Closure, repair of Sherman Minton Bridge discussed with lawmakers

by Rob Weber LRC Public Information

FRANKFORT—Forensic tests show that the two-and-a-half inch crack that forced the closing of the Sherman Minton Bridge probably formed around the time the bridge was built in 1962, Transportation Secretary Mike Hancock told lawmakers during the Oct. 4 meeting of the General Assembly's Transportation Committee.

The bridge was closed for repairs on Sept. 9, one day after the discovery of a crack in the span that carries I-64 traffic over the Ohio River just west of downtown Louisville. Since then, drivers in Louisville and Southern Indiana have been redirected to other routes over the river.

"The closure of the Sherman Minton Bridge has absolutely been disruptive to Louisville area traffic patterns and we sympathize with the commuters that are being inconvenienced while the bridge continues

Continued on page 2

WEG keeps promise to draw new horse events to Kentucky

by Rebecca Mullins Hanchett LRC Public Information

KENTUCKY HORSE PARK, Lexington, Ky.—Kentucky Horse Park officials said early last year that the 2010 Alltech FEI World Equestrian Games would bring more horse events to Kentucky, and they were right.

In addition to at least 70 horse shows featured at the Kentucky Horse Park each year, the park now has 14 new signature events—12 of which will return year after year—that park Executive Director John Nicholson said would never have come to Kentucky without investment in new facilities built for the WEG.

Those 14 shows alone will bring around \$44.2 million to the state that would have otherwise gone to other states, Nicholson told the state legislative Interim Joint Committee on Economic Development and Tourism on Oct. 20. But interest in the revitalized Kentucky Horse Park has not stopped there.

Other events, many held in Tennessee for many years, are now locating to the Kentucky Horse Park because of its WEG upgrades. In 2012, the Grand National Championship for the Paso Fino Horse Association will move to the Kentucky Horse Park from Memphis, TN. A year later, in 2013, The Road to the Horse: World Championship of Colt Starting will move to the park from Murfreesboro, TN.

Continued on page 3



Sen. Alice Forgy Kerr, R-Lexington, co-chaired the Oct. 20 meeting of the Interim Joint Committee on Economic Development and Tourism in Lexing-

Lawmakers hear testimony on proposed smoking ban

by Amy Rose Karr LRC Public Information

FRANKFORT—The Coalition for a Smoke Free Kentucky testified in favor of a proposed statewide smoking ban at the October 19 meeting of the Interim Joint Committee on Health and Welfare.

Rep. Susan Westrom, D-Lexington, informed the committee she plans to introduce a bill during the 2012 General Assembly that would ban smoking in indoor public spaces statewide. Several members of Smoke Free Kentucky spoke in favor of the proposal.

Cardiologist John Johnstone cited a 2006 Surgeon General's report that said there is no safe level of exposure to secondhand smoke. At least 74% of non-smoking Kentuckians are subjected to

secondhand smoke which puts them at a greater risk for a number of cancers and illnesses, he said.

Kentucky Chamber of Commerce members are supportive of smoking bans, with attacks only 9% surveyed disagreeing with

Johnstone added that after becoming smoke free, communities have experienced an immediate and significant reduction in the number of heart and Results from a 2008 study showed that Lexington any type of public saved an estimated \$21 smoking restrictions. million in healthcare costs annually as a result of their smoke-free ordinance.

The Center for Disease Control estimates

the state loses \$2.6 billion annually in smokingattributable economic productivity. Kentucky also ranks 48th among the states for workplace exposure to smoke, according to Dave Adkisson, President and CEO of the Kentucky Chamber of Commerce.

Chamber members are supportive of smoking bans, with only 9% surveyed disagreeing with any type of public smoking restrictions, Adkisson told lawmakers. "The attitude toward smoking is changing in Kentucky and the health effects can no longer be ignored."

Scott Lockard, Public Health Director of the Clark County Health Department, agreed and stated that there was no negative impact in his community after a ban was implemented in 2009.

Thirty one communities in Kentucky already

Continued on page 2

Meth lab, pill mill testimony heard by panel

by Rebecca Mullins Hanchett LRC Public Information

FRANKFORT—Drug enforcement organizations and prosecutors are asking the Kentucky General Assembly to make pseudoephedrine—an over-the-counter drug needed to produce methamphetamine—available only by prescription in the Commonwealth.

Advocates say the change would ensure products like Sudafed that contain pseudoephedrine get into the right hands instead of being purchased for meth labs through loopholes in existing law.

Current law requires that pseudoephedrine products be kept behind the counter, that identification be presented for purchase, that all purchases be logged, and that purchases be limited to 9 grams every 30 days. But the law is reportedly being circumvented by meth producers and helpers called "smurfers" who travel to different pharmacies and buy one or two boxes of product at a time to avoid

the purchase limit.

Commonwealth's Attorney Jackie Steele, who serves Laurel and Knox counties, told the Interim Joint Committee on Judiciary on Oct. 7 that smurfers are a real problem.

The 9 gram limit "will stop one person from buying, but it doesn't stop someone else from buying," Steele said.

Only two states—Oregon and Mississippi—have laws requiring a prescription to buy products containing pseudoephedrine. Officials in both states have reported significant drops in meth lab busts since their laws took effect in the past five years.

Kentucky lawmakers considered legislation during the 2011 Regular Session that would have mandated a prescription for pseudoephedrine and other meth precursors, but the bill—Senate Bill 45—did not pass into law. Legislation on the issue is expected to reappear during the 2012 Regular Session

Kentucky now has the fourth-



Rep. Mary Lou Marzian, D-Louisville, asks a question during the Interim Joint Committee on Judiciary meeting in Frankfort on Oct. 7.

largest number of meth labs incidents in the country, Steele said. The number of actual meth labs is much higher, he explained. In Laurel County, Steele said the discovery of 165 meth labs was counted as one incident because the labs were found in one location.

Law enforcement organizations joined Steele before the committee in requesting that pseudoephedrine be available only by prescription since, they say, the current system is not working. "We need some type of legislation to help us do our job," said Mark Burden of the Kentucky State

Police.

Rep. Mary Lou Marzian, D-Louisville, asked if any other compounds besides pseudoephedrine need to be controlled. Steele said the pseudoephedrine is the only drug absolutely required to make meth, without substitution.

"I'm always (concerned) that something else can be turned into meth," Marzian said. "They're so inventive and resourceful."

Other lawmakers questioned whether a prescription requirement would be effective. Sen. Dan Seum, R-Louisville, mentioned a report out of Oregon that said more than 80 percent of Oregon law enforcement called meth their area's "greatest drug threat" after that state's 2006 prescription requirement had been in effect for four years.

"I guess my question is if we're going to schedule a drug, does it actually ... solve the problem," said Seum. Steele clarified there are two different problems at play: drug abuse, and meth labs. Meth labs can be reduced with a prescription requirement because pseudoephedrine is required to make meth, he explained.

Representatives from the Consumer Healthcare Products Association and Appriss, a Louisvillebased criminal justice technology solutions company, then explained that

— Continued on page 3

Smoking, from page 1

have some form of smoking ban in place. Lockard would like to see those restrictions expanded. "The goal is to protect every Kentuckian from the proven dangers of secondhand smoke," he said.

No one spoke in opposition of the proposed ban during the committee meeting. Westrom proposed a similar statewide smoking ban in the 2011 legislative session, but the measure did not become law.

Bridge, from page 1 _

to remain closed," Hancock said. "However, it should be noted that the annual bridge inspection process did its job and the potential tragedy in this location was averted."

The bridge has been routinely inspected over the years. However, the crack that closed the bridge wasn't visible until contractors removed a plate on a tie near the Kentucky shore as part of a more rigorous inspection requested by the Federal Highway Administration.

Hancock told lawmakers that repairs were expected to cost \$20 million and could take up to six months to complete, though both the estimated cost and the time for repairs decreased in later weeks. The Louisville company selected to handle bridge repairs now estimates it can complete the job by early March, 2012 at a cost of \$13.9 million.

Kentucky and Indiana share maintenance responsibilities for the bridge, with Indiana serving as the lead state for inspection and repairs. The states evenly split inspection and repair costs.

At the time the bridge was built, it represented an innovative, lightweight design that depended on high-strength steel and welded joints. The current repair plan calls for the bolting of new steel plates to the bridge to reinforce welded areas and strengthen joints.

"This retrofit will ensure the safety of the bridge for highway traffic and will eliminate concerns about the lightweight bridge design, the steel ties and the welding methods originally used for the bridge," Hancock said.

The repairs are expected to add at least 20 years to the life of the bridge.

In response to a question from Sen. Paul Hornback, R-Shelbyville, on whether adding millions of pounds of steel to the bridge will affect its structural integrity, State Highway Engineer Steve Waddle said the design firm assisting with repair plans is convinced the bridge can handle the extra weight.

Sen. Ernie Harris, R-Crestwood, co-chair of the Transportation Committee, asked whether other routine maintenance projects on the Sherman Minton Bridge will be completed while it's closed.

Hancock replied that scheduled resurfacing on the Kentucky side of the bridge has been moved up to be completed while the bridge is closed. But the main focus is on getting the bridge open to traffic as quickly as possible.

"At this point we want to focus on getting the fix done that's necessary to reopen the bridge to traffic," Hancock said. "Our concern is if we blend too many other things with that it will take more time to get done. We want the bridge back open ASAP."

State conservation cost sharing has lasting effects

by Rebecca Mullins Hanchett LRC Public Information

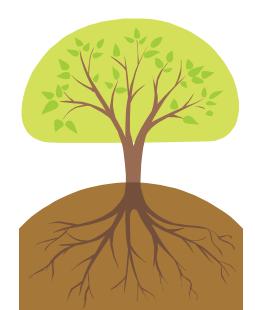
FRANKFORT—Soil and water conservation in Kentucky received a financial boost when it began receiving funding through the national tobacco settlement agreement over a decade ago. Now, a major state conservation cost share program is boosting water quality from Kentucky all the way to the Gulf of Mexico.

Kentucky Division of Conservation Director Steve Coleman told the legislative Tobacco Settlement Agreement Fund Oversight Committee on Oct. 5 that his agency's Soil Erosion and Water Quality Cost Share program is helping to leverage millions of dollars to protect the Green River watershed in west and southern Kentucky and three watersheds in the Mississippi River Basin. The watersheds are contributing to poor

water quality in an "hypoxic"—or oxygen depleted—area on the Gulf coast.

The Green River Conservation Reserve Enhancement Program has committed \$110 million in federal and state cost share dollars for the successful protection of 100,000 acres in 14 counties, Coleman said. Under the Mississippi River Basin Initiative (MRBI), created in 2010, Coleman said Kentucky was awarded \$3 million in fiscal year 2011 for three projects that will help limit the state's impact in the Gulf hypoxic zone. Another \$500,000 will be provided over the next four years through the state cost share program for each of the three projects, according to the Division, and incentive payments totaling more than \$25 million will be awarded to Kentucky landowners.

Kentucky watersheds with projects tied to the Mississippi River



Basin Initiative are the Licking River, Lower Green River, and Mayfield Creek watersheds. Committee Co-Chair Rep. Wilson Stone, D-Scottsville, asked Coleman why the Red River Watershed in southern Kentucky is not part of the state's project area.

The Red River Watershed and Obion Watershed in far west Kentucky are part of a conservation partnership with Tennessee, Coleman said. Thus far, he said, the two states have been unable to finalize a proposal for funding in those areas.

"It is being pursued. We just haven't gotten to that point just yet," he said.

Coleman said he is pleased with the successes of his agency's cost share program and soil stewardship program, created by the 1994 Kentucky General Assembly. State law requires that funding provided through the programs be administered by local conservation districts and Kentucky Soil and Water Conservation Commission.

"I'm very proud of what has been accomplished by the programs that the General Assembly has established...," he said.

Judiciary, from page 2

they are not in favor of a prescription requirement. Carlos Gutierrez with the CHPA said "there's no public outcry to take the products out from over-the-counter. In fact, it's quite the opposite." A recent Asthma and Allergy Foundation of America study revealed that 71 percent of Americans opposed

a prescription requirement, said Gutierrez.

He added that
CHPA recommends
that the General
Assembly instead
consider legislation
to supplement
MethCheck, a tracking
service operated by
Appriss, with a meth
offender registry to
reduce purchases of
pseudoephedrine for illegal use.

Gutierrez said his industry would also be in favor of reducing the purchase limit from 9 grams a month to 7.5 grams a month and reducing the amount allowed to be purchased per year by almost half.

Jim Acquisto with Appriss said almost all the measures that lawmakers favor are in place. He said electronic tracking is the best monitor of the sale of retail substances in the U.S. "I submit to you it's a better way to control the substance," he said.

Testimony of the growing problem with so-called "pill mills" in Kentucky was also received by the committee. Pill mills are medical facilities where licensed physicians typically write prescriptions to

Kentucky now has the

fourth-largest number

of meth labs incidents

in the country, said

Commonwealth's

Attorney

Jackie Steele.

almost anyone
for money,
according to
news reports.
These reports
indicate that
there may
be tens of
thousands
of pill mills
in operation
nationwide,
including many
in Kentucky.

Sen. Jimmy Higdon, R-Lebanon, has prefiled legislation for the 2012 Regular Session that would combat pill mills in the Commonwealth. The bill would create a new law defining pain management facilities and require that all of the facilities be licensed.

The legislation would also include facility ownership requirements, employee requirements and require the Kentucky Board of Medical Licensure to regulate the facilities.

Kentucky Horse Park, from page 1

Perhaps one of the greatest economic coups for the Kentucky Horse Park was its ability to draw the National Horse Shows from New York to Lexington. The historic national competition, which was held at Madison Square Garden for decades since the late 1800s, is what Nicholson called the "oldest, most prestigious horse show in the world." It will now be held in the Alltech Arena at the Kentucky Horse Park beginning next month, when the show meets in Kentucky for the first time Nov. 2-6.

"You would make the statement that the greatest day would be the day after the (World Equestrian) Games closed, and many of us wondered if that could be true," said committee member Rep. Tom McKee, D-Cynthiana. "Your presentation this morning shows (you were right)."

Nicholson said the work that made the 2010 WEG possible and the results of that work "was always about legacy," adding "I think we made a statement about who we are as a Commonwealth last year, and I think we made a very positive statement."

The horse industry—and the Kentucky Horse Park—are fixtures in Kentucky's \$11.4 billion tourism industry, explained Kentucky Tourism, Arts and Heritage Cabinet Deputy Secretary Matt Sawyers. After WEG, Sawyers said, the park became "the epicenter" of the Horse Capital of the World.

Department of Travel and Tourism Deputy Commissioner Hank Phillips said his office's primary focus at WEG was the popular The Kentucky Experience pavilion where representatives from nine tourism regions, over 400 Kentucky artists , dozens of artifacts and hundreds of thousands of tourists gathered to celebrate what makes the Commonwealth unique. Authenticity is the state's selling point, said Phillips, who told the committee that the Department of Travel and Tourism's new marketing theme—"There's Only One Kentucky"—is built on its one-of-a-kind people and places, from the Red River Gorge to Mammoth Cave to the National Quilt Museum in Paducah.

"If you can point out something that exists no place else in the world, you can't get much more authentic than that," said Phillips.

The committee also received a report from Kentucky American Water President Cheryl Norton about water supply and economic development in Kentucky and through Kentucky American's parent company American Water.

2012 REGULAR SESSION CALENDAR (Agraved by LRC Co-Chairs 9/14/11)

JANUARY

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2012 REGULAR SESSION CALENDAR

* () denotes legislative day

FEBRUARY

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() Denotes Legislative Day

MARCH

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APRIL

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72	23	24	25	26	27	28
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INTERIM JOINT COMMITTEE ON AGRICULTURE

Minutes of the 4th Meeting of the 2011 Interim September 9, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Agriculture was held on Friday, September 9, 2011, at 10:00 AM, at the University of Kentucky Veterinary Diagnostic Laboratory, Lexington, Kentucky. Senator David Givens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator David Givens, Co-Chair; Representative Tom McKee, Co-Chair; Senators Joe Bowen, Paul Hornback, Vernie McGaha, Dennis Parrett, Joey Pendleton, and Robin L. Webb; Representatives John "Bam" Carney, James R. Comer Jr., Will Coursey, Mike Denham, C. B. Embry Jr., Jim Glenn, Richard Henderson, Kim King, Martha Jane King, Michael Meredith, Terry Mills, Brad Montell, Fred Nesler, David Osborne, Sannie Overly, Tom Riner, Steven Rudy, Rita Smart, Wilson Stone, and Tommy Turner.

Guests: Drew Graham,
Senior Assistant Dean, Director
of Advancement; Dr. Nancy Cox,
Associate Dean for Research and
Director, Ky. Agricultural Experiment
Station; Dr. Jimmy Henning, Associate
Dean and Director, Cooperative
Extension Service; Dr. Craig Carter,
Director, UK Veterinary Diagnostic
Laboratory; Steve Byers, University
of Kentucky; Dr. Oran Little, former
Dean, University of Kentucky; and
Representative John Will Stacy.

<u>LRC Staff:</u> Biff Baker, Lowell Atchley, Stefan Kasacavage, and Susan Spoonamore, Committee Assistant.

The August 25, 2011, minutes were approved, without objection, upon voice vote, on a motion made by Representative Rudy and seconded by Representative Montell.

Opening remarks

Drew Graham, Senior Assistant Dean, Director of Advancement, University of Kentucky College of Agriculture, welcomed the committee and introduced the speakers.

Dr. Nancy Cox, Associate Dean for Research and Director, Kentucky Agricultural Experiment Station, University of Kentucky College of Agriculture, discussed the college's investment in buildings and personnel. She also noted that the college has

acquired \$34 million in funds for research, and that the college realizes a \$10 return for every \$1 spent on research investments. Dr. Cox briefly reviewed some of the majors that the college offers, and noted that 66 percent of the students enrolled are from out-of-state.

Dr. Jimmy Henning, Associate Dean and Director, Cooperative Extension Service, stated that there are more than 400 extension agents in the Commonwealth. He said that in order to adjust to budget cuts of over \$1 million, 30 vacancies have not been filled. He explained that some county committees have provided extra local funding to hire agents. Dr. Henning also briefly talked about renovations to the Lake Cumberland 4-H camp and the North Central 4-H camp.

Dr. Craig Carter, Director, UK Veterinary Diagnostic Laboratory (Lab), pointed out that the Lab's primary goals are to develop, apply, and utilize state-of-the-art technology and scientific knowledge to improve animal health and marketability, to preserve the human-animal bond, and to help protect public health.

Dr. Carter explained that the Lab has cutting-edge diagnostic testing and regulatory testing to allow for a smooth flow of animals in the markets. The Lab and the Breathitt Diagnostic Center are the only centers in the state that can diagnose zoonotic diseases that can be transferred from animals to people. The Lab also provides research to develop new and better diagnostic testing methods.

Dr. Carter discussed the recent completion of the \$28.5 million renovation of the Lab, and noted that the Lab attained full accreditation by the American Association of Veterinary Laboratory Diagnosticians in 2009 and is a member of the National Animal Health Laboratory Network, a network that provides valuable assistance and research to federal laboratories.

Dr. Carter stated that the Lab continues its goal of achieving *Service Center* status at the University, continues to expand its uses of information technology, and strives to increase its marketing and testing services within Kentucky and nationally. He also noted that some of the Lab's current research projects are related to equine diseases and the continuous health monitoring of cattle.

In response to questions, Dr. Carter explained that the Lab is qualified to assist with disease testing

if federal laboratories are overloaded. He confirmed that the Lab is equipped to handle an outbreak of Equine Infectious Anemia should it occur. He also said that the Lab was poised and ready to help with any problems that might have arisen at the World Equestrian Games, and that some testing was done for the games.

Dr. Carter briefly discussed the post-doctorial program offered by the Lab and answered that the program has three slots. Dr. Cox stated that it is the college's policy to take all students who qualify for the program.

Responding to questions, Dr. Henning stated that the Cooperative Extension Service does communicate with its agents regarding the services at the Lab, and that there is an Extension Veterinarian on staff at the Lab. Dr. Carter confirmed that the Lab and the Extension Service communicate well with each other. He mentioned that the Lab collects disease data from around the state, including data from the Breathitt Diagnostic Center. That data is collected daily and is loaded into the Lab's computer. The computer analyzes the data and if necessary it sends out alerts of a possible crisis, and those alerts are communicated to the Extension agents. Dr. Cox stated that Kentucky is the only state that has this type of surveillance. Dr. Henning also noted that the Extension Service has three specialists in Nutrition and Food Services that address human health concerns such as diabetes.

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

INTERIM JOINT COMMITTEE ON AGRICULTURE

Subcommittee on Horse Farming Minutes of the 1st Meeting of the 2011 Interim October 12, 2011

Call to Order and Roll Call

The 1st meeting of the Subcommittee on Horse Farming of the Interim Joint Committee on Agriculture was held on Wednesday, October 12, 2011, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Susan Westrom, Co-Chair; Senators Dennis Parrett, Joey Pendleton, and Robin L. Webb; Representatives Royce W. Adams, Sara Beth Gregory, Tom McKee, Michael Meredith, Fred Nesler, David Osborne, Tom Riner, Rita Smart, and Wilson Stone.

Guests: Mr. Michael Blowen, Old Friends; Dr. Jim Smith, DVM, Kentucky Equine Humane Center; Ms. Susanna Thomas, Maker's Mark Secretariat Center.

LRC Staff: Lowell Atchley, Sarah Kidder, and Kelly Blevins.

Equine Health Report

After calling the meeting to order, Senator Thayer, the presiding chair, turned the meeting over to Co-chair Westrom, who asked subcommittee members to introduce themselves. Co-chair Thayer explained the jurisdictional responsibilities of the subcommittee and how subcommittee meetings are scheduled.

Co-chair Thayer asked Mr. Rusty Ford, Equine Program Manager, Office of State Veterinarian, to speak to the subcommittee on two topics: an overview of the prevalent equine diseases and outbreaks affecting the horse industry in Kentucky; and a progress report on the Equine Health and Welfare Council, created by the 2010 General Assembly.

Mr. Ford briefed the subcommittee on the mission and regulatory responsibilities of the Office of State Veterinarian. Mr. Ford indicated there are no pressing diseases affecting horses in the state at this time. He turned to some of the equine diseases dealt with in recent years such as equine piroplasmosis, equine infectious anemia, and the equine herpes virus.

Mr. Ford gave an update on the Equine Health and Welfare Council. The council has assisted the Kentucky Livestock Care Standards Commission in its effort to establish standards for on-farm livestock and poultry care. The council is looking into a system of voluntary certification of equine rescue and retirement operations, and is working to develop a series of regional centers to care for unwanted, abused, or neglected horses. An investigation regarding domiciling horses at Department of Corrections facilities is taking place. The equine program established at Blackburn Correctional Facility in Lexington-Fayette County is a "good model."

Responding to Senator Webb, who asked about sightings of horses roaming freely in parts of eastern Kentucky, Mr. Ford indicated there has not been evidence of disease among the horses. He said it would be difficult to gather and test the animals.

Mr. Ford described in more detail conversations he had with the Justice Cabinet about keeping horses on prison grounds. He indicated that allowing prisoners the opportunity to care for horses would give them some useful job skills.

Responding to Representative

Osborne, Mr. Ford said his office had discontinued equine piroplasmosis testing because there is no evidence of the disease among Thoroughbreds, based on thousands samples tested.

In a response to Representative Adams's, Mr. Ford explained the circumstances leading to the euthanization of 10 horses on a farm in Pendleton County. The farm owner had been taking in horses as part of a rescue program, but also found himself with some horses that had been abandoned by others on his premises. According to Mr. Ford, he and other investigators and veterinarians assessed the horses and found that 10 could not be saved.

The department did not pay for the euthanization, but had personnel expenses involved, according to his testimony. In further testimony, Mr. Ford said the department receives calls from people who think that horses are being uncared for, when there are actually no problems with the animals.

Representative Adams related that he has had numerous calls about possible horse abuse during his years in the General Assembly. According to Mr. Ford, the Kentucky Horse Council offers training to law officials and others on dealing with horse abuse, neglect, and abandonment.

Representative McKee said he had been made aware of the situation involving the horses in Pendleton County. He said resolution of that situation was a good example of a system that works.

Equine Rescue Facilities Report

people--Ms. Susanna Three Thomas, Director, Maker's Mark Secretariat Center, a division of the Thoroughbred Retirement Foundation; Dr. Jim Smith, DVM, President, Kentucky Equine Humane Center; Mr. Michael Blowen, President of the Old Friends Thoroughbred retirement and rescue facility--testified about horse rescue, rehabilitation, and adoption facilities. The Maker's Mark facility mainly takes in Thoroughbreds, trains them for other equine activities, and puts them into an adoption program. The Kentucky Equine Humane Center (KyEHC) acts as a shelter and clearinghouse for all types of unwanted horses--regardless of breed--and places them into adoption, if appropriate. Old Friends is a retirement and rescue facility for Thoroughbreds.

The speakers introduced themselves and spent a few minutes giving details about their facilities, which differ but also have many similarities. Throughout the testimony, each speaker talked about the need for funds and support from the public.

Responding to Co-chair Thayer, Ms. Thomas discussed efforts to raise funds and donations, such as hay. The retraining and adoption that takes place at her facility creates a synergy that has economic and cultural benefits.

Dr. Smith explained to Representative Adams the KyEHC's process for taking in and evaluating horses. There is a veterinarian committee whose members evaluate whether horses should be rehabilitated or euthanized. He detailed the steps required for a person to adopt a horse. The adoption process involves follow-up visits to assure an adoption is going smoothly.

Ms. Thomas discussed what is required in the Thoroughbred retraining process. Another mission of the facility is educating people about the value of Thoroughbreds. The facility has an intern training program. Ms. Thomas commented on two DVDs that were played during the meeting.

Dr. Smith noted that the KyEHC is the largest equine rescue facility in the Commonwealth. The center, located on 72 acres in Jessamine County, has a capacity of 50-55 horses and has four full-time paid staff members. The facility has accepted 675 horses since 2007. It has placed 305 in adoptive "homes."

KyEHC accepts any horse, regardless of breed. Some have physical and behavioral challenges, the said. Fit horses are evaluated for training or re-training.

Dr. Smith also discussed some of the contributing factors that have led to the need for the services that the KyEHC offers, such as the dismal economy, previous summer droughts, and the unavailability of a slaughter facility in the U.S.

Mr. Blowen told the committee that the organization is only "scratching the surface" when it comes to dealing with unwanted horses. He discussed the educational aspect of Old Friends.

After allowing the subcommittee to view a DVD of a CBS News profile of the facility, Mr. Blowen discussed the "economics" aspect. He noted the need of generating funds to carry out the mission.

He said that Old Friends does not receive funding from the Thoroughbred race tracks in Kentucky. Earlier in the meeting, Co-chair Thayer told the subcommittee that the three rescue facilities do not receive public funds.

Representative Smart expressed the hope that the speakers' message can be circulated further.

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

The meeting adjourned at approximately 12:15 p.m.

INTERIM JOINT COMMITTEE

ON APPROPRIATIONS AND REVENUE

Minutes of the 4th Meeting of the 2011 Interim September 22, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, September 22, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order. Note: roll call and approval of minutes were conducted after the Cabinet for Economic Development presentation.

Present were:

Members: Senator Bob Leeper, Co-Chair; Senators Walter Blevins Jr., Joe Bowen, Tom Buford, Jared Carpenter, Denise Harper Angel, Ernie Harris, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Alice Forgy Kerr, Vernie McGaha, Gerald A. Neal, R.J. Palmer II, Joey Pendleton, Brandon Smith, and Mike Wilson; Representatives Royce W. Adams, John A. Arnold Jr., Dwight D. Butler, John "Bam" Carney, James R. Comer Jr., Ron Crimm, Mike Denham, Bob M. DeWeese, Kelly Flood, Danny Ford, Derrick Graham, Keith Hall, Jimmie Lee, Reginald Meeks, Lonnie Napier, Fred Nesler, Sannie Overly, Marie Rader, Jody Richards, Tommy Turner, Alecia Webb-Edgington, Susan Westrom, and Brent Yonts.

<u>Guests:</u> None other than agenda presenters.

LRC Staff: L. Bart Hardin, John Scott, Eric Kennedy, Margaret Royar, and Marlene Rutherford.

A Resolution honoring and adjourning the meeting in recognition of L. Bart Hardin, Deputy Director, Office of Budget Review, upon his retirement from LRC was presented by Chair Leeper. Representatives J. Lee, Adams, Ford, and Arnold expressed personal thanks for the ability, dedication, guidance, and assistance Mr. Hardin provided while serving as Budget Director and wished him well in his retirement.

Representative Hall moved approval of the resolution, seconded by Representative Graham, motion carried without dissent.

Update and Discussion of Current Economic Development Incentives and Programs by the Cabinet for Economic Development

Secretary Hayes stated that the cabinet is being reorganized and that there has been a reduction of staffing from 112 in December, 2007 to 79 currently, a 30 percent reduction. He said the cabinet is integrating cabinet operations and performing cross-functional analysis and that the permanent staffing level will be around 84 or 85.

He said that the cabinet is 22 percent above the number of jobs created in Kentucky compared to this time last year and 30 percent above the amount of investments for jobs for the same period. Thirty percent of the investment last year was foreign-direct investments which means Kentucky is operating in a global economy. Because of the legislature's actions, the cabinet has more flexibility, transparency, and accountability.

Commissioner Dunnigan indicated that the cabinet was faced with older programs that were on the cutting edge for their time but had become increasingly more difficult on business and inhibited the cabinet's ability to help businesses grow in Kentucky. Companies wanted to reduce their risk and were consolidating. They no longer were competing with their competitors but were competing with sister organizations within the same parent company which forced companies to make decisions. The cabinet had to find ways to recruit new business into the state and work with existing industries to help win a company's consolidation to keep it in Kentucky rather than possibly closing a facility in Kentucky and moving it to another state.

House Bill 3 allowed the cabinet more flexibility to encourage new job creation and recruiting of new industries but more importantly the cabinet now has the ability to keep companies in Kentucky and keep them competitive within their corporate structures. With the new incentives, the cabinet can now help companies re-tool their facilities and become more cutting edge in the types of products produced or services provided.

The most significant change is a tool to help existing businesses that are not going to create jobs simply re-tool and retain existing jobs. The cabinet now has the ability to help those companies with older facilities install the latest technologies and manufacturing equipment, and make the investments they need to make to be competitive within their corporate structure and keep the jobs in Kentucky. The cabinet can work with the supplier organizations and smaller manufacturers located across the state rather than just the large corporations.

He said the new program also focuses on training. The cabinet has the ability to invest in the workforce and create better skills to put people back to work.

While focusing on job creation the cabinet has expanded the availability of incentives. The new legislation requires a company to create ten new jobs which gives access to the incentives to small businesses in Kentucky. Commissioner Dunnigan stated there are also added advantages built into Kentucky's tax code for manufacturing firms. Manufacturing companies investing in new manufacturing equipment in the state are exempt from sales and use tax on the new equipment. House Bill 3 gave the cabinet the tools to reduce the sales and use tax burden on service sectors which are normally higher technology jobs, higher wage, and higher quality jobs in Kentucky.

The most significant part of legislation is the increased accountability that results from the programs. Under the old program, companies provided projections to the cabinet of what they thought they would do in the future and the cabinet had to make assumptions from those projections as to how to structure the incentive, but there was no way to measure whether the company fulfilled their obligation. If a company met the minimums, it could access the incentives. Companies are now monitored on an annual basis and must create at least 90 percent of the new jobs they projected or they are penalized and the incentives reduced proportionately based on how far the company missed their target.

The cabinet also looks at the wages paid by the company. If the company does not create and pay employees within 90 percent of the company's wage projection, it is again penalized. For reinvestment types of opportunities where companies are required to retain jobs to receive incentives, the cabinet requires the company to uphold a percentage of employment. As an example, he said if a company employs 100 people, by law it is only required to create 85 percent, but the cabinet uses that percentage as a negotiating tactic and actually increases the accountability on the reinvestment projects. If the company wants to access the incentives, it needs to retain 100 percent of its jobs. He pointed out that this cannot always be done but it is a variable that can be negotiated. The more jobs a company can maintain, the more flexible the cabinet can be with the incentive program.

Along with accountability, Commissioner Dunnigan said that transparency has also been built into the system. Public information is posted on the cabinet's website and updated every day. The cabinet and the public have the ability to look at the incentives that have been approved and compare the performance of the companies.

Using an existing company as an illustration, he stated that a company projected to invest just over \$2.5 million in an expansion project in the state had to retain ten jobs that were currently in the facility. The company projected to create 72 two new jobs

at an average hourly wage of \$10.34, and as a result of that new job creation and new investment in Kentucky, it was approved for \$1 million in tax incentives, which is a performance based incentive that is monitored on an annual basis. If a company fails to produce the number of jobs it projected to create, the incentive benefits are reduced. Using the data as it relates to this particular company, the tax incentive of \$1 million approved initially was reduced because the company did not uphold its part of the deal. Measurements will be taken each year by the cabinet to see whether a company created the number of jobs it projected and whether the company is paying the projected wages. If the company meets those requirements, it will receive the benefit it earned for that year. If it does not meet those requirements, the incentives will be reduced proportionately by how much it missed its targets.

Since approval of the incentives in House Bill 3 there have been approximately 350 firms receiving preliminary approval for incentives. Those projects have projected to invest almost \$3.5 billion statewide and potentially create more than 19,600 new jobs and to retain 7,350 existing jobs. The cabinet can now monitor those projects in ways it could not before. Companies will now be accountable for the incentives they receive from the state.

Commissioner Dunnigan said that there had been increased activity in new leads generated for the state as well as the cabinet's focus on existing industry. From 2008 to date, there have been increased new leads into the state that are new opportunities generated through marketing the state, contacts with organizations like local economic development firms, or partners with the cabinet, and marketing efforts through Kentucky United, which is a joint marketing effort with the cabinet and the Kentucky Association of Economic Developers (KAED), as well the cabinet's marketing management staff and business representatives that are out contacting companies.

Commissioner Dunnigan indicated that since House Bill 3 went into effect in July 2009, the state's capital investment and new jobs almost doubled in 2010. When comparing 2010 to 2011 year-to-date, the cabinet is keeping the momentum moving forward, and through August 2010, the cabinet was just under \$1 billion in new investment. It closed the year in excess of \$2 billion in new investment. The cabinet expects this same growth in 2011. Comparing August 2010 through August 2011, there have been 1,200 new jobs created ahead of where the state was last year.

The Incentives for a New

Kentucky (INK) program also has a focus on small businesses who can apply for state income tax credits of between \$3,500 and \$25,000 for small businesses that create one or more jobs and invest \$5,000 or more in qualifying equipment or technology. These eligible small businesses include for-profit entities that have 50 or fewer full-time employees. Commissioner Dunnigan said that in addition the cabinet has implemented a variety of small business initiatives to encourage additional growth out of those small businesses including leveraging federal funds, getting banks involved in lending to small businesses, teaching and educating companies in the state on the importance of exporting to international markets, encouraging more seed funding into start-up firms, and putting more efforts into research and development and high technology industries to grow the next big company out of Kentucky.

An update was given on the activity of Tax Increment Financing (TIF) legislation. Commissioner Dunnigan stated that to date there are 13 active projects that have received final approval and are still progressing. These projects are in Louisville, Lexington, Bowling Green, Newport, Dayton, Georgetown, and Versailles. In addition to these active projects, there are three projects in the preliminary stages of development with the Georgetown Events and Commerce Center, the Paddocks of Woodford, and the University of Louisville Research Park. The approved projects represent over \$7 billion in new investment in the state and over \$2 billion in recoverable funds through the TIF project. He said that the five completed projects are generating new revenue above the baseline for that area in the state, those being the Downtown Louisville Marriott, Churchill Downs, Renaissance Zone, Louisville Arena and Nucleus.

Commissioner Dunnigan said the competition of surrounding states to lure business and create jobs reflects how the cabinet needs to continue the efforts of improving systems, processes internally, and incentive programs.

At this time, Chair Leeper asked that the secretary call the roll.

Senator Pendleton moved that the minutes of the August 25, 2011, meeting be approved, seconded by Representative Hall. The minutes were approved.

In response to a question by Senator Pendleton relating to expansion of retail business and incentives, Secretary Hayes said that traditionally the cabinet is not involved in programs that directly impact retail but the tax increment financing projects have encompassed a significant portion of

retail business. The cabinet is focused on re-directing the efforts in assisting small businesses. The cabinet has approximately \$15 million in federal funding and is leveraging those funds to help small businesses with capital requirements. The banks are involved and the leverage estimate is about 15 to one. He said that retail business is a different issue currently because there is an excess capacity in retail space available so there is an overbuilt situation that adds to other issues. The salary issue is another area in the retail business.

Representative Webb-Edgington asked that the cabinet look into the incentives package offered by the State of Ohio to lure Omnicare back to that state from northern Kentucky, costing Kentucky several hundred jobs, and to determine if there is any action that may be taken in the next legislative session to address another shortfall of this nature in other situations. Representative Webb-Edgington also commented that in watching the recent candidate debates, that there was discussion of re-defining the role of secretary of state into more of an ambassador in economic development and asked Secretary Hayes for any comment. Secretary Hayes said that since he did not watch the debate he was not familiar with the issue of the office of secretary of state being an ambassador type position.

As for Omnicare, Secretary Hayes asked Commissioner Dunnigan to update the committee. Commissioner Dunnigan said that the cabinet began negotiations with Omnicare last November.Partofthetax modernization that took place in 2005 affected the tax burden that Omnicare would be faced with beginning in 2012. As a result of the Kentucky Business Investment (KBI) program, the cabinet was able to work with Omnicare to alleviate the tax burden which became a nonissue. However, there were two other factors affecting its decision, one being the difference in real estate expenses that Omnicare would have faced in northern Kentucky versus downtown Cincinnati. The State of Ohio offered incentives to Omnicare to reduce its real estate expense, and although the cabinet does not have the details, it is the cabinet's understanding that there was free space involved that impacted the cost comparison for Kentucky. In addition, the State of Ohio imposes a commercial activities tax that would have to be paid by Omnicare, but Ohio also has a tax credit to help alleviate that tax burden. He stated that, when looking at all the variables, the incentive programs in Kentucky worked. But, it became a bigger issue of both real estate costs and Ohio taxes, which resulted in Kentucky falling short. The revenues belonged to Ohio rather than Kentucky, which lead to the broader question of how Kentucky competes against the Ohio commercial activities tax, as well as the changes in the real estate market in Cincinnati versus northern Kentucky.

Secretary Hayes also pointed out that the details of the Ohio incentive package have not been published but the cabinet believes that Ohio treated all of the jobs that were in Kentucky as new jobs for the State of Ohio, despite the fact that that over 60 percent of that workforce already lived in Ohio. The cabinet would be able to provide more details when the details of the incentive package are revealed.

Senator Bowen cautioned the cabinet concerning any contemplation of awarding incentives to retail businesses as being very risky because it can quickly create an unfair business environment. In response to a question by Senator Bowen concerning the measurement of new jobs created and jobs lost, Secretary Hayes indicated that the unemployment percentage is the method of measuring jobs lost. Commissioner Dunnigan also pointed out that when a prospect is lost, the cabinet asks questions of companies as to why it decided to not locate in Kentucky, but does not always receive a response. Secretary Hays said that the big challenge for the cabinet are those projects it never has a chance to negotiate with. The cabinet is active with the consultant community, by working with partners of KAED and local individuals to establish relationships with the site selection consultants. He said some of the biggest obstacles are states to the

Senator Leeper stated that in another meeting, in response to a question asked as to what presented Kentucky the most difficulty for competing in southern states, it was mentioned that right-to-work and the personal income tax are important concerns, and he asked how cabinet dealt with these issues. Secretary Hayes said the cabinet tries to get out in front of those issues and to mitigate the differences.

Representative Denham said that the threat from Ohio concerns him because that state is looking for plants up and down the border and has put together a sizable fund to pursue companies, and that West Virginia was also developing a similar fund, and possibly Indiana. It will become tougher for Kentucky to stay competitive, and the legislature needs to be prepared to offer more assistance to recruit businesses and jobs.

In response to a question by Representative Westrom about the airport in northern Kentucky, specifically the Delta terminal, Secretary Hayes indicated that Delta is a concern. It is encouraging at the northern Kentucky airport that DHL is ramping up its services. He and Commissioner Dunnigan have met with DHL's chief operating officer and hopefully will have another announcement in northern Kentucky soon. It will make Kentucky, with UPS in Louisville, a cargo hub of the world. He said that Governor Beshear and Ohio Governor Kasich have met and that Delta is number one on their agenda. He indicated that when Northwest and Delta merged and Minneapolis became the hub for Delta rather than Cincinnati, it was because of clawbacks in incentives that Minneapolis and the State of Minnesota could use against to Northwest, related to an expansion years ago. He stated that Kentucky needs to make sure it has clawbacks that make it a disincentive for a company to change location when there is an occurrence such as merger in midstream.

In response to a question by Representative Crimm, Secretary Hayes indicated neither he nor the cabinet was involved in the negotiations being conducted for Kentucky Kingdom, that this was Tourism Cabinet project.

In response to a question by Senator Buford concerning the approved incentive with Lockheed Martin and a layoff of employees, Commissioner Dunnigan said that the cabinet did not know about the layoffs, that it was an internal change within Lockheed. Because of the way the incentive is structured, the cabinet holds Lockheed to the employment it had in place at the time of approval of the incentives and Lockheed will have to create jobs in excess of that number in order to access the \$15 million in incentives. The layoff is actually a change from an in-house contractor to Lockheed employees. Lockheed still must meet those minimum requirements. Employees Lockheed had on the payroll at the time of the cabinet's approval, which was prior to the announcement by Lockheed of the layoffs, is the number of employees it must have before incentives would be provided for hiring any new employees. The minimum employee requirements will have to be maintained statewide, not just the number of employees it has in Lexington and that Lockheed is aware of this requirement.

Commissioner Dunnigan did not have the numbers available as to the average salary incomes before and what Lockheed will have to maintain in the incentive package, but said he would provide that information. He said 224 new jobs are involved above the baseline employment of 1,706 before accessing the incentives.

In response to a question by

Senator Leeper, Commissioner Dunnigan stated that once the approvals are in place there are formal agreements provided.

In response to a question by Senator Wilson relating to the Kentucky Kingdom matter, Secretary Hayes indicated that the cabinet would be glad to help the Tourism Cabinet structure a deal financially if requested, but in terms of evaluating the investment of this type project, the Tourism Cabinet is more experienced.

In response to a question concerning the Heartland Corridor, a high speed rail line from the east coast that runs through West Virginia, Virginia, Cincinnati, and eventually to Chicago, Secretary Hayes indicated he was not familiar with any of the specifics surrounding this rail system.

Debt of the Commonwealth

Kristi Culpepper, Staff Administrator, Capital Projects and Bond Oversight Committee, provided information on Kentucky's bonded indebtedness.

The report Ms. Culpepper discussed is published every two years for the Capital Planning Advisory Board, and is included in the state's six year capital plan. The report examines trends in the state's debt issuance across fiscal bienniums and discusses various factors that influence the cost of issuing new debt including the state's financial management debt structure and economic situation and explains the impact the various financial practices have had on the state's credit profile. She said that policymakers are making a trade off in using debt to fund projects. By issuing bonds the state is able to undertake and reap the benefits of projects earlier than if it had to accumulate sufficient cash to fund the projects outright.

As the state's outstanding debt increases, the amount of money that policymakers must appropriate to pay debt service also increases. That service represents an inflexible longterm commitment that competes with policymakers' programmatic priorities for funding. There are four financial practices laid out in the report that communicate the state's willingness to repay what it owes and improve the state's ability for repayment. They are: (1) enacting a structurally balanced budget; (2) building reserves; (3) maintaining adequate liquidity; and (4) issuing a manageable level of debt.

A budget is considered to be structurally balanced if the recurring revenues equal or exceed recurring expenditures. Ms. Culpepper said that market participants are concerned with the sustainability of the fiscal policies that are underlying current spending. It is important to distinguish between recurring and non-recurring revenues in deciding how much bonded

indebtedness to assume. Recurring revenue growth stems from positive economic trends and tax policies that take advantage of those trends. One-time resources such as fund transfers, federal aid to states, and debt restructurings are not available in the future to address recurring expenditures such as debt service.

Nonrecurring revenues used to offset recurring expenditures results in a structural budget gap. The state's habitual use of nonrecurring resources was cited by the rating agencies as a factor contributing to the recent credit rating downgrade. Kentucky's structural imbalance has declined from \$1 billion in FY 2010 to over \$417 million, which is significant. Most of the nonrecurring revenues used in FY 2010 were tied to the federal stimulus legislation passed in 2009. Of note, Kentucky's structural imbalance predated the economic downturn.

She said that reserves placed in the budget reserve trust fund can be accessed if revenues are lower than projected or expenditures are higher than projected, and that these funds provide added protection to ensure that a state is able to meet its obligations. The statute sets a goal of having a budget reserve trust fund balance of five percent of actual general fund receipts in a fiscal year. The closest the state has come to meeting this goal was in the 2000-2002 fiscal biennium, when the fund had a high balance of \$278.6 million or 4.1 percent of revenues. The state has drawn down the reserves fund completely during the past two recessions. Kentucky's depletion of its reserves has also been cited by the ratings agencies as a factor driving the credit rating downgrade.

Ms. Culpepper said that although the state made a \$121.8 million deposit to the budget reserve trust fund in FY 2010, the single largest deposit in the fund's history that would be viewed favorably from a credit perspective, but it is still below the five to ten percent levels regarded as prudent. Rating agencies now assign a greater priority to liquidity or cash position because of the volatility in revenues and uncertainty in the capital markets. She stated that based on conversations with the rating analysts, a state is considered to be in an ideal cash position if it can meet all expenses directly out of the general fund. Kentucky is not able to meet all of its expenses out of the general fund because the fund maintains a negative balance for much of the fiscal year. In the past, the state has used taxing revenue anticipation notes to fund its cash flow requirements. Since 2009, the state has been borrowing internally from the state's investment pools. The state maintains roughly \$1 billion of daily liquidity and more than that in next day liquidity which is not the ideal cash position but also not the worst position.

As of FY 2010, the state had \$7.8 billion in appropriations for debt outstanding. It is projected to be about \$9.65 billion in FY 2012 assuming that all debt that has been authorized by the General Assembly that has not been marketed yet will be issued. For each of the last four bienniums the General Assembly has authorized close to or above \$2 billion in new debt, which is historically high. This is a trend that has been reflected in the municipal bond market nationally. She said that approximately \$1.6 billion of the new appropriations debt has not been issued. This includes approximately \$498 million in general fund debt, \$482 million in agency fund debt, and \$667 million in road fund debt.

Since October 2008, Culpepper stated the state has restructured outstanding general fund and road fund-supported debt through six transactions for the purpose of providing budgetary relief. These debt restructurings are non-traditional refunding transactions. She explained that a refunding replaces outstanding bonds with new bonds that have different terms. In a traditional economic refunding, the state would replace outstanding debt with new debt issued at a lower interest rate and realize a positive net present value savings. The debt restructurings however, while not extending the maturity dates on the existing debt, are pushing the amount the state has to pay on its debt out to later fiscal years. Although this reduces the state's debt service payments during the current fiscal biennium, it will cost the state additional interest on the debt over the life of the bonds.

As a result of these restructurings, the state has not had to make \$427.7 million in debt service payments from FY 2009 to FY 2012, however the state will have to pay an additional \$171.6 million in interest over the life of the bonds. With the road fund debt restructuring, the state did not have to make \$81.4 million of debt service payments in FY 2010 but the restructuring will cost \$9.6 million in additional interest over the life of the bonds. The rating agencies have cited these debt restructurings as a one-time resource for balancing the budget that has contributed to the state's structural imbalance, thus contributing to the downgrade.

There are three debt indicators that are used by policymakers and market analysts to evaluate the state's debt burden: (1) debt service as a percent of revenues; (2) debt per capita; and (3) debt as a percent of personal income. The debt service to revenue represents a percentage of Kentucky's annual

operating budget devoted to paying off existing debt. Policymakers in the past have determined debt service of six percent of total revenues for General, Agency, and Road Fund debt represents a reasonable debt burden. She said it is important to note that the rating agencies acknowledge this is a tool Kentucky uses but expects the state to stay within the six percent limit. The rating agencies use other criteria that are much more expansive, not just one indicator.

In comparison, the appropriationsupported debt service as a percent of total revenues between fiscal bienniums 1991 and 2012, she projected the ratio to be 5.24 percent in 2012 at current market rates and 5.26 percent with a downgrade in rates. As a result of the debt restructuring, the appropriationsupported debt service as a percent of total revenues in 2010 was 3.08 percent because the obligation has been pushed out into later years. While this information may suggest that the state could issue additional debt and stay under the six percent benchmark, it is important to remember that the state has restructured a large amount of debt and the cost of those restructurings has been pushed out into later years, causing new debt to be wrapped around those costs going forward.

Furthermore, the credit rating agencies acknowledge Kentucky uses this as a tool but also acknowledge that there is a lot of debt that could be considered appropriation-supported debt that is not included in the calculation. This would include almost \$1 billion of courthouse projects issued by local governments but supported by leases with the state that correspond to the debt service payments on the bonds. The same applies for the Eastern State Hospital project and some energy savings performance contracts.

Ms. Culpepper stated that rating agencies use debt per capita and debt as a percent of personal income as an indicators of whether a state is issuing a manageable level of debt. Kentucky ranks thirteen in the nation in outstanding debt per capita at \$1,685 according to Moody's Investors Service, which is based on a calendar year basis. The median is \$936 and the average debt per capita is \$1,297. According to her calculations based on a fiscal year basis, she estimates that the debt per capita will be \$2,236 in FY 2012.

Also, according to Moody's, Kentucky ranks eighth in the nation as debt as a percent of personal income at 5.4 percent. The median is 2.5 percent and the average is 3.2 percent. Her calculation for appropriation-supported debt as a percent of personal income projects 6.67 percent at the end of the 2014 biennium. The rating agencies consider Kentucky to have

a high debt rating compared to some other states.

Ms. Culpepper explained that the state has significant long-term obligations that contribute to the state's recurring expenditures, notably the state's unfunded pension liabilities. These obligations affect the state's capacity to issue additional bonds to the extent that as they increase in scope they begin to compete with the bonds' annual debt service payments as a budgetary priority, and are taken into consideration of the overall creditworthiness of the state. She said that both of the state's main pension funds have funding ratios that are below what rating agencies consider adequate.

At the end of FY 2010, the Kentucky Employees Retirement System pension fund was 38.3 percent funded and the health insurance fund was 10.6 percent funded. The Kentucky Teachers Retirement System was 61 percent funded and the health insurance fund was 7.5 percent funded. These funding ratios are expected to decline. She pointed out that addressing these commitments will reduce the state's budgetary flexibility. Weak pension funding was a key driver of the state's credit rating downgrade. Kentucky's liabilities are large compared to other states when ranking pension liabilities and debt as a percent of revenues, per capita, GDP, and personal income.

In response to a question by Senator Pendleton concerning addressing funding for the retirement system and unemployment, Mr. L. Bart Hardin indicated that there are a number of fixed costs and a number of issues that will need to be addressed in January such as retirement, unemployment insurance, increased costs of health insurance, and other fixed costs in general. He said he was cautiously optimistic that the revenue estimates for 2012 will be met and that there will be a slight amount of growth from the consensus forecasting group making their revenue projections for 2013 and 2014. His concern is that the revenue growth may not being enough to offset the increase of costs of retirement, unemployment insurance, etc. To the extent that the costs are more than the revenues, there are basically two options, either cutting spending or raising revenues.

At this time Senator Leeper recognized Greg Rush who will be replacing Mr. Hardin as Deputy Director for Budget Review and Stephanie Craycraft, the new Assistant Director for Budget Review.

In response to questions by Representative Denham as to whether Kentucky is in a position to take advantage of the recently lowered interest rates, Ms. Culpepper said that the rates on municipal bonds are

at record lows. She noted that part of the issue is that because the state has authorized a lot of debt over the last four bienniums, close to \$2 billion, the debt burden is already high and that the state does not have much debt that it can actually call. She said that typically debt is callable after ten years, meaning after the ten years the state would have the option of repurchasing that debt from the investors or replacing it with new debt which would be at a lower interest rate.

In response to a question by Representative Denham concerning the student loan mortgage loan, Ms. Culpepper indicated that she believed that the debt was restructured but there is still approximately \$1 billion in debt outstanding, but that debt is not an appropriations-supported debt.

Representative Westrom asked Ms. Culpepper to provide copies of this report to all members of the Minority and Majority Leaderships. Also, Senator Leeper asked that each member of the General Assembly receive a copy of this report.

Senator Bowen said that it was incumbent upon the General Assembly to consider a debt ceiling for Kentucky similar to that in place at the federal level

In response to a question by Senator Higdon concerning debt restructuring, Ms. Culpepper stated that a 20-year maturity was typical when restructuring a bond. Municipal bonds are issued in series so that a certain amount comes due in intervals and the amount coming due in the current fiscal biennium is pushed out into later maturities. Senator Leeper said that the restructuring and the movement of principal and interest was within the maturity term or there was no extension of final maturity date.

Representative Crimm asked that the agency responsible for negotiating and administering the Kentucky Kingdom property be requested to appear and update the committee on those negotiations. Senator Leeper asked Representative Crimm to submit the request to Co-Chair Rand, who will be chairing the meeting next month.

Senator Leeper pointed out to the committee that included in the meeting packets was information relating to the interim budget allotment adjustments and emergency appropriation increases for FY 2011 and 2012 from Mr. Hardin

Being no further business, the meeting was adjourned at 3:12 p.m.

INTERIMJOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Postsecondary Education

Minutes of the 3rd Meeting of the 2011 Interim September 22, 2011

Call to Order and Roll Call

The 3rd meeting of the Budget Review Subcommittee on Postsecondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, September 22, 2011, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Derrick Graham, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representatives Julie Raque Adams, Jim DeCesare, Kelly Flood, Jim Glenn, Melvin B. Henley, Reginald Meeks, Rick Rand, Jody Richards, Carl Rollins II, and Rita Smart.

Guests: Hiren Desai,
Associate Commissioner, Office
of Administration and Support,
Kentucky Department of Education,
Kay Kennedy, Director, Division
of Support, Kentucky Department
of Education, and David Couch,
Associate Commissioner, Kentucky
Department of Education.

<u>LRC Staff:</u> Tom Willis, Linda Ellis, and Amie Elam.

Chairman Graham requested a motion to approve the minutes of the July 28, 2011 meeting. A motion was made and the minutes were approved without objection.

Financial Condition of Local School Districts

In response to a question asked by Representative Carney, Mr.Desai stated that Edujobs funds are used to provide salaries and benefits to staff in each district.

In response to a question asked by Representative Smart, Mr. Desai stated that a district has until September 30, 2012 to use all Edujobs funds. The Kentucky Department of Education (KDE) would like to ensure that all the funds are put to use and not returned.

In response to a question asked by Representative Meeks, Ms. Kennedy said that before the audit on November 15th all districts that have negative financial reports will be corrected. Representative Meeks asked that staff provide a comparison, between the financial status and the academic success of the top ten and the bottom ten districts.

In response to a question asked by Representative Miller, Mr. Desai said that typically federal funds cannot be used for locally funded items, but Edujobs can be used to pay for salaries at the local level without penalty. Mr. Desai added that districts are being cautious because of the threat of a SEEK shortfall and possible cuts to the federal budget if a consensus is not reached.

In response to a question asked by Representative DeCesare, Mr. Desai said that KDE is meeting with the economic forecasting staff quarterly to refine projections and get more accurate numbers for the budget. Mr. Desai added that the SEEK formula is very complicated, but it has worked for twenty years. However, initial discussions have taken place about possibly finding another way to get more accurate figures for the budget.

In response to a question asked by Representative Nelson, Mr. Desai said that districts are wising up to the SEEK formula and substituting low attendance days for high attendance days. Ms. Kennedy added that there is a lot of paperwork that goes into the attendance day substitutions explaining why some districts choose not to do so.

In response to a question asked by Representative Rollins, Mr. Desai said that historically SEEK was based on attendance versus membership because it gave schools incentive to encourage students to be in the classroom. He added that as the state moves towards a virtual classroom model, districts are not requiring that there be more students in the classroom. Mr. Desai stated that KDE is not advocating a switch from attendance to membership when calculating SEEK but discussions of change are happening.

In response to a question asked by Representative Richards, Mr. Desai said that a pool can be established for districts that will have a budget shortfall.

In response to a question asked by Chairman Graham, Mr. Desai said that historically SEEK is paid based on a forecasted amount. He stated that current discussions will have KDE giving final SEEK in December instead of March and there will be no allocation for October.

Representative DeCesare stated that he filed HB411 last year that would establish a pool of money funded by previous excess SEEK funds so when shortfalls occur that money could be used to fill in the gaps.

In response to a question asked by Representative Miller, Ms. Kennedy said that no schools have been turned down for Capital Funds Request but KDE may point districts in a different direction for needed funds.

In response to a question asked by Chairman Graham, Ms. Kennedy said that utilizing Capital Funds request process has allowed districts more flexibility in managing their finances. She added that this process is intended to be used by struggling districts and that the intention of this process has been met.

In response to a question by Representative Carney, Mr. Desai said that 8 percent of funding comes from federal funding. He added that Kentucky received roughly \$3.8 billion in state funding, \$848 million in federal funding. Chairman Graham added that the breakdown is usually 65 percent state funding, 25 percent local funding, and 10 percent federal funding.

Status Report/ Review of the Classification of Primary and Secondary School Buildings

In response to a question asked by Chairman Graham, Mr. Desai said that the board will meet in October to give KDE final directions for the agency budget request. It is anticipated that the department will ask for funding to categorize category 1 and 2 buildings.

Education Technology in Elementary and Secondary Schools

In response to a question asked by Representative Flood, Mr. Couch said that there is a need to restore funding for schools to go to a wireless network. He added that the cost savings is getting rid of servers with the move to Cloud based computing.

Representative Richards stated that for years he has sponsored a resolution to try and get a group together to come up with a way to get a computer into the hands of every 5th and 6th grader.

In response to a question from Representative Richards, Mr. Couch said that Kentucky is the national leader in providing equity of access. He added that Ipads are the next textbook. Mr. Couch stated that there are significant cost savings in going totally technological in the classroom. Mr. Couch said funding for professional development in technology is essential.

In response to a question asked by Representative Miller, Mr. Couch said that parents will most of the time be responsible for an insurance policy on the mobile devices. However, students for the most part take good care of the devices. He added that most devices can be ruggedized with otter boxes.

Representative Henley stated that Representative Richards's task force has become almost imperative due to the rapid movement of technology. In response to a question asked by Representative Henley, Mr. Couch said that not enough pressure is being brought to publishing companies of textbooks for a complete move to an electronic world. He added that as more pressure is brought upon these companies the devices will move towards being not only an end device but a content delivery device as well, which becomes much more affordable. Mr. Couch stated that in 2008 only 20 percent of parents were for electronic textbooks and as of 2010 70 percent of parents agreed that electronic textbooks were the way to go.

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Representative Miller, Mr. Couch said that he has already seen demonstrations on virtual light keyboards so it will not be long before they are easily accessible.

In response to a question asked by Representative Smart, Mr. Couch said that the districts determine themselves whether or not to more heavily rely on technology in instruction.

In response to a question asked by Representative Smart, Mr. Couch stated that editing improves when using a mobile device but clearly cursive writing will suffer.

Representative Carney stated that the money needs to go to electronic textbooks, anything else is a waste. He stated that it was imperative that Kentucky use its resources to keep up with technology so that the state does not lag behind.

Chairman Graham stated that this year in Franklin County, for the first time, students are allowed to submit home work via mobile devices. He added that there has been an improvement in students who otherwise struggle in the classroom since this new rule was implemented.

Representative Henley stated that this country is moving towards a have and have not society very rapidly. He stated that is essential for Kentucky students to master technology if they are to be part of the haves.

There being no further business before the subcommittee, the meeting was adjourned at 11:51 a.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Primary and Secondary Education Minutes of the 3rd Meeting of the 2011 Interim September 22, 2011

Call to Order and Roll Call

The 3rd meeting of the Budget Review Subcommittee on Primary and Secondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, September 22, 2011, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Derrick Graham, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Derrick Graham, Co-Chair; Representatives John "Bam" Carney, Will Coursey, Ted Edmonds, Dennis Horlander, Charles Miller, Rick G. Nelson, and Carl Rollins II.

Guests: Hiren Desai, Associate Commissioner, Office of Administration and Support, Kentucky Department of Education, Kay Kennedy, Director, Division of Support, Kentucky Department of Education, and David Couch, Associate Commissioner, Kentucky Department of Education.

<u>LRC Staff:</u> Tom Willis, Linda Ellis, and Amie Elam.

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There being no further business before the subcommittee, the meeting was adjourned at 11:51 a.m.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Transportation Minutes of the 3rd Meeting of the 2011 Interim September 22, 2011

Call to Order and Roll Call

The third meeting of the Budget Review Subcommittee on Transportation of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, September 22, 2011, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Sannie Overly, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Sannie Overly, Co-Chair; Senators Ray Jones and R.J. Palmer; Representatives Hubert Collins, Danny Ford, Jim Gooch, Fred Nesler, John Short, and Jim Stewart.

Guests: Representatives Rocky Adkins and Leslie Combs; Tammy Branham, Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet; Kevin Damron PE, Chief District 12 Engineer, Transportation Cabinet; Russ Romine, Executive Advisor, Office of the Secretary, Transportation Cabinet; and Colonel Mark Needham, BRAC Advisor, Chairman and Executive Director, Kentucky Commission on Military Affairs.

LRC Staff: L. Bart Hardin, Greg Rush, John Snyder, Stewart Willis, Stephanie Craycraft, and Spring Emerson.

Road Fund Update

Tammy Branham, Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet, gave a brief presentation outlining the changes in the Road Fund over the past year.

In response to a question from Representative Collins, Ms. Branham explained that the Motor Fuels Tax amount could change each quarter based on the average wholesale price (AWP). She said it increased to the ceiling in the first quarter of fiscal year 2012, and will be surveyed again in October. In response to a question from Representative Adkins, Ms. Branham clarified that the overall growth in fiscal year 2011 was approximately 11 percent compared to fiscal year 2010 collections. In response to a question from Representative Adkins, Ms. Branham stated the estimated growth percentage would be approximately 10 percent over the current fiscal year which results in an \$83.3 million increase in estimated Road Fund Revenue.

In response to a question from Chair Overly regarding the expenditures in the Surplus Expenditure Plan, Ms. Branham replied that the Transportation Cabinet is directed in the Budget Bill to place all additional revenue or lapses into the State Construction Account. In response to a question from Chair Overly regarding the advancement of projects, Ms. Branham responded that she did not have any details regarding the specific projects involved. Mr. Romine added that any additional funds that come in above the estimate would be used by project priority, specifically the SPP projects which have first priority. In response to a request from Chair Overly, Mr. Romine agreed to provide more information to the subcommittee at a later date.

State Bond Funded Road Projects

Kevin Damon PE, Chief District 12 Engineer, Transportation Cabinet, provided a brief overview of state bond funded road projects.

In response to a question from Chair Overly, Mr. Damron said a very refined plan is in place to complete the bond funded projects and it could take approximately two years to do so. Chair Overly stated that some of the projects had pre-construction dollars authorized for design, right-of-ways, and utilities.

Representative Collins congratulated L. Bart Hardin, Deputy Director, Office of Budget Review, on his upcoming retirement from the Legislative Research Commission. Representative Adkins thanked Mr. Hardin for his valuable contribution.

Update on Appalachian Development Highways (APD) Funded Road Projects

Kevin Damron PE, Chief District 12 Engineer, Transportation Cabinet, provided a brief overview of APD Projects.

In response to a question from Chair Overly, Mr. Damron said letting dates are usually set when right-of-ways are authorized.

In response to an inquiry from Chair Overly, Mr. Damron provided a brief explanation of APD funding. Chair Overly stated that it is critical to find the 20 percent in state matching

funds so as not to risk losing the federal APD funds. Representative Combs expressed her thanks to all involved in APD funding issues.

In response to a question from Representative Adkins, Mr. Damron said the stretch of highway between US23 to Breaks Interstate Park was approximately 18 miles. He added that with the surfacing through Section 5 at Marrowbone, that would open up an eight- to nine-mile corridor of US460. In response to a question from Representative Adkins, Mr. Damron replied that when Corridors I and R (from Mountain Parkway at Campton to US23) were put into the APD highway system, they were identified as being in the program but not participating. They were presented to the program as necessary corridors to the Appalachian region, but in the mid-1960s, Kentucky did not need Appalachian Regional Commission (ARC) funding to pay for the highways because we already had an alternative funding source for those routes through tolls. He added that the Appalachian Development Highway System is not a cost-to-complete program, but is instead focused on the mileage in the system. The ARC officially considers Corridors I and R to be completed because of the distinction made in the mid-1960s. It would require Congressional action to change that classification.

In response to a question from Chair Overly, Mr. Damron answered there is no federal funding for maintenance.

Update on BRAC Projects

Russ Romine, Executive Advisor, Office of the Secretary, Transportation Cabinet, and Colonel Mark Needham, BRAC Advisor, Chairman and Executive Director, Kentucky Commission on Military Affairs, provided a brief overview of BRAC projects.

In response to a question from Chair Overly, Colonel Needham said the minimum amount the US Department of Defense (DOD) will take a cut on in the next ten years is \$350 billion. He said he expects that number to actually be somewhere between \$400 billion and \$600 billion, and if that happens, the DOD is likely to cut infrastructure, which has been well documented in the news.

In response to a question from Representative Adkins, Mr. Romine said the Cabinet is on target to be at \$1 billion in lettings at the end of calendar year 2011, and expects to be at \$1 billion in calendar year 2012.

In response to a question from Representative Adkins, Ms. Branham agreed to provide information relating to the amount of bonds that had "rolled off" last fiscal year to the subcommittee at a later date.

Representative Nesler recognized and introduced Civil Engineer Clay Robinson from Paducah, who was in the audience.

Representative Collins commented that after reviewing traffic counts on I-65 between Bowling Green and Elizabethtown, he was surprised with the result. He said that the state of the roadway was not the cause of all the accidents occurring there, but speeding and lack of enforcement played a major role.

Chair Overly recognized and thanked Stephanie Craycraft for her service on the subcommittee, and congratulated her on her upcoming promotion to Assistant Budget Director. Chair Overly also congratulated Greg Rush on his upcoming promotion to Deputy Director in the Office of Budget Review.

There being no further business before the subcommittee, the meeting was adjourned at 11:15 AM.

INTERIMJOINTCOMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

Minutes of the 4th Meeting of the 2011 Interim
September 15, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Economic Development and Tourism was held on Thursday, September 15, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Alice Forgy Kerr, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative Leslie Combs, Co-Chair; Senators Jared Carpenter, Julie Denton, Denise Harper Angel, Ernie Harris, Tim Shaughnessy, and Kathy W. Stein; Representatives Julie Raque Adams, John "Bam" Carney, Jim DeCesare, Mike Denham, Bob M. DeWeese, Myron Dossett, Ted Edmonds, Jim Gooch Jr., Jeff Greer, Keith Hall, Mike Harmon, Melvin B. Henley, Wade Hurt, Thomas Kerr, Kim King, Adam Koenig, Donna Mayfield, Tom McKee, Terry Mills, Fred Nesler, Ruth Ann Palumbo, John Short, Fitz Steele, Wilson Stone, and Addia Wuchner.

Guests: Mike Mangeot, President and Chief Executive Officer (CEO), Kentucky Association for Economic Development; Kevin Sheilley, President and CEO, Northwest Kentucky Forward; Mark Mangeot, Legislative Liaison, and Ron Brooks, Director, Division of Fisheries, Kentucky Department of Fish and Wildlife Resources.

<u>LRC Staff:</u> John Buckner, Louis DiBiase, and Dawn Johnson.

Approval of Minutes

A motion and second by Representatives DeCesare and Combs to approve the minutes of the July 21 meeting passed by voice vote. A motion and second by Representatives Greer and Hall to approve the minutes of the August 18 meeting passed by voice vote.

KentuckyUnited

Mike Mangeot, President and CEO of the Kentucky Association for Economic Development (KAED) said the purpose of the statewide nonprofit association of economic development professionals, service providers, and government agencies is to provide education opportunities, networking, and legislative advocacy. KentuckyUnited, a program of KAED, was created as a marketing tool for economic development. The program was created to address concerns about Kentucky's ability to market itself and compete with other states in recruiting economic development projects. Other states, including Texas, Indiana, and Georgia, have significantly increased funding of their economic development marketing initiatives. KAED contracted with a research company to identify shortcomings of Kentucky's current economic development approach by contacting partners and site consultants, and speak to companies that had approached the Cabinet for Economic Development (CED) but decided against locating in Kentucky. Executive interviews of over 100 individuals were conducted. The research concluded that the state's top competitors were Tennessee, North Carolina, and Georgia. The three main reasons those states were chosen over Kentucky were location, costs, and aggressive incentives and marketing. When rating Kentucky, many said they could not rate Kentucky because they did not know enough about the state to offer an opinion. The research also concluded the most effective marketing tool was personal visits.

KentuckyUnited's mission, Mr. Mangeot said, is to create a program to dynamically and aggressively market Kentucky to key business decision makers nationwide. KentuckyUnited's goals are to increase awareness of Kentucky as a business location, provide cost effective marketing and sponsorship opportunities for local organizations that may not have large marketing budgets, and increase the number of prospects interested in Kentucky. Mr. Mangeot explained the program's four partner levels. He noted that partners are now asked for a three-year commitment. A basic tenet of the program is to market the state as a whole rather than specific areas or businesses. Target audiences site consultants, companies interested in expansion or relocation, existing Kentucky business affiliates, and entrepreneurial and fast growth companies.

KentuckyUnited has contracted with 310 Ltd. of Virginia for economic development prospect identification and to vet appointments. They identify 25 to 30 prospects per month. Kentucky United marketing strategies also include luncheons, bourbon tastings, event sponsorships, and in-state visits by key decision makers. Thus far, the program has resulted in nearly 300 face-to-face meetings, more than 75 additional contacts with site consultants KentuckyUnited through events, and an overall increased awareness among target audiences. Future activities include two regional in-state events, continued recruitment of top company sponsorships identification of additional marketing opportunities, and increased opportunities for smaller communities to participate.

Kevin Sheilley, President and CEO of Northwest Kentucky Forward, a regional economic group representing Henderson, Union, Webster, and McLean counties, explained how his agency benefits from being a Kentucky United member. He said marketing through the program far exceeds what Northwest could do independently.

Responding to Representative McKee's question, Mr. Mangeot said rural counties with smaller budgets can partner, combine resources, and become a higher level program sponsor. Also, the program is being restructured to better help smaller communities do more. This will be most apparent with in-state events.

In response to Representative Harmon's question, Mr. Mangeot said he was uncertain whether sponsorship dues were tax deductible but noted that KAED dues were partially deductible as a marketing expense.

Responding to Representative DeWeese's question on what would improve Kentucky's economic development competitiveness, Mr. Mangeot said issues he would like to see the 2012 General Assembly address are right to work, the business inventory tax, and the corporate and personal income tax. He noted that the trade-offs-higher sales tax and a local option sales tax-could be problematic as well. Kentucky's tax system is competitive in some areas and not in others. Mr. Sheilley added that simplification of the business setup process and education are major concerns. Mr. Mangeot said Kentucky's low energy costs are a competitive advantage, especially in manufacturing.

In response to Representative Stone's questions, Mr. Mangeot said KentuckyUnited does not currently have a role in retaining existing businesses other than what is involved with company expansion. Business retention is left to local organizations and the Cabinet for Economic Development.

Responding to Representative Gooch's question, Mr. Mangeot said timelines vary greatly between first contact and "shovel ready" projects. Mr. Sheilley added that the economic downturn has resulted in companies going through the process and then placing projects on hold. He estimated 20 to 25 Kentucky projects are currently on standby due to the economy.

Representative Gooch noted that new Environmental Protection Agency (EPA) regulations have the potential to increase utility rates by 40 percent or more. Responding to his concern on how this may affect businesses, Mr. Sheilley said manufacturers are aware of the EPA changes and the potential impact they may have nationwide.

Responding to Representative Julie Adams' question, Mr. Mangeot said after a site visit by Kentucky United representatives, the Cabinet for Economic Development will follow up with the state's incentives packages. He said Kentucky United is working with the cabinet to streamline the process.

Responding to Representative Dossett's question on suggestions for the legislature, Mr. Sheilley said streamlining the process is the main request he has received from businesses. Mr. Mangeot said he would suggest the possibility of a local option sales tax. He noted the success of Texas' local option sales tax and economic development program. He said KAED is also working on this for the 2012 session.

Representative Henley said there is a lot of misinformation on "green energy" and suggested it is not as cost effective when all expenses are considered.

Asian Carp Processing Facility

Mark Mangeot, Legislative Liaison for the Department of Fish and Wildlife Resources said it will take a concerted effort to handle the Asian carp invasion. Not only does it affect the environment, but tourism and economic development suffer the effects as well.

Ron Brooks, Director of the Fisheries Division, provided background on the Asian carp and their introduction into the United States. Carp have been cultured in China for at least 2,000 years and are a major food item in China. They were brought to the U.S. as a food product and as a solution to pond nutrification problems and overnutrified tertiary

treatment plants. The fish escaped their confines during flooding in the late 1970s and entered the Mississippi River basin. They competed with native fish species for food and began dominating other species. Asian carp are in the Ohio and Mississippi Rivers as well as their tributaries.

Mr. Brooks said Asian carp are a danger to boaters as well. Vibrations in the water cause by boats make them jump, strike boaters and skiers. This has the potential to affect tourism in Kentucky's lakes. Giving an example of their numbers, Mr. Brooks explained that during a 2009 Kentucky Lake study on paddle fish, over 5,000 pounds of Asian Carp were caught in one day by one fisherman.

Mr. Brooks explained his efforts of creating a processing facility in Wickliffe, Kentucky. The facility must be large enough to become a profitable exporter to China. Existing processing facilities in other areas lack storage space. Currently, there are four fish processors interested in the Wickliffe facility. He noted that negotiations with economic development representatives and Chinese businessmen have them within \$700,000 of reaching an agreement on a processing facility. The facility will create up to 20 new jobs. One facility can process up to 50,000 pounds of Asian carp per day. The eventual result would be carp control. To address government concerns of perpetuating the Asian carp market, Mr. Brooks said an Asian carp restricted waters regulation proposal was passed recently that prevents this. It allows government entities to work with commercial fishermen by allowing controlled fishing and to develop measures to avoid hurting the sport fishing industry. He said the facility would also lead to a fish meal market. He noted that Chinese businesses are interested in other rough fish species as well. Once the Asian carp population is reduced, the program can transition to rough fish. Mr. Brooks noted how dire the Asian carp issue is. He said a \$1 million investment in the facility by the state is a onetime investment with economic, tourism, and agriculture returns.

Responding to Representative Nesler's question, Mr. Brooks said the Graves County aquaculture facility has not been considered. Representative Nesler explained that the legislature provided funding to the catfish facility 10 years ago but the facility closed. He suggested it be considered.

Responding to Representative Wuchner's question Mr. Brooks said that transportation is included as part of the cost of the facility.

Mr. Brooks said he has been working on state, regional, and national levels to set up processing facilities to address the growing Asian

carp problem. He noted with the mass spread of fish, more states will need to get involved.

There being no further business the meeting adjourned at 3:00 PM.

INTERIMJOINTCOMMITTEE ON EDUCATION

Minutes of the 5th Meeting of the 2011 Interim October 10, 2011

Call to Order and Roll Call

The fifth meeting of the Interim Joint Committee on Education was held on Monday, October 10, 2011, at 10:00 AM, in the Clay Community Center, Mount Sterling, Kentucky. Representative Carl Rollins II, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ken Winters, Co-Chair; Representative Carl Rollins II, Co-Chair; Senators Walter Blevins Jr., Denise Harper Angel, Jimmy Higdon, Alice Forgy Kerr, Gerald A. Neal, R.J. Palmer II, Jack Westwood, and Mike Wilson; Representatives Linda Belcher, John "Bam" Carney, Hubert Collins, Leslie Combs, Ted Edmonds, C. B. Embry Jr., Bill Farmer, Kelly Flood, Jim Glenn, Derrick Graham, Donna Mayfield, Reginald Meeks, Rick G. Nelson, Ruth Ann Palumbo, Jody Richards, Tom Riner, Rita Smart, Wilson Stone, and Ben Waide.

<u>Legislative Guest:</u> Representative Richard Henderson.

Guests: Charles Comer, UK Coop Extension Service; Lloyd Cassidy, Commissioner; Wallace Johnson, Montgomery County Judge-Executive; Sandy Romensta, Industrial Authority and Chamber; Nancy Hutchinson and Burnsy Stewart, Bath County Schools; John Karays, MSUMt. Sterling; Robert Haynes, Education; Tom Marshall, Mt. Sterling Advocate; Vicky Brown, Powell County Schools; Tom Dorman, LRC; Meg and Bill Steinman; Jim Thompson, Education and Workforce Development Cabinet; Bill Watson M&M Pantry; Will Kayatin, MSU; Gary Hutson, Open Eyes, Inc.; Michael Tate, Powell County Schools; Norma Patton, SHIP; Ron Catchew, Montgomery County Cooperative Extension Service; Clyde Caudill, Kentucky Association of School Superintendents and Jefferson County Public Schools; Donna Wilson, Montgomery County Board of Education; Keith White, Office of Education Accountability, LRC; Wayne Young, Kentucky Association of School Administrators; Mary S. Buckley, Department of Juvenile Justice; and Sue Cain, Council on Postsecondary Education.

LRC Staff: Kenneth Warlick, Jo Carole Ellis, Ben Boggs, Sandy Deaton, and Lisa W. Moore.

Welcome and Introductions

Representative Henderson welcomed the committee and introduced local Montgomery County officials. He said that Mount Sterling is geared for growth and diverse manufacturing powers the region. Montgomery County is the employment, shopping, and dining hub for a region of more than 100,000 people. With 5,000 manufacturing jobs in the county, more people commute into the region than out for employment. World-class industries such as Nestle, Cooper Standard, MASCO, Kyosan Denso, and Summit Polymers, among others, have located in Mount Sterling, and they have been successful and continue to grow.

Overview of Montgomery County Schools

Josh Powell, Superintendent, Montgomery County Schools, said Montgomery County schools has a total population of about 5,000 students. There are three elementary schools with a new one under construction, set to open in fall 2012. The middle school and high school have facilities that set them apart from other schools in Kentucky. Morehead State University (MSU) has an extended campus onsite at the Clay Community Center. Maysville Community College serves the needs for technical training to the local industry.

Mr. Powell expressed concern with the Office of Education Accountability's (OEA) policies and procedures. He feels OEA is preventing school districts from making educational gains.

Wayne Andrews, President, MSU, said MSU is proud to partner with Montgomery County and has its newest and largest extended campus located in the Clay Community Center, next to the high school, which makes offering dual credits and college courses to high school seniors easy. MSU has five regional campuses, but the one at the Clay Community Center is the fastest growing.

In response to questions from Representative Collins, Dr. Andrews said the pharmacy school in Paintsville that is partnering with Midway College should receive accreditation and open in January 2012. Representative Collins discussed the abuse over the years in proprietary and independent schools. Dr. Andrews said abuses are widespread. However, students using Pell Grant funds must maintain a certain grade point average or be placed on probation. He noted the federal loan default rate acts as an equalizer across universities.

Approval of Minutes

Upon obtaining a quorum, Representative Collins moved to approve the minutes of the September 12, 2011, meeting. Representative Flood seconded the motion. The minutes were approved by voice vote.

Energy Manager Program

David Baird, Associate Executive Director, Kentucky School Boards Association (KSBA), said the Kentucky School Energy Managers Project (SEMP) and the Kentucky Energy Efficiency Program for Schools (KEEPS) are helping schools maximize their energy savings with the help of professionals. The SEMP, funded with a \$5.1 million federal economic stimulus grant and managed by the KSBA and the Kentucky Department for Energy Development and Independence, has placed 35 local energy managers to work in more than 130 Kentucky school districts. Many of those districts have banded together to share the expertise of an energy manager. Each participating district must contribute a portion of its manager's salary, demonstrating the depth of commitment. A companion grant, Kentucky Pollution Prevention Center (KPPC), will enable KEEPS to provide a package of tools, training, coaching, and expertise to assist all districts in developing a systems approach to energy management.

Ron Willhite, Director, Energy Managers Project, KSBA, said two decades ago, Kentucky was a national leader in education reform. Today, the state is attracting national attention with its energy-efficient schools, both new and retrofitted. A key concept in energy savings is sustainability. The legacy of this program will be firmly established in Kentucky's schools, even after the federal funding is gone. It will be visible in the reduced energy bills districts pay, in the savings that may be used to retain teachers and in heightened awareness by staff and students of how the smallest of changes, like flipping off a light switch, can make a big difference. It is also anticipated that the school districts will realize enough savings to sustain the position of energy manager to continue the focus on energy cost containment. Most importantly, the legacy of this project will be visible in the next generation and those students who absorb the lesson of energy efficiency in their schools and carry it forward.

Mr. Willhite said that the 2008 executive and legislative initiatives, including KRS 160.325, mandated the reduction of school energy costs and providing intelligent energy choices for Kentucky's future. A seven point strategy for energy independence was identified, and the goal is to reduce projected 2025 consumption by 16 percent.

Mr. Willhite encouraged public school districts to respond to rising

energy costs by focusing on the management of various uses of energy. Local boards of education were required to enroll in KEEPS. KEEPS will produce an annual report on the development of energy management plans and anticipated savings to be obtained by those plans.

Mr. Willhite said the creation of the SEMP evolved into a management team and 29 partnerships involving 130 districts formed, leading to employment of 36 energy managers. Along with 14 existing energy managers, 144 districts benefit from services of a fulltime energy specialist. During a two-year grant period, local energy managers will visit every school in the districts they serve. They will: establish energy teams; facilitate development of energy efficient goals; analyze utility bills; evaluate HVAC and lighting systems; educate staff and students; foster wise energy choices; and develop and implement an energy management plan. He said a handful of school districts that have piloted similar programs with full-time energy managers have reaped astounding savings. In just seven months, energy managers have identified more than \$2 million in annual cost savings and over \$400,000 in refunds and rebates for districts. Energy star schools have increased from 68 to 107.

Mike Cooper, Energy Manager, Montgomery, Clark, and Bourbon County Schools and Paris Independent Schools, said anticipated cost savings willresult from rate corrections, lighting retrofits, HVAC control, computer hibernation, awareness, refunds, rebates, and equipment shutdown. The KSBA and the Kentucky Interlocal School Transportation Association (KISTA) have provided an economical funding mechanism to facilitate these small improvement projects.

Mr. Willhite concluded that opportunities moving forward will be building commissions, control system training, succession planning, and utility purchasing expertise. He said \$3 million would extend the SEMP funding for two years, and he would ask for a 50/50 match in year three and a 25/75 match in year four. The ultimate goal is to serve all 174 school districts and employ 50 energy mangers.

In response to a question by Representative Flood, Mr. Willhite said the energy managers who are serving 145 school districts are appropriately being called "boots on the ground." While districts have not ignored energy efficiency practices in the past, for the first time they have a trained specialist whose full-time responsibility is to focus around-the-clock on making intelligent energy choices. He said working in concert with the KSBA's SEMP team and

the state Department of Energy Development and Independence (DEDI), has fostered the formation of an Energy in Education collaborative to support schools in their efforts to save dollars that can be better utilized in the classroom. He said it is exciting to see teachers utilize the resources of the National Energy Education Development program, the Green and Healthy Schools Project and the Kentucky Energy Efficiency Program for Schools to prepare students to begin taking that knowledge home to foster a new community awareness of best energy practices.

Responding to a question from Representative Graham, Mr. Willhite said the grouping of the school districts on the map included in the meeting materials located in the Legislative Research Library was determined by counting school districts. Mr. Cooper said there is communication with all school facilities about reducing energy consumption.

In response to a question from Senator Kerr, Mr. Baird said some counties are not participating in the SEMP program. He said it was mainly due to timing and budgetary issues. Some districts could not justify hiring an energy manager while laying off teachers at the same time. He said many of those districts have communicated that they want to participate in better economic times.

Alternative Diplomas

Margaret Steinman, parent, Fayette County, testified that her daughter did not receive a high school diploma, and this kept her from obtaining employment. Studies show that students who earn a certificate of attainment will earn 15 to 20 percent less than a high school graduate. Representative Palumbo said she would like to meet with Ms. Steinman in Lexington at a later time to discuss the matter in more detail.

Pat Taylor testified on behalf of her grandson, Roy Taylor, who graduated from Simpson County. She does not believe it is good policy for special needs students to earn certificates of attainment rather than high school diplomas. She suggested adding "honorary" at the bottom of the high school diplomas if students had not met all the criteria for graduation. Testing should be different and accommodations made for special needs students. She also said providing funding for tutors is essential because her grandson would not have graduated if he had not received assistance from

Robin Chandler, Policy Advisor and Legislative Liaison, Office of Next Generation Learners, Kentucky Department of Education (KDE), said the foundation of the American Diploma Project (ADP) is ensuring that students graduate from high school prepared for success in college and careers. The ADP benchmarks for the end of high school were written in 2004 to describe the skills needed for success in postsecondary education and work. The benchmarks are cumulative, describing what students need to learn by the end of high school. She said states have requested more information about the detail of progression of content and skills students would need to master through the grades in order to meet the endof-high school ADP benchmarks. To address this, the program is tracking ADP benchmarks in mathematics from grade 12 down through kindergarten, and in English from grade 12 down through grade 4.

Johnny Collett, Assistant Director of Division of Learning Services, KDE, said the Individual Education Program (IEP) is determined locally each year. The Admission and Release Committee (ARC) will help to determine a program for each individual student. The ARC is the sole authority in determining the needs of a child. It must have a representative on the committee that is authorized to commit to district funds within the committee meeting. The IEP again should be very specific as to when the program will be in place, with trained personnel for the students.

Tracy Goff-Herman, Policy Advisor and Legislative Liaison, Office of Guiding Support Services, KDE, said the Commonwealth Diploma was initiated as a special recognition for students taking a very rigorous curriculum and is considered a higher level than a standard diploma. There are currently 1,500 students participating and on the path to receive the Commonwealth Diploma. She said the Kentucky Board of Education (KBE) has voted not to repeal the administrative regulation eliminating the diploma for one year in order to not affect the students who registered for the courses prior to the 2012-2013 school year.

In response to a question from Representative Rollins, Ms. Chandler said KDE is discussing adding specific student recognitions to transcripts. Representative Rollins said employers need to know what specific skills a student has and those skills should be listed on a transcript. He also said the committee would revisit the issue of diplomas as several parents are upset about the abolishment of the Commonwealth Diploma.

Responding to questions from Representative Carney, Mr. Collett said that the IEP for students receiving special education services is revisited and updated each year. This is to help ensure that the students are progressing and on track to meet their education goals. He said the Admissions and Release Committee is typically comprised of the student's regular teacher, a special education teacher, an assessment person, a parent, and possibly a speech pathologist.

Senator Winters mentioned that Senator Westwood's bill on career pathways designates dedicated career counselors. He said this is a key element to lower the dropout rate in Kentucky. He also said high performing students could tutor students needing additional assistance.

Responding to questions from Representative Graham, Ms. Goff-Herman said that some states offer a high school diploma for special needs students and others offer a certificate of attainment, such as Kentucky. She noted that students receiving special education services can still obtain a high school diploma if they can meet the criteria, but the goal for some is to obtain a certificate of attainment. There are 106,000 Kentucky students who have an IEP, and 4,831 of those will participate in Kentucky's alternate certificate program.

In response to a question from Representative Glenn, Ms. Goff-Herman said students receiving a certificate of attainment, like other special education students, can receive transitional services. She noted that some students with standard high school diplomas are still not employable.

Senator Westwood said every Kentucky student should have an IEP. He believes students should have an individual learning plan (ILP) in the fourth grade rather than the sixth grade. He said a career counselor is so important to guide students on the path to college or career success.

Representative Rollins said his problem with the certificate of attainment is that it does not show what skills a student has obtained. Ms. Taylor said the certificate of attainment is no benefit to the student and the system should be modified to allow all students to receive standard diplomas. Ms. Steinman said the Admissions and Release Committee will tell parents that the school district has placed their child on an alternative diploma track and the parents can do nothing about it because the majority of the committee rules the decision.

With no further business before the committee, the meeting adjourned at noon.

SPECIAL SUBCOMMITTEE ON ENERGY

Minutes of the 4th Meeting of the 2011 Interim September 16, 2011

Call to Order and Roll Call
The 4th meeting of the Special

Subcommittee on Energy was held on Friday, September 16, 2011, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Keith Hall, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Keith Hall, Co-Chair; Senators Joe Bowen, Ernie Harris, Ray S. Jones II, Bob Leeper, Katie Kratz Stine, and Johnny Ray Turner; Representatives Royce W. Adams, Rocky Adkins, Dwight D. Butler, Leslie Combs, Will Coursey, Jim Gooch Jr., Wade Hurt, Fred Nesler, Sannie Overly, Tom Riner, John Will Stacy, Fitz Steele, and Brent Yonts.

Guests: Representative Ted Edmonds; Jolly Hayden, Vice President, Transmission Development, NextEra Energy Resources; Phillip Elswick and Mark Sanders, Summit Engineering.

<u>LRC Staff:</u> D. Todd Littlefield, Sarah Kidder, and Susan Spoonamore, Committee Assistant.

The August 19, 2011 minutes were approved upon voice vote, without objection, on motion made by Representative Overly and seconded by Representative Adkins.

Diversification and Kentucky's Energy Future

Vice President, Jolly Hayden, Transmission Development, NextEra Energy Resources, discussed diversifying the state's energy portfolio and Kentucky's energy future. He explained that the components of a balanced energy portfolio include gas, hydro, and market access. Mr. Hayden reviewed the goals set out in the governor's strategy for energy independence, and how they might be achieved. He highlighted the projects that the UK Center for Applied Energy Research is involved in that will result in more and cleaner use of coal as well as their energy efficiency and storage projects. He said that Kentucky was facing several issues:

reducing environmental impacts of energy production and use; threatened regulations on coal ash; renewable portfolio standards;

cost and reliability of power; energy efficiency, and

fuel security and domestic resource utilization, and economic development for Kentucky.

Kentucky must find a way to use coal cleanly and efficiently in addition to using more gas. Only 4 percent of Kentucky's power is generated by gas although large quantities of gas are available. The wind power project in Maysville could add real economic benefits for Mason County and the region. The estimated economic benefits over a 25 year period would be \$24 million in land lease payments and \$19.9 million in property tax

payments. Over a two year period, approximately 200 temporary jobs would be available, creating 8 to 10 permanent jobs.

Mr. Hayden said that hydropower is underutilized in Kentucky and that a number of Ohio River dams could produce significant power. A large number of other Kentucky dam sites have the potential to produce electric power. Access to power markets in other states is another important factor in balancing the state's energy portfolio, according to Mr. Hayden. He profiled two regional transmission organizations that would not only provide access to sell Kentucky power but would also give Kentucky utilities access to green and other power sources that would enhance reliability and diversify the fuel portfolio.

Mr. Hayden talked about the ERCOT (Electric Reliability Council of Texas) CREZ (Competitive Renewable Energy Zone) projects currently underway in Texas. The CREZ proposal requires massive efforts to coordinate transmission plans while integrating renewable generation. The current CREZ project is estimated to cost approximately \$6.5 billion, and will construct almost 3,500 miles of line to enable 18,000 megawatts of wind power. The cost to the average rate payer will be approximately \$4.00 monthly.

In response to Representative Stacy, Mr. Hayden stated that Texas provides incentives, but nothing significantly different from other states.

In response to Representative Adkins' questions, Mr. Hayden stated that adding diversification to Kentucky portfolio was a prudent move. Representative Adkins said that if Mr. Hayden were to read Kentucky's Energy Policy he would see that Kentucky encourages diversification through the most aggressive incentive package offered in the United States.

In response to Representative Gooch's question, Mr. Hayden stated that new technology is the difference for pursuing natural gas now versus 10 years ago.

In response to Sen. Stine's question, Mr. Hayden said that Kentucky needs a robust interstate transmission system in order to export coal by wire.

Mine Permitting and EPA Requirements

Phillip Elswick, P.E. and Mark Sanders, Summit Engineering, discussed the Environmental Protection Agency (EPA) and other regulatory agency actions relating to the Clean Water Act and 404 permits that are issued by the U.S. Corp of Engineers for any project that places fill material in waters of the United States.

Mr. Elswick reviewed the regulatory actions most affecting surface mining in the last 3 years. In the summer of 2009, it was announced that Nationwide Permit 21 could no longer be used to authorize discharges of fill material in the Appalachian regions of 6 states. Requirements for enhanced coordination between EPA, the Corps of Engineers and the applicant complicated the permit process. Recently announced stringent standards concerning water turbidity and conductance have wide-ranging impacts on surface mining operations. Additionally, in 2009, EPA began routinely requesting preparation of an environmental impact statement for surface mining operations. Some representatives of EPA have stated that all headwater streams are "aquatic resources of national importance." Mr. Elswick is concerned that use of this process will delay permit decisions and remove decision-making from local authorities.

Mr. Elswick stated that because mining permits were being denied or being revised, he estimated the loss of coal to be approximately 3 million tons. The application for the Big Branch project, which is a 1,400 acre large surface mine, was prepared and submitted in May of 2005. The EPA and the U.S. Corp of Engineers expressed concerns regarding the size of the project and asked that the applicant look at some actions that would reduce the environmental impacts. The client determined that some of the coal recovery could be lowered and essentially cut the project in half from 13 million tons to 7 million tons. The U.S. Corp of Engineers was notified in November, 2008 that all the concerns had been addressed, but in March of 2009, EPA notified the U.S. Corp of Engineers that there were still significant concerns. The Corp addressed those concerns and presented a permit to the client in April 2009 for signature. Before the client had a chance to sign the permit, the EPA initiated the 404(C) process. Negotiations with the EPA continue.

Mr. Elswick stated that EPA's permit actions have created time delays, uncertainty, increased costs, and the loss of coal reserves. The adverse economic impacts include job impacts, loss of tax revenue, loss of property for future land development, and could increase the cost of electricity.

In answer to Rep. Gooch's question, Mr. Elswick said that approximately 90 jobs were lost for a period of time because of objections to the permits.

In response to Representative Hall's question, Mr. Elswick said that in addition to the Big Branch project, there are two more permits that will be in the 404(C) process shortly. He said that they have not seen any easing of EPA standards.

In response to Senator Jones, Mr. ElswickstatedthatSummitEngineering deals mostly with the Region 4 staff in Atlanta. The staff in Atlanta is willing to work with Summit, but the Atlanta staff has no decision making authority. When a solution has been reached, and the request sent on to the EPA, the requests are being denied with no explanation. Mr. Elswick said Summit Engineering has two dozen permits and/or applications pending with the EPA. In the last two years, only one permit has been approved.

The meeting was adjourned at 12:00 p.m.

INTERIM JOINT COMMITTEE ON IUDICIARY

Minutes of the 4th Meeting of the 2011 Interim September 14, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Judiciary was held on Wednesday, September 14, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, the secretary called the roll, and a quorum was present.

Present were:

Members: Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; Senators Perry B. Clark, Carroll Gibson, Jerry P. Rhoads, Dan "Malano" Seum, Katie Kratz Stine, and Robin L. Webb; Representatives Joseph M. Fischer, Kelly Flood, Jeff Hoover, Joni L. Jenkins, Stan Lee, Mary Lou Marzian, Darryl T. Owens, Tom Riner, and Steven Rudy.

Guests: Allyson Taylor, Attorney Office; Lori Davis, General's Kentucky State University; Wayne Young, Kentucky Association of School Superintendents; Bill Doll, Kentucky Medical Association; Dan Albers, Jefferson County Attorney's Jan Gould, Office: Kentucky Retail Federation; Meghan Wright, Kentucky Association of CACs; Tom VanDeRostyne, Jefferson County Commonwealth's Attorney Office; Hasan Davis, Deputy Commissioner, Department of Juvenile Justice; Patrick Yewell, Executive Officer, Family and Juvenile Services, Administrative Office of the Courts: Ed Monahan. Department of Public Advocacy; Lynn Pryor, Christian County Commonwealth Attorney; Jackie Steele, Laurel County Commonwealth Attorney; Ernie Lewis, Kentucky Association of Criminal Defense Attorneys; Scott Norsworthy, Christian County Deputy Sheriff; Jeff Hulker, Department of Corrections; Officer

Todd Phillips, Lexington-Fayette Urban County Police Department; and Shannon Stiglitz, Kentucky School Boards Association.

<u>LRC Staff:</u> Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., and Rebecca Crawley.

Arrest, Prosecution, and Treatment of Juveniles Who Are Ten Years of Age or Under

Patrick Yewell, Executive Officer, Department of Family and Juvenile Services, Administrative Office of the Courts, indicated that, from 2005-2010, 2,705 children age ten and under were charged with a status offense or public offense, and these children were four to five times more likely to continue in the juvenile justice system. During this same period, 277 children were charged with being beyond control, 271 with fourth degree assault with minor injury, 268 with criminal mischief in the third degree, 154 with theft, 137 with terroristic threatening, 130 with third degree assault (school personnel, police, etc.), 127 with criminal trespass third degree, 115 with assault fourth degree with no visible injury, and 108 with harassment.

Mr. Yewell discussed the State Interagency Council for Services to Children with Emotional Disabilities and its IMPACT program, which is studying the underlying issues which are causing the children to be referred to the court system. Multiple studies have shown that children ten years old and younger are best served by social service agencies and not the criminal justice system. Kentucky does not have an age of criminal responsibility for children as some other states do, with ages ranging from six to ten years of age with eleven states using age ten.

Hasan Davis, Deputy Commissioner, Department of Juvenile Justice, reported on the department's contact with children under age ten. In 2009, eight children under age ten were referred to DJJ, one was probated, one was eventually probated on other offenses in 2011, one was committed, and the other five were at judicial discretion only and the department made recommendations only. In 2010, the department had contact with four children under age ten, all those offenses were misdemeanors, and no formal DJJ relationship was ordered. Mr. Davis agreed these children would be better served in the social services system than in the criminal justice system.

Ed Monahan, Public Advocate, Department of Public Advocacy, said his department represented most of the children charged with public offenses and status offenses. These children would be better served in the social services system because the criminal justice system is not set up for children's issues and would generally lead to the child continuing in the system. He urged the committee to adopt the age of ten as the age of criminal responsibility in Kentucky, saying many studies indicate that actual responsibility may occur several years later, according to recent psychological studies.

Representative Owens very concerned the Jefferson County statistics showed 60 percent of the children referred to the criminal justice were African-American, even though these children represent only 10 percent of the population. In response to a question from Representative Owens, Mr. Davis said a lack of services, family problems, unemployed parents, and a greater risk of failure contributed to the situation. Representative Owens said 65 percent of the arrests were African-American children, and the schools seem to be unable to handle the problem. Representative Tilley said the state has been placing children in a system knowing they will fail. At the request of Senator Gibson, Mr. Yewell agreed to provide the committee with a list of members on the Local Committees of the SIAC.

Discussion continued on the failure of social services programs due to lack of resources and personnel, as well as the failure of the criminal justice system to meet the needs of juvenile offenders. Mr. Yewell said the Court Designated Worker Program is ready to expand if given the resources. Senator Gibson said the social services programs in his county do not follow court orders relating to children. In response to a question from Representative Fischer about a successful diversion, Mr. Yewell said Court Designated Workers used the prevention, education, accountability, and treatment (PEAT) program to provide services and measure success, and a validated assessment tool is used to provide services to children. Some communities refer all these children to the court system.

In response to a request from Representative Lee for a definition of "out of control," Mr. Yewell said it could be children who would not obey their parents or comply with school rules. Representative Tilley said terroristic threatening sometimes involved a threat to a teacher. Mr. Davis cited a situation where a student threatened to blow up a school ten times. Shannon Stiglitz, Kentucky School Boards Association, said many of the charges resulted from the General Assembly's passage of bullying legislation. Representative Flood disagreed and said many of the problems come from children who are abused at home and who are acting out at school, children with mental health problems, children with learning disabilities, children with Tourettes Syndrome, and families in crisis. Senator Webb suggested many problems involve a learning disability, substance abuse, and ADHD, and that a proper evaluation of the child must come first. Mr. Monahan agreed and indicated the social services approach is better than sending these children to the criminal justice system.

Juvenile Law Changes

Representative Flood summarized her 2011 House Bill 123 and said she plans to reintroduce the bill in the 2012 Regular Session. The bill follows the PEW Foundation model of rehabilitation rather than punishment and would provide more services for children to make them more productive, places limits on the duration of court orders, and protects judicial discretion. She said that placing children in jail does not work.

Criminal Gang Legislation

Lynn Pryor, Christian County Commonwealth's Attorney, accompanied by Chris Cohron, Warren County Commonwealth's Attorney, and Scott Norsworthy, Christian County Deputy Sheriff, testified about the prevalence of gang activity in Kentucky, citing instances in her community where gang activity and gang evidence were prevalent in the school system and involved young children being recruited by older gang members. Ms. Pryor said the problem is growing statewide, and gangs are increasingly responsible for drug trafficking, violence, home invasions, and intimidation and murders of witnesses. Jeff Hulker, Department of Corrections, presented a chart showing the prevalence of gang members in the correctional facilities. All but two counties have gang member representation in Kentucky prisons, and 10 percent of inmates have been identified as gang members. Ms. Pryor said current Kentucky gang laws are insufficient and difficult to use, and courts in her area have prohibited assertions about gang membership and activity as prejudicial to the defendant. Ms. Pryor indicated 32 states have gang legislation. Tennessee's gang legislation includes sentencing enhancements for gang members convicted of a crime in furtherance of gang activity, and Tennessee gangs are coming to Kentucky where the statutes are more lenient.

Ms. Pryor indicated the Commonwealth's Attorneys are seekinglegislationwhichwouldinclude a gang member validation process, a Kentucky State Police maintained list of gangs, gang members, and gang activity, enhanced gang related crime penalties, prohibiting gang members from receiving credit for time served in jail prior to trial, requiring gang

members to serve 50 percent of their sentences prior to parole eligibility, forfeiture of gang assets, and allowing evidence about gang membership. Mr. Cohron said the Commonwealth's Attorneys Association supports the proposals, that they would help bring truth in sentencing to the criminal justice system. Officer Todd Phillips, Lexington-Fayette Urban County Police Department, said gang recruiters teach children to be professional criminals. Representative Lee asked if there had been an increase in Hispanic gang membership and gang activity in Lexington. Officer Phillips said gang activity is spiking in Lexington and involves all races, nationalities, and ethnic groups.

Senator Rhoads said while we need to discourage and eradicate gang activity, we do not need to discontinue the positive trend set by 2011 HB 463. Several members said previous gang legislation failed over fears it was overly broad and there should be solid evidence and prosecutorial accountability when charges of gang membership are brought. Many motorcycle clubs had expressed concerns about previous legislation. Senator Jensen asked what time period the Department of Corrections data represented and what criteria was used to indicate gang membership. Mr. Hulker said the data was based on the current prison population and could be based on a gang tattoo. Further discussion determined the county shown was the county of conviction and not necessarily the county of residence, the conviction shown was not necessarily in support of gang activity, and the department had no statistics indicating the conviction was related to gang activity. Several members said they had problems with the gang membership list including how one got on the list, validation, how one gets off the list, how errors would be corrected, and whether the validation process would contain due process protections for persons placed on the list.

The meeting adjourned at 12:10 p.m.

INTERIM JOINT COMMITTEE ON JUDICIARY

Minutes of the 5th Meeting of the 2011 Interim
October 7, 2011

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Judiciary was held on Friday, October 7, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Tom Jensen, Chair, called the meeting to order, the secretary called the roll, and a quorum was present.

Present were:

Members: Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; Senators Carroll Gibson, Jerry P. Rhoads, John Schickel, Dan "Malano" Seum, Robin L. Webb, and Jack Westwood; Representatives Kelly Flood, Sara Beth Gregory, Joni L. Jenkins, Stan Lee, Mary Lou Marzian, Michael J. Nemes, Darryl T. Owens, and Tom Riner.

Guests: Matthew Leveridge, Commonwealth Attorney, 57th Circuit; Nancy Horn Barker, Corner Drug Store; Allyson M. Taylor, Attorney General's Office; Marylee Underwood, Kentucky Association of Sexual Assault Programs; Karen Thomas Lentz, Johnson and Johnson; Sheila Schuster, Kentucky Mental Health Coalition; and Sarah Nicholson, Kentucky Hospital Association.

<u>LRC Staff:</u> Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., and Rebecca Crawley.

The minutes of the September 14, 2011 meeting were approved without objection. Representative John Tilley recognized Representative Tanya Pullin as an observer at the meeting.

Unfair competition in Kentucky

Laurie Self, Microsoft Counsel, Covington and Burling, said an increasing number of Kentucky businesses rely on technology which can mean the difference between success and failure. Foreign companies steal United States and foreign technology and export it to their advantage, 100,000 manufacturing jobs have been lost to China, India, and Mexico, and technology theft is common in many countries resulting in a \$50 billion annual loss. Fair trade laws relating to stolen internet technology would improve Kentucky and United States business opportunities by punishing those who use stolen technologies and would promote fair trade. Washington State has enacted legislation prohibiting manufacturers that use stolen IT from selling products in competition with manufacturers and others that use legally purchased IT products.

Bobby Bailey of Louisville Geeks, described how he started his small business several years ago and how it has expanded, how stolen IT makes it hard for honest companies to compete, theft handicaps clients, and honest businesses need leverage to fight back. Senator Jensen called the committee's attention to a document opposing the legislation in the committee folder.

Illegal Methamphetamine Laboratories

Jackie Steele, Laurel County Commonwealth's Attorney, Dan Smoot, Deputy Director of Operation UNITE, Tommy Loving, Bowling Green-WarrenCountyDrugTaskForce,

and Mark Burden, Kentucky Narcotics Officers Association, presented on the dangers posed by methamphetamine laboratories to the methamphetamine makers, their families and children, the victims of laboratory accidents, law enforcement, and members of the public. It is estimated that 1,458 meth labs will be discovered this year, which is a record high, and Laurel County leads the state in meth labs. Speakers described the medical, cleanup, and other costs, indicated the one essential ingredient for the illegal manufacture of methamphetamine is pseudoephedrine, discussed the hazards of taking pseudoephedrine by persons with diabetes, coronary artery disease and other ailments, and indicated 137 other over-the-counter alternatives to pseudoephedrine exist. Speakers urged that Kentucky follow the example of Oregon and Mississippi that have made pseudoephedrine a prescription drug, which has significantly reduced the number of meth labs in their states, and how this would reduce "smurfing" where persons are paid to go purchase pseudoephedrine for meth makers. Mr. Loving said the methamphetamine problem is statewide, and this was echoed by Mr. Burden as relates to central Kentucky and Northern Kentucky.

Several persons said methamphetamine use is still a problem in Oregon, and Portland, Oregon has a particularly high methamphetamine use. Representative Marzian wondered what would be next if Kentucky makes pseudoephedrine a prescription drug. Senator Jensen urged the members to separate the manufacture of methamphetamine from the use of methamphetamine as two separate issues.

Jim Acquisto of Appriss, Inc. markets the Meth Check program, which is used to track spseudoephedrine purchases in Kentucky. This program has been expanded in several other states to block pseudoephedrine purchases by persons convicted of drug offenses. Mr. Acquisto said the legislation in Oregon and Mississippi has not reduced methamphetamine use. Eighteen states have adopted the enhanced program that blocks pseudoephedrine purchases by drug offenders for 7-10 years, including Tennessee, which is financed by pseudoephedrine manufacturers and is available to states at no cost. Carlos Gutierrez, Director of State Government Relations, Consumer Health Products Association, representing pseudoephedrine manufacturers and other consumer health care products, said there is no public outcry to make pseudoephedrine a prescription drug. It would increase health care costs. deny the most effective cold remedy to those who could not afford to see a physician, and would not allow persons to immediately seek cold relief. Representative Riner asked about contraindications and side effects from the use of pseudoephedrine and asked if enhanced warnings on packages would be of use, to which the response was they would be costly for manufacturers and would not be of benefit.

Pill mills

Senator Greg Higdon discussed his prefiled 12 RS BR 188, which would require the State Board of Medical Licensure to license and regulate pain management facilities, provide for suspension or revocation of licenses for violations of standards, require prompt hearings on complaints, require pain management facilities to be owned by physicians, require criminal record checks, and establish training requirements for all health care practitioners functioning in a pain management clinic.

Van Ingram, Director of the Kentucky Office of Drug Control Policy, presented information on the prescription drug abuse problem in Kentucky, the number of accidental overdose deaths, and indicated while the problem is perceived to be an eastern Kentucky problem, it is actually statewide and increasing in the Purchase Area and Louisville. Drugs of abuse included Xanax, Oxycodone, Hydrocodone. In a 2010 survey of Kentucky tenth graders, 1.6 percent reported using Oxycontin in the previous 30 days. Mr. Ingram described the success in limiting pill mills in Florida and Ohio, but the result has been an increasing number of pain clinics in Kentucky. Senator Higdon said a pain clinic in his area is advertising within a 150 mile area and operates as a cash only business. Mr. Ingram recommended licensing, strict standards, mandatory physician use of the KASPER program to detect drug diversion and multiple prescriptions, and supported Senator Higdon's bill. Bill Doll, representing the Kentucky Medical Association, and Preston Nunnelley, MD, President of the Kentucky Board of Medical Licensure, expressed support for the proposed legislation. Dr. Nunnelley said there are 44 active cases under investigation, and 22 of them involve pill mill allegations at pain clinics. Dr. Nunnelley said the board does an excellent job of disciplining physicians and has a national reputation for doing

Eric Friedlander, Deputy Secretary, Cabinet for Health and Family Services, presented on the KASPER prescription monitoring program and how it can aid in detecting overprescribing and drug diversion in cooperation with licensing boards and law enforcement. Robert McFalls, Kentucky Pharmacists Association, and Dr. Nancy Horn, owner of Corner Drug in Winchester, Kentucky, said they were concerned with the problem of drug diversion and drug abuse and that as the Florida pill pipeline is closing due to tighter regulation, there is now an increase in similar Kentucky prescriptions. Dr. Horn described receiving 30 calls a week about filling prescriptions from pain clinics in Georgetown, Dry Ridge, and Winchester and said she restricts filling these types of prescriptions to established patients. Tony Goetz, Kentucky League of Cities, and Brian Roy, Deputy Director, Kentucky Association of County Officials, spoke of the problems cities and counties incurred when they recently attempted to regulate pain clinics through local ordinance and were thwarted by Attorney General Opinion 11-03, which specified only the state, not local governments, could regulate heath care professionals and health care facilities.

Review of Executive Order 2011-772 relating to the membership of the Kentucky Law Enforcement Council.

Ken Schwendeman, Director of Government Relations, Department of Criminal Justice Training, said the executive order adds representation from Lexington and Louisville to the membership of the council, increases the quorum for council votes, and permits the members to send voting alternates to council meetings. The measure was accepted by the committee by voice vote.

Senator Jensen announced the next meeting of the committee would be on December 9, 2011, to hear from the Court of Justice, followed by a second meeting on December 16, 2011. The meeting adjourned at 12:00 noon.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

Minutes of the 3rd Meeting of the 2011 Interim September 13, 2011

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Labor and Industry was held on Tuesday, September 13, 2011, at 2:30 PM, in the Convention Center at Kentucky Dam Village State Resort Park. Representative Rick G. Nelson, Chair, called the meeting to order, and staff called the roll.

Present were:

Members: Senator Denise Harper Angel; Representatives John A. Arnold Jr., Will Coursey, C. B. Embry Jr., Bill Farmer, Dennis Horlander, Wade Hurt, Adam Koenig, Terry Mills, Rick G. Nelson, Michael J. Nemes, Tanya Pullin, Tom Riner, Jim Stewart III, and Brent Yonts.

Guests: Dwight Lovan, Commissioner, Department of Workers' Claims

<u>LRC Staff:</u> Linda Bussell and Adanna Hydes

Representative Nelson recognized Representative Coursey to welcome members and guests to his district. Representative Nelson introduced Commissioner Dwight Lovan, Department of Workers' Claims, to present an update on black lung in the workers' compensation program.

Black Lung and Workers' Compensation

Commissioner Lovan informed committee members that two cases addressing black lung (coal workers' pneumoconiosis) claims will be argued before the Kentucky Supreme Court on Wednesday, September 14, 2011. The cases to be argued are Gardner v. Vision Mining (2009) and Joe Martinez v. Peabody Coal (2010). The Kentucky Court of Appeals found the provisions of KRS 342.316 regarding the consensus process and panel process used to determine eligibility for black lung benefits to be unconstitutional under the equal protection clause.

The consensus process has been in place since a legislative change in 2002 which modified the workers' compensation reforms made in 1996. The consensus process is a two-tier process. The first step is the party consensus. The injured worker files a black lung claim and submits an x-ray and an x-ray reading. Then the defendant employer has 45 days to also secure an x-ray and reading. The two x-rays are in consensus if they are interpreted to be within the same major category and one minor category according to the International Labor Organization's guides on the classification of x-rays to show pneumoconiosis.

Commissioner Lovan noted that a Kentucky Supreme Court finding in the 2008 case of *Cain v. Lodestar Energy, Inc.* determined that a portion of the consensus process was unconstitutional. In this case, an individual had a 2/1 and 1/1, which would not be consensus under the statute; it is unconstitutional not to award that individual benefits.

In the two-step process, if there is not party consensus the claim moves to the second step, the panel process. The x-rays are sent consecutively to three B readers. B readers are certified by the National Institute for Occupational Safety and Health as having special skills to interpret x-rays. There are 19 B readers who have agreed to be part of the process in Kentucky. Two of the three B readers must agree in order to reach consensus. If there is consensus,

an additional report can be submitted by either party, but the report has to be related to one of the two x-rays used for consensus, no additional x-rays are submitted. This report is submitted to the administrative law judge who will make a determination of whether the individual is entitled to benefits for coal workers' pneumoconiosis.

The standard to overrule the consensus by the B-readers is clear and convincing evidence. The administrative law judge must specifically state why consensus was not followed. Clear and convincing evidence is a big factor in the cases of Martinez and Gardner. The standard in most civil liability cases is a preponderance of evidence. The clear and convincing standard in case law is somewhere between a preponderance of the evidence and beyond a reasonable doubt. Reasonable doubt is the standard for criminal cases.

In the Gardner decision issued by the Kentucky Court of Appeals in April 2010, the court determined the clear and convincing standard used in black lung claims was different than the standard needed for all other occupational pneumoconiosis claims. The standard for black lung in terms of proof was much higher than for other pneumoconiosis or occupational diseases. It is the only occupational disease that uses a consensus panel that must be overcome by clear and convincing evidence.

The Martinez case followed in June 2010. While the Gardner case focused on the three member panel process, the Martinez case had a much broader holding saying the entire party consensus and panel consensus process is unconstitutional.

There was a previous case heard in the Supreme Court, *Durham v. Peabody Coal*, in 2009 which argued that the consensus process was unconstitutional; however, the case dealt with black lung claims versus traumatic injury claims. The court found a justifiable reason for application of different processes for black lung claims versus traumatic injury claims.

Based on the rulings by the Kentucky Court of Appeals, the Department of Workers' Claims determined that it was fruitless to process black lung claims during the interim until there is a decision from the Supreme Court or until the decision from the Court of Appeals is final. The department has been placing black lung claims in abeyance, but is preparing to move forward by continuing to receive the two x-rays, one from the injured worker and one from the employer. There have been a few cases that have been voluntarily resolved. These cases mostly have been the more severe cases where there is little disagreement and tend to have party consensus. As of September 9, 2011, there were 282 claims in abeyance. The department is anticipating a decision from the Supreme Court after the first of the year, but there is no specific time line.

If the Supreme Court reverses the Court of Appeals and finds the process constitutional, the department will go back to what it has been doing since 2002 using the consensus process. If the Supreme Court affirms the Court of Appeals and find the process unconstitutional, then the department may go back to the statute that preceded the statute found to be unconstitutional, which would be the process in place from 1996 - 2002 which is the same as other occupational diseases. Presumptive weight is given to a university evaluator's determination. There are potential complications to taking this approach because of differing award benefits between the time periods and some concerns that had been raised with the university evaluator system. The department is reviewing different options to be prepared when the Supreme Court renders a decision. It is possible also that the Supreme Court will provide a remedy with its decision and the department will proceed accordingly.

In response to questions from Representative Yonts, Commissioner Lovan stated based on his interpretation of the law no cases would be subject to reopening if the Supreme Court finds the process unconstitutional. Cases in the late seventies dealt with a similar situation in which some cases were placed in abeyance and some proceeded without pursuing an appeal. The issue was reversed by the Supreme Court. Some tried to reopen, but the Supreme Court ruled that this was not a mistake of law and their opportunity was to pursue an appeal and challenge the issue on appeal. They had not appealed, nor had their cases been placed in abeyance, so there was no remedy.

For clarification, Commissioner Lovan noted that the department does not make the determination of which of the two x-rays submitted is the better x-ray. Both x-rays are sent to the panel. The statute and regulation instruct the panelists to identify the xray they think is the best to read. There are not many depositions, testimony, or history in the consensus process, except there may be a distinction between an x-ray that shows coal workers' pneumoconiosis as opposed to other types of occupational pneumoconiosis. Occupational history would be considered in these situations.

Commissioner Lovan said that Kentucky's system does allow for digital x-rays, but requires plain x-ray films. It is voluntary to accept the digital film because only approximately half of the panelists, as of two years ago, had the equipment necessary to read digital films.

There being no further business the meeting was adjourned.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

Minutes of the 4th Meeting of the 2011 Interim September 9, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Licensing and Occupations was held on Friday, September 9, 2011, at 10:00 AM, in Room 129 of the Capitol Annex. Senator John Schickel, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Dennis Keene, Co-Chair; Senators Tom Buford, Julian M. Carroll, Julie Denton, Denise Harper Angel, Jimmy Higdon, Dan "Malano" Seum, Kathy W. Stein, and Damon Thayer; Representatives Tom Burch, Larry Clark, Dennis Horlander, Wade Hurt, Joni L. Jenkins, Adam Koenig, Reginald Meeks, Charles Miller, Michael J. Nemes, David Osborne, Ruth Ann Palumbo, Sal Santoro, Arnold Simpson, and Susan Westrom.

<u>Guests:</u> Lisa E. Underwood, Executive Director, Greg Lamb, Supervisor of Pari-Mutuel Wagering, Mary Scollay, DVM, Equine Medical Director, and Jamie H. Eads, Division of Incentives and Development.

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

Approval of minutes

Representative Burch moved to adopt the minutes from the August 12, 2011, meeting. Representative Keene seconded the motion, which carried by voice vote. Before proceeding with committee business, Senator Schickel asked for a moment of silence for Senator Carroll's family for the loss of Bradley Carroll.

The Kentucky Horse Racing Commission: an overview of horse racing in Kentucky

Lisa Underwood, Executive Director of the Kentucky Horse Racing Commission (KHRC), said the racing commission is affiliated with various national committees to facilitate consistency and uniformity among the states and to avoid federal government intervention. The Racing Compact, passed during the last session, will help states continue to use their unparalled expertise to regulate horse racing. Virginia and Colorado have now adopted this compact, and

other states are reviewing legislation and regulations to join the compact.

The KHRC promulgated administrative regulations relating to historical horse racing. A historical horse race is one that was run at a licensed pari-mutuel facility and that concluded with official results. Regulations became law July 1, 2011, and Kentucky Downs received approval to offer historical horse racing, which began on September 1. There is pending litigation regarding these regulations. Jockey weights and riding crop regulations were reviewed in August. These regulations will standardize weights and crop size from state to state. The commission approved amended regulations related to jockey mount fees and has filed these with the LRC.

Mary Scollay, DVM, Kentucky's first equine medical director, said that an administrative regulation for out-of-competition testing would enable detection of substances that have duration of effect that exceeds their detection period. Some blood doping agents can affect a horse's performance but are not detectable in a post race sample. Examples include erythropoietin, darbepoetin, hemoglobin based oxygen carriers, venoms and toxins, and growth hormones. These substances can be detected for 24 to 28 hours, but the effect can extend much further. They can compromise the health and welfare of a horse or its athletic performance in competition. Out-of-competition testing was used at the 2010 Breeders' Cup Championship races at Churchill Downs, for the 2011 Toyota Bluegrass Stakes at Keeneland, and the 2011 Kentucky Derby, with all test results negative.

The KHRC believes that strategic post-race sampling and testing will more effectively detect violations. Stewards follow criteria to identify whose performance might be influenced by the presence of drugs or medication. Red samples are winning favorites or horses whose performance is consistent with form. Gold samples include a long shot winner beating the favorite, inconsistent performance, unusual wagering patterns, and security intelligence. Kentucky is the first racing jurisdiction to use this strategy. All gold samples are tested. Fifty percent of red samples are tested and fifty percent are retained and could be tested at a later date. Race tracks, which pay for testing, have saved money through this testing model.

The United States and Canada are the only countries that permit the administration of race day medications. A medication summit at Belmont Park in 2011 recommended phasing out all race day medication starting with the foals of 2013. The Breeders Cup

2012 Championship race for 2 year olds will prohibit administration of race day medication, and in 2013, all Championship races will prohibit race day medication. The Thoroughbred Owners and Breeders Association (TOBA) announced that stakes races for 2 year olds will lose their graded status unless they prohibit race day medication. The KHRC has formed a committee to study the issue of race day medications.

The Kentucky Equine Drug Research Council (KEDRC) recently approved three initiatives: elimination ofracedayadjunctbleedermedications; administration of furosemide (Lasix) by regulatory veterinarians; and reduction of the regulatory threshold phenylbutazone. Industry organizations will forward their recommendations to the KHRC. The council chose four of 13 solicited research proposals based on their relevance and impact to the racing industry. The first proposal deals with articular cartilage stem cells, which have the potential to identify a method for curing arthritis, one of the primary reasons horses are retired from racing. The second proposal is related to responsibly regulating therapeutic race horse medications. The third proposal seeks to optimize the health and well-being of retired race horses by successfully placing horses after they have finished racing. The fourth proposal looks at specific bacteria affecting the respiratory tract, the primary part of a horse's body targeted by race day medications.

The Governor's Task Force on the Future of Horse Racing recommended establishing a world class drug testing laboratory in Kentucky. In February, HFL Sport Science built a facility in Lexington, Kentucky. Dr. Rick Sams, the Director of the laboratory, had already worked with both educators and researchers at the University of Kentucky, College of Pharmacy. The laboratory is linked to multiple databases, giving a broad library of substances, chemicals, and medications. It is also expanding service to include supplement testing and human athletic fitness testing. HFL provides cheaper testing for Kentucky racetracks compared to previous outof-state laboratories.

Greg Lamb, Supervisor of Pari-Mutuel Wagering, said his division has recently developed several new reports and audits to increase wagering integrity in Kentucky. A new price verification workbook allows KHRC to verify prices produced by other tote system jurisdictions, which could have as many as 20 different takeout rates. The commission contracted with a technology company (CHRIMS) to provide a consolidated data base on all tote data. The KHRC now receives

a monthly report that shows total handle, commissions, and the amount paid back to the public on both live and simulcast wagering.

The KHRC is conducting pre-meet hardware tests of all live racing tracks to ensure that the totalizator equipment is functional and will allow stewards to stop a race. Monthly compliance audits are being performed on all off-track betting (OTB) facilities in the state. Also, recent legislative and regulatory changes to thoroughbred track wager distribution provide consistency in calculations for bettors.

The KHRC now oversees live racing totalizator operations, and starting next month tote companies will be licensed. United Tote and AM Tote operate in Kentucky. The commission may now audit daily operation and software development. Because historical horse race wagering started just last week, there has been no reporting. Reports will be developed to show what money goes to the state and to the various breeds. When a totalizator company wants to upgrade its software, a price testing book will allow the commission to test for changes to the software calculations.

In response to a question from Representative Keene, Mr. Lamb said a program by Betfair, a company with Advance Deposit Wagering (ADW), provides near live-time wagering at tracks in the state. This program allows the commission to monitor wagering patterns and permits track investigators to review a particular spike in wagering. In response to a question from Senator Thayer, Lisa Underwood said the commission is expediting ADW licenses so that ADW data can be compiled.

Jamie Eads, Division of Incentive and Development, stated that the Thoroughbred Breeder Incentive Fund (TBIF) was developed in 2005 to ensure the strength and growth of the Kentucky horse industry. The fund is financed through the six percent sales tax collected from breeding a stallion to a mare. Qualified thoroughbred winners receive 80% of the tax receipts. In 2011, 10 million dollars has been awarded to eligible horses that raced in 2010. The average award, per race, was 3,166 dollars. A Kentucky bred horse has won the Kentucky Derby the last six years, and the breeder of the 2011 Derby winner will receive \$100,000 in 2012. Over half of the mares bred each year are staying in Kentucky, maintaining eligibility for fund money. This year, 832,000 were eligible on or before August 1, showing breeder interest in this program.

The Standardbred breed is financed by 13 percent of the receipts collected from the sales tax on stud fees. The award is given in Lexington, Kentucky, at the Kentucky Sire Stakes

at the Red Mile, the second oldest harness track in the world.

The non-race breeds are awarded 7 percent of receipts collected from the sales tax on stud fees. Kentucky is the only state that supports non-race breeds. Until November 1, the commission will be accepting applications for period three, which covers 2012 through 2014.

There are 11 recommended changes to the thoroughbred regulation 810 KAR 1:070. In addition to breeder input and multi-state research, the KHRC used information from a public committee that represented all breeds. Since approximately 80 percent of horses foaled in Kentucky are exported, the committee recommended consistent breeder awards for wins in Kentucky or in another state.

Other suggested changes include easing nomination filing requirements, delaying the August nominating deadline to avoid conflicts, lowering nominating fees to accommodate fall sales, and reducing the Kentucky Derby and Oaks component from \$100,000 to \$50,000. Foal age restrictions were reduced in 2007 to prolong the program. The committee also recommended uniform allocations for Allowance, Maiden Special Weight, and graded and group stakes races, and a tiering of those awards according to the level of racing. There is a large disparity between in-state and outof-state awards, and the breeder does not have control over where the horse will run. The committee proposed including the Group 1 winner of races during the Dubai World Cup, Hong Kong International Day, and Japan Cup to acknowledge the international achievements of Kentucky bred horses. The committee recommended including United States stakes races outside Kentucky in the same allocation as Kentucky stakes races, and including Woodbine, in Toronto, in the United States component. They felt that the claiming component should be changed to pay more breeders, since total money allocated is \$200,000 to approximately six people. The final recommendation was to fund awards equally based on available money.

In regard to a question from Senator Schickel, Dr. Scollay said Lasix is a diuretic used in race horses to reduce the event of exercise induced pulmonary hemorrhage (EIPH) in the lungs.

In response to a question from Representative Meeks, Greg Lamb said that each thoroughbred track used to submit its own payout price calculation, and there was no standardized calculation. Jamie Eads told Representative Meeks that an American Graded Stakes Committee determines the grade of a race. She added, in response to an additional

question from Representative Meeks, that the 2005 horse breeding legislation supports both racing and non-race breeds. In response to a question from Representative Clark, Lisa Underwood said the KHRC will continue to require funding from the General Assembly and will receive revenue from licensing fees.

Representative Clark commented that he was concerned that more TBIF money was being paid to winners out-of-state than to in-state winners, giving less incentive to race in Kentucky.

In response to a question from Senator Seum, Lisa Underwood said that there probably have been studies about the impact of casinos and expanded gaming at racetracks; however, she was not aware of any reports.

Senator Thayer said Kentucky is a net exporter of thoroughbred bloodstock. Eighty percent of the horses that are bred here race elsewhere. Most breeders in the business are commercial breeders, in the business to breed to sell at auction. The Keeneland sale brings buyers from all 50 states and approximately 39 countries. Kentucky breeders have no control over where a horse goes. Therefore, paying more from TBIF for winning races in Kentucky is not an incentive to breed horses in Kentucky. To encourage racing in Kentucky, more money should be put into the Kentucky Thoroughbred Development Fund (KTDF), a purse supplement separate from the TBIF. The goal of the KTDF is for breeders everywhere to bring their mares to Kentucky and board them here year-round. To be eligible for this money, the mare must reside in Kentucky 365 days a year and be bred to a Kentucky stallion. This is the economic development component to the KTDF. Senator Thaver stated that he and Representative Clark have discussed supplementing the KTDF with ADW money.

In response to a question Westrom, Representative Representative Osborne said he could not answer for all thoroughbred owners but he felt that the vast majority of owners and trainers are racing in other states for the larger purses. Senator Thayer added that 12 of the 38 thoroughbred racing states supplement their purses with expanded gaming. In response to a question from Representative Meeks, Jamie Eads said mares bred does not necessarily equate to live foals, but approximately 50 percent of mares bred in Kentucky stay in Kentucky. Also, the majority of breeders are breeding to sell.

There being no further business to come before the committee, the meeting was adjourned at 11:12 AM.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 3rd Meeting of the 2011 Interim September 28, 2011

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Local Government was held on Wednesday, September 28, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Steve Riggs, Co-Chair; Senators Walter Blevins Jr., R.J. Palmer II, John Schickel, Dan "Malano" Seum, and Johnny Ray Turner; Representatives Julie Raque Adams, Ron Crimm, Mike Denham, Ted Edmonds, Richard Henderson, Brent Housman, Adam Koenig, Stan Lee, Tom McKee, Michael Meredith, Jody Richards, Arnold Simpson, Kevin Sinnette, Rita Smart, and Jim Wayne.

Guests: Dawn Bellis, Don Newberry, and Roger Banks, Department of Housing, Buildings and Construction; Brian Lykins and Jill LeMaster, Auditor of Public Accounts Office; Kenton County Judge/ Executive Steve Arlinghaus; Campbell County Judge/Executive Steve Pendrey; Chuck Heilman, Amanda Waters, and Mark Wurschmidt, Sanitation District No. 1; Shelley Hampton, Kentucky Association of Counties; J.D. Chaney and Tony Goetz, Kentucky League of Cities; Jim Dugan, Hebron, Kentucky; and Bob Weiss, Home Builders Association of Kentucky.

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

Approval of Minutes

Upon the motion of Representative Crimm, seconded by Representative Henderson, the minutes of the August 24, 2011 meeting were approved.

Consideration of Referred Administrative Regulation

The committee considered referredAdministrativeRegulation815 KAR 8:030, which guides the issuance of apprentice heating, ventilation, and air conditioning (HVAC) mechanic licenses. Senator Thayer stated that a written report of the review will be submitted to the LRC.

Sanitation District No. 1

Senator Thayer said that a recent audit of Sanitation District No.1 (SD1) of Northern Kentucky by the State Auditor of Public Accounts (APA) has revealed issues of concern. Representative Simpson said that the discussion would be worthwhile

to those members who have special districts in their district.

Brian Lykins, Director of the Office of Technology and Special Audits with the APA, told the committee that SD1 is the second largest public sewer utility in Kentucky, and that it serves approximately 100,000 customers. The audit was requested by Kenton Judge/Executive County Steve Arlinghaus to address questions about the financial management of the sewer district and its rate setting process. The audit reviewed SD1 policies and procedures, records retention, rate increases, construction in progress projects, and the accounting of financial transactions.

Although the audit found that overall policies of SD1 generally provide an effective structure for the oversight of the organization, the report presents 14 findings related to administrative matters and makes 72 recommendations to strengthen accounting controls, procurement, and board governance.

During the course of the examination, auditors noted several instances of accounting errors and apparent lax accounting controls and oversight. The specific instances involved errors in a spreadsheet allocating labor costs to projects, significant accounting entries made without proper review or documentation, and errors in the rate setting model.

SD1 calculated the labor costs to be charged to a particular project using an excel spreadsheet containing a formula which multiplied the hours by the applicable rates. The formula was in error, resulting in 151 projects being charged excessive labor costs. SD1's failure to recognize such a significant error in labor allocation calls into question the quality and frequency of accounting review and oversight.

An initial error in the 2008 "Pro Forma" model used to set rates produced erroneous sewer rate projects of 25 percent for fiscal years ending 2009 and 2010. The error was detected by staff prior to being presented to the board and the corrected 15 percent rate increase was approved. Though the model used by SD1 to produce and evaluate rate setting scenarios appears to be reasonable, the amount of manual input and extensive base of knowledge required to effectively maintain and use that model dictates the need for broader financial oversight and review.

In addition, the examination of specific charges recorded in the Construction in Progress (CIP) account balances raised several questions as to whether treatment of those costs was appropriate and accurate. Certain charges were included in CIP account balances and eventually capitalized as

assets rather than expensed in the year they were incurred.

Auditors also found there were instances of entries made to the general ledger with no supporting documentation, approval, or prior period adjustments. The SD1 director of finance and the current SD1 controller were unable to produce a copy of fiscal year-end June 30, 2008 adjusting journal entries or provide the details that support the year-end adjusting entries.

In review of procurement practices, the audit found that SD1 purchased materials and supplied and procured services for the construction of a major project without following its own procurement requirements. One CIP had over \$100,000 in engineering services approved by the board of directors with no documentation of formal requests for proposals for those engineering services or of a review by a selection committee as required by the SD1 guidelines.

SD1 purchased \$385,239 of drainage pipe couplings and pipe directly from the contractor's vendor without going through the competitive bidding requirements, which is required by SD1 guidelines for the purchase of materials exceeding \$20,000.

The audit found that CIP change orders were not always preapproved by the staff, nor reviewed by the board. Internal controls and procedures related to CIP project change orders did not properly address oversight for increases to project totals.

Regarding board governance, auditors found that policies for the board of directors did not address several critical responsibilities necessary for proper and effective oversight. There was no internal audit function that reports directly to the board, or any independent process to receive information and resolve conflicts. Since the audit, the board has created an internal audit function.

Auditors recommended that the board strengthen its oversight policies, including a whistleblower policy, policies or procedures regarding the use of credit cards, reimbursements to employees, electronic backup of financial information, and fixed asset inventory.

Auditors found that ethical polices of board members and employees were comprehensive and recommended that the board establish a comprehensive code of ethics applicable to both board members and employees and require financial disclosure statements from board members and executive staff.

In response to a question from Representative Smart, Mr. Lykins stated that special districts have a chief financial officer that should know their responsibilities. There is specific training for special districts.

In response to a question from Representative Koenig, Mr. Lykins replied that because SD1 has personnel already in place it would not be a significant cost for them to implement the recommendations of the audit.

In response to a question from Representative Lee, Mr. Lykins said SD1 board members are compensated and officers are board members who are limited to two terms.

In response to another question from Representative Lee, Mr. Lykins stated that SD1's annual revenue in 2010 was around \$70 million, and the salary of the executive director is over \$100,000.

Representative Riggs commented that the committee has seen entities with similar issues. His concern is that boards are not performing at the level they should. The statutes are not adequate to deal with the larger boards. The committee needs to think about how to change the statutes and come up with one solution for all boards. There is no accountability. The Auditor's office has seen this over and over.

Mr. Lykins commented that there is much interest in the Auditor's 32 recommendations for non-profit boards. The Auditor has seen in many instances, inadequate policies, non-existent policies, or ignored policies. Some organizations are highly driven by staff. The Auditor's recommendations provide an opportunity for these organizations to improve accountability and transparency.

Senator Thayer stated that he would be happy to work on a collective solution with members of the committee.

In response to a question from Representative Wayne, Jill LeMaster, with the Auditor's Office, said the code of ethics legislation that was passed (KRS 65.003) did not apply to special districts. Representative Wayne commented that the committee needed to study this issue for the next session and have a tighter statute.

In response to a question from Representative Housman relating to the procurement findings, Mr. Lykins stated that since his office cannot enforce the recommendations, it recommends policies and procedures for accountability.

In response to a question from Senator Thayer, Mr. Lykins replied that the audit did not warrant an investigation by the Attorney General.

Senator Thayer commented that he has been a long time opponent of SD1. In response to a question from Senator Thayer, Mr. Lykins said he is not prepared today to offer any specific recommendations for legislation but would be happy to work with the committee. Kenton County Judge/Executive Steve Arlinghaus introduced himself and entertained questions from the members.

In response to a question from Senator Thayer, Judge Arlinghaus stated that there are eight board members who serve on SD1, and he appoints four of them. The judges of Boone and Campbell Counties appoint two members as well. His first appointments are not due until the summer of next year. In response to another question from Senator Thayer, Judge Arlinghaus said no one on the current board was appointed by him.

The directors of the board are the ones who actually review with staff and determine what rate increases, for example, should occur and they bring those suggestions to the three county judges for approval of those rate increases. That policy will change for any increases of five percent or greater with the new law that was passed this summer. Any rate increases of five percent or above will be voted on by the entire fiscal courts of all three counties.

In response to a question from Senator Thayer on whether it was true that a rate increase was recently pushed through before the new law went into effect allowing for greater accountability, Judge Arlinghaus said there was a rate increase passed in June of 15 percent for this year and 15 percent for next year. In response to another question from Senator Thayer, Judge Arlinghaus replied that he voted "no" on the increase because he wanted to have the audit in place first.

In response to a question from Senator Thayer, Judge Arlinghaus stated that he requested the audit of SD 1 because when he was campaigning for office, he was asked many questions regarding the number of rate increases by SD1 and a number of lawsuits have been filed.

In response to a question by Senator Thayer in regard to Judge Arlinghaus' thoughts on the findings of the audit, Judge Arlinghaus stated under finding number four, where it refers to conflicts of interest of board members, he was concerned about board members making additional money.

In response to a question from Representative Simpson, Judge Arlinghaus said he has dialogue with the members that he appoints to boards. He appoints people to 35 boards. He asks for resumes from the individuals who are to be appointed and thoroughly goes through them to make sure they are qualified to serve on those boards.

In response to a question from Representative Simpson relating to the adoption of SD1's budget, Judge Arlinghaus stated that he has had the pleasure of sitting through the budget process with SD1 one time and found everyone to be accommodating and very interested in working with the judges and the board members. Everything was presented factually and there was nothing to be concerned about.

Mr. Chuck Heilman, President of SD1, introduced himself to the committee and entertained questions from the members.

In response to a question from Senator Thayer relating to the new statutory requirement for transparency, Mr. Heilman stated that SD1 is the first public utility to be required to provide financial information on-line by the passage of HB 26 in 2011. Outside counsel advised SD1 to use the state's open door website as a model for meeting these requirements. SD1's vision is to have an easy to find link on its webpage. SD1 will have basically four different documents: one page will show all of SD1's payroll information; a second page will show payee information relating to SD1's operations and maintenance, part of its budget as well as its capital projects; a third page will contain a copy of SD1's approved budget for the year; and the final page will contain copies of SD1's annual audit. All of this information is required by the legislation.

In a commitment to open transparency and in addition to this financial information, SD1 will also have meeting agendas, approved meeting minutes, and a complete set of board packets, which is information the board is given prior to each meeting. The board packets contain all current financial reports, bid documents, engineering and planning documents, operations and capital budgets or projects, and information about current administratively ongoings of SD1. Everything that the board sees prior to the meetings that SD1 is involved in making decisions on will be part of the board packets and they will be available on line. SD1 is aiming on having these on-line prior to the meetings. SD1 is going to put as much information on-line as it possibly can. All of this information will be updated monthly and retained on the website for three years. SD1 is making very good progress and hope to have this up and running, at least internally, in early November so it can be tested and have it implemented and on-line officially in January 2012.

In response to a question from Senator Thayer relating to the findings of the APA and the steps SD1 is taking in following the recommendations, Mr. Heilman stated that SD1 is taking the APA's recommendations very seriously. Thirteen recommendations have been implemented or addressed; 36 are in the process of being woven

in; and 23 are under review and being considered by the board. SD1 is making headway on complying with the recommendations. It has been a very challenging endeavor. It will cost SD1 \$100,000 to implement the recommendations from the audit.

Mr. Heilman commented that he had not heard the federal Environmental Protection Agency (EPA) mentioned, which is the 800 pound gorilla that sits in their room. In 2007, the EPA consent decree was entered into to meet water quality standards calling for a \$1.2 billion investment. The responsibilities of SD1's service area, along with EPA regulations, require board members with specific qualifications.

In response to a question from Senator Thayer, Campbell County Judge Steve Pendrey replied SD1 has fought and pushed back the EPA.

Mike Apgar, Director of Governmental Affairs, SD1, said that SD1 has been working with the U.S. Conference of Mayors relating to rates as a result of the consent decree. With 2010 HB 504 enacted by the Kentucky General Assembly, SD1 drafted some points of needed change which were adopted by the conference of mayors and presented to the federal government. The EPA regulations are not doing what they intended to do, and are are costing taxpayers money. In addition, SD1 is working with other entities to try and effect change.

SenatorThayercommentedthatthe committee will continue to watch SD1 to make sure it continues to implement the audit recommendations.

Representative Wayne commented that SD1 should not find a scapegoat and pick on the EPA. SD1 should have dialogue with the EPA if there are differences and not consider it the enemy.

Mr. Apgar noted productive dialogues are occurring and wants to ensure that every dollar spent improves the environment.

Representative Sinnette commented that oversight is important. There recently was no dialogue with the EPA, but through the recently enacted legislation, there is now.

Senator Thayer commented that after HB 26 passed, SD1 went ahead and made back to back 15 percent rate increases. It just looks bad.

Mr. Heilman said SD1 passed the rate increases because it needed to in order to pay bonds and to set the new infrastructure in place.

Judge Pendrey said that the infrastructure improvements will help the local economy.

Mr. Jim Dugan, representing the Tea Party, told the committee that the EPA needs to be challenged. Mandates from the EPA's clean water requirements will cost \$2 billion. He cited an analysis of the 10th Amendment and the federal government's role in contrast to states' rights.

In response to a question from Representative Simpson, Mr. Dugan said overall, SD1 is doing the best it can under the circumstances but did not like the fact that a \$100,000 bond was passed without bids and that a \$100 million bond was passed without any questions at SD1's board meeting.

There being no further business, the meeting was adjourned at 12:35 p.m.

INTERIMJOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 4th Meeting of the 2011 Interim September 1, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, September 1, 2011, at 10:00 AM, in the Jackson Room at Buckhorn Lake State Park in Buckhorn, Kentucky. Senator Brandon Smith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Ernie Harris, Ray S. Jones II, and Robin L. Webb; Representatives Hubert Collins, Tim Couch, Keith Hall, Marie Rader, John Short, Fitz Steele, and Jim Stewart III.

<u>Legislative</u> <u>Guests:</u> Representatives John Will Stacy and Teddy Edmonds.

<u>Guests:</u> Bill Bissett, Kentucky Coal Association; Allen Dupree, Alpha Natural Resources; Charles Snavely, Arch Coal.

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

Update on recent mergers in the coal industry and what that activity means for Kentucky's coal markets

Mr. Bill Bissett, President of the Kentucky Coal Association, explained that mergers are taking place because companies are battling the federal government and must have more and better resources.

Mr. Allen Dupree, Alpha Natural Resources, explained that since its merger with Massey on June 1, Alpha Natural Resources now employs 14,000 from Wyoming to Virginia. Two thousand of the 14,000 employees reside in Kentucky. Alpha Natural Resources contributes \$191 million in wages paid in Kentucky. There was anxiety in acquiring Massey due to the number of accidents that company had sustained; therefore,

Alpha Natural Resources has created greater transparency to foster safety. The new employee safety training focuses on accidents caused by at risk behaviors. At-risk behaviors are those which are a function of the employee, not the equipment, and Alpha Natural Resources has provided 40 sessions of safety training for 1,400 employees.

In response to a question that Mine Safety and Health Administration (MSHA) has no accountability and its inspectors are citing for no reason, Mr. Dupree agreed that only after a major accident does MSHA becomes overtly active in enforcement. Mr. Dupree continued that there is no accountability. Rather there is a culture to write as many violations as possible.

In response to remarks expressing concern that Kentucky and other states have waited for the federal government to do the right thing without a reaction, Mr. Dupree agreed that there are cases in the courts that will result in MSHA needing to explain its behavior.

Mr. Charles Snavely testified that Arch Coal has seven complexes in Kentucky that employ 1,700 in Eastern Kentucky. Two of those operations are underground in Knott County. Mr. Snavely noted that it takes sizable company to deal with regulatory scrutiny. That is why the nation is witnessing coal company mergers right now. Also, coal consumption internationally is high. Internationally, the world is powered by coal. Coalfired plants are being built in China, India, and Europe. Instead of burning coal, the United States is becoming an exporting country. The best quality metallurgical coal is located in Appalachian area of the United States. Arch Coal is positioning itself to become an exporter.

In response to a question about whether Arch coal is positioning itself to export coal into Eastern European countries, Mr. Snavely responded that Kentucky coal will be transported down the Ohio River where it will be blended with Illinois coal. Mr. Snavely explained that other countries are secure with their energy supply. China's response to energy security is to diversify its energy sources. The United States on the other hand is fighting to promote more environmental security with new Environmental Protection Agency (EPA) initiatives daily. This is resulting in increased electricity prices. Mr. Snavely explained that states with greater environmental regulations have the highest rates. In terms of environmental justice, the increased environmental regulation affects the nation's poor much more than mining activities affect the poor.

In response to concerns with over transportation issues such as waterways, locks, and dams and

whether Kentucky's infrastructure can handle the doubling of exports, Mr. Snavely responded that railways can handle the demand but the river ports cannot handle the increased demand for coal.

In response to a question about foreign investors looking for companies in Kentucky, Mr. Dupree noted that Alpha Natural Resources has an office in India where there is demand for metallurgical coal. Mr. Snavely noted that Australia, Indonesia, and South Africa are large producers of metallurgical coal as well. When the buyers of metallurgical coal lose one of those big three suppliers the United States moves in to displace them. In response to a question about whether India is looking at investment in the United States, Mr. Snavely replied that Arch Coal has received interest in its coal reserves.

In response to a question about countries finding coal supplies in Kentucky, Mr. Bissett, executive director of the Kentucky Coal Association, stated that an Indian company has made inquiries to the Kentucky Coal Association about where to purchase coal. Mr. Bissett furthered that the interest in Kentucky coal by other countries underlies the fact that there is no question whether Kentucky will mine coal, but there is a question about whether it will be burned in the United States.

In response to a question about where Kentucky coal goes, Mr. Snavely explained that coal mined in Kentucky is often exported to southeastern states for steam power markets. In response to a question about the cost of Kentucky steam power quality coal, Mr. Snavely noted that the coal is being sold at \$200 per ton.

In response to a remark about the federal government wanting to stop the use of coal by making permitting more difficult, Mr. Snavely responded that it is true. Federal regulation is the biggest threat to the industry, but it is not the only threat the coal industry is facing. A new generation of employees, water quality issues, and environmental permitting also negatively affect the industry. The United States Army Corps of Engineers and the National Point Source Discharge Permit (NPDES) issued under the Clean Water Act present more problems. These new environmental requirements force industry to produce surface water runoff cleaner than drinking water, and the new conductivity regulations that affect only the Appalachian area are targeted to kill the industry.

All materials from the meeting are on file with the LRC Library. There being no further business the meeting adjourned at approximately 11:45 am.

INTERIMJOINTCOMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 5th Meeting of the 2011 Interim October 6, 2011

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, October 6, 2011, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Brandon Smith, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senators Joe Bowen, Ernie Harris, Bob Leeper, Dorsey Ridley, Johnny Ray Turner, and Robin L. Webb; Representatives Stan Lee, Reginald Meeks, Tim Moore, Marie Rader, John Short, Kevin Sinnette, Fitz Steele, Jim Stewart III, and Jill York.

Guests: Commissioner Bruce Scott, Department for Environmental Protection; Bill Bissett, Kentucky Coal Association; Lloyd Cress, Kentucky Coal Association.

<u>LRC Staff:</u> Stefan Kasacavage, Biff Baker, and Kelly Blevins.

Update on water quality regulations relating to coal mining

Commissioner Bruce Scott, of Department Environmental Protection (DEP), discussed new developments with six different water quality regulations that impact the coal mining industry Kentucky. House Bill 385 of the 2011 General Assembly authorized DEP to create a Kentucky wastewater lab certification program and to develop regulations for the certification of laboratories performing analysis for wastewater, subject to Clean Water Act Section 402 or NPDES permits. The Kentucky antidegredation implementation procedures have been stalled by the UnitedStatesEnvironmentalProtection Agency (USEPA), but the Cabinet is expecting that new regulations may be approved in October 2011. Commissioner Scott testified that the USEPA has announced that it has been in the process of revising the Federal Water Quality Standards regulations for the first time since 1983. He said the USEPA has verbally indicated that it will continue to recognize both the parameter by parameter approach for determining regulatory scope used by some states as well as the water body approach that Kentucky uses.

The USEPA issued Proposed Guidance on Identifying Waters of the United States on April 27, 2011, which is to be used primarily in USEPA's

oversight of the Clean Water Act 402 and 404 matters, and indicated intent to finalize the guidance in the near future. The USEPA has also indicated that revisions will be made to the federal NPDES regulations, including proposed changes to the application requirements, fact sheet requirements, reasonable potential procedures, and interim objection procedures. All of these proposed changes relate to Kentucky's ongoing conflicts with USEPA regarding the permitting of coal mining operations. Commissioner Scott concluded by discussing the Final Guidance on Surface Coal Mining in Appalachia that had been issued by USEPA on July 21, 2011.

In response to questions by Chairman Gooch, Commissioner Scott responded that the Environmental Council of the States' (ECOS) Resolution says that under current law, if USEPA makes an objection to a permit, the courts have determined that the objection is not a final agency determination by the federal government, and thus not subject to judicial recourse by any interested party. Also, when USEPA makes an objection, it is under no time limits and can hold the permit indefinitely. The ECOS Resolution and Governor Beshear both encourage change in the oversight process because they feel that there is not sufficient due process at this time.

Commissioner Scott responded to a question by Senator Harris regarding antidegredation procedure, explaining that every effort should be made to keep relevant dissolved contaminant levels at 0.5 mg/L, but the concern is that USEPA may make a change to those standards. He noted that this will affect anyone with a permit, which could include farmers.

Senator Webb noted that Congressional and state legislative action needs to take place to remedy the situation and encouraged members and citizens of the Commonwealth to call on their Congressional delegates.

Representative Lee expressed concern that representatives of the USEPA have not attended committee meetings, and Chairman Gooch stated that they have been invited to testify before the committee on several occasions but have declined.

Industry perspectives on latest environmental regulations impacting coal mining

Mr. Lloyd Cress, General Counsel, Kentucky Coal Association (KCA), updated the committee on two pieces of litigation that KCA has filed. One is a challenge to the Memorandum of Agreement between the United States Army Corps of Engineers and the USEPA for Clean Water Act Section 404 permit procedures. The case is proceeding and was the subject of

oral argument in the Federal District Court for the District of Columbia on September 16, 2011. The judge originally expressed his opinion that USEPA had exceeded its authority and that he would rule within thirty days. Mr. Cress explained that the second piece of litigation, which contested the USEPA's Interim Guidance on Surface Coal Mining in Appalachia of April 1, 2010, has been delayed by the USEPA's filing of the Final Guidance on July 21, 2011.

In response to a question by Chairman Gooch, Mr. Cress noted that the USEPA must conduct hearings if a state objects to a filing, but there are no timeframes in place. The state requested 21 hearings in December of 2010, but no hearings have been scheduled.

Mr. Cress discussed the July 21, 2011 Final Guidance on Surface Coal Mining in Appalachia, which differed substantially from the previously proposed guidance and presented fresh obstacles for industry as new mining permits are pursued. The July 21, 2011 Final Guidance changed the numeric standard for conductivity, allowed states to use numeric effluent limitations for certain common constituents of Appalachian surface coal mining discharges instead of numeric conductivity standards, and introduced the concept of "offsets," which allows a discharger to meet a water quality-based effluent limitation standard by utilizing offsets from another source that is contributing the pollutant of concern in the area. Mr. Cress noted that USEPA filed one objection letter that applied to 19 facilities rather than individually addressing the deficiencies on a permit by permit basis, using such terms as "in some cases" and "in some permits a problem exists." He stated that as a permit applicant it is impossible to know which deficiencies apply to your individual permit. Section 402 of the Clean Water Act calls for an individual review of each permit.

Mr. Bill Bissett, President, KCA, noted that it is important to remember that since the April 1, 2010 issuance of the Interim Guidance on Surface Coal Mining in Appalachia from USEPA Administrator Lisa Jackson, no eastern Kentucky surface mine has received an individual permit. He explained that the impact of 19 facilities receiving USEPA objections to their permit applications would be the loss of \$123 million in severance tax, 125 million tons of coal that will not be mined, and most importantly, 4,000 direct and indirect Kentucky coal jobs that will either be laid off or not hired. The ripple effect to the economy of Kentucky is of great concern.

Meeting materials are on file with the LRC Library. There being

no further business, the meeting was adjourned at approximately 2:45 PM.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 4th Meeting of the 2011 Interim September 28, 2011

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on State Government was held on Wednesday, September 28, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll

Present were:

Senator Members: Damon Thayer, Co-Chair; Representative Mike Cherry, Co-Chair; Senators Walter Blevins Jr., Jimmy Higdon, and Alice Forgy Kerr; Representatives Dwight Butler, Larry Clark, Leslie Combs, Will Coursey, Joseph Fischer, Danny Ford, Derrick Graham, Mike Harmon, Melvin Henley, Martha Jane King, Jimmie Lee, Mary Lou Marzian, Brad Montell, Lonnie Napier, Darryl Owens, Tanya Pullin, Tom Riner, Carl Rollins II, Steven Rudy, John Will Stacy, Tommy Thompson, John Tilley, Tommy Turner, Jim Wayne, and Brent

Guests: Representative Arnold Simpson; Anthony Wilhoit and John Schaaf, Kentucky Legislative Ethics Commission; Fred Nelson, Joe Cowles, and Dinah Bevington, Personnel Cabinet; William Thielen, Kentucky Retirement Systems; and Travis Powell, Finance and Administration Cabinet.

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

Approval of Minutes

The minutes of the August 24 meeting were approved without objection, upon motion by Representative Rudy.

Recognition of Fallen Firefighters

Representative Pullin said she had attended a service today at the Kentucky Fallen Firefighter Memorial in Frankfort. She encouraged her colleagues to attend next year and then read the names of firefighters who had given their lives in the line of duty this year in Kentucky.

Recommended Changes to the Kentucky Code of Legislative Ethics

Anthony Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, and John Schaaf, Counsel, presented the Commission's recommended changes to the Kentucky Code of Legislative Ethics,

as reported to the Legislative Research Commission on August 16, 2011. As indicated in the cover letter included in the report, the recommendations were first submitted to the LRC in October 2009.

When Senator Thayer asked how Kentucky's legislative ethics law compares with other states, Judge Wilhoit said that Kentucky is nationally recognized as having one of the best ethics laws in the country. The ethics legislation introduced in the U. S. Senate by then-Senator Obama was modeled on Kentucky's law. It was also used as a model when the House Office of Congressional Ethics was created. He said he was called to testify in both instances. Later in the meeting, he said that the Commission could not be happier with the cooperation it receives from the leadership and members of the Kentucky General Assembly, which helps make Kentucky's law as good as it is.

Senator Thayer noted that the Executive Branch Ethics Commission was invited to attend today but declined. It is not ready to present recommendations but may possibly be on the agenda for the Committee's October meeting.

The recommendations of the Legislative Ethics Commission and key discussion, if any, are summarized as follows.

<u>Recommendation #1</u> – Repeal the provision allowing each lobbyist and employer to spend up to \$100 annually on food and beverages for each legislator and his or her immediate family. Judge Wilhoit said that in 17 years employers of lobbyists have spent \$5,327.00 for food and beverages for individual legislators; the total spent by lobbyists in 17 years was \$1,518.00. This provision has caused administrative problems because employers/lobbyists often fail to provide legislators with the required 10-day notice of the spending. Poor public perception is an issue to consider.

Recommendation #2 – Prohibit lobbyists and their employers from paying for out-of-state travel, food, or lodging expenses for members of the General Assembly or candidates. As stated in the report, current law permits an individual legislator, with the approval of the Senate President or House Speaker, to accept transportation, food, beverages, and lodging for an out-of-state event. Judge Wilhoit said this provision is not often utilized but has the potential to cause problems.

Representative Clark questioned whether this recommendation may go too far, since legislators are often invited as guest speakers at conferences of out-of-state private sector organizations.

Judge Wilhoit said it would not apply to organizations such as the Southern Legislative Conference, National Conference of State Legislatures, or the American Legislative Exchange Council. The Commission is making the recommendation for the sake of appearances and to prevent problems from occurring in the future. Senator Thayer suggested that the required reporting for this type of activity serves as a "self-policing" agent which may preclude the necessity to change the law.

When asked by Representative Harmon, Judge Wilhoit said the proposed prohibition would not apply to reimbursement of out-of-state travel expenses related to an individual's duties as an employee of a company that employs lobbyists.

Answering a question from Representative Lee, Judge Wilhoit said the recommendation would not prohibit payment of out-of-state travel expenses for the purpose of accepting a national award from an organization that does not employ lobbyists even though some of its members do employ lobbyists.

Recommendation #3 – Define the term "in-state" so that areas contiguous to Kentucky, such as Cincinnati, are included in the definition. Judge Wilhoit explained that legislators must have permission from either the House Speaker or Senate President to attend functions outside the Kentucky border and that this recommendation would cut down on paperwork.

Recommendation #4 – Treat candidates in the same manner as legislators by limiting the interaction between lobbyists and candidates who have filed to run for election to the Kentucky General Assembly.

Recommendation #5 - Prohibit employers of lobbyists and political action committees from making a campaign contribution to a legislative candidate or a legislator during a regular session of the General Assembly. Mr. Schaaf said this measure is designed mainly to protect members of the General Assembly from poor public perception and the type of legal problems that have occurred in other states as a result of the close proximity between contributions and casting of votes during a legislative session. Upon conclusion of a session and for the remainder of the campaign season there would be no prohibition, except on lobbyists. During a regular session there is no prohibition on raising campaign money from anyone else other than a PAC or employer of a lobbyist.

When asked by Representative Pullinlater in the meeting, Judge Wilhoit confirmed that this recommendation is intended to address only regular and

not special sessions.

Representative Marzian expressed concern about public perception with regard to contributions received immediately before a legislative session begins. Judge Wilhoit said the Commission had looked at that issue but decided to limit the recommendation to "during a regular session" because of uncertainty about the appropriate number of pre-session days to specify.

Recommendation #6 – Prohibit lobbyists from directly soliciting contributions for an election campaign of a legislator or legislative candidate. Mr. Schaaf said this appears to have been intended in the original 1993 ethics law, but the language was tied to a campaign finance statute which has changed since then and appears to no longer apply to legislative campaigns. Lobbyists are already prohibited from bringing their own or someone else's contribution.

When asked by Representative Wayne, Mr. Schaaf said this recommendation would not apply to caucus PACs, which are actually caucus campaign committees that are created separately in the law. Representative Wayne suggested that, since funding and influence of these groups is growing, the Commission should examine this area and issue guidelines regarding use of caucus campaign funds. Mr. Schaaf agreed that this is worth looking into. He noted, too, that the Commission rendered an opinion a few years ago that a lobbyist should not contribute to a caucus campaign committee.

Recommendation #7 – Prohibit the spouse of a legislator from being employed as a lobbyist. Mr. Schaaf said the Commission thought this an opportune time to raise this issue in order to prevent it from becoming a problem in the future.

Recommendation #8 – Amend KRS 6.807, governing the filing of updated registration forms by lobbyists and their employers, to add that a form sent through the U. S. Postal Service or another recognized mail carrier shall be timely filed if it is postmarked by the mail carrier by the last day for filing with the Commission. Mr. Schaaf noted that Recommendations 8, 9, 10, and 11 are "housekeeping" measures.

<u>Recommendation #9</u> – Delete the language in KRS 6.821 that requires a lobbyist to list expenditures "whether or not reimbursed" by an employer.

<u>Recommendation #10</u> – Delete the language in KRS 6.611(22)(a)2. referring to "a legislative liaison."

Recommendation #11 – Clarify the definition of "employer" in KRS 6.611(12) to ensure that the proper employer of a lobbyist registers with the Commission.

<u>Recommendation #12</u> – Prohibit

any mass mailing by a legislator at public expense for 60 days prior to an election, as provided in the Commission's guidelines for use of official legislative stationery. Mr. Schaaf suggested that if this recommendation is drafted in a bill, it should specify "60 days prior to a general election." He said most regular sessions end less than 60 days prior to a primary election, and legislators usually want to send out updates to constituents at the end of a regular session.

Recommendation #13 – Require ethics training for legislative staff and change the Commission's Current Issues Seminar from three hours to two hours. Judge Wilhoit said the Commission feels that it would also be helpful to provide training to LRC staff

Recommendation #14 – Authorize the Commission to dismiss a complaint without prejudice if the complaint or preliminary inquiry is publicly disclosed by the complainant, or the complainant comments publicly about the complaint. Mr. Schaaf pointed out that the complainant would have the option of refiling a complaint that was dismissed.

Senator Thayer asked what action the Commission can take regarding frivolous or politically motivated complaints. Judge Wilhoit explained that knowingly filing a false complaint is a Class A misdemeanor but is difficult to prove because investigation usually reveals a "speck" of truth in what is alleged. It is also a problem for the Commission that it is not permitted to investigate a matter that is brought to its attention until a complaint is actually filed. Recommendations #14 and #15 would strengthen the Commission's process for handling complaints.

Recommendation #15 – Delete the requirement that a complaint be filed prior to a Commission investigation, but add language to clarify that "the Commission shall have no jurisdiction in the absence of a complaint to impose any penalty, except administrative penalties listed in KRS 6.807 and 6.821." (See discussion of Recommendation #14.)

Recommendation #16 – Restrict the political activity of the staff of the Legislative Ethics Commission, as was originally intended by the General Assembly in the ethics code. When asked by Senator Thayer, Judge Wilhoit said the Commission has four full-time staff, a part-time secretary, a part-time prosecutor, and two part-time investigators, and that the Commission's current employees have not been active politically.

Mr. Schaaf said the Commission's monthly newsletter publishes information about what is happening nationally and that each month finds

a number of states to be having problems in the legislative arena. He briefly discussed cases involving ethics violations in Alabama, Georgia, Massachusetts, Virginia, and Maryland. Mr. Schaaf closed by commending the Kentucky legislature for having a good ethics law. Representative Pullin said that the General Assembly is well served by a helpful and willing Commission staff. Senator Higdon also commended the Commission staff. Senator Thayer thanked the speakers and proceeded to the next item on the agenda.

Kentucky Employees Health Plan (KEHP)

Guest speakers from the Personnel Cabinet Department of Employee Insurance were Fred Nelson, Commissioner, and Joe Cowles, General Counsel. They gave an overview of KEHP and the 2012 plan year, accompanied by a slide presentation. Key elements of the discussion are summarized as follows.

Cowles said that the Mr. employer contribution for plan year 2012 increased by two percent, while health care costs for employers are forecast to increase 8.5 percent. Plan design was limited in order to maintain grandfathered status. The plan includes state-mandated coverage for autism, which will have a continuing cost impact. Goals for 2012 include: a low-cost plan option, with a zero dollar plan for singles; offering the same four plans; no changes to the Commonwealth Standard Plan; consumer-driven health care options; premiums competitive with other states; a benefits analyzer; preventative care at little or no cost; health and wellness options; benefits comparable to 2011; a lower-cost PPO option; and maintaining medical benefits and contribution increases within grandfathered limits. Aon Hewitt has replaced PricewaterhouseCoopers (PwC) as KEHP's actuary-consultant and has provided a wealth of knowledge regarding how competitive Kentucky is relative to other states.

Mr. Cowles discussed in detail the criteria for grandfathered health plans and the reasons for maintaining grandfathered status after enactment of the new federal health care reform law [Affordable Care Act] on March 23, 2010. The cost impact of losing grandfathered status would have been approximately \$15-\$25 million, for things such as reporting to the U.S. Department of Health and Human Services (HHS), payment of clinical trials, a modified appeal process, and coverage of some preventative services at 100 percent. It is possible that KEHP could lose grandfathered status in 2013 or 2014.

Responding to a question from

Representative Cherry, Mr. Cowles and Mr. Nelson explained that, as a grandfathered plan, KEHP was able in 2011 to raise some pharmacy copays by as much as \$10.00 and medical copays by \$5.00, based on the rate of medical inflation, but this left no room to increase copays in 2012.

Representative Montell asked about the effect of increasing the employer contribution by two percent, when an 8.5 percent increase is predicted in employer health care costs. Mr. Nelson said that employee contributions will also increase by two percent in 2012, and some cost savings will result from an increase in deductibles and out-of-pocket maximums. In addition, KEHP will make use of early retiree reinsurance money that was received from the federal government in 2011.

Responding to questions from Representative Montell regarding KEHP contracts and audits, Mr. Cowles and Mr. Nelson explained that master agreements can be in force for more than five years, while personal service contracts are for five years or less. Contracts are reviewed and renewed on an annual basis, with the assistance of Aon Hewitt. In 2009 and 2010, former actuary PwC analyzed the performance of ActiveHealth, the utilization and disease management vendorforHumana, andActiveHealth's contract was renewed, based on PwC's recommendation. Software programs provided by KEHP's data aggregator, Thomson Reuters, have examined Humana and Express Scripts (ESI) and found both to have very low error rates. In addition, the state Auditor of Public Accounts is currently on site to conduct the fiscal year audit.

Representative Owens said his Humana Visa card was declined on three occasions when he tried to use it. Although the problems were resolved after contacting the Personnel Cabinet, he is concerned that he had no prior notice and that this may be causing difficulties for other health plan members. Mr. Nelson said this can happen for a number of reasons—for example, if a card is swiped on a date different than the date of service. He pointed out that Humana is required to send notification if a card is suspended and indicated that he would follow up on this issue. Senator Higdon later said he had also experienced problems with his Humana Visa card being declined.

Representative Rollins questioned whether it is fair to local pharmacies—and perhaps a conflict of interest—that ESI owns the pharmacy mail order company. Mr. Cowles said he does not feel it is a conflict of interest or discriminatory. He explained that retail pharmacies also may offer a 90-day supply of maintenance drugs at the lower mail order cost, although not

all pharmacies participate. Answering another question from Representative Rollins, Mr. Nelson explained that ESI proposed a program to KEHP that would require members to choose either a local pharmacy or home delivery in order to obtain a 90-day supply; however, KEHP did not adopt that program. Senator Higdon later said he, too, had received inquiries about the 90-day maintenance drug option

Representative Graham expressed concern and dissatisfaction about Humana's announcement a few months ago that all durable medical equipment would be provided by a nationally known company outside Kentucky. He said this decision hurts a small business located in Frankfort, as well as others throughout the state. He was also told that costs are higher as a result, and he asked whether anything can be done to remedy the situation. Mr. Nelson said that the Personnel Cabinet had received complaints from some plan members and that his office would investigate, consult with Humana, and follow up with Representative Graham. Mr. Cowles said it is his understanding that Humana scaled down its national vendor network as a cost-saving mechanism. He added that the Personnel Cabinet does not normally intervene in contractual provider matters. Representative Graham urged that this issue be addressed as a priority before a new contract is awarded for durable medical equipment.

Mr. Nelson discussed premium rates and benefits for 2012 and the open enrollment process. He noted that employee contributions will increase by two percent; however, the Standard PPO single plan remains at a zero dollar contribution. Two-thirds of members are currently enrolled in Optimum PPO, the most expensive plan. Copays will not increase, but there will be relatively modest changes in deductibles and maximum out-of-pocket limits in the Maximum Choice, Capitol Choice, and Optimum PPO plans. A new benefit offering is the waiver Dental/Vision-Only HRA reimbursement account), which provides \$175/month in an HRA to be used for qualifying vision and dental claims. Federal law will allow members who may be covered under a spouse's HSA (health savings account) plan to participate in this HRA. Open enrollment for 2012 will be passive; that is, action is needed only if members need to change their coverage, enroll in a flexible spending account, or elect the new waiver HRA. The benefits analyzer will be in paper format and sent to KEHP members by

Mr. Cowles explained the Early Retiree Reinsurance Program (ERRP),

a federal program authorized by the Affordable Care Act, which establishes a \$5 billion reinsurance fund to help employers with the cost of certain early retiree medical claims. He said that KEHP members include thousands of early retirees of KTRS (Kentucky Teachers Retirement System) and KRS (Kentucky Retirement Systems) and that KEHP pays \$1.33 in claims for every dollar of premiums received from KTRS and KRS. If a sponsor chooses to use reimbursements to reduce plan participants' costs, it must do so for all plan participants and not just for early retirees. Kentucky is one of approximately 2,500 governmental organizations, or organizations representing governmental employees, that received ERRP funds in 2010. participating Notable Kentucky employers include Humana, Ashland, Inc., Brown-Forman, E.ON US, Lexmark, University of Kentucky, University of Louisville, and Yum!. Responding to a question from Representative Cherry, Mr. Cowles said that application for the funds may be made once each quarter. KEHP currently has \$63.4 million that will be used to the extent necessary in 2012, and all excess funds received will be used in plan year 2013. When Representative Cherry expressed concern that the funds could be depleted before 2013, Mr. Cowles said that a great deal of the \$63.4 million will be used to reduce and offset health benefit costs in 2012. Approximately \$2 billion remains in the program, and the Personnel Cabinet is continuing to apply for, and expects to receive, additional funds. When Senator Thayer later inquired, Mr. Cowles and Mr. Nelson said they were not aware of any federal money that Kentucky received after passage of the Affordable Care Act other than through the ERRP program. They confirmed that KEHP would be facing significant challenges without an influx of additional ERRP funds to help combat medical inflation and the budget crisis.

An overview of KEHP wellness initiatives followed. The Virgin HealthMiles program will end on December 31, 2011. Humana Vitality, a more comprehensive, data-driven, verifiable wellness program, is being considered for the 2012 plan year, but a final decision has not yet been made.

Answering questions from Senator Thayer, Mr. Nelson said that open enrollment is passive this year due to the modest change in benefits and rates, and it is felt that the majority of members will probably not make changes. The benefits analyzer will be on paper rather than online in order to encourage greater participation. With open enrollment being passive, fewer people would probably make use of an

online analyzer.

Representative Clark expressed concern about ESI's announcement that Walgreen's will be excluded as a provider next year and the disruption that this will cause for many state employees. Mr. Cowles said that the Personnel Cabinet is concerned about the impact on plan members, has contacted ESI, and is aggressively pursuing the issue, which is a provider dispute at the national level. He said Aon-Hewitt foresees that there will eventually be an agreement because of ESI's and Walgreen's very strong presence in Kentucky. In the meantime, KEHP is postponing notification to plan members in hopes that the dispute will be resolved. When Representative Lee pointed out that Walgreen's is the only 24-hour pharmacy, Mr. Cowles said that this is probably the biggest concern and that ESI is contacting other pharmacies regarding extending their hours. Representative Lee also asked Mr. Nelson and Mr. Cowles to find out whether there is provision for obtaining prescribed medications when pharmacy prior authorization (PA) is not available from ESI after hours or weekends.

Representative Riner said that members of the Task Force on Childhood Obesity would like to have input regarding the new comprehensive wellness program. Mr. Nelson suggested that they contact him personally as early as possible, although suggestions and new ideas are welcome at any time. Representative Thompson lauded the KEHP program for the rates and benefits to be offered in 2012.

Senator Thayer thanked Mr. Nelson and Mr. Cowles for their presentation. He also lauded the Cabinet for its work in keeping the increases low for 2012 but expressed serious concern about the potential for significant increases in employer and employee contributions in the near future as health care costs continue to grow and one-time federal monies potentially cease.

Administrative Regulation Review

The agenda included review of the following administrative regulations for the indicated agencies:

PERSONNEL CABINET: 101 KAR 2:095&E (Classified service administrative regulations); 101 KAR 2:102&E (Classified leave administrative regulations); and 101 KAR 3:015&E (Leave administrative regulations for the unclassified service).

FINANCE AND ADMINISTRATION CABINET: 200 KAR 21:010 (Procedure for prequalification of underwriters and bond counsel for state bond issues); and 200 KAR 21:031 (Repeal of 200

KAR 21:030).

<u>KENTUCKY RETIREMENT</u> <u>SYSTEMS:</u> 105 KAR 1:140 (Employer's administrative duties); and 105 KAR 1:190 (Qualified domestic relations orders).

Senator Thayer recognized the agency representatives: Dinah Bevington, Executive Director, Office of Legal Services, Personnel Cabinet; Travis Powell, Deputy General Counsel, Finance and Administration Cabinet; and William Thielen, Interim Executive Director, Kentucky Retirement Systems. Because of lack of a quorum and shortness of time, the Committee reviewed the regulations as a block. There being no questions or comments, Senator Thayer thanked Ms. Bevington, Mr. Powell, and Mr. Thielen, and noted that the review had been duly completed.

Subcommittee Report and Adjournment

The Subcommittee Report of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs was postponed until the next meeting.

Business concluded, and the meeting was adjourned at 3:20 p.m.

INTERIMJOINT COMMITTEE ON STATE GOVERNMENT

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

Minutes of the 3rd Meeting Of the 2011 Interim August 23, 2011

Call to Order and Roll Call

The 3rd meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, August 23, 2011, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Darryl T. Owens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Darryl T. Owens, Co-Chair; Senators Walter Blevins Jr., Jimmy Higdon, Alice Forgy Kerr, Gerald A. Neal, R.J. Palmer II, John Schickel, and Dan "Malano" Seum; Representatives Kevin D. Bratcher, Mike Cherry, Larry Clark, James R. Comer Jr., Joseph M. Fischer, Derrick Graham, Mike Harmon, Melvin B. Henley, Mary Lou Marzian, and John Will Stacy.

Guests: Sarah M. Jackson, Executive Director, Emily Dennis, General Counsel, Kentucky Registry of Election Finance; Dale Ho, Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc.; LaDonna H. Thompson, Commissioner, Craig Thatcher, IT Branch Manager, Kentucky Department of Corrections.

<u>LRC Staff:</u> Judy Fritz, Karen Powell, Greg Woosley, Bill Van Arsdall, and Terisa Roland.

Approval of Minutes

The minutes of the July 26, 2011 meeting were approved without objection, upon motion by Representative Henley and second by Senator Thayer.

Trending Now-Top Ten Current Campaign Finance Questions

Sarah Jackson and Emily Dennis from the Registry of Election Finance presented the top ten campaign finance questions heard by the Registry. Some of the issues discussed included whether campaign finance regulations apply to funds spent to get an issue on the ballot, whether candidates and committees can use raffles to raise funds or solicit contributions, whether sitting legislators can retain funds raised for one district seat if that district seat number is changed by redistricting, whether Kentucky candidates can accept funds from a federally registered political action committee without subjecting the committee to Kentucky reporting requirements, whether judicial candidates can solicit contributions, and whether corporations can make contributions to candidates as a result of the United States Supreme Court ruling in the Citizens United case. Copies of the presentation were distributed to members, and a copy is available in the LRC library.

Several members of the Task Force posed questions and voiced their opinions and concerns on the Registry's presentation.

Counting Prison Populations for Redistricting

Dale Ho, Assistant Counsel of the NAACP Legal Defense and Educational Fund, discussed how and where prison populations are counted by the United States Census Bureau and how those populations are considered in the redistricting process. Mr. Ho discussed model legislation on reallocating prison populations from the facilities where they are housed to the prisoners' last known residential addresses, and he advised the where similar legislation has been adopted. He offered demographic examples of several of Kentucky's counties and testified as to how the prison population in those counties can affect relative representation in a redistricting plan, particularly at the local level. Mr. Ho distributed information folders to the members, and a copy is available in the LRC library.

LaDonna Thompson, Commissioner, and Craig Thatcher, IT Branch Manager, of the Kentucky Department of Corrections, testified as to the ability of the Department to report the last known residential address to the General Assembly if a process of prisoner reallocation were adopted as part of future redistricting processes. Commissioner Thompson and Mr. Thatcher provided members with a spreadsheet showing prison population by county of conviction and said other reports could be available to better understand the location and prior residence of Kentucky's prison population.

The members asked questions and voiced their concerns on how the prison population is currently allocated in Kentucky and other states and how a changed system of allocation might alter the redistricting process. Some members inquired as to how prisoners from other states should be allocated. how prisoners differ from students or members of the military who might also be present in a location on the date the census is conducted but not have an intent to stay permanently, and how this issue might be similar or different to how homeless persons are counted – with a comparison to how these persons register to vote, an issue that was discussed in the July meeting of the Task Force.

Business concluded, and the meeting adjourned at 2:30 p.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

Minutes of the 4th Meeting of the 2011 Interim September 27, 2011

Call to Order and Roll Call

The 4th meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, September 27, 2011, at 1:00 PM, in Room 171 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Darryl T. Owens, Co-Chair; Senators Jimmy Higdon, Alice Forgy Kerr, Gerald A. Neal, R.J. Palmer II, John Schickel, Dan "Malano" Seum, and Johnny Ray Turner; Representatives Kevin D Bratcher, Mike Cherry, James R. Comer Jr., Joseph M. Fischer, Derrick Graham, Mike Harmon, Melvin B. Henley, Mary Lou Marzian, and John Will Stacy.

<u>Guests:</u> Jennifer Bowser, Senior Fellow, National Conference of State Legislatures; Sarah Ball Johnson, Executive Director, Maryellen Allen, General Counsel, Kentucky State Board of Elections, and Elaine Walker, Secretary of State.

<u>LRC Staff:</u> Judy Fritz, Karen Powell, Greg Woosley, Bill Van Arsdall, and Terisa Roland.

Approval of Minutes

The minutes of the meeting of August 23, 2011, were approved without objection upon motion by Representative Owens, seconded by Representative Marzian.

Voter Identification – State Requirements and Legislative Update

Jennifer Bowser from the Conference National of State Legislatures discussed laws requiring voters to show identification when they arrive at the polls. She discussed the cost of enforcing these laws and the legal standards that the courts have established. Interest in the topic has been growing and that a number of states have recently enacted or proposed changes in their statutes. Ten years ago, 36 states had laws that did not require voters to show identification at the polls, and only 4 states required photographic identification. By contrast, in 2010 there were only 23 states that did not require identification. Two states have adopted "strict photo identification" standards, under which voters who cannot produce photo identification are allowed to cast provisional ballots that will be counted only if the voters can display photo identification within a reasonable time. During 2011, several states proposed or adopted changes to their voter identification laws. Proponents of tightening the requirements want to prevent voter fraud, while opponents express concern about restricting access to the ballot.

Ms. Bowser discussed the most common arguments used to challenge voter identification laws in court, and she described the requirements that courts have imposed when states strengthen their voter registration laws. Courts have said that photo identification must not require voters to spend money, must protect voters from undue burdens, and must be accompanied by voter outreach and education programs.

A copy of Ms. Bowser's PowerPoint presentation can be found in the Legislative Research Commission library.

Senator Thayer directed members' attention to Kentucky's statute and administrative regulation on voter identification. KRS 117.227 requires election officers to "confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card."

Representatives of the State Board of Elections and the Secretary of State were present at the meeting and responded to the members' questions about voter identification laws in Kentucky.

Representative Bratcher asked about the possibility of allowing voters to sign pledges stating that they do not possess photographic identification. Ms. Bowser responded that some states allow voters without photographs to sign affidavits.

Representative Fischer discussed the 2008 case of *Crawford v. Marion County Election Board*, in which the United States Supreme Court held that Indiana's photo identification statute was constitutional but acknowledged that certain groups of voters might have reason to challenge the law.

Representative Owens asked whether there is significant evidence that voter fraud exists. Ms. Bowser described what she called "a handful of cases" and said that voter impersonation is hard to prove. She said that part of the interest in voter identification laws comes from a public perception that fraud is occurring. There was discussion of Kentucky's experience with voter impersonation and the cost of imposing new identification requirements.

Senator Thayer called attention to an article in *State Legislatures* magazine describing the costs of voter identification laws in Georgia and Indiana, the two states that have adopted strict photo identification laws. Although the two states have roughly equal populations, the costs of the two programs are very different. Ms. Bowser mentioned an Internet article compiling various states' estimates of the costs associated with voter identification.

In response to a question from Representative Harmon, Ms. Bowser said that a few states allow their voters to register on the day of an election. The effect of these laws has not been widely studied.

Senator Seum asked about Kentucky's statute allowing poll workers to identify voters by personal acquaintance. There was a discussion of methods used to establish voter identity, including the listing of street addresses and penalties for poll workers who make false statements.

Representative Graham noted that the issue of voter registration has recently received a great deal of discussion, and he asked where the concern is coming from. Ms. Bowser pointed to a recent poll reporting that 80 percent of Americans view voter fraud as a serious problem. Senator Thayer said that protecting the integrity of elections is an important goal and that Kentucky should not become the target of persons seeking to unfairly influence the outcome of elections.

Representative Owens said that,

in the absence of more evidence about fraud and the misuse of the ballot, legislatures should be careful when adopting registration laws that can lead to suppression of the vote.

Senator Neal agreed that Kentucky should maximize the franchise while preventing voter fraud. He asked whether voter identification laws are adopted primarily to remove a public perception of fraud, and he discussed other methods of verification, including requirements that votes be accompanied by a paper trail.

Senator Schickel compared identification laws to a civics lesson that illustrates the seriousness of voting. Since identification is required when people acquire licenses and make various purchases, states can demonstrate that elections are important by requiring identification for voting as well.

Senator Kerr agreed, and she noted that there is bipartisan support for voter identification legislation. She said that stricter laws could reverse public doubts about the integrity of the voting system and might improve voter turnout

There was a discussion of state laws allowing early voting, mail-in ballots, and other measures intended to increase opportunities for voting.

Business concluded, and the meeting was adjourned at 2:30 p.m.

TASK FORCE ON THE PENAL CODE AND CONTROLLED SUBSTANCES ACT

Minutes of the 3rd Meeting of the 2011 Interim September 14, 2011

Call to Order and Roll Call

The 3rd meeting of the Task Force on the Penal Code and Controlled Substances Act was held on Wednesday, September 14, 2011, at 1:00 PM, in Room 171 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, the secretary called the roll, and a quorum was present.

Present were:

<u>Members:</u> Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; J. Michael Brown, Tom Handy, J. Guthrie True, and Tommy Turner.

Guests: Laurie Dungeon, Leigh Ann Hiatt and Jamie Ball, Administrative Office of the Courts; Commissioner LaDonna Thompson, Department of Corrections; Lauren-Brooke Eisen, Vera Institute of Justice Technical Assistance; Chris Cohron, Warren County Commonwealth's Attorney; Dan Albers, Jefferson County Attorney's Office; Gretchen Hunt, Kentucky Association of Sexual Assault Programs; Aundria Burkhart, Lexington-Fayette Urban County Police Department; Marissa Castellanos, Catholic Charities; Jan Gould, Kentucky Retail Federation; and Allyson Taylor, Attorney General's Office.

<u>LRC Staff:</u> Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., and Rebecca Crawley.

Representative Tilley congratulated Secretary J. Michael Brown, Justice and Public Safety Cabinet, for completing the prestigious Henry Toll Fellowship Program, and Jackie Steele, Laurel County Commonwealth's Attorney, for being recognized as the 2011 Commonwealth's Attorney of the Year.

HB 463 Implementation: Administrative Office of the Courts Update

Laurie Dudgeon, Executive Director, Administrative Office of the Courts, reported on implementation of 2011 RS HB 463 by the AOC, including computer system changes, adoption of 19 new forms, clerk and jailer training on bail and jail credit provisions of the law, and training for judges and circuit clerks. She said more fall colleges are planned to explain the provisions of HB 463. It is too early to fully assess the impact of HB 463, but during the first 90 days following implementation, pretrial releases have increased by two percent, arrests are down, and a new pretrial release risk assessment tool has been implemented. Pretrial release interviews take approximately 45 minutes each, and 1,300 persons classified as moderate risk have been interviewed. "Released on recognizance" has increased from 49 percent to 67 percent, and deferred prosecution has occurred in 34 cases. AOC needs 25 additional pretrial release officers to handle the increased workload. Initial problems included inconsistencies in bail and jail credits and what part of credits may apply to bail or fines. Mr. True said some judges are requiring a confession from persons applying for deferred prosecution which would be admissible in later proceedings, which he felt was not required by HB 463. Representative Tilley commented some of the problems need to be solved by the courts and not necessarily by legislation.

House Bill 463 Implementation: Department of Corrections Update

Commissioner LaDonna Thompson, Department of Corrections, reported the department worked diligently to meet the June 8, 2011 implementation date for HB 463 and is actively working on the January 1, 2012 mandates. She said 1,000 staff members have been trained on the validated risk assessment instrument, including probation and parole officers, additional training was

provided for jailers, county judgeexecutives, prosecutors, defense attorneys, and judicial staff. Thirtyfive new policies and four new or amended administrative regulations have been implemented. Practices now in place include compliance credit for parolees, a violation matrix for probationers, parole board hearings held 60 days prior to an inmate's parole eligibility date, extended placement of Class D felons in county jails, risk and needs assessments, and case planning. Fifty new parole officers have also been hired or will be hired soon. The Administrative Office of the Courts and the Department of Corrections have cooperated on data sharing and other issues of mutual interest.

Reintegration programs and training have been instituted and a Governor's Reentry Task Force was created. The department is working with AOC and the VERA Institute of Justice, and the Bureau of Justice Assistance for additional grant funding. The department is working on mandatory reentry supervision for January 1, 2012, and the use of the risk and needs assessment tool at the time of the presentence investigation in 2013. Challenges include increasing program availability that address criminogenic needs in facilities, lack of resources in communities across the state, and a public data website to be implemented in 2013. Mr. Handy commented on the success of outpatient versus inhouse treatment and that resources for substance abuse are presently available in some communities. In response to a question from Mr. Handy about how prosecutors and judges were made aware of available resources, Ms. Thompson said this information will be required to be in the presentence investigation report in 2013. Representative Tilley said existing mental health facilities, such as community mental health centers and Recovery Kentucky, are able to provide outpatient treatment and will be able to expand to meet the state's needs, particularly if provided with additional resources. Representative Hall, who attended the committee meeting, said Missouri's communitybased treatment program, which uses evidence-based practices, was very successful and the Pike County Jailer supported the Missouri program.

HB 463 Phase II implementation assistance: Vera Institute of Justice Technical Assistance for Implementation of HB 463

Lauren-Brooke Eisen, Center on Sentencing and Corrections,

Vera institute of Justice, reported the Administrative Office of the Courts and the Department of Corrections have been cooperating on implementation of the Phase II Bureau of Justice Assistance Grant. Ms. Eisen discussed the BJA requirements and Vera Institute's role in providing assistance and guidance and discussed implementation in other Phase II states, how the pass-through funding works, and the next steps to be taken. A Justice Reinvestment Initiative Working Group is being established and will be discussing policy options, reinvestmentstrategies, and developing an implementation plan. Secretary Brown commended the cooperation between the Administrative Office of the Courts and the Department of Corrections and suggested adding the Department of Public Advocacy, prosecutors, jailers, and local officials to the working group.

Commonwealth's Attorneys Updates

Chris Cohron, Warren County Commonwealth's Attorney, described training and discussions about implementation of House Bill 463 at the recent annual meeting of Commonwealth's Attorneys Association. One concern was that A, B, C, and D felonies use a onesize-fits-none parole eligibility of 15 percent for Class D felonies and 20 percent for all other felonies except violent offenses. Prosecutors would like to increase parole eligibility to 50 percent of sentence in most felonies, and they are considering a new Class E felony classification for minor felony offenses. The prosecutors are preparing a list of reasonable penal code reforms that will address parole eligibility, pretrial jail time credit, and other penalty issues. Another concern is the 20 percent increase in methamphetamine laboratories which prosecutors indicate could be successfully attacked by making pseudoephedrine a prescription drug as has been done in Oregon and Mississippi.

Jackie Steele, Laurel County Commonwealth Attorney, said public awareness meetings are being held statewide to explain the dangers of meth labs to children, families, law enforcement, and even garbage collectors who are finding meth labs in the trash. The meetings will also explain the need for making pseudoephedrine a prescription drug and acceptable, and that there are safe alternatives to pseudoephedrine that do not require a prescription. Mr. Cohron said the prosecutors also support new gang legislation that would validate gang membership, create a gang database maintained by the Kentucky State Police, create enhanced penalties for gang-related

crimes, and allow forfeiture of gang assets. Senator Jensen asked if the prosecutors received the Task Force's questionnaire and Mr. Cohron indicated the Prosecutor's Association is working on their response.

Mr. Handy indicated he supports Project UNITE, High Intensity Drug Trafficking Area (HIDTA), and other efforts at controlling pseudoephedrine as an effective method of reducing meth labs and their hazards. Judge-Executive Turner suggested looking at the problem on a county-bycounty basis. Mr. Cohron responded that studies show 80 percent of pseudoephedrine is diverted to methamphetamine manufacturing. Mr. Steele said the state's largest sales of pseudoephedrine occur at a drug store in Laurel County, and his efforts to control the flow met with no cooperation from the pharmacy in question. Secretary Brown suggested meth labs are mini-Chernobyl's and are a state issue.

Making Kentucky's Human Trafficking Law More Efficient and Effective

Gretchen Hunt, Training Coordinator, Kentucky Association Sexual Assault Programs, accompanied by Marissa Castellanos, Project Manager, Kentucky Rescue and Restore, Catholic Charities, and Detective Aundria Burkhart, Lexington-Fayette Urban County Government Police Department, discussed human trafficking in the United States. She said 14,000-17,000 persons are trafficked into the country each year, and 300,000 domestic minors are exploited each year for commercial sex or labor purposes. Ms. Hunt commented that human trafficking ties the illegal arms trade as the second largest and fastest growing criminal industry in the world.

Ms. Hunt said human traffickers use force, fraud, and coercion to support their trafficking efforts and described two typical cases, one involving sex trafficking and one involving labor trafficking. She said there were 69 confirmed cases of human trafficking in Kentucky and no prosecutions.

Marissa Castellanos discussed the Polaris Project, a national effort to combat human trafficking. Ms. Castellanos said police generally prosecute the victims instead of the traffickers, particularly in sex cases. Among the reforms she recommended were a safe harbor act for child victims to provide social services for them instead of prosecution. She recommended support for law enforcement, establishment of a human trafficking unit at the Department of Kentucky State Police, adoption of the IC3 incident report, RICOtype surveillance programs, asset forfeiture, and mandatory training for the Alcoholic Beverage Commission, peace officers, prosecutors, and judges. Other recommendations included a wage theft statute, mandatory restitution to victims, fines used to provide victim services, civil remedies for victims, and mandatory posters in restaurants and bars with victim hotlines prominently displayed.

Mr. True suggested the task force begin reviewing actual proposals for legislative changes for future meetings in lieu of further presentations about various issues.

The meeting adjourned at 3:00 p.m.

TRANSPORTATION INTERIM JOINT COMMITTEE HOUSE MEMBERS

Minutes of the 1st Meeting of the 2011 Interim September 6, 2011

Call to Order and Roll Call

The 1st meeting of the Transportation Interim Joint Committee House Members was held on Tuesday, September 6, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Hubert Collins, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Hubert Collins, Co-Chair; Representatives Linda Belcher, Leslie Combs, Tim Couch, David Floyd, Richard Henderson, Melvin B. Henley, Jimmie Lee, Donna Mayfield, Charles Miller, Terry Mills, Lonnie Napier, Rick G. Nelson, Tanya Pullin, Marie Rader, Steve Riggs, Steven Rudy, John Short, Arnold Simpson, Fitz Steele, Jim Stewart III, Tommy Turner, David Watkins, and Addia Wuchner.

Guests: From the Kentucky Transportation Cabinet: Hancock, Secretary, Tammy Branham, Executive Director, Office Budget and Fiscal Management, Ted Merryman, Interim Director, Office of Project Delivery and Preservation, Department of Highways, Zawacki, Commissioner, Paul Mauer, Administrative Coordinator, Department of Vehicle Regulation, Terry Barnes, Project Manager, Office of Information Technology, Steve Waddle, State Highway Engineer, Department of Highways; Brad Schneider, Henderson County Chamber of Commerce; Jody Wassmer, Owensboro President, Greater Chamber of Commerce; John Mahre, Paducah Chamber of Commerce.

<u>LRC Staff:</u> John Snyder, Brandon White, Dana Fugazzi, and Jennifer Beeler.

Road Fund Update (FY 2010-11 Closeout)

Tammy Branham, Executive

Director, Office of Budget and Fiscal Management discussed the state's road fund. She explained that motor fuels tax revenue grew 11.8 percent from 2010 to 2011, motor vehicle usage tax receipts had a growth rate of 14.7 percent, and other tax revenue grew by 2.8 percent. The total revenue of all the state taxes that go into the Road Fund in FY 2010 was \$1,206.6 million and in FY 2011 was \$1,338.8 million, which is an increase of 11 percent.

In response to Representative Collins, Ms. Branham stated that the motor vehicle usage tax credit for new cars in 2011 maxed out in August. She said there was not much room left in the cap at the beginning of the fiscal year, so the new car trade-in credit did not have much effect on usage tax receipts for the year.

In response to Representative Rudy, Secretary Hancock stated that using the surplus expenditure plan enabled \$67 million more to flow into the road plan. In response to Representative Collins, Ms. Branham stated that the surplus money is available because there is carry forward authority in the state construction account, and the budget requires the Cabinet to lapse any excess dollars to that account. Secretary Hancock added that the Cabinet is attempting to stick with the road plan as it was enacted in the 2010 session. There were certain priorities given to specific projects, and the Cabinet is following through with those priorities.

Update on the Status of the Proposed I-69 Project Through Western Kentucky

Ted Merryman, Interim Director, Office of Project Delivery and Preservation stated that in 1991 federal legislation established corridor 18 as a high priority corridor on the highway system. Corridor 18 was named a route between Indianapolis and Memphis via Evansville. Since then, legislation has extended corridor 18 to Canada to the Texas/Mexico border and designated corridor 18 as Interstate 69.

He stated that in 1999 there were 32 Sections of Independent Utility (SIUs) established through the entire national route of I-69. There are three SIUs in Kentucky. The entire route through Kentucky will be approximately 160 miles with about 150 miles planned along existing parkways and interstates.

Mr. Merryman stated that an agreement was reached between the Kentucky Transportation Cabinet and Federal Highways to maximize the use of the Western Kentucky Parkway and existing I-24. The section from Dawson Springs to Calvert City will be signed as I-69 before January 1, 2012. The agreement consists of the improvements such as ramp tapers, a new interchange, bridge clearance,

guard rails, and safety improvements on bridge rails.

In response to Representative Collins, Secretary Hancock stated that when the I-69 project first started, the Cabinet looked at having a new route as an alternative to using existing roadways. The Cabinet decided that, since the parkways were already there and were virtually interstate facilities already, it would use the existing roadways to run I-69. Even with using the existing roadways, there are some minor improvements that need to be made, and all of the minor improvements along 150 miles worth of roadways adds up to approximately \$200 million.

In response to Representative Collins, Secretary Hancock stated that all projects are designed to be federal funding eligible. He said that the Cabinet intends to work the projects into road plans and innovative financing opportunities as the case permits.

In response to Representative Collins, Secretary Hancock stated that as of the end of the federal fiscal year (September 30, 2011) the state will no longer have federal aide to continue the federal highway trust fund, unless Congress takes aggressive action to extend current legislation or enact a new highway authorization.

In response to Representative Rudy, Jody Wassmer, President, Greater Owensboro Chamber of Commerce stated that Indiana has been a leader in moving I-69 forward. He stated there are currently 60 miles of new construction underway rapidly building the section from Evansville north to Craine, Indiana. The stretch from Indianapolis to Michigan I-69 is already open.

John Mahre, West Kentucky Regional Chamber Alliance added that currently Tennessee has projects underway just south of the Kentucky line near Union City. Mississippi has completed its portion of I-69 south of Memphis to the Mississippi River. There is some additional work that is just getting started in Arkansas.

Mr. Wassmer discussed how in 2007 twelve chambers of commerce in 10 northwest Kentucky counties came together to form the C-LINK alliance. At that point, this alliance realized that I-69 was the largest opportunity in western Kentucky to grow the economic development in the future.

Mr. Mahre stated that I-69 is a top priority project and that the alliance is in complete support of the project to bring revenue to western Kentucky. This project is important to Kentucky for the access to economic opportunity. Parkways are a big deal to Kentuckians, but to those outside the state who are bringing jobs and economic growth, parkways are an

unknown term. To have an interstate along these areas will allow out-of-state companies to show interest in these rural areas.

Brad Schneider, President, Henderson County Chamber of Commerce said that C-LINK is moving beyond the borders of Kentucky to get the I-69 project moving forward. C-LINK has hired a consulting firm to help the Transportation Cabinet, Federal Highway Department, and local government progress through the project.

In response to Representative Simpson, Mr. Schneider stated that one of the options to help finance the bridge over the Ohio River is tolls. Most of the western Kentucky parkways were built using tolls, and there has not been any resistance to using tolls to help fund the bridge.

In response to Representative Simpson, Secretary Hancock said that at this point the only discussions have been to use tolls to help fund the bridges. He stated that is the largest cost component of what is left to be done on the I-69 total project.

In response to Representative Simpson, Secretary Hancock stated that the Cabinet is unable to determine a timeline for when the I-69 project will be completed. The commitment from the Federal Highway Administration to work with Kentucky to establish the interstate shields on 55 miles worth of the road in western Kentucky is a huge step in the right direction toward getting the project started.

Update on the Implementation of the New Automated Vehicle Information System (AVIS)

Tom Zawacki, Commissioner, Department of Vehicle Regulation statedtheobjectiveoftheKAVISproject is to provide the Commonwealth with a state of the art, automated system for vehicle and boat titling, registration, taxation, and related functions. This comprehensive system will replace the AVIS and boat titling systems.

Replacement of these legacy systems is important to improve the delivery of current and future vehicle licensing services. The new system will be based on new technology and web based architecture and can be expanded to include drivers' license and motor carrier services.

Mr. Zawacki stated that the funding for the KAVIS project was provided through a \$1 fee on each vehicle registration renewal mandated in KRS 186.040. County clerks, the Transportation Cabinet, and the Department of Revenue have been involved from the start of the project. One of the biggest differences between the two systems is that the AVIS system is based off obsolete programming language, and as a result there are very few resources available. AVIS

has a very high maintenance cost and typically takes four to eight weeks to complete programming tasks. KAVIS has a reduced maintenance cost and takes approximately two to four weeks to complete.

Overall, the advantages to KAVIS are many: improved customer service, improved county clerk efficiency, reduced cost to change and maintain, less manual data entry, dedicated bandwidth to clerks offices, and print-on-demand decals.

Mr. Zawacki stated that the capital budget for this project is \$25 million. There has been approximately \$7.5 million spent, some of which has been the payment to 3M for its firm price contract, and part has been for COT and KYTC labor and purchases. There is \$2 million set aside for change requests, \$2.7 million for labor, and \$6.5 million for hardware and software purchases. Due to the plate-to-customer legislation, the cabinet saved approximately \$200,000 in system changes.

In terms of the project schedule, the system design is completed, the system testing is sixty percent complete, and the schedule for completion is March 28, 2012. The final acceptance testing is scheduled for June 2012. The earliest go-live date is August 2012.

Mr. Zawacki stated that the Cabinet is still up against some challenges during the process of transitioning from the AVIS to KAVIS database. These challenges include business process changes, training all the necessary employees in the new system, converting historical AVIS data to KAVIS data format, interfacing with multiple county clerk network configurations, and customizing the system to comply with KY laws, regulations, and business processes.

In response to Representative Collins, Mr. Zawacki stated that, under the new system, a customer could register online by paying with a credit card, and the new registration and tags would be mailed to the house. For new license plates, a customer would have to go to the clerk's office to trade out the license plates.

In response to Representative Collins, Terry Barnes, Project Manager, Office of Information Technology, Transportation Cabinet, stated the cost of changing the system will be less because the system will be much more flexible. There has not been a discussion as to who will be performing that work.

In response to Representative Collins, Mr. Barnes stated that the system will be a lot more flexible, which means less effort to complete task. Part of the contract with 3M is knowledge transfer to cross-train state employees while 3M employees are

available.

In response to Representative Floyd, Mr. Zawacki stated that it is the Cabinet's objective to add the driver's licensing package to the KAVIS system. The main advantage would be for the exchange of data to the driver's licensing area, which is not a part of the current AVIS system.

Mr. Barnes added that the driver's license system would require an additional capital project. The KAVIS system does have the capability to expand the data base to add the information from the driver's license system.

In response to Representative Pullin, Mr. Zawacki stated the Cabinet specifically postponed the date of introduction of the "I Support Veterans" license plate to the go-live date of KAVIS due to programming issues. There would be approximately \$25,000-\$30,000 saved on the production of the license plate waiting on the KAVIS system to go live.

An Explanation of the Cabinet's Estimating Procedures For Highway Construction Contracts

Steve Waddle, State Highway Engineer, Department of Highways stated that before a project is awarded the Cabinet puts together an engineer's estimate for each project to determine the fair market value for construction of the project. The estimate is used to determine whether to award a project or reject all the bids received, which establishes a baseline to construct the project. The four engineers in this office prepare an estimate on each of the 750-800 projects the state lets in a year.

Mr. Waddle stated that in preparing an estimate there are two main methods--use of historical data and a cost-based analysis. For the historical data method, the Cabinet's estimators will look at jobs done in the past, pull from historical databases, and add the current trends and prices of materials to determine an estimate for a project. For the cost-based analysis method, the estimator will break down the project to determine cost for materials, man hours, equipment, and haul distances.

In response to Representative Collins, Mr. Waddle stated that the staff that produces the estimates for the Transportation Cabinet to use as a baseline estimate for all bids are in house.

In response to Representative Wuchner, Mr. Waddle said that the state licenses a budgeting software program to assist in the estimating process. He stated that the program covers pre-construction through the whole process. The estimating process is just one portion of the program.

In response to Representative Collins, Mr. Waddle stated that when

deciding an estimate on how much it would cost to resurface concrete on a roadway, the estimator would first look at the build proposal to determine how much material would need to be used. He stated that to determine how much material is needed would be length times width times thickness. The thickness of the concrete or asphalt is determined by the people who put the project together.

In response to Representative Lee, Secretary Hancock stated that, for all the science that is involved in producing an estimate and the way the construction market changes from time to time, it may not benefit a competitor to employ one of the Cabinet's estimating staff as a way to get an advantage.

With no further business before the Committee, the meeting adjourned at 2:40 p.m.

TRANSPORTATION INTERIM JOINT COMMITTEE SENATE MEMBERS

Minutes of the 1st Meeting of the 2011 Interim September 6, 2011

Call to Order and Roll Call

The 1st meeting of the Transportation Interim Joint Committee Senate Members was held on Tuesday, September 6, 2011, at 10:00 AM, in Room 169 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Senators David Givens, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Bob Leeper, R.J. Palmer II, John Schickel, Tim Shaughnessy, Brandon Smith, Damon Thayer, and Mike Wilson.

Mark Simendinger, Guests: General Manager, Kentucky Speedway; From the Kentucky Transportation Cabinet: Mike Hancock, Secretary, Tammy Branham, Executive Director, Office of Budget and Fiscal Management, Ted Merryman, Interim Director, Office of Project Delivery and Preservation, Department of Highways, Tom Zawacki, Commissioner, Paul Mauer, Administrative Coordinator, Department of Vehicle Regulation, Terry Barnes, Project Manager, Office of Information Technology, Steve Waddle, State Highway Engineer, Department of Highways; Brad Schneider, Henderson County Chamber of Commerce; Jody Wassmer, President. Greater Owensboro Chamber of Commerce; John Mahre, Paducah Chamber of Commerce.

<u>LRC Staff:</u> John Snyder, Brandon White, Dana Fugazzi, and Jennifer Beeler.

Discussion of the Traffic Issues Surrounding the Inaugural NASCAR Race at Kentucky Speedway

Mark Simendinger, General Manager, Kentucky Speedway, explained that the Speedway has worked hard to attract a Sprint Cup race, and those races are hard to acquire. The state has invested a lot of time and money in bringing this race to Kentucky and deserves an explanation of what went wrong.

Mr. Simendinger stated that the main contributor to the problems at the race was a bad traffic plan. The Speedway hired individuals that had experience with Sprint Cup races to develop a traffic plan and assist with traffic management. The biggest concern was getting everyone to exit the facility in a timely fashion, so the traffic management plan was predicated on making sure that parking was done in a way that people could exit quickly. There were problems with being understaffed in areas, and the plan called for parking each field completely and moving to the next. In the middle of the event, it became apparent the plan was not working. The Speedway then had to switch plans from the original plan of parking field by field, to opening things up so more cars could get in faster and parked quicker. Unfortunately, there was not adequate staff to cover that parking strategy.

The biggest problem with incoming traffic was on KY 35 in front of the Speedway off of exit 57. This portion of highway goes from the interstate to the main entrance of Kentucky Speedway. There were not enough lanes open to hold all the traffic, and there was not enough parking open.

Mr. Simendinger explained that the Speedway recently purchased 143 acres across from Kentucky Speedway on KY 35, which will add approximately 10,000 parking spaces to the existing 30,000 spaces.

After the race, there was a major customer relations issue for those customers who either missed most of the race due to the traffic or did not get to make it at all. The Speedway started planning to make things right for all the patrons who did not get to make it into the race. A plan was then made for all patrons who did not scan a ticket through the gates to exchange the ticket for any other race of the Speedway's parent company, Speedway Motorsports, Inc., which owns seven other tracks. Patrons would have several choices of races to attend. Another option was to allow patrons to exchange the ticket to attend the Sprint Cup race at Kentucky Speedway next June.

Mr. Simendinger discussed

the Speedway's updates for next year's Sprint Cup race. Along with purchasing the 143 acre lot for parking, the Speedway will be graveling that lot so it will be an all-weather lot. A tunnel will be built under KY 35 to allow patrons parked in the new lot to safely and efficiently get to the track. There will be gravel travel routes on all the previous parking areas to make parking more efficient and facilitate traffic flow through the grass lots. The Speedway and the state have made such improvements to parking, public safety, and widening roads so that the issues that arose this year will not happen again, and to keep NASCAR at ease that the problems will not happen again.

In response to Senator Harris, Mr. Simendinger stated that there was enough parking for approximately 33,000 cars, which was thought to be plenty. The Speedway did not realize with the popularity of the event there would be people attending who did not have tickets and who just wanted to tailgate with friends or be part of the atmosphere of the race weekend. This added to the number of cars.

In response to Senator Schickel, Mr. Simendinger said after the race there were discussions with representatives from Sprint, which is the corporate sponsor of the race. These representatives stated that there were more visitors at the corporate booth over the Kentucky Speedway's race weekend than there had ever been at any Speedway Motor Sports track in the eight years of sponsoring a race. There were 22,100 visitors.

In response to Senator Harris, Mr. Simendinger stated the approximate capacity for the Speedway is 106,000.

In response to Senator Leeper, Mr. Simendinger said NASCAR does not award any race track a long term contract. Race dates are awarded on a year for year basis.

In response to Senator Wilson, Mr. Simendinger stated that the two major issues were: 1) the Speedway did not park people fast enough, which caused cars to quickly back up; and 2) the Speedway did not do a good job of managing the spaces and how closely together vehicles were parked.

In response to Senator Wilson, Mr. Simendinger said that when the decision was made to purchase the 143 acres for additional parking, the state was already involved in those negotiations. After the negotiations of purchasing the land were started, the idea of the tunnel was discussed as an alternative to increase public safety.

In response to Senator Givens, Mr. Simendinger stated that the track has been open for 11 years, and the inaugural race of the track was the only parking issue due to rain and problems parking on the grass. Since that time

there have been no issues with parking or traffic. The new 143 acres will be used primarily for the Sprint Cup race each year.

Mike Hancock, Secretary, Kentucky Transportation Cabinet explained that the cabinet has been very involved with making road improvements to I-71 and KY 35 to make next year's race a smoother one in regards to traffic and parking. The cabinet plans to widen the off ramp on I-71 to bring more vehicles off the interstate to KY 35. The proposed plan is to bring traffic more quickly off I-71 and directly to KY 35 and into the Speedway parking spaces, especially the new lot across KY 35 from the track

In response to Senator Harris, Secretary Hancock stated that the Speedway has a rear entrance that worked very well. However, the majority of the traffic came from south bound I-71 onto KY 35.

In response to Senator Harris, Secretary Hancock said that for those coming from Louisville and other northern areas, the goal is to use KY 35 better and make sure there are enough lanes available and park the cars faster and more efficiently. The tunnel will cost \$1.2 million. The reason the cabinet is helping the Speedway fund the tunnel is that stopping traffic on KY 35 for pedestrians would back up traffic on I-71 very quickly.

In response to Senator Hornback, Secretary Hancock stated the Speedway has made substantial investment on improvements. The cabinet's interest is protecting through traffic on I-71 and the Kentucky economy. Making these investments to the Speedway will bring in revenue by allowing big races to come to the state.

In response to Senator Givens, Secretary Hancock said the tunnel will be paid out of the cabinet's contingency account, which is used for unforeseen situations that impact highway safety. The annual budget for that account is \$31 million. A significant portion of that fund is earmarked for partnerships such as Kentucky Pride. About \$20-\$25 million annually is left to address any unforeseen needs or emergencies that might arise.

Road Fund Update (FY 2010-11 Closeout)

Tammy Branham, Executive Director, Office of Budget and Fiscal Management, discussed what is happening with the state's road fund. Motor fuels tax revenue grew 11.8 percent from 2010 to 2011, motor vehicle usage tax receipts grew 14.7 percent, and other tax revenue grew 2.8 percent. The total revenue of all the state taxes that go into the Road Fund in FY 2010 was \$1,206.6 million and in FY 2011 was \$1,338.8 million, which is an increase of 11 percent.

In response to Senator Shaughnessy, Ms. Branham stated that the other tax is a variety of things such as weight distance tax, driver's license fees, and driver's registration fees. Some revenue is broken down by county, but the motor fuels tax and motor vehicle usage tax are not recorded in that format.

In response to Senator Thayer, Secretary Hancock said through the surplus expenditure plan, money defaults to the highway plan. The money is to support projects in the highway plan that are state funded.

In response to Senator Wilson, Secretary Hancock stated with more electric cars being purchased there is a slight quandary as to how to tax the vehicles correctly since owners do not pay the motor fuels tax. The states and the United States Department of Transportation are considering ways to tax these electric and alternative fuel vehicles.

Update on the Status of the Proposed I-69 Project Through Western Kentucky

Ted Merryman, Interim Director, Office of Project Delivery and Preservation stated that in 1991 federal legislation established corridor 18 as a high priority corridor on the highway system. Corridor 18 was named a route between Indianapolis and Memphis via Evansville. Since then subsequent legislation has extended corridor 18 to Canada to the Texas/Mexico border and designated corridor 18 as Interstate 69.

He stated that in 1999 there were 32 Sections of Independent Utility (SIUs) established through the entire national route of I-69. In Kentucky there are three SIUs. The entire route through Kentucky will be approximately 160 miles with about 150 miles planned along existing parkways/interstates.

Mr. Merryman stated an agreement was reached between the Kentucky Transportation Cabinet and Federal Highways to maximize the use of the Western Kentucky Parkway and existing I-24. The section from Dawson Springs to Calvert City will be signed as I-69 before January 1, 2012. The agreement consists of the improvements such as ramp tapers, a new interchange, bridge clearance, guard rails, and safety improvements on bridge rails.

In response to Senator Harris, Mr. Merryman said the cabinet is utilizing the existing parkways, starting at Fulton. The Julian M. Carroll Purchase Parkway will be used to I-24. Seventeen miles of I-24 will be used from Calvert City to Eddyville, then the Western Kentucky Parkway through Dawson Springs to the Breathitt Pennyrile Parkway to Henderson. The cabinet is utilizing

150 miles of existing roadway, and the new roadway will be 10 miles plus a new bridge near Henderson.

Secretary Hancock stressed that there will be some cost to convert the existing facilities to full federally approved facilities. The cabinet expects to spend approximately \$200 million over time to bring everything to federal standards.

Jody Wassmer, President, Greater Owensboro Chamber of Commerce discussed how in 2007 twelve chambers of commerce in 10 northwest Kentucky counties formed the C-LINK alliance. At that point the alliance realized that I-69 was the largest opportunity in western Kentucky to grow the economic development in the future.

John Mahre, West Kentucky Regional Chamber Alliance, stated that I-69 is a top priority project and that the alliance is in complete support of the project to bring revenue to western Kentucky. This project is important to Kentucky for access to economic opportunity. For Kentuckians, parkways are a big deal, but to those outside the state who bringing jobs and economic growth, parkways are an unknown term. Bringing an interstate along these areas will allow out of state companies to show interest in rural areas.

Brad Schneider, President, Henderson County Chamber of Commerce, saidthat C-LINK is moving beyond the borders of Kentucky to get the I-69 project moving forward. C-LINK has hired a consulting firm in order to be a counterpart with the Transportation Cabinet, Federal Highway Department, and local government in progressing through this project.

In response to Senator Harris, Mr. Wassmer stated that Indiana has approximately 60 miles of I-69 under construction from Evansville to Craine. I-69 is completed from Michigan to Indianapolis.

Mr. Mahre added that Tennessee has projects underway just south of the Kentucky line near Union City. Mississippi has completed its portion of I-69 south of Memphis over to the Mississippi River. There is some additional work that is just getting started in Arkansas.

Update on the Implementation of the New Automated Vehicle Information System (AVIS)

Tom Zawacki, Commissioner, Department of Vehicle Regulation statedtheobjectiveoftheKAVISproject is to provide the Commonwealth with a state of the art, automated system for vehicle and boat titling, registration, taxation, and related functions. This comprehensive system will replace the current AVIS and boat titling systems.

He said that the replacement of

these legacy systems is important to improve the delivery of current and future vehicle licensing services. The new system will be based on new technology and web based architecture and can be expanded to include driver's license and motor carrier services.

Mr. Zawacki stated that funding for the KAVIS project was provided through a \$1 fee on each vehicle registration renewal mandated in KRS 186.040. County clerks, the Transportation Cabinet, and the Department of Revenue have been involved from the start of the project. One of the biggest differences between the two systems is that the AVIS system is based on obsolete programming language, and as a result there are very few available resources. AVIS has a very high maintenance cost and typically takes four to eight weeks to complete programming tasks, while KAVIS has a reduced maintenance cost and takes approximately two to four weeks to complete.

Overall the advantages to KAVIS are many: improved customer service, improved county clerk efficiency, reduced cost to change and maintain, less manual data entry, dedicated bandwidth to clerks' offices, and print on demand decals.

Mr. Zawacki stated that the capital budget for this project is \$25 million. There has been approximately \$7.5 million spent, some of which was allocated as payment to 3M for the firm price contract, and part has been for COT and KYTC labor and purchases. There is \$2 million set aside for change requests, \$2.7 million for labor, and \$6.5 million for hardware and software purchases. Due to the plate-to-customer legislation, the cabinet saved approximately \$200,000 in system changes.

The system design has been completed, the system testing is sixty percent complete, and the schedule for completion is March 28, 2012. The final acceptance testing is scheduled for June 2012, and the earliest go-live date is August 2012.

Mr. Zawacki stated that there are still some challenges during the process of transitioning from the AVIS to KAVIS database, such as business process changes, training all the necessary employees in the new system, converting historical AVIS data to KAVIS data format, interfacing with multiple county clerk network configurations, and customizing the system to comply with Kentucky laws, regulations, and business processes.

In response to Senator Harris, Paul Mauer stated that when the plate to customer legislation was passed, it stated that it would be implemented either January 2013 or the go live date of the KAVIS system, whichever is sooner.

An Explanation of the Cabinet's Estimating Procedures For Highway Construction Contracts

Steve Waddle, State Highway Engineer, Department of Highways stated that before a project is awarded the cabinet puts together an engineer's estimate for each project to determine the fair market value for construction of the project. The estimate establishes a baseline cost for project construction and is used to determine whether to award a project or reject all the bids received. The four engineers prepare an estimate on each of the 750-800 projects the state lets each year.

Mr. Waddle stated that in preparing an estimate there are two main methods, use of historical data and a cost base analysis. For the historical data method, the cabinet's estimators look at previous jobs, pull from historical databases, and add the current trends and prices of materials to determine an estimate for a project. For the cost base analysis method, the estimator breaks down the project to determine the cost of materials, man hours, equipment, and haul distances.

With no further business before the Committee, the meeting adjourned at 12:10 p.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Minutes of the 3rd Meeting of the 2011 Interim October 4, 2011

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Transportation was held on Tuesday, October 4, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Senators David Givens, Jimmy Higdon, Paul Hornback, Ray S. Jones II, Bob Leeper, R.J. Palmer II, John Schickel, Brandon Smith, Damon Thayer, Johnny Ray Turner, and Mike Wilson; Representatives Will Coursey, Richard Henderson, Melvin B. Henley, Jimmie Lee, Donna Mayfield, Charles Miller, Terry Mills, Rick G. Nelson, Tanya Pullin, Marie Rader, Steve Riggs, John Short, Arnold Simpson, Fitz Steele, Jim Stewart III, Tommy Turner, David Watkins, and Addia Wuchner.

Other Legislators in Attendance: Representative Fred Nesler.

Guests: From the Kentucky
Transportation Cabinet: Mike
Hancock, Secretary, Tom Zawacki,
Commissioner, Motor Vehicle
Regulation, Rebecca Goodman,
Executive Director, Office of Legal
Services, Winn Turney, Commissioner,

Department of Aviation, Steve Marcozzi, Branch Manager, Inspections Branch, Ann Dangelo, Attorney, Office of Legal Services, Steve Waddle, State Highway Engineer, Department of Highways; Gary White, Cumberland County Corner; John Phelps, Jr., Cumberland County Judge Executive; Stevie Wheat, Cumberland County Sheriff; Michael Meeks, James Simpson, Rick Fanelli

<u>LRC Staff:</u> John Snyder, Brandon White, and Jennifer Beeler.

Consideration of the Committee's July 5, 2011 Minutes

Representative Nelson made a motion to approve the minutes from the July 5, 2011 meeting as submitted. The motion was seconded by Representative Henderson and adopted by voice vote.

Chairman Harris noted that Representative Collins was not in attendance because he was in Washington D.C. attending a meeting of Transportation Committee Chairmen from selected states, sponsored by the Council on State Governments.

Procedures and Statistics for Taxicab and Limousine Licenses and Other Certificates of Convenience and Necessity Issued by the Department of Vehicle Regulation

Tom Zawacki, Commissioner, Motor Vehicle Regulation explained the types of motor carrier passenger vehicles, which include: taxicab, limousine, disabled persons' vehicle, airport shuttle vehicles, and charter and other buses. KRS Chapter 281 governs the process for obtaining a certificate of authority to operate as a motor carrier.

Mr. Zawacki stated that an applicant must show that (1) it is fit, willing, and able to perform the service proposed, and (2) the existing transportation service is inadequate and the proposed service is required by the present or future public convenience and necessity. To prove necessity, substantial inadequacy of existing service must be demonstrated. due either to a substantial deficiency of facilities or the indifference, poor management, or disregard of the rights of consumers. In addition, if existing carriers express a desire and willingness to render any additional service that the department may deem necessary, no need for an additional carrier exists.

Rebecca Goodman, Executive Director, Office of Legal Services testified about the Department of Vehicle Regulation passenger authority application process as set out by KRS Chapter 13B and KRS Chapter 281. This process can be very cumbersome depending on the situation and can as much as a year to complete. She explained the process and timeline.

Mr. Zawacki explained how many existing motor carrier certificates have been awarded and how many vehicles qualify under these certificates. Statewide, there are 888 taxicabs, 364 disabled persons' vehicles, and 141 limousines. In 2009 and 2010 combined, of the 104 taxi applications that have been resolved, only eight were denied on merit, meaning that the carriers could not demonstrate sufficient capability or need in the areas for which the application was filed. Over the same period, two of 65 disabled persons' vehicle applications and two of 42 limousine applications were denied on merit. Another reason applicants may not be approved is a failure to proceed, in which applicants may not have filed the proper paperwork in time or met certain guidelines for timing, and therefore the applications are considered null.

In response to Senator Harris, Mr. Zawacki stated that a denial on merit was based on the fact that there was not a necessity or the carrier could not demonstrate capability in the market.

In response to Senator Jones, Rick Taylor, Deputy Commissioner, Department of Vehicle Regulation stated that the regulation requires each carrier perform a driving history review of the drivers on an annual basis.

In response to Representative Riggs, Ms. Goodman stated that under KRS Chapter 281, the cabinet is required to send a notice to each carrier in the same area that a new applicant seeks to provide a similar type service in, and give it an opportunity to protest the application.

In response to Representative Pullin, Ms. Goodman stated that if an application goes without protest, after all notices have been given, the process would take approximately 60 to 90 days. She added that, if an application is protested, the process can take in excess of a year to complete.

Michael Meeks, Frankfort Lobbyist LLC., James Simpson, Executive Transportation, and Rick Fanelli, Fan-Van discussed some issues, proposals, and suggestions affecting the passenger vehicle industry.

Mr. Meeks discussed the following issues that deal with passenger vehicle providers: state preemption of local laws, regulations and restrictions; the administrative review of hearing process; the duty of the Attorney General and the Kentucky Transportation Cabinet to defend the rights of certificate holders to use licenses within the Commonwealth against quasi-governmental entities that seek to limit such rights and the role of the Kentucky State Police; the authority of the Secretary of the Kentucky Transportation Cabinet to issue temporary authority to operate and qualifications of entities being issued temporary authority; the effect of placing certificates of authority to operate in escrow; and repeal of state charter bus certificates, for which the federal government has preempted state authority.

As a passenger vehicle carrier, Mr. Simpson expressed his concerns about how changing the statute would make owning and operating a business much easier. Mr. Fanelli discussed the same issues only from the side of an individual trying to start a new business.

In response to Senator Wilson, Mr. Simpson explained that, in his view, the cabinet has the resources to determine whether a potential carrier is capable to perform the job or not and competing carriers should not have the opportunity to protest a new carriers application.

Inspection Program for Helipads

Steve Marcozzi, Branch Manager, Inspections Branch stated that in 2009 the state had on record 52 licensed private heliports. The Department of Aviation received numerous requests during that time for data on heliports for which the Department had no record. After the requests were made, the department looked into finding all the heliports and temporary landing zones, and found that 86 had never been inspected for safety or licensed. Out of the 154 heliports that the department found, approximately 16 known landing areas have currently not yet been inspected, which include new construction.

Mr. Marcozzi stated that there are several federal and state statutes that require heliports to be licensed, mainly due to safety reasons. In order to ensure safety of flight crews, patients, people on the ground, and other aircraft, heliports need to be inspected and licensed by the state.

Each owner of a heliport is responsible for ensuring that the landing area follows FAA guidelines. According to these guidelines, the minimum landing pad size for a medical use heliport is a 40 foot by 40 foot concrete surface. At least one unobstructed approach surface must be provided to the heliport which is compatible with the largest helicopter given permission to use the facility. Any airport in the state without a license is unfit as an airport facility and cannot be used by any person for the taking off or landing of aircraft.

Mr. Marcozzi stated that a heliport by definition is a site that has been used or intended for use for more than one year with flight operations on three or more days in any one week, or flight operations that number more than ten in one day. A medical emergency site, which is an unprepared site at or near the scene of an accident or similar medical emergency on which a helicopter may land to pick up a patient in order to provide emergency medical transport, would not be considered a heliport.

When the department inspects heliport landing areas, it inspects the landing facility for safe approaches and an adequate surface for safe operations. It makes sure the heliport is documented with the FAA so there is adequate and accurate navigation data available for pilots with no airspace conflicts. Finally, it ensures that the heliport is in compliance with state regulations and is licensed.

In response to Senator Smith, Mr. Marcozzi stated that part of the difficulty the department is facing is that most of the facilities being inspected are existing facilities. Alternatives are being designed to make the heliports safer.

Status of the Sherman Minton Bridge in Louisville

Secretary, Mike Hancock, Kentucky Transportation Cabinet, testified about the Sherman Minton Bridge, which was recently closed due to structural concerns. He said that the bridge carries I-64 over the Ohio River west of Louisville. Kentucky and Indiana maintenance responsibility for the bridge, with Indiana being the lead state for inspection and repairs under a memorandum of agreement that dates to August 5, 1963.

The Sherman Minton Bridge was built in 1962 and, at that time, represented an innovated lightweight, double-deck, tied-arch bridge design that used high-strength steel and welded joints to carry the four lane traffic load. The bridge has been routinely inspected for many years. Since 1981, non-destructive, visual tests have been repeatedly conducted to monitor the bridge for cracks or other signs of deterioration.

Secretary Hancock stated that on September 8, 2011, while conducting a rigorous inspection, a two and one-half inch crack was discovered when the contractor removed plates on a tie near the Kentucky shore. Based on advice from the contractor and Indiana Department of Transportation engineers, Indiana Governor Mitch Daniels ordered the bridge closed the following day.

Sincethe closure of the I-64 bridge, the Federal Highway Administration, Kentucky Transportation Cabinet, Indiana Department of Transportation, Metro Louisville, and the Indiana communities of New Albany and Jeffersonville have worked diligently to implement appropriate detours using I-65 and I-265, as well as the US 31 Clark Memorial Bridge at Second

Street in downtown Louisville.

Additionally and simultaneously to the inspection effort, design teams have been developing repair alternatives to safely restore the bridge to service as quickly as possible. The retrofit and strengthening of the Sherman Minton Bridge is expected to cost approximately \$20 million and will take six months or less to construct. This will add approximately 20 years or more to the existing bridge.

Kentucky's share of the repair cost will be 50 percent (\$10 million). The funds will be come from the Federal Highway Administration discretionary funds of approximately \$2.5 million and from the Kentucky Transportation Cabinet's six year highway plan funds budgeted for general interstate bridge maintenance (\$3 million). The last \$4.5 million will come from the Kentucky Transportation Cabinet's maintenance budget.

Secretary Hancock explained that the closure of the bridge has been disruptive to Louisville area traffic patterns. However, the annual bridge inspection process did its job, and potential tragedy was averted.

In response to Senator Harris, Secretary Hancock stated that the crack was originally discovered on September 8, and at the time it was unknown how long it had been there. After forensic testing, it was determined it had been there virtually from the time of construction.

In response to Senator Harris, Secretary Hancock stated that there is an incentive program for the contractor of the bridge where the contractor may earn \$100,000 for each day, up to \$5 million, that the project can be finished before the six month deadline. If the contract goes over the six month deadline, there is a \$100,000 per day penalty with no maximum.

In response to Representative Riggs, Secretary Hancock stated there have been tremendous strides from both states to ensure that the traffic gets detoured adequately and in a timely fashion. Indiana worked out some minor adjustments to I-265 that allowed traffic to move smoother. Kentucky also made adjustments to the Clark Memorial Bridge that instituted a reversible lane concept. He said the Norfolk Southern Bridge has been out of service for such a period of time that the cabinet has concerns about adding increased traffic to that bridge.

In response to Senator Hornback, Secretary Hancock stated the first few days after the Sherman Minton Bridge was closed, both the Kennedy Bridge and the Clark Memorial Bridge were examined to make sure there were no problems. Inspections showed that the bridges were in good shape and able to withstand the additional traffic loads.

In response to Senator Hornback,

Steve Waddle, State Highway Engineer, Department of Highways, explained that the design firm that is assisting with the plan to fix the Sherman Minton Bridge looked over all the calculations of the added steel and materials and is convinced that the bridge can handle the extra weight.

In response to Senator Harris, Secretary Hancock stated that on the Kentucky side of the bridge there was a resurfacing project that was planned for a later date, but while the bridge is closed the work will be done.

In response to Representative Simpson, Secretary Hancock stated that the Interstate Maintenance Fund is utilized only for interstate bridges, and the state funds are used for a variety of bridges across the state.

In response to Senator Givens, Secretary Hancock explained the Kennedy and the Clark Memorial bridges were inspected differently than the Sherman Minton because of the difference in design type. He explained that both the Clark and the Kennedy went under the routine maintenance inspections and were found to be satisfactory by the Federal Highway Administration.

Consideration of Referred Administrative Regulation 601 KAR 11:035 - Waiver of skills test for military personnel (CDLs)

Senator Harris gave a brief explanation of the regulation. No objection was raised to the proposed Administrative Regulation.

Other Business:

John Phelps, Jr., Cumberland County Judge Executive, Stevie Wheat, Cumberland County Sherriff, and Gary White, Cumberland County Coroner, discussed safety concerns with KY Highway 90 West.

Mr. Phelps gave a brief overview of KY 90 and where the problem areas are. In the section of highway from Owens Road to Norris Branch road, there have been 43 accidents since October 2010, three of which were fatalities.

Mr. Phelps asked the committee to review KY 90 and to take into consideration a plan to renovate the road in order for the dangers of the road to be fixed.

With no further business before the Committee, the meeting adjourned at 3:00 p.m.

INTERIM JOINT COMMITTEE ON TRANSPORTATION

Subcommittee on Kentucky Waterways Minutes of the 2nd Meeting of the 2011 Interim October 4, 2011

Call to Order and Roll Call
The second meeting of the

Subcommittee on Kentucky Waterways of the Interim Joint Committee on Transportation was held on Tuesday, October 4, 2011, at 10:30 AM, in Room 154 of the Capitol Annex. Representative Will Coursey, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Will Coursey, Co-Chair; Senators Ernie Harris, and R.J. Palmer II; Representatives Charles Miller, Tanya Pullin, and Steven Rudy.

Guests: David Mast, President/ CEO, Mast Solutions; Greg Pritchett, Executive Director, Henderson County Riverport; Norb Whitlock, President, Rivertrends, LLC.

<u>LRC Staff:</u> Brandon White, John Snyder, and Jennifer Beeler.

Consideration of the July 5, 2011 Minutes

Representative Rudy made a motion to approve the minutes from the July 5, 2011 meeting as submitted. The motion was seconded by Senator Leeper and adopted by voice vote.

2011 Midwest Regional Panama Canal Conference

David Mast, President/CEO, Mast Solutions, discussed Paducah's interest in the expansion of the Panama Canal. Paducah is an industry hub and home to 24 towing companies. Several of the major companies in the industry have headquarters in Paducah. These towing companies employ over 8,000 employees.

Mr. Mast commented that Paducah is the northern most ice-free port on the river system, which allows the port to operate year round without having to worry about freezing.

In May of this year, Paducah held a Transportation Summit examining the impact of the Panama Canal expansion on the Midwest region. Mr. Mast stated that the expansion project is on schedule and under budget. The project is a \$2 billion expansion, which will allow the largest ships currently in the marketplace to go through the canal system and therefore reduce shipping costs. The scheduled completion date is in 2013.

Mr. Mast mentioned that Paducah and other ports in Kentucky share a vision to become the distribution center for the midwest. Kentucky has the potential with I-24 and the I-69 project, as well as the future I-66 corridor. The river system is the most economical way to move freight and the most environmentally conscious way to move cargo. The Paducah riverport is a profitable riverport and is not subsidized by the city or the county. The ongoing operations of the port generate enough income.

In response to Representative Pullin, Mr. Mast stated that Panama

made the decision to make the investment to expand the canal, and the goal is to sell the potential of the canal.

In response to Representative Rudy, Mr. Mast said in Paducah dredging is not an issue, which is one of the reasons the port is so profitable. He stated that the Hickman Port requires approximately \$400,000-\$450,000 annually to maintain a draft to keep it operational.

Water Transportation Advisory Board

Greg Pritchett, Executive Director, Henderson County Riverport, discussed the passage of House Bill 28 during the 2010 regular session, which included a provision to establish a seven member Water Transportation Advisory Board.

Mr. Pritchett stated that freight carriers are engaged in planning to provide freight solutions to different population centers. Manufacturers look for good transportation connections in order to serve markets. If the projected population growth patterns and freight transportation plans of others are realized, Kentucky could face significant economic challenges in the future.

Mr. Pritchett mentioned that the Kentucky Water Transportation Advisory Board was established with the notion that Kentucky should consider how to use its natural water highways to provide freight lanes for existing manufacturers and level the playing field to recruit new industries.

The Kentucky Port and River Development Commission formed and attached to the Commerce Cabinet with a first recorded meeting in December 1966. The Governor appointed board members from across the state with the first chairman being from Hickman, Kentucky. The commission was given funding allocation each bi-annual period between 1966 and 1981 from surplus funds held in reserve by state government. The amounts ran as high as \$7 million in the middle to late 1970s. The commission was set in place to go about the business of stimulating economic development throughout the state by providing funding for riverport based freight transportation centers in different regions. The commission would review formal requests by communities that desired to establish a public riverport and seek funds to assist in the construction process.

Mr. Pritchett stated that in Washington, the House of Representatives Transportation and Infrastructure Committee had a hearing on September 21, 2011 focusing on economic impacts of aging U.S. inland waterway systems. This hearing highlighted the economic importance and positive impacts on job creation of

the nations inland waterway system.

He mentioned that Kentucky has a grant program to support short line railroads maintenance needs. As the state statute provides this program to short line railroads, funds are not available to community industrial or public riverports with rail needs. With its current structure, the Kentucky Infrastructure Authority has no ability to loan money to communities or public riverports for the purpose of developing rail and water transportation infrastructure.

Whitlock, Norb President, Rivertrends, LLC, explained several issues that needed to be brought to the committee's attention. He discussed the property tax assessment that is levied by 37 governments bordering the Ohio River and Kentucky Department of Revenue. The property tax is called the Commercial Watercraft Personal Property Tax, and is levied on the value of tow boats, barges, and other commercial vessels operating on Kentucky's waters. The legislation specifically exempts pleasure, fishing, and house boats from this taxation. In 2008, there were 117 taxpayers, and in 2009 there were 111 taxpayers.

Mr. Whitlock stated that in general, the barge and commercial vessel companies pay approximately \$10 to \$11 million each year in the combined county and state property assessment. Some \$6 to \$7 million is returned to the county governments bordering the Ohio River, while the remaining \$3.2 to \$3.6 million collected by the Department of Revenue is deposited into the General Fund.

Mr. Whitlock explained if \$3 million each year were infused into waterways investments, it could have a profound impact on waterways commerce in Kentucky. The funds could be used for regional and national marketing efforts, as well as, for modest capital improvements, even dredging. He stated that there also needs to be attention brought to a problem of federal funding of locks and dams projects. The U.S. Army Corps of Engineers builds locks and dams in our nation from a trust fund that is 50 percent funded by the barge and tow companies, and 50 percent funded by the U.S. Treasury. For more than 60 years, locks and dams have been built without any federal debt being incurred.

He said the Oldmstead Dam construction began in 1994 and is expected to be completed in 2016 or 2017. The fundamental problem is that Congress does not fund the entire project when it begins. Instead, funds of approximately \$100-\$150 million are allocated annually. The board believes that soon there will be a great increase in waterways traffic on the Ohio River due, in large part, to the

Panama Canal expansion project. In recent months, it was believed that there may be some advantages to partnering with other states, such as Mississippi, Alabama, and Tennessee, that share a mutual interest in increased waterways activities. The board encourages consideration in a multi-state approach to this economic opportunity.

In response to Senator Harris, Mr. Whitlock stated the Panamanians are increasing the size of the locks on the Pacific side and on the Caribbean side, as well as, dredging the 'divide cut' to make the channel wider for the large container ships to transit through easier.

With no further business before the Committee, the meeting adjourned at 11:30 a.m.

INTERIM JOINT COMMITTEEON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION

Minutes of the 4th Meeting of the 2011 Interim September 8, 2011

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Thursday, September 8, 2011, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Tanya Pullin, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Carroll Gibson, Vernie McGaha, Dennis Parrett, Tim Shaughnessy, Kathy W. Stein, Katie Kratz Stine, Mike Wilson, and Ken Winters; Representatives Royce W. Adams, Tom Burch, Dwight D. Butler, Mike Cherry, Larry Clark, Leslie Combs, Tim Couch, Ron Crimm, Myron Dossett, Bill Farmer, David Floyd, Martha Jane King, Jimmie Lee, Terry Mills, Rick G. Nelson, Tom Riner, Carl Rollins II, Sal Santoro, Rita Smart, John Tilley, Ben Waide, and Alecia Webb-Edgington.

Guests: Bryant Stiles, Division Director, Kentucky Fire Commission (KFC); Brigadier General Lonnie Culver, Deputy Adjutant General, Kentucky National Guard (KYNG); Gene Kiser, Acting Executive Director, Mary Halmhuber, and Shelby Lawson, Kentucky Office of Homeland Security (KOHS)

<u>LRC Staff:</u> Erica Warren, Clint Newman II, Tiffany Opii, Kristopher Shera, and Rhonda Schierer.

Minutes

Representative Crimm moved to approve the August minutes. Representative Webb-Edgington

seconded the motion. The minutes were approved.

Resolution

Representative Royce Adams read a resolution in memory and honor of Private First Class William F. Stehlin. Senator Wilson moved to adopt the resolution, Representative Floyd seconded the motion, and the motion was adopted.

Firefighters in Kentucky

Bryant Stiles, Division Director for the KFC, gave a PowerPoint presentation on fire and rescue training. Mr. Stiles discussed certification and funding opportunities for Kentucky's fire service. He stated that the mission of the KFC is to strengthen, upgrade, and improve the fire service for the citizens and industry of the Commonwealth through standardized education, training, certification, communication, and distribution of funds. The headquarters for the KFC is located in Versailles at the Kentucky Community and Technical College Systems Headquarters.

Mr. Stiles stated that the fire commission includes: services an incentive program, state aid to volunteer departments, workers compensation insurance, funding to build training facilities and educational upgrades, hepatitis B shots for all firefighters, survivor benefits for families of fallen firefighters, paid expenses to send family members to the national memorial service held each year for line-of-duty deaths, a low interest loan program to low income fire departments, maintenance of training records and certification information for over 800 fire departments, acting as a coordinating agency in the Kentucky Emergency Operations Center, and working with the firefighter identification program.

Mr. Stiles discussed health and wellness issues and stated that the leading cause of death among firefighters is heart related. He briefed the committee on the Comprehensive Physical Aptitude Test (CPAT), a test to administer physical agility assessments initially and annually. Over 3,200 departments and firefighters have been tested. CPAT will be required as of 2013 to be employed as a career firefighter.

Mr. Stiles explained KFC's participation in the International Fire Service Accreditation Congress (IFSAC). IFSAC provides a third party review of capabilities and standards which includes both degree and certification programs. IFSAC also provides the fire service with a voluntary competency based evaluation and certification of responders' knowledge and skills.

Mr. Stiles gave an update on the 14

regional offices located throughout the Commonwealth. The core mission of the KFC's Kentucky Fire and Rescue Training (KFRT) program is to provide mobile training facilities to Kentucky firefighters and rescue teams. Another mobile training facility is the driver simulator which holds three simulators inside it to train responders effectively how to reduce highway dangers. Mr. Stiles stated that the KFRT offers an Associate of Applied Science Degree in Fire Rescue Science Technology through the Kentucky Community and Technical College System (KCTCS). This degree is accredited through IFSAC. KFRT also has educational programs to reduce highway crash fatalities and reduce farm related fatalities. Through KCTCS, the fire commission is also assisting KOHS with multiple projects to include: Citizen Emergency Response Teams Programs, the National Incident Management System, and Homeland Security Training and Exercise Program.

Mr. Stiles stated that the most sophisticated and responsible first responders in the world are in the military. He stated that is a benefit of providing training at the Wendell Ford State Fire Training Academy because there are military responders from around the world who receive training there and the facility can provide some of the most advanced training. Training has also been provided at Fort Knox because of their fire brigade and at Fort Campbell because of their air medical units.

Mr. Stiles stated that there are four mobile command units strategically placed throughout the Commonwealth for responders to operate. One of the mobile command units was used during the flood in Western Kentucky to operate as an emergency operation center. A mobile history center is used to help fire departments recruit future fire fighters.

In response to a question from Senator Gibson regarding incentives to recruit emergency responders, Mr. Stiles stated that he will be able to address that better next year because an individual has just been hired to look into ideas from surrounding states and bring them before the General Assembly.

In response to a question from Representative Floyd, Mr. Stiles stated that getting a credential for international standards is totally a voluntary system.

Kentucky National Guard Deployments Since 9/11

Brigadier General Lonnie Culver, Deputy Adjutant General for the KYNG, gave a PowerPoint presentation on the 10th anniversary of the attack on America. General Culver stated that since September

11, 2001, there have been 14,200 KYNG soldiers and airmen deployed in support of the global war on terror, the KYNG. As of today, the KYNG has 1,547 troops deployed worldwide, and some soldiers in the Kentucky Air National Guard who typically serve shorter deployments have been deployed over a dozen times.

Brigadier General Culver stated that future deployments may lessen for overseas deployments due to changing missions and requirements in Iraq and Afghanistan however, it will not eliminate them. He added that since September 11, 2001, the KYNG has performed 80,000 man days including service and rescue during Hurricane Katrina relief and the ice storm of 2009. Since September 11, 2001, the KYNG has lost 20 members.

In response to Brigadier General Culver's Power Point presentation and testimony, Chair Pullin expressed gratitude on behalf of the committee and the General Assembly for all the services rendered, sacrifices made, and dedication to our state and country by KYNG members.

Kentucky Office of Homeland Security Update and Legislative Priorities

Gene Kiser, Acting Executive Director for the KOHS, briefed the committee on the KOHS's update and legislative priorities. Along with his testimony, Mr. Kiser passed out several informational documents and pamphlets which are a part of the official record. Mr. Kiser stated that the KOHS office is located on the first floor of the new Transportation Cabinet building and consists of 15 staff members. One staff member is a state merit employee and the other 14 are federally funded time-limited employees. There are two vacancies now but with the funding reduced, now is not the right time to hire additional staff. Mr. Kiser described the office in four basic components to include: the Kentucky Intelligence Fusion Center, based on the 9/11 commission's recommendation for a central location in each state for the gathering and sharing of intelligence of law enforcement agents; the Eyes and Ears on Kentucky which is an expanded neighborhood watch that goes to your entire community and state and has a free iPhone app; an Active Intelligence Officer Liaison Program which provides training for those individuals designated by their departments; and a KOHS Exercise and Evaluation Program which provides realistic exercises for communities throughout the Commonwealth.

Mr. Kiser stated that KOHS's only legislative initiative is the executive order that gave the administration of the fusion center to the KOHS.

Mr. Kiser discussed outreach

activities and stated that KOHS is in partnership with some of the area development districts to implement a citizen awareness campaign. The purpose of the campaign is an effort to ensure that every Kentuckian understands the need to make a plan, pack a family preparedness kit, and learn how to be informed during an emergency or disaster.

Mr. Kiser discussed the Citizen Core Program which has 2,100 Kentucky members. The members include: volunteers, police, community emergency response teams, medical reserve cores, and neighborhood watch and fire cores. Another activity includes the four Quick Series books which are the incident command systems, anti-terrorism, active shooter response, and Spanish for patrol officers. These books are provided to first responders, school districts, and any interested person.

Mr. Kiser discussed the KOHS Grant Program and stated that the program has 155 active projects being administered which cost an excess of \$42 million. The FY11 KOHS Grant Program received 103 applications requesting a total of \$28.8 million, however; KOHS took a 58 percent reduction in their funding and only has \$4.1 million to distribute.

Mr. Kiser discussed the eWarrants Electronic System which is administered in conjunction with the Kentucky State Police, the Kentucky Administrative Office of the Courts, and the Attorney General's Office. The eWarrent Systems is primarily for law enforcement.

Mr. Kiser discussed the State Law Enforcement Program which is a state funded program that provides body armor, duty weapons, patrol riffles, tazors, and ammunition to law enforcement officers. The funding from that is contingent from the sale of confiscated weapons.

In response to a question from Senator Parrett, Mr. Kiser stated that there will be a meeting on Monday, September 12, 2011, with General Heltzel to discuss the issue of duplicating trainings between KOHS and Emergency Management to ensure that there is no duplication.

In response to a question from Representative Floyd, Chair Pullin clarified that executive orders have been confirmed for the KOHS to maintain the fusion center but has not been put into statute by the General Assembly.

Other Business

Chair Pullin noted that on September 15th, Dakota Meyer, a marine from Kentucky will be awarded a medal of honor. He is the 88th living Medal of Honor recipient. Also, at the end of September and beginning of October, the 150th anniversary of the

Medal of Honor Convention will be held in Louisville, Kentucky. Chair Pullin encouraged members to attend some part of the convention.

There being no further business, the meeting adjourned.

CAPITAL PLANNING ADVISORY BOARD

Minutes of the 5th Meeting of the 2011 Calendar September 23, 2011

Call to Order and Roll Call

The 5th meeting of the Capital Planning Advisory Board was held on Friday, September 23, 2011, at 10:15 AM, in Room 169 of the Capitol Annex. Representative Melvin B. Henley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Melvin B. Henley, Co-Chair; Senator Paul Hornback, Representative Ron Crimm, David Buchta, Charles Byers, John Hicks, Bill Hintze, F. Ryan Keith, Mary Lassiter, Mark Overstreet, and Carol Palmore.

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

Approval of Minutes August 26, 2011

There was a motion made by Representative Crimm, seconded by Mr. Hintze, and adopted by voice vote to approve the minutes of the August 26, 2011 meeting.

2012-2018 Statewide Capital Improvements Plan

Representative Henley thanked the members of the board for their attendance and hard work over the last few months. He then thanked staff for their work and the various state agencies that provided specialized reports to the board this year.

Representative Henley said the 2012-2018 Statewide Capital Improvements Plan includes a series of policy and project recommendations that address the high priority this board places on maintenance of state-owned facilities. The policy recommendations were discussed and agreed upon at the board's August 26 meeting. The state-funded project recommendations were voted upon by members over the course of the last month, and include projects in the categories of maintenance and renovation, information technology, and new construction.

There was a motion made by Mr. Overstreet, seconded by Mr. Hicks, and adopted by voice vote to approve the draft 2012-2018 Statewide Capital Improvements Plan and the state-funded project recommendations. The motion also included the authorization for staff to make necessary edits as needed in finalizing the plan for publication.

Representative Henley stated that the Board does not typically meet during General Assembly sessions; however, staff will keep members updated on items that may be of interest to the board.

With there being no further business, Representative Crimm made a motion to adjourn the meeting. The motion was seconded and the meeting adjourned at 10:24 A.M.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes of the 8th Meeting of the 2011 Interim September 27, 2011

Call to Order and Roll Call

The 8th meeting of the Capital Projects and Bond Oversight Committee was held on Tuesday, September 27, 2011, at 10:30 AM, 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 Julian M. Carroll; Representatives Robert Damron, Steven Rudy, and Jim Wayne.

Guests: Tom Denton. Vice President for Finance and Administrative Services, Mr. Kim Oatman, Chief Facilities Officer, and Dr. Brian VanHorn, Dean for Continuing Education, Extended Campuses, Murray State University: Bob Wiseman, Vice President for Facilities Management, University of Kentucky; Sam Ruth, Commissioner, Finance and Administration Cabinet; Commissioner Deputy Benjy Kinman, and Tony Wheatley, Land Acquisition Coordinator, Mr. Gerry Buynak, Assistant Director of the Fisheries Division, Department of Fish and Wildlife; Tim Sheehan, Division of Forestry, Department of Natural Resources; Charles Bush, Director, Division of Real Property, Finance and Administration Cabinet; Sandy Williams, Financial Analyst, Kentucky Infrastructure Authority; Katie Smith, Deputy Commissioner, Cabinet for Economic Development; Mr. Greg Phillips, Hilliard Lyons; and Robin Brewer, Office of Financial Management.

<u>LRC Staff:</u> Kristi Culpepper and Jennifer Luttrell.

Approval of Minutes

Representative Rudy made a motion to approve the minutes of the August 16, 2011, meeting. The motion was seconded by Senator Carroll and approved by voice vote.

Correspondence Items

Senator Leeper asked Kristi Culpepper, Committee Staff

to present the Administrator, correspondence items. Ms. Culpepper said there was one correspondence item for members to review, which was a letter from the Kentucky Infrastructure Authority explaining actions the KIA board as taken related to various loans that the committee has already approved. The KIA board has re-approved a Fund C loan for the City of Bardstown for the Bardstown-Nelson County Industrial Park Transmission Project, which the committee approved in October of 2009. The city was unable to meet the terms of the conditional commitment letter issued by KIA because of delays in obtaining the proper easements. The city has since obtained all the easements and requested that the loan be re-approved. The board reapproved the loan with the original terms. KIA has also increased the amount of principal forgiveness for various Fund F loans including: the City of Hardinsburg, Breathitt County Water District, City of Barbourville and City of Barlow. KIA is required to provide a certain level of subsidy to borrowers under the terms of the federal capitalization grant that funds the program. KIA would not have been able to meet its subsidy requirements without providing additional principal forgiveness. The additional principal forgiveness benefits the borrowers.

Information Items

Senator Leeper asked Ms. Culpepper to present the information items. Ms. Culpepper said there were five information items for committee members to review. The first information item was a report on the state's debt position that Ms. Culpepper prepared for the Capital Planning and Advisory Board as part of the biennial of capital planning process. The report provides an estimate of the state's outstanding appropriation-supported debt, compares Kentucky's level of borrowing to other states according to various metrics, and discusses the impact various financial practices have had on the state's credit profile. The second information item was the Semi-Annual Report of the Kentucky Asset/Liability Commission. This report provides information on the state's bond and investment portfolios and cash management. The third information item was the Annual Report of Bonds Outstanding from the Office of Financial Management. The fourth information item was a study that was approved by the Program Review and Investigations Committee in September regarding how school construction affects employment in the state. The last information item was the monthly bond market update.

Project Report submitted by Murray State University

Mr. Tom Denton, Vice President

for Finance and Administrative Services, Mr. Kim Oatman, Chief Facilities Officer, and Dr. Brian VanHorn, Dean for Continuing Education, Extended Campuses, presented two items for Murray State University (MSU). The first item was an update on the new Paducah campus. MSU, the McCracken County Fiscal Court, the City of Paducah, and the Paducah Greater Economic Development Authority have executed a memorandum of agreement (MOA), under which the county would issue \$10 million of general obligation bonds to finance the design and construction of the new facility. The bonds are projected to have a required annual debt service of \$790,000. The city and county will be responsible for paying \$500,000 of the annual debt service. MSU will be responsible for paying about \$290,000 per year. The bonds are scheduled to be issued on November 1, 2011. The General Assembly authorized \$17.6 million of other funds for this project in the current budget.

In response to a question from Senator Carroll, Dr. Brian VanHorn explained that one of the things outlined in the MOA is an expected enrollment of about 2,000 per semester at the Paducah campus. Currently, there are about 1,000 enrollments per semester, but MSU is at capacity in the present building.

In response to another question from Senator Carroll, Dr. VanHorn explained that students can start in Paducah and go to West Kentucky Community Technical College, earn an associates of arts, associates of science, or applied associates degree, and then transfer over to MSU to complete a baccalaureate degree program. MSU opened the existing facility in the spring of 1998.

Mr. Denton said that MSU's bond payment could be less than the estimated \$290,000, and that \$200,000 in operations and maintenance could be transferred from the Crisp Center to the budget for the new facility.

In response to a question from Representative Wayne about the location of the Paducah campus, Mr. Denton replied that it is to the south of Paducah, directly across the interstate from West Kentucky Community College, not in the downtown core.

Representative Wayne stated that it would be better for the community to invest in the downtown area.

Representative Rudy said that he appreciated Representative Wayne's sentiment, but believes this is the proper place for the Paducah campus because of its proximity to the West Kentucky Community and Technical College.

In response to a question from Representative Rudy, Dr. VanHorn

explained that MSU has been at maximum capacity for a number of years.

In response to a question from Representative Damron about the existing lease at the Crisp Center, Mr. Denton replied that it is a 20-year lease at about \$180,000 a year. MSU is examining possibilities for the Crisp Center, but MSU still has the option of returning the facility to the University of Kentucky (UK). The lease is a lease-purchase agreement, and MSU is in the 12th year of the lease.

In response to a question from Damron Representative about McCracken County Fiscal Court's bond rating, Mr. Greg Phillips with Hilliard Lyons, the county's financial advisor on the transaction, explained that the county has not done a standalone financing and thus does not yet have a bond rating. The county has applied for a rating from Moody's Investor Service. Mr. Phillips says he expects the county to receive an AA or A rating based on the rating of the City of Paducah and the area economy.

Representative Damron requested that MSU provide staff with the actual ratings and debt service cost once they are known so that staff could compare the cost of this transaction to a standard university General Receipts bond issue, which benefits from the state university intercept program. No committee action was necessary.

Mr. Denton discussed a change in funding source for the Renovate Elizabeth Hall project. The original authorization for the 2010-12 biennium was for \$8.9 million. Murray issued \$7.5 million of bonds in June to finance the project, which was lower than the amount authorized for the project based on internal estimates. Bids have come in over the bond amount. MSU has a pool of funds that could be used to make up that difference.

Representative Rudy made a motion to approve the project. The motionwasseconded by Representative Wayne and passed unanimously by roll call vote.

Project Report submitted by University of Kentucky

Mr. Bob Wiseman, Vice President of Facilities Management for UK, reported on the purchase of the University Lofts, apartment complex adjacent to the UK campus at a price of \$6.7 million. The purchase was authorized by the UK Board of Trustees at the June 14, 2011, meeting. The building, once renovated, will replace the existing Reynolds Building, which is used for Fine Arts programs.

Project Report submitted by the Finance and Administration Cabinet

Sam Ruth from the Finance and Administration Cabinet reported three projects. The first project was for the Department of Military Affairs to construct new latrines and a cold storage building at Field Maintenance Shop Number 5 at the Boone National Guard Center in Frankfort. The estimated project cost is \$673,000 and will be paid from federal funds.

Representative Wayne stated that the bathrooms and storage facilities are being built at \$210 a square foot, which seems a little high.

The second project, also for the Department of Military Affairs, is to construct a new Medical Command Facility at Boone Center. This building will replace the 60-year-old medical center located at Bluegrass Station in Lexington, which is beyond repair. The estimated project cost is \$1,000,000, of which \$750,000 will be paid from federal funds and \$250,000 will be paid from restricted funds.

The third project was for the Department of Fish and Wildlife to increase the scope of the Pfeiffer Fish Hatchery project by \$3.3 million. The increase is funded entirely with federal funds. The project will increase fish production and add heating and air conditioning to the building so that it can be used year-round. The new project scope will be \$5.8 million.

Representative Rudy made a motion to approve the projects. The motion was seconded by Representative Glenn and passed unanimously by roll call vote.

In response to a question from Chairman Glenn about a second hatchery in Morehead, Mr. Gerry Buynak, Assistant Director of the Fisheries Division, stated that Morehead just invested a couple million dollars to renovate drain and supply lines.

Benjy Kinman, Commissioner, Department of Fish and Wildlife, reported the acquisition of a piece of property in Union County. The property will be co-owned by the Division of Forestry and Department of Fish and Wildlife. It will be used for hunting, fishing, and outdoor recreation. The total cost was \$6.95 million, of which \$3.25 million is from the federal Forest Legacy Program, \$2.23 million is from the Department of Fish and Wildlife Land Acquisition Pool, and \$1.47 million is from the Heritage Lane Conservation Fund.

In response to a question from Representative Rudy, Mr. Tim Sheehan, Division of Forestry, stated that he does not know the amount previously collected from property taxes on the property. Mr. Sheehan said the land had already been managed as a forestry property was some of the least desirable land in the area because it could not be used for agriculture.

Representative Damron stated that every time the state acquires lands it takes the land off the tax rolls

for the local school districts. He also questioned why the state would be paying \$2,700 per acre for undesirable land. No committee action was necessary.

Lease Report submitted by the Finance and Administration Cabinet

Charles Bush, Director, Division Real Property, Finance and Administration Cabinet, reported two lease modifications under \$50,000. These modifications represent an amortization of costs associated with leasehold improvements. The first lease modification was PR-1621 for the Cabinet for Health and Family Services in Franklin County. It included electrical work and minor structural changes to facilitate videoconferencing in the training room, along with the installation of some signage. Two estimates were obtained, one for \$2,551 and the other for \$3,770, and the low bid was selected. The next lease modification was PR-3920 for the Cabinet for Health and Family Services in Spencer County. This project included making security improvements to the reception area and the installation of metal doors and access control devices. The cabinet also converted a former smoking room into office space. Two estimates were obtained, one for \$12,905 and the other for \$13,594, and the low estimate was selected. No committee action was necessary.

Mr. Bush presented the quarterly lease modification report. The report involved three leases (PR-4487, PR-2112, and PR-5199) wherein the overall square footage and total annual rent had changed, but the rental rate per square foot remained the same. No committee action was necessary.

Report from the Office of Financial Management

Sandy Williams, KIA, reported that the first loan request was from the Oldham County Environmental Authority. The authority requested increase of \$900,000 to a previously approved KIA Fund A loan in the amount of \$1.5 million for the construction of the Buckner Interceptor Sewer and Mockingbird Valley Wastewater Treatment Plan Elimination Projects. The increase brings the total Fund A commitment to \$2.4 million. The increase was necessary due to an increase in the cost of PVC pipe, the need for a specialized inspector as required by the CSX Railroad for boring under a section of their railroad, and to address problems with the solids that enter the treatment plant from the Kentucky State Reformatory. The terms are the same as with the original loan.

Ms. Williams then presented a second loan request from the Oldham County Environmental Authority.

The authority requested a Fund A loan in the amount of \$400,000 for the Covered Bridge Waste Water Treatment Plant Decommissioning Project. The loan is for 20 years and has a two percent interest rate. This loan request was approved at KIA's July 4, 2011, meeting.

Representative Rudy made a motion to approve the project. The motion was seconded by Representative Glenn and passed unanimously by roll call vote.

Ms. Williams said that there was a coal grant in committee members' packets to review. No committee action was required.

Smith, Deputy Katie Commissioner, Cabinet for Economic Development, reported a \$500,000 Economic Development Bond (EDB) grant to the City of Augusta for the benefit of Clopay Plastics Products Company, Inc. Clopay is a global leader in specialty films, extrusion coatings, custom printing, and engineered The company's laminations. products are used in the hygienic healthcare protective apparel and industrial market. Clopay anticipates an expansion project including the construction and equipping of approximately 62,000 square feet of new space at its current facility. The proposed EDB grant funds will be used to offset the cost associated with the project. In consideration for the grant, the company will be required to maintain 290 full-time jobs at the Augusta facility for a period of three years following the effective date of the grant agreement. The company will be required to pay the 290 fulltime jobs an average hourly wage of not less than \$14.46 per hour excluding benefits. Repayment provisions are included in the grant agreement if the company fails to retain the jobs or pay the required wages at the appropriate measurement dates. Clopay will also be required to provide a letter of credit or another form of collateral satisfactory to the cabinet as security for re-payment of any of the grant proceeds. The project was approved by the State Property and Buildings Commission at its September 15, 2011, meeting.

In response to a question from Representative Glenn, Ms. Smith explained that the company was not willing to commit to additional jobs at this time.

Representative Denham said that he supports this project because it is the only plant in Bracken County. The grant will save 290 jobs in Bracken County, Kentucky, a county that has about 11 percent unemployment rate.

Representative Damron made a motion to approve the project. The motion was seconded by Representative Wayne and passed unanimously by roll call vote.

Representative Rudy stated that he fully supports this project, but questioned whether it was standard procedure to use EDB funds when a project is only saving, and not creating, jobs. Ms. Smith replied that each grant is negotiated individually.

Representative Denham noted that the city of Augusta and Bracken County contributed \$600,000 to the project. A neighboring state offered the plant \$4,000,000 in economic development incentives plus other perks.

Ms. Smith reported a \$500,000 EDB grant to the City of Berea for the benefit of Hitachi Automotive System Americas, Inc. Hitachi will use the funds to acquire, improve, and equip an approximately 150,000 square-foot manufacturing facility in Berea, where Hitachi plans to manufacture electric drive motors for the next generation electric and hybrid electric vehicles. The proposed EDB grant funds will be used to offset the cost associated with the project. In addition to retaining the existing 946 full-time Kentucky resident workforce in Berea, the company will be required to create 130 new full-time jobs for Kentucky residents, for a total of 1,076 full time Kentucky resident jobs within three years of the date of approval. The company will also be required to pay the 130 new jobs an average hourly wage of not less than \$13.50 including benefits. Repayment provisions will be included in the grant agreement. If the company fails to create or retain the jobs or pay the required wages, and the company will be required to provide a letter of credit or another form of collateral satisfactory to the cabinet as security for repayment of any of the grant proceeds. This project was approved by the State Property and Buildings Commission at its meeting on September 15, 2011.

Senator Carroll made a motion to approve the project. The motion was seconded by Representative Glenn and passed unanimously by roll call vote.

In response to a question from Representative Damron, Ms. Smith replied that Kentucky is not allowed to shift jobs from one site in Kentucky to another site and count them toward a project's job requirements. She said the company is also expanding facilities in Harrodsburg, which will create additional jobs for Kentucky residents.

In response to a question from Representative Rudy, Ms. Smith replied that the unemployment rate is one factor the cabinet looks at when negotiating the packages with companies.

Robin Brewer with the Office of Financial Management reported

a new conduit bond issue, Kentucky Economic Development Finance Authority Revenue Bonds (Catholic Health Initiatives), Series 2011, in an amount size of \$336,000,000. This bond issue will refinance outstanding interim debt; pay certain future capital expenditures, and the cost of issuing the bonds. The proposed date of sale is October 15, 2011. The expected ratings are Aa2 by Moody's Investor's Service and AA from both by Fitch and Standard and Poor's (S&P). This bond issue is a general obligation of Catholic Health Initiatives. JP Morgan and Morgan Stanley are the underwriters for this transaction. Polsinelli Shughart is serving as bond counsel and Wells Fargo is the trustee.

Representative Wayne made a motion to approve the project. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

Senator Leeper noted that there were follow-up reports for previously approved bond issues in member's folders. No committee action was required.

Ms. Brewer reported there are 20 new school bond issues with School Facilities Construction Commission (SFCC) debt service participation. Eighteen of the bond issues are refunding and two provide new money for school projects.

In response to a question from Representative Damron about the total debt service savings to SFCC, Mr. Tom Howard, Executive Director, Office of Financial Management, replied that he did not know, but is sure it is fairly significant.

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

New Local School Bond Issues without SFCC Debt Service Participation

Ms. Culpepper reported that there were four local school bond issues reported to the committee. One bond issue provides new money for projects and the other bond issues were refundings. None of the bond issues involved tax increases.

With there being no further business, Representative Wayne made a motion to adjourn the meeting. The motion was seconded by Representative Glenn and the meeting adjourned at 11:40 a.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the September Meeting September 13, 2011

Call to Order and Roll Call
The September meeting of the

Administrative Regulation Review Subcommittee was held on Tuesday, September 13, 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, and Joey Pendleton; Representatives Robert R. Damron, Danny Ford, and Jimmie Lee.

Guests: Glenn Birdwhistell, J.R. Bush, Marilyn Kennedy, Stephen Van Zant, Board of Auctioneers; Connie Calvert, Jerald F. Combs, William Reynolds, Board of Optometric Examiners; C. Lloyd Vest II, Board of Medical Licensure; Nathan Goldman, Board of Nursing; Becky Klusch; Board of Physical Therapy; Ryan Halloman, Denise Logsdon, Board of Licensure for Massage Therapy; Gerard L. Buynak, Benjy Kinman, Mark Mangeot, Department of Fish and Wildlife Resources; Tony Hatton, Lori R. Terry, Bruce Scott, Division of Waste Management; Rodney Ballard, Amy Barker, Jeff Burton, Debra Kays, Department of Corrections; Clay Lamb, Education and Workforce Development Cabinet; Malinda Shepherd, Department of Insurance; Stephanie Bell, Gerald Wuetcher, Public Service Commission; Jamie H. Eads, Greg Lamb, Tim West, Kentucky Horse Racing Commission; Virginia Carrington, Elizabeth Caywood, Eric Friedlander, Kevin Mudd, and Ray Peters, Cabinet for Health and Family Services; Ben Gaddie, Kentucky Optometric Association; Bill Doll, Betsy Johnson, Kentucky Medical Association; Julie Lee, Woodford Van Meter, Academy of Eye Physicians and Surgeons.

<u>LRC Staff:</u> Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, Betsy Cupp, and Laura Napier.

The Administrative Regulation Review Subcommittee met on Tuesday, September 13, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

DEPARTMENT OF STATE: Registry of Election Finance: Reports and Forms

- 32 KAR 1:050 & E. Political committee registration. Emily Dennis, general counsel, represented the registry.
- 32 KAR 1:070 & E. Waiver from filing candidate election finance statement.

A motion was made and seconded to approve the following amendment: to make a CONFORMING AMENDMENT to the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct an inconsistency between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Board of Auctioneers: Board

201 KAR 3:045. Recordkeeping and accounting. E. Glenn Birdwhistell, chair; J.R. "Randy" Bush, commissioner; and Marilynn Kennedy, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Sections 1, 2, 3, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (b) make a CONFORMING AMENDMENT to correct inconsistencies between the currently effective administrative regulation and the proposed administrative regulation filed by the agency. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 3:081. Repeal of 201 KAR 3:015 and 3:080.

201 KAR 3:090. Administrative fees for applications and services.

In response to questions by Representative Damron, Mr. Bush stated that there was a fee increase for a new licensee card or change of address. All licensees had been notified, and there were no complaints regarding the fee increase.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 5, and 6 to specify fees for licensure, licensure renewal, grace period renewal, late fee, post-grace period renewal, reactivation, change of address, initial recovery, and renewal recovery; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 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.

Board of Optometric Examiners: Board

201 KAR 5:110. Expanded therapeutic procedures. Dr. Jerald

F. Combs, board president, and Dr. William "Bill" Reynolds, board vice president, represented the board. Dr. Ben Gaddie, president, Kentucky Optometric Association, appeared in support of this administrative regulation. Betsy Johnson, attorney representing Kentucky Academy of Eye Physicians and Surgeons; Bill Doll, attorney representing the Kentucky Medical Association; Dr. Julie Lee, Kentucky Academy of Eye Physicians and Surgeons; and Dr. Woodford Van Meter, Kentucky Academy of Eye Physicians and Surgeons, appeared in opposition to this administrative regulation.

Dr. Combs stated that Senate Bill 110 was enacted by the General Assembly in the 2011 Regular Session and the bill specified education, training, and competency standards for certain laser procedures to be performed by optometrists.

Dr. Rush stated that other boards that wished to license new services by licensees did not require new certifications or examinations. This administrative regulation established education, training, and competency standards for certain laser procedures to be performed by optometrists. Optometrists were required complete specific continuing education and be approved by a board-approved preceptor prior to being allowed to perform each type of laser procedure. Optometrists also had to complete annual continuing education in order to maintain certification to perform laser procedures.

Mr. Doll stated that the Kentucky Medical Association was concerned about the safety of these procedures being performed by optometrists.

Dr. Lee stated that the Kentucky Academy of Eye Physicians and Surgeons supported restarting the administrative regulation drafting process because her organization believed that the administrative regulation task force substantively violated Kentucky Open Meetings Law. June board minutes stated that the board convened to draft an administrative regulation by task force. Governor Beshear's office stated that the governor did not establish this task force or appoint its members. The Kentucky Optometric Association established the task force and appointed the members. The task force failed to give public notice of the administrative regulation discussion, task force creation, or meetings. For three (3) months it was erroneously believed that the task force had been created by the Executive Branch. Dr. Lee stated that she had concerns about how the members were appointed, if there was a balance of appropriately certified academics, and if members had conflicts of interest. She stated that the failures of the administrative regulation process threatened public health.

Dr. Van Meter stated that there were numerous violations that occurred during the drafting of this administrative regulation, including: (1) certification requirements were vague; (2) preceptor standards were inferior to university standards and did not address matters of conflicts of interest between preceptor and optometrist; (3) in the case of nonlaser procedures, the board did not require that procedures be performed on living eye tissue for preceptor approval; (4) cancer diagnosis training was omitted; (5) the board circumvented the peerreview process; and (6) the board did not establish rigorous education requirements for laser procedures. Dr. Van Meter further stated that small community medical doctors will leave Kentucky if optometrists take over laser procedures.

Dr. Ben Gaddie stated support for this administrative regulation and explained that it established stringent requirements to be completed before certain procedures can be performed. Dr. Gaddie chaired the task force, which was made up of medical professionals with technical medical expertise. Other boards that wished to license new services by licensees did not require new certifications or examinations, and this administrative regulation will get care to people in small and rural communities.

In response to a question by Co-Chair Bowen, Dr. Combs respectfully declined to defer consideration of this administrative regulation to the October Subcommittee meeting.

In response to questions by Representative Ford, Co-Chair Bell stated that an alleged violation of the Kentucky Open Meetings Law should be considered by the court system, not by this Subcommittee. Dr. Van Meter stated that his concerns involved violation of Open Meetings Law and risks to public health. This administrative regulation was insufficient to protect public safety. Dr. Van Meter supported redrafting this administrative regulation to make the standards more rigorous and specific. This administrative regulation should also address conflicts of interest regarding preceptors determining competence. This administrative regulation should specify criteria for failure of intraocular surgery competency, as determined by the preceptor. Dr. Lee stated that surgery was different from other medical care and required lengthy training. Following Open Meetings Law and providing for public input would make this administrative regulation more protective of the public health.

In response to questions by Senator

Givens, Dr. Combs stated that members of the Board of Optometric Examiners were appointed by the governor. There were four (1) optometrists and one (1) public member on the board, with four (4) year, staggered terms. The board proceeded carefully with the drafting of this administrative regulation. The board would have credibility problems if standards in this administrative regulation were not appropriate. This administrative regulation may keep someone in a rural area from losing vision. Dr. Reynolds stated that board members took an oath to protect public health. He stated that the board followed Open Meetings Law and that Dr. Lee's concerns addressed the task force, not the board. Dr. Combs stated that the board received public comments and amended this administrative regulation in response to those public comments, both supportive and in opposition.

Representative Lee stated that, as a member of this Subcommittee, his obligation was to determine if this administrative regulation complied with Kentucky statutes, not to debate the law itself. This administrative regulation seemed to comply with the applicable statutes. The question of whether the task force violated the Open Meetings Law was one for the courts. The statute authorizing this administrative regulation passed without Representative Lee's vote, but because this administrative regulation seemed to comply with that statute, he had no choice but to allow this administrative regulation to move forward in the process.

In response to questions by Representative Damron, Dr. Gaddie stated that Oklahoma required a thirty-two (32) hour education course and passage of an examination prior to an optometrist being allowed to do specific laser procedures. There was not a full, proctored case for each optometrist, as required by this administrative regulation. This administrative regulation also did not allow a certain procedure that is permitted in Oklahoma. The requirements in this administrative regulation were different and, in some cases, more stringent than those in Oklahoma. Dr. Gaddie stated that the task force made recommendations to the board regarding requirements and standards. There were equal numbers of physicians and optometrists on the task force

In response to questions by Co-Chair Bell, Dr. Van Meter stated that, after the law passed, the public was promised protection of health through promulgation of an administrative regulation. This administrative regulation did not adequately protect public health. Dr. Van Meter agreed that, other than matters pertaining

to the task force, this administrative regulation went through the typical rulemaking process, as established in KRS Chapter 13A. Apublic hearing and comment period was held, comments were received, this administrative regulation was amended in response to those public comments, and this Subcommittee meeting was open to the public.

Co-Chair Bell stated that many of his constituents did not have access to an ophthalmologist and had to drive many hours to see one. Dr. Van Meter stated that many people drive long distances for appointments with other surgical specialists. Lax training may result in poor care. This administrative regulation should be drafted pursuant to the Open Meetings Law, with an opportunity for public participation. Most of the money that would be made through this administrative regulation would go to Oklahoma, not to the University of Kentucky or the University of Louisville.

In response to questions by Co-Chair Bell, Dr. Van Meter stated that public access was not the primary issue regarding public health because this administrative regulation did not improve access significantly because the laser machines cost approximately \$30,000 each, and small communities would not be able to purchase one. He did note that lasers could be rented. Practice on one (1) eye did not establish quality of care of patients. Ms. Johnson stated that the Kentucky Academy of Eye Physicians and Surgeons had filed a complaint in compliance with KRS Chapter 61, alleging that the board violated the Open Meetings Law. The board's Web site did not have information on the meeting places, times, or agendas, as required by KRS Chapter 61. The board abdicated rulemaking authority to the task force and to trade groups.

In response to questions by Co-Chair Bell, Ms. Johnson stated that this administrative regulation and the Subcommittee did not violate KRS Chapter 13A. She wanted this administrative regulation to be redrafted for compliance with KRS Chapters 13A and 61. The Open Meetings Law was violated prior to this administrative regulation being filed with LRC.

Inresponse to a question by Senator Pendleton, Dr. Gaddie stated that the task force was comprised of three (3) ophthalmologists from Kentucky and one (1) from Oklahoma.

In response to Co-Chair Bowen's second request to defer consideration of this administrative regulation to the October meeting, Dr. Combs respectfully declined.

A motion was made and seconded to approve the following amendment: to amend Section 1(2)(a)1.w. to comply

with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Board of Medical Licensure:

201 KAR 9:091. Repeal of 201 KAR 9:090. C. Lloyd Vest II, general counsel, represented the board.

Board of Nursing: Board

201 KAR 20:161. Investigation and disposition of complaints. Nathan Goldman, general counsel, represented the board.

201 KAR 20:370. Applications for licensure.

Board of Physical Therapy: Board

201 KAR 22:045. Continued competency requirements and procedures. Becky Klusch, executive director, represented the board.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

Board of Licensure for Massage Therapy: Board

201 KAR 42:035. Application process, exam, and curriculum requirement. Denise Logsdon, board member, and Ryan Halloran, assistant attorney general, represented the board.

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

301 KAR 1:015. Boats and motor restrictions. Gerard L. Buynak, assistant director; Benjy Kinman, deputy commissioner; and Mark Mangeot, legislative liaison, represented the department.

In response to questions by Senator Givens, Mr. Buynak stated that the horsepower restriction was removed because it was archaic. Other similarly sized lakes had authorized unlimited horsepower and had not had problems. Additionally, it was difficult to enforce the standard. This administrative regulation still provided for no wake zones. Mr. Kinman added that, in addition to no wake zones, reckless boating was still prohibited. The current statute did not provide for revocation of a boating license for reckless boating.

In response to questions by Representative Damron, Mr. Mangeot stated that a meeting was held in Dawson Springs on April 21, 2011, to apprise the community about the proposed changes to this administrative regulation. Mr. Kinman stated that the response at the public meeting was mixed. Anglers tended to support the changes, while some residents wanted the change to be seasonal. In-board boats had been an enforcement problem because the horsepower was not posted on the vehicles themselves. Most jet skis were over 150 horsepower. If

this change was not made, all jet skis would have to be prohibited. Cedar Creek Lake was a dual-purpose lake, providing for fishing and recreational boating.

In response to a question by Co-Chair Bowen, Mr. Kinman stated that noise considerations were unnecessary because noise was based on if the exhaust was underwater or not. As it pertained to this administrative regulation, underwater exhaust was already required on smaller lakes.

301 KAR 1:152. Asian Carp Harvest Program.

301 KAR 1:201. Recreational fishing limits.

ENERGY AND
ENVIRONMENT CABINET:
Department for Environmental
Protection: Division of Waste
Management: Underground Storage
Tanks

401 KAR 42:005. Definitions related to 401 KAR Chapter 42. Lori R. Terry, environmental scientist; Tony Hatton, division director; and Bruce Scott, commissioner, represented the division. (These administrative regulations were discussed, and many amended, prior to their deferral from the August 2011 Administrative Regulation Review Subcommittee meeting. Those amendment summaries were included in the August report of this Subcommittee.)

In response to a question by Representative Ford, Mr. Scott stated that these administrative regulations were not more stringent than federal requirements, but did include Kentucky-specific requirements.

Senator Pendleton stated that he was satisfied that cleanup of underground storage tank sites would be faster if these administrative regulations were implemented.

In response to questions by Senator Givens, Mr. Scott stated that the annual differential between closed sites and sites added was approximately ten (10) years. At that point, the sites closed and added should be approximately equal. Mr. Hatton added that there were three (3) categories of cost for sites that may be closed. The first category was minimal and included sites that may close due to tank removal. The second category included those tanks not able to be closed and that may need corrective action. The third category included significantly contaminated sites, with groundwater involvement. The cost increased for each category. Ms. Terry stated that seventeen (17) percent of sites were in the second category, and three (3) percent were in the first category.

In response to a question by Representative Lee, Mr. Scott stated that the division was investigating other methods to reuse properties by providing prohibitions from using the properties for certain activities that may pose contamination danger.

401 KAR 42:011. Scope of underground storage tank program.

401 KAR 42:020. UST systems: design, construction, installation, and registration.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8(1) to clarify training deadlines; and (2) to amend Section 16 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 42:030. UST system general operating requirements.

A motion was made and seconded to approve the following amendment: to amend Section 7(6) to correct a cross-reference citation. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 42:040. UST system release detection.

401 KAR 42:045. Delivery prohibition.

401 KAR 42:050. UST system release reporting, investigation, and confirmation.

401 KAR 42:060. UST system release response and corrective action for UST systems containing petroleum or hazardous substances.

401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of UST systems, and change in service of UST systems.

401 KAR 42:080. Classification of UST systems containing petroleum and listing of associated cleanup levels.

401 KAR 42:090. Financial responsibility.

401 KAR 42:095. Lender liability.

401 KAR 42:200. Annual fee for underground storage tanks.

401 KAR 42:250. Petroleum storage tank environmental assurance fund reimbursement procedures.

401 KAR 42:290. Ranking system.

401 KAR 42:300. Third-party claims.

401 KAR 42:315. Repeal of 401 KAR 42:314.

401 KAR 42:316. Petroleum storage tank environmental assurance fund eligibility criteria for contracting companies and partnerships.

401 KAR 42:320. Hearings.

401 KAR 42:330. Small owners tank removal account.

A motion was made and seconded to approve the following amendment: to amend Section 4(3) to correct a cross-reference citation. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 42:335. Financial

audits.

401 KAR 42:340. Laboratory certification.

Solid Waste Facilities

401 KAR 47:205. Contents of the application for petroleum contaminated soil treatment facilities.

401 KAR 47:207. Public information procedures for petroleum contaminated soil treatment facilities.

Standards for Solid Waste Facilities

401 KAR 48:205. Technical requirements for petroleum contaminated soil treatment facilities.

401 KAR 48:206. Petroleum contaminated soil treatment facility liner soil layer quality assurance and quality control.

401 KAR 48:207. Petroleum contaminated soil treatment facility liner geosynthetic quality assurance and quality control.

401 KAR 48:208. Petroleum contaminated soil treatment facility liner high-permeability layer quality assurance and quality control.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Jail Standards for Full-Service Facilities

501 KAR 3:040. Personnel. Rodney Ballard, deputy commissioner; Amy Barker, assistant general counsel; and Jeff Burton, director of local facilities, represented the department. (Some of these administrative regulations were discussed, and amended, prior to their deferral from the August 2011 Administrative Regulation Review Subcommittee meeting. Those amendment summaries were included in the August report of this Subcommittee.)

Representative Ford, Co-Chair Bowen, and Senator Givens thanked the department for revising these administrative regulations.

Co-Chair Bell stated his thanks, but noted that his concerns had not been completely addressed. He stated his hope that his concerns regarding medication disbursement would be resolved in a future amendment.

A motion was made and seconded to approve the following amendments: to amend Section 1 to specify different staffing level requirements depending on the size of the jail: (1) for category I jails with eighty (80) beds or less, only two (2) jail personnel were required; (2) for category I jails with eighty-one (81) to 100 beds, three (3) jail personnel were required except for the night shift; (3) for the night shift, only two (2) personnel were required; and (4) For category II-V jails (jails with over 100 beds), three (3) jail personnel were required for all shifts. Without objection, and with agreement of the agency, the amendments were

501 KAR 3:050. Physical plant.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definitions for "renovation" "expansion" in accordance 2011 House Bill 463; (2) to amend Sections 3, 6, and 7 to clarify which requirements apply depending on if it is construction of a new jail or a renovation or expansion of an existing facility; (3) to amend Section 8 to clarify when an existing jail is exempt from subsequently adopted physical plant standards; (4) to amend Section 9(6)(b)3. to correct the minimum number of required bathrooms for diversion holding areas depending on the holding area's capacity; (5) to amend the RELATES TO paragraph to include additional relevant citations; (6) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 6, 7, 9, and 10 for clarification and to comply with the drafting requirements of KRS Chapter 13A; and (7) to amend Section 11 and the material incorporated by reference to: (a) align definitions with 501 KAR 3:010; (b) update references and citations; (c) clarify provisions; and (d) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:090. Medical services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1(2) to expressly state that telehealth services cannot be used for mental health evaluations for involuntary commitments under KRS Chapter 202A; and (2) to amend Section 1(16) for clarity. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:140. Prisoner rights.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) specify what is required when providing an inmate with confidential access to his attorney; and (2) clarify provisions. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

A motion was made and seconded to approve the following amendments: to amend various policies for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:050. Physical plant. A motion was made and seconded

to approve the following amendments: (1) to amend Sections 1 through 6 to conform to the new construction, renovation, and expansion requirements for local jails as enacted in 2011 House Bill 463; (2) to amend the RELATES TO paragraph to include additional relevant citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 6 for clarification and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:140. Prisoner rights.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

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

787 KAR 1:010. Application for employer account; reports. Clay Lamb, staff attorney, represented the office

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

PUBLIC PROTECTION
CABINET: Department of Insurance:
Health and Life Division: Trade
Practices and Frauds

806 KAR 12:150. Annuity disclosures. Malinda Shepherd, program manager, represented the division.

A motion was made and seconded to approve the following amendments:
(1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend Section 1 to correct punctuation. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 12:170. Life insurance disclosures.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:076. Alternative rate adjustment procedure for small utilities. Stephanie Bell, deputy executive director, and Gerald Wuetcher, executive advisor, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the

RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 7, 9 through 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend the two (2) forms incorporated by reference to conform. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:027. Entries, subscriptions, and declarations. Jamie H. Eads, director; Greg Lamb, supervisor of pari-mutuel wagering; and Tim West, assistant general counsel, represented the commission.

In response to a question by Co-Chair Bowen, Mr. West stated that a mistake was made when this administrative regulation was last amended. The amendment clarified the horse selection process for preferences in that stakes races did not count toward preferences. This exclusion was inadvertently overlooked during the previous amendment of this administrative regulation.

Senator Givens expressed thanks for this administrative regulation on behalf of Senator Thayer.

810 KAR 1:070. Kentucky Thoroughbred Breeders' Incentive Fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, 4 through 7, 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 1:145. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:285. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation

in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa, and Arabian Racing

811 KAR 2:185. Advance deposit account wagering.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(4) to clarify that the annual fee can only be amended by amending the administrative regulation in accordance with KRS Chapter 13A; and (2) to amend Sections 1 through 8, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020 & E. State health plan for facilities and services. Eric Friedlander, deputy secretary, represented the office.

Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:060. "Means test" for determining patient liability. Kevin Mudd, division director, and Ray Peters, program administrator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to work, State Supplementation

921 KAR 2:040. Procedures for determining initial and continuing eligibility. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst, represented the division.

In response to a question by Senator Givens, Ms. Carrington stated that this administrative regulation combined two (2) forms to streamline processing. Eligibility requirements were not changed.

Food Stamp Program

921 KAR 3:090 & E. Simplified assistance for the Elderly Program or "SAFE".

The following administrative regulations were deferred to the October 11, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET:

Department of Revenue: Ad Valorem Tax; State Assessment

103 KAR 8:010. Watercraft allocation.

GENERAL GOVERNMENT CABINET: Real Estate Appraisers Board: Board

 $201\,KAR\,30:\!330\,\&\,E.\,Application$ for registration.

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.

Kentucky Applied Behavior Analysis Licensing Board: Board

201 KAR 43:010 & E. Licensed behavior analyst or licensed assistant behavior analyst: application procedures.

201 KAR 43:020 & E. Temporary licensed behavior analyst or temporary licensed assistant behavior analyst: application procedures.

201 KAR 43:030 & E. Fees.

201 KAR 43:040 & E. Code of ethical standards and standards of practice.

ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Kentucky State Nature Preserves Commission: Commission

400 KAR 2:090. Management, use, and protection of nature preserves.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety

815 KAR 4:010 & E. Annual inspection of elevators.

815 KAR 4:025 & E. Permit fees for new and altered elevators.

815 KAR 4:030 & E. Elevator contractor licensing requirements.

815 KAR 4:040 & E. Elevator mechanic licensing requirements.

815 KAR 4:050 & E. Continuing education requirements for elevator contractors and elevator mechanics.

815KAR4:060&E.Requirements for approval of continuing education courses and providers.

 $815\ KAR\ 4{:}070\ \&\ E.$ Fees and refunds.

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

900 KAR 6:080. Certificate of Need emergency circumstances.

Department for Public Health: Division of Public Health Protection and Safety: Mobile Homes and Recreational Vehicles Parks; Facilities Standards

902 KAR 15:020 & E. Recreational vehicles.

Radiology

902 KAR 100:019. Standards for protection against radiation.

902 KAR 100:022. Licensing requirements for land disposal of radioactive waste.

902 KAR 100:040. General provisions for specific licenses.

902 KAR 100:042. Decommissioning and financial surety.

902 KAR 100:100. Industrial radiography.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to work, State Supplementation

921 KAR 2:050. Time and manner of payments.

Division of Protection and Permanency: Child Welfare

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

The Subcommittee adjourned at 3:30 p.m. until October 11, 2011.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE

Minutes of the 2011 Interim September 13, 2011

Call to Order and Roll Call

The meeting of the Education Assessment and Accountability Review Subcommittee (EAARS) was held on Tuesday, September 13, 2011, at 11:30 AM, in Room 131 of the Capitol Annex. Representative Ted Edmonds, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Ted Edmonds, Co-Chair; Senators Vernie McGaha and Ken Winters; and Representative Linda Belcher.

<u>Legislative Guest:</u> Representative Keith Hall.

Guests: Jonathan Lowe, Jefferson County Public Schools; Alicia Vinson, Fayette County Public Schools; Robert Duncan and Jacque VanHouten, Kentucky Department of Education (KDE); Phil Shepherd, KCAE; Jim Thompson, Education and Workforce Development Cabinet; Cindy Heine, Prichard Committee; Sue Cain, Council on Postsecondary Education; and Chris Lilly, Legislative Research

Commission.

<u>LRC Staff:</u> Sandy Deaton, Ken Warlick, Ben Boggs, Jo Carole Ellis, and Lisa Moore.

Adopt Minutes of June 13, 2011 Meeting

Minutes were not approved due to lack of a quorum.

Kentucky's Assessment and Accountability System

Dr. Pat Roschewski, Member, National Technical Panel on Assessment and Accountability (NTAPPA), reported that NTAPPA met twice in the past six months in the months of March and May. The two topics discussed in March included program reviews and security.

Dr. Roschewski noted the program reviews included a series of self reports, and documents had not been developed at the time of the March NTAPPA meeting. School districts were asked to provide feedback on programs that were written into Senate Bill (SB) 1. It was recommended that the Kentucky Department of Education (KDE) develop a specific rubric to give guidance to school districts and serve as a scoring guide to ensure specific program criteria were met. Discussions included the importance in training the school districts on how to use the rubric. KDE took NTAPPA's suggestions seriously and completed the rubric to meet the guidelines of specificity. A pilot of the program reviews was conducted and will be field tested before full implementation.

Dr. Roschewski said NTAPPA asked KDE to provide an overall plan for security. NTAPPA reviewed the performance outlier report in March, but this report should be only one piece in an overall security system for the state. She said other things to include would be reviewing reports and conducting interviews.

Dr. Roschewski said the Webinar in May focused on three topics. Mr. Ken Draut, Associate Commissioner, Office of Assessment and Accountability, KDE, gave an update on the new contract. She said it is important for NTAPPA to be informed on follow-up information from preceding meetings to ensure that its advice is being followed or to be advised that a new direction is being pursued.

Dr. Roschewski said the ACT and end-of-course (EOC) assessment issue was discussed because KDE is trying to determine how to correlate the ACT end-of-course scores to a cut score and grade. School districts are aware that student motivation is needed in an accountability system for optimal results. The meeting concluded with the belief that a traditional standard setting process should occur but be enhanced by a few additional steps that

will translate into grades. Grades are one of the most arbitrary things that can happen inside school districts. It was recommended that the standard setting panelists have a clear understanding of the definitions of proficient or advanced to ensure the terms mean the same thing to everyone. Panelists should be well informed on what other states are doing as well.

Roschewski Dr. said standard setting process for the whole accountability system should incorporate all the components to determine a final cut score. The entire system should be easily understood by the public to determine a school or district's effectiveness. NTAPPA recommended incorporating broader set of panelists to represent community and higher education interests, and recommended making proficiency level descriptors very clear and expectations defined. She said it should be easy to identify a school that is labeled "distinguished." NTAPPA strongly encouraged KDE to provide models of the schools to the panelists.

Dr. Roschewski said training and clarity of the rubric are the keys to having a solid accountability system. Teachers, parents, and administrators all need to understand the rubric and ask panelists if they are implementing suggestions received in training.

In response to questions from Senator Winters, Dr. Roschewski said she is the only member of NTAPPA who has seen the rubric, and she has not seen any of the results. She said there is less opportunity for upward bias if the rubric is clear and the training is extensive. There is great value in auditing, and Nebraska audited every district

Dr. Roschewski said NTAPAA did not discuss the inclusion of the teacher and principal effectiveness in the overall system. This is another piece that will take time to develop.

Responding to questions from Senator McGaha, Dr. Roschewski said she reviewed administrative regulations 703 KAR 5:200, 703 KAR 5:220, and 703 KAR 5:230, but other members of NTAPAA have not reviewed the regulations. She has not provided feedback to KDE on the administrative regulations.

Dr. Roschewski said policy weights are an important discussion and opinions vary. There is no "right" system for determining the percentages, but balances need to be kept in check. The state board in Nebraska approved a system with a good balance of points that schools believe to be fair and then evaluate each year to ensure it is proportioned appropriately. The most difficult part is distributing the points among the low-performing schools that show great improvement

and trying not to punish the excellent schools because they are at the top of the scale. Trying to find an equitable way to distribute the points is a huge and complex task. It was noted that one NTAPPA member mailed in written suggestions that were reviewed by all members of NTAPPA about specific ways to weight points. She said there was no verbal discussion among the members, but their thoughts were distributed to LRC. Senator McGaha said he is concerned that the high-performing schools will not be able to accumulate any points for growth.

Responding to questions from Senator Winters, Dr. Roschewski said adding the EOC score to the student's transcript is a clerical issue and is a reasonable medium because it is a state cut score. She suggested reviewing the numbers in the first year before adding a requirement to place the score on the transcript.

Mr. Kevin Brown, Associate Commissioner and General Counsel, KDE, said Dr. Holliday is out of the country but will be at the Education Assessment and Accountability meeting in October. He said the administrative regulation 703 KAR 5:200 is deferred until October, and two other administrative regulations will follow.

Mr. Draut said Kentucky, like many other states, is developing a model to grade schools on a variety of items, and not just a single test score. Next-Generation Learners, Next-Generation Instructional Programs and Support, and Next-Generation Professionals are the three areas that will make up the overall accountability score. The Next-Generation Professionals, which includes the percent of effective teachers and leaders, will take some time to develop.

Mr. Drautsaidthe Next-Generation Learners goes into effect this year and the test scores will be included in the accountability system. The five areas included in this category are achievement, gap, growth, college and career readiness, and graduation rate. The performance measures vary by category, and their respective weights differ in the overall accountability system between elementary, middle, and high school. There is an example of the overall score reporting for Next-Generation Learners for a Kentucky high school provided in the meeting materials located in the LRC library.

In response to a question from Representative Belcher, Mr. Draut said scores will be released this year in late August or early September because the standard setting process will take some time to complete. Scores will be released on an annual summer basis schedule beginning in two years.

Responding to questions from Senator McGaha, Mr. Draut said the

Kentucky Board of Education (KBE) agreed to give schools a one-half bonus point for any student who is distinguished. However, it is offset by deducting a point for novice students. The rationale behind this was trying to influence behavior and give schools an incentive to push proficient students into the distinguished category.

Mr. Brown said the KDE had received some suggested changes from LRC staff, and they are included in a lengthy staff amendment. KDE is willing to define more terms in the regulation using the amendment process before the hearing in October.

Mr. Draut said KDE will incorporate suggestions from NTAPPA as it begins the standard setting process with the KBE in December. Senator McGaha is concerned that EAARS members are being asked to approve an administrative regulation based on a standard setting system that has not yet been developed.

In response to a question from Senator Winters, Mr. Draut explained that the chart for the weights for Next-Generation Learners in the meeting handout has been included in the administrative regulation to help explain the weights as suggested by LRC staff. Mr. Brown clarified that students are counted in the formula reported by schools and districts if they have been enrolled in the school for 100 or more days.

In response to questions from Senator McGaha, Mr. Draut said he thought it was intended for NTAPAA to review the finished administrative regulation after completion, but KDE does not communicate directly with NTAPPA members. KDE has set up an internal process that utilizes LRC staff to correspond with NTAPPA.

Mr. Brown responded that SB 1 did not include program reviews for foreign languages or the primary program. However, SB 1 did not have limiting language in it that would prevent the KBE to fulfill its other statutory roles over the common schools and the assessment system by adding additional requirements to the assessment and accountability system. Senator McGaha said SB 1 did not give permission for the KBE to add program reviews that were not listed in the bill.

In response to a question from Senator Winters, Mr. Brown said SB 1 amended several assessment and accountability statutes. He noted it did not amend the board's authority of its broad oversight to strengthen the accountability system without being in contradiction to SB 1.

Ms. Felicia Smith, Associate Commissioner, Office of Next-Generation Learners, KDE, discussed implementation of the program reviews defined in SB 1. An accountability model should influence behavior at the local level. All the program reviews were based on three areas identified in SB 1, including arts and humanities, practical living and career studies, and writing. NTAPPA assisted KDE to address concerns regarding subjectivity and the following actions are occurring: establishment of a rubric; one year validation of content; field review; audit process; and establishing common evidences. KDE will partner with districts and schools, the School Curriculum Assessment and Accountability Council (SCAAC), and NTAPPA to address the primary issues related to subjectivity.

Ms. Smith said the addition of the program reviews for the K-3 primary program and world languages has generated much discussion. KBE felt the three program reviews mentioned in SB 1 were identified because it was assumed that paper and pencil was not the best way to assess the content areas of arts and humanities, practical living and career studies, and writing. KDE also believes it captures a number of teachers in the non-assessed areas that are mentioned in the Next-Generation Learner component. KDE and KBE feel it is important to capture how well implementation at the local level is occurring in regards to access, opportunities, and instructional approach; however, they feel it is just as important to make sure students in the K-3 program are college and career ready, which is consistent with the intent of SB 1.

Ms. Smith said KBE made the recommendation to add the program review for the K-3 primary program based on rationale that is believed to measure teacher effectiveness for a larger group of teachers. This ensures all schools are held accountable for student performance. KDE received recommendations from the Early Childhood Development and Education Task Force that improves K-3 quality level and believes adding the program review will help to guide schools in implementing their recommendations. It could assist Kentucky in being awarded a Race to the Top Early Learning Challenge grant that has criteria for K-3 programs adding value to a college and career readiness agenda.

Ms. Smith said the rationale for the addition of a world language program review is to ensure that Kentucky is competitive globally and places an emphasis on access and opportunity for children to have world Enhanced language experiences. language proficiency increases academic achievement by increasing cognitive development and abilities and reading abilities and skills. The study of world language is required for college admissions and keeps

Kentucky in alignment with a precollege curriculum in K-12. World language skills increase job potential and ensure Kentucky's competitive edge in the global market.

Responding to questions from Representative Belcher, Ms. Smith said a K-2 diagnostic measure as outlined in SB 1 will be used to measure K-3 programs. It will be administered at the local level but will model the standards and demonstrators of other program reviews. The intent is to make the program reviews as consistent as possible to relieve the burden at the local level.

Ms. Smith said adding the program reviews for K-3 and world languages may add a burden to elementary teachers, but it is the right thing to do for the children. Representative Belcher said she is supportive of assessing children as they leave the primary program, but is not in support of adding programs that are not funded. She said it is valuable for children to learn foreign languages early in life, but schools need support and money when new programs are mandated. Ms. Smith said the SB 1 and KDE budget request will include the financial aspects of funding the new program reviews.

In response to questions from Representative Belcher, Mr. Brown said SB 1 was not funded either, and KDE has done the best it can with existing appropriations and will do the same implementing the new program reviews. Representative Belcher said this concerns her because this is a more specific mandate.

Ms. Smith said the program reviews will allow schools flexibility in exposing children to world languages outside of the traditional teacher and student ratio instruction format. The program reviews will be manageable and offer students innovative opportunities to learn world languages such as after school programs. She noted schools would receive consequences or sanctions if they do not meet requirements in the accountability system. Senator McGaha said some research shows foreign language is learned at a faster rate by students who have completed puberty instead of in the elementary years.

Dr. Larry Stinson, Associate Commissioner, Office of Next-Generation Schools and Districts, KDE, discussed school and district accountability recognition, support, and consequences. One overall accountability score will be comprised from a mixture of 70 percent Next-Generation Learners, 20 percent Next-Generation Instructional Programs and Support, and 10 percent Next-Generation Professionals. The original recommendation was a 60/20/20 split,

but shareholders such as the Local Superintendents Advisory Board, SCAAC, and various cooperative meetings provided feedback that emphasis should be placed on the learner. It was decided among the stakeholder groups that the 70/20/10 split was optimal and KBE agreed with the field. This is for recognition purposes and does not change the classifications that schools receive for the three subparts.

Dr. Stinson said the standard setting process will establish the goals and cut scores or point totals that determine school and district placement in one of four classifications (Distinguished, Proficient, Needs Improvement or Persistently Low Achieving). The standard setting process will occur after data are available from the first administration of the new state required assessments outlined in Senate Bill 1. The top five percent of the distinguished classification is recognized as high distinction. The bottom five percent or five, whichever is greater, is persistently low-achieving and support is outlined by KRS 160.346.

Responding to a question from Senator Winters and McGaha, Mr. Draut said SB 1 requires students to be tested in science once in elementary and high school and does not accumulate the points that reading and mathematics accumulate because students are tested each year in those subjects. Senator McGaha responded that SB 1 did not ask for the program review in world language, and it is equivalent to the same points as science. Mr. Draut said science is valued more in elementary and middle school and is only equivalent with the program review in high school.

In response to a question from Senator McGaha, Dr. Stinson said the Next-Generation Professionals will be a part of the overall accountability score beginning in the 2013-2014 school year. He said the points are redistributed between the other two categories during the interim.

 $Senator\,McGaha\,asked\,Ms.\,Donna$ Little, Administrative Regulations Committee, if she had reviewed administrative regulation 703 KAR 5:200. Ms. Little said she skimmed the regulation after receiving a phone call to be at the EAARS meeting, but she has not read SB 1 to know what is authorized by statute. She noted that KRS Chapter 13A requires that administrative regulations be specific and establish all the requirements that are necessary unless the requirements are already established in statute. Senator McGaha said that, if the administrative regulations are not drafted properly, it could open up the possibility of legal challenges. He recommended that the EAARS

administrative regulations be reviewed by the Administrative Regulations Subcommittee routinely in the future.

Mr. Brown explained that a standard setting process cannot be set up without a first year of results and a first year of results cannot occur without having the administrative regulation and assessment system in place. Mr. Draut said the first year test scores need to be reviewed before determining the final cut scores to serve as a baseline.

Responding to a question from Senator McGaha, Mr. Brown said it is a legislative branch decision to decide if the EAARS administrative regulations should be reviewed by the Administrative Regulations Subcommittee. Ms. Little said KRS 13A.290removedthereviewofEAARS regulations from the Administrative Regulations Subcommittee and would require statutory change; however, she said that she would review the regulations informally if EAARS staff had no objection. Chairman Edmonds agreed to let Ms. Little review the administrative regulation informally. Mr. Brown said the EAARS staff made several suggestions to KDE that improved the regulation.

Senator Winters asked KDE to strengthen the math and science components in the next version of the administrative regulation. Chairman Edmonds said no action would be taken on 703 KAR 5:200. He deferred the Office of Education Accountability's report until the next EAARS meeting.

With no further business before the committee, the meeting adjourned at 1:35 p.m.

GOVERNMENT CONTRACT REVIEW COMMITTEE

Committee Minutes September 13, 2011

Call to Order and Roll Call

The Government Contract Review Committee met on Tuesday, September 13, 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; Senators Julian M. Carroll, Carroll Gibson, and Paul Hornback; Representatives Jesse Crenshaw, Brent Housman, and Brent Yonts.

Guests: Jill Hunter, Earl Gresham, Travis Powell, Lisa Beran, Judy Lancaster, Tim West, Bill Harris, Steve Byars, Tony Hatton, Tim Hubbard, Mandy Lambert, Catherine Staib, Joe Barrows, Toyah Roby, Charlie Harman, Peggy Stratton, Jamie Byrd, Joe Crabtree, Steve Kull, and Rick Washabaugh. <u>LRC Staff</u>: Kim Eisner, Matt Ross, and Becky Brooker.

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

<u>DEFERRED ITEMS FROM</u> <u>AUGUST 2011</u>

A motion was made by Representative Yonts to approve the following contracts: WESTERN KENTUCKY UNIVERSITY, 111208, American Council on the Teaching of Foreign Languages; 111209 The National Center for Drug Free Sport Incorporated. Senator Gibson seconded the motion, which passed without objection.

DEFERRED ITEMS

A motion was made by Representative Housman to defer the following contracts to the October 2011 meeting of the committee: MURRAY STATE UNIVERSITY: 014-12, Egsue Incorporated d/b/a JEM Associates. Representative Yonts seconded the motion, which passed without objection.

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

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:

CORRECTIONS, DEPARTMENT OF:

Louisville Metro Reentry Task Force Incorporated, 1200000277.

EDUCATION, DEPARTMENT

OF:

Multi, 1200000152; Ann Shannon & Associates, LLC, 1200000307.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Myers Jolly Architects, 1200000117.

<u>KENTUCKY</u> <u>LOTTERY</u> <u>CORPORATION:</u>

OrderPad Software Incorporated, 12-04-073.

<u>KY HORSE RACING</u> AUTHORITY:

Stoll Keenon Ogden, PLLC, 1200000247.

<u>LIBRARIES & ARCHIVES,</u> <u>DEPARTMENT FOR:</u>

Lyrasis, 1200000214.

NORTHERN KENTUCKY UNIVERSITY:

Goody Clancy, 2012-511; Heapy Engineering, 2012-522; BHE Environmental, 2012-592.

<u>PSYCHOLOGISTS</u>, <u>BOARD</u> <u>OF EXAMINERS OF</u>:

Stan Heck, Psy D, 1200000133.

STATEPOLICE, DEPARTMENT

Law Enforcement Services Incorporated, 1200000300.

TRANSPORTATION CABINET:

Municipal Engineering Company, 1200000254; Florence and Hutcheson, 1200000327; Arnold Consulting Engineering, 1200000346; HDR Engineering Incorporated, 1200000355; URS Corporation, 1200000356; BTM Engineering Incorporated, 1200000360.

UNIVERSITY OF KENTUCKY:
Paladin Incorporated, A121060;
Omni Architects, A121070; Omni
Architects, A121080; Selge Holding
& Ventures d/b/a Wheless Partners
Executive Search Firm, K12-122;
Smith Management Group, K12123; MCPC Technology Products &
Solutions, K12-124.

<u>WESTERN</u> <u>KENTUCKY</u> <u>UNIVERSITY</u>:

Kentucky Association of Radon Professionals, 111221; School Improvement Network, 111223; Wilson-Bennett Technology Incorporated, 111225; Shook Mobile Technology, LP, 121226.

WORKFORCE INVESTMENT, OFFICE OF:

Landor Associates, 1200000304.

THE FOLLOWING
PERSONAL SERVICE
AMENDMENTS
WERE REVIEWED
WITHOUT OBJECTION:

ADMINISTRATIVE OFFICE OF THE COURTS:

Gess Mattingly and Atchison, 1100001568.

ALCOHOL AND DRUG COUNSELORS, BOARD OF **CERTIFICATION OF:**

Mac R. Bell, 1000002876.

DEPARTMENT FOR
BEHAVIORAL HEALTH,
DEVELOPMENTAL AND
INTELLECTUAL DISABILITIES:

AMS Temporaries Incorporated, 1000002836; Crown Services Incorporated, 1000002837; Guardian Angel Staffing Agency, 1000002838; Guardian Healthcare Providers, 1000002839; Nursestaffing Group Kentucky, LLC, 1000002840.

<u>DEPARTMENT FOR NATURAL</u> <u>RESOURCES</u>:

R M Johnson Engineering Incorporated, 1100002569.

<u>ECONOMIC</u> <u>DEVELOPMENT</u> - <u>OFFICE OF THE SECRETARY</u>:

Kentucky Science & Technology Corporation, 1000004184.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Omni Architects, 0600000391; Voelker Blackburn Niehoff Architects, 0900011541; Omni Architects, 1100001422; Murphy & Graves Architects, 1100001469; Staggs Consulting Engineers & Fisher Incorporated, 1200000173; MSE of Kentucky Incorporated, C-00301848; Hastings & Chivetta Architects, C-05199594-2; Barnette Bagley Architects, C-05236808-2.

MARRIAGE AND FAMILY
THERAPISTS, BOARD OF
LICENSURE FOR:

John Nicholas Kravic, 1000002992.

MEDICAL LICENSURE, BOARD OF:

Multi, 1000002739.

MURRAY STATE UNIVERSITY:

Boswell, Sims & Vasseur, PLLC, 007-12.

NORTHERN KENTUCKY UNIVERSITY:

Goody Clancy, 2012-511.

OFFICE OF HOMELAND SECURITY:

Stantec Consulting Services Incorporated, 1000004123. PSYCHOLOGISTS, BOARD

OF EXAMINERS OF:

Charles D. Auvenshine, PhD, 1000003207.

REAL ESTATE COMMISSION:
Core Systems Development
Incorporated, 1000003040.

TRANSPORTATION CABINET:

Florence & Hutcheson, 0800010613; HMB Professional Engineers Incorporated, 1000000851; Entran, PLC, 1000002191; Florence & Hutcheson, 1000003100; S&ME Incorporated, 1100001451; American Engineers Incorporated, 1200000220; H A Spalding Incorporated, C-00120549-5; DLZ Kentucky

Incorporated, C-99005073-12; Presnell Associates Incorporated d/b/a QK4, C-99059032-5; Palmer Engineering Company, C-99088912-6.

TRANSPORTATION CABINET:

Florence & Hutcheson, M-06239477.

UNIVERSITY OF KENTUCKY: JRA Architects, A101090.

<u>VETERINARY</u> EXAMINERS, BOARD OF:

James F. Boyd, 1000003220; C. Loran Wagoner, 1000003226; C. Loran Wagoner, 1000003226; Brian Fingerson RPH Incorporated, 1000003228.

WORKFORCE INVESTMENT, OFFICE OF:

Heitech Services Incorporated, 1100001269.

THE FOLLOWING
MEMORANDA OF
AGREEMENTS

WERE REVIEWED WITHOUT OBJECTION:

ATTORNEY GENERAL.
OFFICE OF THE:

Family & Children First Incorporated, 1200000111.

DEPARTMENT FOR
ENVIRONMENTAL PROTECTION:
University of Louisville
Research Foundation, Incorporated,
1200000182.

<u>DEPARTMENT FOR NATURAL</u> <u>RESOURCES</u>:

Natural Resources & Environmental Protection Cabinet, Division of Conservation, 1200000404.

<u>DEPARTMENT FOR PUBLIC</u> <u>HEALTH</u>:

Food Lion, 1100001443; University of Kentucky Research Foundation, 1100003059; University of Kentucky Research Foundation, 1200000124.

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

Kentucky Educational Development Corporation, 1100002265; Spencer County Board of Education, 1100002266; Bourbon County Board of Education, 1100002267; Kentucky Education, 1100002268; Pike County Board of Education, 1100002592; University of Kentucky Research Foundation, 1100002645; Covington Independent Board of Education, 1100003069; Harlan County Board of Education, 1100003089; Henderson County Board of Education, 1100003146; Jefferson County Board of Education, 1200000025; Jessamine County Board Education, 1200000026; Allen County Board of Education, 1200000048; Ballard County Board of Education. 1200000050; Bath County Board of Education, 1200000051; Boyd County

1200000054; Christian County Board of Education, 1200000055; Covington Independent Board of Education, 1200000056; Edmonson County Board of Education, 1200000057; Fayette County Board of Education, 1200000058; Fleming Board of Education, 1200000059; Franklin County Board of Education, 1200000060; Grant County Board of Education, 1200000061; Grayson County Board of Education, 1200000062; Henderson County Board of Education, 1200000063; Jefferson County Board of Education, 1200000064; Jessamine County Board of Education, 1200000065; Johnson County Board of Education, 1200000066; Lawrence County Board of Education, 1200000067; Lewis County Board of Education, 1200000068; Livingston County Board of Education, 1200000071; Magoffin County Board of Education, 1200000072; Marshall County Board of Education, 1200000073; McCreary County Board Education, 1200000074; Muhlenberg County Board of Education, 1200000075; Newport Independent Board of Education, 1200000076; Powell County Board of Education, 1200000077; Scott County Board of Education, 1200000078; Simpson County Board of Education, 1200000079; Union County Board of Education, 1200000081; Kenton Board of County Education, 1200000082; Madison County Board of Education, 1200000116; Lewis County Board of Education, 1200000121; Clinton County Board of Education, 1200000128; Lee County Board of Education, 1200000132; Kentucky Educational Development Corporation, 1200000159; Clay County Board of Education, 1200000177; Lyon County Board of Education, 1200000221; Harlan County Board of Education, 1200000222; Jackson County Board of Education, 1200000250; Pendleton County Board of Education, 1200000253; University of Louisville Research Foundation, 1200000262; University of Kentucky Research Foundation, 1200000270; Kentucky Valley Education, 1200000284. **FISH** & WILDLIFE, **DEPARTMENT OF:**

Board of Education, 1200000053;

Carter County Board of Education,

Nature Conservancy, 1100002414.

KY HORSE RACING
AUTHORITY:

University of Kentucky Research Foundation, 1200000276.

KY STATE NATURE

PRESERVES COMMISSION:

Southern Conservation Corporation, 1200000255; Nature Conservancy, 1200000268.

MILITARY AFFAIRS,

DEPARTMENT OF:

Daviess County Emergency Management Agency, 1200000039; Multi, 1200000231.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Calvert City Housing Incorporated, 1100002889; City of Greenville, 1200000113; City of Drakesboro, 1200000185; City of Providence, 1200000206; Martin County Fiscal Court, 1200000230; City of Allen, 1200000232; Floyd County Fiscal Court, 1200000233; Floyd County Board of Education, 1200000235; Pike County Fiscal Court, 1200000257; Morgan Menifee Rowan County Regional Industrial Development Authority, 1200000267; County Fiscal Court, 1200000272; Letcher County Fiscal Court, 1200000290; Letcher County Fiscal Court, 1200000292; Hazard Independent Schools, 1200000293; City of Hazel, 1200000301; City of Crab Orchard, 1200000302; Pike County Fiscal Court, 1200000315; City of Uniontown, 1200000388.

PARKS, DEPARTMENT OF:

Breaks Interstate Parks Commission, 1200000109.

WORKFORCE INVESTMENT, OFFICE OF:

KCTCS, 1200000380.

THE FOLLOWING
MEMORANDA OF AGREEMENT
AMENDMENTS WERE
REVIEWED WITHOUT
OBJECTION:

AGRICULTURE,

DEPARTMENT OF:

Multi, 0900011602; Multi, 0900011666.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Pennyrile Allied Community Services Incorporated, 1100000766; University of Kentucky Research Foundation, 1100000767.

<u>DEPARTMENT</u> <u>OF</u> <u>WORKPLACE STANDARDS:</u>

US Department of Labor OSHA, 1000001248; University of Kentucky Health, 1100000233.

EDUCATION, DEPARTMENT
OF

Frankfort Independent Board of Education, 1100002238; Owen County Board of Education, 1100002597; Washington County Board of Education, 1100002674.

JUVENILE JUSTICE, DEPARTMENT OF:

Hopkins County Board of Education, 1100002532.

MILITARY AFFAIRS, DEPARTMENT OF:

Cumberland River Regional Mental Health Mental Retardation Board, 1100000339; KCTCS, 1100001220.

OFFICE OF THE GOVERNOR,

<u>DEPARTMENT</u> FOR LOCAL GOVERNMENT:

Graves County Fiscal Court, 0700003402; Martin County Fiscal Court, 0800010600; Lee County Fiscal Court, 1000000783; Butler County Fiscal Court, 1100000512; Knott County Fiscal Court, 1100000673; Housing Authority of Henderson, 1100000881; Knott County Fiscal Court, 1100000964; Owsley County Fiscal Court, 1100001035; Crittenden County Fiscal Court, 1100001263; County Fiscal 1100001770; Wolfe County Fiscal Court, 1100001772; Wolfe County Fiscal Court, 1100001931; Wolfe County Fiscal Court, 1100002369; Wolfe County Fiscal Court, 1100002375; Wolfe County Fiscal Court, 1100003125.

WORKFORCE INVESTMENT, OFFICE OF:

Marion County Board of Education, 1000002077; Casey County Board of Education, 1000002115; Clark County Board of Education, 1000002116; Hancock County Board of Education, 1100000601.

THE FOLLOWING
PERSONAL SERVICE
CONTRACTS WERE SELECTED
FOR FURTHER REVIEW:

<u>DEPARTMENT</u> FOR MEDICAID SERVICES:

Myers & Stauffer, LC, 1200000217. Jill Hunter and Earl Gresham discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

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

Stoll Keenon Ogden, PLLC, 1200000013. Travis Powell discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Senator Gibson seconded the motion, which passed with Senator McGaha and Representatives Housman and Yonts voting NO.

KENTUCKY HOUSING CORPORATION:

Multi, KHC-2012-8. Lisa Beran and Judy Lancaster 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 unanimously.

<u>KY HORSE RACING</u> AUTHO<u>RITY</u>:

Joseph B. Henderson, 1200000179. Tim West discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

UNIVERSITY OF KENTUCKY:

Stites & Harbison, PLLC, K11-110. Bill Harris and Steve Byars discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Hornback seconded the motion, which passed with Senator McGaha voting NO

THE FOLLOWING
PERSONAL SERVICE
CONTRACTS

AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:

<u>DEPARTMENT</u> FOR ENVIRONMENTAL PROTECTION:

Chase Environmental Group, 1100000056. Tony Hatton and Tim Hubbard discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

<u>ECONOMIC</u> <u>DEVELOPMENT</u> - <u>OFFICE OF THE SECRETARY</u>:

Boyette Strategic Advisors, 1100002418. Mandy Lambert and Catherine Staib discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Housman seconded the motion, which passed unanimously.

OFFICE OF HOMELAND SECURITY:

RCC Consultants Incorporated, 0900011815. Joe Barrows discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

OFFICE OF HOMELAND SECURITY:

Goldberg & Simpson, PSC, 1000004121. Joe Barrows discussed the contract with the committee. A motion was made by Representative Yonts to defer the contract to the October 2011 meeting of the committee. Representative Crenshaw seconded the motion, which passed unanimously.

THE FOLLOWING
MEMORANDUM OF
AGREEMENT WAS SELECTED
FOR FURTHER REVIEW:

EDUCATION, DEPARTMENT

Eastern Kentucky University, 1200000259. Toyah Roby and Charlie Harman discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE

SELECTED FOR FURTHER REVIEW:

TRANSPORTATION CABINET:

University of Kentucky Research Foundation, 1000003731. Peggy Stratton, Jamie Byrd, and Joe Crabtree discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

THE FOLLOWING
MEMORANDA OF AGREEMENT
FOR \$50,000

AND UNDER WERE SELECTED FOR FURTHER REVIEW:

 $\frac{DEPARTMENTFOR\,NATURAL}{RESOURCES}:$

City of Owensboro, 1200000371; City of Madisonville, 1200000373; City of Mayfield, 1200000374. Steve Kull and Rick Washabaugh discussed the contracts with the committee. A motion was made by Representative Crenshaw to consider the contracts as reviewed. Representative Yonts seconded the motion, which passed Senators McGaha and Hornback voting NO.

ADDITIONAL DEFERRED ITEM

NORTHERN KENTUCKY UNIVERSITY:

Jones Lang LaSalle Americas Incorporated d/b/a Jones Lang LaSalle Hotels, 836-12. A motion was made by Representative Yonts to reconsider the vote which reviewed this contract without objection. Representative Crenshaw seconded the motion, which passed unanimously. Representative Yonts made a motion to defer the contract to the October 2011 meeting. Representative Crenshaw seconded the motion, which passed unanimously.

With no further business before the committee, the meeting adjourned at 11:38 AM.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

October 13, 2011

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, October 13, 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: Representative Fitz Steele, Co-Chair; Senators Vernie McGaha, Joey Pendleton, John Schickel, and Katie Kratz Stine; Representatives Leslie Combs, Terry Mills, David Osborne, Rick Rand, and Arnold Simpson.

<u>Legislative</u> <u>Guests:</u> Representatives Derrick Graham, Keith Hall, Jimmie Lee.

Guests: Betsy Dunnigan, Deputy Commissioner; Kevin Mudd, Director, Division of Administration and Financial Management; Department for Behaviorial Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services. Steve Shannon, Executive Director, Kentucky Association of Regional Mental Health-Mental Retardation Programs. Virginia Gray, Resource Coordinator, Pennyroyal Mental Health Center.

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

Approve Minutes for September 8, 2011

Upon motion by Senator McGaha and second by Representative Simpson, the minutes of the September 8, 2011 meeting were approved by voice vote, without objection.

Staff Report: Kentucky's Community Mental Health System Is Expanding and Would Benefit From Better Planning and Reporting

Cindy Upton presented the report. The original report from 2007 included data for 5 fiscal years. The update has data for 10 years through FY 2010.

The regional mental health and mental retardation boards are established in statute. Statute sets oversight authority and funding decisions with the secretary of the Cabinet for Health and Family Services. The cabinet's oversight role is exercised by the Department for Behavioral Health, Developmental and Intellectual Disabilities.

The 14 regional boards are the statutory planning authorities for community services. They are required to submit an annual plan and budget to the department each year. The approved plan and budget are incorporated into the contract between the department and each board. The budget process does not take full advantage of the work of a number of other statutory planning partners, including the 843 Commission (Kentucky Commission on Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses) and the 144 Commission (Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disabilities). The two commissions were established in statute to assess statewide needs, develop state plans for program development, and identify funding requirements.

Recommendation 1.1 is repeated from the 2007 report: If it is the intent of the General Assembly that the 843 Commission and the 144 Commission develop comprehensive plans for needed services and funding, then the General Assembly may wish to direct the commissions to present a plan to the governor and the Legislative Research Commission in sufficient time before each biennium so that the plan could be useful in the budgetary process. The plan should include specific population and service targets, funding needs, and measurable outcomes.

Recommendation 1.2 is repeated from the 2007 report: The General Assembly may consider merging the 843 Commission and the 144 Commission to identify needs, prepare a plan for services and associated funding, and identify expected outcomes for individuals with mental illness, substance abuse disorders, mental retardation and other developmental disabilities, and dual diagnoses. The General Assembly may consider requiring the combined commission to have a legislator and the secretary of the Cabinet for Health and Family Services as co-chairs. If the commissions are merged, then recommendation 1.2 would apply to the combined commission.

Recommendation 1.3 is repeated from the 2007 report: Each regional board should develop a strategic plan that describes clearly set objectives, strategies to implement them and a timetable, and cost estimates. The board's plan should include expected outcomes and measurable indicators. The plans should be an integral part of statewide planning decisions.

In this update, Program Review staff concluded that the boards' strategic plans could be shared with local government officials, who could then share the plans with their state senators and representatives. In this way, the plans can become a part of statewide planning decisions.

From FY 2001 to FY 2010, the number of people receiving services increased by nearly 38,000 unique individuals. The number of services they received increased from just over 14 million to nearly 21 million.

Comparing FY 2010 to FY 2002, federal revenue increased more than 19 percent, from about \$178 million to almost \$213 million in FY 2010; state revenue increased more than 16 percent, from about \$104 million to \$121 million; local revenue increased more than \$3 million; and other revenue increased more than \$5 million.

From FY 2001 to FY 2010, the number of consumers increased more than 27 percent. The number of services they received increased almost 45 percent. Inflation-adjusted revenue

increased less than 19 percent.

The community care support grants to each region from the state general fund are flexible dollars intended to support the safety net by funding services for people who have no other payer source. Adjusted for inflation, safety net funding declined more than 18 percent from FY 2001 to FY 2010.

The department, the centers, and legislators need to know how much charity care is being provided. The cost of charity care is not the only unreimbursed cost the centers have, but it is the only one required by KRS Chapter 210.

Recommendation 3.1 is repeated from the 2007 report: The Department for Behavioral Health, Developmental and Intellectual Disabilities should develop a standardized method to calculate charity allowances. The department should require the boards to use that method and report annually, in conjunction with their annual financial statement audit, a separate schedule of charity allowances. The boards' independent auditors should be required to certify that the charity allowances are reported in accordance with the department's instructions. The recommendation has been partially implemented. The department has instructed the regions on how to calculate charity allowances. But the regions are not required to include the calculation in a separate schedule with their financial statements or to have their auditors certify that the calculation was made according to the department's instructions.

On average over the period FY 2011 to FY 2010, a higher regional poverty rate correlated to a larger percentage of the population receiving services from the centers. The correlation between a region's uninsured rate and the percentage of its population that received services was less pronounced than the one for poverty rates, but some comparisons can still be made. For example, NorthKey had the lowest uninsured rate and served the smallest percentage of its regional population over the period FY 2001 to FY 2010.

Financial results vary among the regions. Net assets across the system nearly doubled from \$94.5 million in FY 2001 to about \$185 million in FY 2010. There are similar variations between regions in the average operating margin, which is a measure of profitability. It shows the proportion of what was earned compared to the expenses incurred. The department considers an operating margin of 2 percent to be acceptable. The statewide average margin from FY 2001 to FY 2010 was 2.6 percent.

In general, the system statewide appears to be stable in terms of

providing current services to current populations. But the system's capacity to expand services or serve larger populations is questionable, particularly in some regions.

Ms. Upton concluded by saying that the community mental health system continues to expand and still would benefit from better planning and reporting.

Referring to figures from the report on revenues for the 14 regions, Senator Stine asked whether funding was distributed on something other than a per capita basis. Ms. Upton said that reimbursement is mostly for services provided. Senator Stine asked whether people are getting the necessary services and whether there are waiting lists. Ms. Upton said that there are not waiting lists. Patients get appointments based on severity of need. In response to a question from Senator Stine, Ms. Upton said that she did not know if there were differences in caseloads among regions. Senator Stine noted that annual revenue per capita ranged from \$53 in NorthKey to \$160 in River Valley. She asked whether "per capita" was based on the number of consumers or the population of a region. Ms. Upton replied that it was based on population.

In response to a question from Senator Stine, Ms. Littleton said that the poverty rate was based on household income thresholds. If the household is below the threshold, everyone in the household is defined as living in poverty.

Senator Stine said that it appeared that regions with larger populations received less per capita revenue. Ms. Upton said that staff did not do specific enough breakdowns of revenue to determine if this was the case.

In response to a question from Senator McGaha, Ms. Upton said that net assets are defined as what the regional board owns such as buildings, equipment, cash, and investments. Senator McGaha commented that operating margin per region seems to reflect assets per region.

In response to questions from Senator McGaha, Ms. Upton said the income source category "other" is sources such as grants from private foundations, money received from the sale of an asset, investment income, and everything else that was not included in the federal, state, and local revenue categories. She did not know what the major contributor to the "other" category was but she said that she would get that information to him.

Representative Hall said that he was surprised by the figure in the report showing that the trend was flat for the percentage of consumers being treated for substance abuse. Ms. Upton said that the department could better explain the reasons for this.

In response to a question from Representative Hall, Ms. Upton said that the "other" service type includes all services that could not be categorized as mental health, intellectual or developmental disabilities, or substance abuse. The major service included in this category is the work/adult habilitation program that serves a group of clients in all categories at the same time. Each client's primary diagnosis could not be determined from the available information.

In response to an earlier question from Representative Hall, Ms. Dunnigan said that the percentage of consumers being treated for substance abuse as shown in the report has stayed steady over the years mainly because Medicaid coverage for substance abuse is limited and substance abusers have to seek treatment to be consumers of services at the centers.

Ms. Dunnigan said that the department has used information and recommendations contained in the 2007 LRC report and has, over the last two bienniums, focused on expansion and improvement in community based services for persons with severe mental illness, intellectual and developmental disabilities and substance disorders. The recommendations have not been fully implemented, but incremental changes have been occurring. The updated report provides a snapshot and supports the gradual shift from institutional care to a more community based system of services and supports.

It is unknown whether resolution of the charity care reporting issue would resolve the larger goal. Approximately 2.6 percent of the adult population will have serious mental illness, with the Community Mental Health Centers (CMHCs) currently serving 48 percent of them; 5 percent of the child population will have severe emotional disturbance, 51 percent are currently being served; and 10 percent of the population will have substance use disorders, and only 6.5 percent of them are receiving services.

The department's goals have included better resource utilization, moving toward community based services, looking at establishing priority populations, and at how nonpriority populations access appropriate services. Current efforts include assessing all areas for maximum use of state General Funds, including using these funds to leverage additional federal funds; analyzing and standardizing the CMHC sliding fee scale practices; quantifying any shortfalls for inclusion in the biennial budget process; focusing on shifting from the more costly institutional care to less restrictive and preventive community based care; and continuing toward shifting the system to focus on prevention, recovery, employment, and housing in community settings.

Ms. Dunnigan concluded by saying that the report demonstrates that funding decreases and inflationary impacts have had to be absorbed by the centers. Given that, it must be conceded that impacts to services and programs have occurred over the last decade.

Representative Steele asked if there has been an increase in the number of veterans receiving services. Ms. Dunnigan said that she could provide information on this.

Senator Stine asked whether anything is being done to address the differences in funding across regions. Ms. Dunnigan said that the department started to address this 2 years ago and will be implementing a gradual change in the allocation of state general funds based on utilization and performance over the next 5 to 10 years.

Senator Stine asked how the reimbursement rates have changed with the transition to managed care. Ms. Dunnigan said that she did not know what the final rates would be. In response to a question from Senator Stine, Ms. Dunnigan said that she is being told that the managed care system will be in place by November 1

Senator Pendleton said that he is concerned about veterans. He noted that a facility has been built in Hopkinsville for homeless veterans. He said that Virginia Gray of Pennyroyal Mental Health could talk about the facility. On a recent trip, he saw men, women, and children living under bridges in Kentucky.

Responding to the report, Mr. Shannon said that the CMHCs were established by the General Assembly in 1966. The centers served over 178,000 individuals in FY 2010, approximately 1 out of every 25 Kentuckians. The system employs approximately 9,000 individuals, approximately 1 out of every 200 working Kentuckians. The approximately 310 CMHC board members represent all 120 counties.

The CMHCs concur with Recommendation 1.1. It would be beneficial for all members of both HB 843 and HB 144 to participate in the deliberative process in developing funding needs and measurable outcomes.

Regarding Recommendation 1.2, a combined commission would be less effective than the two distinct commissions. The size needed to insure adequate representation of HB 843 and HB 144 on the new combined commission would diminish its effectiveness. The service needs of the two broad groups represented by HB 843 and HB 144 are not

necessarily consistent with each other. The CMHCs support the combined recommendations of both HB 843 and HB 144. The regional planning councils are essential to HB 843, assuring that the recommendations from the HB 843 Commission are based upon local need. The grassroots focus of the regional planning councils is not included in the HB 144 Commission process. Having a legislator as cochair would be effective for both commissions.

The CMHCs agree with Recommendation 1.3 that the strategic plans of the regional boards should be an integral part of statewide planning decisions.

Regarding Recommendation 3.1 on charity care, if the goal of gathering information covered in the report is to accurately reflect the financial status of the CMHCs, it would be beneficial to include a broader definition of charity care that includes bad debts, usual and customary charges, and other uncompensated care.

Mr. Shannon updated the committee on Medicaid managed care. Twelve of the 14 CMHCs have either signed or are negotiating contracts to provide behavioral health services with the three managed care organizations (MCOs) operating outside the Passport region. The two CMHCs in the Passport region are working with Passport to expand Medicaid managed care to behavioral health services.

Aconcern with the implementation of managed care is the increased administrative cost. The CMHCs will have three additional billing and claims processes to implement while continuing to be able to bill Medicaid directly. Outpatient treatment requests must be submitted to two MCOs; the third MCO requires notification of services provided. The time to complete the forms is uncompensated and will take time away from providing services. The MCOs will impose a utilization review process. Reporting requirements will also increase. CMHCs are required to report the same data to the MCOs and the Department for Behavioral Health, Developmental and Intellectual Disabilities. It would make sense to report it one time and let the MCOs and department share the information. Administrative expenses will increase and revenues CMHCs that derive from Medicaid services are anticipated to decrease, which will mean less access to services for individuals currently served or needing services in the coming years.

There is some opportunity in Medicaid managed care, especially in the area of substance abuse treatment. Based on a 2009 letter from the Centers for Medicare and Medicaid Services (CMS), it appears that the US Mental Health Parity and Addictions

Education Act (2008) applies to Medicaid MCOs. This will result in additional substance abuse treatment services being available to the Medicaid population. [The letter was distributed to committee members.]

Citing the report, Senator Stine said that NorthKey and Seven Counties seem to be best at maximizing their use of funds. In response to a question from Senator Stine, Mr. Shannon said that MCOs treating everyone equally will possibly change the disparity in funding per region. The MCOs are going to ensure that their members have access to care, which should benefit NorthKey.

Senator Stine asked whether larger population areas have more people with unmet needs, given Ms. Dunnigan's statement that 2.6 percent of Kentuckians need mental health services and 10 percent need services related to substance abuse. Mr. Shannon said demand for services is greater than what can be provided. The centers could do a better job of meeting needs if additional resources were available. He said that the reimbursement rates for each type of service were the same as they were in 2001.

In response to questions from Senator McGaha, Mr. Shannon said that each regional board negotiated its own contracts with the MCOs. Of the regions that are not in Passport's service area, one region has contracts with two MCOs and the other regions have contracts with all three MCOs.

Continuing his statement, Mr. Shannon said the significant increase in the employers' contribution to the Kentucky Employee Retirement Systems (KERS) since the end of FY 2006 poses the greatest threat to the financial stability of the 13 CMHCs participating in the system. The KERSmandated employers' contribution has increased from 5.89 percent to 19.82 percent. Each 1 percent increase represents approximately \$2.8 million, and additional increases are anticipated. This escalating unfunded mandate poses a huge risk to the CMHCs and the individuals served and supported by them. The employer contribution hampers the CMHCs' ability to secure competitive grant funding and restricts service expansions to new markets and service diversification. The centers are reluctant to hire new staff since they must be able to support the employer contribution. Salary levels have become less competitive since dollars must be directed to the employers' contribution and away from direct

Mr. Shannon thanked the General Assembly for addressing the escalating KERS employer contributions by including approximately \$2.5 million in FY 2011 and \$3.8 million in FY 2012. Language was included in the legislation that the funding expansion could be used as state match to draw down federal dollars through the Medicaid program. The CMHCs have not realized any of the additional funding. The centers have worked with Kentucky Medicaid to submit a state plan amendment required to increase CMHCs rates. CMHC Medicaid rates have not increased since 2001

He concluded by saying that Medicaid managed care poses significant challenges to the CMHCs due to increasing administrative costs and—most likely—decreasing revenue. KERS has increased personnel costs and will continue to do in the coming years. Already, CMHCs have been seeing more people and providing more services while revenues have not kept pace. This formula cannot be sustained; the financial viability of Kentucky's behavioral health safety net is at risk.

Senator Pendleton noted that two recent studies of retirement systems rate Kentucky's system as the worst in the country. He had hoped that the committee could have done something on this before the session.

In response to a question from Senator Pendleton, Mr. Shannon said that the centers are seeing more veterans and more members of the National Guard.

In response to a question from Senator Stine, Mr. Shannon said that the employees of the centers are not state employees. Senator Stine noted that the Senate has been encouraging stabilization of the retirement plan since 2005.

Ms. Gray said that the US Department of Veterans Affairs provided a \$1.5 million grant for the Hopkinsville facility for veterans, which is the second largest in the country. The facility has 50 beds for male veterans, who can stay up to 2 years. It is scheduled to open in November or early December and will create 12 to 15 jobs.

Senator Pendleton said that he was proud to have this facility addressing the needs of veterans.

The meeting was adjourned at 11:27 a.m.

TASK FORCE ON CHILDHOOD OBESITY

Minutes of the 3rd Meeting of the 2011 Interim September 20, 2011

Call to Order and Roll Call

The third meeting of the Task Force on Childhood Obesity was held on Tuesday, September 20, 2011, at 10:00 a.m., in Room 154 of the Capitol Annex. Representative Tom

Riner, Co-Chair, called the meeting to order at 10:07 a.m., and the secretary called the roll.

Present were:

Members: Senator Katie Kratz Stine, Co-Chair; Representative Tom Riner, Co-Chair; Senators Tom Buford, Jimmy Higdon, Alice Forgy Kerr, and Joey Pendleton; Representatives Bob M. DeWeese, David Watkins, and Addia Wuchner.

<u>Guest Legislators:</u> Senator Julie Denton, and Representatives Wilson Stone and John Will Stacy.

Guests: Major General D. Allen Youngman, US Army (Ret.), Mission: Readiness; Therese Sirles, M.S., R.N., CPN, Director of Child Advocacy, Dr. Brooke Sweeney, Director, Health for Life, Dr. Maria Bowling, and Dr. Jordan Huskins, Kosair Children's Hospital; Deann Allen, Ph.D., Instructional Supervisor, Clay County School System; Melinda J. Ickes, Ph.D., and Heather Erwin, Ph.D., Department of Kinesiology and Health Promotion, College of Education, University of Kentucky; Elizabeth Schmitz, Executive Director, and Merin Roseman, Kentucky Environmental Education Council; Shannon Buzard, parent; Ruth Ann Shepherd, Department for Public Health, Cabinet for Health and Family Services; Meredith Evans and Jen Alvis, Commission on Children with Special Health Care Needs; Wilson Sean, Superintendent Association; Carolyn Dennis, Health Advocate; Elaine Russell, Department for Public Health, Cabinet for Health and Family Services; Jim Thompson, Education and Workforce Development Cabinet; Andrea Plummer, Kentucky Youth Advocates; Bill Doll, Kentucky Medical Association; Jodi Mitchell, Kentucky Voices for Health; Wayne Young, Kentucky Association of School Administrators; and Susan Zepeda, Foundation for a Healthy Kentucky.

LRC Staff: DeeAnn Mansfield, Ben Payne, Kenneth Warlick, Katie French, and Gina Rigsby.

Minutes

A motion to approve the minutes of the August 16, 2011 meeting was made by Senator Pendleton, seconded by Representative Wuchner, and approved by voice vote.

Too Fat to Fight Report: Retired Military Leaders Want Junk Food Out of America's Schools

Major General D. Allen Youngman, US Army (Ret.), Mission: Readiness, stated that the United States military remains the best in the world, not because we have the most sophisticated weapons and equipment, but because of the young men and women who step forward each year to serve in uniform. It is the course and commitment of these soldiers,

sailors, airmen, and Marines that have enabled the United States to sustain two major wars and meet countless other worldwide commitments with an entirely volunteer force. Despite the strains of repeated deployments, all of the services continue to meet their recruiting goals each year. The 230 retired generals, admirals, and other senior military leaders of Mission: Readiness have warned Congress that approximately one in four 17- to 24-year olds in the United States is too overweight to serve in the military. Obesity rates among children and young adults have increased so dramatically that it threatens not only the overall health of America, but also the future strength of the military. One survey found that Kentucky has the highest proportion of overweight or obese young adults in the nation. In 2010, the Healthy, Hunger-Free Kids Act was enacted by Congress. The United States Department of Agriculture proposed a set of new regulations aimed at improving the nutrition in school breakfast and lunches. The new regulations will help children replace bad eating habits with healthy ones that can last a lifetime. Congress needs to ensure schools get needed equipment for better food preparation and updated training for food service workers.

The situation has implications across a wide range of issues including the viability of our healthcare system as well as the quality of life for millions of Kentuckians. Everyone dealing with this matter needs to understand that being able to maintain a strong, healthy military is very important. Every year military recruiters have to turn away thousands of young men and women who want to join the armed forces and are otherwise qualified but cannot meet the military height and weight standards. Military service has been the door to a better life for millions of Americans, especially in Kentucky. Because of bad choices early in life, that opportunity has been taken away from thousands of Kentuckians.

If children are not encouraged at school to participate in physical activities that build strong, healthy bodies, they will pay the price later in life. Sedentary lifestyles of children cause bones and muscle development to be inadequate to avoid injuries caused by the demands of initial entry training. Regular exercise can make an enormous difference not only whether a young person grows up to be healthy later in life, but also has a lot to do with how well they learn at school.

The United States military stands ready to protect the American people, but if everyone does not help ensure that future generations grow up to be healthy and physically fit, that will become increasingly difficult. The health of our children and national security are both at risk.

In response to a question by Senator Stine, General Youngman stated that when weight problems combined with educational deficits, criminal records, and other disqualifiers such as asthma or drug abuse, 75 percent of Americans 17 to 24 years old are unable to join the military for one or more reasons.

Evidenced Based Activities A Proactive Approach to Pediatric Obesity- The Role of Kosair Children's Hospital

Therese Sirles, M.S., R.N., CPN, Director of Child Advocacy, Dr. Brooke Sweeney, Director, Healthy for Life, Dr. Maria Bowling, and Dr. Jordan Huskins, Kosair Children's Hospital, stated that Kosair Children's Hospital is Kentucky's only freestanding pediatric hospital. In 2010, 516 inpatients had a primary or secondary diagnosis of obesity, there were 47 had newly diagnosed diabetic admissions, and 348 outpatients had a primary or secondary diagnosis of diabetes. Kosair Children's Hospital is one of twenty-five children's hospitals participating in the National Association of Children's Hospitals "Focus on a Fitter Future." The responsibilities are to understand current trends, build support and partnerships among colleagues in the field, build consensus on practice improvement, and participate in evidence-based activities.

Within Kosair Children's Hospital, studies are being done to assess structures, policies, and procedures that impact obesity or deficiencies in optimal health. Proactive changes that have occurred include: 1) collecting and interpreting Body mass index (BMI) on all patients admitted to the hospital to help health care professionals develop a plan of care for pediatric patients; 2) enhancing nutritional services and registered dietitian consultations to patients with increased BMI or those who may have a chronic condition that is exacerbated or complicated by obesity, like diabetes or asthma; and 3) collaborating with community partners to open community lactation centers in Norton Healthcare facilities in greater Louisville and area public health departments. The hospital's Children's Hospital Foundation Office of Child Advocacy works in conjunction with the Pediatricians Urging Safety and Health (PUSH) advocacy group to develop prevention programs for a community outreach initiative called the Fun-tastic Fitness Formulary. Advocates at the hospital put together a tool kit that includes a family-centered instructional booklet, fitness tips, nutritional information,

family focused recipes, and a fitness DVD.

Kosair Children's Hospital provides subject experts to present continuing medical education on childhood obesity and tactics for prevention to primary care physicians and other health care providers. Physicians are taught to identify children who are overweight or at risk of becoming obese and teaches them how to have the difficult conversation with the child and his or her family and how to formulate a plan to begin the path to a healthy lifestyle.

Kosair Children's Hospital, Office of Child Advocacy, provided a grant to start a pedometer program to encourage physical activity in ten Jefferson County elementary schools, six Clay County elementary schools, three schools in Owensboro, and two school districts in Indiana. Students in the pedometer program take part in an entire educational curriculum surrounding the nutritional component of a healthy lifestyle, including learning how to make healthy food choices. In addition to healthy lifestyle education, the program incorporates a full complement of mathematics, history, geography, reading and writing skills lessons to improve academic performance. It is very important to actually marry the physical activity with education activity.

Healthy for Life Clinic opened in April 2009. State of the art care is a multidisciplinary treatment program that includes a physician, nurse practitioner, dietitian, psychologist, and exercise physiologist. The mission is to help children grow up healthy, and happy. Over 1,000 patients have been seen at the clinic since it opened.

Benefits of the Clay County Pedometer Program

Deann Allen, Ph.D., Instructional Supervisor, Clay County School System, stated that the pedometer program has encouraged students to want to meet short- and long-term goals. For students who are raised in generational poverty, being able to set and meet a goal can become the beginning of a lifetime of change. Families are beginning to make healthier choices because students are going home and encouraging their families to become more active. Teachers use the pedometers in classroom instruction. Teachers and students have developed a good repoire.

In response to a question by Representative DeWeese, Dr. Sweeney stated that a most of the parents of obese children are also obese themselves, but the children are more adversely affected because they started becoming obese at an earlier age than their parents. While some parents have given up on themselves, they have not given up on their child.

In response to questions by Senator Stine, Dr. Sweeney stated that the partnerships are the key to success. There are many physical activities that teachers could incorporate into lesson plans. Dr. Allen stated that it is important that educators realize that students who are active do better with their academic success.

Senator Pendleton stated that the obesity problem has been around for generations but the cycle can be broken by educating people to live healthier lifestyles.

In response to questions by Senator Higdon, Dr. Sweeney stated that her program is a Medicaid-special program through Passport, and she sees patients who have different insurance plans. Medicaid pays for all the needed services where the other insurance plans do not. The vast majority of patients in the clinic participate in the free school breakfast and lunch program and their parents receive food stamps. Ms. Sirles stated that during the nutritional classes that the child advocates at Kosair Children's Hospital teach not only to parents but also to students, visual demonstrations of the amount of sugar in a can of soda helps children understand the problem better. Children are taught that water and low-fat milk are the healthy choices to quench thirst. Parents need to be taught new behaviors in order to teach their children. Dr. Sweeney stated that the culture and policies in schools need to be changed to where healthy choices become the first choice. Studies have shown that children will drink more water out of a pitcher than a fountain.

In response to questions by Representative Wuchner, Dr. Sweeny stated that the Y5210 program is five fruits, two hours of less screen time, one hour of fitness, and zero beverages sweetened with sugar or artificial sweeteners. The reimbursement rate for pediatricians for obesity-related problems has improved unfortunately because children are becoming sicker.

Senator Denton stated that technology, processed foods, and both parents working have created obesity problems. Access to fresh produce is limited in some areas. Today's society needs immediate gratification, and people need to see immediate changes in order to continue the different lifestyle.

In response to a question by Representative Stacy, Dr. Sweeney stated that not all diabetes or diabetes-related programs will work in all counties and have to be individualized county by county. Genetic factors in obesity are different by culture and have to have different approaches. In response to a question by Representative Stacy, Dr. Allen stated

that freezers, workspace, deep fryers, and remodeling kitchens are all areas that need to be updated and it takes time and money. School cooks need to professional development training to help prepare healthier food choices for students.

Senator Kerr questioned if the Kentucky Department of Education enforces guidelines set forth in Senate Bill 172 from the 2005 Regular Session relating to health and nutrition in schools.

Senator Buford stated that because canned foods served at schools have a high sodium content, schools need to serve more fresh fruits and vegetables.

Representative Riner stated that hospitals need to be examples and provide healthier food choices.

Physical Activity and Academic Performance

Melinda J. Ickes, Ph.D., and Heather Erwin, Ph.D., Department of Kinesiology and Health Promotion, College of Education, University of Kentucky, stated that healthier students are better learners. School health programs can help improve students' education outcomes. Helping young people stay healthy is a fundamental part of the mission of our schools. Physical activity impacts obesity, heart disease, mental health, musculoskeletal disorders. hyperactivity, inattentiveness, and behavior. The Association Between School-Based Physical Activity, Including Physical Education, and Academic Performance Report by the Centers for Disease Control and Prevention reported that studies showed increasing or maintaining time for physical activity does not appear to adversely impact academic performance. There is substantial evidence that school-based physical activity can help improve academic achievement, including grades and standardized test scores, and have a positive impact on cognitive skills and academic behaviors. One reason school administrators are against more physical activity in schools is they are held accountable for standardized test

Senate Bill 172 enacted in 2005 requires up to 30 minutes a day of instructional time toward physical activity. Efforts must assist schools with meeting their objectives to be cost effective, unobtrusive, user friendly, and sustainable. Let's Move in School is a comprehensive school physical activity program. The goal of the program is to ensure that every school provides a comprehensive school physical activity program with quality physical education as the foundation so that youth will develop the knowledge, skills, and confidence to be physically active for

a lifetime. Strategies for implementing classroom physical activity should vary instructional areas within each classroom and should include handson learning. Recess allows time for social interaction, physical activity, and to be a kid, and also a break from academics. Effective strategies for recess are added equipment and materials, playground markings such as hopscotch, activity zones, teacher involvement, and activity of the week cards. A number of simple, low-cost strategies can be implemented to maximize the amount of recess time students are allotted. Physical activity impacts student behavior, attention, and cognition.

Green and Healthy Schools

Elizabeth Schmitz, Executive Director, Kentucky Environmental Education Council (KEEC), stated that the Council was established by the legislature in 1990 to coordinate environmental education in the Commonwealth. KEEC's mission is to help Kentuckians develop the skills necessary to solve current environmental problems, prevent new ones, and maintain a balance between the economy and the environment for future generations. In 2007, KEEC piloted the Kentucky Green and Healthy Schools program. The Kentucky Green and Healthy Schools program is designed to empower students and teachers to create safer, healthier, and more sustainable schools. Currently, over 200 schools across the Commonwealth enrolled in the program. The program is free of charge, open to all K-12 schools, and correlated to state learning standards. Students investigate school environment, then design and implement small but significant school improvement projects based on research findings. Students feel empowered to make a difference at their school and in the community. A benefit of the program is that it can build confidence and self-esteem in students. By participating in the program, students often become more physically active and more confident.

Adjournment

There being no further business a motion to adjourn at 12:05 p.m. was made by Senator Higdon, seconded by Representative Riner, and approved by voice vote.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE

Minutes October 5, 2011

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, October 5, 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; Senator Vernie McGaha; Representatives Royce W. Adams, Tom McKee, Fred Nesler, and Tommy Turner.

Guests: Roger Thomas, Joel Neaveill, Bill McCloskey, Christi Marksbury, Jennifer Hudnall, Michael Tobin, and Angela Blank, Governor's Office of Agricultural Policy; Mac Stone, Kentucky Department of Agriculture; Steve Coleman, Kentucky Division of Conservation; and Drew Graham, University of Kentucky College of Agriculture.

<u>LRC Staff:</u> Lowell Atchley, Biff Baker, and Kelly Blevins.

The September 7, 2011, minutes were approved, without objection, by voice vote, upon motion made by Co-Chair Hornback and seconded by Representative McKee.

Governor's Office of Agricultural Policy

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

Mr. Neaveill summarized the funding allocations made under the County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-use programs from the previous month. He also recapped amendments approved for previously funded projects.

State projects that received funding approvals included: Wayne County Fiscal Court, which was approved for \$25,000 in state tobacco settlement funds to construct an openair pavilion for the Wayne County farmers' market; Hart County Chamber of Commerce, \$13,500 in state funds to build an open air pavilion for the Hart County farmers' market; city of Morgantown, \$3,500 in Butler County funds for enhancement of an education/ training room at an agricultural exposition center; Butler County Board of Education, two projects for \$2,558 and \$1,100 respectively to help fund an aquaculture education program, and to buy some scales for youth livestock sales; Green River Cattlemen's Association, \$12,500 in Green County funds to enhance a local agriculture and marketing center.

Responding to committee members' questions, the officials indicated that two of the applicants,

Wayne County and Hart County fiscal courts, received grants under a farmers' market infrastructure competitive grant program. They noted that an applicant could receive up to \$25,000; funding received cannot exceed half the total cost of a farmers' market project.

Representative McKee lauded the farmers' market competitive grant program, noting that agricultural development funds had benefitted an endeavor in Harrison County, giving market operators there a central location from which to sell their farm commodities.

Mr. Thomas provided committee members with a listing of communities that have agricultural development funding for farmers' market endeavors beginning in 2001.

In discussion later, the GOAP officials indicated that a Somerset Farmers' Market Association application was not funded because of uncertainties related to the market's location and other issues, but that did not mean the project could be evaluated at a later date. Representative Turner said he supported the decision since there were lingering questions about the undertaking.

Responding to Co-chair Stone, the GOAP staff described the facility ownership arrangements for the city of Morgantown, Butler County Board of Education, and Green County Cattlemen's Association applications.

During discussion about another projected denied funding, Mac Farms Inc., Taylor County, the committee witnesses said GOAP staff had advised the applicants about tax incentives for their energy-related projects, plus other financing possibilities, including the Agricultural Finance Corporation.

GOAP responded to committee members' questions and comments concerning the status of a Bracken County feasibility study to determine the viability of building and operating a biofuel pellet mill in the Bracken County Industrial Park. The mill would process switchgrass and other crop residues.

Mr. Thomas informed the committee that the agency has posted on its Web site and in hard copy a report of statewide forums conducted by the ADB this year. The forums sought input from the public regarding the future direction of Agricultural Development Fund investments.

Division of Conservation

Mr. Steve Coleman, Director, Kentucky Division of Conservation, reported on the soil and water quality cost share, and soil stewardship programs, which receive tobacco settlement funds. Mr. Coleman talked about the history of the program, funding through the years, the types of soil and water practices that are eligible for funding, and current

funding levels. He also discussed the Agricultural Water Quality Act, the Green River Conservation Reserve Enhancement Program, partnerships with other agencies, and the status of the new Mississippi River Basin Healthy Watersheds Initiative 2010.

AccordingtoMr.Coleman's report, the cost-share program administered by the division has assisted more than 12,500 landowners with undertaking best farming practices over the past 17 years. A total of \$119 million has been put into the program, although the total value of the program would be higher because landowners contribute funds as well. Tobacco settlement funds currently make up most of the total funding, with the General Assembly appropriating \$9 million in FY 2010 and in FY 2011.

Mr. Coleman described to Cochair Stone the status of conservation work in the Red River watershed, which straddles portions of southern Kentucky and northwest Tennessee. He indicated the division is working with Tennessee conservation staff to prepare a funding proposal that will be submitted to the U.S. Department of Agriculture.

Responding to Co-chair Hornback, Mr. Coleman described the status of land set-aside contracts signed under the Green River Conservation Reserve Enhancement Program. The 10-year program resulted in some \$110 million committed in federal, state, and private funds.

Senator Hornback mentioned the idea of a flexible payment system that would reflect current grain prices. Mr. Coleman responded that that idea has been discussed. He said some of the land has been planted in trees, which may serve to keep the ground in the program for a longer period of time.

Mr. Coleman responded to Representative McKee, who asked about the status of the Licking River watershed in northeast Kentucky. The Licking River watershed is included in the larger Mississippi River Basin Healthy Watershed Initiative, a multistate effort that has a goal of reducing, mitigating, and controlling nutrient levels in groundwater that ultimately ends up in the Gulf of Mexico.

According to Mr. Coleman, the Licking River watershed will have contracts involving farmland that will be "working lands" that stress precision agriculture and use natural buffer zones to control runoff.

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

The meeting adjourned at approximately 11 a.m.

2012 Prefiled Bills

BR 4 - Representative Robert R. Damron (09/27/11)

AN ACT relating to refunding transactions.

Create a new section of KRS Chapter 56 to define terms and to require that savings generated from reduced debt service payments due to a refunding transaction be deposited in the budget reserve trust fund account.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 8 - Representative Melvin B. Henley (06/29/11)

AN ACT relating to taxation.

Amend KRS 132.020 to reflect the most recent tax rate for real property, provide that all tangible personal property owned by a veterans' organization exempt from income taxation under 501(c)(19) of the Internal Revenue Code shall be taxed at \$0.001 upon each \$100 of value, and make other technical changes for ease of reading; amend KRS 132.200 to exempt from local taxation all tangible personal property owned by a veterans' organization that has qualified for exemption for income taxation under 501(c)(19) of the Internal Revenue Code and the property is directly used in the organization's exempt activities: amend KRS 139.495 to exempt from sales and use tax sales of tangible personal property, digital property, or services to a veterans' organization that has qualified for exemption under 501(c)(19) of the Internal Revenue Code if the tangible personal property, digital property, or service is used in the organization's exempt activities, and exempts from sales and use tax sales of tangible personal property by the organization; EFFECTIVE August 1, 2012, and January 1, 2013.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 9 - Representative Sannie Overly (06/23/11)

AN ACT relating to judicial sales. Amend KRS 426.200 and 426.520 to require that in judicially ordered land sales that any appraisals of the land made pursuant to the court ordered sale process be publically available prior to the sale of the land.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 18 - Representative Carl Rollins II

(08/12/11)

AN ACT relating to safety inspections for official vehicles.

Create a new section of KRS Chapter 186 to require an annual safety inspection for vehicles owned or leased by the state, public postsecondary institutions, local governments, boards of education, ambulance services organized by units of government within the state, and volunteer fire department vehicles; require that the inspection be done by a mechanic with A S E certification; require affected entities to present proof of inspection before December 31, 2013, and annually thereafter; require the Transportation Cabinet to promulgate administrative regulations regarding inspection standards and out-of-service criteria for publicly owned vehicles; grant Transportation Cabinet the authority to suspend the registration for any vehicle which does not pass inspection or for which proof of inspection is not provided; provide for no fee to reinstate a registration on a vehicle whose registration was suspended under the provisions of this section; Amend KRS 186.065, 186.060, and 181.061 to conform.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Transportation

BR 19 - Senator Tom Buford (07/07/11)

AN ACT relating to the employment of persons with criminal records in long-term care facilities, nursing facilities, and assisted living communities.

Amend KRS 216.789 to prohibit employment by a long-term care facility, nursing facility, or an assisted living community of all persons convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Health and Welfare

BR 22 - Representative Melvin B. Henley (05/18/11)

AN ACT relating to out-of-state durable medical equipment providers.

Create a new Section of KRS Chapter 216B to require the Cabinet for Health and Family Services to promulgate an administrative regulation requiring a provider of durable medical equipment located in another state to maintain an office or place of business in Kentucky if that state requires durable medical

equipment providers with a principal place of business in Kentucky to maintain an office or place of business within that state

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Health and Welfare

BR 30 - Representative Joni L. Jenkins (05/27/11)

AN ACT relating to crimes and punishments.

Amend KRS 508.025, relating to third degree assault, to include an assault on an operator or passenger of a taxi, bus, or other passenger vehicle for hire within that offense; amend KRS 508.050 and 525.060, relating to menacing and disorderly conduct, to increase the penalty for those offenses if the offense is committed against an operator or passenger of a taxi, bus, or other passenger vehicle for hire.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Judiciary

BR 31 - Representative Ron Crimm (06/17/11)

AN ACT relating to the promotion of organ and tissue donation.

Create a new section of KRS Chapter 141 to establish the employers' organ and bone marrow donation tax credit; amend KRS 141.0205 to provide the ordering of the credit; declare short title to be the Living Organ and Bone Marrow Donor Assistance Act.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee or

To: Interim Joint Committee on Appropriations and Revenue

BR 46 - Representative Joseph M. Fischer (09/14/11)

AN ACT relating to property tax. Amend KRS 132.010 to change the definition of "compensating tax rate", and to add definitions for "Four (4%) rate", and "Taxing district"; amend KRS 132.017 and 132.0225 to conform; amend KRS 132.023 to require all taxing districts to calculate separate real and personal property tax rates; amend KRS 68.245, 157.440, 160.470, 210.480, 212.755, 65.125, 67.934, 67.938, 67A.850, 67C, 125, 67C.147, 78.530, 132.012, 132.028, and 342.240 to conform; create a new section of KRS Chapter 173 to require the Department of Libraries and Archives to calculate tax rates for library taxing districts; repeal KRS 132.018, 132.024,

132.025, 132.029, 68.248 and 160.473; provide that the Act applies beginning January 1, 2013.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 48 - Representative Ron Crimm (07/29/11)

AN ACT relating to naming of public properties.

Create a new section of KRS Chapter 2 to set forth the criteria for the naming of public property owned, maintained, operated, utilized, or leased by the state or any of its political subdivisions, including school districts; amend KRS 177.074 to conform.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 57 - Senator Jimmy Higdon (10/14/11)

AN ACT relating to the school calendar and declaring an emergency.

Amend KRS 158.070 to reiterate school closure on the day of a Presidential election; permit a school district to adjust its calendar to keep schools open on the days of a regular election, a special election, and a primary election if no school in the district is used as a polling place; allow a district to schedule election days as instructional days or make-up days for purposes of recouping instructional time missed due to weather-related, safety, or health emergencies or other disasters: direct the Department of Education to approve school calendars amended pursuant to this Act for the 2011-2012 school year; EMERGENCY.

BR 58 - Representative Brad Montell (10/18/11)

AN ACT relating to unauthorized aliens.

Create new sections of KRS Chapter 45A to require contractors who have public contracts to use E-verify and prohibit the hiring of unauthorized aliens for work on a public contract; permit civil enforcement and cancellation of contracts and injunctions, and impose a five year ban if the provisions are violated; create new sections of KRS Chapter 337 to require employers with eleven or more employees to register and use E-verify and abide by federal law prohibiting the hiring of unauthorized aliens; require violators to lose tax incentives and credits, to repay grants, loans, and taxes that have been forgiven; recoup unemployment insurance benefits paid to unauthorized aliens;

suspend or deny licenses; require the Attorney General to collect and maintain a database with the employers using E-verify; create new sections of KRS Chapters 139, 141, 148, 154 subtitle 20, 335B, and 341, and amend KRS 141.010 to conform.

(Prefiled by the sponsor(s).)

BR 63 - Representative Lonnie Napier (07/05/11)

AN ACT relating to eligibility for public assistance.

Amend KRS 205.200 to require the Cabinet for Health and Family Services (CHFS) to implement a substance abuse screening program for applicants and recipients of public assistance; permit the CHFS to design the program and utilize testing of blood or urine or other reliable methods of substance abuse detection: state conditions under which an adult person is ineligible for public assistance; permit substance abuse testing to occur only when a caseworker suspects substance abuse at the initial interview or at any other occasion when the caseworker comes to suspect that the recipient is abusing controlled substances; require the CHFS to promulgate regulations governing the program and testing including requirements that applicants pay for all substance abuse screening costs and receive a later reimbursement if the test is passed; grant the right to additional screenings for applicants that fail a test; require both parents in two-parent families to comply with screening requirements; require that an individual who fails a test receive a list of licensed substance abuse treatment providers in his or her area; require passage of a drug test before receiving benefits; permit parents or guardians who fail a test to designate another individual to receive benefits for the parent's minor children; require designated individuals to pass substance abuse screenings; create a 60-day grace period to enter a treatment program after the initial positive test; require individuals to pay for a test at the end of the 60-day grace period, and provide that, if they pass that test they must pass two additional randomized testings during the next 24 months, or if an individual tests positive for a controlled substance after the 60-day grace period, they must show evidence of having entered a substance abuse treatment program within 14 days, during which time, benefits may be suspended and only be payable for the benefit of any children in that recipient's home.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Health and Welfare

BR 75 - Representative Carl Rollins II (08/25/11)

AN ACT relating to educator evaluation.

Amend KRS 156.557 to require

the Kentucky Board of Education to establish a statewide system of evaluation for all certified personnel; require the Department of Education, in partnership with professional organizations, to develop the system prior to the 2013-2014 school year; require the board to establish the weights to be applied to each performance criteria; delete three-phase alternative evaluation plan; allow waiver of evaluation plan under certain conditions.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Education

BR 76 - Representative Carl Rollins II (08/10/11)

AN ACT relating to districts of innovation.

Create a new section of KRS Chapter 156 to define "district of innovation" and related terms; authorize the Kentucky Board of Education to approve districts of innovation, not to exceed five (5) districts per year; limit initial approval and subsequent renewals to five year periods; direct the board to promulgate administrative regulations to prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation; specify what the administrative regulations shall address; create a new section of KRS Chapter 160 to describe the requirements for a district to be an applicant as a district of innovation: prescribe the statutory requirements with which schools of innovation within districts of innovation must comply; require 70% of eligible employees in a school to vote in favor of becoming a school of innovation before the school is eligible to be a participant; describe the conditions under which a school may be exempt from KRS 160.345 or sections thereof; and identify areas in which districts may request approval of practices that are different than current statutory requirements.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 83 - Representative Susan Westrom (10/10/11)

AN ACT relating to claims against the Commonwealth.

Amend KRS 41.370 to require the state treasurer to present stale checks to the General Assembly for consideration in each annual regular session, and to repeal the check reissuance fee.

(Prefiled by the sponsor(s).)

BR 84 - Representative Brent Yonts (07/12/11)

AN ACT relating to career and technical education, making an appropriation therefor, and declaring an emergency.

Amend KRS 158.812 to express legislative goals for career and technical education; amend KRS 158.810 to define

terms related to career and technical education; create a new section to KRS Chapter 156 to require the Department of Education to issue core content standards, assess student progress, and develop new courses relevant to college and career readiness; create a new section to KRS Chapter 158 providing for the creation and use of evidence-based models assessing the needs of at-risk students; create a new section of KRS Chapter 157 to define terms related to career and technical education and to establish a career and technical education accessibility fund; amend KRS 158.814 to address unmet needs for career and technical education; amend KRS 158.816 to add criteria to the assessment of technical education students; amend KRS 18A.010 to exempt technology center employees from the count of full-time executive branch employees; EMERGENCY.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 85 - Representative Brent Yonts (07/29/11)

AN ACT relating to a high school technology diploma.

Amend KRS 156.160 to require the Kentucky Board of Education to promulgate administrative regulations for a high school technology diploma; amend KRS 158.7603, 158.140, and 313.040 to conform.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 87 - Senator Denise Harper Angel (07/28/11)

AN ACT relating to fingerprint background checks of long-term care employees.

Create a new section of KRS Chapter 209 to define terms and require that adult institutional or community-based long-term care service providers conduct a fingerprint check before hiring an applicant.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Health and Welfare

BR 88 - Representative Jim DeCesare (07/07/11)

A RESOLUTION requesting the President of the United States and the Attorney General of the United States to abandon plans to try Waad Ramadan Alwan and Mohanad Shareef Hammadi in federal court in Bowling Green, Kentucky and to transfer them to the detention facility at Guantanamo, Cuba for trial by military tribunal.

Urge the President of the United States and the Attorney General of the United States to move the trial of two terrorism suspects from the federal court in Bowling Green, Kentucky to a U.S.

Military Tribunal at the Guantanamo, Cuba detention facility.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Veterans, Military Affairs, and Public Protection

BR 104 - Senator Dennis Parrett (10/12/11)

AN ACT relating to an alternative high school diploma.

Amend KRS 156.160 to require the Kentucky Board of Education to promulgate administrative regulations for an alternative high school diploma for students with disabilities completing a modified curriculum and an individualized course of study; amend KRS 158.140 to require local boards of education to award the diploma to eligible students; amend KRS 313.040 to conform.

(Prefiled by the sponsor(s).)

BR 108 - Representative Melvin B. Henley (07/27/11)

AN ACT relating to children.

Amend KRS 72.992 relating to failing to report a death to increase penalty to a Class D felony if the deceased is a child eight years of age or younger; create a new section of KRS Chapter 17 to require a parent, guardian, or person exercising custody and control of a child eight years of age or younger to report to law enforcement or a 911 public safety answering point within twenty-four hours after the child has been discovered missing; amend KRS 17.990 to make failure to report a missing child within the specified time period a Class D felony.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 111 - Representative Richard Henderson, Representative Larry Clark, Representative Dennis Horlander, Representative Dennis Keene (07/08/11)

AN ACT relating to children.

Create a new section of KRS Chapter 17 to require a parent, guardian, or person exercising custody and control of a child twelve years of age or younger to report to law enforcement or a 911 public safety answering point within twelve hours after the child has been discovered missing; amend KRS 17.990 to make failure to report a missing child within the specified time period a Class D felony; name the act "Caylee's Law."

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 112 - Senator John Schickel (08/25/11)

A RESOLUTION adjourning the Senate in honor and loving memory of Thomas O'Daniel.

Adjourn in loving memory and

honor of Thomas O'Daniel.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 114 - Representative Leslie Combs (10/13/11)

A CONCURRENT RESOLUTION establishing a Timber Theft and Trespass Reduction Task Force.

Direct the Legislative Research Commission to establish a Timber Theft and Trespass Reduction Task Force; provide that the purpose of the task force is to study issues regarding timber theft and trespass and to develop consensus recommendations to address those issues; name the membership of the task force; require the task force to meet three times before submitting its final report; require its final report to be submitted to the Legislative Research Commission by December 7, 2012; and provide that the Legislative Research Commission has authority to alternatively assign the issues identified in the Resolution to interim joint committees or subcommittees thereof.

(Prefiled by the sponsor(s).)

BR 119 - Senator Denise Harper Angel (07/11/11)

AN ACT relating to children.

Create a new section of KRS Chapter 17 to require a parent, guardian, or person exercising custody and control of a child twelve years of age or younger to report to law enforcement or a 911 public safety answering point within twelve hours after the child has been discovered missing; amend KRS 17.990 to make failure to report a missing child within the specified time period a Class D felony; name the act "Caylee's Law."

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 120 - Representative Ron Crimm (07/29/11)

AN ACT relating to qualifications for military service.

Amend KRS 211.760 to require tattoo facilities to conspicuously display a notice in a prominent place easily seen by patrons; set minimum dimensions of notice sign at 11 by 14 inches with 1 inch letters; direct the cabinet to supply the sign to the tattoo facilities; require the notice to warn that any tattoo on the neck, forearm, or lower leg automatically disqualifies the wearer from military service in the United States Armed Forces.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on

Io: Interim Joint Committee on Licensing and Occupations

BR 121 - Representative Ron Crimm (07/29/11)

AN ACT relating to the gross revenues and excise tax fund and declaring

an emergency.

Amend KRS 136.650 to increase the hold harmless amount for fiscal year 2012-2013 and every fiscal year thereafter; amend KRS 136.654 to require the Department of Revenue to determine if it is necessary for a participating political subdivision to certify its total tax receipt; EMERGENCY.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Appropriations and Revenue

BR 122 - Representative Ron Crimm (07/29/11)

AN ACT relating to traffic control devices.

Create a new section of KRS Chapter 189 to require local governments that have installed speed bumps or speed humps on a roadway under its jurisdiction to denote the speed bumps or speed humps using a road sign or paint them so that they are clearly visible to persons traveling the roadway.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Transportation

BR 123 - Representative Ron Crimm (07/29/11)

AN ACT relating to domestic relations.

Amend KRS 403.200, relating to temporary orders, to permit a court to provide for wage assignment and automatic electronic transfer of funds for payment of spousal maintenance; set forth restrictions.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 131 - Senator John Schickel (08/25/11)

A RESOLUTION adjourning the Senate in honor and loving memory of Willie Mathis, Jr.

Adjourn in loving memory and honor of Willie Mathis, Jr..

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 132 - Senator John Schickel (08/25/11)

A RESOLUTION adjourning the Senate in honor and loving memory of Margaret B. Deters.

Adjourn in loving memory and honor of Margaret B. Deters.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 135 - Representative Alecia Webb-Edgington (09/06/11)

AN ACT relating to special license

plates.

Amend KRS 186.162 to establish a Gold Star Sibling special license plate and set forth required fees; provide Disabled Veterans license plates at no charge to veterans with a 50% or greater service-connected disability; amend KRS 186.166 to provide for perpetual production of the Gold Star Sibling special license plates; amend KRS 186.164 to require the Transportation Cabinet to promulgate regulations outlining documentation required to receive a Gold Star Sibling special license plate; limit eligibility for a Gold Star Sibling special license plate to siblings of service members whose mothers are eligible for membership in the Gold Star Mothers of America; delay effective date until January 1, 2013.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Transportation

BR 136 - Representative Alecia Webb-Edgington (09/06/11)

AN ACT relating to the duty to report a dead body.

Amend KRS 72.020 relating to reporting of deaths to require reporting of knowledge of a death as well as possession of a dead body as reportable and add the Department of Kentucky State Police as an agency to which the report may be made; amend KRS 72.990 relating to penalties to add interfering with a peace officer in a death investigation as an offense and increase the penalty for failure to report or interfering with a coroner or peace officer to a Class D felony.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 141 - Representative Bill Farmer (10/17/11)

AN ACT relating to the sale of copper scrap in the Commonwealth.

Create a new section of KRS Chapter 433 to define "nonferrous metal" and "secondary metals recycler"; prohibit a secondary metals recycler from purchasing copper from any person except a licensed heating, ventilation, and air conditioning contractor, electrical contractor, plumber, homebuilder, remodeler, or public or private utility; require secondary metals recycler to report at end of each business day any copper transaction to sheriff and local police department; prohibit an unauthorized person from selling or attempting to sell copper to a secondary metals recycler; establish penalties up to a Class D felony for unlawful purchase or disposition of copper; create a new section of KRS Chapter 512 to establish the crime of unlawful acts relating to acquiring metals; institute penalties up to a Class D felony depending on value of and damage to property; amend KRS 15.232 and 65.871 to conform.

(Prefiled by the sponsor(s).)

BR 145 - Senator Jimmy Higdon (10/14/11)

AN ACT proposing to amend Sections 36 and 42 of the Constitution of Kentucky relating to even-year sessions of the General Assembly.

Propose to amend Sections 36 and 42 of the Constitution of Kentucky to limit even-year sessions to 30 days.

BR 151 - Senator Jimmy Higdon (10/14/11)

AN ACT relating to substance abuse screening for vocational education recipients.

Create a new section of KRS Chapter 151B to establish a substance abuse screening program for adult persons receiving vocational education training, permit the use of blood or urine testing or written questionnaires in the substance abuse screening, require testing as a condition precedent to the receipt of training, prohibit receipt of training for 90 days following the first positive test, and for one year after each subsequent positive test, require the executive director to promulgate administrative regulations and grant permissive authority to require additional randomized testing and to charge a fee to cover the expenses of implementing the program.

BR 152 - Senator Jimmy Higdon (10/14/11)

AN ACT relating to school entrance age.

Amend KRS 158.030 to require a child to be six years of age by August 1 rather than October 1 to enter a public school; permit a child who is five years of age by August 1 rather than October 1 to enter a primary school program.

BR 154 - Representative Richard Henderson (09/19/11)

AN ACT relating to the Veterans' Personal Loan Program and making an appropriation therefor.

Appropriate \$5 million during fiscal year 2012-2013 from the General Fund for the Veterans' Personal Loan Program.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Veterans, Military Affairs, and Public Protection

BR 158 - Representative Tom Burch (08/18/11)

AN ACT relating to the accreditation of health departments and making an appropriation therefor.

Create a new section of to create the Kentucky Commission on Public Health within the Public Health Leadership Institute at the University of Kentucky under KRS Chapter 164; establish membership and duties of the commission including that all health departments achieve national accreditation and maintain accreditation by the national Public Health Accreditation

Board, by December 31, 2020; require the commission to submit an annual report; appropriate \$500,000 to operate the commission.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Health and Welfare

BR 159 - Senator Jack Westwood (08/11/11)

AN ACT relating to career and technical education, making an appropriation therefor, and declaring an emergency.

Amend KRS 158.812 to express legislative goals for career and technical education; amend KRS 158.810 to define terms related to career and technical education; create a new section of KRS Chapter 156 to require the Department of Education to issue core content standards, assess student progress, and develop new courses relevant to college and career readiness; create a new section of KRS Chapter 158 providing for the creation and use of evidence-based models assessing the needs of at-risk students; create a new section of KRS Chapter 157 to define terms related to career and technical education and to establish a career and technical education accessibility fund; amend KRS 158.814 to address unmet needs for career and technical education; amend KRS 158.816 to add criteria to the assessment of technical education students; amend KRS 18A.010 to exempt technology center employees from the count of full-time executive branch employees; EMERGENCY.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 165 - Senator Denise Harper Angel (08/12/11)

AN ACT relating to school collection of data on body mass index, height, and weight.

Amend KRS 156.160 to require the Kentucky Board of Education to promulgate administrative regulations to include the body mass index (BMI) percentile, height, and weight on preventative health care examination forms; require the data to be submitted to the Department of Education in a manner approved by the board that does not identify any individual student; require the department to share data only with the Cabinet for Health and Family Services; require that any use of the data abide by HIPPA privacy rules.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 166 - Senator Denise Harper Angel (10/14/11)

AN ACT relating to dating violence.

Amend KRS 403.720 to include

persons in dating relationships within the coverage of Kentucky's domestic violence laws.

BR 175 - Senator John Schickel (09/07/11)

AN ACT relating to the sale of alcoholic beverages at restaurants.

Amend KRS 241.010 to specify that restaurants must receive at least fifty percent of their food and beverage income from the sale of food.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Licensing and Occupations

BR 188 - Senator Jimmy Higdon (10/07/11)

AN ACT relating to pain management facilities and declaring an emergency.

Create a new section of Chapter KRS 311 to define "board", "facility", "physician", and "pain management facility" and to require that all pain management facilities be licensed; specify ownership requirements; specify employee requirements; require the State Board of Medical Licensure to promulgate administrative regulations related to pain management facilities; amend KRS 311.610 and 311.990 to conform; EMERGENCY.

(Prefiled by the sponsor(s).)

BR 189 - Representative Michael J. Nemes (09/07/11)

ANACT proposing to create a new section of the Constitution of Kentucky and to amend Section 226 of the Constitution of Kentucky relating to gaming.

Propose to create a new section of the Constitution of Kentucky and to amend Section 226 of the Constitution of Kentucky to authorize the General Assembly to provide a means whereby the sense of the people of any county may be taken as to whether casinos, including the operation of gaming at horse racing tracks, will be permitted in the county; submit to the voters for ratification or rejection; include ballot language.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 193 - Representative Kelly Flood (10/21/11)

AN ACT relating to status offenders.

Amend KRS 630.050 to require that persons filing juvenile status offense complaints provide specified supporting documentation for inclusion and presentation to the court; create a new section of KRS Chapter 630 to establish time frames for the expiration of valid court orders; amend KRS 610.265 and 630.010 to restrict the secure detention of status offenders; amend KRS 630.080 to clarify the contents necessary in dispositional

reports; create a new section of KRS Chapter 600 and amend KRS 610.020 to incorporate federal requirements for the release of educational records to the juvenile justice system; amend KRS 610.030 and 610.060 to conform.

(Prefiled by the sponsor(s).)

BR 197 - Representative Kevin Sinnette (08/31/11)

AN ACT relating to utility franchises.

Amend KRS 96.010 to prohibit bidders for city utility franchises from recovering the franchise fee from ratepayers through fees or surcharges on their bills.

(Prefiled by the sponsor(s).)
To: Interim Joint Specia
Subcommittee on Energy

BR 201 - Senator Joey Pendleton (09/28/11)

A RESOLUTION adjourning the Senate in loving memory and honor of our friend and former colleague, Representative John Adams.

Memorialize Representative John Adams.

(Prefiled by the sponsor(s).)

BR 204 - Representative Sara Beth Gregory (10/07/11)

AN ACT relating to civil actions.

Create a new section of KRS
Chapter 411 to specify procedures
for handling comparative fault actions
relating to adding parties and answers to
complaints.

(Prefiled by the sponsor(s).)

BR 209 - Representative Kevin Sinnette (08/31/11)

AN ACT relating to motor vehicle personal injury reparation benefits.

Amend KRS 304.39-241 to authorize an insured to direct the payment of motor vehicle reparation benefits for medical expenses arising from a covered loss to a health benefit plan, Medicaid, Medicare, a Medicare supplement provider, or any other provider that has paid related medical expenses.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on
Banking and Insurance

BR 211 - Representative Jim Wayne (09/09/11)

AN ACT relating to public financing for judicial campaigns.

Create new sections of KRS Chapter 118A to establish the clean judicial elections fund; define terms; establish fund to distribute transfers to certified judicial candidates; provide that the Kentucky Registry of Election Finance administer the fund and

promulgate necessary administrative regulations; designate that moneys in the fund be invested in accordance with administrative regulations developed by the State Investment Commission; require the registry to publish information about campaign expenditures in the judicial campaigns of the previous year; establish requirements to be designated a certified judicial candidate and gain access to the fund; provide guidelines for distribution of funds to certified judicial candidates; direct that judicial review of any final action of the registry be expedited by the court; provide for a civil penalty up to \$10,000 for an actual violation of these provisions, and a Class D felony for any knowing violation of these provisions; provide that a person entitled to a state tax refund may designate on their income tax return an amount to be credited to the fund; permit the Supreme Court to require members of the Kentucky Bar Association to submit an annual fixed amount not to exceed \$25 to be dedicated to the clean judicial elections fund; EFFECTIVE January 1, 2012.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 233 - Representative Martha Jane King, Representative Dwight D. Butler (09/29/11)

AN ACT relating to tax credits for hiring legally blind or severely disabled individuals.

Create a new section of KRS Chapter 141 to provide a nonrefundable income tax credit for tax years beginning on or after January 1, 2013, for taxpayers who contract with a resident nonprofit organization for services performed by individuals who are legally blind or severely disabled; amend KRS 141.0205 to provide the order in which the credit may be claimed.

(Prefiled by the sponsor(s).)

BR 234 - Senator Jimmy Higdon (10/14/11)

AN ACT relating to tourist and convention commissions.

Amend KRS 91A.360 to increase the total membership of local tourist and convention commissions in cities of the second through sixth classes and counties containing such cities from seven to nine; increase the number of restaurant association representatives from one to three.

BR 246 - Representative Michael J. Nemes (09/07/11)

AN ACT relating to the provision for and control of casino gaming and making an appropriation therefor.

Establish KRS Chapter 239 and create new sections to define "authorizing county or counties," "casino," "commission," "county legislative body," "department," "electronic gaming device," "full casino,"

"gross gaming revenue," "handle," "licensee," and "limited casino"; create the Kentucky Gaming Commission, assign powers and duties to the commission; establish executive director position; make commission, the executive director, and employees subject to executive branch code of ethics; require county election to authorize licensing of casino within county; require sheriff to advertise local option election for gaming; provide for procedures on local option elections for gaming not held on primary and regular election days; require the county board of elections to certify the results; establish commission as agency to solicit bids for casino gaming licenses and provide criteria for advertising the bid; establish procedure for evaluating bids for full casinos; provide bidding rights for racing associations; specify licensing requirements for full casinos, manufacturers, and suppliers; prohibit selling, leasing, or otherwise furnishing gaming supplies without a license; provide the option of limited casinos for racing associations; specifylicensing requirements for limited casinos; prohibit any one under 21 years of age from placing a wager at a casino or being permitted access to a casino; provide for occupational licenses; grant the commission authority to initiate disciplinary action; provide grievance procedure; exempt licensed gaming devices from federal restrictions; grant the commission the authority to define and limit permissible games; provide for the exclusion of certain persons from casinos; require the commission to develop programs for education and treatment of problem gamblers; define "cheat" and provide penalties for cheating; amend KRS 15.380 to establish gaming commission employees as peace officers; create a new section of KRS Chapter 138 to establish a wagering and an admissions tax; amend KRS 243.500 to exempt licensed casino gaming; amend KRS 243.505 to include licensed casino gaming; amend KRS 372.005 to include KRS Chapter 239; amend KRS 525.090 to exempt casino gaming; amend KRS 528.010 to gaming licensed under KRS Chapter 239; amend KRS 528.020 to exempt gambling devices operated under KRS Chapter 239; amend KRS 528.070 to exempt licensed gambling activity; amend KRS 528.080 to exempt those with a license issued under KRS Chapter 239; amend KRS Chapter 528.100 to exempt authorized casino gaming.

(Prefiled by the sponsor(s).)
To: Interim Joint Committee on Licensing and Occupations

BR 248 - Representative Rick G. Nelson (10/20/11)

AN ACT relating to the employment of public school teachers.

Amend KRS 160.345 to require teacher vacancies to be filled by qualified teachers certified through a regular certification program before considering applicants certified through an alternative

certification program.

(Prefiled by the sponsor(s).)

BR 261 - Senator Joey Pendleton (09/28/11)

AN ACT relating to industrial hemp.

Create new sections of KRS Chapter 260 to define "department," "industrial hemp," and "THC"; require persons wanting to grow or process industrial hemp to be licensed by the Department of Agriculture; require criminal history checks by local sheriff; require the department to promulgate administrative regulations to carry out the new sections; require the sheriff to monitor and randomly test industrial hemp fields; assess a fee of five dollars per acre for every acre of industrial hemp grown, with a minimum fee of 150 dollars, to be divided equally between the department and the appropriate sheriff's department; require licensees to provide the department with names and addresses of any grower or buyer of industrial hemp, and copies of any contracts the licensee may have entered into relating to the industrial hemp; clarify that the Act does not authorize any person to violate federal law; require Kentucky to adopt any federal rules or regulations relating to industrial hemp; amend KRS 218A.010 to conform.

(Prefiled by the sponsor(s).)

BR 272 - Representative Terry Mills (09/29/11)

AN ACT relating to optional school bus advertising.

Create a new section of KRS Chapter 189 to allow a local school board to sell advertising on school buses; prohibit certain types of advertising; identify annual reporting requirements.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 275 - Representative Jim Glenn, Representative Bob M. DeWeese (10/13/11)

AN ACT relating to the Colon Cancer Screening Program and making an appropriation therefor.

Amend KRS 214.542 to require the Department for Public Health to adopt a schedule of income-based fees to be charged for colon cancer screening; APPROPRIATION

(Prefiled by the sponsor(s).)

BR 285 - Representative Richard Henderson (10/17/11)

AN ACT relating to the sale of nonferrous metal in the Commonwealth.

Create a new Section of KRS Chapter 433 to define "department," "nonferrous metal," and "secondary metals recycler"; amend KRS 433.890 to require a secondary metals recycler to register

with the Department of Kentucky State Police; establish the registration fee of \$200; prohibit a secondary metals recycler from purchasing nonferrous metal from a person not possessing a valid permit; require secondary metals recycler to make a weekly report to the sheriff and police departments describing any transaction involving nonferrous metal; require a person to obtain a permit from the sheriff in the county of his or her primary residence to sell nonferrous metals to a secondary metals recycler; establish \$50 annual fee for required permit; amend KRS 433.894 to impose penalties up to a Class D felony for unlawful acts relating to the purchase or disposition of metals; amend KRS 433.896 to impose a Class A misdemeanor for providing a false, fraudulent, or altered permit; amend KRS 16.066 to require the department to design the permit form; amend KRS 15.232 and 65.871 to conform.

(Prefiled by the sponsor(s).)

BR 316 - Representative Fitz Steele (10/12/11)

AN ACT relating to mental health.

Amend KRS 202A.410 to add judges and witnesses to the list of persons to be notified upon the release or escape of an involuntarily committed person.

(Prefiled by the sponsor(s).)

BR 368 - Representative Keith Hall (10/21/11)

AN ACT relating to the distribution of coal severance tax revenues.

Amend KRS 342.122 to delete language requiring the transfer of funds from coal severance tax receipts to the benefit reserve fund of the Kentucky Worker's Compensation Funding Commission; amend KRS 42.4582, 42.4585, 164.7891, and 164.7890 to conform; repeal KRS 48.112.

(Prefiled by the sponsor(s).)

BRs by Sponsor

* - denotes primary sponsorship of BRs

Senate

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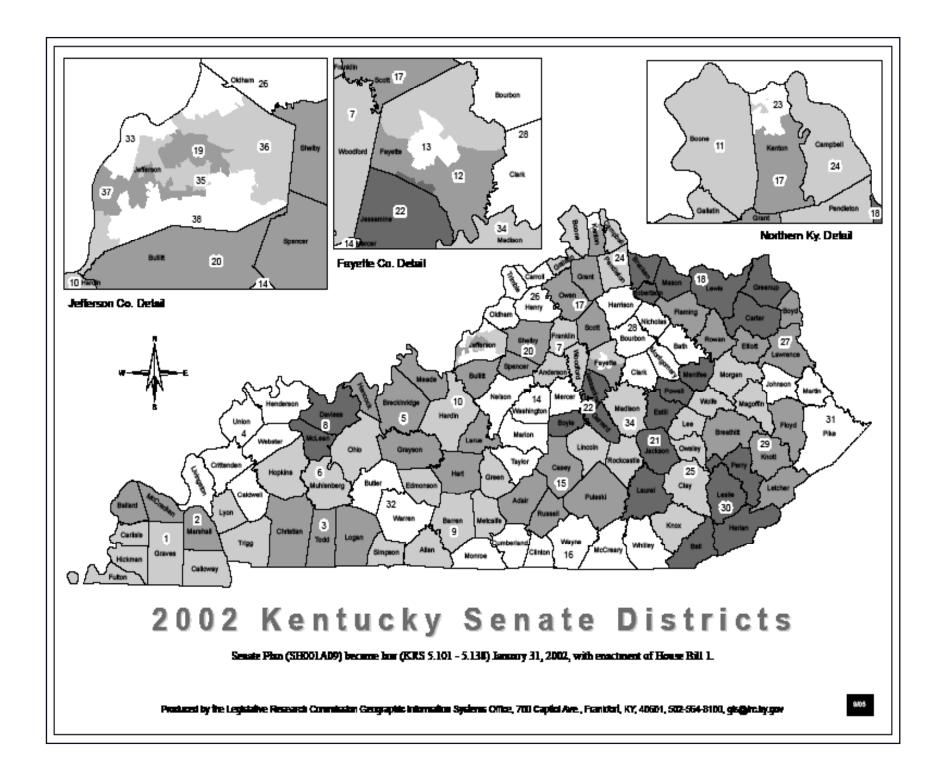
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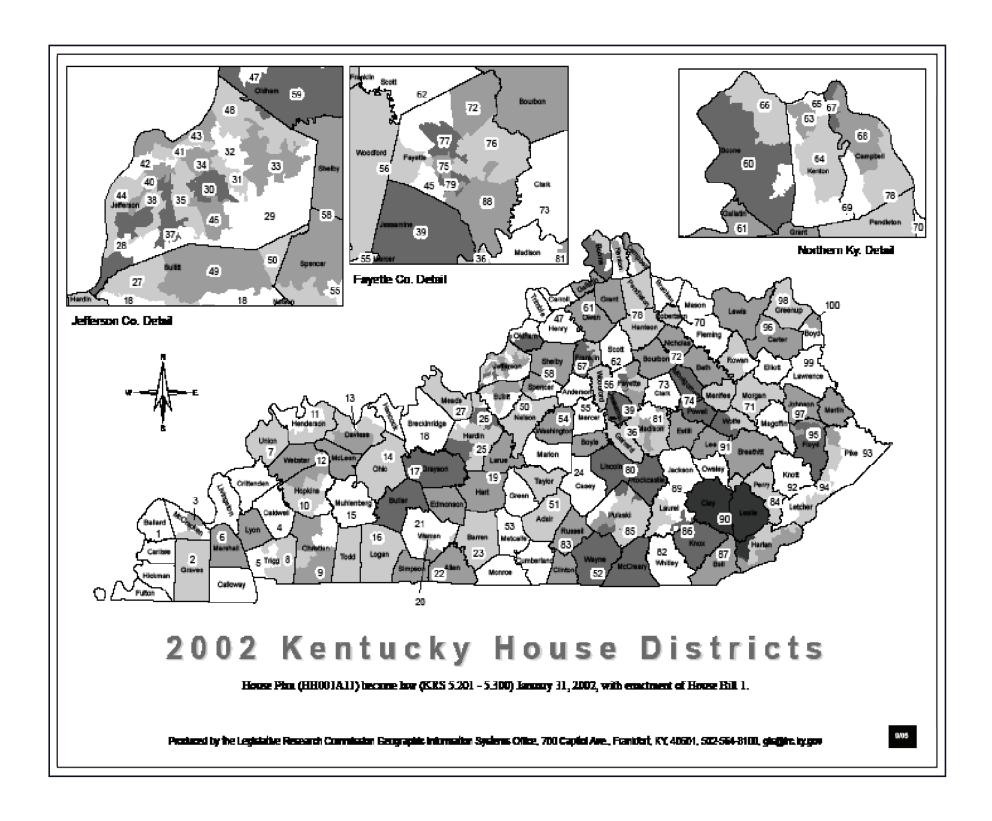
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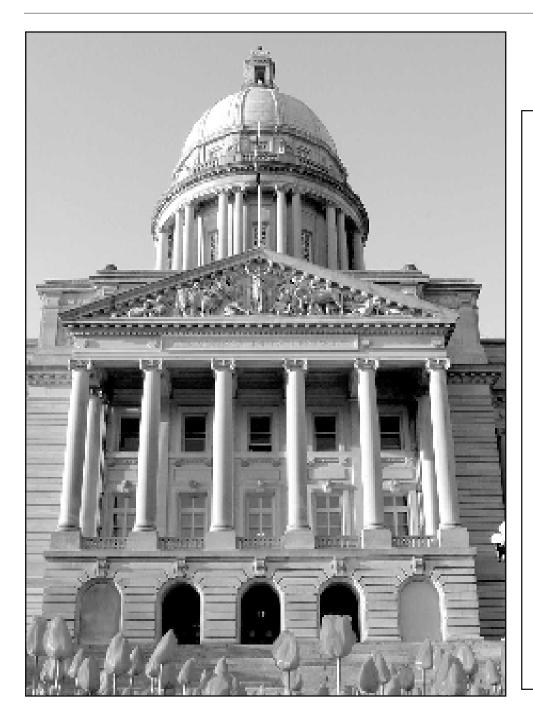
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