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* Read on-line at www.lrc.ky.gov/legislation.htm*



RECORD

HB 1 committee hears concerns with new law

by Rebecca Hanchett
LRC Public Information

Physicians and others in Kentucky's health-care community warned a legislative oversight committee of possible unintended consequences down the road as this year's House Bill 1 – the so called pill mill bill – is fully implemented.

While largely supportive of the bill's goal of curbing prescription-drug abuse in Kentucky, they did ask lawmakers at the Aug. 15 meeting for a clarification of what's required of them as the law's full-compliance date of Oct. 1 approaches.

"I don't come before you today to criticize House Bill 1," Lexington Clinic physician Dr. Robert Bratton, MD, told the 2012 Special Session HB 1 Implementation and Oversight Committee about the legislation, which establishes prescribing and dispensing standards for controlled substances and sets new licensing standards for pain clinics. "Rather I am here to offer suggestions on how we can improve the existing legislation and its associated regulations to better protect patients and provide reasonable...guidelines for physicians."

Bratton said he would like clarification on under what circumstances HB 1's new rules will apply, and how noncompliance will be "effectively and fairly

enforced." Among other things, he said physicians need to know which medications will be monitored under HB 1.

The state's electronic monitoring system, called KASPER (Kentucky All Schedule Prescription Electronic Reporting), has been in place for years

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but its use has not been widespread. Under HB 1, practitioners who prescribe or dispense controlled substances, in most cases, must register with and use the system to check the medical history of patients before prescribing drugs containing hydrocodone (like Vicodin and Lortab). Prescriptions for most other controlled substances will be further restricted by the

Kentucky Board of Medical Licensure.

HB 1's reporting requirements went into effect on July 20, while full compliance with the KBML regulations is expected by Oct. 1.

Dr. Michael Harned, MD, a pain specialist at

Continued on page 2

Kentucky lawmakers weigh in on national issues

by Amy Rose Karr
LRC Public Information

Topics like health care, education and energy security are debated in state capitals across the country. Lawmakers from Kentucky recently joined their peers from other states to speak with a collective voice on these and other issues during the National Conference of State Legislatures' annual summit.

Some members of the Kentucky General Assembly traveled to Chicago in early August to take part in the four-day NCSL summit where they voted on policy directives that will guide the organization's advocacy efforts in Washington this year.

According to Rep. Steve Riggs, D-Louisville, the opportunity for states to come together on national policy is invaluable and has a greater impact than one state acting

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Nominations now accepted for Vic Hellard Jr. Award

The Kentucky Legislative Research Commission is now accepting nominations for the 2012 Vic Hellard Jr. Award.

The award, given annually in memory and recognition of the longtime LRC Director's contributions to an independent legislative institution and devoted service to the Commonwealth, recognizes a person who has advanced the interests of citizens of Kentucky by example and leadership. It is the highest honor the Legislature can bestow.

Letters of nomination should be submitted by Oct. 31, 2012 and should explain how the candidate meets the following criteria, drawn from Hellard's own career:

1) Demonstrates vision, considering long-term implications for the public good; 2) Demonstrates innovation, finding new approaches while appreciating history; 3) Champions the equality and dignity of all; 4) Enhances the processes of a democratic society, promoting public dialogue, educating citizens and decision makers, and fostering civic engagement, and; 5) Approaches work with commitment, caring, generosity and humor.

Please submit nominations to: Hellard Award Selection Committee, Legislative Research Commission, Attn: Ben Payne, 702 Capitol Avenue, Room 101, Frankfort, KY 40601, or online at www.lrc.ky.gov/HellardAward.htm.



Vic Hellard Jr.

Lawmakers updated on permitting of coal mine operations

by Rebecca Hanchett
LRC Public Information

A July 31 federal court ruling that favored states' rights in a legal dispute between the federal EPA and some coal mining states, including Kentucky, will not affect how the state handles certain water quality permits for coal mine operations, state officials say.

Kentucky Department for Environmental Protection Commissioner Bruce Scott told the Interim Joint Committee on Natural Resources and Environment on Aug. 2 that the ruling—in which Scott said the courts affirmed the disputed EPA action was “a violation of the federal Administrative Procedures Act”—will not affect how Kentucky approaches wastewater discharge permitting of coal mine operations under the Clean Water Act 402 permit program.

“It has always been our determination that the existing rules have never changed,” said Scott.

The ruling vacated the EPA's “guidance” or policy recommendations regarding water quality permitting of coal mining operations. The

guidance, issued in 2010, set recommended levels for salinity in streams located below coal discharges. Kentucky and other states filed suit against the EPA in reaction to the guidance, citing due process concerns.

“The legal genesis (behind the lawsuit) is ... the guidance was being used as if it were a regulation without having gone through the regulatory adoption process,” said Scott.

The July 31 ruling also makes it clear that the states, not the EPA, are responsible for water quality standards “as a first resort,” said Scott, effectively rebalancing the federal-state relationship in implementing the wastewater

State officials say the ruling will not affect permitting of coal mine operations under the Clean Water Act 402 permit program.

discharge permits under the 402 program. Scott said it is likely that the EPA will appeal those parts of the ruling to the U.S. District Court of Appeals.

In Kentucky, Scott said there are currently 36 individual water quality permits pending for coal mine operations that are held up due to objections by the federal EPA. Scott said it is unknown how those permit objections will proceed in light of the court ruling.

Committee Co-Chair Rep. Jim Gooch, D-Providence, noted that the 36 permits objected to by the EPA were never denied by the agency. The EPA objected to the permits being issued at all, he stated.

“If they were turned down at least they could make... a lawsuit or whatever, but it doesn't seem in this day and time, in this country, that it's right to deny someone the ability to work and also deny them their due process. They (the EPA) are just holding these things,” said Gooch.

Due to changes made decades ago under the federal Clean Water Act, Scott said the EPA is not under a legal obligation to respond to its objection to the 36 permits.

Scott said he has advocated for years that the federal EPA follow a timeline for making final action.

KASPER, from page 1

Lexington Clinic and a consultant on severe pain issues to the KBML, said HB 1 could leave patients who are in legitimate pain without treatment.

“I'm here not to dispute the necessity of this important legislation... Frankly, I'm already doing what HB 1 and the Kentucky board are now requiring. My concern with HB 1 is that it will likely limit access to care,” said Harned, who said his practice is seeing more patients with “relatively low and stable doses of opiod pain medications (like hydrocodone). ... (whose referral) takes up another slot on my schedule that should be reserved for a patient who truly needs specialized care.”

HB 1, as passed, is also forcing physicians to view some patients with suspicion, said Harned.

“HB 1 and its accompanying regulations are causing primary care physicians to become too wary of legal liability to continue prescribing these medications,” he told the committee.

Other professionals testifying before the committee included Dr. Shawn Jones, MD, the president of the Kentucky Medical Association. Jones said the KMA has received some reports of physicians finding it difficult to prescribe not only pain medicine, but drugs for Attention Deficit Disorder (ADD), testosterone medication for a variety of conditions and even medications administered following surgery.

“Because of its licensing structure, the bill has gone a long way toward shutting many illegitimate pain clinics—something the medical community has long supported,” said Jones, who said KMA also supported upgrades to KASPER in the HB 1 and other parts of the bill. But Jones expressed concern with the many steps a physician must take before prescribing controlled substances.

He said missing one step opens a physician up to criminal activity.

“I believe this is having an impact on good patient care,” he said.

Others scheduled to speak before the committee included representatives of the Kentucky Hospital Association, Kentucky Coalition of Nurse Practitioners and Nurse Midwives, and Kentucky Pharmacists Association, among others.

The committee is monitoring the implementation of HB 1 throughout the 2012 legislative interim.

NCSL, from page 1

individually.

“The resolutions are 50 times greater and 50 times more powerful coming from NCSL because all 50 states agree,” he said.

Policies adopted by NCSL are bipartisan and must receive a three-fourths majority vote.

Among this year's priorities, legislators voted to ask Congress to pass the Marketplace Fairness and Marketplace Equity Acts that would enable states to collect sales tax on purchases made online, to avoid unfunded state mandates, and to decrease the country's dependence on non-North American energy sources.

“These are national issues but they're also very important to us here in Kentucky,” Riggs said.

The conference also offered a variety of workshops and seminars to help states manage issues they're facing today.

Sen. John Schickel, R-Union, said some of the most beneficial sessions at the conference focused on public pension issues.

“That is a critical problem here in Kentucky. The conference gave us some practical guidelines to help solve it,” he said.

Conference attendees heard from pension experts and researchers across the country, as well as from states that have already made changes to their retirement systems.

Getting to hear how other states solved their problems helps prepare Kentucky lawmakers for challenges they might face when they tackle those same issues here, Schickel said.

Rep. Riggs said he hears ideas from other states at the conference that save taxpayer money and make government more efficient.

“You can't beat it for hands-on information, expertise and advice,” Riggs said.

Kentucky Access to shut down in 2014, lawmakers told

by Rebecca Hanchett
LRC Public Information

An 11-year-old state high risk health insurance pool will close down in 2014 to make way for guaranteed issue of individual health coverage in the private market under the recently upheld federal Affordable Care Act, state officials told a state legislative committee on Aug. 1.

Kentucky Access—created by statute in 2000 to guarantee coverage to Kentuckians with high cost medical conditions who are often priced out of the individual private health insurance market—should have the majority of its expenses paid and its clients moved to the private insurance market by June 2014, Kentucky Access Acting Director D.J. Wasson told the

Tobacco Settlement Agreement Fund Oversight Committee.

Wasson said Kentucky Access will spend 2013 notifying its members that the program is winding down and “giving them options for the transition to the market-place.”

Kentucky Access becomes obsolete on Jan. 1, 2014 due to language in the Affordable Care Act that requires all new policies sold in the individual health insurance market as of that date be “guaranteed issue”—now a requirement in only a handful of states, said Wasson.

Signed into law in 2010, the Affordable Care Act was recently upheld by the U.S. Supreme Court.

Wasson said history has shown that at least six months is needed to wrap up the claims process, including any residual claims, in a transition

like the one Kentucky Access is about to make.

“We’ll do all we can to try to encourage filing those claims early so we can have a good handle on how much funding we’ll need to meet our members’ claims and our financial obligations, and wind down the program,” said Wasson.

Kentucky Department of Insurance Commissioner Sharon Clark told the committee it is her hope that coverage will be less costly for members of Kentucky Access once they are moved into the private market.

“These policies in high risk pools are very expensive. So, our hopes are that when they are able to get it from the private marketplace, it will be at a cheaper expense,” said Clark.

At the end of June, there were 4,345 active members in Kentucky Access, said Wasson. Membership

has been declining for several reasons, including the “aging out” of members who are now eligible for Medicare, members obtaining coverage elsewhere, or failure of members to pay their premiums.

Kentucky Access reports to the Tobacco Settlement Agreement Fund Oversight Committee regularly as a recipient of part of Kentucky’s share of a multi-billion dollar 1998 national tobacco settlement.

Twenty five percent of Kentucky’s share of the settlement is placed in a Kentucky Health Care Improvement Fund that funds a handful of state health programs including Kentucky Access, which is also funded by premiums, insurer assessments, and grants.

This fiscal year, Kentucky Access is projected to receive \$14.86 million in appropriations from the 14-year-old tobacco settlement, according to program officials.

In response to a question by Sen. Dennis Parrett, D-Elizabethtown, Wasson said there is discussion about keeping the structure of Kentucky Access, “in the event that the Affordable Care Act is not fully implemented.”



Math and science initiatives successful, lawmakers told

The Gatton Academy, Advance Kentucky among those discussed

by Amy Rose Karr
LRC Public Information

Programs serving Kentucky’s brightest math and science students were showcased at a meeting of the Interim Joint Committee on Education on Aug. 13.

One featured program, the Gatton Academy, was recognized recently by Newsweek as America’s Best High School.

“The Gatton Academy is the best example I know of what happens when you remove the learning ceiling and let students learn what they’re able to learn,” said Dr. Julia Roberts, Executive Director of the Center on Gifted Studies.

The academy, located in Bowling Green, is a public residential two-year high school open to students across the state. It offers an advanced math and

science curriculum, allowing students to complete their high school diploma while

The Gatton Academy is a two-year residential high school that allows students to earn a diploma while earning college credit.

Students from 107 counties have attended the program since it began in 2008. According to Tim Gott, Director of the school, most students also complete research in their field of interest, providing

them with scholarship opportunities typically available only to college students.

All of the school’s graduates have gone on to enroll in a four-year university, he said.

Lawmakers also heard about another program helping Kentucky students get a jump start on college. Advance Kentucky, a partnership between the National Math and Science Initiative, the Kentucky Department of Education and several other public and private agencies, aims to increase students’ participation and success in advanced placement (AP) classes.

AP teachers told lawmakers the program is helping them reach more students than they could have otherwise.

“More than a quarter of our

student body can read and write at the college level as juniors in high school. They’ve been there the whole time. We’ve just been reaching them for the last five years,” said Stephanie Carter, AP English teacher at Lone Oak High School.

According to Joanne Lang, Executive Director of Advance Kentucky, similar results are seen in the other 78 schools involved in the program.

The number of students enrolled in AP Math, Science and English courses has quadrupled since the start of the program five years ago. The number of AP exam scores qualifying for college credit has more than doubled, she said.

“The talent base in this state is unbeatable. We just have to mine it,” Lang said.



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INTERIM JOINT COMMITTEE ON AGRICULTURE

Minutes of the 2nd Meeting
of the 2012 Interim
July 11, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Agriculture was held on Wednesday, July 11, 2012, at 10:00 AM, at the Owsley County High School, Booneville, Kentucky. Senator David Givens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator David Givens, Co-Chair; Representative Tom McKee, Co-Chair; Senators Paul Hornback, Dennis Parrett, Dorsey Ridley, and Robin L. Webb; Representatives C.B. Embry Jr., Sara Beth Gregory, Richard Henderson, Kim King, Michael Meredith, Terry Mills, Brad Montell, Sannie Overly, Ryan Quarles, Tom Riner, Rita Smart, Wilson Stone, and Tommy Turner.

Guests: Representative Keith Hall; Representative Marie Rader; Tim Bobrowski, Owsley County School Superintendent, Alan Taylor, Owsley County High School agriculture teacher; Luke McAnally, University of Kentucky Homegrown Kentucky project coordinator; Paul Sizemore, UK Extension Agent, Owsley County Farmer's Market; Sharon Spencer, Department of Agriculture, Statewide Developments; Dr. Janet Mullins, Associate Professor, UK Department of Nutrition and Food Science; Todd Howard, Floyd County; Darrin Gay, Gay Brothers Logging and Lumber, and Vice President of the Kentucky Forest Industries Association, along with Bob Bowers, Executive Director, Kentucky Forest Industries Association.

LRC Staff: Lowell Atchley, Stefan Kasacavage, and Susan Spoonamore, Committee Assistant.

Owsley County Farm to School and Community Garden Initiative

Alan Taylor, Owsley County High School agriculture teacher and an elementary principal, said the County Farm to School and Community Garden Initiative offered students good farming practices, the growing and selling of their produce (entrepreneurship), and instructional time for labs so students would learn how to apply the appropriate amount of fertilizer. The program has exceeded all expectations with students and community involvement.

Luke McAnally, University of Kentucky Homegrown Kentucky project coordinator, explained that the community garden was developed as an initiative to be submitted to the Clinton Global Initiative University Conference in Washington,

D.C. The project incorporates Kentucky's educational, agricultural and economic systems. Students in grades 3 through 12 maintain the starter plants and the garden. The produce is used in the school's cafeteria for breakfast, lunch, and summer school programs. The initiative was selected by the Clinton Foundation to attend the Conference in Washington, D.C., which included a personal audience with former President Bill Clinton. The community garden initiative has been very successful with little financial help. It is hopeful that other Kentucky counties will consider a community garden project.

In response to questions from Senator Givens, Mr. McAnally said he and other students began by looking at areas, through the Appalachian Center, that would be successful. After talking with Owsley County officials, it was decided to start with Owsley County High School in Booneville. Finding land in other counties and the desire of a community to do it are factors in replicating another Farm to School and community garden initiative. Superintendent Tim Bobrowski said that funding cuts to education make it a challenge to start new projects. The vision has to come from within the community, teachers, community leaders, and students. Mr. Taylor stated that producing and marketing a product created a form of entrepreneurship. Growing and producing vegetables involves the use of science and math, such as learning how to calibrate a sprayer.

In response to Representative Brad Montell, Mr. McAnally stated that any excess produce would be sold at the Farmer's Market to help generate money for next year's growing season. The program needs to continue with some grant money until it becomes sustainable. Mr. Taylor said that younger students, working side by side with the older students, learn how to plant seeds and become familiar with how food is grown.

In response to Senator Webb's questions, Mr. Taylor said that there is one young lady and four young men involved in the project during the summer. During the school year, an equal number of boys and girls are involved. Mr. Bobrowski stated that the Owsley County Conservation District has submitted an application for the Kentucky Agricultural Development Fund 2012 Farmer's Market Infrastructure Competitive Grant Program, and a proposal for the USDA Farm to School grant. Businesses in the community have donated equipment for use by the students. The goal is to have a processing center for people to use to market their products.

In response to Representative Smart, Mr. Taylor stated that there were approximately 15 community members involved in growing their own plots.

He said that he was not sure how many people were purchasing from the Farmer's Market. Besides growing vegetables, they also raise soybeans and corn. The proceeds from the soybeans and corn are returned to the school for the Farm to School and community garden initiatives.

In response to Representative Stone, Mr. Taylor said that the Future Farmers of America is also growing produce to sell as part of its fundraiser.

Farmer's Market

Paul Sizemore, UK Extension Agent and Owsley County Farmer's Market coordinator, said that there are 13 active producers who sell regularly. The program is still fairly new for the farmers, and the goal is to increase the number of producers. Last year, they were given vouchers for use by the elderly. He said that the senior vouchers had been reduced from \$4,000 to \$3,000 leaving approximately 60 to 70 seniors without vouchers. The WIC program provides \$1,600 in vouchers, and those vouchers have not been reduced.

In response to Senator Givens, Mr. Sizemore said that the Farmer's Market had problems in the beginning because the farmers were still tied to tobacco. The community has to become involved for it to become successful.

In response to Representative Smart, Mr. Sizemore said he was aware of the county food bank but was not familiar with the food bank purchasing produce.

Sharon Spencer, Kentucky Department of Agriculture, explained KDA's role in the farmer's market programs. KDA defines a farmer's market as a prescribed location where two or more producers gather on a set date and time to sell their products that they grow and produce directly to consumers. KDA works closely with the University of Kentucky Extension Service and the Kentucky Department for Public Health Food Safety Branch. The department complies with the local, state, and federal regulations on food products that can be sold at the markets but does not monitor the markets. Each farmer's market sets its own guidelines and rules as to how it operates. KDA makes sure that the markets follow along with the local, state, and federal regulations for food safety. All farmer's markets are asked to register with the KDA each year, which includes free membership and the use of the Kentucky Proud logo. They are also asked to submit information regarding the number of vendors they had for the previous year, what kind of products are being offered, and the amount of annual gross sales.

In 2009, there were 135 registered farmer's markets. In 2012, there are 147 farmer's markets. Out of 120 counties, there are 101 counties that host a farmer's

market. Total gross sales for 2008 were \$7.6 million and for 2011 the amount was \$10.4 million. In 2011, there were 151 markets, but there are only 147 registered in 2012. Ms. Spencer said that aging vendors and customers were becoming an issue. KDA supports a community supported agriculture program (CSA) where a consumer contracts with a producer/farmer in advance. The producer/farmer benefits from getting the money earlier, but it poses a shared risk with weather-related problems. In 2011, there were 41 active CSA farms, and there are 60 registered farms this year.

In response to Senator Parrett, Ms. Spencer said that KDA does not have the authority to close an unregistered producer selling produce, but it can the producer to the Health Department if it is selling value-added products and not following procedure or if it is accepting vouchers. Anyone selling organic or certified organic must be registered.

Rural “Food Deserts” Discussion

Dr. Janet Mullins, Associate Professor, Extension Specialist in Food and Nutrition, College of Agriculture, University of Kentucky, explained that a “food desert” is any area in the industrialized world where healthy, affordable food is difficult to obtain. Food deserts are prevalent in rural and urban areas and most prevalent in low-socioeconomic minority communities. They are linked to a variety of diet-related health problems. Rural Kentucky can build strong local food systems by focusing on food as a priority for economic development and the well-being of Kentucky; establishment of a state level food policy council; support for young farmers and food entrepreneurs; establishment of incentives to encourage purchase and serving of local foods by large food service operations; and healthy food financing initiatives or other support for aggregating and distributing local foods.

Forestry Industry

Darrin Gay, Gay Brothers Logging and Lumber, and Vice President of the Kentucky Forest Industries Association, discussed the problems associated with loggers not adhering to the Forest Conservation Act. Mr. Gay said that the logging industry would like to see legislation to close repeat offenders who fail to attend training, have one or more repeat violations of the law, and who fail to pay the fines that have been imposed. The offenders are often involved in timber theft plus have an unfair advantage by operating at reduced costs by not following best management practices.

Drought Resolution

A resolution was presented to the members emphasizing the need for intergovernmental coordination in addressing the impacts of the continuing drought conditions on agriculture throughout the Commonwealth. The resolution was adopted by voice vote without objection, upon motion of Representative McKee and second by

Senator Hornback.

The meeting adjourned at 12:20 p.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 2nd Meeting
of the 2012 Interim
July 26, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, July 26, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Rick Rand, Co-Chair; Senators Walter Blevins Jr., Joe Bowen, Jared Carpenter, Denise Harper Angel, Ernie Harris, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Vernie McGaha, Gerald A. Neal, R.J. Palmer II, Joey Pendleton, Brandon Smith, and Jack Westwood; Representatives Royce W. Adams, John A. Arnold Jr., Dwight D. Butler, John “Bam” Carney, Jesse Crenshaw, Ron Crimm, Mike Denham, Bob M. DeWeese, Kelly Flood, Danny Ford, Derrick Graham, Keith Hall, Richard Henderson, Jimmie Lee, Reginald Meeks, Sannie Overly, Marie Rader, Jody Richards, Steven Rudy, Sal Santoro, Arnold Simpson, Jim Stewart III, Tommy Turner, Alecia Webb-Edgington, and Brent Yonts.

Guests: Ms. Mary Lassiter, State Budget Director and Secretary of the Executive Cabinet; Mr. Kevin Cardwell, Deputy State Budget Director; Mr. Greg Harkenrider, Deputy Executive Director, Governor’s Office of Economic Analysis; Mr. J. Michael Brown, Secretary of the Justice and Public Safety Cabinet.

LRC Staff: John Scott, Charlotte Quarles, Eric Kennedy, Jennifer Hays, and Sheri Mahan.

Representative Lee moved for the approval of the minutes as written. The motion was seconded by Senator McGaha. The motion carried by voice vote.

Fiscal Year 2012 Year-End Financial Report

Secretary Mary Lassiter provided the committee with an overview of the Fiscal Year 2012 (FY 12) year-end totals for the General Fund and Road Fund. She updated the committee regarding incoming Tobacco Settlement funds and provided an economic outlook for FY 13. General Fund revenues increased by 3.8 percent for the year. There was growth in all of the major taxes, with 5.4 percent in sales tax, 2.8 percent in individual income tax, and 24.5 percent in corporate income tax, but there was a downturn of 7 percent in the limited liability entity tax.

Secretary Lassiter discussed historic revenue growth rates, stating

that the FY 12 General Fund revenues increased for the second year following declines in FY 09 and FY 10. The receipts exceeded the official FY 12 estimate by \$83.3 million. After deduction for dedicated severance tax appropriations and adding in unbudgeted lapses, the total General Fund surplus is \$45.7 million. In accordance with the HB 265 surplus expenditure plan, the surplus funds will be allotted to FY 12 necessary government expenses and the Budget Reserve Trust Fund.

Secretary Lassiter discussed FY 12 necessary government expenses (NGE), stating that these are certain expenses provided for in the budget, but for which no funds are appropriated. The funds typically are allotted from the General Fund Surplus Account and the Budget Reserve Trust Fund to cover these expenses. The total NGE for FY 12 was \$45.5 million, consisting of disaster relief funds, forest fire suppressions, additional funds for corrections, and guardian ad litem funds. The secretary outlined the authorized NGE expenses for the FY 12–14 executive branch budget, and provided historical information regarding recent NGE totals.

Secretary Lassiter provided the committee with an update of the FY 12 Road Fund revenues. The Road Fund increased by 7.8 percent in FY 12, primarily through increases in the motor fuels tax and motor vehicle usages tax receipts. Revenues exceeded the projected estimate by \$31.3 million. The Road Fund finished FY 12 with a surplus of \$50.3 million, with all surplus funds deposited into the State Construction Account. The secretary stated that the increase in Road Fund revenues reflects the statutory formula increase in the fuels taxes.

Secretary Lassiter discussed Tobacco Settlement Fund receipts for FY 12. The receipts were 0.9 percent less than budgeted. Proportionate reductions were made in the Rural Development Fund, and areas of early childhood development and health care improvements.

Mr. Greg Harkenrider discussed the general economic outlook for the next biennium. The actual General Fund growth needed to meet budgetary requirements is lower for FY 13 and FY 14 than during the last biennium. The trend for General Fund revenues over the next biennium is generally positive, with modest growth and both major taxes performing slightly better than the national average. There is some concern regarding coal severance revenues, and the underlying economic uncertainty will limit upside potential.

Mr. Harkenrider discussed the anticipated performance of the Road Fund over the next biennium. The actual Road Fund growth needed to meet budgetary requirements is lower for FY 13 and FY 14 than during the last biennium. The trend for Road Fund revenues over the next biennium is generally positive, with growth foreseen in the motor vehicle usage tax. Falling fuel prices could destabilize

Road Fund revenues.

In response to a question from Representative Crimm, Secretary Lassiter stated that the coal severance receipts are not a direct reflection of the state of the coal producing regions of the state as a whole. However, there is a potential for future decreases in receipts in other tax areas if the decline in severance revenues indicates an economic downturn in those regions.

In response to a question from Senator Bowen, Secretary Lassiter said that the interest payments on restructured debt are now factored into the enacted budget.

In response to a question from Senator Higdon, Mr. Harkenrider replied that gasoline consumption in Kentucky has remained predominately stable, but shows indications of a slight declining trend.

In response to a question from Representative Meeks, Secretary Lassiter stated that many states have local option sales taxes. If the sales tax rate in the state is lower than the sales tax rate in Jefferson County, it is possible that consumers would make purchases deliberately outside of Jefferson County. Allowing a local option sales tax could interfere with Kentucky’s participation in the Streamline tax initiative. If Jefferson County is allowed to have a local option sales tax, there are much broader implications from a tax policy standpoint.

State Prison Population

Mr. J. Michael Brown, Secretary of the Justice and Public Safety Cabinet, discussed state prison population trends over the past 12 months. The current population is 21,641 inmates, but inmate totals vary daily. This total is below the 2010 inmate forecast but higher than the expected totals after the enactment of HB 463. The average length of inmate incarceration has been in line with forecasted levels.

Secretary Brown stated that Mandatory Release Supervision (MRS) releases have been greater than forecasted, and this program has been one of the primary reasons that the inmate population is below the forecasted levels. There have been 2,398 program releases. Of this total, 1094 are on active MRS supervision, 823 have successfully completed the program, with the remainder either having MRS revoked or revocation pending.

Secretary Brown stated that the parole grant rates have been below the forecasted level, with the projected rate at 51.6 percent. The actual grant rate has been 46.1 percent. This equates to 1,326 fewer inmates paroled in FY 12 than in FY 11, which results in 510 more inmates than forecasted for FY 12. He presented estimated additional funds needed for inmate care above the HB 265 budgeted amount, which was based on the forecast.

In response to a question from Representative Yonts, the secretary stated that typically the largest requirement that must be met for parole is completion of

a substance abuse program (SAP). The lack of approved programs in the state can prove as a hindrance to inmates and the prison system in expediting a parole process. There have been recent grants that will allow for the implementation of three new SAP programs in the system, and the expansion of three existing programs.

In response to a question from Senator Blevins, Secretary Brown replied that inmates who serve out their sentence, or are within a few months of reaching their serve out date, and are released are required to participate in the MRS program.

In response to a question from Representative Rand, the secretary stated that since the FY 13–FY 14 budget was based upon the 2010 forecast, there will most likely be budget shortfalls within Corrections in FY 13. If the inmate population continues to be above the budgeted count, then the shortfall would continue through the remainder of the biennium. Necessary programs for the implementation of HB 463 would be paid for as a NGE.

Being no further business, the meeting was adjourned at 3:20 p.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Transportation

Minutes of the 1st Meeting of the 2012 Interim June 28, 2012

Call to Order and Roll Call

The first meeting of the Budget Review Subcommittee on Transportation of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, June 28, 2012, at 10:30 AM, in Room 131 of the Capitol Annex. Representative Sannie Overly, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Sannie Overly, Co-Chair; Senator R.J. Palmer II; Representatives Hubert Collins, Tim Couch, Danny Ford, Jim Gooch Jr., Keith Hall, Sal Santoro, John Short, and Jim Stewart III.

Guests: Mike Hancock, Secretary, Transportation Cabinet; Russ Romine, Executive Advisor to Cabinet Secretary; Tammy Branham, Executive Director, Office of Budget and Fiscal Management; and, Steve Waddle, State Highway Engineer, Department of Highways.

LRC Staff: Jennifer Anglin, Chuck Truesdell, and Christina Williams.

Road Fund Update

State Gas Tax Rate and Historical Background

Ms. Branham provided a brief presentation regarding the Road Fund. The official Road Fund revenue estimate was \$1,412,500,000 and through the end of May the Cabinet had collected just

over \$1.3 billion, leaving \$102.4 million to make up through the month of June in order to meet the official revenue estimate. Chair Overly asked if the Cabinet expects to meet that revenue estimate in June. Ms. Branham replied she has no reason to believe the Cabinet will not.

Ms. Branham said the Cabinet had experienced moderate growth in fiscal year 2012 as compared to fiscal year 2011. Through May 2011, the Cabinet had collected \$1.2 billion, and through May 2012 it had exceeded that by 6.8 percent, having collected \$1.3 billion. June 2011, the Cabinet had collected \$111.7 million and will need \$102.4 million in June 2012 to meet the revenue estimate. Ms. Branham said that the official Road Fund revenue estimate for fiscal year 2013 is almost \$1.5 billion and for fiscal year 2014 it is \$1.568 billion.

Mr. Branham said the calculated average wholesale price (AWP) of fuel would increase to \$2.62 effective July 1. She said that would provide an additional 2.1 cents per gallon on the variable rate, bringing the entire motor fuel tax to 29.9 cents per gallon.

In response to a question from Representative Collins, Ms. Branham replied the AWP would be guaranteed from July 1 through the first quarter of fiscal year 2013. She added that the second quarter rate would be based on the rolling average price during July and would be effective October 1.

In response to a question from Representative Couch, Ms. Branham said diesel fuel tax rates were included in the total motor fuel tax rate. Representative Couch expressed concern regarding the effect of coal industry employee lay-offs on the diesel fuel portion of the tax.

In response to questions from Representative Hall, Ms. Branham said gasoline is taxed at nine percent of the AWP. She said there were other taxes, such as the five-cent flat motor fuel user tax and the surtax which consists of an additional two percent of AWP for gasoline and 4.7 percent of the AWP for diesel or special fuel. The \$2.62 rate is the maximum for the fiscal year. July is typically the highest AWP for fuels in the entire fiscal year. Representative Hall commended the Cabinet for doing such a great job managing the Road Fund.

In response to a question from Senator Palmer, Ms. Branham said that in calendar year 2011, the taxable gallons category was down in every month except February. There was an uptick in January, February, and March of 2012, but it was not a significant amount. The Cabinet recently received a report showing that usage had fallen off again in April. Senator Palmer requested a report on the consumption of motor fuels.

In response to questions from Representative Collins, Ms. Branham said everyone is bracing for the downturn in fuel consumption as more and more hybrid cars come online, but exactly when the pinch will be felt is unknown. Secretary

Hancock said national leadership is needed. He said the Federal Highway Administration and Congress are looking hard at the subject and some pilot studies regarding motor fuel tax collection had been conducted across the country. Chair Overly inquired about a flat fee for owners of hybrid or all-electric vehicles. Secretary Hancock said it was a good idea to have an annual fee for those vehicles, but he had not heard any national discussions on the issue.

In response to a question from Chair Overly, Ms. Branham said the annual estimate assumes the 2.1 cents would stick for all four quarters, which would be \$57 million to \$60 million on an annual basis. For fiscal year 2013, the revenue estimate is based on the 2.1 cents sticking all four quarters. Secretary Hancock said an increase of one penny of additional gas tax equates to approximately \$30 million annually.

Federal Funding Update

Secretary Hancock and Mr. Romine provided a brief overview and update of federal funding.

Chair Overly commented that the committee would look forward to future meetings and hearing more information on federal funding. She inquired about TIGER grants. Secretary Hancock replied that Kentucky had made applications for TIGER grants. Mr. Romine said the Cabinet supported grant applications that had not been successful, such as the Kentucky Railway Museum. Secretary Hancock said each state was limited to three requests.

Eggner’s Ferry Bridge Damage Repaired and Reopened

Steve Waddle, State Highway Engineer, provided an overview of the condition of the Eggner’s Ferry Bridge which crosses Kentucky Lake.

In response to questions from Representative Collins, Mr. Waddle said the age of the bridge was a factor in its collapse. Mr. Waddle stated there is still debris in the lake that needs to be removed. Representative Stewart commented that the Cabinet did a great job replacing the span within the given timeline.

In response to questions from Representative Stewart, Mr. Waddle said he would provide information at a later date regarding the amount of the debris and cost of its removal.

In response to a question from Chair Overly, Secretary Hancock said the debris on the front of the ship was collected, but there is still more debris in the lake. The Cabinet is working with the Corps of Engineers and others on the issue. Secretary Hancock commended Hall Contracting for their work on the bridge.

In response to questions from Chair Overly, Mr. Waddle said the disaster had been fully funded with emergency funds. He said the approximately \$7 million for engineering and inspection costs had been covered by federal funds. Secretary Hancock added that when the Governor declared the disaster an emergency, the

federal funds followed. He also said the bridge replacement project is still on the Six-Year Road Plan.

There being no further business before the subcommittee, the meeting was adjourned at 11:30 AM.

INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

Minutes of the 2nd Meeting of the 2012 Interim July 19, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Economic Development and Tourism was held on Thursday, July 19, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Leslie Combs, Co-Chair; Senators Denise Harper Angel, Ernie Harris, and Jack Westwood; Representatives Julie Raque Adams, Royce W. Adams, Linda Belcher, John “Bam” Carney, Larry Clark, Will Coursey, Mike Denham, Bob M. DeWeese, Ted Edmonds, Jim Gooch Jr., Keith Hall, Mike Harmon, Melvin B. Henley, Dennis Horlander, Wade Hurt, Kim King, Martha Jane King, Adam Koenig, Tom McKee, Terry Mills, David Osborne, Ruth Ann Palumbo, John Short, Fitz Steele, Wilson Stone, Tommy Thompson, and Addia Wuchner.

Guests: Caroline Sallee, Senior Consultant and Director, and Jason Horwitz, Senior Analyst, Public Policy and Economic Analysis, Anderson Economic Group, LLC.

LRC Staff: John Buckner, Louis DiBiase, Karen Armstrong-Cummings, and Dawn Johnson.

Approval of Minutes

A motion and second by Representatives Carney and Horlander to approve the minutes of the June 21 meeting passed by voice vote.

Review of Kentucky’s Economic Development Initiatives (2011 HJR 5)

2011 HJR 5 mandated a study of Kentucky’s economic development incentive programs. Anderson Economic Group, LLC, a research and consulting firm specializing in economics, public policy, industry and market analysis and business evaluation, was commissioned by the Legislative Research Commission to conduct the study. The completed study is titled *Review of Kentucky’s Economic Development Incentives* and is available on the LRC webpage. Caroline Sallee, Senior Consultant and Director of Public Policy and Economic Analysis, and Jason Horwitz, Senior Analyst, Anderson Economics, presented the study to the committee. Ms. Sallee said that the report gives an overview of the state’s major incentive programs and is designed to answer specific questions and provide

detailed information for future policy-making. It compares Kentucky's business environment and incentives to 13 peer states, evaluates the use of incentives to attract high-tech and knowledge-based jobs, reports the number of firms receiving incentives and estimates the number of jobs at these firms, estimates the "gross cost" of the incentives to the Commonwealth, evaluates reporting on incentive programs, and discusses the process of selecting the secretary of the Cabinet for Economic Development (CED).

The research process included meeting with Legislative Research Commission staff to identify elements of the study including the major incentive programs, peer states, data collection from the CED, Tourism, Arts and Heritage Cabinet, and the Department of Revenue. Ms. Sallee identified the incentive programs studied and their purpose, including revitalization of distressed local economies, cost disadvantages, encouragement of beneficial behavior, and targeted industrial policy.

Mr. Horwitz reviewed the jobs data of firms receiving economic incentives. Kentucky offers seven incentive programs that contain a jobs requirement. The CED collects detailed data on the firms that receive incentives to ensure compliance. He noted that the study does not and cannot make the claim that jobs reported were a direct result of incentives. During the period studied, 2001-2010, there were 577 companies receiving incentives. On average approximately 5,500 jobs were created and 33,000 jobs maintained on average per year, totaling 55,000 jobs created over 10 years and 330,000 jobs maintained. Mr. Horwitz said no systematic over reporting to the CED was noted. He explained that, on average, firms that received incentives reflected higher overall wages. One explanation may be that companies paying lower wages do not have access to incentive programs. The wages of participating companies are not higher than comparable firms within the same industry.

Mr. Horwitz said the cost of Kentucky's incentive programs for the period reviewed has been approximately \$1.3 billion, with most being revenue foregone by the provision of tax credits. This equals \$130 million per year, or \$23,000 per job created, and \$3,300 per job per year.

Ms. Sallee explained the "effectiveness threshold analysis" in the report, which looked at the effectiveness of incentive programs versus alternative policies such as broad-based tax cuts. The analysis was based on five of the incentive programs that contained enough data for comparison. She explained that while the Kentucky Industrial Development Act (KIDA), Kentucky Rural Economic Development Act (KREDA), Kentucky Jobs Development Act (KJDA), and Bluegrass State Skills Corporation (BSSC) credits were in the middle to high range of the effectiveness threshold, the Office of

Commercialization and Innovation (OCI) High-Tech Pools were failing to be more effective than a broad-based tax change for all companies. However, continuance of the OCI program may be beneficial due to its target audience.

Mr. Horwitz discussed the use of knowledge-based incentives that target advanced manufacturing, life sciences, and information and communication technology industries. Kentucky has a lower employment level in knowledge-based sectors but has experienced faster growth than other states, specifically in biological industries and research-relevant, advanced manufacturing industries. Kentucky is above national and peer averages in employment and payroll share in advanced manufacturing industries and performs better than its peers in research spending and degrees awarded per capita. Among the population itself, education attainment is lower than many peer states and graduate retention is problematic. Referring to Kentucky's use of incentives to target high-tech and knowledge-based firms, Mr. Horwitz said 14 of Kentucky's incentive programs are available to this sector along with industry specific incentives. Areas where Kentucky lags compared to peer states include incentives for infrastructure, start-up companies, and technology development.

In comparing Kentucky's business environment with peer states, Ms. Sallee noted that Kentucky has a competitive business tax environment, average infrastructure, lower education attainment, and a labor force with lower than average career readiness as well as lower median average hourly pay rate. She explained that Kentucky's economic incentives are comparable to peer states and noted that Kentucky is above average in incentives with jobs requirements. When comparing use of incentives to address business factors, Kentucky performs well in the areas of corporate and individual tax rates, property tax rates, and construction and labor costs, but lags in the areas of quality highway and infrastructure access and with the availability of skilled labor.

Because most of Kentucky's incentive programs are performance-based, there is no need for claw-back clauses; however, the OCI high-tech pool does have a claw-back provision. So far, less than six percent of all funds dispersed have been returned.

Referring to the analysis of reporting, Ms. Sallee said only a few peer states comprehensively report on a regular basis. She noted that Kentucky has an extensive public website with monitoring data that is not required by legislation.

In looking at the CED secretary selection process, Ms. Sallee said Kentucky's approach of using a national search firm differs from peer states. The secretary's salary is \$250,000, compared to an average \$100,000 in peer states; however, there could be other compensation components, and job requirements may vary.

Mr. Horwitz concluded saying recommendations of the report include improvement in reporting and promoting growth in knowledge-based sectors.

Representative Henley commented that until the federal government prohibits economic development incentives, Kentucky has no choice but to participate in this practice.

Representative Henley said the recent Kentucky Supreme Court decision removing the tax exempt status of community development corporations is because board members could possibly benefit from board decisions, and this decision will make it difficult to maintain local economic development corporations. Speaking to the committee, he said the state should redefine its tax exemption laws or the organizations themselves. When questioned, Ms. Sallee said the report did not look at local level issues such as this.

Responding to Representative Denham's concerns about rural population decline and recommendations for rural communities, Mr. Horwitz said that nationwide there is a general trend of rural migration towards urban/suburban areas. Kentucky does have some accommodations that make it a little easier for businesses to qualify for incentives if they locate in a "distressed county." Several states have somewhat more aggressive programs that specifically target rural communities in areas such as highway access and broadband development. Ms. Sallee said that site selection consultants agreed that Kentucky's BSSC credit, which trains workers, was very useful. High-tech and type-specific manufacturing companies said they need employees with specialized training. She said the report did not look specifically at rural area needs. When considering an area, companies look at business climate and highway access among other things. Mr. Horwitz said the report recommended research and development because of Kentucky's relatively strong base in research funding and research oriented universities. A strong research and development base attracts advanced manufacturing which in turn attracts more engineers, and information technology and communication specialists.

Responding to Representative Thompson's comments, Ms. Sallee said the report uses a more stable approach and is based on jobs created, maintained, and the gross cost so as not to make assumptions about new jobs. She said Representative Thompson referred to net cost or the multiplier effect which makes an assumption of the effectiveness of the incentive in terms of new outside employment in the state. Based on other studies, the multiplier effect is between two to five depending on the type of job created. Referring to critics of incentive programs, Representative Thompson said incentives create jobs and revenue that the state would not otherwise have.

Responding to Representative Thompson, Mr. Horwitz said the results

of the analysis suggest the incentive programs are likely to perform as well or better than the alternative of broad-based tax reduction. Ms. Sallee added that even conservatively there was enough economic activity that made it worthwhile.

In response to Representative Julie Adams' question, Ms. Sallee said the cabinet's use of incentives for capital investment at the universities has seen a lot of progress. There are more start-up companies and technology transfers when local development agencies work with local universities because they have a better sense of area needs. Mr. Horwitz added that North Carolina is a good example of a successful program. North Carolina works with universities and community colleges to provide training for businesses needing certain skill sets. Mr. Horwitz said North Carolina's "First Flight Venture Center" is a public/private partnership based near the research triangle that taps into research at state public universities along with independent entrepreneurs. It is a state-sponsored venture capital fund and a physical center with high-tech laboratories. Some incentives may be greater if the company is involved with a public university. He noted that the University of Michigan has developed a curriculum around the auto industry.

Responding to Representative Stone's question, Ms. Sallee said the net effect of Kentucky's financial incentives programs was not considered in the report. She noted that Anderson Economic Group was not given company-specific data to conclude what share was abated, what additional taxes were paid, or what the company claimed it was eligible for. The report could not be done on an aggregate level.

As sponsor of HJR 5, Representative Clark said the purpose of the legislation was to ensure transparency and accountability. Some of the recommendations will be seen in future proposed legislation. The OIC program needs more funding but financial constraints and its high risk nature have limited this. He suggested the *Bucks For Brains* program receive more attention from the executive and legislative branches. He noted the mayors of Louisville and Lexington have set up a task force to study advanced manufacturing.

Responding to Representative McKee's question regarding special incentives for rural areas, Mr. Horwitz said there is a national trend for population loss in rural areas. Kentucky's efforts to foster more rural economic development are minor compared to other states, however, he did not know if there was much evidence on the effectiveness of what other states have done. An example is defining depressed areas and providing higher incentives to locate in those areas. Missouri and Virginia have unique programs that offer specific incentives for infrastructure. A more effective effort would be training. Mr. Horwitz noted that Kentucky identifies distressed counties that may qualify a company for

an incentive even with a lower wage rate than a non-distressed county.

Chair Combs informed members that state parks liquor sales data was included in committee meeting folders.

There being no further business, the meeting adjourned at 2:33 PM.

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 2nd Meeting of the 2012 Interim July 13, 2012

Call to Order and Roll Call

The second meeting of the Interim Joint Committee on Education was held on Friday, July 13, 2012, at 1:00 PM, in Suite 5 of the Marriott Hotel, Louisville, Kentucky. Representative Carl Rollins II, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ken Winters, Co-Chair; Representative Carl Rollins II, Co-Chair; Senators Walter Blevins Jr., Jimmy Higdon, Alice Forgy Kerr, Vernie McGaha, Gerald A. Neal, R.J. Palmer II, Johnny Ray Turner, Jack Westwood, and Mike Wilson; Representatives Linda Belcher, John “Bam” Carney, Leslie Combs, Ted Edmonds, C.B. Embry Jr., Bill Farmer, Jim Glenn, Derrick Graham, Reginald Meeks, Charles Miller, Ryan Quarles, Jody Richards, Tom Riner, Bart Rowland, Wilson Stone, Ben Waide, Addia Wuchner, and Jill York.

Guests: Betsy Glover, Christian County Board of Education; LaKettia O’Leary and Karen Tudor, Metcalfe County Board of Education; Marge Bradford, Bardstown Independent; Jason Trudeau, McLean Lobby, LLC; Linda Duncan, Jefferson County Public School Board of Education; Sharon Simmons, Trigg County School Board of Education; Tim Bobrowski and Scotty Combs, Owsley County Schools; Sandy Deaton, Prichard Committee; Michaela Giles, Governor’s State Budget Office; and Priscilla Black, Majority Whip’s Office.

LRC Staff: Kenneth Warlick, Jo Carole Ellis, Ben Boggs, Janet Stevens, Kristi Henderson, Daniel Clark and Lisa W. Moore.

Approval of the June 11, 2012, Minutes

Representative Carney moved to approve the minutes of the June 11, 2012, meeting and Senator Kerr seconded the motion. Motion carried.

Welcome

Mr. Bill Scott, Executive Director, Kentucky School Boards Association (KSBA), said the association is focused on helping school districts to prepare students for college or career readiness. Employers are having a difficult time finding skilled workers and are redefining the skills necessary to be employable in a turbulent economy. Ms. Diane Porter, Chair, Jefferson County Board of Education, welcomed members to Jefferson County District One. She thanked board member

Linda Duncan for accompanying the committee to Westport Middle School.

55,000 Degrees Project

Mayor Fischer said the 55,000 Degrees is a result of tremendous and unprecedented teamwork from education, business, and civic leaders who serving on an education roundtable established in 2008 by former Mayor Jerry Abramson. The groundbreaking Greater Louisville Education Commitment, signed in May 2010, set the goal of increasing the number of associate’s and bachelor’s in Louisville by 55,000 over ten years. He said this initiative positioning Louisville to a stronger position in attracting well-paying jobs.

Mayor Fischer said progress reports indicate the number of working-age adults with college degrees increased by approximately 7,000 from 2008 to 2009 in Louisville. Over the last ten years, Louisville posted the second-largest increase in degree holders among 15 cities used as benchmarks. He said the number of degrees awarded locally in one year increased 14 percent for two-year degrees and 7 percent for four-year degrees. Working-age adults with some college returning to school have also increased 20 percent in one year, partly in response to a difficult job market.

Mayor Fischer said Louisville still faces many challenges. Far too many college freshmen arrive unprepared to begin their coursework. He said 90,000 working-age adults have some college credits, but have not completed their degrees. He noted over the past year, Greater Louisville Inc., working with the business community, has launched a new program for local employers to help its workers complete college.

Mayor Fischer said Louisville ranks last among competitor cities in the percentage of African-Americans with college degrees. Leaders in the African-American community have rallied to support a strong initiative to add 15,000 degrees in ten years. He said Louisville will reach its goal of meeting the 55,000 degrees one degree at a time, and by holding everyone in the community accountable for meeting that goal.

Mary Gwen Wheeler, Executive Director, 55,000 Degrees Project, showed members a PowerPoint presentation demonstrating specific tables and charts relative to the statistics mentioned by Mayor Fischer. This information can be located in the Legislative Research Commission (LRC) library. She said 55,000 Degrees has five main objectives: 1) Create a college-going culture; 2) Use the business community’s unique points of leverage to accelerate attainment; 3) Prepare students for success in college, careers, and life; 4) Make postsecondary education accessible and affordable, and 5) Increase educational persistence, performance, and progress.

Ms. Wheeler said approximately 75 percent of Louisville’s high school graduates enroll in college. However,

college-going rates vary widely by high school, ranging from a low of 27 percent to a high of 100 percent. In 2010, only 69 percent of the Jefferson County students who had begun high school four years earlier stayed to graduate. She said Louisville needs to decrease the number of high school dropouts in order to increase college enrollment.

Ms. Wheeler said re-enrolling in college is a major step for working adults. They are more likely to finish degrees if employers support their efforts. She said sixteen employers, with almost 16,000 workers as potential participants, have signed on to take part in the program. The goal is to obtain 3,500 working adults, 500 of them minorities, completing bachelor’s degrees by 2014.

Ms. Wheeler said too many local high school graduates enter college without the skills to succeed. Only three in ten Jefferson County Public Schools (JCPS) graduates were judged to be college-ready in 2010 with results varying dramatically from school to school. JCPS aims to double that number of college-ready high school graduates to 66 percent by 2015 and to reach the goal of 90 percent by 2020. Inadequate academic preparation forces students and institutions to use precious financial resources for remediation.

Ms. Wheeler said the Kentucky Department of Education (KDE) and the Council on Postsecondary Education (CPE) is working on implementing the requirements of Senate Bill 1 from 2009. This year, Kentucky will be the first state in the nation to align high schools with colleges and assess student achievement against globally benchmarked, college-ready common core standards in math and English.

Ms. Wheeler said college is a major investment for any family. The increase in the cost of higher education has substantially surpassed growth in family income in recent decades. Students and families need clear information to take advantage of all the options and avoid excessive debt. She noted total costs for a first-year student in the Louisville area range from \$11,140 to more than \$35,000. Kentuckians need to take advantage of grants and scholarships as both can significantly reduce the average net price of attending college.

Ms. Wheeler said CEO’s for Cities reported that increasing college graduates by one percent would equal \$900 million in one year in personal aggregate income. For Louisville, this is \$4.5 billion by 2020 if the 55,000 degree goal is met. She also said an economic benefit of cutting the number of JCPS dropouts in half would be \$27 million in increased earnings, \$19 million in increased spending, and \$4 million in tax revenues as reported by the Alliance for Excellent Education.

Mayor Fischer said the cost of the program is \$900,000 for the first three to four years. He said this is not a significant amount and most of the work is contributed by volunteers in the community. The

program is gaining national attention.

Representative Rollins said he recently attended the Education Commission of the States (ECS) meeting and Kentucky was recognized as a leader in the nation in education reform. He and Senator Winters commended Mayor Fischer for obtaining buy-in for the 55,000 degrees program from business leaders across Louisville, and holding everyone accountable for results.

Representative Graham said it is important for Jefferson County to succeed as Louisville is the economic engine for the other 119 counties in the Commonwealth.

Update from Schools Identified as Persistently Low-Achieving (PLA)

Michael L. Raisor, Ph.D., MBOE, Chief Operations Officer, and Dewey Hensley, Ph.D., Chief Academic Officer, JCPS, discussed Jefferson County’s focus on student achievement. JCPS has goals in four focus areas. 1) Increased Learning- every student progresses in his or her learning and meets or exceeds proficiency in all subjects; 2) Graduation and Beyond – every student graduates prepared for his or her postsecondary choice for college, career, and life; 3) Stakeholder Involvement and Engagement- parents, community, and partners enrich students’ educational experiences and support their success; 4) Safe, Resourced, Supported, and Equipped Schools- all schools are staffed, resourced and equipped to support student needs.

Dr. Raisor said the JCPS vision if that all students be prepared to reach their full potential and contribute to society throughout life. Dr. Raisor said JCPS has realigned its budget to hire 80 elementary assistant principals. Research shows principals observing in classrooms contribute to higher levels of instruction and student achievement. New achievement-focused priorities will be implemented during the 2012-2013 school year. The complete list of priorities is located in the meeting material in the Legislative Research Commission (LRC) library.

Dr. Raisor said 70 percent of JCPS students are living in poverty. JCPS is developing a comprehensive system for identifying, addressing, and monitoring the needs of students who live in poverty and are failing to achieve academically.

Dr. Hensley discussed changing the culture within schools and building relationships in order to improve the achievement of students in persistently low achieving (PLA) schools. He said Western High School in Louisville had the greatest gains of all identified PLA schools.

Responding to Senator Winters question regarding the number of high school dropouts, Dr. Hensley said JCPS is coordinating processes that target specific high schools by tracking graduation rates and efforts to close achievement gaps. JCPS is utilizing resiliency quadrants that track students over a period of time equipping them with skills needed for college. JCPS is also considering alternative pathways

to help non-traditional students become career and college ready. This may include a 24 hour mentoring program.

Senator Winters was pleased that JCPS is utilizing principals as instructional leaders in the classroom. He said it takes a supportive principal in conjunction with a strong cohort of teachers to improve student achievement.

Responding to a question from Representative Carney regarding faith-based community partnerships, Dr. Hensley said the organizations were represented in developing the JCPS strategic plan. One such partnership is creating “Learning Places” where students can attend a safe place after hours to receive instruction and student progress is recorded through technology. Another initiative includes “Concerted Cultivation” which allows churches to help young parents get their children ready for school and to learn. Such initiatives are expected to be effective in closing the achievement gap.

Responding to a question from Representative Meeks regarding cultural competency, Dr. Hensley said JCPS is forming a plan to provide district-wide professional development to approximately 15,000 employees to improve school climate and learning environments. He said the training will include bus drivers, teachers, and principals and will encourage staff to be sensitive to a variety of cultures within JCPS.

Representative Meeks said he hopes the JCPS culture is changing. He wants stronger connections between state government agencies, city government, schools, and businesses. He said there are 10,000 homeless students in JCPS. He said international students, working adults with some college, the underemployed, and dropouts need to be supported in the community. Dr. Hensley said JCPS is not about flashy inputs, but about outcomes for children.

Responding to Representative Rollins question concerning 10,000 JCPS students being homeless, Dr. Hensley said JCPS has a student population of 101,000, and almost 10 percent are homeless.

In response to a question from Senator Higdon regarding the statement that 70 percent of JCPS students live in poverty, Dr. Raisor said the figure is based on the number of students receiving free and reduced lunch. Dr. Raisor said the 10,000 homeless students is a self-reported number.

Responding to Representative Glenn about student career choices, Dr. Hensley said the system is being refined to put students on career pathways to good jobs. He said JCPS offers an auto mechanics program where students can start a high paying job the day after they graduate. He said courses to obtain jobs in medical careers, science and math, and welding programs are also available to students.

Responding to a question from Senator Neal regarding state level policies that may hinder student achievement, Dr. Hensley said Senate Bill 1 is correcting

flaws in the accountability system. He noted the federal Title I program is restrictive, but the waiver obtained by the KDE, should help schools with flexibility. He asked the committee to be patient and said JCPS wants to do what is right by its students. Senator Neal concluded that Jefferson County faces big challenges, such as 10,000 homeless students, and is not comparable to any other district in the state. He wants to ensure JCPS has the flexibility to be innovative and meet the wide variety of needs of students.

Responding to a question from Representative Waide regarding how the homeless rate of students is calculated, Dr. Hensley said students living with grandparents or with divorced parents part-time, are not included in the homeless percentage. He said these homeless children live in shelters across Louisville and school buses pick up children at the Home of the Innocents. Dr. Raisor clarified the free and reduced lunch rate is 69.8 percent, but the poverty rate of the community of Louisville is 40 percent. Representative Rollins attributed the difference to the fact that only 20 to 25 percent of people in Louisville have children. Dr. Raisor added that many families have multiple children in the school system. Representative Graham also noted that many students in Louisville attend parochial schools.

Larry Sparks, Superintendent, Leslie County Schools, Kevin Gay, Principal and Todd Horton, Assistant Principal, Leslie County High School, and Susan Brock, Education Recovery Leader, KDE, discussed improvements in the school district. School leaders and KDE have developed a new strategic plan with key goals in the following areas: Next Generation Learners, Next Generation Professionals, Next Generation Instructional Programs and Support, and Next Generation Schools. He said the new strategic plan will ensure Leslie County is a top 20 school district by the year 2020.

Mr. Sparks said Leslie County elementary schools have implemented a research-based reading program, with support from the Elgin Foundation, at the primary level. A new math program was purchased for grades K-6 that includes the new national math common core standards. He said school counselors were hired for the first time in several years. The middle school was identified as one of the top places to work in the state. The high school was recognized by Commissioner of Education Holliday as having one of the biggest increases in “College and Career Readiness Status.” Last year, over \$3,000,000 in scholarships were awarded to Leslie County seniors for postsecondary education. Mr. Sparks noted the district received an “Excellence in Education” award, presented by the local chamber of commerce, in recognition for improvements in all schools.

Mr. Gay said Leslie County High School was recognized this past year as one of the most improved high schools in the state, consistently ranking in the

top twenty on state assessment results in various categories. He said the school met all the No Child Left Behind Goals (NCLB) in 2011. He credited the school’s 30/60/90 results-oriented plan in keeping the staff focused on goals.

Representative Carney asked for the non-negotiable items utilized in the evaluation system to be emailed to him.

Patricia Hurt, Superintendent, LaKettia O’Leary, board member, Karen Tudor, board member, Metcalfe County Schools, discussed the improvement in the Metcalfe County school district and specific actions of the leadership team. She said all teachers were targeted for improvement and developing the right people supported in the right environment makes the difference in whether improvement occurs. The people in an organization are its most valuable asset.

Ms. Hurt said Metcalfe County has improved student achievement by focusing on changes in the curriculum, assessment, instruction, school culture, community support, professional growth, leadership, school organization, and effective planning. She noted the ACT composite scores increased from 16.4 to 19.0 from 2008 to 2011. The PowerPoint handout, including the district’s story of improvement, is located in the LRC library.

Ms. O’Leary said the role of the school board is to set improvement goals and offer support for the school and district leadership team. She said the board should be a part of the solution, and not hinder progress. She also noted Metcalfe County benefitted from being identified as a persistently low-achieving school.

Representative Stone was encouraged by the school districts’ testimony and would like for them to be a model for other persistently low-achieving schools throughout the Commonwealth.

Review of Administrative Regulations

Kevin Brown, General Counsel, KDE, explained administrative regulations 702 KAR 1:160; 703 KAR 5:002; 703 KAR 5:140; 703 KAR 5:240; 704 KAR 3:340; and 704 KAR 5:070. There was no action taken on the administrative regulations.

Responding to a question from Representative Wuchner, Mr. Brown said 704 KAR 3:340 is an amendment to the Commonwealth Diploma Program which is being phased out. He said students will be responsible for the cost of taking Advanced Placement (AP) tests during the last year of the program. He noted a school district can choose to cover the cost of the tests if it has the funds. Representative Graham said the cost of an AP test is about \$80.00 for parents. Mr. Brown said KDE will return the funds used for the Commonwealth Diploma Program to the Gifted and Talented budget line item, which has stayed flat since 1990.

Responding to a question from Representative Graham regarding the cost of AP exams for free and reduced lunch

students, Robin Chandler, Policy Advisor, KDE responded that their testing fees are offset by a federal grant, which is not affected by this administrative regulation.

Adjournment

With no further business before the committee, the meeting adjourned at 3:45 PM.

SPECIAL SUBCOMMITTEE ON ENERGY

Minutes of the 2nd Meeting of the 2012 Interim July 20, 2012

Call to Order and Roll Call

The 2nd meeting of the Special Subcommittee on Energy was held on Friday, July 20, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Brandon Smith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Senators Joe Bowen, Ernie Harris, Ray S. Jones II, Johnny Ray Turner, and Robin L. Webb; Representatives Royce W. Adams, Rocky Adkins, Dwight D. Butler, Leslie Combs, Tim Couch, Will Coursey, Jim Gooch Jr., Wade Hurt, Martha Jane King, Lonnie Napier, Tanya Pullin, Tom Riner, Kevin Sinnette, John Will Stacy, Fitz Steele, and Brent Yonts.

Guests: Sue Nokes, Ph.D., P.E., Professor and Department Chair of the Department of Biosystems and Agricultural Engineering, University of Kentucky, and Michael Montross, Ph.D., P.E., Professor of Biosystems and Agricultural Engineering, University of Kentucky; Melissa Howell, Executive Director, Kentucky Clean Fuels Coalition, and Thomas Clark, Vice President, Kentucky Clean Fuels Coalition.

LRC Staff: Sarah Kidder, and Susan Spoonamore, Committee Assistant.

The June 15, 2012 minutes were approved by voice vote, without objection, upon motion made by Representative Steele and seconded by Representative Couch.

The University of Kentucky’s Federal Grant to Study On-Farm Biomass Processing:

Michael Montross, Professor of Biosystems and Agricultural Engineering at the University of Kentucky, spoke about On-Farm Biomass Processing: Towards an Integrated High Solids/Transporting/Storing/Processing System. He stated that the research is being funded by the United States Department of Agriculture (USDA) under the Biomass Research Development Initiative, which awarded this project \$6.9 million. UK was responsible for securing 20 percent non-federal cost-share, most of which is coming through a partnership with Case New Holland (CNH). Other than the University of Kentucky, participants in the research project include the University of Wisconsin, North Carolina State University, Oak Ridge National Laboratory, and USDA-ARS Food Animal Production Unit. The researchers are also

partnering with farmers across Kentucky, primarily in the Logan County area.

There are four objectives for the research project. The first is feedstock development in which the focus is modifying energy crops so they can be more easily processed and converted. Dr. Montross stated that his team is using two energy crops, miscanthus and switchgrass, and two agricultural residues, corn stover and wheat straw. The second objective revolves around crop management, production, and on-farm bale storage. The next objective is the development of biofuels and biobased products during which the researchers employ two methods to break down the lignants to extract the cellulose or sugars, one involves the use of iron and hydrogen peroxide and the other involves white rot fungus. Once the biomass is developed, it is stored in on-farm bunker silos for the conversion to butanol, which could take two to three months, which is the fourth objective. At that point, it is transported to a refinery and the scope of this project ends. The USDA required that the project focuses on butanol as opposed to ethanol because butanol is less corrosive and has a higher energy density than ethanol. It also can be blended into gasoline at higher concentrations than ethanol and can be blended into diesel fuel.

The project has a life-cycle assessment group tracking the environmental impact, including soil sustainability and erosion control, the product flows, energy expenditures, and greenhouse gas emissions. The researchers will also produce a detailed economic analysis to ensure the fiscal viability and feasibility of on-farm biomass processing. Dr. Montross said that the most commonly cited barrier to biomass production is the costs associated with transportation, so the goal of this on-farm processing project is to mitigate those costs by moving away from the low energy and bulk density typical of off-farm biomass processing, making it an attractive and profitable venture for Kentucky farmers.

Dr. Montross stated that given the current acreage of corn, wheat, and hay crops in Kentucky and the acreage of useable abandoned farmland and abandoned mine land, conservative estimates conclude that on-farm biomass processing could yield 35-40 gallons of butanol per ton. After capital and feedstock costs are factored in, Kentucky farmers, coops, or small businesses could make a profit of about \$10 per ton if butanol sells for \$1.40 per gallon. Dr. Montross said that this would be a profitable outcome for farmers considering that butanol has 87 percent of the energy content of gasoline by volume. The researchers conclude that biomass has the potential to replace 25 percent of Kentuckians' gasoline use on an energy basis. If butanol is worth \$2 per gallon, up to \$4.3 billion would stay in the Kentucky economy.

In response to Senator Smith, Dr. Montross said that coops of small farmers,

farmers with significant acreage, and small businesses would most likely be able to implement on-farm biomass processing and turn a profit. It is estimated that it will take two to three months after putting the product in the bunker before the biomass would generate revenue. Dr. Nokes stated that farmers have two advantages, space and time, and this process design would allow the them to continue regular farming activities during the waiting period. In response to Senator Smith, Dr. Montross said that sugar cane requires fourteen months of frost free weather, so it would not work well for Kentucky. Sweet sorghum, on the other hand, would be a good fit for Kentucky's land, but the USDA restricted the types of feedstocks that could be used in the research.

In response to Senator Harris, Dr. Montross said that miscanthus and switchgrass could be put into crop rotation, alternating what feedstock goes into the bunker silos. This process would supplement, as opposed to replace, regular farming activities. While it would be possible to move a baler from field to field in smaller acres, this process would work much better on a large farm.

In response to questions from Representative Yonts, Dr. Montross said he thought that on-farm biomass processing is feasible and viable for Kentucky farmers. In the eastern part of the state, miscanthus and switchgrass may not be practical so farmers would need to look to other types of feedstock. Dr. Montross said that one large square baler would cost around \$100,000. Dr. Nokes said that their team completed an economic analysis that showed the possibility of profit for farmers, and now the team's job is to apply the research design to test those analyses.

In response to Representative Steele, Dr. Nokes said that butanol is not fully marketable right now because it is still considered a fairly new fuel alternative as of the early 2000s. Responding to Representative Steele, Dr. Montross said that John Deere equipment was not being used because he has a long-standing relationship with CNH, and the grant required the identification of the non-federal cost share in a short amount of time.

In response to Representative Martha Jane King, Dr. Montross said that there was some feed value in switchgrass which is a native grass. Miscanthus has no feed value but would produce higher yields. Farmers are most interested in the feedstock that produces the most tonnage of cellulose per acre. Representative King said that Logan County has farms that participate in equipment exchange and cooperative ownership programs. This beneficial relationship is already integrated into the farming communities across the state and could be useful in this research.

In response to Senator Webb, Dr. Montross said that university researchers and farmers are still working with sweet sorghum, even though this research project does not address it. The primary

hurdle with sweet sorghum is that the juice is not stable, but he said that sweet sorghum would produce more tons per acre of sugar.

In response to Senator Smith, Dr. Nokes said that kudzu could theoretically be used as a biomass feedstock, but that the problem would be harvesting it in an economic manner.

Representative Riggs requested that the researchers look at promoting the use of farming coops for sharing equipment and costs.

In response to Representative Riner, Dr. Montross said he did not know the exact cost of building a bunker silo, but he estimated it to be about \$1.00 per ton over ten years. The bunker silo would be approximately 40 feet long, 40 feet wide, and 12 feet tall.

In response to Representative Adkins, Dr. Montross said the process of breaking feedstock down to liquid fuel is being done on the farms that are a part of the research. He also said it would be expensive for small farmers or small businesses to build the needed facilities and buy the needed equipment to complete the process, which is why a coop and/or regional facility design would work well for most small farmers.

In response to Representative Combs, Dr. Montross said no adjustments would have to be made to vehicles in order to use butanol. Dr. Nokes said that butanol was not ready to compete on today's market. She said that the USDA is funding this research so that more exact information can be known regarding on-farm biomass processing, various feedstocks, liquid volume, expenses, revenue, and profitability.

Advancing Transportation Fuels Across America:

Melissa Howell, Executive Director, and Thomas Clark, Vice President of the Kentucky Clean Fuels Coalition (KCFC), discussed advancing transportation fuels across Kentucky. Ms. Howell said that KCFC is a nonprofit organization that works to provide its members and fleet, fuel, and transportation professionals with the latest industry information. She said that all of KCFC's projects and programs are listed on their website, which is updated at least three times a week.

Ms. Howell said that a grant of \$12.8 million was awarded in 2010 for the purchase of hybrid electric school buses. Kentucky has 162 hybrid school buses, which is the largest fleet of hybrid electric school buses in the nation. The average fuel savings these buses produce is about 34 percent. KCFC is able to collect specific data on the use of these buses, including but not limited to the number of times a bus driver presses on the brakes or the length of time a bus idles. She said that while the buses do produce significant savings in fuel, school districts will not be able to purchase hybrid buses without some form of assistance because the buses are not affordable in the short term. The base bus price is approximately

\$78,000 and the hybrid upcharges are about \$56,000, so until the fuel savings make up for the technology costs over the estimated 14 years of use in hybrid electric school buses, the buses will not be as widely adopted as they have been in other companies with large fleets, such as UPS or Coca Cola.

In response to Senator Smith, Ms. Howell said the buses are manufactured by Thomas Built Buses in High Point, North Carolina, and Bluegrass International Trucks, Buses, and Idealease in Tulsa, Oklahoma. The transmissions are manufactured in Kings Mountain, North Carolina. Ancillary equipment is manufactured in Kentucky but there are no bus manufacturers in the state.

Ms. Howell said that with respect to E85 (fuel made from 85 percent ethanol and 15 percent gasoline), there are 24 E85 stations across Kentucky. The Kentucky Corn Growers Association provides retailers with \$5,000 per dispenser, though the federal tax credits have expired. Kroger plans on installing a number of new stations in northern Kentucky. The corn-based ethanol plant in Hopkinsville continues to produce 33 million gallons per year.

Ms. Howell said that Mammoth Cave National Park was the first national park in the country to be alternatively fuelled in all operating vehicles and equipment. This park was used as a template for the US Department of Interior and the US Department of Energy for alternatively fuelling all national parks across the country. She said that Mammoth Cave National Park uses four propane school buses, two LPG Ford F150 pickup trucks, and three low-speed electric vehicles.

In 2011, KCFC established Green Fleets of the Bluegrass, which is a program designed to improve the environmental performance of vehicle fleets across Kentucky by reducing petroleum fuel use. The program is structured to provide flexibility for diverse fleets across the Commonwealth to pursue best practices while achieving recognition for successes along the way.

Ms. Howell said that while Kentucky is not at the forefront in terms of electric vehicles, there are electric vehicle projects throughout the state providing leadership in this area, including the 450 trucks that use Mercer Transportation to recharge, Louisville's urban truck electrification working on idle reduction, the University of Louisville's seven recharging stations, LG&E and KU's request for proposals offering financial help for electric vehicle charging stations throughout Kentucky. She stated that UPS is the rolling laboratory for alternative fuels. UPS has two biodiesel storage tanks on the Worldport property in Louisville. She said that 95 cargo tugs were repowered from diesel engines to gasoline engines. Thirteen gates went through gate electrification, all the equipment is now electric, and 20 hybrid electric package trucks are being used in Louisville.

Ms. Howell stated that NASCAR

has been using Sunoco Green E15 in all Cup Series races since February 2011. The drivers have stated that they enjoy using ethanol and thousands of fans are able to see the performance benefits.

Ms. Howell said that several years ago, KCFC did a project with the limestone mining company Carmeuse, which sells its limestone to power plants as a sulfur removal agent. The Black River (Pendleton County) and Maysville (Mason County) mining sites have been using up to a 99 percent blend of biodiesel in all underground equipment. A joint air quality-testing program at both sites showed a significant reduction in Diesel Particulate Matter (DPM). Carmeuse is one of the largest users of biodiesel in Kentucky.

Ms. Howell said that August 1, 2012, is the official ribbon cutting for the opening of Waste Management of Kentucky's natural gas refueling site in Louisville which will be open to the public for refueling. Over \$3 million was invested in the facility. She said that Waste Management would be replacing its 100-truck operation with compressed natural gas (CNG) vehicles over the next three to four years. It will be the largest heavy-duty fleet of natural gas trucks in North America with over 1,000 CNG trucks. This will reduce greenhouse gas emission by over 21 metric tons per year, per truck.

Ms. Howell explained that Kentucky signed on to a multi-state natural gas collaborative. Twenty-two states have signed on with more states to follow. The multi-state collaborative is uniting to request that automakers make natural gas vehicles so the states can prepare a market for the vehicles.

As for CNG projects, Westport LD in Louisville is upfitting approximately 15-20 Ford trucks, specifically F250s and F350s, to natural gas per day. The city of Somerset will receive the first Kentucky-made truck for use in Kentucky and will have a fleet of three soon. Freedom Waste, located in western Kentucky, has installed an on-site refueling station in Madisonville for retrofitted CNG vehicles. The Flying J, located in Walton, is a liquid natural gas (LNG) proposal by Clean Energy, a company owned by T. Boone Pickens.

In response to Senator Webb, Ms. Howell said that KCFC is not presently working with anyone to research road maintenance with the loss of gasoline taxes. As diversification progresses, KCFC will certainly be part of that discussion and will be gathering information.

Meeting adjourned.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

Minutes of the 2nd Meeting of the 2012 Interim July 19, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Labor and Industry was held on Thursday, July 19, 2012, at

10:00 AM, in Room 131 of the Capitol Annex. Representative Rick G. Nelson, Chair, called the meeting to order, and the committee assistant called the roll.

Present were:

Members: Representative Rick G. Nelson, Co-Chair; Senators Jared Carpenter, Denise Harper Angel, Ernie Harris, Kathy W. Stein, and Jack Westwood; Representatives C.B. Embry Jr., Bill Farmer, Wade Hurt, Joni L. Jenkins, Thomas Kerr, Adam Koenig, Mary Lou Marzian, Charles Miller, Terry Mills, Michael J. Nemes, Tanya Pullin, Tom Riner, Jim Stewart III, and Brent Yonts.

Guests: Joe Meyer, Secretary, Education and Workforce Development Cabinet.

LRC Staff: Linda Bussell, Adanna Hydes, Carla Montgomery, and Betsy Nickens.

Representative Nelson announced that Senator Kerr could not attend the meeting and reminded members who wish to attend the Labor-Management Conference in September to register.

In memory of former Representative Dewayne Bunch, the committee observed a moment of silence.

Representative Nelson introduced Secretary Joe Meyer to testify on HB 495, the unemployment insurance legislation enacted last session, the status of the trust fund, overall status of the unemployment insurance program, and an unemployment update.

Implementation of HB 495 and Update on Kentucky's Unemployment Insurance Program and Trust Fund

Secretary Meyer first spoke about the progress of action required under HB 495. HB 495 authorized the cabinet to obtain financing to pay the interest on the advances (federal unemployment insurance loans) received under Title XII of the Social Security Act and to impose a surcharge on employers, beginning in 2014, to repay the financing. HB 495 also required the cabinet to report to the committee on the progress of complying with the provisions of the legislation.

Secretary Meyer said financing was obtained after a bid process from J.P. Morgan Chase. The cabinet borrowed \$76 million at a fixed interest rate of 1.95 percent. The money is available in two draws. The first draw of \$47.70 million has already been taken and was used to repay the interest that was advanced by the state to pay interest due last September and to have money in hand to pay the interest due September 30 of this year. The second draw of up to \$26.3 million is available to pay the September 30, 2013 interest payment. Interest payments will be made to J.P. Morgan Chase according to the terms of the agreement and that money is in hand. The overall maturity date of the loan is September 1, 2018 and if the amount is repaid after September of 2017, there is no prepayment penalty.

Responding to a question from Representative Farmer, Secretary Meyer

said there would be a prepayment penalty if the loan was repaid before September 2017 and the surplus in the state budget was not available to repay the financing obtained.

Secretary Meyer reported on the status of the unemployment insurance trust fund. At the beginning of this year, the state had borrowed \$948,700 million from the federal government to pay unemployment benefits. An additional \$35.7 million was borrowed for cash-flow purposes, and that amount has been repaid. The 0.3 percent federal unemployment tax credit offset that employers are paying has produced \$30.855 million, which has reduced the current overall debt to the federal government to \$917.80 million. The federal debt is anticipated to be reduced to \$915 million at the end of the year. By the end of 2013, the federal debt is expected to be reduced to \$768 million.

Secretary Meyer discussed unemployment insurance agency operations. The 2011 Unemployment Insurance Trust Fund report, included in members' folders, contains detailed information about the unemployment insurance program. During the past year, the big issue for the program has been implementation of HB 5 enacted in the 2010 Special Session. All of the law changes and all of the process changes required by HB 5 have been implemented except for the changes required in the procedures for notifying employers. This is expected to be completed within a two-week period. On the matter of employer appeals, which is a process that employers feel is tilted against them, the report provides data that showed, for 2011, that there were 173,000 initial claims for benefits filed. Employers protested 83,000 of those claims and prevailed in 66 percent, resulting in a denial of benefits. In 2011, 23,000 cases were appealed to the lower authority appeals branch. Employees appealed 19,000 of those decisions and 31 percent were decided in favor of the employees. Employers appealed approximately 3,500 of the decisions and 31 percent, the same percentage as for the employees, were decided in favor of employers. Responding to questions from Representative Farmer and Representative Yonts, Secretary Meyer said progress has been made in reducing the time involved in the appeals process and in reducing the backlog of cases. More hearing officers and referees have been hired and ongoing efforts are being made in the training and compensation levels of hearing officers and referees.

Secretary Meyer testified about unemployment. The unemployment rate, just released, is 8.2 percent, which is the same as last month. During the past twelve months, Kentucky has added 37,700 new jobs, which exceeds the number of people looking for work. The number of claims for benefits has decreased by more than half over the past two years. By the end of the year, the total benefit payout is projected to be much less than anticipated. As a

result of the federal extended benefit and emergency unemployment compensation program, Kentuckians have received \$2,979,000 in benefits above what was paid from the state unemployment trust fund.

Responding to questions from Representative Koenig, Representative Pullin, and Representative Farmer, Secretary Meyer said no additional borrowing from the federal government will be made during the remainder of this year and contributions are expected to exceed the benefit payout for the year. He reported on the federal borrowing from other states compared to other states. Kentucky currently owes \$930 million; California owes \$9 billion; Ohio owes about \$1.8 billion; and Indiana owes almost \$2 billion. West Virginia and Tennessee do not owe the federal government. The year-to-date, unemployment insurance benefits paid by the state are considerably than half of all benefits paid to Kentuckians. The remainder has been paid from federal funds.

Representative Nelson reminded members that the August meeting will be at the Ford Motor Plant.

The meeting adjourned.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 3rd Meeting of the 2012 Interim August 2, 2012

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, August 2, 2012, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Joe Bowen, Ernie Harris, Dorsey Ridley, Katie Stine, Robert Stivers II, Johnny Ray Turner, and Robin L. Webb; Representatives Tim Couch, Keith Hall, Tim Moore, Marie Rader, John Short, Kevin Sinnette, Fitz Steele, Jim Stewart III, and Jill York.

Legislative Guest: Representative Rocky Adkins.

Guests: Commissioner Steve Hohmann, Department for Natural Resources; Commissioner Bruce Scott, Department for Environmental Protection; Secretary Len Peters, Energy and Environment Cabinet; Dr. Karen Waldrop, Mark Mangeot, and David Hise, Kentucky Department for Fish and Wildlife Resources.

LRC Staff: Stefan Kasacavage, Lowell Atchley, and Kelly Blevins.

After a motion and a second, the minutes were approved.

Regulations Regarding Increased Reclamation Bonding Requirements

for Coal Mining Operations

Steve Hohmann, Commissioner for the Kentucky Department of Natural Resources (KDNR) discussed the recent interactions between KDNR and the federal Office of Surface Mining (OSM) which led to new reclamation bonding requirements promulgated emergency regulations filed May 4, 2012. Commissioner Hohmann stated that prior to these emergency regulations, Kentucky's reclamation bond amounts had not been revised in 20 years.

A few years prior to promulgation of the emergency regulations, the federal Office of Surface Mining (OSM) took two actions in regard to coal mining reclamation bonds: first, OSM reviewed Kentucky's primacy over the surface mine permitting program and, second, OSM commenced a nationwide study of reclamation bond amounts. OSM concluded that Kentucky's reclamation bond amounts were insufficient to cover reclamation costs in the instance of bond forfeiture. Kentucky was approximately \$4 million dollars short on necessary reclamation bond amounts to return forfeited permits to permanent program standards.

The federal government issued a 733 letter to Kentucky stating that the reclamation bond program was not sufficiently funded, and OSM would federalize the reclamation program if changes were not made in 30 days. OSM's assumption of the Kentucky surface mining program would result in a loss of abandoned mine land (AML) funding and possible federal assumption of other parts of the coal permitting process.

The May 2012 emergency regulations increased the individual bonds amounts, revised the rate per acre, and established an emergency statewide bond pool in the event the bond amounts were insufficient. KDNR also issued an advisory memorandum 155 to give guidance to the coal industry on how the protocols would be applied to existing operations and to new permitting actions. The overall result of the emergency regulations is that each permit will have a 5 year period to bring all existing operations into adjusted status; however, operations that would be at the end of the permit life and beginning reclamation would likely not have the bond amounts adjusted.

Since May 3, 2012, a number of permits have had their bonds adjusted with an average bond increase of approximately 2.3 times over the initial amount. To establish the emergency bond pool, KDNR has hired an actuary to determine the level of funding for the pool, options on a fee structure to capitalize the pool, liabilities the pool might face, and how the pool should be administered. A first phase report is due from the actuary in mid August with a final report and recommendations by October 2012. Statutory changes will be needed in 2013 to establish a statewide reclamation bond pool.

In response to a question about the percent increase of the average bond and

whether OSM has issued a 733 letter to other states, Commissioner Hohmann responded that the bond increased approximately 2.3 times, and OSM's response to the emergency regulations appears to be positive. An informal conference is scheduled for mid August. Mike Haines, General Counsel for KDNR, responded that the Secretary of the Interior would enter an order to take over the bond process if these actions are not taken. The study cost is 200,000, and no other state has received a 733 letter. Other states have bond pools, and that may be why KDNR did not receive letters.

In response to a question regarding reclamation as relates to underground mining, the Commissioner said there is reclamation associated with both underground and surface mines. Both will have disturbances on the surface. Preparation plants have surface disturbances too.

In response to a question about whether there have been reclamation problems in the past in Kentucky, Commissioner Hohmann stated that in the past 2 years there have been 15 to 25 mining permits forfeited, and that has occurred for some time. The studies found that the bonds posted under the old protocols were insufficient over 70 to 80 percent of the time. When a bond is forfeited, AML begins reclamation.

In response to a question about whether the small coal operators participated in the workgroup and whether the new protocols will impact the small coal operators bond pool, Commissioner Hohmann stated that small coal operators participated in the workgroup, but it is uncertain how the protocols and the universal bond pool will affect the small coal operators pool. The department awaits information from the actuary.

In response to a question regarding whether larger coal companies assumed permits that would have been forfeited, Commissioner Hohmann replied that assumption occurred in some instances, and those companies performed the reclamation.

Request to Amend 301 KAR 3:022 by the Kentucky Department of Fish and Wildlife Resources

David Hise, General Counsel, Dr. Karen Waldrop, Wildlife Director, and Mark Mangeot liaison, Kentucky Department of Fish and Wildlife Resources requested an amendment to regulation 301 KAR 3:022 be approved by the committee. Dr. Waldrop explained that the amendment makes a change in the name of a deer permit. After a motion and second, the amendment was approved.

Update on Progress and Staffing of Department for Environmental Protection's Section for Reviewing KPDES Permits for Coal Mining Operations

Commissioner Bruce Scott, Department of Environmental Protection, provided an update on water permits for surface coal mine operations. The 402

permit is a discharge of wastewater that is subject to the federal Clean Water Act 402 program. These permits are issued under two different types of mechanisms: the individual and general coal permits. Roughly 80 percent of coal permits are general permits. The total universe of permits is 10,000 permitted entities, and the permit can be renewed. Of the 10,000 permits, roughly 20 percent are for coal mining operations and a number of those permits are pending.

Some of the challenges faced by permittees include increased oversight by US EPA of the 402 program. Currently 36 permit objections are pending, and Kentucky EPA has responded to those objections under tight budgetary constraints. Kentucky EPA also faces staff turnovers and retirements. Previously, KY EPA had 18 people handling all the permits, and Kentucky has traditionally had a backlog of permits which the department is trying to address. Under the reorganization of the 402 permit process, coal permits were split off from noncoal mining related permits to facilitate actions on those permits. Staffing was prioritized to address permit differences. The General Assembly appropriated \$250,000 for each part of the biennium in 2013-2014.

Commissioner Scott provided an update on the lawsuit filed by the Mining Association and KY EPA against US EPA. Kentucky filed suit against US EPA for use of a guidance document as if it was a regulation without it having gone through the regulation process. On July 31, 2012 the court affirmed that the guidance document was not acceptable, and the court set out to equalize the federal/state relationship. The court affirmed that the state acts as a first resort and is responsible for establishing and implementing water quality standards.

Additionally, the Clean Water Act does not have the authority to impose requirements on the federal Surface Mining, Control and Reclamation Act (SMCRA). The ruling speaks to reasonable potential or when a limit is necessary to protect water quality, and the state has first responsibility rather than the federal government in implementing the standard. Kentucky EPA anticipates that the decision will be appealed. The ruling does not change Kentucky's perspective on how to approach the permitting process. Existing rules have not changed, but Kentucky does not know how US EPA will respond to new permits and that includes the 36 permits that have received US EPA objections. Kentucky has requested a release of those 36 permits as part of the ruling. Kentucky should implement and improve upon electronic filings as a cost savings.

In response to a question regarding objection of the 36 state permits, Commissioner Scott stated two things need to change in US EPA federal regulations. The first is a timeline to make a final

action. Under the way the law is written, US EPA does not have to make a decision. The second is making an objection a final agency determination subject to due process. The 36 permits are not under any obligation to make any response and trigger due process.

In response to a question about US EPA making rule and regulation changes as part of court settlements and decisions are made without accountability to voters, Commissioner Scott stated historically US EPA functions under consent decree and that becomes the new law for how a regulatory problem is administered.

In response to remarks about US EPA not adhering to a reasonable timeline for a decision on a permit, Commissioner Scott stated that the court has been clear in that objection is not a final agency determination.

After a motion and a second, the committee adjourned.

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 2nd Meeting of the 2012 Interim July 17, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Transportation was held on Tuesday, July 17, 2012, 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 Hubert Collins, Co-Chair; Senators David Givens, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Bob Leeper, R.J. Palmer II, John Schickel, Brandon Smith, Damon Thayer, Johnny Ray Turner, and Mike Wilson; Representatives Linda Belcher, Leslie Combs, Tim Couch, Jim DeCesare, David Floyd, Keith Hall, Richard Henderson, Melvin B. Henley, Jimmie Lee, Donna Mayfield, Charles Miller, Terry Mills, Lonnie Napier, Rick G. Nelson, Tanya Pullin, Marie Rader, Steve Riggs, Sal Santoro, John Short, Fitz Steele, Jim Stewart III, Tommy Turner, and Addia Wuchner.

Guests: Representative Ted Edmonds; Representative John Will Stacy; From the Kentucky Transportation Cabinet: Tom Zawacki, Commissioner, Rick Taylor, Deputy Commissioner, Department of Vehicle Regulation; Ann D'Angelo, Office of Legal Services; Sergeant Tristan Truesdell, State Police, Division of Commercial Vehicle Enforcement; Brian Alvey, Director, Local Affairs and Policy Development, Kentucky Farm Bureau Federation.

LRC Staff: John Snyder, Brandon White, Dana Fugazzi, and Jennifer Beeler.

Approval of Minutes

Representative Henderson made a motion to approve the minutes from the June 5, 2012 meeting as submitted. The

motion was seconded by Representative Collins and adopted by voice vote.

New Farm Vehicle Escort Regulations

Tom Zawacki, Commissioner, Department of Vehicle Regulation complimented the combined efforts of the Transportation Cabinet, LRC, and legislators to make the process a smooth one.

Ann D'Angelo, Assistant General Counsel, Office of Legal Services gave an explanation of the history of the farm vehicle escort regulations. She explained that the regulations started out as an independent regulation pertaining to overweight, overdimensional vehicles, 601 KAR 1:018. The farm vehicle escort regulation was formed when the Cabinet tried to amend 601 KAR 1:018 and realized that there was interest in having the farm provisions in a separate regulation (601 KAR 1:019).

Ms. D'Angelo stated that House Bill 518 was filed during the 2012 Regular session which caused the farm vehicle escort regulation, 601 KAR 1:019 to be deferred until the bill was passed, in order for the Cabinet to conform the provisions of the regulation to match the legislation.

Rick Taylor, Deputy Commissioner, Department of Vehicle Regulation explained that the major changes enacted in the farm vehicle escort regulation had to do with the escort requirements, lighting requirements, and signage of escort vehicles. These changes made the requirements slightly more flexible for the farming industry. The Cabinet added a definition for "convoy" to allow several pieces of farm equipment driving together to only need one escort vehicle, rather than requiring each piece of equipment to have an escort vehicle.

In response to Representative Collins, Mr. Taylor explained that, on a two lane road, a vehicle exceeding twelve feet in width must have a single lead escort, and a convoy of vehicles that exceeds a width of twelve feet will also need a single lead escort.

In response to Senator Givens, Mr. Taylor stated that rules governing the transporting of agricultural products, whether the vehicle is farm owned or a commercial trucking outfit, is dependent on how the vehicle is registered for operation (farm use or commercial use). Vehicles registered with farm tags are not permitted to haul "for hire" under the statute.

In response to Senator Hornback, Mr. Taylor explained that a farmer has the discretion to use either amber flashing lights or a flag at the widest point of the vehicle.

Kentucky Farm Bureau's Farm Vehicle Regulation Guide

Brian Alvey, Director, Local Affairs and Policy Development gave an overview of Kentucky Farm Bureau's Farm Vehicle Regulation Guide. The guide is a quick overview of farm vehicle regulations for constituents, county clerks, Department of

Vehicle Enforcement, and other interested parties.

In response to Representative Collins, Mr. Alvey stated that there have been many questions regarding the licensing of trailers. If an individual has a farm plate on a vehicle, the vehicle, trailer and load must be under the 38,000 pound requirement in order not to be exempted from licensing. There is confusion due to there being two different statutes pertaining to trailers: one for trailers and vehicles under 38,000 pounds and one for vehicles and trailers over 38,000 pounds. When an individual is using a trailer to haul a load "for hire," the trailer must be licensed.

In response to Representative Collins, Sergeant Tristan Truesdell, State Police, Division of Commercial Vehicle Enforcement, stated that the way the statute is being interpreted is that if a vehicle is registered under KRS 186.050(4)(a), which is the statute pertaining to the registration of farm vehicles 38,000 pounds and under, the trailer is not required to be licensed unless it is in a "for hire" operation. If a vehicle is registered with a farm limited plate, the exemption of not having to license the trailer is not applicable.

In response to Senator Givens, Sergeant Truesdell stated that when a vehicle is registered with a basic farm plate, no matter the size of the trailer, it is not required to be licensed unless it is being used in a "for hire" operation.

In response to Representative DeCesare, Sergeant Truesdell explained that, to determine whether an individual is following the law when it comes to the use of a farm plate while hauling a trailer, the officer will use discretion and training during the initial interview with the driver. As an example, if an officer pulls over an individual hauling a trailer with several lawn mowers, weed eaters, and gas cans, and the individual claims to be hauling for personal use, the officer will most likely determine the individual is trying to get around licensing the trailer and will be cited.

In response to Senator Schickel, Sergeant Truesdell stated that several law enforcement offices, including the Boone County Sheriff's Office, Louisville Metro Police Department, and the Lexington Metro Police Department, are satellite branches of the Division of Commercial Vehicle Enforcement and are trained to enforce the commercial regulations. Those three law enforcement entities are the only ones that receive any federal grant money and are trained in safety inspections of commercial vehicles.

Enforcement of Small Commercial Vehicles (10,000 pounds to 26,000 pounds)

Sergeant Truesdell stated that the definition for a commercial motor vehicle is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property. There are four weight classes for commercial vehicles. The one being discussed is when a vehicle that has a gross vehicle weight

rating or gross vehicle combination weight rating of 10,001 pounds to 26,000 pounds. Regardless of the weight designation on the license plate, if the physical weight of the truck and trailer is over 10,000 or the manufacturers' weight rating is over 10,000 and is being used in commerce, the vehicle is considered a commercial vehicle.

Sergeant Truesdell explained that Kentucky has adopted the definition of interstate commerce, as well as other federal regulations to apply to intrastate carriers. If an individual stays within Kentucky with a commercial vehicle, the individual must comply with adopted federal regulations not exempted by statute.

In response to Senator Givens, Sergeant Truesdell stated that Kentucky has adopted the federal regulations regarding commercial vehicles to apply to the vehicles traveling intrastate.

In response to Representative DeCesare, Sergeant Truesdell explained that for commercial vehicles there is no mileage exemption, but there are some exemptions for farm operations where an individual can travel 150 miles from the farm and are exempt from licensing requirements.

In response to Representative Collins, Sergeant Truesdell stated that the way he interprets the statute is that, if a vehicle is designed to carry 15 or fewer passengers and was manufactured after 1981, seatbelts are required for the driver and any other passenger.

With no further business before the committee, the meeting adjourned at 2:25 p.m.

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

Minutes of the 2nd Meeting of the 2012 Interim July 12, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Thursday, July 12, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Jack Westwood, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Joe Bowen, Carroll Gibson, Vernie McGaha, Dennis Parrett, Joey Pendleton, Kathy W. Stein, Mike Wilson, and Ken Winters; Representatives Royce W. Adams, Linda Belcher, Larry Clark, Leslie Combs, Tim Couch, Bill Farmer, David Floyd, Jeff Greer, Martha Jane King, Jimmie Lee, Donna Mayfield, Terry Mills, Tim Moore, Rick G. Nelson, Tom Riner, Rita Smart, John Tilley, and Alecia Webb-Edgington.

Guests: Justice Will T. Scott,

Kentucky Supreme Court; Gene Kiser, Executive Director, Kentucky Office of Homeland Security; Carlos Pugh, JECVO; and Steve Bullard, Department of Military Affairs.

LRC Staff: Erica Warren, Tiffany Opii, Kristopher Shera, and Rhonda Schierer.

Minutes

Senator Pendleton moved to adopt the June 14, 2012, meeting minutes. Representative Floyd seconded the motion. The minutes were adopted.

Executive Reorganization Order 2012-418

Gene Kiser, Executive Director, Kentucky Office of Homeland Security, explained Executive Reorganization Order 2012-418, pertaining to the Kentucky Intelligence Fusion Center. Senator Pendleton moved to adopt the order. Representative Pullin seconded the motion. The executive order was adopted.

Kentucky Access to Justice Veterans Task Force

Justice Will T. Scott, Kentucky Supreme Court, briefed the committee on the Kentucky Access to Justice Veterans Task Force. Justice Scott stated that a veterans subcommittee was formed with all the aspects of government including federal government members. The committee is a large group of members which include Co-Chair Pullin and Chair Westwood. Justice Scott stated that two of the main issues to be resolved with this committee are awareness of when a veteran interacts with the justice system and transportation issues that veterans face by which he meant connecting veterans to services available.

He stated that the committee is working towards ways to help direct police officers and pretrial officers to recognize veterans. The committee is working to get a veteran's arrest action automatically entered into a database and hopes to have the information in the main database within a year. A paper citation form has been produced that allows a police officer to mark that the person being arrested is a veteran. Justice Scott stated that the Kentucky Transportation Cabinet is working on getting veteran status on driver's licenses to allow the officer to see it immediately upon pulling over a veteran. Justice Scott stated that Judge Keller, Court of Appeals, has approved data to be placed on the clerks' computers. This process will allow the clerks to easily sort out veterans' cases and place them together to be handled in court.

Justice Scott spoke to the members about the importance of their support of the Little Soldiers and Sailors Relief Act. Finding ways to designate veterans on the criminal side of the justice system is progressing. Finding ways to identify veterans in civil cases is harder. If the General Assembly mandated veteran status on civil complaints and forms with this Act, veterans could be linked with appropriate services. For example, veterans can get and be eligible for a one-time program to

fix a car for transportation to a job, among other services. Not all veterans would qualify for some programs, depending on the specific circumstances. Justice Scott stated that there are four legal aid groups that will help veterans with financial difficulties. There is also a subcommittee that works with over 1,100 attorneys who are veterans and who provide pro bono work for qualifying veterans. Justice Scott stated that a lot of barriers have been broken already, and with some legislative changes, it would be a concept that would be of even greater assistance.

In response to a question from Representative Floyd, Justice Scott stated that there is sufficient support for legislation to be passed for the increase in funds.

In response to a question from Senator Stein, Justice Scott stated that there is some federal money to help with assistance provided for civil issues.

Chair Westwood urged members to contact Justice Scott with any questions or advice they might have to make things more effective for the system and the veterans.

Chair Westwood announced that the August meeting date has been changed to Tuesday, August 21, 2012, at 1:00 PM in Room 154 of the Annex.

There being no further business, the meeting adjourned.

**CAPITAL PLANNING
ADVISORY BOARD**
Minutes of the 2nd Meeting
of the 2012 Calendar
July 20, 2012

Call to Order and Roll Call

The 2nd meeting of the Capital Planning Advisory Board was held on Friday, July 20, 2012, at 10:00 AM, at the Shelby County Judicial Center. Representative Melvin B. Henley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Melvin B. Henley, Co-Chair; Senator Paul Hornback, Representative Ron Crimm, Charles Byers, Carole Henderson, Mark Overstreet, and Katie Shepherd.

Guests testifying before the Board: The Honorable Lowry S. Miller, Shelby County Circuit Court Clerk, and Carole Henderson, Budget Director, Administrative Office of the Courts.

LRC Staff: Shawn Bowen, Josh Nacey, and Jennifer Luttrell.

Welcome and Remarks

Senator Paul Hornback and Representative Brad Montell, legislative representatives for Shelby County, welcomed Board members and invited guests.

Representative Henley thanked the Shelby County Government officials and the Court of Justice staff for hosting the meeting. He then introduced the Honorable Lowry Miller to briefly discuss

the new judicial center. Mr. Miller said the new Shelby County Judicial Center, which opened in December 2011, has made the judicial process more efficient, safer, and organized. The project was authorized in the 2004-2006 State/Executive Budget (House Bill 267), at a project scope of \$18,441,000. The use allowance, which refers to the court's proportional share of the annual principal and interest costs in connection with the construction or renovation of the facility, was \$1,651,000. Completed at a cost of \$17.7 million, the 60,000-square-foot facility includes space for Circuit Court, District Court, the Office of Circuit Court Clerk and ancillary services. The judicial center also provides the highest level of Kentucky court security through a single-point entry with magnetometers and security personnel.

Presentation – Court Facility Construction Program

Representative Henley introduced Carole Henderson to briefly discuss the court facility construction program. Codified as KRS 26A.160, the court program was created by the 2000 General Assembly. Its main purpose is to oversee the design, financing and construction of court facility construction projects. The court projects are overseen by the Administrative Office of the Courts (AOC) and the financing and construction of the facilities falls to the local government.

The projects are authorized as part of the capital budget, however, they are considered local rather than state projects. Since 2000, the General Assembly has approved 55 court facility projects. Presently, nine court projects are in construction, and a total of \$712.3 million in bonds have been issued by cities to fund the projects. The total debt service for these projects is \$53 million. Court facilities were last authorized in the 2008-2010 budget for the counties of Allen, Bracken, Carlisle, Lawrence and Morgan. The Morgan County Judicial Center, under construction and almost 65 percent complete, was largely destroyed by a tornado on March 2, 2012. Leased space in the county has been outfitted as a temporary courthouse until the facility can be rebuilt.

Relative to questions from Representative Henley regarding the Morgan County Judicial Center, Ms. Henderson said approximately \$8 million remained in the project budget when the facility was destroyed by the tornado. AOC is working with the insurance companies to make certain enough money remains in the project budget to complete the facility. The estimate to raze the damaged building and reconstruct it is about \$11 million. A new project completion date has not been established.

In response to questions from Senator Westwood, Ms. Henderson said courthouse operations in Morgan County were only closed for three days due to the tornado. The Morgan County court is now temporarily operating in leased space in West Liberty owned by Morehead State

University.

AOC – Acquisition and Renovation of the Former Home Depot Building

Ms. Henderson updated the Board on the AOC Renovation and Lease/Purchase of the Vandalay Drive project in Frankfort. On January 30, 2012, AOC announced that it had entered into a lease-to-purchase agreement to acquire the vacant Home Depot building in Frankfort. The sales price is \$5.9 million and payments are structured as a series of quarterly installments of \$211,250 (\$845,000 annually) over a seven-year period. AOC plans to pay off the lease in less than seven years to reduce the purchase price.

The project will also entail renovations to the building, including conversion of 62,000 square feet of the building's 94,900 square feet into office space, with the remaining square footage to be used for warehouse space. The renovations will be paid with earmarked one-time savings from the facilities budget and criminal record report revenue. The project is currently in Phase A design, and will be bid for construction in September 2012.

In response to a question from Representative Henley, Ms. Henderson stated that once AOC staff meets with the architect, ShermanCarterBarnhart PSC, they will know the estimated construction/renovation cost.

In response to a question from Senator Westwood, Ms. Henderson said the *Renovation of Office Space - 1001 Vandalay Drive project* is authorized in the 2012-2014 budget (\$6 million restricted funds.)

Representative Henley thanked Ms. Henderson for her presentation and said the Board's next meeting is tentatively scheduled for September 21 on the Kentucky Community and Technical College System campus in Lexington.

With there being no further business, Representative Henley made a motion to adjourn the meeting. The motion was seconded by Senator Westwood and the meeting adjourned at 10:21 A.M.

**CAPITAL PROJECTS
AND BOND OVERSIGHT
COMMITTEE**

Minutes of the 7th Meeting
of the 2012 Interim
July 17, 2012

Call to Order and Roll Call

The 7th meeting of the Capital Projects and Bond Oversight Committee was held on Tuesday, July 17, 2012, at 1:00 PM, in Room 169 of the Capitol Annex. Representative Jim Glenn, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Jim Glenn, Co-Chair; Senators Tom Buford, Jared Carpenter, and Julian M. Carroll; Representatives Robert R. Damron, Steven Rudy, and Jim Wayne.

Guests: Senate President David

Williams; Cindy Wohl, Assistant Director for Contract Administration, University of Louisville; Mitchell Payne, Associate Vice President for Business Affairs, University of Louisville; Bob Wiseman, Vice President for Facilities, University of Kentucky; Scott Aubrey, Director, Division of Real Properties; Rodney Murphy, Executive Director, Cabinet for Health and Family Services (CHFS) Office of Administrative and Technology Services; Carrie Banahan, Executive Director, CHFS Office of Health Policy Planning and Development; John Hicks; Tom Howard, Office of Financial Management.

LRC Staff: Kristi Culpepper, Jennifer Luttrell, and Josh Nacey.

Approval of Minutes

Representative Rudy made a motion to approve the minutes of the June 19, 2012, meeting. The motion was seconded by Senator Carroll and approved by voice vote.

Information Items

Kristi Culpepper, Committee Staff Administrator, said there were three items for members to review. The information items included quarterly reports from the Administrative Office of the Courts, the Commonwealth Office of Technology, the Finance and Administration Cabinet, and universities that manage their own capital construction programs.

Reports submitted by the University of Louisville (UL)

Cindy Wohl, Assistant Director for Contract Administration and Mitchell Payne, Associate Vice President for Business Affairs at UL, presented two items. The first was the purchase of scientific research equipment, using \$252,000 in federal funds for a metal etch system. No action was required. The second item was a modification to the MedCenter One lease, which added 4,138 square feet to an already existing lease, at an added cost of \$77,173 per year. Because the lease modification was executed prior to the committee's approval, no action was taken.

Reports submitted by the University of Kentucky (UK)

Bob Wiseman, Vice President for Facilities Management at UK presented six items. The first item was the cash purchase of a nurse call system for Good Samaritan Hospital at a cost of \$291,332. The second item was the report of a ground lease to Phi Mu Fraternity, which will construct a 17,000 square foot chapter house on the property. The organization will be responsible for all maintenance and operational funding. The third item was a report of consolidation of two authorized projects. UK will consolidate two capital projects for accounting purposes: Acquire Campus Security System; and Repair, Upgrade and Improve Electrical Systems. No action was required on the first three items.

The fourth item was a lease for the Nursing Staff Development Department. The university will lease 5,824 square feet at Alumni Park Plaza at an annual

cost of \$131,040, which includes utilities and common area maintenance. The fifth item was a lease for the UK Healthcare Information Technology Services Department. The university will lease 24,328 square feet at an annual cost of \$545,000, which includes utilities and common area maintenance. Both leases were approved by the university's Board of Trustees. Representative Wayne made a motion to approve both leases. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

The sixth item was a report of a new project, Renovate/Expand Gatton Building. Mr. Wiseman said that UK was seeking approval for only the design phase at this time. The project is expected to cost \$65 million and UK intends to fund it privately, although the total amount has not yet been raised. In response to a question from Representative Wayne, Mr. Wiseman said that the funds have been raised for the design portion of the project and that he would certify that with a letter to the committee staff. Senator Carroll made a motion to approve the design phase of the project. Representative Wayne seconded the motion and it passed unanimously by roll call vote.

Lease reports submitted by the Finance and Administration Cabinet

Scott Aubrey, Director, Division of Real Properties, presented seven lease reports. The first was a notice of advertisement for leased space for the Department of Workforce Investment in Daviess County. The lease, for approximately 15,150 square feet, is anticipated to exceed \$200,000 annually. No action was required.

The second item was a report of state leases with square foot modifications for the period of January through March, 2012. Though the rate per square foot will not change, the additional square footage for Probation and Parole in Garrard County, the Department of Corrections in Taylor County, the Department of Travel in Franklin County and Financial Institutions in Jefferson County will cost an additional \$17,618 annually. No action was required.

The third item was a lease renewal for the Department of Revenue in Boone County. The lease was renewed with the same terms and conditions at a rate of \$15.55 per square foot and an annual cost of \$110,110. Because the renewal had been executed prior to the committee meeting, no action was taken.

The fourth item was a lease renewal for the Commonwealth Office of Technology in Franklin County. The lease was renewed with the same terms and conditions at a rate of \$8.80 per square foot and an annual cost of \$384,111. Because the renewal had been executed prior to the committee meeting, no action was taken.

The fifth item was a lease renewal for the Energy and Environment Cabinet in Franklin County. The lease was renewed with the same terms and conditions at a

rate of \$9.08 per square foot and an annual cost of \$1,314,194. Because the renewal was executed prior to the committee meeting, no action was taken.

The sixth item was a new lease for the Cabinet for Health and Family Services in Carter County. The lease is for 11,483 square feet at \$11.89 per square foot and an annual cost of \$136,533. This lease was procured through a competitive bid process. Representative Wayne made a motion to approve the lease. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

The seventh item was a new lease for the Cabinet for Health and Family Services (CHFS) in Franklin County for the purpose of housing the Kentucky Health Benefits Exchange to satisfy the provisions of the Affordable Care Act over 24 months. The lease, for 29,454 square feet, will cost \$10.00 per square foot at an annual cost of \$294,540. In response to a question from Representative Wayne, Rodney Murphy, Executive Director of the CHFS Office of Administrative and Technology Services and Carrie Banahan, Executive Director of the CHFS Office of Health Policy Planning and Development said that this lease will be paid for with approximately 95 percent federal funds.

In response to a question from Senator Leeper, Ms. Banahan said that the governor recently filed an executive order creating the Health Benefits Exchange. Ms. Banahan said she would provide committee members with a copy of the executive order. In response to questions from Senator Leeper, Ms. Banahan said that the Health Exchange will go into effect on January 1, 2014, and open enrollment will begin in October 2013. Ms. Banahan explained that the Cabinet has begun the process of selecting a benchmark plan, which will identify the benefits and services to be included in the plans, and they are required to submit that plan to the federal government by September 30 of this year. In response to another question from Senator Leeper regarding abortion and contraception coverage, Ms. Banahan said that the cabinet has not made any decisions about what will be included in the qualified health plans.

In response to a question from Representative Glenn, Ms. Banahan said that the public will be notified as to what the plan will include and that input would be solicited from the public as well.

In response to a question from Senator Leeper, Mr. Aubrey said that the lease was for temporary space and will run through 2015, when the program shuts down. Mr. Murphy explained that the cabinet has a small area leased already and employs approximately 20 employees. Once the project is fully in place, there will be 210 employees, which will include 110 employees from the vendor. The cabinet expects to have that vendor in place within the next 90 days. Mr. Aubrey said that this lease has a 30-day cancellation clause.

In response to a question from

Senator Carpenter, Mr. Aubrey said that the hiring will begin and employees will be in place in September of this year, so the lease process was initiated in order to find a location to house those employees by the deadline. Mr. Aubrey said that the judicial branch currently has minimal staff in the space to be leased, but they will be moved to another office space leased by the judicial branch. In response to another question from Senator Carpenter, Mr. Murphy explained that the employees of the vendor will include engineers, architects, developers, testers, and trainers. The rest will be state-contracted specialists to do quality assurance and other project oversight. Approximately 25-30 state employees will be built into that team to help develop and refine policy and then take over the ongoing operations of the exchange once it is in place. In response to another question from Senator Carpenter, Mr. Murphy said he did not know how many employees being hired would be included in the state pension system, but that he would get back to Senator Carpenter with that information.

In response to a question from Senator Buford, Ms. Banahan said that Kentucky does not plan to join in with other states to form a partnership, and that Kentucky would establish its own exchange. Mr. Murphy said that the other option would be to use a plan designed by the federal government. Ms. Banahan said that federal funds were available through 2014 for all exchange operations. On January 1, 2015, the state is responsible for sustaining the exchange. Kentucky plans to refrain from using general fund dollars. Instead, restricted funds will be used, possibly coming from an assessment on insurers. Ms. Banahan said she would provide more information for Senator Buford on the restricted funds that CHFS plans to use. In response to another question from Senator Buford, Mr. Murphy said that Accenture was hired as a consultant to draft the request for proposal (RFP) in regard to the health care exchange, but was forbidden to bid on the RFP itself.

In response to a question from President Williams, Ms. Banahan said the annual cost of the program is not known and the budget process is ongoing at this time. Mr. Murphy and Ms. Banahan said they did not know under what authority the governor intends to create the health care exchange, or what federal funds they expect to receive after January 1, 2015. Mr. Murphy said that a \$5 million appropriation in the most recent budget created a special project for the state's portion of the 90-10 federal match. John Hicks, Deputy State Budget Director, said that the Commonwealth had received an exchange development grant of \$57 million in February, and that two things will occur regarding appropriations. First, the executive branch would return to present a capital technology information project. Second, an operating budget interim appropriations increase from federal funds will be the FY 2013 operating budget for

elements of exchange activities that do not involve systems development. Mr. Hicks said that no general fund or agency fund dollars would be spent.

Rep. Wayne made a motion to approve the lease. The motion was seconded by Senator Carroll. The motion failed, with three members voting yes and four members voting no.

Project reports submitted by the Finance and Administration Cabinet

John Hicks, Deputy State Budget Director, presented five items to the committee. The first item was a scope increase for a project authorized in the 2012-2014 budget. The Energy and Environment Cabinet will spend \$29,000 in restricted funds in addition to the original \$305,000 budget line item for a paper shredder at a recycling facility. The additional funds will pay for work associated with the installation of the equipment, an increase in shipping cost, and electrical upgrades. Representative Wayne made a motion to approve the scope increase. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

The second item was a \$412,000 scope increase for the Renovate West Mignon Residence Hall project authorized in the 2012-2014 budget. The scope increase, to be used for the project's contingency allowance and window replacement, will be funded by bond proceeds from the university's Housing and Dining Revenue fund. Representative Wayne made a motion to approve the scope increase. The motion was seconded by Senator Leeper and passed unanimously by roll call vote.

The third item was a new unbudgeted capital project for the Transportation Cabinet. The Lake Barkley State Resort Park Airport Runway Repair project was originally authorized in the 2012-2014 budget, but due to changes in the match rate from the Federal Aviation Administration, a new unbudgeted project was created. The \$1,000,000 project will be funded with 90 percent federal funds and 10 percent restricted funds. Representative Wayne made a motion to approve the project. The motion was seconded by Senator Leeper and passed unanimously by roll call vote.

The fourth item was new unbudgeted capital project for the Transportation Cabinet. The \$2,933,000 Capital City Airport Runway Safety Area Improvement and Taxiway Construction project will shorten the runway at Capital City Airport and create a buffer zone. The project will be funded with 90 percent federal funds and 10 percent restricted funds. Representative Wayne made a motion to approve the project. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

The fifth item was a report of a pool project for the Department of Corrections (DOC). The \$869,000 Eastern Kentucky Correctional complex -- Security Control System for Dorms project will be funded by the DOC's 2010-2012 bond-funded maintenance pool and will replace the existing system, which is nearing the end

of its useful life. No action was required.

Kentucky Infrastructure Authority (KIA) grants

Ms. Culpepper said that KIA reported five grants to the committee that were reauthorized and reallocated by the 2012 General Assembly. No action was required.

Bond Activity Reports from Office of Financial Management

Tom Howard, Executive Director, Office of Financial Management, presented seven follow-up reports for previously issued bonds. The issues included: Asset/Liability Commission Direct Loan [Project Notes] (\$65,000,000); Western Kentucky University General Receipts Bonds, 2012 Series A (\$35,860,000); Western Kentucky University General Receipts Refunding Bonds, 2012 Series B (\$6,450,000); University of Louisville General Receipts Refunding bonds, 2012 Series A (\$14,560,000); University of Kentucky General Receipts Refunding Bonds, 2012 Series A (\$25,370,000); Morehead State University General Receipts Bonds, 2012 Series A (\$5,060,000); and Kentucky Housing Corporation Revenue Receipts Bonds, 2012 Series A (\$187,755,000). These bond issues were approved at a previous committee meeting, and no further action was required.

New School Bond Issues with School Facilities Construction Commission Debt Service Participation

Mr. Howard said there were seven new school bond issues with SFCC participation. The total estimated par amount of these bonds is \$31.8 million. One project, for Hazard Independent, is supported by a recallable nickel. The remaining six projects do not involve a tax increase. Senator Leeper made a motion to approve the school bond issues. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

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

Ms. Culpepper said there was one local school bond issue, for Boyle County, reported to the committee this month. The bond issue is 100 percent locally funded and did not involve a tax increase. No committee action was required.

With there being no further business, the meeting adjourned at 2:15 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July Meeting
July 10, 2012

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 10, 2012, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Johnny Bell, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-

Chair; Representative Johnny Bell, Co-Chair; Senators David Givens, and Alice Forgy Kerr; Representatives Robert R. Damron, Danny Ford, and Jimmie Lee.

Guests: Melissa Justice, Kentucky Higher Education Assistance Authority; Colonel Steve Ballard, Kentucky National Guard; Brian Bishop, Board of Dentistry; Jonathan Buckley, David Cox, State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Paula Schenk, Morgan Ransdell, Board of Nursing; Dave Hise, Mark Mangeot, Karen Waldrop, Department of Fish and Wildlife; Amber Arnett, Amy Barker, Department of Corrections; Bob Elkins, James R. Gridor, Jr, Kristi Redmen, Labor Cabinet; Virginia V. Davis, Tony Dehner, Department of Alcoholic Beverage Control; Michael T. Davis, Marc A. Guilfoil, Mary Scollay, John Ward, Kentucky Horse Racing Commission; Rick Hiles, Ky HBPA; Andy Roberts, KHHA/KAEP; Dawn Bellis, Jack Coleman, David J. Moore, Ambrose Wilson, Department of Housing, Buildings and Construction; Allison Lile, Office of Health Policy; Rick Hiles, Ky HBPA; FD Marcum, and KAEP Andy Roberts, KHHA/KAEP.

The Administrative Regulation Review Subcommittee met on Tuesday, July 10, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Melissa Justice, senior associate counsel, represented the division.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Department of Military Affairs: Division of Administrative Services: Military Assistance Trust Funds

106 KAR 2:030. National Guard adoption benefit program. Colonel Steve Bullard, director of administrative services, represented the division.

In response to a question by Co-Chair Bowen, Colonel Bullard stated that Kentucky's First Lady developed this program, which was adapted for the National Guard to correspond to the state employee benefit. Funding for the program was allocated from the military assistance trust fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to correct statutory citations. Without objection, and with agreement of the agency, the

amendments were approved.

Board of Dentistry: Board
201 KAR 8:562. Licensure of dental hygienists. Brian Bishop, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:220. Administrative hearings. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

Board of Nursing: Board
201 KAR 20:450. Alternative program. Nathan Goldman, general counsel; Morgan Ransdell, board prosecutor; and Paula Schenk, manager of consumer protection, represented the board.

In response to a question by Representative Ford, Ms. Schenk stated that if a nurse voluntarily reported a substance abuse problem and completed the program successfully, there would not be officially documented disciplinary action by the board. Failure to adhere to the program may result in license revocation.

A motion was made and seconded to approve the following amendments: to amend Section 3 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:510. Voluntary relinquishment of a license or credential.

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

301 KAR 2:041. Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season. David Hise, attorney; Mark Mangeot, legislative liaison; and Karen Waldrop, wildlife director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 6, 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.

301 KAR 2:300. Black bears.

In response to a question by Co-Chair Bowen, Dr. Waldrop stated that the current bear population could withstand the proposed hunting season.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

A motion was made and seconded to approve the following amendment: to amend Section 2(4) to change "Shooting Preserve Permit" to "Shooting Area Permit." Without objection, and with

agreement of the agency, the amendment was approved.

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

501 KAR 6:050. Luther Luckett Correctional Complex. Amber Arnett, staff attorney, and Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to conform to other departmental policies, clarify provisions, and correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:260. Procedures for recommendation of early termination of probation and review of compliance of supervised individuals.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to clarify provisions; (2) to amend Sections 2 and 5 to correct citations; and (3) to amend Sections 1, 2, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:280. Risk and needs assessment.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; and (2) to amend Section 1 and the material incorporated by reference to clarify provisions, correct minor drafting errors, and renumber the policies. 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. Bob Elkins, safety standards specialist; James R. Grider, Jr., assistant general counsel; and Kristi Redmon, health standards specialist, represented the division.

In response to questions by Co-Chair Bell, Ms. Redmon stated that these administrative regulations provided consistency in chemical labeling. This consistency should facilitate compliance, and the implementation cost was expected to be offset by the savings vis a vis fewer employee accidents and deaths. The changes affected agricultural operations that fell within the same scope of practice as the industrial facilities involved.

In response to a question by Senator Kerr, Ms. Redmon stated that an industry that used chemicals would be affected by these administrative regulations. New labeling and new data sheets were required.

The primary expense was expected to be the cost for training regarding the new labeling. These administrative regulations contained requirements that Kentucky was mandated by the federal government to adopt. These requirements were not more stringent than the federal requirements.

Staff stated that the division had filed a FISCAL NOTE ON STATE OR LOCAL GOVERNMENT as part of the amendment process. These were federal requirements that Kentucky was mandated to adopt.

In response to a question by Representative Ford, Ms. Redmon stated that a farmer who repackaged chemicals for agricultural use would not be impacted by these amendments because requirements for repackaging for personal use were not being revised.

In response to a question by Co-Chair Bowen, Ms. Redmon stated that these administrative regulations were similar to administrative regulations mandated by the U.S. EPA to be adopted by Kentucky's Department for Environmental Protection. Kentucky had a deadline of six (6) months to adopt these administrative regulations.

803 KAR 2:307. Hazardous materials.

803 KAR 2:309. General environmental controls.

803 KAR 2:313. Materials handling and storage.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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.

803 KAR 2:316. Welding, cutting, and brazing.

803 KAR 2:317. Special industries.

803 KAR 2:319. Commercial diving operations.

803 KAR 2:320. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:403. Occupational health and environmental controls.

803 KAR 2:405. Fire protection and prevention.

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 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.

803 KAR 2:407. Adoption of 29 C.F.R. Part 1926.250-252.

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 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.

803 KAR 2:425. Toxic and hazardous substances.

A motion was made and seconded to approve the following amendment: to amend Section 2 for clarification. Without objection, and with agreement of the agency, the amendment was approved.

803 KAR 2:500. Maritime employment.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:370. Entertainment destination center license. Virginia V. Davis, legislative liaison, and Tony Dehner, commissioner, represented the department.

In response to a question by Senator Kerr, Mr. Dehner stated that entertainment districts similar to 4th Street Live were not precluded for the city of Lexington; however, Victorian Square had opted out of participation.

In response to questions by Senator Givens, Mr. Dehner stated that Newport on the Levee was the primary initiator of this administrative regulation. Subcommittee staff stated that subdivisions within the definition of "entertainment destination" were in accordance with the drafting requirements of KRS Chapter 13A.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures; prohibited practices. Marc A. Guilfoil, deputy executive director; Dr. Mary Scollay, equine medical director; and John Ward, executive director, represented the commission. Rick Hiles, president, Kentucky Horsemen's Benevolent and Protective Association, and member of the Equine Drug Research Council, and Dr. Andy Roberts, veterinarian and member of the Equine Drug Research Council, appeared in opposition to these administrative regulations.

Mr. Hiles stated that the Equine Drug Research Council was opposed to provisions regarding adjunct bleeder medication, which was proven effective and used in human surgical procedures. The Equine Drug Research Council voted unanimously to accept these provisions regarding adjunct bleeder medication only after being promised by the Kentucky Horse Racing Commission that the KHRC would not seek to ban the medication lasix. Because the KHRC had voted to ban lasix by future administrative regulation, the Equine Drug Research Council was now voicing its original opposition to the provisions regarding adjunct bleeder medication. Additionally, the change from a maximum allowable limit of five (5) to

two (2) micrograms of phenylbutazone for thoroughbreds was overburdensome. Kentucky was the only state proposing these measures, and there were different requirements for different breeds of horses, which was confusing. The horse industry in Kentucky was already in jeopardy, and these administrative regulations may cause further harm.

Dr. Roberts stated that the Equine Drug Research Council agreed to compromise by voting unanimously for approval of these administrative regulations, but the KHRC turned out to be acting in bad faith because it did not keep its promise to protect the current provisions for the use of lasix. The Equine Drug Research Council was required by statute to report to the General Assembly, and this testimony constituted that report.

In response to questions by Senator Givens, Mr. Hiles stated that he had not intended to testify on these administrative regulations until the KHRC voted to promulgate an administrative regulation to ban the use of lasix. Lasix was needed for therapeutic use on equine. Dr. Roberts stated that the Jockeys' Guild wanted to ban lasix to bolster public perception of racing integrity and to make Kentucky's administrative regulations commensurate with international standards. For these reasons, the Jockeys' Guild lobbied the KHRC to approve a ban on lasix. Mr. Hiles stated that the racing industry in the United States wanted Kentucky to ban lasix as a pilot project to test the impact that other states may expect. Banning lasix would affect approximately ninety-five (95) percent of racing horses. Dr. Roberts stated that the Equine Drug Research Council was established by statute in 1985, and the KHRC had never before overridden a decision of the Equine Drug Research Council. New York had attempted banning lasix, and it resulted in the destruction of the local racing industry.

In response to questions by Co-Chair Bowen, Dr. Roberts stated that the therapeutic benefit of lasix was as a diuretic, one of the safest types of drugs. It removed excess water and prevented bleeding from broken capillaries. In horses that were not racing, lasix was primarily used for heart problems. Mr. Hiles stated that this was the first major dispute between the KHRC and the Equine Drug Research Council.

In response to a question by Senator Kerr, Mr. Hiles described the makeup of the Equine Drug Research Council, whose members were appointed by the governor. The Equine Drug Research Council voted unanimously to accept these administrative regulations only because the KHRC promised to protect the use of lasix if administered by the state veterinarian. Because the KHRC voted to promulgate an administrative regulation to ban the use of lasix, the Equine Drug Research Council was no longer in support of these administrative regulations.

Subcommittee staff stated that the administrative regulations for consideration at this Subcommittee meeting addressed phenylbutazone and who administered lasix, but did not place a ban on the use of lasix.

In response to questions by Representative Damron, Dr. Roberts stated

that a ban on lasix had been voted on by the KHRC but the administrative regulation to that effect had not yet been filed. Mr. Hiles stated that the first part of the KHRC's plan was to ban the use of lasix for graded stakes races. Lasix was used in European horse racing, but not on the actual day of racing. Dr. Roberts stated that the effects of lasix lasted about eight (8) hours and did not have an adverse effect on horses. Lasix did not cause severe dehydration if used properly. Mr. Hiles stated that delaying these administrative regulations would not have an adverse impact on this season's Keeneland races.

Representative Damron stated that Mr. Hiles and Dr. Roberts had sufficiently informed this Subcommittee of the concerns regarding a ban on lasix; however, that administrative regulation had not yet been filed, and the remainder of the discussion needed to refocus on the administrative regulations currently on the agenda for consideration.

In response to a question by Co-Chair Bowen, Dr. Roberts stated that Kentucky had been a leader in positive reformation of the horse racing industry. The KHRC had played an important part in that leadership; however, the KHRC had recently experienced membership changes.

In response to a question by Representative Lee, Dr. Scollay stated that there were different drug standards for different breeds of horses because different types of races had different times for the prerace examinations. The concern was that if horses that were examined early, as thoroughbreds were, were still under effects of a drug, the drug may mask or obscure possible dangers to a jockey. Upon early examination, many horses were over the limit for phenylbutazone. Standardbred horses, on the other hand, were not examined until the warm-up period about one (1) hour prior to racing; therefore, the effects of the drugs would have had sufficient time to have worn off before the examination. Drug testing prohibited administering medicine too close to race time. There was usually a fine for a first offense of improper drug administration. A second offense may be grounds for disqualification. Mr. Hiles stated that the effects of phenylbutazone lasted approximately eight (8) hours. The threshold limit was two (2) micrograms for thoroughbreds and five (5) micrograms for harness racehorses and standardbreds. Dr. Scollay stated that these administrative regulations required injection, rather than oral administration, of phenylbutazone in thoroughbreds.

Representative Lee stated that consideration of a ban on lasix should take place once that administrative regulation was promulgated.

Representative Damron stated that he took exception to Dr. Roberts' statement that the KHRC had played an important part in leadership; however, the KHRC had recently experienced membership changes. Representative Damron stated that Mr. Ward was an excellent choice to be the executive director, was quite competent, and that he had great respect for Mr. Ward's expertise, professionalism, and integrity. Mr. Hiles stated that the

comment was not intended toward Mr. Ward. Dr. Roberts stated that his issues were with the commissioners, not with staff of the KHRC.

Mr. Guilfoil stated that the process of amending these administrative regulations began in August 2011. The KHRC held three (3) town hall meetings, and the issues were extensively vetted. Mr. Guilfoil was not aware of a promise not to ban lasix in return for acceptance of these administrative regulations by the Equine Drug Research Council. The KHRC supported intravenous administration by a veterinarian to protect the integrity of racing. Dr. Scollay stated that the effects on horses from the withdrawal of adjunct bleeder medication had not been sufficiently studied, especially if the purpose was to prevent bleeding. Kentucky was in the minority of states that still allowed adjunct bleeder medication. Mr. Ward stated that adjunct bleeder medication requirements were for the purpose of protecting the integrity of horse racing in Kentucky in order to build a future for this sport and to meet international standards.

In response to a question by Senator Givens, Dr. Scollay stated that she had reported to the public that banning lasix was not a matter being considered by the KHRC, which was accurate at the time. Later, the KHRC determined that lasix should be banned.

Co-Chair Bell stated that Mr. Ward was a person of character and honesty. He did not approve of overzealous regulations pertaining to what citizens do with their animals on their own property. It was not the government's role to require certain veterinarians for the administration of specific medications. Prohibiting administering phenylbutazone through feed seemed unwise. Kentucky's walking horse industry was destroyed by overcorrection after problems, and Co-Chair Bell did not want the same to happen to the racing industry.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 7, 8, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:028. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, and 8 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Sections 2, 4, 5, 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.

810 KAR 1:040. Drug, medication, and substance classification schedule and

withdrawal guidelines.

Harness Racing
811 KAR 1:090. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 2, 7, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 1:095. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, 8, and 9 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Section 11 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:093. Drug, medication, and substance classification schedule and withdrawal guidelines.

811 KAR 2:096. Medication; testing procedures; prohibited practices.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify provisions and to specify that the cost for administering lasix shall be twenty (20) dollars or less if the actual cost is lower; and (2) to amend Sections 1, 7, 8, 20, and 23 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:100. Disciplinary measures and penalties.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 6, 7, and 8 to clarify provisions; (2) to amend the STATUTORY AUTHORITY and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update citations; and (3) to amend Sections 2, 4, 5, 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.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:100. Joints and connections. Dawn M. Bellis, general counsel, and David J. Moore, division director, represented the division.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health

Policy: Data Reporting and Public Use Data Sets

900 KAR 7:030. Data reporting by health care providers. Allison Lile, healthcare data administrator, represented the office.

The following administrative regulations were deferred to the August 14, 2012, meeting of the Subcommittee:
FINANCE AND

ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Sales and Use Tax; Administration and Accounting

103 KAR 31:170 & E. Disaster area relief sales and use tax refunds.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Board of Emergency Medical Services: Board

202 KAR 7:601. Training, education, and continuing education.

TOURISM, ARTS AND HERITAGE CABINET: Department of Parks: Parks and Campgrounds

304 KAR 1:040. Campgrounds.

304 KAR 1:080. Kentucky Proud™ Promotion Program.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 10:011E. Repeal of 405 KAR 10:010 and 405 KAR 10:020.

The Subcommittee adjourned at 3:30 p.m. until August 14, 2012.

2012 SS HB 1 IMPLEMENTATION AND OVERSIGHT COMMITTEE Minutes of the 1st Meeting of the 2012 Interim July 23, 2012

Call to Order and Roll Call
The 1st meeting of the 2012 SS HB 1 Implementation and Oversight Committee was held on Monday, July 23, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, and the secretary called the roll.

Present were:
Members: Senator Robert Stivers II, Co-Chair; Representative John Tilley, Co-Chair; Senator Jimmy Higdon; Representatives Linda Belcher and Sara Beth Gregory.

Guests: M. E. Kobes, Bluegrass Prevention Center; Paula Schenk, Nathan Goldman, General Counsel, and Morgan Ransdell, Kentucky Board of Nursing; Dr. Steven Stack, MD, St. Joseph East Emergency Room Medical Director; Lloyd Vest, General Counsel, Kentucky Board of Medical Licensure; Jan Gould, Kentucky Retail Federation; Sheila Schuster, Kentucky Mental Health Coalition; Stephanie Brammer-Barnes, Office of Inspector General, Cabinet for Health and Family Services; Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners; James Grawe, Assistant Attorney General representing Kentucky Board of Podiatry;

Sara S. Nicholson, Nancy Galvagni, and Brian Brezosky, Kentucky Hospital Association; Mike Burleson, Executive Director, Kentucky Board of Pharmacy; Representative Dennis Horlander, and others.

LRC Staff: Jon Grate, Ben Payne, and Marlene Rutherford.

Chair Tilley recognized Representative Dennis Horlander in attendance. He also indicated that due to time constraints and the length of the agenda that the committee may not be able to hear comments from the audience at this first meeting. The committee is simply an implementation and oversight committee for House Bill 1 passed in the 2012 Special Session; that the Executive Branch and licensure boards have now filed emergency regulations for the implementation of the legislation which will be discussed today. The committee will continue to hear feedback and concerns on those regulations as to how the regulatory process is working or not working. The administration and licensure boards have been meeting around the clock with a number of groups or stakeholders over the past several weeks and that the committee is completely aware of all concerns but that this initial meeting will not be forum to hear those concerns at this time.

Senator Stivers emphasized comments made by Chair Tilley that the committee is very aware of the concerns of the issue being discussed and that the committee encourages everyone to continue to be engaged in discussions and provide comments and encouraged the thoughts and opinions of the respective groups that are affected.

Chair Tilley also noted that the Oversight Committee was not ratified to meet formally in June by the Legislative Research Commission at its June meeting however Senator Stivers and he did meet with several staff members and privately with representatives of the KASPER system relating to implementation but wanted the Cabinet for Health and Family Services to have an opportunity to publicly explain KASPER and to answer questions and clear up any misconceptions about KASPER.

Kentucky's KASPER System – Its Structure, Functions, Operation, and Enhancements

Mary Begley, Inspector General, David Hopkins, Program Manager for the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system, and Stephanie Brammer-Barnes, Policy Analyst, Office of Inspector General, Cabinet for Health and Family Services (CHFS) discussed the KASPER system.

Ms. Begley shared statistics as to how KASPER, Kentucky's Prescription Monitoring Program (PMP), has progressed over the last couple of months. During calendar year 2011, the Cabinet for Health and Family Services processed 879 master accounts for KASPER. As of April 24, 2012, the cabinet had 7,911 master accounts and that for every master

account there is an average of two delegate accounts. Between April 24, 2012, and July 20, 2012, the cabinet registered 9,137 master accounts for a total of 17,048 master accounts. The 17,048 master accounts do not include the delegate accounts for each master account and that the cabinet has had a very productive 61 work days since April 24.

Ms. Begley provided a brief overview of KASPER which tracks Schedule II through V controlled-substance prescriptions throughout the state. The program was enhanced a few years ago so that it is a real-time, web-access database and that eKASPER is accessible 24/7 to help in controlling the misuse, abuse, and diversion of controlled substances. KASPER was initially designed to provide information to prescribers and for investigations by law enforcement. KASPER was not designed to prevent individuals from obtaining the necessary drugs or to prevent practitioners and prescribers from prescribing drugs that are best for patient care.

The number of reports requested of KASPER has grown significantly from 122,000 in 2004 to 811,000 in 2011 and that KASPER is on target to triple or quadruple reporting in the next year. As of May 24, 2012, KASPER was running about 4,000 requests for reports and on July 18, 2012, 11,000 reports were generated or nearly three times the number of reports for the previous three months.

Mr. Hopkins provided information for the year 2011 on the top ten prescribed controlled substances tracked in KASPER that are reported by the dispensers. The number one prescribed controlled substance in Kentucky, which is similar to other states, is Hydrocodone (Lortab, Lorcet, Vicodin) or about 43 percent of the total top ten controlled substances which converts in dosage numbers to over 219 million doses. He said that of interest was until the end of 2011, the second highest dispensed drug in Kentucky was Alprazolam (Xanax) at about 13 percent of the total top ten controlled substances or about 68 million doses dispensed but that in 2011 Oxycodone (OxyContin, Percodan, or Percocet) passed Alprazolam at 15.5 percent of the total top ten prescribed controlled substances or 79 million doses dispensed.

Ms. Begley noted one of the enhancements that have been made to eKASPER in the past couple of months and that continues to be worked on is the online, paperless account registration process. Prior to June 20, 2012, all registrations were completed in a paper format; that in order to accomplish this paperless registration process, the cabinet worked with the Boards of Medical Licensure, Nursing, Optometry, Podiatry, and Pharmacy. All the information was uploaded into the KASPER system allowing prescribers and pharmacists to validate their own identity online.

There were some problems because of inaccurate or different e-mail addresses prescribers had provided to the boards which were different than what had been provided KASPER; there were issues inputting correct numbers and addresses but that these issues were able to be resolved and proper registration made in a timely manner; that the cabinet will be putting into place data quality analysis and improvement and a behavior surveillance system; and that a priority for the cabinet at this time is to work with hospitals and hospital systems who have shown an interest in wanting to have institutional accounts. Since April, the cabinet has been creating, testing, uploading, and managing the KASPER system all at the same time and has not had the opportunity to test some of the systems but rather the testing has been real time. Releasing some upgrades to the system this past weekend caused the KASPER system to go down on Sunday and on Friday when there was over 1,000 individuals simultaneously trying to register, in addition to over 50 cabinet employees in the system at the time, causing it to go down for a period of about four hours.

Ms. Begley said that manual queues have been a big topic of discussion. On April 24, about ten percent of the requests for reports that went into a manual queue which means that the system could not match the information for the individual the report was being requested. This was due to the fact that some reports requested are greater than three pages in length, a page is about 60 lines each or 60 entries, and for safety if a requested report is greater than 180 lines or three pages it goes into the manual queue so that office personnel can review the request. Occasionally a prescriber may enter wrong information when data is being requested, or a pharmacy may inadvertently enter wrong social security information, or the name of the patient is entered differently in a current request than was entered previously. Since April 24, the manual queue requests have decreased to seven percent, however the volume has increased because of report requests.

Ms. Begley said that other eKASPER activities that have occurred over the last year is training and to the creation of an Advisory Council at the Governor's request. The Council has conducted a proactive review of information such as identifying the highest prescribers, and it determined that there was further need for investigation that information forwarded to the appropriate boards for their review. Another interesting function is the ability to have interstate data sharing because KASPER is recognized as one of the nation's leading programs. Cabinet employees are routinely asked to participate in conferences around the country, and Kentucky has made the decision to not only share information via one mechanism such as the Rx Check Hub, but information is being shared with the Prescription Monitoring Program of

the National Association of Boards of Pharmacy PMP Interconnect (PMPI), which allows Kentucky to share with states that have any kind of electronic prescription monitoring program.

Mr. Hopkins briefly explained the PMPI program and noted that the border states of Indiana, Ohio, and Virginia are currently sharing data. Illinois, Kentucky, and West Virginia have committed to use the PMPI program, and Kentucky should be sharing information with those states in the near future. The cabinet's target date for this sharing of data is September 30 to have the interface complete between KASPER and the PMPI. As soon as that interface is complete, Kentucky will be working with those states to go live with the system. West Virginia is close to the same timeline as Kentucky. He hopes hope that Kentucky will be sharing data with all these border states by the end of 2012. Kentucky is currently sharing data with Alabama's Rx Check Hub system, a federally sponsored program. Kentucky is the only state that has indicated that it will be able to share with states using either system. Ultimately, the PMPI will hook with the Rx Check Hub and Kentucky's interface will be through the PMPI system and will be able to share with any state no matter what service provider other states choose to use. At this time, there is no cost for either the PMPI or Rx Check Hub systems to Kentucky.

In response to a question from Representative Belcher concerning institutional accounts, Ms. Begley explained that every prescriber or delegate assigned to that account who wants to query or receive a report from KASPER signs on to the system, and that in working with the hospitals and hospital facilities, the cabinet would like to provide a special connection to the hospital or their facilities to sign on to KASPER under that hospital or facility's name and the facility be able to track users should there be issues.

Senator Higdon indicated that he had received calls and comments on the events that occurred on Friday and over the weekend and asked if there were any further foreseen problems that could occur with the KASPER system going forward. Ms. Begley indicated that the cabinet is very confident that KASPER can manage all the queries and records. She could not say with certainty that problems would not occur in the future because of technology, electricity, and requests made, having to work with the state's Office of Technology, and the cabinet's technology personnel. The major obstacle is getting individuals registered. There were numerous e-mails and phone calls on Friday, the first day of registration, and it is believed that the code written for the registration process was stressed beyond its ability for that number of registrations, which caused the events that occurred.

In response to another question by Senator Higdon relating to the percentage of those who should be registered with KASPER, Ms. Begley stated she did not

have an exact number but that the cabinet was very near the point that all have been registered. She said there is some further work to be done with the boards relating to in-state and out-of-state prescribers and that other than last minute registration that the boards and practitioners have been very compliant.

In response to a question posed by Representative Gregory with regard to reports placed in the manual queue, Ms. Begley said that because reports are placed in the manual queue and a required review by a staff person that it does delay access of the report to the practitioner depending on the time of day and day of the week that the request is made. The cabinet had increased staff on the weekends to manage the load. The cabinet tracks the number of requests, and the number of requests for KASPER has dropped significantly on the weekend, but the cabinet will continue to monitor those requests. During the evening hours the numbers drop significantly, and during the day the requests stay real time. It takes a couple of hours each morning to catch up on those manual requests. The cabinet has added another individual to help with the manual queue. There are other ideas to implement that may decrease the number of reports being placed in the manual queue. Ms. Begley explained that if a query is made and it is placed in the manual queue after normal operating hours, the report will not be available until early the next morning. A physician should treat a patient based on his or her medical judgment and professional knowledge when a KASPER report has been placed in a manual queue, with a notation being made in the medical record that the KASPER report was delayed or unavailable.

Chair Tilley indicated there is a possible misconception or there has been a lot of discussion over the length of time a normal KASPER request should take if all the proper information has been input. Ms. Begley said that as a general rule those requests are returned almost immediately, fifteen seconds at the longest. The program is still getting a backlog of individuals who did not get registered by the end of the week. The system is running a little sluggish and the reports are taking 30 to 40 minutes. She said the input of information is simply a matter of inputting the correct name, address, social security number, and date of birth.

In response to a question by Chair Tilley as to the most common mistake that would place a request in the manual queue, Ms. Begley said the sensitivity of entering a social security number into the system, the multiple ways of entering an individual's name, and address changes or zip codes that do not match the previous requests are some mistakes. In haste, a prescriber may input incorrect information, which would send a request to a manual queue. It was determined that the three reasons for manual queue were the input of social security numbers, date of birth, addresses from the pharmacy; physician's putting

in incorrect information; and clustering, which is when the system looks, for example, at the various ways a name has been input that does not match. The cabinet is working to refine that issue with in-house programmers and to outsource some of that programming to help resolve issue.

In response to a question by Representative Belcher, Mr. Hopkins noted that there is no feedback that is made currently but that additional information is going to be available for the providers that will attempt to explain what causes a report to be placed in the manual queue to help them identify how a mistake can be avoidable. He also said that new software is being implemented that will assist in matching the correct records for a particular patient, and hopefully the manual queue percentage will decrease.

Chair Tilley noted that House Bill 1 calls for a needed influx of cash to address the problem not with fees from providers but with mortgage settlement funds from the Attorney General's Office, and asked if the upgrade of these funds will assist in the greater demand for KASPER. Ms. Begley said that the cabinet had been getting by with minimal funds to run KASPER, an unfunded program, so the new cash available will allow the cabinet to take KASPER to a new level.

Pain Management Facility Regulations

Discussing the Pain Management Facility Regulations were Lloyd Vest, General Counsel, Kentucky Board of Medical Licensure, and Mary Begley, Inspector General. Dr. Preston Nunnelley, Chair of the Kentucky Board of Medical Licensure, was unable to attend the meeting.

Mr. Vest stated that the Cabinet for Health and Family services has similar responsibilities under House Bill 1 for differently owned pain management facilities. The Board of Medical Licensure regulates physician-owned pain management facilities, and the cabinet regulates the non-physician owned facilities. The board and cabinet worked closely in coordinating and developing the regulations. Consistent with the statute, the board tried to address two primary categories of individuals in the regulations: 1) the licensed owner or investor of the pain management facility, being a physician having an active license in effect and in good standing and who is not subject to any order or letter of agreement or any other adverse action by the Board of Medical Licensure, with protocols being established to require divestment of ownership within established timelines should such an order or letter be entered against the physician; and 2) the clinic supervisory staff required to be available 50 percent of the time the pain management facility is open, which could be the owner or a designee.

After passage of the House Bill 1, it was learned that a number of physician-owned facilities did not have an owner

or someone employed who met the requirement of being at the facility 50 percent of the time it was open, and that there was concern that a number of those facilities would have to close until the facility was in compliance with the statute. Working with the Governor's Office, the board included in the regulation an accommodation for individuals. To meet this requirement, the board provided that the individual could continue to practice as a pain management facility after the effective date of the legislation if the facility was in existence at the time, and the owner or designee certifies to the board that he or she was eligible to take one of the two certifying examinations available until April 2013; and, when certified, he or she will be in compliance with the provisions of the statute. If not, then the individuals would not be qualified to provide that supervision.

The regulation also requires that the facility identify each of its prescribers and notify the board of any changes of prescribing employees within ten working days; that prescribers who work in pain management facilities are board certified and are disqualified from practicing in a pain management facility if their Drug Enforcement Administration permit has been revoked, have had a board action in any state against their prescribing privileges, if they have had an application to prescribe license denied, or have entered some type criminal plea or a conviction of a crime related to a controlled substances in any state. The regulation also requires a \$1,000 per year fee to help implement the requirement by the board. There are many documentation requirements in the regulation to help the board implement and oversee the pain management facilities much of which is included in the annual registration as well as some required documentation maintained on site by the pain management facility.

Ms. Begley reiterated that the difference between the cabinet's regulatory authority and that of the Board of Medical Licensure is that the cabinet regulates nonphysician-owned facilities. The cabinet's inspections of these type facilities will be unannounced both annually and with random investigations or complaints. When a complaint is received, the cabinet must determine if the facility is physician-owned or one that qualifies under the cabinet's purview. The cabinet also has to determine if more than 50 percent of the patients of the pain management facility are receiving treatment that includes the use of controlled substances. Facilities that the cabinet oversees must have at least one registered nurse on duty. If there are any issues with prescribing, a medical review by the appropriate board and nurse surveyors will be made at the facility with pharmacy support. One area that would be reviewed is whether the facility accepts insurance. The cabinet's perspective is to monitor the pain management facilities. If any physician or practitioner is practicing in a way he or she should not, those

observations will be forwarded to the appropriate licensing board.

Ms. Begley also provided some statistics of interest. On June 22, 2012, the Office of Inspector General sent out 37 certified letters to facilities identified by the Kentucky State Police. Since that date, seven additional facilities have contacted the Inspector General offices or been identified by the Kentucky State Police for a total of 44 facilities thought to be under the title of a pain management facility. Nine of those facilities have indicated they are physician or hospital-owned. Eight facilities have closed, and four of the facilities have closed since the effective date of House Bill 1 or since they received a letter from the Inspector General's Office. The Office of Inspector General's Office has received 17 applications for license as of last week and one additional application since conferring with the licensing board. Based on the list of facilities the office began with, nine of the facilities have not applied for a license and will be investigated as illegal over the next couple of weeks.

In response to a question by Chair Tilley, Ms. Begley indicated it was difficult to say whether the 44 facilities encompass all of the nonphysician-owned facilities because some on the cabinet's list were physician-owned. Ms. Begley encouraged anyone who is aware of one of these clinics or has questions about the practice of the facility to notify the boards, Inspector General's Office, Attorney General's Office, or the Kentucky State Police because these agencies are unified in their efforts to combat this problem.

Practitioner and Dispenser Required Regulations Under House Bill 1

Lloyd Vest, General Counsel of the Kentucky Board of Medical Licensure stated that the Board of Medical Licensure has historically established professional standards for prescribing and dispensing through expert testimony of board consultants on a case-by-case basis. In developing the regulations the board relied upon the wealth of knowledge of these experts as well as looking to the national standards published by the federation of state medical boards which the Board of Medical Licensure is a member. The board's standards address three key points on the timeline of prescribing controlled substances: 1) the initial prescribing or the first prescription written for a patient, 2) the decision to continue to prescribe controlled substances longer than three months for that same medical condition, and 3) what the physician does during that prescribing period. The key principals the board used in developing these standards were: (a) that the board consultants believe each decision to prescribe controlled substances should be an informed and deliberate decision rather than a matter of course; (b) there should be a risk benefit analysis for each prescribing decision and a physician should only prescribe at the level and for the time period required; and

(c) there should be adequate monitoring of the controlled substance used and the prescriber should take affirmative steps to address addiction or illegal use.

He said the standards for initial prescribing are focused, obtaining a history and physical of relevant information to diagnose the acute problem, looking at information contained in the KASPER system and other information available to the physician; conducting a risk benefit analysis and making a deliberate decision whether to prescribe controlled substances to the patient. The prescriber or dispenser should also focus on explaining to the patient that the prescription is for short-term use and relief. These individuals should also educate the patient on safe storage and disposal of the medications. The key area for the board is the decision to prescribing controlled substances beyond three months.

The standards call for a more detailed history to cover a wide variety of areas including the potential of substance abuse and diversion, comprehensive physical examination, obtaining relevant information from other sources such as other physicians who have treated the patient for a particular problem, using consultants if necessary to reach a working diagnosis. He stated that one of the problems with trying to reach a working diagnosis is that there is no identification as to what the physician is trying to treat other than to treat pain, nerves, or refill medications. It is important for physicians to reach a working diagnosis that focuses on the patient's treatment and prescribing by developing a treatment plan that contains measurable goals and focuses on functional improvement of the patient and remedy of the medical complaint. An informed consent or a joint decision of the patient and the physician is critical with the understanding that the patient will be on controlled substances for long period of time and, if appropriate, the patient presents significant risks of potential diversion or addiction to have a prescribing agreement in place setting up the parameters and the expectations for the patient.

He said that after a decision is made to go into long-term prescribing, the standards focus on regular patient visits and evaluations and reevaluations of the diagnosis and treatment plan to determine if the problem is being addressed in a meaningful way, whether there are there adjustments that need to be made in either the diagnosis, and whether there should be another evaluation to determine if the treatment is not addressing the initial diagnosis. The standards require determining if the patient has a functional improvement; monitoring through KASPER or urine drug screens and pill counts; making sure that annual preventive medicine is attended to in addition to the prescribing and treatment of the primary problem; and tapering or terminating a controlled substance prescription if there is evidence of illegal use or addiction.

Mr. Vest said that there are separate

standards included in the board's regulations for emergency department physicians because they are in a unique setting and have unique challenges and are a potential source for "doctor shoppers." Emergency department individuals came to the board and asked to be included in the board's standards. The board adopted the standards proposed by emergency department physicians because they are consistent with similar standards for those departments in Washington and Ohio. The board also created exceptions to the standards. The prescribing and dispensing standards do not apply when prescribing and dispensing to a patient as part of hospice or end of life care or to a patient during the course of hospital admission or to a patient who is suffering from cancer pain or to a patient who is a registered resident of a skilled long-term care facility.

There is a specific exception for the initial KASPER review on a queue prescribing in three situations: 1) in the event the prescriber or physician cannot receive the KASPER report immediately or in a timely manner, the board created a specific exception allowing the prescriber to document what decision was made and why a report was not received; 2) pediatricians treating patients under eighteen years of age for ADHD or ADD; and 3) when prescribing Schedule IV and V controlled substances. Mr. Vest indicated there was a lot of concern and a variety of arguments made when prescribing those controlled substances. The board took a balanced approach contacting drug control and law enforcement agencies and reviewed the board's past cases. The decision was made to exempt Schedule IV and V controlled substances from the initial KASPER review except for the specific Schedule IV drugs identified as problem drugs for abuse. This had been a very detailed and lengthy process getting these standards into the form they are in now. The board received input from many individuals and met with the representative groups.

Mike Burleson, Executive Director of the Kentucky Board of Pharmacy, provided an overview of the regulations for the Board of Pharmacy. The Board of Pharmacy had a regulation committee that included board members and stakeholders from the practice of pharmacy as well as non-practicing pharmacists that met to work on the regulations. There were five regulations reviewed dealing with a pharmacy dispensing controlled substances. Those regulations deal with examinations, license transfer which addresses any pharmacist who wants to reciprocate in from another state stating that a fee increase was made for the required querying for the national practitioner data bank; procedures for the investigation and hearing of complaints which was the largest regulation which had to have changes made to comply; the regulation dealing with the pharmacist-in-charge

reporting the theft or lost of controlled substances to the board. He stated that the board worked with the Inspector General's Office, the Attorney General's Office, and Kentucky State Police in implementing the changes, especially the Kentucky State Police as to the background check and fingerprinting. This process has already been included in the Board of Pharmacy's website, which details how a pharmacist reciprocates into Kentucky; contains the procedure or process a new pharmacy student graduating from pharmacy school must follow; and the process for filing of anonymous complaints, noting that inspectors investigating these complaints are pharmacists. The board notified pharmacists in the June newsletter of changes, and another newsletter in September will include everything the pharmacists are now required to do. On Friday, July 20, the board sent an e-mail blast to 7,700 in-state and out-of-state pharmacists and approximately 1,800 pharmacies advising of the new regulation requirements. The board will be notifying the state and local professional associations to let them know about the new regulation requirements. Continuing education programs will be notified. As the pharmacy inspectors go to pharmacies each year, they will educate pharmacists on what the new requirements.

Chair Tilley commented that it was a consensus of all three branches of government that the legislature needed to act to address the drug abuse epidemic in Kentucky. The regulations and functions of the executive branch try to mirror as closely as possible the intent of House Bill 1. He said that the Center of Disease Control has labeled this problem an epidemic. The U. S. prescribes enough opioid painkillers, 215,000,000 prescriptions, which is enough to medicate every man, woman, and child in this country for 24 four hours for one month. The U. S. comprises four to five percent of the world's population but consumes 97 percent of the world's oxycontin. The U. S. has more deaths attributable to prescription drug abuse than car wrecks. Although there may be disagreement as to how to move forward in the implementation of the legislative intent versus the executive branch's role of regulating the process, everyone should keep in mind that the state is trying to combat an epidemic that is different from that of confronting street level drugs. Elected leaders can control the flow of these drugs, which is what is attempting to be done. Beginning with the use of KASPER, when used effectively, it is possible to stem the flow of addiction. The leaders of this issue are trying to combat an epidemic that is taking lives and addicting children. Senator Stivers commented on a program in eastern Kentucky that detoxified 150 women in pregnancy last year.

Next on the agenda was an overview of regulations for the Kentucky Board of Nursing represented by Nathan Goldman, General Counsel, Paula Schenk, Consumer

Protection Manager, and Morgan Ransdell, Prosecuting Attorney. Mr. Goldman indicated that there are approximately 4,600 advance practice registered nurses (APRN); nurse anesthetists who do primarily anesthesia but do some pain management; nurse midwives; clinical nurse specialists; and nurse practitioners. Since 1996 and again in 2005, these individuals were given the authority to prescribe noncontrolled substances and later controlled substances. The nurse must have a collaborative agreement with the physician for noncontrolled and controlled substances. There are limits on the number of drugs prescribed, and APRNs primarily can only prescribe up to 72 hours for Schedule II drugs with one exception, thirty days for Schedule III, and Schedule IV and V drugs original prescription up to six months. The regulations changed by the board dealt with the advanced practice registered nurse licensure which has a reporting provision for the National Practitioner Data Bank; changes to the scope and standards provision which has the prescribing standards for controlled substances; changes to the discipline provision of the board's regulation which has the expedited review process; and changes to the continuing education or competency requirements for KASPER, drug addiction, and pain management.

Mr. Goldman indicated that the board has educated nurses as much as it could to this point and have been in contact with about 1,600 prescribing APRNs that have the authority to prescribe controlled substances in the state. E-mails had been sent informing them of House Bill 1 and the regulations. The board has been in contact with the Kentucky Coalition of Nurse Practitioners and nurse midwives, and the information is also contained on the board's website and in its newsletter. The board is planning to provide as much information to nurse practitioners as possible.

Ms. Schenk indicated that the board has internally modified the investigative and disciplinary processes to conform to the unique requirements of House Bill 1, the review process, and completion of the investigation. The board has submitted a request for an additional staff person to assist in the review and investigation of complaints involving APRNs who may have improperly, illegally, or inappropriately prescribed controlled substances. The board is developing a multifaceted approach for the education of APRNs regarding the requirements of House Bill 1 utilization of the KASPER system. The board has also contacted the nurse anesthetists to schedule and offer presentations, written materials, and other multi-media options. The board has contacted the Cabinet for Health and Family Services and has been proactive in identifying those APRNs who may not have registered with KASPER.

Connie Calvert, Executive Director of the Board of Optometric Examiners gave an overview of two revised regulations

and one new regulation promulgated by that board addressing House Bill 1. 201 KAR 5:010 was amended to require a fingerprint-supported criminal background check on all applicants for license; requires a National Practitioner Data Bank query on all applicants; and requires applicants for a license by endorsement to certify they are registered with KASPER if the applicant has a DEA number; 201 KAR 5:030 was amended to require all licensees who have a DEA number to take a two-hour course in pain management or addiction disorders each year for license renewal; and the newly promulgated regulation, 201 KAR 1:130, sets out the prescribing standards for licensees who have the authority to prescribe controlled substances. She said there is a section of the regulation that sets forth the action the board may take without a hearing if it has reasonable evidence to temporarily suspend, limit or restrict a license, and has included a section to address how complaints are to be handled when received.

She said the board accepts anonymous complaints. The regulation sets forth the penalties imposed and reporting required when violations occur. If a licensee is convicted of a felony, the penalty is a lifetime revocation on prescribing controlled substances, and for misdemeanors, a three month suspension from prescribing. The board licenses approximately 775 doctors of optometry. Of that number, about 415 have a DEA number, and the board has been getting word out to them about registering with KASPER. Information has been on the board's website since mid-June with links to KASPER registration, and the board has conducted e-mail blasts. There are about 20 optometrists who do not have e-mail who have been notified by mail. A license will not be renewed if an optometrist has a DEA number and is not registered with KASPER.

Jason Ford, member of the Board of Dentistry and private practicing Oral Surgeon in Lexington, Mary Ann Burch, Dental Hygienist on the Board of Dentistry, and Brian Bishop, Executive Director of the Kentucky Board of Dentistry, discussed that board's regulations. Mr. Bishop indicated that the board formed its regulatory group shortly after the passage of House Bill 1 and worked with all of the board's constituent groups including the Kentucky Dental Association, Kentucky Dental Hygienist Association, both of the state's dental schools, and the Department for Public Health. The board has worked with the executive branch staff to address a specific and unique opportunity with some dentists such as Mr. Ford who is not only a dentist but is also a medical doctor. The board wanted to write regulations as close to the Board of Medical Licensure's regulations so that in situations where dentists are also doctors they would not be under separate standards. The board has modified three regulations, one dealing with licensure which addresses the fingerprint requirement for all initial

licensees. The regulation will limit the individuals who come into Kentucky to practice under the charitable dental act to not be able to prescribe medications of any type while in the state. A continuing education component is also included. The dental practice regulation, which addresses the bulk of House Bill 1, has not been filed but will be finalized this evening at a special meeting of the board to include all the requirements by the Board of Medical Licensure. The board will also be modifying the fees and fines regulation to include fines for those individuals who choose not to register with KASPER in a timely fashion or who have had action taken in another state and has failed to report that information to the Board. He said there will be no fee increases for the implementation of House Bill 1 for licensed dentists. Mr. Bishop indicated that one additional staff member has been added to coordinate disciplinary and tracking efforts for dentists.

James J. Grawe, Assistant Attorney General and Counsel to the Kentucky Board of Podiatry discussed that board's regulations. Mr. Grawe indicated that to his knowledge in the ten years of working with the board that it has not had any abuse problems or complaints regarding the prescribing of controlled substances outside an occasional licensee who may have a patient addiction problem that the podiatrist must deal with. He said that Dr. Robert Levine, Chair of the Board and a practicing podiatrist in Louisville, was unable to attend the meeting because of scheduling. Mr. Grawe indicated that the board has drafted regulations to implement the requirements of House Bill 1 and the application process for the conviction requirements and the disciplinary action by other states for controlled substances and the renewal requirements, the continuing education requirements, complaints and hearing proceedings, and the prescription and dispensing standards that were mandatory under House Bill 1.

The board opted for broader language that intersects with the proper use of the practitioner's podiatric medical judgment, the standard medical processes for analyzing the condition being treated, medical history, physical examination, diagnosis, written treatment plan addressing the controlled substance, verification by identification of the patient, the querying of KASPER for Schedule II, III, and limited Schedule IV controlled substances, and documentation of the discussion of the inherent risk for addiction with controlled substances. He indicated that Mr. Levine has written e-mails to licensees informing them of the requirements of the regulation and the KASPER registration requirements.

Chair Tilley recognized Dr. Steven Stack who had signed up to address the committee. Dr. Stack is an Emergency Room physician at Saint Joseph East Medical Center. Dr. Stack indicated that in addition to his role at Saint Joseph East that he has served as the Medical Director

and the Physician Leader at Saint Joseph East and Saint Joseph Mount Sterling at various times over the past six years. He applauded the committee on the statistics presented earlier from the Center of Disease Control. The data outlines an enormous crisis. Physicians share the commitment to drying up the problem of controlled substance abuse.

He discussed two points of concern. The first point of concern was that, in the attempt to address the crisis, the regulations and the statute that created the regulations have gone beyond the initial intent of the legislation and will likely result in avoidable and unnecessary human suffering. He said it was not necessary and is unfortunate that the regulations and the complexity of those regulations will result in a number of different and unnecessary things occurring in the complex health system. Patients will not get the care they need. It is an unfortunate reality that the complicated health system is dysfunctional in enumerable ways. In his emergency departments, the patient population is comprised of 56 percent of patients who are either uninsured or on Kentucky Medicaid, and that those individuals either have no access to routine follow-up care or are unlikely to get timely access to care and they therefore resort to emergency departments as a last resort.

His second point of concern was that the debate of House Bill 4 in the 2012 regular session and the follow-up House Bill 1 in the 2012 special session was nonconstructive. As a physician who takes his Hippocratic oath seriously, he found it personally unfortunate and wounding to hear the vitriol, the open derision, and the mockery of the profession both in publications within the state and by certain individuals in elected office. It had the affect of having the physicians in the state feel as if they were vilified and criminals. The open assertion in a recent newspaper editorial that physicians were in fact killing people because doctors were trying to obstruct the legislation and regulations was unfair and unfounded. Dr. Stack indicated that although he had communicated with Senator Higdon concerning this issue, he in hoped that his comments have been constructive throughout this process and will continue to remain constructive because of his commitment and oath.

Dr. Stack asked on behalf of his colleagues that this issue be kept at the level it requires because the physician's commitment to patients is not only based upon the oath but upon the daily actions, that the vast majority of physicians would like to see the criminals locked up. There is a long way to go, and some refinement will need to occur over time to the statute and regulations to enable physicians to provide the care needed while addressing the problem that must be addressed.

Chair Tilley indicated that more input is needed from physicians to talk about what is occurring and why revision may be needed either to regulations or the

statute. Chair Tilley also stated that the committee would continue to look at the concern Dr. Stack expressed that some of the regulations go beyond the intent of the legislation. Chair Tilley understands the physicians take their Hippocratic oath very seriously. The entire profession is not a problem but only a small number that must be addressed. Chair Tilley said that it was not the intent of any person who worked on this issue to vilify the medical profession. The initial effort in addressing this issue was to address pill mills and to weed out the nonphysician-owned clinics. He encouraged colleagues of Dr. Stack to make their voices known.

Senator Higdon thanked Dr. Stack for attending the meeting and making his concerns known and said that he looks forward to hearing more of those concerns as the discussions move forward.

Senator Stivers also indicated he appreciated Dr. Stack being in attendance and recognizing that there is a problem. Senator Stivers said that he had meet with several groups who are consistently exchanging e-mails, faxes, and articles concerning this issue. He said one rarely picks up a newspaper or any type of nationalized periodical without reading about the problem of an overly prescribed nation. House Bill 463 was passed that dealt with intervention and rehabilitation of individuals in the corrections system, but the real impacts of drugs, diverted drugs, illegal drugs are found in domestic relations courts. They have a devastating impact on children being taken from parents, where grandparents are intervening on behalf of their children to become the custodians of their grandchildren. Senator Stivers stated that he understands that we have to be cognizant of the fact and the practical applications of the actions taken and that there needs to be constructive dialogue so that policymakers can have the appropriate information in order to make an informed decision to deal with a problem that has become tragic.

Chair Tilley indicated that as the regulations are implemented more constructive feedback will occur.

The committee will meet on the third Wednesday of each month until session begins. The next meeting will be on August 15 and chaired by Senator Stivers.

The meeting adjourned at about 2:35 p.m.

TASK FORCE ON KENTUCKY PUBLIC PENSIONS

Minutes of the 2nd Meeting of the 2012 Interim July 24, 2012

Call to Order and Roll Call

The second meeting of the Task Force on Kentucky Public Pensions was held on Tuesday, July 24, 2012, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Mike Cherry, Co-Chair; Senators Jimmy Higdon, Paul Hornback, Joey Pendleton, and Dorsey Ridley; Representatives Derrick Graham, Keith Hall, Brad Montell, Marie Rader, Rick Rand, and Brent Yonts.

Guests: David Draine, Pew Center on the States; William Thielen, Kentucky Retirement Systems; Senator David Williams; Representatives Jim Gooch, Dennis Horlander, Adam Koenig, and Tom Riner.

LRC Staff: Brad Gross, Judy Fritz, Jennifer Hays, Karen Powell, Frank Willey, Greg Woosley, and Peggy Sciantarelli.

Approval of Minutes

The minutes of the July 2 meeting were approved without objection, upon motion by Representative Yonts. (This occurred later in the meeting.)

Perspective on National Public Pension Issues (Including Kentucky) and Individual State Reactions to Address These Issues

Returning guest speaker was David Draine, Senior Researcher, Pew Center on the States. Copies of his slide presentation are available from Task Force staff.

Mr. Draine explained that the nonprofit Pew Center is a division of the Pew Charitable Trust. The Center, based in Philadelphia, has been looking at public sector retirement for about five years and is sharing data analysis on a nonpartisan basis with policy makers in all states.

Mr. Draine said that Kentucky Retirement Systems (KRS) faces a funding gap of \$12.5 billion for its pension promises. Like pension plans in other states, KRS suffered losses from the 2001 recession; when actuarially recommended contributions increased following the recession, the state was not able to keep up and fell short in making its employer contribution each year since 2003. Kentucky should have set aside an additional \$166 million in FY 2011 to pay for KRS pension promises. Given both the unfunded liabilities facing the state, as well as the ongoing inability to make the payments necessary to sustainably fund Kentucky's pensions, the Kentucky Public Pensions Task Force will need to confront three challenges. The state must find ways to sustainably and affordably close the existing funding gap, ensure that the promises being made are sustainable and do not put the state at risk, and ensure that the retirement benefits being offered are effective at recruiting and retaining a talented public sector workforce.

One issue that Kentucky's leaders need to address is whether to adopt a pension model other than the traditional defined benefit plan. Options used by other states include 401(k) style defined contribution plans, hybrid plans that include both a traditional pension and an individual retirement account, and cash balance plans that offer an individual retirement account but also include many of the protections commonly associated

with traditional pension plans. One pressing question is the cost impact of putting new employees into a new plan, given that their employee contributions will no longer go into the existing plan. Before answering that it is important to note that most states, including Kentucky, work to prefund their pension plans. Prefunding pension obligations is important for intergenerational fairness, to help smooth costs over time, and to enable states to invest the money to help pay for benefits. If new workers go into a new plan, their contributions would no longer go into the existing plan, but their benefits would no longer be an obligation of the current plan.

Concern has been raised that switching to a new plan would force the state to spend more in the short term to pay off its existing funding gap. Transition costs have been cited as a reason not to close existing pension plans. States need to balance numerous factors and consider all the options available but should not worry that some approaches will force them to pay massive transition costs.

For most state plans, payments to close the funding gap are set as a certain percentage of salary. For example, in 2013 the contribution rate to pay for the unfunded liabilities of the Kentucky Employees Retirement System (KERS) nonhazardous plan was 24 percent of pay. Some have argued that, based on pension accounting rules, states should no longer set contributions as a percentage of salary; instead, the annual contribution should be a level dollar figure and more “front loaded” than Kentucky’s current rate. This means that contributions in 2013 would have to be higher than the plan is currently estimating, but contributions in the future—in 2033—would be substantially lower.

It is crucial for state policy makers to realize that developing a credible plan—rather than how payments are scheduled—is paramount to closing the funding gap. This is what Alaska realized when switching to a defined contribution plan in 2006. The first year it tried to make more payments up front, but policy makers quickly realized that because new workers were still entering the retirement system as a whole, even though in a different plan, it made sense to use the old approach. It is critical for a state to develop a plan to close the funding gap and meet the necessary payments. The practical experience of states like Alaska shows that the old accounting rules were not so rigid as to prevent states from coming up with their own approaches to fix their pension systems.

Pension accounting rules have substantively changed. The Government Accounting Standards Board (GASB) that sets these rules agreed to changes that let states set their own policies in determining recommended contribution rates. Kentucky should still identify a reasonable, affordable payment schedule to close its funding gap but is no longer

required to estimate a given recommended contribution. Instead, GASB has shifted the rules from a funding-based approach—where GASB made states report whether they are making adequate annual contributions—to an accounting-based approach in which states focus on reporting their liabilities. This is not to say that closing existing pension plans is the best move for Kentucky—just that the different options should be considered on their own merit and not based on hypothetical costs caused by accounting rules that are no longer in effect.

Investment risk is particularly relevant to how pensions impact state budgets and is inherent in how states run their pension systems. About 60 cents of every dollar used to pay benefits comes from investments. Pension plans could avoid much of the risk by putting money in low-risk investments—e.g., Social Security’s placement of assets in Treasury bonds—but this would make retirement benefits much more expensive. While investment risk is not something to be avoided at all costs, it is important for policy makers to understand the risk.

It is also important that policy makers take a long-term view rather than focus only on individual years of data. When investment return was strong at the end of 2010, the median state pension plan had a 13 percent return, but in December 2011 the return was only one percent. While returns were very strong in the 1990s, from 2001 to 2011 states failed to meet their investment assumptions. When investments fell short, many states demonstrated that they had taken on more risk than they could handle, and recommended contributions increased in the midst of severe budget pressures that made it hard to meet increased payments. Most of the time when states do not meet their investment assumptions it is due to recession—a time when states are also facing tight budgets and decreased revenue.

While states like New York and North Carolina made the recommended contributions to shore up their pension plans, other states like Kentucky and New Jersey failed to do so. To avoid taking on more risk than they can afford, states may share some of the risk with workers and retirees. Wisconsin offers a dividend to boost retiree pension benefits when times are good but can take the dividend back if investments fall short. Alternatively, states can have employee contributions or cost-of-living adjustments (COLAs) reflect the health of the pension fund. A number of states, including Rhode Island, now set rules for giving cost-of-living adjustments when the plan is fully funded. In Arizona, contributions to the pension system are shared equally between workers and taxpayers; following the system’s investment losses in 2008, the contributions of both increased to help restore firmer footing to the pension system.

In a traditional defined benefit

pension plan, all or most of the investment risk stays with the taxpayer. Some states have switched to different models to share some or all of the risk. In a 401(k) style defined contribution plan, workers bear the investment risk, receiving the gains when markets do well but having retirement assets suffer during recessions. Hybrid plans, which combine a traditional pension plan with a defined contribution plan, and cash balance plans, which give workers an individual retirement account with a guaranteed minimum return by the state, are models in which taxpayers and workers share investment risk.

The Task Force must face the challenge of developing a feasible plan to deal with KRS’s \$12.5 billion unfunded liability. The cost of making recommended contributions competes with other important public priorities. Ultimately, states that face substantial funding gaps and have been unable to make full contributions will need to raise taxes, cut services, ask employees to contribute more, or reduce benefits, or some combination of these. Policy makers will need to consider ways to fairly share the burden. Concern has been raised that in states like Kentucky contractual protections may hinder reducing existing liabilities. This is not a simple question with a simple answer. Whether something may be legally viable in another state may not mean it would be feasible for Kentucky. However, a number of states have either made or proposed pension changes to reduce existing liabilities that seem to be legally viable. These approaches may be available options for Kentucky if putting more money into the system is not feasible and affordable.

Many states have increased contribution rates for employees. Changing employee contribution rates for new employees only would have minimal impact in the short term, and some states have also asked current employees to pay more. Alabama, Colorado, Kansas, Louisiana, Maryland, and New Jersey are among states that have recently made such a change. Since 2010, Arizona, Colorado, Florida, Maine, Minnesota, New Jersey, Oklahoma, Rhode Island, South Dakota, and Washington have reduced or eliminated cost-of-living adjustments for current workers or retirees. Thus far, judges in Colorado, Minnesota, New Jersey, and South Dakota have upheld the cuts.

Limiting future accrual is another approach states can use to reduce existing liabilities. While benefits that have already been earned are legally protected, states may be eligible to alter a public employee’s future earned benefits. In Rhode Island, current employees keep what they have earned under old pension rules but now earn benefits based on the new hybrid system. San Diego voters recently approved a referendum instructing city officials to freeze pay for the purpose of calculating pension benefits. If the city gives raises, those salary increases would

not count toward the pension formula.

In 2011, when Connecticut’s governor offered public unions a choice of finding savings through either pension cuts or layoffs, the unions chose to work with the governor on pension reform. Voters in San Jose, California, passed a referendum allowing workers the option to either pay more into their pension system or receive a reduced benefit. Illinois’s Governor proposed a similar approach whereby workers would either accept reduced cost-of-living adjustments—the preferred approach—or lose retiree health benefits and forego having future raises count for pension calculation.

In closing, Mr. Draine said that many states simply cannot afford to close the funding gap by putting money into the system without devastating tax increases or draconian budget cuts. It is also not feasible to make new employees bear the entire burden. Policy makers need to be able to ask public employees to share in the cost, while also providing assurance that pension reform will avoid similar challenges in the future. If sustainable reform is passed, the benefits promised will be secure for future generations. Kentucky faces a real challenge but has the opportunity to improve the fiscal health of the state and to ensure that pension benefits are funded responsibly in the future. Mr. Draine thanked the Task Force for the opportunity to share the Pew Center’s knowledge and research on these complex issues.

Representative Yonts asked whether there has been resolution in any states where pension reform has been challenged in court on the basis of contractual promises. Mr. Draine said that the courts ruled in favor of cost-of-living adjustment reforms passed by the legislatures in Colorado, New Jersey, Minnesota, and South Dakota. States were able to prevail by demonstrating that the expectation of a given cost-of-living adjustment was not built into the contract, while existing benefits were built into the contract and untouchable. In some cases, even with an existing contract, the need of the state to function and provide public services resulted in court decisions favorable to state changes. In many other states there are continuing legal challenges, although some have prevailed in lower court. Except for Wisconsin, where the contract explicitly has a dividend system in which benefits go up or down, no state has retirees who have faced a situation where the benefit check for next year is lower than the benefit check in the current year.

Senator Hornback asked how federal health care reform might impact retiree health insurance benefits. Mr. Draine said that Pew has not seen states completely withdraw from offering health benefits for retirees, but some states have increased contributions to help pay for health benefits or asked for more cost-sharing from workers by charging increased premiums.

Representative Cherry said that

pre-2003 health insurance benefits are part of the KRS inviolable contract but that cost-of-living adjustments are not an inviolable contract issue. Senator Thayer and Representative Cherry also noted that the Task Force is not including the Kentucky Teachers' Retirement System in its deliberations but is including the judicial and legislative retirement plans.

When Representative Hall asked whether any state might be viewed as a role model in pension reform, Mr. Draine said he thinks reforms enacted in Georgia could serve as possible lessons for other states. Georgia requires an actuarial evaluation on any proposed pension legislation and a one-year waiting period to allow for deliberation before the bill can be passed. In 2008, Georgia switched to a hybrid plan that offers to new workers only a smaller traditional benefit and an individual retirement account. The purpose was not to save money but to help recruit a talented workforce. Mr. Draine said he believes other states should consider the analysis Georgia used in offering the hybrid plan.

Representative Graham asked whether any state with an inviolable contract similar to Kentucky's has made the type of pension changes that have been proposed for the Task Force to consider. Mr. Draine said that all of the states mentioned share some level of constitutional protections for pension benefits. The contracts vary by state and are affected not only by case law but also by the way plan benefits are written. Arizona lost a recent court case when the judge ruled that pension changes violated that state's contract provision. There is variation in what states include in the contracts; but in every state, if not specific state protections, federal constitutional protections may limit the ability to change contractual benefits.

Responding to further comments from Representative Graham, Mr. Draine said that even without a plan change it is important that Kentucky be able to make its contributions in a sustainable way. He further explained cash-balance type plans like Nebraska's and said he would provide information regarding the average salary of employees in the Nebraska pension system. Representative Graham said he is concerned how the Nebraska reforms impacted employees with annual salaries of \$75,000 or less.

Responding to questions from Representative Montell regarding the cost of switching to a new plan, Mr. Draine said it is the Pew Center's position that the transition cost argument is not correct under the old rules and is moot under the new GASB rules. He said the main debate relates to how quickly a state would be able to pay off its unfunded liability after moving to a new plan. Regardless, the debt needs to be paid, either by raising taxes, cutting services, or asking employees to share more of the cost. When Michigan switched to a defined contribution plan, unfunded liability was not an issue.

Representative Montell asked whether transitional costs of switching to a defined contribution plan would be greater if current employees, as well as new hires, would be earning future benefits under the new plan. Mr. Draine said that transition cost arguments have generally been made with respect to closing a defined benefit plan entirely and switching to a defined contribution plan. In Rhode Island, which closed its existing defined benefit plan and switched to a hybrid plan with a defined benefit component, the case was not made that this would create transition costs. States have two options for scheduling payments to close a funding gap—either as a level dollar amount paid every year over time, or as a percentage of pay. If payments are based on percentage of pay and all existing employees are removed from the system, there is no pay left. If the state follows a transition cost payment schedule in an attempt to speed up payment of the unfunded liability, setting aside all existing employees would result in a greater cost impact.

Responding to Representative Yonts, Mr. Draine said that a number of states have raised taxes recently to help pay their unfunded liability. Illinois had a major income tax increase, which did not solve its pension problem. Representative Yonts asked whether there has been any court case that involved a "peeling off" of COLAs that were not part of the base retirement benefit but were treated as such. Mr. Draine said there may possibly be a court case. He said that in Providence, Rhode Island, the retirement board agreed to a six percent annual cost-of-living adjustment, compounded. This quickly became expensive, and the mayor immediately tried to rescind the COLA. Courts upheld it at the time, but unions recently agreed to end it. Mr. Draine said the agreement may have included recoupment of some of the gains. Pew Center has not seen any state make a change that would reduce a retiree's current benefit payment, with the possible exception of Providence, which he agreed to look into further.

Representative Cherry stated that, in Kentucky, COLAs already earned and added to a retiree's base benefit cannot be recaptured, although future COLAs might be rescinded since they are not part of the inviolable contract. He also spoke about the magnitude of the unfunded liability and the necessity to either meet the required contributions enacted by the legislature or find ways to reduce costs.

When asked by Senator Higdon, Mr. Draine said that both the "high three" and "high five" years of salary are currently used by states to calculate retirement benefits. States that are changing their pension plans also tend to use "high three" and "high five."

Senator Thayer remarked that when he had sponsored a bill to create a defined contribution system for new employees, the first argument he always heard was that it would incur a huge transition cost. However, with the change in GASB rules,

it appears that the transition cost argument is moot and should not be viewed as an impediment. Mr. Draine affirmed the Pew Center's analysis that transition cost was not an issue under the old GASB rules. Regardless, the new rules do not demand that states create an explicit payment schedule, let alone one based on moot transition cost rules.

Senator Thayer asked how many states have pension plans that differ from the traditional defined benefit. Mr. Draine said that Alaska and Michigan offer pure defined contribution plans. Nebraska has used the cash balance model for a long time, and Louisiana and Kansas recently passed legislation to shift new employees into that type of plan. Oregon, Rhode Island, Georgia, Ohio, and a number of other states offer hybrid plans. Mr. Draine said he would be happy to provide a complete list later. At Senator Thayer's request, he also stated the choices that governments face in order to address their unfunded liabilities: free up revenue by increasing assets, raising taxes or cutting services; ask employees to contribute more; or reduce benefits.

Representative Cherry questioned whether the ARC (actuarially required contribution) for the Systems would increase as a result of going to a defined contribution or hybrid plan. Mr. Draine said that the new GASB rules eliminate the ARC as something that states need to calculate or report, but states can—and should—have a payment schedule to close the funding gap in a sustainable way. Representative Cherry asked who would determine a payment schedule for the County Employees Retirement System (CERS), which now pays 100 percent of the ARC. Mr. Draine said plan administrators would be better able to answer this. He commented that he, as a researcher, is curious how the new rules will be implemented. He believes that states and localities that have been paying the ARC will continue to do the same. The ARC is a sensible way to establish a reasonable set of payments. Some places that have fallen short may stop reporting an ARC. In Kentucky, ARC payments still make sense. Straight-line level payments and payments that increase as a share of payroll for all members of the system are both available options. Though no longer required to establish an ARC, if a state chooses to do so, it has the flexibility to decide how it is structured. Representative Yonts said that, without an ARC, Kentucky's funding gap would quickly escalate.

Representative Cherry said he is encouraged by some of today's testimony. He hopes that the Task Force can find a solution that will focus on new employees. Senator Thayer concurred. He announced that the Task force will have four more meetings, with recommendations due in December. He thanked Mr. Draine and announced that someone from the Pew Center or the Laura and John Arnold Foundation will participate in all of the

meetings. Mr. Draine introduced his colleague from the Pew Center, Brian Keegan, and said they would be available for questions after the meeting.

Kentucky Retirement Systems Overview

William Thielen, Executive Director, Kentucky Retirement Systems, said that KRS wishes to serve as a resource to the Task Force to provide accurate, relevant information. He and the KRS Board do not advocate any particular policy. GASB has never been a funding requirement but rather sets a standard for accounting and for reporting liabilities. GASB 43/45, which KRS implemented in 2006, had a dramatic impact on funding. The new standard, GASB 67/68, changed the way of accounting for and reporting pension liabilities, but it divorces the accounting and reporting from funding. It will be up to the KRS Board to establish a funding policy. Without reasonable funding of the liabilities, the state's credit rating is likely to suffer. Ultimately, KRS actuaries will have to determine whether there will be transition costs. GASB 67/68 requires that liabilities be determined and reported using the "entry age normal" actuarial method, with a level percent of payroll. This is the current method used by KRS. The KERS-nonhazardous fund has a cash flow problem, which means contributions cannot be "back loaded." The money must be available up front for investment purposes and to pay for benefits. Actuaries contend that KRS cannot afford an actuarial method that permits "back loading" of benefits in the KERS-nonhazardous plan.

Mr. Thielen completed the overview that he presented in part at the July 2 meeting of the Task Force. Copies of his slide presentation are available from Task Force staff. He noted that slides 36, 37, and 59 are new.

Mr. Thielen disagrees with allegations in the media that KRS funding problems are caused by mismanagement of the investment program. KRS has managed its investments well but is striving to do better. Since inception in 1984, investment performance in the KRS pension fund is only 0.09 percent below the benchmark, and overall investment return has been 9.72 percent. The fund fell short of the assumed rate of return of 7.75 percent for the 3-year, 5-year, and 10-year period, as did most pension plans in the country, but over the long term the pension fund has significantly exceeded the assumed rate. Investment return for the insurance fund is only 0.06 percent below the benchmark since inception in 1987. Relative to 77 public pension plans across the country of comparable size, KRS is about 0.10 percent below the median in investment return for the past five years, with significantly less risk in the portfolio.

Mr. Thielen's slide presentation included charts showing the 2006-2011 actuarial funding level for both the pension and insurance funds of KERS and CERS-hazardous and nonhazardous and the State Police Retirement System (SPRS).

The actuarial fund value of the KERS-nonhazardous pension plan has declined from 60 percent in 2006 to 33.3 percent in 2011. The CERS-nonhazardous pension plan had an actuarial fund value of 83.6 percent in 2006; in 2011, the actuarial fund value was 63.1 percent. The SPRS pension plan has gone from 66.6 percent funded to 45.0 percent funded for the same period. The SPRS plan is relatively small, however, with a total asset base of approximately \$405 million.

The combined unfunded liability of KERS-nonhazardous was \$11.28 billion at the end of FY 2011. Total combined unfunded liability for KERS-nonhazardous, KERS-hazardous, and SPRS was \$12.34 billion, a slight increase from FY 2010 due to investment losses in 2008 and 2009, even though investments did well in 2010. Combined unfunded liability of CERS was \$6.89 billion, also a slight increase from FY 2010.

A significant cause of the increase in unfunded liabilities is the reduction in employer contribution rates in KERS and SPRS. The shortfall has been \$2.86 billion over the last 20 years. Other causes include: cost inflation for retiree insurance; funding to significant new health insurance liabilities that were reported beginning in 2006 as a result of GASB 43/45; benefit enhancements; retiree COLA increases that were not prefunded; and market losses in 2000-2002 and 2008-2009. There have not been any significant benefit increases since 2001. The total increase in the unfunded liability from 2006 to 2011 in the KERS-nonhazardous pension plan is attributed to investment loss (18.7 percent), COLA and benefits (19.8 percent), changes in actuarial assumptions (12.6 percent), employer contribution shortfall (17.4 percent), demographic and salary experience (6.8 percent), and “other” (24.7 percent—due partly to the closed amortization period).

Mr. Thielen gave a brief review of slides relating to historical reductions to the employer contribution rates for KERS-hazardous and SPRS; combined underfunding interest loss for KERS, CERS, and SPRS; cost inflation for retiree insurance; estimated cost of providing a 1.5 percent ad hoc COLA for retirees effective July 1, 2010; savings from the changes enacted into law in 2004 (HB 290); and the benefit changes and phase-in ARC payment schedule enacted in House Bill 1 in the 2008 extraordinary session.

Responding to a question from Representative Graham, Mr. Thielen said that he had offered by phone to meet with and provide information to staff of the Pew Center but had not yet done so.

Responding to questions from Representative Yonts, Mr. Thielen said that the large spike in the adopted employer contribution rate in 2007-2008 was due to implementation of GASB 43/45 and reduction of the assumed rate of return from 8.25 to 7.75 percent. Over the last 10 years, the assumed rate in the pension plan

has been 5.52 percent.

Announcements and Adjournment

Earlier in the meeting, Senator Thayer remarked that KET did not televise this meeting or the first meeting of the Task Force. Because of statewide interest in the work of the Task Force, KET will televise future meetings.

Representative Cherry announced that the next meeting will be on Tuesday, August 21, at 1:00 p.m. The agenda may include testimony from interested organizations and employee/retiree groups.

With the business concluded, the meeting adjourned at 12:05 p.m.

TASK FORCE ON THE UNIFIED JUVENILE CODE

Minutes of the 1st Meeting
of the 2012 Interim
July 31, 2012

Call to Order and Roll Call

The 1st meeting of the Task Force on the Unified Juvenile Code was held on Tuesday, July 31, 2012, at 2:00 PM, in Room 171 of the Capitol Annex. Senator Katie Stine, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Katie Stine, Co-Chair; Representative John Tilley, Co-Chair; Harry L. Berry, Hasan Davis, Lisa P. Jones, Robert D. Neace, Mary C. Noble, Pamela Priddy, Peter Schuler, and Steve Trimble.

Guests: Judge Karen Thomas, Chief Regional District Judge, Campbell County; Judge James Adams, Vice Chief Regional District Judge, Christian County; Judge Joan Byer, Family Court Judge, Jefferson County; Rebecca DiLoreto, Children’s Law Center; Eric Friedlander, Deputy Secretary, Cabinet for Health and Family Services; Clyde Caudill, Kentucky Association of School Administrators; Clarence Williams, Louisville Metro Youth Detention Services; Kim Allen, Metro Criminal Justice Commission; Kathy Adams, Children’s Alliance; Kate Haydon, Community Action Kentucky; and LaShana Harris, Department of Juvenile Justice.

LRC Staff: Joanna Decker, Ray DeBolt, Norman Lawson, Jonathan Scott, Mike Clark, and Rebecca Crawley.

Senator Stine introduced the members of the task force and thanked them for their willingness to serve and for their interest in improving the juvenile justice system in Kentucky.

Issues Relating to Juvenile Justice

Karen Thomas, Chief Regional District Judge, Campbell County, said placing juvenile status offenders in the court system creates an adversarial environment which does not address the real needs of juveniles and their families. Most status offenders are charged with being beyond control of the parent or school and habitual truancy. She said nine Truancy Diversion Programs have been established to address habitual truancy problems, including early intervention

during the pre-court stage using case management and multidisciplinary consultation, and involvement of school personnel, court personnel and community partners. These programs have reduced habitual truancy charges by 90 percent in Campbell County.

Judge Thomas discussed the Campbell County Status Offense Project, based on the Reclaiming Futures model, which unites courts, probation, adolescent substance abuse treatment and the community to reclaim youth. Campbell County court staff and community stakeholders have partnered with the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) to integrate pieces of the Reclaiming Futures model to improve outcomes for pre-court or diverted juvenile offenders. Initiated in March 2012, the project is designed to screen and assess juvenile offenders and their families, and coordinate treatment programs and services, with the involvement of school personnel and court personnel before a formal complaint is filed. She discussed the Global Appraisal of Individual Needs (GAIN) Short Screen assessment tool for juvenile offenders, use of court designated workers acting as case managers, and data reporting requirements. Sixty-five to 70 percent of juvenile offenders have at least one diagnosable mental health need, and about 25 percent have serious emotional issues, including trauma, mental illness, substance abuse or other special needs. Based on the success of the Campbell County Status Offense Project, she recommended adoption of a standardized screening and assessment tool, use of evidence-based treatment practices, development of standards for multiple agency information sharing, and a more coordinated and efficient funding structure to better serve juvenile offenders and their families.

In response to a question from Mr. Schuler regarding her comment on the adversarial nature of status offenses, Judge Thomas explained attorneys representing juveniles before the court may not necessarily argue for what is in the best interest of the child or their family. If the court finds the juvenile in contempt, the child must be placed in juvenile detention, which is the last resort for the courts under current law.

James Adams, Vice-Chief Regional District Judge, Christian County, told the members he served on the panel that revised the juvenile code in 1987. He discussed the success of juvenile drug courts with a recidivism rate of less than eight percent and recommended they be expanded to other jurisdictions in the state. He suggested the Department of Juvenile Justice might be the best agency to administer and fund these courts. He agreed with Judge Thomas about the need for a statewide juvenile risk assessment tool. Judge Adams also briefly discussed disproportionate minority confinement (DMC).

Justice Noble said she would like to see the jurisdiction language in the statutes clarified because some counties handle juvenile cases in district court along with abuse, dependency and neglect cases, while other counties place all juvenile status offenses in family court, creating inconsistencies in the judicial system. She asked if the juvenile drug court in Christian County is limited to status offenders or also includes abuse, dependency and neglect cases. Justice Noble said the statutes need to be constructed recognizing the difference in civil versus criminal standards, because the courts can only go so far. Judge Adams agreed with her recommendation and said the same burden of proof is required in both courts. He recommended the task force look at what other states have been implementing and referred to Clayton County, Georgia.

Mr. Schuler agreed the courts are spending too much time on due process for status offense cases and perhaps that time and expense would be better spent developing and funding services for juvenile offenders.

In response to a question from Judge Jones, Judge Adams elaborated on the DMC project in Christian County, which recognizes the cultural, racial and ethnic differences of the juvenile offenders before the court. The DMC project front loads services to keep these children out of the court system.

Representative Tilley assumed chairmanship for the remainder of the meeting.

Judge Joan Byer, Family Court Judge, Jefferson County, told the task force that during her 16 years as a judge, she has found the juvenile justice system is not effective, efficient or cost effective. The court system responds to behaviors, not causes, and the juvenile justice system needs to spend more money on educating children rather than on incarcerating them. Many of the children she deals with have been witness to or victims of adult domestic violence or drug abuse, and have developed a lack of trust in adults. The school systems are too quick to push troubled children out of school because they do not want to affect their average daily attendance figures. She recommended amending Kentucky’s truancy laws to increase the number of days missed without a valid excuse that are required to be classified as a truant. The current standard is unrealistic and too stringent. The focus should be on what families need to be successful, not on what the courts and prosecutors need. She provided the task force with copies of a recent publication entitled *Reclaiming Futures in Kentucky* and encouraged them to review the information. She also encouraged the members to look at what other states are doing to improve the juvenile justice system, and information from the Coalition for Juvenile Justice. At the request of Ms. Priddy, Judge Byer agreed to advise staff of the studies and

articles she referred to so they can be shared with the members.

Rebecca DiLoreto, Children's Law Center, told the members the resources available for incarcerating juvenile offenders would be better spent developing a community based, family focused, child-oriented system of services. Juvenile detention is very expensive and juvenile offenders are sent to detention for lesser crimes than adults. Juvenile detention facilities do not address the causes of the troubling behavior of juveniles and increases the chances of recidivism and future criminal activity. Status offenders who are not a danger to the community are incarcerated with offenders who have committed serious offenses and are more likely to engage in criminal activity after their release. Approximately 5.8 percent of juveniles committed to the Department of Juvenile Justice facilities are violent offenders as defined by the FBI and incarceration is appropriate. She also noted the racial disparity of court decisions and the refusal of the courts and prosecutors to allow diversion for juvenile offenders. There is no coordination among agencies who serve juveniles, a tendency to criminalize all offenses, a failure to provide juvenile mental health services, there are health insurance barriers to substance abuse treatment for juveniles, and it is too easy for parents and school systems to turn to the courts for solutions to juvenile behaviors. She said parents and schools must return to teaching values to our children, and hold them accountable. She noted the Kentucky Criminal Justice Council suggested revisions for the juvenile code in 2002 which could be helpful to the members.

Discussion on Task Force Direction

Representative Tilley thanked the presenters for their interest and concern about the juvenile justice system in Kentucky and encouraged members to communicate with staff on specific topics needing review. He asked Ray DeBolt, task force staff, to work with the members to determine a meeting date for the remainder of the interim.

Senator Stine asked staff to work with the National Conference of State Legislatures, Council of State Governments, ALEC, Annie E. Casey Foundation, and the Pew Center for the States to find relevant materials and speakers for future meetings. She agreed with Judge Thomas that the current funding structure for the juvenile justice system needs further examination by the task force.

The meeting adjourned at 3:50 p.m.

TASK FORCE ON MIDDLE SCHOOL INTERSCHOLASTIC ATHLETICS

Minutes of the 1st Meeting of the 2012 Interim July 16, 2012

Call to Order and Roll Call

The 1st meeting of the Task Force on Middle School Interscholastic Athletics was held on Monday, July 16, 2012, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Carl Rollins II, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Mike Wilson, Co-Chair; Representative Carl Rollins II, Co-Chair; Senator Joe Bowen, Representative Joni L. Jenkins; Kevin Brown, Adam Lantman, Barry Lee, Elizabeth Miles, Greg E. Mitchell, Rita Muratalla, Dan Seum, Jr., and Julian Tackett.

Legislative Guest: Senator Dan Seum.

Guests: Dr. Trevor Wilkes, Orthopedic Surgeon, Lexington Clinic; Myron Thompson, Director of Risk Management, Kentucky School Boards Association; and John Roberts, Vice-President, R. J. Roberts, Inc.

LRC Staff: Bryce Amburgey, Greg Hager, Janet Stevens, and Stella Mountain.

Welcome and Introduction of Task Force Members

Representative Rollins said the Task Force on Middle School Interscholastic Athletics was created as a result of HCR 155, enacted in the 2012 Regular Session of the General Assembly. It was established to study the current oversight of middle school athletics and to produce a final report by December 7, 2012, including findings and recommendations to improve middle school athletics.

Representative Rollins welcomed and thanked the members for serving on the task force. Senator Wilson expressed his pleasure of serving on the task force. The members introduced themselves.

Presentation: The Middle School Athlete: Unique Health Concerns

Dr. Trevor Wilkes, orthopedic surgeon with the Lexington Clinic and fellowship trained in sports medicine, said evidence-based medicine aims to apply the best available evidence gained from the scientific method to guide clinical decision making. The recommendations cited in his presentation are categorized based on the levels of supporting evidence. Category A evidence is consistent, high quality studies; Category B evidence is supported but limited-quality studies; Category C evidence is based on consensus and expert opinion; and Category D evidence is conflicting and not routine.

Almost no high level evidence supports having distinctly different management of middle school versus high school athletes. Ages 11 to 14 is the onset of puberty and is a period of rapid

change. Physically, these children go through growth spurts, their growth plates grow, and tendons and ligaments expand. Cognitively, they develop the ability to determine long-term consequences and to see other sides of issues, go through an important neuro-motor development, and may experience a sensory/motor – disconnect. Graphs showed growth to be at its steepest rate for this age group and bones to grow the most during this time.

The Pre-Participation Physical Exam (PPE), although only an Evidence Category Level C, is a vital part to screening athletes. The PPE should be used to screen each middle school athlete for potential risk factors related to the heart, cognitive function, and bones and joints. Athletes with deficits, about 5 percent according to a study in the 2010 British Journal of Sports Medicine, need to be referred to specialists. Screening providers should be knowledgeable in pediatrics and demands of the sport. What the PPE should include is controversial, such as an EKG and baseline neuro-cognitive tests in case of concussion; more research is needed.

Overuse or repetitive trauma injuries (Evidence Category B) represent approximately 50 percent of all pediatric sport-related injuries. Emerging evidence indicates that the sheer volume of sport activity, whether measured as number of throwing repetitions or quantity of time participating, is the most consistent predictor of overuse injury. Efforts should be made to limit the total amount of repetitive sport activity engaged in by pediatric athletes to prevent or reduce overuse injuries. The general consensus is that alterations or modifications need to be made but there is no evidence at this time of what those changes should be.

Athletes in middle school are susceptible to overuse injuries. Open growth plates are susceptible to repeated micro-trauma, as is the case with gymnasts, causing pain and disability. Causes of growth plate injuries include improper technique, early specialization, excessive training with inadequate rest, and muscle weakness and imbalances. Coaches and trainers can address these issues. Some data suggest that pediatric athletes should do no more than 16 to 20 hours per week of vigorous physical activity (Evidence Category B). Athletes should be given one to two days off per week and never have more than five days of the same sport per week (Evidence Category C). Trainers should only see a 10 percent increase in training intensity per week.

Prevention programs for the general conditioning of youth carry over into athletics. Multiple high quality studies confirm the value of preventive pre-season conditioning programs that focus on areas such as the knee with regard to ACL tears, overhead athlete's shoulder, and jumper's knee (Evidence Category A).

Results of new research indicate that, contrary to previous thinking, youth do not have less effective thermoregulatory ability compared to adults during exercise

in the heat when adequate hydration is maintained. Middle school athletes should follow heat guidelines (Evidence Category A) and target modifiable risk factors such as frequent breaks, daily weigh-ins, gear, and rest between efforts.

Little research is available on patients under 14 regarding the influence of concussions and there is no established baseline data to guide return to play. There is concern for the role that the cognitive damage of concussion plays on the rapid brain development of athletes in the middle school age group. Some data indicate that from 1997 to 2007, sport-related concussions doubled. A British study found a minimum of three months of symptoms after a confirmed concussion; an Australian study showed two or more concussions statistically lowered the athlete's GPA; and children under the age of 20 have a higher risk of the potentially fatal Second Impact Syndrome.

Volume of pitches per game and season is the most important factor in baseball pitchers' injuries (Evidence Category A). Technique is also important; according to a Los Angeles study, the risk of injury increases eight fold if two out of five parameters defined are incorrect. USA Baseball has published evidence-based guidelines for middle school baseball: 75 pitches per game; 600 pitches per season; 2,000 pitches per year; no throwing for three months per year; only one overhead sport per season; no breaking pitches until age of 14; and never play the positions of pitcher and catcher on consecutive days.

In response to a question from Senator Bowen, Dr. Wilkes defined overhead sport as football quarterback, baseball, volleyball, swimming, and any weighted activity with hands above the head. In response to a question from Representative Rollins, Dr. Wilkes said that basketball does not qualify as an overhead sport. He can provide a list of overhead sports.

Strength training is recommended as part of the conditioning program for middle school athletes since it has no harmful effect on growth plates. Body weight exercises, core stability, and low weight – high repetition should be emphasized. Middle schools with strength and conditioning programs need to implement lower standards per body weight compared to high schools.

In response to a question from Representative Rollins, Dr. Wilkes said that instruction for coaches on strength training varies. Mr. Tackett said that it is not required for middle or high school coaches. It has been suggested that, when the course on sport safety that coaches have to take is revised again, a module on strength training be added.

In response to a question from Senator Bowen, Mr. Tackett said that traditionally teachers would also be coaches, but now schools rely more on hiring outsiders to be coaches who may not necessarily have an education background. Mr. Mitchell said that the majority of middle school coaches

are paraprofessionals. Dr. Wilkes stressed the importance of educating coaches by offering coaching clinics.

Dr. Wilkes said all athletic trainers and athletic health care providers should participate in injury-surveillance efforts, including Web-based and other registries that are a powerful tool for injury prevention (Evidence Category C).

There have been some recent developments for 9 to 14 year-old athletes. USA Baseball has published evidence-based pitch count guidelines; USA Cycling has published a gear ratio limit; USA Swimming is developing guidelines for training and racing; and running mileage limits have been published in Australia for middle school athletes.

Dr. Wilkes summarized that the ages of 9 to 14 represent a rapid period of physical and cognitive growth; little high level evidence exists to guide recommendations on rules and training; and distinct differences from high school ages, with regard to athletic participation, are poorly defined. He said that despite the lack of evidence, some trends emerge with consensus in the 9 to 14 age group: the importance of the PPE; attempt to minimize overuse injuries; tread carefully with concussions; follow published heat guidelines; observe current pitch count limits; and permit and encourage modified strength training. Over the next 5 to 10 years, more Level A and B research and evidence will emerge for guidelines.

In response to a question from Representative Rollins, Dr. Wilkes said that weight loss to stay within a wrestling classification is harmful.

In response to questions from Senator Wilson, Dr. Wilkes said that it is not typical for young athletes to develop Osgood-Schlatter syndrome; about 5 to 7 percent of young athletes experience it. Most overuse injuries are a complex interplay between genetics, previous injuries, and athletic training program, and it is difficult to pinpoint the real cause of such injuries. Level C evidence is that it is increasing due to longer training hours, single sport focus, and the lack of education of some of the coaches to incorporate strength and flexibility into the training program. There is little evidence that stretching prevents injury.

In response to a question from Senator Wilson, Dr. Wilkes said that the recommended 16 to 20 hours per week of vigorous physical activity include game time.

Mr. Seum mentioned a football player and two basketball players dying from enlarged hearts. In response to his questions, Dr. Wilkes said enlarged hearts in young athletes are common and cardiac death is the single most common cause of sudden traumatic death from sports. The PPE includes a stethoscope examination and a student is referred to a specialist when a problem is detected. On a practical level, PPEs are done on many students in a short period of time. Performing EKGs on all students has been proposed but this is

not an evidence-based recommendation; it is a controversial topic and the cost effectiveness would have to be taken into account. The best that coaches can do is to observe students who do not look well.

Mr. Tackett said that over-usage is a big problem. He gave an example of a basketball team playing 51 ball games in a season. Some kind of limitation needs to be implemented.

In response to a question from Mr. Tackett, Dr. Wilkes said he would like to see the same standards set for contact sports to be applied to all middle school sports because he sees concussions also in cheerleaders.

In response to a question from Representative Jenkins, Dr. Wilkes said that there is consensus that those providing PPEs be knowledgeable and have sports-related expertise, and do PPEs to stay competent.

In response to a question from Representative Jenkins, Dr. Wilkes said that cardiologists recommend that automatic external defibrillators (AEDs) be present at every feasible event. Having AEDs available at all school facilities is the minimum recommendation.

In response to a question from Mr. Lee, Dr. Wilkes said that the guidelines for high school athletics should be the minimum for middle schools. Some guidelines should be different, such as pitch counts and strength training.

In response to a question from Mr. Lee, Dr. Wilkes said that recognition is the main factor for the numbers of concussions almost doubling. Other reasons for the increase are more participation and the emphasis on being bigger and stronger in a shorter period of time.

Mr. Mitchell said that based on his experience as a coach, middle school sports are different. Minimum standards are needed but middle school sports should not be overregulated.

Presentation: Athletic Risk Management

Mr. Myron Thompson, Director of Risk Management with the Kentucky School Boards Association (KSBA), said that there are no members of KSBA on the Task Force and they could contribute valuable input.

He said KSBA insures about half the school districts in Kentucky. Sport is very important in our society and the worst thing that can happen is when a situation results in an athlete's death and criminal charges are made against the coach or a fellow athlete. The course for coaches focuses on safety training and at least one trained person has to be present at every high school athletics practice and competition. Adequate supervision is of the utmost importance as claims can be very expensive. Mr. Thompson cited examples of athletes suffering injuries and death, resulting in expensive settlements. Coaches need to be adequately trained to adhere to the regulations. Regular drills are needed to prepare for possible situations in which an athlete gets injured or collapses.

In 2007, there were two high school football deaths nationwide; in 1968 there were 36. Better education and equipment have contributed to the decrease in deaths over the years.

Athletic programs have risks and good guidance is needed when dealing with middle school athletes. Coaches need to be well prepared in student injury management, and proper supervision is needed. Sex abuse, hazing, and bullying are other situations that need to be guarded against. Any of these situations can lead to a lawsuit. The reputation of a school board also needs to be protected. Risk management is about maximizing safety and minimizing liability. Coaches need to guard against situations that could get them fired or even going to jail. When something goes wrong, lawsuits are usually filed against the school board. Most school districts have athletics policies, and the KSBA Policy Service has an athletics handbook that can be made available to committee members.

Other factors that need to be considered regarding risks involved with athletics are parent involvement at athletic events and the possibility of brawls; the handling of money with regard to booster clubs, concession stands, and gate entrance fees; transportation of athletes; coaches adhering to regulations to prevent heat injuries; athletic trainers being trained for emergency response regarding concussions; having AEDs available; sports facilities being compliant with regulations; stands being safe and in good condition with sturdy railings; bleacher inspections; equipment safety; and having contracts and insurance when leasing facilities.

Mr. Thompson said that KSBA recommends that school board members at the high school level receive an annual report from their athletics director, covering what has happened in the sports program, good and bad.

In response to questions from Mr. Tackett, Mr. Thompson said that the KSBA boundary and coach training is typically for KSBA insurance members but is also offered for free to school board members. KSBA does not have a recommended model or disclosure for financial accountability; that is something that needs to be addressed.

In response to questions from Mr. Mitchell, Mr. Thompson said that if the school district has jurisdiction over a middle school athletic event or activity, authorized volunteers under the direction of a school employee are covered by the Kentucky School Boards Insurance Trust (KSBIT) general liability policy. KSBIT does not cover participants. The insurance policy does not contain any requirements for a PPE or release forms. KSBA does not have any specific middle school insurance coverage requirements.

In response to questions from Senator Bowen, Mr. Thompson said that practices may start too early in the season and contribute to injuries and deaths.

Practices need to build up gradually to get student athletes acclimated to the weather. Overlapping of different sports may also be a contributing factor and may warrant an evaluation.

In response to a question from Mr. Lee, Mr. Thompson said that district policies and procedures must be followed in order to be covered by the KSBIT policy.

In response to a question from Mr. Seum, Mr. Thompson said that coaches need to use caution when providing transportation to a student athlete and not to engage in a pattern that could be perceived negatively.

In response to a question from Mr. Tackett, Mr. Thompson said that non-public schools participating in athletics are not insured by KSBIT. Non-public schools would need individual insurance policies and would need to adhere to those policy provisions.

Presentation: Student Accident Insurance & Industry Changes

Mr. John Roberts, Vice President of R. J. Roberts, Inc. insurance agency, said that his agency provides accident insurance to over 130 school districts and colleges, and is also the agent for the Kentucky High School Athletic Association (KHSAA) Catastrophic Program. This coverage pays the medical bills when athletes are injured. Any middle school athlete playing up to the high school level is covered by the KHSAA Catastrophic Program. Districts may have a separate student accident program to cover their athletes. Middle school athletes may also be covered by their parents' personal insurance or by a voluntary plan purchased through the school district. All student accident insurance rates are increasing because of the increase in the numbers of claims. As a result, fewer schools are purchasing coverage, creating a huge coverage gap. Districts may require individual insurance, but monitoring is weak.

The current KHSAA Catastrophic Program is a \$5 million maximum benefit for 10 years with a \$25,000 deductible. It is a medical benefits policy; it pays 100 percent of usual and customary charges in excess of other insurance in force and includes a \$20,000 death benefit. This coverage is for students participating in interscholastic competitions governed by KHSAA, including school-supervised practice, tryouts, game-related activities, and related travel. KHSAA adopts the best practices for heat-related injuries and concussions. A catastrophic accident policy for middle school athletes would be good to consider. It helps to have best practices in place when an agent is negotiating rates with companies for coverage.

Monitoring insurance is difficult; not all school districts in Kentucky purchase student accident insurance. Regulation for middle school students would help with rates. The best solution would be to create a Middle School Catastrophic Program for all districts, similar to the KHSAA Catastrophic Program.

In response to questions from Representative Rollins, Mr. Roberts said that middle school athletes are not covered under the KHSAA Catastrophic Program unless they participate on a high school team. The cost for the KHSAA Catastrophic Policy is \$180,000 to \$200,000 for the entire state.

In response to questions from Mr. Mitchell, Mr. Roberts said he is not familiar with any middle school risk management standards. He is vaguely familiar with the KHSAA physical examination form. The KHSAA release consent form is not considered when underwriting at the catastrophic level or with respect to the student accident programs. Roberts Insurance & Investments does not provide coverage to middle schools. There is no need for extra coverage if schools have a student accident plan because that plan provides coverage for all school sponsored and school supervised activities.

In response to a question from Mr. Mitchell, Mr. Roberts said that heat-related injuries are a concern. He will provide information regarding standards and by-laws underwriters look for when writing school athletics policies.

In response to questions from Mr. Mitchell, Mr. Roberts said that two levels of insurance for middle school student athletes would be feasible: the Athletic Only Policy covering \$0 to \$25,000 and the catastrophic policy. Coaches at the middle school level are covered for injuries, but not for accidents.

In response to a question from Mr. Lantman, Mr. Roberts said that wrestling club teams can obtain the same student accident coverage as middle schools. Boone County provides student accident coverage for all club teams.

Representative Rollins announced that future meetings will take place on the third Monday of each month. The next meeting will be on August 20. Meeting dates thereafter are September 17, October 15, and November 19.

Adjournment

The meeting was adjourned at 3:20 PM.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE Minutes

August 1, 2012

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, August 1, 2012, 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: Senator Paul Hornback, Co-Chair; Representative Wilson Stone, Co-Chair; Senators Carroll Gibson, David Givens, Vernie McGaha, and Dennis Parrett; Representatives Royce W. Adams, Terry Mills, Ryan Quarles, and Tommy

Turner.

Guests: Mr. Roger Thomas, Ms. Angela Blank, Mr. Joel Neaveill, Mr. Bill McCloskey, and Mr. Biff Baker, Governor's Office of Agricultural Policy; Commissioner Sharon Clark, Department of Insurance; and D.J. Wasson, Acting Director, Kentucky Access.

LRC Staff: Lowell Atchley, Stefan Kasacavage, Kelly Ludwig, and Kelly Blevins.

The July 9, 2012, minutes were approved, without objection, by voice vote, upon motion by Representative Mills and second by Senator Parrett.

Governor's Office of Agricultural Policy

The committee received the monthly report from Mr. Roger Thomas, Executive Director, Mr. Joel Neaveill, Chief of Staff, and Mr. Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), regarding project funding decisions made by the Agricultural Development Board (ADB) during its July meeting.

Before giving their projects report, the GOAP officials showed committee members a series of agriculture-related promotional spots that will be aired on television and radio statewide. Some committee members lauded the videos, particularly because they deliver a positive message about the importance of agriculture. Some committee members also commented on the equipment brand names that were prominent in the videos and the message in one video about transitioning from tobacco production to poultry production.

The GOAP officials responded to committee members' questions during the summary of funding allocations made under the County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-Use programs from the previous months. Mr. Neaveill described to Senator Givens the farm equipment acquired under the Shared-Use Equipment Program. He noted the county was able to acquire the farm equipment under a special Share-Use Equipment Initiative established for counties that receive little in the way of tobacco settlement funds. The initiative is being phased out.

Regular state and locally funded projects reviewed in subsequent discussion included: Kentucky Association of Food Banks, granted \$47,500 in county funds to purchase farm produce for distribution at food banks; Daviess County Lions Club Fair, approved by the ADB for \$50,000 in Daviess County funds to build a county agriculture multipurpose building; Wayne County Cattleman's Association, approved by the ADB for \$20,000 in county funds to establish a calf cost-share program; Pendleton County Extension District Board, approved for \$21,401 in county funds to build a structure to house shared-use equipment; Mercer County 4-H Council, approved for \$18,000 in county funds to build an outdoor education

facility.

The GOAP officials replied to several questions from committee members during the discussion of the Kentucky Association of Food Banks project. Some committee members stressed the association needs to become self-sustaining and not dependent on governmental type funding. Senator Givens remarked that, while he supports the goals of the association, caution should be used in continually granting funds to the group. According to Mr. Thomas, the board has indicated it would prefer that, going forward, the association not apply for state tobacco settlement funds. During discussion later, he mentioned a bill the General Assembly passed in the 2012 session to create a state income tax check-off for the "farms to food banks" program. Later in the project discussion, Senator McGaha reiterated Senator Givens' remarks about the continuous funding.

The GOAP officials responded to questions from Senators Givens and McGaha about what percentage of the funds would be set aside for administration. The officials promised to obtain additional information about administrative costs and provide that information to the committee.

Responding to Senator Gibson, the GOAP personnel described the way the association buys produce at auction markets in the state and then make the produce available to food banks.

In a response to Senator McGaha, the GOAP officials described how the board usually abides by county council recommendations. Senator McGaha suggested the notion of the board reconsidering that stance.

During the discussion of the Kentucky Association of Food Banks project, Co-Chair Stone indicated produce growers may not have been as aware of the availability of tobacco settlement fund grants as they are now.

Regarding the Daviess County Lions Club project, Mr. Neaveill responded to Senator Givens that the Daviess County Council had sufficient funds, either from this year's allocation or from next year's allotment, to fund the undertaking.

Kentucky Department of Insurance

Ms. Sharon Clark, Commissioner, Department of Insurance, and D.J. Wasson, Acting Director, Kentucky Access, reported on the proceedings of the Kentucky Health Care Improvement Authority, which oversees activities of some entities receiving tobacco settlement funds, and the Kentucky Access program, the high-risk insurance pool, which receives tobacco settlement funds to use in its operations.

During her remarks, Ms. Clark discussed the future of Kentucky Access in light of anticipated changes under the federal Patient Protection and Affordable Care Act. Ms. Clark told the committee that beginning January 1, 2014, insurers will be required, under the federal law, to guarantee issue health insurance coverage.

Thus, Kentucky Access would eventually be phased out as lingering claims are paid and other issues resolved. According to her report, a legal analysis is being conducted on transition requirements, notification of Kentucky Access members will be undertaken at some point in time, members and health insurance agents will be educated about options after termination of coverage, and an actuarial analysis of funding needs will be undertaken.

Responding to a question from Representative Adams, Ms. Clark indicated that appropriations shortfalls in the Kentucky Access program are made up with additional premium charges on those covered. Generally, she said, premium assessments cover 51 percent of total claims.

Replying further to Representative Adams, Ms. Wasson said Kentucky Access has looked for ways to control costs, including a three-tiered pharmacy rider.

Ms. Clark responded to Senator McGaha that attendance at Health Care Improvement Authority meetings is better than in the past.

During her full report on the Kentucky Access program, Ms. Wasson indicated membership in the program has been declining, mainly due to factors like nonpayment of premiums, Medicare coverage being available to some members, and the acquisition of other coverage. She noted that the administrative costs are low at 6 percent. New benefits have included a child-only plan. The program received a "clean audit" from the Auditor of Public Accounts.

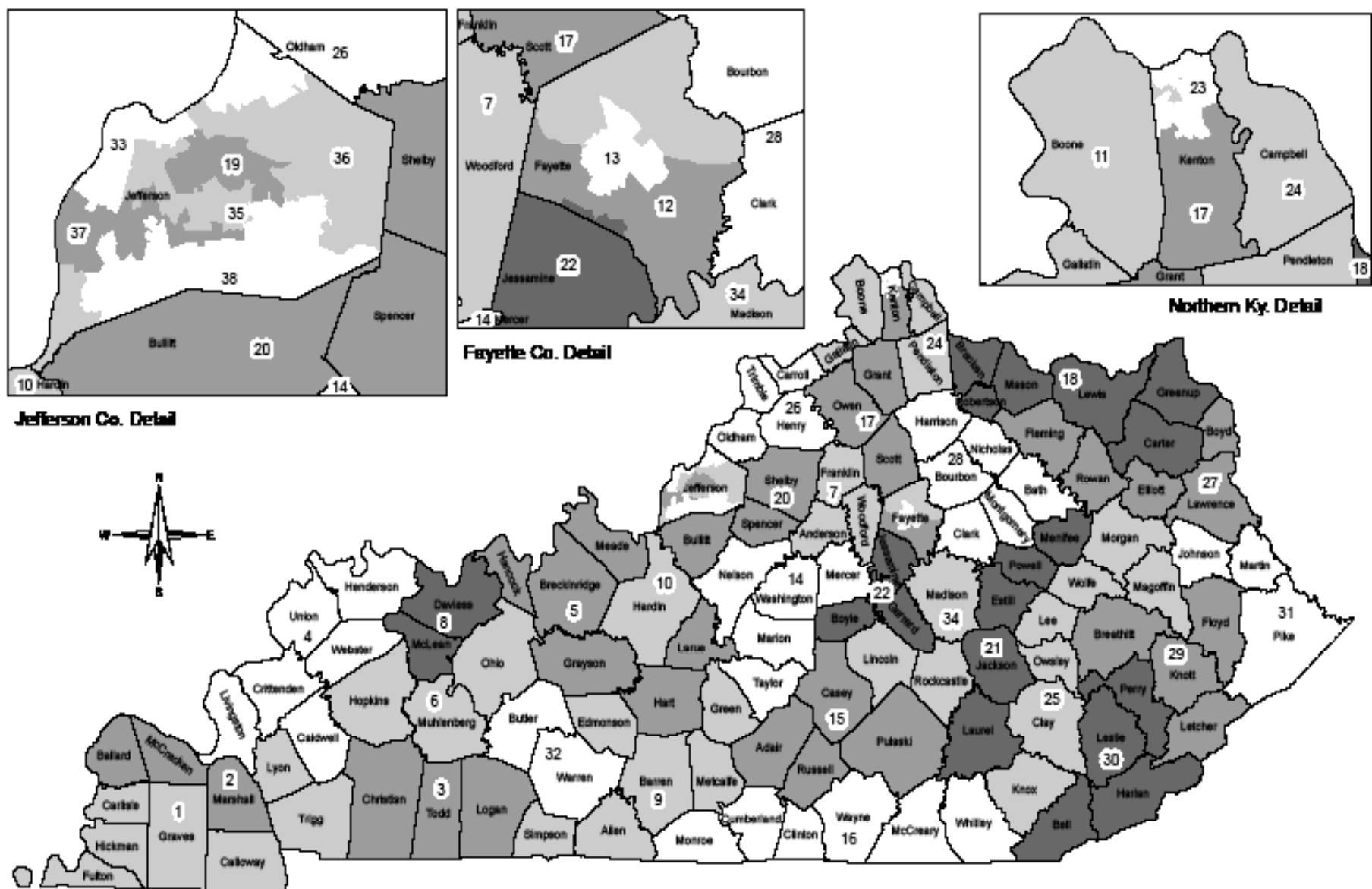
Responding to Senator Parrett, Ms. Wasson said Kentucky Access has discussed repercussions if the federal Patient Protection and Affordable Care Act is repealed. The Department of Insurance officials had noted during the discussion that statutory changes would not be needed regarding Kentucky Access until the 2014 session.

Ms. Clark and Ms. Wasson replied to Senator Givens that people sometimes stop paying premiums because they have received coverage elsewhere, have moved out of the state, have paid late, or have been dropped from the system but later re-enrolled in the program.

As their presentation ended, Co-Chair Stone complimented them on receiving a clean audit from the Auditor of Public Accounts.

Documents distributed during the committee meeting are available with meeting materials in the LRC Library.

The meeting adjourned at approximately 11:45 a.m.

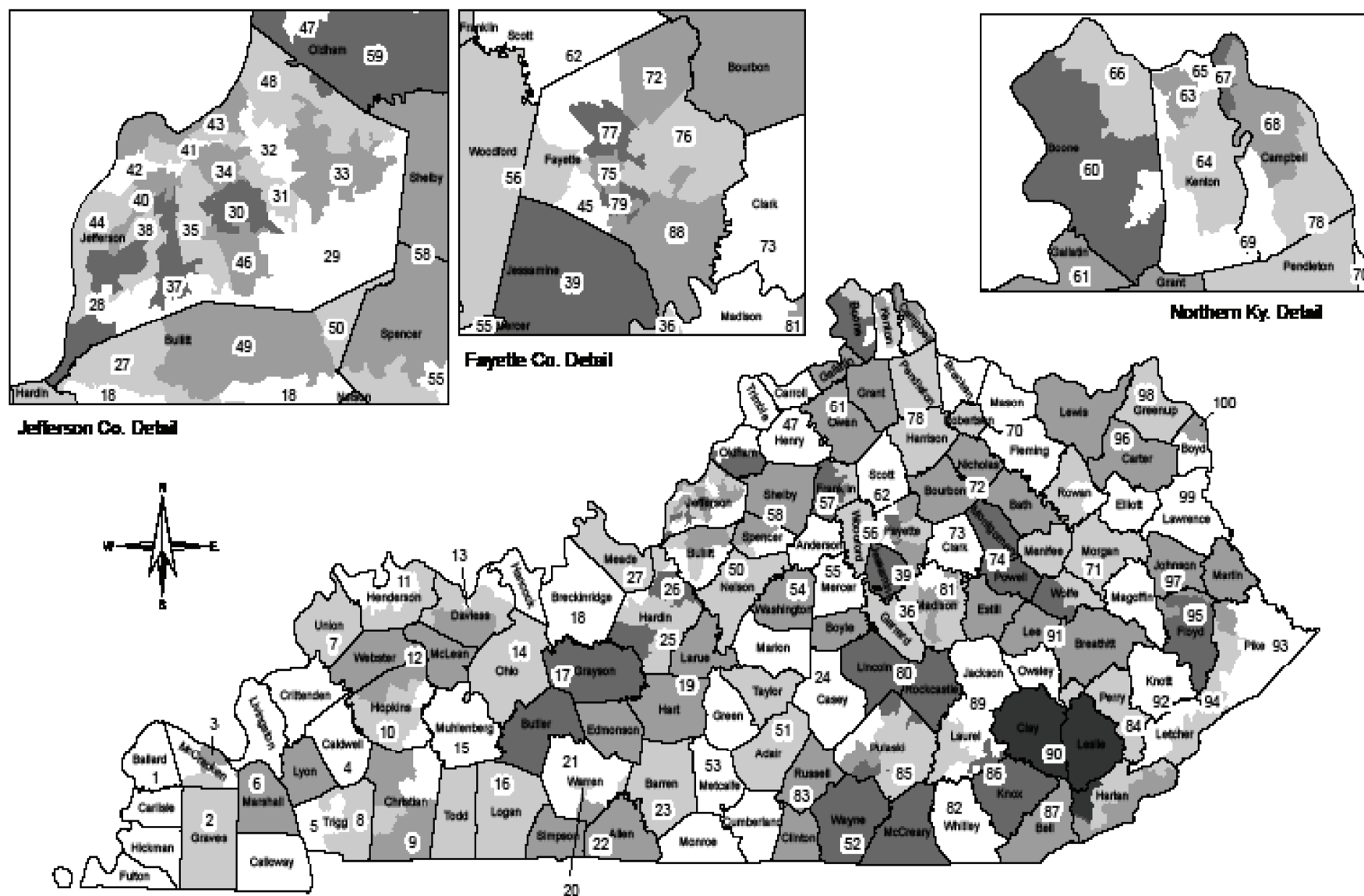


2002 Kentucky Senate Districts

Senate Plan (SH001A09) became law (KRS 5.101 - 5.130) January 31, 2002, with enactment of House Bill 1.

Produced by the Legislative Research Commission Geographic Information Systems Office, 700 Capitol Ave., Frankfort, KY, 40601, 502-564-8100, gis@lr.com.ky

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2002 Kentucky House Districts

House Plan (HB001A11) became law (KRS 5.201 - 5.300) January 31, 2002, with enactment of House Bill 1.

Produced by the Legislative Research Commission Geographic Information Systems Office, 700 Capitol Ave., Frankfort, KY, 40601, 502-564-8100, gis@lrc.ky.gov

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