2012 Interim
LEGISLATIVE RECORD
Volume 25, No. 3
July 2012
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Task force looks at veterans in criminal justice system

by Amy Rose Karr
LRC Public Information

The number of veterans involved in the criminal justice system has increased significantly in recent years, Justice Will Scott told members of the Interim Joint Committee on Veterans, Military Affairs and Public Protection in a July 12 meeting.

Justice Scott is the chair of the Veterans Issues subcommittee of the Kentucky Access to Justice Commission, a task force focused on identifying veterans in the justice system and then connecting them with appropriate services to address their needs.

Until recently, there was no standardized method of determining if a person involved in the court system had veteran status. Work by the task force and others has changed that, Scott said.

Pre-trial officers now classify individuals by veteran and combat status as part of the mandated post-arrest interview process. Similar information is now included on the Uniform Citation Report completed by police at every arrest, as well.

The information goes into a searchable database and enables court personnel to identify veterans in the system. This allows judges the option of requesting a veterans-only docket, and makes it easier to refer veterans to the programs they qualify for, Scott said.

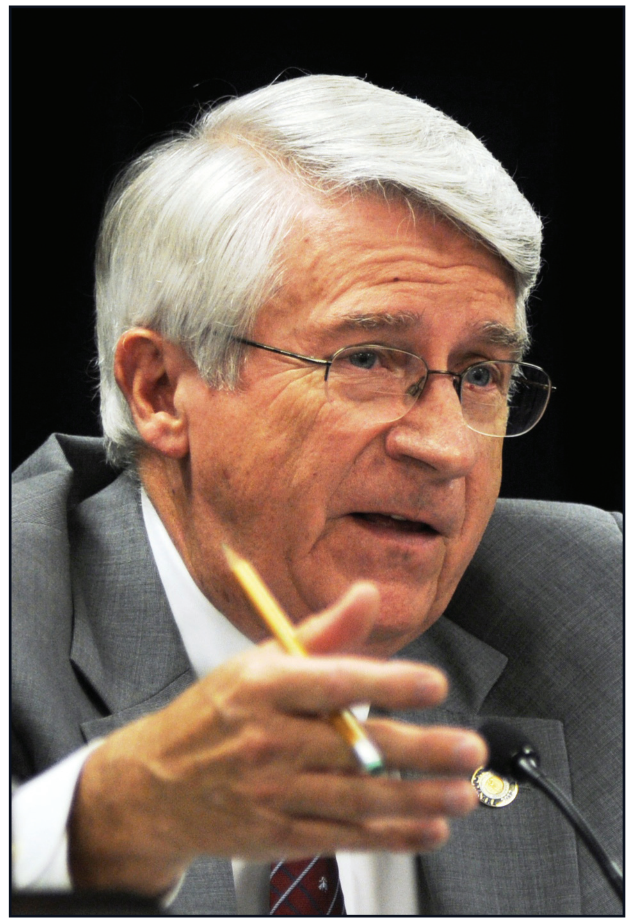
Many veterans coming into the criminal justice system may be suffering from undiagnosed neurological or other combat-related injuries, Scott said. Veterans Justice Outreach Officers (VJOs) can assist qualified veterans by helping to divert their arrest with mental health or substance abuse treatment, he said.

> Until recently, Kentucky did not have a standard way to determine if someone in the court system is a veteran.

A part of the Veterans Administration, VJOs offer assessment and case management to veterans involved in the justice system.

VJOs are also working to educate and train judges and others in the criminal justice system about the programs available to veterans involved in criminal and civil matters, Scott said.

Many veterans programs aren't utilized because people don't know about them, he said.



Sen. Ken Winters, R-Murray, a member of the Interim Joint Committee on Veterans, Military Affairs and Public Protection, asks a question during the committee's July 12 meeting in Frankfort.

Early childhood programs help students succeed, lawmakers told

by Rebecca Hanchett
LRC Public Information

Early childhood development programs and school readiness screenings deserve credit for at least some of the progress made in public education in Kentucky lately, state officials told a legislative committee on July 9.

The screenings, currently given to children entering kindergarten in various Kentucky school districts, are often the first indicator of educational success, state Early Childhood Advisory Council member Brigitte Ramsey told the Tobacco Settlement Agreement Fund Oversight Committee.

"That would be the first point in time where we know how many children are coming to school prepared to be successful…and how many are not," Ramsey said in reply to a question from committee co-chair Rep. Wilson Stone, D-Scottsville, who asked about the role tobacco settlement-funded early childhood programs play in later educational success.

All school districts in Kentucky will conduct school readiness screenings for children entering kindergarten beginning in the 2013-14 school year, according to the Governor's Office of Early Childhood Executive Director Terry Tolan. The screenings will ultimately help officials determine which children will be reading on grade level by third grade, she said.

Those who are reading on level by third grade are most likely to graduate from high school and go on to college and/or career success, she said.

"I fully agree that early childhood development is one of the best things we could focus on," committee co-chair Sen. Paul Hornback, R-Shelbyville, said. "If we don't catch kids by the time they're in the third grade anyway, they're behind in their peer group and it's tough for them to graduate."

School readiness screening promotion is only part of the state's investment in early childhood development since early childhood began receiving 25 percent of Kentucky's share of a 1998 multi-billion-dollar national master tobacco settlement. Other funding areas include, but are not limited to, quality ratings of childcare providers, child care subsidies, immunizations, substance abuse programs for pregnant mothers, in-home visits for young families, and early childhood oral health programs.

Lawmakers look at state's special districts

by Rebecca Hanchett
LRC Public Information

State lawmakers heard about the State Auditor of Public Accounts' efforts to examine special districts that levy taxes or fees in hopes of boosting the accountability of those entities during the June 27 meeting of the Interim Joint Committee on Local Government.

By the end of this year, State Auditor Adam Edelen said his office should have an inventory of just how many special districts there are in the state (he estimates there could be as many as 1,800) and how much tax revenue these special districts—which may provide funding for services like fire protection, public health, library services, flood control, etc.—handle each year. The information will be then placed online to make the districts more accountable to the public, Edelen said.

The information gathered by the State Auditor's office will also be used to make recommendations for possible legislative action during the 2012 Regular Session of the Kentucky General Assembly, Edelen said. Interim Joint Committee on Local Government Co-Chair Sen. Damon Thayer, R-Georgetown, said he plans to sponsor legislation concerning special districts for consideration in 2013.

Thayer said his committee and the State Auditor's office are continuing a dialogue that, as Edelen commented, will help "separate the wheat from the chaff" as far as special districts are concerned.

"The taxpayers are now focused on this and, first of all, I would say to the employees and board members of the special districts exactly what the Auditor said at the beginning (of this meeting): If you are doing your job appropriately and being good stewards of the taxpayers' money, you have nothing to fear from the Auditor's effort, or any legislation that this General Assembly may consider," Thayer said.

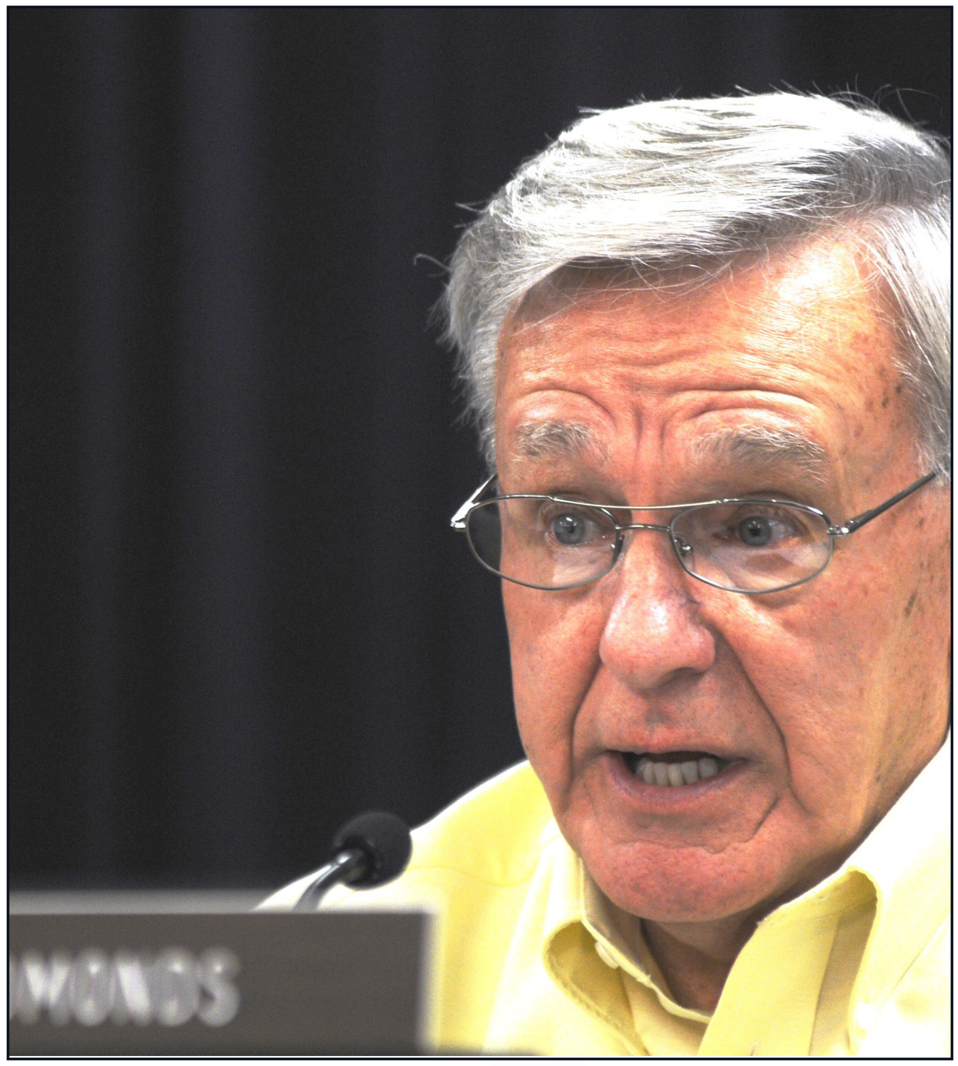
It was just a few months ago that the 2012 Kentucky General Assembly passed House Concurrent Resolution 53, sponsored by Rep. Reginald Meeks, D-Louisville, and Interim Joint Committee on Local Government Co-Chair Rep. Steve Riggs, D-Louisville. That legislation directs the Interim Joint Committee on Local Government to study special districts during the 2012 legislative interim, which ends this December. The resolution was adopted following recent government and quasi-governmental agency audits conducted by Edelen's office.

Edelen told the committee that his office thinks Kentucky has between 1,000 and 1,800 special districts with total tax revenue of $500,000 to $1 billion passing through those districts annually.

"Based on those assumptions, you'd have $100 million in taxpayer money floating through a system every year in a way in which the taxpayers can't properly account for (it)," he told lawmakers.

Once the inventory is complete, Edelen said state lawmakers and all Kentucky taxpayers will know more about what he called the "most prevalent form of government in Kentucky", which is what he said special districts are.

Rep. Tom McKee, D-Cynthiana, said he appreciates those who serve on special district boards in his area because they volunteer their time to serve. "I've got some great special districts and I thank all the people who serve because they serve without pay… To get some kind of benchmark will be your challenge," he told Edelen.



Rep. Ted Edmonds, D-Jackson, questions those testifying before the June 27 meeting of the Interim Joint Committee on Local Government in Frankfort.

Edelen said he plans to set the bar "very high."

The committee heard from members of some local fire districts and the Kentucky Fire Commission, whose legislative director Michael "Howdy" Kurtsinger said he feels fire taxing districts "are doing what is required" under state law.

It also heard from Kentucky Association of Counties (KACo) President Elect and Larue County Judge Executive Tommy Turner, who said KACo endorses both Edelen's initiative and HCR 53 passed during the 2012 Regular Session. "We are hopeful that the majority of (special districts) will be found to be in full compliance, acting in a responsible and efficient manner," said Turner.

KACo is also willing, said Turner, to collaborate with state officials on a local government tax reform package.

Legislative panel hears state lottery report

by Amy Rose Karr
LRC Public Information

The Kentucky Lottery Corporation will be implementing new strategies in an effort to increase sales, profitability, and funds transferred to the Commonwealth, Arch Gleason, President and CEO of the corporation, told lawmakers during the June 27 meeting of the Interim Joint Committee on State Government.

"I think all of you recognize the most important thing is the amount of money we actually return to the Commonwealth for the benefit of its citizens," he said.

According to Gleason, the lottery has seen a decline in sales in recent years. He attributes that decline, in part, to a decrease in the percentage of profits being paid back to winners. Since 2009, the portion of sales revenue being awarded as cash prizes has been below 60 percent. The Kentucky Lottery plans to increase the overall payout to "the industry's prevailing rate" of 68.8 percent, he said.

"It is important that the players feel that the tickets they play give them the best opportunity to win," Gleason said.

The Kentucky Lottery Corporation also plans to implement a rewards program later this year called 'Points for Prizes.' The new program will allow players to enter

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Lawmakers briefed on new farm vehicle regulations

by Amy Rose Karr
LRC Public Information

Overweight and large farm vehicles now have their own regulation separate from the overweight commercial truck regulation, lawmakers were told in a July 17 meeting of the Interim Joint Committee on Transportation.

The division was made to simplify farm vehicle requirements and make them easier to understand, Ann D'Angelo, of the Kentucky Transportation Cabinet, said. Minor changes were also made to the regulation to comply with laws passed during the most recent legislative session, she said.

House Bill 518, passed during the 2012 legislative session, requires only one escort vehicle when transporting farm vehicles more than 12 feet wide. The law specifies only a lead vehicle must be present on two-lane highways. Only a trail vehicle is required on four-lane roads. Previously two escort vehicles were needed anytime an overdimensional vehicle was on the road.

Other changes to the regulation affect farm vehicle lighting and signage, Rick Taylor, Kentucky Transportation Cabinet Deputy Commissioner, said. The changes are more lenient and flexible for farmers, but still maintain highway safety, he said.

According to Tom Zawacki, commissioner of the state's Department of Vehicle Regulation, the change in regulation came after months of work by many different parties.

It's a great example of teamwork and a win-win for everyone, he said.

Sen. Brandon Smith, R-Hazard, at left, talks with Rep. Fitz Steele, D-Hazard, during the July 17 meeting of the Interim Joint Committee on Transportation.

Unemployment trust fund update aired before Labor and Industry committee

by Rebecca Hanchett
LRC Public Information

Kentucky's unemployment insurance trust fund is in better shape than many states' unemployment funds, a panel of state lawmakers heard July 19.

Kentucky now owes the federal government $930 million—down from $948.7 million in early 2012—which it borrowed to be able to make its unemployment benefit payments in recent years, Kentucky Education and Workforce Development Cabinet Secretary Joe Meyer told the Interim Joint Committee on Labor and Industry. But California owes approximately $9 billion to the federal government to pay back money borrowed for unemployment benefits, said Meyer.

And at least a few states right next door have struggled more than Kentucky has with unemployment trust fund debt. Ohio, said Meyer, owes the federal government around $1.8 billion, while Indiana owes around $2 billion and Illinois owes more than $1 billion. Only Tennessee and West Virginia were specifically mentioned by Meyer as owing nothing.

At the end of 2012, Meyer said the debt owed by Kentucky to the federal government will be reduced to approximately $915 million.

By the end of 2013, "…we expect that debt to be down to $768 million," said Meyer.

Kentucky's unemployment picture is also improving based on new jobs data, said Meyer. During the last 12 months, the state economy gained 37,700 net new jobs, he said, adding that the current rate at which jobs are being added to the economy exceeds growth of the number of people looking for work.

Also, the state's preliminary unemployment rate for June 2012 remained at 8.2 percent for a second consecutive month, according to data released today by the state Office of Employment and Training. Last month's preliminary rate is 1.4 percentage points below the jobless rate of 9.6 percent from a year ago, the data shows.

The committee received an update from Meyer earlier in the meeting on the implementation of House Bill 495, sponsored by House Speaker Pro Tem Larry Clark, D-Okolona. The legislation authorized the state to obtain financing for the payment of interest on federal unemployment loans, and authorized a surcharge on employers contributing to the unemployment insurance trust fund to repay the financing.

Lottery,
from page 2

non-winning tickets on the lottery website to accumulate points that can be exchanged for merchandise and prizes.

The program is expected to increase sales by 2-4 percent, Gleason said.

When asked if removing certain advertising restrictions would also boost sales, Gleason said it would.

Currently, lottery proceeds transferred to the state fund the merit-based Kentucky Educational Excellence Scholarship, as well as the need-based College Access Program and Kentucky Tuition Grant. However, the lottery is prohibited from including that information in advertisements.

Gleason said he'd like to see the General Assembly consider eliminating that restriction.

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Committee Meetings

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LEGISLATIVE RESEARCH COMMISSION

Minutes of the 536th Meeting
June 28, 2012

Call to Order and Roll Call

The 536th meeting of the Legislative Research Commission was held on Thursday, June 28, 2012, at 10:00 AM, in Room 125 of the Capitol Annex. Representative Greg Stumbo, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator David L. Williams, Co-Chair; Representative Greg Stumbo, Co-Chair; Senators Carroll Gibson, R.J. Palmer II, Dan "Malano" Seum, Katie Stine, and Johnny Ray Turner; Representatives Rocky Adkins, Larry Clark, Robert R. Damron, Bob M. DeWeese, Danny Ford, and Tommy Thompson.

LRC Staff: Bobby Sherman and Christy Glass.

Representative Stumbo called the meeting to order, and the secretary called the roll. There being a quorum present, Representative Stumbo called for a motion to approve the minutes of October 5, 2011, and June 13, 2012; accept and refer as indicated items A. through S. under Staff and Committee Reports; Refer prefiled bills as indicated and approve items B. through V. under New Business, incorporating the handout distributed regarding membership of the Task Force on Kentucky Public Pensions; and accept and refer as indicated items 1. through 104. under Communications. A motion was made by Representative Clark and seconded by Representative Adkins. A roll call vote was taken, and the motion passed unanimously. The following items were approved, accepted, or referred:

The minutes of the October 5, 2011, and June 13, 2012 meetings were approved.

Staff and Committee Reports

Information requests October 2011 through May 2012.

Committee Activity Reports for October, November, and December 2011, and January, February, March, April and May 2012.

Reports of the Administrative Regulation Review Subcommittee meetings of October 11, November 7, and December 6, 2011, and January 9, February 13, March 12, April 11, and May 8, 2012.

Committee review of administrative regulations by the Interim Joint Committee on Health and Welfare during its meetings of October 19, November 16, and December 19, 2011, and June 20, 2012.

Committee review of administrative regulations by the Interim Joint Committee on Education during its meetings of November 14, December 12, 2011, and June 11, 2012.

Committee review of administrative regulations by the Interim Joint Committee on State Government during its meeting of November 16, 2011.

Committee review of administrative regulations by the Interim Joint Committee on Veterans, Military Affairs, and Public Protection during its meeting of November 10, 2011.

Committee review of administrative regulations by the Interim Joint Committee on Local Government during its meeting of November 30, 2011.

Committee review of administrative regulations by the Education Assessment and Accountability Review Subcommittee during its meetings of December 12, 2011, and June 12, 2012.

Committee review of administrative regulations by the Senate Standing Committee on Health and Welfare during its meetings of January 18, February 15, and March 21, 2012.

Committee review of administrative regulations by the House Standing Committee on Health and Welfare during its meetings of January 12, February 9, and March 15, 2012.

Committee review of administrative regulations by the Interim Joint Committee on Licensing and Occupations during its meeting of June 8, 2012.

Committee review of FY 2012-2013 Temporary Assistance for Needy Families Block Grant Application by the Interim Joint Committee on Health and Welfare during its meeting on October 19, 2011.

Committee review of FFY 2012-13 Unified Mental Health and Substance Abuse Prevention and Treatment Block Grant Application by the Interim Joint Committee on Health and Welfare during its meeting on November 16, 2011.

Committee review of FY 2012 Small Cities Community Development Block Grant and Section 108 Loan Guarantee Program Application by the Senate Standing Committee on State and Local Government and the House Standing Committee on Local Government during their meeting on March 14, 2012.

Committee review of FY 2013 Social Services Block Grant Application by the Senate Standing Committee on Health and Welfare during its meeting on March 21, 2012.

Committee review of FY 2013 Social Services Block Grant Application by the House Standing Committee on Health and Welfare during its meeting on March 22, 2012.

Committee review of FY 2013 Low Income Home Energy Assistance Program Block Grant Application by the Special Subcommittee on Energy during its meeting of June 15, 2012.

From Senator Jimmy Higdon and Representative Fitz Steele, Co-Chairs, Program Review and Investigations Committee: Study of 911 Services and Funding. (Staff suggested committee referrals: Energy, Veterans, Military Affairs and Public Safety, and Appropriations and Revenue.) (Copy available upon request.)

New Business

Referral of prefiled bills to the following committee: **BR 17** (relating to driving under the influence) and **BR 26** (relating to dating violence) to **Judiciary**.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum regarding the selection of former Representative Charles Siler as recipient of the 2011 Vic Hellard Jr. Award.

From Bobby Sherman: Memorandum requesting approval to assign LRC staff liaison to monitor the PSC study of the impact of utility rates on Kentucky's aluminum smelting industry

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing the membership of the 2012 SS HB 1 Implementation Oversight Committee.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing the initiation of a staff study of nutrition habits of Kentucky citizens (2012 HB 550).

From Senator Ken Winters and Representative Carl Rollins II, Co-Chairs, Interim Joint Committee on Education: Memorandum requesting authorization and the appointment of members to the Subcommittee on Postsecondary Education and the Subcommittee on Elementary and Secondary Education of the Interim Joint Committee on Education.

From Senator Ken Winters and Representative Carl Rollins, II, Co-Chairs, Interim Joint Committee on Education: Memorandum requesting approval to meet on July 13 in Louisville in conjunction with the annual meeting of the Kentucky School Boards Association, rather than the regularly scheduled meeting date of July 9. There are five potential conflicts.

From Senator Tom Buford and Representative Jeff Greer, Co-Chairs, Interim Joint Committee on Banking and Insurance: Memorandum requesting approval to meet on September 24 in Covington in conjunction with the annual convention of the Kentucky Bankers' Association, rather than the regularly scheduled meeting date of September 25. There are no apparent conflicts.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on Economic Development of the

Interim Joint Committee on Economic Development and Tourism.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government.

From Senator Ernie Harris and Representative Hubert Collins, Co-Chairs, Interim Joint Committee on Transportation: Memorandum requesting approval to meet on July 17 rather than the regularly scheduled meeting date of July 3 (there is one potential conflict), and approval to meet on November 13, rather than the regularly scheduled meeting date of November 6 (there are four potential conflicts).

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum making adjustments to the memberships of the Interim Joint Committee on State Government and the Interim Joint Committee on Transportation. From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on Kentucky Public Pensions.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on Student Access to Technology.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on the Unified Juvenile Code.

From Senate President David L. Williams and House Speaker Gregory D. Stumbo: Memorandum authorizing and appointing membership to the Task Force on Middle School Interscholastic Athletics.

From Bobby Sherman: Memorandum requesting acceptance and referral of consultant's study entitled *Review of Kentucky's Economic Development Incentives* pursuant to 2011 HJR 5.

From Senator Ken Winters and Representative Carl Rollins, II, Co-Chairs, Interim Joint Committee on Education: Memorandum requesting approval to meet on November 19, rather than the regularly scheduled meeting date of November 12. There are no apparent conflicts.

From Senator John Schickel and Representative Dennis Keene, Co-Chairs, Interim Joint Committee on Licensing and Occupation: Memorandum requesting approval to meet on August 27, rather than the regularly scheduled meeting date of August 10. There are no apparent conflicts.

From Senator Brandon Smith and Representative Jim Gooch, Jr., Co-Chairs, Interim Joint Committee on Natural Resources and Environment: Memorandum requesting approval to meet on July 12 in Pikeville, Kentucky, rather than the regularly scheduled meeting date of July 5. There are five potential conflicts.

From Senator Julie Denton and Representative Tom Burch, Co-Chairs, Interim Joint Committee on Health & Welfare: Memorandum requesting authorization and the appointment of members to the Subcommittee on Families and Children of the Interim Joint Committee on Health & Welfare.

From Senator Jack Westwood and Representative Tanya Pullin, Interim Joint Committee on Veterans, Military Affairs, and Public Protection: Memorandum requesting approval to meet on August 21, rather than the regularly scheduled meeting date of August 9. There are two potential conflicts.

From Senator Bob Leeper and Representative Rick Rand, Co-Chairs, Interim Joint Committee on Appropriations and Revenue: Memorandum requesting approval to meet on September 26 at the Newport Aquarium rather than the regularly scheduled meeting date of September 27. There are 28 potential conflicts.

Communications

From Senator Jimmy Higdon and Representative Fitz Steele, Co-Chairs, Program Review and Investigations Committee: Memorandum regarding opportunity for appointment of ex officio members for particular studies.

From the Office of the Attorney General: Constitutional Challenge Reports for the months of August, September, October, November, and December 2011 and January, February, March, and April 2012.

From the Cabinet for Economic Development, Department of Financial Incentives: Loan data sheets for each loan approved as of the quarters ending September 30 and December 31, 2011, and March 31, 2012.

From the Finance and Administration Cabinet: Monthly Investment Income Report for the months of September, October, November, and December 2011 and January, February, March, and April 2012.

From the Energy and Environment Cabinet: FY 2011 Annual Report from the Center for Renewable Energy Research and Environmental Stewardship.

From the Kentucky Department of Fish and Wildlife Resources: The Status of Hunting Land Access in Kentucky.

From the Kentucky Personnel Cabinet: FY 2011 Annual Report.

From the Cabinet for Economic Development, Office of Commercialization and Innovation, and the Kentucky Science and Technology Corporation: FY 2011 Annual Report for the Kentucky New Energy Ventures Fund.

From the Personnel Cabinet: Personnel Cabinet Quarterly Reports as of September 28, 2011.

From the Kentucky Pollution Prevention Center: FY 2011 Annual Report.

From the Public Protection Cabinet, Department of Insurance: The Impact of Mental Health Parity on Health Insurance Cost in Kentucky, October 2011.

From Sanitation District 1: 60 Day Update on Implementation of the Auditor of Public Account's Recommendations.

From the University of Kentucky, Office of the Treasurer: FY 2011 Report of the University of Kentucky Capital Construction.

From the Auditor of Public Accounts: Examination of Certain Policies, Procedures, Controls, and Financial Activity of Lexington-Fayette County Health Department.

From the University of Kentucky: FY 2011 Annual Report of the Kentucky Interagency Groundwater Monitoring Network.

From Eastern Kentucky University: FY 2011 Financial Statements and Independent Auditors' Report.

From the Cabinet for Economic Development: FY 2011 Annual Report of the Bluegrass State Skills Corporation.

From the Cabinet for Health and Family Services, Office of the Secretary: FYS 2008-2011 Annual Report for the Kentucky Women's Cancer Screening Program on the Status of Breast Cancer in the Commonwealth

From the Labor Cabinet, Division of Workers' Compensation Funds: Report for Kentucky Coal Workers' Pneumoconiosis Fund, Quarters Ending September 30 and December 31, 2011 and March 31, 2012.

From Kentucky Higher Education Assistance Authority: FY 2011 Annual Actuarial Valuation of the Prepaid Tuition Trust Fund for Kentucky's Affordable Prepaid Tuition.

From the Cabinet for Economic Development, Office of Commercialization and Innovation: FY 2011 Annual Report on Office of Commercialization and Innovation activities.

From the Kentucky Office of Homeland Security: 2011 Annual Report.

From the Cabinet for Economic Development: FY 2011 Annual Report of the Kentucky Investment Fund.

From the Cabinet for Economic Development: FY 2011 Annual Report of the Kentucky Enterprise Initiative Act.

From the Cabinet for Health and Family Services: 2011 SWIFT Adoption Teams Report for the first and second quarters of calendar year 2011.

From the Kentucky Employers' Mutual Insurance: 2012 Administrative Budget and statements of financial status and actuarial condition.

From the University of Kentucky, College of Agriculture: Kentucky Tobacco Research and Development Center, Quarterly Report for the period July 1 through September 30, 2011.

From Northern Kentucky University: FY 2011 Annual Financial Report.

From Kentucky Higher Education Assistance Authority: FY 2011 Audited Financial Statements for the Kentucky Higher Education Assistance Authority, Kentucky Higher Education Student Loan Corporation, and the Kentucky Affordable Prepaid Tuition Program.

From the Kentucky Department of Agriculture: 2011 Annual State Veterinarian's Report on the Cervid Chronic Wasting Disease Surveillance Identification Program.

From the Finance and Administration Cabinet: FY 2012 Temporary Contract Workers Report for First Quarter.

From the Finance and Administration Cabinet, Office of the Controller: Surtax Receipts Statements for the Law Enforcement and Professional Firefighters Foundation Fund Programs for the months of October, November, and December 2011 and January, February, March, and April 2012 and year-to-date activity for FY 2012.

From the Cabinet for Health and Family Services: FY 2011 Report of the Operations and Activities for Health and Family Services Related to Health Data Collection for Hospital Inpatient Discharge and Outpatient Services and the Cabinet for Health and Family Services Biennial Report on Health Care Transparency.

From Kentucky Employers' Mutual Insurance Authority: Quarterly Statement and Financial Status for the period ending September 30, 2011.

From the Kentucky Employers' Mutual Insurance: 2011 Third Quarter financial statements.

From the University of Kentucky: FY 2011 Audited Financial Statements of the University of Kentucky and its affiliated corporations.

From the Finance and Administration Cabinet: Letters regarding the Kentucky Economic Development Finance Authority Revenue Bonds, Series 2011B.

From the Education and Workforce Development Cabinet, Department of Education: 2010-2011 academic year Physical Activity Report.

From the Cabinet for Economic Development: 2011 Programmatic Involvement Report.

From the Kentucky Judicial Form Retirement System: FYS 2010 and 2011 Audited Financial Statements of the Kentucky Judicial Form Retirement System.

From the Kentucky Personnel Board: FY 2011 Annual Report.

From the Cabinet for Economic Development: FY 2011 Contract Workers Report.

From the Department of Revenue, Division of Corporation Tax: FY 2011 Energy Efficiency Products Credits claimed.

From the Department of Revenue, Division of Corporation Tax: FY 2011 Energy Star home and Energy Star manufactured home credits claimed.

From the Kentucky Pollution Prevention Center: KEEPS 2011 Annual Status Report.

From the Cabinet for Health and Family Services, Department for

Community Based Services: Child Abuse and Neglect Annual Report of Child Fatalities and Near Fatalities, December 1, 2011.

From the Kentucky Legislative Ethics Commission: FY 2011 Annual Report.

From the Personnel Cabinet: October 2011 Semi-annual Report listing filled positions, exempted from classified service.

From the Cabinet for Health and Family Services: 2011 Annual Report for Charitable Health Providers as of September 30, 2011.

From Murray State University: FY 2011 Annual Financial Report. (Staff suggested committee referrals: Education and Appropriations and Revenue.) (Copy available upon request.)

From Kentucky Retirement Systems: FYS 2010 and 2011 Financial Statements and Supplementary Information.

From Kentucky Retirement Systems: FY 2011 Audited Financial Statements.

From the Kentucky Pollution Prevention Center: 2011 KEEPS Status Report.

From the Cabinet for Economic Development: December 2011 Semi-Annual Report of the Riverport Marketing Assistance Trust Fund.

From the Auditor of Public Accounts: 2004-2011 Accomplishments and 2009-2011 Biennial Update.

From the Public Protection Cabinet, Department of Insurance: 2011 Annual Report of the Kentucky Health Care Improvement Authority.

From the Public Protection Cabinet, Department of Insurance: 2012 Kentucky Access Report.

From the Kentucky Business One-Stop Portal Advisory Committee: 2011 Report Assessment and Recommendations.

From the Cabinet for Health and Family Services: 2011 Child Fatality Review Annual Report.

From the Kentucky Council on Postsecondary Education: Criteria and explanation for Advanced Practice Doctorates in Kentucky pursuant to 2011 SB 130.

From the Kentucky Department of Agriculture: 2011 Kentucky Equine Health and Welfare Council Administrative, Programmatic, and Financial Activity Report.

From the Cabinet for Health and Family Services: 2009-2011 Biennial Report of Commission for Children with Special Health Care Needs.

From the Energy and Environment Cabinet, Division of Waste Management: Report of Kentucky's Waste Tire Program.

From the University of Kentucky: FY 2011 Kentucky Geological Survey Annual Report.

From the Office of the Governor, Kentucky Office of Homeland Security: FY 2011 Annual Report for the Commercial Mobile Radio Service Board.

From the Cabinet for Health and Family Services: FY 2011 Annual Report for the Kentucky HIV/AIDS Planning and Advisory Council.

From the Kentucky Department of Agriculture: 2011 Annual Report for the Kentucky Milk Commission.

From the University of Kentucky, Kentucky Tobacco Research & Development Center: FY 2011 Annual Report.

From the Department of Revenue: 2011 Progress Report on 2004 HB 162 (relating to debts owed to the Commonwealth.

From the Auditor of Public Accounts: FYS 2008, 2009, 2010, and 2011 Report of the Audit of the 56th Judicial District Corrections Board, Inc.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kentucky Valley Educational Cooperative.

From the Auditor of Public Accounts: FYS 2010 and 2011 Report of the Audit of the Communicare, Inc., Community Corrections Commission.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kenton County Community Corrections Advisory Board, Inc.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kentucky River Authority.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the 21st Judicial Circuit Community Corrections Project, Inc.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the 28th Judicial Circuit Community Corrections Board, Inc.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kentucky Artisan Center at Berea.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kentucky Heritage Land Conservation Fund.

From the Auditor of Public Accounts and the Attorney General: 2010-2011 Biennial Report of the Kentucky Employers' Mutual Insurance Authority.

From the Auditor of Public Accounts: Examination of Certain Policies, Procedures, Controls, and Financial Activity of Metropolitan Sewer District.

From the Cabinet for Health and Family Services: SWIFT Adoption Teams Report for the third quarter of 2011.

From the Louisville and Jefferson County Metropolitan Sewer District: 60-Day Corrective Action Update on the Implementation of the State Auditor's Recommendations.

From the Cabinet for Health and Family Services: FY 2011 Annual Report for the Domestic Violence Batterer Intervention Provider Program.

From the Administrative Office of the Courts: 2011 Annual Report for the Kentucky Citizen Foster Care Review Boards.

From the Cabinet for Economic Development: 2011 Annual Report for the Business Information Clearinghouse.

From Kentucky Employers' Mutual Insurance: 2011 Annual Statement and Letter of Actuarial Opinion.

From the Cabinet for Health and Family Services, Office of the Inspector General: FY 2011 Annual Report regarding federally licensed blood establishments.

From the Office of the Attorney General: Notice of Constitutional Challenge to KRS 367.409.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Kentucky Department of Fish and Wildlife Resources Statutory Audit.

From the Personnel Cabinet: Personnel Cabinet Quarterly Reports pursuant to KRS 61.392 as of March 30, 2012.

From the Auditor of Public Accounts: 2011 Report of the Audit of Motor Vehicle and Motorboat Taxes and Registration Fees Collected and Remitted to the Commonwealth of Kentucky by Each County Clerk.

From the Cabinet for Health and Family Services: 2011 Annual Report of the Kentucky Spinal Cord and Head Injury Research Board.

From the University of Kentucky, College of Agriculture: Kentucky Tobacco Research and Development Center, Quarterly Report for the period January 1 through March 31, 2012.

From the Auditor of Public Accounts: Examination of Certain Policies, Procedures, Controls, and Financial Activity of the Former Administration of the Kentucky Department of Agriculture.

From the Finance and Administration Cabinet, Department of Revenue, Office of Property Valuation: 2012 Real Estate Exemption List.

From Kentucky Employers' Mutual Insurance Authority: Quarterly Statement and financial status documents for the period ending March 31, 2012.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the Northern Kentucky Convention Center Corporation.

From the Kentucky Employers' Mutual Insurance: 2011 Annual Report.

From the Kentucky Personnel Cabinet: 2011 Employee Turnover Report.

From the Cabinet for Health and Family Services: Elder Abuse in Kentucky, 2011 Annual Report.

From the Cabinet for Health and Family Services, Department for Aging and Independent Living: FY 2011 Traumatic Brain Injury Trust Fund Program Annual Report.

From the Auditor of Public Accounts: FY 2011 Report on Compliance with Civil Rights Laws Including Agency Title VI Implementation Plans, Updates, and Compliance Reports.

From the Auditor of Public Accounts: FY 2011 Report of the Audit of the McCracken County Fiscal Court.

From the Kentucky Legislative Ethics Commission: Recommended changes to the Legislative Code of Ethics 2012.

No action was taken on Item W. under New Business, pertaining to a request for the Interim Joint Committee on Appropriations and Revenue to meet on September 26 in northern Kentucky.

Adjournment

There being no further business, the meeting was thereby adjourned at 10:05 a.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 1st Meeting of the 2012 Interim

June 28, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, June 28, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Rick Rand, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Rick Rand, Co-Chair; Senators Walter Blevins Jr., Tom Buford, Jared Carpenter, Denise Harper Angel, Ernie Harris, Paul Hornback, Ray S. Jones II, Alice Forgy Kerr, Vernie McGaha, R.J. Palmer II, Joey Pendleton, Brandon Smith, and Mike Wilson; Representatives Dwight D. Butler, John "Bam" Carney, Jesse Crenshaw, Ron Crimm, Mike Denham, Bob M. DeWeese, Danny Ford, Derrick Graham, Richard Henderson, Jimmie Lee, Reginald Meeks, Lonnie Napier, Sannie Overly, Marie Rader, Jody Richards, Sal Santoro, Arnold Simpson, Tommy Turner, Jim Wayne, Susan Westrom, and Brent Yonts.

Guests: Mr. Sean Riley, Chief Deputy Attorney General, Office of the Attorney General; Mr. Eric Friedlander, Deputy Secretary, Cabinet for Health and Family Services.

LRC Staff: Pam Thomas, John Scott, Charlotte Quarles, and Sheri Mahan.

National Mortgage Settlement

Mr. Sean Riley, Chief Deputy Attorney General, discussed the details of the national mortgage settlement. He provided an overview of the settlement, stating that it is the second largest civil settlement ever obtained by state attorneys general, totaling $25 billion. The settlement provides for Federal court oversight and independent monitors to oversee banks' compliance. Mortgage company practices prompting the investigation included the widespread falsifying of affidavits submitted to courts in foreclosure proceedings, pervasive misconduct detrimental to homeowners, and irrational economic conduct by lending institutions.

Mr. Riley discussed statistics regarding foreclosures and homeowner equity in Kentucky. Foreclosure proceedings reached a peak in 2010, with 18,737 being initiated in that year. Since 2008, there have been 5,395 foreclosures initiated by the five settling banks in the state. There are currently 717,816 mortgages in the state, and it is estimated that about 8 percent of these currently have negative equity.

Mr. Riley discussed the provisions of the joint federal-state foreclosure settlement. There are five lending institutions involved in the settlement: Bank of America, J.P. Morgan Chase, Wells Fargo, Citibank, and Ally. Kentucky will receive $58.7 million in the settlement. $12 million will be set aside for foreclosure initiatives, providing direct relief to borrowers through principal reductions, short sales, anti-blight measures, and borrower transition efforts. $15.9 million will help provide refinancing opportunities for borrowers with negative equity. $19.2 million will provide state payments, and $10.8 million will provide payments to borrowers for mortgage servicing abuses. Additional servicers may be included in the settlement. The settlement does not release servicers from criminal liability, including liability for possible securitization misconduct.

Mr. Riley discussed the desired results for the agreement, which should create wholesale change in mortgage servicing practices. Consumers will be treated more fairly and with more transparency. Some of the changes to be implemented are the disallowment of robosigning, restrictions on fees, and provision of a single point of contact and enhanced safeguards for consumers.

In response to a question from Representative Lee, Mr. Riley stated that the money that Kentucky was allocated--$19.2 million--from the settlement was based on a proposal submitted by the Attorney General. In the proposal as approved by the Federal District Court in Washington, D.C., $5 million will be retained by the office to finance ongoing efforts similar in scope to the mortgage settlement investigation. The remaining $15 million is subject to the Attorney General's discretion, to be distributed throughout the Commonwealth. All funds are directed by the court to be distributed towards mortgage and financial issues. Mr. Riley said that there will be an accounting to the committee of how the funds are spent during the biennium.

In response to questions from several legislators, Mr. Riley stated that information and press release details would be provided to the committee members. Information distribution has been one of the largest obstacles to assisting Kentuckians facing the mortgage crisis. He said that the best housing data, including foreclosures in individual districts, can be found at the Kentucky Housing Authority.

Program Additions and Expansions in Cabinet for Heath and Family Services

Mr. Eric Friedlander, Deputy Secretary of the Cabinet for Health and Family Services, provided the committee with an update regarding program additions and expansions resulting from actions by the 2012 General Assembly. He discussed each of the Cabinet's budgetary units affected by the enacted budget.

Mr. Friedlander discussed pain management facilities, stating that the Office of the Inspector General (OIG) is responsible for enforcement of licensure standards for existing facilities that qualify for the physician ownership exemption in HB 1. Administrative regulations will be filed as an emergency, along with general regulations, by July 20, 2012. OIG will begin inspecting pain management facilities for compliance on July 23. He said that the paperless account registration for the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system has begun, and daily reporting will begin July 1, 2013. Additional staff is being hired to help implement HB 1. Interstate data sharing has begun and will be expanded over the biennium.

Mr. Friedlander discussed various programs in the Department of Behavioral Health. He discussed various proposed amendments to the state Medicaid Plan. The preliminary draft of the Medicaid state plan amendment regarding the substance abuse program has been completed. Contingent upon approval, the program will begin in January, 2013. Input is being gathered from stakeholders regarding community services for the severely mentally ill. This information will be used in drafting a proposed amendment to the Medicaid state plan. If approved, the program would begin in the fall of 2012. An additional 300 new slots each year of the biennium have been approved in Community Supported Living. The regulation to implement this plan will be completed during this summer.

Mr. Friedlander discussed construction projects in the Department of Behavioral Health. There will be a request for proposal issued in July regarding electrical upgrades to Western State Hospital. The construction on the Glasgow State Nursing facility is 70 percent completed with an anticipated completion date of December 3, 2012. The project is on track to receive Leadership in Energy and Environmental Design (LEED) certification. Construction is 70 percent completed at the new Eastern State Hospital facility, with an anticipated completion date of February, 2013. The facility is expected to receive a LEED silver certification, and transition into the new facility is expected to begin in March, 2013. The cabinet has requested a proposal from the Bluegrass Mental Health/Mental Retardation Board for operation of the new facility.

Mr. Friedlander discussed various other departments within the cabinet, stating that the Department for Community Based Services will be hiring 258 new front line field staff. The Department for Aging and Independent Living will use half of the $5 million received each year in the budget to maintain funding at FY 12 levels. Assuming no reductions in federal funds due to the Budget Control Act, the department will use $1.2 million to provide meals and case management to 300 additional seniors. $700,000 will allow for approximately 45 new personal care attendant clients, and $500,000 will be used to hire staff in the Guardianship program.

Mr. Friedlander finally discussed the colon cancer screening program within the Department for Public Health. With assistance from the Colon Cancer Advisory Committee, the department has developed a request for proposal to send to local health departments. The application deadline is in September, with successful applicants being notified in October 2012. The Kentucky Cancer Foundation is contributing $500,000 each year in matching funds for this program.

In response to a question from Representative Crimm, Mr. Friedlander stated that Central State Hospital received no additional funds.

In response to a question from Representative Westrom, Mr. Friedlander said that the social worker classification has not been changed, and the cabinet is currently hiring under the present requirements. The most important qualifications for social workers are competency and concern for Kentucky's citizens. The best applicants do not always have social work degrees.

In response to a question from Senator Wilson, Mr. Friedlander stated the cabinet is not ready to outline how the U.S. Supreme Court ruling concerning the Affordable Care Act will affect the cabinet.

In response to a question from Representative Lee, Mr. Friedlander replied that the various programs will be phased in as the space becomes ready for use at the new Eastern State facility. The facility is on track to be completed in March, 2013.

In response to a question from Representative Overly, Mr. Friedlander replied that improving the training and licensing of social workers is an ongoing process involving cabinet work over the long term.

In response to questions from Senator Leeper, Mr. Friedlander stated that Medicaid eligible numbers have remained relatively flat. The cabinet budgeted for a 1,000 per month increase, but the increase in eligibles is less than the budgeted amount. Savings realized from utilizing managed care has been calculated by taking the projected total amounts for services outside of managed care and comparing that to the same services now provided within managed care. The difference represents the savings provided by the managed care system.

There being no further business, the meeting was adjourned at 3:10 p.m. A tape of this meeting is available in the Legislative Research Commission library.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Postsecondary Education

Minutes of the 1st Meeting of the 2012 Interim

June 28, 2012

Call to Order and Roll Call

The 1st meeting of the Budget Review Subcommittee on Postsecondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, June 28, 2012, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Arnold Simpson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Arnold Simpson, Co-Chair; Senator Gerald A. Neal; Representatives Julie Raque Adams, Melvin B. Henley, Jody Richards, Carl Rollins II.

Guests: Robert L. King, President, Council on Postsecondary Education; Michael Jones, Executive Director, Office of Management and Administration, Department of Military Affairs; John W. Smith, Director, Kentucky Youth ChalleNGe/Bluegrass ChalleNGe Academy; Croley Forester, Director, Appalachian ChalleNGe Academy.

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

New Adult Learner Initiative

President Robert L. King, Council on Postsecondary Education, gave a presentation on a new adult learner initiative.

In response to a question asked by, Representative Adams, President King said that 70 percent of undergraduates are traditional students. The focus of the university business model is still on the traditional student versus an adult learner or non-traditional student. Representative Adams expressed apprehension that this program may be duplicative of what universities do to attract adult learners. The council agreed to provide data on the trend of traditional versus non-traditional students in the state's postsecondary education system.

Chairman Simpson said the good thing about restricting this program to one or two lead institutions is that energy and advertisements can be a shared effort instead of each institution trying to reach this group of adult learners individually.

In response to a question asked by, Representative Rollins, President King, said that the Western Governors' University was evaluated during the planning stages of this initiative. John Hayek said that the market is large and, given the current structure of higher learning institutions, promoting a Commonwealth College concept was a better fit for Kentucky. Representative Rollins added that three year degrees would be a great cost savings measure for this program.

Representative Carney expressed concern over recreating the wheel with a program like this. In response to a question from Representative Carney, President King stated two universities are particularly interested in managing and serving as the degree granting institution. President King said an RFP is being developed to choose the institution to take on the program.

Representative Graham said he agrees this is the type of program that will ready the Commonwealth for when the economy recovers.

In response to a question asked by Representative Adams, President King said that the requested $2 million per year is for the entire project not just marketing. He added that the tuition revenue should support the larger operations in addition to the state support.

Representative Combs stated that creating jobs and creating the economy is accomplished throughout the higher education process.

Representative Richards stated that college savings plans need to be advertised more so that parents and grandparents can plan better for their children's education because those with a higher level of education will make more money in the workforce.

In response to a question asked by Senator Neal, President King said that success will be measured by how many students are brought into the program and go on to earn a degree.

Appalachian ChalleNGe Academy

Michael Jones, Executive Director, Office of Management and Administration Department of Military Affairs, gave a status report on the Appalachian ChalleNGe Academy.

In response to a question from Chairman Graham, Mr. Jones stated that initially the Department of Juvenile Justice was providing $700,000, and currently it provides $500,000 to the Academy.

In response to a question from Representative Nelson, Kevin Brown, General Counsel, Department of Education answered that the ChalleNGe Academy is not regulated because it is not technically a school. He added that the regulations are based on district policies.

In response to a question from Chairman Graham, Hiren Desai, Associate Commissioner, Department of Education added that using the SEEK formula has been challenging. He added that the school districts are supportive of the academies. Mr. Desai stated that based on estimated calculations the Kentucky Department of Education is on track to pay for the academies out of SEEK funding. He urged the committee to consider direct line item funding for the academies in the future.

Representative Carney and Representative Richards expressed their appreciation for the academy and thanked the presenters for their presentation.

In response to a question from Chairman Graham, Mr. Jones answered that the 48 academy employees are state employees paid for through a federal grant. He added that some teachers are certified and some are not.

With no further business before the Committee, the meeting was adjourned at 11:57 a.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Primary and Secondary Education
Minutes of the 1st Meeting of the 2012 Interim

June 28, 2012

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, June 28, 2012, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Derrick Graham, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Derrick Graham, Co-Chair; Senator Gerald A. Neal, and; Representatives John "Bam" Carney, Ted Edmonds, Dennis Horlander, Rick G. Nelson, Carl Rollins II, Steven Rudy, and John Will Stacy.

Guests: Robert L. King, President, Council on Postsecondary Education; Michael Jones,

Executive Director, Office of Management and Administration, Department of Military Affairs; John W. Smith, Director, Kentucky Youth ChalleNGe/Bluegrass ChalleNGe Academy; Croley Forester, Director, Appalachian ChalleNGe Academy.

LRC Staff: Jennifer Rowe, Tom Willis, Perry Papka, and Amie Elam

New Adult Learner Initiative

President Robert L. King, Council on Postsecondary, gave a presentation on a new adult learner initiative.

In response to a question asked by, Representative Adams, President King said that currently 70 percent of undergraduates are traditional students. He added that the focus of the university business model is still on the traditional student versus an adult learner or non-traditional student. Representative Adams expressed apprehension that this program may be duplicative of what universities are currently doing to attract adult learners. The council agreed to provide data on the trend of traditional versus non-traditional students in the state's postsecondary education system.

Chairman Simpson said the good thing about restricting this program to one or two lead institutions is that energy and advertisements can be a shared effort instead of each institution trying to reach this group of adult learners individually.

In response to a question asked by, Representative Rollins, President King, said that the Western Governors' University was evaluated during the planning stages of this initiative. John Hayek said that the market is so large and given the current structure of higher learning institutions that promoting a Commonwealth College concept was a better fit for Kentucky. Representative Rollins added that three year degrees would be a great cost savings measure for this program.

Representative Carney expressed concern over recreating the wheel with a program like this. In response to a question from, Representative Carney, President King stated two universities are particularly interested in managing and serving as the degree granting institution. President King said a RFP is being developed in order to choose the institution to take on the program.

Representative Graham said he agrees this is the type of program that will ready the Commonwealth for when the economy recovers.

In response to a question asked by, Representative Adams, President King said that the requested $2 million per year is for the entire project not just marketing. He added that the tuition revenue should support the larger operations in addition to the state support.

Representative Combs stated that creating jobs and creating the economy is accomplished throughout the higher education process.

Representative Richards stated that college savings plans need to be advertised more so that parents and grandparents can plan better for their children's education because those with a higher level of education will make more money in the workforce.

In response to a question asked by, Senator Neal, President King said that success will be measured by how many students are brought into the program and go on to earn a degree.

Appalachian ChalleNGe Academy

Michael Jones, Executive Director, Office of Management and Administration

Department of Military Affairs gave a status report on the Appalachian ChalleNGe Academy.

In response to a question from, Chairman Graham, Mr. Jones stated that initially the Department of Juvenile Justice was providing $700,000 and currently they provide $500,000 to the Academy.

In response to a question from, Representative Nelson, Kevin Brown, General Counsel, Department of Education answered that the ChalleNGe Academy is not regulated because it is not technically a school. He added that the regulations are based on district policies.

In response to a question from, Chairman Graham, Hiren Desai, Associate Commissioner, Department of Education added that using the SEEK formula has been challenging. He added that the school districts are supportive of the academies. Mr. Desai stated that based on estimated calculations the Kentucky Department of Education is on track to pay for the academies out of SEEK funding. Mr. Desai urged the committee to consider direct line item funding for the academies in the future.

Representative Carney and Representative Richards expressed their appreciation for the academy and thanked the presenters for their presentation.

In response to a question from, Chairman Graham, Mr. Jones answered that the 48 academy employees are state employees paid for through a federal grant. He added that some teachers are certified and some are not.

With no further business before the Committee, the meeting was adjourned at 11:57 a.m.

INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

Minutes of the 1st Meeting of the 2012 Interim

June 21, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Economic Development and Tourism was held on Thursday, June 21, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Alice Forgy Kerr, chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative Leslie Combs, Co-Chair; Senators Ernie Harris, and Katie Stine; Representatives Julie Raque Adams, Royce W. Adams, Linda Belcher, John "Bam" Carney, Larry Clark, Jim DeCesare, Mike Denham, Bob M. DeWeese, Myron Dossett, Ted Edmonds, Jim Gooch Jr., Keith Hall, Mike Harmon, Melvin B. Henley, Dennis Horlander, Wade Hurt, Dennis Keene, Thomas Kerr, Kim King, Tom McKee, David Osborne, John Short, Fitz Steele, Tommy Thompson, and Addia Wuchner.

Guests: Eric Rose, Executive Director, Newport Aquarium; Barbara Dozier, Vice President, Sales and Marketing, Northern Kentucky Convention and Visitors Bureau; Sherry Murphy, Executive Director, Elizabethtown Tourism and Convention Bureau; Laura Cole, President and Chief Executive Officer, Kentucky Travel Industry Association; Marcheta Sparrow, Secretary, and Hank Phillips, Deputy Commissioner, Department of Travel and Tourism, Tourism, Arts and Heritage Cabinet; Eric Gregory, President, Kentucky Distillers' Association; and Adam Johnson, Manager, Kentucky Bourbon Trail.

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

Kentucky Bourbon Trail

Eric Gregory, President of the Kentucky Distillers' Association, introduced Adam Johnson, who is the newly appointed manager of the Kentucky

Bourbon Trail. Mr. Johnson previously served as the executive director of the Danville Convention and Visitors Bureau. Mr. Gregory gave a brief update on Kentucky's bourbon industry, noting that Kentucky produces 95 percent of the world's bourbon, with production up 115 percent since 1999. Inventories are the highest since 1977, with a projected assessed tax value of $1.7 billion—an increase of $350 million from 2011. Mr. Gregory noted that Kentucky's distilleries continue to expand. Wild Turkey's $94 million expansion includes a new bottling center and warehouse along with 70 new jobs. The Maker's Mark $54.3 million expansion includes a new visitors' experience and increased distillation capacity. Jim Beam's $54 million expansion includes a new visitors' experience as well as an additional 120 jobs in Frankfort. Alltech is building a $6 million distillery in downtown Lexington, Brown Foreman is investing approximately $4.5 Million in their facility, Heaven Hill $4.2 million, and $2 million at Four Roses for a new visitors' experience. Total investment since 2011 is $218.5 million.

Mr. Johnson said Kentucky Bourbon Trail participation has increased 30 percent over 2011 numbers. In the past five years, nearly two million people have participated in the Bourbon Trail experience with approximately 12,000 people completing the trail. The bourbon trail is also a tourism driver for area hotels and businesses. New to the Bourbon Trail experience is a line of merchandise available online and at distilleries.

Assisting Travel- and Tourism-Related Businesses in the Commonwealth

Laura Cole, President and Chief Executive Officer, Kentucky Travel Industry Association (KTIA) said the agency's mission is to promote, enhance, and unite the tourism industry through governmental interaction, awareness, professional development, and education. A nonprofit organization, the KTIA has over 950 members. Ms. Cole said tourism is the third largest industry in Kentucky with a financial impact of $11.7 billion in 2011. The industry employs over 170,000 Kentuckians, generating $3.3 billion in wages and $500 million in tax revenue annually.

Eric Rose, Executive Director, Newport Aquarium told members the aquarium benefited greatly from Tourism Development Act tax credits. Other projects as well have benefited from the program, including Newport on the Levee. Mr. Rose said investment projects drive out-of-state tourism. 80 percent of the aquarium's revenue is from out-of-state visitors. Every tourism dollar in revenue brought into the state has a return of $1.43 in economic impact. Mr. Rose noted that the Tourism Development Act has allowed companies in Kentucky to compete nationally with other development projects.

Sherry Murphy, Executive Director of the Elizabethtown Convention and Visitors Bureau, explained the function and importance of convention and visitors bureaus (CVBs) whose goal is to help produce a positive economic impact for travel-related businesses.

Ms. Murphy discussed the Elizabethtown Sports Park, which is a 156-acre tournament hosting facility that will open in July. Its goal is to capture sports destination marketing. It is estimated to have an annual $7.7 million economic impact locally.

Barbara Dozier, Vice President of Sales and Marketing with the Northern Kentucky Convention and Visitors Bureau, spoke about the economic impact of meetings and conventions for the state. Tourism enhances Kentucky's image and draws attention to the state's other assets, including education and businesses. Ms. Dozier said northern Kentucky recently hosted the Association for Manufacturing Excellence. The 1,500 attendees had access to organized tours of manufacturing facilities around the state. CVBs approach community businesses to help bring conventions to the area. She noted that a 500-person convention has a $200,000 economic impact.

Ms. Cole expressed the concerns that KTIA has for Kentucky's tourism industry. She said it is important to maintain the integrity of the transient room and restaurant taxes. Other concerns include decreased funding to the Tourism, Arts and Heritage Cabinet and the lack of casino gambling. She noted that one casino in Indiana generated $275 million in revenue, $88 million in taxes, and 1,600 jobs. Also of concern is the lack of alcohol sales in "dry" counties. Counties that sell alcohol are more tourism friendly.

Responding to Senator Stine's question, Ms. Dozier said when convention attendees book reservations, most of the marketing, including tourism guides, is sent online. Through the reservation system, attendees receive suggested itineraries, the option to receive more planning materials, and other information online. Mr. Rose added that most conventions put out a delegate reception kit that includes state and regional tourism information.

Representative Keene said the community benefits greatly from the Newport Aquarium. He noted that Cincinnati is hosting the World Choir Games and has enlisted northern Kentucky travel-related businesses to assist.

Responding to Representative McKee's question, Ms. Dozier said that area hotels are booked for the upcoming race at Kentucky Speedway. She said the traffic situation has been addressed. Representative Wuchner noted that the Kentucky State Police will be handling the traffic flow. Mr. Rose added that events at the Speedway have a spillover effect on area attractions.

Responding to Representative Wuchner's question, Ms. Dozier said the Cincinnati and Northern Kentucky CVBs joined forces and created a regional tourism network to market area attractions such as the Newport Aquarium and Cincinnati Zoo. She noted that many traveler visit areas rather than one specific attraction. She said the Cincinnati/Northern Kentucky area was rated third on *Lonely Planet Magazine's* list of great weekend escapes. Senator Kerr agreed with Senator Stine's point about the importance of getting travel information to visitors before they arrive at their destination.

Responding to Representative Carney's inquiry, Ms. Murphy said the sports project is unique in that it focuses on sports tournament events. She said the Elizabethtown Tourism and Convention Bureau would be happy to speak with other communities about the project's development. In response to his question, she said the local restaurant sales tax funded the facility.

"There's Only One" Marketing Campaign, Kentucky Department of Travel and Tourism

Secretary Marcheta Sparrow of the Tourism, Arts and Heritage Cabinet addressed Representative Clark's earlier question regarding alcohol sales at state parks. She said there have been no negative incidents since liquor by the drink was introduced in at select state parks. Recent sales data reflects revenue from alcohol sales of over $110,000. The Cabinet continues to work with meeting and convention groups to market the amenity.

Secretary Sparrow said tourism's economic impact for 2011 was $11.7 billion, up from the previous year. The tourism industry supports over 170,000 jobs in Kentucky.

Secretary Sparrow announced that Mike Mangeot was recently appointed the Commissioner of the Kentucky Department of Travel.

Hank Phillips, Deputy Commissioner of the Department of Travel and Tourism gave a PowerPoint presentation on the cabinet's "There's Only One" marketing campaign. Mr. Phillips explained the concept of one-of-a-kind tourism destinations within the Commonwealth. There are now 44 unique destinations featured. A committee of five nonstaff tourism representatives reviews applications to determine which locations can truly be considered one-of-a-kind. Marketing includes television, radio, internet and print publications as well as special events and social media. Deputy Commissioner Phillips noted that the television and radio commercials have been broadcast to states contiguous to Kentucky and print ads have been in 26 publications this spring. The program works in conjunction with local partners who wish to co-op with the department's campaign.

Deputy Commissioner Phillips said the department is working on the fall marketing campaign. They are also considering marketing to the Chicago area for the first time. He said competition among states to attract tourists is intense. The campaign helps differentiate Kentucky from the competition.

Chairperson Kerr said many notable Kentuckians could be featured in the campaign. Mr. Phillips added that several are, including Muhammad Ali and Abraham Lincoln.

Senator Stine said that prior to visiting Vermont for a conference, she was mailed several detailed travel-related publications. Regarding Senator Stine's question on National Scenic Byways, Secretary Sparrow said the state does receive federal byways funds that are handled by the Transportation Cabinet. Kentucky is part of the Lincoln Heritage Trail and the Great River Road in western Kentucky. She noted that process is detailed and more projects are in the works. Deputy Commissioner Phillips added that due to limited advertising ability, the state works hard to direct visitors to internet sites.

Secretary Sparrow said the state's Adventure Tourism Office has a new program called Trail Towns—trail heads for various trails, including horse and biking trails.

Senator Harris commended the cabinet for carrying over the Unbridled Spirit marketing campaign and incorporating it into its new marketing program.

Responding to Representative DeCesare's question Secretary Sparrow said television advertising co-ops receive funding through the Cabinet's Tourism Marketing Incentive Program.

There being no further business, the meeting adjourned at 2:30 PM.

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 1st Meeting of the 2012 Interim

June 11, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Education was held on Monday, June 11, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Ken Winters, Co- Chair, called the meeting to order, and the secretary called the roll.

Present were:

<u>Members:</u> Senator Ken Winters, Co-Chair; Representative Carl Rollins II, Co-Chair; Senators Jared Carpenter, David Givens, Denise Harper Angel, Jimmy Higdon, Alice Forgy Kerr, Vernie McGaha, R.J. Palmer II, Johnny Ray Turner, Jack Westwood, and Mike Wilson; Representatives Linda Belcher, Regina Petrey Bunch, John "Bam" Carney, Hubert Collins, Leslie Combs, Jim DeCesare, Ted Edmonds, C.B. Embry Jr., Bill Farmer, Derrick Graham, Donna Mayfield, Reginald Meeks, Charles Miller, Ruth Ann Palumbo, Ryan Quarles, Jody Richards, Tom Riner, Bart Rowland, Rita Smart, Wilson Stone, and Ben Waide.

<u>Guests:</u> Diana Barber, Kentucky Higher Education Assistance Authority, Becky Gilpatrick, Kentucky Higher Education Assistance Authority, Jim Thompson, Education and Workforce

Development Cabinet, Sue Cain, Council on Postsecondary Education, Julian Tackett, Kentucky High School Athletic Association, Wayne Young, Kentucky Association of School Administrators, Chad Collins, Kentucky High School Athletic Association, Kathy Donaldson, Teacher Steering Committee.

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

Reports of the Subcommittee Meetings

Representative Meeks reported that the Subcommittee on Postsecondary Education heard presentations from the Council on Postsecondary Education and the University of Louisville about efforts to improve student success in higher education.

Dr. John Hayek, Senior Vice President for Budget Planning and Policy, Council on Postsecondary Education, provided data on the progress Kentucky is making towards 2020 goals for degree attainment, transfer, and graduation rates. Dr. Hayek provided information on changes in tuition costs, state allocations for higher education, and direct tuition costs for students (after excluding grants and scholarships).

Dr. Aaron Thompson, Senior Vice President Academic Affairs, Council on Postsecondary Education, and Dr. Shirley Willihnganz, Provost, University of Louisville, discussed efforts to improve student success, such as appreciation and advisory initiatives, student faculty interaction, technology, and supplemental instruction.

Representative Meeks said the discussion highlighted four important points. There is an increasing working partnership between the Council on Postsecondary Education (CPE) and the various institutions to address shared goals. There are expanded improvement strategies and increased rigor and availability of data being tracked, and there is continuing financial pressure on the universities to meet the 2020 accountability goals.

Representative Edmonds reported on the Subcommittee on Elementary and Secondary Education. The subcommittee heard discussions on services provided and the challenges faced by Kentucky's educational cooperatives.

Terry Holliday, Commissioner, Kentucky Department of Education (KDE), explained the partnership that has developed between the department and the co-ops. He provided insight on how the co-ops' work is an essential component in implementing the requirements of Senate Bill 1.

Directors from three of the eight cooperatives in Kentucky provided handouts explaining the history, mission, and vision of their co-ops. The co-ops are committed to providing services and programs that support their member districts and schools. Services are based on the needs of the teachers and administrators in members' districts. They are focused on assisting teachers and administrators to become more effective so they can help students reach their potential. The directors discussed their challenges, such as sustainable funding, organization, and geography.

Overview of Teacher Evaluation System

Terry Holliday, Commissioner of Education, explained the two years of work KDE has done with the teacher effectiveness and growth pilot. He praised Senate Bill 1 as extremely bold legislation, which other states are looking to replicate. The teacher evaluation effectiveness system was included in the department's application for waivers to No Child Left Behind provisions. Kentucky was one of the first eleven states to be granted a waiver. A waiver condition requires the State Education Agency (SEA) to develop guidelines for local teacher and principal evaluation support systems. The State Board must ensure schools are implementing the teacher and principal evaluation system consistently with the guidelines.

Felicia Smith, Associate Commissioner, Office of Next Generation Learners, compared the differences between the current and proposed systems. KDE is proposing a common statewide system for teacher and principal evaluation. It is considering requiring annual evaluations of certified personnel and more in-depth training for evaluators. In a system with multiple measures, the evaluators of the system need to have a strong understanding of what it means to use these multiple measures in a meaningful way. There are several different national models that can be explored for developing training for school staff and the evaluators. The department will be required to significantly increase monitoring of local evaluation system implementation if adopted statewide.

Ms. Smith said that the teacher effectiveness system places a lot of emphasis on observation of teachers. The department hopes to have peer observers that help provide more intensive, content specific support to educators. The department wants a system that is better aligned with what is happening in the classroom where students are learning based on teachers' professional growth plans. Ms. Smith also stated that staff believes in the importance of professional self-awareness and self-reflection as a profession and the proposed measures should improve the quality of educators in classrooms. A student survey is proposed to collect information about students' views of educational experiences.

Ms. Smith noted that there are potentially legislative implications with the proposed teacher effectiveness system. House Bill 140 and Senate Joint Resolution 88 are foundational pieces that could be the basis for future legislation. The proposed system focuses on growth, reflection, and meaningful professional contributions.

Responding to Senator Winters' question regarding KRS 156.557, Dr. Holliday said he feels that piloting in 54 districts is a reasonable approach prior to statewide adoption. KRS 156.557 provides an option for a local district to develop its own teacher effectiveness plan and principal evaluation plan.

Senator Winters said he introduced Senate Joint Resolution 88 to make sure the General Assembly is fulfilling its oversight responsibility and to ensure the legislature has a look at the final proposal prior to implementation.

Responding to Representative Belcher's question regarding peer observation, Dr. Holliday clarified that peer observation should be formative rather than summative in nature and provide feedback to teachers.

Michael Daily, Director, Division of Next Generation Professionals, explained that the kindergarten through second grade component in the pilot was a focus group process. A facilitator asked a group of students age-appropriate questions about their learning experiences in class. The questions were about how they learn, what their experiences were in learning, and what resources did they have available to them.

Responding to Representative Belcher's question regarding annual evaluation, Ms. Smith said that the issue will be studied through the extended field test. She stated the department will be looking at evaluator caseload and the appropriate number of observations for a principal.

In response to Senator Westwood's question regarding self-reflection, Mr. Daily said that information from the field test provided the department with a better understanding of the impact of self-reflection on professional growth. It was found that teachers reflect a lot on student results, how the lesson was received, and the mood of the children. Mr. Daily said the division is trying to formalize the process, and it has designed some instruments that to test in the spring. The instruments address professional role planning and self-reflection. The goal of self-reflection is to inform practice, help teachers improve instruction, and give them the opportunity to record formally the evidence they have on how that reflection is improving their practice. Dr. Holliday said that KDE is not going to ask teachers to develop a portfolio collection of files. They will be provided an electronic method for representing evidence.

In response to Representative Waide's question regarding roles for parents, Dr. Holliday said the department is still looking for a valid and reliable instrument for use by parents. It has a validated tool for representing student voice but not for parent voice.

Senator Givens stated that the legislature and the Kentucky Department of Education are in this together, and the motivation is there for everyone to do well.

Representative Graham stated that the bottom line for administrators and teachers is the test results. For teachers and administrators, it is all about testing.

Responding to Representative Graham's question regarding test results not being the most effective method of teacher evaluation, Dr. Holliday said their work has been heavily informed by the Measuring Effective Teaching National Project. He also stated that the intent is to monitor the field testing and conduct research to see which components actually helps predict student learning outcomes.

In response to Representative Rollins' question regarding student growth in subject areas where there is no testing, Dr. Holliday said KDE intends to use measures based on performance, but the department does not have final recommendations on this and are looking at different possibilities.

Responding to Representative DeCesare's question regarding lack of a parent evaluation, Dr. Holliday said the reason the student feedback is being considered before parent feedback is because the student instrument has been validated. He also noted that the parent's response rates may prove a problem and that an online survey often produces a small response rate from parents.

Status of Adoption of Science Standards

Felicia Smith, Associate Commissioner, Office of Next Generation Learners, said the science standards are a critical piece of the work that was generated by Senate Bill 1. Kentucky is a lead state on the national work on development of the science standards.

Karen Kidwell, Director, Division of Program Standards, said that Achieve, Inc. is leading this effort. It has selected 26 states to assist in development. In May, 2012, Achieve, Inc. released the first draft of the science standards for public comment. The second public release will be in the fall. A team of individuals representing Kentucky's elementary and secondary schools and postsecondary institutions recently compiled an 80 page response to the draft. The department feels confident about the process being used. The biggest shift in the science standards is imbedding more engineering practices throughout all of the standards. The final release of these standards will be in early 2013.

Preschool Funding for Students with Disabilities – Factors that Influenced Recent Changes

Senator Winters said he added preschool funding to the agenda because the Senators have received many questions, phone calls, letters, and emails from superintendents about preschool funding. There is a lot of frustration and confusion about this topic in school districts. Some of the superintendents shared a statement reportedly by the department that cuts in the program would not have been necessary if the Senate had passed House

Bill 329. Legislators were left vulnerable when asked to explain this statement.

Hiren Desai, Office of Administration and Support, said the department has had a lot of questions about preschool funding in the past month. This was a result of the allocations letter sent to the superintendents on May 4. A lot of superintendents asked why preschool funding had such variation and whether the preschool budget was cut during the 2012 legislative session. He told the superintendents that preschool funding was not cut, and the General Assembly fully funded preschool. The problem is with the preschool funding formula that has been in place since 1992. KDE has a regulation that links funding for eligible students with disabilities and at-risk children.

Mr. Desai said KDE will request legislation to simplify the formula and process. The statute and regulation establishing the funding process do not make sense today. The department has made a commitment to the superintendents that staff will work with the General Assembly to try to change this formula. His goal in the presentation was to get support for the change.

Senator Higdon expressed concern about the department's communication to districts about the issue and said that superintendents were upset with the cuts.

Responding to Senator Higdon's questions regarding what may have changed in the formula from previous years, Dr. Holliday said the big difference was a year of self-reporting rather than the use of an electronic database.

Responding to Senator Higdon's question regarding House Bill 329 fixing the problem, Mr. Desai said House Bill 329 would have eliminated all of the formulas, and it would have taken care of the problem.

Responding to Senator Givens' question regarding the variables changing, Mr. Desai explained the variations on the chart provided to members, and stated that some allocations are expected to change because they are tentative projections.

Responding to Representative Farmer's question regarding how the department is dealing with the current implosion, Dr. Holliday said that clarification had been sent to schools in an email the previous Friday.

Responding to Senator McGaha's question regarding district finance officers' understanding of the funding formula, Bill Buchannon said all district finance officers are provided the information.

Senator Givens suggested that House Bill 329 would only have impacted funding for students with disabilities. Senator Winters noted that House Bill 329 would have eliminated the three-year projection formula being used by the department but that, even if passed, the law would not have gone into effect in time to have prevented the current controversy.

Review of Administrative Regulations

There was no testimony or action taken on 11 KAR 4:080, 11 KAR 5:145, 16 KAR 4:030, and 702 KAR 7:065.

With no further business before the committee, the meeting adjourned at 3:19 p.m.

SPECIAL SUBCOMMITTEE ON ENERGY

Minutes of the 1st Meeting of the 2012 Interim

June 15, 2012

Call to Order and Roll Call

The 1st meeting of the Special Subcommittee on Energy was held on Friday, June 15, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Keith Hall, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Keith Hall, Co-Chair; Senators Ernie Harris, Bob Leeper, and Dorsey Ridley; Representatives Royce W. Adams, Rocky Adkins, Dwight D. Butler, Tim Couch, Will Coursey, Jim Gooch Jr., Wade Hurt, Thomas Kerr, Martha Jane King, Lonnie Napier, Sannie Overly, Tanya Pullin, Tom Riner, Kevin Sinnette, Fitz Steele, and Brent Yonts.

Guests: Elizabeth Caywood and Virginia Carrington, Department for Community Based Services, Cabinet for Health and Family Services; Michael Moynahan, Energy Programs Director, Community Action Kentucky; Secretary Len Peters, Karen Wilson, Chief of Staff, and John Davies, Deputy Commissioner, Department for Energy Development and Independence, Energy and Environment Cabinet.

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

Low Income Home Energy Assistance Program (LIHEAP) Block Grant Application for FFY 2013:

Ms. Elizabeth Caywood and Ms. Virginia Carrington, with the Department for Community Based Services, Cabinet for Health and Family Services, explained that the Low Income Home Energy Assistance Program (LIHEAP) was established to provide low income individuals and families with a safety net for their heating and cooling costs and energy conservation measures. The program is 100 percent federally funded. The anticipated federal funds to be awarded to Kentucky for the block grant for FFY 2013 will be $24.3 million, of which 90 percent will be used for direct benefits to Kentuckians. For the past three years, Kentucky has received enhanced federal funding; however, enhanced funding may not be available this year. The Department for Community Based Services contracts with Community Action Kentucky (CAK) to provide administrative training, monitoring, and technical support to the 23 agencies in the CAK network.

Virginia Carrington spoke about the direct benefits provided through the program. Kentucky serves individuals with incomes at or below 130 percent of the federal poverty level. For a household size of one, monthly income cannot exceed $1,211, and for a household size of four, monthly income cannot exceed $2,498. LIHEAP has two program components, the subsidy component and the crisis component. Last year, the subsidy program served 109,644 unduplicated households with an average benefit of $140.06. The total amount of benefits awarded under the subsidy component was $15,356,844. The crisis component is assistance for energy emergencies. Crisis applicants can apply multiple times until they reach their maximum benefit level. The maximum benefit level for natural gas and electric was $250; however, when enhanced funding was received, it was increased to $400. The crisis program served 96,799 unduplicated households with an average benefit amount of $294.65, totaling $28,522.77. The total amount of benefits provided in both components was $43,878,912, which included money received from enhanced funding. Benefits are provided in all 120 counties.

In response to questions from Representative Keith Hall, Ms. Carrington said that if the money appropriated to the subsidy component had a remaining balance, then that money would be used for the crisis program. The need was greater than the available funding.

Mr. Michael Moynahan, Energy Programs Director, Community Action Kentucky, explained that CAK operates LIHEAP, and serves all 120 counties in the Commonwealth. CAK officials also work with home-bound individuals to make sure they receive needed services. The need to support and continue the services is still great. CAK is always looking for ways to make the program better in an era of rising energy costs and potential federal funding cuts.

The proposed LIHEAP Block Grant Application and Findings of Fact were approved by voice vote, without objection, upon motion of Representative Tanya Pullin and second by Representative Royce Adam.

In response to Senator Brandon Smith's questions, Mr. Moynahan said that CAK is ready to operate a summer cooling program if requested by the Cabinet. Ms. Carrington said that a cooling program during the summer normally does not happen because all the funds have been utilized during the winter season. If there are any funds available and if high temperatures are going to be consistent for a long period of time, then the Cabinet will try to make a cooling program available. That would also depend upon funding from either the federal or state government.

In response to Representative Hall, Ms. Carrington said that there is no money available for a summer cooling program.

Representative Jim Gooch spoke about the new federal regulations' consequences to the people of Kentucky. They will have dramatic affects on utility rates, and there may not be enough federal money to fund the heating and cooling programs.

Representative Tanya Pullin asked the Cabinet and CAK to develop a way to assist the home-bound elderly in applying for the program.

Secretary Len Peters, Kentucky Energy and Environment Cabinet, discussed energy consumption and expenditures, transportation fuels, natural gas, electricity costs and generation, and coal production. Because of energy efficiency and the economy, energy consumption in Kentucky and nationally have been relatively flat for the past five years. Since 2000, energy expenditures in Kentucky have more than doubled due to rising transportation fuel prices. Increases in transportation energy expenditures were driven by price increases rather than increased consumption. Kentucky was not a dominant player in natural gas production in that the state's natural gas production was less than one percent of national production. Kentucky imports 45 percent of its natural gas. There has been a dramatic increase in natural gas production nationally during the last two years, thus causing natural gas prices to fall by half since 2008. Prior to 2000, the price of natural gas was stable, but now the volatility in the market makes it difficult to predict the price of natural gas in 2015.

Secretary Peters said that due to the low price of natural gas, coal has been replaced by natural gas for electricity generation. In March 2012, coal represented only 34 percent of the national electricity generation as opposed to 50 percent in 2010. The trend of switching from coal to natural gas is also prevalent in Florida and Georgia, the top two consumers of Kentucky coal. Kentucky continues to have the lowest electricity rates in the nation, but that is starting to change. Kentucky is in the top ten for the fastest rising electricity prices.

From 1960 through 2011, Kentucky's coal production was steady, peaking at approximately 18 million tons in 1990. One of the major reasons that eastern Kentucky coal production is declining is the advent of flue-gas desulfurization units on many electricity generating power plants. Low sulfur coal is no longer needed. On the other hand, there has been more of a demand for western Kentucky coal because it is predominantly higher sulfur coal.

Secretary Peters said that energy consumption has been relatively flat, which is good news for energy efficiency. The dominant factor in increasing costs is the rising transportation fuel price, which has had a significant impact on overall energy expenditures. The demand for and production of coal has been falling due to stringent federal regulations and the low cost of natural gas.

In response to Representative Riner's question, Secretary Peters said that if a military conflict between Iran and Israel were to happen, and if the shipping lanes were closed, it would have an impact on transportation fuels by driving the prices higher. Natural gas costs are somewhat decoupled from petroleum/crude oil prices, but federal regulations regarding fracking could reduce the production of natural gas and make the United States more dependent upon international supplies. It is a very complex political situation.

In response to Representative Steele, Secretary Peters said he would choose coal over natural gas if natural gas prices were to escalate like they did a few years ago. Natural gas does not have a steady energy price. If that volatility continues, then the energy intensive manufacturing industries in Kentucky will have to decide whether it is feasible to expand or build new plants. The United States has greater coal reserves than natural gas.

Representative Adkins said it was important to realize that the decrease in coal production would have a significant impact on Kentucky's budget for the next biennium starting July 1. Coal severance money that was estimated will probably be reduced by 30 percent. Natural gas should be used as fuel for vehicles so the United States can reduce its importation of foreign oil. Natural gas should not be used for base load power.

In response to Representative Adkins, Secretary Peters said that the volatility of natural gas prices could be a real issue. Electric utility companies will have difficulty choosing their fuel sources not knowing what federal regulations will be enacted in the next few years.

Senator Brandon Smith expressed his concerns over the unpredictability of natural gas price and gas availability. Coal is predictable and readily available.

In response to Representative Jim Gooch's question, Secretary Peters said that the Cabinet was in the process of researching what this means for Kentucky in the short and long-term, whether the energy profile should be coal, natural gas, or nuclear, what it means about the number of jobs in energy generation, and whether it is better to have stable or unstable energy prices.

In response to Representative Tim Couch's question, Secretary Peters said that if there were a stadium filled with 10,000 seats, four of those seats would represent the amount of carbon dioxide in the atmosphere, which is about the same amount as it was 30 years ago.

With there being no further business, the meeting was adjourned.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE

Minutes of the First Meeting of the 2012 Interim

June 20, 2012

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, June 20, 2012, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Tom Burch, Co-Chair, called the meeting to order at 1:11 p.m. and the secretary called the roll.

Present were:

Members: Senator Julie Denton, Co-Chair; Representative Tom Burch, Co-Chair; Senators Tom Buford, Perry B. Clark, David Givens, Denise Harper Angel, Alice Forgy Kerr, Dennis Parrett, Katie Stine, and Jack Westwood; Representatives Julie Raque Adams, Bob M. DeWeese, Brent Housman, Joni L. Jenkins, Tim Moore, Darryl T. Owens, Susan Westrom, and Addia Wuchner.

Guest Legislators: Senator David Williams; and Representatives Jim Gooch, Derrick Graham, and John Will Stacy.

Guests: Audrey Tayse Haynes, Secretary, Cabinet for Health and Family Services; Neville Wise, Acting Commissioner, Department for Medicaid Services, and Dan Jacovitch, Cabinet for Health and Family Services; Michael Murphy, CEO, CoventryCares of Kentucky; Bill Doll and Lindy Lady, Kentucky Medical Association; Nick Hiller, Kentucky Chamber of Commerce; Nathan Goldman, Kentucky Board of Nursing; Russell Palk, Medimmune; Jim Grawe, Sharon Sanders, and Margaret Hazlette, Kentucky Board of Social Work; Jan Gould, Kentucky Retail Federation; Roy Templeton, Kentucky Youth Advocates; Mike Porter, Kentucky Dental Association; Bert May, AHIP; Sarah S. Nicholson and Steve Miller, Kentucky Hospital Association; Jerry Askew, HMA; David Spenard and Matt James, Office of Attorney General; and Anne Hedreas, Kentucky Equal Justice Center.

LRC Staff: DeeAnn Mansfield, Miriam Fordham, Ben Payne, Jonathan Scott, Gina Rigsby, and Cindy Smith.

Introduction

Representative Graham introduced Audrey Tayse Haynes, the new secretary for the Cabinet for Health and Family Services. Secretary Haynes stated that her immediate goals for the cabinet are to improve transparency, increase coordination and collaboration among various departments to stretch the budget as far as possible, look at service gaps within the systems of care and work with the MCOs and providers to fill the gaps, and ensure Kentuckians receive the highest quality service through provider networks. The Department for Aging and Independent Living oversees senior and disability populations, administers the Adult Guardianship Program, and administers the Traumatic Brain Injury Trust Fund and the Long-Term Care Ombudsman Program. In fiscal year 2011, the department served approximately 600,000 unduplicated clients. Approximately 214,000 Kentuckians suffer from traumatic brain injury.

The Office of Health Policy is planning the state's health benefit exchange. The Department for Behavioral Health, Developmental and Intellectual Disabilities, oversees mental health and substance abuse services to individuals with intellectual disabilities, works with community mental health centers, and operates state mental health facilities. In fiscal year 2012, approximately 170,000 individuals have been served in community health centers, 14,000 in substance abuse programs, and over 4,000 in the Supports for Community Living (SCL) waiver program. Public health is a vital service in the state. Approximately one million Kentuckians were served in fiscal year 2011. Public health is the state's largest health system. The Department for Public Health's budget consists of general fund, federal, Medicaid, Tobacco Settlement, and restricted funds. The Department for Community Based Services' goals are to improve protocols and services, lower case loads for social workers, improve training for staff, and increase efficiencies. The department employs 4,446 staff.

Child Support Enforcement collected $440 million in child support. The Commission for Children with Special Needs is making efforts to move into the rural parts of the Commonwealth and build more robust provider networks for pediatric providers. There are 823 family resource centers serve approximately 1,180 schools. The Office of Inspector General is getting ready for the July 20, 2012 implementation of the Kentucky All Schedule Prescription Electronic Reporting (KASPER). Kentucky is leading the country with its work in the health information exchange.

CoventryCares: Provider Relations

Secretary Haynes stated that on November 1, 2011, approximately 550,000 Medicaid eligible individuals transitioned to one of the three Medicaid Managed Care Organizations (MCOs). In the first six months, the program saved nearly $190 million. The planning began in March 2011, the Request for Proposal (RFP) was released on April 7, 2011, and all bids were due on Mary 25, 2011. Contracts were finalized the first week of July 2011, and multiple letters to members and assignment to MCOs were all completed by mid-October. Final approval from the Centers for Medicare and Medicaid Services (CMS) came on October 28, 2011, and MCO startup occurred on November 1, 2011.

The assignment process priorities were to provide continuity of care, recognize children and disabled members needs, keep families together with one MCO, prevent MCOs from having too many or too few members, and achieve the lowest price for the Commonwealth. Network adequacy standards were developed by the Department for Medicaid Services (DMS) and stated in the contract. Detailed network adequacy reports were provided to the MCOs weekly throughout October based on their network file submissions. The October 19, 2011 network adequacy report was provided to CMS as part of the readiness review, and CMS approval came October 28, 2011 after review of the contracts and the department's readiness review. As of June 2012, CoventryCares has 44 percent of the 544,624 statewide Medicaid recipients, Kentucky Spirit 27 percent, and Wellcare 29 percent. Provider groups contract with the MCO not the cabinet.

In response to questions by Representative Housman, Mr. Jacovitch stated that the $190 million is identical to the projected savings with the exception that eligibles are lower than originally estimated and have leveled off since last July. Secretary Haynes stated that the cabinet is on target with the $1 billion savings projected by the Governor. While there were some problems with the implementation of the MCOs, the cabinet and the MCOs have worked together to try to fix the problems.

In response to questions by Senator Denton, Secretary Haynes stated that service gaps include behavioral health, substance abuse, and children's mental health services. CoventryCares is in the process of renegotiating contracts with several hospitals, and she hopes an agreement on rates can be made with Our Lady of Peace. CoventryCares has an adequate network without the Appalachian Regional Hospital because there are services within 60 minutes or 45 miles of the hospital required by CMS. The risk adjustment follows the population by acuity level. The risk adjustment would be retroactive to April 1, 2012. Commissioner Wise stated that the goal is for the population to become stable before deciding the risk that each MCO would incur. Secretary Haynes stated any reports of supervisors intimidating social workers would be investigated.

In response to questions by Representative Adams, Secretary Haynes stated that the RFPs are due the end of July. The cabinet will take the same consideration for continuity of care with Region 3 if not more than the rest of the state. If a recipient in Region 3 is auto-assigned a MCO that he or she does not like, there will be an opportunity to change MCOs like the rest of the regions.

In response to questions by Senator Givens, Secretary Haynes stated that of the 300 recently added positions, 209 positions are family support, and 91 are protection and permanency because both have high caseloads. Of the 34 new hires that began on June 16, approximately 18 were family support and the rest were protection and permanency. None of the positions were administrative positions. Information on the breakdown of the 4,300 workers reported last year would be provided to the committee. The cabinet will be ready for the July implementation of the Kentucky All Schedule Prescription Electronic Reporting (KASPER). E-mails are being sent to 15,000 providers who can register on-line in the next couple of weeks. The first responsibility of the cabinet is to advocate for the Medicaid recipients to ensure an adequate network with quality services is available for them. Fines can be imposed for any breech of the contract. When a recipient changes to a different MCO, the money follows the recipient.

In response to questions by Representative Owens, Secretary Haynes stated that the Finance Cabinet contracts with the MCOs, which contract with provider networks. The cabinet is not renegotiating contracts with the MCOs, but the MCOs can renegotiate contracts with providers.

In response to questions by Representative Moore, Secretary Haynes stated that each MCO decided if a co-pay would be required for recipients, but it cannot exceed what DMS charged for co-pays under the fee-for-service system. The contract has a process to begin charging co-pays. Commissioner Wise stated that the MCOs had to follow federal guidelines that state the co-pay cannot exceed a percent of a recipient's income; therefore, the co-pays range from $1 to $3.

In response to a question by Representative Jenkins, Secretary Haynes stated that when the cabinet is notified, it verifies if a MCO provider is really accepting new patients.

In response to questions by Representative Wuchner, Commissioner Wise stated that during open enrollment, recipients receive information that includes a comparison between plans. After a recipient has chosen an MCO, they can change to another MCO with cause that is outlined in the federal regulations. There are provisions and rates to pay out-of-network costs.

In response to a question by Representative Stacy, Secretary Haynes stated that the MCOs have a three-year contract and it would not be renegotiated before the contract expires. There is no contract change necessary to start charging a co-pay.

Mr. Murphy, President and CEO of CoventryCares of Kentucky, stated that some challenges were expected during the implementation phase. CoventryCares remains committed to the Commonwealth and will live up to its contract. The utilization of services in reality versus the information provided in the data book is dramatically different. Administering co-pays is a standard feature among health benefits. Kentucky places a cap on how much money an individual is asked to spend based on his or her quarterly income. Managing that quarter to quarter and using that amount to decide whether to adjust whether to charge a co-pay is the advanced technical issue behind co-pays. CoventryCares' system was not equipped to charge a co-pay initially. The reason Coventry Cares was not concerned with co-pays was that a risk adjuster would be applied. The programs used to assess risks of individuals are national standards. Each person is assessed based on medical history and receives a score.

Normally, the revenue follows the risk. Kentucky is the only state that, after the scores were run, came in after the fact and placed an artificial limit on how much money could change hands between the MCOs. If CoventryCares had known this, it would not have had a plan without co-pays because the MCO would attract higher risk individuals. In the first quarter of 2012, Coventry lost $50 million. Because CoventryCares is a public company, it cannot absorb such huge losses. The utilization rates are dramatically different than what were given in the data book in order to place bids. CoventryCares does not charge co-pays and has attracted higher risk individuals. Coventry should be receiving $3.4 million additional funds per month for high risk recipients, but has only received $2 million per month since April. The $17 million shortfall is going to Kentucky Spirit, which has lower-risk individuals. Once individuals have been stabilized, a computer program should be run for each month showing the number of individuals with each MCO and adjusting the amount of money based on the number of high risk individuals. With the amount of revenues the company has lost, it is looking for opportunities to put it on a sound financial basis, and one way is to start charging co-pays.

In response to a question by Representative Owens, Mr. Murphy stated that CoventryCares lost $50 million the first quarter of 2012 but does not anticipate continued losses at that level. Since the company is not paid the risk adjustment revenue for caring higher risk individuals, rates must be adjusted to providers. Co-pays would provide some relief to everyone. If the risks among all the MCOs were within a normal range of difference, this would not be an issue. CoventryCares' risk is substantially higher than the other two MCOs. In the first five months, the prescription drug cost was 41 percent higher than what the original data book stated, and behavioral health costs were 66 percent higher. Rates were bid on the lower utilization rates from the data book.

In response to a question by Representative Jenkins, Mr. Murphy stated that CoventryCares owns a company, Mental Health Net, which administers its own proprietary set of criteria for admitting children that is different from the national criteria. Representative Jenkins requested CoventryCares explain the differences in criteria to providers and then explain them to the committee.

In response to a question by Representative Wuchner, Mr. Murphy stated that cutting services is not an option because the company is required to provide the services in the contract. The question is finding quality providers who are willing to provide services at the price the company can afford to pay. If providers drop out and there is no longer an adequate network, the cabinet could levy sanctions against the MCO. All the MCOs knew the services that were part of the contract and part of the benefits in Kentucky. Kentucky does not have a substance abuse program for adults over the age of 21 years unless the person is an expectant mother or within 90 days post-partum. CoventryCares believes substance abuse costs for adults over the age of 21 years should be a funded mandatory benefit. If a benefit is not in the contract or funded by the cabinet, it costs the MCO millions of dollars to provide the benefit. The cabinet must decide to provide funding for MCOs to provide supplemental benefits, and it should be stated in the contract with the MCOs.

In response to a question by Senator Givens, Mr. Murphy stated that the company anticipated a projected loss the first year of operation. The $17 million risk adjustment loss would be over a twelve-month basis and another $17 million between the lack of adjustment between the start of the program in November 2011 and the end of March 2012. Overutilization is the reason for the largest amount of losses incurred by the MCO. However the data book was constructed, the MCO feels some of the data is missing because there is no way there could be such a dramatic change in utilization of the different services. Each state is unique in how it manages the Medicaid program and what is done to keep it financially stable. If there is inadequate data, other states come up with ways to mitigate the risk before it gets out of control. CoventryCares has not quantified how much it would cost the state to make the changes it has asked to be made but will provide the information to the committee when available. The process is to work within the budget restraints of the cabinet.

In response to a question by Senator Denton, Acting Commissioner Wise stated that it is the cabinet's intent to provide coverage of school-based services and the administrative regulations and the State Health Plan should provide coverage of these services. The MCOs have to comply with all applicable federal and state mandates. Mr. Murphy stated that if the contract requires coverage of in-school services, CoventryCares would comply with all requirements of its contract. If CoventryCares has not been paying for a provided service, it would retroactively pay the providers the amount owed plus interest. The cabinet sent clarification to hospital providers about coordination of benefits of Medicare and Medicaid dual eligibles, but durable medical equipment providers need the same clarification. Other than hospital providers, physicians have been contacted based on performance and an unwillingness to implement programs the MCO thinks would help better manage care, not because of a cost issue.

After talking to the physicians, some physicians will be sent a termination letter while others will be issued a new contract. There will be due process for providers to address concerns the MCO has with their practices. Information concerning where services would be provided within the network if Our Lady of Peace is terminated will be provided to the committee. Interqual criteria is used for observation and inpatient care in emergency rooms. The claims for individuals who use the emergency room as their primary care are being reviewed and denied primary care payment rates. In Kentucky, a Medicaid recipient can be locked into a specific physician, pharmacy, or hospital based upon misuse of services and overutilization of emergency room visits. If a recipient goes to a different emergency room, the hospital will only be paid $35 for triage evaluation to get the patient redirected to his or her primary care physician for services. Decisions about the local plan are made locally and not on the corporate level. The clinical decisions are made by panels of clinicians around the state and country who then make recommendations to the MCO. Information about the resolution of problems with Hemophilia Preferred Care will be provided to Senator Denton.

Consideration of Referred Administrative Regulations

201 KAR 20:490 – establishes the scope of practice for administering medicine or treatment by a licensed practical nurse as it relates to intravenous therapy; **201 KAR 23:015** – establishes the requirements for the granting of temporary permission to engage in the practice of social work; **921 KAR 2:015 & E** – increases the standards of need for all levels of care in the State Supplemental Program for persons who are aged, blind, or have a disability and makes technical corrections; and **921 KAR 3:035** – establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP). A motion to accept the administrative regulations was made by Representative Owens, seconded by Senator Harper Angel, and accepted by voice vote.

There being no further business, the meeting was adjourned at 4:00 p.m.

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 2nd Meeting of the 2012 Interim

July 6, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Judiciary was held on Friday, July 6, 2012, at 10:00 AM, at McCreary Central High School, Stearns, Kentucky. Senator Tom Jensen, Chair, called the meeting to order, the secretary called the roll, and a quorum was present.

Present were:

Members: Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; Senators Ray S. Jones II, John Schickel, Dan "Malano" Seum, Brandon Smith, and Robin L. Webb; Representatives Sara Beth Gregory, Joni L. Jenkins, Thomas Kerr, Mary Lou Marzian, Michael J. Nemes, Darryl T. Owens, Tom Riner, and Brent Yonts.

Guests: Joe Williams, Appalachia HIDTA; Sgt. Mark Burden, Kentucky State Police; and Karen Kelly, Operation

UNITE.

LRC Staff: Norman Lawson Jr., Jon Grate, Ray DeBolt, Shane Orr, and Rebecca Crawley.

The minutes of the June 1 meeting were approved without objection.

Drug Bills Update

Joe Williams, Director, Appalachia High Intensity Drug Trafficking Area (HIDTA) Program told the committee he recently retired after a 32-year career with the Kentucky State Police with the rank of Lt. Colonel. Col. Williams gave a summary of controlled substances legislation passed by the 2012 General Assembly. 2012 Extraordinary Session House Bill 1, relating to prescription drugs, takes effect on July 20, 2012. The bill includes requirements for ownership, staffing, and operation of pain management facilities; requires the Cabinet for Health and Family Services, Kentucky Board of Medical Licensure, Kentucky Board of Nursing, and law enforcement to share complaint information; requires licensing boards to promulgate administrative regulations on mandatory prescribing and dispensing practices and to accept unsworn complaints and anonymous complaints with sufficient verification; requires physicians and practitioners to use the KASPER drug tracking program prior to prescribing controlled substances; permits medical office personnel and Commonwealth's and County Attorneys and their assistants to access KASPER; and requires the state to enter into agreements with other states for sharing of prescription information. Representative Yonts said several doctors told him KASPER reports sometimes take one to three weeks.

Col. Williams said prescription drug overdoses are the leading cause of accidental death in Kentucky, causing twice as many deaths as motor vehicle accidents. Drugs most frequently involved in accidental overdoses include Oxycodone, Alprazolam (Xanax), Hydrocodone, Methadone, and Oxymorphone. Overdoses frequently involve more than one drug. In response to a question from Senator Webb, Col. Williams said a coroner or a laboratory would determine if a death was caused by an accidental overdose. Senator Jensen noted that the high cost of illegal prescription drugs has resulted in increased use of black tar heroin in northern and eastern Kentucky.

2012 Regular Session Senate Bill 3 places limits on the purchase of the solid form of pseudoephedrine but does not limit the purchase of liquid or gel cap forms. Pseudoephedrine is a necessary ingredient for the illegal manufacture of methamphetamine. Purchases are limited to 7.2 grams per month with a maximum limit of 24 grams per year. The bill prohibits the purchase of pseudoephedrine by persons convicted of methamphetamine-related offenses for a period of five years, enhances the purchase tracking system, and requires annual reports to the Legislative Research Commission.

Col. Williams said children, family members, law enforcement personnel, and the general public are at risk of contamination from toxic fumes and environmental hazards associated with manufacturing methamphetamine. In response to a question from Senator Webb about increasing reports of Mexican drug cartel methamphetamine being reported in western Kentucky, Col. Williams said although some imported methamphetamine is found in Kentucky, the Mexican drug cartels use the P2P method of laboratory manufacture, resulting in a product which is half as strong as the one-step methods used in Kentucky. He noted there could be an increase in Mexican methamphetamine if the efforts to reduce domestic production are successful.

Sgt. Mark Burden, Kentucky State Police, discussed 2012 House Bill 481, which criminalizes the manufacture, sale, and possession of synthetic cannabinoids, piperazines, and cathinones. Sometimes known as designer drugs, a term used to describe drugs which are created and marketed to circumvent existing drug laws, these products are frequently marketed to minors under names such as Mad Monkey and Scooby Snax. Synthetic cannabinoids are frequently known as synthetic marijuana, and synthetic cathinones are frequently known as bath salts or plant food products. Many deaths and psychotic episodes, such as a videotaped episode shown to the committee, have resulted from the use of bath salts. The new legislation prohibits classes of drugs, not specific drugs, because altering the molecular structure of the products allowed them to remain a legal product in Kentucky. Under House Bill 481, possession of a synthetic drug is a Class B misdemeanor with a 30 day sentence. Trafficking in a synthetic drug is a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses. If the synthetic drug is sold to a minor, it becomes a Class C felony for the first offense and a Class B felony for subsequent offenses. In addition, the law provides for twice the amount of the gain fines for trafficking and seizure and forfeiture of property for trafficking. HB 481 contained an emergency clause and became effective on April 11, 2012.

Representative Tilley said Christian County is the epicenter of synthetic drug use in Kentucky, primarily because of its popularity with soldiers stationed at Fort Campbell who are able to pass drug screens while using these products. Representative Tilley said Franklin County Attorney Rick Sparks told him an ounce of bath salts costs more than an ounce of gold.

In response to a question from Senator Seum about how a retailer can determine whether a product is legal to sell under the new law, Sgt. Burden said the nature of the product, the name of the product, and the sale price are primary indicators because ordinary legitimate bath salts and plant food come in much larger packaging at much lower prices.

Operation UNITE

J. Andrew Croley, Whitley County Coroner, told the committee that prescription drug abuse is the nation's fastest growing drug problem. A 2009 national survey found that nearly one-third of people aged 12 and over who used drugs for the first time began by using a prescription drug for non-medical reasons. The same survey found that over 70 percent who used prescription pain relievers got them from friends or relatives, while only five percent got them from a drug dealer. He said an estimated 20 percent of people in the United States use prescription drugs for non-medical reasons, and abusing narcotic painkillers, stimulants, sedatives, and tranquilizers can lead to addiction.

Mr. Croley discussed the death of Christopher Mark Fuson, a 13 year old middle school student who accidentally overdosed on prescription drugs that had not been prescribed for his use. His death certificate listed acute combined drug (Hydrocodone, Alprazolam, Tramadol, Promethazine) toxicity. Some of the drugs tested at 5.8 times the therapeutic range. In 2011, there were 51 drug deaths in Whitley County, and through June 25, 2012, there have been 23 deaths due to prescription drug overdoses. These deaths have been attributed to Alprazolam (Xanax) (23 percent), Oxycodone (13 percent), Hydrocodone (nine percent), cannabinoids (nine percent), Tramadol (four percent), alcohol (four percent), and cocaine (one percent).

Karen Kelly, President and CEO of Operation UNITE, gave a history of the program, launched in April 2003 by Congressman Harold "Hal" Rogers in response to the special report "Prescription for Pain" published by the Lexington Herald-Leader. Ms. Kelly said the articles exposed the addiction and corruption associated with drug abuse in southern and eastern Kentucky. The program serves 29 counties and includes undercover narcotics investigations, substance abuse treatment, and public education efforts. UNITE has arrested 3,711 individuals, seized 104,882 pills, 273 meth labs, 23.5 pounds of cocaine, 466 pounds of processed marijuana, and 5,844 marijuana plants, with a total value of $11,618,446. The substance abuse treatment program has provided $7.38 million in vouchers for residential treatment, invested $4.2 million to create 30 Drug Court programs, in which 3,111 persons have participated, and collected $1,017,835 in fines, restitution, and child support.

UNITE's education program has 30 Community Coalitions in which 66,570 youth have participated, has 11,000 volunteers, and has provided drug free workplace training to many businesses and industries. Prevention programs include prescription drug drop boxes, anti-drug rallies, youth leadership programs, community outreach and education programs for children, a UNITE Service Corps to help tutor and mentor students in school, and Camp UNITE, a four-day leadership camp. UNITE is launching a new program for students to educate them about the consequences of having a felony conviction called "Life with a Record." In response to a question from Representative Marzian, Ms. Kelly said UNITE receives funding from federal grants, coal severance tax, an AmeriCorps Grant, and private sector support from businesses such as Walmart and Kentucky River Coal Company. Senator Webb cautioned the downturn in the coal industry and coal mine layoffs will result in less coal severance tax. Representative Gregory thanked Ms. Kelly and UNITE for the work being done in eastern Kentucky. Senator Jensen said Ms. Kelly was one of the founders of the UNITE program and has been with the program since its beginning.

The meeting adjourned at 12:20 p.m.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

Minutes of the 1st Meeting of the 2012 Interim

June 21, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Labor and Industry was held on Thursday, June 21, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Alice Forgy Kerr, Chair, called the meeting to order, and the committee assistant called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative Rick G. Nelson, Co-Chair; Senators Julian M. Carroll, Denise Harper Angel, Ernie Harris, Jerry P. Rhoads, Katie Stine, and Jack Westwood; Representatives C.B. Embry Jr., Bill Farmer, Dennis Horlander, Wade Hurt, Thomas Kerr, Charles Miller, Michael J. Nemes, Tanya Pullin, Tom Riner, Jim Stewart III, and Brent Yonts.

Guests: Dwight Lovan, Commissioner, Department of Workers' Claims and J.R. Wilhite, Executive Director, Kentucky Workers' Compensation Funding Commission

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

Senator Kerr welcomed members to the first meeting of the committee during the 2012 interim. She informed members of the passing of former Representative Al Bennett and asked for a moment of silence in his memory.

Senator Kerr stated that the agenda consisted of two presentations and that material related to those presentations was included in members' folders.

Update and Agency Procedure Relating to the December 2011 Ky. Supreme Court Decision *Gardner v. Vision Mining*

Commissioner Lovan stated that the Supreme Court's December 22, 2011 decision affirmed the Court of Appeals decision that found the consensus process was unconstitutional because it treated coal workers' pneumoconiosis (black lung) differently than it treated other claims for benefits based on occupational pneumoconioses, of which there are several. In doing so, the court did away with the consensus process that was enacted in 2002 in an effort to make the decision-making process in coal workers' pneumoconiosis claims as objective and independent as possible.

Under the consensus procedure, a panel of three "B" reader physicians was used to interpret x-rays and benefits would be awarded based on the consensus of the panel. A showing of clear and convincing evidence was necessary to overcome the consensus reached by the panel. The Supreme Court noted that the clear and convincing standard applicable to coal workers' pneumoconiosis was a much higher standard than was applied to other occupational pneumoconioses. The agency is now in the process of determining how to comply with the decision. Commissioner Lovan said the agency will return, at least at this time, to the use of university evaluators, which was the process used for coal workers' pneumoconiosis claims from 1996 to 2002 and is the process used for all other occupational pneumoconioses claims. University evaluations are afforded presumptive weight, which is a rebuttable presumption that may be overcome by other evidence. The agency is taking this approach because the Supreme Court decision emphasized that coal worker's pneumoconiosis claims should be treated as other occupational pneumoconioses claims. Another reason for this approach is that case law dictates that when a statute is found unconstitutional, the prior law that was constitutional must be relied on. Returning to the use of university evaluators for coal workers' pneumoconiosis claims presents some logistical issues for the agency because the universities have not been doing black lung evaluations since 2002. The universities do not have "B" reader physicians on staff, but Commissioner Lovan said that he is not sure, based on the Supreme Court decision, that a "B" reader is necessary to pursue a black lung claim. A "B" reader physician is a physician who has been specially trained and certified by the National Institute of Occupational Safety and Health in classifying x-rays of pneumoconioses.

Commissioner Lovan said the agency will probably require a full pulmonary examination in every black lung claim because it is required in other occupational pneumoconioses claims. The 396 black lung cases being held in abeyance will be taken out in a measured way to avoid overwhelming the agency or the universities.

Commissioner Lovan said other issues that remain to be determined include what, if any, impact the court decision will have on the payment structure for black lung claims, which is different from the payment structure applicable to other occupational pneumoconioses claims. This issue was not addressed in the majority opinion of the Supreme Court decision. He expects this issue to arise early in the adjudication of cases as they are released from abeyance.

Questions have been raised about the impact of the decision on cases decided under the consensus process enacted in 2002. Case law dictates that a case that has been finally decided, absent legislation to the contrary, cannot be reopened even if the courts determine the law to have been unconstitutional.

Commissioner Lovan concluded by stating that the agency has a plan to comply with the Supreme Court decision, but there are many issues yet to be determined.

In response to questions from Senator Kerr, Senator Rhoads, Representative Yonts, and Representative Pullin, Commissioner Lovan summarized the different payment structure for coal workers' pneumoconiosis, set out in KRS 342.732, than for other occupational pneumoconioses. He said he thought the Supreme Court did not address this in its decision, probably because it would have had to overrule its previous decision that upheld the different payment structure for those claims. Approximately 2,500 claims have been denied under the 2002 law that the court found unconstitutional. A legislative remedy is available to provide a reopening provision similar to the one that was included in the 2002 law for those claims that had been denied under the 1996 law.

Commissioner Lovan said it is yet to be determined whether blood gas studies will be required in a full pulmonary examination. He discussed how opinion evidence is currently utilized in occupational pneumoconioses claims, and agreed that the absence of "B" reader interpretations in the claim probably would not preclude an award for benefits. He agreed that the low number of retraining incentive benefit awards may have resulted from the requirement that a claimant participate in retraining in order to receive benefits. Commissioner Lovan informed members that information about the agency's procedures will be disseminated by email and will be included on the agency's website, and informed members that examples of other types of other occupational pneumoconioses include farmer's lung, asbestosis, and silicosis.

Following the presentation from Commissioner Lovan, Senator Kerr introduced J.R. Wilhite, Executive Director, Kentucky Workers' Compensation Funding Commission.

Report on the 2011 Actuarial Study on the Workers' Compensation Special Fund and the Coal Workers' Pneumoconiosis (CWP) Fund and the 2012 Assessment Rates.

Mr. Wilhite used a power point presentation to explain the purpose and history of the Kentucky Workers' Compensation Funding Commission. The commission was created 25 years ago with a seven member board for the purpose of providing funding for the types of claims Commissioner Lovan discussed. The board of the commission consists of three cabinet secretaries and appointed members representing employers, employees, and the insurance industry. The duty of the commission is to control, invest, and manage the funds of the Special Fund and the CWP fund. The Special Fund has been in existence since 1946. In 1996, the Special Fund was closed to new claims, but it still includes about 9400 active claims with a liability, as of June 30, 2011, of about $1.5 billion.

The CWP fund was created in 1996 when the Special Fund was closed for new claims to pay the state's share of the liability for black lung claims filed after 1996. As of June 30, 2011, the liability of the CWP fund was $17.6 million.

The commission sets annual assessment rates for the Special Fund and the CWP fund, collects and audits assessments for those funds, and invests the monies collected annually from the assessments. The assessment for the Special Fund is a percentage of workers' compensation premiums and is paid by all employers, coal and noncoal. The two assessments for the CWP fund are paid by coal employers and are a percentage of premium and cents per ton of severed coal.

Mr. Wilhite further explained that the workers' compensation statute, KRS Chapter 342, requires an actuarial study of the funds every other year so that the agency can report to the General Assembly on the actuarial soundness of the funds. The actuarial study also provides the basis for the annual assessment rates. The statute requires the commission, based on actuarial studies, to set a level assessment rate annually for the Special Fund that, if applied annually from now until the end of 2029, would produce sufficient revenue to pay annual claim payments as they arise and future claim costs that are required beyond 2029 when the annual assessments end. According to the actuarial study, payments obligations of the Special Fund might extend to 2087. The Special Fund assessment also funds the liabilities of the Uninsured Employers' Fund, administrative expenses of the commission, and programs operated by the Labor Cabinet.

Based on the actuarial study from last year, the commission reduced the 2012 assessment rate for the Special Fund to 6.28 percent from 6.50 percent, and eliminated the assessment rates for the CWP fund. Mr. Wilhite stated that the assessment rates for the Special Fund for 2012 are the lowest rates that have been in place over the past 25 years.

Mr. Wilhite explained the different funding requirements that exist for the CWP fund. The statute requires annual funding and prefunding of the CWP liabilities for an 18 month period going forward. The liability of the CWP fund determined by the actuarial study done last year pre-dated the Supreme Court decision relating to black lung that was discussed by Commissioner Lovan. The liability of the CWP fund as of June 30, 2011 was $17.6 million with a fund balance of $19.3 million resulting in a surplus of $1.7 million. According to the actuarial analysis, the annual assessments for the CWP fund will probably have to increase in future years if the Supreme Court decision increases claim liabilities, but sufficient funds exist to pay liabilities over the 18 month period ending in December of this year.

Mr. Wilhite concluded by saying that the commission is preparing an update of the actuarial study done last year to determine whether any changes have occurred in the claims database from July 1 of last year that might change the overall liability estimations going forward and assessment rates for 2013.

In response to questions from Representative Farmer, Representative Yonts, and Senator Rhoads, Mr. Wilhite explained that the statutes require that the annual assessment for the Special Fund be sufficient to pay annual claim costs and administrative expenses of the Labor Cabinet and that the disbursements to the Labor Cabinet not exceed the amounts approved by the General Assembly in its executive budget. Secretary Mark Brown said the budget of the Labor Cabinet is approved by the General Assembly. This is the way the Labor Cabinet has been funded historically and the annual disbursements to the cabinet from the Funding Commission include claim payments and the administrative expenses of the cabinet. Mr. Wilhite further responded by stating that: the estimates of the projected payout of Special Fund liabilities to 2087 are based on actuarial determinations of life expectancy; the financial condition of the Special Fund and the CWP fund would be better if previous transfers by the General Assembly of funds from Special Fund and the CWP fund had not occurred; 58 percent of the Special Fund liabilities result from coal; medical costs are not paid by the Special Fund; annual administrative costs of the Labor Cabinet are approximately $20 million annually; the annual severance tax allocation to the Funding Commission that was put in statute in 1996, and later suspended, was intended to replace a previous additional assessment on coal; and, the assessments for the Special Fund could have ended in 2018 if the severance tax allocation of $19 million annually had been received by the Funding Commission. Mr. Wilhite also agreed to provide a breakdown of the coal-related liabilities of the Special Fund resulting from injuries versus black lung. Secretary Brown commented that the Labor Cabinet is about 35 people less than the number of budgeted positions in order to control costs and that the budget of the cabinet has been reduced by 34 percent over the past four years.

There being no further business, the meeting adjourned.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

Minutes of the 2nd Meeting of the 2012 Interim

July 13, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Licensing and Occupations was held on Friday, July 13, 2012, at 10:00 AM, in Room 129 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Dennis Keene, Co-Chair; Senators Tom Buford, Julian M. Carroll, Denise Harper Angel, Paul Hornback, Dan "Malano" Seum, Kathy W. Stein, Damon Thayer, and Robin L. Webb; Representatives Larry Clark, David Floyd, Wade Hurt, Joni L. Jenkins, Adam Koenig, Reginald Meeks, Michael J. Nemes, Darryl T. Owens, Sal Santoro, and Arnold Simpson.

Guests: Doug Gallenstein, Independent Business Owner; Stacy Roof, President and CEO of the Kentucky Restaurant Association; Preston Nunnelley, M.D., President, Michael S. Rodman, Executive Director, C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure.

LRC Staff: Tom Hewlett, Bryce Amburgey, Carrie Klaber, Michel Sanderson, Alan Jones, and Susan Cunningham

Approval of minutes

A motion to approve the minutes from the June 8, 2012 meeting was made by Senator Thayer, seconded by Senator Seum. The motion carried by voice vote. Senator Schickel asked for a moment of silence in memoriam of Representative Keene's father, who passed away in June. He also asked the committee to remember Representative Regina Bunch whose husband, former Representative Dewayne Bunch, died after an accident in the Whitley County High School cafeteria a year ago. Additionally, Senator Schickel reminded members that the August meeting will be on August 27th, rather than the usual second Friday of the month. Senator Schickel also noted that a memo with a chart of per diem amounts, included in members' folders, was in response to a question from the June meeting regarding the per diem amounts received by members on various boards and commissions.

Election Day sales of alcoholic beverages

Representative Arnold Simpson explained his concept for legislation on election day liquor sales. He said he filed a bill in 2006 to modify Kentucky law to permit the sale of alcohol in retail package stores on election day during the hours that the polls are open. However, the bill did not pass. Kentucky is surrounded by states on all borders that allow sales of alcohol on election day when the polls are open. Only Kentucky and South Carolina have a complete ban on the sale of alcohol during the hours the polls are open.

Representative Simpson noted there was a draft of the bill he plans to file in the next session in members folders. The bill will not affect all of Kentucky. The jurisdictions that maintain prohibition will not be affected, and local jurisdictions with alcohol sales may pass local ordinances to continue the election day ban. This bill will allow businesses who are forced to close during the hours that polls are open on election day to continue operation as a normal business day. In election years the state loses approximately $625 thousand in tax revenue. Businesses lose thousands of dollars due to closing, and employees lose wages. Also, Representative Simpson stated, there is no ban of alcohol sales during the day on days special elections are held so the current law is inconsistent.

The Bourbon Trail has been a successful tourist attraction in Kentucky. Visitors from other states, even other countries follow the trail. These visitors would have no knowledge of Kentucky's prohibition on election day sales. Visitors attempting to purchase bourbon on election day would be inconvenienced when not allowed to purchase souvenirs samples during their visit and might not return or might influence other not to visit.

Doug Gallenstein, owner of six package retail stores, told the committee that he does see a loss in revenue from closing his stores while the polls are open on election days. Recently he was fined for opening the store and not having his liquor inventory under lock and key even though he was not attempting to sell alcohol. This year he will keep his stores totally closed, and 18 people will lose income during those hours.Stacy Roof, President and CEO of the Kentucky Restaurant Association, said restaurants all across the state have to comply with this law. Recent surveys show that restaurants are losing sales when comparing revenue on primary day to other Tuesdays in May. Some restaurants with multiple locations reported lower sales ranging from 23 to 43 percent lower on election days.Senator Schickel said that the effect on small business was powerful. He added that when he was in law enforcement he worked three cases sales of alcohol on election days, all in dry counties. Representative Simpson added that cities and local governments would have flexibility regarding enforcing the change. This is also a mechanism for higher tax revenues.Senator Thayer said he appreciated the interest in affecting the tax revenues to government and supported the measure. Representative Clark said he was interested in more information regarding people laid off and the loss of occupational tax. In response to a question from Representative Floyd, Representative Simpson said Northern Kentucky has a unique market niche that attracts customers from Cincinnati who might not come to the area if they could not purchase alcohol.

Kentucky Board of Medical Licensure

Preston Nunnelley, M.D., President of the Board of Medical Licensure told the members the board's mission was simple; to protect the public in matters relating to health care. All doctors are reviewed, either with their initial licensure or their reapplication, to make sure that they are qualified to practice medicine. When the board does not see the quality of care that meets the board's standards, an investigation is opened. Disciplinary action is used when needed and if necessary retraining is implemented. Board members are appointed by the Governor and include eight physicians, three consumer members, the Dean at the UK College of Medicine, the Dean at the UofL School of Medicine, the Dean at the University of Pikeville School of Osteopathic Medicine and the Commissioner of Public Health. The professions under the supervision of the board include not only the medical and osteopathic doctors but also physician assistants, athletic trainers, surgical assistants and acupuncturists. The physician assistants are licensed while the remaining three are certified. The Board is funded by licensure and other fees and does not receive any general fund money. The current budget is slightly under $2.8 million. In the past the two disciplinary panels met quarterly; however, matters involving physician disciplinary action have increased and the panels are now meeting every other month. The general board meeting will continue on a quarterly basis. Currently there are 15,820 licensed physicians in Kentucky. Some of these licensees are physicians who have retired or moved out of state, but do not want to give up their Kentucky license. Also, an out-of-state physician using telecommunication and information technologies to communicate with patient and medical staff, known as telemedicine, is required to have a Kentucky license. As telemedicine continues to grow in popularity there will be more out of state physicians licensed in Kentucky. Physician assistants licensed in Kentucky work under the supervision of a licensed physician. The Physician Assistant Advisory Committee reviews all physician assistant applications and makes recommendations to the board. Currently, there are 996 licensed physician assistants in Kentucky. Athletic trainers are currently certified in Kentucky. The Kentucky State Advisory Council reviews the applications of athletic trainers and makes recommendations to the board. There are 525 certified athletic trainers in Kentucky. Surgical Assistants, an allied health group that assists surgeons, are also certified in Kentucky. The Kentucky Surgical Assistant Committee reviews all applicants and makes their recommendations to the board. There are 199 certified surgical assistants in Kentucky. Acupuncturists are the newest group to gain certification in Kentucky. The State Advisory Committee on Acupuncture reviews all acupuncturists' applications for certification and makes recommendations to the board. Kentucky has certified 67 acupuncturists.

The Kentucky Board of Medical Licensure maintains a website, www.kbml.ky.gov that verifies information on physician licenses, or certifications of other professions under the board's administration. Consumers are also able to look up any disciplinary action against the licensee or certificate holder. Active sanctions are listed on the website.

The board receives approximately 230 complaints each year. Reports of violations come from consumers, physicians, law enforcement, and pharmacy investigators. In cases regarding substandard care or prescribing issues the board uses a consultant to review medical records and give their opinion. The board has five full time medical investigators, three of which are retired Kentucky State Police detectives. The average caseload per investigator is 25 to 30 cases. There are currently 121 open investigations, 65 involving prescribing controlled substances. The investigators work with state and federal law enforcement officials. The KASPER (Kentucky All Schedule Prescription Electronic Reporting) trend reports have been an effective tool for the board to use to watch prescribing trends. Since January of this year there have been 41 prescribing hearings resulting in 20 physicians losing their Kentucky license.

Common grievances from patients include rude behavior by physicians and or staff, failure to provide a copy of medical records, and lack of communication. The board investigates all complaints and can suspend, restrict, publicly reprimand, revoke, and issue a fine for inappropriate conduct or prescribing. All actions are reported to a national data bank. The board has begun to take a more proactive stance in the past year. Because of the more aggressive position, the investigative work load has increased and another investigator will be hired in the near future.

Senator Schickel said that the illegal use of prescription drugs has been discussed since before he became a member of the General Assembly. Senator Schickel opined that the medical community has always been held to a high professional standard. The public perception of the medical profession has diminished in recent years, however, because of the problems associated with the illegal use of prescription drugs.

In response to a question from Senator Schickel, Dr. Nunnelley said money comes to the board from the fees paid by physicians and all allied health professionals for their registration. He added that, because complaints and reports of misconduct have increased in the past year, an addition investigator will be hired so that reports can be filed in a timely manner. In order to shut down pill mills, the inflow of drugs has to be stopped. National data bases to track prescribers have been helpful, and working with law enforcement in a team approach has made a difference in stopping this epidemic.

In response to a question from

Representative Keene, Dr. Nunnelley said that due to the technical nature of medical issues, 12 members of the 15 member board are doctors, the other three members are consumers. He added that the consumers were vital to the board in evaluating final restrictions.

In response to a question from Representative Koenig, Dr. Nunnelley said the number of licensed doctors has stayed the same for the last five years, adding that in the last year the board has been unable determine how many of the doctors have retired but maintain their license. He added, regarding telemedicine, that if you are making a decision that alters the care of a patient in Kentucky you must have a Kentucky license.

In response to a question from Senator Webb, Dr. Nunnelley said consultants must be experts in the field that is being investigating. However, because the consultants are practicing physicians, they only review cases when they have time. This can cause delays in finalizing investigations. Consultants are monitored, have to be board certified, and in good standing. He added the board, as part of its responsibility, could increase registration fees if necessary to pay consultants a larger fee. Also, the board feels that KASPER is a tool that has not been utilized to its fullest effect; however, communication with the cabinet has increased as well as registration of the doctors to use the system. The board has a policy for prescribing schedule drugs which states that KASPER must be used when doing so.

In response to a question from Senator Carroll, Dr. Nunnelley said House Bill 1 increases the responsibility of not only the board but of the investigators. The board is hiring another investigator. If more are needed the board will take steps to do so. He added that the board is continuing to educate Kentucky doctors on the issue of over-prescribing pain medication. There is a narrow line between the abuse of drugs and treating a patient with genuine pain.

In response to a question from Representative Owens, Dr. Nunnelley said that there is an organization that ranks all medical board on the disciplinary actions they take. For the last 10 years Kentucky has been in the top 10 on the list, and that in the past three in the top five. One key way the board has of knowing a doctor is over-prescribing is through citizens calling in and filing a complaint.

In response to a question from Representative Floyd, Dr. Nunnelley said the board has a generalized requirement for continuing education (CME). Physicians are required to take sixty hours over a three year period with 30 of those hours consisting of category one courses. The board audits CME's and if they find them not in order there are fines imposed. In response to a question from Representative Jenkins, Dr. Nunnelley said the board has a legal obligation to report misconduct such as sexual misconduct or over-prescribing. An average investigation takes three to four months. If an agreed order cannot be reached the board places a suspension on the license until the situation is resolved.

In response to a question from Senator Seum, Dr. Nunnelley said ninety-seven percent of Kentucky doctors are good doctors. The board presents lectures all across the state to ensure that doctors are aware of best practices.

Senator Schickel said that the board did have a difficult job. Bad actors need to be sanctioned; however, when a patient has a disease like brain cancer a physician does need to be sure to prescribe sufficient pain medication. The KBML will be invited back again to keep the dialogue open on the topic of prescribing pain medication and the usefulness of pain clinics.

Senator Stein said the legislative intent of House Bill 1 should be discussed in another meeting.

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

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 1st Meeting of the 2012 Interim

June 27, 2012

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on Local Government was held on Wednesday, June 27, 2012, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Senators Walter Blevins Jr., Jimmy Higdon, Alice Forgy Kerr, and R.J. Palmer II; Representatives Julie Raque Adams, Ron Crimm, Mike Denham, Ted Edmonds, Richard Henderson, Brent Housman, Stan Lee, Tom McKee, Michael Meredith, Arnold Simpson, Kevin Sinnette, Rita Smart, and Jim Wayne.

Guests: Representatives Dennis Horlander and Mike Cherry; Adam Edelen and Tom Bennett, State Auditor of Public Accounts; LaRue County Judge/Executive Tommy Turner; Denny Nunnelley, Shellie Hampton, and Roger Recktenwald, Kentucky Association of Counties; Bert May, Kentucky League of Cities; Mike Kurtsinger, Kentucky Fire Commission; Jack Reckner, Kentucky Association of Fire Chiefs; Dan Walton, Labor Cabinet; Ron Wolf, Associated General Contractors of Kentucky; and Sara McGown, Louisville Metro Government.

LRC Staff: Mark Mitchell, John Ryan, Jessica Causey, Joe Pinczewski-Lee, and Cheryl Walters.

Kentucky Association of Counties' (KACo) and the State Auditor's perspectives of their priorities, issues, and challenges regarding special districts

Senator Thayer stated that the committee is discussing the issue of special districts because HCR 53, which passed during the session, sponsored by Representative Reginald Meeks, directed the committee to study them. Members were referred to background material, which included recommendations pertinent to special districts from the 2005 Task Force on Local Taxation, co-chaired by Senator Thayer. The recommendations called for the statutes to be amended to allow fiscal courts to eliminate special districts in a more streamlined and efficient manner; to create a centralized registry for special districts; have all rates and fees, including rate or fee changes, be approved by their respective fiscal courts; and to have special taxing districts' budgets and tax rates be submitted to fiscal courts to comply with the county budgeting process. Since then, Senator Thayer has offered legislation that would require special districts to seek approval from fiscal courts anytime they seek a rate or tax increase. The crux of the problem is there are over 1,000 special districts located all over the Commonwealth comprised of individuals, the majority of which having been appointed, but not elected, and they are approving tax and rate increases. The State Auditor feels that the issue of special districts is important. Perhaps during the next session of the General Assembly, legislation can be agreed upon and passed to bring more accountability to the special districts to help protect the taxpayers.

Auditor of Public Accounts (APA) Adam Edelen told the committee that special districts represent the most prevalent level of government. There is not a single person in state government or in Kentucky who can tell the taxpayers precisely how many special districts there are, where they exist, how many tax dollars flow through them annually, and whether they are compliant with state law. The taxpayers are owed a level of accountability at every level of government. By the end of the year, the APA will have gone through a massive inventory process and will have made that information available to the taxpayers. The APA's office knows there are 43 different categories in state statute governing special districts, both taxing and fee-based. There are 1,017 different statutes that govern these entities; some date back to 1912. There are between 1,000 and 1,800 of these entities, and between a half billion dollars and 1.5 billion dollars go through them annually. The APA's office will communicate with the committee as well as the locally elected representatives. What the APA's office is most excited about is that by the end of the year, the information will be put on-line. Kentucky has an historic opportunity to be a national leader in the area of good government. It is important to note that the commitment or the effectiveness of the people who are running the special districts is not being questioned.

A centralized registry would both simplify the process for being accountable to the special districts. It would also make sure that the taxpayer watchdogs would better have an ability to make sure that these special districts are doing precisely what they are supposed to do. The APA's office is going to run a fact-based, data-driven investigation that is focused merely on making sure that those who are doing the right thing do not get lumped in with those who are not, and those who are doing the wrong thing get held accountable to the taxpayers.

In response to a question by Representative Wayne regarding procurement procedures of special districts, Mr. Edelen replied that the entire system is a mess. The issues brought to his office's attention generally involve procurement or paying a contract. From what the APA's office has seen from many diverse entities, there is a high potential for abuse of those tax dollars which is a result of a system that seems designed to ensure that there is very little oversight.

In response to another question by Representative Wayne, Mr. Edelen replied that the Indiana/Kentucky Bridges Authority is a non-taxing special district.

In response to a question by Representative Edmonds, Mike Kurtsinger, with the Kentucky Fire Commission, answered that if the fire department is a KRS Chapter 75 fire taxing district, which about 180 of them are, it must get a certificate of need to have an ambulance service. Then, the fire department could start the ambulance service, and the district's members would pay up to 10 cents on $100 in addition to the existing fire tax. If the fire department is not a taxing district, then it cannot start its own ambulance service.

Representative Simpson commented that he has some concerns with his sanitation district's spending practices, which could use additional oversight. The district does not have the ability to tax because it is a quasi-governmental entity. The district raises fees in order to provide services, but he has some concerns regarding how much the district has raised its fees and its spending practices. Representative Simpson said he is glad to hear that the APA's office is going to scrutinize districts' spending practices. Taxpayers do not care if it is a fee, tax, or toll—it is money coming out of their pockets and going into a quasi-governmental entity.

Representative McKee commented that getting some kind of a benchmark will be the APA's biggest challenge. Mr. Edelen agreed.

In response to a question from Senator Kerr, Mr. Edelen stated that any big reform or comprehensive effort requires a broad base of support. This effort that the APA's office is undertaking has been endorsed by more than two dozen entities ranging from every ADD to the county judges, KACo, KLC, magistrates, commissioners, county clerks, county attorneys, and sheriffs. There will be a political consequence, but that can be sorted out when it comes.

Senator Thayer commented that some pushback will come from board members and employees of special districts. There will be a balance though, because there are some who are not going to happy that this issue is being looked into, but the taxpayers, who the legislature serves, ultimately will be pleased that their government, executive branch, legislative branch, democrats, republicans, senators and representatives, are taking a serious look at this. Senator Thayer noted that he plans to sponsor a bill on this and is looking for members from both chambers and both parties to be partners with him and with the APA to try to exact some kind of change in the next session of the General Assembly regardless of who is angry and who is not.

In response to a question from Representative Crimm, Kentucky Association of Fire Chiefs' representative Jack Reckner, replied that there is a wide diversity of opinion among attorneys for the fire districts regarding the payment of fees in addition to tax collection. The legality of what they are doing is not clear. Mr. Kurtsinger stated that the sections of KRS Chapter 75, which refer to the fees in question, actually refer to KRS Chapter 273 fire department fees. These are fire departments that are not taxing districts and charge subscription fees or membership charges, so the Chapter 75 fire districts cannot charge that fee. In Kentucky, there have not been any cases as to what Representative Crimm described of fire districts refusing to put out a fire of a person who has not paid a fee a district charges.

KACo President-elect Judge Tommy Turner told the committee that numerous county organizations, including KACo, supported HCR 53 during the session. KACo has also endorsed Auditor Edelen's efforts. Counties are hopeful that these parallel efforts will in fact lead to what Auditor Edelen has referred to as a database of information on all districts, both taxing and non-taxing, to review the revenues, expeditures, and board oversight called for in HCR 53.

KRS 65.182 is the primary governing statute for the creation of a special district with taxing authority, but is not the only method. Scattered statutory provisions allow certain districts to be created by petition, referendum and annexation in some cases. Fiscal courts often play a major role in the creation of special districts. However, once created, special districts have a substantial amount of independence from the fiscal court. Memberships on district boards are, in most cases, required to be approved by the fiscal court, but the names submitted for membership often come from the special district itself.

Special taxing districts are imperative if counties are going to provide services. They help fill a revenue void and provide vital services for county constituents. While some errors brought to light in the last two years proved to be the impetus for action on reviewing special districts, it should be noted that the errors found involved two of the largest taxing districts in the state. KACo is hopeful that the majority of the remaining districts will be found to be in full compliance of financial standards, acting in a responsible and efficient manner. There will be errors found and this effort will enable new provisions to be implemented to make special districts more accountable and responsible.

KACo is always willing to collaborate with the committee on a local government tax reform package that would include these districts in the discussion. KACo stands ready to work with the General Assembly to review the findings of both the committee and the Auditor's Office to make the work of special districts more transparent and accountable to the people they were created to serve.

In response to a question from Senator Thayer, Judge Turner said he personally would not have a problem with the General Assembly requiring more responsibility by the fiscal court where its members had to vote on tax increases, but some members would have a problem.

Senator Thayer announced that the committee would discuss special districts at some of its future meetings.

There being no further business, the meeting was adjourned at 11:20 a.m.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 2nd Meeting
of the 2012 Interim

July 12, 2012

Call to Order and Roll Call

The 2nd meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, July 12, 2012, at 10:00 AM, at the Office of Mine Safety and Licensing in Pikeville, Kentucky. Senator Brandon Smith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Ray S. Jones II, Johnny Ray Turner, and Robin L. Webb; Representatives Hubert Collins, Tim Couch, Keith Hall, Reginald Meeks, John Short, Kevin Sinnette, Stewart III, and Jill York.

Legislative Guests: Representatives Kim King and John Will Stacy.

Guests: Mr. Freddie Lewis, Harold Sloane, and Frank Reed, Office of Mine Safety and Licensing; Rodney Scott, Pike County Jailer.

LRC Staff: Tanya Monsanto, Stefan Kasacavage, and Kelly Blevins.

A quorum was established. After a motion and second, the minutes of June 7, 2012 were approved. A moment of silence was held for former Representative DeWayne Bunch who passed away on July 11, 2012.

Update from the Office of Mine Safety and Licensing on injuries and accidents in Kentucky mines

After introduction of local dignitaries and officials, Mr. Freddie Lewis, executive director of the Office of Mine Safety and Licensing (OMSL) gave a presentation on Kentucky's mine safety record over the past five years. Mr. Lewis introduced Mr. Harold Sloane, division director of Inspections in OMSL and Mr. Frank Reed, director of Training and Analysis.

Mr. Lewis described the organization structure of OMSL stating there are 165 employees located in Frankfort and in the six district offices throughout Kentucky. There are four major divisions in OMSL: Safety Inspection and Licensing; Safety Analysis, Training and Certification; Accident Investigation; and Mine Rescue. Mr. Lewis described the various functions performed by those divisions beginning with mine rescue. There are 12 mine rescue teams in the state that provide mine rescue service to coal miners. Service on a mine rescue team is voluntary, and because mine rescue is mandatory under federal law, the structure of the mine rescue teams in Kentucky is vital to the continuance of the coal industry in the state.

OMSL's Division of Safety Inspection and Licensing performs inspections of both the 171 underground and 229 surface coal mines in Kentucky. There are two surface and six underground inspections per year. Additionally, underground mines will use two of the six inspections for electrical works in the mine. In 2011, OMSL conducted 2,519 inspections of surface and underground coal mines in Kentucky.

The Division of Safety Analysis, Training and Certifications has recently established a new program to train and provide mine safety analysts to mines with new foremen or new mine crews. This effort is to blunt bad safety practices before the practices are instituted in workplace. OMSL is making an effort to be proactive and serve as an advocate the coal mining industry by encouraging better safety in mines rather than penalizing after an inspection. The idea is that creating partnerships with the industry will lead to an embrace of safe mine work conditions. In 2011 mine safety analysts conducted 24,286 job safety observations and corrected 2,375 unsafe acts. Many inspectors are also mine safety analysts, but mine safety analysts watch and offer corrections to working conduct whereas an inspector will not. Kentucky is the only state with a mine analysts program. The Division of Safety Analysis, Training and Certifications also trains, tests, and certifies for 18 different mine certifications such as foreman, jobbers, blasters. Kentucky OMSL trained and tested 38,648 miners and issued roughly 20,000 certifications to miners in 2011.

The Division of Accident Investigation has three accident investigators that are on call 24 hours a day in case of a serious mine accident or fatality occurs. Investigators now send emergency bulletins out after a serious accident or fatality that describes how that situation came about and could have been prevented. It is a way of extending the philosophy of proactive mine safety to the Division of Accident Investigation.

Mr. Lewis provided data on accidents and fatalities in Kentucky from 2007 to 2011 and further delineated the data for both surface and underground mines. There were a total of 20 serious accidents and 14 deaths at underground mines between 2007 and 2011 in Kentucky. Surface mines experienced six serious accidents and 14 deaths during that same period. In 2012, there have been two fatalities, and the last fatality that occurred is under investigation.

In response to a question about what proportion of the accidents are drug related, Mr. Lewis replied that he did not know the answer and deferred to Mr. Greg Goins, mine accident investigator. Mr. Goins explained that mine deaths will require a toxicology report. However, the results do not express whether drugs were a contributing factor in the death of the miner. Accident investigators do not give their opinion on the role of drugs in the mine accident unless called to testify in a court proceeding.

Mr. Lewis, in response to another question about the difference between serious accidents and fatalities, explained that serious accidents involve a miner that is injured but not killed. Examples of serious accidents include highwall failures, berm collapse, equipment related incidents like rollovers. There are many situations that constitute serious accidents.

In response to a question about suboxone treatment for opioid addictions could be considered an impairment situation to remove the miner from the work line, Mr. Lewis stated that the problem with suboxone, like methadone, is when the miner is abusing the substance rather than taking it at prescribed therapeutic levels. In response to a legislator commenting that coal companies can address these situations through company drug policies, Mr. Lewis concurred.

In response to a question about the funding for OMSL, Mr. Lewis expressed that funding is tight. Mine rescue is expensive and Kentucky needs to update all apparatuses used for mine rescue. When the equipment is not updated, the Mine Safety and Health Administration (MSHA) can inspect Kentucky's offices for compliance. If OMSL's program is found out of compliance, then MSHA can shut Kentucky's program down. A shutdown of Kentucky's program would cause a cascade throughout the industry. Federal law requires travel to all mines, even abandoned mines. This is a costly feature of federal law.

In response to a question about how Kentucky markets the image of miners using thick coal seams, Mr. Lewis remarked that there are many thin coal seams in Kentucky, and those images can be used, too.

In response to a question about employees in each division of OMSL and the collection of fines from coal companies, Mr. Lewis replied there are three accident investigators, 35 mine analysts, and 88 mine inspectors. Mine penalties have a good collection record in Kentucky; however, the penalties being reported in the press recently are federal. Kentucky OMSL does not have the authority to collect fines and penalties for MSHA.

In response to a remark about the complexity of a mine inspection and the recklessness of increasing inspections without understanding the impact on OMSL and coal mine companies, Mr. Lewis remarked that there are inspectors on every shift. Complete inspections can take a month for some mines. OMSL is meeting the inspection requirements set in statute. With mine closures due to economic downturns, some of the pressure to stay up-to-date on inspections is lessened. It still costs the agency as much money to conduct inspections.

In response to a question about analysts being inspectors simultaneously, Mr. Lewis stated that analysts can inspect. But those duties are not being performed simultaneously. OMSL does not want inspectors punishing industry. Safety has to be sold as an idea to industry in order for industry to embrace good, safe practices.

Mr. Lewis then described the remaining activities of the day. The committee would view a rescue station in the OMSL, Pikeville District office, and then travel to Bob Amos Park to watch the mine safety competition.

After a motion and a second, the committee adjourned at 11:15 PM (EST).

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 1st Meeting
of the 2012 Interim
June 27, 2012

Call to Order and Roll Call

The first meeting of the Interim Joint Committee on State Government was held on Wednesday, June 27, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Mike Cherry, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Mike Cherry, Co-Chair; Senators Walter Blevins Jr., Alice Forgy Kerr, R. J. Palmer II, John Schickel, Dan “Malano” Seum, Robert Stivers II, and Johnny Ray Turner; Representatives Dwight Butler, Larry Clark, Tim Couch, Joseph Fischer, Danny Ford, Derrick Graham, Mike Harmon, Melvin Henley, Martha Jane King, Jimmie Lee, Brad Montell, Lonnie Napier, Sannie Overly, Darryl Owens, Tanya Pullin, Tom Riner, Carl Rollins II, Bart Rowland, Steven Rudy, Sal Santoro, John Will Stacy, Tommy Turner, Jim Wayne, and Brent Yonts.

Guests: Arch Gleason, Howard Kline, and Mary Harville - Kentucky Lottery Corporation; Mary Elizabeth Harrod, Kentucky Personnel Cabinet.

LRC Staff: Judy Fritz, Kevin Devlin, Brad Gross, Alisha Miller, Karen Powell, Greg Woosley, and Peggy Sciantarelli.

Kentucky Lottery Corporation – Overview of Financial Report

Guest speakers from the Kentucky Lottery Corporation (KLC) were Arch Gleason, President and CEO; Howard Kline, Senior Vice President and Chief Financial Officer; and Mary Harville, Senior Vice President and General Counsel. After introductory remarks by Mr. Gleason, Mr. Kline reviewed a slide presentation relating to lottery sales, net income history, distribution of lottery proceeds, operating results for FY 2007-2011, FY 2012 projections, and the FY 2013 budget. He pointed out that after two flat years of sales in 2010 and 2011, record sales of $817.7 million are projected for FY 2012, with $210.8 million projected to go to the Commonwealth and $8.5 million of unclaimed prize money to the KEES (Kentucky Educational Excellence Scholarships) Reserve Fund. Since inception of the lottery in 1989 through May 2012, sales have totaled $13.82 billion, with $866.7 million paid to retailers, $8.29 billion paid to winners, operating expenses of $961 million, and $3.69 billion earned for the Commonwealth.

From 1989 through June 30, 2011, $1.75 billion was distributed to the General Fund, including $214 million for the SEEK (Support Education Excellence in Kentucky) program; $1.66 billion to grant/scholarships and KEES Reserve; $36 million to literacy development; and $20.8 million to the Affordable Housing Trust Fund (FY 1999 through FY 2003). The KLC Board has budgeted dividend transfers of $223 million to the Commonwealth for FY 2013.

Mr. Gleason said he is grateful that the General Assembly in the 2012 budget conference decided not to reinstitute the 28 percent minimum requirement for dividend transfers to the Commonwealth. He said there was no question in his mind that the 28 percent mandate thwarted KLC’s ability to grow both sales and profit and was a factor in the decline in sales in 2010 and 2011. Removal of that provision will allow the lottery to be more competitive in the marketplace and ultimately more profitable in the future. The goal is to have a prize payout of 68.8 percent on instant (scratch off) tickets, which account for about 60 percent of sales. The lower level “free ticket” prize has been removed in some games and eliminated in others in order to increase cash prizes.

Mr. Gleason went on to say that in order to improve instant ticket sales, in the fall of 2012 KLC expects to launch a Player Engagement Rewards Program which will allow players to enter losing tickets at “kylottery.com” and accumulate points to redeem for merchandise and other prizes, as well as enter top prize drawings. The new program will be funded by one percent of the instant ticket prize fund and is expected to increase sales by 2-4 percent. States that have implemented this type of program have seen double-digit growth in ticket sales. “Points for prizes” programs are offered in Arkansas, Iowa, and Tennessee and will be launched this summer in North Carolina and Missouri.

When Representative Montell inquired, Mr. Gleason explained that the $214 million that went to the General Fund’s SEEK program was only for a two year period after the legislature dedicated lottery revenue to the SEEK program during the 1998 session. Subsequently, that revenue has been shifted from the General Fund to the KEES Reserve Fund and the need-based programs—Kentucky Tuition Grants (KTG) and College Access Program (CAP) grants.

Responding to questions from Senator Blevins, Mr. Gleason said that the great majority of winners are Kentucky residents but that there are winners from other states. Fifty cents of every dollar of ticket sales for the Powerball and Mega Millions games goes into a common prize pool shared among the states.

Senator Schickel said he would find it helpful to have a chart detailing how lottery proceeds have funded education for the past two years, and Mr. Gleason said KLC would be happy to provide that. He explained that in the current biennium the legislature in the budget process chose to dedicate 78 percent of net revenues from the Commonwealth to scholarship programs—after payment to the KEES Reserve Fund and literacy development—and 22 percent to higher education. When Senator Schickel asked whether there has been any discussion of again directing money to the SEEK program, Mr. Gleason said that this would be a prerogative of the General Assembly. He went on to say that the scholarship program has proven to be popular with the citizens of Kentucky and appears to be consistent with desires to raise the level of education. Representative Cherry added that he was a supporter of legislation that designated lottery proceeds specifically for education and that he is proud to be able to assure his constituents that all lottery dividends are funding scholarships and education initiatives in the Commonwealth.

Senator Thayer brought up for discussion the fact that KLC is restricted by statute from advertising how lottery proceeds are distributed. Mr. Gleason suggested that the original intent of the prohibition was to prevent tasteless advertising in order to promote sales. He said that, to his knowledge, the Kentucky lottery is the only U. S. lottery that has such a restriction. He believes that citizens have the right to know where the money goes, but legislation to remove the restriction has failed in the past. KLC currently spends approximately $10 million annually on advertising. When Senator Thayer asked how removal of the restriction might impact KLC’s advertising policy and costs, Mr. Gleason said KLC would probably dedicate an annual campaign to advertise how proceeds are used but that overall advertising expenditures would likely not increase. He added that public service announcements for the lottery are less achievable today because of the wide dispersion of advertising in the marketplace, even though KLC is a significant spender of advertising dollars. Mr. Gleason assured the Committee that if KLC were to be allowed to advertise where the money goes, it would be done responsibly and in good taste. Answering further questions from Senator Thayer, Mr. Gleason said he believes that advertising would lead to increased sales. Other lotteries estimate that 5-10 percent of sales may be attributable to such advertising, although it is difficult to pinpoint an exact amount. In Georgia it is apparent that the citizens appreciate the benefit of that state’s lottery, which funds the Hope scholarship program. He said the model for the Georgia lottery corporation came directly from the KLC model.

Senator Thayer said that whether or not advertising would lead to increased sales, it would definitely lead to more understanding that the proceeds are funding education, as was promised when the lottery began in 1988. He emphasized that he raised the issue because he feels it is worthy of discussion but that he is not at this time advocating one way or the other. Mr. Gleason said he would be an advocate for the General Assembly to again consider the issue. He noted that KLC annually provides each member of the General Assembly with a letter summarizing scholarship program expenditures in the members’ districts. He expressed appreciation to legislators who have submitted the letters for publication in local newspapers for the benefit of both citizens and the lottery.

Representative Rollins spoke about the history and benefits of the KEES and need-based scholarship programs. He went on to say that KEES may have been modeled somewhat after Georgia’s program but that, in his opinion, it is much better than the one in Georgia. It truly is an intervention strategy that encourages students to study harder in high school, go to college in Kentucky, and exceed in college. It is unfortunate that KLC cannot tell the general public that approximately $200 million of lottery proceeds annually goes toward funding scholarship programs. Representative Rollins indicated he would encourage any efforts to remove the advertising restriction.

When asked by Representative Graham, Mr. Gleason said that the great majority of advertising dollars is spent on newspaper, television, and media within Kentucky. There has been advertising to some extent in the Cincinnati and the Huntington/Charleston area of West Virginia. Advertising in Bowling Green can reach the Nashville market, and Paducah covers the western part of the state. Representative Graham also advocated allowing KLC to advertise how proceeds are used.

When asked by Representative King, Mr. Gleason explained that KLC is permitted to advertise on its web site how proceeds are distributed and that the restriction on advertising pertains to paid advertising. The web site also includes KLC's annual report. Discussion concluded, and Representative Cherry thanked the speakers.

State Employee Quarterly and Semi-Annual Reports

Guest speaker from the Personnel Cabinet was Mary Elizabeth Harrod, Director of the Division of Employee Management. Ms. Harrod provided a brief update of employment numbers for the Executive Branch. She said that there are currently 33,847 employees, compared to 33,967 at this same time in 2011. At the beginning of the current gubernatorial administration, the count was 35,325. The current workforce is the smallest it has been since 1974, based on the count of 33,700 on January 1, 2012, and the smallest 1974 count of 32,521.

When Representative Cherry asked about the number of contract and part-time employees, Ms. Harrod said she could provide information regarding the number of part-time employees but would have to contact the Finance and Administration Cabinet for information on the number of contract employees. Representative Cherry requested that State Government Committee staff research this question.

Representative Ford said he would like to see a breakdown of areas where the number of employees has decreased and also statistics relating to the number of Kentucky State Police. Ms. Harrod said she could provide that information also to the Committee. There were no further questions, and Representative Cherry thanked Ms. Harrod.

Kentucky Public Pensions Task Force

Representative Cherry and Senator Thayer, Co-chairs of the new Kentucky Public Pensions Task Force, briefed the Committee regarding the membership, meeting schedule, and planned activity of the Task Force, pending expected approval by the LRC. They spoke about the importance of addressing the serious problems facing public pension programs and noted that the Pew Center on the States has volunteered its expertise to assist the Task Force.

Adjournment

Discussion concluded, and the meeting was adjourned at 2:00 p.m.

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

Minutes of the 1st Meeting
of the 2012 Interim
June 14, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Thursday, June 14, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Tanya Pullin, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Joe Bowen, Vernie McGaha, Dennis Parrett, Kathy W. Stein, and Mike Wilson; Representatives Royce W. Adams, Linda Belcher, Regina Petrey Bunch, Dwight D. Butler, Mike Cherry, Tim Couch, Ron Crimm, Myron Dossett, Bill Farmer, David Floyd, Martha Jane King, Donna Mayfield, Terry Mills, Tim Moore, Rick G. Nelson, Tom Riner, Carl Rollins II, and John Tilley.

Guests: Larry Roberts, Executive Director, Kentucky State Building and Trades Council; Matt Jones, Bruce Dantley, United Association, Veterans in Piping Training Program; Gene Kiser, Executive Director, Kentucky Office of Homeland Security; and Steven Bullard, Kentucky Department of Military Affairs.

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

Resolutions

Representative Crimm read a resolution in memory and honor of Corporal Aaron M. Faust. Representative Pullin moved to adopt the resolution, Representative Mills seconded the motion, and the motion was adopted.

Representative Mayfield read a resolution in memory and honor of Private First Class Dustin D. Gross. Representative Pullin moved to adopt the resolution. Senator Parrott seconded the motion, and the motion was adopted.

Veterans in Piping Training Program

Bruce Dantley, with the United Association of Plumbers, Pipefitters, and Sprinkler-fitters (UA), gave a brief overview of the Veterans in Piping Program (VIP). Mr. Dantley stated that veterans returning from Iraq and Afghanistan, ages 22-24, have an unemployment rate of more than three times that of non-veterans in the same age group. He explained why returning veterans are struggling to find work. One in five have experienced Post-Traumatic Stress Disorder (PTSD), many employers refuse to hire veterans because they assume the veteran will have PTSD and it will affect their performance on the job, and many veterans experience difficulties when re-entering the civilian world because it is less structured than military life.

Mr. Dantley stated that one solution to the problem is the UA, which has 390,000 members, 212 training facilities, and has partnered with the U.S. military to create the UA Veterans In Piping (VIP) Program. The program provides returning veterans with two weeks of transitional training to civilian life and then sixteen weeks of accelerated welding training. The training is free to veterans who, upon completion, are placed in construction careers nationwide, helping to replenish an aging workforce while rebuilding America's infrastructure. Welders are in high demand nationwide, making job opportunities plentiful for welders who are well-trained and highly-skilled after their intensive training program. Mr. Dantley added that the UA and the U.S. military can provide a positive re-entry into civilian life and long-term, lucrative careers for those who have served their country with bravery and honor.

Matt Jones, a recent graduate of the VIP Program, briefly described his experience applying for and participating in the program, as well as his placement in a welding career.

In response to a question from Chair Pullin, Mr. Dantley stated that one of the Kentucky representatives for the VIP Program is Jamie Rucker. Larry Roberts, Executive Director of the Kentucky State Buildings and Trades Council, stated that he would get specific statistics of veterans and welding positions for Kentucky and send them to the committee.

In response to a question from Representative Floyd, Mr. Dantley stated that no other business has stepped up to the plate to help veterans with training and employment like the UA VIP has and paying the full price for the veterans' training. The UA VIP did a survey and found that they were in need of 1,000 welders in the immediate future.

In response to a question from Representative Belcher, Mr. Dantley stated that 239 veterans have graduated the training program since it started in 2009.

Kentucky Office of Homeland Security Update

Gene Kiser, Executive Director, Kentucky Office of Homeland Security (KOHS), gave an update on the KOHS Program Areas. Mr. Kiser stated that the Kentucky Intelligence Fusion Center (KIFC) disseminates intelligence information and is an all crimes resource for the local, state, and federal entity. The State Fire Marshal and Public Health are the newest members located in the KIFC. KOHS also provides statewide intelligence classes for law enforcement and fire services via the KIFC.

Mr. Kiser stated that the Interoperable Communications/Command trailers continue to support local responders. There are four communications trailers strategically placed across Kentucky. Those communications trailers were used during the floods in the Spring of 2011 where they acted as the EOC in Livingston County when the county was evacuated. The trailers were also used when the bridge collapsed in Cadiz, and all four trailers operated at one location for the first time after the West Liberty tornado.

Mr. Kiser discussed the grant program and the various authorized equipment used by first responders that are eligible for grant funds. Mr. Kiser added that funding received for local grants in fiscal year 2004 was $27,616,000 and is down to $2,241,052 in fiscal year 2012. Mr. Kiser stated that the total funds obligated for the Law Enforcement Protection Program, since July 1, 2011, has been $684,098. This funding paid for body armor, three canine vests, patrol rifles, shotguns and ammunition, duty weapons and ammunition, and tasers and cartridges.

Mr. Kiser listed the upcoming activities of the KOHS, including revising the State Preparedness Report/State Strategic Plan leading an exercise at the Kentucky State Fairgrounds, and doing a full scale exercise for nuclear detection at Louisville Metro government. KOHS will also be announcing FY-12 grants, and will have an executive reorganization order for the KIFC.

In response to a question from Representative Floyd, Mr. Kiser stated that KOHS does not provide first responders, they provide training for them. Emergency management, among others, provides the first responders.

In response to a question from Senator Wilson, Mr. Kiser stated that KOHS provides grant management oversight every year, however; this is the first year that the NIMS Program will be managed in house.

Other Business

Chair Pullin called on Representative Tim Moore to give a brief report on the May NCSL Military and Veterans' Affairs Task Force Meeting. A copy of the highlights and key issues of the meeting are a part of this official record, which is located in the Legislative Research Commission Library.

There being no further business, the meeting adjourned.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes of the 6th Meeting
of the 2012 Interim
June 19, 2012

Call to Order and Roll Call

The 6th meeting of the Capital Projects and Bond Oversight Committee was held on Tuesday, June 19, 2012, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Chairman; Senators Tom Buford, Jared Carpenter, and Julian M. Carroll; Representatives Steven Rudy, and Jim Wayne.

Guests: Larry Blake, Assistant Vice President for Facilities Management, Northern Kentucky University; John Hicks, Governor's Office for Policy and Management; Scott Aubrey, Director, Division of Real Properties; Sandy Williams, Financial Analyst, Kentucky Infrastructure Authority; David Cox, Executive Director, Kentucky State

Board of Licensure for Professional Engineers and Land Surveyors; Julie Anderson, US Department of Agriculture Rural Development Office; John Covington, Executive Director, Kentucky Infrastructure Authority; Ed Basquill, Project Manager, Oldham County Environmental Authority; Brett Antle, Deputy Director, Office of Financial Management.

LRC Staff: Kristi Culpepper, Josh Nacey, and Christine Robertson.

Approval of Minutes

Representative Rudy made a motion to approve the minutes of the May 15, 2012, meeting. The motion was seconded by Senator Buford and approved by voice vote.

Information Items

Kristi Culpepper, Committee Staff Administrator, presented three items for members to review. The first item was a response to questions asked about the Schnellenberger Football Complex during the May 15, 2012, meeting. Members had asked how much money had been raised for the unbudgeted capital project, which is to be constructed using private funds. Larry Owsley, Vice President for Business Affairs at the University of Louisville, advised via email to committee staff that no funds had yet been raised, and construction would not begin without the funds in place.

The second item was a report from Moody's Investor Service explaining the rating agency's decision to downgrade the underlying credit rating on the Kentucky Economic Development Finance Authority Louisville Arena Project Revenue bond issue two notches to Ba2, which is considered a speculative grade or "junk bond" rating.

Senator Leeper said he would speak with Representative Rand and co-chair Glenn to see if they would be interested in discussing the matter at a future Appropriations and Revenue Committee meeting or next month's Capital Project and Bond Oversight Committee meeting.

The third item was Moody's annual state debt medians report.

Change in fund source, budgeted project

Larry Blake, Assistant Vice President for Facilities Management at Northern Kentucky University (NKU), addressed the committee regarding the university's Renew/Renovate University Center Phase II project. Mr. Blake said that the project has a scope of $12 million in third party financing and that NKU intends to substitute 15 percent of that scope ($1,795,000) with institutional restricted funds. Funds are available for this purpose and were not specifically budgeted for another purpose. In response to questions from Senator Leeper, Mr. Blake said that the substitution was being made to avoid costs associated with financing the total scope and that the university had already secured financing for the remainder of the project with Fifth Third Bank at 1.68 percent. In response to a question from Representative Wayne, Mr. Blake said that the financing was obtained through a competitive process. No committee action was required.

Project reports from the Finance and Administration Cabinet

John Hicks, Deputy State Budget Director, presented two pool projects in excess of $600,000. The first project will replace two 500-ton chillers at the Transportation Cabinet Office Building and the State Office Building/Annex that have reached the end of their useful life with one 1,200-ton chiller. The appropriation is $800,000. The second project will replace and relocate the boiler plant that serves the L & N Building in downtown Louisville. The appropriation is $750,000. No committee action was required.

Lease reports submitted by the Finance and Administration Cabinet

Scott Aubrey, Director of the Division of Real Properties, presented two reports of amortization of leasehold improvements to state leased property. The first was for the Cabinet for Health and Family Services located at 102 Athletic Drive in Frankfort. The improvements include electrical outlets to support new equipment for the mail room, electrical and duct work to facilitate the installation of a temporary (backup) cooling unit in four network closets, and the creation of a raceway and installation of a conduit between the building and backup generator which would allow for connection to the agency's security system. The low bid of $5,208 was accepted, and the cost will be amortized through the lease expiration date of June 30, 2014.

The second report was for the Cabinet for Health and Family Services located at 310 Whittington Parkway in Louisville. The improvements include construction of full-height walls in the staff break room to replace the half walls already present. The goal of the project is to reduce noise pollution in adjacent office areas. The low bid of $3,040 was accepted and the cost will be amortized through the lease expiration date of June 30, 2016. In response to a question from Representative Wayne, Mr. Aubrey said that he did not know if all the safety measures outlined by the Boni Bill (2007 SB 59) had been implemented, but he would check and report back to committee staff.

Mr. Aubrey presented two emergency leases. The first was for four acres of land in Magoffin County used for the temporary storage and destruction of debris due to weather events in February and March 2012. A termination of the agreement, which went into effect on April 6, 2012, has been sent to the lessor and is due to be cancelled on June 30, 2012. The second emergency lease was for the Cabinet for Health and Family Services in Scott County for lease of their current office space while advertisement for a new lease is being conducted. No committee action was required for any of the lease items presented.

Kentucky Infrastructure Authority (KIA) Presentation on Engineering Fees

Following several committee meetings at which members had questions regarding engineering fees on KIA projects, Sandy Williams, KIA Financial Analyst, arranged a panel to present a more in-depth explanation of the engineering fees associated with KIA projects. She was joined by John Covington, KIA Executive Director; David Cox, Executive Director, Kentucky State Board of Licensure for Professional Engineers; and Julie Anderson, US Department of Agriculture, Rural Development Office engineer.

Mr. Covington said that KIA bonds have received AAA ratings from all three ratings agencies, recently received a clean opinion from an independent auditor, and also received a positive report from the USEPA. Projects funded by KIA are reviewed twice publicly, once by the KIA Board and once by the committee.

Ms. Williams said that KIA and the Division of Water (DOW) work together to analyze a borrower's loan application. The engineering fee is a summation of five subcategories and is not just the cost of design. The fee also includes items such as planning and research, cost to hire an on-site inspector, and cost of preparing environmental review. Only three are covered under guidelines of percentages in the Rural Development (RD) fee scale, which KIA uses to evaluate engineering fees. The other two subcategories are considered additional professional services and are negotiated separately. The need for additional services is project specific and can differ between projects that appear similar.

Mr. Cox told the committee about the requirements to obtain engineering licensure in Kentucky, the statutes governing engineering, and the engineer's code of conduct. He explained that only a professional engineer is allowed by law to perform certain functions associated with projects.

Ms. Anderson presented information on the US Department of Agriculture's Rural Development (RD) fee scale. The scale was designed to help streamline the process for obtaining fair and equitable engineering fees. It is based on a nationwide survey conducted by American Society of Civil Engineers and is also compared to the construction cost index published every ten years by ENR (Engineering News Record). The fee guideline is for a set number of deliverables, and on each project those items are the same. However, there are additional services on each project, such as preliminary study, that are not included in the fee scale. No project will fall exactly on the scale because the fee scale only covers design, construction administration, close out, and resident inspection as outlined in the agreement for engineering services.

In response to questions from Senator Buford regarding a project on the committee's agenda, Ms. Anderson said an engineering-services-to-construction-costs ratio of 20 percent would not be unreasonable. Typically, modifications like the project Senator Buford referenced are more expensive depending on complexity, the discharge stream, and mitigating measures for environmental concerns. Ms. Anderson said she would ask for documentation as to why the costs are above the fee scale.

In response to a question from Senator Carroll, Ms. Williams said that the Division of Water requires the stamp of a professional engineer on all plans submitted. In response to follow up questions, Ms. Williams said that the resident inspector is typically not an engineer. Ms. Williams explained that the dollar amount listed in the engineering fees category is not money being paid directly to the engineer. It would also include all the planning, inspection and up front work that needs to be completed for the engineer to do the job. Senator Carroll suggested that the engineering line item could be broken down to show which fees are paid the engineer, and which are associated with the engineer but paid to other professionals so that fees paid directly to the engineer do not appear inflated. Mr. Covington said that engineering contracts are submitted to the Division of Water for review. In response to additional follow up questions, Ms. Williams said that KIA does receive a breakdown for each category of service in the engineering fees.

Senator Carpenter said that the reason for scrutinizing engineering costs is to keep costs down, where possible, so that user fees do not have to be raised more than necessary.

In response to a question from Representative Wayne, Mr. Covington said that KIA requires that borrowers follow whatever procurement code applies to for their jurisdiction. Mr. Covington said that where unforeseen costs arise, the procedure is similar to the way change orders are handled in construction projects. In response to follow up questions, Ms. Anderson said that the RD fee scale is just a guide for three of the five categories in the engineering fees component. Representative Wayne questioned whether there was favoritism in choosing engineering firms, who then charge inflated rates, the costs of which are passed on to consumers. Mr. Covington replied that KIA did not want to overstep its bounds and dictate to local jurisdictions who to hire as engineers. In response to another follow-up question, Mr. Covington said that KIA tries to ensure that the process is as fair and equitable as possible.

In response to a question from Senator Carpenter, Mr. Covington explained that there are separate fee schedules for design and inspection.

Senator Leeper commented that it would be helpful to the committee to see a breakdown in engineering fees on the

Executive Summary that KIA provides on projects submitted for approval. He said it appears that in the majority of projects, the engineering-to-construction ratio is higher than the RD fee scale, even when design and inspection are factored in. He said that KIA does review projects for excess, but that the committee, in an oversight capacity, did not currently have enough information to make the same judgment. Senator Leeper asked staff to include the RD fee scale percentages on future committee analysis sheets. Senator Leeper also requested information about using the right people to perform the necessary work.

In response to a question from Senator Buford, Ms. Williams said that KIA asks borrowers to obtain at least two bids on each project. Mr. Covington said that borrowers go through a procurement process as described by law. Engineers are procured under a professional services contract and are not bid, but engineers submit proposals. Fees are determined after an engineer is selected. Mr. Cox said that if the borrower does not approve of the fees that an engineer proposes, the borrower is free to negotiate with another engineering firm of their choosing.

In response to a comment from Representative Wayne, Mr. Covington said KIA tries to educate utilities on the RD scale so they are knowledgeable when they negotiate with engineering firms. KIA also does not want to overstep its bounds. In response to a follow-up question, Mr. Covington said that KIA does not have the power to tell borrowers what to pay.

In response to a question from Representative Rudy, Mr. Covington said that KIA would provide the breakdown of engineering costs to the committee and that better information would answer a lot of questions the committee has.

Senator Leeper thanked the presenters for their information on engineering fees. In response to a question about median household income (MHI) figures being used by KIA, Mr. Covington said that KIA was using the figures they had available at the time for the current funding cycle. Ms. Williams said that going forward, KIA will use the most up-to-date MHI information available through the Kentucky State Data Center. In response to a question from Senator Carroll, Ms. Williams said MHI is used by KIA in determining interest rates, but the KIA Board does have discretion to lower rates for a particular project if the borrower is in dire financial stress and could not make a payment. The borrower could ask for interest rate relief if the financial condition exists.

Kentucky Infrastructure Authority (KIA) Fund A Loans

Sandy Williams presented nine Fund A loans for approval. The first was an increase of $86,751 to a previously approved loan for City of Warsaw, bringing the loan total to $2,146,907. The increase is necessary due to final engineering costs being over the estimate and to change orders.

The second item was an increase of $446,174 to a previously approved loan for the Oldham County Environmental Authority (OCEA) Buckner project, bringing the loan total to $2,846,174. The increase will fund a design change to the expanded headworks at the Kentucky State Reformatory waste water treatment plant. In response to a question from Senator Leeper, Ms. Williams said KIA gets very involved when multiple scope increases are sought from a borrower, as is the case with OCEA this month. This increase will address flushables coming from the reformatory that would not be common in standard household wastewater. In response to a question from Representative Wayne, Mr. Basquill, Project Manager with OCEA, said there was a long term lease agreement between OCEA and the reformatory, which has allowed OCEA to have 35 additional acres of land for expansion, and in return OCEA treats their wastewater. In response to a question from Senator Buford, Mr. Basquill said that OCEA received and reviewed proposals from seven different engineering firms and that each of their projects this month has a different engineer.

The third item was an increase of $478,420 to a previously approved loan for the OCEA Orchard Grass Willow Creek project, bringing the loan total to $2,601,420. The increase will fund additional inflow and infiltration work in the Ash Avenue collection area. KIA permitted an increase to the existing loan, rather than approve a new loan, because it will result in payments being made to KIA sooner, rather than delaying payments with a second loan. These projects are similar in scope, timeline, and end date. In response to a question from Senator Leeper, Mr. Basquill said that negotiations with MSD are still ongoing regarding Metropolitan Sewer District accepting flow from Oldham County and the two groups have met eight times in the past eight weeks. Regarding this loan increase for additional inflow and infiltration work, whether OCEA builds a new plant or ends up contracting with MSD, it will not be paying for storm water to be treated, only wastewater.

The fourth Fund A item was an increase of $710,000 to a previously approved loan to the City of Hopkinsville for the benefit of Hopkinsville Water Environment Authority, bringing the loan total to $7,810,000. The increase was necessary due to increased construction costs.

The fifth Fund A item was an increase of $270,588 to a previously approved loan for the Oldham County Environmental Authority Covered Bridge project, bringing the new loan total to $670,588. The increase is necessary to 2,200 linear feet of eight-inch force main to compensate for insufficient grade in the existing gravity line between two lift stations. In response to a question from Senator Leeper, Mr. Basquill said that OCEA has seen a 70 percent rate increase over four years. In response to a follow up question, Mr. Basquill said that rates will continue to go up, probably another six percent.

The sixth fund A loan request was for the City of Barbourville in the amount of $5,651,270 for expansion of the wastewater treatment plant from 1 million gallons per day to 1.5 million gallons of water per day. In response to a question from Senator Leeper, Ms. Williams said that residential rates will more than double as a result of this loan. In response to a follow-up question from Senator Leeper regarding median household income in Barbourville, Ms. Williams said that KIA does consider affordability when making loans and that sometimes when borrowers are told that they will have to increase rates as a condition of a loan from KIA, the local entities refuse. Mr. Covington said that when rate increases are significant, KIA requires a representative from the borrower to be present at the KIA board meeting and that rate increases are something KIA board members are concerned about. In response to a question from Senator Buford, Mr. Covington said that payroll taxes are not usually examined, only water and sewer rates are.

The seventh Fund A loan request was in the amount of $1,575,000 to the City of Earlington to make improvements in the existing sewer collection system.

The eighth Fund A loan request was in the amount of $970,000 to the City of Russell to construct facilities in order to comply with DOW's regulations requiring treatment of wastewater.

The ninth Fund A loan request was in the amount of $2,000,000 to the city of Lawrenceburg for a sanitary sewer evaluation survey.

Representative Rudy made a motion to approve all nine Fund A loans and loan increases. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

KIA Fund B Loan

Ms. Williams presented one Fund B loan in the amount of $92,000 to the Nebo Water District to enable the system to meet residual and turnover requirements in 2014. Senator Buford made a motion to approve the loan. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

KIA Fund C Loan

Ms. Williams presented one Fund C loan assumption in the amount of $40,000. The City of Paducah, for the benefit of Paducah Water Works, will assume the outstanding debt of the Hendron Water District as a result of a merger of the Hendron System into the Paducah system that was executed on April 16, 2012. Senator Carroll made a motion to approve the loan assumption. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

KIA Fund F Loans

Ms. Williams presented two Fund F loans. The first was in the amount of $2,000,000 to the Lyon County Water District for various water system improvements to reduce water loss. The second was an amended loan in the amount of $1,875,000 to the City of Campbellsville for the replacement of approximately 24,000 linear feet of piping. The amendment removes the requirement for a rate increase and a rate study. Representative Rudy made a motion to approve the Fund F loans. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

KIA 2020 Program Grant

Ms. Williams presented one 2020 Program Grant in the amount of $69,262 to the City of Sebree to fund initial planning and preliminary engineering fees associated with replacement of water lines. This grant will exhaust the funds in the 2020 Grant account. Senator Carroll made a motion to approve the grant. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

New School Bond Issues with School Facilities Construction Commission debt service participation

Brett Antle, Deputy Director of the Office of Financial Management, reported six new SFCC bond issues. The total estimated par amount of the bonds is $49.3 million. No local tax increases were anticipated to finance these projects. Representative Rudy made a motion to approve the school bond issues. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

With there being no further business, a motion was made to adjourn the meeting. The motion was seconded by Senator Carroll, and the meeting adjourned at 3:02 PM.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE

Minutes of the Meeting

June 12, 2012

Call to Order and Roll Call

The meeting of the Education Assessment and Accountability Review Subcommittee was held on Tuesday, June 12, 2012, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Ted Edmonds, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Ted Edmonds, Co-Chair; Senators Vernie McGaha, Gerald A. Neal, and Ken Winters; Representatives Linda Belcher, Bill Farmer, and Mary Lou Marzian.

Legislative Guest: Representative Derrick Graham.

Guest List: Brigitte Ramsey, Kentucky Board of Education and Wayne Young, Kentucky Association of School Administrators.

LRC Staff: Ben Boggs, Ken Warlick, Kristi Henderson, and Lisa Moore.

Minutes of December 12, 2011 Meeting

Representative Marzian moved to adopt the minutes of the December 12, 2011, meeting, and Representative Farmer seconded the motion. The motion carried.

Review of Administrative Regulations:

703 KAR 5:002

703 KAR 5:140

703 KAR 5:240

Mr. Kevin Brown, Associate Commissioner and General Counsel, and Ms. Rhonda Sims, Director of Support and Research, Office of Assessment and Accountability, Kentucky Department of Education (KDE), explained administrative regulations 703 KAR 5:002, Repeal of Commonwealth Assessment Testing System (CATS) Regulations; 703 KAR 5:140, Report Card Content; and 703 KAR 5:240, Definitions for School and District Classifications, and relating technical amendments.

Responding to a question from Senator McGaha, Ms. Sims said middle schools comprise many different configurations. The new accountability system tracks the percentile rank of how schools perform. A K-8 school would receive a report for the elementary portion and the middle school portion in order to make statewide comparisons.

Representative Belcher moved to accept the technical amendments to the administrative regulations, and Representative Marzian seconded the motion. The motion carried.

Office of Education Accountability Reports

Ms. Marcia Ford Seiler, Director, Office of Education Accountability (OEA), said KRS 7.410 Section (2)(c)(8) directs the OEA to prepare an annual report of the status and results of the annual research agenda, a summary of completed investigative activity, and other items of significance to the Education Accountability Review Subcommittee (EAARS). The annual research agenda is developed by the members of EAARS, with input by OEA staff, and approval by the full committee. The investigative process has not changed in the last ten years and is included in detail in the annual report in the meeting folder located in the Legislative Research Commission (LRC) library.

Ms. Karen Timmel, Analyst, OEA, said OEA only acts on written complaints. The OEA received 565 written complaints in 2011. Fifty of these investigative cases were opened, 57 were closed, and 42 cases are pending. The number of new cases opened changes over the years. Nearly 70 new cases were opened in 2008 and 2009, and only 47 new cases in 2010. OEA closed more cases this year than in the past and continues to work on reducing the case backlog.

Ms. Timmel said the range of complaints received by the OEA staff is broad. Some issues such as board member eligibility, board member interference in personnel matters, and the bullying of students by other students or teachers tend to occur more often. Some complaints are not acted upon because staff has deemed that no school laws have been violated. Others are resolved by staff contacting the school personnel by phone or referring them to the appropriate agency.

Ms. Seiler said KRS 7.410 (2)(c)4, requires that the OEA make recommendations for legislative action to EAARS. OEA is recommending that two statutes be amended as a result of issues directly encountered by OEA through investigations.

Ms. Timmel said KRS 160.990 establishes various penalties for violations of statutes within KRS Chapter 160. The table listing statutory penalties is located in the meeting folder in the LRC library. The fines and penalties established in the statute are similar to those established in criminal statutes. However, none of the cited statutes delineate a mental state--such as knowingly or willingly--for suffering the penalty as are found in criminal statutes. Additionally, the statute fails to specifically state who shall make the determination of guilt or who will assess and collect the fine, except KRS 160.990(5), which states the Kentucky Board of Education should withhold $1,000 in Support Educational Excellence in Kentucky (SEEK) funds for each violation of KRS 160.380(3). OEA recommends additional statutory guidance providing specific detail as to what agency or court shall make the determination of guilt, what mental state is required for guilt, and who shall enforce and collect the fine.

Responding to a question from Representative Farmer, Ms. Seiler said the statute does not give OEA the authority to collect a fine imposed as a penalty. OEA's role is administrative, focused on collecting and analyzing data. OEA does not conduct hearings or determine guilt. Ms. Timmel said the Attorney General has opined that OEA does not have enforcement authority to prosecute an offense under the current statute. OEA conducts the investigation and attempts to resolve any wrongdoing to ensure it does not happen again. Ms. Seiler said it would be helpful if the statute stated specifically which agency would impose and collect the penalty fines.

Ms. Seiler said KRS 159.035(2) requires principals to grant students up to ten days of excused absence to pursue an educational enhancement opportunity (EEO). The legislative expectation is that the activity for which the excuse is granted would provide a high-quality, educationally relevant experience that supports the student's in-school program. The student is credited with an excused absence for up to ten days and is considered present for the purposes of calculating average daily attendance for SEEK. OEA has received complaints that districts have approved excessive numbers of EEO days, and some of the approved activities are not up to the rigorous standards set in statute.

Ms. Seiler said that OEA obtained data related to the EEO issue from KDE. Three years of data are available, and 2012 data has been requested. In 2009, there were 76,942 days coded as EEO for 29,016 students statewide. This number nearly doubled in 2010, with 127,294 days coded as EEO days for 42,984 students. In 2010, the Commissioner of Education sent all district superintendents a notice explaining the statutory requirements for use of EEO days. Subsequent to this notice, there was a decline in the use of EEO days. In 2011, the numbers decreased to 113,213 days for 41,826 students.

Ms. Seiler said the use of EEO days varies widely from district to district. In over 100 districts, fewer than 10 percent of the total student population were granted an EEO day. However in 2010, there were eight districts in which more than 25 percent of the student population was coded as participating in an EEO day. One district had 78 percent and another 91 percent of the students coded as using at least one EEO day. Closer examination of the data shows nearly entire populations of some schools coded on certain days as participating in an EEO day.

Ms. Seiler said in order for a principal to approve an EEO day, he or she must determine that the activity has significant educational value. Examples that are provided in the statute are participation in educational foreign exchange programs or intensive instructional, experiential, or performance programs in English, mathematics, science, social studies, the arts, and foreign language. OEA has not examined school records to determine if the approved activities fall within the range of programs intended by the statute. Some districts have undergone KDE attendance audits, and results of the audits indicate insufficient documentation for the days coded as EEO.

Ms. Seiler said the General Assembly should consider requesting KDE develop a regulation that more specifically defines what activities can be appropriately approved for purposes of this statute. Consideration could also be given to a study of the issue to determine how the statute is being implemented.

Responding to Representative Marzian, Ms. Seiler said OEA has not reviewed the documentation. She said KDE is concerned that no districts involved in the attendance audits had the appropriate documentation for its EEO absence days. Representative Marzian said the data are alarming and feels the statute needs to be reviewed. She supported the legislation but did not anticipate the widespread abuse.

In response to a question from Senator McGaha, Ms. Seiler said more specific data are needed to see if and how the EEO excused absence policy is being abused. She said some school districts will allow large populations of students to miss school as an EEO day if there is a big event in the community.

Senator McGaha said the bill had a great purpose and that he supported it, but it appears as if school districts may be taking too much advantage. He would like OEA to provide members with specific data related to the school days missed centered around vacations, breaks, Oaks Day, hunting season days, Kentucky State Fair, and testing days. He would like the OEA to identify specific clusters that may be widely abused. He also said school districts that had 90 percent of students absent on the same day should be contacted asking for clarification.

Representative Farmer noted that less than ten percent of students are utilizing an EEO day as an absence. He does not agree that the legislation needs to be strengthened. He said it is an administrative error and more training is needed for personnel to classify student absences correctly.

Responding to Representative Belcher, Ms. Seiler said the principal reviews each student request for an EEO day and approves or disapproves on an individual basis. She is not sure if the "take your child to work day" would fall into the acceptable category. It would probably depend on where the parent worked and the appropriate documentation that identified the academic enrichment for the student. Representative Belcher believes the "take your child to work day" is a valuable educational experience that should be excused as an EEO day.

Responding to questions from Representative Graham, Ms. Seiler said students attending the Kentucky State Fair are excused as allowable EEO days. Representative Graham said his school required students to bring ticket stubs to school the next day as proof of their attendance. Ms. Seiler said some elementary schools have large percentages of EEO absences, and it is not just occurring at the high school level.

In response to a question from Senator Winters, Ms. Seiler said OEA has copies of forms for students to complete to submit for EEO day approval. OEA does not have the approved applications with the principal's signature. Senator Winters would like a summary of what EEO days are being used for.

Ms. Seiler reported to members that the OEA new district data profiles should be ready in August or September 2012.

Approval of Office Education Accountability Reports:

"On-Behalf Payments"

"Funding Equity"

"Career and College Readiness"

Senator McGaha moved to approve the three OEA reports, and Representative Farmer seconded the motion. Motion carried.

With no further business before the committee, the meeting adjourned at 2:00 p.m.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

June 14, 2012

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, June 14, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Greg Hager, Committee Staff Administrator, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senators Tom Buford, Perry B. Clark, Jimmy Higdon, Vernie McGaha, Joey Pendleton, Dan "Malano" Seum, and Brandon Smith; Representatives Dwight D. Butler, Leslie Combs, Jim DeCesare, Terry Mills, Rick Rand, Arnold Simpson, and Fitz Steele.

Guests: Eric Friedlander, Deputy Secretary; Stephen R. Hall, Commissioner; Betsy Dunnigan, Deputy Commissioner; Natalie Kelly, Children's Branch Manager, Division of Behavioral Health, Program Development Branch; Department for Behavioral Health, Developmental, and Intellectual Disabilities, Cabinet for Health and Family Services. Dr. Terry Holliday, Commissioner; Ken Draut, Associate Commissioner, Office of Assessment and Accountability; Felicia Smith, Associate Commissioner, Office of Next Generation Learners; Kentucky Department of Education. Dr. Robert L. King, President; Aaron Thompson, Senior Vice President for Academic Affairs; Council on Postsecondary Education. Dr. Phillip Rogers, Executive Director; Robert Brown, Director, Division of Professional Learning and Assessment; Dr. Kim Walters-Parker, Director, Division of Educator Preparation; Linda Nickel, Project Specialist; Education Professional Standards Board.

LRC Staff: Greg Hager, Committee Staff Administrator; Colleen Kennedy; Katie Kirkland; Van Knowles; Lora Littleton; Jean Ann Myatt; William Spears; Leonard Evans, Graduate Fellow; Jenna Skop, Graduate Fellow; Stella Mountain, Committee Assistant.

Election of Senate and House co-chairs

Upon nomination made by Senator Seum, and seconded by Senator McGaha, Senator Higdon was nominated for the position of Senate Co-chair.

Upon motion made by Senator McGaha, and seconded by Senator Buford that nominations cease, Senator Higdon was elected Senate Co-chair by acclamation, without objection.

Upon nomination made by Representative Combs, and seconded by Representative Rand, Representative Steele was nominated for the position of House Co-chair.

Upon motion made by Representative Simpson, and seconded by Representative Combs that nominations cease, Representative Steele was elected House Co-chair by acclamation, without objection.

Approve Minutes for March 19, 2012

Upon motion made by Representative Simpson and seconded by Representative Mills, the minutes of the March 19, 2012 meeting were approved by voice vote, without objection.

Senator Higdon recognized new committee members Senator Tom Buford and Representative Jim DeCesare and noted that Senator Brandon Smith has returned to the committee. He announced that the August meeting would be Tuesday, August 14 at 10 am.

Follow-up on Impact Plus

Mr. Friedlander said that cabinet officials have been unable to discuss the termination of a specified provider due to an ongoing investigation. Because the Office of Attorney General will not be pursuing a criminal or civil case related to this provider, the cabinet is able to provide the memo distributed to committee members today. The memo describes a timeline of events related to the termination. The cabinet has sent a letter inviting the provider to join the cabinet in working through issues. The cabinet is working to improve their review process. Impact Plus serves nearly 7,000 children with severe emotional disturbance.

Senator Higdon commented that the main goals are that children are served and that taxpayers are protected. Based on his review of the audits of existing providers, it does not appear that there were follow-ups for providers with failing scores. Hopefully, the cabinet is looking at a new review system. He summarized the results of some of the audits of providers, including a 2009 audit that cited 47 deficiencies, a 2010 audit that cited 38 deficiencies, a 2011 audit that cited 62 deficiencies, a 2010 audit that cited 39 deficiencies, and a 2010 audit that cited 43 deficiencies. Roepke, a provider that was terminated, was cited for 1,000 occurrences of no notes or blank notes in 2008. Inappropriate billing continued according to a 2009 audit. Roepke ended up owing the state $108,000. It was not noted anywhere whether a recoupment had been received by the state. Senator Higdon asked what is being done to address such concerns. Mr. Friedlander said that information will be provided on what follow-up has occurred. How reviewing and scoring are done need to be revisited.

In response to a question from Representative Steele, Mr. Friedlander said that he would be willing to return to provide information related to the Impact Plus provider that was terminated in 2011.

Representative Mills asked Mr. Friedlander to summarize the document provided to committee members today. Mr. Friedlander said that it is a timeline from the time the cabinet made contact with the provider. The document reviews concerns related to overlapping billing.

In response to questions from Senator Buford, Ms. Dunnigan said that Impact Plus would not be included in the renewed contract with Eastern Kentucky University (EKU). Impact Plus program employees are now state employees. The department has a contract with EKU for other staff positions currently within the department that will be renewed for the upcoming year. The amount of the renewed contract will be reported to the committee.

Senator Buford asked for examples of likely changes to the Impact Plus program. Mr. Hall said that the scoring system for site reviews would be revised. Ms. Dunnigan said that there may have been issues with one or a few records from the sample used in the review. Mr. Friedlander said that the department did not share the review tools with providers but will now do so.

Senator Buford asked if the contract awarded to EKU was put out for bid. Ms. Dunnigan said that university contracts are not put out for bidding. Clarifying her answer to an earlier question from Senator Buford, she explained that four employees with EKU will be moved to state positions and will be paid in the meantime through the larger contract with EKU.

In response to questions from Senator McGaha, Ms. Kelly said there were four scoring categories. The average of the clinical and billing scores should be above 85 percent or corrective actions are required. Corrective action is also required if either the clinical or billing category is below 80 percent. For the overall quality measurement, changes are suggested, not required. The provider's policy and procedures manual is also reviewed.

Senator Smith said that administration of Impact Plus has been one of his major concerns. In response to a question from Senator Smith, Mr. Friedlander and Mr. Hall agreed that the cabinet could report on the status of the termination case by the next Program Review meeting. Senator Higdon said that this would be on the agenda for the next meeting.

Senator Higdon asked if there has been any consideration given to providing Impact Plus services through managed care. This would give Impact Plus subcontractors provider numbers and due process. Mr. Friedlander said that he is not in a position to commit. Funding for Impact Plus is complex, but consideration could be given to providing services through managed care.

Representative DeCesare noted that some reviews are nearly 3 years old. In response to his question about scheduling of follow-ups, Ms. Kelly said that reviews are ongoing.

Implementation of Senate Bill 1 (2009)

Commissioner Holliday noted that a presentation on SB 1 will be on the agenda for the upcoming Southern Legislative Conference, which is an indicator of other states' interest in what Kentucky is doing. The first major requirement of SB 1 is new, more rigorous academic standards aligned with the entry requirements for college. Delivery strategies for the unified plan for college and career readiness include persistence-to-graduate processes for all students, alignment of courses and assessment, the Unbridled Learning Accountability Model, targeted interventions for high school students who are unprepared for the next step in learning, career readiness pathways, acceleration programs (advanced placement), academic and career advising, and priority schools. Double-digit gains in language arts and math have been reported for all 41 priority (low-performing) schools. The Kentucky Board of Education has established two goals related to college/career readiness: by 2015 increase the average freshman graduation rate from 76 percent to 90 percent and increase the percentage of students who are college or career ready from 34 percent to 67 percent.

Kentucky worked with the national Common Core Standards Initiative coalition to develop new standards. In February 2010, the Kentucky Board of Education, Education Professional Standards Board (EPSB), and Council of Postsecondary Education (CPE) adopted the new English/language arts and mathematics standards, making Kentucky the first state to do so.

Ms. Smith said that the new standards are fewer in number but require deeper understanding. The next-generation science standards are in draft form and are due for release in spring 2013. New social studies standards are being developed by a coalition of states and are due for release later in 2013. The common core academic standards in English/language arts and mathematics were taught and assessed in the 2011-2012 school year. Regional leadership networks are used to provide support and professional development related to the new standards. The Continuous Instructional Improvement Technology System uses resources developed by Kentucky teachers focused on implementation of the standards. Implementation of program reviews of components of the instructional program—required by SB 1—began with the 2011-2012 school year. Implementation for the next school year will incorporate more training for districts and schools.

Mr. Draut testified that a second major requirement of SB 1 is the development and implementation of new assessments. The new Kentucky Performance Rating for Educational Progress system uses criterion- and norm-referenced tests in grades 3 to 8, and end-of-course and writing assessments in high school. The new assessments, which include multiple-choice and open-response questions, are benchmarked to the performance standards; provide longitudinal profiles for students; and are comparable to national norms. More than 400,000 students were tested in spring 2012. The new tests will feed into the new accountability system. The new system uses multiple indicators; is based on continuous improvement; is aligned with college/career readiness goals; and includes details on academic growth, achievement gaps, academic progress, college/career readiness, and graduation rates. Kentucky was one of the first states to be granted flexibility on No Child Left Behind requirements, which allows Kentucky to have one accountability model: the Unbridled Learning Accountability System.

Commissioner Holliday described improvements in Kentucky's national rankings based on proficiency standards. The new standards will measure college and career readiness. The percentages of students who are defined as college and career ready will be lower than the students who are defined as proficient.

Representative DeCesare asked for an update on the teacher evaluation system. Commissioner Holliday said that it is anticipated that results from field testing will be available this year.

Representative DeCesare reported concerns from superintendents in his district that the state Board of Education is tweaking SB 1. Commissioner Holliday said that the board has not changed anything that it was not authorized to change. The board has been driven by a No Child Left Behind waiver of teacher evaluation. Legislation is needed regarding measurement of teacher effectiveness. The state board has been active in implementing kindergarten diagnostic assessments, and 109 districts have volunteered to participate in the kindergarten readiness screening.

In response to a question from Representative DeCesare, Commissioner Holliday said that weighting for world languages was changed based on feedback from superintendents.

In response to a question from Senator Buford, Mr. Draut said that information could be provided on the percentage of public secondary school graduates who do not go beyond the first year of college.

Senator Buford suggested a roundtable discussion among the business community, secondary education, and higher education.

Senator Higdon asked for information on the cost of the testing system. Mr. Draut said that the end-of-course tests cost $5 million. Testing for grades 3 to 8 costs $7 million.

In response to a question from Senator Higdon, Commissioner Holliday said that the P-20 database and Infinite Campus will provide a lot of interesting information.

CPE President King acknowledged the foresight of the General Assembly in enacting SB 1. The timing and content gave Kentucky a role in the development of national core content standards. CPE has worked in partnership with the Kentucky Department of Education (KDE) and EPSB to implement the law. SB 1 guided the focus of CPE's agenda, specifically in two areas: college readiness and student success. KDE and CPE both use the same definitions for college readiness and career readiness.

Placement exams and assessments are being aligned across public postsecondary institutions. A framework of indicators has been completed that guarantees entry into college credit courses using ACT, SAT, and placement scores. KDE and CPE are providing placement assessments for students. Assessment Academies use data to improve student learning through targeted professional development. President King described several initiatives related to strengthening the college completion culture including accelerated learning, summer programming, transitional programs for high school seniors who are not meeting ACT benchmarks, and an advising toolkit for middle and high school educators.

Initiatives related to postsecondary professional development include a website and online modules for faculty who teach freshman or introductory courses and teacher education faculty; regional workshops and online webinars; grants for professional development to support implementation of SB 1; and a national forum in Louisville with postsecondary faculty from 22 states.

Senator Higdon asked for clarification on realignment related to use of the ACT. Dr. King said that this will come about through decisions made by KDE. The grade 11 ACT score is used as a preliminary indicator for placement. It appears that KDE is moving toward using quality core specific ACT scores. Mr. Thompson added that the quality core scores are subject specific and allow for more effective intervention.

Executive Director Rogers presented a timeline of how EPSB has used policy to improve the practice of teaching since 2004. Elements include redesign of the internship program to include performance assessments; revision of EPSB's goals to indicate commitment to student learning, not just teaching; redesign of master's degree programs to focus on leadership; redesign of principal preparation programs to focus on student-centered school leadership; redesign of superintendent preparation programs to focus on student-centered district leadership; restructuring of the requirements for new teachers; and release of the Data Dashboard, which provides comparisons among universities in producing educators. Ongoing projects are the redesign of the state accreditation and program review process and the development of a Quality Preparation Index, which includes measurement of K-12 student performance.

EPSB officials described the progress that EPSB has made in implementing four requirements of SB 1. Ms. Nickel said that the first requirement is that EPSB lead, in collaboration with KDE and CPE, coordinated information and training sessions on revised content standards. Progress includes the completion of eight SB 1 information workshops and webinars and other information workshops and webinars (99.8 percent of faculties at teacher preparation programs have completed the training). Five online modules for new faculty have been developed.

Mr. Brown said that the second requirement is that EPSB ensure that teacher preparation programs include use of academic standards in the pre-service programs and that all teacher interns have experience planning classroom instruction based on the revised standards. A committee was appointed to ensure alignment of SB 1 and the Kentucky Teacher Internship Program. Dr. Walters-Parker said that for continued accreditation EPSB requires all teacher preparation programs to document that they are addressing the requirements of SB 1.

The third requirement is that EPSB collaborate with KDE and other partners to identify weaknesses in writing instruction and consider how skills to improve writing should best be taught to teachers. Dr. Walters-Parker said that two teaching certificate endorsements—literary specialist and reading—have been added. Revised admission standards and assessment require composition, not just multiple choice questions. Collaborative university/college work groups have been established. EPSB and the University of Kentucky's Martin School of Public Administration have completed a research study on the effects of teacher pre-service preparation to teach writing.

The Martin School study has also been useful to EPSB in implementing its fourth requirement from SB 1: analyze current requirements at the pre-service level for writing instruction and determine how writing instruction for prospective teachers can be enhanced or improved. The writing required for admission is undergoing peer review.

Representative DeCesare asked for elaboration on teacher preparation related to grammar, spelling, and cursive writing. Dr. Walters-Parker said that there is renewed emphasis on grammar instruction. Representative DeCesare said that his children's school work has not been graded for spelling. He suggested that spelling should be graded. Dr. Rogers replied that a basic skills test, which includes writing, is required for admission to the teacher preparation program. EPSB has adopted a new test for prospective elementary teachers covering math, language arts, social studies, and science. One has to pass all areas. Representative DeCesare used an example of math instruction and lack of training in cursive writing for his children to illustrate how teaching has changed. Dr. Walters-Parker said that there is a concern about reading instruction across all subject areas. The issue with cursive writing is not whether to teach it, but how.

Representative Rand asked for elaboration on why writing is emphasized. Dr. Walters-Parker said that SB 1 requires emphasis on writing. There is a practical need for writing to be able to function in the modern world. Some Kentucky teachers have participated in the National Writing Project. EPSB wants to replicate some elements of this in its teacher preparation programs.

Senator Higdon reminded members that the committee's next meeting is July 12.

The meeting was adjourned at 12:10 pm.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

July 12, 2012

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, July 12, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Fitz Steele, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Tom Buford, Perry B. Clark, Vernie McGaha, Joey Pendleton, and Dan "Malano" Seum; Representatives Dwight D. Butler, Leslie Combs, Terry Mills, Rick Rand, and Arnold Simpson.

Guests: Eric Friedlander, Deputy Secretary, Cabinet for Health and Family Services. Stephen R. Hall, Commissioner; Betsy Dunnigan, Deputy Commissioner; Natalie Kelly, Children's Branch Manager, Division of Behavioral Health, Program Development Branch; Department for Behavioral Health, Developmental, and Intellectual Disabilities, Cabinet for Health and Family Services. Tony Wilder, Commissioner, Department for Local Government. Michael Hammons, Chair, Endow Kentucky Commission. Gerry Roll, Executive Director, Foundation for Appalachian Kentucky.

LRC Staff: Greg Hager, Committee Staff Administrator; Colleen Kennedy; Katie Kirkland; Van Knowles; Lora Littleton; Jean Ann Myatt; William Spears; Joel Thomas; Leonard Evans, Graduate Fellow; Jenna Skop, Graduate Fellow; Stella Mountain, Committee Assistant.

Approve Minutes for June 14, 2012

Upon motion made by Representative Mills and seconded by Representative Simpson, the minutes of the June 14, 2012 meeting were approved by voice vote, without objection.

Representative Steele asked for a moment of silence in memory of former Representative Bunch.

Follow-up on Impact Plus

Mr. Friedlander said that he had met with Ms. Campbell-Turner on June 20. They exchanged information and agreed that this should be a documented process. He has received the closing report on the case from the Office of the Attorney General. The cabinet is reviewing information and determining what needs to be further examined. Ms. Campbell-Turner has requested reenrollment to provide services through the Impact Plus program and the Michelle P. Supports for Community Living waiver. He will try to resolve the case by August 1 but cannot guarantee this. There is ongoing litigation and unresolved issues related to administrative recoupment.

Senator Higdon stated that the Office of the Attorney General has confirmed that there is nothing criminal to pursue. The evidence is that Ms. Campbell-Turner probably should not have been terminated as an Impact Plus provider, but he is pleased that the process is moving forward.

Representative Steele instructed cabinet officials to return for the September Program Review meeting to provide an update.

Overview of Endow Kentucky

Commissioner Wilder commended the General Assembly for enacting Senate Bill 227 in 2010. This is visionary legislation, and there has been significant progress since its enactment. The act provided tax credits of $500,000 for each year of the biennium. Five new community foundations were certified in the first year, three have been certified since, and another is going through the process. About $5 million has been donated, with $730,000 of the tax credits being used. The Appalachian Regional Commission provided $1 million in funding, which is being directed to 11 of the most distressed counties in Appalachia.

Mr. Hammons credited Judy Clabes for suggesting the need to encourage philanthropy and to provide research. Governor Beshear appointed a commission on philanthropy, which issued a report in 2009 on initiatives related to early development and health of children. Effort was needed to grow philanthropy, especially in rural areas. The Kentucky Philanthropy Initiative commissioned a wealth study, which was distributed to committee members today. The study indicated that Kentuckians have assets of more than $300 billion. Over the next 10 years, if 5 percent of the wealth available to transfer between generations in Kentucky households were to be set aside for community organizations, this would generate $3.6 billion. The interest on the $5 million that has already been given is $235,000. He thanked the General Assembly for the legislation.

Representative Steele thanked Commissioner Wilder and the others testifying and House and Senate leadership for their support for the task force on poverty.

Senator Buford asked for elaboration on specific benefits of the program. Mr. Hammons described the Wired 65 workforce development initiative in the I-65 corridor.

In response to a question from Senator Buford, Mr. Hammons said that funds could be used to establish day care in rural communities. Commissioner Wilder said that foundations have a wide range of options.

Ms. Roll said that charity is good, but philanthropy provides for the long-term investments to build and transform communities by changing old habits of focusing on needs, gaps, and barriers to a future based on our assets and gifts and the opportunities they present. She thanked Senator Brandon Smith, Representative Fitz Steele, the legislature, and others for helping to create Endow Kentucky.

Endow Kentucky provides grants for capacity building in communities, provides money to leverage private investment in local and nonprofit endowments, and incentivizes those endowment contributions with tax credits. When this legislation was passed in 2010, the tax credits were funded; the capacity building grants and leveraging pool were not.

Kentucky is filled with community-minded people with a will to do good, but often without access to needed financial resources. It also has people with financial wealth, many of whom want to invest locally. With Endow Kentucky, the right infrastructure for giving throughout the Commonwealth is now being developed.

The Foundation for Appalachian Kentucky is the most recent of many efforts over the last half century to create a community foundation in Appalachian counties. It is the only successful effort. The foundation was conceived in 2002 as the Community Foundation of Hazard and Perry County. By 2010, there were two full-time staff in place and three additional counties interested in building a regional community foundation. Ms. Roll cited the foundation's accomplishments over the past 3 years, including meeting the National Standards for US Community Foundations; building an initial unrestricted endowment of over $1.5 million with more than 300 donors and a mailing list of 2,000 people; facilitating and implementing a strategic plan in Perry County and helping to do so in three additional counties; making more than $300,000 in grants to the community, most passed through from individuals and other foundations; supporting the community in raising $215,000 for the East Kentucky Tornado Relief Fund; and working with three additional counties in creating local community funds.

Ms. Roll stated that whether one believes that the crisis the Kentucky coal economy is facing is a result of government regulations, natural gas, or an act of God, Kentucky is facing an inevitable decline in a major resource for this state and Appalachia. She thanked the legislature for the tax credits for contributions to permanent endowments, but asked legislators to fund the capacity building grants in the Endow Kentucky legislation and to commit resources to be matched 2:1 by communities to build their endowments.

She agrees with Senator Smith that Endow Kentucky is landmark legislation. The tax credits have brought in almost $5 million in private money for local communities. Thirty-five percent of that money is in rural counties.

Mr. Hammons echoed the need for capacity and challenge grants. The plan is to expand from 11 counties to 14. He cited the Barren River project that was funded by the Turner family. He has heard of people who wanted to leave an endowment for a community but did not have a mechanism to do so. Commissioner Wilder added that there is a need for education of estate attorneys that there are options to protect heirs and leave a significant portion of estates to the community.

Senator Pendleton agreed with the testimony. There is a need to get out the word to help seniors and families. He thanked Commissioner Wilder for his work at the Department for Local Government to help seniors.

Representative Rand mentioned that his community had lost a grocery. He asked if this is the type of problem that a foundation could address. Ms. Roll gave an example of foundation funding being used to help provide a building. Mr. Hammons cited the example of a medical provider who left. The foundation convinced the provider to donate the building so that it could be used to attract another provider.

In response to a question from Representative Rand, Ms. Roll said the community foundation has provided the opportunity to draw other organizations with competing interests together to raise funds. She gave the example of the Run for the Hills event from the community foundation in Perry County. Businesses were encouraged to be the charity challengers. Last year, local nonprofits raised $180,000 over 3 months. More was raised with one event than would have been raised with separate fundraising efforts. Commissioner Wilder said the umbrella aspect of a community foundation is effective.

Representative Rand commented that those with estates sometimes have trouble identifying mechanisms for donating to their communities. Mr. Hammons noted that the idea for Run for the Hills came from western Kentucky, which illustrates the communication among community foundations. Ms. Roll said that a community foundation can serve as a clearinghouse. Donations can be divided among recipients, and donors can specify where their money goes.

Senator Buford said that sounds like things are going well but the General Assembly needs more specific information on what is being accomplished, for example, how many women have gone back to work after getting child care. He would like to get a list of what has been done for people. Ms. Roll said that she would send the newsletter and annual report.

Senator Seum asked for their opinion of local vocational education. He gave an example of his grandson, who received vocational training and got a job as a diesel mechanic while in high school in Indiana. He wondered why vocational education was such that Louisville trucking companies had to recruit diesel mechanics from Indiana. Ms. Roll said the foundation did a strategic plan for Perry County, focusing on primary and secondary education with integration of vocational education. Foundations can bring in private funding.

Representative Steele thanked Commissioner Wilder for his work. He cited examples of community support provided by a coal company family in Perry County. He was glad that Ms. Roll mentioned EPA. He referred to the recent loss of 600 jobs at Arch Coal due to EPA regulation. Coal still has a price advantage over natural gas. Coal companies are the first to help in southeastern Kentucky. Ms. Roll said that their foundation is a testament to the investment made by coal companies.

The meeting adjourned at 11:10.

TASK FORCE ON KENTUCKY PUBLIC PENSIONS

Minutes of the 1st Meeting of the 2012 Interim

July 2, 2012

Call to Order and Roll Call

The first meeting of the Task Force on Kentucky Public Pensions was held on Monday, July 2, 2012, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Mike Cherry, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

<u>Guests:</u> William Thielen and T. J. Carlson, Kentucky Retirement Systems; David Draine and Alexis Schuler, Pew Center on the States; Josh McGee, The Laura and John Arnold Foundation.

<u>LRC Staff:</u> Brad Gross, Judy Fritz, Karen Powell, Frank Willey, and Peggy Sciantarelli.

Background and Opening Remarks

The Task Force on Kentucky Public Pensions was created as a result of HCR 162, enacted in the 2012 regular session of the General Assembly. The Task Force co-chairs, Representative Cherry and Senator Thayer, expressed appreciation to the Pew Center on the States and The Laura and John Arnold Foundation for offering their assistance and expertise at no cost to the Commonwealth. They also acknowledged in the audience two members of the Kentucky Retirement Systems (KRS) Board, Kentucky Secretary of Personnel Tim Longmeyer and Vince Lang. Representative Cherry discussed factors that have further worsened the funding gap in Kentucky's public pension funds since the passage of House Bill 1 in 2008. Both co-chairs commented on the seriousness of the problem and expressed willingness to consider everything related to the issue as the Task Force and its participants seek to improve the long-term financial health of Kentucky's public pension funds.

Kentucky Retirement Systems Overview

Guest speakers from Kentucky Retirement Systems were William Thielen, Interim Executive Director, and T. J. Carlson, Chief Investment Officer. They presented an overview of the

Systems and provided the Task Force with copies of their slide presentation. Copies of the presentation may be obtained by contacting Task Force staff.

Mr. Thielen gave an overview of the three plans administered by KRS: Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS), and State Police Retirement System (SPRS), which are qualified public defined benefit plans established under Section 401a of the Internal Revenue Code. He provided information regarding plan administration; the composition of the nine-member Board of Trustees that administers the Systems; the KRS organizational chart; annual totals of retired, inactive, and active members from 2006 to 2011; and membership by system and status (hazardous/nonhazardous) as of June 30, 2011. KRS administers retirement benefits for more than 324,000 state and local government employees and retirees. As of June 30, 2011, KRS assets were $14.77 billion. Each year KRS pays $2 billion in pension and insurance benefits, with 95 percent of benefit payments delivered to Kentucky residents. Other topics discussed included the statutory benefit formula; retirement eligibility criteria for hazardous and nonhazardous members, with participation dates prior to, on, or after September 1, 2008; health insurance benefits for members participating prior to July 1, 2003, between July 1, 2003 and August 31, 2008, and on or after September 1, 2008; FY 2011 analysis of initial retirees, by system; KRS funding sources; United States public pension fund revenue sources from 1982 to 2009; actuarially recommended and actual employer contributions for the FY 2012-2013 budget biennium; and the recommended and budgeted employer contribution rates since 1990 for KERS-Hazardous, KERS-Nonhazardous; and SPRS.

Responding to questions from Representative Cherry, Mr. Thielen confirmed that the health insurance fund, although it has an unfunded liability, is in a better position than the pension fund. He explained that GASB refers to the Governmental Accounting Standards Board, a nonprofit organization of professionals that establish accounting standards for public pension plans and other public entities. GASB standards do not have to be complied with, by law, but are considered by bond rating agencies.

Mr. Carlson gave an overview of the KRS investment program. He spoke about availability of monthly performance reports and other investment information on the KRS web site; educational qualifications and certifications of the KRS investment staff; Pension Fund asset allocation targets, effective July 1, 2011; asset allocation statistics; KRS Pension Fund asset allocation versus averages for similar size funds across the country; fiscal and calendar year investment return for the KRS Pension Fund since 1990; short-term and long-term performance of Pension Fund investments as of April 30, 2012; and risk/return analysis of the KRS investment program.

Mr. Carlson stated that KRS is responsible for managing assets on behalf of 10 different plans; seven of those plans have the same asset allocations, and three have different asset allocations, based on the specific cash flow needs and liquidity requirements of the plans. The allowable ranges for asset allocation are more constrained than they have been historically, in order to help ensure a more consistent meeting of targets and improve long-term investment performance.

He said that KRS invests 20 percent in U. S. stocks. Many other public pension plans have 30-35 percent invested in U. S. stocks. On a one-year basis, the U. S. Equity portfolio is performing slightly below the benchmark. KRS and many other public pension plans have struggled in the Non-US Equity market, where the benchmarks have been more difficult to meet since 2003 when benchmarks were re-made by index providers. Over the coming months KRS will look at ways to improve performance of the Non-US Equity program. The Emerging Market Equity program is working well and is expected to be a good source of future growth for the pension and insurance funds. Total equity in the KRS Pension Fund portfolio, which is about 44 percent, is underperforming the benchmark on a one-year basis by .75 percent. Total Fixed Income—20 percent of the portfolio—is outperforming the benchmark by approximately one percent. Total Real Return has only been in place since the beginning of the current fiscal year but is about seven percent above the benchmark. The total Absolute Return program is just over one year old is working very well, at six percent above the benchmark. The total Real Estate program was restarted about three years ago and is lagging on a one-year basis but has earned almost eight percent versus the two percent benchmark on a three-year basis. With respect to risk/return, KRS has substantially reduced volatility and risk in its portfolio, although slightly underperforming (by .09 percent) from the median return of 77 public pension plans across the country on a five-year annualized basis.

Due to shortness of time, Representative Cherry asked Mr. Thielen to return to a future meeting to give the remainder of his presentation, since it deals with actuarial basics and funding levels—areas of prime interest to the Task Force. Representative Cherry thanked the speakers and assured the members that they would have an opportunity to ask questions of Mr. Thielen and Mr. Carlson when they return.

National Public Pensions Issues (Including Kentucky) and Individual State Reactions to Address These Issues

The guest speakers were David Draine, Senior Researcher, and Alexis Schuler, Senior Officer/Campaigns, Pew Center on the States; and Dr. Josh McGee, Vice President for Public Accountability Initiatives, Laura and John Arnold Foundation. Copies of their slide presentations and Mr. Draine's prepared remarks that accompanied the presentation are available from Task Force staff.

Mr. Draine explained that he is the lead researcher on public sector retirement systems at the Pew Center and that his research had centered on six Kentucky pension plans: KERS Hazardous, KERS Non-Hazardous, State Police Retirement System, Judicial Retirement Fund, Legislator's Retirement Fund, and Kentucky Teachers' Retirement System. Representative Cherry interjected that the Task Force will not be examining the Teachers' Retirement System, but that any recommendations developed by the Task Force might also be applied to the judicial and legislative plans.

Mr. Draine's slide presentation included charts illustrating 2011 funding levels and recommended and actual contributions in Kentucky's pension plans; growth of liabilities and decline in assets from 2000 to 2011; contribution rates for the KERS Non-Hazardous plan; the widening gap faced by state pension systems nationally; the impact of reforms on a hypothetical Rhode Island state worker in 2012; and a U. S. map showing states that have reduced the cost-of-living adjustment (COLA) or switched to a new plan type, or both.

In summary, Mr. Draine said that since 2003, public employers have not been able to make the full contributions recommended by actuaries. Kentucky's pension plans were fully funded in 2001, with a substantial surplus. A combination of benefit increases—including COLA's—and investment losses from the 2001 recession created a funding gap. From 2004 onward the plans did not get enough contributions from the state to keep them on a sustainable path. The pension reforms enacted in 2008 will provide long-term savings but will have a limited impact in the short-term. Initial estimates suggested that the reforms will have saved the state a little over $30 million in 2011; meanwhile the state fell short by about $300 million in making contributions that same year. In the KERS Non-Hazardous plan, for example, the total annual cost for pension and retiree health care benefits was a little under six percent of payroll in 2003, compared to a little over 44 percent in 2013. Even if benefits are cut for new workers, closing the funding gap would still require a substantial infusion of money.

Nationally, states faced an unfunded liability of $1.38 trillion in 2010 for similar reasons that Kentucky has—insufficient contributions, retroactive benefit increases, and investment losses. Kentucky was one of just four states that had funded less than 55 percent of pension obligations, along with Connecticut, Illinois, and Rhode Island. However, Kentucky was one of just 10 states found to be solid performers in managing retiree health care obligations.

Mr. Draine said that traditional defined benefit pension plans have structural problems that have helped lead to the substantial pension challenges facing the majority of the 50 states. These plans expose states to investment risk and longevity risk and allow state and local policy makers the opportunity to skip payments and push the cost off to future taxpayers. Because traditional pensions concentrate benefits on career employees, they may not reflect the modern workforce that a state needs, and states may miss out on younger workers who might expect to change jobs several times during their careers. These issues can be addressed, and some states that offer traditional defined benefit pensions have plans that are in good shape. North Carolina, for example, has a well-funded, sustainable pension system.

To address the pension challenges, Kentucky will need to have a credible plan to close the funding gap, over time, by making the full recommended contributions. For states with severe unfunded liabilities, making these payments may be unaffordable, and they may need to consider fair ways to share the sacrifice. Secondly, it is important that Kentucky find ways to ensure that the state does not skip on contributions, raise benefits without paying for them, or take on more risk than it can handle. This can include employee contribution rates that adjust based on funding levels, or by switching to hybrid plans or individual retirement accounts that shift risk to workers, or to plans where benefits change based on the health of the pension system. Thirdly, benefits being offered should help the state recruit and retain a talented public sector workforce.

Based on 2010 data, Rhode Island had a poorly funded pension system but passed major reforms in November 2011 that reduced its unfunded liability by an estimated $3 billion. The state drastically reduced the cost-of-living adjustment to retirees—to be returned at a reduced level when pensions are at least 80 percent funded. Those cost-of-living changes are responsible for the bulk of the savings that put the state on a path toward controlling and reducing its funding gap. Rhode Island also put employees, including current workers, in a new plan comprised of a smaller traditional pension plan and an individual retirement account to which both the state and the worker will contribute. Workers will still receive all benefits already earned prior to implementation of the new plan but will earn benefits at a reduced rate under the new plan. Nine other states have also reduced cost-of-living adjustments. In court challenges the changes have been upheld in some cases, and in others the legal battles are continuing. Under the city of San Jose's recent pension reforms, workers can accept either the new, less generous rules for benefits, or higher contribution rates. A recent proposal by

Illinois Governor Quinn gave workers a choice of retaining COLA adjustments or their retiree health benefits.

Some states have been considering new pension plan models that are more affordable, pose less risk to the state, and potentially could offer a benefit better aligned with the states' workforce needs. Virginia is putting new workers in a hybrid plan with a smaller defined benefit and an individual retirement account.

Louisiana and Kansas created new plans that offer an individual retirement account with many of the protections commonly associated with a traditional pension plan. Workers would have an individual account, and benefits would be based on how much was in the account at retirement. Unlike a 401(k)-style plan, the state would guarantee a minimum return rather than leaving all investment risk with workers, and would allow retiring workers to easily buy annuities that would protect them from outliving their retirement savings. Plans of this type—called a cash-balance plan—are already in use in Nebraska and Texas.

Some cities have made changes as well. When policymakers failed to solve their problems, voters by referendum in San Jose and San Diego closed their existing plans to new employees. San Jose transitioned workers to a hybrid plan, and San Diego created a new 401(k)-style individual retirement account.

One argument against closing existing plans and replacing them with new ones is that it would impose immediate costs on states due to accounting rules. The Pew Center has looked at this issue. Both academic analyses and the practical experience of states like Alaska that made the switch suggest that accounting rules are not so rigid as to require these extra costs. Furthermore, recent changes in GASB accounting rules make that point moot. This is not to say that states need to close their existing plans but simply that neither the costs nor the benefits of doing so should be exaggerated.

In closing, Mr. Draine said that there is no one-size-fits-all solution, and Kentucky policy makers will need to find an approach that works for the state. It is not just about reducing costs but also about designing a system that meets the state's needs while being fiscally responsible and sustainable. Kentucky's problem is solvable and that the Pew Center is ready to offer help in providing the data and analysis needed in order to make an informed decision.

When Representative Montell asked whether it would not be a common sense approach for states to choose pure defined contribution plans as an alternative, Dr. McGee said that both Alaska and Michigan have defined contribution plans, and several states offer defined contribution as an option. In Florida new hires may choose a defined contribution option if it better matches their preferences. Several states have considered the defined contribution approach, but there has not been a lot of movement in that direction recently.

Representative Montell said he is interested in the cash-balance plans of Louisiana and Kansas, where both the employee and employer contribute to the employee's individual account and the employer guarantees a minimum return. Mr. Draine explained that when actual returns exceed the minimum rate some of the excess money goes to the employee, depending on how the rules are set up, but the employer keeps part to make up for possible low returns in the future. Dr. McGee said the return promise to employees is very flexible in a cash balance plan, which is a defined benefit plan. The minimum return promise is zero, and the minimum floor is often set above that but certainly at less than the current investment return assumptions of the existing plan. That is why it is less risky. Louisiana promises employees the plan's return minus one percent. If the plan returns 10 percent, the employees' accounts would get nine percent, which can float between zero and "sky's the limit." The Kansas and Nebraska plans promise a floor and have a mechanism for sharing gains above that floor. Nebraska promises a floor of five percent. When investment return exceeds that floor, a dividend goes to employees, but the dividend plus the floor cannot be greater than eight percent.

When Representative Yonts asked about the limiting effect of Kentucky's inviolable contract with employees, Dr. McGee said that is a difficult question to which he cannot give a direct answer. He said that the inviolable contract is not unique to Kentucky. Illinois and other places have strong constitutional or case law protections for pensions. It is a tricky situation but is navigable, he believes. Everywhere that pension changes are made will involve legal issues that will go "all the way to the top" to be sorted out in order to protect states' economic viability.

Representative Yonts asked how employees in Rhode Island reacted to the new plan and whether that state has an inviolable contract. Dr. McGee said the employees, as expected, were not supportive, since their prospective benefits were reduced. Although Rhode Island does not have constitutional protections for retirement benefits specifically, a trial court has found that there is a contract with employees for benefits. The plan is being challenged under a contract clause of the state and federal constitutions. He emphasized that in order for a state to have the strongest case possible, it is the responsibility of state leaders who are meeting these challenges to take a thoughtful and reasoned, data-driven approach and to demonstrate that the changes are reasonable and necessary.

Representative Graham questioned a comparison with the plan in Rhode Island, since it has a much smaller population than Kentucky. When he asked how many employees are in Rhode Island's retirement system, the speakers said they would have to get that information. Mr. Draine said they are not suggesting Rhode Island as an example for Kentucky. The lesson to be drawn from the pension reforms in Rhode Island is the process that was used to find solutions and devise an affordable plan. He said there are many different options and ways to make them work—whether it be a cash balance, hybrid model, defined benefit, or defined contribution plan. What is important is that policy makers ensure that risks will be managed, contributions made sustainably, and implications for the workforce carefully considered. Dr. McGee added that they are not suggesting that Kentucky adopt Rhode Island's solution but to consider Rhode Island's approach, where that state's treasurer emphasized that "this is about math, not ideology." Representative Graham said he agrees but that Kentucky must also consider other variables, such as the inviolable contract. He added that he is looking forward to the recommendations that will be forthcoming.

Representative Cherry said he is flexible with regard to whatever options may ultimately be recommended; however, he believes the most difficult issue faced by the Task Force is how to address the huge unfunded liability.

Responding to comments from Senator Thayer, Dr. McGee said that pension changes almost always will result in litigation, and trial courts are likely to push the issue through the appeals process to the highest state court. Mr. Draine said that the legal issues have not been resolved in many states and that there is no binding precedent. He said there are things which states can do fairly, but there are things that clearly cannot be done—i.e., take away benefits already earned. There will undoubtedly be legal challenges with respect to benefits expected but not yet earned, cost-of-living adjustments not yet granted, and future employee contributions, for example.

Dr. McGee said that the Pew Center and the Foundation will not be able to promise the Task Force complete legal certainty on pension issues. Mr. Draine said that courts have indicated that the degree to which a state has explored and exhausted all options impacts whether a given change might be ruled legal. To build a strong case, states must show, for example, that their approach is the only one available and that additional revenues cannot be found without challenging the viability of the state.

Senator Thayer, noting that pension reform has become a bipartisan issue, inquired about the party affiliations of the Rhode Island legislature and the state treasurer who was the main impetus behind pension reform in that state. Dr. McGee said that Rhode Island is an overwhelmingly Democratic state with a Democrat majority in the General Assembly, and that the Treasurer is a rising star in the Democrat Party.

Senator Thayer, recalling Mr. Draine's earlier testimony, asked why it may not necessarily be the case that replacing a defined benefit plan with a defined contribution plan would impose an immediate cost to the state. Dr. McGee said that under current GASB rules, closing a plan requires a shift in the way unfunded liability is amortized. That is the basis for much of the transition cost argument. He went on to explain that when on an increasing schedule, some would claim that closing a plan would force a switch to a level schedule much like a mortgage, where payments are the same across time. However, other states that have moved to a defined contribution plan—Alaska being one—did not move to this level schedule. They kept their increasing schedule and spread the cost over total payroll. Also, there is no theoretical reason for accelerating funding payments. If a state, before closing its plan, already had a responsible funding schedule that would pay down the debt over a reasonable time period, then after closing the plan that same funding schedule should be responsible. The only time an infusion of cash into the system would be needed is when there is an actual cash flow problem—i.e., if benefit payments would exceed fund assets. Most states do not have an actual cash flow problem. In addition, the most recent GASB revisions—which hopefully will go into effect within the next two years or so—have done away with the annual required contribution, which is essentially the element of accounting that would recommend a funding schedule altogether. Since GASB is getting out of the funding policy business, it is a moot point going forward.

Senator Thayer asked about the fiscal implications of pension reforms in Alaska and Michigan, which have defined contribution plans. Dr. McGee said that is a great question but that he is not prepared to provide exact details. He said that Alaska made the move in the early 2000s and Michigan in the early 1990s and, therefore, have insulated themselves from some of the recent volatility in the market, although their members have borne that volatility. He said he believes the fiscal implications are positive for those states. They did not aggregate market losses to the state budget nor have the volatility that has been very difficult to deal with at the state level.

Representative Cherry indicated that the transition cost issue has concerned him with respect to the defined contribution approach. Dr. McGee said that the transition cost argument is very specific to closing a plan and moving to a defined contribution plan. The argument does not hold when leaving a plan open and moving to a FAC (final average compensation) hybrid plan like Rhode Island's or cash balance plans like Louisiana's and Nebraska's. Representative Cherry asked whether there would still be costs involved with a hybrid plan because of less going into the system in contributions. Dr. McGee said that is true but that it is important to note that these systems are not "pay as you go" like Social Security. Unless underfunding is so severe that there is a cash flow problem, there is no reason to deviate from a responsible funding plan.

Closing Remarks and Adjournment

Representative Cherry announced that the next meeting is tentatively scheduled for July 24. He thanked the speakers and said he expects other organizations and groups may be making presentations at future meetings. Earlier in the meeting he advised the members that the Pew Center and the John and Laura Arnold Foundation will continue to offer assistance and that he anticipates they will be submitting specific proposals to the Task Force.

With the business concluded, the meeting adjourned at 3:00 p.m.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE

Minutes

JULY 9, 2012

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Monday, July 9, 2012, 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 and Vernie McGaha, Dennis Parrett; Representatives Royce W. Adams, Tom McKee, Terry Mills, and Tommy Turner.

Guests: Joel Neaveill, Bill McCloskey, Angela Blank, Biff Baker, and Brian Murphy, Governor's Office of Agricultural Policy; Terry Tolan, Brigitte Ramsey, and Beth Jurek, Governor's Office of Early Childhood.

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

The June 6, 2012, minutes were approved, without objection, by voice vote, upon motion made by Senator McGaha and seconded by Representative Mills.

Governor's Office of Agricultural Policy

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

Mr. Neaveill summarized the funding allocations made under the County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-use programs from the previous months. He also recapped amendments approved for previously funded county administrators and projects. Some amendments were from county program administrators who applied to increase their county funds availability. Regarding the amendments, Mr. Neaveill told Representative Stone that entities seeking amendments are not required to reapply for funds if they have previous approval, rather file an amendment to their original plan or application.

Agricultural grant and loan approvals reviewed during the meeting included: Triple J Farm, $37,500 for an on-farm retail market in Scott County; W. Brent Woodrum, $17,500 to establish a multicounty deceased livestock composting service based in Casey County; Pulaski County Conservation District, $7,419 to buy a post driver for producer usage; and Grasshopper Distribution LLC, $250,000 for value-added produce processing and distribution in the Louisville area.

During the W. Brent Woodrum project discussion regarding county commitments, the GOAP officials answered questions from Senator Gibson and other committee members regarding why no state funds were approved for the project, particularly to help with the start-up. GOAP also explained the Woodrum project fee structure to Co-chair Hornback.

Senators Gibson and McGaha mentioned the importance adequate funds at the beginning of the regional composting service project and suggested state funds should have been awarded in addition to county funds. The board's decision not to commit state funds to the project should be revisited in the future, according to Senator McGaha.

According to Mr. Neaveill, the board did not want to give the appearance of mandating use of the composting service.

Senator McGaha compared the Grasshoppers Distribution project and the Woodrum project. GOAP officials responded to Senator McGaha that some Indiana producers would be selling their commodities to Grasshoppers Distribution. Mr. McCloskey responded to Senator McGaha that tobacco production involvement was not a consideration in the approval of funds for Grasshoppers. Senator McGaha indicated that he believed the livestock producers participating in the Woodrum project would be "tobacco dependent."

Responding to Representative Stone, Mr. McCloskey revealed the Grasshoppers board was reorganized and expanded recently. Some board members are growers who will supply produce to be marketed. He also told Representative Stone that the organization submitted a business plan to the board. GOAP staff responded to Representative McKee that the business plan shows Grasshoppers can pay off its loan.

Mr. Neaveill and Mr. McCloskey described to Senator Gibson the way Grasshoppers will collect produce at a site in Louisville and then sell it to consumers on-site or at other locations.

During the discussion, Senator Gibson said he would prefer more private business involvement in projects.

According to Mr. Neaveill, the board has a goal of helping create markets for farmers, and the Grasshoppers Distribution project was viewed as one that would help farmers reach markets.

During the Triple J project discussion, Mr. McCloskey described the company's plan to buy products from local farmers and its plan to market farm products on-site and at farmer's markets.

Regarding other projects, the GOAP officials explained the board's denial of a Kentucky State Fair Board request for $2 million to establish an endowment for the 4-H and FFA Sale of Champions. According to Senator Hornback, the board's pronouncement was a good decision. Co-chair Stone pointed out that while it is a good idea to have a continuing source of funds for the sale, there may be other sources of funding. Senator Gibson asked for information on how surrounding states fund similar programs.

On other issues, the GOAP officials updated the committee on the status of a protracted lawsuit involving a tobacco company's withholding from states of its 2003 Master Settlement Agreement (MSA) funding.

Office of Early Childhood Report

The committee received the annual report from the Governor's Office of Early Childhood from Terry Tolan, Executive Director, and Brigitte Ramsey, a member of the Early Childhood Advisory Council.

The Early Childhood officials reviewed aspects of the program that receive MSA funds, including annual investments in KIDS NOW programs, the status of community early childhood councils, the evaluation of early care and education programs, the collaborations with Head Start.

Responding to Co-chair Hornback, other staff described the criteria for the early child care subsidies. Asked about parental involvement, Ms. Tolan told the committee that the agency has conducted training through advisory councils on ways to get parents involved in early childhood development.

Responding to Representative Mills, who asked about drug abuse education, Ms. Tolan indicated that a KIDS NOW program focuses on drug use intervention with pregnant women.

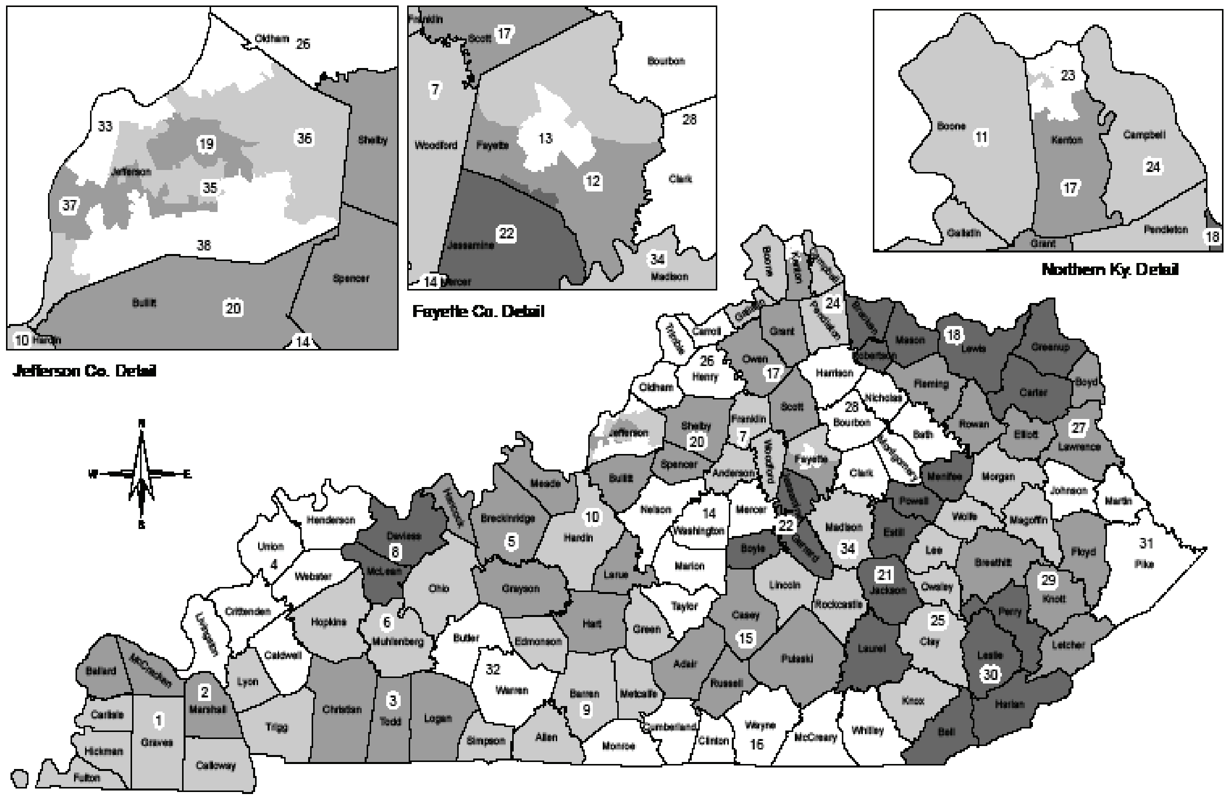
Asked by Representative McKee about progress being made in oral health, the officials mentioned federal grants and funds have been sought for oral health and also have looked at ways to encourage dentists to work with youngsters.

Responding to Representative Stone, the Early Childhood officials described the school readiness screenings. According to Ms. Ramsey, the readiness screenings are often the first signal of educational success. Ms. Tolan explained the screenings will eventually help educators determine which children will be reading on grade level by the third grade. Beth Jurek indicated that the readiness screenings also work in the area of assessing the health of children entering school.

Responding later to Senator McGaha, Ms. Tolan said the Department of Education has a contract with a company to develop the readiness screening tool. Ms. Tolan described the screening as a "snapshot in time." The assessment is geared to measure curiosity, health and physical well-being, language, social and emotional development, and cognitive skills.

In reply to a question from Co-chair Stone, the officials said figures will be provided on the administrative costs of delivering the early childhood services. Ms. Tolan estimated the administrative costs are less than four percent.

There being no further business, the meeting adjourned at approximately 11:45 a.m.



2002 Kentucky Senate Districts

Senate Plan (SH001A09) became law (KRS 5.101 - 5.138) January 31, 2002, with enactment of House Bill 1.

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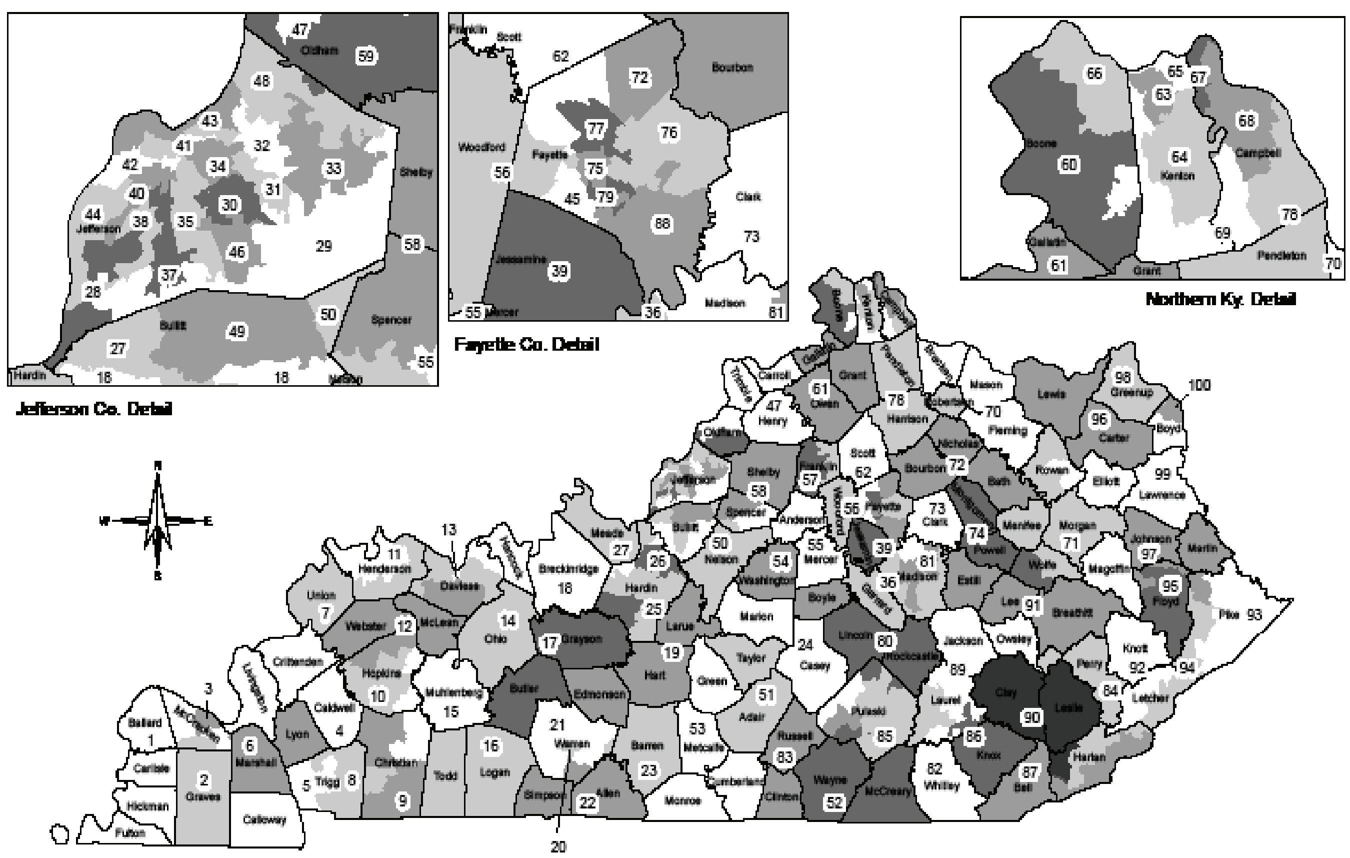

2002 Kentucky House Districts

House Plan (HH001A11) became law (KRS 5.201 - 5.300) January 31, 2002, with enactment of House Bill 1.

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Printed with state funds

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