gibbons Prunty, and Russell Webber.

Guests: Rosmond J. Dolen, *Of Counsel,* Bingham Greenebaum Doll LLP, and Executive Director, Kentucky Association of Health Plans; Vickie Yates Brown Glisson, Secretary, Eric Clark, Legislative Director, Adria Johnson, Commissioner, Department for Community Based Services, Steve Miller, Commissioner, Department for Medicaid Services, Wendy Morris, Commissioner, Department for Behavioral Health, Developmental and Intellectual Disabilities, Dr. Connie White, MD, Senior Deputy Commissioner, Department for Public Health, Deborah Anderson, Commissioner, Department for Aging and Independent Living, Robert Silverthorn, Inspector General, Office of the Inspector General, Paul Coomes, Executive Director, Office of Health Policy, John Watkins, Deputy Executive Director, Office of Health Benefit and Information Exchange, Jackie Richardson, Executive Director, Commission for Children with Special Health Care Needs, Steve Veno, Commissioner, Department for Income Support, Tim Feeley, Deputy Secretary, Cabinet for Health and Family Services;

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

Overview of Medicaid Managed Care Organizations (MCOs)

Rosmond J. Dolen, *Of Counsel,* Bingham Greenebaum Doll LLP, and Executive Director, Kentucky Association of Health Plans (KAPH), stated that the KAPH has been in existence since 1985 and has provided a forum for commercial insurers to promote the common business interest of health insurers in Kentucky. Medicaid Managed Care Organizations (MCOs) joined the association providing an important voice in addressing issues impacting the sustainability of the Commonwealth's Medicaid program while improving the quality of life and health outcomes of its members. Aetna, Anthem, Blue Cross and Blue Shield, Humana, Passport Health Plan, and WellCare contract with Kentucky as MCOs to provide Medicaid benefits to Kentuckians across the Commonwealth.

In 1965, Medicaid was signed into law through the Social Security Act to provide health coverage for low-income people. Although the federal government establishes certain parameters for all states to follow, each state administers its own Medicaid program differently. In 2014, the Affordable Care Act (ACA) provided states the authority to expand Medicaid eligibility to individuals under age 65 in families with incomes below 138 percent of the Federal Poverty Level (FPL) and standardize the rules for determining eligibility and providing benefits through Medicaid, the Children's Health Insurance Program (CHIP), and the health insurance market. Over 300,000 Kentuckians were added to the program during its first year. The traditional Medicaid program and CHIP are the central sources of coverage for low-income children and pregnant women, with 49 states covering children and 34 states covering pregnant women with incomes at or above 200 percent FPL as of January 2017.

In 1995, the Commonwealth of Kentucky sought to develop eight regional Medicaid Managed Care Partnerships to help control increasing Medicaid costs. The two state medical schools at the University of Louisville and the University of Kentucky were asked to provide leadership in the development of these partnerships. Only Region 3 was successful and resulted in the single source waiver approved for Louisville and the surrounding sixteen counties while the rest of the state continued to operate under the fee-for-service model. In 2011, the Cabinet for Health and Family Services (CHFS) privatized the Medicaid administration through a competitive bid process and was able to save approximately $1.3 billion. Three companies were awarded contracts to administer the Medicaid benefits across the state, except in Region 3 which continued to operate under a single source waiver utilizing the partnership model. Initially, the three MCOs were given 90 days to build a network and eventually another 30 days to build provider networks and put in place systems that could successfully administer Medicaid benefits for both providers and members. On November 1, 2011, the three MCOs began providing benefits to low-income children and pregnant women, the aged, blind, and disabled, and foster care. Individuals in nursing homes and other waiver programs, such as the Home and Community Based Service (HCBS) waivers, are not included in Kentucky's Medicaid managed care program but under the previous fee-for-service program. Today, over 1.3 million Kentuckians receive their health care benefits through five MCOs.

MCOs administer Medicaid benefits on behalf of the Department for Medicaid Services (DMS) and in accordance with the State Plan. MCOs contract with providers or provider groups that meet the guidelines of participation with Kentucky Medicaid to create networks of providers. All MCOs allow members to see any provider participating in its network in accordance with plan rules, although some may require prior authorizations. Under the terms and conditions of Medicaid participation, providers are prohibited from balance billing patients. Participating providers in Kentucky Medicaid may not balance bill patients or collect cash payments from Medicaid beneficiaries for Medicaid covered services. MCOs are required to provide all benefits that Kentucky Medicaid fee-for-service offers. Each MCO determines and operates its own utilization requirements which are similar to programs utilized by commercial insurers. MCOs pay providers directly from the money received from the cabinet.

In 2016, the General Assembly passed Senate Bill 20 that established the right and path for providers to an independent, external third party review of the MCOs decision that denied, in whole or in part, a health care service to an enrollee or a claim for reimbursement to a provider for a health care service rendered by the provider. The Medicaid Managed Care Final Rules released by the Centers for Medicare and Medicaid Services (CMS) in May 2016, contain significant new requirements for actuarial soundness and actuarial certification of rates. Among the requirements is that MCOs report to the state Medical Loss Ratios (MLR) which essentially is the percent of premium or revenue used to pay claims and provide care. In July 2016, Kentucky imposed a MLR for MCOs at 90 percent which exceeds the federal minimum MLR of 85 percent. In the event an MCO does not spend the required 90 cent of revenue to provide care for Medicaid beneficiaries, a portion of the money is returned to the Commonwealth.

All MCOs are contractually required within three years to be accredited by the National Committee for Quality Assurance (NCQA). NCQA accreditation provides a comprehensive evaluation including clinical performance and consumer experience. The Healthcare Effectiveness Data and Information Set (HEDIS) is a tool used by more than 90 percent of America's health plans to measure performance on important dimensions of care and service. HEDIS consists of 81 measures across 5 domains of care. HEDIS measures demonstrate the MCOs effort to improve health outcomes.

The MCO footprint varies by each plan. The DMS provides the MCOs weekly membership counts for each county. Each of the MCOs have hired and developed a workforce to administer the Medicaid benefits across the Commonwealth of Kentucky. Aetna has more than 30 years of experience managing the care of the most medically vulnerable using innovative approaches to achieve both the successful health care results and effective cost outcomes. For over 75 years, Anthem Blue Cross and Blue Shield has provided health care benefits in both the commercial and government-sponsored programs to more than 1.6 million Kentuckians. For over 50 years, Humana has served Kentucky's healthcare needs through Medicaid, Medicare, commercial, and government lines of business. Passport Health Plan is a provider sponsored, non-profit, community-based health plan administering Medicaid benefits in all 120 Kentucky counties since 1997. WellCare was founded in Tampa, Florida 32 years ago by a group of physicians and focuses exclusively on providing government-sponsored managed care services, primarily through Medicaid, Medicare Advantage, and Medicaid prescription drugs plans to families, children, seniors, and individuals with complex medical needs. WellCare has served the Commonwealth since November 1, 2011.

Managed care focuses on improving health outcomes through coordinated care, preventive services, and by offering disease management for individuals with chronic conditions. It also focuses on reducing the unnecessary use of services such as emergency room visits for non-emergencies or duplicate tests. MCOs are focused on providing the right care at the right time in the right setting. The most effective way to control costs in Kentucky's Medicaid program is to make members healthier. The proposed 1115 Medicaid waiver focuses on how to provide a new framework designed to increase Medicaid member engagement that encourages cost-conscious healthcare decisions. In January 2014, the ACA mandated coverage of substance use disorder treatment allowing states to expand provider types and add billing codes for additional therapies and treatment. This allowed MCOs to not only pay for substance abuse medications but expand access to care and provide coverage for additional treatment options enhancing the likelihood of success. The proposed 1115 waiver would make changes to allow Medicaid payment for inpatient psychiatric care for individuals 21 to 64 years of age in institutions for mental diseases (IMDs) with more than 16 beds. The proposed waiver includes a demonstration project in 10 to 20 high-risk counties to cover short-term inpatient psychiatric treatment for substance use disorders in the 26 facilities identified by the cabinet. Expanding treatment options for addiction services empowers MCOs to contract with new providers while working with the Commonwealth to address the public health crisis of addiction.

In response to a question by Senator Adams, Ms. Dolen stated that the 10 to 20 high-risk counties have not been identified.

In response to questions by Senator Danny Carroll, Ms. Dolen stated that she was not aware of any systematic approaches to deny or defer services or claims in an effort to manage corporate cash flow. In 2016, approximately 25 million claims were processed by the MCOs within the required percentages allowed by the Department of Insurance (DOI). MCOs try to work with providers to address claims issues in terms of payment. Providers will receive statutorily required interest based on the length of time it takes to pay a claim. MCOs are heavily regulated and monitored by the DMS and DOI and regulated by federal compliance requirements.

Representative Benvenuti stated that Medicaid is very expensive to operate and manage because there are too many people on the rolls. The fundamental core issue is when a handout is provided, people are unmotivated to take care of themselves. There should be an aggressive effort to reduce the Medicaid population.

In response to questions by Senator Meredith, Mike Ridenour, Vice President of Government Affairs, WellCare of Kentucky, stated that the $1.3 billion savings achieved included state and federal dollars. The state's strategy was contracting with providers who could offer different rates, different contract structures in order to achieve a level of savings without slashing needed services across the board. The state contracted with MCOs instead of cutting reimbursement rates by $438 million. The state ended up saving $1.3 billion and this savings immediately went back into the state budget for education, infrastructure development, and other areas that would not be able to be funded without the additional funds. Ms. Dolen stated the 10 percent of funds left after the 90 percent MLR expenses are paid is used for administrative functions to expand programs, quality initiatives, case management services, and profits. Provider reimbursement rates negotiated with the individual MCOs are typically proprietary and not something an MCO can talk about, but initiating a contract with a provider is something that can be addressed from each individual MCOs perspective. It is up to each MCO to decide how to use and divide funds from the state, so for the MCOs, it is a business decision. She did not know the percentage of cost Medicaid providers are being reimbursed. Senator Adams requested that Ms. Dolen provide members information to questions that she was not able to provide at the meeting.

Representative Gooch stated that the number on the Medicaid rolls is unstainable. The state should never provide benefits to Medicaid recipients for free that are better benefits than what the taxpayers can purchase.

In response to questions by Representative Moser, Mr. Ridenour stated that MCOs partner with the cabinet and other groups to identify ways to achieve better quality and better care for the Medicaid membership. Medicaid benefits are identified in the State Plan that is approved by CMS. CMS set the 16-bed limit policy. The 1115 waiver would allow Kentucky to expand the 16-bed limitation in 10 to 20 counties. The counties for the pilot project have not been identified yet. After 2014, MCOs could contract for therapy services and interventions to ensure successful treatment of addiction. MCOs, the state, and the General Assembly need to partner to find creative ways to address the problem of substance abuse. Ms. Dolen stated that she did not know how long the short-term treatment option for addiction services would last under the proposed 1115 waiver. Representative Moser asked that when the counties are identified that Ms. Dolen provide the information to the committee.

In response to a statement by Representative Wuchner, Ms. Dolen stated that she provide the HEDIS reports to the committee.

In response to a question by Senator Meredith, Ms. Dolen stated that Kentucky's any willing provider law also applies to Medicaid providers just as it does to providers who contract with commercial payers. If a provider accepts the same or similar terms and conditions being provided to everyone else, that is a provider's individual choice.

The committee recessed for lunch at 11:05 a.m. and reconvened at 1:03 p.m.

Legislative Agenda and Overview of the Cabinet for Health and Family Service

Vickie Yates Brown Glisson, Secretary, stated that the cabinet is the primary state agency responsible for protecting and promoting the well-being of Kentuckians through the delivery of health and human services. From birth certificates to death certificate and everything in between, someone in Kentucky utilizes a service provided by the cabinet. The cabinet has 7,200 full-time employees in 400 locations and 2,500 contractors. There is a local DCBS office and local health department in each county. The CHFS budget is $13 billion of the total state operating budget of $43 billion. In 2016, the cabinet's expenditures were $12,264,178,400 with $10,045,561,800 used for Medicaid expenses. Most of the cabinet funds are spent on grants, loans, and benefits. Major cabinet initiatives are transforming Medicaid, transforming adoption and foster care programs in Kentucky, and developing ways to combat Kentucky's substance abuse problem. Twice as many babies will be born to a Kentucky mother with an opioid addiction than in any other state.

Adria Johnson, Commissioner, Department for Community Based Services (DCBS), stated that the mission of the DCBS is to build an effective and efficient system of care with Kentucky's citizens and communities to reduce poverty, adult and child maltreatment, and the effects; advance personal and family self-sufficiency, recovery, and resiliency; assure all children have safe and nurturing homes and communities; and recruit and retain a workforce and partners that operate with integrity and transparency. The department also processes Medicaid eligibility applications and administers 30 programs and grants such as the Supplemental Nutrition Assistance Program (SNAP) State Supplementation Program for persons who are aged, blind, or have a disability, Temporary Assistance for Needy Family Block Grant, Child Care Assistance Program, Low Income Home Energy Assistance Program (LIHEAP), and others. DCBS serves approximately 4.4 million Kentuckians. The SFY revenue of $1,025,695,674 is funded through federal funds, general funds, restricted and/or agency funds, and tobacco settlement funds. High caseloads cause huge worker turnover rates. Kentucky law mandates that a parent or guardian authorizes and signs for a minor child to get a driver's license. There needs to be a law that allows a foster parent to be able to sign for a foster child's driver's license. The department wants the ability to place a child with a fictive kin. Currently, the cabinet cannot recommend placement of a child with someone who is not a family member.

Steve Miller, Commissioner, Department for Medicaid Services, stated that the Medicaid budget is $11 billion annually and covers approximately 1.4 million Kentuckians. Due to the decrease in federal match for the cost of the Medicaid expansion, the Medicaid expenses will increase to $750 million by state fiscal year (SFY) 2021-2022. Approximately $7 billion is spent on the MCO population. Kentucky ranks highest in the nation for Medicaid managed care profits. In January 2017, the MCOs negotiated a six-month contract with the cabinet. The MLR was raised to a minimum of 90 percent which means 90 cents of every premium given to an MCO has to be spent on Medicaid expenses. Some of the Kentucky HEALTH (Helping to Engage and Achieve Long Term Health) goals are to encourage individuals to become active participants and consumers of healthcare, transition people to seek employment and transition to commercial health insurance coverage, and ensure fiscal sustainability of Medicaid.

In response to questions by Senator Meredith, Commissioner Miller stated that the fee-for-service provider reimbursement rate for a combination of inpatient and outpatient care is 80 percent. The cabinet is not privy to the MCOs contractual arrangements with providers. Each MCO has to have an adequate provider network in each county. Some counties do not contract with all the MCOs which makes having an adequate provider network challenging. The Red Tape Reduction initiative is an in-house effort but outside feedback is welcome. Senator Meredith stated that there needs to be one clearinghouse for all five MCOs.

Eric Clark, Legislative Director, stated that as part of Governor Bevin's Red Tape Reduction, many of the 669 administrative regulations that have to be promulgated by the cabinet are required by statute. The goal is to identify which administrative regulations are or are not still relevant to run the cabinet efficiently. Approximately 60 percent of the administrative regulations have been reviewed. Information on the Red Tape Reduction initiative can be found at http://www.redtapereduction.com. Anyone can submit comments or ideas on how to reduce red tape within the cabinet. All submissions are reviewed and responded to by the cabinet.

In response to questions by Senator Danny Carroll, Commissioner Johnson stated that the cabinet is analyzing what are the appropriate number of regions. A permanent eligibility team has been established in Frankfort to deal with special cases that need more time and attention than standard processing that takes place in a call center. Secretary Glisson stated the cabinet is looking at workflow issues and establishing consistent regions throughout the cabinet and state. Deck Decker, Executive Director, Office of Administrative and Technology Services, Cabinet for Health and Family Services, stated that the cabinet is working on identifying why a recipient is being assigned from Medicaid to a MCO during recertification through Benefind. The cabinet is also working on issues with the 1915(c) and 1115(c) waiver populations. Secretary Glisson stated that the 1915(c) waiver population includes at-risk populations in the Home and Community Based Services (HCBS) waiver, the Acquired Brain Injury (ABI) waiver, the Michelle P waiver (MPW), and the Supports for Community

Living (SCL) waiver. These waivers need approval by the federal government. Executive Director Decker stated that the cabinet is trying to find solutions to help the Medicaid Management Information Systems (MMIS) and Benefind work in together. Benefind cannot process a claim without all the fields having information. Commissioner Johnson stated that a rapid response team has been put in place to address the Benefind issues. Representative Wuchner clarified that the Home and Community Based Services, Acquired Brain Injury, Michelle P, and the Supports for Community Living waivers have a fee-for-service reimbursement and are not part of the MCOs.

In response to questions by Representative George Brown, Commissioner Miller stated that able-bodied adults need to be active in their care, engaged in the community, and transition to commercial insurance (federal health plans). An individual would stay on Medicaid until they have the skills set and abilities and are no longer qualified for Medicaid and can move to a qualified health plan. If they are unable to make the transition, they will still have the Medicaid benefits through Kentucky HEALTH. Qualified health plans have protections for pre-existing conditions and unlimited lifetime limits. The goal of the 1115(c) waiver is to help individuals transition over to qualified health plans that are in place today and mirror the policies in the commercial market.

Wendy Morris, Commissioner, Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID), stated that the department is responsible for the administration of state and federally funded mental health, substance use disorder, developmental and intellectual disability programs and services through the Commonwealth. Its mission is to provide leadership, in partnership with others, to prevent disability, to build resilience in individuals and their communities, and to facilitate recovery for people whose lives have been affected by mental illness, substance abuse, intellectual disability, or developmental disability. The department contracts with the 14 Community Mental Health Centers (CMHCs) located throughout the state and provides oversight for the Supports for Community Living (SCL) waiver. In January 2017, a Release for Information (RFI) from the Substance Abuse and Mental Health Services Administration (SAMSHA) was released for a grant application for $10.5 million to help address the opioid epidemic. The department leads the cabinet's Opioid Response Workgroup, promotes efforts to decriminalize mental illness by diverting and transitioning people from the criminal justice system and into treatment, and supporting implementation of evidence-based behavioral health practices for adults and children through funding, technical assistance, and performance based contracts.

In response to a question by Senator Adams, Commissioner Morris stated that the department is watching legislation dealing with assertive outpatient treatment and there is always a need for funding to transition from institutions to a robust system of care in the community.

Dr. Connie White, MD, Senior Deputy Commissioner, Department for Public Health (DPH), stated that there are 61 health departments in Kentucky, some independent. The department's budget is $36 million and employs 2,500 workers. The goal is to improve the health and safety of the citizens of Kentucky by using high quality data. The department is working on an electronic health records and early childhood development initiatives. There are 179 administrative regulations promulgated by the department. There are 144 programs administered by the department covering a broad range of areas. Kentucky has the highest number of cases of hepatitis C.

Representative Wuchner stated that awareness needs to be increased about adolescent and young adults considering and making a plan to commit suicide. Dr. White stated that the DPH wants to make sure a newborn goes into a nurturing environment where they will be able to take care of themselves appropriately.

Deborah Anderson, Commissioner, Department for Aging and Independent Living, stated that the populations served are older adults and individuals of all ages with disabilities and wards of the state. The department receives federal and state funding. The Aging and Disability Resource center receives approximately 32,000 phones calls annually. The state Long Term Care Ombudsman makes 49,000 visits annually to visit approximately 49,000 residents. Meals are provided to homebound individuals as well as senior citizen centers. Supportive services are provided to help keep people in their homes longer. Assisted living facilities are not Medicaid funded and cost $2,500 to $5,000 per month. There are 100 to 110 assisted living communities statewide. The number of active clients has increased from 2,100 to 4,309 over the past 8 years and continues to trend upward, and budget constraints limit the ability to continue to cover the trend. Caseload sizes for state guardians is 60 to 80 with the national recommendation being 20. Approximately 10 to 12 percent of clients have a history of violence and/or substance abuse. In 2016, 4,700 grandparents were served in the Kentucky Caregiver Program. Out-of-state placements remains necessary because Kentucky does not have a secure setting for traumatic brain injury patients. Approximately 2,700 traumatic brain injury patients are served per year. Nearly all programs for aging services currently have waiting lists.

Robert Silverthorn, Inspector General, Office of the Inspector General (OIG), stated that the OIG licenses and regulates health care and child care providers, long-term care facilities, and child adoption and placement agencies. It investigates fraud, waste, abuse, mismanagement or misconduct by CHFS clients, employees, vendors, providers, and contractors. The office coordinates enforcement of federal law as state survey agency for the CMS and operates the Kentucky All Schedule Prescription Electronic Reporting (KASPER) Program and enforces applicable laws. Goals of the office are to sync state and federal drug schedules for consistency, include toxicology reports within KASPER, and house KASPER in the Kentucky Office of Benefit and Information Exchange.

Paul Coomes, Executive Director, Office of Health Policy (OHP), stated that OHP administers the Certificate of Need (CON) Program, maintains and publishes data on health care facilities and uses, seeks and administers many federal grants, manages several external contracts, and coordinates and develops health policy within the cabinet. A health plan on data needs to be developed. OIG receives $455,000 in general funds, $572,000 for CON application fees, and $1.5 million in federal funds.

John Watkins, Deputy Executive Director, Office of Health Benefit and Information Exchange, stated that in October 2016, Kentucky received approval from CMS to transition from kynect to the federal healthcare.gov. The office is still responsible for outreach, training, and education to consumers during transition. The office anticipates the same number of enrollees on the federal exchange as the state exchange has had in past years. The Kentucky Health Information Exchange (KHIE) is a statewide secure electronic network for patient electronic medical records to be shared among all providers. KHIE compiles a common patient record from disparate provider electronic medical records (EMRs) for the purpose of improving coordination and curtailing costs by reducing duplicative tests and exams. KHIE acts as a data intermediary for the DPH by routing data from provider EMRs to DPH for population health purposes.

Jackie Richardson, Executive Director, Commission for Children with Special Health Care Needs, stated that the functions of the commission are being a one-stop shop for children with complex health needs, seeing patients in a multidisciplinary setting, filling the gaps in services for children and youth with special health care needs, and enhancing services not duplicating them. There are 11 offices and 7 satellite locations statewide. Every child is within a 1.5 hour drive from a commission office. The goal is to expand and reach out to touch as many children with special healthcare needs by continuing collaborations with providers, state partners, school systems, universities, and telehealth services.

In response to a question by Representative Wuchner, Executive Director Richardson stated that the commission provides a parent in a federally qualified health center (FQHC) in Louisville to be a support to other parents.

Steve Veno, Commissioner, Department for Income Support, stated that the Disability Determination Services (DDS) program determines medical eligibility for Kentucky residents who apply for Social Security or SSI Disability benefits set by the Social Security Administration. SSA contracts with states to administer determinations process. Kentucky is the only state in the region piloting the use of telework for the Medical Consultants staff. The goal is to expand this to other DDS staff. The Child Support Enforcement (CSE) program establishes paternity, child and medical support, modifies support obligations, and enforces and collects child and medical support for individuals who request child support services or are receiving public assistance. State funding is needed to replace the 26-year old Kentucky Automated Support Enforcement System (KASES).

In response to questions by Senator Danny Carroll, Deputy Secretary Feeley stated that the waiting list for the Michelle P Waiver (MPW) is long, and if someone becomes ineligible, it would take a long time to get back on the waiver. There is currently no determination of need for individuals on the waiting list. Secretary Glisson stated that the 1915(c) waivers are being reviewed by the cabinet.

In response to a comment by Representative Wuchner, Secretary Glisson stated that there are only a certain amount of funds available, and the cabinet wants to make sure the funds are being used as wisely as possible. If an able-bodied individual with no dependents can transition off Medicaid, the funds could possibly be used to increase services for the 1915(c) waivers.

Tim Feeley, Deputy Secretary, stated that the cabinet also has an Office of Legal Services, Office of Ombudsman, and Office of Hearings and Appeals. The cabinet provides oversight of the Family Resource and Youth Services Centers (FRYSCs) and AmeriCorp & Volunteer Services. The cabinet wants to be open and transparent and work with legislators on issues.

Consideration of Referred Administrative Regulations

The following administrative regulations were referred for consideration: 10 KAR 6:010 – establishes procedures for the governance of the Early Childhood Advisory Council and procedures for disbursement of funds, in accordance with KRS 200.700(1), from the Early Childhood Development Fund to programs that support and promote early childhood development; 201 KAR 21:025 – establishes the duties of the officers, field personnel, and administrative staff, establishes the terms and procedure for election of officers, and establishes compensation of the Kentucky Board of Chiropractic Examiners;

201 KAR 21:041 – establishes the procedures relating to application for licensure, license renewal, and fees for practitioners of chiropractic in Kentucky; 908 KAR 2:040 - establishes hospital district assignments and updates the forensic psychiatry evaluation process; 908 KAR 3:081 – repeals 908 KAR 3:080, 3:090, 3:100, 3:120, 3:130, 3:140, 3:150, 3:160, and 3:180 for consistency with other cabinet regulations, to eliminate redundancy, and to remove antiquated policy; 921 KAR 3:030 – establishes the application and the voter registration processes used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP); 921 KAR 3:050 – establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP; and 922 KAR 1:360 & E – establishes five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification of the appropriate level of care, and procedures for determination of components of the model program cost analysis. An ordinary administrative regulation would not allow the agency sufficient time to increase payment rates for residential child-caring facilities to better meet the actual costs in providing care, thereby jeopardizing placement capacity and service provision to vulnerable children in state custody.

Adjournment

There being no further business, the meeting was adjourned at 2:45 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes

January 30, 2017

Call to Order and Roll Call

A special meeting of the Interim Joint Committee on Education was held on Monday, January 30, 2017, at 1:04 p.m., in Room 154 of the Capitol Annex. Senator Mike Wilson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Mike Wilson, Co-Chair; Representative John Carney, Co-Chair; Senators Danny Carroll, David P. Givens, Jimmy Higdon, Alice Forgy Kerr, Stephen Meredith, Gerald A. Neal, Reginald Thomas, Johnny Ray Turner, Stephen West, and Max Wise; Representatives Danny Bentley, Regina Bunch, Mark Hart, Mary Lou Marzian, Reginald Meeks, Charles Miller, Phil Moffett, Melinda Gibbons Prunty, Jody Richards, Steve Riley, Attica Scott, James Tipton, Russell Webber, and Jill York.

LRC Staff: Jo Carole Ellis, Janet Stevens, Joshua Collins, Yvette Perry, and Maurya Allen.

Chairman Wilson welcomed new and returning members, with a special welcome to new co-chair Representative John Carney. He informed members that they had received a copy of the Annotated 2016 Kentucky School Laws published and distributed by the Kentucky Department of Education with their meeting packets.

Approval of Minutes of the November 14, 2016, Meeting

Upon a motion from Representative Meeks and second by Representative York, the minutes were approved by voice vote.

Discussion of 2017 Senate Bill 50

Senator Damon Thayer presented Senate Bill 50, pertaining to the school calendar. The bill does not contain a mandate but provides school districts with more flexibility regarding their school calendar. The bill was crafted through compromise to provide local school districts an incentive to start school later in August. Senator Thayer said this was a response to several different issues. First, many parents have expressed their dissatisfaction with school starting in early August, claiming that their summer holiday plans are held hostage by the school calendar and that summer time spent with their children has been stolen from them. Second, the tourism industry in Kentucky suffers because of early school start dates due to loss of business and loss of student workers (e.g. high school students working as municipal pool lifeguards). He cited the high heat in August that negatively impacts students on non-air-conditioned buses and in poorly air-conditioned classrooms. Energy costs for schools are drastically higher in August than September because of the strain of air-conditioning in August heat.

Senator Thayer said some of the benefits of a later school start date are higher test scores and increased economic revenues. On student test scores, the top 10 states in terms of ACT scores all have later start dates. On the economy, an estimated $432 million is lost in tourism revenue and lost pay because of an early school start date. Senate Bill 50 addresses these issues by relieving school districts of the statutory requirement of 170 instructional days, making them subject only to the requirement to have 1,062 instructional hours if they begin school the Monday after August 26. The bill creates a school calendar committee, which would provide calendar recommendations to a school superintendent who can then present those suggestions to the local school board.

Senator Thayer said that the trend toward later start dates has already begun in some school districts, and he hopes this bill will provide even more flexibility for schools. Education consultants have provided sample calendars that would begin after August 26, include all required professional development and holidays, and still allow for a release date around Memorial Day.

Responding to a question from Chairman Wilson, Senator Thayer answered that the bill is permissive and completely voluntary for school districts. If they choose to exercise the provision and determine that it is not appropriate for them, school districts can return to an earlier start date the next year with no penalty. One potential change that this bill allows is for schools to have longer school days to meet the instructional hour requirement.

Discussion of 2017 Senate Bill 1

Chairman Wilson testified regarding Senate Bill 1. With him at the table was Dr. Joe Burks, education policy expert for Senate Majority. Senator Wilson explained that the overarching purpose of the bill is to purge No Child Left Behind waiver language; mirror the federal Every Student Succeeds Act (ESSA); and restore 2009 Senate Bill 1 to its original design and intent of aligning K-12 academic standards, state assessments, and school accountability. The bill is intended to increase postsecondary readiness of Kentucky graduates, reduce bureaucratic burdens on educators, and foster state and local decision-making. This is in line with the intent of ESSA, which also returns greater control of schools to the state and local levels. Senate Bill 1 included more deletions than additions.

Senator Wilson discussed a flow chart that illustrated the Kentucky state standards and assessments review structure proposed in the bill. It would begin with public review in each of four content areas: language arts, math, science, and social studies. A Kentucky Board of Education (KBE) would be tasked with setting up an online forum for public comments to be collected by an independent third party selected by KBE. An advisory panel would be established for elementary, middle, and high school levels for each subject area. The advisory panels would consist of six Kentucky teachers of subject and grade level and one representative from Kentucky higher education. These advisory panels would make recommendations to the appropriate Standards & Assessments Review and Development (SARD) committee regarding changes in standards or alignment adjustments for assessments.

A SARD committee will be established for each of the content areas comprised of six Kentucky teachers in the subject area and two representatives of Kentucky higher education, one of whom must be from a public institution. The purpose of the SARD committees will be to review the advisory panels' findings and make recommendations to revise or replace existing standards and any needed alignment adjustments for assessments. Each committee will then send these recommendations to the Standards

& Assessments Recommendation committee comprised of three gubernatorial appointees, three senators (appointed by the Senate President), three representatives (appointed by the House Speaker), and the Commissioner of Education. The purpose of this committee is to present the recommendations to the House and Senate Education Committees, review processes to ensure all feedback has been heard, and forward recommendations to KBE.

The KBE would have final review of the recommendations before adopting the Kentucky academic standards and assessments and be responsible for implementation. New state standards and corresponding aligned assessments shall be implemented in Kentucky public schools no later than the second academic year following the review process. Senator Wilson said that the intent is to reduce the amount of testing required of students and to ensure that the tests align exclusively with Kentucky standards. It was never his intent to negatively impact arts education and some areas where this is implied in the bill will be addressed in a forthcoming committee substitute. Senator Wilson said that he had emailed every certified Kentucky educator asking for feedback on the bill in May 2016 and received over 500 responses, largely positive. Teachers expressed feeling burdened by the current bureaucracy and looked forward to the changes proposed by the bill to alleviate that burden. He credited Senator Kerr with coining the nickname "the teachers can teach" bill for Senate Bill 1 in a previous session.

Regarding state testing, Senator Wilson said that the tests will still be done on the existing schedule in reading, writing, math, social studies, and science. The testing reports will additionally include an operational subset of actual items from each administered test. This will provide teachers and schools a more accurate understanding of what is tested. And the school accountability measures will be more accurate reflections of "productivity" rather than "activity." All schools will be held accountable for growth by student subgroup in tested content areas and for progress in proficiency for English language learners. Currently, school districts with very high populations of English language learners are negatively impacted by the requirement to count their scores after only one year. To address this, Senate Bill 1 provides that the scores of English language learners are not incorporated until after three years. All schools are also ranked on school safety and climate while high schools only are ranked based on graduation rate and genuine measures of postsecondary readiness. The accountability measures will allow for KDE to annually evaluate school performance and academic growth based on a variety of measures to avoid oversimplification based on a single score. It also introduces the option to allow competency and performance-based assessments.

Senator Wilson addressed some of the changes that are the result of ESSA. Postsecondary readiness replaces the term "college and career readiness" in the language of the bill and can be measured by credentials, rather than by an assortment of additional tests. Program reviews that are costly, time-consuming, and ineffective will be removed. However, language in this section of the bill which could be construed as damaging to visual and performing arts will be removed or modified. Changes will be made to the assistance provided to lower performing schools. The bill removes the previous federal turnaround model and "Focus and Priority Schools" nomenclature will be replaced with Targeted Support and Improvement and Comprehensive Support and Improvement nomenclature. A Targeted Support and Improvement (TSI) school will be identified by KDE as having a consistently underperforming subgroup of students and a Comprehensive Support and Improvement (CSI) school will be identified by KDE for one of the following: lowest performing 5 percent in its level across the state, graduation rate below 80 percent, or failure to exit TSI status. Schools in these categories will have the opportunity to pursue local decision-making opportunities for turnaround innovation before being subject to state audits, sanctions, or prescriptive interventions. Options include: choosing KDE as a turnaround agent, reorganizing internal resources and structures, or contracting with an external turnaround agent. The turnaround plan must be approved and monitored by KDE and failure to exit CSI status within three years will result in more rigorous and prescriptive intervention by KDE.

Senator Wilson addressed teacher growth and effectiveness. KDE will continue to establish a statewide framework for teaching, but school districts will develop, customize, and implement a personnel evaluation system aligned with that framework. Staff evaluations will be performed at the local level and will not include student growth data nor be counted as a component of school accountability.

Chairman Carney thanked Senator Wilson for his collaboration and efforts to make this bill satisfactory to all parties and opened the floor for questions.

Responding to a question from Senator Higdon, Senator Wilson said that the identification of schools in the lowest 5 percent as CSI schools is a federal requirement, and there is not a waiver to allow a state to disregard a bottom five percent ranking if a school meets a certain benchmark. He agrees that it is unfortunate that whenever one school advances out of the lowest 5 percent, another school will invariably take its place because of the nature of the requirement. Senator Wilson said further work will need to be done to address this issue.

Responding to a comment from Representative Moffett that graduation rates seem to be an inaccurate measure of postsecondary readiness considering so many students graduate without attaining proficiency at math or reading level, Senator Wilson agreed there are other measures that are incorporated into school success aside from graduation rate.

Representative Bunch commented that teachers will be very grateful for this bill, but that many arts teachers still seemed concerned. She suggested that the legislators needed to be better at communicating what the bill actually does. She also complimented the provision of the bill which allows for individualization of postsecondary readiness measures based on local workforce needs.

Responding to a question from Senator West, Senator Wilson said that the comprehensive profile reports which are replacing program reviews will be designed by KDE per content area and will be filed annually.

Responding to a question from Representative Tipton, Senator Wilson explained that there are agencies which specialize in turnaround of failing or underperforming schools. He added that the University of Detroit Mercy has a degree program which specifically trains individuals to turnaround schools. Some strategies for school turnaround can include strengthening leadership which experts can identify or provide. He added that the hiring of an external turnaround entity would still have to be vetted and approved by KDE.

Responding to another question from Representative Tipton, Senator Wilson said that the same provisions which applied to "focus and priority schools" remain for CSI schools, in that site based decision making councils are removed when a school enters CSI status. However, they can be reinstated when a school exits CSI status. This allows for a shift of decision making to the administration during turnaround.

Representative Meeks asked the chair if concerned citizens from Jefferson County could be allowed to speak regarding the bill and pose questions. Chairman Carney answered that there was not an opportunity in this meeting, however in future meetings of the Senate and House Standing Committees on Education, members of the public would be allowed time. He encouraged concerned citizens to speak with their representatives or with Chairman Wilson or himself at any time.

Senator Wise commented that he had held a town hall style meeting to receive constituent feedback on education bills in the current session and had heard no negative comments about Senate Bill 1. He asked whether the provision to allow a foreign language course, career and technical course, or a computer technology or programming course to count for a humanities credit was still in the bill. Senator Wilson assured him that that provision is being removed in a proposed committee substitute.

In response to comments and questions regarding kindergarten readiness from Representative Marzian, Senator Wilson said that he agreed that reading and early childhood education set the tone for later school success, however, this bill only addresses K-12 education. He suggested that another bill would need to address early childhood education, specifically funding for early childhood reading programs.

Responding to a question from Representative Scott, Senator Wilson said that the SARD committee does not serve any other purpose than reviewing the recommendations from the advisory panels. However, he feels it is a necessary step to prevent "cut-and-paste" standards similar to past practices.

Senator Higdon commented that the Kentucky School Laws publication seemed a large expense that might be saved if it was not required to be published and distributed to members. Representative Richards agreed that many print publications are unnecessary when the information can be made available online and suggested the committee look into the possibility of transitioning to an all-electronic method to save costs.

Senator Givens complimented and thanked all those who had worked on Senate Bill 1. He said the dialogue had been very constructive and significant. He understood that for something of this nature there had to be a great deal of compromise but it had been well done and the bill was vitally important work.

Chairman Carney announced that the first meeting of the House Standing Committee on Education will be Tuesday, February 14, 2017, at 8:00 a.m.

Review of Administrative Regulations

Mr. Travis Powell, General Counsel, Council on Postsecondary Education (CPE), presented administrative regulation 13 KAR 4:010 & E State authorization reciprocity agreement. This regulation arose from 2016 Senate Bill 140 to allow Kentucky to join a state authorization reciprocity agreement, which currently includes 47 states. It allows institutions to operate in other states and offer distance education as long as they meet the nationwide standards. This regulation allows Kentucky institutions to join and sets forth the process by which they can start offering distance education in the 46 other states. Currently, there are 32 Kentucky institutions which have joined the over 1,000 institutions nationally. This agreement also allows all participating institutions to operate in Kentucky without having to go through the regular regulation process and includes the ability to advertise and have limited clinical placements in the state. The emergency regulation allows CPE to begin accepting applications more quickly.

There being no questions, Mr. Powell continued, presenting 13 KAR 2:060 Degree program approval; equal opportunity goals. This regulation is an amendment to the equal opportunity goals regulation and has a provision that CPE will postpone the approval of any new academic programs unless the institution meets its equal opportunity goals. Five years ago, a new process was implemented when Kentucky was removed from the federal desegregation plan. This regulation reflects the revised process and incorporates a more holistic approach which takes into consideration campus diversity, campus climate, student success, and retention and graduation rates of minority and low income students. If institutions can meet their goals in these areas they can introduce new academic programs with the approval of CPE. There were no questions on this regulation.

Mr. Kevin Brown, Associate Commissioner and General Counsel, KDE, and Ms. Leslie Slaughter, Executive Advisor, KBE, presented three administrative regulations. The first was 702 KAR 3:171, a repeal of 702 KAR 3:170 Educational television equipment purchases. This regulation originally pertained to early models of educational televisions which were large and heavy. It established minimum safety requirements for the carts used to hold and move the televisions and ensured that the televisions were compatible with Kentucky Educational Television (KET) broadcast signal. Today's television models are significantly lighter and more compact so the regulation is obsolete. KDE worked with KET and together they agreed this regulation could be repealed. It is one of approximately seven or eight regulations that KBE voted to repeal.

Ms. Slaughter presented 705 KAR 4:231 General program standards for secondary career and technical education and 780 KAR 4:012, repeal of 780 KAR 4:010 which established the broad, general standards for all career and technical education programs to qualify for federal funding. She told members that these resulted from 2013 House Bill 217, which merged the two secondary career and technical systems into a single system under the purview of KDE. Since that time, they have worked to simplify the regulatory scheme for career and technical education programs. In many cases there were identical, duplicate regulations that can now be combined into a single comprehensive regulatory framework for secondary career and technical education programs. These are not curriculum or assessment standards, but rather program standards that focus on things such as the incorporation of work-based learning and facility requirements. Any pertinent information in the repealed regulation is going to be incorporated into the proposed regulation 705 KAR 4:231. A chart is available to members and the public that highlights the changes, most of which are technical updates. There were no questions on these regulations.

Senator Givens commented about the vital role that regulations serve and the responsibility that members have to ensure the regulations go through the proper procedures. There cannot be a motion to accept a regulation, but rather to find it deficient, and the motion would require a majority vote. He informed members that, before a regulation comes before the committee, it has already been before the Administrative Regulation Review Subcommittee.

Chairman Wilson thanked Senator Givens for his comment and added that regulations can also be amended by the committee or deferred for later consideration. Both of these actions would also require agreement from the regulations' originating agency. He announced that the Senate Standing Committee on Education will be meeting on Thursday, February 9, 2017, at 11:30 a.m.

There being no further business, the meeting adjourned at 2:26 p.m.

GOVERNMENT CONTRACT REVIEW COMMITTEE

Committee Minutes

January 10, 2017

Call to Order and Roll Call

The Government Contract Review Committee met on Tuesday, January 10, 2017, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

<u>Members:</u> Senator Max Wise, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julie Raque Adams, and Paul Hornback; Representatives Chris Fugate, Stan Lee, and Diane St. Onge.

<u>Guests:</u> Stacy Phillips, Veronica Cecil, Eric Pelfrey, Tina Swansegar, and Joe Barrows.

<u>LRC Staff:</u> Kim Eisner, Jarrod Schmidt, and Kim Smith.

<u>ELECTION OF HOUSE MEMBER CO-CHAIR</u>

Senator Wise opened the floor for nominations from a House member for the position of co-chair.

Representative St. Onge moved to nominate Representative Lee as co-chair, which was seconded by Representative Horlander. Representative Horlander moved that nominations for co-chair cease and that Representative Lee be elected by acclamation, which was seconded by Representative Fugate. Representative Lee was elected by acclamation.

A motion was made by Representative Horlander to approve Minutes of the December 2016, meeting of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

<u>THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:</u>

<u>ALCOHOL AND DRUG COUNSELORS, BOARD OF CERTIFICATION OF</u>:

Brian Fingerson RPH, Inc., 1700000995.

<u>ATTORNEY GENERAL, OFFICE OF THE</u>:

Tichenor and Associates, 1700001046; University of Louisville Research Foundation, 1700001047.

<u>CABINET FOR HEALTH AND FAMILY SERVICES</u>:

Trisha Zeller, 1600003010-1.

<u>CORRECTIONS, DEPARTMENT OF</u>:

Community Education Centers, 1700000895; Charles T. Mitchell Company, 1700001032.

<u>CRIMINAL JUSTICE TRAINING, DEPARTMENT OF</u>:

Larry D. Ball, LLC, 1700000997.

<u>DENTISTRY, BOARD OF</u>:

Shannan M. White, 1700000982; T. Clay Mason, 1700000983.

<u>DEPARTMENT FOR INCOME SUPPORT</u>:

Marietta E. Enriquez, MD, 1700000868; G. Stephen Perry, EDD, 1700000876; Frances Janelle McNeal, 1700000877; Clarissa Roan-Belle, 1700000878.

<u>EDUCATION PROFESSIONAL STANDARDS BOARD</u>:

Capital Link Consultants, Greg Coker Enterprises, LLC, 1700001098.

<u>FINANCE AND ADMINISTRATION CABINET</u>:

Merlinos & Associates, Inc., 1700001010.

<u>FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING</u>:

Tate Hill Jacobs Architect, Inc., 1700000947.

<u>JUSTICE CABINET</u>:

Axis Forensic Toxicology, Inc., 1700001004.

JUVENILE JUSTICE, DEPARTMENT OF:

Lindsey Apple, 1700001069.

KENTUCKY HOUSING CORPORATION:

Value Tech Realty Services, Inc., 2017-15; T. Ronald Brown, Research & Analysis, 2017-16; Vogt Santer Insights, Ltd., 2017-17.

LIBRARIES & ARCHIVES, DEPARTMENT FOR:

Saroj Ghoting, 1700000897.

NORTHERN KENTUCKY UNIVERSITY:

Shen Milson & Wilke, LLC, 2017-182; Zerhusen Holten Commissioning, 2017-185.

TREASURER, OFFICE OF THE KENTUCKY STATE:

Treasury Services Group, LLC, 1700000448.

UNIVERSITY OF KENTUCKY:

GBBN, LLC, A171100; JRA Architects, A171120; Ross Tarrant Architects, Inc., A171130; Rainforest Alliance, K17-223; SC Search Consultants d/b/a BeecherHill, K17-224; JMIS Kentucky, K17-225.

UNIVERSITY OF LOUISVILLE:

Brailsford & Dunlavey, Inc., 17-072; Project Control of Texas, Inc., 17-074; Huron Consulting Services, LLC, 17-075.

VETERANS AFFAIRS, DEPARTMENT OF:

Multi, 1700001088

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

ADMINISTRATIVE OFFICE OF THE COURTS:

Stites and Harbison, 1600003953.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Lifeline Homecare, Inc., 1600003962; Independence Assistance Services of the Bluegrass, 1600003963; Nicholas County Senior Citizens, 1600003966; Harrison County Circuit Court, 1600003967; American Health Management, Inc., 1600004009.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

AMS Temporaries, Inc., 1600001672; Crown Services, Inc., 1600001673; Guardian Angel Staffing Agency, 1600001674; Guardian Healthcare Providers, 1600001675; M. S. M. Solutions, 1600001676; SHC Services, Inc., 1600001677.

DEPARTMENT OF INSURANCE:

INS Consultants, Inc., 1600002568.

EASTERN KENTUCKY UNIVERSITY:

Crowe Horwath, LLP, 18-014; Multi, 18-038; Multi, 18-042.

ECONOMIC DEVELOPMENT - OFFICE OF THE SECRETARY:

Aecom Technical Services, Inc., 1400003167.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

EOP Architects, PSC, 1200001615; Schnabel Dam Engineering, Inc., 1200002448; Omni Architects, 1400000794; Sherman Carter Barnhart, 1400001413; Paladin, Inc., 1400001416; Paladin, Inc., 1600000033.

NORTHERN KENTUCKY UNIVERSITY:

Multi, 2017-100.

TRANSPORTATION CABINET:

HDR Engineering, Inc., 1300001736; Stantec Consulting Services, Inc., 1500000902; Manchester Memorial Hospital, 1600002045; Intequal-Duncan Appraisal, 1600002183; St. Elizabeth Business Health, 1600002772; American Engineers, Inc., 1600003407; GRW Engineers, Inc., C-01232797-1; HMB Professional Engineers, Inc., C-99005065-6.

UNIVERSITY OF KENTUCKY:

THP Limited, Inc., A131110; Ross Tarrant Architects, Inc., A131170; Bell Engineering, A161150.

VETERANS AFFAIRS, DEPARTMENT OF:

Multi, 1600001302.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:

ADMINISTRATIVE OFFICE OF THE COURTS:

Morehead State University, 1700001012; Morehead State University, 1700001013; Morehead State University, 1700001014; Morehead State University, 1700001015; Morehead State University, 1700001017; Morehead State University, 1700001018; Morehead State University, 1700001019; Pennyroyal Mental Health, 1700001118; Pennyroyal Mental Health, 1700001120; Kentucky River Community Care, Inc., 1700001121; Hope Center, 1700001122; Lifeskills Corporation Offices, 1700001123; Four Rivers Behavioral Health Corporate Office, 1700001126; Chrysalis House, Inc., 1700001127; Bluegrass Prevention Center, 1700001128.

AGRICULTURE, DEPARTMENT OF:

Clinton County Fair, 1700000924; Nelson County Fair, 1700000926; Hancock County Fair, 1700000927; Isom Area Day Festival, 1700000928.

ATTORNEY GENERAL, OFFICE OF THE:

Necco, 1700000083; KVC Behavioral Healthcare Kentucky, Assignee for Croney & Clark, 1700000086; Mountain Comprehensive Care Center, Inc., 1700000087; Pathways, Inc., 1700000088; Ramey Estep Homes, Inc., 1700000089; Chrysalis House, Inc., 1700000091; Children's Home of Northern Kentucky, 1700000093; Transitions, Inc., 1700000094; Volunteers of America Mid-States, Inc., 1700000095; Kentucky Housing Corporation, 1700000096.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Dave Thomas Foundation for Adoption, 1700001091; Child Care Council of Kentucky, 1700001130.

EDUCATION, DEPARTMENT OF:

Carroll County Board of Education, 1700000630; New Teacher Center, 1700000681; Collaborative for Teaching, 1700000735; Anderson County Board of Education, 1700000756; Marion County Board of Education, 1700000998; Ashland Independent Board of Education, 1700001049; Berea Independent Board of Education, 1700001050; Calloway County Board of Education, 1700001051; Simpson County Board of Education, 1700001052.

FISH & WILDLIFE, DEPARTMENT OF:

Kenlake Marina Corporation, 1700000958.

INFRASTRUCTURE AUTHORITY:

Barren River Area Development District, Inc., 1700000667; Bluegrass Area Development District, Inc., 1700000672; Big Sandy Area Development District, 1700000675; Buffalo Trace Area Development District, 1700000676; Gateway Area Development District, 1700000677; Green River Area Development, Inc., 1700000678; Cumberland Valley Area Development, Inc., 1700000680; Kentuckiana Regional Planning & Development Agency, 1700000682; Kentucky River Area Development, 1700000683; Lake Cumberland Area District, 1700000684; Lincoln Trail Area Development District, Inc., 1700000685; Northern Kentucky Area Development District, Inc., 1700000686; Pennyrile Area Development District, Inc., 1700000688; Purchase Area Development District, Inc., 1700000689.

LIBRARIES & ARCHIVES, DEPARTMENT FOR:

University of Kentucky Research Foundation, 1700000891.

MILITARY AFFAIRS, DEPARTMENT OF:

Hopkinsville Surface & Storm Utility, 1700000843; Louisville & Jefferson, MSD, 1700000880; Louisville & Jefferson, MSD, 1700000884; Louisville & Jefferson, MSD, 1700000886; Louisville & Jefferson, MSD, 1700000888; Multi, 1700000957.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

SOAR, 1700000565; Boone County Fiscal Court, 1700000993; City of Fleming Neon, 1700001008; McCracken County Fiscal Court, 1700001011; City of Campbellsville, 1700001033; Bell County Fiscal Court, 1700001034; Knott County Fiscal Court, 1700001054; Ohio County Fiscal Court, 1700001056; Pulaski County Fiscal Court, 1700001078; Carter County Fiscal Court, 1700001093; Daviess County Fiscal Court, 1700001094; City of Lawrenceburg, 1700001097.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

AGRICULTURE, DEPARTMENT OF:

Multi, 1500001218.

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:

University of Louisville, 1600001325.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Kentucky River Foothills Development Council, Inc., 1600003959; Bluegrass Community Action, 1600003960; Franklin County Council On Aging, Inc., 1600003961; Estill County Fiscal Court, 1600003964; Lincoln County Senior Citizens Center, Inc., 1600003965; Legal Aid of the Bluegrass, 1600003968; Nursing Home Ombudsman Agency of the Bluegrass, Inc., 1600003969; Bluegrass Community Action Age, 1600004007; Bluegrass Community Action, 1600004026; Kentucky River Foothills Development Council, Inc., 1600004034.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

Northern Kentucky Regional Mental Health Mental Retardation Board, 1600001867; Bluegrass. Org, 1600001874.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

City of Carlisle Police Department, 1600002112; City of Georgetown, 1600002113; City of Hazard, 1600002114; Laurel County Sheriff Department, 1600002115; Kentucky State Police Headquarters, 1600002117.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Mt. Sterling Water and Sewer System, 1600002204.

DEPARTMENT FOR NATURAL RESOURCES:

UK Research Foundation, 1600003237.

EDUCATION, DEPARTMENT OF:

Wayne County Board of Education, 1600003131; Shelby County Board of Education, 1600003132; Kentucky Science and Technology Corporation, 1600003686; Henderson County Board of Education, 1700000852.

INFRASTRUCTURE AUTHORITY:

Lawrence County Fiscal Court, 1400001630.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Union County Fiscal Court, 1300001535; Menifee County Fiscal Court, 1300002327; City of Fulton, 1300002601; City of Earlington, 1400003336; Ravenna City of PA, 1500000010; Wolfe County Fiscal Court, 1500000649; Garrard County Fiscal Court, 1500000975; Pendleton County Fiscal Court, 1500001402; Calloway County Fiscal Court, 1500002691; Union County Fiscal Court, 1600000433.

TRANSPORTATION CABINET:

Kentucky Transportation Center, 1600002156.

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:

DEPARTMENT FOR MEDICAID SERVICES:

Milliman, Inc., 1700001102. Stacy Phillips and Veronica Cecil discussed the contracts with the committee. A motion was made by Senator Hornback to consider the contracts as reviewed. Representative Horlander seconded the motion, which passed.

TRANSPORTATION CABINET:

Northrop Grumman Systems Corporation, 1700001007. Eric Pelfrey and Tina Swansegar discussed the contracts with the committee. A motion was made by Representative St. Onge to consider the contracts as reviewed. Senator Hornback seconded the motion, which passed.

EXEMPTION REQUEST:

KENTUCKY 9-1-1- SERVICES BOARD:

The Kentucky 9-1-1 Services Board requested an exemption from the committee's routine review process for all purchase orders issued as instruments of obligation for grant funds and will provide quarterly reports and requests an exemption from the two year contracting restrictions. Joe Barrows discussed the exemption request with the committee. A motion was made by Senator Raque Adams to grant the request to December 31, 2017. Representative St. Onge seconded the motion, which passed without objection.

There being no further business, the meeting adjourned at 10:41 a.m.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE

Minutes of the 11th Meeting of the 2016 Interim

December 7, 2016

Call to Order and Roll Call

The 11th meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, December 7, 2016, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Wilson Stone, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Wilson Stone, Co-Chair; Senators Carroll Gibson, Paul Hornback, Dennis Parrett, and Whitney Westerfield; Representatives Tom McKee, and Terry Mills.

Guests: Warren Beeler, Executive Director, Governor's Office of Agricultural Policy; Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy; Van Ingram, Executive Director, Kentucky Office of Drug Control Policy; Heather Wainscott, Branch Manager, Kentucky Office of Drug Control Policy; Amy Andrews, Program Coordinator, Kentucky Agency for Substance Abuse Policy (KY-ASAP); and Representative Dennis Keene.

LRC Staff: Lowell Atchley, Kelly Ludwig, and Marielle Manning.

Upon motion made by Representative McKee and seconded by Representative Mills, the November 2, 2016 minutes were approved by voice vote and without objection.

Co-Chair Representative Stone recognized Senator Gibson, Representative McKee, Representative Mills, and Representative Denham with a citation honoring their time served on the Tobacco Settlement Agreement Fund Oversight Committee.

Governor's Office of Agricultural Policy

Warren Beeler, Executive Director, and Bill McCloskey, Deputy Executive Director, Governor's Office of Agricultural Policy, presented projects receiving the Agricultural Development Board approval at its November 2016 meeting. These included a school poultry science program, animal composting facility expansion, kenaf processing, on-farm investments, shared-use equipment, and major statewide or regional projects.

The committee received reports on three regional projects: (1) Casey County Board of Education, approved by the board for $13,775 in Casey County funds to purchase materials to expand the existing poultry science program at the Casey County middle and high schools; (2) Large Animal Composting of Kentucky (LACKY), approved by the board for $10,100 in Casey County funds for the expansion of its fallen animal composting site and to purchase sawdust and rock to enlarge the compost pad; and (3) Pumpkin Vine Creek Farm, LLC, approved by the board for $500 in Madison County funds to support kenaf processing by upgrading its ground cover processing equipment.

GOAP officials described two funding denials: (1) WEBHEMPIN_KY, LLC, turned down for $50,000 in State funds and $50,000 in County funds (Bourbon $15,000, Clark $5,000, Fayette $15,000, Harrison $10,000, and Nicholas $5,000) for a mobile hemp oil extraction unit. The board denied this request based on the uncertainty of the hemp status related to the farm bill making the longevity of the project difficult to justify KADF investment; and (2) Crooked River Farms, LLC d/b/a The Kentucky Garden Initiative, turned down for $4,000 in Jefferson, Bullitt and Hardin County funds and $55,850 in State funds to create seven school gardens in Jefferson, Bullitt, and Hardin counties. The board denied this request due to limited producer impact.

GOAP representatives answered committee members' questions about the three regional projects received by the board in November.

Responding to Representative Stone, GOAP officials explained that the Casey County Board of Education project was one of the first poultry projects in a school.

GOAP representatives answered committee members' questions about the two denied regional projects received by the board in November.

In response to Representative McKee, GOAP officials stated that hemp production is still in a research/education mode and also an illegal crop at the moment.

Senator Hornback commented that he is optimistic for hemp to become legal and agreed with GOAP officials in that they need to proceed carefully in funding hemp projects.

Representative Mills expressed support for GOAP's denial of the WEBHEMPIN_KY, LLC project until there is more certainty in hemp production.

Kentucky Agency for Substance Abuse Policy (KY-ASAP)

Van Ingram, Executive Director, Heather Wainscott, Branch Manager, Kentucky Office of Drug Control Policy, and Amy Andrews, KY-ASAP Program Coordinator, testified about the Kentucky Agency for Substance Abuse Policy's (KY-ASAP) use of tobacco settlement funds.

KY-ASAP officials discussed "the nation's worst drug epidemic in its history" and the accomplishments of KY-ASAP. According to Mr. Ingram, last year, 1,300 Kentuckians died a totally preventable death following a drug overdose. In fiscal year 2017, tobacco settlement funds provided $1.6 million to KY-ASAP. In addition to the tobacco settlement funds, the 2016 budget carryover and money provided by SB 192, KY-ASAP has a revised budget of about $4.7 million in fiscal year 2017. The majority of the budget is put toward KY-ASAP Local Boards, which now exist in 118 of Kentucky's 120 counties. Tobacco settlement funds have been used recently by local boards primarily for comprehensive drug education/prevention, treatment, and law enforcement programs. About 50 percent of the local board harm reduction expenditures are used to purchase Naloxone, a medication used to treat a narcotic overdose in an emergency. There are several intervention programs available to schools, families, and communities. Other KY-ASAP projects include the implementation of 198 permanent prescription drug disposal boxes, a public information campaign called MyOldMeds Kentucky, a Partnership for a Drug-Free Kentucky, a Drug Free Communities Support Program, and the KyStopOverdoses website.

Responding to Representative Stone, KY-ASAP officials stated tobacco settlement funds provided about $1.24 million in fiscal year 2016 and about $1.6 million for fiscal year 2017.

In response to Senator Parrett, KY-ASAP was able to put more money towards its media presence in fiscal year 2017 because of the money provided by SB 192.

Responding to Representative Keene, KY-ASAP representatives said they believe to see less and less heroin in the future. However, fentanyl and fentanyl analogs from Asia are new chemical drugs causing massive numbers of overdoses, as some are 100 times more powerful than heroin. KY-ASAP officials stated the threat they face is ever changing.

In response to Representative McKee, KY-ASAP officials stated that the country's drug epidemic has been two decades in the making. The United States has five percent of the world's population but uses 99 percent of the world's hydrocodone combination products. The U.S. uses 82 percent of the world's oxycodone products. A person is five times more likely to enter treatment if involved in a needle exchange program. Responding to Representative Mills, KY-ASAP representatives explained that the Justice Cabinet and the Cabinet for Health and Family Services are creating a peer support program for users. Responding to Representative Stone, KY-ASAP officials stated that the landscape is always changing, but the Kentucky General Assembly has had great interest in passing bills that deal with substance use.

Documents distributed during the meeting are available with meeting material in the LRC Library. There being no further business, the meeting was adjourned.

PUBLIC PENSION OVERSIGHT BOARD

Minutes of the 10th Meeting of the 2016 Interim

December 19, 2016

Call to Order and Roll Call

The 10th meeting of the Public Pension Oversight Board was held on Monday, December 19, 2016, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Brent Yonts, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Brent Yonts, Co-Chair; Senator Gerald A. Neal; Representative Brian Linder, J. Michael Brown, John Chilton, Mike Harmon, James M. "Mac" Jefferson, and Sharon Mattingly.

Guests: Brad Gross and Bo Cracraft, LRC.

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes.

Representative Yonts announced that J. Michael Brown of the Attorney General's Office is taking the place of Mitchel Denham.

Approval of Minutes

Senator Bowen moved that the minutes of the November 28, 2016, meeting be approved. Mac Jefferson seconded the motion, and the minutes were approved without objection.

Budget Director John Chilton gave an update on the Pension Performance & Best Practices project. He said that the audit is well underway and his office has been in regular contact with PFM Consulting Group, which is conducting the audit. The first report will address transparency and some governance issues that relate to the state-administered retirement systems. Some of the actuarial computations were not available until December, which contributed to a delay of the report.

2016 Recommendations

The following list of recommendations was discussed and adopted by the Public Pension Oversight Board (PPOB):

PPOB staff should research and present information to the board regarding the cash flows of each state-administered retirement system including a historical view of system cash flows, how the additional funding in the current budget is impacting current cash flows, a future projection of cash flows, and what factors impact system cash flows the most.

PPOB staff should provide the board with a brief summary document highlighting the differences in actuarial methods and assumptions between the various state-administered retirement systems.

The Kentucky Retirement Systems' (KRS) board of trustees shall by January 23, 2017, provide a plan for addressing the cash flow/funding issues facing the systems it administers, and in particular the cash flow issues facing the KERS nonhazardous pension fund. The plan shall be detailed with specific research performed for each plan option which shall include specific savings/costs for each option. KRS shall report this information to the PPOB, the House State Government Committee, and the Senate State & Local Government Committee.

The Teachers' Retirement System (TRS) board of trustees shall by January 23, 2017, provide a plan for addressing the cash flow/funding issues facing the system it administers, and in particular the funding issues facing the TRS pension fund. The plan shall be detailed with specific research performed for each plan option which shall include specific savings/costs for each option. TRS shall report this information to the PPOB, the House State Government Committee, and the Senate State & Local Government Committee.

KRS, TRS, and JFRS shall study and report to the PPOB by January 23, 2017 on the fees paid directly or indirectly by each system (i.e. through incentive or partnership agreements) and shall provide a consensus recommended standard for investment fee reporting to be utilized by all systems.

The KRS, TRS, and JFRS boards should evaluate and determine if certain actuarial assumptions (payroll growth, investment return) and funding policies/methods should be modified based upon experience (including trends in state employee salaries, changes in the total number of full-time employees due to outsourcing, employers avoiding payment of contributions on behalf of those employees) and financial condition of the systems and should incorporate any changes into the funding requests submitted to the 2018 General Assembly.

The KRS board of trustees shall by January 23, 2017, study issues related to agency participation, including but not limited to KRS participating agencies that are utilizing contract employees or are not offering employees the opportunity to participate in the systems, and shall provide a listing of all agencies that are attempting various means to avoid paying contributions on employees along with the estimated number of employees not being reported as well as the anticipated financial impact to the systems. Based upon this information, the General Assembly should enact legislation to address the loss of employer contributions from KRS participating agencies that are utilizing contract employees or are not offering employees the opportunity to participate in the systems.

Currently, the state-administered retirement systems are exempt from Kentucky Revised Statutes Chapters 45 (Budget and Financial Administration) and 45A (Kentucky Model Procurement Code) relative to contracting. Legislation to make the systems subject to Kentucky Revised Statutes Chapters 45 and 45A should be enacted, similar to provisions included in BR 242 that has been prefiled for the 2017 Regular Session. Legislation should be enacted, similar to provisions included in BR 242 that has been prefiled for the 2017 Regular Session, to require Senate confirmation of the KRS and TRS executive director/executive secretary and all Gubernatorial-appointed board members. Currently, the TRS board comprises seven trustees elected by the membership, with the two remaining members being the chief state school officer and the state treasurer. The General Assembly should enact legislation to add additional gubernatorial-appointed members to the TRS board, and the additional members should have investment experience.

Measures to ban the use of KRS, TRS, and JFRS assets to pay placement agent fees, similar to the measures included in BR 242 that has been prefiled for the 2017 Regular Session, should be enacted.

Legislation to more clearly define the qualifications of KRS appointed trustee positions that must have "investment experience" should be enacted, to:

Refine the definition of "investment experience" in Kentucky Revised Statute 61.645 to ensure that truly qualified individuals are selected; and

Provide that the Governor should request assistance from the CFA Society of Louisville to vet any potential applicants for future appointments/reappointments.

Legislation to expand the PPOB to include more legislative members, similar to the measures included in BR 242 that has been prefiled for the 2017 Regular Session, should be enacted. Under the measure, 4 legislators would be appointed by the Senate President (currently 2), 4 will be appointed by the House Speaker (currently 2), and 2 members shall be appointed by the Minority Floor Leaders in both the House and Senate (currently 1 each).

Legislation to develop consistent investment fee reporting requirements for the state-administered retirement systems should be enacted.

Pension transparency measures for the state-administered retirement systems should be enacted and should include:

Measures prohibiting KRS, TRS, and JFRS from using system assets to pay placement agents fees.

Requirements for JFRS to develop a website and require specific information to be posted on the JFRS website similar to what is currently required for the KRS/TRS websites under Kentucky Revised Statutes 61.645(19) and 161.250(4).

Limitations on the definition of "Investment Experience" for KRS Board members appointed by the Governor.

Standardized investment expense reporting. The standard shall require, to the extent information is available, disclosure by individual manager/partnership and the dollars paid for direct fees and any profit sharing, carried interest, partnership incentives, in accordance with ILPA standards.

Public disclosure of system offering documents.

Contract disclosure at all times to trustees, Auditor, Governor, or legislators if a confidentiality agreement is signed.

Requirements for all systems to report returns both gross and net of fees.

Adherence to CFA Institute Standards, except for Asset Manager Code of Conduct.

Legislation should be enacted to require the systems to provide supplemental data on the potential impact of a bill when an actuarial impact statement required by KRS 6.350 determines the bill's impact is indeterminable/negligible.

Legislation to require the disclosure of pension benefits of current and former legislators from all state-administered retirement systems, similar to the measures included in BR 260 that has been prefiled for the 2017 Regular Session, should be enacted.

Legislation to publicly disclose the actual annualized monthly retirement allowance, or estimated allowance if the actual amount is not known, for LRP participants retiring on or after December 1, 2016, should be enacted. This provision should be enacted prospectively since it could present a legal challenge to the inviolable contract.

Legislation to allow KRS, LRP, and JRP members to opt into the hybrid cash balance plan, similar to the measures included in SB 172 that did not pass into law during the 2016 Regular Session, should be enacted.

The KRS housekeeping bill, similar to provisions included in House 241 that did not pass into law during the 2016 Regular Session, should be enacted.

The TRS housekeeping bill, similar to provisions included in House Bill 470 that did not pass into law during the 2016 Regular Session, should be enacted.

Legislation to address KRS employer concerns with "pension spiking" fees that resulted from the passage of SB 2 in 2013 should be enacted.

Legislation to address KRS employer concerns with "pension spiking" fees that resulted from the passage of SB 2 in 2013 should be enacted. The legislation should limit the fees to a minimum threshold of $10,000 provided that exceptions are added, including but not limited to employees that return to work after unpaid authorized maternity leave, unpaid leave authorized under the Federal Family Medical Leave Act (FMLA), authorized sick leave without pay, employees that return from active or reserve military duty, and employees that received worker's compensation benefits that were not reported as creditable compensation. The legislation should be fair and equitable to employees.

Legislation to eliminate the option for Legislative Retirement Plan (LRP) participants to "spike" their legislative pension from salary earned through other public employment should be enacted.

The General Assembly should evaluate the findings and recommendations of the performance audit being conducted by the PFM group and adopt a financially sound approach to address the funding issues facing the state-administered retirement systems.

The General Assembly should evaluate the findings and recommendations of the performance audit being conducted by the PFM group and adopt a financially sound approach to address the funding issues facing the state-administered retirement systems. It should also evaluate how to best allocate the funds in the Kentucky Permanent Pension Fund among the state-administered retirement systems.

The PPOB supports measures that would provide additional funding to improve the financial health of the state-administered retirement systems and in particular measures that would improve the cash flow issues facing the Kentucky Employees Retirement System (KERS) nonhazardous pension fund or that would improve the overall funding of the Teachers' Retirement System (TRS) pension fund and the State Police Retirement System (SPRS) pension fund.

The PPOB supports measures that would provide additional funding to improve the financial health/cash flow issues facing the KERS nonhazardous pension fund and the SPRS pension fund.

The PPOB supports measures that would provide additional funding to improve the financial health of the TRS pension fund and that would include a long-term statutory plan to pay the actuarially required contribution.

Senator Thayer said that his caucus has discussed the possible recommendation that the House and Senate Chairs for the Appropriations and Revenue Committees be added to the PPOB.

Mac Jefferson moved that the 2016 Recommendations be approved. Representative Brian Linder seconded the motion, and the recommendations were approved without objection.

Senator Bowen moved that the draft PPOB 2016 Annual Report be approved. Sharon Mattingly seconded the motion, and the draft PPOB 2016 Annual Report was approved without objection.

2016 Financial/Actuarial Summary

Brad Gross, Legislative Research Commission, began by discussing the background on the different state-administered retirement systems, three of which include KERS, SPRS, and the County Employees Retirement System (CERS), which are administered under one entity known as the KRS. Each one of these systems have a pension and retiree health actuarial valuation, separate financial data, and also separate nonhazardous and hazardous duty benefit and contribution structures within KERS and CERS. The state systems also include TRS which has actuarial valuations for its pension, retiree health, life insurance benefits, and also separate benefit contribution structures for university and non-university employees. Lastly, the state systems include the Legislators' Retirement Plan (LRP) and Judicial Retirement Plan (JRP), which are administrated under entity known as the Judicial Form Retirement System (JFRS) and have separate actuarial valuations for the differing funds.

Mr. Gross discussed the annual actuarial valuation from the state systems. The valuation produces information on plan status (funding level and unfunded liabilities), employer contribution rates (pension and retiree health), and reporting information required by standards established by the Governmental Accounting Standards Board (GASB). Mr. Gross stated the information that goes into the valuation and produces this information are the actuarial assumptions and methods (i.e. assumed investment returns and retirement rates), benefits and funding provisions (established by statute, regulation, and sometimes board policy), financial experience (i.e. actual investment returns), and demographic data and experience (i.e. actual retirement rates). There are also key studies that are performed that influence the actuarial assumptions used in the valuation. The Experience Study is a review of assumptions against experience with recommendations for adjustments. The study is performed at least once every five years. An Actuarial Audit is a secondary review by another actuary to review the current actuary's work and is also performed at least once every five years. The Asset/Liability Modeling Study is typically performed following the experience study and evaluates various asset allocations against projected system liabilities with the ultimate goal of selecting a target asset allocation for the investment portfolio.

Mr. Gross discussed the actuarial data for the state-administered systems and noted that in general pension, funding level values went down in 2016 and retiree health funding level values went up. He stated there is a total of $32.792 billion in unfunded liabilities for the state pension funds and $5.86 billion in unfunded liabilities for the state retiree health funds as of June 30, 2016, which when combined, totals $38.652 billion. Mr. Gross said that KERS nonhazardous pension funding level went from 19 percent to 16 percent and the unfunded liability went from $10.01 billion to $11.11 billion. The major factor resulting in the change for this system was a drop in the assumed rate of return from 7.5 percent to 6.75 percent, which increased the unfunded liabilities by $900 million. The CERS nonhazardous pension declined as well and the funding level went from 60.3 percent to 59 percent and the unfunded liabilities went from $4.27 billion to $4.54 billion. TRS's pension funding level went from 55.3 percent to 54.6 percent and the unfunded liabilities went from $13.93 billion to $14.53 billion, with the major contributing factor being underfunding in FY 2016. The retiree health funding has been positive compared to recent years where the funding levels have been improving and the unfunded liabilities have been going down.

Mr. Gross discussed how in 2000 the KERS nonhazardous pension was 139.6 percent funded and had a surplus relative to the unfunded liability of roughly +$1.93 billion and in 2003 the numbers began to separate. In 2012, prior to the SB 2 changes enacted in 2013, this pension fund was 27.3 percent funded and with an unfunded liability of -$8.26 billion. In 2016 this pension fund is 16 percent funded and the unfunded liability is -$11.11 billion. The retiree health fund for KERS nonhazardous in 2000 was 27.4 percent funded with an unfunded liability of -$1.06 billion, in 2006 it was 7.8 percent funded with an unfunded liability of -$7.20 billion, and in 2016 it is 30.3 percent funded with an unfunded liability of -$1.71 billion.

Per statute, the employer rates for KERS nonhazardous are set as a percentage of payroll. When looking at the 2000 valuation when this pension fund was 139.6 percent funded and a surplus actuarially, the actuarially required contribution (ARC) was 5.89 percent for pension and retiree health combined, of which the pension component was 0.00 percent. Looking five years later the trends began to change and the pension costs started going up. Since FY 15 the ARC has been funded in the budget. In FY 2018 the ARC was 47.28 percent of pay but the General Assembly budgeted in excess of the ARC utilizing a lower assumed rate of return and providing supplemental funds above the ARC. In FY 2017 the projected total employer contributions will be roughly $868 million from all fund sources. Of this total, funding from the General Fund is roughly 45-50 percent of the total. Total funding in terms of dollars will depend upon what the actual payroll ends up being. KRS is utilizing a more conservative payroll number so it is possible for some slight differences.

Relative to CERS nonhazardous, in 2000 the pension fund was 156.9 percent funded with a surplus relative to the unfunded liability of +$1.92 billion, in 2008 it was funded 78.5 percent with an unfunded liability of -$1.57 billion, and in 2016 it is funded 59.0 percent with an unfunded liability of -$4.54 billion. In 2000 the CERS nonhazardous retiree health fund was funded 21.8 percent with an unfunded liability of -$1.15 billion, in 2006 it was funded 16.9 percent with an unfunded liability of -$3.83 billion, and in 2016 it is funded 69.6 percent with an unfunded liability of -$0.91 billion.

With the CERS nonhazardous employer rate, the rate was down to 6.41 percent in FY 2002. In FY 2016 the rate was 17.06 percent. Mr. Gross said that the CERS nonhazardous rates are not in the budget and are payable based upon the valuation results. He also noted that the CERS pension contribution has always been paid at the full actuarially determined rate. The retiree health contribution is being phased in to the full actuarially determined rate through FY 2018 based on the 10-year schedule established by HB 117 passed in 2009. Prior to the 2009 legislation, various KRS board policies to phase into the full actuarially required contribution rate were used to determine the retiree health rate.

Mr. Gross discussed the actuarial data for TRS and stated the pension funds experienced similar downward trends but not nearly as severe as KERS and CERS. In 2000 the TRS pension fund was 95.7 percent funded with an unfunded liability of -$0.57 billion, in 2008 it was funded 68.2 percent with an unfunded liability of -$7.14 billion, and in 2016 it was funded 54.6 percent with an unfunded liability of -$14.53 billion. The TRS pension fund is one in which the GASB standards matter significantly because there is not a funding plan in statute. GASB 67 values (reporting requirements) show in 2016 it is funded 35.2 percent with a Net Pension Liability (NPL) of $30.92 billion. With the retiree health fund in 2000 it was funded 2.4 percent with an unfunded liability of -$2.15 billion, in 2009 it was funded 3.5 percent with an unfunded liability of -$6.23 billion, and in 2016 it is funded 21.9 percent with an unfunded liability of -$2.84 billion.

Mr. Gross discussed the funding mechanism of TRS in stating that the historical fixed contributions of 13.105 percent of pay, known as the “match” and “overmatch”, are set by statute to fund pension and retiree health benefits and are paid mostly (85 to 90 percent) by general fund dollars. The state pays the costs for all non-federally funded school teachers for this historical fixed contribution. Over time, additional funding has been provided through direction appropriations to TRS in the budget and are paid solely by general fund dollars. Direct appropriations to TRS includes: amortized payments for sick leave, ad hoc COLA’s, the state shared solution part from 2010 HB 540 (health), and also the additional $973 million in pension funding in current budget biennium. Direct employer funding was established by HB 540 in 2010 and is essentially a 3 percent of pay contribution made by individual employers participating in TRS and helps fund retiree health. The total value of employer contributions from all sources in FY 2016 was $745.1 million. Using this value, plus the additional funding in FY 2017 of $498.5 million, total employer funding is projected at roughly $1.2 billion from all sources.

Mr. Gross discussed the total unfunded liability of the state administered systems over time. In 2006, the total was $28.4 billion, with 62 percent or $17.6 billion attributed to retiree health benefits and the remaining 38 percent or $10.8 billion attributed to pension benefits. If you look ten years later it has grown to $38.7 billion with $32.8 billion or 85 percent pension and the remaining $5 billion or 15 percent retiree health.

Mr. Gross discussed key assumptions, including investment return, payroll growth, and data from a sensitivity analysis that show what happens if these assumptions change. The investment return assumptions for each system and the impact to changing the investment return assumption are:

Current Assumptions: The KERS nonhazardous pension fund and SPRS pension fund has an assumed rate of return of 6.75 percent. The KERS hazardous, CERS, and TRS pension funds have a 7.5 percent assumed rate of return. In recent years, the assumed rate for KERS, CERS, and SPRS funds have been lowered by the KRS board.

Sensitivity Analysis: A 1 percent decrease in the investment return assumption for the KERS nonhazardous pension fund to 5.75 percent would reduce the funding level from 16.0 percent to 14.0 percent, would increase unfunded liabilities by $1.4 billion, and would increase the ARC by 2.3 percent of pay. A 1 percent decrease in the investment return assumption for the CERS nonhazardous pension fund to 6.50 percent would reduce the funding level from 59.0 percent to 52.3 percent, would increase unfunded liabilities by $1.4 billion, and would increase the ARC by 3.7 percent of pay. A 1 percent decrease in the investment return assumption for the TRS pension fund to 6.50 percent would reduce the funding level from 54.6 percent to 48.9 percent, would increase unfunded liabilities by $3.75 billion, and would increase the ARC by 8.41 percent of pay.

The state-administered retirement systems typically amortize unfunded liabilities over a 30-year period. Both KRS and TRS utilize a level percentage of payroll method to determine the amortized payment which takes into account payroll growth over time. The investment return assumptions for each system and the impact to changing the investment return assumption are as follows:

Assumption/Methods: The KERS and CERS pension unfunded liabilities are amortized over 30 year closed-period using the level percentage of payroll method and a 4 percent payroll growth assumption. In recent history, the KRS board and the General Assembly by legislative action have reamortized the unfunded liability and the KRS board has lowered the assumed payroll growth assumption over time. Actual payroll growth experience in recent years has varied by system. For the KERS nonhazardous pension fund, total payroll has fallen from $1.816 billion in 2012 to $1.662 billion in 2016. For the CERS nonhazardous pension fund, payroll has increased over time from $2.301 billion in 2012 to $2.414 billion in 2016.

TRS pension fund unfunded liabilities are amortized by policies adopted by the TRS board of trustees. Per policy, legacy unfunded liabilities are amortized over a 30 year closed-period and any new sources of unfunded liabilities are amortized over separate 20 year periods. Per policy, the amortized payment is determined by the level percentage of payroll method and a 3.5 percent payroll growth assumption. In recent history, the TRS board has both reamortized the unfunded liability and lowered the payroll growth assumption. For the TRS pension fund, payroll has increased over time from $3.480 billion in 2012 $3.537 billion in 2016.

Mr. Gross discussed the cash flow for KERS nonhazardous and TRS pension funds. In FY 2016, assets for the KERS nonhazardous pension fund fell by an additional $347 million to $1.980 billion. For the first quarter of FY 2017, with the increased ARC and supplemental appropriations and favorable investment returns, assets of the KERS nonhazardous pension fund increased slightly by $32.6 million. In FY 2016, the TRS pension fund assets fell by $1.236 billion to $16.813 billion. For the first quarter of FY 2017, with the increased appropriations and favorable investment returns, assets of the TRS pension fund increased by $482 million. Both the KERS nonhazardous and TRS retiree health funds showed positive cash flow in FY 2016.

Responding to a question from Representative Miller, Mr. Gross stated that the tier 3 essentially operates as another tier within the system so employers pay the exact same employer rate and the unfunded liabilities includes the tier 3 individuals. Responding to a question from Representative Linder, Mr. Gross stated that with CERS nonhazardous the additional ARC would be 3.7 percent of pay and with a $2.4 billion payroll, the additional cost of a 1 percent decrease in the investment return assumption would be roughly $89 million.

Senator Bowen and Representative Graham announced that Representative Yonts had worked on committees with great distinction for the Commonwealth of Kentucky and thanked him for his efforts in his 20 years of service for the General Assembly. With no further business, the meeting was adjourned. The next regularly scheduled meeting is Monday, January 23, 2017.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes

November 15, 2016

Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee meeting was held on Tuesday, November 15, 2016, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Stan Humphries, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stan Humphries, Co-Chair; Senators Julian Carroll, Chris Girdler, and Christian McDaniel; and Representatives Chris Harris, Steven

Rudy, and Jim Wayne.

Guests: Ms. Elizabeth Baker, Planning Director, University of Kentucky; Mr. Scott Aubrey, Director of Real Properties, Finance and Administration Cabinet; Mr. Steve Starkweather, Inventory and Forecasting Program Specialist, Office of Financial Management; Mr. Jeremy Ratliff, Managing Director of Multifamily Housing, Kentucky Housing Corporation; Ms. Katie Smith, Executive Director, Office of Financial Services, Cabinet for Economic Development; Ms. Brandi Norton, Financial Analyst, Kentucky Infrastructure Authority; Mr. Harlan Sands, Senior Vice President for Finance and Administration, University of Louisville; Mr. James Sears, Associate Vice President for Facilities Management, University of Louisville; Mr. Andy Barber, Executive Director, Kentucky Transportation Cabinet; and Ms. Karen Haskell, President, The Healing Place Rehabilitation Center, Louisville.

LRC Staff: Josh Nacey, Committee Staff Administrator; Julia Wang, Analyst; and Jenny Wells, Committee Assistant.

Approval of Minutes

Mr. Josh Nacey said that two errors to the October 18, 2016 meeting minutes had been corrected and outlined those corrections for the benefit of the members and public. Mr. Nacey said that four words were added to the last paragraph of page 7, which now states "and $8.1 million, respectively." This language was added to show the distinction between two separate sources of funds in regards to the Louisville Arena Authority (LAA). The second corrected error is in the first paragraph of page 8, reflecting a change to $17.2 "million," which was mistakenly phrased as $17.2 "billion."

Representative Rudy moved to approve the minutes of the October 18, 2016 meeting. The motion was seconded by Representative Harris and approved by voice vote.

Discussion Item

Senator Humphries said that there is one discussion item on today's agenda, which is a draft of a letter to be sent to the Auditor of Public Accounts requesting a special examination or audit of the finances of the LAA. Senator Humphries said that at the October meeting, staff was directed to draft a letter which would be presented to the committee this month for discussion and approval.

Representative Wayne commented said that he appreciated how this process had been handled, especially in working together with the auditor's office to understand the requirements for this issue. Additionally, Representative Wayne said that it is important that the committee recognize the effort on its part to validate all the facts in order to reassure the public and the taxpayers who are subsidizing the arena that the LAA is being run in the best way possible and with full financial disclosure. Further, Representative Wayne said that he is hopeful that the auditor will take this letter seriously and will act on the request of this committee.

Representative Harris moved to approve the letter, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Information Items

Mr. Nacey reported on three informational items which are nonaction items. The first item is an advertisement for leased space for the Department of Corrections in Jefferson County. Pursuant to KRS 48.111(6), such advertisements are required to be reported to the committee.

The second item is an update on the Drumanard property in Jefferson County. At the October meeting, additional questions were raised regarding the purchase price paid by the Kentucky Transportation Cabinet (KYTC) and the timing of its designation as a historic property.

The information provided by KYTC explained: The property was listed on the National Register of Historic Places in 1983 as "Fitzhugh House." Due to a boundary change, the estate was later renamed to Drumanard. In 1988, the Jefferson County Office of Historic Preservation and Archives submitted an application for the current Drumanard estate to be placed in the registry. However, the preservation easement was not executed and placed on the property until May 30, 2014, approximately two years after the KYTC acquired the property. The owner of the estate (Soterion Corporation) was not interested in placing a preservation easement on, nor in negotiating the damages or the decrease of property value associated with, the permanent easement. KYTC stated that it was necessary to enter into the right of way acquisition process with the property owner. The estimated daily cost from the delay of construction was $100,000. The cabinet stated that it determined that paying a negotiated price of $8.1 million more that the appraised price was a better course of action as opposed to delaying a $763 million project for several months, if not years. The property is being sold by sealed bids starting November 3, 2016, with a minimum bid reserve of $3.5 million. The Commonwealth reserves the right to reject any or all bids. The cabinet stated that the current significantly lower appraised value is the result of the preservation easement.

In response to a question from Representative Wayne, Mr. Nacey said that the KYTC paid $1.8 million more than the appraised value of the Drumanard estate. Representative Wayne said that was a significant amount and voiced concern about the precedent this sets by purchasing properties in order to speed a project through.

In response to several more questions from Representative Wayne, Mr. Andy Barber, Executive Director, KYTC, said that the estimated price of $6.8 million and the purchase price of $8.3 million paid for the property, resulted from negotiations and KYTC holding out as long as possible before purchasing the property. Mr. Barber said that, normally, KYTC normally does not proceed with construction of a project or with a start date until the Cabinet has all the right-of-way in place with a project of this size. Mr. Barber further said that in order to avoid delay and in order to fulfil KYTC's commitment, KYTC made the decision to proceed with the East End Crossing project. Additionally, Mr. Baber said that the purchase of property over the estimated purchase price is not a practice that is used frequently; however, it is used in dire cases. Mr. Barber said that during negotiations with the owner of the property beneath which the tunnel goes, the property owner could have exercised his legal right to stop work. Further, Mr. Barber said that Indiana held the lead on this project and, had the project been halted, KYTC could have exceeded the purchase price of $8.3 million quickly.

In response to several more questions from Representative Wayne, Mr. Barber said that KYTC looked at sixteen alternatives at the beginning of the project in 1998, for alignments for the East End Crossing project. Three of them included a tunnel. The alignment that was selected for the project was the least environmentally invasive for the area. Mr. Barber said that the tunnel was an avoidance of a direct environmental impact to the historical property and, without the tunnel, there would not have been a project. Mr. Barber said that the compelling argument to build a tunnel was an avoidance of an impact that would fall under Section 4(F), the Build Alternative of the Department of Transportation Act (DOT Act) of 1966. Additionally, Mr. Barber said that if a property is eligible to be listed on the National Register of Historic Places, the Section 4(F) provision may apply. Further, Mr. Barber said that federal laws were followed in acquiring the property for this project and several funding sources were used, which included federal funding.

In response to questions from Representative Harris, Mr. Barber said that he was not involved in the project when the Drumanard property was bought and could not answer as to why the Cabinet did not utilize the condemnation process using the appraised value of $6.8 million before paying $8.3 million for the Drumanard property. Mr. Barber said he would find out more information and forward it on to Representative Harris after the meeting.

In response to a question from Senator Humphries, Mr. Barber said that if a property is eligible to be placed on the National Registry of Historical Places, such as the Drumanard property, the property still has Section 4(f) federal law protection.

Senator Humphries commented that the regulations that are placed on the Commonwealth as it faces the challenge of trying to build more roads with less dollars each year, and without federal assistance, is alarming.

The last information item is the annual report from the Cabinet of Economic Development which details the status of previously-approved Economic Development Bond grants projects. The report is an update on the extent to which the grant recipients have complied with the job creation and wage requirements of the grants. Of the 9 grants listed in the report that were approved in previous fiscal years 1 project is still in the process of executing an agreement; 0 projects have withdrawn from the program; 0 projects have completed the requirements; 3 projects have reported employment; and 5 projects have not yet reached a reporting date.

Project Report from the Universities

Ms. Elizabeth Baker, Planning Director, University of Kentucky (UK), reported on three items. The first item is the purchase of the Somatom Definition Edge CT Scanner. This system will be located in the Emergency Department at UK A. B. Chandler Hospital. The purchase will replace the equipment that is presently at the end of its life and it will provide medical imaging and leading technology for low dose therapy control and early tumor detection. The cost is $1,239,095 and was paid for in cash with restricted funds. No action was required.

The second item is a lease modification between the University and the Lowry Group, LLC. The three organizations located at this property are the Kentucky Regional Extension Center, UK-Norton Stroke Network, and UK Healthcare External Affairs. All three programs have experienced growth and additional space is needed to efficiently manage daily operations. The lease modification will include an expansion of 1,186 sq. ft., and the total lease cost is $111,147. The lease addendum is pursuant to the same terms and conditions as the original lease. No action was required.

The final item is a request to transfer restricted funds to private funds for the Construct Baseball Field project which was authorized as part of the 2016-18 Executive Branch budget bill. The authorization was for $49,000,000 in restricted funds for the construction of the baseball facility. UK is requesting to use $12,056,020 in private funds in lieu of restricted funds.

In response to several questions from Representative Wayne, Ms. Baker said that the old baseball stadium was built in 1969, remodeled in 2003, and presently is not large enough to host NCAA tournaments and other important events. The university plans to repurpose the old stadium, which is located the south side of campus. Ms. Baker said that by the fall of 2017, with UK's housing initiative, it will have approximately 7,500 beds on campus, 5,000 of which will be located on the south side of campus. Pursuant to UK's Revised Campus Master Plan and the Revised Transportation Master Plan, the university will provide more recreational areas and parking for students who will be located in this area. Ms. Baker said that the university will move the Athletics Department closer to the football stadium in order to share facilities and bring the departments closer together in proximity. This project will be paid by the Athletics Department.

Representative Rudy moved to approve the project, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Mr. Harlan Sands, Senior Vice President for Finance and Administration, University of Louisville (U of L), and Mr. Jim Sears, Associate Vice President for Facilities Management, U of L, requested a scope increase of $8,250,000 for the Papa Johns Cardinal Stadium Football Complex Expansion project. Mr. Sands said that with this appropriation increase, the north end of the stadium will be totally enclosed. The original scope authorized for this project was $55,000,000. Higher than anticipated construction costs and design fees have contributed to a 14 to 15 percent price increase over budget. U of L has added 6,500 sq. ft. of additional space in the Schnellenberger Training Facility to accommodate its athletic program.

In response to questions from Representative Wayne, Mr. Sands said that the increase will be funded through seat licenses and seat sales from the 10,000 additional seats that will be added to the stadium. The project requires no additional debt service and is consistent with the original debt service plan. The increase will be funded through the University of Louisville Athletic Association by private gift donations specifically earmarked for this project.

Senator Carroll moved to approve the increase, seconded by Representative Wayne. The motion passed by a roll call vote of 7 yeas, 0 nays.

Lease Reports from Finance and Administration Cabinet

Mr. Scott Aubrey, Director of Real Properties, Finance and Administration Cabinet, reported on two items. The first item is for a new lease exceeding $100,000 for the Department of Corrections (DOC) in Daviess County. The proposed space will accommodate the staff of DOC currently housed in a different office facility which requires extensive renovations and recurring maintenance to accommodate the agency needs. The current facility has a lack of appropriate-sized individual offices. Due to these issues, the agency went through the competitive bid process. This new lease is for 8758 sq. ft., with a cost of $13.24 per sq. ft. The annual cost for the lease is $116,043.52 and will expire June 30, 2024.

In response to a question from Senator Humphries, Mr. Aubrey said that the new space is located at the same facility. The agency will move from the 5th floor to available space located on the 2nd and 3rd floors during the renovation period.

Senator Carroll moved to approve the lease, seconded by Representative Wayne. The motion passed by a roll call vote of 7 yeas, 0 nays.

The second item is a Leasehold Improvement Report for leasehold modifications over $50,000, located in Franklin County. In October, another group of modifications was presented to the committee and those improvements totaled $46,840. The Finance and Administration Cabinet is requesting approval on behalf of the Energy & Environment Cabinet (EEC), the Education and Workforce Development Cabinet, and the Department of Education, which are located at the new state office building known as the "300 Building." The EEC is requesting to install a badge reader and a magnetic lock for a file room and additional electrical and data outlets in its conference rooms. All three agencies have submitted a request to install and mount a television in the lobby area for visitors to the "300 Building." The cost for these improvements, which will be paid through the Tenant Improvement Fund, is $64,641.30. To date, the cost of the total improvements is $111,482.21.

In response to questions from Senator Humphries, Mr. Aubrey said that the modifications that were reported last month are either complete or in the process of being completed.

Senator Carroll moved to approve the modifications, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Report from the Office of Financial Management

Ms. Brandi Norton, Financial Analyst, Kentucky Infrastructure Authority (KIA), reported on five items. The first item was for a Fund A loan increase for the Mountain Water District in Pike County. The request was for an increase of $370,000 for a total amount of $3,472,921, for the Douglas Wastewater Treatment Plant project. The loan will have a 20 year term, an interest rate of .75 percent and an annual estimated debt service payment of $194,266.

The second item was for a Fund A loan for the City of Winchester in Clark County. The request was for $1,404,000 for the Hampton Manor Sewer project. The loan will have a 20 year term, an interest rate of 1.75 percent and an annual estimated debt service payment of $86,312.

The third item was for a Fund A loan for the City of Maysville in Mason County. The request was for $4,000,000 for the Wastewater Treatment Plant Upgrade project. The loan will have a 20 year term, an interest rate of .25 percent and an estimated annual payment of $143,887.

The fourth item was for a Fund A loan to the City of Jackson in Breathitt County. The request was for $593,000 for the Lift Station Rehabilitation project, Phase II. The loan will have a 20 year term, an interest rate of .25 percent and an annual payment of $15,801.

The final item was for a Fund B loan to the Northeast Woodford County Water District in Woodford County. The request was for $400,000 for the Northeast Woodford County Improvement project. The loan will have a 20 year term, an interest rate of 1.75 percent and an estimated annual payment of $24,590.

Representative Wayne moved for all items to be considered as one vote, seconded by Senator McDaniel. The motion was approved by voice vote.

Representative Rudy moved to approve the items, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Report from the Office of Financial Management

Ms. Katie Smith, Executive Director, Office of Financial Services, Cabinet for Economic Development, reported on one Economic Development Bond (EDB) Grant. The request is for the use of $1,350,000 in economic development bond funds to make a grant to the City of Midway for the for the benefit of Lakeshore Equipment Company d/b/a Lakeshore Learning Materials (Lakeshore). Lakeshore is a leading U.S. developer of educational materials and classroom furniture and supplies and has selected Midway for its new assembly distribution and storage facility. The proposed EDB grant funds will be used to extend gas service to the company and any future tenants of the industrial park including, but not limited to, companies such as Brown-Forman Corporation and American Howa Kentucky, Inc. In consideration for the grant, Lakeshore will be required to make investment and create up to 262 full-time Kentucky resident jobs paying an average hourly wage of $19 including benefits. Disbursement of grant funds will occur after the annual compliance reporting has occurred and the amount of the disbursements will be based on the performance requirements achieved.

Senator Carroll moved to approve the grant, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

Mr. Steve Starkweather, Inventory and Forecasting Program Specialist, Office of Financial Management, reported on six items for the Office of Financial Management. The first item was the Kentucky Economic Development Finance Authority (KEDFA) Hospital Revenue and Refunding Bonds, Series 2016 C, for Baptist Healthcare System Obligated Group. Proceeds from this bond issue will finance various Baptist Healthcare System projects throughout the Commonwealth and partially refund KEDFA Hospital Revenue Bonds, Series 2009 A. This issue has a par amount not to exceed $445,000,000 and contains $314,000,000 of new money. The duration of the bonds is 35 years and has an anticipated net interest rate of 5.0 percent. This issue also has a refunding component of $87,259,000. These refunding Series have an anticipated true interest cost of $3,202,000, an 11 year term, with a net present value savings of $1,479,000.

Representative Rudy moved to approve the item, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

The second item was for the Kentucky Housing Corporation Tax-Exempt Conduit Multifamily Housing Revenue Bonds, Series 2016, in an amount not to exceed $17,500,000. Proceeds from this bond issue will finance the construction and equipping of the Healing Place project, a 176 unit property in Louisville. This bond issue is a direct placement transaction with an anticipated interest rate of 5.50 percent.

In response to a question from Representative Wayne, Mr. Jeremy Ratliff, referred to Ms. Karen Haskell, President of the Healing Place. Ms. Haskell said that the Healing Place has demonstrated its success by having raised, to date, almost $9,000,000 in an aggressive capital campaign and anticipates raising the remainder of $8,000,000 over the next 30 months using the same campaign.

Representative Wayne commented that, as a clinical social worker, he frequently refers clients to the Healing Place. Further, Representative Wayne said that, in this time of crisis in the Commonwealth with drug overdoses and addictions, the Healing Place is a salvation for many people.

Senator McDaniel moved to approve the item, seconded by Representative Rudy. The motion passed by a roll call vote of 7 yeas, 0 nays.

The third item was for the Kentucky Housing Corporation Single Family Housing Revenue Bonds 2016, Series B, in an amount not to exceed $45,000,000, and is a refund of Kentucky Housing Corporation 2007 E, G and H bonds. This issue is a negotiated transaction with a true interest cost of 2.8 percent and a term of 20 years. This taxable bond issue will refund certain Series 2007 bond issue, Series E, G and H, for an aggregate net present value savings of $3.1 million at approximately 7.6 percent (7.9 percent Series E; 6.8 percent Series G, H combined).

Representative Wayne moved to approve the item, seconded by Representative Rudy. The motion passed by a roll call vote of 7 yeas, 0 nays.

The fourth item was the University of Louisville General Receipts Bonds, 2016 Tax-Exempt Series D; University of Louisville General Receipts Bonds, 2016 Taxable Series E; and the University of Louisville General Receipt Refunding Bonds, 2016 Series F. This bond will finance the project "Expand Papa John's Stadium/Football Complex" as authorized in 2016-2018 executive budget; and advance refund Louisville/Jefferson County Metro Government, U of L Papa John's Cardinal Stadium project, 2008 Series A and B. The par amount for Series D, E and F totals $81,385,000, which includes $28,985,000 in refunding monies, and new money of $52,400,000. The net present value savings is $2,167,000 or 6 percent.

In response to several questions from Representative Harris regarding the funding as discussed in agenda item 5.B.: Appropriation Increase-Expand Papa John's Cardinal Stadium Football Complex, Mr. Sands said that the project itself is a combination of refinancing and additional debt on the stadium, which is also funded exclusively through revenues from seat sales at the stadium, and is self-contained in the athletics budget. Mr. Sands further said that no money would be coming from the LAA to pay on bonds that are going to be used to increase the size of the stadium.

Senator Carroll moved to approve the item, seconded by Representative Rudy. The motion passed by a roll call vote of 7 yeas, 0 nays.

The fourth item was the Western Kentucky University General Receipts Bonds, 2016 Series B, Parking Garage project, and General Receipts Refunding Bonds, Series 2016 Series C, dated October 25, 2016. The 2016 Series B bond issue consisted of $8,905,000 in new money, priced at 3 percent. The refunding bond issue 2016 Series C had a par amount of $27,395,000 and a true interests cost of 2.26 percent. These bond issues yielded a savings to the University of $2,500,000, and resulted in a net present value savings of 8.8 percent. No action was required.

The final item was the Kentucky Housing Corporation Multifamily Housing Revenue Bonds, Volunteer Management project, Series 2016, dated October 21, 2016, at a par amount of $8,500,000, and a net interest cost of 1.20 percent. No action was required.

New School Bond Issues with School Facilities Construction Commission (SFCC) Debt Service Participation

Mr. Starkweather reported on seven school bond issues with SFCC debt service participation. Two issues will finance school renovations and the remaining five will refinance previous bond issues. There were no local tax increases associated with these projects.

Representative Rudy moved to approve the school bond issues, seconded by Senator Carroll. The motion passed by a roll call vote of 7 yeas, 0 nays.

New School Bond Issues with 100 Percent Locally Funded Debt Service Participation

Mr. Nacey said that seven local school bond issues were reported to the committee. The purposes for which these bonds will be issued include refunding of previous issues, construction of a new bus garage, and district wide energy improvements. No tax increases were involved. No action was required on this item.

Debt Issuance Calendar

Mr. Nacey said that the updated debt issuance calendar was included in the members' folders.

Lastly, Chairman Humphries said the committee had a resolution honoring Senator Chris Girdler for his four years of service to the Commonwealth and to the committee. Senator Humphries read the resolution being presented to Senator Girdler and, on behalf of the committee, extended its best wishes to Senator Girdler upon his departure of the General Assembly. The resolution also stated that, when the committee adjourns, it shall do so in honor of Senator Girdler. With there being no further business, the meeting was adjourned at 1:52 p.m.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes

December 20, 2016

Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee meeting was held on Tuesday, December 20, 2016, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Chris Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Chris Harris, Co-Chair; Senators Julian Carroll, Stan Humphries, and Christian McDaniel; and Representatives Will Coursey, Steven Rudy and Jim Wayne.

Guests: Ms. Elizabeth Baker, Planning Director, University of Kentucky; Mr. Scott Aubrey, Director of Real Properties, Finance and Administration Cabinet; Mr. Ryan Barrow, Executive Director, Office of Financial Management; and Ms. Ashley Adams, Financial Analyst, Kentucky Infrastructure Authority.

LRC Staff: Josh Nacey, Committee Staff Administrator; Julia Wang, Analyst; and Jenny Wells, Committee Assistant.

Approval of Minutes

Senator McDaniel moved to approve the minutes of the November 15, 2016 meeting. The motion was seconded by Representative Rudy and approved by voice vote.

Information Items

Mr. Nacey reported on four informational items. The first item is an update regarding the negative impact reimbursement due to the Kentucky State Fair Board (FSFB) from the Louisville Arena Authority (LAA). Committee Staff was recently asked to inquire as to whether and how much money the LAA has paid to the KSFB to cover the agreed upon amount of $1.47 million dollars. In an email from the Tourism, Arts, and Heritage Cabinet, staff was informed that $100,000 had been paid for each of the last three years. The balance is now at $1.17 million dollars.

The second item is a recent Courier Journal article involving the KFC Yum! Center. In particular, the paper quotes a radio interview with the University of Louisville (UofL) Athletic Director, Mr. Tom Jurich, in which he commented on the Arena's financial situation and the relationships between the City, the Arena, and the University.

According to the article, Mr. Jurich made the following comments said that the University could build its own arena on the Belknap campus near Interstate 65, and host men's and women's basketball games there. The university is not wanted in downtown Louisville despite the fact that the Center has been an economic boon for the area. The university would help with the arena's debt; however, Mr. Jurich did not want the university to be the only entity that helps. The City has received great benefit from the deal and brought in more investment for downtown Louisville. Additionally, Mr. Jurich commented that the university was "baited" into a downtown location for the arena.

The article quotes Mr. Scott Cox, chairman of the LAA, as saying that Mr. Jurich and other university officials had agreed earlier this year to be more involved in securing the Yum! Center's financial future. Mr. Cox also said that Mr. Jurich has been a good partner to the arena authority and the county.

In a special meeting on December 9, the Metro Council Budget Committee passed a resolution, which would give the mayor more authority to reach an agreement to set the city's debt payment below the $10.8 million dollar maximum.

Representative Wayne commented that he is pleased with Governor Bevin's appointee as the new chair of the LAA and feels that Mr. Cox's responses to the Arena's financial crisis are diplomatic. Representative Wayne said that he is disappointed in the comments made by Mr. Jurich and believes that it is important to keep the tone that Mr. Cox is setting in regards to the arena.

The third item is an update on the Western Kentucky University (WKU) Sports Medicine Complex. The committee postponed action on the complex during its September meeting. According to a recent WKU press release, the university has determined that no proposal met all the requirements of the Request for Proposals (RFP) issued after the September meeting. Therefore, WKU is unable to award a contract and has decided to close the RFP process. With the bidding process closed, the university plans to pursue other options to build a sports medicine facility through private support or other means.

In response to several questions from Representative Wayne, Mr. Nacey said that, according to limited information provided to staff, WKU does not plan to pursue the project because requirements of the RFP were not met. Further, Mr. Nacey commented that staff does not have additional information in regards to responses to the RFP issued by the university and has no information as to what other options the university may use to acquire the funds to build the complex. Mr. Nacey said that at the present time the project is not moving forward.

Representative Wayne expressed concern as to why there were no responses to the university's RFP and suggested that staff and members keep tabs on whether the "other options" to acquire funding for the complex will also have to follow the model procurement code.

The last item is presented for purposes of the record and it is an update on one School Facilities Construction Commission (SFCC) school bond that the committee approved in October. The issue was for $3 million dollars for the Frankfort Independent School system with both SFCC and local debt service participation. Staff has been informed that SFCC participation was not needed. The financing will now be 100% local since the District recently passed a recallable nickel. No action was required.

Project Report from the Universities

Ms. Elizabeth Baker, Planning Director, University of Kentucky (UK), reported on four items. The first three items are for the purchase of medical equipment in excess of $200,000. The first equipment purchase is for an EEG System (Electroencephalogram-brain monitoring system) which will be located at the UK A.B. Chandler Hospital. This system provides leading-edge features for comfort to allow monitoring while standing, sitting, and sleeping. It will also provide monitoring without being connected and can be moved to the patient's location. The cost is $1,062,268 and was paid in cash with restricted funds.

The second equipment purchase is for a Pediatric Cardiopulmonary Pump which will also be located at the UK A.B. Chandler Hospital. This equipment is a modular heart-lung machine for pediatric patients to improve safety during transplants and open heart surgery. The cost is $222,977 and was paid in cash using restricted funds.

The third equipment purchase is for a Digital Radiography/Fluoroscopy System which will be located at UK Good Samaritan Hospital. This system provides improved images which lead to higher quality of diagnosis and greater treatment accuracy. The costs is $641,943 and was paid in cash using restricted funds. No action was required.

The last item is a request to transfer funds from restricted funds to private funds for the Repair/Upgrade/Improve Civil Site Infrastructure, University Court. This project is being done jointly between UK and Baptist Health Lexington. The project will create a new connection point to the Baptist Health Lexington Campus and widen University Court from that new connection point north of Alumni Drive. The upgrade of University Court will improve safety for pedestrians and bicyclists along University Court and improve traffic operations on Alumni Drive and Nicholasville Road. Baptist Health is paying for the cost of this at $1,600,000.

Representative Rudy moved to approve the project, seconded by Representative Wayne. The motion passed by a roll call vote of 7 yeas, 0 nays.

Lease Reports from Finance and Administration Cabinet

Mr. Scott Aubrey, Director of Real Properties, Finance and Administration Cabinet, reported on three items. The first item is for a new lease exceeding $100,000 for the Energy and Environment Cabinet (EEC) in Perry County. The agency is addressing the need for additional space due to an increase in employees from 26 to 30. Advertisements were put out for competitive bid and the Cabinet selected the low bid for 10,016 sq. ft. at a cost of $15.79 sq. ft. with no utilities. The total annual costs is $158,152 and the lease will expire June 30, 2024.

In response to several questions from Senator McDaniel, Mr. Aubrey said that he does not have the physical address where the facility is located but will get the address for the next meeting. Mr. Aubrey said that there are thirty employees for EEC located in Perry County and this new facility will have a lab function, along with additional office space. Mr. Aubrey said that the current location has no lab functions and does not meet ADA accessibility standards.

In response to several more questions from Senator McDaniel and Representative Harris, Mr. Aubrey said that $8.79 is per sq. ft. for the office space and $2.85 is per sq. ft. for storage space. Mr. Aubrey said that the blended rate for the new location is $15.79 per sq. ft., which is more than double what EEC is presently paying at the current location.

In response to two questions from Senator Carroll, Mr. Aubrey said that the need for additional space and four addition staff were due to the need for lab functions at the new location. Mr. Aubrey said that with the additional fit up of the lab requirements the proposed facility would be a new construction and all costs would be included in the total amount.

In response to a question from Representative Harris, Mr. Aubrey said that the proposed project would be considered a new construction instead of an addition to the existing location. The agency plans to build a new building which will meet their square footage needs.

Senator McDaniel said that the committee needs more information before proceeding with the project and to answer the question as to why the existing property cannot be made to work since the square footage price is more than double the average rate in the county. Senator McDaniel said that the project deserves more scrutiny and it may be that there is nothing else available and the need is justified.

Mr. Nacey said that a letter to the Finance and Administration Cabinet would go out from the committee regarding the motion to table the project until next month's meeting. Also included in this letter would be the questions that the committee members brought up in today's meeting.

Senator McDaniel moved to table the project until next month's meeting, seconded by Senator Humphries. The motion passed by voice vote.

The second item is for tenant improvements for the "300 Building", Education and Workforce Cabinet, located in Franklin County. This modification includes the installation of an electrical outlet and coax cable outlet in the Secretary's suite. The cost is $2,100 and will be paid for through the Tenant Improvement Fund (TIF).

Representative Wayne moved to approve the item, seconded by Senator Carroll. The motion passed by a roll call vote of 7 yeas, 0 nays.

The third item is for tenant improvements for the "300 Building", Energy & Environment Cabinet (EEC), the Education and Workforce Development Cabinet, and the Department of Education, located in Franklin County. This modification consists of the fit- up of the snack/vending/food service area in the building and will include construction of walls, painting, flooring, plumbing, electrical, and HVAC work. The cost is $449,900 and will be paid for through the TIF.

Representative Wayne moved to approve the item, seconded by Senator Humphries. The motion passed by a roll call vote of 7 yeas, 0 nays.

Report from the Office of Financial Management

Ms. Ashley Adams, Financial Analyst, Kentucky Infrastructure Authority (KIA), reported on seven items. The first item was for a Fund A loan for the City of Butler in Pendleton County. The request was for $987,243 for the Sewer System Rehabilitation project. The loan will have a 20 year term, an interest rate of 1.75 percent, and an estimated annual debt service payment of $60,691.

The second item was for a Fund A loan for The Daviess County Fiscal Court in Daviess County. The request was for $1,169,634 for the Friendly Park Village Sewer Extension project. The loan will have a 20 year term, an interest rate of .25 percent, and an estimated annual debt service payment of $31,166.

In response to several questions from Senator McDaniel, Ms. Adams said that the additional subsidization of the loan in the amount of $584,000 comes from KIA's federal CAP Grant that requires KIA to allocate a certain amount of principal forgiveness. This is determined through a priority ranking system put together by the Division of Water

(DOW) with package treatment plants that have been prioritized because of an emergent issue. This system of priority places the plants near the top of the list and are allocated a percentage of principal forgiveness as a result.

In response to several questions from Senator McDaniel, Ms. Adams said that it is a federal requirement that, if a district participates under this particular federal CAP program, a certain amount of the Commonwealth's loan amount has to be forgiven. This forgiveness amount is in addition to Community Development Block Grant (CDBG) monies. KIA has to meet a range requirement of this grant.

Representative Wayne commented that there was a research article which appeared December 19th in USA Today, and written by Laura Unger regarding water districts that are orphaned, not functioning, nor governed in a way which guarantees the quality of the water. Representative Wayne also noted that Ms. Unger said in her article that some of these have been found in KY and wrote that the water is as bad, if not worse, than the water supply in Flint, Michigan.

In response to several questions from Representative Wayne, Ms. Adams said it is the responsibility of KIA to make sure that these communities which have been granted loans can pay back these loans. Ms. Adams said that KIA does not oversee the water districts as to the quality of water; this would most likely fall within the jurisdiction of the Environmental Protection Agency (EPA) or DOW. Ms. Adams said that either the EPA or the DOW could issue a consent decree or an agreed order if an emergent problem with the system is identified and may cause any kind of environmental impact. Additionally, Ms. Adams said that all KIA's funds have a very strict set of rules that these cities must follow.

Ms. Adams said that Daviess County is an example of a package treatment plant that many wish to abandon even though there are a number of citizens that risks losing sewer service. The Daviess County fiscal court and the Water Resource Agency came together to make sure that this didn't happen and took ownership of the project in order to fix it so that these citizens have the sewer service that is needed in order to live in this district.

Representative Wayne said he thought it would be helpful to the committee if it received a report back from KIA to determine if any of the water districts that KIA has granted loans to have any problems regarding the quality of the water or oversight of the operations. Further, Representative Wayne said that the committee approves these types of loans each month. However, there are citizens that are suffering because of water systems or districts that are not being properly administered.

The third item was for a Fund A loan for the City of Louisa in Lawrence County. The request was for $356,000 for the Infiltration Rehabilitation project. The loan will have a 5 year term, an interest rate of 2.75 percent and an estimated annual payment of $77,420.

The fourth item was for a Fund B loan to the City of New Castle in Henry County. The request was for $445,000 for the Water Main Replacement project. The loan will have a 20 year term, an interest rate of .25 percent, and an estimated annual payment of $23,715.

The fifth item was for a Fund B loan for the City of Bardstown in Nelson County. The request was for $1,129,000 for the Bardstown WTP Improvements project. The loan will have a 20 year term, an interest rate of 1.75 percent, and an estimated annual payment of $69,406.

The sixth item was for a Fund B loan for the City of Bowling Green f/b/o Bowling Green Municipal Utilities (BGMU) in Warren County. The request was for $2,000,000 for the Water Treatment Plan Disinfection System project. The loan will have a 20 year term, an interest rate of 1.75 percent, and an estimated annual payment of $122,951.

The final item was for a Fund C loan for the City of Bowling Green f/b/o Bowling Green Municipal Utilities (BGMU) in Warren County. The request was for $4,000,000 for the Water Treatment Plan Disinfection System project. The loan will have a 20 year term, an interest rate of 3 percent, and an estimated annual payment of $330,500.

Senator McDaniel moved to approve all seven items, seconded by Representative Wayne. The motion passed by a roll call vote of 7 yeas, 0 nays.

Report from the Office of Financial Management

Mr. Ryan Barrow, Executive Director, Office of Financial Management, reported on five items for the Office of Financial Management. The first item was the State Property and Building Commission (SPBC) Revenue Bonds, Project 115. Proceeds from this bond issue will provide financing for approximately $250 million dollars of General Fund projects authorized by the General Assembly from Sessions which span from 2004-2016. The proposed date of sale is January 24, 2017, an anticipated all in true interest rate of 4.113 percent, and $18,000,000 debt service payment.

In response to a question from Senator McDaniel, Mr. Barrow said that the 4.1 percent issue for the Commonwealth versus the next issue for UK which is at 2.4 percent, is due to UK's numbers being dated and because UK has a better credit rating than the Commonwealth. Additionally, UK's issue is underestimated and is not represented in the same interest rate climb that is seen in the current market for the 4.1 percent rate.

Representative Rudy moved to approve the item, seconded by Senator McDaniel. The motion passed by a roll call vote of 7 yeas, 0 nays.

The second item was for the University of Kentucky (UK) General Receipts Refunding Bonds, 2017 Series A and Series B. Proceeds from the Series A issue will refund and retire all ALCo/UK General Receipts Project Notes, 2006 Series A. This issue has a par amount of approximately $30.6 million dollars, an all-in true interest cost of 2.433 percent, and will mature on October 1, 2022. Series B will be used to refund and retire all outstanding UK General Receipts Taxable Build America Bonds, 2010 Series A. This issue has a par amount of $7.5 million dollars for Series B, an all in true interest cost of 2.712 percent, and will mature on October 1, 2024. The savings to both issues are approximately $1.8 million dollars.

Representative Wayne moved to approve the item, seconded by Senator Carroll. The motion passed by a roll call vote of 7 yeas, 0 nays.

The third item was for the Kentucky Economic Development Finance Authority (KEDFA) Healthcare Facilities Revenue and Revenue Refunding Bonds, Series A, for Masonic Home Independent Living II, Inc. Proceeds from this bond issue will finance the acquisition, construction, installation, and equipping of independent and assisted living facilities to be operated by the Masonic Homes Campus in Louisville, and to refund bonds previously issued for similar facilities in the same location. This issue has a par amount of $122,880,000, an all-in true interest cost of 4.7 percent, with a pricing date of October 25, 2016. No action was required.

In response to a question from Representative Harris, Mr. Barrow said that this facility was an independent living facility and not limited to Masons although it is called a Masonic Home.

In response to a question from Senator McDaniel, Mr. Barrows said that although the Commonwealth is not responsible for the repayment of conduit loans, there have been rare transactions for partial conduit loans for industrial development parks, and there are backup guarantees on these types of transactions.

In response to another question from Senator McDaniel, Mr. Barrow said that if the Commonwealth began taking on conduit issues and backstopping them, it would affect the Commonwealth's credit rating as a negative. In response to a question from Representative Harris, Mr. Barrow said that he had never presented an issue of that type to the committee.

The final item was for Kentucky Housing Corporation Single Family Housing Revenue Bonds 2016 Series B. This taxable bond issue will refund certain Series 2007 bond issues, Series E, G, and H. Proceeds from this issue was $41,110,000, a true interest cost of 3.73 percent, and will mature on July 1, 2037. No action was required.

Representative Harris said that the fifth item presented from OFM involved a bond issue for the Gallatin County Airport which does not require a vote. After discussions between OFM and committee staff, it was determined that, for transparency purposes, it was best to submit this item to the committee as an informational item. The reason it does not require a vote is because the state is not the issuer. A local government is issuing the bonds. On the other hand, the reason it was submitted is because a state agency, the Kentucky Transportation Cabinet, Department of Aviation, plays a role in this transition.

New School Bond Issues with School Facilities Construction Commission (SFCC) Debt Service Participation

Mr. Ryan Barrow reported on six school bond issues with SFCC debt service participation. Four issues will finance school renovations and the remaining two will refinance the construction of new schools. There were no local tax increases associated with these projects.

Representative Wayne moved to approve the school bond issues, seconded by Senator Carroll. The motion passed by a roll call vote of 7 yeas, 0 nays.

New School Bond Issues with 100 Percent Locally Funded Debt Service Participation

Mr. Nacey said that one school bond issue was reported to the committee which is for Spencer County. It is 100 percent locally funded and did not involve a tax increase. The issue will refund 2005 Series bonds. No action was required on this item.

Debt Issuance Calendar

Mr. Nacey said that the updated debt issuance calendar was included in the members' folders.

Senator Humphries said that this will be Representative Harris's last meeting as Co-Chair of the committee and expressed his appreciation to Representative Harris for his work, leadership, professionalism, and intent to find the best answers for the Commonwealth through the committee.

Representative Rudy said that Capital Projects and Bond Oversight is an important committee and commended Chairman Harris on a job well done. Additionally, Representative Rudy said that Representative Harris has been an informed and effective chairman of the committee and has served it well.

Representative Harris said that it has been an honor to serve on the committee. In closing, Representative Harris said that the committee takes on issues regarding government transparency, accountability, and oversight. These issues are very important and Representative Harris expressed his intent to continue working on these issues in the 2017 General Assembly.

With there being no further business, the meeting was adjourned at 1:52 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December Meeting of the 2016 Interim

December 13, 2016

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 13, 2016, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Senators Julie Raque Adams and Alice Forgy Kerr; Representatives Linda Belcher and Tommy Turner.

Guests: Linda Hampton, Wayne Lewis, Patrick Shirley, Governor's Office of Early Childhood Development Authority; Caroline Atkins, Robert King, Sarah Levy, Jay Morgan, Council on Postsecondary Education; Carrie Bishop, Finance and Administration Cabinet; Keith Peynter, Board of Chiropractic Examiners; Larry Brown, Tammy John-son, Carson Kerr, Board of Durable Medical Equipment Suppliers; Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Amy Barker, Department of Corrections; Chase Bannister, Robin Kinney, Lisa Moore, Amy Peabody, Leslie Slaughter, Department of Education; Steve Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Justin Dearinger, Tanya Dickenson, Department for Behavioral Health, Developmental and Intellectual Disabilities; Elizabeth Caywood, Todd Tripp, Department for Community Based Services; Chet Hayes.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

The Administrative Regulation Review Subcommittee met on Tuesday, December 13, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GOVERNOR'S OFFICE: Early Childhood Development Authority

10 KAR 6:010. Duties of the Early Childhood Advisory Council. Linda Hampton, acting director; Wayne Lewis, executive director of education programs; and Patrick Shirley, staff attorney, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete citations to repealed statutes; (2) to amend Section 3: (a) to make a technical correction; and (b) for clarity; and (3) to amend Sections 4 through 6 to com-ply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals. Caroline Atkins, senior associate; Robert King, council president; Sarah Levy, director of postsecondary licensing; and Jay Morgan, council vice president, represented the council.

In response to a question by Co-Chair Harris, Mr. King stated that the statewide diversity policy addressed challenges such as disparity in graduation rates between minority students and the larger population. This administrative regulation established strategies for public educational institutions to promote and enhance minority graduation rates. Approximately forty (40) years ago, Kentucky was cited for having policies that intentionally limited minority access to public educational institutions, which resulted in a special order from the U.S. Department of Education to address those imbalances. The special order was lifted; however, the council had an ongoing obligation to monitor issues of diversity at all public educational institutions. Additionally, a Kentucky statute was in place to require the council to conduct this monitoring and to address imbalances discovered by the monitoring. For example, the council may prohibit an institution from offering new academic programs until that institution complied with statewide diversity policies. This administrative regulation clarifies standards and enhances oversight.

In response to questions by Senator Kerr, Mr. King stated that each public educational institution developed distinct diversity strategies. Strategies were then evaluated uniformly by the council using results-based criteria. The council would share strategies with proven outcomes to other public educational institutions. There was a committee that served with the council to provide oversight and ensure transparency. Ms. Atkins stated that the committee used separate rubrics for two (2) year and four (4) year institutions to qualitatively and quantitatively evaluate diversity programs.

In response to a question by Representative Belcher, Mr. King stated that graduation rate data were available on the council's Web site, and the council would provide specific data to members of the subcommittee.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to change a definition term from "diversity-ty policy" to "policy" for consistency throughout the administrative regulation; and (2) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Interstate Reciprocity Agreements

13 KAR 4:010 & E. State Authorization Reciprocity Agreement.

In response to questions by Co-Chair Harris, Ms. Levy stated that this agreement was new for Kentucky. Except for six (6) states, all states had joined as member states. Kentucky was a later state to join the agreement. The agreement allowed a student who was a resident of Kentucky to take courses from institutions in other member states. In order to be approved as a participating institution in the agreement, the institution was required to be authorized by the member state and accredited by an accrediting agency recognized by the U.S. Department of Edu-cation, meet faculty qualification standards, have certain curriculum standards, and comply with truth-in-advertising requirements. In addition, a nonpublic institution was required to demonstrate financial stability, as shown by the financial responsibility score determined by the U.S. Department of Education. Mr. King stated that the agreement allowed institutions of member states to offer courses to students in other states without the institutions being licensed in those states. The agreement was not necessarily a course quality-assurance program. Becoming a member state to the agreement required Kentucky to waive some quality-assurance requirements. The council was tasked with consumer-protection responsibilities.

In response to questions by Representative Belcher, Mr. King stated that this administrative regulation did not affect the transferability of credits from institutions within Kentucky. Due to legislation from the 2010 or 2011 Regular Session of the General Assembly, there was broader and more consistent transferability of credits, largely from two (2) year institutions to four (4) year institutions. Transferability of credits from four (4) year to four (4) year institutions was broad for standard core courses with well-established learning outcomes but varied for more specialized or advanced courses.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a term that is not used in the administrative regulation; (2) to amend Sections 2 and 3 to reference the Web site for the National Council for State Authorization Reciprocity Agreements (NC-SARA) for the purpose of obtaining forms required by NC-SARA; and (3) to amend Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel. Carey Bishop, staff attorney, represented the office.

In response to a question by Co-Chair Harris, Mr. Bishop stated that travel reimbursement rates were available on the controller's Web site. This administrative regulation established the forms required to apply for reimbursement.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a superfluous definition; (2) to amend Section 2 to specify when the Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution document is used; (3) to amend Section 6 to clarify reimbursement procedures if using state park facilities; and (4) to amend Sections 1, 2, 4, 7, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board

201 KAR 21:025. Board; officers, duties. Keith Poynter, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) 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.

201 KAR 21:041. Licensing; standards, fees.

Board of Durable Medical Equipment Suppliers: Board

201 KAR 47:010 & E. Home medical equipment and supplier licenses, requirements, and fees. Larry Brown, commissioner; Carson Kerr, executive advisor; and Tammy Johnson, vice-chair, represented the board.

In response to questions by Co-Chair Harris, Mr. Brown stated that this subject area was formerly part of the Board of Pharmacy, under which the yearly licensure fee was $200. These administrative regulations established a two (2) year licensure fee of $350; therefore, the yearly cost was less. The fee amount was based on an estimate, but because this was a new board, it was difficult to determine a specific estimate of needed revenue.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 10 to add a citation; (2) to amend Section 2 to allow licensure if an applicant is exempted from accreditation by a national accreditation organization; (3) to amend Section 2 to remove the per se suspension provision in accordance with KRS 13B.125; (4) to amend Section 4 to include the reciprocal license fee that is listed in the application form; (5) to amend Section 5 to establish refund procedures for denied or incomplete applications; (6) to amend Sections 5 and 8 to clarify annual training requirements; (7) to amend Section 10 to require the board, rather than the Office of Occupations and Professions, to grant or deny licenses and to discipline licensees, in accordance with statute; (8) to amend Section 11 to make con-forming changes to the licensure form and to require the applicant's email address; and (9) to amend Sections 4, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 47:020 & E. Inspections, discipline, reinstatement, and administrative appeals.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 1 to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to: (a) clarify that the inspection and investigation procedures apply to applicants and licensees; (b) delete the inspection fee as initial licensure and other inspection fees are already established by statute; and (c) delete credit history procedures because they are not clearly authorized by statute. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Karen Waldrop, deputy commissioner, and David Wicker, general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Waldrop stated that the initially proposed administrative regulations exempted trappers from hunter orange requirements during firearms seasons; however, the agency amendments replaced hunter orange requirements during firearms seasons.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for "youth;" (2) to amend Sections 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 3(2) to delete the hunter orange exemption for furbearer trappers, as cross referenced in 301 KAR 2:251. 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: (1) to amend Section 1 to clarify the definition for "youth;" (2) to amend Sections 1, 7, 8, 9, and 11 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 8's water set requirements to establish that a body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater; (4) to amend Section 9 to establish that, except for box or cage live traps or properties five (5) acres or less, a person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or designee, except that there shall not be more than three (3) traps set within any ten (10) foot spacing; and (5) deletes Section 10, which exempted furbearer trappers from hunter orange requirements. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:150. Eastern Kentucky Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend EKCC 01-07-03, 02-01-02, 06-03-01, 11-05-01, 11-07-01, 13-01-01, 13-01-02, 13-02-05, 13-08-01, and 13-08-03: (a) for clarity; (b) to correct citations; and (c) to make technical corrections; and (2) to amend Section 1 to update the edition dates of the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:171. Repeal of 702 KAR 3:170. Robin Kinney, associate commissioner; Lisa Moore, staff assistant; and Amy Peabody, staff attorney, represented the board.

Instructional Programs

705 KAR 4:231. General program standards for secondary career and technical education programs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; (2) to amend Section 14 to add criteria for program assessments; and (3) to amend Sections 2 through 7, 10, 14, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Instructional Programs

780 KAR 4:012. Repeal of 780 KAR 4:010.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:071. Repeal of 804 KAR 1:070, 804 KAR 1:090, and 804 KAR 1:120. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Intellectual and Developmental Disabilities: Mental Health

908 KAR 2:040. Hospital district assignments. Justin Dearinger, regulation coordinator, and Tanya Dickenson, director, represented the division.

In response to questions by Senator Raque-Adams, Ms. Dickenson stated that Kentucky Correctional Psychiatric Center was the only forensic psychological institution, meaning that the facility was criminal-justice oriented. Policies were being repealed because the contents had been absorbed into other administrative regulations. Mr. Dearinger stated that out-of-state referrals were rare and may include an out-of-state resident being referred to a Kentucky facility or a Kentucky resident being referred to an out-of-state facility.

In response to a question by Senator Kerr, Mr. Dearinger stated that this administrative regulation broadened flexibility regarding which facility a patient would be assigned based on family proximity. This was a step toward the proposed Tim's Law and would be another policy tool to assist families dealing with mental illness.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 3 to delete provisions that are already established by statute; (4) to amend Section 4 to clarify requirements for out of district hospital admittance; and (5) to amend Section 5 to clarify requirements for admittance to a psychiatric unit in a local general hospital. Without objection, and with agreement of the agency, the amendments were approved.

Division of Program Integrity: Institutional Care

908 KAR 3:081. Repeal of 908 KAR 3:080, 908 KAR 3:090, 908 KAR 3:100, 908 KAR 3:110, 908 KAR 3:120, 908 KAR 3:130, 908 KAR 3:140, 908 KAR 3:150, 908 KAR 3:160, and 908 KAR 3:180.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1. Elizabeth Caywood, executive advisor, and Todd Trapp, branch manager, represented the department.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:030. Application process.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:050. Claims and additional administrative provisions.

Division of Protection and Permanency: Child Welfare

922 KAR 1:360 & E. Private child care placement, levels of care, and payment.

Other Business: Co-Chair Harris thanked Representative Linda Belcher who was leaving the General Assembly. A resolution had been prepared.

Co-Chair Harris stated that Representative Belcher would be missed by the subcommittee. She performed on the subcommittee as a non-partisan legislator, and her work was deeply appreciated.

Senator Kerr stated that Representative Belcher would be missed, especially as a colleague and friend to other female legislators because female legislators were in the minority in the General Assembly, regardless of party affiliation. Representative Belcher maintained grace under pressure and was very knowledgeable and well prepared for legislative issues.

Senator Raque–Adams stated that she agreed with Senator Kerr's remarks. It was nice to be on a subcommittee in which half of the members were female. Representative Belcher's work was appreciated and she would be missed.

A motion was made and seconded to adopt the resolution prepared for Representative Linda Belcher.

Representative Belcher stated that working for the General Assembly was a wonderful experience. She was very busy in her community and, after two (2) weeks to rest, she would be moving forward with her endeavors. She looked forward to continue working with legislative friends and policymakers in the future.

The following administrative regulations were deferred to the January 6, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Licensed Professional Counselors: Board

201 KAR 36:045. Distance counseling.

201 KAR 36:055. Administrative subpoena.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:013. Repeal of 902 KAR 20:014.

Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1.

The Subcommittee adjourned at 2 p.m. until January 6, 2017, at 1 p.m.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes
2016 Interim

December 13, 2016

Call to Order and Roll Call

The Program Review and Investigations Committee met on Tuesday, December 13, 2016, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Terry Mills, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Terry Mills, Co-Chair; Senators Tom Buford, Dan "Malano" Seum, Stephen West, and Whitney Westerfield; Representatives Tim Couch, David Meade, Ruth Ann Palumbo, Rick Rand, Arnold Simpson, and Jeff Taylor.

Guests: Judge Roger Crittenden, Chairman, Child Fatality and Near Fatality External Review Panel; David Gordon, Executive Director, Tom Crawford, Director of Local Valuation Support, Office of Property Valuation, Richard Bertelson, Staff Attorney, Office of Legal Services for Revenue, Department of Revenue; William "Mack" Bushart, Executive Director, Kentucky Property Valuation Administrators Association, Clay Wells, Union County Property Valuation Administrator, Chairman of the Farm Committee for Property Valuation Administrators; Terry "Catfish" Rakes, Marion County Property Valuation Administrator; Thomas Wheatley, Alice Wheatley, and Madeline Wheatley.

LRC Staff: Greg Hager, Committee Staff Administrator; Colleen Kennedy; Van Knowles; Chris Riley; William Spears; Shane Stevens; Joel Thomas; and Kate Talley, Committee Assistant.

Representative Mills asked for a moment of silence for Senator Clark's father, who recently passed away.

Representative Mills welcomed guests and said the committee will meet sometime in January to choose study topics for 2017.

Minutes for November 10, 2016

Upon motion by Representative Simpson and second by Senator Seum, the minutes of the November 10, 2016, meeting were approved by voice vote, without objection.

Staff Report: 2016 Update On The Child Fatality And Near Fatality External Review Panel

Colleen Kennedy said that the General Assembly created the panel in 2014 to conduct comprehensive reviews of child fatalities and near fatalities suspected to be a result of abuse or neglect. Program Review and Investigations is required by statute to evaluate the panel's operations, procedures, and recommendations annually.

The panel is attached to the Justice and Public Safety Cabinet for staff and administrative purposes. A 2014 memorandum of understanding affirms the panel's independence.

The panel is in compliance with six of the seven statutory requirements reviewed. The exception is that the panel's annual report is to be published by December 1. The 2016 report was published on December 12.

The panel has implemented the recommendation from the Program Review evaluation in 2015 that the panel adopt a formal policy for destroying old online case files.

For fiscal years 2015 and 2016, the cabinet's general fund included allocations of $420,000 per year for panel staff and operating costs. Beginning with FY 2017, panel funding comes from the cabinet's baseline funding. Recent information from a cabinet official is that $382,000 was set aside for the panel for FY 2017. However, the panel's understanding from the cabinet has been that no specified amount was set aside for FY 2017.

Current panel staff are

a full-time staff attorney whose salary is funded in full by the panel;

an executive staff advisor, who handles other cabinet duties and whose salary is 50 percent funded by the panel;

a cabinet administrator who acts as a liaison between the panel and the cabinet;

an intern during spring semesters; and

part-time, contracted case analysts.

The panel's preferred staffing would be

a full-time director,

a full-time program coordinator,

a full-time data analyst,

an intern, and

contractors as needed.

A formal request for these positions has not been made based on the understanding that no funding was available.

The panel's 2015 annual report had 10 recommendations. One of the two recommendations requiring action by the General Assembly was enacted in 2016. The panel's 2016 annual report has two recommendations requiring action by the General Assembly

to create easily affordable and low-cost access to background checks for parents considering using unregulated child care providers and

to enhance penalties when a driver is convicted of a DUI with a minor in the vehicle.

In response to questions from Senator Westerfield, Ms. Kennedy said that electronic records are to be destroyed after 5 years. Judge Crittenden said paper files are destroyed immediately after review. He clarified that "online" documents are documents available on SharePoint that are available only with restricted access within state government. In response to a question from Representative Mills, Ms. Kennedy said that funding is determined by the Justice and Public Safety Cabinet. Judge Crittenden said $382,000 has been set aside for the panel's use this fiscal year. He expects another $382,000 for the next fiscal year.

Judge Crittenden explained that the panel's annual report was submitted 11 days late so that it would include information from all the panel's meetings. The panel reviewed 142 cases this year. In response to a question from Senator Seum, Judge Crittenden said an unregulated childcare provider is what is generally considered a babysitter. Such providers are not required to have background checks.

Representative Mills commented that drug abuse is the main problem according to the panel's report. Although the pension crisis is a major concern facing our state, services for children should not suffer at its expense. Upon motion by Representative Simpson and second by Representative Palumbo, the report *2016 Update On The Child Fatality And Near Fatality External Review Panel* was adopted by roll call vote.

Staff Report: Assessment Of Farmland For Property Taxation In Kentucky

Perry Nutt said that a 1969 amendment to the Kentucky Constitution provided that farmland would be assessed differently for property taxation. A commercial or residential tract is assessed based on its fair cash value–the estimated price it would bring at a fair voluntary sale. Farm property must be assessed based on its agricultural use value, which is the estimated price the property would bring if the use of the land was limited to agriculture. This typically results in a lower assessed value and lower property taxes for the owners. The 1969 amendment allowed the General Assembly to levy an additional tax on farmland if the use of the land changed, commonly referred to as the rollback provision.

HB 442, the enabling legislation for the amendment, was enacted in 1970. Under the law, for a tract of land to quality for assessment as farmland, it had to meet a minimum acreage requirement and be used for agricultural or horticultural purposes. Property owners had to file an application that documented a minimum amount of income was generated from the use of the land. A rollback provision specified that if the use of the land changed, an additional tax would be applied for the current year and the previous 2 years.

HB 585, enacted in 1992, removed the income requirement and the rollback provision. Under current statutes, two types of land qualify for the preferential assessment: agricultural and horticultural. Agricultural land is defined as any tract with at least 10 acres that is used for the production of livestock, poultry, and growing of tobacco and/or other crops, including timber. A 5 acre tract can qualify if the land is being used for aquaculture. Any size tract can qualify if it meets the requirements of a state or federal agricultural program. To qualify as horticultural land, the tract must have at least 5 acres and must be used for the cultivation of a garden, orchard, or the raising of fruits, nuts, vegetables, flowers, or ornamental plants. When determining whether the land meets the minimum 5 or 10 acre requirements, land under farm buildings and similar structures is included. Land under the owner's residence, lawns, and drives, is excluded.

Three statutory provisions address when the preferential assessment is no longer applied. If a qualifying tract has been zoned for another use besides agriculture, it qualifies for the preferential assessment until the use of the land changes. If part of a tract has changed from agriculture to another use, the remainder of the tract can receive the preferential assessment if it meets the minimum acreage requirement and is used for agricultural or horticultural purposes. If the owner has met the provisions for agricultural land for 5 consecutive years but has ceased to farm the land and the use has not changed, then the property would still receive the preferential assessment (retired farmer provision).

Under current statutes, the value of the land is based on its income-producing capability, assuming its use is limited to agricultural or horticultural purposes. In determining income-producing capability, the assessment must take into account characteristics of each tract such as the type of land, the soil productivity, and any improvements.

Staff found some ambiguities in statutes. First, the term "used for production" is not defined. Since the removal of the income provision in 1992, statutes do include any criteria that could be used to determine if a tract is being used for agricultural or horticultural purposes. Second, statutes do not specify what portion of the tract or how much agricultural activity must take place before a tract qualifies. Third, statutes list certain types of agricultural use, so it is unclear whether strict interpretation would allow other types of animal or agricultural enterprises to qualify. Fourth, a provision permits any tract to qualify if it meets the requirements for a state or federal agricultural program. It is unclear whether a tract qualifies if the owner was approved for such a program but did not receive any payments. A strict interpretation may exclude a property owner who participates in a local agricultural program.

The Kentucky Supreme Court has ruled that farmland assessments must be based on income producing capability and property valuation administrators (PVAs) must consider the characteristics of each tract. Only one court decision mentioned directly the income and acreage requirements that were in place at that time. The court ruled the income and acreage requirements were not unreasonable, but did not identify the factors it considered in reaching this conclusion. Cases before the Kentucky Board of Tax Appeals have focused on valuation issues and determination of when the use of a tract changes. Language in these board rulings suggests that after the income requirement was removed, the sole requirement is that the land have income-producing capability. Overall, these cases provide little guidance because what constitutes "used for production," the types of agriculture allowed, and the amount of agricultural activities needed for a tract to qualify have not been brought before the court or the board.

Staff interviewed the executive director and the Farm Committee of the Kentucky PVA Association, participated in a group discussion of PVAs at their fall conference, and interviewed officials in the Department of Revenue's Office of Property Valuation. PVAs and department officials said that after the removal of the income provision in 1992, the adopted policy was to grant the preferential assessment if the tract met the minimum acreage requirement and had income-producing capability. This practice does not consider three provisions in the statutes. First, it does not consider whether land is being "used for" agricultural production. Only a few PVAs monitor agricultural use. Second, current practice does not consider the acreage adjustment provision. Third, common practice does not consider whether a tract may qualify because it meets the requirements under a state or federal agricultural program.

PVAs and department officials recognize that under the common practice there are misclassified farms—tracts without agricultural use that receive the preferential assessment. They noted that misclassification is a concern, but that misclassified farms may be concentrated in certain areas and the effect on assessments and property tax revenue will vary by county. The effect on property tax revenue may be small. PVAs indicated that determining agricultural use is not difficult for most tracts. For certain tracts, PVAs had questions regarding how to apply the "used for" provision. Overall, PVAs indicated that legal considerations and statutory limitations have hampered their ability to diligently enforce the provision that farmland be used for agricultural purposes.

In February 2016, the *Herald Leader* published a series of articles examining the determination and valuation of farmland in Fayette County. The articles suggested that lower property taxes due to the preferential assessment decrease property tax revenue, are inequitable, and do not promote the preservation of farmland. A number of Fayette County parcels received the preferential assessment, even though the parcel was about to be developed, development was underway, or the land was idle. More than 800 residential tracts of 10 to 11 acres did not have agricultural use, but received the preferential assessment.

Fayette County may not be representative of other counties though. It has a relatively high number of 10 acre properties because Fayette County required a 10 acre minimum lot size for residential tracts outside the urban services area prior to 1999. The price of farmland in Fayette County is relatively high, which means that the deferred per acre is much higher than in other counties.

In response to the *Herald Leader* series, the Fayette County PVA requested guidance from the Department of Revenue. In its response, the department said that a tract must be actively used for agricultural, aquaculture, or horticultural purposes and contain the minimum acreage after the acreage adjustments have been applied unless the tract would qualify under the retired farmer provision. For tracts that are transitioning to another use, in most cases the preferential assessment should be removed once the new use has begun. If the tract was idle, a PVA could remove the agricultural assessment unless the retired farmer provision applied. A partial tract could qualify for the preferential assessment if it met the minimum acreage requirement and had active use.

The Fayette County PVA has indicated he will remove agricultural exemptions for all tracts except those that qualify under the retired farmer provision and will require an application demonstrating the land has active agricultural use. For land that is likely to be developed, tracts must have active agriculture use or they must qualify under the retired farmer provision. Partial tracts may qualify if they meet the minimum acreage requirements and are being used for agriculture, or qualify under the retired farmer provision.

HB 576, introduced in the 2016 Regular Session, would require that PVAs obtain documentation regarding tract size and use of the land and that the land be currently used for agricultural, aquaculture, or horticultural purposes. The bill clarified that the land tied to the owner's permanent residence must be excluded when determining whether the minimum acreage requirement is met. Any size tract would qualify if the owner had a current enforceable agreement under a state or federal agricultural program.

In 2015, there were more than 300,000 tracts in Kentucky that were assessed as farmland. Their fair cash value was $56.1 billion. Their estimated agricultural use value was $19.5 billion. The deferred assessment amount—the difference in these two values—was $36.6 billion. The reduction in state property tax revenue attributable to the deferred assessment was $44.7 million. The 15 counties with the highest deferred assessments in 2015 accounted for 36 percent of total deferred assessments in Kentucky. Fayette County topped the list at $1.6 billion in deferred assessments. Logan, Christian, and Bourbon Counties had deferred assessment of more than $1 billion each.

The number of misclassified farms and the deferred assessments from them could not be determined, which precluded staff from estimating the fiscal impact. It can be said that if assessments increase due to a reduction in the number of misclassified farms, state, local, and school property tax revenue will increase. For school districts, the increase in property assessments will lead to an increase in local property tax revenue but will reduce the amount of state Support Education Excellence in Kentucky (SEEK) funds a district receives. Overall, the additional local property tax revenue will exceed the reduction in state SEEK funds, however.

Representative Palumbo thanked Mr. Nutt for his diligence on this issue.

In response to questions from Senator Buford, Mr. Nutt said the Supreme Court and the Board of Tax Appeals have not been asked directly what constitutes agricultural land.

In response to a question from Senator West, Mr. Nutt said current statutory requirements are minimum acreage and land usage; there is no minimum level of usage required. Development potential of properties was not covered in this study.

Mr. Gordon said the goal of the Department of Revenue is to eliminate misclassified farms. In the coming year, emphasis will be placed on the acreage requirement and land usage. The department is developing a form for PVAs to use in their determinations.

In response to a question from Senator Buford, Mr. Gordon said deducting the land under a residence, lawns, and driveways is required in KRS 132.450. Questions regarding this requirement are anticipated.

In response to a question from Representative Simpson, Mr. Gordon said a quadrennial review is required. Mr. Crawford said some PVAs assess lands in different ways. Some assess geographically; assess categorically. Owners can appeal PVA assessments.

In response to a question from Senator West, Mr. Bertelson said the land under a residence is taxed at fair cash value.

In response to a question from Representative Mills, Mr. Bertelson said the agricultural value of a property is determined under KRS 132.010(11).

Mr. Bushart agreed that there is not much guidance in statutes about what agricultural use means. The association has requested a list of relevant federal and state programs from the Agriculture Commissioner.

Senator West commented that the provision in HB 442 concerning agricultural purpose is vague and gives PVAs too much discretion. It is likely that taxing some tracts of land at residential rates rather than agricultural rates will push these tracts into development.

In response to questions from Representative Simpson, Mr. Bushart said the association would like statutory requirements to be more concrete and uniform. Mr. Nutt said 30 states have a minimum acreage requirement, 26 states have an income requirement, and 20 states require both.

Representative Rand commented that PVA offices are understaffed. These assessments affect schools and the SEEK formula, and therefore need to be dealt with cautiously.

In response to a question from Representative Meade, Mr. Wells said timberland is classified according to US Department of Agriculture land classes. These assessments are not an issue in his area.

Representative Palumbo said the intent of HB 576 was not to harm farmers. PVAs are understaffed and underfunded.

Senator Buford commented that consistency is needed across the state. PVAs should not go beyond the scope of the statutes.

Upon motion by Senator Seum and second by Representative Simpson, the report *Assessment Of Farmland For Property Taxation In Kentucky* was adopted by roll call vote.

Staff Update On The Foster Care System Study

Chris Riley said the study will focus on children who have been removed from their homes by a court and remanded into the custody of the Cabinet for Health and Family Services.

The circumstances under which a child might enter foster care begins when a report alleging dependency, neglect, or abuse is filed and a Department for Community Based Services social service worker (SSW) investigates the allegations. The three basic scenarios are the following.

It is found that the child is not in imminent danger, but that the family needs help. The SSW may arrange for services to help the family improve its living conditions.

If the family refuses help, the SSW can file a non-removal petition with the courts to force the family to accept help in the best interest of the child.

If the SSW substantiates the allegations and believes the child is in imminent danger, the SSW will file a petition with a court for the immediate removal of the child.

Mr. Riley explained steps in the foster care court process: petition, temporary removal hearing, adjudication hearing, disposition hearing, and annual permanency review. Each step has specific requirements, which include time limits and deadlines for actions. Within 5 working days of signing of the temporary custody order, the SSW schedules a meeting to develop a family case plan detailing steps that need to occur to correct the problems that resulted in the child being removed. The SSW and the family work on and revise this plan continuously during the process.

Reunification was the goal in approximately 70 percent of the permanency plans from FY 2010 to FY 2015. Adoption was the permanency goal in roughly one-quarter of the cases.

On average, nearly 4,100 children per year exited from out-of-home care from FY 2010 to FY 2015. The four primary reasons were reunification (nearly 40 percent of exits on average), placement with relatives (more than 26 percent), adoption (19 percent), and ageing out (nearly 13 percent).

According to the annual reports submitted by the Kentucky Citizen Foster Care Review Boards, the number of children whose cases were reviewed by the board has grown by more than 13 percent in recent years, from nearly 9,800 children in FY 2010 to nearly 11,000 in FY 2015. These are children who were in foster care whose cases were reviewed throughout the fiscal year. The population as reported by the Department for Community Based Services (DCBS) fluctuates daily. As of November 6, 2016, the cabinet had 8,083 children under its custody and care.

According to the annual population counts, children 5 and younger represented the largest age grouping of children in out-of-home care, accounting for nearly one-third of children over this period. Children aged 16 to 20 years consistently accounted for approximately one-quarter of the children. Approximately 1 percent of children were age 21 and over.

Over this period, boys were approximately 51 percent of the children in out-of-home care. Seventy-six percent of the children were Caucasian, nearly 16 percent were African American, and 8 percent were classified as "other" or "unable to determine". The average age for children in out-of-home care was 10 years.

As the study moves forward, staff plan to utilize data from the Administrative Office of the Courts that will provide times per case for the steps in the court process. Staff are also currently looking into the DCBS workforce and financing of the foster care system. In response to a question from Representative Taylor, Mr. Riley said the upward trend of children being placed with relatives or adopted is because of an increasing number of unsafe home environments. Representative Mills said the committee adopted seven reports this year and heard testimony on many other subjects. Reports are being presented in a timely manner. He thanked Representative Taylor for his service. Representative Simpson and Senator West thanked Representative Mills for his leadership.

The meeting adjourned at 11:45 AM.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the January Meeting

January 17, 2017

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 17, 2017, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Senators Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representatives Mary Lou Marzian, Tommy Turner, and Ken Upchurch.

Guests: Kathryn Gabhart, Ethics Commission; Becky Gilpatrick, Higher Education Assistance Authority; Jimmy Adams, Donna Brockman, Lisa Lang, Cassie Trueblood, Education Professional Standards Board; Margaret McCoy, Secretary of State; Maryellen Allen, State Board of Elections; Lesley Bilby, Brian Crall, Rosemary Holbrook, Personnel Cabinet; Gary Morris, Department of Revenue; Nathan Goldman, Board of Nursing; Tyler Madison, Clint Quarles, Department of Agriculture; Sean Alteri, Aaron Keatley, Energy and Environment Cabinet; Stephen Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Melea Rivera, Chandra Venettozzi, John Watkins, Office of Health Benefit Exchange; Bob Silverthorn, Office of Inspector General; Veronica Cecil, Sharley Hughes; Department of Medicaid; Elizabeth Caywood, Department for Community Based Services; Caroline Ruschell, Children's Advocacy Centers; Mary Sparrow, Department for Income Support; Roger McCann, Community Action KY; Larry Suess.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

The Administrative Regulation Review Subcommittee met on Tuesday, January 17, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission

9 KAR 1:010. Statement of financial disclosure. Katie Gabhart, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Authority

11 KAR 4:080. Student aid applications. Becky Gilpatrick, director of student aid, represented the authority.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration

16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial. Jimmy Adams, executive director; Donna Brockman, director of professional learning and assessment; Lisa Lang, general counsel; and Cassie Trueblood, staff attorney, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; (2) to amend Section 2 to clarify the procedure for handling a complaint or report if the educator fails to file a rebuttal and has not requested to extend the thirty (30) day deadline; and (3) to amend Sections 1, 2, 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification.

Internship

16 KAR 7:010. Kentucky Teacher Internship Program.

In response to questions by Co-Chair Harris, Ms. Brockman stated that the teacher intern assessment process and the provisions for each of the three (3) cycles of the assessment process were established throughout this administrative regulation. The first two (2) assessment cycles were formative and primarily focused on mentoring, with the beginning teacher committee providing feedback and suggestions. The teacher intern must be rated at least as "developing" in the third assessment cycle for successful completion of the program. The teacher intern will be apprised of when the assessments will take place and what standards will be used to make the determinations. The beginning teacher committee, which consisted of the institution's principal, a teacher educator, and the mentoring teacher, was well trained and provided with guidance, including a handbook with examples of possible forms of evidence to demonstrate teacher development. Mr. Adams stated that funding constraints and statutory authority limited the program to one (1) year; however, mentors were not prohibited from continuing a professional development relationship with the teacher intern if the parties agreed. Ms. Lang stated that the handbook was no longer incorporated by reference in this administrative regulation because it was not a compliance document, but only provided examples and suggestions. A teacher intern who failed to successfully complete the program remained in the program for another year.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 4 to clarify that: (a) a teacher intern shall be prohibited from discontinuing an internship without submitting a written resignation detailing the facts surrounding the resignation and receiving approval from the superintendent or designated nonpublic school head and the EPSB; and (b) if the teacher intern discontinues the internship without the approval of the EPSB, the intern shall be recorded as unsuccessfully completing the internship for that school year; (4) to amend Section 8 to require that the final order of the EPSB state if the teacher internship was successful, not successful, or nullified; and (5) to amend Sections 1, 3, 4, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Occupational License Fees

30 KAR 7:020. Standard form occupational license fee returns for dual tax districts. Margaret McKay, director of business, represented the Secretary of State.

In response to a question by Co-Chair Harris, Ms. McKay stated that a dual tax district involved one (1) office being responsible for collecting taxes for two (2) different districts. For example, there was one (1) office that collected taxes for Boyle County and for the City of Danville.

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:170. Exceptions to prohibition on electioneering. Maryellen Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to clarify that the administrative regulation applies in the voting room. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD: Board

101 KAR 1:325. Probationary periods. Brian Crall, chair, represented the board. Allen Sisk, executive director of human resources, Cabinet for Health and Family Services, appeared in support of this administrative regulation.

In response to questions by Co-Chair Harris, Mr. Sisk stated that the probationary period for a Social Service Worker I was being raised from six (6) months to nine (9) months because the initial training for a new social service worker took approximately six (6) months. Until training was complete, the worker's case load was minimal; therefore, a nine (9) moth probationary period was needed to assess the employee's ability to adequately perform with a standard case load. A social service worker in the training period may have a case load of less than twelve (12) cases, while a standard Social Service Worker I case load was approximately twenty (20) to twenty-five (25) cases. A nine (9) month probationary period was sufficient to perform an assessment of the employee's capability to perform his or her duties appropriately with a full case load.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:034 & E. Classified compensation administrative regulations. Lesley Bilby, executive director, Office of Legal Services, and Rosemary

Holbrook, staff attorney, represented the cabinet.

In response to questions by Co-Chair Harris, Ms. Bilby stated that a special entrance rate was a higher-than-standard introductory rate for a position that was difficult to fill due to turnover or recruitment problems. If an agency had adequate discretionary funds, after an employee began employment at a special entrance rate, the agency often raised the rate for existing employees with that same classification in order to avoid issues of pay inequality. If the employee who filled the position at a special interest rate successfully completed the probationary period, he or she would usually be awarded a five (5) percent salary increase. That could again lead to pay inequality, and this amendment was intended to address that concern by establishing pay adjustments on the same date for the employee with the special entrance rate and for the employees receiving a commensurate adjustment.

101 KAR 2:180 & E. Employee performance evaluation system.

Personnel Cabinet, Unclassified

101 KAR 3:045 & E. Compensation plan and pay incentives for unclassified service.

Personnel Cabinet, General

101 KAR 5:016. Repeal of 101 KAR 5:015.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:011. Repeal of 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030, 103 KAR 3:040, and 103 KAR 3:050. Gary Morris, executive advisor, represented the department.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:215. Continuing competency requirements. Nathan Goldman, general counsel, represented the board.

201 KAR 20:220. Nursing continuing education provider approval.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 5 and the 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.

Department of Agriculture: Marketing and Product Promotion

302 KAR 39:020. Kentucky Small Farm Wineries Support Fund. Clint Quarles, staff attorney, and Tyler Madison, program manager, represented the department.

In response to questions by Co-Chair Harris, Mr. Madison stated that there were seventy (70) licensed vineyards in Kentucky. More information on Kentucky vineyards was located at kentuckywine.com.

In response to questions by Senator Clark, Mr. Madison stated that this administrative regulation required reporting on grape yield by variety and number of gallons of wine produced for statistical purposes. Kentucky-licensed vineyards were not required to use only Kentucky-grown grapes. Senator Clark stated that, prior to prohibition, Kentucky was one of the best wine-producing states.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 4 to clarify application procedures; and (2) to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: New Source Performance Standards

401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources. Sean Alteri, executive director, and Aaron Keatley, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Keatley stated that these administrative regulations referenced the federal standards and were not more stringent or different than the federal counterparts. Mr. Alteri stated that the new standards were, for the most part, not more stringent than the previous requirements; however, some standards did apply to new source categories and different types of industries than previously.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) complete the federal title for the subject matter established in Section 2(2)(iiii); (2) delete two (2) paragraphs that should not have been included; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Standards of Performance

401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Quotas

804 KAR 9:010. Quota retail license limits for counties. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Humphress stated that the City of Louisville had a special quota retail license limit of one (1) to 1,500 population. That ratio was used as the starting point in determining appropriate city quota retail license limits. In addition to using the ratio as a determination starting point, this administrative regulation would require more than one (1) license per city to avoid a monopoly situation.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Kentucky Health Benefit and Information Exchange: Kentucky Health Benefit Exchange

900 KAR 10:200 & E. Kentucky State Based Exchange on the Federal Platform. Melea Rivera, assistant director; Chandra Venettozzi, healthcare data administrator; and John Watkins, deputy executive director, represented the exchange.

Office of Inspector General: Division of Audits and Investigations: Controlled Substances

902 KAR 55:015. Schedule I substances. Bob Silverthorn, Jr., inspector general, and Van Ingram, executive director, Kentucky Office of Drug Control Policy, represented the division.

In response to questions by Senator Clark, Mr. Ingram stated that it was not necessary to provide the specific chemical formula for cannabinoids and cathinones to be scheduled; however, synthetic opioids were not included and did require specific scheduling. U-47700 was a U.S. patented painkiller that was never brought to market. It was now being produced in China and made available via the Internet. A Bowling Green youth died recently from use of U-47700 purchased from the Internet. U-47700 was seven and a half (7 ½) to nine (9) times more potent than morphine.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 7 to add citations. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 55:035. Schedule V substances.

In response to questions by Senator Clark, Mr. Ingram stated that the new drugs listed as Schedule V substances were legend drugs; therefore, they were not currently part of the KASPER system of scheduled drug tracking.

Department for Medicaid Services: Commissioner's Office: Payments and Services

907 KAR 3:031. Repeal of 907 KAR 3:030. Veronica Cecil, deputy commissioner, represented the department.

Department for Community Based Services: Division of Protection and Permanency: Violence Prevention Resources

920 KAR 2:040. Standards for children's advocacy centers. Mary Sparrow, internal policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A and for clarity. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1. Elizabeth Caywood, executive advisor, and Caroline Ruschell, executive director, represented the department.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:140. Foster care and adoption permanency services. Elizabeth Caywood, executive advisor, represented the division. Roger McCann, executive director, Community Action Kentucky, appeared in support of this administrative regulation and 922 KAR 6:010.

Division of Family Support: Community Action Agencies

922 KAR 6:010. Standards for community action agencies.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Harris introduced Representative Ken Upchurch who was appointed to the Subcommittee to fill the House Co-Chair vacancy. Representative Turner made a motion, seconded by Representative Marzian, that Representative

Upchurch be nominated for House Co-Chair. Representative Upchurch accepted the nomination. Representative Turner made a motion, seconded by Representative Marzian, to end House Co-Chair nominations. Representative Upchurch was unanimously endorsed as House Co-Chair by all subcommittee members present.

Co-Chair Upchurch stated that he looked forward to serving on this Subcommittee alongside Co-Chair Harris.

The following administrative regulations were deferred to the February 13, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Licensure for Occupational Therapy: Board

201 KAR 28:090. Renewals.

201 KAR 28:200. Continuing competence.

Board of Licensed Professional Counselors: Board

201 KAR 36:045. Distance counseling.

201 KAR 36:055. Administrative subpoena.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

BOARD OF EMERGENCY MEDICAL SERVICES: Board

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel.

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY: Authority

202 KAR 10:010. Unsolicited proposals.

202 KAR 10:020. Public-private partnerships.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:013. Repeal of 902 KAR 20:014.

Division of Health Care: Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150.

The Subcommittee adjourned at 1:50 p.m. until February 13, 2017, at 1 p.m.

PUBLIC PENSION OVERSIGHT BOARD

Minutes

February 6, 2017

Call to Order and Roll Call

The 1st meeting of the Public Pension Oversight Board was held on Monday, February 6, 2017, at 12:00 PM, in Room 169 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Brian Linder, Co-Chair; Senator Jimmy Higdon; Representatives James Kay and Jerry T. Miller; J. Michael Brown, John Chilton, Timothy Fyffe, Mike Harmon, and James M. "Mac" Jefferson.

Guests: Beau Barnes, Deputy Executive Director, and Mark Whelan, Chief Financial Officer, Teachers' Retirement System; Donna Early, Executive Director, Judicial Form Retirement System, Judge Laurance Vanmeter; David Eager, Interim Executive Director, Kentucky Retirement Systems, and Richard Robben, Interim Executive Director, Office of Investments, Fixed Income Assets.

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes.

Approval of Minutes

Representative Linder moved that the minutes of the December 19, 2016, meeting be approved. Representative Miller seconded the motion, and the minutes were approved without objection.

Senator Bowen welcomed Representatives James Kay and Jerry T. Miller as new members to the Public Pension Oversight Board (PPOB).

There were no objections to Senator Bowen's request for a 1:00 p.m. start time for all future meetings.

Quarterly Investment Update – Teacher's Retirement System

Beau Barnes, Deputy Executive Director, Teacher's Retirement System (TRS) discussed investment performance for the quarter ending December 31, 2016. The return for that quarter was 1.28 percent. The fiscal year to date return was 5.71 percent. If this pace continues, TRS will be on track to exceed its assumed rate of return for the fiscal year of 7.5 percent.

Mr. Barnes referenced an investment review conducted by Cliffwater, which is an asset manager. Cliffwater did an independent review unbeknownst to TRS that included 64 statewide pension plans from 2006 to 2015. TRS tied for 17th for 10-year returns and tied for 9th on a risk-adjusted basis. Another investment review was conducted by Aon Hewitt, which is TRS's investment consultant, and TRS ranked in the top 20 percent for the quarter ending December 31, 2016 and top 21 percent for the 10 years ending September 30, 2016.

Mr. Barnes provided an investment outlook and noted several positive factors going forward, such as, attractive valuations and optimism in the market regarding tax reform and deregulation. The next several months will show some volatility, which is not abnormal with a new administration and new policy development. Within the next two to three years from now, equities and real estate that respond well to GDP growth should perform well. TRS's portfolio has 44 percent in U.S. Equities, 19 percent in Non-U.S. Stocks and 5.6 percent in real estate. The economic indicators are synchronized to global expansion, overseas economies are picking up, oil and gas rig counts improved from 404 to 712 in the last nine months, energy demand is increasing, the Dow hit 20,000, and S&P also hit record levels recently.

Responding to a comment by Senator Bowen, Mr. Barnes stated that TRS uses a combination of in-house indexing and active external management, which is consistent with their strategy for having a diversified portfolio.

Responding to a question by Senator Bowen, Mr. Barnes stated that the asset base increased approximately $17.5 billion as of June 30, 2016. It increased $425 million from the first quarter and had a 1.28 percent increase the second quarter.

Responding to a question by Senator Bowen, Mr. Barnes stated that TRS had an initial meeting with PFM regarding investment and benefits and a follow-up teleconference regarding medical insurance benefits.

Quarterly Investment Update – Judicial Form Retirement System

Donna Early, Executive Director, Judicial Form Retirement System (JFRS) and Judge Laurance Vanmeter, discussed the Judicial and Legislator Defined Benefit and Hybrid Cash Balance Retirement Plans. Mr. Vanmeter stated that JFRS has been in existence since 1960 and the State Auditor recently finished the first state financial statement audit since around 1986, which indicated no findings. TRS has an assumed rate of return of 7 percent. With the Judicial Defined Benefit Retirement Plan, the total portfolio returned almost 9.4 percent over the past one year. The equity portion of the portfolios returned almost 12 percent, which exceeded the S&P 500. The fund equity portfolio has outperformed the S&P 500 index for every period except the trailing 9 month period. JFRS manages approximately $467 million in total assets with 75 percent allocated to equities. The equity portfolio is all S&P 500 companies and totals about 30 individual stocks. The fixed income assets are individual high quality bonds that include corporate and government bonds.

Mr. Vanmeter discussed the Hybrid Cash Balance Retirement Plan, which is managed separately from the Defined Benefit Plan only because in 15 to 20 years it may be impossible to segregate the two plans. The Judicial and Legislators Hybrid Cash Balance Plans are invested in index funds and the equity in the Defined Benefit Plan that is managed actively has outperformed the index funds.

Mr. Vanmeter stated that the Legislators Defined Benefit Plan is almost identical to the Judicial's Defined Benefit Plan and the Legislators Hybrid Cash Balance plan is also virtually identical to the Judicial's Hybrid Cash Balance plan.

Ms. Early stated that there are no future policy changes and no recent changes have been made to the investment policy statement, nor are any anticipated.

In response to Senator Bowen asking for clarification on outsourcing, Mr. Vanmeter answered that Hilliard Lyons Trust Company has been involved with JFRS since 1993, but did not have sole discretionary investment authority until around 2008 or 2009. Ms. Early added that funds are under separate control in a custodian account and that by policy, Hilliard Lyons does not do trading.

Quarterly Investment Update – Kentucky Retirement System

David Eager, Interim Executive Director, Kentucky Retirement System (KRS) discussed performance over the first six months of the fiscal year 2017. Essentially all markets across the board were favorable, with real return, which was the worst performing asset class producing a return of about 0.9 percent and KRS was about 1.9 percent. The U.S. Equity market, where S&P was up about 8.7 percent, was the best performing asset class and KRS' portfolio was up about 9.5 percent. Asset levels grew in all plans and all 10 plans had more assets at the end then at the beginning. Mr. Eager discussed the Kentucky Employees Retirement System (KERS) nonhazardous pension plan cash flow and noted the minimal positive asset growth in a market that saw returns of just over

5.0 percent. The County Employees Retirement System (CERS) nonhazardous plan is in much better shape and the insurance plans were even better.

Mr. Eager stated the benchmark, which is a blend of each asset class policy target weight and respective benchmark, was up during the first six months of the fiscal year 5.08 percent compared to 5.19 percent from the portfolio. In responding to a question from Senator Bowen, Mr. Eager stated the benchmark will vary, such as, the U.S. Equities' portfolio may likely utilize the S&P 500 or some other index. The benchmark selection is based on specific needs and any one particular category or strategy will have a specific index benchmark.

Mr. Eager said that when looking at each plan there are not a lot of differences. However, asset allocation is moving to a more customized approach for each plan. The KERS nonhazardous plan currently has about 39 percent equities but the CERS funds have 55 percent equities. This trend will continue to move in that direction.

KERS nonhazardous experienced an increase of 30.2 percent in inflows, while outflows slightly increased by 2.6 percent during the first half of FY17 when compared to the same periods in FY16. The increase in inflows are primary due to increased employer contributions (rate increase), in addition to General Fund Appropriations, and recent investment performance. The outflows are due to benefit payments and expenses with a decrease of roughly $350 million last year. Mr. Eager noted the positive investment returns relative to the assumption had only resulted in a flat asset base for KERS. In FY17 there has been an $8 million improvement.

CERS nonhazardous also saw inflows increase 30.2 percent, while outflows grew 2.6 percent as compared to the same periods in FY16. The increase in inflows are due to increased employer contributions (rate increase) and increase in investment performance. CERS saw assets increase by roughly $211 million.

State Police Retirement System (SPRS) experienced an increase of 145.4 percent in inflows, with an increase of 2.1 percent in outflows for FY17 as compared to the same periods in FY16. The increase in inflows are due to increased employer contributions (rate increase), the addition of General Fund Appropriations, and increase in investment performance. SPRS assets increased by roughly $17 million.

In response to a question from Mr. Fyffe, Mr. Richard Robben, Interim Executive Director, Office of Investments, Fixed Income Assets stated that at the end of 2015, KRS decided to make a change to the fixed income portfolio benchmark. The change was made to make the benchmark more reflective of the actual risk in the portfolio, such as removing currency from the benchmark given KRS is a U.S. based plan and liabilities are 100 percent USD. The benchmark is a 50/50 blend of investment grade bonds as measured by the Bloomberg Barclays U.S. Universal index and non-investment grade bonds, which is measured by the Bloomberg Barclays High Yield Index.

Mr. Eager discussed the KRS insurance investments and the total fund return of 5.30 percent compared to the benchmark of 5.09 percent. KRS is about 60 percent funded. Allocations are similar to the pension side.

The contributors to performance for pension funds were primarily driven by U.S. Equities, which exceeded their benchmark with reported returns of 9.5 percent FYTD and 14.1 percent for the one year compared to their respective benchmarks of 8.8 percent FYTD and 12.7 percent for the one year. On the insurance side, U.S. Equities exceeded their benchmark with reported returns of 9.5 percent FYTD and 14.7 percent for the one year compared to their respective benchmarks of 8.8 percent FYTD and 12.7 percent for the one year. Financial stocks in the first six months of 2016 were down 6 percent and the last six months it was up 30 percent. Utilities in the first six months were up 24 percent and the last six months it was down 5 percent. There were no significant detractors from performance.

Mr. Eager discussed major changes within KRS. Investments is transitioning out of $700 million in hedge funds due to high fees versus current return potential, liquidity issues, and discussed some strategies that may survive as separate accounts. Going forward KRS will be completing hedge fund transition by December 31, 2017. With organizational changes, KRS had two senior staff departures and the Investment Committee is more engaged. Going forward KRS will have staff additions to the investment operations and determining staffing implications tied to PFM recommendations. In response to a question from Senator Bowen, Mr. Eager discussed the assumed rate and a suggested change related to proposed legislation included in House Bill 351, which had been filed. This is related to organizations planning to withdraw from the system and how their liability is calculated during their exit. The suggested change would incorporate the 30-year treasury rate in this process.

In response to a question from Senator Higdon, Mr. Eager stated that the objective of smoothing is so that the contribution is more predictable from year to year and there is no smoothing in KRS's presentation or returns. Smoothing is only incorporated during the actuarial valuation process.

In response to questions from Representative Kay, Mr. Eager stated a cash infusion would have to be a significant amount for a duration of time to make substantial difference for the KERS non-hazardous plan. Also, Mr. Eager stated in regards to disclosure of fund of fund contracts that there are certain fee arrangements that KRS has signed a confidentially agreement and limits their public disclosure. In response to questions from Representative Miller, Mr. Eager stated differences in benchmarks could be the result of strategy. For example, three different investment portfolio managers who invest in stocks may have very different strategies or market caps. Also, Mr. Eager stated that JFRS utilizes a single manager and that their equities are run by one firm in a 30 stock portfolio which KRS could not possibly do that given their size and needs for more diversification.

Discussion on Unfunded Liability Estimates

John E. Chilton, Budget Director, Office of the State Budget Director discussed the performance audit the PFM Consulting Group is currently in process of completing. Mr. Chilton noted the discussion by each system with regards to investment return, asset class targets, and the various risk profiles of fixed income, equity, hedge fund, or absolute return. Each has different expectations and different return profiles.

Mr. Chilton also discussed the various assumptions that are built into the actuarial formulas, which includes the investment return assumption used in actuarial calculations. How much money that is in the fund is relevant, along with mortality rates, payroll growth, and retirement patterns, which are then are incorporated into the work actuaries do to determine the amount of underfunding that might be in existence at any particular time. The actuaries work with all of these assumptions to predict what might happen in the future.

Mr. Chilton noted that presentations in the future will help explain each assumption and how each effects the underfunding for the various plans, but focused the discussion on the discount rate, or investment return assumption, used by actuaries for calculating the accumulating liabilities. The KERS non-hazardous and SPRS plans currently use 6.75 percent as the assumption for long-term return on investments. The SPRS is relatively small because of the small number of state troopers that are involved in that plan. The KERS nonhazardous is a very large plan with a large number of employees. Both of these plans are severely underfunded. The Judicial and Legislative systems both use a 7 percent expected return, while all of the other plans use a 7.5 percent expected return.

Mr. Chilton discussed the funding levels of each plan using their current assumptions for investment return and noted the benefit from understanding how much these calculations can change when the assumptions are changed. For example, what if the investment return over the long-term is the guaranteed rate available in current markets using the 30-year treasury happened. While not suggesting the state should incur debt to cover any underfunding, PFM also evaluated liabilities using the estimated borrowing rate of Kentucky as an assumption.

Mr. Chilton provided a summary of calculated unfunded liabilities and funding ratios for each plan when considering alternative investment assumptions. With regards to the KERS nonhazardous pension fund, the current valuation indicated an $11 billion unfunded liability when using a 6.75 percent assumption. Changing the assumption to 2.7 percent, which was the average the 30-year treasury rate in 2016 results in a $19.3 billion unfunded liability. Using the state borrowing rate of 4.5 percent indicated a $14.8 billion unfunded liability. The KERS nonhazardous pension funding status, which was 16 percent based on their assumed rate, fell to 13 percent using the state's borrowing rate and 10 percent when using the treasury rate. The KERS hazardous pension fund unfunded liability grew from $400 million to $1.1 billion using the 30 year treasury rate. TRS, which had a reported unfunded liability of $14.5 billion using its current assumption, would almost double to $29 billion using a 4.5 percent rate and grow to $43 million when using the treasury rate. The funding percentage for TRS goes from 55 percent to 37 percent and then to 29 percent. The relative change in funding for the KERS non-hazardous fund is less dramatic giving its current asset base as compared to the larger plans.

Blending all plans together, using the 2016 actuarial assumptions, on the average, the funds are 47 percent funded. At the state's borrowing rate of 4.5 percent rate, this funding ratio would drop to 34 percent, while applying the 30-year treasury rate would reflect a funding level of 26 percent. The Governor asked for the 30-year treasury rate because it is theoretically a guaranteed rate over the long-term. However, moving assets into other types of investments where the investment risk is greater gives reason to the expected returns could be greater than it is in U.S. Government Securities.

Mr. Chilton also noted that current assumptions being used were not out of line with what other pension funds across the industry. The 6.75 percent utilized by KERS and SPRS are likely on the lower side, while the 7.5 percent is maybe on the higher side of what other funds are currently using.

Mr. Chilton reiterated that all of these are estimates of what is going to happen in the future and what kind of a return plans expected to earn. The future will be the future, but making the best guess while using a reasonable approach to investing is important for resolving the underfunding and making them sustainable on a long-term basis.

Mr. Chilton stated the calculations did not represent PFM's opinion of an appropriate investment return assumption and were provided simply to illustrate the financial implications of the assumptions. The alternative rates used are also estimates and even the U.S. Treasury rate changes frequently. PFM is working on a variety of calculations and will provide other illustrations to help better understand the status of all plans and how the underfunding occurred.

Senator Bowen stated HB 238 was passed in the 2016 regular session and requires the PPOB to employ the services of an actuary. Senator Higdon moved that HB 238, a motion to authorize or to request funds for LRC to hire an actuary, be approved. Representative Miller seconded the motion, and HB 238 was approved without objection.

With no further business, the meeting was adjourned. The next regularly scheduled meeting is Monday, February 27, 2017.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE

Minutes of the 1st Meeting of the 2017 Interim

February 1, 2017

Call to Order and Roll Call

The 1st meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, February 1, 2017, 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, Stephen Meredith, Dennis Parrett, and Robin L. Webb; Representatives Kim King, Phillip Pratt, Brandon Reed, and Dean Schamore.

Guests: Warren Beeler, Executive Director, Governor's Office of Agricultural Policy; Bill McCloskey, Deputy Executive Director, Governor's Office of Agricultural Policy, Hannah Forte, Boards Coordinator, Governor's Office of Agricultural Policy; Beth Mobley, Governor's Office of Agricultural Policy; Stefanie Osterman, Project Manager, Governor's Office of Agricultural Policy; Bill Crist, Kentucky Dairy Development Council; and Representative Wilson Stone.

LRC Staff: Lowell Atchley, Kelly Ludwig, and Marielle Manning.

Upon motion made by house members, Representative Myron Dossett was elected House co-chair by acclamation and without objection.

Upon motion made by Senator Parrett and seconded by Representative Reed, the December 7, 2016 minutes were approved by voice vote and without objection.

GOAP officials provided an overview of the Kentucky Agricultural Development Board's various programs such as the Deceased Farm Animal Removal Program (DAR), County Agricultural Investment Program (CAIP), Shared-Use Equipment Program, and On-Farm Energy Efficiency Incentives Program. GOAP representatives also described the Master Settlement Agreement for the new members of the committee.

Responding to Senator Parrett, GOAP officials explained that everyone in the state should have access to the Dead Animal Removal Program. For example, the rendering plant in Metcalfe County can be used by the surrounding 8 or 9 counties. The Conservation District promotes the program.

Governor's Office of Agricultural Policy

Warren Beeler, Executive Director, and Bill McCloskey, Deputy Executive Director, Governor's Office of Agricultural Policy, presented projects receiving the Agricultural Development Board approval at its December 2016 meeting. These included a grain elevator feasibility study, farmers market expansion, on-farm investments, environmental stewardship, and major statewide or regional projects.

The committee received reports on six regional projects: (1) Kentucky Dairy Development Council, Inc., approved by the board for $1,003,675 in State funds to continue educating, representing and promoting Kentucky's dairy producers and the dairy industry as a whole; (2) Kentucky Horticulture Council, Inc., approved by the board for $617,500 in State funds to continue important research, support new and existing producers and provide market analysis for Kentucky's growing horticulture industry; (3) Kentucky Beef Network, LLC, approved by the board for $909,498 in State funds to continue to provide programs to cattle producers that will enhance their net income; (4) Kentucky Department of Agriculture, approved by the board for $1,657,750 in State funds to be used for the Kentucky Proud programs; (5) Southeast Kentucky Economic Development Corporation, Inc., approved by the board for $9,165 in State funds to contract KCARD to conduct a study on the feasibility of location a grain elevator in the Lake Cumberland region along the Cumberland Parkway corridor; and (6) City of Pikeville, approved by the board for $90,000 in State funds to conduct Phase II of the Pikeville Farmers Market, which includes constructing a metal roof, blacktopping the parking lot and adding water and electricity to the site.

Warren Beeler and Bill McCloskey presented projects receiving the Agricultural Development Board approval at its January 2017 meeting. These included a high school greenhouse improvements, on-farm investments, environmental stewardship, shared-use equipment program, and major statewide or regional projects.

The committee received reports on one regional project: (1) Oldham County Schools, approved by the board for $5,000 in Oldham County funds to replace the roof of the high school greenhouse.

GOAP officials described one funding denial: (1) Lexington Fayette Urban County Government, turned down for $2,500 in Fayette County funds and $20,000 in State funds for a part-time festival coordinator for the Kentucky Sheep and Fiber Festival in 2017 and 2018. The board denied this request based on projected income being greater than festival costs.

Committee members commented on the purpose of the Tobacco Settlement Agreement Fund Oversight Committee.

Senator Webb commented on the importance of the Master Settlement Agreement and encouraged new members of the committee to "protect this fund."

Representative Schamore encouraged GOAP officials to seek out funding for water related projects.

Senator Meredith thanked and commended GOAP representatives for their work.

Responding to a question from Representative King, GOAP officials explained that the state board is divided into three review committees and labeled as blue, red, and white. Documents distributed during the meeting are available with meeting material in the LRC Library. There being no further business, the meeting was adjourned.

GOVERNMENT CONTRACT REVIEW COMMITTEE

Committee Minutes

February 14, 2017

Call to Order and Roll Call

The Government Contract Review Committee met on Tuesday, February 14, 2017, at 4:50 PM, in Room 131 of the Capitol Annex. Representative Stan Lee, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative Stan Lee, Co-Chair; Senators Julie Raque Adams; Representatives Chris Fugate and Diane St. Onge.

Guests: Kim Potter Blair, Hilarye Dailey, David Byerman, Joshua Collins, Eric Pelfrey, Andy Stewart, Dean Loy, Bill Harris, Tom Barker, Mark Maier, John Chilton, and Andrew McNeill.

LRC Staff: Kim Eisner, Jarrod Schmidt, and Kim Smith.

A motion was made by Senator Wise to approve Minutes of the January 2017, meeting of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Wise to consider as reviewed the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Wise to consider as reviewed the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Wise to consider as reviewed the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

A motion was made by Senator Wise to consider as reviewed the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative St. Onge seconded the motion, which passed without objection.

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:

Ricks International Consulting, Inc., 1700001100.

DEPARTMENT FOR NATURAL RESOURCES:

Francis Water Company, 1700000815.

FINANCE AND ADMINISTRATION CABINET:

McBrayer, McGinnis, Leslie, and Kirkland, 1700000971.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

S&ME, Inc., 1700001104; Clotfelter Samokar PSC, 1700001117.

JUSTICE CABINET:

St. Elizabeth Medical Center, 1600003901; Axis Forensic Toxicology, Inc., 1700000746; Kent E. Harshbarger, 1700001095.

MILITARY AFFAIRS, DEPARTMENT OF:

Richard J. McDonald, 1700001181.

NORTHERN KENTUCKY UNIVERSITY:

KZF Design, Inc., 2017-186.

OPHTHALMIC DISPENSERS, BOARD OF:

Byron E. Brentlinger, 1700001000.

PUBLIC PROTECTION CABINET:

Allen Orien Wilson, 1700001090.

STATE POLICE, DEPARTMENT OF:

James Goble, 1700001103; Robert Curtis Mouser, 1700001169.

TRANSPORTATION CABINET:

Palmer Engineering County, 1700001263; H A Spalding, Inc., 1700001270.

TREASURER, OFFICE OF THE KENTUCKY STATE:

Bryant Law Center PSC, 1600003982.

UNIVERSITY OF KENTUCKY:

JRA Architects, A171110; Strand Associates, Inc., A171150; Shield Environmental Associates, Inc., K17-226; Grace Consulting, Inc., K17-228; CMTA, Inc., K17-229.

UNIVERSITY OF LOUISVILLE:

Walker Parking Consultants, Inc., 17-082.

VETERANS AFFAIRS, DEPARTMENT OF:

Amerathon, LLC, 1700001248

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

CABINET FOR HEALTH AND FAMILY SERVICES:

Trisha Zeller, 1600003010-1.

CORRECTIONS, DEPARTMENT OF:

Windows of Discovery, 1600003566; NOA Counseling, LLC, 1700000805.

DEPARTMENT FOR PUBLIC HEALTH:

Multi, 1600002614; Multi, 1600002667.

DEPARTMENT OF INSURANCE:

Kathleen M. Bergan, LLC, 1600002192.

EASTERN KENTUCKY UNIVERSITY:

Baldwin Creative and Company, LLC d/b/a B63, 18-011.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Myers Jolly Architects, 1000000840; EOP Architects, PSC, 1100002570; Omni Architects, 1400001237; Stengel Hill Architecture, Inc., 1500001000; Hafer Associates, 1500001053; EOP Architects, PSC, 1500001370; Murphy & Graves & Trimble, PLLC, 1500001840; Architectural Investment, 1500002693; Stantec Consulting Services, Inc., 1500002881.

FISH & WILDLIFE, DEPARTMENT OF:

AMEC Foster Wheeler Environment & Infrastructure, Inc., 1600001192.

MEDICAL LICENSURE, BOARD OF:

Multi, 1600002744.

MOREHEAD STATE UNIVERSITY:

Jeff Moser, 17-020.

TRANSPORTATION CABINET:

H. C. Nutting Company, 1000003823; American Engineers, Inc., 1200000220; WMB, Inc., 1300001394; J M Crawford & Associates, Inc., 1300001570; Palmer Engineering Company, 1300001866; J. M. Crawford & Associates, Inc., 1300001870; EA Partners, PLC, 1400001234; Michael Baker Jr., Inc., 1400003290; Strand Associates, Inc., 1500001637; Michael Baker, Jr., Inc., 1500002763; Occupational Health Center of Southwest Pa, 1600002773; Burgess and Niple, Inc., 1700000177; ICA Engineering, C-01063751-3; DLZ Kentucky, Inc., C-99005073-12; HMB Professional Engineers, Inc., C-99005159-3.

UNIVERSITY OF KENTUCKY:

Stengel-Hill Architecture, A151150; Champlin Architecture, A151270; Ross Tarrant Architects, Inc., A161110.

UNIVERSITY OF LOUISVILLE:

Multi, 17-016 A-H.

VETERANS AFFAIRS, DEPARTMENT OF:

Multi, 1600001302.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:

DEPARTMENT FOR INCOME SUPPORT:

Legal Aid Society, 1700000583.

DEPARTMENT FOR MEDICAID SERVICES:

Cabinet for Workforce Development, 1700001178.

DEPARTMENT OF WORKPLACE STANDARDS:

University of Kentucky Health Kentucky Clinic, 1700000757.

EDUCATION, DEPARTMENT OF:

Jefferson County Board of Education, 1700000600; Advanced - Kentucky, 1700000938; Fayette County Board of Education, 1700001035; Pulaski County Board of Education, 1700001042.

FISH & WILDLIFE, DEPARTMENT OF:

Nature Conservancy, 1700000952.

INFRASTRUCTURE AUTHORITY:

Fivco Area Development District, 1700000679.

JUSTICE CABINET:

University of Louisville, 1600003489; Department of Pathology and Laboratory, 1600003569.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Knox County Fiscal Court, 1700001124; University of Louisville Research Foundation, 1700001136; City of Sacramento, 1700001139; Pike County Fiscal Court, 1700001150; Clay County Fiscal Court, 1700001154; City of Butler Water and Sewer, 1700001160; Breathitt County Fiscal Court, 1700001206; Barren River Area Development District, 1700001218; Big Sandy Area Development District, 1700001219; Bluegrass Area Development District, 1700001220; Buffalo Trace Area Development District, 1700001221; Cumberland Valley Area Development District, 1700001222; Fivco Area Development District, 1700001223; Gateway Area Development District, 1700001224; Green River Area Development District, 1700001225; Kentucky River Area Development District, 1700001226; Kentuckiana Regional Planning & Development Agency, 1700001227; Lake Cumberland Area Development District, 1700001228; Northern Kentucky Area Development District, 1700001230; Pennyrile Area Development District, 1700001231; Purchase Area Development District, 1700001232; Louisville Metro Government, 1700001274; City of Owensboro, 1700001278.

POST SECONDARY EDUCATION, COUNCIL ON:

Kentucky Association of School Superintendents, 1700001031; Council for Opportunity In Education, 1700001099.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

AGRICULTURE, DEPARTMENT OF:

Multi, 1500001216.

CORRECTIONS, DEPARTMENT OF:

Marion County Jail, 1600001410.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Multi, 1600001201.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Kentucky Housing Corporation, 1600001952; Community Action Kentucky, Inc., 1600001953; Kentucky Coalition Against Domestic Violence, Inc., 1600002762.

EDUCATION, DEPARTMENT OF:

Hopkins County Board of Education, 1600003129; Johnson County Board of Education, 1600003130; Knox County Board of Education, 1600003524; Christian County Board of Education, 1600003589; Collaborative for Teaching, 1700000735.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

SOAR, 1700000565; Knott County Fiscal

Court, 1700000665; Martin County Fiscal Court, 1700000666; Floyd County Fiscal Court, 1700000707.

TRANSPORTATION CABINET:

Graves County Fiscal Court, 1600001878.

WORKFORCE INVESTMENT, OFFICE OF:

UK Research Foundation, 1600002328.

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:

CORRECTIONS, DEPARTMENT OF:

Correctional Counseling, Inc., 1700001110. Kim Potter Blair and Hilarye Dailey discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

LEGISLATIVE RESEARCH COMMISSION:

Dr. James Pellegrino, 16/17-24. David Byerman and Joshua Collins discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Representative St. Onge seconded the motion, which passed.

TRANSPORTATION CABINET:

Allgeier Company, 1700001158; Harold Brantley, 1700001161; Rick O. Baumgardner, 1700001162; Stephen G. Raleigh, 1700001163; Matt Chapman, 1700001164; Integra Realty Resources Kentucky-Southern Indiana, 1700001165; Charles Joseph Bird, 1700001166; J. Michael Jones, 1700001168; Matt Chapman, 1700001170; Bluegrass Valuation Group, LLC, 1700001171; Edward L. Beck, 1700001172; Rick O. Baumgardner, 1700001173; J. Michael Jones, 1700001174; The Raleigh Company, 1700001175; Appco Appraisal Service, Inc., 1700001176; John Daniel Lyons, 1700001177; Bluegrass Valuation Group, LLC, 1700001182; Charles Joseph Bird, 1700001183; Appco Appraisal Service, Inc., 1700001184; Tammy L. Barnes, 1700001185; Keaton Real Estate Services LLC, 1700001186; Thoroughbred Real Estate Services, LLC, 1700001187; Kentucky Field Service Realty, 1700001189; John Daniel Lyons, 1700001191. Eric Pelfrey, Andy Stewart, and Dean Loy discussed the contracts with the committee. A motion was made by Senator Raque Adams to consider the contracts as reviewed. Senator Wise seconded the motion, which passed.

TRANSPORTATION CABINET:

QK4, Inc., 1700001237. Eric Pelfrey and Andy Stewart discussed the contract with the committee. A motion was made by Representative St. Onge to consider the contract as reviewed. Senator Raque Adams seconded the motion, which passed.

TREASURER, OFFICE OF THE KENTUCKY STATE:

Tl2Q, LLC, 1700001217. A motion was made by Senator Wise to defer the contract to the March 2017 meeting of the committee. Representative St. Onge seconded the motion, which passed.

UNIVERSITY OF KENTUCKY:

Fredrikson & Byron, P. A., K17-227. Bill Harris and Tom Barker discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Senator Raque Adams seconded the motion, which passed.

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:

EASTERN KENTUCKY UNIVERSITY:

McCandish Holton, PC, 18-059. Mark Maier discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

FINANCE AND ADMINISTRATION CABINET:

PFM Group Consulting, LLC, 1700000539. John Chilton and Andrew McNeill discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

There being no further business, the meeting adjourned at 5:53 p.m.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes

February 21, 2017

Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee meeting was held on Tuesday, February 21, 2017, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Stan Humphries, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stan Humphries, Co-Chair; Senators Julian Carroll, Rick Girdler and Christian McDaniel; and Representatives Larry Brown, Phil Moffett, and Steven Rudy.

Guests: Ms. Elizabeth Baker, Planning Director, University of Kentucky; Ms. Natalie Brawner, Assistant Director of Real Properties, Finance and Administration Cabinet; Mr. Ryan Barrow, Executive Director, Office of Financial Management; and Ms. Brandi Norton, Financial Analyst, Kentucky Infrastructure Authority.

LRC Staff: Shawn Bowen, Committee Staff Administrator; Julia Wang, Legislative Analyst; and Jenny Wells, Committee Assistant.

Election of House Co-Chair

Senator Humphries, Co-Chair, said that the first order of business was to elect a House Co-Chair.

Shawn Bowen said that, pursuant to KRS 45.790, a Co-Chair position is to be addressed by election, and members of the House are to elect a House member to serve as House Co-Chair.

Representative Brown nominated Representative Moffett for the position of House Co-Chair. The motion was seconded by Representative Rudy. A motion was made that nominations cease and that Representative Moffett be elected House Co-Chair by acclamation. The motion was seconded by Representative Rudy and approved by voice vote.

Approval of Minutes

A motion was made by Senator Carroll to approve the minutes of the December 20, 2016 meeting. The motion was seconded by Representative Rudy and approved by voice vote.

Senator Humphries said that, in the interest of time, the members of the committee would hear action items only on today's meeting agenda.

Project Report from the Universities

Ms. Elizabeth Baker, Planning Director, University of Kentucky (UK), reported that the university has leased 22,784 square feet of office space at an annual cost of $113,920. The lease will house the Center for Applied Energy Research at the Spindletop Office Building in Lexington. A motion to approve the lease was made by Senator McDaniel, seconded by Senator Carroll and approved by unanimous roll call vote.

Ms. Baker reported that the Department of Ophthalmology and Visual Science will lease 10,177 square feet of office, classroom and clinical space at an annual cost of $388,253. The leased space is located at 110 Conn Terrace in a facility owned by Shriner's Hospital. The lease will also include the cost of tenant improvements at $96,300 annually. A motion to approve the lease was made by Senator Carroll, seconded by Representative Rudy, and approved by unanimous roll call vote.

Lease Reports from the Finance and Administration Cabinet

Ms. Natalie Brawner, Assistant Director of Real Properties, Finance and Administration Cabinet, reported a new lease for the Energy and Environment Cabinet in Perry County. This lease was submitted for the committee's approval in December 2016. However, the committee raised some additional questions, and approval of the lease was postponed until the questions had been answered. With there being no questions, Senator Carroll made a motion to approve the lease. The motion was seconded by Representative Moffett, and approved by unanimous roll call vote.

Ms. Brawner next reported leasehold improvements at the 300 Building in Franklin County. The modifications will include the installation of badge readers in several areas throughout the building at a total cost of $65,992. The agencies requesting the modifications included the Energy and Environment Cabinet, the Education and Workforce Development Cabinet, and the Department of Education. A motion to approve the report of leasehold improvements was made by Representative Moffett, seconded by Senator Carroll, and approved by unanimous roll call vote.

Report from the Office of Financial Management

Ms. Brandi Norton, Financial Analyst, Kentucky Infrastructure Authority (KIA), reported five KIA loans: Fund A Loan Increase, City of Liberty, $4,660,000; Fund A Loan Increase, Regional Water Resource Agency, $3,566,001; Fund B Loan Increase, City of Lewisport, $267,500; Fund C Loan, City of Worthington, $300,000; and Fund F Loan, City of Prestonsburg, $3,624,000.

Senator McDaniel made a motion to roll the KIA loans into one vote. The motion was seconded by Representative Rudy, and approved by voice vote.

In response to several questions from Senator McDaniel, Ms. Norton said the City of Lewisport loan had a significant increase due to the need to revamp the original project plan. The existing pumps were unable to provide enough flow in case of an emergency or a maintenance event to keep customers with water service. Ms. Norton said that KIA was confident of the repayment ability of Lewisport for the increase in the amount of the loan.

In response to several questions from Senator

Carroll, Ms. Norton said that the City of Liberty had an 8 percent water rate increase from 2015 to 2016, another 6 percent increase from 2016 to 2017, and has a water rate of $32. The water rate for Daviess County is presently $27, will increase to $28 in July 2017, and will increase to $30 in July 2018. Ms. Norton said that the modifications to the current water plan in Prestonsburg will not affect the water rate. Prestonsburg has not had a water rate increase since 2012.

A motion was made by Senator McDaniel to approve the five KIA loans, seconded by Senator Carroll, and approved by unanimous roll call vote.

Report from the Office of Financial Management

Mr. Ryan Barrow, Executive Director, Office of Financial Management, reported two new bond issues: Kentucky Higher Education Student Loan Corporation (KHESLC) Student Revenue Bonds, Senior Series 2017A, $33,700,000, and Eastern Kentucky University General Receipts Bonds, 2017 Series A, $47,400,000.

In response to a question from Senator McDaniel, Mr. Barrow said that KHESLC is a separate entity and its trust bears all financial responsibility for this bond issue. KHESLC is using the policing power of a taxing power and uses state government to issue its bonds through the tax-exempt market.

A motion was made by Senator McDaniel to approve the two new bond issues, seconded by Senator Carroll, and approved by unanimous roll call vote.

New School Bond Issues with School Facilities Construction Commission (SFCC) Debt Service Participation

Mr. Ryan Barrow reported two school bond issues with SFCC debt service participation. Both issues will finance school renovations. There were no local tax increases associated with these projects. A motion was made by Representative Moffett to approve the school bond issues, seconded by Senator Carroll, and approved by unanimous roll call vote.

With there being no further business, the meeting adjourned at 1:20 p.m.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

February 17, 2017

Call to Order and Roll Call

The Program Review and Investigations Committee met on Friday, February 17, 2017, at 8:30 AM, in Room 327 of the Capitol. Senator Danny Carroll, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Senators Tom Buford, Wil Schroder, Dan "Malano" Seum, Reginald Thomas, Stephen West, and Whitney Westerfield; Representatives Lynn Bechler, Donna Mayfield, Rob Rothenburger, Arnold Simpson, and Walker Thomas.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall; Van Knowles; William Spears; Joel Thomas; and Kate Talley, Committee Assistant.

Senator Carroll opened the meeting by noting the passing of long-time employee Anita Muckelroy. He said members' thoughts and prayers are with her family.

Senator Carroll called for nominations for a House co-chair. Representative Rothenburger nominated Representative Bechler, and the motion was seconded by Representative Simpson. Representative Simpson moved to cease nominations with a second by Representative Rothenburger, and the motion was approved by voice vote.

Senator Carroll welcomed new members and opened the floor for proposals for new study topics. He explained that one topic would be selected from each of the four caucuses. The two Senate topics will be selected today. The House topics will be selected at the next meeting of the committee, which should be before the end of the 2017 session.

Senator Seum made a motion that staff study tuition of Kentucky's eight public universities. He noted that the University of Louisville has recently announced that it is freezing tuition.

In response to questions from Representative Simpson and Senator Carroll, Senator Seum clarified that the study would include tuition, fees, and associated costs. The motion was seconded by Representative Bechler and approved by a roll call vote.

Senator Thomas made a motion that staff study the impact and success of funding half-day kindergarten. The motion was seconded by Representative Simpson and approved by a roll call vote. In response to an instruction from Senator Carroll, Mr. Hager explained how Program Review and Investigations Committee staff conduct studies and present reports. In response to questions from Senator Seum, Mr. Hager confirmed that this is the only committee with subpoena power, that the statute does not have specific requirements to exercise subpoena power, and that the committee may receive testimony under oath.

The meeting adjourned at 8:53 AM.

FREE-ROAMING HORSE TASK FORCE

Minutes of the 4th Meeting of the 2016 Interim

December 20, 2016

Call to Order and Roll Call

The 4th meeting of the Free-Roaming Horse Task Force was held on Tuesday, December 20, 2016, at 10:30 AM, in Room 129 of the Capitol Annex. Senator Jared Carpenter, Chair, called the meeting to order at 10:38 AM, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Brandon Smith and Robin L. Webb; Representative John Short; Phillip Brown, Rusty Ford, Ginny Grulke, Steve Hohmann, David Moss, Lori Redmon, Robert Stout, and Karen Waldrop.

Guests: Representative Tim Couch; Representative-Elect John Blanton; Laura Prewitt, Deputy Executive Director, Kentucky Horse Park; Tyler White, President, Kentucky Coal Association; John McCauley, Policy Director, Kentucky Department of Agriculture; and Debby Spencer, WMTH Corporation.

LRC Staff: John Ryan, Tanya Monsanto, Jasmine Williams, and Becky Lancaster.

Approval of the Minutes from the October 18, 2016 Meeting

A motion to approve the minutes of the October 18, 2016 meeting was made by Representative Steele, seconded by Steve Hohmann, and approved by voice vote.

Findings and Recommendations of the Free-Roaming Horse Task Force

Senator Carpenter stated the Free-Roaming Horse Task Force members have put much time and effort into their tasks and had engaged in great discussions. He recommended that the task force release the findings for information to further research and continued discussions. He is hopeful that the task force will be able to continue to work on the issue and provide a resolution.

Senator Webb agreed that the issue of free-roaming horses is more complex on many levels. There is still work to be done statutorily to definitions and classifications because free roaming horses could be in an area with a different classification in a subgroup of free roaming horses. She does consider population control important and a priority of the task force.

Dr. Robert Stout agreed with Senator Webb that the task force does not have enough information. He suggested that the U.S. Department of Interior, Bureau of Land Management be contacted to testify regarding its experiences, solutions, challenges, and costs related to free-roaming horses.

Lori Redmon recommended that a change be made to number 11 of the draft findings to consider the word agencies, or another word, that represents groups that benefit or help with the collaboration of networking and work to be done.

Senator Webb agreed with that recommendation, providing others may give input on the phrasing of that inclusion.

Representative Steele stated that, in the future, the task force should invite the sheriffs' association to the meetings. The sheriffs' association meets two to three times each year. If more information is given, the sheriffs may be able to help to patrol and monitor local areas that may be prone to having horses dropped off and left to roam illegally. In response to a question from Dave Moss, Senator Carpenter stated that people could be added to the Free-Roaming Horse Task Force in 2017. There would need to be a legislative initiative to continue work on the task force.

Ginny Grulke expressed concern with the release of the findings and recommendations. The general public may take the document as recommendations that were agreed upon by task force members and action could be taken.

Dr. Robert Stout also shared concern with releasing the findings and recommendations as currently written. Senator Webb agreed and stated there should be technical corrections to the language of the document to indicate issues the task force should investigate further instead of language that would indicate a determination or recommendation for legislation. She suggested the task force could issue a report of discussion to show what had been discussed to merit further task force existence. Senator Carpenter favored a document of discussion but expressed concern about the time left to produce, approve, and release the document. A motion to table the official findings and recommendations and release an official statement to continue the task force was made by Senator Webb, seconded by Dave Moss, and approved by voice vote.

Adjournment

There being no further business, the meeting was adjourned at 10:55 a.m.

PUBLIC PENSION OVERSIGHT BOARD

Minutes

February 27, 2017

Call to Order and Roll Call

The 2nd meeting of the Public Pension Oversight Board was held on Monday, February 27, 2017, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Brian Linder, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Brian Linder, Co-Chair; Senator Gerald A. Neal; Representatives James Kay and Jerry T. Miller; J. Michael Brown, John Chilton, Timothy Fyffe, Mike Harmon, James M. "Mac" Jefferson, and Sharon Mattingly.

Guests: Brad Gross and Bo Cracraft, LRC; David Rich, Kentucky Retirement Systems (KRS), County Employees Retirement System (CERS) elected trustee; Dolly Guenthner, Retiree.

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes.

Approval of Minutes

With a correction noted by Sharon Mattingly, Representative Kay moved that the minutes of the February 6, 2017, meeting be approved. Senator Bowen seconded the motion, and the minutes were approved without objection.

Review of System Administrative Expenses

Bo Cracraft, LRC staff, reviewed administrative expenses with the purpose of providing background information, outlining reporting differences, and discussing the key drivers of administrative costs. Administrative expenses are the day-to-day expenses required to service active and retired members of each system. They include personnel expenses, contractual services, information technology, and operating expenses. Administrative expenses are disclosed as a line item on the Statement of Changes in Net Plan Position which is required by GASB. Most retirement plans are producing standalone annual financial reports which include a more detailed supporting schedule of expenses. Kentucky is a bit unique in that retiree health benefits are largely administered by the retirement systems.

Mr. Cracraft described the process by which administrative expenses are requested and paid by each system. The statute requires the Kentucky Retirement Systems (KRS) to request authorization for administrative expenses within their biennial budget request. Expenses are paid out of the Pension and Retiree Health Trust funds, and prorated among the KRS plans based upon membership. KRS includes an expense load within the annual actuarial valuation and the employer contribution rate calculation. The Teachers' Retirement System (TRS) effectively follows the same process as KRS. While there is no specific statutory language, staff has followed the biennial budget request process and asks for authorization to use existing TRS trust dollars. TRS has some statutory language, which limits administrative expenses to an amount not to exceed 4 percent of dividend or interest earned from investments during the prior year. TRS administrative expenses are paid out of the pension, retiree health, and life insurance trust funds based on benefits paid, but an expense load is not included within the actuarial valuation. Judicial Form Retirement System (JFRS) is a little difficult to compare from an administrative expense standpoint given its size (two employees) and limited membership. From a budget standpoint, JFRS follows a slightly different process. JFRS requests and receives a direct appropriation from the Judicial and Legislative budgets to covers administrative and investment expenses. No expense load is included in the valuation process.

Mr. Cracraft reported administrative expenses for each system as provided in the financial statements from the Comprehensive Annual Financial Report (CAFR) for the trailing five fiscal years. A perceived decline in KRS expense is largely due to the system self-funding healthcare benefits for Medicare eligible retirees up through 2012. When adjusting KRS expenses, all three plans experienced about 2 percent to 3 percent annual growth in administrative expenses over the past five years.

Mr. Cracraft discussed key drivers to administrative expense, with salaries as the most significant expense, driving 40 percent of total expenses for all systems. The membership, or the size of a plan, often drives the number of employees required to service the plan. Fringe benefits are the second most significant expense driver. They include items such as pension contributions, Social Security, health and life insurance premiums, and other employee benefits. Retirement contributions are dependent on the plan in which the employees participate. KRS is subject to the Kentucky Employees Retirement System (KERS) nonhazardous employer rate, which was 38.77 percent during FY 2016, while the TRS employer rate was 16.105 percent. Not all TRS employees participate in TRS, but a significant portion do, with the remainder participating in KERS. A final driver, which is more difficult to quantify, is the complexity of a plan. A recent CEM study noted that the complexity of KRS and the number of reporting agencies, tiers, or plans administered can impact system expenses.

Mr. Cracraft summarized administrative fees as reported in the financial statements or CAFRs of each plan for the fiscal year ending June 30, 2016. The total administrative fees reported were $34,338,000 for KRS, $10,350,263 for TRS, and $473,053 for JFRS.

Mr. Cracraft discussed a slight differences in reporting, which included healthcare administrative fees and investment personnel related expenses. With regards to healthcare administrative fees, all three plans pay the Department of Employee Insurance (DEI) a monthly fee for non-Medicare eligible retirees who are covered under the Kentucky Employees Health Plan. Historically, this expense was treated as a benefit expense and recorded as a deduction rather than an administrative expense. In 2011, as a result of a performance audit, a recommendation was made that KRS begin to incorporate DEI fees into their budget request approved by the General Assembly. TRS and JFRS have continued to report DEI fees as a benefit expense. With regards to investment personnel and related expenses, there is another slight difference between the plans with regards to how internal expenses are recorded. TRS began reporting internal investment staff and related personnel expenses as an investment expense in 2014 as a result of the introduction of GASB 67. JFRS does not have dedicated internal staff, but reports custody and consulting fees as an administrative expense. KRS continues to report all internal staff and related expenses as administrative expenses, which also dates to a recommendation from the 2011 APA performance audit.

Mr. Cracraft compared each plans administrative fees after adjusting for the differences previously noted. Adjusted administrative fees were $30,782,264 for KRS, $10,350,263 for TRS, and $453,127 for JFRS. One of the primary methods used to compare plans is to calculate a cost per active and retired member, which resulted in a cost of $129.21 per member for KRS, $83.87 per member for TRS, and $501.25 per member for JFRS. It is difficult to compare JFRS to the two larger plans. Mr. Cracraft noted that salaries and fringe benefits are driving the difference, and operating expenses--all other expenses besides salaries and fringe benefits--are fairly comparable between the two plans. When looking at salaries and fringe benefits, the KRS cost per member was $93.16 versus the TRS cost of $52.96 per member. Looking at all other expenses (operating expenses), KRS totaled $36.05 per member while TRS totaled $30.91 per member.

Mr. Cracraft summarized personnel expenses and discussed the key drivers of the differences. While the average salary per employee is slightly less, KRS has more employees, which results in a higher total salary base. More employees also results in more health insurance premiums. There are several structural differences or expenses that are employer specific and cannot be controlled or changed by management. Retirement contributions, where KRS is subject to the KERS nonhazardous employer rate of 38.77 percent of pay for all employees, is one notable expense. Only 30 of 100 TRS employees participate in the KERS nonhazardous plan, while the remaining 70 employees participate in TRS and are therefore subject to the lower TRS employer rate. When combined, the effective employer rate TRS paid for all employees was just over 23 percent of payroll. Social Security is another difference, with KRS paying Social Security at 6.2 percent of pay on all employees versus TRS, which pays an effective rate of a little over 2.5 percent given that only 30 of its employees are subject to Social Security. The higher retirement and Social Security costs resulted in an additional cost of $12 and $45 per member respectively for KRS and JFRS.

A CEM Benchmarking (CEM) study from was presented to the Public Pension Oversight Board (PPOB) in June of 2016. CEM is a research firm that collects investment and administrative expense data from plans across the world. The administrative study seeks to measure cost and the level of service provided. KRS was compared to a custom peer group of 13 peers and the larger set of all data collected by CEM. The study only considered administrative expenses of the pension fund, so CEM excluded costs associated with healthcare and investment administration. The study found that total cost per member was $77 for KRS (pension only) versus $112 for the custom peer group and $84 for the universe of funds. KRS fell short of the median score in service with a total score of 62 versus 80 for peers, primarily due to call wait times, percent of undesired outcomes, and the time required to receive written estimates. CEM noted the complexity of KRS, which scored 83 versus 68 for peers, and identified payment options, customization, multiple plans, and tiers as major contributors.

Responding to a question from Senator Bowen, Mr. Cracraft said each TRS employee was servicing more members on average, which would lead one to expect a lower cost per member. KRS had transitioned to Chapter 18A from a personnel standpoint, but only the Chief Investment Officer (CIO) position salary was decreased as a result of the transition. Existing salaries were not adjusted, but as open positions are filled, one could expect the transition to reduce costs. Brad Gross, LRC staff, said that, when KRS was removed from the state personnel system in 2002, average salaries increased.

Responding to questions from Senator Bowen and Representative Miller, Mr. Cracraft said a few drivers to the notable differences in computer, furniture, and rental expenses reported. With regards to computer and telecommunications, the primary driver of the difference between KRS and TRS (approximately $1.5 million) was due to an upgrade to add "call-back assist" and also a maintenance update required for the FileNet databases. With regards to furniture and equipment, the reported difference was due to hardware purchases. With regards to rental fees, KRS and TRS own their properties, but KRS owns its property under a wholly-owned subsidiary, Perimeter Park West (PPW), which receives a rental payment. A portion of the rental payments is returned to the KRS trust funds in the form of a dividend, but LRC staff cannot determine the amount, so the entire amount was included as an expense.

Public Pension Investment Return Assumptions/Board Structures

Brad Gross and Bo Cracraft reviewed public pension return assumptions and board structures. Mr. Gross discussed the actuarial valuation process. The investment return assumption is one of the key assumptions in the process. He discussed changes in the assumption result and changes to unfunded liabilities, funding levels, and the employer contribution rates. The investment return assumption typically changes as a result of an Experience Study, which occurs at least once every 5 years. The Experience Study often is conducted in conjunction with the Asset/Liability Modeling Study that evaluates various asset allocations against projected system liabilities.

Mr. Gross discussed the actuarial data for the state administered systems. The total unfunded liability for all pension funds as of fiscal year 2016 was $32.792 billion and $5.860 billion in total for all health care plans. Each pension fund was using a 7.5 percent assumed rate of return, with the exception of KERS nonhazardous and the State Police Retirement System (SPRS) pension funds, which are at 6.75 percent, and both JFRS plans, which use a 7 percent assumption. On the retiree health fund side, most systems are assuming a 7.5 percent rate of return, except for TRS, which uses an 8 percent assumption, and JFRS, which uses a 7 percent assumption. A recent PPOB discussion regarding sensitivity analysis was provided by KRS and TRS, along with the PFM illustrative data which evaluated a 4.5 percent assumption (state's borrowing rate) and a 2.7 percent assumption (30 year treasury rate), which resulted in the unfunded liability for the state pension funds growing from $32.8 billion to $56.9 billion or $82.3 billion.

Mr. Gross said that most public pension funds, including Kentucky, utilize a "market based approach," with the assumed rate of return being used to both project future investment returns (asset side) and to discount the future streams of benefit payments (liability side). On the actuarial valuation date, the discount rate is used to determine the present value of benefits, actuarially accrued liability, and unfunded liability. If the assumed rate of return decreases, unfunded liabilities increase and employer contributions increase as a result. The process is determined through the actuarial Experience Study, Actuarial Standards of Practice #27, and recommendations from public pension actuaries. Public pension plan actuaries generally evaluate past investment performance, anticipated future investment performance, and peer data in evaluating an appropriate investment return assumption. Mr. Gross referenced some other views including a "bond based approach" and methods used by single and multiple-employer private pension plans.

Mr. Cracraft provided historical fiscal year investment returns for KRS and TRS over the past 30 years, along with a summary of each plans return assumptions. Both plans were using an assumption of 8 percent in FY 1987. TRS lowered its assumption to the current 7.5 percent in 1998. The KRS plans have fluctuated over the last 30 years. Mr. Cracraft provided a summary of TRS and KRS performance over the past 30- and 10-year periods, noting that both plans had slightly exceed the assumed rates of return over the longer 30-year period. However, when considering the most recent 10-year period, both plans had struggled to keep pace with their assumptions.

Mr. Cracraft provided a national perspective on return assumptions across other state pension plans. From a performance standpoint, the LRC peer group (which consists of 43 state employee plans) had a 10-year media return of 5.9 percent and average return of 5.7 percent. This trend was consistent with Kentucky, where plans have struggled to reach the assumed rate of return. Regarding the return assumption, staff provided a distribution of all 50 state employee plans based on 2015/2016 data, which showed the majority of plans (23 of 50) are utilizing an assumption in the 7.5 to 8 percent range. The median assumption is 7.5 percent, which is utilized by 12 plans and was the most commonly used assumption. The range started at the low end of 6.75 percent, which was the KERS, SPRS, and Indiana plans. No plans are currently above 8 percent, but 10 plans are utilizing an 8 percent return assumption. Sixteen plans reduced their assumptions for the most recently completed valuation, and 6 plans adopted lower assumptions for future use. A recent NASRA study reported almost three fourths of plans measured had lowered assumptions since FY 2010.

Mr. Gross said that the KERS and SPRS pension assumption has changed from 8.25 percent to 7.75 percent in 2006, 7.5 percent in 2015, and 6.75 percent in 2016. The CERS nonhazardous pension assumption changed from 8.25 percent to 7.75 percent in 2006 and 7.5 percent in 2015. The current TRS assumption is 7.5 percent and has not changed recently.

Mr. Gross provided some sensitivity analysis for KERS, CERS, and TRS with regards to the return assumption. Better-funded plans are more sensitive to changes in the investment return assumption. With an assumed rate of return of 6.75, 5.75, and 5 percent, the KERS nonhazardous pension funding levels decreased from 16 percent to 14.4 percent to 13.3 percent, while unfunded liabilities increased from $11.11 billion to $12.52 billion to $13.7 billion under the two assumption changes. Using a 5.75 percent assumed rate of return, the ARC for this fund increased by roughly 2.3 percent of pay while a reduction to a 5.0 percent assumption resulted in an increased ARC of 4.07 percent of pay for this fund. An increase of 1 percent of pay in the KERS nonhazardous ARC costs roughly $16 million in total funds of which half typically comes from General Fund dollars. With an assumed rate of return of 7.5, 6.5, and 5 percent, the CERS nonhazardous funding levels decreased from 59 percent to 52.3 percent to 45 percent, while unfunded liabilities increased from $4.54 billion to $5.96 billion and to $8 billion under the alternative assumptions. Using a 6.5 percent assumed rate of return, the ARC for CERS nonhazardous employers increased roughly 3.7 percent of pay and under a 5 percent assumed rate of return, the same ARC increases 8.57 percent of pay. An increase of 1 percent of pay in the ARC results in roughly $24 million total funds needed from CERS nonhazardous employers. With an assumed rate of return of 7.5, 6.5, and 5 percent, TRS funding levels decreased from 54.6 percent to 48.9 percent to 40.9 percent, while unfunded liabilities increased $14.53 billion to $18.28 billion to $25.29 billion. Using a 6.5 percent assumed rate of return, the ARC for TRS increased roughly 8.41 percent and using a 5 percent assumed rate of return results in a 25 percent of pay increase in the ARC. An increase of 1 percent of pay in the ARC for TRS results in roughly an increase in funding needed of $35 million (total funds).

Responding to questions from Senator McDaniel, Mr. Gross stated that assumptions used by actuaries generally come from the Experience Study, which considers the actual experience versus each assumption over the most recent 5 year period. With regards to the investment return assumption, the board ultimately makes the decision in conjunction with their actuary. The process of setting a payroll growth assumption generally begins with comparing the current assumptions with actual experience, considering recent national trends, and looking at expectations provided by the actuary.

The actuary uses this information to provide a recommended assumption, which the board can approve or not. Most pension funds utilize some form of payroll growth assumption, primarily because this assumption is incorporated on the financing side using a level percentage of payroll method.

Responding to a question from Senator McDaniel, Mr. Gross stated the fiduciary responsibility of trustees is explicit to the members. A statutory provision from 2008 indicates that the trustees have a responsibility to the taxpayers as well.

Senator McDaniel noted the sensitivity of the KERS nonhazardous plan to payroll growth assumptions and expressed disappointment that the previous retirement system board had not challenged the assumptions provided by the actuary, which had produced inaccurate and likely lower ARC estimates.

Responding to a question from Representative Miller, Mr. Cracraft stated that the TRS Board decided to use 8 percent return for its retiree health plan. This assumption is likely based off the fund's current asset allocation.

Senator Bowen commented that the board has acted irresponsibly with the assumptions that the Cavanaugh group had offered. This is a three stage pyramid, the actuary, the board, and the General Assembly, and each one of these, starting with the General Assembly, takes the information that is given. The actuaries, board, and previous legislators have performed poorly.

Representative Kay agreed with Senator Bowen, and added that the legislators had a bad ARC and did not pay it, and that hedge funds are making a lot of investment earnings and fees.

Responding to a question from Representative Simpson, Mr. Gross stated that the recommendations from the board are typically distributed to the Governor's Budget Office and the General Assembly, and ultimately the Governor issues the first budget proposal. There has been deviation in the past from what KRS had recommended to the Governor and General Assembly. From FY 2003 to FY 2014, the budgeted rates were lower than what was requested for KERS and SPRS, but there were a few years in which the General Assembly appropriated a higher rate than what was included in the proposed budget from the Governor's Office.

Mr. Gross reviewed each state-administered system's board structures as written in statute and as amended by SB 2. The KRS Board has increased from 13 to 17 members, with the four added members all appointed and requiring investment experience. The TRS board will increase from 9 to 11 members, with the additional 2 members appointed by the Governor being required to have investment experience. The JFRS Board remains at 8 members, but the 2 gubernatorial appointees going forward will be required to have investment experience. Looking over the last 30 years, Mr. Gross noted the TRS and JFRS have essentially experienced no structural changes to their board composition. Over the same time period, KRS had experienced two changes in structure of the Board in 2010 and 2013. In 2010, HB 146 required 2 of 3 gubernatorial appointees to have investment experience. In 2013, SB 2 expanded the board from 9 to 13 members, adding a CERS elected trustee and three gubernatorial appointees from lists submitted by Kentucky League of Cities, Kentucky Association of Counties, and the Kentucky School Board Association.

Mr. Cracraft discussed a national perspective of pension governance, describing three basic models all retirement plans generally fall within. The least common model (4 of 50 states) is a sole fiduciary model, where responsibility is vested in an elected or appointed state official, generally the Treasurer or Comptroller. The most common (29 states) is an Integrated Investment and Pension Model, where a single fiduciary board is responsible for both investment and benefit administration. Responsibility is generally delegated through an executive director or CEO, while some states delegate benefit and investment administration separately. Seventeen states employ a segregated investment model in which two separate entities have been created to handle investments and benefits, each with its own Fiduciary Board.

Mr. Cracraft discussed statutory requirements on appointed trustees, saying that 28 of 46 states have language regarding qualifications of fiduciary board members. The language varies in detail and breath of expertise, with most states having fairly broad definitions of experience. Several states have created independent investment councils or committees to help acquire the needed investment experience. These were most often found in states that may have had a low representation of appointed trustees or states that did not have statutory language regarding knowledge.

Responding to a question from Representative Miller, Mr. Cracraft stated that Tennessee has one fiduciary board (20 members) that incorporates multiple retirement plans; the board has representation of each plan. Tennessee had delegated authority of benefits and investment separately, while also creating an independent investment council that meets at least twice with investment staff.

Responding to a question from Sharon Mattingly, Mr. Cracraft stated there had not been much movement between integrated and segregated plans recently. While not a change in model, Indiana recently changed to consolidate its state and teacher plans about 7 to 10 years ago.

Representative Linder announced that the gubernatorial appointee Alison Stemler has tendered her resignation.

Public Comments

David Rich, a CERS elected trustee to the KRS Board, testified that he would like to have the KRS and PPOB Boards converse more in regards to issues, problems or the possibility of circumventing costs that could be avoided. He wanted to know whether, in regards to the Affordable Care Act, the PPOB is satisfied with the answers provided in why KRS spent an additional $18 to $27 million in 2015 on insurance that deals with hazardous duty retirees. Mr. Rich stated that he felt the PPOB should do a risk analysis on why and how that money was spent.

Dolly Guenthner, Retiree, testified that there is corruption in Elizabethtown in regards to double dipper fraud and wants the fraudulent acts to be investigated. She stated that there are problems with KRS 61.637 and pension spiking that need to be addressed.

With no further business, the meeting was adjourned. The next regularly scheduled meeting is Monday, March 27, 2017.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes

March 15, 2017

Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee met on Wednesday, March 15, 2017, at 8:30 AM, in Room 169 of the Capitol Annex. Representative Phil Moffett, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Phil Moffett, Co-Chair; Senators Rick Girdler, Stan Humphries, and Christian McDaniel; and Representatives Larry Brown and Steven Rudy.

Guests: Mr. Scott Aubrey, Director, Division of Real Properties; Ms. Ashley Adams, Financial Analyst, Kentucky Infrastructure Authority; Ms. Janice Tomes, Deputy State Budget Director, Governor's Office for Policy Management; and Ms. Sandy Williams, Deputy Executive Director, Office of Financial Management.

LRC Staff: Shawn Bowen, Committee Staff Administrator; Julia Wang, Legislative Analyst; and Jenny Wells, Committee Assistant.

Approval of Minutes

A motion was made by Senator McDaniel to approve the minutes of the February 21, 2017 meeting. The motion was seconded by Representative Rudy and approved by voice vote.

Project Report from the Universities

Ms. Bowen said the University of Louisville and the University of Kentucky have provided correspondence reporting the purchase scientific research equipment with restricted funds. The purchases are to be reported to the committee within 30 days, and no further action is required.

Lease Reports from the Finance and Administration Cabinet

Ms. Scott Aubrey, Director, Division of Real Properties, reported on leasehold improvements at the 300 Building in Franklin County. The modifications include the installation of badge readers and a mag lock system on a communications closet. The total cost for the modifications is $4,055, which brings the total cost of improvements to date to $183,629. The agencies requesting the modifications included the Energy and Environment Cabinet, the Education and Workforce Development Cabinet, and the Department of Education.

In response to questions from Representative Moffett, Mr. Aubrey said the cost of improvements to the cafeteria, snack, and food service area ($449,900) was reported to the committee in December 2016. The cost of the improvements was outside the budget for the project in the beginning, and was reported as a separate item, not to be included in the total cost of the leasehold modifications reported today. The plans were to bid the space in hopes of obtaining a private operator, however, those efforts proved to be unsuccessful.

A motion was made by Representative Rudy to approve the report of leasehold modifications, seconded by Representative Brown, and approved by unanimous roll call vote.

Project Reports from the Finance and Administration Cabinet

Ms. Janice Tomes, Deputy State Budget Director, Governor's Office for Policy Management, reported a $127,863 scope increase for the Department of Military Affairs Renovate Bay A in Building 3 project at Bluegrass Station. The project will renovate the headquarters of Bluegrass Station's primary tenant, Special Operations Forces Support Activity (SOFSA). The scope increase is needed to cover the cost of a secure computer network required by the National Security Agency. The scope increase will be paid with federal funds provided by SOFSA. The revised project scope is $2,427,863.

A motion to approve the scope increase was made by Representative Rudy, seconded by Senator Humphries, and approved by unanimous roll call vote.

Report from the Office of Financial Management

Ms. Ashley Adams, Financial Analyst, Kentucky Infrastructure Authority (KIA), reported ten KIA loans: Fund A loans for the City of Frankfort, Franklin County (six), $2,041,000; $1,853,750; $1,954,500; $1,202,660; $2,175,965; Fund B loan, South Hopkins Water District, Hopkins County, $765,000; Fund F loan increase, City of Nicholasville, Jessamine County, $553,000; Fund F loan, City of Fleming-Neon, Letcher County, $1,500,000; and Fund F loan, Southern Water and Sewer District, Floyd County, $1,350,000.

Senator Humphries made a motion to roll the KIA loans into one vote. The motion was seconded by Representative Brown, and approved by voice vote.

In response to questions from Senator McDaniel, Ms. Adams said that had the six Fund A loans for the City of Frankfort been packaged as one loan, it would have been an administrative nightmare due to the many contracts, engineers, and timelines required to manage six different project locations within the city. She said the city also wished to provide more work opportunities by distributing the work to various contractors and engineers. Ms. Adams added that KIA receives loan repayments sooner if the projects are separate, and once a project is complete, KIA can then reconstruct the loan and receive its money back.

In response to questions from Senator McDaniel regarding the Fund F loan to the City of Fleming-Neon, Ms. Adams said she did not attend any city council meetings, but it was her understanding that there were no user objections to the water rate increases associated with the loan. The 14 percent increase recommendation was read twice at two different city council meetings and was published in the local paper. Ms. Adams said, according to the city's Affordable Living Index, the loan is based on the city's Medium Household Income at a rate of 1.5 percent, with a principal forgiveness of .50 percent, and an interest rate of .25 percent.

A motion was made by Senator McDaniel to approve the loans, seconded by Representative Rudy, and approved by unanimous roll call vote.

Report from the Office of Financial Management

Ms. Sandy Williams, Deputy Executive Director, Office of Financial Management, provided follow-up reports on four previously approved bond issues: State Property and Building Commission Bonds, Project No. 115, $227,815,000; University of Kentucky General Receipts Refunding Bonds, 2016 Series A and B, $29,265,000 and $7,540,000, respectively; Kentucky Housing Corporation (KHC) Multifamily Housing Revenue Bonds, Riverport Family Scholar House Project, Series 2016 A and B, $2,000,000 and $5,300,000, respectively; and KHC Revenue Bonds, Riverport Senior Apartments Project, Series 2016 A and B, $6,785,000 and $1,915,000, respectively. The follow-up reports did not require action.

New School Bond Issues with School Facilities Construction Commission (SFCC) Debt Service Participation

Ms. Williams reported one $4.75 million school bond issue for Lone Oak Intermediate School in McCracken County. There were no local tax increases associated with this project.

Senator McDaniel said there is speculation that the Federal Reserve, at its upcoming meeting, may raise interest rates. He expressed concerns that the anticipated interest rate on this bond issue may have been calculated with old data, and there could potentially be an issue with the bond's financial structure. Senator McDaniel recommended that the bond issue be held over until the committee's April meeting. He said given that the projected date of sale is not until May 2017, there is enough time for the Office of Financial Management to determine how changes in the interest rate may affect the bond issue, and provide that information to the committee. Ms. Williams agreed there could be a change in the interest rates by the Federal Reserve after it meets.

In response to a question from Representative Moffett, Ms. Williams said that the bond issue could be held until the next meeting date, and that a representative who is more knowledgeable with the bond issue would attend to answer any questions that members may have.

Representative Rudy said he did not think it was necessary to hold the bond issue until the next meeting. Senator McDaniel said postponing the committee's review of this item until April will not interfere with the projected bond sale date of May 2017.

A motion to postpone the committee's review of this bond issue until the April meeting was made by Senator McDaniel, seconded by Senator Humphries, and passed by a roll call vote of 5 yeas, and 1 nay.

New Local School Bond Issues with 100 Percent Locally-Funded Debt Service Participation

Ms. Bowen said three 100% locally-funded school bond issues were reported to the committee for review: two for Hopkins County and one for McCracken County. The bond issues total $8,315,000, and will refund outstanding bonds and make improvements to district schools. These bond issues do not involve a tax increase. No action was required on this item.

With there being no further business, the meeting adjourned at 8:49 a.m.

GOVERNMENT CONTRACT REVIEW COMMITTEE

Committee Minutes

March 15, 2017

Call to Order and Roll Call

The Government Contract Review Committee met on Wednesday, March 15, 2017, at 8:00 AM, in Room 131 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

<u>Members:</u> Senator Max Wise, Co-Chair; Representative Stan Lee, Co-Chair; Senators Julie Raque Adams and Paul Hornback; Representatives Chris Fugate and Diane St. Onge.

<u>Guests:</u> Noah Friend, Ellen Benzing, Andrew Casebier, Jennifer Linton, Gretta Hylton, Charlie Harman, Stephanie Robey, and Geni Jo Brawner.

<u>LRC Staff:</u> Kim Eisner, Jarrod Schmidt, and Kim Smith.

<u>DEFERRED ITEMS:</u>

<u>TREASURER, OFFICE OF THE KENTUCKY STATE:</u>

T12Q, LLC; 1700001217. Noah Friend discussed the contract with the committee. A motion was made by Representative Lee to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

<u>WESTERN KENTUCKY UNIVERSITY:</u>

JMH Consulting; 161727. A motion was made by Senator Hornback to defer the contract to the April 2017 meeting of the committee. Representative Lee seconded the motion, which passed.

A motion was made by Senator Hornback to approve Minutes of the February 2017, meeting of the committee. Senator Raque Adams seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative Lee seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative Lee seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative Lee seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative Lee seconded the motion, which passed without objection.

A motion was made by Senator Raque Adams to consider as reviewed the Correction List. Representative Lee seconded the motion, which passed without objection.

<u>THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:</u>

<u>DEPARTMENT FOR MEDICAID SERVICES</u>:

Wakely Consulting Group, 1700001276.

<u>DEPARTMENT OF INSURANCE</u>:

Gloria L. Dunn, 1700001108; Examination Resources, LLC, 1700001109.

<u>EASTERN KENTUCKY UNIVERSITY</u>:

Myers McRae, Inc., 18-101; Multi, 18-111.

<u>FAIR BOARD</u>:

Aecom Technical Services, Inc., 1700001294.

<u>FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING</u>:

John L Carman and Associates, Inc., 1700001106.

<u>FISH & WILDLIFE, DEPARTMENT OF</u>:

Vizionair, LLC, 1700001306.

<u>JUVENILE JUSTICE, DEPARTMENT OF</u>:

Center for Children's Law and Policy, Inc., 1700001140; Brenda Wilburn, 1700001256; Brenda Wilburn, 1700001257.

KENTUCKY BOARD OF LICENSURE FOR MASSAGE THERAPY:

Scanlan Associates, LLC, 1700001192.

MOREHEAD STATE UNIVERSITY:

Witt Kieffer, 17-044; HDR Engineering, Inc., 17-045.

MURRAY STATE UNIVERSITY:

The Segal Company, Inc., 009-17; Dean Dorton Allen Ford, PLLC, 010-17.

PSYCHOLOGISTS, BOARD OF EXAMINERS OF:

Multi, 1700001195.

STATE POLICE, DEPARTMENT OF:

Michael A. Hatler, 1700001327; Thomas R. Walsh, 1700001362.

TRANSPORTATION CABINET:

Aecom Technical Services, Inc., 1700001318; Stantec Consulting Services, Inc., 1700001320; Michael Baker International, Inc., 1700001321; Strand Associates, Inc., 1700001420; American Engineers, Inc., 1700001427.

UNIVERSITY OF KENTUCKY:

Sherman Carter Barnhart, A171170; SSI (US), Inc., K17-230; Witt/Kieffer, K17-231; Nexum, Inc., K17-232; Palantir.net, K17-233.

WESTERN KENTUCKY UNIVERSITY:

JMH Consulting, 161727

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:

NASACT, 1700000988.

CORRECTIONS, DEPARTMENT OF:

Correct Care Solutions, LLC, 1600002933.

DEPARTMENT FOR PUBLIC HEALTH:

Multi, 1600002663; Multi, 1600002667.

EASTERN KENTUCKY UNIVERSITY:

Trek Advancement, LLC, 18-077.

FINANCE AND ADMINISTRATION CABINET:

PFM Group Consulting, LLC, 1700000539.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Michael Baker Jr., Inc., 0600002724; Omni Architects, 0700003255; Stantec Consulting Services, Inc., 0800006925; Omni Architects, 1400000794; EOP Architects, PSC, 1400000960; Godsey Associates Architects, Inc., 1500000966; CMTA, Inc., 1600000674.

MOREHEAD STATE UNIVERSITY:

Caption Colorado, a division of VITAC Corporation, 17-033.

TRANSPORTATION CABINET:

Hall Harmon Engineers, Inc., 0700004926; Lochner H. W., Inc. Consulting, 1200001193; WMB, Inc., 1200001589; Palmer Engineering Company, 1300000803; Parsons Brinckerhoff, Inc., 1300001224; WMB, Inc., 1300001682; Stantec Consulting Services, Inc., 1300001775; Strand Associates, Inc., 1300001849; Vaughn & Melton Consulting Engineers, Inc., 1400000537; Strand Associates Inc., 1400000729; Vaughn & Melton Consulting Engineers Kentucky, Inc., 1400000764; Strand Associates, Inc., 1500001032; Greenman-Pedersen, Inc., 1500001964; Stantec Consulting Services, Inc., 1500002492; Strand Associates, Inc., 1500002745; CDP Engineers, Inc., 1600000584; Burgess and Niple, Inc., 1600000845; THE Engineers, Inc., C-00233372-2; GRW Engineers, Inc., C-99004860-4.

UNIVERSITY OF LOUISVILLE:

Multi, 17-010 A-G; Multi, 17-016 A-H.

VETERANS AFFAIRS, DEPARTMENT OF:

Multi, 1600001332.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:

AGRICULTURE, DEPARTMENT OF:

Harrison County Fair, 1700000925.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Bluegrass Area Development District Title III, 1700001268.

EDUCATION, DEPARTMENT OF:

Advance Education, Inc., 1700000474; University of Kentucky Research Foundation, 1700000962; Collaborative Center for Literacy Development (CCLD), 1700001039; Literacy Design Collaborative, Inc., 1700001180.

LIBRARIES & ARCHIVES, DEPARTMENT FOR:

Morgan County Fiscal Court, 1700001038; Oldham County Public Library, 1700001040; Boyle County Public Library, 1700001142; Campbell County Public Library, 1700001143; Lawrence County Public Library, 1700001144; Lincoln County Public Library, 1700001145; Bell County Public Library, 1700001179.

MILITARY AFFAIRS, DEPARTMENT OF:

Northern Kentucky University, 1700001204; Oldham County EMA, 1700001261.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Lincoln Trail Area Development District, 1700001229; Pike County Fiscal Court, 1700001284; Leslie County Fiscal Court, 1700001298; City of Richmond, 1700001303; Leslie County Fiscal Court, 1700001323; Leslie County Fiscal Court, 1700001324; Ohio County Fiscal Court, 1700001325; Hopkins County Fiscal Court, 1700001340; Floyd County Fiscal Court, 1700001437; City of Middlesboro, 1700001440.

WORKFORCE INVESTMENT, OFFICE OF:

West Kentucky Education Cooperative, 1700001233; Central Kentucky Educational Cooperative, 1700001236; NKCES, 1700001241; Green River Regional Educational, 1700001250; Kentucky Educational Development Corporation, 1700001253; Southeast/Southcentral Educational Cooperative, 1700001254; Ohio Valley Educational, 1700001255; Kentucky Valley Education, 1700001300; UK Center for Business and Economics, 1700001450.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

COMMISSION FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS:

River Valley Behavioral Health, 1600002109.

CORRECTIONS, DEPARTMENT OF:

Kenton County Detention, 1600001831.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Bluegrass Community Action, 1600003960.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

University of Kentucky Research Foundation, 1600001655; Nami Kentucky, 1600001719; University of Kentucky Research Foundation, 1600001735.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Community Action Kentucky, Inc., 1600001953; Bluegrass.Org, 1600002629; University of Kentucky Research Foundation, 1600003667.

DEPARTMENT FOR PUBLIC HEALTH:

Kentucky Hospital Research & Education Foundation, 1600002281.

EDUCATION, DEPARTMENT OF:

Fayette County Board of Education, 1600002798; Jefferson County Board of Education, 1600003111; Jefferson County Board of Education, 1600003125; Jefferson County Board of Education, 1600003126; Jefferson County Board of Education, 1600003165; Jefferson County Board of Education, 1600003180; Allen County Board of Education, 1700000025; Bath County Board of Education, 1700000028; Boyd County Board of Education, 1700000030; Franklin County Board of Education, 1700000048; Grayson County Board of Education, 1700000051; Jessamine County Board of Education, 1700000055; Livingston County Board of Education, 1700000064; Trigg County Board of Education, 1700000075; Union County Board of Education, 1700000076; Center for Assessment, 1700000080; Jefferson County Board of Education, 1700000352.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Martin County Fiscal Court, 1700000666; Bell County Fiscal Court, 1700001034.

WORKFORCE INVESTMENT, OFFICE OF:

City of Bowling Green, 1600001460; City of Bowling Green, 1600001963.

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:

FAIR BOARD:

Dinsmore and Shohl, 1700001107. Ellen Benzing discussed the contract with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

THP Limited, Inc., 1500002870. Andrew Casebier and Jennifer Linton discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Senator Hornback seconded the motion, which passed.

THE FOLLOWING PERSONAL SERVICE CONTRACT FOR $10K AND UNDER WAS SELECTED FOR FURTHER REVIEW:

FAIR BOARD:

Dinsmore and Shohl, 1700001107. Ellen Benzing discussed the contract with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative St. Onge seconded the motion, which passed.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE SELECTED FOR FURTHER REVIEW:

EDUCATION, DEPARTMENT OF:

Kentucky Valley Education, 1700001045. Gretta

Hylton and Charlie Harman discussed the contract with the committee. A motion was made by Senator Wise to consider the contract as reviewed. Senator Hornback seconded the motion, which passed.

MILITARY AFFAIRS, DEPARTMENT OF:

Pike County Fiscal Court, 1700001209. Stephanie Robey and Geni Jo Brawner discussed the contract with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Fugate seconded the motion, which passed.

There being no further business, the meeting adjourned at 8:32 a.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the February Meeting

February 10, 2017

Call to Order and Roll Call

The February of the Administrative Regulation Review Subcommittee was held on Friday, February 10, 2017, at 12:00 PM, in Room 149 of the Capitol Annex. Representative Ken Upchurch, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representatives Jason Petrie and Tommy Turner.

Guests: Kathryn Gabhart, Misty Indy, Ethics Commission; Jimmy Adams, Lisa Lang, Education Professional Standards Board; Steve Bullard, Department of Military Affairs; Mike Dossett, Tiffany Sizemore, Division of Emergency Management; Louis Kelly, Board of Physical Therapy; Brian Judy, Martin Wesley, Board of Licensed Professional Counselors; Dr. Elizabeth Reda Milazzotto, Board of Licensure for Pastoral Counselors; Angela Evans, Charles O'Neal, Board of Medical Services; Ann Dangelo, Megan McClain, Department of Transportation; Chris Garland, Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Tony Hatton, Aaron Keatley, Bruce Scott, Department for Environmental Protection; Mike Pettie, Kristi Redmon, Department of Workplace Standards; Stephen Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Deborah Crocker, Tiffany Ge, Department of Financial Institutions; Jamie Eads, John Forgy, Marc Guilfoil, Horse Racing Commission; Eric Clark, Justin Clark, Office of the Secretary, Nancy Galvagni, Hospital Association; Paul Coomes, Diona Mullins, Office of Health Policy; Robert Silverthorn Jr., Office of Inspector General; Elizabeth Caywood, Todd Trapp, Department of Community Based Services; Tom Fitzgerald, Kentucky Recourses Council, and Kelly Leach.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

The Administrative Regulation Review Subcommittee met on Friday, February 10, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission

9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations. Katie Gabhart, executive director, and Misty Judy, general counsel, represented the commission.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration

16 KAR 1:010. Standards for certified teachers. Jimmy Adams, executive director, and Lisa Lang, general counsel, represented the board.

In response to questions by Co-Chair Harris, Mr. Adams stated that the major changes to this administrative regulation included a series of streamlined standards for educator preparation providers that would reduce duplication and condense standards. These standards would apply to and reduce the workload for colleges and universities. The intent was to increase efficiency.

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.

DEPARTMENT OF MILITARY AFFAIRS: Division of Emergency Management: Disaster and Emergency Services

106 KAR 1:081. Kentucky Emergency Response Commission Tier 2 reporting and fee schedule requirements EHS facility planning participation requirements. Brig. Gen. Steve Bullard, counsel, Department of Military Affairs; Michael Dossett, director, Kentucky Division of Emergency Management, and chair, Kentucky Emergency Response Commission; and Tiffany Sizemore, program manager, Kentucky Emergency Response Commission, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify the acronym, "EHS;" (2) to amend the RELATES TO paragraph to add citations; (3) to amend Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A; and (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Sections 1 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to add Section 8 to incorporate material by reference; (4) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT; and (5) to include a FEDERAL MANDATE ANALYSIS COMPARISON and a SUMMARY OF MATERIAL INCORPORATED BY REFERENCE. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:101. Kentucky Emergency Response Commission fee grant requirements for state agencies.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add citations; (2) to amend Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:111. Kentucky Emergency Response Commission Fee Account Grant Review Committee.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:121. Kentucky Emergency Response Commission fee account grant distribution formula.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A; and (3) to include a FEDERAL MANDATE ANALYSIS COMPARISON. Without objection, and with agreement of the agency, the amendments were approved.

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Sections 1 through 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 3 and 10 to clarify deadlines; (4) to amend Section 10 to provide for electronic filing of papers via email; and (5) to revise the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT and the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Louis Kelly, general counsel, represented the board.

In response to a question by Co-Chair Harris, Mr. Kelly stated that, although it was not common, the board had instances of an applicant failing the required exam more than six (6) times. Most applicants passed the exam in one (1) or two (2) attempts. The board believed that the remediation plan should be developed without board involvement. The remediation plan should be a matter between the applicant and the educational institution.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 11 and the Supervisory Agreement for Applicant with Temporary Permit to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensed Professional Counselors: Board

201 KAR 36:005. Definitions for 201 KAR Chapter 36. Brian Judy, assistant attorney general, and Martin Wesley, chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 1 to clarify: (a) what shall be considered a miscellaneous crime affecting businesses, occupations, and professions; and (b) what shall constitute multiple offenses of driving while under the influence or impaired. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:020. Fees.

201 KAR 36:030. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct citations; and (2) 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.

201 KAR 36:040. Code of ethics.

In response to questions by Co-Chair Harris, Mr. Judy stated that the previous requirement for peer intervention in the case of impairment resulted in colleague-to-colleague conflict, which negatively impacted the profession as a whole. The board still retained disciplinary options if a complaint of impairment was filed.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:045. Distance counseling.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Section 4 to add a reference to a licensee not splitting fees; and (4) to add a new Section 5 to cover the utilization of distance counseling in the provision of continuing education. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:050. Complaint management process.

201 KAR 36:055. Administrative subpoena.

201 KAR 36:060. Qualifying experience under supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to clarify that the prohibition on a supervisee not continuing to practice professional counseling shall not apply to a supervision agreement being terminated due to extenuating circumstances that allow for temporary supervision; and (2) to amend Sections 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:065. Licensed professional clinical counselor supervisor.

201 KAR 36:070. Application, education, and examination requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to clarify what shall be considered as evidence of rehabilitation and what shall happen if rehabilitation is not established. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 4 to clarify that if a supervisor fails to verify an associate's hours by the license termination date that the supervision agreement shall be terminated; (3) to amend Section 5 to clarify what shall be considered as evidence of rehabilitation and what shall happen if rehabilitation is not established; and (4) to update the renewal and reinstatement applications to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 36:090. Administrative hearings for denials and revocation of probation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a citation; and (2) 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.

Board of Licensure for Pastoral Counselors: Board

201 KAR 38:020. Application. Brian Judy, assistant attorney general, and Dr. Elizabeth Milazzotto, board member, represented the board.

In response to questions by Senator Clark, Mr. Judy stated that licensed pastoral counselors were different from licensed professional counselors in that they approached treatment from a theological and faith basis. Religious clerics were exempt from penalties for counseling without a license. Dr. Milazzotto stated that pastoral counseling usually took place in a faith-based center, and education requirements were different for a pastoral counselor and a professional counselor.

Senator Kerr stated that this licensure category was established so that pastoral counselors could receive insurance reimbursement. Most pastoral counselors actually had more education than most professional counselors.

In response to a question by Co-Chair Harris, Mr. Judy stated that the reduction in education hours was a minimum requirement.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) 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.

201 KAR 38:030. Equivalent course of study.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 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.

201 KAR 38:070. Renewal of licenses and continuing education.

A motion was made and seconded to approve the following amendments: 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.

Board of Emergency Medical Services: Board

202 KAR 7:810. Survivor benefits for death of emergency medical services personnel. Angela Evans, board counsel, and Charles O'Neal, deputy executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

Public Transportation Infrastructure Authority: Authority

202 KAR 10:010. Unsolicited proposals. Megan McLain, assistant general counsel, represented the authority.

202 KAR 10:020. Public-private partnerships.

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.

202 KAR 10:030 & E. Tolling projects.

In response to a question by Co-Chair Harris, Ms. McLain stated that the authority had updated the Web site, and the tolling information was now easily available within only one (1) click of the authority's home Web page.

A motion was made and seconded to approve the following amendments: to amend Section 2 to clarify that "circular" means "regional newspaper;" (2) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 4 to clarify that an out-of-service notice shall only be placed on a commercial motor vehicle in violation of KRS 175B.040(4) after the owner has received a notice of violation. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:015. Shooting ranges on department-owned or managed lands. Chris Garland, program manager; Karen Waldrop, deputy commissioner; and David Wicker, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 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.

TRANSPORTATION CABINET: Department of Highways: Preconstruction

603 KAR 2:020. Public-private partnerships. Ann D'Angelo, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for "director"; and (b) clarify a definition to establish that "secretary" means Secretary of the Transportation Cabinet; and (2) to amend Sections 1 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.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:300. General. Mike Pettit, occupational safety and health standards specialist, and Kristi Redmon, occupational safety and health standards specialist, represented the division.

803 KAR 2:303. Walking-working surfaces.

In response to questions by Co-Chair Harris, Mr. Pettit stated that these administrative regulations updated standards commensurate with federal revisions. Walking-working surface standards, which had not been revised since 1973, were updated. Personal protective equipment and American National Standards Institute provisions were updated. New training was required for personal fall protection systems. The general industry scaffold standard was deleted in lieu of the construction standard, which required personal fall arrest systems. The federal financial analysis expected the savings from prevented deaths and injuries to more than offset the costs of implementation. These administrative regulations were expected to improve safety for employees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1: (a) to cite to statutory definitions; and (b) for consistency with other department administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

803 KAR 2:308. Personal protective equipment.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:313. Materials handling and storage.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 2 to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 for consistency with other department administrative regulations. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:317. Special industries.

A motion was made and seconded to approve the following amendment: to amend Section 2 to correct a citation. Without objection, and with agreement of the agency, the amendment was approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Local Administrators

804 KAR 10:010. Appointment notification of local alcoholic beverage administrator. Stephen Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

804 KAR 10:021. Repeal of 804 KAR 10:020 and 804 KAR 10:025.

Department of Financial Institutions: Division of Depository Institutions: Administration

808 KAR 1:111. Repeal of 808 KAR 1:110. Deborah Crocker, assistant general counsel, and Tiffany Ge, general counsel, represented the division.

Credit Unions

808 KAR 3:020. Recordkeeping requirements.

808 KAR 3:031. Repeal of 808 KAR 3:030.

Industrial Loans

808 KAR 5:011. Repeal of 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030.

Savings and Loans

808 KAR 7:031. Repeal of 808 KAR 7:030 and 808 KAR 7:040.

Kentucky Horse Racing Commission: Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. Jamie Eads, director, Division of Incentives and Development; John Forgy, general counsel; and Marc Guilfoil, executive director, represented the commission.

811 KAR 1:220. Harness racing at county fairs.

A motion was made and seconded to approve the following amendments: to amend Section 12 to delete references to an outdated effective date. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020 & E. State Health Plan for facilities and services. Eric Clark, legislative director; Justin Clark, general counsel; and Diona Mullins, executive advisor, represented the office.

Certificate of Need

900 KAR 6:055. Certificate of need forms.

900 KAR 6:060. Timetable for submission of certificate of need applications.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2(2) to clarify that the revised submission dates are applicable "beginning" July 1, 2017, rather than "after" that date. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:065. Certificate of need application process.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 6 to delete provisions that no longer apply because a stated deadline has already occurred. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:095. Certificate of need administrative escalations.

Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. Robert Silverthorn, Jr., inspector general, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; (3) to amend Sections 1, 4, and 9 and the material incorporated by reference for clarity; and (4) to amend Sections 4 and 5 to delete notification provisions that repeat or conflict with statute, as required by KRS 13A.120. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:013. Repeal of 902 KAR 20:014.

Division of Health Care: Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150.

906 KAR 1:190. Kentucky National Background Check Program.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 5, 7, and 10 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 for Community Based Services:

Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Elizabeth Caywood, executive advisor; Eric Clark, legislative director; and Todd Trapp, assistant director, represented the division.

Other Business: Co-Chair Harris announced that committee staff administrator, Donna Little, was leaving the Subcommittee to be a special assistant to the Cabinet for Health and Family Services. Ms. Little had served LRC for nearly twenty-three (23) years, beginning as an intern, and had worked for Constituent Services, the Task Force for Governmental Ethics, the Education Committee, and the Administrative Regulation Review Subcommittee. A resolution was read honoring Ms. Little and her service. Co-Chair Harris stated that Ms. Little, with her many talents and consummate professionalism, would be sorely missed by the subcommittee. Senator Kerr stated that the transfer of Ms. Little, with her well-known work ethic, was a tremendous loss to the Subcommittee. Members appreciated all Ms. Little had done for the legislature. Co-Chair Up-church thanked Ms. Little for her service.

Ms. Little thanked the Subcommittee for the resolution and recognition, stating that this was the best subcommittee in the General Assembly. Members and staff worked together for the benefit of the Commonwealth. While excited about future endeavors, Ms. Little would miss working with this Subcommittee.

A motion was made and seconded to adopt the resolution. Without objection, the resolution was adopted.

The following administrative regulations were deferred to the March 6, 2017, meeting of the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Certification Procedures

16 KAR 4:080. Out-of-state recency.

16 KAR 4:090. Reissuance.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; Administration

103 KAR 5:121. Repeal of 103 KAR 5:120.

Income Tax; General Administration

103 KAR 15:021. Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100.

Income Tax; Corporations

103 KAR 16:031. Repeal of 103 KAR 16:030.

103 KAR 16:221. Repeal of 103 KAR 16:220 and 103 KAR 16:300.

Income Tax; Miscellaneous

103 KAR 19:031. Repeal of 103 KAR 19:030

Corporation License Tax

103 KAR 20:011. Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Licensure for Occupational Therapy: Board

201 KAR 28:090. Renewals.

201 KAR 28:200. Continuing competence.

Board of Alcohol and Drug Counselors: Board

201 KAR 35:016. Repeal of 201 KAR 35:015.

201 KAR 35:070. Supervision experience.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:070. Coal combustion residuals surface impoundments. Tony Hatton, deputy commissioner; Aaron Keatley, commissioner; and Bruce Scott, deputy secretary, represented the department. Tom FitzGerald, director, Kentucky Resources Council, and Kelley Leach, resident of an impacted community, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Upchurch, Mr. Scott stated that in 2015 U.S. EPA promulgated regulations to address coal combustion residuals (CCRs). Kentucky had approximately forty-six (46) coal ash ponds and twelve (12) CCR landfills. Most coal ash ponds would be closed as a result of the federal regulations. The requirements were self implementing, meaning utilities were responsible for regulating them-selves to ensure compliance with the program. Kentucky chose to promulgate these state requirements to ensure enforcement capabilities.

In response to questions by Co-Chair Harris, Mr. Scott stated that U.S. EPA provided no funding to states for this self-implementing program. Because the federal regulations were rushed, many implementation compliance deadlines had already passed. The department complied with the KRS 13A.270 public comment process and received public comments pursuant to these administrative regulations. The department amended some of these administrative regulations in response to the public comments by adding financial assurance requirements, changing the permitting and permit application process, and changing the public notification process. Landfill disposal of CCR was considered safer than containment in coal ash ponds. The Effluent Guideline Rule under the Clean Water Act required the leachate from CCRs to be treated.

Mr. FitzGerald stated that in his thirty-three (33) years representing Kentucky Resources Council, he had never seen a more reckless package of administrative regulations. The federal rules did not require Kentucky to eliminate permitting procedures. CCR waste had hazardous components. Kentucky was eliminating requirements for special waste landfills as pertained to CCR waste. A proposal for a special waste landfill would have required an individual permit, with siting, engineering, construction, groundwater and surface water monitoring, operation, closure, and post-closure requirements. The individual permit would be subject to public review and potentially public challenge. The proposed registered permit-by-rule would require only a one (1) page disclosure with very little technical information. The individual permitting structure had been in place for over twenty-five (25) years.

Mr. Leach stated that he owns a 150-acre family farm that adjoins the Trimble County Louisville Gas and Electric Company proposed CCR landfill. His family had owned this farm for three (3) generations, and Mr. Leach had planned to live his life there; however, he had tried to sell the property recently because of the planned CCR landfill. Louisville Gas and Electric Company had several Notices of Deficiency issued for the current landfill permit. The porous nature of the underlying dolomite layer meant that, even with liners, the groundwater was at significant risk of being contaminated by leachate from the CCR landfill. There was also a concern regarding noise and light from the facility. Mr. Leach requested that the Subcommittee not allow the current permitting process to be eliminated.

In response to questions by Senator Clark, Mr. Scott stated that there was no current permitting program for coal ash ponds. These administrative regulations would give the department a framework and requirements. The department agreed to defer consideration of these administrative regulations to the March 6 meeting of the Subcommittee.

Representative Turner stated that he wanted the department to defer and wanted additional time to research the implications of this administrative regulation package.

In response to a question by Co-Chair Harris, Mr. FitzGerald stated that ratepayers would be affected if there were environmental problems resulting from CCR disposal. A motion was made and seconded to defer consideration of these administrative regulations. Without objection, and with agreement of the agency, these administrative regulations were deferred to the March 6 meeting of the subcommittee.

Division of Waste Management: Special Waste

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) 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.

401 KAR 45:060. Special waste permit-by-rule.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) 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.

Coal Combustion Residuals (CCR)

401 KAR 46:101. Definitions for 401 KAR Chapter 46.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units.

401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule

A motion was made and seconded to approve the following amendments: to amend Sections 1 through

4, 6, and 7 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: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim.

PUBLIC PROTECTION CABINET: Department of Insurance: Commissioner's Office: Administration

806 KAR 2:011. Repeal of 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030, 806 KAR 2:040, and 806 KAR 2:050.

806 KAR 2:097. Filing of local government premium tax ordinances; notification to insurers.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Commissioner's Office: Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers.

The Subcommittee adjourned at 1:35 p.m. until March 6, 2017, at 1 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the March Meeting

March 6, 2017

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 6, 2017, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Ken Upchurch, Co-Chair; Senators Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representative Jason Petrie.

Guests: Jimmy Adams, Lisa Lang, Education Professional Standards Board; Tom Crawford, David Gordon, Melissa Russell, Department of Revenue; Bill Adcock, Florence Huffman, Board of Social Work, Ryan Halloran, Board of Licensed Occupational Therapists; Brian Judy, Board of Alcohol and Drug Counselors; John Marcus Jones, Denise Logsdon, Board of Licensure for Massage Therapy; Steve Beam, Ron Brooks, Gabe Jenkins, David Wicker, Department of Fish and Wildlife Resources; Caroline Baesler, Katie Smith, Cabinet for Economic Development; Tony Hatton, Aaron Keatley, Bruce Scott, Energy and Environment Cabinet; Amy Barker, Department of Corrections; Steve Humphress, Carol Beth Martin, Trina Summers, Christy Trout, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Laura Begin, Angela Billings, Sue Thomas-Cox, Department of Public Health; Robert Silverthorn, Office of Inspector General; Veronica Cecil, Donna Little, Department for Medicaid Services; Tom FitzGerald, Kelley Leach, and Sonia McElroy.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

The Administrative Regulation Review Subcommittee met on Monday, March 6, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Certification Procedures

16 KAR 4:040. Certification fees. Jimmy Adams, executive director, represented the board.

In response to questions by Co-Chair Harris, Mr. Adams stated that a deferral situation in which a program was delayed through no fault of the teacher was exempt from the fifty (50) dollar fee. A statement of eligibility was valid for five (5) years. A certificate holder, with multiple certificates that have different renewal dates, may pay an additional fifteen (15) dollars to align the multiple certificates with one (1) common renewal date at the next expiration period.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 4:080. Out-of-state recency.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 4:090. Reissuance.

A motion was made and seconded to approve the following amendments. (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 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: Department of Revenue: Ad Valorem Tax; Administration

103 KAR 5:121. Repeal of 103 KAR 5:120. Tom Crawford, director, Office of Property Valuation; David Gordon, executive director, Office of Property Valuation; and Melissa Russell, tax policy research consultant, Office of Tax Policy and Regulation, represented the department.

In response to a question by Co-Chair Harris, Mr. Crawford stated that these administrative regulations were being repealed because they were outdated and unnecessary.

Income Tax; General Administration

103 KAR 15:021. Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100.

Income Tax; Corporations

103 KAR 16:031. Repeal of 103 KAR 16:030.

103 KAR 16:221. Repeal of 103 KAR 16:220 and 103 KAR 16:300.

Income Tax; Miscellaneous

103 KAR 19:031. Repeal of 103 KAR 19:030.

Corporation License Tax

103 KAR 20:011. Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035.

GENERAL GOVERNMENT CABINET: Board of Social Work

201 KAR 23:075. Continuing education for renewal. Bill Adcock, board member; Florence Huffman, executive director; and Brian Judy, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 6, 9, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 4 to clarify that the fee for a provider shall be: (a) fifty (50) dollars for each one (1) day program of eight (8) hours or less; and (b) $100 for each additional one (1) day program of eight (8) hours or less; (3) to amend Section 5 to clarify that the presenter requirements shall apply to a sponsor; and (4) to make technical corrections to material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Occupational Therapy

201 KAR 28:090. Renewals. Ryan Halloran, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 4 to delete the requirement to complete the board jurisprudence examination upon a licensee's renewal. Without objection, and with agreement of the agency, the amendments were approved.

Board of Alcohol and Drug Counselors

201 KAR 35:016. Repeal of 201 KAR 35:015. Brian Judy, assistant attorney general, represented the board.

201 KAR 35:020. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 4 and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:025. Examinations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and the Reexamination Application form to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:030. Code of Ethics.

In response to a question by Co-Chair Harris, Mr. Judy stated that all peer support specialists were recovering addicts with at least two (2) years in recovery to be eligible for registration. Most had completed a treatment program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 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.

201 KAR 35:050. Curriculum of study.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add citations; (2) to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the Peer Support Specialist Alcohol/Drug Training Verification Form to add sections for additional required training. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 35:070. Supervision experience.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add citations; (2) to amend Sections 1, 4, 8, 9, and 11 to clarify when required forms shall be filed; and (3) to amend Sections 1 through 3 and 8 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Massage Therapy

201 KAR 42:020. Fees. John Marcus Jones, assistant attorney general, and Denise Logsdon, MS, LMT, chair, represented the board.

In response to questions by Co-Chair Harris, Ms. Logsdon stated that a nonpracticing licensee may go into inactive status. An inactive license was renewed annually, rather than biannually. A licensee with an inactive license was expected to comply with continuing education requirements and was not required to get additional training to return to active status if in compliance with continuing education requirements. If a licensee was not in compliance with continuing education requirements, the board would consider the reason for noncompliance before the licensee returned to active status.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 42:040. Renewal.

A motion was made and seconded to approve the following amendments: to amend Section 6 to comply with the drafting 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 1:152. Asian Carp and Scaled Rough Fish Harvest Program. Steve Beam, wildlife division director; Ron Brooks, fisheries director; and David Wicker, general counsel, represented the department.

Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

A motion was made and seconded to approve the following amendments: to amend Section 10 to clarify the deadline. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR ECONOMIC DEVELOPMENT: Economic Development Finance Authority

307 KAR 1:031. Repeal of 307 KAR 1:030, 307 KAR 1:040, 307 KAR 1:050, and 307 KAR 1:060. Caroline Baesler, executive director and general counsel, Office of Legal Services, and Katie Smith, executive director, Office of Financial Services, represented the authority.

In response to questions by Co-Chair Harris, Ms. Baesler stated that these administrative regulations were reviewed as part of the Governor's red tape reduction initiative. One (1) administrative regulation applied to a program that no longer existed. The other three (3) administrative regulations applied to existing programs; however, the requirements for those programs had been incorporated into another administrative regulation. The program that no longer existed ceased taking applications in 2009, although there were still agreements in place for monitoring and compliance purposes.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:070. Coal combustion residuals surface impoundments. Tony Hatton, deputy commissioner; Aaron Keatley, commissioner; and Bruce Scott deputy secretary, represented the department. Tom FitzGerald, director, Kentucky Resources Counsel; Kelley Leach, Ogden Ridge resident; and Sonia McElroy, Trimble County resident, appeared in opposition to these administrative regulations.

In response to questions by Co-Chair Harris, Mr. Scott stated that this administrative regulation package adopted the federal coal combustion residuals (CCR) rules for coal ash ponds and CCR landfills. The cabinet made changes to 401 KAR 46:101 and 46:120 in response to public comments. As a result of the new requirements, coal ash ponds throughout Kentucky would close pursuant to protective closure requirements. Going forward, CCRs would be disposed of in landfills, rather than held in coal ash ponds.

Mr. Leach asked the Subcommittee not to accept the proposed changes to the CCR requirements. If CCR disposal did not pose a problem, why were there existing administrative regulations to govern them? Louisville Gas and Electric company's original CCR landfill permit required monitoring wells to ensure that groundwater was not contaminated. Most landowners adjacent to CCR landfills could not afford litigation or private monitoring. Recent contamination at Herrington Lake may not have been detected under the proposed permit-by-rule program.

Ms. McElroy stated that she lived in Trimble County and was opposed to the Louisville Gas and Electric company's CCR landfill. Many notices of deficiency had been issued to the facility. Residents near the Cane Run plant had to live with blowing fly ash, which lowered property values and resulted in health problems. Kentucky was fifth in the United States for coal ash contamination. It was necessary to have an agency to actively regulate coal ash facilities, including to regulate public notification and education of affected communities. The requirements should stay as they are and not be amended by this proposed administrative regulation package because facilities could not be counted upon to properly regulate themselves.

Mr. FitzGerald stated that CCRs were known to cause environmental damage. There were seventeen (17) potentially toxic elements commonly present in CCRs. Leachates from CCR facilities typically exceeded drinking water standards, and communities near CCR landfills often used groundwater as a drinking water source. Leachate studies showed that, in some cases, heavy metal leachate from CCRs was higher than hazardous waste standards. There was no federal mandate for the cabinet to delete the existing permit process. The proposed, self-certifying standards required information to be made public on the Internet; however, the required information was minimal and of little use to regulators and communities. Agency oversight was necessary for activities such as groundwater monitoring. Monitoring wells recently constructed without cabinet oversight were shown to not comply with standards, and some were constructed in the wrong place to detect potential contamination. A cabinet inspection prior to commencing operation would no longer be required. The Subcommittee should find these administrative regulations deficient because they were inconsistent with KRS 224.10-100(19), which required the cabinet to regulate permits for waste disposal sites and facilities and to compel applications accompanied by plans and specifications.

Mr. Scott stated that the problems illustrated by those testifying against these administrative regulations demonstrated the need for these new requirements. The problems described occurred pursuant to the existing administrative regulations. The cabinet would continue to inspect and monitor CCR disposal, just as it had done previously. KRS 13A.030(2)(a) required the Subcommittee to find an administrative regulation deficient if it imposed stricter state requirements than those required by a federal mandate. There were existing permit-by-rule requirements in place without this administrative regulation package. If permit-by-rule was incompatible with KRS 224.10-100(19), then both the current requirements and the proposed package were incompatible.

Division of Waste Management: Special Waste

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) 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.

401 KAR 45:060. Special waste permit-by-rule.

At the February 10, 2017, meeting of the

Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) 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.

Coal Combustion Residuals (CCR)

401 KAR 46:101. Definitions for 401 KAR Chapter 46.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units.

401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule.

At the February 10, 2017, meeting of the Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:170. Green River Correctional Complex. Amy Barker, assistant general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Barker stated that this administrative regulation was the annual update to the Green River Correctional Complex policies.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:370. Entertainment destination center license. Steve Humphress, general counsel; Carol Beth Martin, malt beverage administrator; Trina Summers, distilled spirits administrator; and Christy Trout, commissioner, represented the department.

In response to a question by Co-Chair Harris, Ms. Trout stated that the entertainment destination center license was an existing licensing program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

Department of Insurance: Commissioner's Office

806 KAR 2:011. Repeal of 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030, 806 KAR 2:040, and 806 KAR 2:050. Patrick O'Connor II, executive advisor, represented the department.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add a cross reference. Without objection, and with agreement of the agency, the amendment was approved.

806 KAR 2:097. Filing of local government premium tax ordinances; notification to insurers.

Agent Licensing Division: Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:360 & E. Pharmacy benefit manager license.

A motion was made and seconded to approve the following amendment: to amend Section 2 to clarify what the commissioner considers as "good cause" to avoid the denial of an application if missing or necessary information is not received within thirty (30) days from the date of notification by the commissioner. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Public Health Protection and Safety: Sanitation

902 KAR 10:085. Kentucky on-site sewage disposal systems. Laura Begin, regulation coordinator, and Angela Billings, environmental health program administrator, represented the division.

In response to a question by Co-Chair Harris, Ms. Begin stated that the changes to this administrative regulation were the result of 2016 legislation to provide greywater conservation credits. If certain environmentally conservative types of systems were installed, the size of the chambers may be reduced to benefit these systems.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, 7, and 9 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 1, 3, and 6 to include Web site addresses for the referenced handbook and manuals; and (4) to amend Section 6 to clarify that certain leaching chamber sizes shall be established on a case-by-case basis pursuant to technological advances. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:091 & E. Facilities specifications, operation and services; community mental health center. General Robert Silverthorn, Jr., inspector general, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend Sections 1, 3, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:280. Prescribed pediatric extended care centers.

In response to a question by Co-Chair Harris, General Silverthorn stated that this administrative regulation used the term "primary care provider," rather than "primary care physician," for consistency with the authorizing statute.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Sections 1, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Prevention and Quality Improvement: Programs for the Underserved

902 KAR 21:020. Kentucky Colon Cancer Screening Program. Laura Begin, regulation coordinator, and Sue Thomas – Cox, chronic disease branch manager, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to delete provisions that were governed by contract; and (2) to amend Sections 6 and 7 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Community Alternatives: Medicaid Services

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. Veronica Cecil, deputy commissioner, and Donna Little, regulatory compliance senior policy advisor, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend Section 1 to add three (3) definitions; and (3) to amend Sections 1, 4, and 8 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:047 & E. Community mental health center primary care services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 3, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commissioner's Office: Kentucky Children's Health Insurance Program

907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.

In response to a question by Co-Chair Harris, Ms. Cecil stated that the six (6) month waiting period established in this administrative regulation and 907 KAR 4:030 was being deleted because it was not a federal requirement and it left children without creditable coverage during the waiting period.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the April 11, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Physical Therapy

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Prosthetics, Orthotics and Pedorthics

201 KAR 44:040. Professional conduct and code of ethics.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030 & E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:070. Reasonable time for protesting claim.

CABINET FOR HEALTH AND FAMILY SERVICES: Division of Community Alternatives: Behavioral Health

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15.

907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups.

Commissioner's Office: Managed Care

907 KAR 17:015 & E. Managed care organization requirements and policies relating to providers.

The Subcommittee adjourned at 2:10 p.m. until April 11, 2017, at 1 p.m.

PUBLIC PENSION OVERSIGHT BOARD

Minutes

March 27, 2017

Call to Order and Roll Call

The 3rd meeting of the Public Pension Oversight Board was held on Monday, March 27, 2017, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Senators Jimmy Higdon, Christian McDaniel, Dennis Parrett, and Wil Schroder; Representatives Ken Fleming, James Kay, Jerry T. Miller, Arnold Simpson, and Russell Webber; J. Michael Brown, John Chilton, Mike Harmon, James M. "Mac" Jefferson, and Sharon Mattingly.

Guests: Jim Waters, Aaron Ammerman, and William F. Smith, Bluegrass Institute; Brad Gross, LRC; Dolly Guenthner, Retiree.

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes.

Approval of Minutes

Senator Higdon moved that the minutes of the February 27, 2017, meeting be approved. Mac Jefferson seconded the motion, and the minutes were approved without objection.

Senator Bowen welcomed Senators McDaniel, Parrett, and Schroder, and Representatives Fleming, Simpson, and Russell, as new members to the Public Pension Oversight Board (PPOB).

Bluegrass Institute

Jim Waters, President, Bluegrass Institute discussed how the Bluegrass Institute could offer information to help with the pension crisis. The Bluegrass Institute is a state-based, free market think tank that was started in 2003 and is a member of the state policy network, which offers free market solutions and ideas to Kentucky's greatest challenges.

Aaron Ammerman, Investment Analyst, Bluegrass Institute explained that pension reform has been a big part of the Bluegrass Institute's goal over the last 7 to 8 years. Mr. Ammerman addressed the benefit structure of the pension plans and stated that the Bluegrass Institute is not against defined benefit plans, but if a defined benefit is incorporated into a state structure, there are a set of rules that need to be followed in order to obtain and keep a fully funded status. Over the last 30 years, Kentucky has had multiple rules violated that has resulted in the severe underfunded status of the state plans. Two rules that most likely caused the most damage are benefit enhancements that were given retroactively to employees and retirees and the lack of an actuarial analysis on the benefit enhancements.

William F. Smith, MD, Systems Analyst, Bluegrass Institute discussed the mathematical analysis of the system. He stated that it is important that certain rules are followed with a defined benefit plan, and the pension system has been used improperly. The pension system has been used as a pay-as-you-go system instead of an actuarial reserve system. The systems are designed to support a very specific set of actuarially prefunded benefits that are assigned, earned, and funded to a specific year with payroll contributions. The payroll contributions that are used to prefund these benefits actuarially are called the normal cost. The reason for prefunded benefits is that it offers protection against unfunded liabilities. The scenario is that if the normal cost payroll is made and the actuarial assumptions are achieved, there will be a fully funded pension system. The scenario only applies if there are legitimate and reasonable actuarial assumptions and beneficiaries receive the actuarially prefunded benefits.

Mr. Smith explained that if these benefits are retroactively enhanced after being prefunded, the intended strategy is being defeated. Prefunding means creating an actuarial reserve for these benefits with normal cost payroll contributions, thereby investing that money so it will grow to pay the future benefit obligations. So, if there is failure giving beneficiaries the benefit that is used to calibrate the system, there will no longer be a calibrated system, and there will no longer be an actuarial reserve system. The actuarial assumptions and normal costs are no longer relevant. The system has one set of benefits that are earned and actuarially prefunded and then a second completely separate set of benefits that have been artificially enhanced. The enhanced set of benefits are what people receive when they retire, and there is no prefunding for those benefits. So, now it is more of a pay-as-you-go system instead of an actuarial reserve system.

Mr. Smith discussed actuarial funding of benefits and stated that the benefit factor is the quantitative measure of benefits as a percentage of final compensation and are assigned by legislators and are the defined benefits. The actuaries use that benefit to calibrate the system which gives the normal cost. Making the normal cost payroll contributions as the benefit is being earned is important so there will be an actuarial reserve to pay those benefits in the future. If the benefit is retroactively enhanced, there is no actuarial reserve. The primary funding mechanism for benefits is normal cost and the ARC is there to amortize debt that occurs when the actuarial assumptions are not achieved. The ARC is not intended to be used as a primary funding mechanism for benefits.

There are other elements of benefits that can be enhanced and applied retroactively as actuarially prefunded benefits, such as, enhanced final compensation formula (high3/high5), enhanced final compensation (spiking), excessive COLAs, and health insurance premiums.

Mr. Smith stated the Teachers' Retirement System's (TRS) benefit enhancements have a different strategy and do not shuffle benefit factors, but do have benefit enhancements that inflate the value of actuarially prefunded benefits. The benefits that are not covered by the inviolable contract are, the 3 percent factor for years of service over 30, the high 3 final compensation formula at 27 years/age 55, benefit spiking with sick days, pay-as-you-go health insurance.

Mr. Smith discussed KRS 6.350 that was passed in 1980 that requires an actuarial analysis for benefit enhancements. The statute states "A bill which would increase or decrease the benefits…of any state-administered retirement system shall not be reported from a legislative committee of either house of the General Assembly for consideration by the full membership of that house unless the bill is accompanied by an actuarial analysis." Mr. Smith stated that an actuarial analysis determines how much a benefit enhancement will cost.

Mr. Smith stated the one benefit enhancement that was accompanied by an actuarial analysis was in 1998, SB 142. Further, the final compensation formula was changed from high 5 to high 3, with zero additional funding for two years. Mr. Smith stated that actuary, Steve Gagel, performed the actuarial analysis for SB 142 and was opposed to the legislation because any increase in benefits should reflect a true need or meet a real shortfall in retirement benefits, that it was unclear whether such a shortfall exists, that there is real danger that spendable income after retirement could exceed pre-retirement spendable income, and that it was not an effective use of taxpayer dollars. Mr. Smith said that Steve Gagel thought it was going to cost $300 million over a 30 year period of time and assumed retirement patterns would remain unchanged.

Mr. Smith discussed a couple issues regarding the inviolable contract, stating that it is important to understand based on the wording that the beneficiaries do not contribute to retroactively enhanced benefits and that all the funding comes from future employers. Also, future benefit accrual rates have not been earned and not funded.

Mr. Smith gave recommendations for all plans and stated it is important to enact a constitutional amendment prohibiting retroactive benefit enhancements, providing complete transparency for all benefits received by every retiree and how these benefits were determined, providing that plan governance and board representation should reflect the risk assumed by each stakeholder, and imposing a hard freeze if legitimate reform efforts prove unsuccessful.

Senator Bowen asked if anyone attending the meeting or on the board wished to refute the information the Bluegrass Institute presented to the PPOB with no response.

In response to a question from Representative Kay, Mr. Smith stated that by not paying the ARC exacerbated the problem, but it did not cause the problem. The system design is to avoid an ARC altogether. The ARC is normal cost plus amortized debt and the role of the ARC is to amortize debt as created when the actuarial assumptions are not met, it is not intended to be a primary funding mechanism for the benefit enhancements.

In response to a question from Representative Kay, Mr. Ammerman stated that Bluegrass Institute is an advocate for transparency in all levels of government. TRS' performance over the last 30 years with extremely low levels of fees is very impressive. KRS performance has lagged the last few years, and KRS is in the process of extracting itself from hedge funds, but the performance is not the reason for the current situation. In responding to questions from Representative Miller, Mr. Waters stated that the Bluegrass Institute is presenting this information and analysis across the state and will look into whether or not there are court cases about inviolable protection over retroactive benefits. In response to a question from Senator Higdon, Mr. Smith stated that the debt is being amortized and being charged to future employers as a percentage of their payroll, which make the ARC payments depend on payroll growth assumptions and payroll growth rates.

Payroll Growth Assumptions

Brad Gross, LRC discussed the actuarial data background and stated that with the actuarial valuation there are a lot of components that go into it, such as, actuarial assumptions and methods (including payroll growth), benefits and funding provisions, financial experience, and demographic data and experience. Total amount of benefits paid determines the output of the plan, such as, funding levels, unfunded liabilities, and employer contribution rates. The assumptions are reviewed every five years through an experience study. A secondary review, called the actuarial audit, which is conducted by a different actuary, is also done every five years. An asset liability modeling study is typically performed following the experience study and evaluates various asset allocations against projected system liabilities with the ultimate goal of selecting a target asset allocation for the investment portfolio.

Mr. Gross discussed the funding levels and unfunded liabilities from the 2016 actuarial valuation results. The KERS non-hazardous unfunded liability for pension is -$11.112 billion and -$1.713 billion for retiree health. The County Employees Retirement System (CERS) non-hazardous unfunded liability for pension is -$4.541 billion and -$0.908 billion for retiree health. The TRS unfunded liability for pension is -$14.531 billion and -$2.839 billion for retiree health. For all state-administered pension and retiree health funds the combined total unfunded liability is -$38.652 billion.

Mr. Gross discussed financing unfunded liabilities and stated that in the ARC calculation there is normal cost, which is the anticipated cost of the next year's benefit, and an amortized unfunded liability payment. For the 2015 valuation, the KERS non-hazardous combined pension and retiree health normal cost was 5.95 percent of pay, the unfunded liability payment was 41.33 percent of pay, for a combined total of 47.28 percent of pay as an employer contribution rate. The amortization method is how the unfunded liabilities are paid off over time. The key components are the amortization period length, whether the period is closed or open, and whether it is financed using the level percent of payroll method or level dollar method. The KRS unfunded liability is amortized over a 30 year closed period using the level percent of payroll method (with an assumed 4 percent payroll growth assumption). The TRS pension unfunded liability is amortized over a 30 year closed period for legacy liabilities as of 2014 with separate 20 year closed amortization periods on new sources of unfunded liabilities. TRS also uses the level percent of payroll method with a 3.5 percent payroll growth assumption. The Judicial Form Retirement System (JFRS) unfunded liability is not impacted by payroll growth. Rather, the JFRS amortization method is a statutory formula of interest on the liabilities plus one percent of the unfunded liability.

Mr. Gross discussed the level dollar versus level percent of pay methods and stated the level dollar method sets the amortization payment as a set dollar amount, meaning no payroll growth is assumed in the future, thus resembling most home loans. In terms of dollars, this method will be more expensive in the short run and less expensive in the long run as compared to the level percent of pay method. The level percent of pay method, which is what KRS and TRS utilize, will be less expensive in the short run, but will require more dollars in the future because the method sets the payment as a percent of total payroll over the amortization period and assumes future payroll growth. In this method a potential problem is negative amortization. LRC did a 50 state peer group survey and 41 states use the level percent of pay method while 9 use the level dollar method. Of those that are using the level percent of pay method, the payroll growth assumption varied between 2.25 percent to 6.5 percent of pay with a median of 3.5 percent of pay.

Mr. Gross discussed how the payroll growth assumption is developed and stated the number ultimately comes from the actuarial experience study. KRS had their last experience study in 2014, which was made effective in the 2015 valuation. TRS had their last experience study in 2016. Typically, the system actuaries use a building block approach that incorporates the assumed inflation rate in the payroll growth assumption. Both systems had an actuarial audit in 2015 by the Segal Company and, in both audits, Segal noted that the 4.0 percent payroll growth assumption used by KRS and TRS at the time was aggressive and detailed that actual payroll growth of the systems was below the assumption for the period being evaluated.

Mr. Gross discussed the payroll growth data for a five year period from 2012 to 2016. KERS non-hazardous payroll has dropped from $1,816.39 million to $1,662.37 million; KERS hazardous increased from $142.85 million to $158.33 million; CERS non-hazardous increased from $2,300.71 million to $2,413.66 million; CERS hazardous increased from $497.46 million to $526.15 million; State Police Retirement System (SPRS) dropped from $51.19 million to $46.69 million; and TRS increased from $3,369.04 to $3,456.41.

Mr. Gross discussed the payroll growth for the KERS non-hazardous system and the payroll values and employee count by types of KERS agencies for fiscal years 2012 to 2016 and noted the drop in numbers from certain types of agencies.

Mr. Gross discussed the negative amortization and stated that it is a potential problem in the level percent of payroll method, and it occurs when the amortization payment (unfunded liability payment) is less than the interest on the unfunded liability. This phenomenon typically occurs earlier in amortization period, but can be prolonged if payroll doesn't grow as anticipated, and results in growing unfunded liability even if the full ARC is paid and all other assumptions are met. Both KERS and TRS have experienced negative amortization in recent history.

Mr. Gross discussed the 2015 projections for the KERS nonhazardous fund comparing the level percent of pay method (with a 4 percent payroll growth assumption) versus the level dollar method (no payroll growth). Mr. Gross also discussed the payroll growth sensitivity analysis from the 2016 valuation for the KERS non-hazardous, CERS non-hazardous, and TRS funds and provided data on the impact to plan statistics including the employer contribution rate.

In response to questions from Senator McDaniel, Mr. Gross stated that the level dollar method is a more conservative approach since it does not rely upon payroll growth to help finance the liability.

In response to a question from Auditor Harmon, Mr. Gross stated that Kentucky has not looked at going from a 30 year closed to a 15 to 20 year open amortization period and that KRS is bound by statute to adhere to a 30 year amortization period.

Public Comments

Dolly Guenthner, Retiree, testified that she was a whistleblower against retirement fraud, and there is corruption in Elizabethtown in regards to reemployed retirees. Ms. Guenthner wanted answers from the board as to what steps would be taken to resolve the matter. Senator Bowen responded that the PPOB was not a court of law, and the information brought forth would need to be litigated in another capacity.

With no further business, the meeting was adjourned. The next regularly scheduled meeting is

Monday, April 24, 2017.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

March 15, 2017

Call to Order and Roll Call

The Program Review and Investigations Committee met on Wednesday, March 15, 2017, at 11:00 AM, in Room 129 of the Capitol Annex. Representative Lynn Bechler, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Wil Schroder and Reginald Thomas; Representatives Chris Fugate, Donna Mayfield, Ruth Ann Palumbo, Rob Rothenburger, Arnold Simpson, and Walker Thomas.

LRC Staff: Greg Hager, Committee Staff Administrator; Colleen Kennedy, Van Knowles; William Spears; Shane Stevens, Joel Thomas; and Kate Talley, Committee Assistant.

Representative Bechler opened the floor for proposals for new study topics.

Representative Rothenburger made a motion that staff study the inventory of state-owned buildings and land that could potentially be designated as surplus property in the future.

In response to a question from Senator Carroll, Representative Rothenburger said the House Majority did consider making HCR 100 a study topic but ultimately chose not to. The motion was seconded by Representative Simpson and approved by a roll call vote.

Representative Simpson made a motion that staff study state-owned automobiles and policies relative to utilization inclusive of liability coverage and other related matters. Representative Palumbo clarified that the topic includes all vehicles, not just automobiles. The motion was seconded by Representative Rothenburger and approved by a roll call vote.

In response to a question from Representative Bechler, Senator Thomas confirmed the Senate Minority's study topic of the impact and success of funding half-day kindergarten.

Senator Thomas made a motion that during the 2017 Interim, all testimony be given under oath.

In response to a question by Senator Schroder, Senator Thomas confirmed that the committee does have the statutory authority to place witnesses under oath.

Representative Simpson commented that many witnesses come forth as individuals. Under certain circumstances, it may be suitable.

The motion was not seconded.

Senator Carroll made a motion that staff study the Supports for Community Living Waiver Program's reimbursements for private providers as addressed in HCR 100. Medicaid is a predominant cost factor in the state budget, so this issue is important to study in determining how to provide these services. The motion was seconded by Representative Rothenburger.

In response to a question from Senator Schroder, Representative Bechler said that staff can handle the additional topic. The motion was approved by a roll call vote.

The meeting adjourned at 11:15 AM.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE

Minutes

February 14, 2017

Call to Order and Roll Call

The Education Assessment and Accountability Review Subcommittee meeting was held on Friday, February 14, 2017, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Mike Wilson, Chair, called the meeting to order, and the secretary called the roll.

Members: Senator Mike Wilson, Chairman, Senators Alice Forgy Kerr and Max Wise; Representatives Regina Bunch, Daniel Elliott, Derrick Graham, and Steve Riley.

Guests: Rhonda Sims, Associate Commissioner of Office of Assessment and Accountability, Kentucky Department of Education (KDE); Kevin Brown, Associate Commissioner and General Counsel, Office of Legal, Legislative and Communications, KDE; and Todd Allen, Deputy General Counsel, Office of Legal, Legislative and Communications, KDE.

LRC Staff: Joshua Collins, Yvette Perry, Avery Young, and Chris White.

Election of House Co-Chair

Representative Bunch nominated Representative Daniel Elliott for the position of House co-chair of the subcommittee. The motion was seconded by Representative Riley, who moved the nominations cease and was seconded by Representative Bunch.

Approval of November 15, 2017 Minutes

Representative Graham moved to approve the November 15, 2017 minutes, seconded by Representative Bunch. The motion passed by voice vote.

Review of Administrative Regulations - 703 KAR 5:070 Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

Kevin Brown said the discussion will address a regulation regarding an individual education plan, language regarding student-initiated accommodations. After a complaint was filed with the U.S. Department of Education (USDE), Office of Civil Rights (OCR), the KDE was contacted about a provision in the regulations. While OCR did not agree with the strategy despite KDE's input received from educators around the state, KDE entered into a voluntary settlement agreement with OCR to remove the student-initiated portion. As a result of this settlement, teachers can inform students they are entitled to a reader; however, the student has the option to decline.

In response to Representative Graham's question, Ms. Sims said parents are always involved in making decisions and accommodations for their students. Whereas parents of middle school students can request reading the test to their child, a high school student of legal age can have private, one-on-one testing.

Ms. Sims said the accommodations occur during daily classroom experience and is used to determine which parts of daily experience can be used in a testing environment. The basis of concern came from parents after testing in FY 2014-15 due to the parent making the decision for their child. By providing that the student is directly asked, it transforms them to the decision-making role. Ms. Sims said the intention was to build and promote student independence and active learning. She said students have the right to decline the accommodation in that even in a private environment, a student may oppose being removed from class for testing.

There being no further business, the meeting was adjourned at 10:20 a.m.

SB 120, from page 3

R-Paducah, said he carefully studied SB 120 before voting for it.

"There was a time in my career in law enforcement that I would never have been willing to even consider something like this," he said. "My philosophy was lock them up. Throw away the key. That is where they need to be."

Carroll said it is now obvious to him, with the additional perspective of being a legislator, that Kentucky sorely needs criminal justice reform.

"However, as we move forward, we have to be careful to make sure we maintain the proper balance in all aspects of this," he said.

Sen. Gerald A. Neal, D-Louisville, said SB 120 was "a breath of fresh air" in how Kentucky looks upon the about 24,000 people currently locked up across that state.

"I think this is a very, very significant step by the commonwealth," Neal said.

SB 120 was amended by the House to add the state Attorney General and the state police commissioner back to the Criminal Justice Council in addition to increasing the steps violent offenders must go through to get a professional license or certificate.

Rep. Jason Nemes, R-Louisville, said he favored the SB 120 because it would stop the "revolving door of incarceration" in Kentucky.

"Do you know on average, in Kentucky, one in four occupations require a government license which is basically a government-issued permission slip to work?" Nemes said. "When the government prohibits people with records from getting licenses to work, they are eliminating thousands of potential job opportunities for hundreds of thousands of Kentuckians."

Rep. Chris Harris, D-Forest Hills, said SB 120 moved Kentucky in the "right direction" concerning criminal justice reform.

"I voted in favor of this bill today because of the bipartisan work that was done over the summer by people from all over the state who came together to try to find a more common-sense way to deal with some of our criminal justice issues," he said.

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