

# 2013 Interim LEGISLATIVE

Volume 26, No. 5  
August 2013

\* Read on-line at [www.lrc.ky.gov/legislation.htm](http://www.lrc.ky.gov/legislation.htm)\*



## RECORD

## Redistricting bill passed in recent special session

by Amy Rose Karr  
*LRC Public Information*

The Kentucky General Assembly convened for an extraordinary session on August 19 and approved a legislative redistricting plan for the state.

House Bill 1, sponsored by House Speaker Greg Stumbo, D-Prestonsburg, and House Majority Floor Leader Rocky Adkins, D-Sandy Hook, reapportions the state's 100 House districts and 38 Senate districts to reflect population changes identified by the 2010 U.S. Census. The legislature is required to complete redistricting each decade to comply with the Supreme Court ruling of "one person, one vote."

"I hope that this plan is viewed in the manner that it's offered: As an attempt to be fair, as an attempt not to punish anyone, as an attempt to bring us together collectively and get over this issue and set the tone for what I hope can be a brighter and better future as we come out of this recession..." Stumbo said when presenting the proposed House district plan in that chamber.

Proposed Senate districts were added to HB 1 when the bill was considered by that chamber. Senate President Robert Stivers, R-Manchester, said the new Senate map was developed in a bi-partisan effort that was fair for all Kentuckians and would be defensible in court if challenged.



Rep. Steve Riggs, D-Jeffersontown, at left, looks over House Bill 1 on the House floor with Rep. David Floyd, R-Bardstown.

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## Modest economic growth expected through 2018

by Rebecca Hanchett  
*LRC Public Information*

While preliminary estimates for the next state revenue forecast won't be ready until October, the state's independent forecasting group adopted planning estimates in August based on modest average General Fund growth of 2.5 percent through fiscal year 2018.

The Consensus Forecasting Group (CFG) predicted General Fund revenue growth of 2.6 to 2.8 percent for four of the five next fiscal years, although slower growth of 1.8 percent is anticipated for this fiscal year, planning estimates show.

The planning estimate for fiscal year 2014—the current fiscal year—is \$4.5 million less than the official enacted forecast, according to Governor's Office for Economic Analysis Deputy Director Greg Harkenrider. The lower estimate is mostly due to declines in sales and use tax revenue, coal severance revenue, and cigarette tax revenue, based on the planning

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## Nominations now accepted for Vic Hellard Jr. Award

The Kentucky Legislative Research Commission is now accepting nominations for the 2013 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, 2013 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](http://www.lrc.ky.gov/HellardAward.htm).



Vic Hellard Jr.



## Special session, from page 1

“This is a map based on mathematics and legal principle,” he said.

The legislature approved a new legislative map for the state during the 2012 Regular Session that was later challenged in court and struck down. According to the ruling, that map split too many counties and didn’t adhere to acceptable population guidelines.

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The bill was signed into law by the Governor shortly after its passage on August 23.

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Since then, the state has been operating under district lines drawn in 2002, with a 2014 deadline for a new map. After additional redistricting

suits were filed in courts earlier this year, the governor called a special session to complete the task earlier.

HB 1 cleared the Senate on a 35-2 vote and received final passage in the House of Representatives, 79-18, in the five days minimum required for a bill to fully clear the legislature.

The bill was signed into law

## Budget forecast, from page 1

estimates.

The planning estimates are part of a “control forecast” adopted by the independent panel, which forecasts economic change for state government before each legislative budget session. Preliminary revenue estimates will be issued at the CFG’s next meeting which will be held by Oct. 15.

Official revenue estimates from the CFG will be provided to the General Assembly by the State Budget Director’s Office no later than the 15th day of the upcoming 60 legislative day regular session that begins on Jan. 7.



Sen. Morgan McGarvey, D-Louisville, in foreground, reviews House Bill 1 in a committee hearing during the First Extraordinary Session of the Kentucky General Assembly. Seated to his right are Senate Majority Floor Leader Damon Thayer, R-Georgetown, and Majority Caucus Chair Dan Seum, R-Louisville. Below: House Speaker Greg Stumbo, D-Prestonsburg, speaks on HB 1 on the House floor.

by the Governor shortly after its passage on Aug. 23.

The General Assembly will not reconvene until the beginning of the 2014 Regular Session on Jan. 7 or the call of the Governor for an additional extraordinary session.



The CFG had the choice of a control, optimistic, or pessimistic forecast for the state for fiscal years 2014-2018 and chose the control forecast. In the short run, the control forecast is based on growth despite a drag from fiscal tightening, lukewarm growth in employment and wages, and “short-term weakness” on exports, according to an Aug. 7 presentation to the CFG from Harkenrider’s office.

A control forecast is considered the most likely scenario, according to the national forecasting firm Global Insight.

The revenue forecast for the

state Road Fund will also follow a control scenario, the CFG agreed Thursday. Planning estimates for the Road Fund show 3.2 percent growth this fiscal year, negative growth next fiscal year, and growth of 0.1 percent, 2.2 percent, and 2.5 percent in fiscal years 2016, 2017, and 2018 respectively.

The state Road Fund provides funding for road construction, maintenance, operations, engineering, planning, research, and administration. It is funded by receipts from motor vehicle usage tax, vehicle and boat registration, driver’s licensing, the motor fuels tax, and interest.

## Drone testimony draws crowd to legislative meeting

by Rebecca Hanchett  
LRC Public Information

Discussion on how the use of unmanned aircraft systems or UAS, often called drones, are impacting or *could* impact civil liberties inside the U.S. was held by the House Judiciary Committee before a full audience on Aug. 21.

No action was taken at the meeting.

The testimony follows a mandate issued by Congress in 2012 that requires the Federal Aviation Administration (FAA) to open up more domestic airspace to drones by 2015. It also follows the April pre-filing of legislation by State Rep. Diane St. Onge, R-Lakeside Park, that would prohibit domestic drones from being used to gather evidence or other information in Kentucky, except under a search warrant or for purposes of military training. That bill will likely be considered during the 2014 Regular Session of the Kentucky General Assembly which starts in January.

Domestic drones that carry a “lethal payload”, such as a missile, would be specifically prohibited inside Kentucky airspace under St. Onge’s bill.

Those testifying on the issue before the committee included representatives from the ACLU, law enforcement, the unmanned aircraft system (UAS) industry, academic researchers, and a retired U.S. military officer. The first to speak was Kate Miller with the ACLU of Kentucky, who said the ACLU is not opposed to drones but does believe that “strict controls are needed to guide law enforcement.

“Drones open up a world of exciting possibilities. There are very many private, public and commercial uses for drones,” such as fire control, monitoring crops, and search and rescue, said Miller. “But we also believe drones raise the specter of Big

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KENTUCKY

General Assembly

Senate

**Walter Blevins, Jr.**  
115 Hill N Dale Morehead 40351  
Work 606-743-1200  
Home 606-743-1212  
FAX 606-743-1214

**Joe Bowen**  
2031 Fieldcrest Drive Owensboro 42301  
Home 270-685-1859

**Tom Buford**  
409 W. Maple Nicholasville 40356  
Home/FAX 859-885-0606

**Jared Carpenter**  
PO Box 100 Berea 40403  
Home 859-623-7199

**Julian M. Carroll**  
Room 229 Capitol Annex  
Frankfort 40601  
502-564-8100

**Perry B. Clark**  
5716 New Cut Road Louisville 40214  
Home 502-366-1247

**Julie Denton**  
1708 Golden Leaf Way  
Louisville 40245  
502-564-8100

**Carroll Gibson**  
PO Box 506 Leitchfield 42755  
Home 270-230-5866

**Chris Girdler**  
PO Box 395 Somerset 42502  
502-564-8100

**David P. Givens**  
PO Box 12 Greensburg 42743  
502-564-8100

**Sara Beth Gregory**  
PO Box 1835 Monticello 42633  
Home 606-348-9767  
FAX 606-348-3459

**Denise Harper Angel**  
2521 Ransdell Ave. Louisville 40204  
Home 502-452-9130

**Ernie Harris**  
PO Box 1073 Crestwood 40014  
Home 502-241-8307

**Jimmy Higdon**  
344 N. Spalding  
Lebanon 40033  
Home 270-692-6945

**Paul Hornback**  
6102 Cropper Rd. Shelbyville 40065  
502-564-8100

**Stan Humphries**  
763 Sinking Fork Rd., Cadiz 42211  
Home 270-522-0195

**Ray S. Jones II**  
PO Drawer 3850 Pikeville 41502  
Work 606-432-5777  
FAX 606-432-5154

**Alice Forgy Kerr**  
3274 Gondola Dr. Lexington 40513  
Home 859-223-3274

**Bob Leeper**  
229 South Friendship Paducah 42003  
Work 270-554-9637  
Home 270-554-2771  
FAX 270-554-5337

**Christian McDaniel**  
PO Box 15231 Latonia 41015  
502-564-8100

**Morgan McGarvey**  
2250 Winston Ave.  
Louisville 40205  
Home 502-589-2780

**Gerald A. Neal**  
Suite 1250 Meidinger Twr  
462 S. 4th Street  
Louisville 40202  
Work 502-584-8500  
Home 502-776-1222  
FAX 502-584-1119

**R.J. Palmer II**  
1391 McClure Road Winchester 40391  
Home 859-737-2945

**Dennis Parrett**  
731 Thomas Rd. Elizabethtown 42701  
Home 270-765-4565

**Jerry P. Rhoads**  
9 East Center Street  
Madisonville 42431  
Home 270-825-2949

**Dorsey Ridley**  
4030 Hidden Creek  
Henderson 42420  
Home 270-826-5402  
Work 270-869-0505  
Work FAX 270-869-0340

**Albert Robinson**  
1249 S. Main London 40741  
Work 502-584-8500  
Home 606-878-6877

**John Schickel**  
2147 Natches Trace Union 41091  
502-564-8100

**Dan “Malano” Seum**  
1107 Holly Ave. Fairdale 40118  
Home 502-749-2859

**Brandon Smith**  
P.O. Box 846 Hazard 41702  
Home 606-436-4526  
FAX 606-436-4526

**Kathy W. Stein**  
364 Transylvania Park Lexington 40508  
Work 859-225-4269  
Home 859-252-1500

**Katie Stine**  
21 Fairway Drive Southgate 41071  
Home 859-781-5311

**Robert Stivers II**  
207 Main Street Manchester 40962  
Work 606-598-2322  
Home 606-598-8575  
FAX 606-598-2357

**Damon Thayer**  
102 Grayson Way Georgetown 40324  
502-564-8100  
FAX 502-868-6086

**Johnny Ray Turner**  
849 Crestwood Dr. Prestonsburg 41653  
Home 606-889-6568

**Robin L. Webb**  
404 W. Main Street Grayson 41143  
Home 606-474-5380

**Whitney Westerfield**  
700 S. Main PO Box 1107  
Hopkinsville 42241-1107  
502-564-8100  
Work 270-885-6671

**Mike Wilson**  
631 Washington Avenue  
Bowling Green 42103  
502-564-8100

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

House of Representatives

**Julie Raque Adams**  
213 S. Lyndon Ln.  
Louisville 40222  
Home 502-744-9264

**Rocky Adkins**  
PO Box 688 Sandy Hook 41171  
Work 606-928-0407  
Home 606-738-4242  
FAX 606-929-5213

**John A. Arnold, Jr.**  
PO Box 124 Sturgis 42459  
Work 270-333-4641

**Lynn Bechler**  
2359 Brown Mines Road  
Marion 42064  
Home 270-988-4171

**Johnny Bell**  
108 North Green St. Glasgow 42141  
Work 270-651-7005  
Home 270-590-0110

**Robert Benvenuti III**  
2384 Abbeywood Rd Lexington 40515  
Home 859-421-1464

**Kevin D. Bratcher**  
10215 Landwood Drive  
Louisville 40291  
Home 502-231-3311

**Regina Bunch**  
179 Mountain St. Williamsburg 40769  
Home 606-549-3439

**Tom Burch**  
4012 Lambert Ave.  
Louisville 40218  
Home 502-454-4002

**Denver Butler**  
PO Box 9041 Louisville 40209  
Work 502-817-3044

**Dwight D. Butler**  
PO Box 9 Harned 40144  
Home 270-756-0100

**John Carney**  
341 Pembroke Way  
Campbellsville 42718  
Home 270-465-5400

**Larry Clark**  
5913 Whispering Hills Blvd.  
Louisville 40219  
Home 502-968-3546

**Hubert Collins**  
72 Collins Dr. Wittensville 41274  
Home 606-297-3152

**Leslie Combs**  
245 E. Cedar Drive Pikeville 41501  
Home 606-444-6672

**Tim Couch**  
PO Box 710 Hyden 41749  
Home/FAX 606-672-8998

**Will Coursey**  
285 Oak Level Elva Road  
Symsonia 42082  
Home 270-851-4433  
Work 270-252-1278

**Jesse Crenshaw**  
121 Constitution Lexington 40507  
Work 859-259-1402  
Home 859-252-6967  
FAX 859-259-1441

**Ron Crimm**  
PO Box 43244 Louisville 40253  
Work 502-400-3838  
Home 502-245-8905

**Robert R. Damron**  
231 Fairway West Nicholasville 40356  
Home 859-887-1744

**Jim DeCesare**  
PO Box 122 Rockfield 42274  
Home 270-792-5779  
Home FAX 888-275-1182  
Work 270-792-5779

**Mike Denham**  
306 Old Hill City Road Maysville 41056  
Home 606-759-5167

**Bob M. DeWeese**  
6206 Glenhill Rd. Louisville 40222  
Home 502-426-5565

**Jeffery Donohue**  
PO Box 509 Fairdale 40118  
Work 502-439-6175

**Myron Dossett**  
491 E. Nashville St. Pembroke 42266  
Home 270-475-9503

**C.B. Embry, Jr.**  
PO 1215 Morgantown 42261  
Work 270-526-6237  
Home 270-791-1879

**Joseph M. Fischer**  
126 Dixie Place Fort Thomas 41075  
Work 513-794-6442  
Home 859-781-6965

**Kelly Flood**  
121 Arcadia Park Lexington 40503  
Home 859-221-3107

**David Floyd**  
102 Maywood Ave. Bardstown 40004  
Home 502-350-0986

**Jim Glenn**  
PO Box 21562 Owensboro 42304  
Home 270-686-8760

**Jim Gooch Jr.**  
714 North Broadway B2  
Providence 42450  
Work 270-635-7855  
Home 270-667-7327  
FAX 270-667-5111

**Derrick Graham**  
Room 329F Capitol Annex Frankfort 40601  
Home 502-223-1769

**Jeff Greer**  
PO Box 1007 Brandenburg 40108  
Home 270-422-5100  
Home FAX 270-422-5100

**Keith Hall**  
213 E. Fourth Frankfort 40601  
502-564-8100

**Mike Harmon**  
633 N. 3rd St. Danville 40422  
Home 859-238-7792

**Richard Heath**  
438 Millers Chapel Rd.  
Mayfield 42066  
Home 270-705-7539  
Work 270-247-2210  
Work FAX 270-247-2304

**Richard Henderson**  
3483 Grassy Lick Rd. Mt. Sterling 40323  
Home 859-585-0886

**Toby Herald**  
PO Box 1602 Beattyville 41311  
Home 606-464-8510

**Jeff Hoover**  
PO Box 985 Jamestown 42629  
Work 270-343-5588  
Home 270-343-2264

**Dennis Horlander**  
1806 Farnsley Rd., Ste. 6 Shively 40216  
Work 502-447-9000  
Home 502-447-2498

**Kenny Imes**  
4064 US 641 N Murray 42071  
502-564-8100

**Joni L. Jenkins**  
2010 O'Brien Ct. Shively 40216  
Home 502-447-4324

**James Kay II**  
PO Box 1536 Versailles 40383  
502-564-8100

**Dennis Keene**  
1040 Johns Hill Road Wilder 41076  
Home 859-441-5894

**Thomas Kerr**  
5415 Old Taylor Mill Rd. Taylor Mill 41015  
Work 859-431-2222  
Home 859-356-1344  
FAX 859-431-3463

**Kim King**  
250 Bright Leaf Drive Harrodsburg 40330  
Home 859-734-2173

**Martha Jane King**  
633 Little Cliff Estates Lewisburg 42256  
Home 270-657-2707  
FAX 270-657-2755

**Adam Koenig**  
No. 12 170 Harrington Ct. Erlanger 41018  
Home 859-653-5312

**Jimmie Lee**  
901 Dogwood Drive Elizabethtown 42701  
Work 270-765-6222  
Home 270-737-8889  
FAX 270-765-2312

**Stan Lee**  
PO Box 2090 Lexington 40588  
Home 859-252-2202  
FAX 859-259-2927

**Brian Linder**  
16 Ridgeview Circle Dry Ridge 41035  
502-564-8100

**Mary Lou Marzian**  
2007 Tyler Ln. Louisville 40205  
Home 502-451-5032

**Donna Mayfield**  
2059 Elkin Station Rd.  
Winchester 40391  
Home 859-745-5941

**Tom McKee**  
1053 Cook Road Cynthiana 41031  
Home 859-234-5879  
FAX 859-234-3332

**David Meade**  
PO Box 121 Stanford 40484  
502-564-8100

**Reginald Meeks**  
PO Box 757 Louisville 40201  
Work 502-741-7464

**Michael Meredith**  
PO Box 292 Brownsville 42210  
Work 270-597-6049

**Charles Miller**  
3608 Gateview Circle Louisville 40272  
Home 502-937-7788

**Terry Mills**  
695 McElroy Pike Lebanon 40033  
Home 270-692-2757

**Brad Montell**  
543 Main Street Shelbyville 40065  
Work 502-633-7017  
Home 502-633-7533

**Tim Moore**  
417 Bates Rd. Elizabethtown 42701  
Home 270-769-5878

**Rick G. Nelson**  
117 Gumwood Rd. Middlesboro 40965  
Home/FAX 606-248-8828

**David Osborne**  
PO Box 8 Prospect 40059  
Work 502-645-2186  
Home 502-228-3201

**Sannie Overly**  
340 Main Street Paris 40361  
Home 859-987-9879

**Darryl T. Owens**  
1018 S. 4th St., Ste. 100 Louisville 40203  
Home 502-584-6341

**Ruth Ann Palumbo**  
10 Deepwood Dr. Lexington 40505  
Home 859-299-2597

**Tanya Pullin**  
1026 Johnson Lane South Shore 41175  
Work 606-932-2505

**Ryan Quarles**  
PO Box 1001 Georgetown 40324  
502-564-8100

**Marie Rader**  
PO Box 323 McKee 40447  
Work 606-287-3300  
Home 606-287-7303  
FAX 606-287-3300

**Rick Rand**  
PO Box 273 Bedford 40006  
Work 502-255-3286  
Home 502-255-3392  
FAX 502-255-9911

**Jody Richards**  
817 Culpeper St. Bowling Green 42103  
Home 270-842-6731

**Steve Riggs**  
PO Box 24586 Louisville 40224  
502-564-8100  
FAX 502-564-6543

**Tom Riner**  
1143 E. Broadway Louisville 40204  
Home 502-584-3639

**Bart Rowland**  
PO Box 336  
Tompkinsville 42167  
502-564-8100

**Steven Rudy**  
3430 Blueridge Dr. W. Paducah 42086  
Home 270-744-8137

**Sal Santoro**  
596 Walterlot Ct. Florence 41042  
Home 859-371-8840  
FAX 859-371-4060

**Jonathan Shell**  
PO Box 138 Lancaster 40444  
Work 859-792-4161

**John Short**  
PO Box 1133 Hindman 41822  
Work 606-785-9018

**Arnold Simpson**  
112 W. 11th Street Covington 41011  
Work 859-261-6577  
Home 859-581-6521  
Home FAX 859-261-6582

**Kevin Sinnette**  
PO Box 1358 Ashland 41105  
Home 606-324-5711  
Home FAX 606-329-1430

**Rita Smart**  
419 W. Main Street Richmond 40475  
Home 859-623-7876

**Diane St. Onge**  
PO Box 17351 Lakeside Park 41017  
502-564-8100

**John Will Stacy**  
PO Box 135 West Liberty 41472  
Home/FAX 606-743-1516

**Fitz Steele**  
176 Woodland Ave. Hazard 41701  
Home/FAX 606-439-0556

**Jim Stewart III**  
545 KY 223 Flat Lick 40935  
Home 606-542-5210

**Wilson Stone**  
1481 Jefferson School Road  
Scottsville 42164  
Home 270-622-5054

**Greg Stumbo**  
PO Box 1473 108 Kassidy Drive  
Prestonsburg 41653  
Home 606-886-9953

**Tommy Thompson**  
PO Box 458 Owensboro 42302  
Home 270-926-9736  
Work 270-926-1740  
FAX 270-685-3242

**John Tilley**  
126 Moreland Dr Hopkinsville 42240  
Home 270-881-4717

**Tommy Turner**  
175 Clifty Grove Church Road  
Somerset 42501  
Home 606-274-5175

**Ken Upchurch**  
PO Box 969 Monticello 42633  
Home 606-340-8490

**Ben Waide**  
100 YMCA Dr., Ste. 5  
Madisonville 42431  
Work 270-824-9227  
Work FAX 270-824-9206

**David Watkins**  
5600 Timberlane Dr. Henderson 42420  
Home 270-826-0952  
FAX 270-826-3338

**Gerald Watkins**  
Room 332A Frankfort 40601  
502-564-8100

**Jim Wayne**  
1280 Royal Ave. Louisville 40204  
Work 502-451-8262

**Russell Webber**  
PO Box 6605 Shepherdsville 40165  
Home 502-543-8209

**Susan Westrom**  
PO Box 22778 Lexington 40522  
Work 859-266-7581

**Addia Wuchner**  
PO Box 911 Burlington 41005  
Work 859-525-6698

**Brent Yonts**  
232 Norman Circle Greenville 42345  
Work 270-338-0816  
Home 270-338-6790  
FAX 270-338-1639

**Jill York**  
PO Box 591 Grayson 41143  
Work 606-474-7263  
Work FAX 606-474-7638

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

# Committee Meetings

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### INTERIM JOINT COMMITTEE ON AGRICULTURE

Minutes of the 2nd Meeting  
of the 2013 Interim  
July 10, 2013

#### Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Agriculture was held on Wednesday, July 10, 2013, at 10:00 AM, at the Webster County Extension Office, Dixon, Kentucky. Senator Paul Hornback, Chair, called the meeting to order, and the secretary called the roll.

#### Present were:

Members: Senator Paul Hornback, Co-Chair; Representative Tom McKee, Co-Chair; Senators Carroll Gibson, David Givens, Stan Humphries, Dennis Parrett, Dorsey Ridley, Kathy W. Stein, Robin Webb, and Whitney Westerfield; Representatives Lynn Bechler, Johnny Bell, Jim DeCesare, Myron Dossett, C.B. Embry Jr., Jim Glenn, Derrick Graham, Richard Heath, Kim King, Martha Jane King, Terry Mills, Ryan Quarles, Tom Riner, Steven Rudy, Jonathan Shell, and Wilson Stone.

Legislative Guests: Senator Dorsey Ridley and Representative Jim Gooch.

Guests: Jim Townsend, Webster County Judge-Executive; Joel Sappenfield, Tyson Foods Inc., VP and GM IF and Cornish; Craig Coberley, Complex Manager, Robards; Dave Phillips, Complex Human Resources Manager, Robards; Jeff Wood, Manager, Community Relations; Chuck Penry, VP, Government Relations; Matt Mika, Director, Government Relations; Jamie Guffey, Kentucky Poultry Federation; Mike Burchett, Kentucky Soybean Association; Laura Knoth and Ray Allen Mackey, Kentucky Corn Growers Association; Josh Lancaster, Webster County farmer; Eddie Melton, Kentucky Farm Bureau.

LRC Staff: Lowell Atchley, Kelly Ludwig, and Susan Spoonamore, Committee Assistant.

Jim Townsend, Webster County Judge Executive, Senator Dorsey Ridley, and Representative Jim Gooch welcomed the members to the Webster County area.

#### Impact of Kentucky's Poultry Industry on Agriculture

Joel Sappenfield, Vice President and General Manager of Individual Frozen and Cornish at Tyson Foods, stated that Tyson is one of the world's largest producers of meat and poultry, producing approximately one quarter of all protein consumed by Americans. Tyson is also a leader in hunger and

disaster relief.

Tyson produces prepared foods such as tortilla shells, chips, and pet food. Tyson employs approximately 100,000 people in the United States and 15,000 people abroad. The Robards, Kentucky, complex has approximately 1,700 employees. Tyson works with about 12,000 independent livestock and poultry farmers.

Tyson ships to approximately 85 foreign countries, exporting drumsticks from Robards, Kentucky, to Singapore and wing tips to China. Since 2000, Tyson has donated more than 92 million pounds of protein to U.S. food banks and has served more than 73,000 meals in Moore, Oklahoma, since it was struck by the May tornado.

Tyson relies on 130 Kentucky poultry farmers, who about 2 million bushels of corn purchased from farms in Henderson County. The total economic impact is roughly \$15 million in corn purchases.

Mr. Sappenfield stated that because of the closing of Century Aluminum in August, Tyson's energy costs could rise 30 percent, equivalent to \$960,000 per year. Ninety-six poultry farmers could see an annual increase of \$7,000-\$8,000 in energy costs.

Mr. Sappenfield discussed truck weight issues relating to KRS 189.222(2)(b). In recent months, the interpretation of the statute has changed, forcing Tyson to run lighter loads to comply. As a result, more loads must be hauled, and fuel consumption increases. Tyson encourages legislation increasing the weight limit to 88,000 pounds on two axles. The current weight limit is 80,000 pounds.

Mr. Sappenfield discussed Tyson's high costs for water, which is supplied by the Henderson County Water District. The high electric rate and water costs will make the Robards plant one of the highest in total utility costs in the United States.

In response to Senator Hornback, Mr. Sappenfield stated that some parts of the chicken, in particular the bottom of the breast frame, are ground up and used in pharmaceuticals.

In response to Representative Riner, Mr. Sappenfield stated that Tyson may be interested in purchasing free-range chickens. However, the possibility gives concern about the Avian Influenza virus. Tyson's first steps would be to evaluate the purchase of antibiotic free poultry, organic poultry, and then free-range poultry.

In response to Senator Parrett, Mr. Sappenfield stated that Tyson uses 1.8 to 2 million gallons of water per day at an annual water cost of \$5 million.

In response to Senator Stein, Tyson speakers stated the company produces Fresh Pet food, which is a refrigerated product, and products such as True Chews, which is a dog treat.

In response to Senator Hornback, Dave Phillips, the Tyson Complex Human Resources Manager in Robards, explained that Tyson team members represent 43 countries, and those employees often speak multiple languages. There is a 50 percent turnover that usually occurs within the first 90 days of employment and that is due to the repetitive nature and motion of the job. Seventy-six percent of the turnover is made up of local residents.

In response to Representative Rudy, Tyson employees stated that the restricted weight limits result in about eight additional loads per day.

In response to Representative McKee, Jeff Wood, Community Relations Manager, stated that Tyson has donated approximately 17,000 pounds of food to local food banks. Tyson donates a total of about 6 million pounds of food annually.

In response to Representative Stone, Mr. Sappenfield stated that each location has a United States Department of Agriculture inspector in charge. Each line has four inspectors, and each inspects for visible problems. There are two additional USDA inspectors who assist with inspecting and grading the chickens.

In response to Senator Hornback, Joel Sappenfield stated that Tyson's traceability uses the Julian date code, which tracks the plant, grower, date, line, and minute the product was produced.

In response to Senator Webb, Tyson representatives stated that the company publicizes that it complies with regulatory issues, and informs consumers about its use of best practice standards. The message is more easily accepted when it comes from a grassroots organization.

Jamie Guffey, Executive Director, Kentucky Poultry Federation, gave an overview of Kentucky's poultry industry. Poultry is Kentucky's number one commodity. More than 850 farm families in 42 counties represent the industry. The Kentucky Poultry Federation provides over \$13,000 in educational materials and supplies for poultry items to school systems. It is instrumental in bringing federal money into the state to support



the University of Kentucky and Murray State University veterinary laboratories.

The federation's goal is to increase the number of family-owned poultry farms in Kentucky to 1,000. Its efforts will also focus on bringing one additional company or secondary processor to the state.

Mr. Guffey stated that the Kentucky Poultry Federation supports an increase in truck weight limits, increasing the limit to 88,000 pounds, and would like poultry bedding and veterinarian supplies to be included in the agriculture-exempt sales tax status.

Mike Burchett, Kentucky Soybean Association, stated that soybean check-off dollars help fund soybean promotion and gather data on growing soybeans. Most soybeans have been planted this year, but there was some delay due to wet weather. Animal agriculture is the soybean industry's number one customer, and many producers are concerned about continued attacks on animal agriculture and production.

Laura Knoth and Ray Allen Mackey, Kentucky Corn Growers Association, and Josh Lancaster, a Webster County farmer, discussed the impact of the corn industry on Kentucky's poultry industry.

Ms. Knoth stated that 1.6 million acres have been planted in 2013 and more than 80 percent is in good-to-excellent condition. In 2012, total production was 104 million bushels at an average price of \$7.20 per bushel. The total estimated value of production, in 2012, was \$749 billion. Each year, 45 million bushels of corn are used to feed 320 million chickens. An additional 35 million bushels feed beef and dairy cattle and hogs. Approximately 28 million bushels of Kentucky corn are distilled into ethanol and spirits.

Eddie Melton, Kentucky Farm Bureau, stated that Kentucky Farm Bureau is beginning its legislative policy process, which will be ready to present in November. Webster County has 110,000 crop acres and 10,000 head of cattle. The poultry industry is a great industry for Webster County. Kentucky Farm Bureau is working to offer more opportunities to young people and encourage young people to stay on the farm.

The meeting adjourned at 12:00 p.m.

## INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Postsecondary Education  
Minutes of the 2nd Meeting  
of the 2013 Interim  
July 25, 2013

### Call to Order and Roll Call

The 2nd meeting of the Budget Review Subcommittee on Postsecondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, July 25, 2013, at 10:00 AM, in Room 169 of the Capitol Annex. Senator Stan Humphries, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stan Humphries, Co-Chair; Representative Arnold Simpson, Co-Chair; Senators David P. Givens, Johnny Ray Turner, and Mike Wilson; Representatives Derrick Graham, Reginald Meeks, Kevin Sinnette, Rita Smart.

Guests: David Baird, Acting Executive Director, Kentucky School Boards Association (KSBA); Douglas Goforth, Chief Insurance Services Offices, Kentucky League of Cities (KLC); Janet Craig, Attorney, Stites and Harbison; Sharon Clark, Commissioner, Department of Insurance (DOI).

LRC Staff: Tom Willis, Perry Papka, and Amie Elam.

### Kentucky School Boards Insurance Trust (KSBIT)

Members from the Kentucky School Board Association (KSBA), Department of Insurance (DOI), and the Kentucky League of Cities (KLC) testified about the Kentucky School Boards Insurance Trust (KSBIT). The presentation included a look at when and how the trust was formed, the present state of KSBIT, steps for the future, and the impact it will have on school districts.

In response to a question by Senator Wilson, Mr. Baird said that KSBA will provide information regarding the dollar amount of claims paid by KSBIT to the committee.

In response to a question by Senator Wilson, Mr. Baird said that a reinsurer will step in for all losses that exceed what KSBIT will cover. He explained that during the Novation deal the reinsurer will step in for KSBIT and be responsible for all claims from the first dollar on.

In response to a question by Representative Graham, Mr. Baird said that the majority of schools would choose the bonding option instead of the lump sum payment option.

In response to a question by Senator Givens, Mr. Baird said that the first figures in the presentation are financial deficits, and the later figures are assessment numbers that include

additional costs, therefore explaining the difference. Ms. Craig added that, when the actuaries estimate claims, they apply different assumptions.

In response to a question by Senator Givens, Ms. Craig said that actuaries are held to certain principals and standards when advising clients. Ms. Craig said that KSBIT is looking into the appropriateness of the advice received from actuaries to determine if action is warranted.

In response to a question by Senator Givens, Mr. Goforth said that the fiscal soundness of Novation has been evaluated by outside consultants and was found to be very strong.

In response to a question by Senator Wilson, Mr. Goforth said that, under the Novation bulk reinsurance transfer, there is no gain potential for school districts but there is also no risk.

In response to a question by Representative Smart, Ms. Craig said that, during the evidentiary hearing, districts will have the opportunity to formally intervene and raise objections. She added that KSBA is still working out the timeline for how many days districts will have to file an objection after receiving assessments.

In response to a question by Representative Miller, Ms. Craig said that the advantage to making an early payment depends on the individual member or school district.

In response to a question by Chairman Humphries, Mr. Baird said KSBIT started in 1979 and was managed by KSBA until 2010. In January, 2010, KSBA formed a partnership with KLC in which KLC would manage the insurance programs on behalf of KSBA. As of July 1, 2013, KSBIT continues to pay claims but has no active policies.

Mr. Baird said it is unlikely that districts that have gone to the open market will be able to come back to KSBIT.

In response to a question by Chairman Humphries, Mr. Baird said that there was a time when KSBIT was doing well and a royalty was paid to KSBA.

In response to a question by Senator Givens, Ms. Clark said that all insurance plans similar to KSBIT file quarterly and annual statements with DOI. Senator Givens asked that the assessments be sent to school districts before any recovery plan is adopted.

In response to a question by Senator Wilson, Ms. Clark said that, if the Novation option were to fail, the liabilities fall back on the school districts.

There being no further business before the committee, the meeting was adjourned at 11:36 a.m.

## INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Primary and Secondary Education  
Minutes of the 1st Meeting  
of the 2013 Interim  
July 25, 2013

### Call to Order and Roll Call

The 1st meeting of the Budget Review Subcommittee on Primary and Secondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, July 25, 2013, at 10:00 AM, in Room 169 of the Capitol Annex. Senator Stan Humphries, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stan Humphries, Co-Chair; Senators David P. Givens, Johnny Ray Turner, and Mike Wilson; Representatives Jeffery Donohue, Derrick Graham, Dennis Horlander, and Charles Miller.

Guests: David Baird, Acting Executive Director, Kentucky School Boards Association (KSBA); Douglas Goforth, Chief Insurance Services Offices, Kentucky League of Cities (KLC); Janet Craig, Attorney, Stites and Harbison; Sharon Clark, Commissioner, Department of Insurance (DOI).

LRC Staff: Tom Willis, Perry Papka, and Amie Elam.

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In response to a question by Senator Wilson, Ms. Clark said that, if the Novation option were to fail, the liabilities fall back on the school districts.

There being no further business before the committee, the meeting was adjourned at 11:36 a.m.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

### **Budget Review Subcommittee on Transportation**

#### **Minutes of the 2nd Meeting of the 2013 Interim**

July 25, 2013

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

The second meeting of the Budget Review Subcommittee on Transportation of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, July 25, 2013, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Leslie Combs, Co-Chair; Senators Ernie Harris and R.J. Palmer II; Representatives Hubert Collins, Tim Couch, Jim Gooch Jr., Keith Hall, Dennis Keene, Sal Santoro, John Short, and Jim Stewart III.

Guests: Senator Chris Girdler; Representatives Rocky Adkins, Denny Butler, Kim King, Adam Koenig, Reginald Meeks, Sannie Overly, Tanya Pullin, Arnold Simpson, Diane St. Onge, and Addia Wuchner; Jim Reed, Environment, Energy, and Transportation Group Director, National Conference of State Legislatures (NCSL); Mike Hancock, Transportation Cabinet Secretary; Russ Romine, Executive Advisor to the Secretary, Transportation Cabinet; Tammy Branham, Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet; Steve Waddle, State Highway Engineer; Transportation Cabinet.

LRC Staff: Chuck Truesdell, Jennifer Anglin, Spring Emerson, and Benjamin Thompson.

Chair Combs requested a motion to approve the minutes of the last meeting. A motion was made by Representative Collins and seconded by Representative Gooch, and the minutes were approved without objection.

Representative Collins said that several years ago he strongly opposed to Public-Private Partnerships (P3s), but after visiting Washington, D.C. with the Council of State Governments and hearing discussions on the subject, he is becoming convinced that the use of P3s is a good idea.

Chair Combs said the use of P3s should be fully understood before decisions are made. It could create a lot of opportunity and potential that Kentucky might not otherwise have, but due to the complexity of the issue, it must be considered carefully.

#### **Public-Private Partnerships**

Jim Reed, NCSL, provided an

overview of the use of P3s in other states, as well as other modes of funding.

Chair Combs said the United States is behind the curve on the use of P3s, and some foreign countries have used it fairly extensively for a while. While the discussion today revolves around the use of P3s for roads, they can be used for other major projects as well.

In response to questions from Representative Collins regarding the possibility of an entity not providing maintenance or perhaps going bankrupt, Mr. Reed said a fund could be created as a contingency for those types of problems. The fund would need to be capitalized initially and then contributed to annually in order for it to grow, which would be similar to posting an insurance bond.

Cabinet Secretary Hancock and Mr. Romine provided an overview of funding sources in use in Kentucky.

In response to questions from Representative Keene, Secretary Hancock said the Transportation Cabinet's total annual budget is approximately \$2 billion. Mr. Romine said approximately \$250 million would be supported by toll receipts.

In response to questions from Representative Overly, Mr. Reed said NCSL does not currently have guidance for the use of P3s outside the transportation sector, but he agreed that it could be used for more. He also mentioned the use of shadow tolls, funding through other resources, with tolling as a good user fee. Secretary Hancock agreed, stating that P3 discussions should be separate from discussion of the use of tolls. Mr. Romine said Indiana has concessions to support debt for the Louisville-Southern Indiana Ohio River Bridges project, by pledging a project-specific appropriation to support the debt that has been issued. He said their availability payment concession has a 35-year term, and they intend to recoup that expense with the use of toll revenues. Chair Combs asked that Mr. Reed take the discussion on non-road P3s back to NCSL for consideration.

In response to questions from Representative Adkins, Secretary Hancock said TIFIA loans are project-specific. States must formally apply through the U.S. Department of Transportation which works directly with the Department of the Treasury to create low interest loans for states that are attempting to do projects bigger than they can typically afford. Mr. Romine added that negotiations are ongoing and Kentucky's request for TIFIA support has been maximized.

In response to a question from Representative Meeks regarding the Louisville-Southern Indiana Ohio River Bridges project, Mr. Reed said the Indiana toll contract includes

increases over time. He added that the use of managed lanes is also an option, such as that being used in Colorado.

In response to a question from Representative Santoro, Secretary Hancock said it takes a variety of options to make a mega-project work. He said all financial mechanisms are considered.

Senator Higdon thanked the Cabinet for their accessibility, and noted what an important issue project funding is. He plans to continue the discussion in future meetings.

Representative Simpson thanked Chair Combs for her willingness to have a candid, open discussion. He said P3s are a reality in many states, and as a consequence, discussions are very necessary. He thanked the Chair for extending an invitation to non-members to participate in the discussion. He said that, going forward these discussions, he hoped that two points would be considered: one, the concern of disproportionate impact; and two, what other states are doing about local control.

#### **Project Lettings and Design/Build Projects**

Steve Waddle, State Highway Engineer, testified on project lettings and design/build projects.

In response to a question from Representative Overly, Mr. Waddle said information regarding the projects let during fiscal years 2012 and 2013 would be provided to the committee at a later date.

Tammy Branham overviewed the Road Fund Cash Balance, and Secretary Hancock outlined the State Bond Funds and State Funding Priority (SPP) Projects current authorized funding versus scheduled program funding as of July 1, 2013.

In response to a question from Representative Adkins, Secretary Hancock said in order for projects to qualify for design/build status, construction costs can be up to \$30 million.

In response to a question from Representative Hall, Secretary Hancock said the projects included in the 2012 Highway Plan are currently being worked on. Ms. Branham said in fiscal year 2013, \$5.98 million was spent per calendar day and \$8.4 million was spent per work day.

In response to questions from Representative Overly, Secretary Hancock said the cabinet would share more information on design/build projects within the next couple of weeks. He added that a floor amount of \$150 million would be a fair target amount to keep as the cash balance.

Representative Couch requested information on the TIFIA loan program. Chair Combs asked that the cabinet provide all information requested during the meeting to staff for distribution to the committee at a



later date.

There being no further business before the committee, Chair Combs requested a motion to adjourn. A motion was made by Representative Collins and seconded by Representative Santoro, and the meeting was adjourned without objection at 12:23 PM.

## **SPECIAL SUBCOMMITTEE ON ENERGY**

### **Minutes of the 2nd Meeting of the 2013 Interim**

July 19, 2013

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

The 2nd meeting of the Special Subcommittee on Energy was held on Friday, July 19, 2013, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Jared Carpenter, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Senators Joe Bowen, Ernie Harris, Jimmy Higdon, Ray S. Jones II, Bob Leeper, Dorsey Ridley, Johnny Ray Turner, and Robin L. Webb; Representatives Rocky Adkins, Dwight D. Butler, Hubert Collins, Leslie Combs, Tim Couch, Jim Gooch Jr., Keith Hall, Tanya Pullin, Tom Riner, John Short, Kevin Sinnette, John Will Stacy, Fitz Steele, Gerald Watkins, and Brent Yonts.

Guests: Bill Bissett, President, Kentucky Coal Association and Dr. Len Peters, Secretary, Energy and Environment Cabinet.

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

Representative Pullin moved that the minutes be changed to correct a typographical error. Following a second by Representative Steele, the motion passed without objection. The June 19, 2013 minutes were approved, as amended, upon motion made by Representative Steele and seconded by Representative Hall.

#### **Kentucky's Coal Industry Looking Forward**

Mr. Bill Bissett, President, Kentucky Coal Association, explained that the Association provides a voice for Kentucky Coal. The Association represents more than 90 percent of Kentucky's coal production, with 23 member companies in addition to 148 associate member companies.

Mr. Bissett said that Kentucky ranks third in the United States for the most coal production, fifth for energy production, and has one of the lowest electricity rates. Coal provides more than 90 percent of Kentucky's electricity. Since 2010, the demand for coal has been decreasing while the demand for natural gas has been increasing. The decrease in demand has resulted in significant job loss that has had an adverse fiscal impact on

coal producing counties.

Mr. Bissett stated that several negative changes were ahead for Kentucky coal. The low price for natural gas has had a negative impact on coal prices. The warm winters and mild summers have affected the demand for coal. The anti-coal administration in Washington, D.C. wants to move away from coal, and the lack of a true economic rebound has negatively impacted the industry. The future of coal depends on how coal is extracted, how much is mined, and who would be the end user. Exporting of coal has significantly increased, and Kentucky needs to be able to ship coal out of state.

Mr. Bissett stated that the Sierra Club measures its success on how many coal plants it can retire. The federal administration's war on coal is frustrating and costly. The solution has become more political than legal.

In response to Representative Collins, Mr. Bissett stated that the method of mining in eastern and western Kentucky has affected the demand for underground and surface mined coal. After coal-fired plants have been converted to gas, it will be difficult to revert.

In response to Representative Watkins, Mr. Bissett said that over 5,000 jobs have been lost in the eastern Kentucky mine fields.

In response to Representative Adkins, Mr. Bissett stated that there are thirty-nine 404 permits waiting for review, and there are approximately one hundred seventy 402 permits waiting for review. Of those, 100 permits are for individuals and 60 are general permits. General permits are slowing movement through the process.

Representative Riner stated that the United States should not be the only nation to regulate its coal industry. The United States should insist on a level playing field with other countries.

Representative Couch said that his counties of Clay, Leslie, and Harlan are facing high employment rates and loss of coal severance money. It has already started to affect the daily operations of local governments.

Dr. Len Peters, Secretary, Energy and Environment Cabinet, discussed the energy landscape for Kentucky. Coal production in eastern Kentucky decreased from 2011 to 2012 by 27.6 percent, making it the lowest level since 1965. Coal production has fallen 52 percent since its peak in 1990, thereby causing employment to drop 30 percent from 13,608 in 2011 to 9,540 in 2012.

Secretary Peters explained that on the national energy landscape coal production declined by five percent. Even though coal-to-gas switching slowed in 2013, Appalachian coal

remains uncompetitive because of the price differential between coal and gas. Unlike natural gas, federally imposed regulations and other market forces are not in coal's favor. Coal plant retirements will continue in the North American Electric Reliability Corporation and South Electric Reliability Corporation regions, which account for most of eastern Kentucky's out-of-state coal shipments.

Secretary Peters said that regulatory pressures will not lessen and will become greater. There is concern that once coal plants are converted to natural gas, and if natural gas prices increase, the United States will be locked in to using only natural gas. Even if the coal market were to rebound, Appalachian coal would still be the least cost-competitive relative to all other coal basins.

Secretary Peters suggested that there were several things that could be done to help the coal industry: (a) make coal-fired generation more efficient to reduce emissions; (b) a boiler efficiency study to help serve as a guide for policymakers, utility companies, and the public; (c) work with the federal government to ensure flexibility and rational compliance timeframes with greenhouse gas rules; (d) continue supporting carbon capture and storage research and development; and (e) identify projects for possible cost-share to leverage funding under \$8 billion loan guarantee. Kentucky might have good projects that would qualify for the loan guarantee program.

Secretary Peters said that Kentucky has no ability to affect what happens in other states. Affordability and price certainty for Kentucky's manufacturing base and for its citizens are paramount. Switching from coal to natural gas nationally makes the loss of coal a state-wide issue. Meaningful discussions about the changes occurring in eastern Kentucky would be helpful. The results of a Boiler Efficiency Study are due in November, and he will be available to report the findings if requested.

Senator Leeper stated that his senatorial district moves a lot of coal via barge. The decrease in coal production has impacted his district significantly. Employees at the Uranium Enrichment Plant were recently sent notices that the plant will be closing and their jobs terminated. Losing highly skilled and highly paid employees will have a significant negative economic impact to Paducah and surrounding counties.

Senator Carpenter stated that closing the Paducah Gaseous Diffusion Plant is a serious problem that will affect community projects and local income.

In response to Representative Adkins, Secretary Peters said that the reasons for the 11 percent increase

in coal consumption during the first quarter of 2013 were demand and need for coal due to economic rebound and weather conditions. The United States should be careful about locking itself into a single fuel source.

In response to Representative Steele, Secretary Peters stated that more time is needed to examine chemical looping. It could be a viable alternative.

Representative Short stated that the 92<sup>nd</sup> House District is first in coal severance money decrease, first in unemployment and first in the number of unemployed miners. Eastern Kentucky needs help from the Commonwealth of Kentucky.

In response to questions from Senator Jones, Secretary Peters said that coal's main issue is at the federal level. The EPA and each cabinet work independently. Kentucky needs all government agencies working together to bring value-added industries to the state. Secretary Peters said Kentucky needs to use its natural resources to create value-added jobs. For example, hardwoods can be used to make numerous products, and those products could be made in Kentucky. Only two voices speak on coal regulations: the Environmental Protection Agency and the Department of Energy. Secretary Peters said that Governor Beshear has met with federal agency officials and Kentucky's congressional delegation in Washington, D.C.

Several legislators commented that decreasing the use of coal will have national adverse implications and that the Environmental Protection Agency must be reined in.

The meeting was adjourned at 12:10 p.m.

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

### **Minutes of the Second Meeting of the 2013 Interim**

July 17, 2013

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

The second meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, July 17, 2013, at 1:00 p.m., at the Jefferson Community & Technical College, Louisville, Kentucky. Senator Julie Denton, Co-Chair, called the meeting to order at 1:15 p.m., and the secretary called the roll.

Present were:

Members: Senator Julie Denton, Co-Chair; Representative Tom Burch, Co-Chair; Senators Joe Bowen, Tom Buford, Perry B. Clark, David P. Givens, Denise Harper Angel, Jimmy Higdon, and Alice Forgy Kerr; Representatives Julie Raque Adams, Robert Benvenuti III, Bob M. DeWeese, Kelly Flood, Tim Moore, Darryl T. Owens, Ruth Ann Palumbo, Ben Waide, David Watkins, Russell Webber, and Susan Westrom.

Guest Legislator: Representative Dennis Horlander.

Guests: Dr. Tony Newberry, President and CEO, Jefferson Community and Technical College; Stephen J. Houghland, MD, Chief Medical Officer, and Liz McKune, ED.D, Director of Behavioral Health, Passport Health Plans; Ted A. Cummings, R.Ph., MBA, Regional Clinical Pharmacy Director, and Chris Slocum, LCSW, MBA, Vice President, Clinical Operations, MHNet Behavioral Health, CoventryCares of Kentucky; Dr. Paul Kensicki, Behavioral Health Medical Director, Lori Gordon, State Director of Behavioral Health, WellCare of Kentucky; Mario Lopez, Account Executive, Jonas Thom, Vice President of Community Programs, Humana; Dr. Mark Jorrich, Secretary-Treasurer, Kentucky Society of Addiction Medicine; April Lawson, Constituent, and David E. Hanna, Ph.D., Interim President and CEO, bluegrass.org, and clinical psychologist; Samantha McKinley, Department for Medicaid Services, Cabinet for Health and Family Services; Joseph Maupin and Matt Ditch, Vanguard Ventures of Louisville; Kara Hinkley and Jacqueline Lindsey, National Multiple Sclerosis Society; Anne Parton, Babbage Cofounder; Shelley Gast, Norton; Jan Gould, Kentucky Retail Federation; Mike Porter, Kentucky Dental Association; Kelly Gunning; Phill Gunning, Valerie Mudd, and David Riggsby, National Alliance on Mental Illness (NAMI)-Lexington; Betsy Dunningan, Acting Commissioner, and Allen Brenzy, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services; Marylee Underwood, Commonwealth Council on Developmental Disabilities; Bill Doll, Kentucky Medical Association; Haleh Karimi, Eliason; Gary Thurnauer, Pfizer, Nancy Galvagni and Sarah Nicholson, Kentucky Hospital Association; Ramona Johnson, Bridgehaven; Gwen Cooper, Seven Counties Services; Steve Bing, Kentucky Public Health Association; Heather Dung, Cabinet for Health and Family Services; Karen Lentz, Commonwealth Alliances, Janice Richardson, Rivendell Behavioral Health; Marty White, Capitol Link Consultant.

LRC Staff: DeeAnn Mansfield, Sarah Kidder, Gina Rigsby, Cindy Smith, and Wesley Whistle.

#### Opening Remarks

Dr. Tony Newberry, President and CEO, Jefferson Community and Technical College (JCTC), stated that workforce development is a primary mission of the Kentucky Community and Technical College System (KCTCS). Over a forty-year

period, KCTCS developed programs which meet the specialized workforce needs of the health care community and the needs of the students for careers in fields that pay a sustainable living wage. The \$25 million, 100,000 square foot facility provides state of the art classrooms, laboratories, and equipment for 16 different programs that serve students in southwest Jefferson, Bullitt, Carroll, and Shelby counties. Several of the programs were established with seed funding from hospitals and a Department of Labor grant, Health Professions Pathways, expanded the pharmacy technology and medical assisting programs to nights and weekends to meet the needs of employees of the hospitals. The downtown campus enrolls approximately 8,000 students per year. JCTC is home base to a partnership, Metropolitan College, with UPS and the University of Louisville that provides 2,000 students annually the opportunity to work while going to school.

#### Consideration of Referred Administrative Regulations

The following administrative regulations were available for consideration: **201 KAR 20:057** – establishes the scope and standards of practice for an advanced practice registered nurse; **201 KAR 20:070** – establishes the requirements for the licensure of nurses by examination; **201 KAR 20:085** – establishes the licensure periods for licenses by the Kentucky Board of Nursing; **201 KAR 20:110** – establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed; and **921 KAR 3:090 & E** – establishes requirements for the Simplified Assistance for the Elderly Program, a demonstration project administered by the cabinet to improve access to SNAP for elderly and disabled individuals. A motion to accept the administrative regulations was made by Senator Buford, seconded by Representative Burch, and accepted by voice vote.

#### Behavioral and Substance Abuse Issues

Dr. Mark Jorrich, Secretary-Treasurer, Kentucky Society of Addiction Medicine, stated that the Office of National Drug Control Policy (ONDCP) reported that annually nationwide the cost of addiction is \$500 billion annually including costs associated with crime, healthcare, and industry. The National Institute on Drug Abuse (NIDA) reports that 25 percent of each Medicare dollar is used to address addiction related illnesses and 20 percent of each Medicaid dollar. Drug use and crime are both down almost 60 percent, the transmission of

HIV, Hepatitis C virus, and Hepatitis B virus is down, and employment is up 40 percent among individuals treated for addiction. For every \$1 spent on treatment it saves \$4 in criminal justice costs, \$3 for emergency care, \$4 in public assistance for a woman, and \$7 in productivity in men. Kentucky's Opiate Recovery Treatment Outcome Study (KORTOS) reports reductions of 90 percent in opioid use, 78 percent in other drug use, 32 percent in illicit drug use, 37 percent in arrests, and 65 percent in jail time. Approximately 70 percent maintained employment. Someone leaving methadone maintenance treatment (MMT) has a 75 percent chance of relapse and three times the mortality rate of the general population. Treatment works but it needs to be available, accessible, and affordable. The American Society of Addiction Medicine recommends that (1) treatment for any patient with an opioid use disorder should be based on a thorough evaluation of the patient by a knowledgeable and skilled physician, and be designed in an individual manner to best meet that patient's needs; and (2) pharmacological therapy can be a part of an effective professional treatment for opioid use disorder, and should be delivered by physicians appropriately trained and qualified in the treatment of opioid withdrawal and opioid addiction.

In response to questions by Senator Denton, Dr. Jorrich stated that it is rare that an insurance company pays for methadone treatment, but Medicaid will cover the treatment. There is no cure for methadone addiction, just medications to control the symptoms.

In response to questions by Senator Buford, Dr. Jorrich stated that House Bill 1 from the 2012 Regular Session initially put limitations on physicians. HB 1 has had a positive effect on the medical community and helped to deter drug abuse. Physicians who treat people for addiction, psychiatric, and pain disorders are still available, but there are some limitations that need to be addressed.

Stephen J. Houghland, MD, Chief Medical Officer, and Liz McKune, Ed.D, Director of Behavioral Health, Passport Health Plans, stated that the first 30 visits of individual and family outpatient therapy do not require preauthorization, and a review is required prior to the 31<sup>st</sup> visit. The services are reviewed and authorized typically within two business days, but can allow up to two weeks if a provider needs to gather and provide additional information. There has been a 100 percent authorization rate to date for these services. Inpatient services require an initial authorization as do diversionary services such as intensive outpatient, partial hospitalization, and group rehabilitation therapy. Both

inpatient and diversionary services are authorized typically within the first hour received. Pre-certification is available 24 hours a day, seven days a week. Preauthorization for inpatient services is 99 percent and diversionary services are 100 percent to date. Services that do not require authorizations are therapy, crisis treatment for the first 60 minutes, therapy, crisis treatment for each additional 30 minutes, group therapy, interactive complexity, injection, interpretation or explanation of psychiatric or other medical exam or procedure to family, alcohol and/or drug assessment, and mental health assessment by a non-physician. Behavioral health medications that require authorization are antipsychotics, Attention Deficit Hyperactivity Disorder (ADHD) medication, sleep disorder anxiolytics, antidepressants, and substance abuse medication. Foster care children are a fragile population and often require intense behavioral health treatment. Medications play a role in behavioral health, but there also need to be behavior modifications. There is concern about prescribing certain medications to children because the long-term effects on them are not known.

In response to questions by Representative Moore, Dr. Houghland stated that Passport has been fortunate because of the consolidation and the number of providers available. There is some concern about the Medicaid expansion in general and in particular around substance abuse treatment because under the Affordable Care Act it is mandated to be covered in a more comprehensive manner. There are current problems with adequate access to substance abuse treatment, and currently substance abuse treatment is only available for children through EPDST services and pregnant women. The concern is that the problem will be magnified after the expansion. People need to be encouraged to take advantage of available preventive care services. Education on preventative care has an important impact on patients and families. Incentives for Medicaid recipients to obtain preventative care will keep them from utilizing as many services in the future. Most evidence supports that incentive programs for preventive care are more effective when patients rather than doctors are incentivized. If patients can become engaged in preventive care, health outcomes and expenditures in healthcare will improve.

In response to questions by Representative Flood, Dr. Houghland stated that currently Medicaid services are primarily geared toward women. The safety net allows someone who has not had another payer or received Medicaid services to access



behavioral health services through the Community Mental Health Centers (CMHCs).

In response to questions by Senator Givens, Dr. Houghland stated that the comprehensive behavioral health population has not increased yet, because they were already Medicaid recipients.

In response to questions by Senator Denton, Dr. Houghland stated that suboxone and buprenorphine are covered by Medicaid but need prior authorization to ensure appropriate treatment and monitor outcomes. Treatment is generally approved for up to six months. The progress of the member is monitored to ensure that the treatment is necessary for a longer period of time. Providers have guidelines and criteria for minimal and maximum doses, but are allowed to contact Passport for exceptions. When foster children are reassigned to another MCO, the expenses stay with the MCO who approved the services unless services are changed by the new MCO.

In response to questions by Representative Owens, Dr. Houghland stated that part of the psychotropic drug intervention program is to distribute reports on utilization patterns to doctors and members.

Ted A. Cummings, R.Ph., MBA, Regional Clinical Pharmacy Director, and Chris Slocum, LCSW, MBA, Vice President, Clinical Operations, MHNet Behavioral Health, CoventryCares of Kentucky, stated that the three types of providers allowed to provide Medicaid behavioral health services are CMHCs, IMPACT Plus, and independent practice physicians. Individuals with behavioral health issues need access to services immediately. CoventryCares received approximately ten percent of Kentucky Spirit's membership raising CoventryCares membership to approximately 280,000. After the Medicaid expansion begins in January 2014, there is a potential to add 30,000 to 45,000 more members to CoventryCares, and the current number of qualified providers will not be sufficient to provide care. Individuals who are independently licensed such as clinical social workers or clinical psychologists are not eligible to provide services in Kentucky limiting access to care, particularly in rural areas. Authorization is required for high levels of care in hospitals or residential treatment facilities, IMPACT Plus services, and 12 service codes that are offered at the CMHCs. Authorization is not needed for evaluation services. IMPACT Plus services are established by administrative regulations and authorization is given within 30 to 60 days of assessment. There were 26,000 authorization requests of all types of services with 93 percent

approved immediately, three percent partially approved, and three percent not approved from January through May. Approximately 3,475 requests per month are received from CMHCs.

In response to questions by Senator Denton, Mr. Slocum stated that detoxification is covered by the CoventryCares' medical plan. Substance abuse services are covered for EPDST children under age 21 and pregnant women under MHNet. Senator Denton requested information on the percentage of detoxification requests for adults that are approved on the physical health side. CoventryCares has a good relationship with the Department for Behavioral Health program manager for IMPACT Plus. Approximately 93 percent of IMPACT Plus initial requests are approved in full. CoventryCares has a regularly scheduled monthly meeting with a coalition of providers to review issues, and there have been no complaints about one-half of intakes being denied coverage and on-going treatment is flagged for termination after six months. CoventryCares and hospitals review cases against medical necessity criteria on a regular basis. If the criteria are not met and denial for continued stay at a facility for a child has been made, there are processes in place for review and recommendations for an alternative level of service are given.

In response to questions by Representative Benvenuti, Mr. Slocum stated that CoventryCares' health plan uses InterQual level of care criteria and MHNet uses its own internal criteria approved by the Department for Medicaid Services. Mr. Slocum agreed to meet with providers who have cases that met InterQual criteria and were denied coverage. There are several medical directors on the health plan side who review cases from hospitals and use InterQual criteria, and a nonauthorization decision would come from the physician. MHNet has a Kentucky licensed psychiatrist review behavioral health claims and CoventryCares has Kentucky licensed medical directors who review physical health cases. The medical directors are not board certified in a mental health specialty, but are board certified medical physicians qualified to make appropriate decisions. Behavioral health concerns were discussed with officials at the Department for Medicaid Services and the Department for Behavioral Health, Developmental and Intellectual Disabilities about adding more members to the current Medicaid population without having adequate number of qualified providers.

Senator Denton requested that all of the MCOs provide the committee with information on behavioral health and substance abuse services,

including IMPACT Plus, showing initial authorization required, how quickly authorizations are given, how often preauthorization is granted, services that do not require authorization, denial rates, and behavioral health medications that require authorization.

In response to questions by Senator Higdon, Mr. Cummings stated that there is a generic drug available for suboxone that is a less expensive pill form. The brand name drug is abused just like the generic drug. The pharmacy system that fills a prescription can track if someone has filled prescriptions for other opioids during the same time that person has filled a prescription for suboxone. Every month comparisons are made to see how many generic suboxone pills have been dispensed to members who have also received other opioids.

In response to a comment by Senator Higdon, Representative Burch stated that IMPACT and IMPACT Plus were established because there were no services available for children. The purpose of the programs is to bring services to the child instead of the child going to the services. Senator Denton asked that all the MCOs provide information to the committee on the denial rates for IMPACT Plus from the time each one began providing services through July 2013.

In response to questions by Senator Denton, Mr. Cummings stated a short-term opioid prescription is normally used for medical procedures. Prescribers are notified if monthly pharmacy reports show that someone has been prescribed several opioids in a short period of time.

In response to questions by Representative DeWeese, Mr. Slocum stated that CoventryCares is meeting with all hospitals that have discrepancies in payments.

In response to questions by Representative Benvenuti, Mr. Slocum stated that a claim would be denied if a provider did not get prior authorization for services. The provider can appeal the denial by submitting medical records and relevant information. Denial can also occur when a person is in the hospital and further care is not authorized. A different physician will review the case, talk to the original provider, and allow additional information to be provided before a decision is made about the appeal. If the appeal is denied, a provider can ask for a state hearing, but there could be significant costs to the provider.

Dr. Paul Kensicki, Behavioral Health Medical Director, Lori Gordon, State Director of Behavioral Health, WellCare of Kentucky, stated that it has licensed behavioral health staff geographically located near each CMHC. Additionally there are foster care and guardianship case managers

across the state. WellCare staff meet with IMPACT Plus providers every three weeks, CMHCs monthly, and the Kentucky Hospital Association quarterly. The mission of case management is to coordinate timely, cost effective, integrated services for individual, physical, and behavioral health needs of members to promote positive clinical outcomes. The purpose of case management is to decrease fragmentation of healthcare service delivery, facilitate appropriate utilization of available resources, and optimize member outcomes through education, care coordination, and advocacy services for the medically compromised populations served.

WellCare remains committed to providing ongoing services within the 14 CMHCs and ensuring that the needs of its member population are adequately addressed. Additional services have been implemented within the CMHC contract structure and WellCare will continue to support efforts toward physical health integration. Services codes for substance abuse treatment are currently contracted and will be supported according to benefit design. In addition to previously existing services, WellCare has contracted for services that include intensive outpatient, partial hospitalization, adult and child crisis stabilization, mobile crisis, peer support, and supported employment. WellCare will continue to support efforts to provide addictions treatment as allowed by the Kentucky Medicaid benefit plan. WellCare agrees that addiction is a chronic, complex disease characterized by relapse and remission, with behavioral and biochemical and genetic components. Addiction cannot be cured with six months of treatment. Suboxone is one important tool that, when used properly, offers hope to addicts and their families and reduces stigmatization. Suboxone Film is currently on the WellCare preferred drug list. Prior authorization is required every three months with no cap on duration of treatment. The prior authorization process requires evidence of therapy, clinicians to regularly monitor eKasper reports and urine drug screens, and annual attempts to reduce doses of medication. WellCare does not require prior authorization based on diagnosis but based on covered service and provider. Prior authorization is not required for routine outpatient services provided at the CMHCs. Prior authorization is required for psychological testing, electric convulsive therapy (ECT) and crisis stabilization, intensive outpatient services, partial hospital services, inpatient hospital services, residential treatment services, and IMPACT Plus services.

In response to questions by Representative Benvenuti, Ms. Gordon



stated that WellCare contracts with a few facilities for higher level outpatient such as partial hospitalization. There are no barriers for hospitals to provide traditional outpatient services. Dr. Kensicki stated that, because the company uses a child psychologist with a group that is not licensed in Kentucky, the child psychologist only provides consultative reviews during the appeals process. WellCare agrees that it is important to have people with specific medical expertise in specific areas reviewing cases.

Mario Lopez, Account Executive, Jonas Thom, Vice President of Community Programs and Behavioral Health and licensed professional clinical counselor, Humana, stated that since January 2013, Humana and CareSource have been serving Kentucky Medicaid recipients, including dually eligibles for Medicaid and Medicare, in Region 3 under a national partnership. Humana CareSource knows that behavioral health care is essential to wellness and the welfare of communities. According to the 2012 America Health Rankings, Kentucky ranks 48<sup>th</sup> in the nation in poor mental health days, defined as the number of days in the previous 30 days when a person indicates activities are limited due to mental health difficulties. Humana is partnering with Beacon Health Strategies, a National Committee for Quality Assurance (NCQA) accredited managed behavioral healthcare organization that specializes in the treatment of mental illness and substance abuse on a fully integrated basis. Humana is executing a fully integrated model that includes care management, medical management, pharmacy, nurse triage line, disease management, and community providers. Each of the teams coordinates benefits and integrates care across the health and wellness continuum that includes acute and crisis services, psychiatric emergency care, inpatient services for children and adults, and crisis stabilization, and residential care and extended care units with EPSDT special services. Humana's continuum also includes a full array of outpatient services including psychiatry, intensive care management services, counseling, group counseling, therapeutic rehabilitative services for children and adults, and day treatment services for children. IMPACT Plus services are covered and care for substance abuse needs of members who are children and adolescents under age 21 through EPSDT special services, pregnant women, including detoxification in medical hospitals and medical detoxification facilities when medically necessary. Services are provided through a comprehensive network of providers that include agreements with all IMPACT Plus

providers as well as the three CMHCs in Region 3. Humana has agreements or contracts with nine hospitals, thirty-six private psychiatrists or psychiatric groups, Central State Hospital and Eastern State Hospital, Western State Hospital, and four medical facilities in Region 3.

Physician services, injections, targeted case management, emergency services, assessments, and group counseling, as well as collateral services, do not require any prior authorization. Substance abuse case management requires no authorization, but does require a review for a continued stay at 90 days. Prior authorization is required for all inpatient services and other acute intensive levels of care such as extended care units, psychiatric residential treatment facilities, intensive outpatient, and therapeutic rehabilitation and day treatment programs. IMPACT Plus services require an initial review for eligibility and prior authorization. Prior authorizations for acute and outpatient services have review timeframes that are dependent on the level of crisis and acuity of the situation. Every effort is made to execute a timely authorization process for members and providers. A request for a member presenting to an emergency room or requiring immediate hospitalization or emergent care is processed within a two-hour timeframe from the time of the initial request to the time a decision is given. Non-emergent care has a 24-hour turnaround time. Pre-service reviews have up to 48 hours if needed for a final determination. The timeframe for outpatient services or IMPACT Plus decisions is 48 hours from receipt of the request. Turnaround times for behavioral health requests are successfully met more than 97 percent of the time. Humana's approval rate for behavioral health authorizations is over 99 percent for all inpatient and outpatient services.

Kentucky's CMHCs have met the needs of people with serious mental illness, developed significant service and care management resources, become an integral part of its communities, and responded to the needs of families. Since January 2013, Humana has conducted weekly operational calls with the CMHCs to answer questions and address operational issues. Humana will partner with the CMHCs in the development and implementation of various pilot programs that will improve the use of evidence-based practices and recovery-oriented services. Humana will collaborate with the CMHCs to develop a crisis services model for intensive children's services to make the authorization and billing practices easier to assist in keeping children in crisis in the community as well as

reduce hospitalizations.

Most members with non-severe mental illnesses see their primary care physicians (PCPs) for outpatient healthcare, yet PCPs do not frequently offer behavioral health services within their practices. Access to behavioral healthcare will be increased by adding integrated depression and anxiety treatment capacity through the use of Health Behavior and Assessment Codes and Screening Brief Intervention Referral to Treatment (SBIRT) practices. The codes and practices will assist PCPs in delivering a range of widely disseminated evidence-based practices and coordinate care across providers.

#### **Eastern State Hospital Issues**

April Lawson, Constituent, stated that her brother, David Ray Clarkson, Jr., started hallucinating and became suicidal in May 2012. A mental health petition can be requested if someone presents a danger to himself or others. On May 30, 2012, he was transported to Eastern State Hospital because he was suicidal. Communicare was his regular doctor. On May 31, 2012, there was no assessment on record even though he was just assessed the day before. On June 4, her brother overdosed by taking all of his prescriptions at once. She felt like he should have been admitted because he needed more time for the medication to start helping him.

Senator Higdon stated that KRS 202A.028 states that following an examination by a qualified mental health professional and certification by that professional that the person meets the criteria for involuntary hospitalization, a judge may order the person hospitalized for a period not to exceed 72 hours.

David E. Hanna, Ph.D., Interim President and CEO, Bluegrass Regional Mental Health-Mental Retardation Board, Inc. (bluegrass.org), and clinical psychologist, stated that if a judge orders someone to Eastern State Hospital, commitment criteria found in KRS 202A for hospitalization of the mentally ill would be used to evaluate the patient to see if that person needs to be committed to a facility. KRS 202A.026 prohibits involuntary hospitalization unless a person is (1) mentally ill and presents a danger or threat of danger to himself, his family, or others as a result of the mental illness, (2) can reasonably benefit from treatment, and (3) for whom hospitalization is the least restrictive alternative mode of treatment presently available.

In response to questions by Senator Kerr, Dr. Hanna stated that the outpatient agreed order is misunderstood. The challenge is weighing the patient's civil liberties against someone else making decisions on their behalf. The Bluegrass

Regional Mental Health-Mental Retardation operated Eastern State Hospital since 1995. The University of Kentucky will assume the vast majority of the operation of Eastern State Hospital and bluegrass.org will take care of outpatient services.

Betsy Dunnigan, Acting Commissioner for the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, stated that on September 10, 2013, all the patients and furniture will have been moved to the new Eastern State Hospital facility. On September 11, 2013, the Bluegrass Community and Technical College will take control of the old facility.

There being no further business, the meeting was adjourned at 4:12 p.m.

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

### **Minutes of the 2nd Meeting of the 2013 Interim**

July 24, 2013

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

The second meeting of the Interim Joint Committee on State Government was held on Wednesday, July 24, 2013, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Brent Yonts, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Joe Bowen, Co-Chair; Representative Brent Yonts, Co-Chair; Senators Walter Blevins Jr., Ernie Harris, Stan Humphries, Christian McDaniel, Morgan McGarvey, Gerald Neal, R. J. Palmer II, Albert Robinson, and Damon Thayer; Representatives Kevin Bratcher, Dwight Butler, John Carney, Leslie Combs, Joseph Fischer, Derrick Graham, Mike Harmon, Kenny Imes, James Kay II, Martha Jane King, Jimmie Lee, Mary Lou Marzian, David Meade, Brad Montell, Sannie Overly, Darryl Owens, Tanya Pullin, Tom Riner, Steven Rudy, Sal Santoro, Kevin Sinnette, Diane St. Onge, John Will Stacy, Tommy Thompson, John Tilley, Tommy Turner, Ken Upchurch, Gerald Watkins, and Jim Wayne.

**Guests:** Kentucky Auditor of Public Accounts Adam Edelen; Thomas Pageler, DocuSign; and Lieutenant General Harry Raduege, Jr. (USAF, Ret.).

**LRC Staff:** Judy Fritz, Kevin Devlin, Alisha Miller, Karen Powell, Shantez Riley, and Peggy Sciantarelli.

#### **Recognitions**

Representative Yonts welcomed Representative James Kay, new member of the General Assembly and the Interim Joint Committee on State Government, and Shantez Riley, new graduate fellow.

#### **Approval of Minutes**

The minutes of the June 19



meeting were approved without objection upon motion by Senator Bowen.

### **Cybersecurity Challenges**

Representative Yonts advised that Elliot Schlanger, Secretary of Information Technology and Chief Information Officer (CIO) for the state of Maryland, was unable to attend the meeting, but his written testimony is included in the meeting folders. Mr. Schlanger said that Maryland has often been recognized as an epicenter of cybersecurity subject-matter-expertise and best practices. Maryland has created state cybersecurity law (MD Senate Bill 676). The law specifies that state and local government units, as well as state contractors and service providers, must implement and maintain “reasonable security procedures and practices” that are set forth in written information security policy. Maryland shares cyber information; collaborates on cyber security issues with internal and external stakeholders; has key cybersecurity partnerships with the Maryland Air National Guard, Baltimore FBI Cyber Security Unit, and NSA Cyber Command; and also promotes extensive cyber training, awareness, and education. Mr. Schlanger said he would be glad to appropriately share best practices and lessons learned with his colleagues in Kentucky.

Representative Yonts welcomed Auditor of Public Accounts Adam Edelen and complimented him for bringing this important topic forward. Mr. Edelen said he feels his office should be a force for modernization and reform in state government. The role of the Auditor’s Office (APA) as cyber watchdog has been established for many years. The Office conducts cyber (IT) audits and vulnerability assessments for state and other agencies in which technology has a significant impact on the processing and reporting of confidential information. The audits in many instances find that agencies continue to have IT concerns identified year after year with limited attention or resolve. Shining additional light on the issue may assist in focusing more attention toward resolving risks to cybersecurity. Kentucky is one of only four states without a breach notification law; if an agency in state government inadvertently releases confidential information about Kentucky taxpayers, the Commonwealth is not required by law to notify the taxpayer. APA hopes to do all possible to ensure that Kentucky does not suffer a data breach similar to the 2012 breach in South Carolina, where critical information for every taxpayer and business holder in the state was released to the public and so far has resulted in a cost of over \$30 million. Opportunities exist to

strengthen the security of Kentucky’s systems and data. APA will work for enactment of a breach notification law for Kentucky state agencies, as well as other laws to strengthen cyber security. Having the weight of law may play an important role in achieving the desired level of security. It is also important that any future requirements placed in statute are achievable.

Mr. Edelen said it is also APA’s goal to strengthen its relationship and the policies that are in place with the Commonwealth Office of Technology (COT). He commended the recent hiring of COT’s new CIO, James Fowler, and suggested that he, too, would welcome the opportunity to share his perspective with the Interim Joint Committee on State Government. Many states already mandate ongoing review of cyber policies, and so should Kentucky. APA wants to continue working closely with COT to ensure that systems and data are properly secured and to identify new opportunities as the state continues the consolidation of IT resources and functions under COT. APA also wants to continue evaluating IT testing areas and methodology and addressing the evolving risks posed by the ever changing IT environment. APA plans to release a separate report of its IT findings and recommendations; the report will be written in layman’s terms and presented in a manner that will not jeopardize the Commonwealth’s security. APA also wants to work with the Legislative Research Commission, the National Governors’ Association (NGA), and other organizations in the forefront of policy making. NGA will be releasing policy recommendations relating to cybersecurity in September 2013.

Mr. Edelen introduced the other guest speakers and stated that they represent two of the best and brightest minds in the field of cybersecurity: Thomas Pageler, Chief Information Security Officer, DocuSign, and Lieutenant General Harry Raduege, Jr. (USAF, Retired), Chairman, Deloitte Center for Cyber Innovation.

Before joining DocuSign, Mr. Pageler served as Deputy Chief Information Security Officer for JPMorgan Chase, where he led cybersecurity, fraud prevention and protective intelligence for the firm. Prior to his role at JPMorgan Chase, he was the Head of Risk Assessments and Director of Fraud Control for Visa. He served as a special agent with the United States Secret Service before going to private industry.

Mr. Pageler’s discussion and PowerPoint presentation focused on the importance of cybersecurity, cybersecurity adversaries and their methods, a brief history of cyber warfare, future trends in cybersecurity, government sector data breaches,

and costs of the cyber threat and how to defend against it. Mr. Pageler said cyber threats are increasing and becoming more pervasive, sophisticated and organized. Cyber adversaries include fraudsters and hackers; organized crime; protestors and hacktivists whose motive is not financial; and “nation state actors.” Third party threats come from outside entities intending to disrupt business or steal data. Internal threats, also known as employee misuse, could be attempted extortion or accidental. He explained the structure and hierarchy of organized crime in the cyber world and profiled four notorious cyber fraudsters: Roman Vega, Dmitri Godvbov, Albert Gonzales, and Vladislav Horohorin. He also discussed major cyber attacks that occurred internationally between 1970 and 2012, underground cyber fraud markets, exploitation techniques, and the response cycle for detecting existing and emerging threats. Malware, compromised accounts, threats against industry, and politically motivated threats are the main areas of focus. The attack by Russian cyber criminals on Georgian web sites during the 2008 Russian/Georgian war is an example of state-sponsored attacks.

Cybersecurity has elevated in priority. Methods to counterattack future cyber threats include a Cybersecurity Executive Order; state and federal laws and initiatives; industry forums; new regulations; and offensive capabilities yet to be determined, such as possible revision of federal laws relating to cyber attacks. The government sector has experienced a steady increase in the number of records exposed. From January 1, 2009, to May 31, 2012, there were 268 breach incidents in government agencies involving over 94 million records containing personally identifiable information. Portable devices are the leading type of records breach.

According to the Verizon Data Breach Report, which is done jointly with the U. S. Secret Service every year, the cost of a data breach can be as high as \$100 million. Bankruptcy, though rare, was the result of four recorded incidents in 2011. Regulatory fines from a recent breach at Stanford University have reached about \$90 million. Ponemon Institute’s 2011 Cost of Data Breach Study assessed the cost at \$194 per lost record. Cybersecurity preventive measures are expensive but much less costly than the alternative.

Mr. Pageler explained the security systems and services provided by DocuSign, the leader in encryption of customer data and recognized globally as a leader in security. He also suggested consulting with officials in South Carolina, where they are

learning from past mistakes and will be implementing stronger security measures.

General Raduege said he joined Deloitte after retiring from 35 years in the U. S. military, where he worked in the area of technology that included telecommunications, space, information, and network operations. He served more than 17 years in joint duty assignments and was a four-time federal activity CIO. In his last position, he led Department of Defense netcentric operations as the Director of the Defense Information Systems Agency. In his seven-plus years with Deloitte, he has continued to work in the information technology/information management and cyber space arenas. In January 2008 he also was appointed as one of four co-chairs of the special presidential Commission on Cybersecurity.

General Raduege’s PowerPoint presentation included information on threats, targets, and counters in the world of cybersecurity; what global experts are thinking about cybersecurity; President Obama’s February 2013 Executive Order entitled “Improving Critical Infrastructure Cybersecurity” and Presidential Policy Directive (PPD-21); critical infrastructure; and Deloitte’s 2012 NASCIO (National Association of State Chief Information Officers) Cybersecurity Study.

General Raduege said that everyone should assume their information network has or will be compromised—not if, but when. He reviewed the types of threats to cybersecurity: identity theft, information manipulation from malicious software (Malware), cyber assaults/bullying, advanced persistent threats from malicious software that extracts information over a period of time, credit card fraud, insider threats, espionage, cyber attacks, transnational threats, attacks of software “boomerangs,” and the potential for terrorism. Targets include federal, state, and local governments; industry; universities and colleges; and individuals. One way to counter cybersecurity threats is through creation of a cyber workforce in which employees are trained and educated to have cyber awareness. Other counters include network access controls like firewalls and anti-virus software, monitoring of outbound activity, dynamic situational awareness, open source information, and forensic analysis that can be shared with others. Substantial research is underway in the field of cyber analytics. Experts differ on the benefits of legislation as a counter.

The East West Institute is preparing for its fourth Worldwide Cybersecurity Summit. In surveying global experts and senior leaders



from government and industry who are aware of cybersecurity issues, the Institute found that 54 percent of experts doubt their organization is capable of defending against a sophisticated cyber attack, and 61 percent fear losing global connectivity. Sixty-six percent think home users need to take more responsibility for cybersecurity, and 66 percent view their government's maturity as low regarding international cooperation. General Raduege said he is working with various nations on the possibility of an agreement to designate certain critical infrastructure as off-limits. Sixty-six percent of experts surveyed think a cyber warfare treaty is needed or overdue.

General Raduege said that South Carolina's Department of Revenue was a target-rich environment for a cyber attack. When it occurred, the information of 1.6 million individuals from 1996 forward was compromised. The attack had been at work for approximately one month before being discovered. Data loss from government impacts citizen trust and potentially impacts state business. High-profile cyber attacks from loose-knit, politically motivated groups are increasing. The dynamic "battlefield" is constantly changing. Recent developments have elevated cybersecurity to a governor-level issue, and a number of governors have taken a strong stand.

The goal of the Executive Order (EO) and PPD signed by the President on February 12, 2013, is to improve cybersecurity information sharing and develop and implement risk-based critical infrastructure standards through a public-private partnership. The National Institute of Standards and Technology (NIST) is leading a public-private collaboration to build a cybersecurity framework for the nation that will hopefully be in place in February 2014. The new EO defines "critical infrastructure at greatest risk" as infrastructure where a cybersecurity incident could reasonably result in catastrophic regional or national effects on public health or safety, economic security, or national security.

General Raduege reviewed key milestones of the EO for the public and private sectors. The near-term 150 day milestones have been reached. A preliminary cybersecurity framework for the public sector should be ready for review in October 2013. The final framework is to be issued in February 2014, along with reports relating to program participation, privacy risks, and regulatory requirements. The Federal Department of Homeland Security and other federal agencies will likely play a pivotal role in information sharing. State and local governments need to look for funding opportunities from the

federal government to implement a cybersecurity framework. The EO will be a catalyst for the Commonwealth of Kentucky to embrace a cybersecurity framework and its potential impact on critical infrastructure. Deloitte has been an active participant in a National Policy Council for State Cybersecurity formed by the National Governor's Association and has been helping shape policy recommendations for governors.

There are 16 industry sectors defined as critical infrastructure, with 85 percent in private sector hands. Critical infrastructure examples include agriculture and food; communications; dams; emergency services; health care and public health; transportation systems; and water and wastewater systems. In addition, other operations and activities are indirectly involved with critical infrastructure sectors.

General Raduege said that Deloitte's 2012 update of its NASCIO Cybersecurity Study is available in print and electronic format and is downloadable from [www.deloitte.com](http://www.deloitte.com). He believes the potential for a "perfect storm" is here. States routinely rely on the Internet and hold the most comprehensive collection of personally identifiable information. State and local government agencies account for more than 20 percent of data breaches reported in the United States. Cyber crime is more prevalent and more insidious than any other crime, and cyber criminals are more organized and effective than ever. The President and his cabinet have made cybersecurity a national priority. Key messages for the Commonwealth of Kentucky are to understand the state's risks, start and sustain an information security program, and establish laws for reporting cyber risks. Cybersecurity is about risk management. Protection cannot be complete, but it begins with identification of critical infrastructure and databases. The concluding slide presented by General Raduege outlined a cybersecurity state "roadmap": assess the risk and share results with business stakeholders; strategize to address risks and threats; invest in cybersecurity solutions; and educate, measure, report, and share your story.

When Representative Owens asked what states can do to combat the problem, Mr. Edelen said it is important to view it with the mindset of a risk management business. The challenge is to continue to build a protective wall more quickly than the fraudsters can build tools to scale the wall. The process requires vigilance from everyone and assurance that policymakers and others who have a role in serving the public are doing everything possible to build the wall a little taller each day.

When Senator Harris questioned the safety of home users' electronic products, many of which are made overseas, General Raduege said that is a valid concern. Even American-made products often contain foreign components, and it is important to buy from trusted vendors. He cautioned that thumb drives—often handed out free of charge and probably foreign made—have been found to automatically transmit information without the user's knowledge as soon as plugged in. Counterfeiting of products is also a growing concern.

Senator Bowen asked about the estimated cost of providing adequate security for Kentucky state government systems and whether any states might serve as models. Mr. Edelen said that attaining full encryption is part of COT's business plan but that the agency's new CIO could better address questions about cost. The state of Maryland has been a leader in the cybersecurity effort.

When Representative Riner asked about the potential impact of an electromagnetic pulse (EMP) attack that could disable power grids and all electronic devices, General Raduege said that is big concern. Depending on the position of an EMP attack, it could have devastating effects. Sophisticated attacks via the Internet can also have devastating effects.

Rep. St. Onge asked about the "sleeper" element when personal information is infiltrated and how to prevent stolen personal data from being used at some time in the future. Mr. Pageler said that the victim's credit should be monitored, ideally for two years. Theft of only a name and account number is easier to repair; however, in cases where someone's complete identity is stolen, the retrieval process is time consuming and could take years. The cause of the initial data breach needs to be determined to prevent reoccurrence and in order to "close the door" in the vulnerable software.

General Raduege said that cybersecurity is a dynamic environment that is constantly changing. He proposed four simple terms applicable to cybersecurity: people, processes, technology, and policy. All four must work together and evolve continually to address concerns that can arise in cyber space. The Commonwealth of Kentucky and other states can work together through organizations like NASCIO and the Multi-State Information Sharing and Analysis Center (MS-ISAC) in order to learn from others and address current and future security issues.

Representative Carney voiced concern about the safety of electronic data in the school system. General Radeuge said that is a great point. He also said it is important to make

children aware that today's Facebook entry is tomorrow's resume—it will never go away. People should also be aware that information that is general public knowledge can also be of concern. Mr. Pageler suggested that the Commonwealth evaluate areas of priority for encryption; perhaps Department of Education data would be rated a top priority.

Representative Watkins referred to the recent case of former National Security Agency employee Edward Snowden, a high school dropout who leaked classified information. He said it seems that both government and industry should be more thorough in hiring and monitoring of employees in highly sensitive positions. General Raduege said it is important to know an employee's personal habits, and maybe the investigative procedures were not as strong as they should have been in this particular case. People given access to classified information undergo rigorous security clearance background checks. He personally was subjected to a thorough investigation recently for renewal of his security clearance. He believes security and investigation procedures have been stepped up and will become increasingly more rigorous.

When Representative King asked where Kentucky state government stands with respect to anti-malware and data encryption, Mr. Edelen said that security measures are currently somewhat a "hodgepodge." Not all state government data is encrypted. However, COT is executing a plan to reach full encryption within the next two or three years. He emphasized that cybersecurity is everyone's business and not just within the purview of technical experts. He urged that policymakers enact a breach notification law so that Kentucky will not among the four states that lack this provision.

Representative Yonts thanked the speakers and said they have gotten the committee's attention. Several members previously commended the speakers' presentations and expressed thanks.

#### **Subcommittee Report**

Senator Bowen, Co-chair of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs, read the report of the Task Force's July 23 meeting. The report was adopted without objection, upon motion by Senator Thayer.

#### **Adjournment**

Representative Yonts announced that the committee will not meet in August due to the scheduled special session. Business concluded, the meeting adjourned at 3:00 p.m.



## INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Task Force on Elections,  
Constitutional Amendments, and  
Intergovernmental Affairs  
Minutes of the 1st Meeting  
of the 2013 Interim  
July 23, 2013

### Call to Order and Roll Call

The 1st meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, July 23, 2013, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Senators Walter Blevins Jr., Ernie Harris, Stan Humphries, Christian McDaniel, Morgan McGarvey, Gerald A. Neal, R.J. Palmer II, Albert Robinson, and Damon Thayer; Representatives Kevin D. Bratcher, Larry Clark, Joseph M. Fischer, Derrick Graham, Mike Harmon, Mary Lou Marzian, Sannie Overly, and Bart Rowland.

Guests: Representative Adam Koenig; John W. Bizzack, Commissioner, Criminal Justice Training; Jason Rector, President, Kentucky Constables' Association, and Jeff Jacobs, Government Affairs Director, Kentucky Constables' Association.

LRC Staff: Judy Fritz, Karen Powell, Greg Woosley, Kevin Devlin, and Terisa Roland.

### Constitutional Amendment Proposal Relating to Constables

Representative Adam Koenig discussed a proposed constitutional amendment to provide local governments an option to abolish the office of Constable. A copy of the 2013 Regular Session proposal was included in members' folders.

Representative Koenig noted that similar proposals have been considered by the General Assembly in the last several regular sessions, but because none of the proposals have passed, the issue of whether to abolish Kentucky constables will likely be debated in the 2014 legislative session. Representative Koenig said it was his intention to reintroduce a version of his prior proposed constitutional amendment to give fiscal courts the authority to eliminate the office of constable by ordinance, thereby allowing each county to decide if the office is suitable for that county's law enforcement needs.

Representative Koenig testified that constables have law enforcement powers similar to sheriffs by law. Constables largely perform fee-based duties such as serving court paperwork

and traffic control. Members asked several general questions and expressed opinions and concerns as to both keeping and abolishing the office.

John Bizzack, Commissioner of the Department of Criminal Justice Training, testified that his office had studied whether constables were necessary. Commissioner Bizzack said the study concluded that they were not because Kentucky constables perform less than one quarter of one percent of all law enforcement duties. He expressed concerns about the lack of training requirements for constables and the potential liability to county governments for constable actions. The cost of training constables to a level commensurate with other peace officers is not likely justified based on the limited amount of law enforcement work that constables actually perform.

Jason Rector and Jeff Jacobs, Kentucky Constables' Association, also testified. Mr. Rector said that, rather than seeking to abolish the office of constable, the General Assembly should address concerns with training standards in a manner that would retain the 569 constable positions that assist with law enforcement duties in the Commonwealth. The association has developed its own plan constable training to be funded by the constables themselves. He expressed concern about bias in the report on abolishing the constable office by noting that the report did not take any opinions on Kentucky's constables from the general public, who constitute constables' true constituency.

Mr. Jacobs provided an overview of constables' work in the counties and presented a proposal for legislation that would add required certification and training requirements. He said the Constables' Association opposed the proposed constitutional amendment because it gave the power to abolish the office to the local fiscal court rather than to the people of the county, and it does not alleviate the lack of training issue for those counties that choose to keep the constable office. Mr. Rector and Mr. Jacobs distributed a packet of information to the members that outlined the association's proposal.

Several members indicated that they would like to see the matter resolved without a constitutional amendment proposal and said that the issues could be addressed by simply amending statutes governing constables and their duties, and by creating any necessary training requirements.

A copy of the materials distributed at the meeting can be found in the Legislative Research Commission library.

The business concluded, and the meeting was adjourned at 2:15 p.m.

## INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 2nd Meeting  
of the 2013 Interim  
July 22, 2013

### Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Transportation was held on Monday, July 22, 2013, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll. A quorum was present, and the June 4, 2013 meeting minutes were approved.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Hubert Collins, Co-Chair; Senators Chris Girdler, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Bob Leeper (via videoconference), Morgan McGarvey, Dorsey Ridley (via videoconference), Albert Robinson, John Schickel, Johnny Ray Turner, and Whitney Westerfield; Representatives Denver Butler, Leslie Combs, Tim Couch, Jim DeCesare, Keith Hall, Richard Henderson, Kenny Imes, Jimmie Lee, Donna Mayfield, Charles Miller, Terry Mills, Rick G. Nelson, Tanya Pullin, Marie Rader, Steve Riggs, John Short, Diane St. Onge, John Will Stacy, Fitz Steele, Jim Stewart III, Tommy Turner, and Addia Wuchner.

Legislative Guests: Representatives Rocky Adkins and Michael Meredith.

Guests: Doug Hendrix, Attorney, Office of General Counsel, Department of Revenue; Garry Morris, Policy Advisor, Office of the Commissioner, Department of Revenue; Tammy Watts, Director, Division of Collections, Department of Revenue, Corey Kline, Office of Policy and Audit, Finance and Administration Cabinet; Christine Siksa, Director of Government Relations, Recreation Vehicle Industry Association (RVIA); Kim Nelson, Legislative Agent, RVIA; Brian Nelson, Legislative Agent, RVIA; Nevelle Skaggs, Kentucky RV Dealer Association; Jay Huber, State President, Kentucky Motorcycle Association; Keith Roberts, Vice President of Legislative Affairs, Kentucky Motorcycle Association.

LRC Staff: John Snyder, Brandon White, and Christina Williams.

### Discussion of House Bill 440

Tammy Watts, Director, Division of Collections for the Department of Revenue, discussed House Bill 440 and the steps that are taken before a delinquent tax payer's professional and/or driver's license is revoked for non-payment of taxes. She stated 95 percent of Kentuckians file and pay their taxes in a timely manner, and that it is only with the remaining 5 percent that the collection process is utilized.

Director Watts stated the taxes

covered by the license revocation program are administered by the Department of Revenue, including the state portion of property taxes. Property taxes administered at the local level are excluded. Other debt that the Department of Revenue collects, such as a sub-set of child support, is not included in the revocation process because the statute refers revocation for non-payment of only state taxes.

The current collection tools that the department utilizes include a call center to manage outbound telephone calls to taxpayers regarding delinquent tax debt, and several collection letters that are sent out at various times throughout the process. Other collection tools are levies are issued after the taxpayer was sent a formal notice by certified mail. Both bank and wage levies are a possibility for the delinquent taxpayer. State tax liens that encumber property owned by the delinquent taxpayer and offsets, which are the ability to capture any refunds or monies due to the taxpayer from federal government or any other state agency, are also collection tools.

Prior to the passage of HB 440, the department had the authority to revoke several licenses including: liquor licenses through the Alcohol Beverage Control Board, mine licenses, and lottery sales licenses. The department can request the court in Franklin County to close a business by injunction if there is no evidence of cooperation and all other collection actions have failed.

A flow chart was provided to show the typical collection process. The process begins with a notice of tax due and a 45 day protest period. The next step in the process is initial collection, actions that include multiple telephone calls and letters. If that step has failed, administrative collections actions are taken that include additional phone calls, letters, levies, and liens. If the above three actions have failed, the late stage collection actions are taken which include injunctions, judgments, seizures, revocations of licenses (after a 20 day notice via certified mail), and other legal actions that may be necessary. At any point during this process, if the delinquent taxpayer were to contact the department, a negotiation could be made to proceed without more serious collection actions.

Director Watts stated taxpayers that will not be affected by HB 440 include those who receive a bill and are still within the 45 day protest period, taxpayers who file the timely protest and are working with someone in the department to resolve their debt, taxpayers who have filed bankruptcy, and taxpayers who are making payments under an approved payment agreement plan or judgment. No individual or business that does



not have a legal tie to the incurred debt will be in danger of legal action or of losing a license. Only the person or business that incurred the debt will be affected.

The department has been working closely with the Transportation Cabinet and county and circuit clerks implement HB 440. The Department of Revenue and the Transportation Cabinet have made system modifications, and the department is developing an application to handle the process in-house. Information cards have been printed that will be available in county official offices for the taxpayers' use that include a telephone number and the steps to take to resolve the debt.

The department has obtained a list of approximately 125 professional licenses and is developing a process to generate specific letters for the loss of professional licenses.

Other agencies have already had suspension and revocation authority. Child support enforcement has the authority to suspend, deny, or revoke professional licenses, driver's licenses, and vehicle registrations. The Kentucky Higher Education Assistance Authority (KHEAA) has the authority to deny or revoke professional licenses. Various agencies, boards, and commissions have the ability to revoke a license for internal reasons.

Chairman Harris stated that his initial response was that he was unsure if implementing HB 440 would create a type of debtors' prison, but since more information has been provided about the process leading up to the implementation of HB 440, he believes that is not the case, and that the process gives the taxpayer ample opportunity to set a course of action to resolve the debt.

Chairman Collins raised concerns about suspending licenses of delinquent taxpayers due to the possibility that they may still drive without a license, which becomes an issue of the taxpayer driving without automobile insurance due to a suspended license.

Chairman Collins stated there are tax amnesty programs where taxes are forgiven or significantly reduced, which is unfair to the taxpayers who pay on time without a debt reduction of forgiveness.

In response to a question asked by Chairman Collins, Director Watts stated the collection of child support is primarily a county attorney's responsibility, but the department does collect a sub-set of child support if the county attorney has not had the ability to collect.

Chairman Collins stated he does not feel a significant effort is made to collect taxes beyond sending letters or making telephone calls, and an active

effort should be made to physically collect taxes owed.

#### **Discussion of the Recreation Vehicle Franchise Law**

Christine Siksa, Director of Government Relations, Recreation Vehicle Industry Association (RVIA), discussed a proposal for the recreation vehicle franchise law and provided background information on the recreation vehicle (RV) industry and how RVs may fit into the franchise law.

Director Siksa stated the people in attendance to represent the RV industry would like to propose a fair and reasonable RV-specific franchise law that can address the unique business model followed by RV dealers and their manufacturers. She described the different types of RVs and stated that the only type that is covered under the car franchise law in Kentucky is a motorized RV.

She compared the RV industry to the car industry within the state of Kentucky. There are approximately 261 car dealers in Kentucky compared to 28 RV dealers. There are three car manufacturers and no RV manufactures. Approximately 11,400 people are employed in new-vehicle dealerships compared to 420 employees in RV dealerships. There are 1,025,000 light vehicles manufactured in Kentucky and 2,356 RVs are shipped to Kentucky out of an approximate 285,749 RVs for the entire industry. There are car sales of approximately \$7.2 billion in the state. The retail value of RV shipments to the state is approximately \$79.6 million.

Franchise laws evolved to protect car dealers in the dealer-manufacturer relationship and laws are structured for the car industry business model, whereas the RV industry has a different business model, so the proposal of a different franchise law based on the RV industry is needed. She stated RV dealerships offer items from several brands and manufactures and new car dealers will typically deal with one manufacturer. There are approximately 130 RV manufacturers competing for space on a dealer's lot, which is not the case in the auto industry. Director Siksa gave four key provisions of the proposal: (1) territory, which indicates where a dealer is allowed to sell RVs and who is allowed to sell in that area; (2) transfer, or how the dealerships are transferred from one owner to another; (3) termination, which allows the manufacturer and dealers to terminate with or without cause; and (4) warranty, which involves parts manufacturers to be under the franchise and warranty obligations of the proposed law. Parts manufacturers would be responsible for paying the dealer mark up for repairs, handling the warranty claim, assuring that the warranty repairs are made in a timely fashion, and assuring

that the consumer has good access to warranty service.

Also included in the proposed bill are definitions specific to the RV industry. There will be a provision that requires mediation prior to moving into any kind of injunction, court system, or any other type of more serious dispute resolution systems. The experience in the RV industry has been that disputes between manufacturers and dealers can generally be settled out of court with the use of a mediator. Another provision is reciprocity, meaning the dealer can do whatever the manufacturer can do and vice versa. The proposal would also be more inclusive by including travel trailers and non-motorized RVs under the law.

If an RV-specific franchise law is passed, several stakeholder benefits would occur. It would benefit consumers because it places travel trailer dealers under a franchise law, providing better protection for consumers. For RV dealers, the franchise law would protect travel trailer dealers the same as motor home dealers, and it would also protect dealers' warranty claims to warrantors other than the RV manufacturer. A benefit for RV manufacturers would include consistency on how things are done and a clear law that applies directly to the RV industry. A benefit for the state would be if RV-specific provisions would be administered by the same agencies as for motor homes. This is not a proposal to change the state's licensing, registration, taxation, or consumer protection laws and regulations, or civil procedure.

In response to a question asked by Chairman Collins, Director Siksa stated creating a separate KRS Chapter altogether would be ideal, but being in a separate section of KRS Chapter 190 to establish the difference between the car franchise law and the RV franchise law would also be suitable.

Mr. Lee Searcy, President of the Kentucky Auto Dealers Association, stated that separating RVs from the motor vehicle franchise statutes seems to make sense, and they will collaborate with the RV industry to make that happen. He indicated he would inform the committee if a situation arises that does not work in KRS Chapter 190. Mr. Searcy stated anything he can do to make the committee feel comfortable with a new RV franchise law he will do, and he will also notify the committee if he feels uncomfortable with any part of the process.

In response to a question asked by Chairman Collins, Mr. Nevelle Skaggs, Kentucky RV Dealer Association, stated most RV dealers are referred to as "mom and pop" operations because they have never been franchised. As opposed to motor vehicle franchises, when the time

comes to sell his RV dealership, there is no value in the business name other than the longevity of the business itself and the structure of the building.

Chairman Collins stated some auto dealers have had their dealerships taken away after a franchise has been implemented and cautioned the RV industry to evaluate if they would be better off if they did not have a franchise so that this does not happen to them. Mr. Skaggs stated there are so many different brands that, when one brand goes out of business, there are several other brands that the dealership can depend on. Some of those brands are referred to as anchor brands.

In response to a question asked by Chairman Collins, Mr. Skaggs stated that in Texas, which has what is considered a model RV franchise law, it does not appear that dealers have been forced to sell a particular brand. A dealer was forced to take a particular brand by the manufacturer, but that did give the dealer warranty protections. One aspect of being an RV dealer is sometimes having a hard time collecting warranties. If an owner brings a motor home to his dealership for warranty work, the owner signs the paperwork and drives away, and the dealership must battle with the manufacturer to collect the warranty money. Sometimes the manufacturer will pay the warranty and other times it will not, in which case the dealer is left paying for the loss. A franchise agreement specifies who pays how it will be paid.

In response to a question asked by Chairman Collins, Mr. Skaggs stated the dealers have to approach individual companies who make RV parts (Coleman etc.) to recover the money from the warranty. In the auto industry, the car owner expects the dealership of the brand of car to fix and pay for the repairs covered under the warranty, not the brand of the part that is being replaced. In the RV industry, a Winnebago customer expects Winnebago to pay for the replacement of a refrigerator that has gone bad, when the customer may have to be told that the brand of the refrigerator will not be covering the warranty and the customer becomes unhappy. Mr. Skaggs stated the RV franchise law would make a more seamless warranty process for the consumer.

Chairman Harris stated the RV franchise law would also make it easier for the dealer to be able to contact the manufacturer to cover the warranty and places the responsibility back on the RV manufacturer.

In response to a question asked by Chairman Collins, Director Siksa stated that, to be an RV dealer, the state requires that dealer to have at least a gravel paved lot, a facility to conduct business and keep files, and a restroom. Manufacturers do not



require anything additional.

In response to a question asked by Chairman Collins, Director Siksa stated the RV franchise law does not discuss the manufacturers requiring something of the RV dealers.

Senator Hornback stated he understands the dilemma the RV dealers face from a warranty standpoint, but he is unsure why they would want to be under more control from a franchise. The control the franchise may gain over a period of time by making the dealer a vendor of only one product for one thing takes away from the variety and choice that is available at each individual RV dealership. Senator Hornback cautioned the RV industry representatives to be careful what they ask for because there may be unintended consequences, including a loss of freedom that is often times enjoyed by “mom and pop” types of businesses.

In response to a question asked by Representative Imes, Mr. Skaggs stated that Texas has experienced a manufacturer franchising with a large dealer or trying to take a small dealer’s franchise away and give it to that dealer. It may be because of the nature of the business because GM has everything under the GM umbrella whereas Forest River has so many different brands that it has not been forceful in making RV dealers sign for additional products. That has not been the case in Texas, where the law seems to be working pretty well.

In response to a question asked by Representative Henderson, Director Siksa stated there is no cost associated with the franchise law. She stated when the RV dealers sign a dealer-manufacturer agreement, they pay nothing. The agreement will outline which lines of vehicles to be carried from that manufacturer. Representative Henderson stated the car industry and RV industry are different types of businesses.

In response to a question asked by Chairman Collins, Director Siksa stated big and small dealers are treated equally in the RV industry.

Chairman Collins cautioned that if an RV franchise law is passed that allows the manufacturer to govern the RV industry, there is a possibility that small dealers could be squeezed out of the industry. Director Siksa stated that she and the other representatives do not envision that happening. They are drafting language to help ensure that does not occur.

In response to a question asked by Chairman Collins, Director Siksa stated there was a monologue several years ago involving RV dealers, suppliers, and manufacturers. That monologue is the basis of what the work. RVIA tailors the monologue to the dealers in the state, but the

manufacturers are happy with most of the decisions. RVIA wants to create consistency among the states and fix the warranty problems in the RV business, and the RV franchise law does that to some extent.

Chairman Collins stated he understands the warranty problems as well, but he also echoes the other legislators’ comments of “be careful what you ask for.” He stated the committee will have to look over the proposal very carefully to ensure there are no loopholes that could cause any RV dealers unintended problems.

#### **Discussion of Legislative Issues Pertaining to Motorcycles**

Jay Huber, State President, Kentucky Motorcycle Association, discussed legislative issues pertaining to motorcycles. He discussed three bills that the association was collaborating with legislative sponsors on in the previous session

Mr. Huber stated the first bill is what is referred to as the parking garage bill, introduced by Representative Linder in the 2013 session as HB 420. Motorcyclists have had issues concerning motorcycles being banned in parking garages. These parking garages are typically municipal garages, city owned garages, or university garages. Typically, motorcyclists have been able to individually address the situation with various parking garage structures. The main reason for the ban is fear that the arm of the gate will come down and hit someone’s head as they go through the gates. Mr. Huber said he is an electrician who has experience working on motor control and that an electronic eye, similar to what is installed at the bottom of a garage door, can resolve this situation for \$30 to \$40 per gate. The garage at Newport on the Levee has an entirely automated system, and there is no ban on any type of motorcycles at the facilities. There have previously been agreements made between motorcyclists and various parking garages that the garages will allow motorcycles, but the signs prohibiting motorcycles will be left in place for liability purposes. From an economic standpoint, parking garages could gain four entry fees on eight people if they were to arrive on motorcycles versus one or two entry fees if the same number of people were to arrive in cars or trucks.

The second proposed bill that has been discussed is a bill that has been sponsored by Representative Meredith concerning red lights not sensing motorcycles (HB 437 of the 2013 session). Mr. Huber stated one of the ways that some motorcyclists deal with the issue is to buy a magnet to place on the underside of the motorcycle. Some but not all intersections have been fixed. Other things that may help

are have flashing yellow turn lights or round-a-bouts. Some states have passed similar legislation. Some states have implemented a law stating that, if the light has passed through two cycles, 60 seconds, or 90 seconds, a person can proceed left with caution at a red light that fails to operate properly. Representative Meredith stated the bill is ready to be prefiled again for the upcoming 2014 session, and he welcomed feedback. When comparing similar legislation of other states, there have been differences in the amount of time that states mandate waiting at the red light before proceeding with caution. States mandate from 60 to 220 seconds. His proposed bill is not exclusive to motorcycles and includes motor vehicles as well. Technology does not always function properly, and there needs to be a way out of situations like these for motorists.

Mr. Huber stated Representative Flood had sponsored a vulnerable users’ bill during the previous session that addresses right-of-way violations (HB 137 of the 2013 session). Right-of-way issues are an extremely prevalent problem within the motorcycle community. The proposed bill addresses motorcycles, bicycles, mopeds, scooters, in-line skates, roller-skates, and motorized wheelchairs. Mr. Huber and other members of the Kentucky Motorcycle Association have seen what happens when people pull in front of them. One instance was when a member of the association had a woman pull in front of him a couple of years ago while he was riding his motorcycle, which caused him to T-bone the vehicle. The woman had four children in the car, no license, no insurance, and did \$10,000 worth of damage to his motorcycle. He was off of work for 10 weeks, and the only penalty she was assessed was a \$50 fine. Mr. Huber said the association sees similar instances all the time. Penalties and fines have been increased if someone is speeding or negligent in the areas of construction workers, and the association would like to see something similar happen in a right-of-way bill.

In response to a question asked by Representative Riggs, Mr. Huber stated that convertibles are still allowed in the garages, suggesting that a person who owns a convertible with the top down could potentially have the same problem of getting hit on the head with the gate and yet not be banned. Representative Riggs stated in that sense the motorcyclists are discriminated against.

Representative Lee stated the greatest enemy of any motorcyclist or automobile driver is the cellular telephone. Until the use of cellular phones while driving is outlawed, there will be a great risk of danger on the road. Mr. Huber stated one of the

unintended consequences of passing the no texting while driving bill has been that, instead of people texting and driving where the road is still in view, they hold their phones lower and text, resulting in the driver not being able to look at the road at all.

Representative Mills stated he is working on texting legislation that might help. He added that he has never seen a person on a motorcycle texting.

Senator Schickel thanked the Kentucky Motorcycle Association, Jay Huber, and his constituent, Keith Roberts, who is a legislative affairs agent. He expressed appreciation that they work other jobs but remain active advocates during the interim.

Representative Henderson suggested researching a way to implement a user friendly pass, or a reduced rate for motorcycles on toll bridges, as they have little impact on the surface of the roads. Mr. Huber stated some other states have either have a reduced rate or no rate at all. Some states base toll rates on the number of tires on the ground. Most motorcycles are 1,000 pounds or less, and therefore the impact that they have on wear and tear of the road is minimal.

Representative St. Onge thanked Jay Huber, Keith Roberts, and the Kentucky Motorcycle Association for the discussion regarding the disparity of the motorcycle users and the penalties or lack thereof applied during certain right-of-way situations.

With no further business before the committee, the meeting adjourned at 2:27 P.M.

## **CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

Minutes

July 16, 2013

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

The Capital Projects and Bond Oversight Committee met on Tuesday, July 16, 2013, at 1 p.m., in Room 131 of the Capitol Annex. Senator Chris Girdler, Chair, called the meeting to order and the secretary called the roll.

Present were:

Members: Senators Julian Carroll, Chris Girdler, and Christian McDaniel; Representatives Steven Rudy, Kevin Sinnette, and Jim Wayne.

Guests Testifying Before the Committee: John Covington, Executive Director, Kentucky Infrastructure Authority; Larry Blake, Assistant Vice President for Facilities Management, Northern Kentucky University; Bob Wiseman, Vice President for Facilities Management, University of Kentucky; Scott Aubrey, Director, Division of Real Properties; Ryan Green, Executive Director, Office of Budget and Administration, Department of Workforce Investment;



Ryan Barrow, Executive Director, Office of Financial Management; and Andrew Hawes, Senior Director for Multifamily Housing, Kentucky Housing Corporation.

LRC Staff: Kristi Culpepper, Josh Nacey, and Angela Offerman.

#### **Approval of Minutes**

Senator Carroll made a motion to approve the minutes of the June 18, 2013, meeting. The motion was seconded by Senator McDaniel and approved by voice vote.

#### **Correspondence Item**

Chairman Girdler said that the correspondence item was related to action taken by the committee at the June 18, 2013, meeting for the Kentucky Infrastructure Authority (KIA) Fund A loan for the Oldham County Environmental Authority (OCEA) Orchard Grass Regional Wastewater Treatment Plant project.

Senator McDaniel made a motion to reconsider the vote taken at the June 18, 2013, meeting for the KIA Fund A loan. The motion was seconded by Senator Carroll and approved by roll call vote.

John Covington, Executive Director, KIA, said that KIA was informed of a discrepancy between the information submitted and presented at the committee's June 18, 2013, meeting. A letter clarifying the information was submitted for review.

In response to a question from Representative Wayne, Mr. Covington said the Division of Water (DOW) has received the necessary information from OCEA to approve the facility plan and the plan has been posted by DOW on their website for 30 days for public comment. At the end of 30 days, a public meeting will be held.

In response to a question from Senator Carroll, Mr. Covington said KIA will not enter into the loan until notification from DOW has been received confirming the process has been completed, including the necessary public hearing.

In response to questions from Senator McDaniel, Mr. Covington said that the correct funding information was presented to, and subsequently approved by, the KIA board. The information presented was from an earlier version of the credit analysis.

Senator Carroll made a motion to approve the Fund A loan. The motion was seconded by Senator McDaniel and approved by roll call vote.

#### **Information Items**

Kristi Culpepper, Committee Staff Administrator, said there were seven information items for review. The first information item was Moody's Investors Service *Adjusted Pension Liability Medians for US States* report. The report uses Moody's new pension metric, which among other changes assumes a more conservative discount rate and the fair market value of assets

rather than smoothing techniques. According to Moody's, Kentucky ranks 3<sup>rd</sup> in the nation in adjusted net pension liabilities to revenues; 4<sup>th</sup> in pension liabilities to personal income; 4<sup>th</sup> in pension liabilities as a percent of state GDP; and 8<sup>th</sup> in pension liabilities per capita.

The second information item was a notice of advertisement for leased space for the Commonwealth Office of Technology in Franklin County.

The third information item was a status report on the Louisville-Southern Indiana Ohio River Bridges project, which is required to be submitted to the committee at least semiannually by statute.

The fourth information item was an article from the *Courier-Journal* suggesting that the Kentucky State Fair Board has forgiven potentially \$7,000,000 that the Louisville Arena Authority was contractually obligated to reimburse the Fair Board for business lost to the new arena. The article suggested this was done to increase funds the Louisville Arena Authority had available to make debt service payments on its outstanding revenue bonds.

The arena's construction was funded through a combination of conduit revenue bonds issued by the Kentucky Economic Development Finance Authority on behalf of the Louisville Arena Authority and a \$75,000,000 state grant, which was authorized by the General Assembly in 2006 HB 380 and paid for by the state's issuance of General Fund supported bonds.

In response to comments from Representative Wayne and Senator McDaniel, representatives from the Kentucky State Fair Board and Louisville Arena Authority will be asked to attend the August 20, 2013, meeting to answer questions.

Ms. Culpepper said the remaining three information items were quarterly status reports on projects for the Administrative Office of the Courts, the Commonwealth Office of Technology, the Finance and Administration Cabinet, and the universities that manage their own capital construction programs.

#### **Project Report from Northern Kentucky University (NKU)**

Mr. Larry Blake, Assistant Vice President for Facilities Management, NKU, reported an emergency repair, maintenance, or replacement project, Steely Library Building Roof Replacement. A roofing consultant determined that leak repairs that have been made were not deterring roof deterioration and recommended immediate replacement of the building's entire roof system. The scope of the project was \$875,000 and will be funded from the university's agency funds. No action was required.

#### **Project Reports from the University of Kentucky (UK)**

Mr. Bob Wiseman, Vice President for Facilities Management, UK, presented three items. The first report involved the purchase of unbudgeted medical equipment. The item purchased was an iE33 Ultrasound System that combines 2D and 3D image quality in the same transducer. This system addresses the clinical needs of managing patients with heart conditions and automates stress exams so that they are faster and more consistent. The cost of the system was \$214,592 and was paid from restricted funds. No action was required.

The second item was a lease renewal for the University of Kentucky College of Social Work, Children, and Trauma Program for 11,199 square feet (sq ft) of office space owned by Blazer Parkway Venture, LLC. The lease was renewed under the same terms and conditions for an annual rental cost of \$198,782 through June 30, 2015.

Senator McDaniel made a motion to approve the lease renewal. The motion was seconded by Representative Wayne and approved by roll call vote.

The third item was a notification of UK's intention to use the construction manager-at-risk project delivery method for the Patient Care Facility Fit-Up 8<sup>th</sup> Floor and Pharmacy project. The Patient Care Facility has involved multiple authorizations across budget cycles dating to the 2002-04 budget. The total scope of the project is approximately \$31,500,000. A Request for Proposal has been issued and responses were due July 18, 2013.

In response to a question from Senator McDaniel, Mr. Wiseman said that the construction manager-at-risk project delivery method was used for most projects. The benefits of using this delivery method include the reduction of future change orders, advice in the constructability review process, providing assistance to the architects, and reducing delays in claims during the life of the construction. No action was required.

Ms. Culpepper presented a report from the University of Louisville of the purchase of two pieces of scientific research equipment. The first item was a MicroBrightField integrated microscope image capture system, which will maximize the power of microscopes. The purchase was made using \$229,290 of gift and endowment funds.

The second item purchased was an optical coater for research into solar cells, light-emitting diodes, and optical bio-sensors. The purchase was made with \$290,000 of federal funds. No action was required.

#### **Lease Reports from the Finance and Administration Cabinet**

Mr. Scott Aubrey, Director, Division of Real Properties, presented five items. The first item was for a lease modification and amortization of leasehold improvements for Cabinet for Health and Family Services (CHFS) in Lee County. The amortization of leasehold improvements was to complete security-related improvements to the receptionist area, which included the removal of one door to create a receptionist window with a counter in its place, the installation of that door into a newly-framed wall in a secure corridor, and the addition of an electric strike locking device on the door.

Two estimates were obtained for the improvements and the cabinet recommended accepting the lowest bid of \$3,957 from AWI, LLC. The cost will be amortized through the term of the lease, which will expire June 30, 2014. No action was required.

The second item was for a lease modification and amortization of leasehold improvements for Department of Public Advocacy in Campbell County. The department requested the installation of Luxe Vinyl plank tile in the hallways, lobby, and break room. Two estimates were obtained for the improvements and the department recommended accepting the lowest bid of \$5,907 from Midwest Flooring Contractors. The cost will be amortized through the term of the lease, which will expire June 30, 2020.

In response to questions from Senators McDaniel and Carroll, Mr. Aubrey said the Department of Advocacy requested the specifications be changed to incorporate this type of plank tile floor covering for all future agency projects. The specifications would be reviewed to ensure the allowance for a vinyl plank tile and not for a specific manufacturer's brand.

Representatives from the Department of Public Advocacy will be asked to attend the August 20, 2013, meeting to answer questions regarding their request for the specific manufacturer's brand of flooring to be used for the leasehold improvements and to be incorporated into the specifications. No action was required.

The third item was for a lease modification and amortization of leasehold improvements for CHFS in Pike County. The leasehold improvements included the replacement of two existing sliding glass receptionist windows with burglary-resistant glazing material, voice ports, and pass-through cutouts. Two estimates were obtained and the agency recommended accepting the lowest bid of \$1,600 from Cardinal Glass and Door. The cost will be amortized through the term of the



lease, which will expire June 30, 2016. No action was required.

The fourth item was for a new lease for CHFS in Fayette County. New space was requested by the agency because the current facility was in receivership. Any future term extensions would not be guaranteed and any significant HVAC system repairs would not be addressed. The lease was for 11,201 sq ft of office space at \$17.75 per sq ft, including utilities and janitorial services, for an annual cost of \$198,818. The lease will expire June 30, 2015.

In response to a question from Senator McDaniel, Mr. Aubrey said the difference in the actual cost per sq ft and the average cost per sq ft in Fayette County is due to the consideration of leases that have been in place for several years at a lower rate and the state requirement of a 30-day termination clause.

Representative Wayne made a motion to approve the new lease. The motion was seconded by Senator Carroll and approved by roll call vote.

The fifth item was for a new lease for the Department for Workforce Investment in Kenton County. New space was requested by the agency to create a one-stop facility as required by the Workforce Investment Act (WIA). The lease was for 8,356 sq ft of office space at \$33.19 per sq ft for an annual cost of \$277,336. The lease will expire June 30, 2021.

In response to a question from Representative Wayne, Mr. Aubrey said the reason for the higher cost per sq ft was the necessity to find space that will accommodate multiple agencies to create the one-stop facility under the requirements of the WIA. The additional agencies sharing the space include the Office of Employment and Training, Office for the Blind, and Office of Vocational Rehabilitation. By statute, because the state will not occupy 100 percent of the facility, common areas cannot be included, which tends to inflate the price.

In response to a question from Senator McDaniel, Ryan Green, Executive Director, Office of Budget and Administration, Department of Workforce Investment, said that the rental rates will be paid from federal and state funding sources.

Senator McDaniel made a motion to approve the new lease. The motion was seconded by Representative Rudy and approved by roll call vote.

#### **New Bond Issues Submitted from the Office of Financial Management (OFM)**

Mr. Ryan Barrow, Executive Director, OFM, presented two new bond issues. The first bond issue was for Kentucky Higher Education Student Loan Corporation Student Loan Asset-Backed Notes, Series 2013-2 in an amount not to exceed

\$625,000,000. The bonds were LIBOR floating rate notes and will be used to fund and refinance the corporation's existing debt.

The estimated date of sale will be August 14, 2013. The costs of issuance will be funded with equity and the estimated interest rate will be one-month LIBOR with a 0.70 percent spread. The notes will have a final maturity date of 2031. This will be a negotiated transaction and Hawkins Delafield & Wood LLP will serve as bond counsel; Bank of America Merrill Lynch as senior underwriter; Kutak Rock LLP as underwriter's counsel; US Bank National Association as trustee; and OFM as financial advisor. The savings is estimated to be \$23,800,000.

Senator Carroll made a motion to approve the new bond issue. The motion was seconded by Representative Wayne and approved by roll call vote.

The second item presented was KHC Conduit Multifamily Housing Revenue Bonds, Sheppard ACD Apartments Project, Series 2013, for the acquisition, construction, and equipping of a multifamily residential rental facility consisting of approximately 129 units. This project is the second phase of a \$142,000,000 redevelopment plan.

The anticipated gross proceeds will be up to \$14,000,000 and the proposed date of sale will be in July 2013. The estimated interest rate is 0.50 percent with an estimated term of 13 months. It will be a public offering and Peck, Shaffer & Williams LLP will serve as bond counsel; PNC Capital Markets, LLC as underwriter; and Bank of New York Mellon Trust Company, N.A. as trustee.

In response to a question from Representative Wayne, Andrew Hawes, Senior Director for Multifamily Production, Kentucky Housing Corporation, said that local elected officials have been notified.

Senator Carroll made a motion to approve the new bond issue. The motion was seconded by Representative Wayne and approved by roll call vote.

#### **Follow-up Report from the Office of Financial Management**

Mr. Barrow presented follow-up reports on two previously approved bond issues. The first report was for \$147,120,000 State Property and Buildings Commission (SPBC) Agency Fund Revenue Bonds, Series A Revenue Refunding Bonds, Series B Project No. 106, which will provide permanent financing for \$112,000,000 of projects previously authorized by the General Assembly; repayment of the 2012 Asset/Liability Commission Interim Bank Loan from Citibank; refunding of some outstanding SPBC bonds for a net present value savings;

and payment for the cost of issuing the bonds.

The transaction closed June 17, 2013 and the final maturity will be October 1, 2033. The true interest cost was 3.534 percent. It was a negotiated transaction and Peck, Shaffer & Williams served as bond counsel; Citi served as underwriter; Frost Brown Todd as underwriter's counsel; and OFM as financial advisor. The net present value savings on the refunding portion of the issue was \$872,424. No action was required.

The second report was for \$15,635,000 Murray State University General Receipt Bonds, 2013 Series A to finance the Renovate Hester Hall, Capital Renewal of Housing and Dining Facilities and Upgrading Sprinkler System at College Courts projects, which were authorized in 2013 HB 7.

The date of sale was May 29, 2013, and the closing was on June 19, 2013. The true interest cost was 3.186 percent. It was a competitive bid and Baird was the successful bidder. No action was required.

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

Mr. Barrow reported one school bond issue with SFCC debt service participation with a total par amount of \$1,295,000. The state portion of the annual debt service payment was \$31,927 and the local contribution was \$60,155. The bond issue did not involve a tax increase.

Representative Wayne made a motion to approve the bond issue. The motion was seconded by Senator Carroll and approved by roll call vote.

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

Ms. Culpepper said three local school bonds have been reported. One issue will construct a new school, one will make improvements to existing facilities, and one will purchase land for a new elementary school. None of the bond issues required tax increases.

With there being no further business, the meeting adjourned at 1:55 p.m.

### **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

Minutes of the August Meeting  
August 5, 2013

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

The August meeting of the Administrative Regulation Review Subcommittee was held on Monday, August 5, 2013, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Senators Joe Bowen, Perry B. Clark, and Sara Beth Gregory; Representatives Jimmie Lee and Tommy Turner.

Guests: Becky Gilpatrick, Kentucky Higher Education Assistance Authority; C. Lloyd Vest II, Board of Medical Licensure; Mark Brengelman, Board of Physical Therapy; Jim Grawe, Tom Veit, Kentucky Real Estate Appraisers Board; James C. Cobb, Gil Crumbee, Brian Judy, Larry Rhodes, Stephen Wyatt, Board of Registration for Professional Geologists; Stephen Foreman, Ryan Halloran, Applied Behavior Analysis Licensing Board; Margaret Everson, Dan Figert, Benjy Kinman, Kentucky Department of Fish and Wildlife; Ann D'Angelo, Randall Royer, Transportation Cabinet; Mike Pettit, Kristi Redmon, Labor Cabinet; Trey Hieneman, Frederick A. Higdon, Department of Alcoholic Beverage Control; Jack Coleman, Michael T. Davis, Gary Feck, Department of Housing, Buildings and Construction; Mary Begley, Stephanie Brammer-Barnes, Sarah McCoun, Elizabeth Caywood, Mark Cornett, Michelle DeJohn, Mary Beth Jackson, Teresa C. James, Dionna Mullins, Emily Parento, Cabinet for Health and Family Services; Andrea Bennett, Kentucky Youth Advocates; Brenda Bowman, Southside Christian Child Care; Marion Gibson, Fayette County Race, Community and Child Welfare; Mike Hammons, Children, Inc.; Richard Morris, Child Care Advocates of Kentucky and Licensed Centers; Julie Swindler, Consultant for Kentucky Board of Medical Licensure; Sarah Vessels, Child Care.

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard, Laura Napier, and Betsy Cupp.

The Administrative Regulation Review Subcommittee met on Monday, August 5, 2013, 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. Becky Gilpatrick, director, student aid services, represented the division.

KHEAA Grant Programs

11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.

A motion was made and seconded to approve the following amendment: to amend Section 1(23) to insert a missing phrase in the definition of "resident of Kentucky" to comply with the drafting requirements of KRS 13A.222(4)(a). Without objection,



and with agreement of the agency, the amendment was approved.

11 KAR 5:140. KTG award determination procedure.

11 KAR 5:145. CAP grant award determination procedure.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships.

A motion was made and seconded to approve the following amendments: to amend Section 1(13) to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commonwealth Merit Scholarship Program

11 KAR 15:040. Kentucky Educational Excellence Scholarship award determination procedure.

A motion was made and seconded to approve the following amendments: to amend Section 1(2) to comply with the drafting requirements of KRS 13A.222(4)(j). Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

Early Childhood Development Scholarship Program

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process.

11 KAR 16:040. Early Childhood Development Scholarship Program recordkeeping requirements.

11 KAR 16:050. Early Childhood Development Scholarship Program costs.

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives.

GENERAL GOVERNMENT CABINET: Board of Physical Therapy: Board

201 KAR 22:045. Continued competency requirements and procedures. Mark Brengelman, board counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 22:055E. Interim standards for supervision for physical therapists.

201 KAR 22:130. Per diem of board members.

Real Estate Appraisers Board: Board

201 KAR 30:120. Temporary appraisal licenses and certificates.

James Grawe, assistant attorney general, and Tom Veit, executive assistant, represented the board.

In response to a question by Senator Bowen, Mr. Veit stated that the fee increase in this administrative regulation was commensurate with similar fees in surrounding states.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:125. Continuing education for appraisers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to add Section 4 to incorporate by reference the application; and (3) to amend Section 1 to establish a \$200 late fee. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:150. Education provider approval.

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.

201 KAR 30:200. Reciprocity requirements for applicants licensed or certified in another state.

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

Board of Registration for Professional Geologists: Board

201 KAR 31:010. Fees. Brian Judy, assistant attorney general, and Larry Rhodes, chair, represented the board.

In response to a question by Senator Bowen, Mr. Judy stated that the authorizing statute changed the fee schedule from annually to biennially for these licenses; therefore, the fees were not actually doubling but appeared to double because fees that previously covered twelve months now covered twenty-four months.

A motion was made and seconded to approve the following amendments: (1) to delete Section 3, which proposed

an initial licensure fee; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to clarify provisions and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:020. Compensation of board members.

201 KAR 31:040. Applications and examinations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:050. Renewals.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3 and 4 for consistency with statutory terminology; and (2) to amend Section 5 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:060. Code of professional conduct.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:080. Geologist-in-training.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to update statutory citations; and (2) to amend Section 5 and the material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 31:090. Complaint management process.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to delete references to "applicant" because those provisions did not apply to an applicant; and (2) to amend Sections 1 and 4 to comply with the drafting and formatting requirements of KRS

Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Applied Behavior Analysis Licensing Board: Board

201 KAR 43:010. Application procedures for licensure. Stephen Foreman, vice chair, and Ryan Halloran, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. Margaret Everson, assistant attorney general; Dan Flaggert, assistant director of wildlife; and Benjy Kinman, deputy commissioner, represented the department.

In response to a question by Co-Chair Harris, Mr. Kinman stated that a rifle may be used to take a coyote during daylight hours, but only a shotgun could be used at night.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Office of Audits: Division of Road Fund Audits: Motor Carriers

601 KAR 1:147. Auditing of U-drive-it permit holders. Ann D'Angelo, assistant general counsel, and Randall Royer, director, represented the division.

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:300. General. Mike Pettit, OSH standards specialist, and Kristi Redmon, OSH standards specialist, represented the division.

In response to questions by Senator Bowen, Ms. Redmon stated that these administrative regulations made minor technical revisions to correspond to federal revisions. For example, personal protective equipment standards now established the option to use current standards or the previous standards, which provided more flexibility for the regulated community. These administrative regulations did not contain new compliance requirements.



803 KAR 2:307. Hazardous materials.

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

803 KAR 2:308. Personal protective equipment.

803 KAR 2:314. Machinery and machine guarding.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:320. Toxic and hazardous substances.

803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-6.

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

803 KAR 2:404. Personal protective and lifesaving equipment.

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

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

803 KAR 2:411. Scaffolds.

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.

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

803 KAR 2:425. Toxic and hazardous substances.

803 KAR 2:500. Maritime employment.

**PUBLIC PROTECTION**  
**CABINET: Department of Alcoholic Beverage Control: Licensing**

804 KAR 4:031. Repeal of 804 KAR 4:020, 804 KAR 4:030, 804 KAR 4:130, 804 KAR 4:140, 804 KAR 4:160, 804 KAR 4:170, 804 KAR 4:180, 804 KAR 4:200, 804 KAR 4:220, and 804 KAR 4:260. Trey Hieneman, legislative liaison, and Frederick A. Higdon, commissioner, represented the department.

804 KAR 4:250. Special temporary licenses.

A motion was made and

seconded to approve the following amendments: to amend Sections 2, 4, 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.

804 KAR 4:390 & E. License renewals.

804 KAR 4:430E. Issuance of Licenses.

Transportation of Alcoholic Beverages

804 KAR 8:011. Repeal of 804 KAR 8:010, 804 KAR 8:020, and 804 KAR 8:030.

Quotas

804 KAR 9:010. Quota retail license limits.

Department of Housing, Buildings, and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:125. Kentucky Residential Code. Jack Coleman, deputy commissioner; Michael T. Davis, general counsel; and Gary Feck, director, represented the division.

In response to a question by Senator Bowen, Mr. Davis stated that the revisions to this administrative regulation were not substantial. Mr. Coleman stated that the division usually allowed a period of preparation prior to enforcement of revisions to the code. That period was inadvertently omitted, and this amendment provided for that preparation period. Mr. Feck stated that the International Model Residential Code included provisions for seismic maps; however maps were split within counties and were difficult to interpret. The amendment simplified seismic maps and provided more current standards.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update the Kentucky Residential Code to establish that the new requirements shall not take effect until January 1, 2014. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need**

900 KAR 6:030. Certificate of Need expenditure minimums. Diona Mullins, policy advisor, and Emily Parento, executive director, represented the cabinet.

900 KAR 6:120. Certificate of Need angioplasty two (2) year trial program.

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

A motion was made and seconded to approve the following amendments:

to amend Sections 4 and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Inspector General: Office

906 KAR 1:200. Use of Civil Money Penalty Funds collected from certified Long-term Care Facilities. Mary Begley, inspector general; Stephanie Brammer-Barnes, policy analyst; and Sarah McCoun, staff assistant, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include an additional relevant citation; (2) to amend Section 1 to include additional relevant definitions; and (3) to amend Sections 3 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

922 KAR 1:130 & E. Kinship Care Program. Elizabeth Caywood, internal policy analyst; Mark Cornett, deputy commissioner; and Teresa C. James, commissioner, represented the cabinet. Andrea Bennett, chief external affairs officer, Kentucky Youth Advocates; Marion Gibson, co-chair, Fayette County Race, Community, and Child Welfare; and Patricia Tennen, member, Kentucky Youth Advocates, appeared in opposition to these administrative regulations.

Ms. James stated that the goal of the Kinship Care Program was to keep families together through extended family guardianship in cases of abuse or neglect while in the care of a parent or guardian. Under the basic program a guardian family was provided \$350 per month for each child. The programmatic expenses were approximately \$32,000,000 annually. The program currently experienced an \$86,000,000 deficit. The program needed to be reorganized for efficiency to better meet the needs of families for less cost. The current programmatic changes were primarily for cost containment.

Mr. Cornett stated that these administrative regulations established a program moratorium, except that existing participants continued to be supported through the existing program and certain new participants would continue to be admitted. Requirements were established to continue background checks after April 1. Other programs and services outside of the Kinship Care Program remained available. Ms. James stated that many children would still be eligible for Medicaid assistance to maintain medical and dental care, and Social Security Insurance was issued in some cases.

In response to a question by Senator Bowen, Ms. James stated that as of June 1, 2013, there were 11,319 children who had experienced substantiated abuse or neglect and were in need of placement in the Kinship Care program. Ten years ago, there were approximately 3,000 children eligible for the program. That constituted a significant increase in substantiated cases of abuse or neglect.

In response to a question by Co-Chair Harris, Ms. James stated that the cabinet was considering means testing of placement guardians to determine the amount of support that would be appropriate. Mr. Cornett stated that the cabinet performed means testing on the eligible child, which included only the child's income, such as Social Security Insurance, not the income of the placement guardian.

Representative Lee stated that children eligible for the Kinship Care Program already had court substantiation of abuse or neglect. There were many children who were not eligible for the Kinship Care Program because abuse or neglect had not been formally adjudicated. The Kinship Care Program needed to be reorganized to include these other children.

In response to a question by Senator Gregory, Ms. James stated that, while it was possible that the moratorium on the Kinship Care Program may funnel more children into the state's foster care system, data collected since the moratorium began did not indicate that as a current trend. The cabinet was monitoring the situation on a regional and monthly basis.

Ms. Bennett stated that the Kinship Care Program was better for children and for families than the foster care system. Kentucky Youth Advocates anticipated more children being placed in the foster care system as a result of the Kinship Care Program moratorium. In addition to being better for children and families, the Kinship Care Program was less expensive for the state than the foster care system. Ms. Bennett requested that the subcommittee find these administrative regulations deficient.

Ms. Gibson stated that racial and ethnic disparity would be exacerbated by the moratorium on the Kinship Care Program. The foster care system was significantly more expensive per child per day than the Kinship Care Program. The Kinship Care Program provided stability for families and fewer school transfers. Children placed into the foster care system were more likely to fail, be incarcerated, and drop out of education opportunities.

Ms. Tennen stated that she agreed with the comments made by Ms. Bennett.

Representative Lee stated that



he shared concerns about losing the Kinship Care Program, and the Governor also was concerned. Kentucky Youth Advocates and Fayette County Race, Community, and Child Welfare should remain involved in reorganizing the Kinship Care Program to include children not officially adjudicated as abused or neglected. Ms. Bennett stated that Kentucky Youth Advocates would like to work with the cabinet on reorganizing or reforming the Kinship Care Program. Representative Lee stated that statistical data was needed to assist in budgeting and effective administration of program funds.

In response to a question by Senator Bowen, Ms. Bennett stated that Kentucky Youth Advocates was supportive of programs to prevent abuse or neglect. Education for first-time parents had been shown to reduce the likelihood of abuse or neglect. Children in the Kinship Care Program had already experienced abuse or neglect and needed treatment and placement.

In response to a question by Representative Gooch, Ms. Tennen stated that Kentucky Youth Advocates did not have data on repeat maltreatment if children were returned to families after abuse or neglect. Ms. Bennett stated that the aim of the Kinship Care Program was to provide permanent placement with alternative relatives. Representative Gooch stated that the cabinet seemed overly eager to place children back into risky homes just to keep families together.

In response to a question by Senator Clark, Ms. Gibson stated that Fayette County Race, Community, and Child Welfare had national statistical data, but not Kentucky-specific data.

Ms. James stated that the cabinet had national and Kentucky-specific data, and the cabinet was beginning to track post-placement outcomes. In the past, federal funds had allowed the Kinship Care Program to continue, but now that federal funds were no longer available options were limited. Families were being adversely affected.

Representative Lee stated that, for both the Kinship Care Program and the foster care system, there were both good and bad placement families. More statistical data was needed in order for the cabinet to provide the most effective support with cost-efficiency measures. Ms. James stated that, as part of reorganizing the program, the cabinet was considering basing support on age because needs changed as a child aged. The cabinet was also considering auditing current participants.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY

paragraph and Sections 2, 3, 6, 8, 13, 17, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:140 & E. Foster care and adoption permanency services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 6, and 11 to update citations; and (2) to amend Sections 1, 8, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:320 & E. Service appeals.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 and 6 to update citations; and (2) to amend Sections 2, 3, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 1:400 & E. Supportive services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Child Care: Day Care  
922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties. Elizabeth Caywood, internal policy analyst; Mark Cornett, deputy commissioner; and Teresa C. James, commissioner, represented the cabinet. Brenda Bowman, CEO, Southside Christian Child Care and Child Care Advocates of Kentucky; Mike Hammons, director of advocacy, Children, Inc; Richard Morris, owner, Child Care Advocates of Kentucky and eleven licensed centers; Susan Vessels, executive director, 4-C Child Care; and Andrea Bennett, chief external affairs officer, Kentucky Youth Advocates, appeared in opposition to these administrative regulations.

Ms. James stated that funding for child care was important and expensive. Because of funding problems, a moratorium was being placed on this program, except for existing participants. Existing participants would encounter stricter requirements upon renewal. Previously, requirements included meeting up to 150 percent of federal poverty standards. The new requirements required up to 100

percent of federal poverty standards. The other administrative regulations in this group provided for stricter precautions regarding fraud and abuse of funds.

Ms. Bowman requested that the subcommittee find these administrative regulations deficient. She represented six others who would be affected by these administrative regulations. A child care license may be revoked for financial or administrative issues, even paperwork mistakes, even if the licensee was appropriately complying with health and safety requirements. A revoked license shall not be reinstated for at least seven years. Fraud seemed inconsistently defined in these administrative regulations. Sometimes it seemed to indicate substantiated fraud and sometimes suspected. These administrative regulations had already been found unlawful by the Franklin County Circuit Court. Facilities were required to protect the confidentiality of the children being cared for; however, forms required by these administrative regulations made that impossible. Information for multiple children was to be on a single form.

Mr. Morris stated that the vast majority of compliant licensees should not be punished because of a minority who commit fraud and abuse of funds. These administrative regulations will have a negative impact on children and families. Employees could be terminated if a license was revoked because of a paperwork error. Many child care facilities had already closed or were closing.

Mr. Hammons stated that Child, Inc. served over 3,000 children. Mr. Hammons requested that the subcommittee find these administrative regulations deficient. At least one-third of the funding for this program was being cut; that was more than the amount of cuts to other state agencies. These administrative regulations would likely negatively affect more than 25,000 of Kentucky's children. These measures would cost state and local government and would be detrimental to the economy. Parents who lose jobs because of inability to afford child care would have less money to spend, which would affect other businesses. Reduced staff at child care facilities because of fewer children would add to unemployment. The effect of these administrative regulations was likely to be children placed in unsafe situations and an increase in protective placements and associated expenses, including court costs. This program needed more funding not less. The requirement that renewing participants demonstrate less than 100 percent of the federal poverty standards resulted in Kentucky being the lowest qualifier in the nation. Child, Inc. was available to work with the cabinet to reorganize this program.

In response to a question by Co-Chair Harris, Mr. Hammons stated that the two primary issues with these administrative regulations were: (1) funding cuts; and (2) due process concerns, especially regarding suspected fraud. Co-Chair Harris stated that the General Assembly had authorized the governor to shift funds among programs as necessary.

Representative Lee stated that the funding was unavailable because federal funds were no longer available after sequestration. More cuts were expected. If the subcommittee found these administrative regulations deficient, the funding problems would continue. Mr. Hammons stated that the cabinet was aware of federal funding issues before sequestration. Providers had alternative savings ideas that were not addressed. Representative Lee stated that he and the cabinet would entertain alternative savings ideas, and these administrative regulations could be recalled by the subcommittee as necessary.

Senator Gregory stated that she hoped to address these funding issues during the upcoming budget session of the General Assembly. She was concerned about due process issues and the confidentiality of forms. Ms. Bowman stated that the confidentiality concern was easy to address; the form could be amended to contain information for a single child. Ms. Vessels stated that such an amendment would also reduce paperwork in the event of an audit.

Co-Chair Harris stated that budget concerns, while crucial, could not be addressed through the administrative regulation process. The remainder of the discussion regarding these administrative regulations should focus on the due process and confidentiality issues.

Ms. Caywood stated that many of the concerns regarding fraud were expressed during the public hearing and public comment period. The cabinet responded to those concerns in the STATEMENT OF CONSIDERATION. A new facility shall not be licensed and a license shall not be transferred to another owner during an investigation of fraud in order to protect the public and avoid investigatory complications. Only if fraud was substantiated would a license be revoked. Some commenters regarding the fraud issue were mistaken regarding suspected fraud resulting in license revocation. All issues in the Franklin County Circuit Court matter have been settled. The form incorporated by reference was not new but was a standardized vehicle for transmitting already required information. The form was not any more of a confidentiality concern than a guardian or child spotted entering a child care facility. The form was



amended in the Amended After Comments version to make it more user friendly. The form would enhance billing accuracy. Amending the form again now would require deferral, which would result in the emergency administrative regulations expiring before the ordinary administrative regulations were effective. Such an expiration would create a gap in the cabinet's ability to enforce these requirements.

Ms. James stated that the cabinet recently experienced serious incidences of fraud pertaining to this program. It was vital for good stewardship of state funds to ensure that children reported as receiving child care actually received that care.

In response to a question by Senator Bowen, Ms. Caywood stated that the form was based on the federal model. The cabinet was willing to change the form, but these administrative regulations needed to continue through the process now. The cabinet agreed to amend the form in the near future.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to place definitions in alphabetical order; and (2) to amend Section 10 to delete language referencing provisions that were deleted in the Amended After Comments version of 922 KAR 2:160. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:090 & E. Child-care center licensure.

Ms. Bowman stated that Section 6 of this administrative regulation required an employee to be discharged if that employee was found to have a felony conviction, even if the conviction was for matters unrelated to the health and safety of children, such as a conviction for endorsing checks without sufficient funds.

922 KAR 2:100. Certification of family child-care homes.

922 KAR 2:110. Child-care center provider requirements.

922 KAR 2:120. Child-care center health and safety standards.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to make a technical correction; and (2) to amend Section 13 to clarify provisions. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:160 & E. Child Care Assistance Program.

Ms. Vessels stated that 4-C Child Care had alerted the cabinet of incidences of fraud, and the facility supported some portions of this administrative regulation; however, some requirements were more burdensome than federal requirements without justification. Some requirements placed undue burdens on

small businesses. It was possible that innocent mistakes in paperwork may be deemed intentional fraud. Discrepancies in paperwork had sometimes caused audits resulting in overburdensome paperwork, including a situation in which copying costs alone were over \$1,400. Ms. Vessels requested that the subcommittee find this administrative regulation deficient.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend Section 7 to make technical corrections; and (3) to amend Sections 10 and 17 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

The following administrative regulations were deferred to the September 2013 meeting of the subcommittee:

A G R I C U L T U R A L  
EXPERIMENT STATION: Seeds

12 KAR 1:116. Sampling, analyzing, testing, and tolerances.

12 KAR 1:135. Tags available for purchase from the director.

12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.

12 KAR 1:150. Stop sale orders.

12 KAR 1:155. Schedule of charges for samples submitted for testing.

12 KAR 1:165. Germination standards for vegetable seed.

GENERAL GOVERNMENT  
CABINET: Board of Medical Licensure: Board

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. C. Lloyd Vest II, general counsel, represented the board.

Mr. Vest stated that the board inadvertently failed to file the suggested amendment in time for the subcommittee meeting. The board requested deferral to the September meeting of the subcommittee. Without objection, and with agreement of the subcommittee, this administrative regulation was deferred to the September meeting.

ENERGY AND  
ENVIRONMENT CABINET:  
Department for Environmental Protection: Division of Water: Water Quality Standards

401 KAR 10:030. Antidegradation policy implementation methodology.

Department for Natural Resources: Division of Technical and Administrative Support: General Administrative Procedures

418 KAR 1:040. Grant applications.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Maternal and Child Health: Kentucky Early Intervention System

902 KAR 30:120. Evaluation and eligibility.

902 KAR 30:200. Coverage and payment for services.

Department for Medicaid Services: Payment and Services

907 KAR 3:230 & E. Reimbursement policies and requirements for specialty intermediate care (IC) clinic services.

The subcommittee adjourned at 3:25 p.m. until the September meeting date, which will be scheduled after other committee schedules can be determined.

**GOVERNMENT CONTRACT  
REVIEW COMMITTEE  
Committee Minutes**

August 9, 2013

**Call to Order and Roll Call**

The Government Contract Review Committee met on Friday, August 9, 2013, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Dennis Horlander, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Sara Beth Gregory, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julian M. Carroll and Christian McDaniel; Representatives Jesse Crenshaw, Brad Montell, and Brent Yonts.

Guests: Mike Mangeot, Steve Kelly, Jenna Day, Ray Perry, DJ Wasson, Tim Miller, Hollie Spade, Nancy Carpenter, Tonya Crum, Deanne Toby, Mike Hill, Dr. Gene Tice, Betsy Dunnigan, Kevin Mudd, Charlie Harman, Cindy Parker, Donna Tackett, Dale Winkler, John Covington, and Jim Erwin.

LRC Staff: Kim Eisner, Charles Booker, and Becky Brooker.

Representative Yonts moved to approve the July 2013 meeting minutes. Senator Gregory seconded the motion, which passed without objection.

**JUNE 2013 DEFERRED  
ITEMS**

FISH & WILDLIFE,  
DEPARTMENT OF

Jonathan W. Gassett, 1300002393. A motion was made by Senator Gregory to defer the contract to the September 2013. Representative Montell seconded the motion, which passed without objection.

**JULY 2013 DEFERRED  
ITEMS**

C O R R E C T I O N S ,  
DEPARTMENT OF

MidAmericaHealth Incorporated, 1300002682; Correctcare Incorporated, 1300001272. Jim Erwin

discussed the contracts. A motion was made by Representative Yonts to consider the contracts as reviewed. Senator Carroll seconded the motion, which passed without objection.

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

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

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

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

**THE FOLLOWING  
PERSONAL SERVICE  
CONTRACTS WERE REVIEWED  
WITHOUT OBJECTION:**

DEPARTMENT FOR  
ENVIRONMENTAL PROTECTION:

Dade Moeller & Associates Incorporated, 1300003084.

DEPARTMENT OF  
ALCOHOLIC BEVERAGE  
CONTROL:

Sandy Swift, 1200003346-1.

EDUCATIONAL TELEVISION,  
KENTUCKY:

Amy Christine Bradshaw, 1400000008.

FINANCE AND  
ADMINISTRATION CABINET -  
DIVISION OF ENGINEERING:

S&ME, Inc., 1300003119.

KENTUCKY LOTTERY  
CORPORATION:

Chase Bank, 14-06-026.

KY HORSE RACING  
AUTHORITY:

Durham Jones & Pinegar, 1400000150.

NORTHERN KENTUCKY  
UNIVERSITY:

Heapy Engineering, 2014-643.

OFFICE OF HOMELAND  
SECURITY:

Goldberg Simpson, LLC, 1300003002.

SECRETARY OF STATE,  
OFFICE OF THE:

Tachau Meek, PLC, 1400000087.

STATE POLICE, DEPARTMENT  
OF:



Law Enforcement Services, Inc., 1300003009; Elliott D. Gollihue, 1400000088; Deron E. Berthold, 1400000089; Jerry Bailey, 1400000090.

TRANSPORTATION CABINET:  
American Engineers Incorporated, 1400000002; Lochner H W Incorporated Consulting, 1400000006; Arnold Consulting Engineering Services, Inc., 1400000014; Strand Associates Incorporated, 1400000045; Strand Associates Incorporated, 1400000046; Florence and Hutcheson, 1400000071; GRW Engineers Incorporated, 1400000072; Palmer Engineering Company, 1400000073; QK4, 1400000074; Burgess and Niple Incorporated, 1400000075; CDP Engineers Incorporated, 1400000078; J M Crawford & Associates Incorporated, 1400000195; URS Corporation, 1400000197; URS Corporation, 1400000214; BTM Engineering Incorporated, 1400000216; HDR Engineering Incorporated, 1400000217.

UNIVERSITY OF KENTUCKY:  
JRA Architects, A131210; Multi, A141000; Multi, A141010; Multi, A141020; Multi, A141030; Multi, A141040; Multi, A141050; Multi, A141060; Moody Nolan, A141080; Commonwealth Anesthesia, PSC, K14-114; R.V. Kuhns & Associates, K14-115; Cornett Integrated Marketing Solutions, K14-116; Advent, K14-118; Cammack LaRhetta Advisors, LLC, K14-119.

WESTERN KENTUCKY UNIVERSITY:

Active Learning Abroad (ALA), 131410; CMS Publishing Incorporated d/b/a R & R Newkirk, 131411; DC Steam Incorporated d/b/a Row27 Studios, 131412; Multi, 131413; Learning Curve Educational Consulting, 131414.

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Goldberg and Simpson, PSC, 1200002425.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Micah Group Environmental Contractors, Inc., 1300002885; Tetra Tech Incorporated, C-05120724-1.

DEPARTMENT FOR INCOME SUPPORT:

Paul Anthony Ebben, Psyd, 1200001423; Rebecca B Luking, 1200001424; The Visions Group, LLC, 1200001966.

DEPARTMENT FOR PUBLIC HEALTH:

Norton Healthcare Incorporated, 1200000837.

FINANCE AND

ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Paladin Incorporated, 0600003090; Stantec Consulting Services Incorporated, 0800007671; CDP Engineers Incorporated, 0800010316; Staggs and Fisher Consulting Engineers Incorporated, 0900011701; URS Corporation, 1100000073; EOP Architects, PSC, 1200001615; Schnabel Dam Engineering, Inc., 1200002448; Facility Commissioning Group, 1200003589; EOP Architects, PSC, 1300001967; Ross Tarrant Architects, Incorporated, C-06082726.

PERSONNEL-OFFICE OF THE SECRETARY:

Cannon Cochran Management Services Incorporated, 1200002507.

PUBLIC PROTECTION & REGULATION CABINET:

Mike Wilson, 1200003599.

TRANSPORTATION CABINET:

E A Partners, PLC, 0600001849; QK4, 0700004069; HMB Professional Engineers Incorporated, 0700004075; EA Partners, PLC, 0900012421; HMB Professional Engineers Incorporated, 0900012535; HDR Engineering Incorporated, 1000003299; J M Crawford and Associates Incorporated, 1000004236; S&ME, Inc., 1100000552; Florence and Hutcheson, 1100001049; Burgess & Niple Incorporated, 1200001748; Fogle Keller Purdy, PLLC, 1200003062; QK4, 1200003576; QK4, 1300003161; Municipal Engineering Company, C-01318541-6; HMB Professional Engineers Incorporated, C-99005065-6.

UNIVERSITY OF KENTUCKY:  
Rockcastle Hospital & Respiratory Care Center Incorporated, K13-112.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:

ATTORNEY GENERAL, OFFICE OF THE:

Catholic Charities Incorporated, 1400000091.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

University of Kentucky Medical, 1300002978; University of Louisville Research Foundation, Incorporated, 1400000069.

EDUCATION, DEPARTMENT OF:

Fleming County Board of Education, 1300002919; Research Foundation of Suny, 1300002926; Bowling Green Independent Board of Education, 1300003034; Carter County Board of Education, 1300003040; Covington Independent Board of Education, 1300003044; Edmonson County Board of Education, 1300003045; Fayette

County Board of Education, 1300003046; Fleming County Board of Education, 1300003047; Franklin County Board of Education, 1300003048; Jefferson County Board of Education, 1300003053; Kenton County Board of Education, 1300003061; Powell County Board of Education, 1300003074; Advanced - Kentucky, 1300003123; Daviess County Board of Education, 1300003151; Owen County Board of Education, 1300003160; Covington Independent Board of Education, 1300003169; Fayette County Board of Education, 1300003172; Greenup County Board of Education, 1300003174; Pike County Board of Education, 1300003181; Knox County Board of Education, 1400000026; Bullitt County Board of Education, 1400000029; Campbellsville Independent Board of Education, 1400000032; Lyon County Board of Education, 1400000125.

FISH & WILDLIFE, DEPARTMENT OF:

University of Tennessee, 1300002528; UK Research Foundation, 1300002835; UK Research Foundation, 1300002872; UK Research Foundation, 1300002995.

INFRASTRUCTURE AUTHORITY:

Barren River Area Development District, 1400000140.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Rockcastle County Fiscal Court, 1300003124; City of Grand Rivers, 1400000047; Daviess County Fiscal Court, 1400000048; Knott County Fiscal Court, 1400000057; Henderson County Fiscal Court, 1400000058; Morgan County Fiscal Court, 1400000094; Christian County Fiscal Court, 1400000114; City of Paducah, 1400000145; Graves County Fiscal Court, 1400000152.

UNIVERSITY OF KENTUCKY:  
Bluegrass Regional Mental Health & Mental Retardation Board Inc., MOA-003-14.

WORKFORCE INVESTMENT, OFFICE OF:

Kentucky Revenue Cabinet, 1300001940.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

A G R I C U L T U R E , DEPARTMENT OF:

Multi, 1300001593; Multi, 1300001595; Murray State University, 1300002289; Murray State University, 1300002290.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

UK Research Foundation,

1200002603; UK Research Foundation, 1300000791.

DEPARTMENT FOR NATURAL RESOURCES:

Virginia Polytechnic Institute & State University, 1200002987.

ECONOMIC DEVELOPMENT - OFFICE OF THE SECRETARY:

Kentucky Science and Technology Corporation, 1200003267.

EDUCATION, DEPARTMENT OF:

Ohio Valley Educational Cooperative, 1200002759; Barren County Board of Education, 1200003135; Bourbon County Board of Education, 1300000070; Campbellsville Independent Board of Education, 1300000075; Carlisle County Board of Education, 1300000076; Carroll County Board of Education, 1300000078; Caverna Independent Board of Education, 1300000081; Christian County Board of Education, 1300000083; Clinton County Board of Education, 1300000084; Cloverport Independent Board of Education, 1300000086; Covington Independent Board of Education, 1300000088; Crittenden County Board of Education, 1300000089; Cumberland County Board of Education, 1300000090; Eminence In Board of Education, 1300000091; Fayette County Board of Education, 1300000093; Floyd County Board of Education, 1300000094; Garrard County Board of Education, 1300000096; Grayson County Board of Education, 1300000098; Greenup County Board of Education, 1300000099; Harlan County Board of Education, 1300000103; Henderson County Board of Education, 1300000107; Kenton County YMCA of Greater Cincinnati, 1300000116; Middlesboro Independent Board of Education, 1300000153; Nelson County Board of Education, 1300000157; Paris Independent Board of Education, 1300000164; Pleasant Green Baptist Church, 1300000165; Pulaski County Board of Education, 1300000167; RC Durr YMCA, 1300000168; Washington County Board of Education, 1300000176; Whitley County Board of Education, 1300000177; Campbell County Board of Education, 1300001607; YMCA of Greater Cincinnati, 1300001626; Eastern Kentucky University, 1300002878.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Pike County Fiscal Court, 0700004897; Pike County Fiscal Court, 1000003224; Knox County Fiscal Court, 1300001028; Union Co Fiscal Court, 1300001535.

TRANSPORTATION CABINET:

Franklin County Health Department, 1200001745; Eastern Kentucky University, 1200001775;



Eastern Kentucky University,  
1200001776.

WORKFORCE INVESTMENT,  
OFFICE OF:

Bluegrass Technology Center,  
1200002835; Redwood School and  
Rehabilitation Center, 1200003158.

THE FOLLOWING FILM  
TAX INCENTIVE AGREEMENT  
WAS SELECTED FOR FURTHER  
REVIEW:

TOURISM DEVELOPMENT  
CABINET

Produce Films, LLC,  
1400000115. Mike Mangeot discussed  
the contract. A motion was made by  
Senator McDaniel to consider the  
contract as reviewed. Representative  
Montell seconded the motion, which  
passed without objection.

THE FOLLOWING  
PERSONAL SERVICE  
CONTRACTS WERE SELECTED  
FOR FURTHER REVIEW:

A G R I C U L T U R E ,  
DEPARTMENT OF

Miss Kentucky Scholarship,  
1300002956. Steve Kelly and Jenna  
Day discussed the contract. A motion  
was made by Senator McDaniel to  
consider the contract as reviewed.  
Representative Yonts seconded  
the motion, which passed without  
objection.

DEPARTMENT OF  
INSURANCE

Donald D. Bratcher, 1300003148;  
Larry Elmer Cross, 1300003149. Ray  
Perry, DJ Wasson, and Tim Miller  
discussed the contracts. A motion was  
made by Representative Montell to  
consider the contracts as reviewed.  
Representative Yonts seconded  
the motion, which passed without  
objection.

ECONOMIC DEVELOPMENT  
- OFFICE OF THE SECRETARY

Commerce Lexington,  
1300003166. Hollie Spade discussed  
the contract. A motion was made by  
Representative Yonts to consider the  
contract as reviewed. Representative  
Crenshaw seconded the motion, which  
passed without objection.

EDUCATIONAL TELEVISION,  
KENTUCKY

Catherine Fillmore-Hoyt,  
1300003152. Nancy Carpenter and  
Tonya Crum discussed the contract.  
A motion was made by Senator  
McDaniel to consider the contract as  
reviewed. Senator Carroll seconded  
the motion, which passed without  
objection.

MURRAYSTATE UNIVERSITY

Witt / Kieffer, 014-14. Deanne  
Toby discussed the contract. A motion  
was made by Representative Yonts  
to consider the contract as reviewed.  
Representative Crenshaw seconded  
the motion, which passed without

objection.

THE FOLLOWING  
PERSONAL SERVICE  
CONTRACTS AMENDMENTS  
WERE SELECTED FOR  
FURTHER REVIEW:

TRANSPORTATION CABINET  
Community Transportation  
Solutions, 0900012152. Mike Hill  
discussed the contract. A motion  
was made by Representative Yonts  
to consider the contract as reviewed.  
Representative Crenshaw seconded  
the motion, which passed without  
objection.

THE FOLLOWING  
PERSONAL SERVICE  
CONTRACTS FOR \$10,000 AND  
UNDER WERE SELECTED FOR  
FURTHER REVIEW:

WESTERN KENTUCKY  
UNIVERSITY

Brenda Truitt Jones, 131415. Dr.  
Gene Tice discussed the contract. A  
motion was made by Representative  
Yonts to consider the contract as  
reviewed. Representative Crenshaw  
seconded the motion, which passed  
without objection.

THE FOLLOWING  
MEMORANDUM OF  
AGREEMENTS WERE  
SELECTED FOR FURTHER  
REVIEW:

DEPARTMENT FOR  
BEHAVIORAL HEALTH,  
DEVELOPMENTAL AND  
INTELLECTUAL DISABILITIES

University of Kentucky Research  
Foundation, 1300002454. Betsy  
Dunnigan and Kevin Mudd discussed  
the contract. A motion was made by  
Representative Yonts to consider the  
contract as reviewed. Representative  
Crenshaw seconded the motion, which  
passed without objection.

EDUCATION, DEPARTMENT  
OF

Magoffin County Board of  
Education, 1300002988; Lee County  
Board of Education, 1300002996;  
Washington County Board of  
Education, 1300003019. Charlie  
Harman and Cindy Parker discussed  
the contracts. A motion was made by  
Representative Yonts to consider the  
contract as reviewed. Senator Carroll  
seconded the motion, which passed  
without objection.

EDUCATION, DEPARTMENT  
OF

Spencer County Board of  
Education, 1400000030. Donna  
Tackett and Charlie Harman discussed  
the contract. A motion was made by  
Representative Yonts to consider the  
contract as reviewed. Senator Carroll  
seconded the motion, which passed  
with Senator McDaniel voting NO.

I N F R A S T R U C T U R E  
AUTHORITY

Buffalo Trace Area Development  
District, 1400000166; Fivco Area Dev  
District, 1400000167; Gateway Area

Development District, 1400000168;  
Green River Area Development,  
1400000170; Kentuckiana Regional  
Planning & Development Agency,  
1400000172; Kentucky River Area  
Development Chamber of Commerce,  
1400000173; Lake Cumberland Area  
District the Cumberland, 1400000174;  
Lincoln Trail Area Development  
District, 1400000175; Northern  
Kentucky Area Development  
District, 1400000176; Pennyrile Area  
Development District, 1400000178;  
Purchase Area Development District,  
1400000179. John Covington  
discussed the contracts with the  
committee. A motion was made  
by Representative to consider the  
contracts as reviewed. Representative  
Yonts seconded the motion, which  
passed without objection.

THE FOLLOWING  
MEMORANDUM OF  
AGREEMENTS FOR \$50,000 &  
UNDER WERE SELECTED FOR  
FURTHER REVIEW:

EDUCATION, DEPARTMENT  
OF

Jefferson County Board of  
Education, 1300002765; Magoffin  
County Board of Education,  
1300002778; Perry County Board  
of Education, 1300002796. Charlie  
Harman and Donna Tackett discussed  
the contracts. A motion was made by  
Representative Montell to consider  
the contracts as reviewed. Senator  
Gregory seconded the motion, which  
passed without objection.

EDUCATION, DEPARTMENT  
OF

Lincoln County Board of  
Education, 1300002331. Charlie  
Harman, Dale Winkler, and Donna  
Tackett discussed the contract. A  
motion was made by Senator  
McDaniel to consider the contract  
as reviewed. Representative Yonts  
seconded the motion, which passed  
without objection.

EXEMPTION REQUESTS  
PUBLIC PROTECTION  
CABINET, KENTUCKY HORSE  
RACING COMMISSION

The Public Protection Cabinet,  
Kentucky Horse Racing Commission  
requested an extension of time only  
for one project only; this request was  
pertaining to the biennial requirement  
GCRC Policy Statement 99-4. A  
motion was made by Representative  
Yonts to grant the request to March  
30, 2015. Senator McDaniel seconded  
the motion, which passed without  
objection.

EDUCATION AND  
WORKFORCE DEVELOPMENT  
CABINET, OFFICE OF  
VOCATIONAL REHABILITATION

The Education and Workforce  
Development Cabinet, Office of  
Vocational Rehabilitation requested a  
waiver of the Biennial Time Limit for

various federally funded living centers  
throughout the commonwealth. A  
motion was made by Representative  
Yonts to grant the request to September  
30, 2014. Senator McDaniel seconded  
the motion, which passed without  
objection.

With no further business before  
the committee, the meeting adjourned  
at 11:45 AM.

**PROGRAM REVIEW  
AND INVESTIGATIONS  
COMMITTEE**

Minutes  
August 1, 2013

**Call to Order and Roll Call**

The Program Review and  
Investigations Committee met on  
Thursday, August 1, 2013, at 10:00  
AM, in Room 171 of the Capitol  
Annex. Representative Fitz Steele,  
Chair, called the meeting to order, and  
the secretary called the roll.

Present were:

Members: Senator Christian  
McDaniel, Co-Chair; Representative  
Fitz Steele, Co-Chair; Senators Tom  
Buford, Perry B. Clark, Julie Denton,  
Ernie Harris, Jimmy Higdon, Dorsey  
Ridley, and Dan “Malano” Seum;  
Representatives Dwight D. Butler,  
Leslie Combs, Jim DeCesare, Terry  
Mills, Ruth Ann Palumbo, Rick Rand,  
and Arnold Simpson.

Legislative Guests:  
Representative Dennis Horlander.

Guests: Steve Glenn, Commission  
Vice-Chair, Kentucky Department of  
Fish and Wildlife Resources; Jonathan  
Gassett, Commissioner, Kentucky  
Department of Fish and Wildlife  
Resources; Benjy Kinman, Deputy  
Commissioner, Kentucky Department  
of Fish and Wildlife Resources; Matt  
Sawyers, Deputy Secretary, Tourism,  
Arts and Heritage Cabinet; Mona  
Juett, Office of Intergovernmental  
Affairs, Tourism, Arts and Heritage  
Cabinet.

LRC Staff: Greg Hager,  
Committee Staff Administrator; Chris  
Hall; Colleen Kennedy; Van Knowles;  
Lora Littleton; William Spears; Joel  
Thomas; Stephanie Love, Jessica  
Sapp, Graduate Fellows; Ashlee  
McDonald, Kate Talley, Committee  
Assistants.

**Approve minutes for July 11,  
2013**

Upon motion made by  
Representative Simpson and a second  
by Senator McDaniel, the minutes  
of the July 11, 2013, meeting were  
approved by voice vote, without  
objection.

**Staff Report:** Kentucky  
Department of Fish and Wildlife  
Resources

Christopher Hall and Tosha  
Fraley presented the report. Mr.  
Hall said that staff were directed  
to examine the Department of Fish  
and Wildlife Resource’s (DFWR)



governance, organization, and funding. The department is attached to the Tourism, Arts, & Heritage Cabinet (TAHC) for administrative purposes. The cabinet does not have an active role in department policy decisions. The department is governed by a nine-member commission, which acts as a regulatory body and as an advisory board. The commission hires the administrative head of the department. The commission consists of one representative each from nine wildlife districts. Sportsmen in each district nominate five individuals and submit their names to the governor, who selects one and appoints that individual to a 4-year term subject to Senate confirmation.

A conclusion of the report is that within TAHC, other entities are governed by a commission or board in a manner similar to DFWR. Specifically, the Kentucky Horse Park is governed by a 15-person commission whose members are appointed by the governor. The commission appoints an executive director to serve as the chief administrator of the park. The Kentucky State Fair Board is governed by a 15-member board, which appoints a president to serve as the chief executive officer. The Kentucky Historical Society is governed by a 22-member executive committee. A difference in the governance of these entities is that TAHC has no formal representation on the Fish and Wildlife Commission, but the secretary is a voting member on the Horse Park Commission and is a nonvoting member of the State Fair Board. The governor is a member of the State Fair Board and sits on the Kentucky Historical Society's executive committee, but is not a member of the Fish and Wildlife Commission.

LRC staff compared DFWR's governance to surrounding states, concluding that Kentucky is similar to some states whose fish and wildlife agencies are also stand-alone entities that are governed by a commission. One difference is that Kentucky appears to be the only state in which sportsmen play an active role in nominating members of the agency's governing body. Specifically, Kentucky is similar to Missouri, Tennessee, and Virginia in that their fish and wildlife commissions set department policy, regulations, and advise the department on actions it should take. These commissions also hire someone to serve as the administrative head of the agency.

Mr. Hall said that DFWR has a commissioner, deputy commissioner, and seven division directors. By statute, the commission is required to meet quarterly in Frankfort. These are open meetings, which are scheduled one year in advance to allow for members of the public to plan their

attendance. The commission has an administration, education, and policy committee; a fisheries committee; and a wildlife committee.

A conclusion of the report is that the department is structured and organized so that ideas are reviewed at multiple levels before coming to the full commission for a final vote and that there are multiple avenues for receiving public input.

The three standing committees serve as a first step in the commission approval process. Ideas for regulatory changes, new projects, or research programs typically come from department field staff or Kentucky's sportsmen. These ideas are passed along to the appropriate division director, who works with the relevant committee members to create a viable proposal. The proposal then goes to the department commissioner, who places it as an agenda item on the next scheduled committee meeting, which typically are held one month before the quarterly meeting of the full commission. Once committee members have discussed a proposal, they can request additional information from staff or forward the proposal to the full commission as an action item at the next quarterly meeting. As such, the public has a least one month to comment on proposals before they go to the full commission.

DFWR does not document the list of items that require approval by the full commission. Recommendation 1.1 of the Program Review report is that "The Kentucky Department of Fish and Wildlife Resources Commission should adopt bylaws that detail operating procedures and guidelines, including procedures used for reimbursing the department commissioner's travel expenses."

Based on a review of meeting minutes from the past 3 years, DFWR has been consistent in terms of the items it brings before the commission for approval. These include new administrative regulation and changes to existing regulations; land acquisitions, sales, or transfers; the annual legislative agenda and proposals; and issuance of special permits to nonprofit wildlife conservation organizations.

In 2006, the commission asked the department to develop a 5-year strategic plan to better define the agency's mission, goals, and objectives. A team consisting of the department's executive staff, the commission chair, and the chairs of the three standing committees solicited ideas for nearly a year, including through town hall-style meetings to gain input from the public. The department drafted a strategic plan and the commission approved it. The current plan is for FY 2013

– 2017. Nearly all of its objectives have measurable outcomes. Division directors provide regular progress reports on the 5-year strategic plan to the standing committees and to the full commission.

SB 64, enacted in 2010, amended KRS 150.061 to require the department commissioner to be hired under a defined-term contract not to exceed 4 years. A contract was drafted and approved by the commission in June 2010. This contract was not signed by the TAHC secretary or general counsel and did not receive approval from the Secretary of the Finance Cabinet. According to TAHC officials, the contract did not move forward because it included provisions that did not comply with procurement policy. The same officials stated that in October 2010 the original contract was revised to meet procurement policy, but that the contract was never executed. In April 2013, Program Review staff requested a copy of the contract from Government Contract Review Committee staff. According to TAHC officials, it was at this point that they learned that the October 2010 revised contract had never been executed through the eMARS approval process. DFWR and TAHC officials moved to enter the contract into the state's procurement system, which was completed on May 2, 2013. The contract has since been on the agenda of the Government Contract Review Committee, but has been deferred for the past two meetings.

SB 64 also required an annual review of the department's commissioner. According to several commission members, they have conducted an annual review since 2010. These reviews occur in closed session, as required by KRS 150.061, so there is no documentation of the discussion or the outcomes.

Under KRS 150.061, the department commissioner is entitled to reimbursement for actual and necessary travel expenses. His annual travel budget is approved by the commission and the TAHC secretary. Out-of-state travel must receive prior approval from the commission and cabinet secretary. At least during the tenure of the current and previous commission chairmen, upon returning from both out-of-state travel and trips within Kentucky, the department commissioner must submit a form accompanied with receipts to the commission chair, who reviews the documents and signs off on the reimbursement. None of the current commissioner's travel reimbursement requests have been denied.

Ms. Fraley said that a conclusion of this report is that the department's annual revenue is usually larger than expenditures. Revenue and expenditures for the department

are approximately \$50 million per year. From FY 2007 to FY 2011, the department had larger revenues than expenditures each year. In FY 2012, the department's expenditures totaled approximately \$57.2 million, \$4.5 million more than revenue. The difference was attributable to FY 2012 capital projects and accumulated capital projects from previous years.

Another conclusion is that the department does not receive money from the state general fund, and the majority of the department's funding is from hunting and fishing license sales and federal programs. These two sources of revenue accounted for 81 percent of total revenue in FY 2012.

In FY 2012, the department collected approximately \$26.4 million in hunting and fishing license fees, one-half of the department's total revenue. The department receives federal revenue through reimbursement. In FY 2012, Kentucky collected approximately \$16.6 million from the federal government. These funds must be used for federally approved projects. In FY 2012, boating registration fee revenue totaled \$3.6 million, 7 percent of total revenue. In FY 2012, program income revenue was \$1.5 million, 3 percent of total revenue. Other sources of income in FY 2012, added up to \$4.6 million, 9 percent of total revenue.

The department's overall revenue has steadily increased over the past 6 years with two exceptions. In FY 2008, revenue decreased slightly because of a drop in federal funds. Revenue decreased in FY 2010 because FY 2009 revenue was particularly high. Federal grant revenue source has fluctuated, peaking in FY 2009 and FY 2011. Program income over the last 6 years is small and relatively erratic. There has been little or no growth in revenue from hunting and fishing license sales and motor boat registration.

In FY 2012, expenditures totaled approximately \$57.2 million. The Wildlife Division and the Law Enforcement Division accounted for 45 percent of total expenditures.

Another major conclusion in this report is that in FY 2012, 84 percent of the department's revenue was subject to federal regulation.

Many of the department's expenditures are tied to federal funds. In FY 2012, the department received approximately \$16.6 million in federal reimbursements. Total expenditures from these federal funds were \$14.7 million. The federal agencies that provide funds to the department also provide oversight to ensure that the funds are being used as intended. Most programs require matching state funds. Generally, each program specifies the types of activities and costs that may be funded under the program. States receiving wildlife



or sport fish restoration funds must pass legislation restricting the use of hunting and fishing license fees to the administration of the state's fish and wildlife agency. States that divert these fees to other purposes risk losing future funding or control of projects under the program. Ms. Fraley described the largest federal programs that the department implements.

The department administers Kentucky's Wetland and Stream Fee-In-Lieu-Of Mitigation Program (FILO). The US Corps of Engineers sets the fees and the department uses the revenue to repair and protect streams and wetlands in parts of the state. Under the agreement between the department and the US Corps of Engineers, fees paid into the program for a project that adversely affects a stream or wetland must be used for mitigation projects within the same water basin. Recent changes to the agreement require that fees be used within 3 years of when they are paid. FILO revenue and expenditures are separate from the department revenue and expenditures. In FY 2012, FILO revenue was approximately \$19.5 million and expenditures were approximately \$8.4 million.

Another conclusion of the report is that the department is required to have federal and state audits. According to recent audits, the department is in compliance.

Among the audits described by Ms. Fraley is the annual audit of DFWR by the Auditor of Public Accounts. This audit has been required by statute since 2010. This audit ensures there is no commingling of funds, requires program income to be specified by type, checks internal controls, and requires the auditor to submit a report to the Joint Committee on Natural Resources and Environment. According to recent audits, the department is in compliance, but it has received some recommendations, mostly pertaining to a lack of expenditure documentation. The department developed and implemented corrective action plans in response.

Senator McDaniel said that he would like more information on the evaluation of the commissioner. He asked why there is no record of findings and whether there could be a summary at least.

Mr. Hall said that it is up to the department as to whether to provide some kind of record of a closed session. He was unsure of the legal issues involved in publishing something from a closed session.

Representative Simpson said that typically evaluations are in the personnel file. He asked whether such a file exists in this case.

Mr. Hall said that LRC staff

asked whether there were records of the evaluation. He was unsure as to whether relevant information existed but was not provided.

Senator Higdon said that one of the conclusions of the report is that there were audit recommendations referring to a lack of documentation. He asked why there was no recommendation in the Program Review staff report addressing this.

Ms. Fraley replied that the issues subject to the audit recommendations have been corrected.

Representative Steele said that the federal government controls the FILO money. It is down because of the federal government's current war on coal. Stream projects have to meet water conductivity standards that are unreasonable.

Mr. Gassett said that the commission has been considering what can be done with bylaws in recent years. The commission can implement the recommendation in the report.

Representative Simpson asked whether Mr. Gassett evaluates his employees and, if so, whether documentation is placed in their personnel files.

Mr. Gassett responded that all full- and part-time merit employees are evaluated. Gubernatorial appointees are not evaluated. He was in that category until Senate Bill 64 was enacted. He has a personnel file, but, to his knowledge, it does not contain any formalized evaluation.

In response to a question from Representative Simpson, Mr. Gassett said that he was appointed by the commission with the approval of the governor.

In response to a question from Representative Simpson, Mr. Glenn said that, speaking for himself, he would not have a problem with including information about the evaluation in the personnel file. He would not include all the details of what was handled in closed session. He does not think that anyone would have a problem of having an overview of what happened in the file. Such a requirement could be part of the bylaws.

In response to questions from Senator McDaniel, Mr. Gassett said that the commission meets quarterly, and that the next meetings would be August 14 and in December. Committees meet before the quarterly meetings.

Senator McDaniel said that he would like the commission to review the recommendation in the report concerning bylaws and respond to the following meeting of Program Review, which would likely be May 2014.

In response to a question from Senator McDaniel, Mr. Gassett said that a lack of growth of hunting and

fishing revenue is widespread in the U.S. This is an improvement from a decade ago when such revenue was declining. There are multiple reasons. There is increased competition for time. He mentioned the increase in organized sports for children. There is now a core group of hunters and anglers. The average age of participants is increasing.

In response to a question from Senator McDaniel, Mr. Gassett said that there are no major problems with herd size due to a lack of hunters. An exception is that the bear season is being increased because of more problems with bears.

In response to questions from Sen. McDaniel, Mr. Gassett said that an example of a FILO transaction would be a highway project that will cross a stream or wetlands area. The environmental impact can be mitigated on site or in an adjacent area. The third option is to make a payment for the estimated cost of mitigation. This transfers the burden from the entity doing the project to the FILO program. The 3-year time limit became a requirement last year. Funding for FILO projects before that are not subject to the 3-year limit.

Mr. Kinman said the department has yet to face the issue of what happens if a FILO project's funds are not spent in 3 years. Mr. Gassett said that the plan is to meet the requirements.

In response to a question from Senator McDaniel, Mr. Gassett said that in deciding which land to purchase, areas are identified that would be of high value to sportsmen. The department tries to get larger tracts of land, at least 1,000 acres. If the property is smaller, it is preferable that it be adjacent to property already owned by the department. The department has been successful in getting external funding for acquisitions.

Mr. Kinman described a \$6.6 million acquisition that was done with only \$50,000 in revenue from fishing and hunting licenses.

Senator McDaniel said that the Louisville Bats relationship mentioned in the report is not the best outlay of funds.

Mr. Gassett said that the department no longer does this. The rationale was to reach out to youth. The department sold licenses at booths and rented the Jumbotron for advertising. Any other benefits that the department received were part of a marketing package.

In response to questions from Senator Higdon, Mr. Gassett said that most audits of the department have been clean. The department develops a corrective action plan when there is a finding.

In response to a question from

Senator Higdon, Mr. Gassett said there is a potential long-term revenue problem due to an aging population. The department will be making minor adjustments to license fees.

In response to a question from Senator Higdon, Mr. Glenn said that having sportsmen play an active role in nominating commissioners works well. Mr. Gassett said that Kentucky is the envy of other states for its nomination process.

Representative Steele said that other reasons for the downturn in license sales to youth are the widespread use of cell phones and playing video games.

Representative Mills said that he visited Camp Earl Wallace last year and was impressed. The department should invest more resources in the camps to get more youth involved in outdoor activities.

Mr. Gassett said that a new initiative is to provide a youth sportsman license as part of the camp fee.

Representative Mills said that Duck Dynasty is coming to the state fair. A public service announcement would be a good idea as a way to encourage more interest in outdoor activities among young people.

In response to questions from Representative Steele, Mr. Gassett said that the department funds three camps with 5,000 participants. The department also funds equipment for outdoor activities at Trooper Island.

Representative Steele said that archery programs should be pushed more in schools. There should be more hands-on demonstrations in schools to educate students about elk.

In response to questions from Representative Simpson, Mr. Gassett said that the department has sometimes tried to survey out-of-state elk hunters to get an idea of the economic impact of the activity. There is economic impact from hunters from other parts of the state too. There have been no surveys of the many people who come to see elk, not hunt them. There are no other large animals that used to live in Kentucky that would be suitable to reintroduce to the state. Among smaller animals, he would like to see larger grouse and quail populations.

In response to a question from Representative Simpson, Mr. Gassett said that when the elk program started 15 years ago, Kentucky got elk from six states.

Representative Steele asked for Mr. Gassett's view of reports of sightings of big cats in Kentucky.

Mr. Gassett said that until a few years ago, it was legal to own a big cat in Kentucky. It is against state law to kill a big cat. There have been no documented cases of a sighting of a wild, big cat in Kentucky. There are sightings of them in other states, so it



is possible that they could show up in Kentucky. Cats that would come here from Florida are federally protected.

Senator Harris encouraged the commission to include a clause in the bylaws to provide for appropriate documentation of the review of the commissioner, which could also be posted online.

Mr. Sawyers thanked the committee for the opportunity for providing information about how the department works.

In response to a question from Representative Simpson, Mr. Sawyers described what the Department of Travel and Tourism does to market the elk district to residents of other states.

Representative Simpson said that his district is near Cincinnati, and he has not seen any such advertising.

Mr. Sawyers said that he would provide details to Representative Simpson on what is being done.

In response to question from Representative Simpson, Mr. Sawyers said that FILO funding cannot be used for this.

Representative Steele said that he was one of the co-sponsors of HJR 11, which passed unanimously [2012 Regular Session]. The resolution requested that the Kentucky Congressional delegation work to amend the Clean Water Act to end the discriminatory standard for water conductivity in Appalachia that prevents the region from setting aside some FILO funding for sewer and straightpipe projects.

Upon motion by Senator McDaniel and second by Representative Simpson, the report was adopted by roll call vote.

The meeting adjourned at 11:30 a.m.

## **TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE**

Minutes

August 7, 2013

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

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, August 7, 2013, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Paul Hornback, 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, Jimmy Higdon, Dennis Parrett, and Robin L. Webb; Representatives Mike Denham, Tom McKee, Terry Mills, and Jonathan Shell.

Guests: Joel Neaveill, Bill McCloskey, Angela Blank, Brian Murphy, and Biff Baker, Governor's

Office of Agricultural Policy; Sharon Clark and D.J. Wasson, Department of Insurance.

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

The July 3, 2013, minutes were approved without objection by voice vote, upon a motion by Senator Higdon and second by Representative McKee.

### **Governor's Office of Agricultural Policy**

Mr. Joel Neaveill, Chief of Staff, and Mr. Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), testified about project funding decisions made by the Agricultural Development Board (ABD) during its July meeting.

Mr. Neaveill summarized tobacco settlement funding allocations for the previous month under the County Agricultural Improvement (CAIP), Deceased Farm Animal Disposal Assistance, and Shared-use Equipment programs.

The speakers provided additional information to Representative Stone, Senator Hornback, and Representative McKee on the types of equipment purchased by some counties under the Shared-use Equipment program and the method of disposal in a Deceased Farm Animal grant approval.

The GOAP officials summarized those projects approved for state funding during the previous ADB meeting: Kentucky School for the Deaf, approved for \$10,000 in Boyle County tobacco settlement funds to buy a modified tractor for the school's farm; University of Kentucky Research Foundation, \$113,347 for the UK Center for Crop Diversification, with the funds to be spent on Web-based marketing and production information intended for agricultural producers; Whitley County Farmers' Market Inc., \$1,809 in state funds to develop a demonstration/marketing mobile unit; Hopkins County Extension Service, \$12,130 in state funds to be used to upgrade the existing sales area; and Franklin County Farmers' Market, \$5,200 to be used for the renovation and repair of the existing market complex.

As for the School for the Deaf funding request, the GOAP officials indicated the ADB was somewhat reluctant to commit funds to buy a tractor but agreed to the funding with the requirement that the tractor would be modified to make it safer for hearing-impaired youth.

Responding to Senator Parrett, the GOAP officials indicated that the Kentucky School for the Deaf school farm produces hay currently, but the school hopes to get into vegetable production.

Replying to Senator Gibson, GOAP officials indicated that the UK

request was originally for \$249,029, but was scaled back to a one-year commitment. Officials told the senator that the reduced commitment did not jeopardize the overall project and also said UK could request additional funds in a subsequent year.

GOAP officials described to Representative Shell how the UK Center for Crop Diversification will attempt to broaden its reach by offering webinars and the like, and also will revise some of the current crop growing profiles.

The UK Center for Crop Diversification received the funding with no match commitment, something the GOAP witnesses said was not out of the ordinary. Other agriculture-related groups also receive tobacco settlement funds with no match requirements.

Mr. Neaveill indicated that the Whitley, Hopkins, and Franklin county projects were funded under the 2013 Farmers' Market Infrastructure Competitive Grant Program.

Responding to a series of questions from Senator Gibson, officials described how farmers' markets are typically established and governed. Mr. Neaveill pointed out that farmers' markets typically will charge vendors a fee for the right to set up and place controls on other aspects of the markets. Co-chair Hornback said he was familiar with the set-up in Shelby, where vendors pay a fee to sell their farm products. Senator Parrett pointed out that Hardin County's market operates under a foundation type legal structure.

On other issues, GOAP Officials described to Representative Denham how the GOAP promotes the availability of tobacco settlement funds for agriculture diversification in the northeast part of the state. Representative Denham prefaced his question by describing the noticeable decline of tobacco production in his region. Senator Webb suggested that efforts should be made to increase farm production in light of worldwide food demands.

### **Health Care Improvement Authority and Kentucky Access**

Ms. Sharon P. Clark, Commissioner, and Ms. D.J. Wasson, Legislative Liaison, Department of Insurance Next presented the annual report on the Health Care Improvement Authority (HCIA) and Kentucky Access.

HCIA is responsible for the oversight of the expenditures of the tobacco settlement payments that are provided for public health initiatives. Kentucky Access receives an annual tobacco settlement appropriation (\$16.4 million currently).

Ms. Clark discussed the stratus of the HCIA, its membership, programs that it oversees, its role,

funding, accomplishments by the various programs, and challenges, in particular, declining tobacco settlement appropriations.

Ms. Wasson delivered the report on Kentucky Access, which was established in Kentucky in 2001 to provide insurance coverage for people with pre-existing high-risk health ailments. It is funded mostly through member insurance premiums and tobacco settlement funds, along with insurance company assessments.

Much of Ms. Wasson's report centered on the phasing out of the Kentucky Access program and the advent of high-risk coverage under the federal Health Care Reform Act.

As of mid-year, Kentucky Access had about 4,100 active members, according to Ms. Wasson's report. Member premiums totaled almost \$33.7 million. She said membership has been decreasingly slightly each month for the past year, mainly because of nonpayment of premiums, Medicare eligibility, or the ability to obtain other coverage.

In her remarks, Ms. Wasson indicated that beginning January 1, 2014, federal law will require insurers to guarantee issue health insurance coverage. Consequently, the last day of coverage for all Kentucky Access members will be December 31, 2013. Members and agents were notified in June that Kentucky Access coverage would be ending. An additional letter will be sent in September with options for 2014 and how to enroll in the new state health benefit exchange (Kynect) or the private market.

According to Ms. Wasson, even though Kentucky Access will be winding down, there will be a transition period during which lingering claims must be paid and ultimately settled.

Ms. Wasson and Ms. Clark responded to a series of questions from Senator Parrett agreeing that overall member premiums were expensive, but that is due to the high-risk conditions of those buying the insurance.

Senator Parrett what would happen if the federal program is not funded or otherwise does not become operational. Ms. Wasson said the Department of Insurance will keep the structure of the Kentucky Access program intact in case it has to be reactivated. Should something happen, according to Ms. Wasson, the Department of Insurance would re-visit Kentucky Access. She said she would not suggest repealing the enabling statutes in order to monitor what happens in the future.

Responding to Senator Hornback, who asked about the need for \$16 million in funding, Ms. Wasson said that decision will be for the General Assembly, but some provider claims will remain outstanding. She said



Kentucky Access has undertaken actuarial projections regarding how much would be needed to pay lingering claims, plus there are other provisions in the statutes for generating funding.

She testified that in September, when a new actuarial study is available, there should be a better estimate regarding payouts. Ms. Wasson said that people often elect to go ahead and undergo certain medical procedures done if it is known that a program is ultimately closing down.

Responding to Co-chair Hornback, Ms. Wasson said it would be difficult to predict if existing claims would be paid by the end of the next biennium, but she offered that it is believed about 90 percent will be paid out by then. But she pointed out that medical providers have one year to file claims and there also are appeal right periods that can extend the payment process as well.

Responding to a follow-up question from the senator, Ms. Wasson said Kentucky Access would be providing information to legislative budget writers on the numbers of claims outstanding and the potential payouts. Ms. Clark pointed out that persons covered under Kentucky Access could be in the hospital up until the last day of coverage and policies also have a continuum of care provision.

Ms. Wasson told Senator Higdon that there is not a surplus of funds available, but enough funding available to cover claims. The Department of Insurance officials described how incoming fund allocations will oftentimes lag behind current funding needs.

Responding to Senator Higdon, Ms. Wasson said the federal law covers aspects of smoking cessation, but that should not affect Kentucky's smoking cessation program, which operates a quit smoking phone line, sponsors public announcements, and undertakes anti-smoking education efforts.

As for future uses of the tobacco settlement funds, Senator Higdon cited a need to fund state health programs for returning military veterans.

In a response to Representative McKee, Ms. Wasson said she hopes that premiums for those with high-risk ailments will be lower under the federal program. She responded that tobacco settlement funding for the Kentucky Access program has been declining.

Senator Webb told the committee that she is concerned about the potential defunding of the federal Health Care Reform Act. She said it would be prudent in the near future to maintain Kentucky Access's statutory structure and not rush to spend additional money, even if necessary set put it in escrow until more is

known about the federal act. She has expressed concerns to members of the Kentucky congressional delegation.

**BR 1** - Representative Diane St. Onge, Representative Brent Yonts (04/11/13)

AN ACT relating to drone surveillance.

Create a new section of KRS Chapter 500 to define "drone," "law enforcement agency," and "prohibited agency"; prohibit a law enforcement agency from using a drone to gather evidence or other information; provide exceptions; prohibit use of evidence obtained in violation; provide that the Act may be cited as the "Citizens' Freedom from Unwarranted Surveillance Act."

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

**BR 7** - Representative Jeff Greer (05/15/13)

AN ACT relating to confirmation of executive appointments.

Amend KRS 304.2-020 to delete the requirement for Senate confirmation of the Governor's appointment of the commissioner of the Department of Insurance; and amend KRS 342.228 to delete the requirement for Senate confirmation of the Governor's appointment of the commissioner of the Department of Workers' Claims.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Licensing and Occupations

**BR 23** - Representative Larry Clark, Representative Jeffery Donohue (07/12/13)

AN ACT relating to reporting on economic incentive programs.

Create a new section of Subchapter 12 of KRS Chapter 154 to require the cabinet to maintain a searchable electronic database containing information on the cost and status of economic incentive programs; specify programs and information to be included; apply to specified programs approved within last five years; require in addition a single annual written report for programs approved in preceding fiscal year; specify programs and information to be included; amend KRS 148.546, 148.8591, 154.12-100, 154.12-208, 154.12-278, 154.20-150, 154.27-050, and 154.31-030 to conform.

(Prefiled by the sponsor(s).)

**BR 40** - Representative Hubert Collins (06/27/13)

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

meeting adjourned at approximately 11:45 a.m.

# 2014 Prefiled Bills

AN ACT relating to driving under the influence.

Amend KRS 189.520, 189A.010, 189A.120, and 281A.2102 to move the per se DUI threshold from 0.08 to 0.05.

(Prefiled by the sponsor(s).)

**BR 42** - Representative Brent Yonts (07/19/13)

AN ACT relating to the collection of delinquent taxes.

Amend KRS 44.030 and 131.560 to prohibit the offsetting of a person's financial claim against the state or a local government, including claims for individual income tax refunds, to satisfy a delinquent property tax debt owed to the state or any local government if the 11-year period established for liens on the property on which the tax has become delinquent has expired; amend KRS 134.015 to extinguish the personal debt of a taxpayer for delinquent property taxes upon the expiration of the 11-year period established for liens on the property on which the taxes have become delinquent; amend KRS 134.490 to clarify that a third-party purchaser of a certificate of delinquency may institute an action to collect on the certificate anytime after the 1-year tolling period but prior to the 11-year period established in KRS 134.546; amend KRS 134.546 to provide that a certificate of delinquency becomes null and void 11 years from the date when the taxes became delinquent.

(Prefiled by the sponsor(s).)

**BR 53** - Representative Terry Mills (06/11/13)

AN ACT relating to problem, compulsive, or pathological gambling and making an appropriation therefor.

Amend KRS 222.005 to define "pathological gambling" and "problem gambling"; create new sections of KRS Chapter 222 to establish the Problem and Pathological Gamblers Awareness and Treatment Program; direct the use of funds and limit annual administrative costs to \$200,000; establish the Gamblers Awareness and Treatment Program Advisory Council; establish the council's membership and responsibilities; require the Cabinet for Health and Family Services to promulgate administrative regulations in collaboration with the council; establish a funding and application

process, certify disbursement of funds, and require reports annually; assign responsibilities to the director of the Division of Behavioral Health; amend KRS 222.001 and 222.003 to conform; APPROPRIATION.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

**BR 64** - Representative Fitz Steele, Representative Leslie Combs (07/11/13)

AN ACT relating to coal severance revenues and declaring an emergency.

Amend various sections in KRS Chapter 42 to distribute 100% of coal severance revenues among the coal producing counties on the basis of the tax collected on coal severed or processed in each respective county; amend KRS 143.090 and 164.7891 to make conforming changes; repeal KRS 42.490; EMERGENCY.

(Prefiled by the sponsor(s).)

**BR 72** - Representative Brent Yonts (07/11/13)

AN ACT relating to the reorganization of the Department of Fish and Wildlife Resources and the Department of Fish and Wildlife Resources Commission.

Amend KRS 45A.690 to exclude an employment contract for the commissioner of the Department of Fish and Wildlife Resources from the definition of "personal service contract"; amend KRS 62.160 to change Fish and Wildlife Resources Commission "members"; amend KRS 150.010 to add definitions for "cabinet," "director," and "secretary"; amend KRS 150.022 to change members of the commission to directors of the commission; allow the Governor to remove a director for good causes; allow directors to be appointed more than once to a nonsuccessive term; require the commission to elect a chair, adopt bylaws, and establish rules of procedure for carrying out the duties of the commission; amend KRS 150.023 to change members of the commission to directors of the commission; require quarterly reports from the commissioner and the department to be sent to the secretary, the commission, and the Legislative Research Commission; require budgetary reports to be delivered before committees by certain dates



during the interim and during a session when a budget is under consideration; require the secretary to review and approve and expenditures and all purchases of the department; amend KRS 150.024 to require the Finance and Administration Cabinet to prepare a fiscal impact statement before the commission acquires real property to determine the impact on the revenues of local taxing jurisdictions; require disapproval of such acquisitions when the secretary of the Tourism, Arts and Heritage Cabinet finds that there is a substantial impact on local taxing jurisdictions; amend KRS 150.061 to require the Governor appoint the commissioner and subject the commissioner to the administrative authority of the secretary of the Tourism, Arts and Heritage Cabinet in the same manner as any other employee of the cabinet; establish educational requirements for the commissioner; require an employment contract between the commissioner and the secretary be reduced to writing, submitted to the Legislative Research Commission, and approved by the Government Contract Committee; identify specific contents of the contract; include an exclusive employment clause; prohibit income from any businesses regulated by the department; terminate the commissioner if the contract is not executed within the time frame prescribed by statute; cap travel expenses and require the secretary to approve all travel expenses; amend KRS 150.081 and 186.075.

(Prefiled by the sponsor(s).)  
**BR 78** - Representative Ron Crimm (07/19/13)

AN ACT relating to the promotion of organ and tissue donation.

Create a new section of KRS Chapter 141 to establish the employers' organ and bone marrow donation tax credit; amend KRS 141.0205 to provide the ordering of the credit; declare short title to be the Living Organ and Bone Marrow Donor Assistance Act.

(Prefiled by the sponsor(s).)  
**BR 99** - Representative Lynn Bechler (08/20/13)

AN ACT relating to motor fuels taxes.

Amend KRS 138.210 to remove any adjustment to the "average wholesale price" without the direct action of the General Assembly.

(Prefiled by the sponsor(s).)  
**BR 102** - Representative Addia Wuchner, Representative Denver Butler (08/23/13)

AN ACT relating to weapons.  
Amend KRS 237.140, relating to concealed carry licenses for retired peace officers issued in conformity with the federal Law Enforcement Officers Safety Act to allow the

annual license to be extended in yearly increments up to four times before a new license is issued.

(Prefiled by the sponsor(s).)  
**BR 116** - Representative Rick G. Nelson (08/13/13)

AN ACT relating to sales and use tax holidays and declaring an emergency.

Create a new section of KRS Chapter 139 to establish a three-day sales and use tax holiday the first weekend in August each year to exempt clothing, school supplies, school art supplies, computers, and school computer supplies; EMERGENCY.

(Prefiled by the sponsor(s).)  
**BR 117** - Representative Rick G. Nelson (08/08/13)

AN ACT relating to the employment of public school teachers.

Amend KRS 160.345 to require teacher vacancies to be filled by qualified teachers certified through a regular certification program before considering applicants certified through an alternative certification program.

(Prefiled by the sponsor(s).)  
**BR 118** - Representative Fitz Steele, Representative Julie Raque Adams (08/20/13)

AN ACT relating to sales and use tax holidays and declaring an emergency.

Create a new section of KRS Chapter 139 to establish a three day sales and use tax holiday the first weekend in August each year to exempt clothing, school supplies, school art supplies, computers, and school computer supplies; EMERGENCY.

(Prefiled by the sponsor(s).)  
**BR 119** - Representative Fitz Steele (08/20/13)

AN ACT relating to dextromethorphan abuse.

Create new sections of KRS Chapter 218A to prohibit any person from possessing one gram or more of pure dextromethorphan or dextromethorphan that has been extracted from solid or liquid form; prohibit sale of products containing dextromethorphan as the only active ingredient to individuals younger than 18; require any person selling a product containing dextromethorphan to require that prospective buyers show a photo ID and sign a document stating the customer is older than 18 before purchase; create an affirmative defense for the retailer if a minor utilizes a fraudulent ID; prohibit individuals younger than 18 from misrepresenting their age and from utilizing a fraudulent ID to purchase or obtain dextromethorphan; establish penalties for violation.

(Prefiled by the sponsor(s).)  
**BR 138** - Representative Wilson Stone (08/23/13)

AN ACT relating to TVA in-lieu-of-tax payments, making an

appropriation therefor, and declaring an emergency.

Amend KRS 96.895 to provide that, beginning in fiscal year 2014-2015, a portion of the Tennessee Valley Authority in-lieu-of-tax payment made to the Commonwealth and deposited into the general fund shall be transferred to the regional development agency assistance fund to be distributed among fiscal court-designated local industrial development authorities for economic development and job creation activities; provide that the transfer will not affect the portion of the total TVA payment that is currently distributed among local government entities; provide that these transfers will be phased-in over a five-year period, with an amount equal to 50 percent of the general fund portion of the total TVA annual payment being transferred in fiscal year 2018-2019, and each fiscal year thereafter, not to exceed \$6,000,000 each year; APPROPRIATION; EMERGENCY.

(Prefiled by the sponsor(s).)

**BRs by Sponsor**  
\* - denotes primary sponsorship of BRs

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BR99\*  
Butler, Denver  
BR102  
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# Drones,

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Brother in the way few technologies have before.”

She said the ACLU supports use of domestic drones by law enforcement—with court oversight—in times of emergency, but opposes “indiscriminate use” of drones.

At least seven states including Tennessee, Virginia, and Illinois—all which border Kentucky—have already adopted some kind of drone legislation, according to the ACLU. It is estimated that some type of drone legislation has been filed in over 40 states to date.

FAA rules regarding domestic drones are very specific, according to Association of Unmanned Vehicle Systems International government affairs manager Mario Mairena who also testified on the issue. Mairena said an unmanned aerial system, or “UAS,” must be under 25 pounds, be certified by the FAA, fly below 400 feet, and only be used during daylight hours per FAA rules. He said polls show a majority of Americans support UAS use in specific situations.

A recent Monmouth University poll shows 83 percent of Americans support the use of UAS for search and rescue operations and 62 percent support its use for border patrol operations, said Mairena. However, most use of UAS in the U.S. currently is focused on agriculture, he said.

Kentucky Commission on Military Affairs Executive Director Col. David Thompson (Ret.) said UAS technology was used “to great effect” by the military in Iraq. It could also help the U.S. domestically by helping to fight fires, manage wildlife, reduce costs and increase yields in agriculture, and assist in police work, said Thompson.

Use of UAS in U.S. law enforcement is now in its infancy, according to Baltimore County, MD Police Department Captain Don Roby, a member of the International Association of Chiefs of Police Aviation Committee who also spoke. Roby said only four law enforcement agencies nationally have federal Certificates of Authorization to use UAS, he said.

Not one of the four is in Kentucky.

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**241** General Assembly Action 2013 Regular Session

**240** Final Reports of the Interim Joint, Special, and Statutory Committees 2012

**239** Issues Confronting the 2013 Kentucky General Assembly

**238** General Assembly Action 2012 Regular Session

**237** Final Reports of the Interim, Joint, Special, and Statutory Committees 2011

**236** Issues Confronting the 2012 Kentucky General Assembly

**235** General Assembly Action 2011 Regular Session

**234** Final Reports of the Interim, Joint, Special, and Statutory Committees 2010

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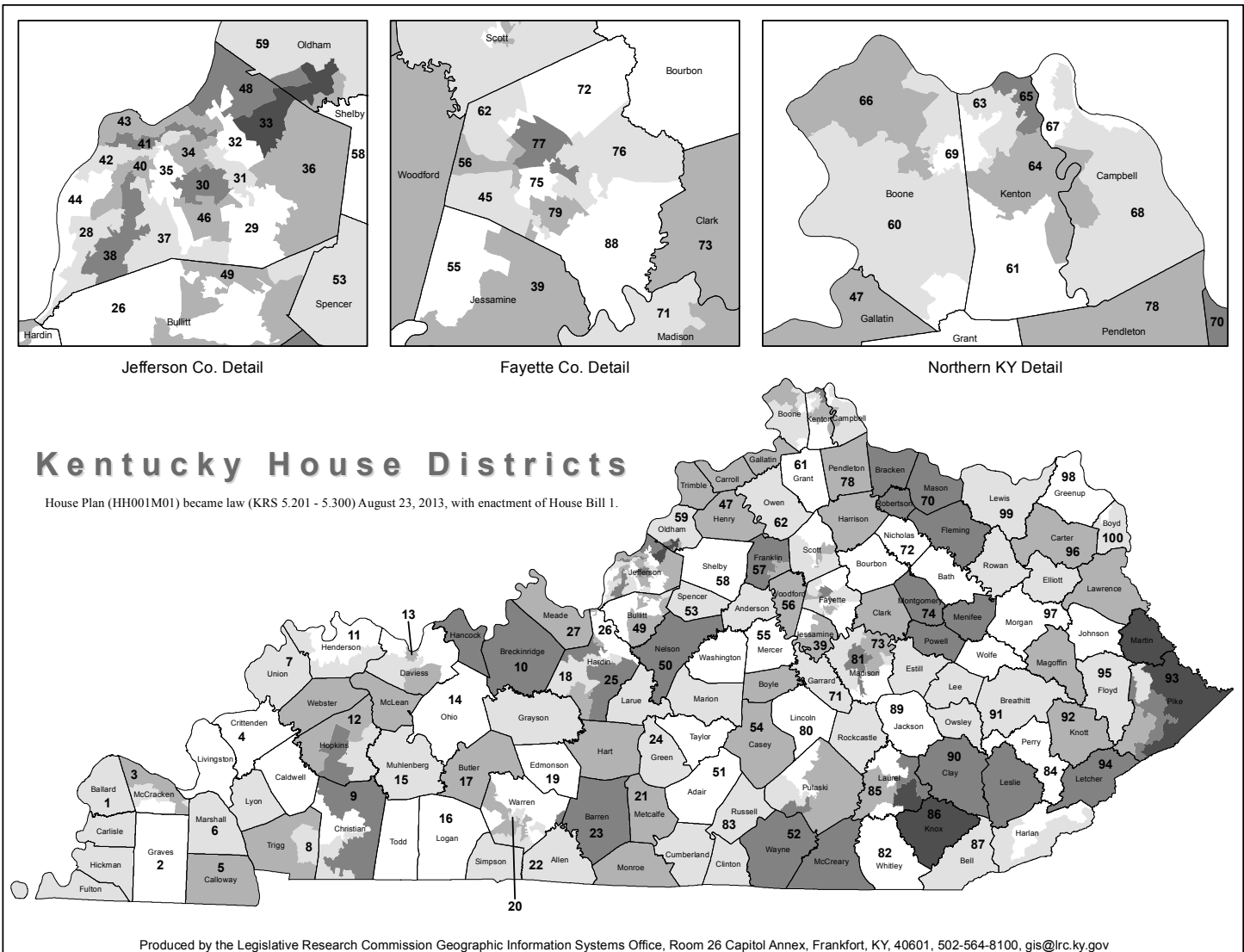
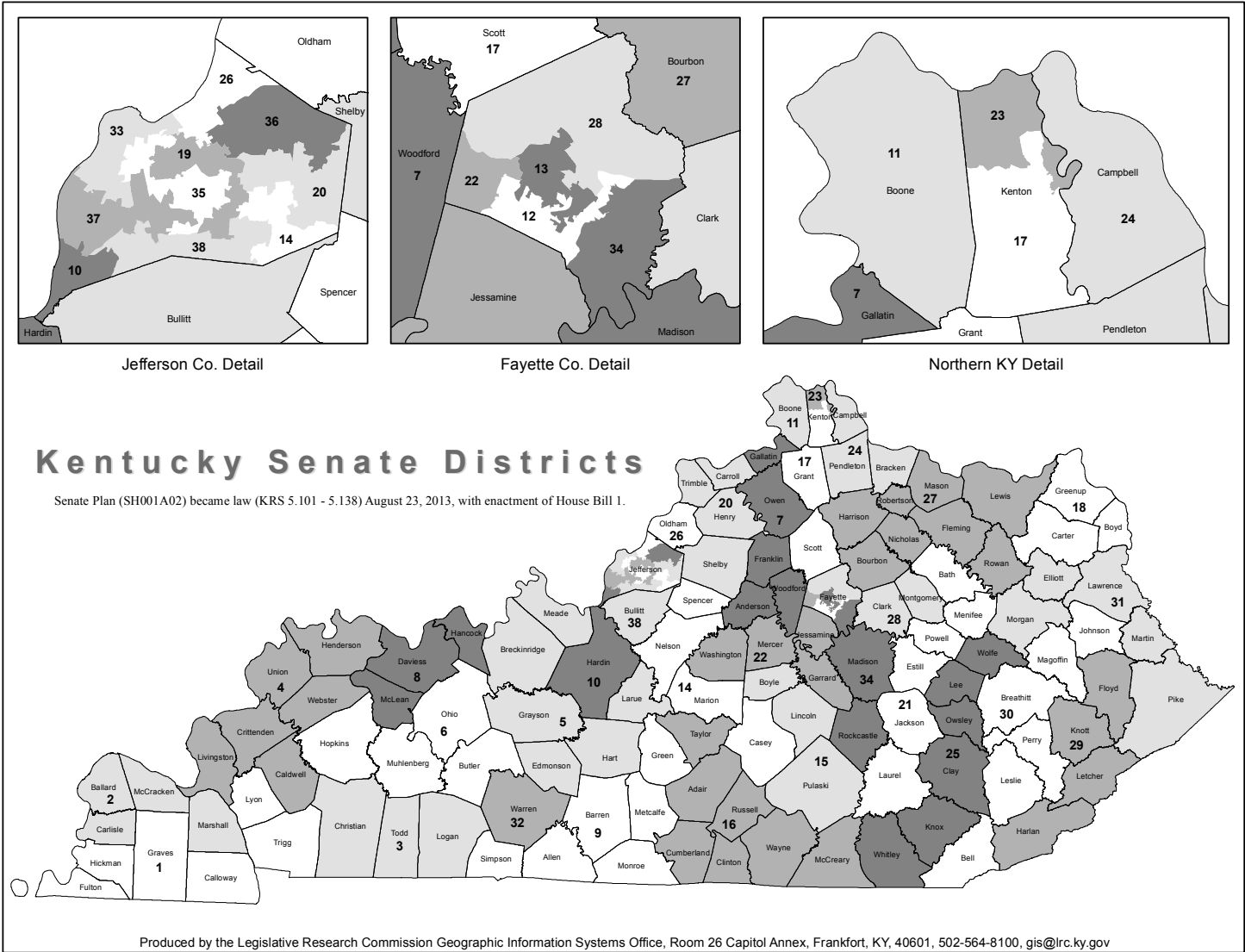
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Printed with state funds

Bobby Sherman, Director  
Legislative Research Commission

Robert Jenkins  
Deputy Director for Committee and Staff Coordination

Rob Weber  
Public Information Officer

Joe Cox  
Publications and Printing Officer

Rebecca Mullins Hanchett  
Editor, Typography and Design

Mike Sunseri  
Chief Photographer

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