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Economic development successes highlighted

by Rob Weber
LRC Public Information

FRANKFORT -- The KFC Yum! Center is generating a buzz in downtown Louisville and a Tiffany & Co. jewelry manufacturing operation is bringing new jobs to Lexington, lawmakers were told June 16 during a meeting of the Economic Development and Tourism Committee.

Harold Workman, CEO of the Kentucky State Fair Board, led off the meeting with a report highlighting the activities in the KFC Yum! Center since the 22,000-seat arena opened last October.

Over the past eight months, the arena, which is the home for University of Louisville basketball, has featured 38 basketball games, 28 concerts and 136 other events.

"It is heavily used and very important to the community. It really is a magnet for downtown," Workman said. "It has created a lot of energy, a lot of buzz, in downtown."

The most heavily attended event at the arena was a sold-out Elton John concert that attracted 20,700 attendees. The highest-grossing concert was an Eagles show that earned more than $1.7 million in ticket sales. "The concerts are doing very well in Louisville," Workman said, noting that the KFC

Continued on page 2

Handling of status offenses reviewed by state lawmakers

by Rebecca Mullins Hanchett
LRC Public Information

FRANKFORT—Status offenses—which include skipping school, misbehaving in the classroom and running away from home—are not crimes in Kentucky. But how these youth-related offenses are handled can send a child down the right or wrong path, a state legislative committee heard on June 3.

Terry Brooks with Kentucky Youth Advocates told lawmakers that locking up truants or unruly students with youth who have committed serious and even violent adult crimes puts status offenders at risk of becoming adult criminals. His comments were followed by those from district court judges, Department of Juvenile Justice officials, school officials and others invited to come before the Interim Joint Committee on Judiciary and talk about problems related to jailing status offenders in juvenile detention facilities.

Children enter juvenile detention facilities as a last resort, state officials say.

Brooks quoted research that indicates juvenile detention of status offenders leads to more serious offenses and, in at least some cases, adult prison. It is also costly, Brooks said: In 2010, 1,541 youth were locked up in Kentucky for status offenses at a cost to counties of $94 per day, or a total cost just shy of $1 million.

KYA wants lawmakers to require the use of other types of intervention, like mental health counseling or expanded use of foster care, in place of detention of status offenders. House Bill 123, sponsored by Rep. Kelly Flood, D-Lexington, and supported by KYA during the 2011 Regular Session, would have required status offense complaints presented in court include supporting documentation and that secure detention of status offenders be restricted, among other legal changes.

"The issue is whether we make an investment on the front end, and put the youngster on the right track, or whether we spend our dollars on the back end when the specter of adult criminal justice is at play," said Brooks.

Department of Juvenile Justice Deputy Commissioner Hasan Davis said children enter juvenile

Continued on page 2

Medicaid managed care plan reviewed by committee

by Chuck Truesdell
LRC Public Information

FRANKFORT — A legislative hearing on a Medicaid cost containment report quickly turned to the upcoming transition to managed care for Medicaid recipients on June 9.

Cabinet for Health and Family Services officials were on hand to respond to a Program Review and Investigations Committee report with recommendations for improving the state Medicaid program. With cost containment and fraud prevention a key component of the report — and with the Medicaid budget the subject of a special session earlier this year — lawmakers on the panel were interested in plans for managed care implementation statewide.

Acting Medicaid Commissioner Neville Wise said that proposals are currently being reviewed with negotiations with prospective managed care organizations to come in the next few weeks. He said he expected contracts to be signed by July 1.

The request for proposals allows different groups to join together to separately provide primary care, pharmacy, and other services, as long as there is a "seamless" experience for Kentucky's 820,000 Medicaid recipients, Deputy CFHS Secretary Eric Friedlander said. The RFP required prospective managed care organizations (MCOs) to submit

Continued on page 2

Judiciary,

from page 1

Sen. Robin Webb, D-Grayson, a member of the Interim Joint Committee on Judiciary, makes a comment during a recent meeting of the committee in Frankfort.

detention as a last resort because "every other agency in the state has … made a decision or failed" to address a child's abuse or neglect issues. Before they get to DJJ, status offenders go before judges like District Judge Karen Thomas of Campbell County, who said trouble at home is at the root of a status offense.

"Status offender kids are status offender kids because something is going on at home," said Thomas. If a parent doesn't know how to parent, Thomas said often times the courts have to take over.

Many children have been helped by court designated workers, she said, but added that early intervention—specifically placing mental health counselors in schools so children have access to such care—should be considered.

Retired law enforcement official and State Sen. John Schickel, R-Union, said that detention of status offenders can be helpful. In fact, he said, it can save a child's life based on his experience as a law enforcement officer and former U.S. Marshal. Other lawmakers said hiring more social workers and putting mental health workers in schools is a good route to take.

"It is our fault as legislators that we have not faced reality and increased revenue (to hire more caseworkers)," said Rep. Mary Lou Marzian, D-Louisville. Marzian said there are not enough caseworkers to handle all the children who need their help.

Committee Co-Chair Sen. Tom Jensen, R-London, said the committee will have another meeting on the issue and invite the Department for Community Based Services in the Cabinet for Health and Family Services to comment, among others. Fellow Co-Chair Rep. John Tilley, D-Hopkinsville, said although state budgets will be tight over the next few years, there are possible solutions to the problem.

"(We can) create savings to reinvest," Tilley said.

Economic Development,

from page 1

Yum! Center is giving artists an opportunity to draw larger crowds than arenas in other cities.

Once the center has been opened for a full year, an economic impact study will give a clearer picture of the effect the arena has had on downtown Louisville. But one early indicator of success is the eight new restaurants that have opened within a few blocks of the arena, Workman said.

Rep. Tom McKee, D-Cynthiana, noted that there were some concerns about parking when the arena was being built. Workman replied that parking has not been a problem. "Some of you who may have attended events there – including basketball, which is one they were concerned about – can probably say there haven't been any problems getting in or out of the parking area. … I park in the arena garage and I've never had more than a half-dozen cars in front of me coming or going."

Lawmakers were also updated on a new Tiffany and Co. jewelry manufacturing facility in Lexington that has already employed 90 workers in a facility its renting until a new 25,000-square-foot manufacturing plant is completed this summer. In the new facility, the workforce is expected to grow to 125, with future expansion and more jobs possible.

John S. Petterson, senior vice president of operations for Tiffany & Co., said Lexington was chosen from about 50 sites in the U.S. that were considered for the new manufacturing plant. One of the main considerations, he said, was choosing a site that could uphold the quality expected of the Tiffany & Co. brand. "It boiled down to us … being sure we could hire people that would understand this amazing brand what this amazing culture was all about."

Lexington made a good first impression on the Tiffany and Co. officials when they visited, Petterson said.

"Something feels good about Lexington -- the arts, the values, the people that we've met, the sincerity we felt during the process," he said. "And so that's when we began the process of looking much, much deeper at Kentucky."

Some of the same qualities that attracted the manufacturing plant to Kentucky may draw a Tiffany & Co. retail shop to Lexington in the future, Petterson said.

Medicaid,

from page 1

details on a statewide network as well as networks for specific regions of the state.

> "We've all learned something from Passport, some positive and some negative..."
>
> **Neville Wise**

Passport Health Plan currently runs a similar program for 165,000 Medicaid recipients in and around Louisville.

"We've all learned something from Passport, some positive and some negative, that we can use," Wise said.

Once managed care largely replaces the current fee-for-service model, as many as half of all Medicaid staff could shift all or part of their responsibilities toward administrative oversight and related duties, Wise said, although Medicaid eligibility will still be controlled by state workers and not MCOs.

"It would seem we've just added another layer" of bureaucracy rather than cutting costs, said Senate President Pro Tempore Katie Kratz Stine, R-Southgate.

Friedlander pointed out managed care's traditionally lower costs as another cost savings to the commonwealth at a time of strained budget resources, while CHFS budget director Beth Jurek said Kentucky's low administrative overhead would help keep costs low.

The report cited the lower administrative costs as a potential negative if proper oversight is to be maintained over MCOs. In some cases, proper cost-benefit analysis for programs has not been conducted, and statutorily required reports to the legislative branch have not been adequate, it said. "It would seem the best internal protocols are what we need in place," Sen. Stine said.

End-of-course school exam details shared with lawmakers

by Chuck Truesdell
LRC Public Information

FRANKFORT — Members of the Education Assessment and Accountability Review Subcommittee heard details of the coming school year's implementation of end-of-course assessments at their first meeting of the 2011 interim on June 13.

Senate Bill 1, passed in 2009, authorized statewide end-of-course exams to measure students achievement in core courses. Those exams will take place for English II, Algebra II, biology, and U.S. history courses beginning with the 2011-12 school year. All students must take those courses for high school graduation.

Under the plan, districts may choose to use student exam results as part of the course grade, but any district that chooses not to, or that values the exam results as less than 20 percent of the student's final grade, must explain their choice to the Kentucky Department of Education. "Teachers all over the commonwealth told me students needed to have some accountability in this," Education Commissioner Terry Holliday said.

The exams will come in two parts: 35-38 multiple-choice questions that can be taken electronically or with pencil and paper, and 1-3 written response questions that must be taken the old-fashioned way.

Around 98 percent of all schools have the capability to administer the multiple-choice part electronically, Holliday said. State education officials said that ACT, Inc., the exam designers, cannot administer the written portion online.

Electronic responses can be graded and returned to students within a day or so, said Rhonda Sims of the Education Department's Division of Support and Research. Pencil-and-paper responses will have a two-week lag.

"Ten days is not very long, unless it's the end of the school year," said Sen. Vernie MaGaha, R-Russell Springs. The exams will be given at the end of the course, whether in a block, trimester, or traditional calendar.

"We will continue to work with ACT to see if the timeline can be improved," Sims responded. The original bid process asked for a five-day lag, but ACT's 10-day time frame was the shortest submitted, Sims said.

Sen. Mike Wilson, R-Bowling Green, makes a comment during a recent meeting of the Education committee in Frankfort.

The benefit of the new testing scheme, school officials said, was that students statewide will face the same exams, setting a firm measure for all students. In addition, the results can be compared to students taking similar tests in other states, and because ACT Inc. is helping design the exams, they will have some predictive value for students' performance on the PLAN and ACT exams that measure college readiness. The end-of-course exams were "backward-engineered," Sims said, beginning with expectations for college and career readiness and working from there. The state's new core curriculum standards have also been designed with students' future needs in mind.

While the state's English II and Algebra II standards are already in line with ACT's pre-packaged exams, and biology standards are largely the same, the U.S. history exam will be adjusted somewhat to account for high school students' focus on post-Reconstruction history. American history up to the Civil War is covered in middle school, Sims said. The more customized the exams are to Kentucky standards, however, the less they can be compared to other states' test results.

Sims also addressed the concern of Rep. Bill Farmer, R-Lexington, that teachers will focus on the test instead of core standards, a problem cited with the state's former testing system. The test questions will be changed throughout the year and not frequently recycled so that teachers can focus on the broader knowledge base rather than expected exam questions.

"It's a new and exciting path, and we expect there to be some growing pains," Sims said.

Proposed federal rules lead to possible rate hikes

by Rebecca Mullins Hanchett
LRC Public Information

FRANKFORT— Electric rates across Kentucky would likely increase as utilities prepare to spend around $9 billion over the next five or six years to comply with proposed or pending federal environmental regulations, a state legislative committee heard on June 2.

John Voyles with LG&E and KU Energy told the Interim Joint Committee on Natural Resources and Environment that his company applied June 1 to the Public Service Commission for a rate increase of up to 12.2 percent for KU's nearly 546,000 customers by 2016 and up to 19 percent for LG&E's 397,000 electric customers to help recoup its costs. Wholesale rates could increase 40 percent by 2015 for customers of Big Rivers Electric in Henderson to help that company recoup expected costs, said company spokesman John Talbot.

Big Rivers Electric, which distributes electricity and other services to more than 111,000 customers, estimates it will pay $785 million initially to develop equipment necessary for compliance with new federal regulations, Talbot said.

"It's a grave concern to our country and the western Kentucky economy," Talbot said, adding the increase would affect industrial employers such as aluminum smelters that pull much of Big Rivers' customer load.

"Anyone who has a job here may not have that type of job when these increases go through," said committee co-chair Rep. Jim Gooch, D-Providence, who chaired today's meeting. Gooch said there is no way an industry will stay in the U.S. if it is required to pay an electricity rate increase of 20-30 percent or more.

East Kentucky Power Cooperative official Nick Comer said his company—which supplies power to 519,000 Kentucky customers—estimates compliance with the proposed regulations could cost his company at least $700 million while

Continued on page 20

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Committee Meetings

Index

Interim Joint Committee on Transportation

Minutes of the 1st Meeting
of the 2011 Interim
June 7, 2011

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Transportation was held on Tuesday, June 7, 2011, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Hubert Collins, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representative Hubert Collins, Co-Chair; Senators Jimmy Higdon, Paul Hornback, Bob Leeper, John Schickel, Brandon Smith, Damon Thayer, Johnny Ray Turner, and Mike Wilson; Representatives John A. Arnold Jr., Leslie Combs, Tim Couch, Will Coursey, Jim DeCesare, Richard Henderson, Jimmie Lee, Donna Mayfield, Charles Miller, Terry Mills, Lonnie Napier, Rick G. Nelson, Tanya Pullin, Marie Rader, Steven Rudy, John Short, Arnold Simpson, Fitz Steele, Jim Stewart III, and Tommy Turner.

Guests: Tom Zawacki, Commissioner, Motor Vehicle Regulation, Rick Taylor, Deputy Commissioner, Motor Vehicle Regulation, Kentucky Transportation Cabinet; Winn Turney, Commissioner, Craig Farmer, Department of Aviation, Russ Romine, Executive Advisor, State Highway Engineer, Kentucky Transportation Cabinet.

LRC Staff: John Snyder, Brandon White, and Jennifer Beeler

Presentation from the Transportation Cabinet regarding implementation of Senate Bill 79

Tom Zawacki, Commissioner, and Rick Taylor, Deputy Commissioner, Department of Vehicle Regulation, Transportation Cabinet, discussed a brief overview of the implementation of Senate Bill 79. Mr. Zawacki stated that SB 79 was originally introduced because some neighboring jurisdictions, most notably Illinois, do not exempt farm registered vehicles from the International Fuel Tax Agreement (IFTA) requirements. Prior to the passage of SB 79, Kentucky's lowest registration weight level for farm vehicles was 38,000 lbs; because of their farm registration these vehicles are exempt from the IFTA requirements while operating in Kentucky. The IFTA articles of agreement, however, leave it up to each state as to whether it will exempt farm trucks. Under IFTA rules, vehicles with a registered gross vehicle weight exceeding 26,000 lbs are considered subject to IFTA requirements. Because the weight printed on the registration receipt for Kentucky farm trucks was 38,000 lbs, any farm truck, even pickups, were subject to IFTA requirements if another state did not exempt farm vehicles like Kentucky.

The result was that Illinois enforcement officers engaged in an enforcement campaign on the road farmers need to take to get from Kentucky to Missouri. "Violators" were cited for not being complaint with IFTA and generally assessed a $1,000 fine.

With the implementation of SB 79 a third registration level for farm trucks has been added. The three weight classes are now; Level 1: 26,000 lbs or less; Level 2: 26,001 lbs - 38,000 lbs; Level 3: 38,001 lbs - 80,000 lbs (levels limited to farm use only). The Automated Vehicle Information System (AVIS) changes necessary to implement this change was finalized on April 25, 2011. County clerks were also notified of the change on April 25, 2011, and there is no state fee required to update the registration receipt.

In response to Representative Collins, Rick Taylor stated that Illinois has been the state that there was the most trouble and their revenue officers were made aware of the changes of SB 79 and they agreed to suspend enforcement until Kentucky could fully implement the changes.

Mr. Taylor stated an additional issue that has arisen recently with Illinois is that they are citing Kentucky farm registered vehicles hauling horse trailers for pleasure riding. Illinois is stating that is an improper use of the farm tag. Mr. Taylor stated the cabinet has spoken with Illinois and that the provisions of the farm tags on the lower weights state that they may be used for farming, but do not exclusively have to be used for farming.

In response to Representative Arnold, Mr. Taylor stated that as far as the fuel tax is concerned as long as the vehicle hauling a trailer is registered at the 26,000 lb or below level and stay under that weight, that vehicle is not subject to the IFTA tax. He also stated that constituents will need to get an updated registration receipt stating that their vehicle is within the 26,000 lb or less category rather than the 38,000 lb category. That new receipt would be their proof that they are not subject to the IFTA tax.

Mr. Zawacki continued with his presentation and stated that another major change contained in SB 79 was the exemption to three parts of the Federal Motor Carrier Safety Regulations for intrastate vehicles engaged in farming or agricultural related activities with a gross combined weight of 26,000 lbs or less. Since the enactment of the legislation the Department of Vehicle Regulation did not have to make any changes, Kentucky State Police and the Department of Commercial Vehicle Enforcement have provided training to all field personnel in March explaining the impact of SB 79.

In response to Representative Collins, Mr. Zawacki stated that there needs to be something done to make sure the citizens of the commonwealth are made aware of the changes of SB 79. He stated that the department plans on having discussions with Kentucky Farm Bureau and cooperative extension offices to get the word out.

Mr. Zawacki stated there are some additional changes made with the implementation of SB 79 the first of which was expanding the planting and harvesting season. The season was previously dated from March 1 through November 23 of each year and has been changed to January 1 through December 31 of each year to provide an hours of service exemption within a 100 air mile radius from the source of the commodities or distribution point. He explained that SB 79 also allows transportation of farm equipment on an annual permit from dealership to dealership aligns the definition of interstate commerce and intrastate commerce with 49 CFR Part 309.5.

Representative Arnold asked if with the new changes farmers were able to drive from one field to another without being stopped by the Department of Transportation officers, Mr. Taylor stated that yes they were exempt from normal hours of service rules.

In response to Senator Hornback, Mr. Taylor stated that as far as a combine is concerned farm to farm movement does not require any additional permits, but that the farmer needs to follow safety guidelines, which include escort vehicles and lighting. He stated that if a farm implement is under 12 feet they do not need an escort vehicle, anything over 12 feet requires an escort vehicle front and rear. There is no special lighting that is required currently.

Presentation from the Department of Aviation on Kentucky's Airports

Winn Turney, Commissioner, Department of Aviation discussed activities of the department. Kentucky has recently sold two aircraft out of the state's fleet of six to help bring in over $230,000 of revenue to the state. The Department of Aviation recently was a part of a National Level Exercise which is a preventative exercise in order to assess the state's preparedness for a major earthquake. The department is also part of fire support for the Department of Fish and Wildlife and drug enforcement with the Kentucky State Police. He stated that currently the Department of Aviation has an ongoing project called AWAS (Automated Weather Announcement System). The department is currently planning on placing twelve within the state. The AWAS system is meant so that pilots can call and check on the weather in a certain area to decide if he is qualified to fly in those conditions.

In response to Representative Collins, Mr. Turney stated that the Department of Aviation's funding comes from the Road Fund, jet fuel sales tax and from bond sales. Craig Farmer noted that for 2011 the Department's budget was around 10 million dollars.

In response to Representative Collins, Russ Romine stated that the previously the jet fuel tax was the primary funding for the department and in the past several years through the budget bill there have been transfers of the jet fuel tax to the general fund. Mr. Romine also stated that as money from the Jet Fuel Tax has been transferred out the money has been replaced with spending authority to road fund dollars and in 2012 will be replaced with bond sale proceeds.

In response to Representative Collins, Craig Farmer said that there is currently a process in place that if a need is identified, either the airport boards or the consulting engineers can submit a project application for consideration. After the application is submitted the department will wait from approval from the Secretary's office for funding approval.

In response to Representative Collins, Mr. Turney stated that Paducah, Owensboro, Lexington, Louisville and Cincinnati currently have aircraft that carry passengers. Also, to provide passenger services an airport has to get federal approval and meet certain guidelines.

In response to Senator Harris, Mr. Farmer stated that revenue could easily double or triple if the one million dollar cap per taxpayer on jet fuel was removed. He said that Louisville, Lexington and Cincinnati hit the cap around mid February.

In response to Senator Harris, Mr. Romine said that there was a 9 million dollar bond issued for the extension of the Bluegrass Field runway which was one-third the price of the actual project.

In response to Senator Thayer, Mr. Turney stated there are policies and procedures that have to be followed in order to use an aircraft owned by the state. He said there are forms that need to be filled out and approval from the Governor's office. When an aircraft is requested by the Governor's office it is then billed back to the Governor's office for fuel, flight time, and pilots.

In response to Senator Higdon, Mr. Turney said the average cost of the AWAS system is approximately $160,000 each. These systems are used strictly for pilots to know what weather conditions are in a certain area. He said that right now there are around 37 statewide.

In response to Senator Higdon, Mr. Farmer stated that the trend in pleasure travel has gone down, but corporate travel has stayed steady.

In response to Representative Henderson, Mr. Farmer stated that if an emergency arises at any airport in the state of Kentucky, that airport could submit a project evaluation and have that project rushed through the system so work could begin to fix whatever emergency has arisen.

In response to Representative Collins, Mr. Turney stated that in the situation where an accident happens at an airport the FAA will do an investigation. The Department of Aviation will then go and make sure there has been no damage to any buildings or damage to the runways so that it can be repaired. In response to Representative Collins, Mr. Farmer stated that runway extensions do not always have to be approved on the federal level unless there is funding from the federal level, if Kentucky has the funding the project can be approved within the state only.

Before adjourning the meeting Chairman Harris informed the members that its next meeting would be held on July 5th, at 1:00 PM in Frankfort.

With no further business before the Committee, the meeting adjourned at 2:20 PM.

Capital Planning Advisory Board

Minutes of the 1st Meeting
of the 2011 Calendar
May 13, 2011

Call to Order and Roll Call

The 1st meeting of the Capital Planning Advisory Board was held on Friday, May 13, 2011, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Jack Westwood, Chair, called the meeting to order, and the secretary called the roll.

Present were:

<u>Members:</u> Senator Jack Westwood, Co-Chair; Senator Paul Hornback, Representative Ron Crimm, David Buchta, Charles Byers, Carole Henderson, John Hicks, Ryan Keith, Mary Lassiter, Mark Overstreet, and Carol Palmore.

<u>Guests testifying before the Board</u>: Gene Fuqua, Chief of Staff; Donna Duncan, Commissioner, Department of Financial Incentives; and George Burgess, Executive Director, Office of Administrative Services, Economic Development Cabinet; Marcheta Sparrow, Cabinet Secretary and Tim Pollard, Executive Director, Office of Finance, Tourism, Arts, and Heritage Cabinet; Harold Workman, President and CEO, Kentucky State Fair Board; Tammy Branham, Executive Director, Office of Budgets and Fiscal Management, Tom Zawacki, Commissioner, Department of Vehicle Regulation; and Jack Morris, Executive Director, Facilities Support, Transportation Cabinet; Stephen Reeder, Executive Director, Kentucky River Authority; Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission; and Tony Wilder, Commissioner, Department for Local Government.

<u>LRC Staff:</u> Shawn Bowen and Jennifer Luttrell

Approval of Minutes October 29, 2010

There was a motion made by Representative Crimm, seconded by Mr. Buchta and adopted by voice vote to approve the minutes of the October 29, 2010 meeting.

Welcome New Members

Chairman Westwood said since the Board's last meeting in October 2010, three new members have been appointed. The Senate President appointed Senator Paul Hornback to fill the vacancy left by Senator David Boswell. The Speaker of the House appointed Carol Palmore to replace Laurel True, and the Governor appointed Ryan Keith to replace John Esham.

Overview of Capital Planning Process

Senator Westwood said the major responsibility of the Board every two years is the development of a statewide capital improvements plan. Before beginning the review of the six-year capital plans of the various agencies, he asked Ms. Bowen to provide an overview of the planning process.

Ms. Bowen briefly discussed the Board's meeting schedule for development of the 2012-2018 statewide plan and the format for review of the agency plans at the upcoming meetings. The Board will meet monthly up until September. The last meeting in September will require members to vote upon the final draft of the 2012-2018 Statewide Capital Improvements Plan, including any policy and project recommendations agreed upon by members.

Summary Information on Certain Executive Branch Agency Plans

Ms. Bowen said included in members' folders was a document listing various state agencies, boards, and cabinets that are not scheduled to testify before the Board. These agencies utilize restricted funds only or they do not have any capital project requests.

Consideration of Agency Plans

The first plan to be reviewed was for the Economic Development Cabinet. Representing the Cabinet were Mr. George Burgess and Ms. Donna Duncan. Mr. Burgess gave a brief overview of the Cabinet's capital plan and discussed four General Fund project requests for the Kentucky Economic Development Finance Authority, the High-Tech Construction and Investment Pools, the Economic Development Bond Program, and the Parking Garage Maintenance Pool.

In response to a question from Representative Crimm, Mr. Burgess stated that the Phoenix Parking Garage in downtown Lexington is not owned by the state. The Phoenix Garage, which was closed in May due to structural issues, is owned and operated by the Lexington-Fayette Urban County Government.

In response to a question from Chairman Westwood, Mr. Burgess responded that the Cabinet owns four parking garages: Lexington Financial Center Garage, Vine Street Parking Garage, Covington City Center Parking Garage, and Sullivan Parking Garage. The Cabinet initially owned six garages; however, the ones in Covington and Owensboro were sold. He added that private entities are interested in the other four state-owned garages and, if these garages were to be sold, it would eliminate the Cabinet's request for funding for the Parking Garage Maintenance pool.

In response to a question from Mr. Hicks, Ms. Duncan gave a brief history of the High-Tech Construction and Investment Pools and explained how the pools have evolved since the program's inception. She stated that initially funds were used for small business and university-related infrastructure projects, but funds are now being used for more specific knowledge-based, high-tech companies that have developed business plans with products, innovations, and patents.

The next plan to be reviewed was the Tourism, Arts and Heritage Cabinet (TAHC). Cabinet Secretary Sparrow and Mr. Tim Pollard gave a brief overview of the Cabinet's capital plan request. The agencies within TAHC submitting General Fund project requests included the Department of Parks, the Kentucky State Fair Board, the Kentucky Horse Park, the Kentucky Center for the Arts, the Kentucky Artisan Center, and the Frankfort Convention Center.

Two other entities submitting General Fund project requests, the Northern Kentucky Convention Center and the Eastern Kentucky Exposition Center are, by statute, attached to the TAHC for administrative purposes only. Also discussed were project recommendations for the Department of Fish and Wildlife Resources, which is funded 100 percent with Restricted Fund sources.

In response to a question from Chairman Westwood, Mr. Workman replied that the closing of Kentucky Kingdom has impacted the state's revenues significantly. As an example, he said youth conventions that book facilities in Louisville have had to find alternative venues for entertainment.

In response to another question from Chairman Westwood, Mr. Workman said the Fair Board is reviewing a proposal from the Kentucky Kingdom Redevelopment Company to reopen the park through a public/private partnership. The initial proposal calls for $50 million to reopen the park, with Kentucky Kingdom Redevelopment providing the initial $3 million and the Commonwealth of Kentucky providing $30 million. The Fair Board is working with the City of Louisville to develop sources for the remaining funding needed. The company is prepared to provide an additional $4 million if necessary. The plan to reopen Kentucky Kingdom in 2012 is based on the results of a study commissioned by the Fair Board, *the Kentucky Kingdom Redevelopment Economic and Fiscal Impact Analysis.* This study was accepted by the State Fair Board last year, and was completed by Economics Research Associates in November 2010.

The next plan to be reviewed was the Kentucky Transportation Cabinet. Representing the Cabinet were Ms. Tammy Branham, Mr. Tom Zawacki, and Mr. Jack Morris. The discussion highlighted the Cabinet's highest priority projects to be funded with General Funds and Road Funds. The Cabinet's plan focused on the maintenance and upkeep of its facilities statewide.

Mr. Zawacki then discussed the Flat Digitized License Plates project. This $1,250,000 Road Fund project includes the purchase of a digital printer, blanking, and finishing support equipment needed to transition to flat, digitized license plates.

In response to a question from Chairman Westwood, Mr. Zawacki stated that even with the purchase of new equipment, the license plates program would still be operated by the Department of Corrections. The inmates will learn the new technology necessary to operate the equipment.

In response to another question from Chairman Westwood, Ms. Branham replied that two airplanes, a 1975 Piper PA 31-350 (Navajo) Twin-Engine Fixed-Wing and a 1967 Cessna R172E/T-41 (Skyhawk) Single-Engine Fixed-Wing had recently been sold on E-bay.

In response to a question from Chairman Westwood, Ms. Branham replied that she was not aware that the Finance Cabinet had recently released a Request for Proposal (RFP) for construction of a hangar at the Capital City Airport, but she would follow-up on the question. The RFP was issued on behalf of the Department of Aviation.

In response to a question from Mr. Hicks, Mr. Morris said the Cabinet is working to update its storage facilities, and has started a schedule to replace storage buildings that were built in the 1950s and 1960s.

The next plan to be reviewed was the School Facilities Construction Commission (SFCC). Representing SFCC was Dr. Bob Tarvin. Dr. Tarvin discussed the history of SFCC and then gave a brief overview of their capital plan. The two major components of SFCC's plan are targeted urgent needs funding and SFCC bond funding.

In response to a question from Representative Crimm, Dr. Tarvin stated that SFCC does not actually see the facilities for which funding is being requested and/or approved. When a district puts together a local facility plan, the local group hires an architect to assist in the development of the plan and review of the facilities. He added that a study of school facilities statewide is currently being conducted for the Kentucky Department of Education. An outside third-party firm, consisting of ten teams, will physically assess these facilities based on a set of criteria to develop consistency across the state for evaluating school facilities. That study, known as the Facility Inventory and Categorization System, will involve 486 buildings.

Representative Crimm requested that Dr. Tarvin provide additional information as to who owns the Bellwood Presbyterian Children's Home in Anchorage and who is responsible for the maintenance of the facility. Dr. Tarvin replied that he would follow-up with the requested information.

In response to a question from Chairman Westwood, Mr. Tarvin responded that high growth districts, up until 2008, had the opportunity to pass two local nickels. If they passed two local nickels, the first one was equalized. However, in 2008, the legislature took that authority away. Now, high growth districts have no authority or opportunity for additional funds. In 2008, schools in the Base Realignment and Closure (BRAC) district were provided with an additional nickel for northern Kentucky, Elizabethtown and Fort Knox. The concentration of growth is in northern Kentucky, Oldham County, and Warren County.

The next plan to be reviewed was the Kentucky River Authority. Mr. Steve Reeder gave a brief overview of the 2012-2018 Capital Plan for the Kentucky River Authority. Included within the discussion were the highest priority projects to be funded with a combination of General Funds and Agency Bonds.

In response to a question from Chairman Westwood, Mr. Reeder stated that even though the project scope for the renovation of Locks 1, 2, 3, and 4 has decreased, the repairs are not patchwork fixes. The repairs will last for at least ten years or more due to the high quality of the timbers being used.

In response to a question from Mr. Hicks, Mr. Reeder replied that the Tier Two fee is 30 cents per month to cover Dam 9 now and will need to be increased to cover expenses. Tier II fees are assessed on main stem withdrawals and used solely for capital projects.

The next plan to be reviewed was the Department for Local Government. Commissioner Tony Wilder gave a brief overview of the 2012-2018 Capital Plan for the agency. The Department is requesting grant funds for three programs it administers: the Flood Control Matching Program, the Renaissance on Main Program, and the Community Enhancement Program.

In response to a question from Chairman Westwood, Mr. Wilder replied that flood control matching funds may be used for any flood-related federal government grant or loan program requiring local matching funds. The local match required is 12 percent and some communities are not able to provide this amount.

Representative Crimm commended the Department for the Renaissance on Main program. Mr. Wilder added that the program has changed the landscape for many cities across the state.

Board Discussion of Planning Issues

Chairman Westwood stated that in the past, the practice has been for the statewide plan to include both policy and project recommendations. He said based on what has been heard and discussed today, some members may have already identified items or policy issues for consideration and may want to follow-up with staff.

Schedule of Future Meetings

Senator Westwood stated that the next meeting is scheduled for Friday, June 17 starting at 9:00 AM for a full day session.

Adjournment

With there being no further business to discuss, the meeting was adjourned at 3:06 PM.

Capital Projects and Bond Oversight Committee

Minutes

May 17, 2011

Call to Order and Roll Call

The Capital Projects and Bond Oversight Committee met on Tuesday, May 17, 2011, at 1:00 p.m., 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, Co-Chair; Representative Jim Glenn, Co-Chair; Senator Jared Carpenter; Representatives Robert R. Damron and Steven Rudy.

Guests: Representatives John Will Stacey, Jim Gooch, and Dennis Horlander; John Hicks, Governor's Office of Policy Management; Charles Bush, Division of Real Property; Sandy Williams, Kentucky Infrastructure Authority; Katie Smith, Cabinet for Economic Development; and Tom Howard and Brett Antle, Office of Financial Management.

LRC Staff: Kristi Culpepper and Samantha Gange.

Approval of Minutes

Representative Damron made a motion to approve the minutes of the April 19, 2011, meeting. The motion was seconded by Representative Glenn and approved by voice vote.

Correspondence Items

Senator Leeper asked Kristi Culpepper, Committee Staff Administrator, to discuss correspondence items. Ms. Culpepper said members' folders contained two items of correspondence. The first item was a letter from the Cabinet for Economic Development regarding amendments to the Kentucky Economic Development Finance Authority Industrial Building Revenue Note, Series 2010 (Goodwill Industries of Kentucky, Inc. project) transaction. The committee approved the $28 million conduit bond issue in March 2010. The amendments relate to the financing agreement, tax compliance agreement, and issuer authorizing resolution. The amendments only relate to timing and do not change the nature of the project.

The second of item of correspondence was a letter from the Council on Postsecondary Education (CPE) notifying the committee that the council approved the University of Kentucky to purchase an Ambulatory Electronic Health Record Equipment / System. The committee approved the project in March 2011 contingent upon CPE's approval.

Information Items

Ms. Culpepper said members' folders contained three information items. The first item was from the School

Facilities Construction Commission (SFCC) regarding members' questions from the April 2011 meeting; and the last two items were the staff and bond market updates.

Project Scope Increases from the Finance and Administration Cabinet

Senator Leeper asked John Hicks, Deputy Director, Governor's Office of Policy Management, to present two items related to scope increases. Mr. Hicks said the first item was a scope increase for a budgeted capital project for Eastern Kentucky University (EKU), Construct Stratton Building Addition project. The scope increase is $825,000 in restricted funds with a revised project scope of $6,325,000. The additional funds are needed to address change orders, increases in furnishing / equipment costs, and unanticipated infrastructure renovations.

Senator Carpenter made a motion to approve the scope increase for EKU. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

Mr. Hicks said the second item was a scope increase for a budgeted capital project for Kentucky Community and Technical College System (KCTCS), Construct Cosmetology Building project. The scope increase is $70,000 in restricted funds with a revised scope of $1,050,000. The low construction bid of $809,326 would have reduced project contingency funds to a level that was unacceptable to the Finance and Administration Cabinet. The scope increase will allow the project to proceed in a timely manner.

Representative Glenn commented that he is employed by the KCTCS Owensboro campus; however this project pertains to the KCTCS Ashland campus.

Representative Rudy made a motion to approve the scope increase for KCTCS. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

Lease Modification Report from the Division of Real Property

Senator Leeper asked Charles Bush, Director, Division of Real Property, Finance and Administration Cabinet, to report on several items related to leases. Mr. Bush said the first item was a report of changes in square footage for eight state leases for the period January through March 2011. The lease modifications were less than $50,000 and did not require Committee action.

Lease Renewals Exceeding $100,000 from Division of Real Property

Mr. Bush said the first lease renewal was for the Department of Corrections in Fayette County (PR-3086) for office space with an annual rental cost of $116,908. The lease term is through June 30, 2012.

The second lease renewal was for the Department of Workers Claims in Fayette County (PR-4708) for office space with an annual rental cost of $141,465. The lease term is through June 30, 2012.

The third lease renewal was for the Department for Workforce Investment in Boone County (PR-4243) for office space with an annual rental cost of $105,555. The lease term is through June 30, 2019.

Representative Damron made a motion to approve the three lease renewals. The motion was seconded by Representative Glenn and passed unanimously by roll call vote.

New Lease Exceeding $100,000 from Division of Real Property

Mr. Bush said the next item was a new lease for the Cabinet for Health and Family Services in Harlan County (PR-4864). The annual cost of the lease is $135,771 through June 30, 2017 and includes 90 parking spaces. The cabinet currently occupies 19,014 square feet of office space under three separate lease agreements representing a combined annual rental cost of $149,375. The cabinet has requested to consolidate into a single facility.

In response to a question from Representative Damron, Mr. Bush said the consolidation of the three leases will save the Commonwealth $13,603 annually.

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

New Lease Exceeding $200,000 from Division of Real Property

Mr. Bush said the last item was a new lease exceeding $200,000 for the Department of Agriculture in Jefferson County (PR-5133). The annual cost of the lease is $219,773 (100 percent federally funded) through June 30, 2018 and includes 4,026 square feet of office space, 18,377 square feet of warehouse space, and 50 parking spaces. The department requested new space to house a commodity distribution center, which serves as a statewide food bank. The new space request was prompted by a US Department of Agriculture inspection at the current leased space that revealed deficiencies that could compromise future federal funding.

Representative Glenn made a motion to approve the new lease. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

Kentucky Infrastructure (KIA) Fund A Loans

Senator Leeper asked Sandy Williams, Financial Analyst, KIA, to present several loans. Ms. Williams said the first request was a $500,000 Fund A loan for the City of Pineville in Bell County for the benefit of Pineville Utility Commission for the planning and design work associated with the Virginia Avenue Utility Replacement project. The loan term is five years with an interest rate of three percent, which is standard for planning and designing loans. This project qualifies for additional subsidization of $150,000 in principal forgiveness.

In response to a question from Senator Leeper, Ms. Williams said the total cost for the project including the planning and design is $6,000,000 and is eligible for full KIA funding. She indicated that the city wanted to proceed with the planning and designing phase first.

The second loan request was a $2,000,000 Fund A loan for the City of Vanceburg in Lewis County for the benefit of the Vanceburg Electric Plant Board for the CSO Renovation project. The funding for this project will be used for the first phase of a two phase project. The loan term is 20 years with an interest rate of one percent. The project qualifies for additional subsidization of $600,000 in principal forgiveness.

Senator Leeper asked why the ratio of engineering fees to construction costs were so high for this project. Ms. Williams said the engineering costs reflect both construction phases of the project.

KIA Fund A Loans for Sanitation District No.1

The next three Fund A loan requests were for Sanitation District No. 1 in Boone, Campbell, and Kenton Counties to reduce and eliminate sewer overflows as well as address a Consent Decree with the Kentucky Division of Water and the US Environmental Protection Agency. Seven projects have been combined into three loan requests. The first loan request was $15,187,500 for the Ash Street Force Main and Ash Street Pump Station. The loan term is 20 years with an interest rate of two percent. The project qualifies for Green Project Reserve funding for $1,676,000 in Green Infrastructure and $1,787,000 in Energy Efficiency.

The second loan request for Sanitation District No.1 was $14,188,155 for the Church Street CSO Reduction project, Kentucky Aire Pump Station Elimination project, and Lakeview Pump Station Improvements project. The loan term is 20 years with an interest rate of two percent. The project qualifies for Green Project Reserve funding for $1,148,330 in Green Infrastructure and $3,075,000 in Energy Efficiency.

The third loan request for Sanitation District No.1 was $7.778.000 for the Lakeside Park Public and Private Source I/I and Sewer Rehabilitation and Vernon Lane Public and Private Source I/I and Sewer Rehabilitation. The loan term is 20 years with an interest rate of two percent. The project qualifies for Green Project Reserve funding for $910,000 in Green Infrastructure and $6,620,000 in Energy Efficiency.

Representative Rudy made a motion to approve the five Fund A loan requests. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

KIA Grant

Ms. Williams indicated one non-coal development grant authorized by the General Assembly was included in members' folders. No further committee action was needed.

Economic Development (EDB) Pool Grant Amendment

Senator Leeper asked Katie Smith, Deputy Commissioner, Department for Financial Incentives, Cabinet for Economic Development, to present an item. Ms. Smith said the cabinet is requesting approval of an amendment to the terms of an existing $196,500 EDB project for the City of Franklin in Simpson County for the benefit of HBAS Manufacturing, Inc. The outstanding grant was made to offset the cost of the company's $12 million expansion in Simpson County. The company has requested an amendment to the grant extending the deadline for meeting the jobs requirement of retaining its existing workforce of 270 full-time employees and creating an additional 100 jobs. In exchange for the extension, HBAS agrees to add an additional 20 jobs beyond the original requirement and to maintain those jobs until January 2013. The company plans to invest $8 million in the plant to manufacture a new, high-volume product.

In response to a question from Representative Glenn, Ms. Smith said the company will add an additional 20 jobs to the original grant requirements.

Senator Leeper asked what type of new product was being launched at the facility. Ms. Smith said she did not know.

Representative Rudy asked if similar amendments have been given to other companies. Ms. Smith responded affirmatively.

Representative Glenn made a motion to approve the EDB grant amendment. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

New Bond Issue – State Property and Building Commission (SPBC)

Senator Leeper asked Tom Howard, Director, Office of Financial Management (OFM), and Brett Antle, Deputy Director, OFM, to present several items. Mr. Antle said the first item was a new bond issue for State Property and Building Commission Revenue and Revenue Refunding Bonds, Project. No. 100. The par amount of the bonds is $368,435,000. Proceeds from this bond issue will 1) provide permanent financing for projects authorized in 2005 HB 267 (2004-06 Budget), 2006 HB 380 (2006-08 Budget) and HB 557, 2008 HB 406 and 608 (2008-10 Budget), and 2010 Extraordinary Session HB 1 (2010-12 Budget); 2) refund outstanding bonds issued under SPBC Project No. 68 (Second Series), Project No. 69 (Series A), and Project No. 72 for present value savings; and 3) restructure approximately $130 million of fiscal year 2012 debt service for budgetary relief.

Representative Damron made a motion to approve the new bond issue. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

Follow-up Report for Previously Approved Bond Issue

Mr. Antle said the second item was a follow-up report for Turnpike Authority of Kentucky Economic Development Road Revenue and Revenue Refunding Bonds (Revitalization Projects), 2011 Series A. Proceeds from this transaction will be used to make improvements and additions to the Kentucky Economic Development Road System. This transaction did not include a debt restructuring component as originally contemplated.

School Bond Issues

Mr. Antle reported four new bond issues with School Facilities Construction Commission (SFCC) debt service participation for Hancock County, Leslie County, Monticello Independent in Wayne County, and Silver Grove Independent in Campbell County).

Representative Damron made a motion to approve the new SFCC bond issues. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

Senator Leeper asked Ms. Culpepper to report new local school district bond issues. Ms. Culpepper said there were five local school district bond issues with 100 percent locally-funded debt service for Dayton Independent in Campbell County, Fairview Independent in Boyd County, Kentucky Interlocal School Transportation Association, and two for Leslie County.

With there being no further business, Representative Glenn made a motion to adjourn the meeting. The motion was seconded and the meeting adjourned at 1:50 p.m.

Administrative Regulation Review Subcommittee

Minutes of the May Meeting

May 10, 2011

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 10, 2011, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Johnny Bell, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Johnny Bell, Co-Chair; Senators David Givens, Alice Forgy Kerr, and Joey Pendleton; Representative Danny Ford.

Guests: Maryellen Allen, Sarah Johnson, State Board of Elections; Doug Dowell, Laura Ferguson, DeVon Hankins, Jeff Mosley, Jim Oliver, Matt Warfield, Department of Revenue; Charles Lykins, Board of Hairdressers and Cosmetologists; Nathan Goldman, Board of Nursing; Margaret Everson, Mark Mangeot, Karen Waldrop, Kentucky Department of Fish and Wildlife; Kevin Brown, Chad Collins, Julian Tackett, Kentucky High School Athletic Association; Simon Berry, Rona Paul, Department of Financial Institutions; Marc A. Guilfoil, Susan Speckert, Tim West, Kentucky Horse Racing Commission; Stan Cave, Kent Ostrander, The Family Foundation of Kentucky; and Patrick Neely, Kentucky Equine Education Project.

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

The Administrative Regulation Review Subcommittee met on Tuesday, May 10, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY STATE BOARD OF ELECTIONS: Help America Vote Act 2002

31 KAR 6:030 & E. Uniform definition of a vote. Maryellen Allen, general counsel, and Sarah Ball Johnson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:050. Miscellaneous taxes forms manual. Doug Dowell, attorney manager; Laura Ferguson, attorney manager; and Jeff Mosley, general counsel, represented the department.

In response to questions by Senator Givens, Ms. Ferguson stated that the Kentucky Horse Racing Commission included wagering on historical horse racing as a new form of exotic wagering in their proposed administrative regulation package, consisting of 810 KAR 1:001, 1:011, and 1:120; 811 KAR 1:005, 1:125, and 1:250; and 811 KAR 2:010, 2:060, and 2:160. If those administrative regulations became effective, it would be incumbent upon the department to have available at the same time this administrative regulation and the form necessary to collect the excise tax resulting from the new form of wagering.

In response to a question by Senator Kerr, Ms. Ferguson stated that "live racing" was not defined by KRS Chapter 138; however, KRS 138.511(3) defined the term, "daily average live handle", which included revenue collected from activities indirectly related to but not specifically including "live racing." The department therefore believed it had tacit authority to collect the tax. In his Franklin Circuit Court opinion, Judge Wingate determined, pertaining to a historical horse race that was replayed for a wagerer, the race was live in the mind of the wagerer and constituted a "live race." Ms. Ferguson stated that the court opinion said that the matter of wagering on historical horse racing needed to be considered within the context of other statutes than just those that addressed live, real-time racing.

In response to questions by Senator Givens, Ms. Ferguson stated that wagering on a historical horse race could include skill in addition to chance to affect the outcome. Many bets could be placed quickly in simulcast wagering, but not as quickly as if using a historical race machine. A historical race constituted a live race because it was live in the mind of the wagerer.

In response to questions by Representative Ford and Co-Chair Bowen, Mr. Mosley stated that the department respectfully declined to defer consideration of this administrative regulation to the June 14 meeting of the Subcommittee because this administrative regulation needed to become effective in tandem with the related package proposed by the Kentucky Horse Racing Commission.

Senator Givens stated that wagering on a historical horse race did not constitute live racing. A finding of deficiency for this administrative regulation may result in the inability to collect the excise tax if the new form of wagering became effective as it was established in the administrative regulations proposed by the Kentucky Horse Racing Commission. This subject matter should have been processed as legislation.

In response to a question by Senator Kerr, Mr. Mosley stated that the only way to insure that taxes would be collected immediately if wagering on historical racing was established was to have the tax requirements in place simultaneously when the requirements pertaining to the gaming became effective.

In response to a question by Representative Ford, Mr. Mosley stated that the effective date for this administrative regulation was estimated at roughly six weeks from this meeting of the Subcommittee.

Co-Chair Bell stated that this administrative regulation should not be found deficient because the excise tax would not be collectible if the Kentucky Horse Racing Commission's administrative regulations became effective without this administrative regulation also being effective. Mr. Mosley clarified that the department could still collect the excise tax if the suggested staff amendment was not approved; however, the administrative regulation would be better with the suggested staff amendment. The suggested staff amendment was not approved by the subcommittee due to a lack of a required second.

Representative Ford stated that since he voted against the administrative regulations regarding wagering on historical horse racing, it would be hypocritical for him to not also vote to find this administrative regulation deficient. He made a motion, which was seconded by Senator Kerr, to find this administrative regulation deficient. A roll call vote was taken. There being four (4) votes to find the administrative regulation deficient and one (1) vote against finding the administrative regulation deficient, the motion failed (See KRS 13A.020(4)).

GENERAL GOVERNMENT CABINET: Board of Hairdressers and Cosmetologists: Board

201 KAR 12:083. Educational requirements. Charles Lykins, administrator, represented the board.

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

Board of Nursing: Board

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice. Nathan Goldman, general counsel, represented the board.

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

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

301 KAR 2:172. Deer hunting

seasons, zones, and requirements. Margaret Everson, general counsel, and Dr. Karen Waldrop, wildlife director, represented the department.

Hunting and Fishing

301 KAR 3:100. Special commission permits.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition of "incorporated nonprofit conservation organization"; (2) to amend Section 3 to specify all types of special commission permits; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Kevin Brown, general counsel, Department of Education, represented the department. Chad Collins, general counsel, and Julian Tackett, commissioner, represented the Kentucky High School Athletic Association.

In response to questions by Senator Givens, Mr. Tackett stated that some incorporated bylaws had revised semester grade tracking procedures to allow teacher coaches to check grades through Infinite Campus and clarified the scheduling of games and practices, especially for volleyball, basketball, and spring football practices. The decision to propose the amendments was almost unanimous, as reflected in the association's vote record.

In response to a question by Senator Pendleton, Mr. Tackett stated that the amendments were intended to create a more fair and balanced playing field as it related to spring practice.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to establish that the material incorporated by reference shall apply to high school athletics in Kentucky; and (2) to amend Section 5 to incorporate all documents and forms that will be used to govern high school athletics in Kentucky. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Securities Division: Securities

808 KAR 10:010. Forms for application, registration, notice filing, reporting and compliance. Simon Berry, staff attorney, and Ronda Paul, certified examiner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to update the name of a form; and (2) to amend the STATUTORY AUTHORITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:030. Conduct of broker-dealers, agents, and employees; investment advisors and representatives.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to clarify requirements for brochures and brochure supplements; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:050. Application withdrawal.

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

808 KAR 10:200. Investment advisers' minimum liquid capitalization bond.

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

808 KAR 10:240. Registration exemptions - sale of business.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) establish a definition for "legal entity;" and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

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

808 KAR 10:280. Qualifications, eligibility, and restrictions on the use of Form U-7, Small Corporate Offering Registration.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add authorizing language; and (3) to amend Sections 1 and 2 for clarification and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:410. Life settlement investments.

In response to a question by Senator Givens, Ms. Paul stated that the term "viatical" was changed to "life settlement investments" throughout this administrative regulation to mirror changes made by the Department of Insurance. There were no substantive changes.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct and add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to delete superfluous language; and (3) to amend Sections 1, 2, 3, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:440. Examples of dishonest or unethical practice for broker-dealers and agents.

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

808 KAR 10:450. Examples of dishonest or unethical practice for investment advisers and investment adviser representatives.

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

808 KAR 10:480. Books and records of firms employing issuer agents.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct the edition date for the "Offering Document Guidelines"; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 10:490. Procedures for Distributing and Using Funds from the Securities Fraud Prosecution and Prevention Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions. Marc A. Guilfoil, deputy executive director, and Tim West, assistant general counsel, represented the commission. Patrick Neely, executive director, Kentucky Equine Education Project, appeared in support of 810 KAR 1:001, 1:011, and 1:120; 811 KAR 1:005, 1:125, and 1:250; and 811 KAR 2:010, 2:060, and 2:160. Stan Cave, attorney, and Kent Ostrander, executive director, represented The Family Foundation of Kentucky and appeared in opposition to 810 KAR 1:001, 1:011, and 1:120; 811 KAR 1:005, 1:125, and 1:250; and 811 KAR 2:010, 2:060, and 2:160.

In response to a question by Representative Ford, Mr. West stated that the commission respectfully declined to defer consideration of these administrative regulations to the June 14 meeting of the Subcommittee.

Senator Pendleton stated that the administrative regulations needed to move forward through the administrative regulation review process.

Mr. West stated that the Kentucky Horse Racing Commission had statutory authority to promulgate administrative regulations pertaining to wagering on historical horse racing. He provided the definition of "pari-mutuel" from the Interstate Horse Racing Act, the Racing Commissioners International Model Rules, and the decision in *Commonwealth v. Kentucky Jockey Club*. Mr. West stated that, pursuant to the aforementioned rules, for a wager to comply with the definition of "pari-mutuel," three (3) things were necessary: (1) the wagers must be in a pool; (2) patrons must wager amongst themselves, not against the house; and

(3) the operator must get a statutory commission. These administrative regulations define "pari-mutuel" similarly with the aforementioned rules. Wagering on historic horse racing does not specifically include "instant racing;" however, "instant racing" would be approved by the commission as meeting "wagering on historic horse racing."

Mr. West explained how the historic horse racing wagering machines worked. A player never won more than one (1) pool. There was a "seed pool" that insured a minimum payout availability. All races in the video library had ten (10) horses without disqualifications or a dead heat. Handicapping information was provided to inject an element of skill. The pools grew in real time until there was a winner. Once there was a winner, the pool returned to the minimum "seed pool." A bet was "locked in" once the historical race initiated. The wagerer may watch the entire race or just the stretch run.

In response to questions by Senator Givens, Mr. West stated that wagering on a historical horse race did not constitute an expansion of gambling, but was a type of exotic wagering based on pari-mutuel wagering of a horse race, which was already allowed in the Commonwealth. This was an evolution of horse race wagering, not an expansion of gaming. It was up to the wagerer to determine if skill would be an element utilized in the wager process, and skill was an element that was always an option in addition to chance for determining the outcome of a wager. A "quick pick" option provided for more chance and less use of skill. Handicap information, if used, provided the opportunity for skill to be a factor in the outcome of the wager. All wagers wagered on different races within the same pool. The statute only exempted horse racing from antigambling provisions; therefore, expansion to cards or other sports would not be possible. A wager could potentially be placed within one (1) minute of a previous cycle of wagering. Mr. West stated that the appearance of the machine was more like a slot machine, but was otherwise different. The machine provided a quicker wager than one would encounter at a live, real-time horse race because of logistics, such as in moving and preparing horses. The defining characteristic of the broader rules pertaining to "pari-mutuel" was the pooling of risk, not if the event was a single race.

In response to questions by Representative Ford, Mr. West stated that the recent opinion from the Attorney General did not provide for wagering on a historical horse race and required administrative regulations to be promulgated. Duly filed administrative regulations would carry the full force of law. These administrative regulations were being promulgated to define "pari-mutuel." Mr. Guilfoil stated that wagering restrictions would prevent wagering my minors or a horse trainer under investigation who has been prohibited from attending a live, real-time race. This type of restriction would carry forward to wagering on a historical horse race. The Kentucky Horse Racing Commission was a government agency; however, the Kentucky Horsemen's Benevolent and Protective Association and the racetracks were not state governing bodies. Mr. West stated that the same types of provisions already in place for these entities in live, real time horse racing would be extended to wagers on historical horse racing. This would benefit the entire horse industry. "Live racing" was defined by Mr. West as racing in real time but subject to interpretation.

In response to questions by Co-Chair Bowen, Mr. West stated that multiple wagerers using historical horse racing machines would have wagers pooled within the same six (6) types of pools. The entire horse racing community supported wagering on historical horse racing. The public hearing was held at the Red Mile, and all attendees except the Family Foundation of Kentucky supported the proposals. Churchill Downs, Keeneland, and other tracks were all in support. If a wagering system was pari-mutuel and pertained to horse racing, it would be approved pursuant to these administrative regulations; therefore, "instant racing" was not the only potential form of wagering on a historical horse race.

Senator Pendleton stated that these administrative regulations pertained only to horse racing. Kentucky was losing revenue to other states. Senator Pendleton made a motion to approve these administrative regulations. Co-Chair Bell determined that the motion was out of order because the Subcommittee was not authorized to approve administrative regulations, only amendments thereto. Senator Pendleton revised his motion to not find these administrative regulations deficient.

In response to a question by Senator Givens, Mr. West stated that a hypothetical wager involving plastic horses and dice would not constitute wagering on a historical or other race because if a living horse was not racing at the time the race took place, the integrity of horse racing would be undermined.

Mr. Neely stated that the Kentucky Equine Education Project represented all breeds of horses and had over 15,000 members. The project supported "instant wagering" as a form of wagering on historical horse races. Wagering on historical horse races had been successful in Arkansas. Like Kentucky, Arkansas prohibited casino gambling, but allowed pari-mutuel wagering on horse racing. Other states supplemented horse racing purses and breeders' incentive programs; therefore, without these administrative regulations, Kentucky would be at a disadvantage. New fans of horse racing have been created via this new type of exotic wagering.

In response to a question by Senator Pendleton, Mr. West stated that there was not a substantive difference between simulcast and machine wagering. Both related to horse racing and both involved pari-mutuel gaming.

In response to questions by Co-Chair Bowen, Mr. Neely stated that the target market for wagering on historical horse racing was as many consumers as possible. Skill was an important element in wagering on historical horse racing, but could be eliminated if the wagerer chose. Mr. West stated that those consumers who came to wager on historical horse racing may also be introduced to live, real-time horse racing and become a fan, rather than just the opposite happening. Mr. Neely stated that evidence supported Mr. West's hypothesis more than the opposite, which would be losing fans of live, real-time horse racing to machines.

In response to questions by Senator Kerr, Mr. West stated that financial forecasting for annual tax revenue from wagering on historical horse racing was difficult to determine. Comparison with Arkansas's revenue was not exact because of very different market sizes. The number of terminals that would be used would depend on how popular wagering on historical horse racing became. Mr. Neely stated that he did not have accurate financial forecasts either.

Senator Pendleton stated that it was unknown if wagering on historical horse racing would be successful and lucrative, but it would not be possible to determine unless it was attempted. The policy could be changed in the future by the Subcommittee or the legislature if it was not successful. The horse industry in Kentucky was in trouble, and this may help.

In response to questions by Representative Ford, Mr. Neely stated that wagering on historical horse racing involved an element of skill if the wagerer so chose. This was a horse racing event that may be characterized as "gaming," which was a term presently part of horse racing vernacular. Mr. West stated that wagering on historical horse racing was a type of exotic wager.

Mr. Cave stated that wagering on historical horse racing did not constitute live racing. Because a video of a horse race was not a horse race but a video, the video was not under the jurisdiction of the Kentucky Horse Racing Commission. He quoted Mr. Neely's comment that "A horse race is a spectacular event, which cannot be replicated on a tv screen." Mr. Cave stated that there was a two (2) part test for determining the legality of this matter: (1) was this a horse race; and (2) was it pari-mutuel. His answer to both tests was no and he stated that the Kentucky Horse Racing Commission and the Department of Revenue were so unsure if this was legal, they sought a determination from the court system.

Mr. Cave stated that wagering on historical horse racing was not truly pari-mutuel because patrons were not betting on the same event. The patent for the instant racing machine indicated that each player bets on a unique pool of one (1). The purse comes from progressive wagering pools. The Kentucky Attorney General's opinion stated that changes to an administrative regulation that would provide for wagering on historical horse races may also necessitate changes to the statute that prohibits certain devices, which appear to include an instant racing reel device. This may be the reason the Kentucky Horse Racing Commission declined to bring an instant gaming machine to the Subcommittee meeting. It may be illegal to bring such a device into Kentucky. A Wyoming court decision recently struck down a similar law in that state on the basis that the instant gaming reel machine was a slot machine, which was prohibited by Wyoming statutes. The Wyoming court decision stated that the device was a slot machine disguised as pari-mutuel wagering.

Mr. Cave stated that the wagering excise tax could only be collected on live, real-time horse racing events; therefore, it may not be possible to collect revenue from wagering on historical horse races. Wagering on historical horse racing would violate KRS 230.370, which prohibited keeping undisclosed information about a horse race such as the horse's name, jockey's name, or owner's name.

Mr. Cave stated that The Family Foundation of Kentucky was additionally concerned that there were not questions or discussions that took place at the Kentucky Horse Racing Commission the day that the commission approved these administrative regulations for filing. There were sworn affidavits related to the approval of these administrative regulations that were dated prior to the date the commission officially took the vote.

In response to questions by Co-Chair Bowen, Mr. Cave stated that representatives from the horse racing industry had, in press reports, stated both support and opposition to wagering on historical horse racing. The public hearing was held at the Red Mile venue, which was not a nonbiased facility; therefore, the results of the public hearing did not necessarily represent the total scope of opposition.

Senator Pendleton stated that he was offended that The Family Foundation of Kentucky had insinuated that Subcommittee members were being led blindly into bad public policymaking. He stated that Kentucky needed to protect its signature horse industry and the integrity of horse racing.

In response to statements by Mr. Cave, Mr. West stated that the argument of The Family Foundation of Kentucky was an emotive one, not based on the facts. The Kentucky Horse Racing Commission was cognizant of all applicable statutes and had vetted all the issues carefully. He said that KRS 230.370 pertained to undisclosed information about a live, real-time horse race and did not apply to wagering on historical horse races.

A motion was made by Senator Givens and seconded by Representative Ford to find these administrative regulations deficient unless the agency agreed to defer. Mr. West restated the commission's decision not to defer. A roll call vote was taken. There being four (4) votes to find the administrative regulations deficient, one (1) vote not to find the administrative regulations deficient, and one (1) pass vote, the motion failed (See KRS 13A.020(4)).

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct citations; and (2) to amend Section 1 to: (a) delete unnecessary definitions; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:009. Jockeys and apprentices.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, 5, 8, 10, 15, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:011. Pari-mutuel wagering.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend Section 2 to delete language that repeats statutory provisions; (3) to amend Sections 1, 3, 4, and 9 to include cross references to other administrative regulations; and (4) to amend Sections 2, 3, 4, 5, 7, 8, 9, and 10 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:120. Exotic wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to include cross references; and (2) to amend Sections 2 and 4 for clarity and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:005. Definitions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to update citations; and (2) to amend Section 1 to: (a) delete unnecessary definitions; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:125. Pari-mutuel wagering.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend Section 2 to delete language that repeats statutory provisions; (3) to amend Sections 1, 3, 4, and 9 to include cross references to other administrative regulations; and (4) to amend the TITLE and Sections 2, 3, 4, 5, 7, 8, 9, and 10 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:250. Exotic wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to include cross references; and (2) to amend Sections 2 and 4 for clarity and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa, and Arabian Racing

811 KAR 2:010. Definitions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to update citations; and (2) to amend Section 1 to: (a) delete unnecessary definitions; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:060. Pari-mutuel wagering.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend Section 2 to delete language that repeated statutory provisions; (3) to amend Sections 1, 3, 4, and 9 to include cross references to other administrative regulations; and (4) to amend Sections 2, 3, 4, 5, 7, 8, 9, and 10 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 2:160. Exotic wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 5 to include cross references; and (2) to amend Sections 2 and 4 for clarity and to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the June 14, 2011, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Interpreters for the Deaf and Hard of Hearing: Board

201 KAR 39:010. Definitions.

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

201 KAR 39:040. Fees.

201 KAR 39:050. Renewal of licenses and extension of temporary licenses.

201 KAR 39:060. Reinstatement of license subject to disciplinary action.

201 KAR 39:070. Application and qualifications for temporary licensure.

201 KAR 39:080. Reciprocity.

201 KAR 39:090. Continuing education requirements.

201 KAR 39:100. Complaint procedure.

201 KAR 39:120. Code of ethics.

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

401 KAR 10:030. Antidegradation policy implementation methodology.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:420 & E. Child fatality or near fatality investigations.

The Subcommittee adjourned at 4:10 p.m. until June 14, 2011.

Government Contract Review Committee

Committee Minutes

May 10, 2011

Call to Order and Roll Call

The Government Contract Review Committee met on Tuesday, May 10, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Vernie McGaha, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julian M. Carroll, Carroll Gibson, and Paul Hornback; Representatives Jesse Crenshaw, Brent Housman, and Brent Yonts.

Guests: Beth Jurek, Lisa Lee, Hiren Desai, Ken Draught, and Walt Gaffield

LRC Staff: Kim Eisner, Matt Ross, and Becky Brooker.

A motion was made by Representative Yonts to approve Minutes of the April 2011 meeting of the committee. Senator Carroll seconded the motion, which passed without objection.

DEFERRED ITEMS

A motion was made by Senator Carroll to defer the following contracts to the June 2011 meeting of the committee: DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENT DISABILITIES & ADDICTION SERVICES: 1100001294, Crown Services Incorporated; 1100001295, Staff Easy, LLC; 1100001296, Medstaff Healthcare Solutions; 1100001396, Staff Easy, LLC; 1100001397, Crown Services Incorporated; 1100001398, Crown Services Incorporated. Representative Yonts seconded the motion, which passed without objection.

Western Kentucky University contract 101231 with Degy Booking International Incorporated was withdrawn per the request of the university.

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

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

A motion was made by

Representative Yonts to consider as reviewed, the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative Horlander seconded the motion, which passed without objection.

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

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:

ADMINISTRATIVE OFFICE OF THE COURTS:

Britton Osborne Johnson, PLLC, 1100002304.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

People Advocating Recovery, 1100001493.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Terry Gray, 1100001697; Acclaim Systems Incorporated, 1100001976.

DEPARTMENT FOR INCOME SUPPORT:

Legal Aid Society, 1100001279.

DEPARTMENT FOR NATURAL RESOURCES:

Madison Consulting Group Incorporated, 1100002052.

EDUCATION, DEPARTMENT OF:

Edvantia, 1100002050.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Omni Architects, 1100001678.

INFRASTRUCTURE AUTHORITY:

American Municipal Tax-exempt Compliance Corporation, 1100001934.

KENTUCKY HOUSING CORPORATION:

Middleton Reutlinger, 2012-13; Kinkead & Stilz, PLLC, 2012-14; Mountjoy Chilton Medley, LLP, 2012-16; The Inspection Group Incorporated, 2012-18; Conservation Services Group Incorporated, 2012-21; Venture Encoding Service, LLC, 2012-6; TheoPro, 2012-7.

KENTUCKY LOTTERY CORPORATION:

OrderPad Software Incorporated, 12-04-073; Commonwealth Radio Reports, 12-08-002; M & S Works Incorporated, 12-09-008-2; PDT Communications Limited, 12-10-027.

KY HORSE RACING AUTHORITY:

McBrayer McGinnis Leslie & Kirkland, 1100002006.

NORTHERN KENTUCKY UNIVERSITY:

John H. Clark Jr., 2011-580; Marsh USA Risk Services Incorporated, 2012-579.

PUBLIC PROTECTION & REGULATION CABINET:

Mike Wilson, 1100001716; Embry & Shaffar, PPLC, 1100001718.

STATE BOARD FOR PROPRIETARY EDUCATION:

Allen Law Office, 1100001912.

TRANSPORTATION CABINET:

Vaughn & Melton, 1100001915; Florence & Hutcheson, 1100001917; Florence & Hutcheson, 1100001923; Lochner H W Incorporated Consulting, 1100001937; Greenman-Pedersen Incorporated, 1100002113; Southern Traffic Service, 1100002121; WMB Incorporated, 1100002316; QK4, 1100002323; URS Corporation, 1100002324; HMB Professional Engineers Incorporated, 1100002335; HDR Engineering Incorporated, 1100002338.

UNIVERSITY OF KENTUCKY:

Adam L. Locke, K11-180; Crown Medical Technologies, LLC, K11-181; Commonwealth Leverage Group Management, K11-182.

UNIVERSITY OF LOUISVILLE:

Power Creative, 11-117; Red7e, 11-118.

WESTERN KENTUCKY UNIVERSITY:

Kerr-Gruelich Engineers Incorporated, 101232; Arnold Consulting Engineering Services Incorporated, 101233; Network Standard Corporation d/b/a Net Diligence, 101234; Multi, 101235.

WORKFORCE INVESTMENT, OFFICE OF:

Maher & Maher, 1100001708.

THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Neurorestorative Carbondale, 1000001924.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

Res Care Incorporated, 1100000079.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Landon Earl McKinney, 1100001170; Landon Earl McKinney, 1100001442.

DEPARTMENT FOR MEDICAID SERVICES:

Island Peer Review Organization Incorporated, 1000001090.

DEPARTMENT FOR NATURAL RESOURCES:

Urgent Treatment Centers, 1000002822; Tee Engineering Company Incorporated, 1100000440; Florence & Hutcheson, 1100001530.

DEPARTMENT FOR PUBLIC HEALTH:

Kentucky Pharmacists Association, 1100000224; Planned Parenthood of Kentucky Incorporated, 1100001205.

EDUCATION, DEPARTMENT OF:

Kentucky Clean Fuels Coalition, 1000002684; Multi, 1000003010; University of Kentucky Research Foundation, 1000003384.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Clotfelter Samokar, PSC, 0700003496; Ross Tarrant Architects, 0700003580; Bender Associates Architects, 0800007400; Voelker Blackburn Niehoff Architects, C-99004092.

FINANCIAL INCENTIVES, DEPARTMENT OF:

Kentucky Science & Technology Corporation, 1000004213.

JUVENILE JUSTICE, DEPARTMENT OF:

Commonwealth Research Consulting Incorporated, 1000002316.

KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM:

Youth Adult Development in Action d/b/a Youth Build Louisville, 470.

KENTUCKY HOUSING CORPORATION:

Stierle & Stierle, Attorneys at Law, 2011-11; Middleton Reutlinger, 2011-13; Kinkead & Stilz, PLLC, 2011-14; AFC First Financial Corporation, 2011-20; Conservation Services Group Incorporated, 2011-23.

KENTUCKY STATE UNIVERSITY:

Johnson, True, & Guarnieri, LLP, 11-02.

MEDICAL LICENSURE, BOARD OF:

Multi, 1000002739.

MURRAY STATE UNIVERSITY:

Mercer Health & Benefits, LLC, 009-11.

NORTHERN KENTUCKY UNIVERSITY:

Heapy Engineering, 2011-522.

PERSONNEL-OFFICE OF THE SECRETARY:

Blue & Company, LLC, 1000002304; Cannon Cochran Management Services Incorporated, 1000003240; Salvaggio Teal & Associates, 1000003746.

PHARMACY, BOARD OF:

Thomas J. Hellmann, Attorney-at-law, PLLC, 1000002328.

TRANSPORTATION CABINET:

QK4, 0600002166; Burgess & Niple Incorporated, 0700006336; PB Americas Incorporated, 0800006763; CDP Engineers Incorporated, 1000000961; Palmer Engineering Company, 1000001908; H. C. Nutting Company, 1000003823; S&ME Incorporated, 1100001451; Johnson Depp & Quisenberry, C-01061344-5; Presnell Associates Incorporated d/b/a QK4, C-03349284-1; Presnell Associates Incorporated d/b/a QK4, C-04224166-2.

UNIVERSITY OF KENTUCKY:

CMW Incorporated, A061100; Stengel-Hill Architects, A111080.

WESTERN KENTUCKY UNIVERSITY:

The VIA Group, 101146.

THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:

EDUCATION, DEPARTMENT OF:

Georgetown College, 1100001687; Madison County Board of Education, 1100001892; Hardin County Board of Education, 1100002105; McCracken County Board of Education, 1100002107; Montgomery County Board of Education, 1100002108; Daviess County Board of Education, 1100002120; Johnson County Board of Education, 1100002122; McCracken County Board of Education, 1100002127; Jefferson County Board of Education, 1100002144; Pulaski County Board of Education, 1100002154.

EDUCATION, OFFICE OF THE SECRETARY:

KCTCS, 1100001942.

INFRASTRUCTURE AUTHORITY:

City of Louisa, 1100001993; Letcher County Fiscal Court, 1100002228.

MILITARY AFFAIRS, DEPARTMENT OF:

Multi, 1100002073.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Carlisle County Fiscal Court, 1100001747; Kentucky Housing Corporation, 1100002001; Adair County Fiscal Court, 1100002019; Campbell County Fiscal Court, 1100002020; McCracken County Fiscal Court, 1100002021; McLean County Fiscal Court, 1100002023; City of Eddyville, 1100002024; City of Leitchfield, 1100002025; City of Barlow, 1100002051; City of Radcliff, 1100002053; City of Livermore, 1100002055; Bourbon County Fiscal Court, 1100002057; Berea Municipal Utilities, 1100002060; Henderson County Fiscal Court, 1100002067; Henderson County Fiscal Court, 1100002069; Leslie County Fiscal

Court, 1100002070; City of Covington, 1100002081; Christian County Fiscal Court, 1100002082; Lawrence County Fiscal Court, 1100002093; Hopkins County Fiscal Court, 1100002095.

WORKFORCE INVESTMENT, OFFICE OF:

KCTCS, 1100001511.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:

AGRICULTURE, DEPARTMENT OF:

Multi, 0900011602; Multi, 0900011666; Multi, 0900011722; Multi, 1100001230.

DEPARTMENT FOR BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES:

Eastern Kentucky University, 1000003607.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Community Action Lexington Fayette, 1000002343; Harlan County Community Action Agency, 1000002347; Kentucky Communities Economic Opportunity Council Incorporated, 1000002348; University of Kentucky Research Foundation, 1000003597; University of Kentucky Research Foundation, 1000003636.

DEPARTMENT FOR PUBLIC HEALTH:

University of Kentucky Research Foundation, 1000004099; University of Kentucky Research Foundation, 1000004116; University of Kentucky Research Center (Kentucky Injury Prevention), 1000004234.

DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:

University of Kentucky Research Foundation, 1000004193.

EDUCATION, DEPARTMENT OF:

Shelby County Board of Education, 1000001798; Shelby County Board of Education, 1000001810; Hazard Independent Board of Education, 1000001814; Mason County Board of Education, 1000001826; Bourbon County Board of Education, 1000001827; Montgomery County Board of Education, 1000002797; Paris Independent Board of Education, 1000002952; Pike County Board of Education, 1000002986; Glasgow Independent Board of Education, 1000002987; Shelby County Board of Education, 1000003255; Shelby County Board of Education, 1000003257; Shelby County Board of Education, 1000003259; Campbellsville Independent Board of Education, 1000003260; Shelby County Board of Education, 1000003261; Danville Independent Board of Education, 1000003283; Bell County Board of Education, 1000003287; Frankfort Independent Board of Education, 1000003288; Campbellsville Independent Board of Education, 1000003289; Fayette County Board of Education, 1000003566; Fayette County Board of Education, 1000003567; Fayette County Board of Education, 1000003568; Fayette County Board of Education, 1000003569; Fleming County Board of Education, 1000003570; Daviess County Board of Education, 1000003571; Perry County Board of Education, 1000003639; Knott County Board of Education, 1000003710; Shelby County Board of Education, 1000003812; Metcalfe County Board of Education, 1000003814; Christian County Board of Education, 1100000137; Kentucky Valley Educational Cooperative, 1100000531; Hopkins County Board of Education, 1100000604; University of Kentucky Research Foundation, 1100001202; Simpson County Board of Education, 1100001505.

FISH & WILDLIFE, DEPARTMENT OF:

Eastern Kentucky University, 1000003371.

MILITARY AFFAIRS, DEPARTMENT OF:

Shelby County, 1100001043.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Breckinridge County Fiscal Court, 0700003242; City of Bellevue, 0700006414; Floyd County Fiscal Court, 0800010863; Floyd County Fiscal Court, 0800011007; Union County Fiscal Court, 0900011371; Floyd County Fiscal Court, 0900011606; Floyd County Fiscal Court, 0900012885; Breathitt County Fiscal Court, 1000000490; Community Ventures Corporation, 1000000718; Floyd County Fiscal Court, 1000001525; Union County Fiscal Court, 1000003606; Floyd County Fiscal Court, 1000003610.

WORKFORCE INVESTMENT, OFFICE OF:

Barren River Area Development District, 1000003019.

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:

DEPARTMENT FOR MEDICAID SERVICES:

Fairbanks, LLC, 1100001502. Beth Jurek and Lisa Lee discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Horlander seconded the motion, which passed with Senator Gibson electing to abstain (PASS).

DEPARTMENT FOR MEDICAID SERVICES:

Ked R. Fitzpatrick, 1100001910. Beth Jurek discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed with Representative Housman and Senators Gibson and McGaha voting NO.

EDUCATION, DEPARTMENT OF:

NCS Pearson Incorporated, 1100001988; ACT Incorporated, 1100001998. Hiren Desai and Ken Draught discussed the contracts with the committee. A motion was made by Representative Yonts to consider the contracts as reviewed. Representative Horlander seconded the motion, which passed unanimously.

PERSONNEL-OFFICE OF THE SECRETARY:

International Consulting Acquisition Corporation, 1100001722. Walt Gaffield discussed the contract with the committee.

EXEMPTION REQUEST

The Department of Military Affairs Division of Emergency Management requested exemption for FEMA funded MOAs and Grants for declared emergencies and will provide the committee with quarterly reports. A motion was made by Representative Yonts to approve the request to December 31, 2011. Representative Horlander seconded the motion, which passed unanimously.

With no further business before the committee, the meeting adjourned at 11:05 AM.

Program Review and Investigations Committee

Minutes

May 12, 2011

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, May 12, 2011, 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 Perry B. Clark, Vernie McGaha, Joey Pendleton, John Schickel, Dan "Malano" Seum, Brandon Smith, and Katie Kratz Stine; Representatives Dwight D. Butler, Leslie Combs, Terry Mills, David Osborne, Rick Rand, and Arnold Simpson.

Guests: Neville Wise, Acting Commissioner, Department for Medicaid Services; Lee Guice, Director, Division of Audits and Investigations, Office of Inspector General; Cabinet for Health and Family Services. Mitchel Denham, Assistant Deputy Attorney General, Office of the Attorney General.

LRC Staff: Greg Hager, Committee Staff Administrator; Rick Graycarek, Christopher Hall, Colleen Kennedy, Van Knowles, Lora Littleton, Jean Ann Myatt, Sarah Harp, Cindy Upton, and Stella Mountain, Committee Assistant.

Co-Chair Steele welcomed Senator Clark as a new member to the Program Review and Investigations Committee.

Approve Minutes for January 13, 2011

Upon motion by Representative Simpson and second by Senator Pendleton, the minutes of the January 13, 2011 meeting were approved by voice vote, without objection.

Staff Report: ***Medicaid Management and Integrity: Update on Recommendations from Three Program Review Reports***

Van Knowles presented the report. He said staff have prepared a combined follow-up review of 56 recommendations from 3 prior committee reports adopted in 2004, 2006, and 2007. Many of the findings in the report are based on statute or best practice, without considering budgetary or staffing limitations.

In the area of Medicaid administration, staff found that the Department for Medicaid Services as well as the Department for Community Based Services continues to have inadequate administrative staffing. Medicaid has improved its written documentation of internal policies and procedures, but still needs a formal policy or standard for such documentation. Also, Medicaid has conducted some cost-benefit analyses, but needs to implement continuous measurement of costs, savings, and benefits across all cost containment efforts. Staff also found that Medicaid has improved its contract monitoring efforts, and more internal audits and reviews by the Office of Inspector General may be needed. The cabinet has implemented many other recommendations or parts of recommendations related to administration, while several remain outstanding.

He said, in the area of program integrity which covers the reduction of fraud, abuse, and waste, previous reports recommended a state false claims act to encourage whistleblowers to report fraud. He said Medicaid has depended on program integrity vendors to supplement its administrative staff. However, program integrity efforts have been limited in that there have been three vendors since 2003 and Medicaid was without a vendor for 30 of the 54 months from July 2006 to December 2010. Providers are required to keep records for 5 years, but program integrity vendors have been unable to examine all providers for improper payments over the past 5 years and some older overpayments are unrecoverable.

Medicaid has made progress toward prepayment review of claims to prevent improper payments. However, prevention of improper payments requires human review of claims that the software identifies as suspicious. Modern pharmacy claims systems that approve or deny the claim at the point of sale make it difficult for the system to suspend claims for human review. Other types of providers are pressing for point-of-service claims processing, but Medicaid should consider how to prevent improper payments first.

Results in eligibility quality control have been mixed. The overall eligibility error rate has been quite low, but the error rate for certain adult Medicaid recipients in long-term care appears to have risen. There also have been mixed results in the program that investigates suspected fraud by Medicaid applicants prior to granting benefits. Previous reports recommended such a program and it was implemented in 2005. However, the return on investment has declined nearly to the break-even point.

Prior reports expressed concern with the relationships among Medicaid, the inspector general, and the attorney general. Currently, these relationships appear to be working well.

Several recommendations directed to the Cabinet for Health and Family Services, such as auditing pharmacies and medical providers, restricting phone-in prescriptions, and expanding health insurance premium assistance, have been implemented in whole or in part. Action is still needed on some recommendations, such as fragmented information systems and incomplete data.

Several recommendations were directed to the Office of the Attorney General's Medicaid fraud control unit and primarily related to budget and staffing. The unit has adequate staffing at this time, but its caseload might increase with improved Medicaid program integrity efforts or with a state false claims act.

Since 2007, the General Assembly has made recommended changes to strengthen third party liability provisions to ensure that private sources pay health costs before Medicaid does. Also, 2010 budget language directed the cabinet to reinstitute an advisory board as recommended. Some of the recommendations to the General Assembly are no longer relevant, while there are others that the General Assembly may still wish to consider.

In the second section of the presentation, Mr. Knowles covered lessons learned as documented in the report. A combination of factors, such as limited administrative resources, the inability to attract industry expertise, and management turnover, appear to have led to many of the administrative deficiencies noted in this and previous reports by Program Review staff and by the Auditor of Public Accounts. Another factor is the resistance of providers and recipients to cost containment and program integrity efforts.

Effective management reduces improper payments and uses all practical and effective cost controls. This requires sufficient administrative resources. Within those resources, Medicaid must prioritize and target savings efforts. To do so, Medicaid needs knowledge about what has worked at other times and places. But most importantly, Medicaid needs ongoing measurement of how each policy actually works over time. The cabinet should base its decisions on data about what works and continues to work.

In the area of fraud and abuse, providers are a greater source of recoveries than recipients are, but provider fraud and abuse are difficult to discover. Program integrity efforts nationwide have uniformly reported positive returns on investment. Although the state has to spend money to recover overpayments, more investment seems to lead to more recoveries.

Mr. Knowles discussed the cabinet's 2011-2012 Medicaid cost containment plan, which appears likely to result in several managed care organizations (MCOs) covering different types of services in different parts of the state.

The burden of operating the program would shift from the cabinet to the MCOs. Presumably, the MCOs would have professional health plan managers and clinical staff with less management turnover. Because the MCOs accept the risk of cost increases, these contracts could make the Medicaid budget more predictable. Also, the medical home and performance-based payment models might contain costs.

The cost containment plan's challenges include ensuring cabinet capacity to monitor MCOs; continuing to cover non-MCO services; measuring and tracking costs and benefits; obtaining adequate MCO capacity; sharing information among multiple MCOs and the state Medicaid information system; coordinating program integrity among multiple MCOs and state agencies; and ensuring access and quality of care.

Mr. Knowles concluded his presentation by saying that the presentation focused on material in Chapter 1; Chapter 2 details the background and current status of all 56 recommendations organized in sections by topic and each section's findings include status and remaining recommendations.

Senator Stine noted that the follow-up report says that the return on investment of the Determining Eligibility Through Extensive Review program declined after 2005 to only \$1.20 per \$1 invested in 2010. This was much less than the amount reported for a similar program in previous years. Senator Stine asked what the similar programs were and what their return on investment rates were.

Mr. Knowles said that the previous program was called CORE [Cooperative Review of Eligibility]. The returns that the cabinet reported at that time were \$4 to \$5 per dollar invested, depending on the year.

Senator Stine asked why there was a change from \$4 to \$5 per dollar invested to only \$1.20 per dollar invested. Mr. Knowles said that he did not know why there was that change in returns. The Inspector General's office indicated they were going to look at that but that he did not know the results.

Senator Stine asked whether cabinet officials have explained why they have mostly ignored the three Program Review reports that are summarized in the present report. Mr. Knowles replied that the cabinet could address this. The cabinet has adopted some of the recommendations but not others.

Senator Stine said that there were numerous observations in the follow-up report about the cabinet not responding to recommendations and not achieving the intended objectives of recommendations the cabinet agreed to. An example of the latter is the lack of progress in measuring the net changes in cost and quality of care when attempting to contain costs, increase efficiency, or improve quality. Mr. Knowles said that would be one of the major points that staff have tried to make in the report.

Representative Steele asked the cabinet to address the three recommendations related to measuring cost containment. Mr. Wise said there are numerous things that Medicaid is doing in the area of cost containment and it is somewhat problematic in certain situations to get definitive data that proves that everything they did was successful. Many of their activities, many of which are happening at the same time, are interrelated and it is often difficult to isolate the effect of one action from another. The cabinet tries to implement all recommendations it gets from providers, recipients, and the legislature.

Mr. Wise said they review quarterly reports from their pharmacy benefit administrator, detailing each action put into the system to contain costs and the effect of that action, ongoing and cumulative. Medicaid would be able to provide additional documentation after a scheduled meeting with the vendor later on May 12. The cabinet had determined that the Kentucky Medicaid administrative agent was not effective and had cancelled that contract. In the current administration, most of those activities, such as provider enrollment, have been brought back in house to do more effectively and to have more direct control. Prior authorization is still being done through another vendor. KyHealth Choices was an initiative under the previous administration and it was determined at the beginning of this administration that it has not been entirely successful.

Senator Pendleton requested that in future the cabinet would be given at least 24 hours to prepare before being questioned by the committee. Committee members are not getting the answers needed to make honest decisions concerning the citizens of Kentucky. All areas of Kentucky need to be considered when looking at and implementing Medicaid managed care.

Representative Steele and Senator Higdon said this report will be reviewed again in next month's meeting.

Senator Stine said that it was her understanding that the cabinet had had the report for three weeks and that it was an elaboration on a report that was considered in January. This was not sprung on the cabinet, and there have been numerous reports for years covering these issues. She encouraged the cabinet to read the report, noting the report's findings regarding written documentation of internal policies and procedures; a lack of any kind of cost-benefit analysis; which was a concern also raised by the auditor; finding out where improper payments had been made; why under CORE the return was as much as \$4.50 per \$1 spent and now it was down to just \$1.20 spent; and how program integrity functions should be in place for the new managed care contracts.

Senator Stine quoted from the report that KRS 205.6336 requires the cabinet, along with the Finance and Administration Cabinet, to provide quarterly cost containment reports to the Interim Committee on Appropriations, which apparently has not been done. Progress reports for 2008 and 2010 have not been received. She said the reason for requiring reports was to determine whether programs in place are working effectively and are serving the people of Kentucky.

Senator Stine said that some of the 7,000 employees in the cabinet could possibly be freed up to make sure that money is not wasted and by spending a little extra money on that may in fact save a lot more money.

In response to questions from Senator Higdon about constraints related to personnel, Mr. Wise said there was a concern of attracting employees with the exact health industry experience needed because of the state salary structure and not being able to compete with the executive salary structure of the private health industry. He said about 190 of the 7,000 cabinet employees work with the Medicaid program, which does not include field services workers in each county. Additional personnel would help to recover some of the monies lost through fraud. He said the plan initially was to have 12 additional people work on the managed care initiative. They were not hired contractors but were all state staff or a combination thereof.

In response to a question from Senator Higdon regarding the status of developments on the managed care initiative going into effect July 1, Mr. Wise said the RFPs are due May 25 and after evaluating and scoring those proposals, more would be known. Since the beginning of the special session, the cabinet's focus had been on the managed care initiative, which was part of the problem for not having been able to evaluate the Program Review staff report.

Senator Smith commented that cabinet officials were being asked questions about Medicaid with which the cabinet should be very familiar. He is concerned that legislators, who are held accountable by the taxpayers, are not getting answers to questions. The lack of oversight and lack of a clear answer on the return of investments should concern everybody.

In response to a question from Senator Smith, Mr. Wise said that the cabinet is on goal to meet the targets that were set forth in the past session.

Senator Smith said that he sensed resistance on providing information on the return on investment and other analysis. He asked why there would be such a delay. Mr. Wise said that during the special session the cabinet presented numerous times on the progress of the ongoing initiatives. A quarterly report is sent to staff of the Interim Joint Committee on Appropriations and Revenue, which tracks those initiatives. The cabinet has sent the report in a format that it developed and has not received any feedback from the committee. The cabinet's understanding is that the requirements set out in statute are being met. If not, cabinet staff need to understand what else needs to be done.

In response to a question from Senator Smith, Mr. Wise said all ongoing items had been reported on. Managed care has not been reported on yet because it is in the middle of procurement. The cabinet has reported on the initiatives presented during the special session.

Senator Smith said that he is agreeable to meet again in 24 hours to receive updated information to pass on to the people in his district.

Senator Pendleton said that the Program Review and Investigations Committee has the authority to subpoena people and to put them under oath, but he hoped they would not have to do that. He hoped that by giving the cabinet more time, the cabinet can explain their response to what committee staff found because he has full confidence in the staff.

Senator Stine suggested that the cabinet take a look at the recommendations in the report that before it enters into new contracts, that there should be measurements in place, that there should be transparency and guideposts for operating. She suggested that cabinet officials a look at pages 57 to 59 of the report, on the need for consolidation of data to ensure program integrity and look at the different streams of services to see if there is overlap, and reduce any duplication.

Senator Stine said she would like to hear from the Office of Inspector General (OIG) as well as the Attorney General. She noted that the report said that OIG no longer sends to the Attorney General's Medicaid Fraud Control Unit notification of hotline complaints involving only recipient fraud and abuse. She said that the report states that the cabinet said that in April 2011 that method-of-payment information, as recommended by the 2003 Prescription Drug task force, will be captured. Such information would help identify Medicaid recipients.

Senator Stine asked whether the system is in place. Ms. Guice said the KASPER system is moving to a different platform that will capture the payment data. They did not make the April goal because of technology personnel issues. They are changing to ASAP 2009, a Pharmaceutical Association standard of data fields, which will capture payment data. It is anticipated to be completed by the end of 2011.

Representative Steele said the Cabinet's written responses to the recommendations covered in the staff report should be submitted to Program Review staff by May 23.

Senator Stine said that she hoped that the co-chairs would consider utilizing the committee's subpoena power if necessary.

Mr. Denham said that for Federal Fiscal Years 2009 and 2010, the $112 million in recoveries and awards that the Medicaid Fraud & Abuse Control Division received were generally from civil cases or criminal cases that they prosecuted or litigated that were awarded either by a jury verdict or fines and penalties, or criminal cases that were settled and the unit received recoveries. The return on investment for those two years was nearly $20 per dollar spent, both federal and state monies. The state receives a quarter because the unit is funded by a federal grant. Since January 2008, they have recovered nearly $175 million.

Senator Smith asked if any outside agency confirms these reported numbers. Mr. Denham said that the auditor's office audits all state agencies annually, but was unaware whether the quoted numbers were audited. He could provide the actual settlement documents that showed those numbers and an actual spreadsheet that indicated the amounts of recoveries and the dates they were recovered.

Representative Steele requested that Mr. Denham provide that information to Program Review staff by May 25.

In response to questions from Senator Seum, Mr. Denham said the $175 million recovered included federal and state dollars as well as costs. They participate in global cases through the National Association Medicaid Fraud Control Units; a portion of that recovered money stays in their office and the rest gets paid to Medicaid. It is not entirely accurate to say that the state gets 30 percent of the $175 million; it depends on the type of case. That would be generally accurate for global cases. When recovered money is received, a portion stays in their office, a portion is paid to outside counsel and the rest is paid to Medicaid. He said the Department of Medicaid Services would be able to indicate what happens to the money it receives. He agreed to provide the breakdown of who received what portion of the recoveries.

Senator Pendleton said that his research indicated connections between what has happened with the Illinois retirement system and the Kentucky Teachers Retirement System and the State Employees Retirement System. He asked that this be put on the forefront for follow-up and for seeking a dual investigation of the retirement systems.

The meeting was adjourned at 11:15 a.m.

Program Review and Investigations Committee

Minutes

June 9, 2011

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, June 9, 2011, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Perry B. Clark, Vernie McGaha, Joey Pendleton, John Schickel, Dan "Malano" Seum, Brandon Smith, and Katie Kratz Stine; Representatives Dwight D. Butler, Leslie Combs, Ruth Ann Palumbo, and Rick Rand.

Legislative Guest: Representative John Will Stacy.

Guests: Neville Wise, Acting Commissioner, Department for Medicaid Services; Eric Friedlander, Deputy Secretary; Beth Jurek, Executive Director, Office of Policy and Budget; Cabinet for Health and Family Services. Mitchel Denham, Assistant Deputy Attorney General; Dave Johnstone, Assistant Attorney General, Medicaid Fraud and Abuse Control; Office of the Attorney General.

LRC Staff: Greg Hager, Committee Staff Administrator; Rick Graycarek; Christopher Hall; Colleen Kennedy; Van Knowles; Lora Littleton; Jean Ann Myatt; Cindy Upton; Kris Harmon, Graduate Fellow; Stella Mountain, Committee Assistant.

Approve Minutes for May 12, 2011

Upon motion by Senator Pendleton and second by Representative Rand, the minutes of the May 12, 2011 meeting were approved by voice vote, without objection.

Medicaid Management and Integrity: Update on Recommendations From Three Program Review Reports

Van Knowles gave a brief overview of the report and said that the Cabinet for Health and Family Services and the Office of the Attorney General had submitted the additional information requested at the May committee meeting.

Senator Higdon commented that this was the second meeting at which the follow-up report on Medicaid was being discussed. With the changes in the way the Medicaid program will operate under managed care, the question of the cabinet's role remained unanswered. The General Assembly must understand how managed care is going to work, what preparations the cabinet has made, and how it will change the way the success of Medicaid is measured. Some findings in the report raise concerns that the cabinet is not fully prepared for the sea change that will occur July 1.

Senator Higdon called attention to some of the findings in the report regarding cabinet administrative capacity for contract monitoring and oversight, tracking costs and benefits, information challenges, program integrity fragmentation, and quality of care.

Mr. Friedlander complimented the report and said that the cabinet takes it seriously. The cabinet was responsive to requests for information from Program Review staff and there was much communication back and forth. The cabinet is still in the procurement stage for the managed care initiative. Due to fiscal constraints, there are limits on what the cabinet can do.

Ms. Jurek also said that the report was taken seriously but that there were financial limits on the cabinet. She gave examples of accomplishments in the Medicaid program such as the Health Information Exchange program.

Senator Higdon asked what would be in place by July 1 in the managed care initiative.

Mr. Wise said that responses to the request for proposals (RFP) are being evaluated, so he was limited in what he could say. Negotiations will begin soon. July 1 is the target date for signature of contracts. Other steps will depend on provisions of the contracts.

Mr. Friedlander said that the RFP and responses to vendors' questions were available on the Website.

Mr. Wise said that the bids were to provide comprehensive packages that would provide seamless services to recipients. There is external quality review now for Passport and there will also be external quality reviewed for the new managed care organizations (MCOs).

Senator Stine asked who was doing the negotiations and what their expertise was.

Mr. Wise said that it was a Finance and Administration Cabinet procurement, so they would be represented. He and the cabinet's secretary would be involved in negotiations. The actuary Pricewaterhouse Coopers will provide financial expertise.

Senator Stine said that it had been her understanding that enrollment would be taking place by July 1.

Mr. Wise said that July 1 is the target for signing contractors with vendors.

In response to questions from Senator Stine, Mr. Friedlander said that the intention is for all areas of the state to be covered. Mr. Wise could not say whether Passport has applied under the new RFP.

Senator Stine asked about changes at the cabinet in response to the shift to more managed care.

Mr. Wise said that they are recruiting staff and contract staff. Shifting of duties involving approximately one half of existing staff will occur after the RFP process.

Mr. Friedlander said that staff have already been working on the RFP and learning new systems.

Senator Stine commented that there seemed to be another layer of employees. If the purpose of the contracts is to save money, why would there be more staff?

Ms. Jurek said that the oversight role is critical and that Medicaid administrative costs are low compared to other states.

Senator Stine said that the Program Review report and the Auditor's report raised doubts about the cabinet's expertise in cost-benefit analysis. She asked what changes have occurred to ensure that this is working.

Mr. Wise said that outside staff are being brought in.

Ms. Jurek said that analysis is being done in house and they are looking at other states.

Senator Stine said that a concern was raised in the report about the lack of institutional knowledge. She asked what was being done about this.

Mr. Wise said that they are cross-training, but there is a shortage of administrative staff, and funding is an issue. There have been a lot of retirements.

Mr. Friedlander said that this is an honest criticism and that they are trying to do training.

Ms. Jurek said that the report notes that written procedures are better in some parts of the cabinet than others. They are working on memorializing better and putting more processes online.

In response to a question from Representative Rand, Mr. Wise said that there are 820,000 Kentucky Medicaid recipients. Ms. Jurek said that the number of recipients is growing but that the rate of growth has recently slowed.

Representative Rand commented that the 2010 Medicaid Cost-Containment Task Force had not offered any solutions to the cabinet.

Senator Higdon asked for a response to the recent comments by Citigroup related to the RFP, including the RFP's emphasis on price.

Mr. Wise said that Citigroup seemed to be saying that the RFP was different. Ms. Jurek added that it is difficult for them to know what Citigroup was trying to say. Mr. Friedlander said that Citigroup's perception that margins would be low for vendors the first year is correct; that is the intent of the RFP.

In response to a question from Representative Palumbo about what could be in place by July 1, Mr. Wise said that members could be assigned to an MCO by July 1.

Senator Stine asked whether the cabinet is ready to implement managed care given that the cost savings associated with Passport could not be determined and given the concerns raised in the Program Review report.

Mr. Wise said that comparing cost-effectiveness is easier at the beginning of the managed care process.

Senator Stine asked what incentive MCOs have to find fraudulent enrollments, and if there is no incentive for them, whether the cabinet has some sort of overview plan in place.

Mr. Wise said that the cabinet determines eligibility and the MCOs accept the members that the cabinet assigns them as being eligible for Medicaid. Mr. Friedlander said that the cabinet's present procedures for doing so would continue. Ms. Jurek said that the cabinet has requested funds in the capital plan to replace KAMES [Kentucky Automated Management Eligibility System].

Senator Stine quoted the Program Review report's finding that there is no mechanism to record or estimate unreported income and resources discovered by caseworker verification.

Ms. Jurek said that was relating to that particular population segment which is a very small portion of the entire Medicaid population where one spouse is institutionalized and the other is still residing in the community. Staff are permitted to check up to 5 years back if there is anything during the interview process that causes the worker to suspect some inconsistency.

Senator Stine quoted the Program Review report's finding that the adult Medicaid eligibility error rate had increased from 7.5 percent to 10 percent and asked why this increase had occurred.

Ms. Jurek said that this is for a relatively small part of the Medicaid population; the overall eligibility error rate is less than 1 percent.

Senator Stine quoted the Program Review report that the cabinet was without a program integrity vendor for 30 months and asked why this had occurred.

Mr. Wise said that even when there was no external program integrity vendor, the cabinet was still doing program integrity work. There was no drop-off in collections in periods when there was no vendor.

Representative Stacy asked if MCOs have to be licensed as insurance companies, whether all respondents to the RFP are licensed or have sought licenses, and how long it takes to obtain a license.

Mr. Wise said that the vendors do have to be licensed. His impression is that respondents that are not licensed have sought licenses. It takes approximately 45 days to get a license but it could be less.

In response to a question from Representative Stacy, Mr. Wise said that MCOs are required to have provider networks.

Representative Stacy asked what the standards are for a provider network.

Mr. Wise said that the specifications include having access to a primary care physician within 30 miles, a specialist provider within 50 miles, and a hospital within 60 miles. Each recipient has to have at least two choices of a primary care physician and a network that can cover all the services that Medicaid covers as laid out in the RFP.

Representative Stacy asked what the cabinet had learned from Passport.

Mr. Friedlander said that some aspects of Passport have worked better than others. He cited the Passport Mommy and Me program, a home visitation program, as a success.

In response to questions from Representative Stacy about the Passport pharmacy program, Mr. Wise said that he was not aware of any problems.

In response to a question from Representative Stacy, Mr. Wise said that how vendors would provide pharmacy services would be determined through the RFP process. Using the Passport model could be an option.

In response to a question from Senator Seum, Mr. Friedlander said they are moving to managed care because they are hoping to be able to manage costs, realize savings from what they are doing, be able to continue to provide quality care, and will benefit from the competition.

In response to a question from Senator Seum, Mr. Wise said that Passport has been successful in provision of care.

In response to a question from Senator Seum, Mr. Wise said that managed care would be creating jobs at the local level as there is a requirement in the RFP for a local presence.

Senator Seum asked whether the cabinet would be downsizing, whether there would be fewer employees, and if not, why not.

Ms. Jurek said that there would be shift in the role of employees. Administrative costs are already low and are only a very small portion of the whole Medicaid budget.

Senator Seum said that it was unclear how the state would be saving money if provision of care is being turned over to for-profit companies.

Ms. Jurek said that the savings would come in patient care and coordination.

Senator Schickel said that he is concerned about fraud. It seems that the emphasis is on detecting provider fraud. He asked if there is an identifier on Medicaid recipient ID cards and if not, why not.

Mr. Wise said that the card identifies someone as a Medicaid recipient, but there is no picture. Recipients must present other forms of ID too. A proposal about picture IDs was presented to a committee. The downside to having an identifier on the ID card is the cost as there are 820,000 recipients, some of whom are children. Ms. Jurek said there is a magnetic identifier on the card.

Senator Schickel asked whether it identifies through a thumbprint or something that tells for sure that the card bearer is the actual person.

Mr. Wise said it only confirms their Medicaid ID number as valid.

In response to a question from Senator Schickel, Mr. Wise said that MCOs will be responsible for issuing cards and they may choose to have such an identifier on their cards.

Senator Schickel asked why the cabinet would not require them to do that and what the cons were.

Ms. Jurek said she can provide that report to the committee.

In response to a question from Senator Schickel, Mr. Wise said there are no restrictions on who can apply as long as they have the proper license; even nonprofits can apply.

In response to a question from Representative Steele, Mr. Wise said that better pharmaceutical rebates are being achieved by putting certain pharmaceuticals on their preferred drug list. Approximately 40 percent is received back in rebates to the pharmacy program, part of which goes back to the federal government. Ms. Jurek said that dollar figures would be provided to the committee.

Senator Higdon said that he had heard concerns from pharmacies regarding mail-orders, and from health departments as it relates to school nurses.

Mr. Wise said that MCOs are required to contract with health departments at rates similar to current rates paid by Medicaid to health departments. He said that provision of pharmacy services would be subject to the contracts with MCOs, which would have to demonstrate the value of mail-order in terms of cost and provision of care and benefit to the recipient.

In response to a question from Senator Higdon, Mr. Friedlander said that there are many current mental health programs. Behavioral health is part of the MCO proposal. Ms. Jurek said that mental health providers will have a seat at the negotiating table.

In response to a question from Senator Higdon, Ms. Jurek said that the department has requested more money in the budget for administration.

In response to a question from Representative Steele regarding controlled substances being available by mail order, Mr. Friedlander said that everything will be in compliance with the law. Ms. Jurek said that they could look this up and provide an answer.

In response to a question from Senator McGaha, Mr. Wise said that he did not know if any of the respondents to the RFP were nonprofit.

In response to a question from Senator McGaha, Mr. Wise said that to be a provider in a provider network, the provider must sign with an MCO. All providers must go through the cabinet's credentialing process.

In response to a question from Senator McGaha, Mr. Wise said that the requirement in the RFP was that in order to be a responsive bid, applicants had to submit bids under three areas, namely a statewide bid, a bid for all regions excluding the Passport area, and individual bids for eight regions.

In response to a question from Senator McGaha, Mr. Wise said that applicants could not exempt some areas or services in their proposal.

Senator McGaha asked for cabinet officials to name one service that could be provided through managed care on July 1, 2011.

Mr. Wise said that this would not be known until contracts are signed and negotiations completed.

In response to a question from Senator McGaha, Mr. Wise said that the cabinet will still enroll recipients. MCOs do not have any part in the eligibility determination process.

Senator McGaha noted that the state auditor had concerns about how much money Passport may have saved.

In response to a question from Senator McGaha, Mr. Wise said that current cost levels are available for all regions. Passport is different from the model under the new RFP. Passport is the only Medicaid MCO in its region. Under the new model, the goal is to have three or more MCOs per region so that there will be competition and they can be compared to each other. It is a federal requirement that all rates be actuarially certified. An external organization will determine what the target should be.

Senator Stine, citing a news article quoting cabinet Secretary Miller, said that it seemed that it had been claimed that services would begin July 1, 2011. She asked if this is accurate.

Mr. Wise said that the plan is to have the contracts in place by July 1.

Mr. Denham summarized the document provided to the committee on recovery amounts.

Senator Seum asked whether settlement means getting a check and what the difference is between a settlement and a recovery.

Mr. Denham said that he had been using the terms interchangeably. Usually the company must send a check within 30 days of settlement. If it is a jury award, the company could appeal.

In response to questions from Senator Seum, Mr. Denham said that the Attorney General's Office distributes settlement funds to the appropriate people. The state Medicaid dollars go to the Cabinet for Health and Family Services; the portion for administrative costs goes to the Office of the Attorney General (OAG). For the global cases, generally the agreements are broken down into Medicaid recoveries; this is the single dollar damages amount that would be making Medicaid whole of which all goes to Medicaid. If there are additional recoveries, the OAG gets 20 percent of those additional recoveries.

In response to a question from Senator Seum, Ms. Jurek said that by statute, settlement funds are considered claims and recovery dollars. They receive the funds; they remit the federal share to the federal government; the state share is retained and becomes part of the Cabinet's claims and recovery account, which appears in their budget request as restricted funds. Once funds are recovered, they come in as a restricted fund and become part of the cabinet's budget request. None of this money reverts back to the general fund; it goes back to the program by law.

Senator Seum asked how much of the $182 million in total recoveries went to the cabinet.

Ms. Jurek said that the dollar figures could be provided to the committee.

In response to a question from Senator McGaha, Mr. Denham said that the Medicaid fraud unit is funded, in part, by the federal government and federal law prevents the unit from investigating recipient fraud and abuse cases. The grant is very specific about the unit's jurisdiction to investigate and prosecute fraud cases.

Senator McGaha said that local prosecutors do not always take the cases that the Inspector General has investigated.

Senator Stine asked Program Review staff to address the concerns in the report about the Office of Inspector General and AOG.

Mr. Knowles said that staff's impression was that there had been difficulties in the past between the Office of Inspector General (OIG) and OAG, but now they are coordinating. State law requires OIG to notify the Medical Fraud Control Unit (MFCU) of hotline complains regarding recipient fraud and abuse but federal rules prohibit the MFCU from investigating these cases.

In response to a question from Senator Stine, Mr. Denham said that the OIG follows up on recipient fraud and they can refer cases to local prosecutors.

Mr. Denham said that the attorney general's office coordinates with OIG and the Department of Medicaid Services integrity unit; investigators from each office speak to each other regularly.

Senator Stine asked how many recipient fraud cases are pursued and what the outcomes are.

Mr. Friedlander said he will provide this information.

Senator Pendleton said that he did not know if members of the committee were aware that they cannot individually ask staff what questions are being asked in an investigation and whether every group is being asked the same questions. He stated that this was not the policy when he was chair, and he did not know when this had changed. He stated his belief that the General Assembly needs to look at this to ensure that everyone is treated fairly, and that the same questions are being asked of everyone in a group that is being investigated.

Senator Higdon thanked Sen. Pendleton. He said that members would be receiving a memo to submit additional requests and study subjects for Program Review.

The meeting was adjourned at 12:35 p.m.

Tobacco Settlement Agreement Fund Oversight Committee

Minutes

May 11, 2011

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, May 11, 2011, 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 Vernie McGaha, Dennis Parrett, and Joey Pendleton; Representatives Royce W. Adams, Tom McKee, Fred Nesler, and Tommy Turner.

Guests: Roger Thomas, Joel Neaveill, Bill McCloskey, Angela Blank, Christi Marksbury, and Sandra Gardner, Governor's Office of Agricultural Policy; Dean Scott Smith and Drew Graham, University of Kentucky College of Agriculture; Dr. Gary Palmer, Dan Grigson, Ted Johnson, Doug Shepherd, and Jeff Smith, University of Kentucky Agricultural Extension Agents.

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

The April 13, 2011 minutes were approved, by voice vote and without objection, on a motion made by Senator Pendleton and seconded by Senator Parrett.

Governor's Office of Agricultural Policy

The presiding co-chair, Senator Hornback, called on Mr. Roger Thomas, Executive Director, and Mr. Joel Neaveill, Chief of Staff, and Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), to review the projects considered by the Agricultural Development Board (ADB) in its April meeting.

Prior to the GOAP report, Co-chair Stone reported on a recent biofuels fact-finding trip to Missouri that involved GOAP staff, representatives of the Energy and Environment Cabinet, state legislators, and others from Kentucky and other states.

During the report on previous project amendments, Mr. Neaveill indicated to Representative McKee that an additional $29,400 approved for use by Robertson County would be incorporated into the county's regular allotment.

The GOAP officials reviewed projects voted on at the previous ADB meeting, beginning with the Meade County Riverport Authority, which received a low-interest loan of up to $2 million in state Master Settlement Agreement (MSA) funds to help build a regional port authority for grain and other types of agriculture shipments. Other projects included: Western Kentucky University Department of Agriculture, $5,000 in state funds to establish an apiary at the WKU farm; Eastern Kentucky University, $44,130 in state funds and $1,000 in county funds for a honeybee queen nutritional study; Jessamine County FFA Alumni Association, which received $8,000 in Jessamine County funds for a youth cost-share program; and Jessamine County Fiscal Court, $40,000 in Jessamine County funds to help build a covered arena at the county fairgrounds.

Several committee members asked questions and commented on aspects of the Meade County project, including the operational structure and relationship between parties involved in the project, pricing offered to farmers, regional benefits of the project, the status of a separate bond issuance, the need for larger projects benefitting farmers, and the lien arrangement related to the board's commitment of MSA agricultural development funds. Responding to committee members, the GOAP officials described the contractual relationship between the authority and Consolidated Grain and Barge, the firm that will handle barge loading and unloading services. Co-chair Hornback expressed some particular concerns about charges that farmers may be facing when shipping commodities through the facility.

The GOAP officials pointed out to the committee that ADB commitment will not exceed $2 million. The Meade County Fiscal Court will be asked to issue $4 million in bonds to help finance the project. Annual income from the stevedoring agreement is estimated at $110,000.

Senator Parrett, who was familiar with the project, indicated some positive aspects about the endeavor, in particular the services it will offer to farmers in that region. The facility should be competitive in pricing compared to other facilities, according to his testimony.

The GOAP officials responded to questions by Co-chair Stone, who asked about the lien that the board would hold. It was pointed out that a $6 million facility would be securing the $2 million loan.

After completing the projects summaries, Mr. Thomas made some other announcements. He indicated that local agricultural development funds from the 2011 MSA payments are available in county accounts. He also reported on the Governor's recent request for disaster aid from the United States Department of Agriculture because of spring flooding and the like.

County Agricultural Extension Agents Presentations

Prior to the presentations, Dr. Scott Smith, Dean of the University of Kentucky College of Agriculture, made some remarks to the committee about the history of the agricultural development segment of the MSA program and extension agents' roles in administering programs in counties. Beyond the agricultural development aspect segment, according to Dr. Smith, the program has helped develop new leaders, fostered education, and created teachable moments. He indicated the program remains a good one.

Speaking to the committee were: Mr. Dan Grigson, Lincoln County, chair of an extension agents advisory committee to the GOAP and ADB, and committee members Mr. Ted Johnson, Lee County, Mr. Doug Shepherd, Hardin County, and Mr. Jeff Smith, Fleming County.

Mr. Grigson, who chairs the advisory group, began the presentation by talking about the impact that the agricultural development funds have had on Kentucky agriculture. During his remarks, he gave an example of a beef producer in his area who benefitted from the advice and funds available through the county program.

Mr. Grigson also discussed the work of the advisory committee in providing input and advice to the ADB and GOAP regarding issues and concerns in various regions of the state.

The agents discussed the makeup of their country agricultural development councils, funds received through the years, and reviewed how County Agricultural Improvement Program funds are used in their counties. They also talked about some of the regional projects in which their counties have been involved.

Each of the agents mentioned the positive aspects of the overall program and its impact in helping farmers diversify away from tobacco production.

During the discussion, Mr. Johnson indicated to Chairman Hornback that the end of the tobacco buyout payments may not be as drastic as the downturn after the MSA enactment, but predicted a downturn nevertheless. The senator predicted it will be difficult throughout the state.

Senator Pendleton thanked the extension agents for testifying before the committee and noted the vision of the program is being fulfilled. He mentioned that planning will be needed to deal with the end of the buyout payments.

Following the agents, the committee heard from Dr. Gary Palmer, UK Agriculture Extension Director. Dr. Palmer pointed out the advisory committee would be spelled with a "little a" and not a "big A." He indicated he was pleased with the role the advisory committee was playing.

Representative McKee commended the agents and pointed out, as did Dr. Smith, that agents were told in 2000 when Kentucky's tobacco settlement legislation was being considered, that their job duties would grow as a result of the program. The agents were okay with that, according to the representative.

According to Representative Stone, commenting later, when it was envisioned that local participants would be involved in the agricultural development program, it was important that some funds go to the local level.

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

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

Tobacco Settlement Agreement Fund Oversight Committee

Minutes

June 1, 2011

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, June 1, 2011, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Wilson Stone, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Paul Hornback, Co-Chair; Representative Wilson Stone, Co-Chair; Senators Carroll Gibson, Vernie McGaha, Dennis Parrett, and Joey Pendleton; Representatives Royce W. Adams, Tom McKee, Fred Nesler, and Tommy Turner.

Guests: Roger Thomas, Bill McCloskey, and Angela Blank, Governor's Office of Agricultural Policy; Commissioner Sharon P. Clark and D. J. Wasson, Kentucky Department of Insurance; and Al Perkins, Kentucky Access.

LRC Staff: Lowell Atchley, Biff Baker, and Kelly Blevins.

As the meeting began, the presiding chair, Representative Stone, noted the passing of former Representative Eddie Ballard and received an update from an audience member regarding Representative Dewayne Bunch, previously injured in a school-related incident.

The May 11, 2011 minutes were approved, by voice vote and without objection, on a motion made by Senator Pendleton and seconded by Representative Adams.

Governor's Office of Agricultural Policy

The presiding co-chair, Representative Stone, called on Mr. Roger Thomas, Executive Director, and Mr. Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), to review the projects considered by the Agricultural Development Board (ADB) during its May meeting.

Mr. McCloskey reported on County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-use Equipment programs prior to reviewing statewide and regional projects acted on in the previous ADB meeting. The state and regional projects included: Marion County Industrial Foundation, a total of $23,000 approved for a value-added dairy processing feasibility study; Hopkinsville Elevator Co., Inc., $239,000 approved for a grain cleaning system to enable the cooperative to expand its customer base; and Shelby Area Rural Conservation, Inc., $5,378 to study the potential for a farmland preservation program for Shelby County.

The Marion County project resulted in a number of questions and comments from committee members regarding the project itself and the dairy industry as a whole. Mr. Thomas told Senator Pendleton that the dairy feasibility study grew out of a meeting GOAP staff had with Marion County officials regarding attracting an agricultural commodities processor to that county. Co-chair Stone mentioned Chaney's Dairy in the Bowling Green area as an example of a dairy related enterprise that has been successful.

The GOAP officials responded to questions from Senator Gibson regarding how the federal dairy price support system works. Mr. Thomas noted that the federal dairy regulatory structure is very complicated. He mentioned one aspect affecting Kentucky that needs to be refined – the federal order system.

Senator Gibson also alluded to the possibility of a locale in Wisconsin, rather than Leitchfield, being the site of an expansion planned by a cheese company that has a factory in the Grayson County city.

According to Mr. Thomas, much of the milk produced in upper Midwest states like Wisconsin and Michigan is used in the manufacturing of cheese. During the discussion, he reiterated the need to refine the federal order system.

As the projects review continued, Co-chair Stone indicated he was pleased to learn various county councils had contributed funds to assist the Hopkinsville Elevator expansion. Mr. Thomas indicated the Governor, in recent remarks, challenged them to consider regional projects.

Concerning the Shelby County farm preservation project, they pointed out to Senator Parrett that, several years ago, a bond issue to be paid off with tobacco settlement dollars helped fund farm preservation efforts statewide and in Fayette County. Since that time, the Fayette County council has contributed additional tobacco funds for land preservation. Scott and Woodford counties also have looked at the issue.

Before Mr. Thomas and Mr. McCloskey concluded their report, committee members discussed the on-going problem of how to dispose of dead farm livestock in the wake of tighter federal rules regarding how carcasses are used.

Senator Gibson mentioned the dilemma of keeping up with state inspections needed for on-farm composting systems. Mr. Thomas noted the role of the Department of Agriculture's Office of State Veterinarian. He indicated some counties may wish to establish regional composting endeavors. Mr. Thomas mentioned a Farm Bureau-hosted meeting on livestock disposal that was taking place on the same day as the committee meeting. He also referred to the work that the University of Kentucky has done in the area of on-farm composting. He noted the state has a vibrant beef industry and indicated that carcass disposal is another aspect of that industry.

As discussion continued, Representative McKee mentioned the merits of addressing the disposal issue on a regional basis.

Department of Insurance, Kentucky Access Report

Next, the committee received reports from Ms. Sharon Clark, Commissioner, Ms. D.J. Wasson, Legislative Liaison, Kentucky Department of Insurance, regarding the Health Care Improvement Authority (HCIA), and from Mr. Al Perkins, Director of the Kentucky Access high-risk health insurance program. HCIA monitors four programs receiving tobacco settlement payments for public health initiatives – Kentucky Access, the Tobacco Use Prevention and Cessation Program, Kentucky Agency for Substance Abuse Policy (KY-ASAP), and the Kentucky Lung Cancer Research Program.

Ms. Clark's report included a review of the current authority membership, its meeting schedule, HCIA programs, the role of HCIA, funding, particularly how tobacco settlement funds are used, and challenges.

Responding to Representative Adams, Ms. Wasson indicated that KY-ASAP grants awarded to communities are leveraged with local funds and resources.

Representative Nesler pointed out that, while headway was being made in reducing tobacco use, drug abuse was still a problem. He wondered aloud about the benefits of the KY-ASAP programs. He noted the state is losing the war on drugs.

In subsequent remarks, Senator Pendleton pointed out that funds are needed to help combat the illicit drug problem. He pointed out that a quick fix will not work. According to the senator, more funds are needed for rehabilitation and treatment.

Responding to Representative McKee, who had mentioned his recent remarks at a drug court graduation, Ms. Wasson said some KY-ASAP funds assist some drug courts.

Also responding to Representative McKee, Ms. Clark noted that, were it not for the Kentucky Access high-risk health insurance program, people with high-risk ailments would be seeking help from other public programs. According to Ms. Clark's testimony, the federal health care reform law contained provisions for a national high-risk pool. Mr. Perkins noted that Kentucky Access is the first resort for many citizens.

In continuing discussion, Ms. Clark told Senator McGaha that she asked the Office of the Governor about filling some open HCIA vacancies. She indicated to the senator that HCIA board meeting attendance has not been good, with perhaps three out of four meetings occurring with no quorum present.

Next, Mr. Perkins updated the committee on the Kentucky Access insurance program. According to his report, the program had 4,820 active members as of March 31. The program pays 99 percent of its claims within 30 days of receipt. Premiums cover about 45 percent of the program's expenses. The remainder is funded through tobacco settlement funds (32 percent), assessments on insurers (20 percent), and federal grants and interest earnings (3 percent). Administrative expenses to operate the program are only 6 percent of total program expenses. They expect new administrative regulations to reduce the amount of time it takes to approve an application for coverage. And, for FY10, the program received its tenth "clean" audit report from the State Auditor.

Responding to Co-chair Stone, who had asked about trends observed, Mr. Perkins indicated they constantly monitor the market place. According to Mr. Perkins, they attempt to offer a rich plan in terms of coverage, but one that is cognizant of costs.

In terms of possible future changes, Ms. Clark indicated some insurance agents have asked about the potential for child-only insurance policies.

Documents distributed during the committee meeting are available with meeting materials in the LRC Library. The meeting adjourned at approximately 11:45 a.m.

Rate hikes,
from page 3

forcing EKPC customer rates to rise by more than 20 percent. The company has already spent over $1.8 billion in the past five or six years on clean coal technology and retrofitting, Comer said.

Similar reports of likely rate hikes were shared by officials from Kentucky Power, which serves around 175,000 customers throughout eastern Kentucky, and Duke Energy which serves approximately 4 million customers in Kentucky, Indiana, Ohio and the Carolinas.

Sen. Joe Bowen, R-Owensboro, asked officials from the utilities what role state environmental officials play, as opposed to the federal Environmental Protection Agency, in the regulatory process and how do the roles interact.

Voyles said the federal rules are given to the states to be carried out, although states can approve regulations that are more, not less, stringent that the federal rules.

When asked by another lawmaker if utilities have taken action to extend the compliance deadlines, company officials said that their employers are taking such action.

Jimmy Keeton with Kentucky Power said short timelines have his company asking questions like "do we switch to gas?" and "do we shut the plant down?"

All rate increases requested by regulated utilities must be approved by the PSC before they can take effect.


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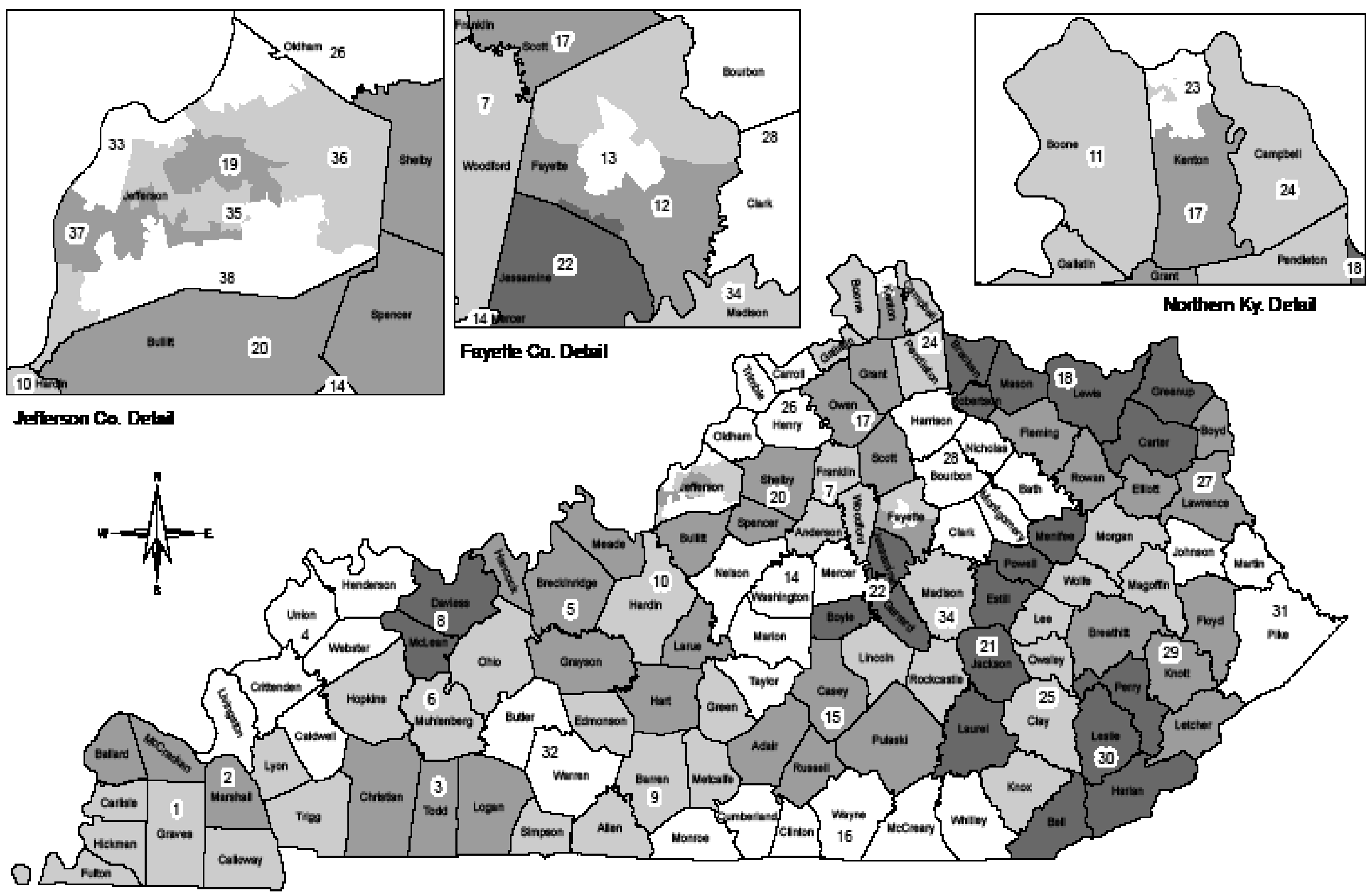

2002 Kentucky Senate Districts

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

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

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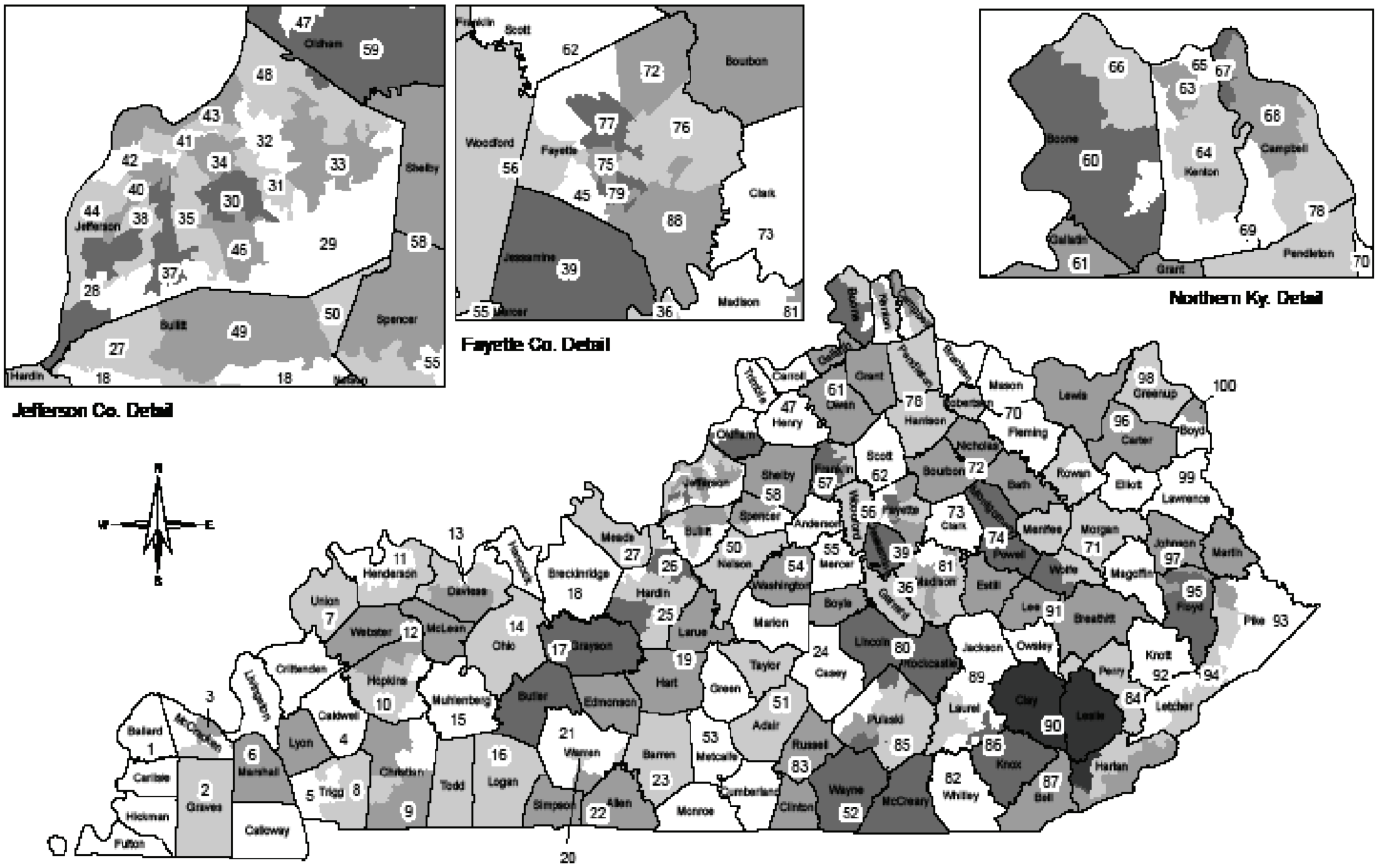

2002 Kentucky House Districts

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

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