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RECORD

Veteran designation now available on driver's licenses

by Amy Rose Karr
LRC Public Information

A new veteran designation is now being printed on eligible Kentucky driver's licenses and state-issued photo identification, members of the Interim Joint Committee on Transportation heard in an Oct. 2 meeting.

The designation, created by House Bill 221 during the 2012 General Assembly, is available at no cost to anyone who has served in any branch of the armed forces. It eliminates the need for veterans to provide additional proof of military service when receiving certain benefits, discounts and special services.

HB 221 became effective on July 12, but programming that would allow circuit clerks to print the new licenses wasn't completed until Sept. 24, Tom Zawacki, commissioner of the state's Department of Vehicle Regulation, told lawmakers.

"I'm pleased to tell you we are now printing licenses with the veteran designation on them," he said.

According to Zawacki, many veterans are taking advantage of the new designation. More than 700 licenses with a veteran designation were printed during the first week of implementation, he



Transportation Co-Chair Rep. Hubert Collins, D-Wittensville, talks with Rep. Tim Couch, R-Hyden at the committee's Oct. 2 meeting.

said.

The Department of Vehicle Regulation is also working with local circuit clerks to provide free reprints to veterans who renewed their licenses between July 12 and Sept. 24 and were unable to receive the designation, Zawacki said.

About 200 reprints have already been issued, he said.

Calendar set for 2013 Regular Session

The 2013 Regular Session of the Kentucky General Assembly is scheduled to begin on Jan. 8 and will last 30 legislative days.

As usual during an odd-numbered year, in which sessions are half as long as in even-numbered years, the session will have two parts. The first four days of the session – Jan. 8 to Jan. 11 – will focus on organizational work, such as electing legislative leaders, adopting rules of procedure and organizing committees. The introduction and consideration of legislation can also begin during this time.

The second part of the session begins on Feb. 5, with final adjournment scheduled for March 26.

Legislators will not meet in session on Feb. 18 in observance of Presidents' Day.

The veto recess – the period of time when lawmakers commonly return to their home districts to see which bills, if any, the governor vetoes – begins on March 12. Lawmakers will return to the Capitol on March 25 and 26 for the final two days of the session.

The 2013 session calendar can be viewed online at http://www.lrc.ky.gov/sch_vist/13RS

Lawmakers learn of fuel testing lab's progress

by Rebecca Hanchett
LRC Public Information

A transportation fuel testing lab that state Department of Agriculture officials say was losing around \$900,000 a year under the department's last administration is on track to save roughly \$400,000 this year, according to department officials.

State Agriculture Commissioner James Comer told the Interim Joint Committee on Agriculture on Oct. 10 that savings have come from reduced expenses on the project which Comer said was billed as a "money maker" to lawmakers by the department when it was overseen by state Agriculture Commissioner Richie Farmer. Farmer's administration began construction of the lab in fiscal year 2007.

Comer gave Larry Cox, the executive director of the department's Office for Consumer and Environmental Protection, authority to improve lab operations. That resulted in changes—including sampling fuel based only on complaints beginning about two months ago, said Cox. The lab was unable to randomly test samples under its original concept, he said, creating a large backlog.

"The visual and chemical elements of the analysis moved rapidly, but octane and cetane testing proved to be a choke point, making the entire lab process unable to meet its promoted objective of performing anywhere from 40 to 50 tests per day," Cox told the committee. "In fact, only 10 tests at most could be performed on an ideal day because of time required for the octane and cetane tests."

Today, the backlog is eliminated and sampling amounts to one or two tests in a typical week, said Cox, unless there is a problem reported with a large load of fuel or with fuel from a major supplier. An excess amount of ethanol found in fuel from a major supplier had to be handled by the department early this year, said Cox.

Committee co-chairman Rep. Tom McKee, D-Cynthiana, asked agriculture officials if sampling on a complaint basis is enough, or if more needs to be done. Right now, Cox said, the sampling process is working—although he said the department would have to be prepared to do broader-based sampling should the number of complaints rise.

Talks with officials at the University of

Continued on page 2

Fuel lab, from page 1

Kentucky about turning fuel testing over to the university are also in the works, said Cox, who said Kentucky is burdened by its \$200,000 annual rent on the lab building, a \$3.1 million investment in underutilized equipment, underutilized staff, and testing costs that outstrip annual fees collected from fuel outlets.

Cox said a testing partnership with UK would be one “in which the Department of

Agri-culture continues to carry its statutory responsibility for regulation of fuel quality, with the uni-

Today, the backlog is eliminated and sampling amounts to one or two tests in a typical week, said Cox, unless there is a problem reported with a barge load of fuel or with fuel from a major supplier.

versity performing all fuel testing before providing results to the department for administrative action.”

“If we can work out this arrangement, and once again we’re very early in those discussions, but if we can work them out, we can sharply reduce the cost of fuel testing to the Commonwealth, we can place fuel testing in the hands of a dedicated and respected research institution, and we can conduct testing on a scale that is appropriate to current Kentucky fuel quality



Rep. Ryan Quarles, R-Georgetown, asks a question at the Oct. 10 Interim Joint Committee on Agriculture meeting in Frankfort.

issues,” said Cox.

Sen. Paul Hornback, R-Shelbyville, asked what the benefit of working with UK would be over farming out to private industry. State Agriculture department official Steve Kelly said that was discussed during a recent meeting of a state task force looking into the fuel lab. An attorney representing the state Finance Cabinet at that meeting explained, said Kelly, that “if there was a possibility to do something like this (with the university) then it’s obviously much faster and much cheaper.

“And then from our point of view, if we can do something with the university and its Center for Applied Energy Research (CAER)—they’re the experts in energy right now... We feel like if we can get it in someone’s hands like that, that we’re protecting the consumer to the best of our ability,” said Kelly.

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Task force finalizing proposed recommendations for middle school sports

by Rebecca Hanchett
LRC Public Information

A state task force that has spent months reviewing oversight of interscholastic athletics at Kentucky’s middle schools is finalizing its recommendations of what changes, if any, need to be made to middle school sports.

The 2012 Task Force on Middle School Interscholastic Athletics, created by state lawmakers during the 2012 Regular Session with the passage of House Concurrent Resolution 155, reviewed dozens of proposed recommendations on Oct. 15 after receiving testimony that day from the Kentucky High School Athletic Association. Final recommendations are expected to be considered by the task force on Nov. 26.

Some of the recommendations being considered include:

- ✓ Require all student athletes to undergo a pre-participation physical examination each year;
- ✓ Require all sports to adhere to the KHSAA Heat Index rules and regulations;
- ✓ Require coaches and volunteers to complete first aid/CPR training, and complete sports safety training similar to those offered by KHSAA for high schools coaches;
- ✓ Require all school to use the same return-to-play guidelines used at high school level after a concussion, with impact testing implemented, if possible;
- ✓ Creation of a middle school athletic association that would serve as an umbrella organization for non-profit groups like the Kentucky Middle School Football Association and the Kentucky Middle School State Wrestling Association;
- ✓ No state invention required; government oversight is already functioning well at the local level.

According to HCR 155, oversight of middle school interscholastic athletics is now mostly left to administrators and staff at each school while the KHSAA establishes best practices for high school interscholastic sports among its member schools in the areas of athlete health and safety, coach training, length of seasons, and more.

The task force has been working since July to study current oversight of interscholastic athletics in the state’s middle schools and look at possible options for the creation of best practices at the middle school level, as well as support for non-profits organizations designed to improve middle school athletics, the resolution states.

KHSAA Commissioner Julian Tackett, a member of the task force who testified during the meeting, said a new state law passed in 2012 that requires middle school coaches to complete sports safety training already required for high school coaches would likely cover concussion training. The 2012 law, which began as House Bill 281, sponsored by Rep. Joni Jenkins, D-Shively, will be fully phased in over the next year, said Tackett.

Tackett said unequivocally in his testimony that the state should not wait to address safety in middle school sports.

“We’ve had injuries, we’ve had deaths in middle school; Most of you remember the kid who was hit in the chest in baseball in Campbell County—an eighth grade kid—and we’ve had some very unfortunate things that we should never let happen again,” he said.

In the area of risk management, Tackett expanded on the proposed recommendation that the “(Kentucky) General Assembly ... require limited practice and games in a week period for middle school athletics,” at the suggestion of Task Force co-chair Sen. Mike Wilson, R-Bowling Green. Tackett said some other states, specifically Tennessee and Illinois which have had individuals testify before the task force, have such limits.

“If it’s in the best interest of the students, it can be done,” said Tackett.

Proposed final recommendations will be drafted by the task force co-chairs and sent to the task force members in the mail, said Sen. Wilson. A vote on the proposed recommendations is expected at the task force’s last meeting on Nov. 26—just in time for possible action by the 2013 Kentucky General Assembly, which begins meeting in regular session in January.

Lawmakers hear of Louisville-Lexington alliance for job growth

by Rob Weber
LRC Public Information

MIDWAY -- Officials from Louisville and Lexington say their efforts to work together on a regional economic development plan will produce benefits for the entire state.

"It's more than about Louisville and Lexington and the region. It's really about the whole state, lifting up the water table," Lexington Mayor Jim Gray told lawmakers during a joint meeting of the General Assembly's Economic Development and Tourism Committee and the Labor and Industry Committee at Midway College on Oct. 19.

Gray testified alongside Margaret Handmaker, director of Louisville's innovation delivery team, about the Bluegrass Economic Advancement Movement, an effort announced last

year between the state's two largest cities to boost economic development by working cooperatively. The effort is being assisted by the Brookings Institute, a nonprofit public policy organization based in Washington, DC.

"The goal is jobs, higher wages (and) higher value jobs for the future," Gray said.

Much of the effort focuses on building upon strengths and assets the region already possesses, particularly in areas like advanced manufacturing.

"From the start, the data that we collected suggested that a focus on advanced manufacturing as a common industrial cluster is the region we ought to focus on," Gray said. "Manufacturing has a multiplier effect with each job supporting more than two others. This is a core industry for our region and for Kentucky

(with) 13 percent of the nation's auto manufacturing right here."

Developing the skilled labor force needed for advanced manufacturing jobs is a key challenge, Handmaker said.

"I've heard someone say that we don't have an unemployment problem. We have an employment problem," Handmaker said. "The jobs are there. We don't have the people to fill the jobs. ... The jobs that need to be filled now require higher levels of skills."

Sen. Alice Forgy Kerr, R-Lexington, said that's a refrain lawmakers commonly encounter. "We hear this everywhere we go around the state. It's a need that should be one of the top two or three priorities of this state."

Part of the challenge lies in changing the perception of what a good job is, Handmaker said. "We know it's

important to brand manufacturing as a good career. It's not just a job anymore, but a career."

Sen. Jack Westwood, R-Erlanger, noted that lawmakers made headway in improving job skills of Kentuckians by passing the "Career Pathways" bill earlier this year. The legislation seeks to provide a career and technical curriculum in the public school system.

"Help is on the way," Westwood said. The Career Pathways Bill "should provide opportunities, when fully implemented, to get some of these students on a path that will direct them into an area where they can experience high quality education by integrating project learning with high skilled coursework."

Rep. Tom McKee, D-Cynthiana, said he hopes the benefits of the

Continued on page 53

Kentucky in compliance with federal anti-teen smoking mandate

by Rebecca Hanchett
LRC Public Information

Kentucky's compliance with a federal law requiring states to both pass laws prohibiting the sale and distribution of tobacco products to persons under age 18 and enforce those laws has been among the nation's best in recent years.

That was the word on Oct. 3 to the legislative Tobacco Settlement Agreement Fund Oversight Committee from Steve Cambron, the state's federal Synar Amendment coordinator for the Kentucky Department of Behavioral Health, Development and Intellectual Disabilities. The federal amendment, passed in 1992, mandates that states enact and enforce laws aimed at decreasing youth access to tobacco products.

In 2009, the state's rate—also known as its "Synar rate"—for noncompliance with the mandate was 3.5 percent, the third lowest rate in the nation, Cambron said. Since 2004, Kentucky's noncompliance rate has been around 5.6 percent, meaning around 5.6 percent of stores inspected under the amendment's protocols sold tobacco products to underage youth, he said.

Noncompliance must not exceed 20 percent under the mandate, according to Cambron. Exceeding a noncompliance rate of 20 percent could result in a state losing up to

40 percent of its federal block grant funding, he said.

Even though its Synar rate is relatively low nationally, Cambron told the committee that Kentucky does have the highest youth smoking rate in the country.

"We know that these youth are getting cigarettes from somewhere. We know that a large part of that probably comes from social access, and there probably still are stores that unwittingly sell to minors, probably because the clerks are not properly trained," Cambron said.

Results from a school survey, called the Kentucky Incentive for Prevention Survey, last administered by the state in 2010 among students in grades 6, 8, 10 and 12 show that obtaining cigarettes as an underage youth in Kentucky is not really difficult. The results were gleaned from student responses to a survey question that asked "How easy would it be for you to get some cigarettes?"

"What those youth tell us is that for some of those grades, it's still quite easy (to obtain cigarettes)," Cambron said.

Sen. Joey Pendleton, D-Hopkinsville, said that he believes in most cases it is an adult who is purchasing for underage youth. And that, he explained, is not always easily remedied.

"We cannot resolve the fact that



Rep. Royce Adams, D-Dry Ridge, asks questions during the October meeting of the Tobacco Settlement Agreement Fund Oversight Committee.

they are getting them from a parent or a grandparent, or older sibling, that is giving them to them," he said. Pendleton said he thinks the survey question should be, "Where and how are you obtaining the cigarettes?"

Aside from the Synar program, the state Department of Alcohol Beverage Control (ABC) inspects for tobacco sales to underage youth. For those inspections, an investigative aide of age 16 or 17 will go into a store and attempt to purchase tobacco products, according to the ABC's Josh Crain. If he or she is successful, a citation is issued against the seller.

Crain said 3,280 state inspections

were conducted last year, resulting in 120 violations. Federal inspections are conducted separately by the Food and Drug Administration.

Committee co-chair Rep. Wilson Stone, D-Scottsville, asked if the young investigative aides in state inspections have someone monitoring them on-site, and Crain said they do. He said an investigator follows the aide for his or her safety.

"I think there are at least two reasons to do that," said Stone. "... the first is the safety of that young person who's doing a service for all of us, and the second is to make sure the results we get are verifiable."

2013 REGULAR SESSION CALENDAR

2013 REGULAR SESSION CALENDAR (approved by LRC 9/5/12; clerical error corrected 9/5/12)

JANUARY – PART I

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8 Part I Convenes (1)	9 (2)	10 (3)	11 (4)	12
13	14	15	16	17	18	19
20	21 Martin Luther King, Jr. Day	22	23	24	25	26
27	28	29	30	31		

Denotes break between Parts I and II. Bill drafts may be requested during this period for introduction when Part II convenes.

FEBRUARY – PART II

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5 Part II Convenes (5)	6 (6)	7 (7)	8 Last day for new bill requests (8)	9
10	11 (9)	12 (10)	13 (11)	14 (12)	15 Last day for new Senate bills (13)	16
17	18 Presidents' Day HOLIDAY	19 Last day for new House bills (14)	20 (15)	21 (16)	22 (17)	23
24	25 (18)	26 (19)	27 (20)	28 (21)		

() Denotes Legislative Day

MARCH

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
					(22)	
3	4 (23)	5 (24)	6 (25)	7 (26)	8 Convenes (27)	9
10	11 Convenes (28)	12 VETO	13 VETO	14 VETO	15 VETO	16 VETO
17	18 VETO	19 VETO	20 VETO	21 VETO	22 VETO	23
24	25 (29)	26 SINE DIE (30)	27	28	29	30
31						

() Denotes Legislative Day

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INTERIMJOINTCOMMITTEE ON AGRICULTURE

Minutes of the 4th Meeting
of the 2012 Interim
September 14, 2012

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Agriculture was held on Friday, September 14, 2012, at 10:00 AM, at the E.S. Good Barn, University of Kentucky, 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, and Damon Thayer; Representatives Royce W. Adams, Will Coursey, Jim DeCesare, Mike Denham, Myron Dossett, Sara Beth Gregory, Richard Henderson, Kim King, Martha Jane King, Brad Montell, Ryan Quarles, Tom Riner, Bart Rowland, Steven Rudy, Wilson Stone, and Tommy Turner.

Guests: President Dr. Eli Capilouto, University of Kentucky; Scott Smith, Dean, UK College of Agriculture; Drew Graham, Senior Assistant Dean, Director of Advancement, UK College of Agriculture; Nancy Cox, Associate Dean for Research, Director of Ag. Experiment Station, UK College of Agriculture; Larry Grabau, Associate Dean for Instruction, UK College of Agriculture; Kenny Burdine, Extension/Livestock and Forage Specialist, UK College of Agriculture; Will Snell, Professor, Agriculture Economics, UK College of Agriculture; and Dr. Robert Stout, Kentucky State Veterinarian.

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

The August 23, 2012 minutes were approved, without objection, by voice vote upon motion made by Senator Bowen and second by Representative Stone.

UK College of Agriculture Overview

Scott Smith, Dean, UK College of Agriculture, said the UK Extension Service is ranked fifth in the country. The Extension program has agent vacancies in some areas of the state but is working closely with local extension boards to continue service. The Extension Service is constantly seeking ways to become a valuable part of the community by keeping up with new demands, such as economic development. The UK College of Agriculture strongly supports the extension systems.

Larry Grabau, Associate Dean for Instruction, UK College of Agriculture, said that enrollment for the College of Agriculture has increased by 21 percent. The programs include human nutrition,

animal science, biosystems, and equine. The most employable degree offered is agriculture economic development. Equine and animal science are the most popular programs for freshman. Seventy percent of the freshman class are women.

In response to Representative McKee, Mr. Grabau stated that the College of Agriculture is at its limit and cannot accept any students.

In response to Senator Givens, Mr. Grabau stated that not many students are involved in production agriculture.

Nancy Cox, Associate Dean for Research, Director of Ag. Experiment Station, stated that the Research Department offers the following programs: economics, pasture management, environmental compliance, animal composition, and equine. The department is conducting an equine study counting all horses in the state. The equine reproduction team (20 students) is in the process of working the Keeneland sales.

The UK President, Dr. Eli Capilouto, stated that he had toured extension offices around Kentucky and fully supported the Extension Service. Student enrollment at the university is at its largest. UK is working hard to keep National Merit Scholars in Kentucky and has expanded the honors program. It is important that students graduate with a quality educational degree.

Drought Impact and Agriculture Economic and Tobacco Outlook

Kenny Burdine, Extension/Livestock and Forage Specialist, stated that the lack of rain and high heat had impacted grain and high quality hay prices, which in turn has affected the equine, dairy, and beef industries. Beef prices are still strong. Alternative feed sources are much more expensive than hay.

In response to Senator Bowen, Mr. Burdine said that the aging population of farmers and high feed prices has caused many to sell dairy. Some new smaller dairies are starting.

Will Snell, Professor, Agriculture Economics, stated that the Kentucky agriculture economy has done fairly well. Those areas with access to water have good tobacco crops. Tobacco contracts are up 5 cents, and the sale of dark tobacco and burley has remained fairly steady, bringing in \$350 million dollars. The overall agriculture economy shows \$5 billion in cash receipts. Kentucky's net farm income will not reach the \$1 billion mark due to higher feeds costs. In the very near future, it will be hard for farmers to replace the tobacco buyout direct payments, which will be ending soon.

In response to Senator Givens and Senator Hornback, Mr. Snell said that there would be marginal impact on agriculture in the next ten years as a result

of farmers using pasture land to grow corn and soybeans due to high prices.

Update on the Kentucky Livestock Care Standards Commission

Dr. Robert Stout, Kentucky State Veterinarian, stated that the mission of the Commission is to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry. The commission has 16 members who have met ten times since October, 2010. The next meeting, scheduled for September 28, will include a review of current draft of the standards and current scientific information.

In response to Senator Givens, Dr. Stout said that a draft of the new proposed standards is available to the public through an open records request or can be found on the KDA web site. The most current document is dated July 19.

Representative McKee stated that no changes have been made to the animal cruelty statute.

Informational Item

No action was taken on 302 KAR 16:091.

Meeting adjourned.

INTERIMJOINTCOMMITTEE ON AGRICULTURE

Subcommittee on Horse Farming
Minutes of the 1st Meeting
of the 2012 Interim
October 10, 2012

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 10, 2012, at 10:00 AM, in Room 131 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 David Givens, Dennis Parrett, Joey Pendleton, and Robin L. Webb; Representatives Royce W. Adams, Sara Beth Gregory, Tom McKee, Michael Meredith, David Osborne, Sannie Overly, Tom Riner, and Wilson Stone.

Guests: John Ward, Executive Director, Marc Guilfoil, Deputy Executive Director, Greg Lamb, Supervisor of Pari-Mutuel Wagering, Jamie Eads, Director, Breeders' Incentive Programs, Dr. Mary Scollay, Equine Medical Director, Kentucky Racing Commission; Martha Murdock, Board Member, and Lance Bowman, Kentucky Arabian and Half Arabian Breeders Alliance; and others.

LRC Staff: Lowell Atchley and Marlene Rutherford.

Kentucky Horse Racing Commission

Representatives of the Kentucky Horse Racing Commission (KHRC), introduced by Marc Guilfoil, provided a review of their respective divisions. Greg Lamb provided a brief overview of pari-mutuel wagering including the importance of the regulatory pari-mutuel oversight, a function new to the Racing Commission. Jamie Eads provided an update on the Breeders' Incentive Fund Program, which includes the thoroughbred, standardbred, and non-race breeds. Dr. Mary Scollay, the KHRC's Equine Medical Director, talked about the health and safety of horses and the programs developed to enhance those initiatives. John Ward, Executive Director, discussed the current status of horse racing in Kentucky and elsewhere.

Responding to Co-Chair Thayer regarding advance deposit wagering (ADW) reporting and transparency, Mr. Lamb indicated that the third quarter was complete and not all numbers were available, but in the second quarter of ADWs, Kentucky residents wagered \$47,663,022. Bettors are identified by ZIP code when accounts are established for each ADW to determine whether the jurisdiction allows ADW. The type of betting is not legal in every state. KHRC is working toward a new set of guidelines that would require ADW sites to track the amounts wagered by Kentucky residents through the system, plus other data.

Co-Chair Thayer asked when the subcommittee and the Committee on Licensing and Occupations could expect to receive a summary of ADW data. Money wagered at Kentucky races has a pari-mutuel tax applied, with a portion of that tax benefiting the Kentucky Thoroughbred Development Fund (KTDF). The ADW wager does not have a tax applied, and therefore no money goes into the KTDF. A breakdown of the numbers would provide a more complete picture of how much a 1 or 1 1/2 percent surcharge could generate, with the proceeds to be dedicated to the KTDF. Co-Chair Westrom indicated it would be interesting to see how other states are benefitting from ADW.

According to Ms. Eads, the thoroughbred market is in a flat year, with the number of mares to be bred estimated at 15,000, compared to 15,918 last year. Kentucky continues to lead North America in breeding statistics, according to Ms. Eads. In addition, she discussed the Standardbred Incentive Fund, the Kentucky Sire Stakes, and the Non-race Incentive Fund, which had 11 participants this year.

Ms. Eads commented to Co-Chair Thayer that over \$76 million has been distributed back to successful breeders of winning thoroughbreds, and over \$100 million combined has been distributed to those involved with all three breeds.

Representative Overly asked if the Commission could provide the statistics on breeders Ms. Eads referenced in her presentation so that all legislators could be informed about the importance of the industry to Kentucky. Representative

Westrom asked if the KHRC could provide a package of Ms. Eads's horse industry information to help educate new legislators elected in November of the information.

Co-Chair Thayer applauded the KHRC for the administrative regulation that allows Kentucky breeds raced overseas to participate in the Thoroughbred Breeders' Incentive Fund. Kentucky is an export state in the thoroughbred business, and continues to be the market share leader in the country in terms of mares bred. Kentucky is holding its own in the face of competition, and competitor-states are facing their own challenges.

Dr. Scollay said that since Kentucky hosts the most prestigious horse race in the world in May (the Kentucky Derby), the public expects that races are conducted with integrity, that the competition is fair, that the outcome of races is not impacted by illegal performance enhancing medications, that only healthy horses compete, that races will be run safely, and that horses will be protected from injury.

Dr. Scollay described the race horse testing process in Kentucky, which involves random sampling and targeted sampling based on horses' standings and performances in races. KHRC utilizes HFL Sport Science Laboratory in Lexington to analyze samples.

Representative Osborne encouraged subcommittee members to tour the operation of the HFL Sport Science facility, which provides drug surveillance, doping control, and research for human and equine sports.

In response to comments and questions by Senators Pendleton and Parrett, Dr. Scollay described how horses are sampled. All winners are sampled. A wild card sample comes from a steward special, which may be in response to particular information, a horse may run better or worse than in past races, or a trainer may have an unusually high winning percentage. Dr. Scollay said stewards are required to select a minimum of one horse for a steward special.

Dr. Scollay explained Lasix has not been outlawed. Rather, the Commission has withdrawn the use of adjunct bleeder medications or medications that have no substantial or scientific evidence to support their use.

In response to a question by Representative Westrom, Dr. Scollay said the use of nutraceuticals or supplements is evident in most equine disciplines, especially athletic horses, and is problematic in the racing industry because, since they are not regulated by the U.S. Food and Drug Administration, the content of the products is unknown and uncertified. There are risks for trainers administering them to race horses being readied for races. The agency has attempted to convey that information to the trainers because of the quality control. Herbal supplements may vary from packet to packet in the percentage of active ingredients, and the active ingredient

could result in a positive test. Horsemen need to exercise caution when they do not have certainty of the content.

Mr. Ward stated that with the initiatives by the legislature and KHRC over the last few years in the selling of horses and the purity and trustworthiness of the "betting signal," the industry has had to change to be successful. As a result of changes, state officials are more aware of what is going on in the betting community than most other racing states. The next level to be addressed is security. The goal is for Kentucky to have a type of horse racing that can be sold around the world as the premier product.

Co-Chair Thayer noted that treatment with Lasix will continue to be an issue, and that the welfare and integrity issue will continue to define equine sports, racing, and showing.

In response to a question from Representative Riner concerning the use of human medications on horses, Dr. Scollay said that some medications are okay when a horse is ill leading up to a race, but in the interval closer to a race, the drugs are not permitted. There are medication guidelines. Some over-the-counter human pain medications are not approved for use in horses. Amphetamines are stimulants and are strictly prohibited.

In closing remarks, Mr. Ward, noted that 2014 will be next year that Kentucky can host the Breeder's Cup in Louisville. The Commission will help pursue that series of thoroughbred races.

Kentucky Arabian Horse and Half Arabian Breeders Alliance

Martha Murdock and Lance Bowman, representatives of the Kentucky Arabian Horse and Half Arabian Breeders Alliance (KAHABA) discussed the Arabian breed association, the history and heritage of the breed, uses of the horse, including showing, endurance racing, and pleasure riding, and characteristics of the breed; and talked about the Kentucky Quarter Horse, Appaloosa and Arabian Development Fund, which was established about four years ago through the Kentucky Breeders' Incentive Fund Program to promote, enhance, improve, and encourage breeding in Kentucky by providing supplemental purses for designated races. Money is allotted to breeders for showing, endurance, and racing. A total of 57 horses have been registered this year, an increase from 49 last year. A total of 52 horses are expected to earn points by the end of this year, according to the speaker. Mr. Bowman indicated that over 70 percent of the horses are sired by stallions in Kentucky.

In response to a question from Senator Webb, Ms. Murdock indicated that the KAHABA sets the rules and standards and is the umbrella organization for the breed in Kentucky.

In response to a question by Representative Osborne, Ms. Murdock indicated that the national show horse registry still exists and has a strong youth program and program for the saddle-

seat division, although the breeding has declined. Mr. Bowman said that the Arabian is one of the few breeds accepted into the warm blood registry.

In response to a question by Representative Stone, Ms. Murdock said the American Endurance Ride Conference governs all approved endurance racing. Distance divisions include 25, 50, 75, and 100 miles, which is the maximum distance. Endurance racing is very popular in South America.

In response to a question from Co-chair Thayer regarding the number of Arabian horses in Kentucky, Mr. Bowman indicated it is difficult to compile this statistic because of the way the horses are registered whether by the Kentucky address or an address in another state. At this time, there are over 8,000 Arabians. Also, \$13,500 was the maximum received from the Breeder's Incentive Fund Program for the breed, and the total paid out last year was just over \$48,500.

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

INTERIM JOINT COMMITTEE ON AGRICULTURE

Subcommittee on Rural Issues

Minutes of the 1st Meeting of the 2012 Interim

October 10, 2012

Call to Order and Roll Call

The 1st meeting of the Subcommittee on Rural Issues of the Interim Joint Committee on Agriculture was held on Wednesday, October 10, 2012, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Vernie McGaha, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Mike Denham, Co-Chair; Senators Joe Bowen, David Givens, Paul Hornback, Jim DeCesare, C.B. Embry Jr., Kim King, Tom McKee, Terry Mills, Bart Rowland, and Tommy Turner.

Guests: Brian Kiser and Dana Case, Commonwealth Office of Broadband Outreach and Development; Dr. Greg Halich and Dr. Cory Walters, University of Kentucky, Department of Agricultural Economics.

LRC Staff: Tanya Monsanto, Stefan Kasacavage, Kelly Ludwig, and Susan Spoonamore.

Broadband service to rural Kentucky

Senator McGaha welcomed Mr. Brian Kiser, Executive Director, and Ms. Dana Case, Program Administrator, Commonwealth Broadband Outreach and Development (CBOD). Mr. Kiser stated that all states struggle with the access, availability, and awareness of broadband. Adoption is the area in which most states struggle. About 91.5 percent of Kentucky households have access to broadband, and 58 percent have chosen to adopt it. Kentucky needs affordable broadband throughout the state as there are 400,000

citizens without access.

Mr. Kiser testified that Kentuckians have options, but in most cases those options are inadequate. For example, phone line broadband is too slow, and 3G cell service is expensive, restrictive, and has poor signal quality. Satellite broadband is expensive and restrictive. Rural areas struggle with high cost and expensive installation costs, and families of low income and poverty levels cannot afford the high service or installation cost. There is no perceived value in adopting broadband.

In response to a question, Mr. Kiser explained that broadband is defined as 768 kilowatts per Federal Communications Commission (FCC) guidelines. CBOD meets monthly with ConnectKentucky, an organization created several years ago with similar intent, to prevent duplication.

Mr. Kiser responded to a question regarding wireless telecommunication, stating that CBOD has a contract with three major carriers. While it is not likely that wire will be laid in rural areas, it has been suggested that reverse marketing be implemented to rollout in rural areas and then report its performance.

In response to a comment regarding poor and impoverished areas, Mr. Kiser responded that there are no grants available, but CBOD works with groups such as Community Action to provide donated items to families in rural areas.

Mr. Kiser stated that, just as small satellite filled the gap for rural television, new broadband technology can fill the gap for rural areas in fixed wireless and satellite broadband. Therefore, Kentucky's needs include affordable broadband and increased adoption. The benefits of broadband availability include: education for students and the workforce; greater opportunities for those of low income as well as students with disabilities; distance learning; aiding Kentuckians in becoming globally competitive; attracting future businesses; eHealth; public safety; and governmental services.

Livestock Risk Protection Program

Dr. Greg Halich, University of Kentucky Department of Agricultural Economics, explained Livestock Risk Protection Program (LRP) basics. The most useful tool for Kentucky producers is the United States Department of Agriculture (USDA) Program, which gives the downside to price risk protection similar to futures markets in the Chicago Mercantile Exchange (CME) based on the CME feeder cattle index and offers multiple coverage areas. The change in CME feeder cattle index is used to determine the payment.

Dr. Halich noted advantages of LRP being the 13 percent subsidy, which makes it cheaper than a put option. There is no commission, and coverage is available for cattle of any weight, sex, and type. Protection is offered for any number of head with no minimum requirement. The disadvantages of LRP are that the

coverage levels depend on options trades, and it is less flexible than the CME option as far as selling cattle early. The inability to sell a policy back, and the fact that LRP can only be exercised at expiration, is problematic. There is a lack of program information available to most farmers and most farmers are not aware the program exists.

Dr. Halich reported that most livestock farmers are too small to use the tools of CME. Hedging other opportunities such as selling directly to feedlots or directly to an order buyer could increase potential in Kentucky. Few Kentucky livestock farmers use these tools because of the size of their operations.

Dr. Halich addressed the rainfall index (RI), which is a USDA insurance program based solely on rainfall in a grid area. It is designed for cattle and hay operations, however; the pilot program is not available in Kentucky. The RI chooses 70 to 90 percent rainfall coverage and establishes a per acre income value. The RI can be adjusted from 60 to 150 percent on an individual basis. The Non-Insured Crop Disaster Assistance Program (NAP) can be used for hay, although it is not thought to be good coverage, and few farmers use it. Adjusted Gross Revenue – Lite (AGR-L) whole farm revenue insurance, which is not available in Kentucky, insures 65 to 80 percent of average five year revenues. It is only available in Tennessee, Illinois, Virginia, and West Virginia.

Dr. Halich stated that LRP is the best option for most cattle farmers, while the coverage for grain farmers is not comparable.

Discussion on Crop Insurance Programs

Dr. Cory Walters, University of Kentucky Department of Agricultural Economics, testified that crop insurance premiums increased from \$1 billion in 1994 to over \$11 billion in 2011, while insured acres increased from 100 million to 265 million. Statistics for the state showed 2.9 million acres insured, \$1.5 billion in liabilities, \$14 million in premiums, \$92 million in subsidies, \$33 million in indemnities, and the loss ratio equals an indemnity premium of 32 cents for 2012.

In response to a question, Dr. Walters responded that 80 percent or more of the state's row crops are insured. Farmers' premiums are more than enough to cover last year's losses, but that will not be the case this year. There have been monitoring problems with tobacco insurance.

Dr. Walters explained that there is no ad hoc assistance available for corn producers who missed the March 15 deadline to purchase insurance.

Dr. Walters explained that crop insurance contract decisions are made before the sales closing date and listed coverage level, unit type, and insurance type as the three primary decisions for crop insurance. Group Risk Income Protection (GRIP) for a producer provides

two choices of coverage and protection levels.

Dr. Walters explained premium subsidies. Subsidy is applied as a percentage of premiums under most policies. Premium is a functionality of pricing. Subsidy money goes up or down based upon pricing.

Dr. Walters explained the role that the Department of Agricultural Economics will play as it estimates indemnities to see whether policies would have been available and purchased, take the lead on making missing products available to Kentucky stakeholders, and educate stakeholders about risks involved. In addition to funding for the study, the department will need to evaluate potential partnerships. There is a need for a political push to bring to Kentucky those programs that are being offered in other states.

There being no further business, the meeting was adjourned.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Minutes of the 4th Meeting of the 2012 Interim
September 26, 2012

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Appropriations and Revenue was held on Wednesday, September 26, 2012, at 9:00 AM, at the Newport Aquarium. Representative Rick Rand, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Rick Rand, Co-Chair; Senators Walter Blevins Jr., Joe Bowen, Tom Buford, Jared Carpenter, Denise Harper Angel, Paul Hornback, R.J. Palmer II, Brandon Smith, and Jack Westwood; Representatives Royce W. Adams, John "Bam" Carney, Ron Crimm, Mike Denham, Kelly Flood, Danny Ford, Derrick Graham, Keith Hall, Jimmie Lee, Reginald Meeks, Jody Richards, Steven Rudy, Sal Santoro, Arnold Simpson, Jim Stewart III, Tommy Turner, Susan Westrom, and Brent Yonts.

Guests: Ms. Gretchen Landrum, Executive Director, Northern Kentucky Convention Center; Ms. Candace McGraw, CEO, Greater Cincinnati/Northern Kentucky Airport; Mr. Roger Peterman, Chairman, Northern Kentucky Port Authority; Ms. Laura Brunner, President, Port of Greater Cincinnati Development Authority; Mr. Steve Stevens, President, Northern Kentucky Chamber of Commerce; Mr. Dan Tobergte, President and CEO, Tri County Economic Development Corporation; Ms. Jeanne Schorer, Executive Director, The Catalytic Fund; Honorable Chuck Scheper, Mayor, City of Covington Kentucky; and Mr. Jack Moreland, President, Southbank Partners, Inc.

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

Representative Richards moved to

approve the minutes from the previous meeting as written. The motion was seconded by Senator Leeper, and the motion carried by voice vote.

Northern Kentucky Convention Center

Ms. Gretchen Landrum, Executive Director, Northern Kentucky Convention Center, discussed future convention center expansion. The expansion proposal is estimated to cost \$35 million. Planned future expansions will bring an estimated \$930,000 annually to the center, and an additional potential \$4.5 million per year to the local economy. There has been an overall economic loss to the region of \$50 million since 2005 due to the lack of funding for the proposed 2005 expansion plan. She requested that the committee provide either \$35 million for the convention center expansion, or \$3 million for continued planning.

Greater Cincinnati/Northern Kentucky Airport

Ms. Candace McGraw, CEO, Greater Cincinnati/Northern Kentucky Airport (CVG) provided the committee an update on the regional airport. CVG is an economic generator, supporting over 16,000 jobs with an annual impact of \$3.4 billion. CVG is expanding its passenger and air cargo service, consolidating Terminal 3/Concourse A, and enhancing concession service. She discussed CVG's relationship with DHL Express, stating that DHL has invested \$105 million in its CVG global super hub since 2009. Staffing will grow to approximately 2,300 when DHL's \$47 million expansion is completed in early 2013. It will process 2.6 million pieces of cargo per month and sort 92 percent of all US delivery shipments. The Terminal 3/Concourse A consolidation opened in May, 2012, and has had a positive response from passengers. CVG is working on updating its master business plan and business model, which will serve as a blueprint for CVG growth through 2035.

Ms. McGraw discussed several customer service improvements made at CVG, which include enhancing retail and food options, free Wi-Fi, and USO military lounges in Concourses A and B. CVG has introduced a mobile web application and is providing frequent customers with email updates about the facility. The TSA pre-check program has been introduced at CVG to improve passengers' experience.

Northern Kentucky Port Authority

Mr. Roger Peterman, Chairman of the Northern Kentucky Port Authority, and Ms. Laura Brunner, President of the Port of Greater Cincinnati Development Authority, discussed the duties of the authorities, which support multi-county initiatives and issue bonds for multi-county organizations. The Northern Kentucky Port Authority would support possible legislation to expand the development authority beyond river transportation, similar to Port of Greater Cincinnati Development Authority. The Port of Cincinnati is involved not only

in public finance, but also in real estate development, land reutilization, and non-river related transportation and logistics.

Brent Spence Bridge and the Angel Investment Tax Credit

Mr. Steve Stevens, President of the Northern Kentucky Chamber of Commerce, and Mr. Dan Tobergte, President and CEO of the Tri County Economic Development Corporation, discussed the Brent Spence Bridge project. Mr. Stevens discussed the various reasons a new bridge is needed, including the need to alleviate congestion, decrease accident risk, and update a bridge that has become insufficient and obsolete. He discussed the importance of the I-75 corridor to personal and cargo transportation to the regions.

Mr. Tobergte said a new bridge would be built, the current bridge would be rehabilitated, and 7.8 miles of highway, ramps, and access roads would be reconfigured. The project’s anticipated cost would be \$2.7 billion. A potential solution would be a collaborative agreement between Kentucky and Ohio. The first step would be a value for money study to determine the tolerance for tolling and suggest a preliminary financial plan. There is potential for a public-private partnership, which would allow for a shorter build timeline, lessen the financial risk to the state, and reduce the needed initial capital investment. The estimated completion is 2023 if private funds are not utilized. The completion date would be 2018 using a combination of public-private funds.

Mr. Tobergte discussed the proposed Kentucky Angel Investment Act, 2013 RS BR77, which would provide individuals a 40–50 percent Kentucky income tax credit for certified investments.

The Catalytic Fund

Ms. Jeanne Schorer, Executive Director of the Catalytic Fund, summarized the activities of the fund. The Catalytic Fund is a private sector, not-for-profit organization that provides financing assistance and related services to developers of quality residential and commercial real estate projects in northern Kentucky’s urban cities. The fund provides various services to individuals including gap loans and equity investments, land banking, and financial packaging. It provides capital through a \$10 million investment fund to fill gaps between traditional underwritten loans, developer’s equity, and project costs. A portion of the fund is also allocated to land banking activities. The fund requires repayment of all capital loaned, but it can be flexible in terms allowing time for projects to become successful.

Riverfront Commons/Covington Waterfront Development

The Honorable Chuck Scheper, Mayor of the City of Covington, and Mr. Jack Moreland, President of Southbank Partners, Inc., discussed the Riverfront Commons project. This proposed project includes an 11.5 mile walking/biking trail that would begin at the I-275 bridge near

Ft. Thomas and end at the city limits of Ludlow, Kentucky. It is envisioned to connect all the south bank of the Ohio River cities with riverside trails and venues within each city. There are segments of existing walking/biking paths, but they lack connection to make it one continuous system. The project would make these connections. Also, the project would conduct a feasibility study with the U.S. Army Corps of Engineers concerning the degree of erosion and ecosystem damage along the south bank of the Ohio River. The study would concentrate on assessing damage, suggesting repairs necessary, and suggestions to maintain a stable river bank.

There being no further business, the meeting was adjourned at 10:54 a.m. A copy of all meeting materials and a cassette recording of the meeting are available in the Legislative Research Commission library.

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 1st Meeting
of the 2012 Interim
September 24, 2012

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Banking and Insurance was held on Monday, September 24, 2012, at 2:30 PM, at the Northern Kentucky Convention Center. Senator Tom Buford, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Tom Buford, Co-Chair; Representative Jeff Greer, Co-Chair; Senators Jared Carpenter, Julian M. Carroll, Dennis Parrett, Jerry P. Rhoads, Dorsey Ridley, John Schickel, Dan “Malano” Seum, and Brandon Smith; Representatives Dwight D. Butler, Will Coursey, Ron Crimm, Robert R. Damron, Mike Denham, Ted Edmonds, Joseph M. Fischer, Danny Ford, Jim Gooch Jr., Sara Beth Gregory, Mike Harmon, Dennis Horlander, Dennis Keene, Adam Koenig, Michael Meredith, David Osborne, Ryan Quarles, Jody Richards, Steve Riggs, and Arnold Simpson.

Guests: Ballard Cassady, President & CEO, John Cooper, Legislative Consultant, Debra Stamper, General Counsel, Kentucky Bankers Association, and Charles Vice, Commissioner, Department of Financial Institutions.

LRC Staff: Sean Donaldson and Jamie Griffin.

Senator Buford welcomed the members of the Kentucky Banker’s Association and asked that the minutes from the November 22, 2011, meeting be approved.

Status of the Banking Industry

Ballard Cassady, President, Kentucky Bankers Association, welcomed the committee to the Kentucky Bankers Association annual convention and updated the committee on the banking industry in Kentucky. He stated that Kentucky banks

are doing well, despite changes that have been made in Washington, DC. There are 196 financial institutions in Kentucky, and over half are at least 100 years old. The banking industry in Kentucky is strong and doing well.

Status of the Banking Industry and Dodd-Frank Reform Act

Charles Vice, Commissioner, Department of Financial Institutions, discussed the European fiscal crisis, U.S. economic conditions, and Kentucky banking conditions. The United States and Europe are significantly linked through trade and financial channels. Europe is one of the United States’ largest trading partners, and United States money market funds hold core European bank debt. The European crisis is due to excessive deficits, such as the debt in Greece, collapse of housing booms in Spain and Ireland, and debt and account deficits in Italy and Portugal. The impact on the United States has been diminished exports, the volatile dollar, and investors’ reduced euro assets. The Commissioner spoke on the numbers of finalized, proposed, and required but not yet proposed regulations under Dodd Frank. He explained the steps of quantitative easing that the Federal Reserve has taken since 2008. Commissioner Vice stated that, despite the current economic conditions, Kentucky banks remain strong.

John Cooper, Legislative Consultant, Kentucky Bankers Association, Bob Weiss, Kentucky Home Builders Association, and Tom Underwood, testified about how the “Affordable Health Care Act” will affect association health plans. They expressed concerns regarding affordability, access, and coverage. The association plans have been very successful. Mr. Cooper stated that a meeting has been arranged with the associations and Cabinet for Health and Family Service representatives to discuss the concerns. Senator Tom Buford asked that the associations report to the committee with the results from the meeting.

With no further business, the meeting adjourned.

INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

Minutes of the 3rd Meeting
of the 2012 Interim
September 20, 2012

Call to Order and Roll Call

The 3rd meeting of the Interim Joint Committee on Economic Development and Tourism was held on Thursday, September 20, 2012, at 1:00 PM, at the Salato Wildlife Education Center, Frankfort. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Leslie Combs, Co-Chair; Senators Jared Carpenter, Denise Harper Angel, Katie

Stine, and Jack Westwood; Representatives Royce W. Adams, John “Bam” Carney, Larry Clark, Will Coursey, Mike Denham, Ted Edmonds, Jim Gooch Jr., Keith Hall, Mike Harmon, Melvin B. Henley, Dennis Horlander, Wade Hurt, Dennis Keene, Thomas Kerr, Kim King, Martha Jane King, Adam Koenig, Tom McKee, Terry Mills, John Short, Fitz Steele, Wilson Stone, Addia Wuchner, and Jill York.

Guests: Marcheta Sparrow, Secretary and Elaine Wilson, Executive Director, Office of Adventure Tourism, Tourism, Arts and Heritage Cabinet; Mark Mangeot, Legislative Liaison, Department of Fish and Wildlife Resources; and Shad Baker, County Extension Agent, Agriculture and Natural Resources, Letcher County Cooperative Extension.

LRC Staff: John Buckner, Louis DiBiase, and Dawn Johnson.

Minutes

A motion by Representative Clark to approve the minutes of the July 19, 2012, meeting passed by voice vote, following a second by Representative McKee.

Adventure Tourism

Mark Mangeot, Legislative Liaison for the Department of Fish and Wildlife Resources, welcomed the committee to the Salato Wildlife Education Center. He gave a brief overview of the Salato Center, which hosts 75,000 visitors, mostly school groups, annually.

Secretary Marcheta Sparrow, Tourism, Arts and Heritage Cabinet, introduced Elaine Wilson, Executive Director of the Office of Adventure Tourism. Secretary Sparrow noted Ms. Wilson’s previous experience and commended her work with the agency.

Ms. Wilson explained the mission of the Kentucky’s adventure tourism program. The office published an updated guide outlining the state’s adventure tourism activities and outfitters based on an in-depth, statewide study. The study revealed a lack of understanding of adventure tourism, little coordination to maximize services and supplies, and no specific destinations. The office website was updated to be more appealing and user friendly. This spring, a marketing campaign included online marketing that has proven to be successful based on user interest.

Ms. Wilson noted an increase in adventure tourism infrastructure, with some projects made possible by the tourism loan program. There are seven new zip line businesses and three horse camps, as well as more multi-use trails at Kentucky state parks, new construction projects, and ongoing efforts with private landowners for more land access. The economic impact of adventure tourism can be up to \$240 per person per overnight visit. The average adventure traveler is generally more educated and affluent than the typical traveler. Adventure tourism is beneficial from a health standpoint because outdoor activities tend to require greater physical exertion.

Ms. Wilson explained the Kentucky

Trail Town Development and Recognition Program. By definition, a trail town is a portal to a trail system, either by water or land access that offers services and supplies for trail users. To qualify, participating towns should provide friendly and knowledgeable services about trails and services, and be willing to share their culture and history. The Office of Adventure Tourism has connected with potential and participating towns, gathered information, and provided guidance and resources where needed. The Trail Town Task Force, composed of various interest groups and community officials, was created to help oversee the process. Ms. Wilson noted that Gatlinburg, Tennessee is one of the most successful examples of a trail town. The trails rely on community volunteers to keep them maintained.

Responding to Representative Clark's question about increased usage and access to his district's stand-alone parks, Secretary Sparrow said the cabinet would look into the matter as the agency has been working on other park-related issues in the area.

Representative Kim King pointed out that the state is attracting specialty events like the "Warrior Dash" in Marion County, the "Capitol City Dash" in Franklin County, and the "Bourbon Chase" along the Kentucky Bourbon Trail. Ms. Wilson added that the state hosted two national adventure events, and the state parks are hosting an "Adventure Race" series.

Representative Wuchner noted that participating communities are struggling to create jobs, and the new economy presents a cultural change for them.

Representative York thanked the Adventure Tourism Office for assisting Olive Hill in becoming a trail town. She said it is a process of using what is already in place--connecting towns along trails that already exist.

Representative Hall said West Virginia has experienced significant increased interest in historical sites that were featured in the History Channel's *The Hatfield and McCoy Feud*, which had 17.4 million viewers. He said given that significant coal severance funding was used to map the Hatfield and McCoy Trail in Kentucky, the state should embrace the new interest in the area.

Responding to Representative McKee's question, Ms. Wilson said the office is promoting more horse trails in Harrison County where feasible and there are ongoing discussions with the Department of Fish and Wildlife Resources about horse trails. Secretary Sparrow said the cabinet will contact the department as they are unsure of the plans for that particular land as there are legal limits on some land usage. Representative McKee suggested setting aside some of the property for horse trails and/or closing horse trails during hunting season if necessary.

Representative Edmonds asked tourism officials to work closely with state and federal forestry officials with

the Natural Bridge project. Ms. Wilson said the agency has a good relationship with state forestry officials, and Secretary Sparrow said the agency would follow up on the matter.

Representative Short asked if tourism officials could ensure the Knott County Trail Ride continues with the possible absence of the program's primary promoter. Secretary Sparrow said the cabinet would work with organizers and community leaders to keep the event going.

Senator Carpenter thanked Secretary Sparrow and Ms. Wilson for the work done in Liberty and Casey County in regard to a recent adventure tourism event.

Ms. Wilson introduced Shad Baker, Extension Agent with the Letcher County Cooperative Extension. Mr. Baker spoke about the development of the Pine Mountain Trail as part of the Appalachian Great Eastern Trail. He said while other states have extensively promoted their trails, Kentucky had not. In setting up Pine Mountain Trail, coordinators began working with the National Park Service's Rivers, Trails and Conservation Assistance Program. A nonprofit group was formed to promote the development of these trails. The Patton administration designated the Pine Mountain State Scenic Trail. Since then, the project has received approximately \$4 million in grants. Currently, the trail is 56 miles long and extends from the Breaks Interstate Park to Kingdom Come State Park. There are three overnight shelters with a fourth under construction in Pike County. Because there are few access points to the trail, they are working on creating more trail head. He noted that all work is done through volunteer labor. The trail has had over 4,000 volunteers with 160,000 hours and \$2.5 million in donated labor.

Ms. Wilson said promoting the trail opens opportunities for communities that are desperate for work that will allow residents to stay in their communities.

The trail has acquired almost 1,800 acres of land from 200 landowners and developed 38 miles of trail. The agency is in the process of acquiring land from the Department of Fish and Wildlife that will add another eight miles to the trail.

Mr. Baker said it was discovered at the Southeast Foot Trails Conference that there is a system of trails developing throughout the southeast United States that can easily be connected, and the planning process is underway. Kentucky is in competition with Virginia, which who strongly promotes adventure tourism. Pike County lobbied the Great Eastern Trail Board to keep as much of the trail in Kentucky as possible. Some of the challenges faced are land acquisition, which is a slow process, and expanding the volunteer base. Kentucky has not been very successful in the recruitment of volunteer labor. He is working with college and university programs for earned college credit.

Mr. Baker noted the importance

of trail towns because they become as much a part of the experience as the trail itself. Hikers look to these towns for food and lodging, and their spending has a significant financial impact in these communities.

Responding to Representative Stone's question, Mr. Baker said the state prefers property easements to access land, and this method is advantageous because some landowners do not want to part with their land.

Responding to Representative Wuchner's question, Mr. Baker said the trail between Breaks Interstate Park and US 23 is in good shape. There are no shelters, but one is under construction. The remote areas of the Highland Trail section are in poor condition due to difficulty in access. Mr. Baker is trying to obtain the section running through the Pine Mountain Wildlife Management Area from the Department of Fish and Wildlife.

Representative Carney said it would be good for the media to cover the volunteer efforts along the trail. When questioning safety issues, Mr. Baker said all the shelter areas have good cell phone coverage.

Representative Carney said he hoped the state is doing all it can to promote trail heads and ATV trails as it has become a multimillion industry throughout the southeastern United States.

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

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 4th Meeting
of the 2012 Interim
September 10, 2012

Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on Education was held on Monday, September 10, 2012, at 1:00 PM, in Room 154 of the Capitol Annex. 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., Jared Carpenter, David Givens, Jimmy Higdon, Alice Forgy Kerr, Vernie McGaha, Gerald A. Neal, R.J. Palmer II, Johnny Ray Turner, Jack Westwood, and Mike Wilson; Representatives Linda Belcher, Regina Petrey Bunch, John "Bam" Carney, Hubert Collins, Leslie Combs, C.B. Embry Jr., Bill Farmer, Derrick Graham, Donna Mayfield, Reginald Meeks, Charles Miller, Ruth Ann Palumbo, Ryan Quarles, Jody Richards, Tom Riner, Bart Rowland, Rita Smart, Wilson Stone, Ben Waide, Addia Wuchner, and Jill York.

Guests: Clyde Caudill, Kentucky Association of School Administrators and Jefferson County Public Schools; Tamanda Barnett, parent; Don Meade and Kennedy Turner, Jefferson County Teacher Association, Betty Muntz, Kentucky Council on Exceptional Children, Linda

Nickel, Education Professional Standards Board, Charlie Harmon, Kentucky Department of Education; Cindy Baumert, Education Advocate; Wayne Young, Kentucky Association of School Administrators.

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

Representative Collins moved to approve the minutes of the August 13, 2012, meeting, and Senator Higdon seconded the motion. The motion carried.

Reports from Subcommittee Meetings

Senator Kerr reported on the Subcommittee on Postsecondary Education meeting. The subcommittee heard from Bellarmine University, the University of Kentucky (UK), Kentucky State University (KSU), and the Kentucky Community and Technical College System (KCTCS) on the role of the Office of Student Affairs and its effect on student engagement and retention. All university representatives echoed the theme that "an engaged student is a retained student."

Senator Kerr said students face many challenges. Among these are mental and physical health, emotional, academic, time management, and financial issues.

Senator McGaha reported on the Subcommittee on Elementary and Secondary Education meeting. The meeting focused on the school federal lunch program. KDE staff reported that in the 2011-12 school year, 18 school districts took part in a federal program that provided free lunch to all students enrolled in specific schools in the districts. Known as the Community Eligibility Option, the program operates as an alternative to household applications for free and reduced price meals. This number of districts participating in the current school year has increased to 52.

The subcommittee discussed concerns pertaining to the changes in portion size in school meals as well as the availability of food for students to take home to share with their family on weekends. These reductions hurt the families most in need. KDE staff agreed to forward the concerns to federal representatives who set the standards. A letter from the subcommittee addressing these concerns will be sent to the United States Department of Agriculture.

Ms. Tina Garland, Coordinator, presented an overview of the Farm to School Program. The goal of the program is to serve healthy meals in school cafeterias while supporting local and regional farmers. The program is also promoting development of school gardens, which contribute to school cafeterias and help teach children the importance of farming.

Education Professional Standard Board Progress Update

Alicia A. Sneed, Acting Executive Director, Education Professional Standards Board (EPSB), said EPSB is one of only 13 independent state professional standard boards across the nation. It was

established during the 1990 Kentucky Education Reform Act (KERA) and has 17 members. Fifteen of the members are appointed by the Governor and confirmed by the General Assembly.

Ms. Sneed said EPSB's goals were revised in 2005. The EPSB Board recently redesigned the Master's Degree and administrative preparation programs. All principal preparation programs are now post-master's. The curriculum requirements of the superintendent preparation programs are being redesigned.

Ms. Sneed said EPSB is raising admission standards to initial teacher preparation programs. All new teacher candidates will be required to pass a rigorous skills test in math, reading, and writing prior to admission. A 2.75 GPA is required for admission, and candidates must demonstrate essential classroom skills including critical thinking, collaboration, creativity, and communication.

Ms. Sneed said EPSB is developing a quality preparation index for all of Kentucky's teacher preparation programs. The index includes a fair and reliable measure connecting to K-12 student performance. Kentucky will participate in the National Council of Accreditation for Teacher Education (NCATE) Alliance of states embracing school-based clinical models for educator preparation.

The EPSB implemented its first online application for certification for the TC-4 emergency substitute certificate. Last year, 7,000 substitute teachers were took emergency certification. Teacher interns must demonstrate use and analysis of data from formative and summative assessments. EPSB staff will continue to provide ethics seminars for school districts and educator preparation programs at no cost to ensure that educators are aware of their fiduciary duties to students, parents, and the profession.

EPSB, in collaboration with the Kentucky Department of Education (KDE) and the Council on Postsecondary Education (CPE), coordinated information and training sessions on revised content standards for faculty and staff in all teacher preparation programs. Teacher preparation programs sent the EPSB a current roster of adjunct, part-time, full-time, and term faculty, denoting attendance at information and/or training sessions in the use of Kentucky Core Academic Standards. One hundred percent have completed the training.

Ms. Sneed said EPSB is ensuring teacher preparation programs include the use of academic standards in pre-service programs and that all teacher interns have experience planning classroom instruction based on the revised standards. EPSB appointed a committee to ensure the alignment between the Kentucky Teacher Internship Program (KTIP) and 2009 SB 1.

Ms. Sneed said EPSB, KDE, and other partners are identifying weaknesses in writing instruction and considering how skills to improve writing should best be

taught to teachers. EPSB and the Martin School of UK have completed a research study on the effects of instruction in writing for P-12. KDE provided the data.

Dr. Cathy Gunn, EPSB Board Chair, said she is leading the search process to replace the executive director, who retired June 30. Members can direct questions about the search process to her.

Ms. Sneed said EPSB has created a workgroup to endorse an on-line teaching work group to allow certified classroom teachers to be prepared to effectively develop and deliver on-line content. EPSB is creating a special education task force to examine preparation and certification of special education teachers. Finally, EPSB is monitoring the consolidation process of the NCATE and the Teacher Education Accreditation Council (TEAC) as they move toward the creation of a single accrediting body, named the Council for the Accreditation of Educator Preparation (CAEP).

Responding to a question from Representative Stone, Ms. Gunn said her background is in online learning at the K-12 and higher education levels. She said research shows that high levels of instruction can occur in the formal classroom setting and on-line. In regard to teachers obtaining higher degrees in an on-line setting, many traditionalists believe students cannot learn at the same level in an on-line environment. As a former on-line teacher, she said many great discussions occur on-line, and she has shared those with students in the formal classroom. A hybrid approach utilizing both on-line and classroom instruction is the most effective approach. On-line courses are monitored and required to meet the same requirements as a face-to-face class.

Responding to Representative Palumbo, Ms. Gunn said field experiences might include observing a master teacher in a classroom to working with small groups of children within a classroom setting. She said clinical practice for students should involve engagement and discussions with master teachers for reflection. Field experiences begin in the freshman year as soon as students have declared education as their majors. Two hundred hours must be completed before student teaching.

Responding to Representative Graham and Senator Neal, Ms. Gunn agreed that the best and brightest teachers may not have the highest GPA. However, most students are required to have at least a 2.75 GPA, which is equivalent to a "C" average. She said students who show promise can be tutored or mentored and offered extra classes to meet the 2.75 GPA.

Bullitt Advanced Math and Science Program (BAM)

Keith Davis, Superintendent, Bullitt County Schools, said Bullitt County has experienced rapid growth. As indicated in the latest national census, Bullitt experienced at least a 21 percent increase in population over the past 10 years. According to CPE, Bullitt County ranks

119 of 120 counties in the number of additional Bachelor degrees needed to match national averages.

Mr. Davis said Bullitt County secondary and postsecondary leaders partnered to

develop a variety of programs to increase the number of college and work-ready students. The district is determined to transform community expectations and attitudes about higher education and to create a highly educated workforce to improve quality of life.

Mr. Davis described the unique partnership between Bullitt County Public Schools and the Jefferson Community Technical College (JCTC) Bullitt County Campus. The partnership is based on a series of purposeful action steps designed around the concept that successfully completing some amount of college credit while in high school is an influential factor in obtaining gainful employment and/or persisting in postsecondary education after graduation.

Mr. Davis said Bullitt County will create the demand for education by increasing awareness. He said 100 percent of high graduates will be either career or college-ready by 2015. Obstacles will be removed by reducing the cost of college by offering dual credit classes in high school. There will be an increase in the persistence in transfer rates by getting quality information and expert college advising to students and families in middle and high school. Every public school will have access to a minimum of 24 college credits by high school graduation.

Donna Miller Bruenger, JCTC, said the 12x12 Middle College program is designed to give college-ready high school juniors and seniors the opportunity to become acclimated to college culture through the pursuit of college credit in a traditional college campus setting. 12x12 is a partnership between Bullitt County Public Schools and JCTC and all classes occur at the Bullitt County Campus of JCTC. The program began in August 2008 and has expanded to include high school juniors who may take two classes per semester, which means those students can earn up to 24 college credits by the end of their high school careers. The specific program requirements outlined for the 12x12 Middle College program are included in the meeting materials located in the Legislative Research Commission (LRC) library.

Mr. Davis said the Bullitt Advanced Math and Science Middle College program (BAMS) is housed at the Bullitt County campus and is a partnership between JCTC and the Bullitt County Public School System. Students are recruited and selected at the end of middle school (8th grade) and spend the first two years of high school in an intensive secondary education experience where they complete a significant portion of the credits required for a high school diploma through in-person, hybrid, or on-line instruction (APEX). The next two years (the junior

and senior years of high school) are spent at the Bullitt Campus where students move as a cohort group through traditional classroom settings with other college students and complete the requirements for an Associate's Degree in Science or Arts while fulfilling the requirements for high school graduation. The specific program requirements and tuition costs for students to participate in BAMS are included in the meeting materials located in the LRC library.

Ms. Bruenger said the Bullitt Accelerated College Advanced Placement (ACAP) Early College program is another partnership between Bullitt County Public School and JCTC. The initiative involves offering dual credit courses by developing successful schedules, hiring highly-qualified professors, and ensuring rigorous college instructional materials are used. Students participating in the ACAP program are able to obtain up to 12 credit hours by the end of spring semester 2013. The classes allow students to accomplish 20 percent of an Associate's in Arts or Science degree.

Mr. Davis said three Bullitt College and Career Readiness Centers will be built, one attached to each high school. They will provide students flexibility by offering college courses in the evening. They also remove transportation obstacles and integrate "launch pads" in technical skills, career programs, as well as transfer education within each major residential area of the county.

Representative Rollins commended Bullitt County for offering students these dual credit course opportunities. He said the dual credit classes will substantially reduce college debt for students who enroll in college after graduation to complete a four-year degree.

Responding to questions from Senator Givens, Ms. Bruenger said there is an 81 percent persistence rate for students staying enrolled in college upon completion of the Bullitt County Middle College programs. She said this is significant because there is a large percentage of Bullitt County students who would enroll in college upon graduation from high school but who would drop out. The goal for BAMS students is to attend graduate school and find employment in the Bullitt County area.

Mr. Davis said the high schools get to keep the Average Daily Attendance (ADA) funds for the students who participate in the 12x12 or BAMS programs. This allows the high schools to have more money and teachers to work flexibly in other areas. Most of the high school teachers affected by the students attending the college credit programs are being used to tutor other high school students who are struggling. Ms. Bruenger added that those teachers are also used for tutoring the students enrolled in the early college programs, particularly in trigonometry, Algebra, and college level writing. The faculty also stays engaged by assisting students to be successful in the college level courses being offered within

the high school.

Responding to Representative Richards question regarding student perception of the early college programs, Alex Carter, Bullitt County BAMS student, said she has benefited from the program. She is more confident in her critical thinking skills and life choices.

Senator Winters commended JCTS and Bullitt County Public Schools on their cooperative venture between postsecondary and secondary education. The partnerships capture the spirit of the intention of SB 1.

Mr. Davis thanked Senator Winters for sponsoring SB 1 and said it was the best piece of legislation to ever come out of the General Assembly. Ms. Bruenger said the early college program's mission, vision, and action steps were derived from SB 1.

P-20 Data

Joe Meyer, Secretary, Education and Workforce Development Cabinet, said the P-20 data collaborative is a cooperative working relationship among CPE, EPSB, and KDE. It is a comprehensive data system that links early childhood, K-12, teacher certification, workforce, unemployment insurance, and other data to provide a better picture of the overall impact of state policies and practices.

Charles McGrew, Executive Director, Education and Workforce Development Cabinet, said the system has the capability to link high school and college data and will give a better understanding how high school experiences affect college going and success. It will link preschool and early childhood information to kindergarten and elementary school performance to ensure that all children enter schools with the skills needed to be successful.

Mr. McGrew said teacher preparation programs will benefit from the P-20 collaborative by understanding how well graduates are impacting student learning in the classroom. Programs can be modified to ensure that future teachers enter the classrooms with the skills they need to have the greatest impact on students' learning. Linking education and employment records in the future will provide data on whether Kentucky graduates are entering the workforce and earning a reasonable wage. Data will indicate how well Kentucky colleges are meeting the needs of local industries, and what the return on investment is for education and training programs.

Mr. McGrew said the P-20 data system is being developed through a grant from the United States Department of Education, Institute for Education Sciences Statewide Longitudinal Data Systems program. Most states are in the process of developing a similar system. Providing better data will inform decision making at the local and state policy maker levels. To receive federal money for education in the future, states must be able to report on college going and success and employment of graduates, as well as other issues that can only be addressed through

a system of this nature.

Mr. McGrew discussed the high school feedback reports and other upcoming reports. A full list is located in the meeting folder located in the LRC library.

Senator Higdon commended the P-20 collaborative and its usefulness.

Review of Executive Orders 2012-586 and 2012-737

There was no action taken by the committee on the executive orders.

Review of Administrative Regulations

There was no action taken by the committee on 16 KAR 2:120 or 703 KAR 5:225.

Kevin Brown, General Counsel, KDE, explained 703 KAR 5:070, Procedures for the Inclusion of Special Populations in the State-Required Assessment and Accountability Programs. KDE amended the regulation to update terminology and requirements consistent with KRS 158.6453, KRS 158.6455, the NCLB Act of 2001, the Individuals with Disabilities Education Act, and its federal regulations, and Section 504 of the Rehabilitation Act of 1973, as amended, and its federal regulations. The amendments update the procedures for accommodations to include: limiting the use of the reader accommodation on reading tests; limiting the use of a calculator on non-calculator portions of state assessments; clarification of procedures for assessing students with Limited English Proficiency; clarification of prompting and cueing to remain on task; adding a 3 x 5 note card to approved manipulatives; removing the use of student generated glossaries for English language learners; removing outdated terminology; providing a waiver for students with special circumstances; and reorganizing the document incorporated by reference to improve clarity.

Ken Draut, Associate Commissioner, KDE, clarified that readers will be allowed in mathematics, science, social studies, and science because those assessments test content knowledge and not reading ability. The reader will be excluded on the reading test only. The regulation does not have any prohibitions on the use or non-use of a reader in the instructional classroom on a day-to-day basis.

Mr. Draut said the new assessment test is based on the common core standards in reading and mathematics. The reading assessment contains decoding and comprehension measurements. Decoding is a term for reading the symbols represented in printed text. The problem with students utilizing a reader on the reading assessment is that it is in conflict with the goal of measuring student proficiency in decoding.

Mr. Draut said 41 out of 50 states do not allow students with disabilities to use a reader. The other nine states allow the limited use of a reader. Kentucky has the second highest number of students in the country whose scores are excluded from fourth and eighth grade reports on

the National Assessment of Educational Progress (NAEP). NAEP policies do not allow use of a reader accommodation as an indicator of a valid score.

Mr. Draut said Maryland, Massachusetts, and South Carolina have a waiver system for students with disabilities who require special accommodations on assessments. The ACT also utilizes a waiver system for students with disabilities. Students are approved or disapproved for special testing accommodations based on meeting specific criteria. He noted the national testing consortium, the Partnership for Assessment of Readiness for College and Careers (PARCC), to which Kentucky belongs, is considering a waiver process.

Mr. Draut said Kentucky has included a waiver process in 703 KAR 5:070 that would allow schools to apply for a reader for the reading assessment. He said KDE would approve or disapprove the waivers.

Mr. Draut said the Kentucky mathematics assessment, in coordination with the common core standards, measures two types of mathematical abilities. The assessment includes problem-solving, applying mathematical concepts, and completing computation problems. Kentucky will no longer allow students with disabilities to utilize a calculator on the computation portion of the mathematics assessment.

Responding to questions from Representative Rollins, Mr. Draut said the common core standards required both comprehension and decoding to be in the reading assessment. Representative Rollins said students need to be accommodated who cannot decode in order to measure their comprehension skills. He said the other argument is that students need to make progress and improve in both areas. One percent of Kentucky's students take an alternative assessment. Students with mild learning disabilities should be tested like everyone else, and this is a large group.

Mr. Draut noted that details of the administrative regulation were explained to numerous superintendent groups and KDE had communicated the forthcoming changes to school districts. Administrative regulation time constraints allowed for KDE to receive public comments, and KDE changed the wording of the administrative regulation from allowing no readers to allowing some readers if a waiver was requested and approved. He emphasized that no formal training has been provided to school districts because the administrative regulation has not gone into effect.

Responding to Representative Rollins question regarding students needing a new Admission and Release Committee (ARC) meeting, Johnny Collette, Director, Division of Learning Services, Office of Next Generation Learners, KDE, said he did not believe a new Individualized Education Program (IEP) for students would be necessary. Language was previously recommended

for incorporation in the students' IEPs to allow flexibility if state assessment policies are changed. Because of the bridge language, a specially called ARC meeting would not be needed.

Mr. Collette explained the proposed waiver process in the administrative regulation. For students with a documented disability who, due to the severity of their disability, are unable to access the reading assessment without the use of a reader, the district may apply to KDE for a waiver to use the read-aloud accommodation not otherwise permitted in the administrative regulation. Mr. Brown noted there is no appeal process in place.

Mr. Collette shared the list of advisory groups who were briefed on status updates on the administrative regulation during the past year. A question and answer document was sent to district assessment coordinators and directors of special education in the spring of 2012.

Senator Winters said the major issue the Education Assessment and Accountability Review Subcommittee (EAARS) identified with 703 KAR 5:070 was the timeline to implement the regulation in the spring of 2013. If concerns are not quickly resolved in the administrative regulation, it will be difficult for KDE to implement the regulation in a few months.

Responding to a question from Representative Carney about the process KDE will use to approve or disapprove the waivers, Mr. Draut said waiver approval would be decided on an individual basis based upon student needs.

Representative Graham said removing an interpreter will cause test scores to significantly drop.

Responding to Representative Smart, Mr. Draut said the test is designed for the grade level of the students, and not their functional level.

Responding to a question from Representative Rollins regarding the administrative regulation including the End-Of-Course (EOC) examinations, Mr. Draut said it would affect the English II test, but would not affect math, social studies, science, or writing EOC examinations. Representative Rollins said this could harm an individual student's grade. Mr. Draut said a student's use of a reader for many years could be considered as a reason to grant a waiver in high school.

Representative Belcher expressed concern that KDE does not know the students as well as the people on the ARC. She also suggested exempting schools and teachers from sanctions if test scores decrease.

Responding to a question from Senator Neal regarding implications to KDE for delaying the implementation of the regulation, Mr. Draut said it was initially planned for the administrative regulation to be in effect at the beginning of the 2012-2013 school year, but the process was slowed down. KDE is trying to stay on schedule and also to stay in-line with what other states are doing. The

timeline of implementation is not tied to any funding source.

Responding to Senator Neal, Mr. Brown said the administrative regulation is in the Governor’s Office, and he can withdraw, withdraw and amend, or allow the regulation to go into effect notwithstanding the finding of deficiency. The Kentucky Board of Education (KBE) could withdraw and amend the regulation, receive public comment in December 2012, receive approval in February 2013, and return it to LRC next interim for review. Representative Rollins said the process needs to be expedited.

Representative Farmer expressed concern over the lack of an appeal process to the waiver application. It could be devastating to special needs children to deprive them of readers.

Representative Rollins said the committee could amend the administrative regulation with the agreement of KDE, and it would move forward. He suggested moving the implementation date to the 2013-2014 school year, but noted KDE Commissioner Holliday was not in attendance to respond.

Donna Little, LRC Administrative Regulations Compiler, said the committee and KDE could agree to defer the regulation until the October meeting. The deferral would allow an appropriate time for an amendment to be drafted and filed with the committee.

Senator Winters suggested deferring the regulation until the November committee meeting held in Frankfort. The October meeting will be held at Murray State University, and it may not be feasible for everyone to attend. Mr. Brown said KDE would be willing to defer the regulation until October and again to November. Senator Winters acknowledged that the amendment may need to be broader than just changing the implementation date.

Representative Rollins summarized that KDE agreed to defer 703 KAR 5:070 until October, with the intention to defer again to November. He is hopeful an amendment can be accepted at the November committee meeting to address the concerns with the regulation.

Representative Graham noted that deferral is the right option, allowing ample time for KDE staff to consult with Commissioner Holliday and receive input from legislators on amendment language.

Representative Riner said the administrative regulation is deficient and also hurtful to children. It will lower student assessment scores and keep special needs students from being accepted into college. The drafter of the regulation disregarded all written comments and suggestions to improve it. He noted 42 percent of Kentucky’s special education students use readers, and this regulation will impose a hardship on them unless they receive waivers.

Representative Rollins said Kentucky and Maryland were the first states to include students with special needs in the

state assessment system. The reasoning was to ensure that all students were making progress. Some people believe that some of Kentucky’s educators are purposely giving students accommodations to improve test scores. Kentucky should push its students to make them better, but be fair to those who need accommodations.

Senator Westwood said that, as a member of EAARS, the implementation date was the main concern in the regulation because there was not enough time to prepare teachers and students for the changes. He defended the intent of KDE to ensure the validity of our assessment reporting and said Kentucky is reporting that students are decoding when they are not. He suggested using two separate tests to measure decoding and comprehension. Students will be hurt if they are reported to know how to read, and then fail in college, or on the job, because they cannot read.

Responding to questions from Senator Westwood, Mr. Draut said 42 percent of Kentucky’s special education population have readers. Senator Westwood said too many special need students are using accommodations.

Responding to Representative Wuchner, Mr. Brown said KBE may call a special meeting if a situation warrants it. However, KBE is scheduled to meet in October 2012, and this regulation will be discussed along with the recommendations from the EAARS and committee meetings. Mr. Brown said the timeline is accelerated if the regulation is amended by the committee as opposed to KDE withdrawing it.

Senator McGaha said he is concerned that EOC exams are affected by the regulation. Students who have relied on using the readers for years will be at a disadvantage. A lower EOC examination score will count in a student’s overall grade and could jeopardize their graduation from high school. He feels the timeframe is problematic and that a phased-in approach starting with younger children would be ideal because they are not used to receiving accommodations.

Senator Blevins said he wants KDE to include an appeal process for students who are denied a waiver to use accommodations. Mr. Collette said he would investigate and report back his findings.

Responding to Representative Rollins, Representative Bunch said assessments should match student ability. She said special needs students are varied in skills and a one-test-fits-all mindset is not realistic.

Responding to a question from Representative Belcher regarding the amendment process, Mr. Brown said KDE will accept written comments for the amendment over the next few weeks, consider all suggestions, and give the amendment to the committee.

Brent McKim, Jefferson County Teacher Association (JCTA) President, spoke against the administrative regulation, citing several concerns. He said teachers

are concerned that there is not enough time to prepare students for the changes before they would take the assessment.

Mr. McKim said the issue of too many students using a reader should be addressed. Better professional development is needed for teachers making the determination of whether a student should receive an accommodation.

Betty Muntz, Kentucky Council on Exceptional Children, said her major problems with the administrative regulation are that the waiver process is established for a very small number of students, and there is too much paperwork. Kentucky may have hundreds of applications for waivers, considering the number of students impacted.

Ms. Muntz said that KDE records indicate that less than 40 percent of students use a reader. KDE is in violation of a federal law that says every IEP team member must be trained on any changes in testing procedures and accommodations, including parents. There is not adequate time to be in compliance with the law as the regulation is written.

Tamanda Barnett testified against 703 KAR 5:070 because she has a child in the 11th grade who reads at the 5th grade level. If her child does not have a calculator to use, he will fail Algebra II. At the very least, a phased-in approach would be best starting with younger children who are not accustomed to using accommodations.

Cindy Baumert, Education Advocate, testified against the regulation. She is an advocate for parents who cannot afford legal counsel. She said 703 KAR 5:070 is discriminatory against children with dyslexia. KDE will have legal action taken against it if the regulation is implemented as written.

Kennedy Turner, JCTA, ECE Caucus Chair, wants more changes made to the regulation other than just changing the implementation date.

Adjournment

With no further business before the committee, the meeting adjourned at 4:17 PM.

INTERIM JOINT COMMITTEE ON EDUCATION

Subcommittee on Elementary and Secondary Education

Minutes of the 3rd Meeting of the 2012 Interim

September 10, 2012

Call to Order and Roll Call

The 3rd meeting of the Subcommittee on Elementary and Secondary Education of the Interim Joint Committee on Education was held on Monday, September 10, 2012, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Vernie McGaha, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Ted Edmonds, Co-Chair; Senators Walter Blevins Jr., and Jack Westwood; Representatives Linda Belcher, Regina Petrey Bunch, Hubert

Collins, Derrick Graham, Rick G. Nelson, Carl Rollins II, Bart Rowland, Wilson Stone, and Jill York.

Guests: Rhonda Caldwell, Kentucky Association of School Administrators and Clyde Caudill, Kentucky Association of School Administrators and Jefferson County Public Schools.

LRC Staff: Janet Stevens, Ben Boggs, Ken Warlick, and Daniel Clark.

School Nutrition Services

Hiren Desai, Kentucky Department of Education (KDE), Associate Commissioner, Office of Administration and Support, said there have been some changes to the School Nutrition Services Program. In 2010, federal law changed with emphasis on changing meal patterns and operational issues. Kentucky receives about \$250 million per year in federal funding. About \$230 million of that funding goes to school districts to help with the National School Lunch Program. The remainder goes toward reimbursement of meals in childcare. There are over 1,000 sponsors who participate in the National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, and Summer Food Service Program.

Sue Bartenfield, KDE, Branch Manager, Division of School and Community Nutrition, said one of the changes in meal patterns is the alignment of meal patterns and nutrition standards for the National School Lunch Program and the School Breakfast Program to the dietary guidelines for Americans. As a result, school meals will have increased availability of vegetables, fruits, whole grains, fat-free milk, and low-fat milk, as well as reductions in the levels of sodium, saturated fat, and trans fat within set calorie ranges by set grade groups. Ms. Bartenfield said there is increased availability to fruits and vegetables for each meal if students would like it. There are minimum and maximum requirements for all other foods. Portion sizes for meat and grains have decreased and portion sizes for fruits and vegetables have increased.

In response to Representative Belcher’s question regarding students in elementary schools being allowed to choose what they want to eat, Ms. Bartenfield said the students are allowed to choose what they want to eat at the discretion of the school district.

In response to Chairman McGaha’s question regarding the minimum and maximum requirement of food for each student, Ms. Bartenfield said meals must stay within a minimum and maximum range of the meats and meat alternate. She said if the students are supposed to have eight to ten ounces of meat or meat alternate weekly, then that would mean they could have an ounce and one-half to two and one-half ounces daily.

Ms. Bartenfield said there is a paid lunch equity tool that each school district must complete and submit to the Division of School and Community Nutrition. The

school lunch must be at least \$2.50 this year because that is the reimbursement for each free lunch served. Ms. Bartenfield said the paid lunch equity requirement may be met through prices charged for “paid” lunches and through other non-federal sources provided to the nonprofit school food service account. She stated some districts chose to supplement the costs of meals rather than charge the students more for their lunches.

In response to Representative Stone’s questions regarding the free and reduced lunch rate, Ms. Bartenfield said the schools have to charge at a minimum the amount they get for reimbursement for the free meal.

In response to Chairman McGaha’s question regarding certification, Ms. Bartenfield said the Division of School and Community Nutrition has a definite checklist. The department has funding from the United States Department of Agriculture (USDA) to employ six people to train, do technical assistance, and certify districts for meal patterns. The federal funding is for two years.

Mr. Desai said the Community Eligibility Option (CEO) is a very good federal program in which Kentucky has participated with two other states.

Colby Wagner, Child Nutrition Consultant, said the CEO program helps districts get reimbursement for their meals as opposed to collecting free or reduced price applications from households. Reimbursement is based on a percentage of the district’s children who have been directly certified. CEO provides an alternative to household applications for free and reduced priced meals in high poverty Local Educational Agencies (LEAs) and schools. LEAs and schools electing the option agree to serve all students free lunches and breakfasts for four successive school years.

In response to Representative Collins’ question regarding financial requirements for the free lunch program, Mr. Wagner said that districts are required to send applications. The applications have the federal poverty rates according to household size. If a family falls within a certain threshold of number of people within the family and annual income, then the children are eligible for free or reduced priced meals.

In response to Representative Edmonds’ question regarding money for free lunches going to the whole school district, Mr. Wagner said the economy has gotten worse and as a result more families are qualifying.

Representative Collins moved to approve the minutes of the August 13, 2012 meeting, Representative Belcher seconded the motion, and the motion carried.

Mr. Wagner stated that last year there were 18 school districts that participated in the CEO program. CEO has 52 school districts this year. There should be more participants in the coming years because this is the first year that Medicaid is

included with the directly certified children.

In response to Chairman McGaha’s question regarding the funding being by school or district, Mr. Wagner said it is determined school by school.

Mr. Desai said one of the challenges CEO had last year with the school districts was the cost versus the benefit of participating. School districts were concerned with the administrative costs with the process. One of the reasons there were only 18 school districts participating the first year was that Kentucky was one of three states in the country to pilot the CEO program. Many remaining school districts did not know if the projected costs from the federal government would be accurate. He said the first year of CEO was a success, and after the word spread, other districts wanted to participate.

In response to Chairman McGaha’s question regarding Title I, Mr. Wagner said Title I funding is tied to the number of free and reduced paid children within a district.

Deanna Tackett, KDE, Acting Director, Division of School and Community Nutrition, explained the Fresh Fruit and Vegetable Program (FFVP). FFVP program is based on a competitive grant application process. Schools that want to participate have to be eligible elementary schools and must submit an application. FFVP offers fresh fruits and vegetables to students during the school day, at times other than meal service periods. Schools that represent a state’s highest free and reduced price enrollment are eligible to participate and are given priority due to their high need level. Only elementary schools can participate, and those elementary schools must operate in the National School Lunch Program. Those schools must submit an application to compete. Ms. Tackett said the funding for this fiscal year is \$2,746,543. Based on the applications that were received, this calculates to \$52.66 per child.

Ms. Tackett said the Division of School and Community Nutrition has a new computer application system called Child Nutrition Information and Payment System (CNIPS). This is an on-line, web-based system that districts and child and adult care food programs sponsors use to process their applications and submit their claims. Mr. Desai said that the system, paid for with federal funds, costs \$2 million.

In response to Representative Collins’ question regarding students’ eating habits with fruits and vegetables, Ms. Tackett said most children have been exposed to grapes and apples, but not much else. Some children are hesitant to try other fruits and vegetables until they see other children and adults eating them.

In response to a question from Representative Belcher, Ms. Tackett said 125 schools participate in the FFVP.

In response to Representative York’s questions and comments regarding ounces of meat per week for students, Ms. Bartenfield said the minimum and weekly

range for Kindergarten through fifth grade is one ounce equivalent minimum daily and eight to ten ounces weekly; grades six through eight, one ounce equivalent minimum daily and nine to ten ounces weekly; and grades nine through twelve, two ounces equivalent minimum daily and ten to twelve ounces weekly. Mr. Desai stated that the Department of Education and local school districts have communicated concerns with the federal government about small portion sizes for students.

Responding to Chairman McGaha’s question regarding a bag with more food for students who are still hungry, Mr. Wagner said he has heard of schools doing that and he is supportive. He said some of students might not be able to afford the bag.

Responding to Senator Westwood’s question regarding students bringing their own lunch to school, Ms. Bartenfield said there are no restrictions by the government for students to bring their own lunches.

Responding to Representative Belcher’s question regarding a regulation that does not allow a student to have a snack before lunch, Ms. Bartenfield said she is not aware of the regulation. It is up to the school to decide whether to allow snacks before lunch.

Upon motion from Representative Stone, seconded by Representative Belcher, the committee will draft a letter to the federal government to voice concerns about changes to the National School Lunch Program and School Breakfast Program.

Farm to School

Tina Garland, Farm to School Program Coordinator, Kentucky Department of Agriculture (KDA), said the Farm to School program links producers and schools together in Kentucky. The Farm to School program connects the producer and food service director to create a relationship so schools can get fresh fruits, vegetables, meats, eggs, and dairy products. Kentucky Proud is a big part of the Farm to School Program. The program provides the producer an edge on marketing and gives people a logo with which to identify.

Ms. Garland said program focuses on three areas: classroom, community, and cafeteria. The Program is a cornerstone for every community’s rural development because it can provide sustainability for communities and school involvement. The program’s curriculum focuses on food sources and nutrition. The curriculum also focuses on involving the students, raising awareness, and increasing participation. Ms. Garland said the program promotes taste testing with the students to encourage them to try something new. Chefs were recently introduced in the schools.

Bill Wickliffe, Director, Division of Food Distribution, KDA, said the Farm to School program will have a Junior Iron Chef competition this year. This will be a school competition, just like a sport. The finals will be held at the

2013 Kentucky State Fair. The program involves schoolchildren and farmers around a particular area. Farm to School has been around for a few years and is just now really starting to take off. Mr. Wickliffe stated that the program involves more than just the farmer bringing the fruits and vegetables into the schools in that schools are starting to grow their own gardens. Schools are taking an active role in greenhouse investments.

In response to a question from Representative Stone, Ms. Garland said the program is operating in Jefferson County. Because Jefferson County is so large, the district must purchase from multiple farmers.

Mr. Wickliffe stated the Farm to School program works to make sure children understand how food gets to their tables.

In response to Senator Blevins’ question regarding the number of school districts having farms and gardens, Ms. Garland said she did not know but that they are becoming popular across the state.

Representative Graham commended the presentation and stated that Frankfort High School participates in the Farm to School program.

Chairman McGaha thanked the guests for their presentations. With no further business before the committee, the meeting adjourned at 11:45 a.m.

INTERIM JOINT COMMITTEE ON EDUCATION

Subcommittee on Postsecondary Education

Minutes of the 3rd Meeting of the 2012 Interim September 10, 2012

Call to Order and Roll Call

The third meeting of the Subcommittee on Postsecondary Education of the Interim Joint Committee on Education was held on Monday, September 10, 2012, at 10:00 a.m., in Room 131 of the Capitol Annex. Senator Alice Forgy Kerr, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Alice Forgy Kerr, Co-Chair; Representative Reginald Meeks, Co-Chair; Senator Ken Winters; Representatives Leslie Combs, C.B. Embry Jr., Donna Mayfield, Ryan Quarles, Jody Richards, Tom Riner, and Rita Smart.

Legislative Guest: Representative Derrick Graham.

Guests: Gloria McCall, Kentucky Community and Technical College System and Sean M. Cutter, McBrayer, McGinnis, Leslie and Kirkland, PLLC.

LRC Staff: Jo Carole Ellis and Lisa W. Moore.

Minutes from June 11, 2012, and August 13, 2012

Minutes were not approved due to lack of a quorum.

Students Affairs Administrators: Their Role In Integrating Student Life and Learning On Kentucky’s

Campuses

Bellarmino University

Dr. Helen Grace Ryan, Dean of Students, Bellarmine University, said the mission of the Division of Academic and Student Life is to support and enhance the mission and vision of the university. The division works in partnership with the Division of Academic Affairs to foster opportunities for student learning and success. Student Life will facilitate students' academic and personal development through co-curricular experiences, services, programs, and activities. Opportunities are intentionally designed to promote the balanced development of the whole person – intellectually, spiritually, vocationally, socially, culturally, and emotionally to create active learners and responsible citizens for a global community.

Dr. Ryan said Bellarmine is a small, private university with 3,200 students, 40 percent being first-generation students. There is a 12:1 teacher to student ratio, and she knows all students by their name. She transports the students on tours of popular places in Louisville in an effort to integrate and familiarize students with the community.

Dr. Ryan said the Office of Multicultural Affairs supports students by offering co-curricular programs that acknowledge and reflect the experiences of underrepresented populations, while also providing educational opportunities for all members of the campus community to examine their individual and group experiences within a culturally diverse society. The purpose is to construct a community that acknowledges the multiple perspectives and backgrounds that are present on campus, thereby creating an inclusive and celebratory campus environment where all students, staff, and faculty are valued and affirmed.

Dr. Ryan said alcohol and drug use is on the rise with Bellarmine's students. The American College Health survey reported 15 percent of students do not drink alcohol, 15 percent binge drink, and the others fall somewhere in between. The same 15 percent rule is applied to marijuana usage on campus. Students are entering college more medicated and show signs of mental health issues. Bellarmine is committed to help students with coping skills to deal with depression and substance abuse issues. There are three full-time psychologists, five doctoral or post doctoral students, and one psychiatrist on retainer to staff the on-site counseling center.

Dr. Ryan said that Bellarmine recognizes the importance of technology. Faculty utilizes text messaging to communicate, and the university has a twitter account. Students reported appreciation that Bellarmine communicates with students on the social networking sites.

Dr. Ryan concluded that retention of students is important to the student affairs office. All faculty have a master's degree or higher in counseling or higher

education. Faculty is trained to watch student assessment scores closely. The university incorporates qualitative work and utilizes small groups of students.

Kentucky State University

Ms. Vernell Bennett, Assistant Vice President of Student Affairs, Kentucky State University, (KSU) said the mission of the KSU Student Affairs office is to develop, organize, administer, monitor, and coordinate a variety of experiences, services, programs, and activities in such a manner that they will have the greatest impact on the growth and development of a diverse student body. These experiences, services, programs and activities are administered through the following areas: Counseling and Career Placement, Health Services, Student Life, and the Office of Student Affairs.

Ms. Bennett said the student affairs office is the central administrative office for student non-academic activities. Its staff is responsible for student conduct and discipline; meal exemptions; for offering health insurance and excuses for class absences, processing emergency student loans, counseling, and coordinating all areas in the unit.

Ms. Bennett discussed challenges serving the 21st century student. Student safety has become a national concern due to increased incidents of terroristic threat situations, particularly on college campuses. KSU has a Behavioral Threat Analysis Team (BTAT) of administrators, faculty, and staff. The BTAT is responsible for assessing possible threat situations and addressing them accordingly. She noted individuals may make reports anonymously via a hotline if they so choose.

Ms. Bennett said the Betty White Center on campus is the counseling center to support the mental and emotional needs of students. Students are arriving on campus more medicated and in need of counseling in the areas of time management, building relationships, mental health issues, and substance abuse.

Ms. Bennett said student healthcare insurance is another challenge. An average of 950 students utilized the KSU healthcare option in the last academic year. She said increasing costs of insurance leaves some students without coverage and creates problems managing health issues for uninsured students.

Ms. Bennett said funding continues to be an issue for students. Higher education costs are increasing and Pell grant awards are decreasing. She noted students have multiple jobs and full-time course loads. There are new financial aid policies that reduce the maximum amount of aid students can receive.

Responding to questions from Representative Smart, Dr. Rubye Jones, Vice President of Student Affairs, said 2,800 students had registered for the 2012 fall semester. She said an average of 3,200 to 3,400 students matriculate on campus annually.

Dr. Jones said the Division of Students Affairs includes the police department and the staff in the health center. She said there are four staff in the administrative office of Student Affairs and five full-time staff in the counseling center. She believes the Office of Student Affairs touches 80 to 90 percent of all students on campus in some manner. The health center receives about 1,000 visits per quarter.

Responding to Representative Meeks question on the percentage of students on campus who do not have health insurance, Dr. Jones replied that 900 students do not have health insurance due to rising costs. KSU is not requiring students this academic year to opt into its insurance plan but did have private health vendors available on campus during fall registration.

Representative Meeks said the legislative body is concerned about Kentucky universities being able to provide its students health insurance. Regarding his question about changes in the financial aid regulations, Dr. Jones said some students are losing their eligibility to receive aid prior to completing their degrees. At this point, the student has to pay out of pocket, or the university has to locate other resources to assist the student to graduation. She said the changes are based on family income thresholds and the new requirements have eliminated some families from being eligible.

Representative Quarles said there is more student loan debt than credit card debt. Responding to his question about strategies for providing student loan information, Dr. Jones said students do receive information on the issues of financing a college education through financial aid programs. KSU hosts town hall meetings to explain to students the implications of student loans and how to be good stewards of funds provided to them.

Responding to Senator Winters, Ms. Bennett said KSU is a unique institution. It is a regional, comprehensive, liberal arts, and land grant university. Senator Winters offered that KSU should market itself as a comprehensive university instead of a liberal arts school. Representative Graham said KSU is a historically black university and is unique in that it provides liberal arts. He also noted the aquaculture program is helping Kentucky farmers, especially in western Kentucky.

University of Kentucky

Dr. Robert Mock, Vice President of Students Affairs, University of Kentucky (UK), said the Office of Student Affairs is an integral part of university life. The office and programs facilitate interactions among students, faculty, and staff to promote a campus climate that supports students' academic success and their personal and professional development. Student Affairs promotes student development and lifelong discovery, celebrates differences, and promotes global citizenship.

Dr. Mock said one of the most important keys to a student's success is building meaningful relationships and

developing strong connections to the university through members of the UK community. The UK Student Affairs office provides many opportunities to facilitate these connections through internships, intramural athletics, volunteer work, student clubs, registered student organizations, and community service.

Dr. Mock said an engaged student is a retained student. There are over 466 registered student organizations. He noted 2,254 students were enrolled in UK 101 and UK 201 in the fall of 2012. These are academic orientation courses and 33 percent of instructors for the courses were student affairs staff.

Dr. Mock said there are approximately 350 events designed to help new students successfully transition to UK. The UK for Unity and Service In Our Neighborhood, known as UK FUSION, is a one-day service event held each August. FUSION has included over 8,000 volunteers in its eight-year existence, reaching out to over 159 agencies and local neighborhoods. He said Dance Blue, a 24-hour dance marathon, had more than 3,000 students participate since its inception in 2006, raising over \$3.3 million for UK Pediatric Oncology patients and families.

Dr. Mock said students may obtain leadership positions within the student affairs office. Student Affairs offers programs and trainings, like the Leadership Summit and the Emerging Leader Institute, which can aid in developing and refining skills. He noted the UK Office of Student Affairs employs over 1,000 students, and this can help reduce student loan debt.

Dr. Mock said 1,488,776 students and others visited the student center in 2010-2011, which is an increase from 1,191,651 in 2006-2007. He noted a short dip of traffic in the spring of 2009, when the campus experienced very severe winter weather which impacted the number of people able to physically come to the facility.

Dr. Mock said there are 43 Greek-letter organizations with 3,667 student members that are advised by fraternity and sorority affairs. He said 65 percent of all registered student organizations are led by Greeks. Greeks are the largest donor base at UK.

Dr. Mock said students who live on campus are more academically successful, earn better grades, and graduate 20 percent sooner than students who do not live on campus. He noted only about 25 percent of students live on campus due to obsolete housing and lack of rooms.

Dr. Mock said one challenge is funding all the services that students need. He said more students are arriving on campus with psychological issues and are prescription medicated. He said 1,360 total clients in the 2011-2012 academic year visited the counseling center. There were 6,730 total student appointments, as some students had multiple visits, and 718 of those were crisis and emergency consultations. There were 206 outreach presentations that reached 13,550 students,

staff, faculty, and family members. Faculty and staff are also treated in the counseling center.

Dr. Mock said the student affairs office maintains student wellness in a variety of ways. The UK Campus Recreation Office provides recreation for every season, as well as club sports, intramurals, and a variety of fitness facilities and programs at numerous campus locations. In addition, Dining Services offers many healthy options designed to fit a variety of dietary needs and special requests. Much of the food on the menu is locally grown, creating a sustainable connection with the local agriculture community. He said mental health is vital to a positive campus experience for students. The UK Counseling Center provides support for academic success, career decision-making, and personal growth.

Dr. Mock said that, in a coordinated effort with colleagues across campus, UK strives to maintain a safe environment for living and learning. Many of the staff members in the Division of Student Affairs serve in important roles to ensure campus safety and keep security measures a top priority. He said 2,800 students receive substance abuse education and responsibility courses through trainings, events, and workshops. They are supported by student wellness ambassadors who are dedicated to empowering their peers to live safe and balanced lifestyles, focus on mental wellness, and avoid drugs and alcohol abuse.

Kentucky Community and Technical College System

Dr. Gloria McCall, Vice Chancellor, Kentucky Community and Technical College System (KCTCS), said 55 percent of students enrolled in KCTCS are traditional students in the 18 to 24 age group. She said the adult non-traditional learners comprise the other 45 percent. All KCTCS campuses are non-residential.

Dr. McCall said KCTCS students are different from traditional campus students in that they all commute on a daily basis. One reason students attend a community college is to earn a credential and a sustainable living wage. They may be interested in increasing their knowledge and skills for new job opportunities or to upgrade their job training skills. Students also may want to transfer to a four-year institution to obtain a baccalaureate degree.

Dr. McCall said KCTCS offers associate degrees, certificates, diplomas, and workforce education training. KCTCS is the largest provider of workforce training in the Commonwealth.

Dr. McCall said the KCTCS Student Life programs and services foster student learning and development, prepare students for their chosen professions, and help students become contributing members of a diverse and global society. She noted the student life services compliment the colleges' academic programs and enhance the educational experiences of students through curricula and co-curricula

initiatives that are both purposeful and holistic in nature.

Dr. McCall said KCTCS offers students membership in various clubs and organizations. KCTCS offers students new student orientation; tutorial services; supplemental instruction to help them be effective and remain in college; and seminars, events, and volunteer opportunities for community and civic activities. She noted KCTCS has strong partnerships with the four-year institutions in Kentucky for students who wish to transfer and earn a four-year degree.

Dr. McCall said a new and comprehensive Student Services Center was opened in July 2012 to provide a seamless, integrated 24 hour a day, 365 days a year, student call center for all KCTCS students. She said this new delivery system provides up-to-date financial aid information with a self-help portal and gives students knowledge on how to matriculate successfully in college. The system provides outbound servicing of communicating with students including email, text, chat rooms, phone calls, and social media outlets to keep students informed. Over 23,000 calls have been made by students inquiring about registration and other student issues.

Dr. McCall said many challenges face adult learners. Employment schedule issues, lack of employment, financial issues, family demands, and personal issues impact the adult learner's ability to advance their education and obtain a degree. Time management and balancing work, family, and school is difficult. These issues are compounded when students have to take remedial courses because they are underprepared for college courses.

Dr. McCall said a challenge facing KCTCS students is limited engagement as students commute and do not live on campus. Many students are employed or seeking employment, have limited resources, and can be underprepared for college.

KCTCS Student Life staff members are well-trained individuals that help students transition into colleges across the Commonwealth. Students are assisted in preparing for lifelong learning and becoming contributing members of society. The National College Survey of Student Engagement showed KCTCS exceeded the national average in many categories, but student and faculty interaction was the highest grade given by students. She said students form long lasting relationships with faculty that last long after they leave the classroom.

Adjournment

With no further business before the committee, the meeting adjourned at 11:35 a.m.

**INTERIM JOINT COMMITTEE
ON HEALTH AND WELFARE**
Minutes of the Third Meeting
of the 2012 Interim
September 19, 2012

Call to Order and Roll Call

The third meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, September 19, 2012, at 1:00 PM, Kaleidoscope, Inc., Younger Adult Day Health Center, 10330 Bunsen Way, Louisville, Kentucky. Representative Tom Burch, Co-Chair, called the meeting to order at 1:02 p.m., and the secretary called the roll.

Present were:

Members: Senator Julie Denton, Co-Chair; Representative Tom Burch, Co-Chair; Senators Joe Bowen, Tom Buford, Perry B. Clark, David Givens, Denise Harper Angel, Alice Forgy Kerr, Dennis Parrett, Joey Pendleton, and Katie Stine; Representatives Julie Raque Adams, Bob M. DeWeese, Kelly Flood, Brent Housman, Joni L. Jenkins, Mary Lou Marzian, Tim Moore, Darryl T. Owens, Ben Waide, and Addia Wuchner.

Guest Legislator: Representative John Will Stacy.

Guests: Darla Bailey, President, Kaleidoscope, Inc., Younger Adult Day Health Center; Terry Wood, husband of Carolyn who attends Kaleidoscope; Michael, Kaleidoscope participant, Dr. LaQuandra S. Nesbitt, Director, and Kathy Harrison, Louisville Metro Department of Public Health; Pamela McDaniel, Director of Parent Outreach, Carol Mueller, Director of Public Relations, Cindy Baniago, Karen Ricci, and Donovan Fornwalt, Council on Disabilities; Carrie Banahan, Executive Director and Bill Nold, Deputy Director, Office of Health Policy, Cabinet for Health and Family Services; Dana Cox Nickles, Policy Advisor to the Secretary, Cabinet for Health and Family Services; Dr. Terry I. Brooks, Executive Director, Kentucky Youth Advocates; Rusty Cress, America's Health Insurance Plans; Renee Craddock, Capital Network; Sherry Currents, Kentucky Domestic Violence Association; Paul Ankeny; Jodi Mitchell, Kentucky Voices for Health; Steve Hart, Kentucky Board of Pharmacy; Marty White, Capital Link Consultants; Carolyn Keelen, parent, Kaleidoscope; Don and Nora Putnam, Oakwood parents; Sandra Robie, Community Living, Inc.; Scott D. Majors, Kentucky Board of Physical Therapy; Eric Friedlander, Deputy Secretary, and Tina Webb, Cabinet for Health and Family Services; Heidi Schissler, Protection & Advocacy; Elizabeth Fiehler and Phyllis Sosa, Department for Aging and Independent Living, Cabinet for Health and Family Services; Michelle Sanbord, Children's Alliance; Bruce Bushman, stepparent of John and Robbie who attend Kaleidoscope; Sue Johnson, KIPDA ADRC; Laura Anness Espinola and Stacey Gash, Kentucky Board of Pharmacy; Jim McWilliams, Governor's Office of Policy Management; Russell Harper, CoventryCares of Kentucky; Jim Richardson, Richardson Associates; Andrew Wacker, Family Foundation; Libby Milligan, MSS; Denise Bingham, Three Rivers District Health Department; Sabrina Moore, Dreams With Wings; Clyde Caudill, Jefferson County Public

Schools, Anne Marie Regan, Kentucky Equal Justice Center; Sarah S. Nicholson, Kentucky Hospital Association; Drew Jenkins, Office of the Attorney General; Ed LeMaster, Bluegrass-Oakwood; James Sharp, American Cancer Society, Cancer Action Network; James Conway, Wellcare; Tonya Chang, American Heart Association; Charles Kendell, Kentucky Department of Public Health, Cabinet for Health and Family Services; Jill Seyfred, Prevent Child Abuse Kentucky; Patty Dempsey, The Arc of Kentucky; David Harris, National MS Society; Karen Lentz, EPIC Pharmacies; Mike Porter, Kentucky Dental Association; Peggy Porter, Independent Insurance Agents of Kentucky, Inc.; Steve Bing, Kentucky Public Health Association and Kentucky Health Department Association; and Carl Boes, Kentucky Association of Regional Mental Health and Mental Retardation Programs, Inc.

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

Approval of the Minutes of the August 15, 2012 Meeting

A motion to approve the minutes of the August 15, 2012 meeting was made by Senator Buford, seconded by Representative Moore, and approved by voice vote.

Consideration of Referred Administrative Regulations

201 KAR 2:340 – establishes the requirements for the special pharmacy permit for clinical practice; **201 KAR 22:040** – establishes the requirements and procedures for the renewal and reinstatement of credentials for a physical therapist or a physical therapist assistant; **201 KAR 22:045** – establishes continued competency requirements and procedures of the Board of Physical Therapy; and **910 KAR 1:190** – sets forth the standards of operation for the nutrition program for older persons. A motion to accept the administrative regulations was made by Representative Owens, seconded by Senator Harper Angel, and accepted by voice vote.

Welcome and Presentation by Kaleidoscope

Darla Bailey, President, Kaleidoscope, Inc., Younger Adult Day Care Health Center, stated that therapy is an integral part for persons with developmental disabilities to achieve their goals. She said that legislators can contact her at 502-664-7816 with questions or concerns. Supplies delivered to individuals are often not correct or too many are received, but if the supplies are cancelled, it could be very difficult to get back on the list to receive them.

Ms. Bailey introduced Michael, who started attending Kaleidoscope one year ago and is enrolled in the Money Follows the Person (MFP) program and receives \$125,000 per year for his services. Supplies delivered to patients are often not correct. Nick, Michael's physical therapist, stated that when Michael first started attending

Kaleidoscope he could not walk. After doing activities and exercises, he can walk approximately 300 feet. Libby, Michael's speech therapist, stated that Michael can talk well about things he wants to talk about. Living in the community, he gets a lot of attention, which has helped him become more verbal and willing to do different things he was not able to do in an institution.

Ms. Bailey introduced Terry Wood, husband of Carolyn, and stated that Mr. Wood would like to be able to purchase supplies directly for his wife using her Medicaid card. In 2011, Senate Bill 128 was passed by the Senate that would allow enrollees in a home and community based services waiver program to make a direct purchase of all necessary medical devices, equipment, and supplies. In 2012, House Bill 130 was introduced to with the same language. Neither bill passed both chambers to become law. Legislation with the same language will probably be introduced again during the 2013 Regular Session.

Representative Burch stated that it is important that money follow the person so individuals can receive needed services in the community. Every person has the right to reach full potential.

The Future of Public Health

Dr. LaQuandra S. Nesbitt, Director, Louisville Metro Department of Public Health and Wellness, stated that public health is about public and private partnerships. Only 20 percent of the population's health outcomes are related to quality and access of care. The other 80 percent is related to health behaviors, social economic factors, as well as the physical environment. Factors that affect health include counseling and education, clinical interventions, long-lasting protective interventions, changing the context to make individuals default to healthy decisions, and socioeconomic factors. Addressing social economic factors like education, poverty, stable housing, and other inequalities is where the largest impact needs to be focused. The level of education attained is closely related to a person's ability to live a healthy and productive life. Since a large number of individuals have decided that vaccines are not as necessary as before, there is a resurgence of vaccine-preventable illnesses. Public health officials realize there is a need to reinforce the importance of long-lasting, high impact protective factors that could keep communities healthy. When the health of Kentuckians is improved successfully, it will be because resources have been allocated in the correct places and recognition of the important of investments in the social economic factors and increased access to clinical services. Kentucky public health departments have ten core functions that break down into three basic areas of assessment, policy development, and assurance. If Kentucky addressed systematic issues and problems, any disease or behavior can be effectively addressed and improve outcomes. People

with lower incomes or who live in certain geographic regions tend to have poorer health outcomes. In the Kentucky county healthrankings, Louisville Metro/Jefferson County ranks second highest out of 120 counties for the quality of care available. Kentucky has to have an outcome driven approach and remain committed to having a good data information structure for that approach to work.

In response to a question by Representative Burch, Dr. Nesbitt stated that Jefferson County has a smoke-free workplace law. Many employers have joined to form collaboratives. Louisville Metro has a Worksite Wellness Initiative that provides awards to local companies who are doing things to improve the health of its employees. Private sector companies realize programs need to be implemented to maintain a healthy workforce.

Preventing the Hiring of Former Abusers to Care for Adults with Developmental Disabilities

Pamela McDaniel, Director of Parent Outreach, Council on Developmental Disabilities, stated that her son, Cory, is 11 years old and a student at Churchill Park School. Due to his significant medical history, he is deemed medically fragile, and requires total care for his activities of daily living. Cory is non-verbal, incontinent, and struggles to do the simple things that most people take for granted. Her concern is if anyone did something to her son, he could not tell anyone. In a report in the American Journal of Orthopsychiatry, Victimization of Children with Disabilities, the authors reported that children with disabilities are more likely to be victims of abuse but may have more difficulty than their typically developing peers reporting their experience. She stated that not only are disabled people easy targets, but teaching them appropriate boundaries and self protective measures is very difficult or sometimes impossible. While Cory is protected under child abuse protection laws now, there are no protections in place for him when he turns 18 years old. She said that there need to be protections in place to make to make sure the most vulnerable individuals are protected no matter what their age.

Carol Mueller, Director of Public Relations for the Council on Developmental Disabilities, stated that she is the guardian of her sister, Donna, who has autism to a profound degree. She has a history of suddenly leaving her home or caregiver, eating inedible objects, entering strange cares, houses, or yards, and acting out when upset. She needs care with every aspect of hygiene and daily care. While most direct support professionals do their jobs admirably, any of them, if they have done the job awhile and are honest and not afraid of retaliation, will tell you that abuse is common. Statistics say that only five percent of even serious crimes against victims with developmental disabilities and three percent of sexual abuse is reported. Individuals with developmental disabilities are ten times more likely to be victims of

sexual assault and twelve times more likely to be victims of robbery. The Cabinet for Health and Family Services received a three year National Background Check Program (NBCP) grant from the Centers for Medicare and Medicaid Services (CMS) in May, 2011. The grant will fund the implementation of the program for the first two years. Kentucky applicant Registry and Employment Screening (KARES) is a pre-employment screening mechanism that will prevent individuals from hiding criminal or abusive actions when seeking employment in long-term care facilities. State law currently requires applicants for employment in long-term care facilities to submit to a check of the nurse aide abuse registry and name based, state only criminal records check. There is no requirement for additional or ongoing checks during the individual's employment that may reveal if the individual has committed any crimes after being hired. Through KARES, applicants will submit to a check of all available abuse registries and fingerprint supported, state and FBI criminal background checks.

In response to a question by Representative Marzian, Ms. Mueller stated that the cameras in the facility Donna was in were turned off due to privacy rights of patients and staff.

Legislative Hearing on Executive Order 2012-587 relating to the establishment of the Kentucky Health Benefit Exchange

A motion was made by Senator Givens and seconded Representative Wuchner that the committee vote to report the findings that explain why Executive Order 2012-587 is out of order and report them to the Legislative Research Commission Director with the understanding that he will forward them on to the Governor. Representative Wuchner asked for a roll call vote.

In response to a question by Representative Owens, Senator Givens stated that the Senate Majority staff provided the State of Findings to the committee.

Representative Burch stated that the courts have stated that the Governor issuing an executive order is in line with the Kentucky Constitution. The committee needs more time to look at the handout in order to make an informed decision.

In response to comments made by Representative Marzian, Senator Givens stated that it would be bad form to make a motion relevant to the health benefit exchange presentation. The motion relates to the specific authority cited by the executive order under KRS 12.028 as to whether any Governor can create a new entity and then house in that new entity a totally new purpose. KRS 12.028 relates to reorganizations that are clearly defined in the statutes as the transfer of existing functions. The motion is made with regard to whether KRS 12.028 provides for the authority that the executive branch has cited.

Representative Owens stated that it

would be difficult to make an informed decision and judgment on the documents prepared and passed out by the Senate Majority staff that members had not seen before the meeting but would be issued by the Interim Joint Committee on Health and Welfare. He suggested delaying the vote on the findings to give everyone an opportunity to figure it out and make an informed vote.

Representative Flood stated that clearly this is a staged moment so that members could be "on record" with a vote that none of the members are prepared to make except for Senator Givens.

Senator Stine stated that a motion is appropriate at any time.

Representative Housman stated that he agreed that this has caught some people off guard, but he said that this is, unfortunately, very standard practice for the committee.

Representative Burch stated that even if an explanation was given at the meeting, it is too complex and there are some questions about the accuracy of parts of the findings. He stated that there will not be a quorum present after the discussions to take a vote on the motion. The Governor can issue an executive order any time he wants, and it is up to the General Assembly to say whether it is legal or not during the next Regular Session.

Senator Denton requested that Senator Givens go through the findings so that everyone on the committee understands the intent and meaning and how it relates to KRS 12.028.

Senators Clark, Harper Angel, Parrett, and Pendleton, and Representatives Burch, Flood, Jenkins, Marzian, and Owens left the meeting.

In response to questions by Senator Denton, Senator Givens stated that KRS 12.028 provides the executive branch the authority to create a new organizational unit and transfer existing duties under state law to the newly created entity. The findings explain why the authority exercised by the executive branch does not exist. KRS 12.028 is written to result in the efficiencies of operations as would result from reorganization of existing activities under state government. The Statement of Findings include: 1) Section 29 of the Kentucky Constitution states that the legislative authority in Kentucky resides in the General Assembly; 2) Section 81 of the Kentucky Constitution requires the Governor to faithfully enforce the laws of Kentucky; 3) The General Assembly has not enacted legislation creating Health Insurance Exchanges, nor have we allowed any other entity to create Health Insurance Exchanges; 4) The Governor has issued a document styled Executive Order 2012-587 which purports to create Health Insurance Exchanges in Kentucky and assigns those new duties to a new entity of the Commonwealth. It also purports to add over 200 new state employees to the state payroll to perform duties not in existence prior to the issuance of the purported order;

5) The purported order was issued under the authority of KRS 12.028, styled as a reorganization; 6) The purported order does not, as required by KRS 12.028 indicate a “transfer of functions, personnel, funds, equipment, facilities and records from one organizational unit or administrative body to another”; 7) Rather, the purported order creates completely new duties to be performed by a completely new entity, neither of which can be found in statutes enacted by the General Assembly, and is an attempt to exercise authority beyond the power of the Governor found either in statute or the Constitution. Therefore the purported Order is an unlawful act by the Governor and is void and of no effect upon the Government and people of Kentucky; and 8) Because the purported order is not a reorganization order, but an attempted usurpation of Legislative Authority by the Governor, this committee is not bound by KRS 12.028 to any particular review period, and may comment on the Governor’s actions at any time.

He said that the first conflict arises in KRS 12.028 (1)...changes in the state government organizational structure which may include the creation, alteration or abolition of any organization unit or administrative body and the transfer of functions, personnel, funds, equipment, facilities, and records from one (1) organization unit or administrative body to another. KRS 12.028(3) states any reorganization proposed under subsection (1) or (2) of this section shall be set forth in a reorganization plan which shall be filed with the Legislative Research Commission. The plan shall include: (a) An explanation of each proposed change, including the need for the change; (b) An estimate of any reduction or increase in expenditures, itemized as far as practicable, which the promulgating officer expects will result from the reorganization; (c) A description of any improvements in the management, delivery of state services, and efficiency of state government operations which the promulgating officer expects will be realized as a result of the reorganization. The entire statute is written to result in efficiency of operations as would result from reorganization of existing activities under state government.

In response to questions by Representative Stacy, Senator Givens stated that the statute speaks to the committee’s authority to review and report findings relative to the executive order. Executive Order 2012-587 is not an executive order under the authority cited in KRS 12.028. If the Governor does not act in favor of the motion, the next step would be if someone wanted to pursue it in a court of law to see if the Governor has the authority to create the health benefit exchange. KRS 12.028(5) states that a temporary reorganization effected under subsections (2) and (4) of this section shall be terminated ninety (90) days after sine die adjournment of the next regular session of the General Assembly unless otherwise specified by the General Assembly.

Senator Stine stated that the Contract Review Committee did not confirm the contract to rent space for the Kentucky Health Benefit Exchange office, but the cabinet leased the space anyway. All branches of government need to know their boundaries and ensure all actions are constitutional.

Senator Stine stated that it was regrettable that all the Democrats on the committee had left the room, because it is important that everyone hear, listen, and have dialogue and work together to address the important issues. She stated that this is an Interim Joint Committee on Health and Welfare, therefore, it is the right forum and important to discuss all issues that affect Kentuckians.

Senators Bowen stated that when there is a committee meeting it is a proper forum to discuss anything. While the legal issue is an important component, the most overriding component is that to preserve the balance of power in state government.

Senator Buford stated that an explanation on the exchange as to the duties to be performed and services that would be provided through the executive order. The next step is to determine if the executive order is proper or not. There is an appropriation issue to the state if the exchange is created and the expenses are supposed to be itemized to the best of the ability of the executive branch. The executive order states that the operations of the exchange will be wholly funded from the revenues generated by the exchange which is a tax on insurance premiums. The exchange will be Kentucky-only insurance companies. He said that a vote can be taken even though there is no quorum because it sets a statement and indicates that those present are not agreeable to the tax increase at this time. Senator Denton stated that there was a quorum.

Representative Moore stated that he appreciated the conversation even with the limited quorum that still remains. An airing of different perspectives is how a consensus is created to lead the state and do so in a way that everyone can agree with or at least know they have been part of the process. The executive order says “NOW, THEREFORE, I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority invested in me by the Constitution of the Commonwealth of Kentucky and KRS 12.028, do hereby Order and Direct.” Even in the order itself, there is a recognition that the power of the Office of the Governor stems from the authority granted to him by the people and the people’s representatives in the Kentucky Constitution and the Kentucky Revised Statutes. The issue is about the authority of the Office of the Governor to reorganize existing state government during an interim. That reorganization has to get approval of the legislature. The authority has not been granted to create and establish, according to the statute cited in the executive order.

Senator Givens stated that the vote taken indicates a willingness to engage in

debate and discussion about good public policy. KRS 12.028(4) states that if the committee does not report on a proposed plan within the time specified, the plan shall be considered reviewed by the interim joint legislative committee with appropriate jurisdiction. Failure to take a vote indicates that the executive branch has the authority to do what it is doing, and because it is reviewed and reported without the mood of the governing committee, it would be presumed to be not only appropriate authority, but okay for the executive branch to do what has been done. The vote is very significant and lays groundwork for great future dialogue about trying to develop what is good public policy as it relates to purchase of health insurance in Kentucky.

Senator Denton stated that rules say that once there is a motion that a vote on the motion must be taken. The motion made by Senator Givens and seconded Representative Wuchner that the committee vote to report the findings that explain why Executive Order 2012-587 is out of order and report them to the Legislative Research Commission Director with the understanding that he will forward them on to the Governor was approved by voice vote. Representative Wuchner reminded Senator Denton that she had requested a roll call. Senator Stine stated a motion and a second for a roll call vote had already been offered. Senator Denton said to take the roll call.

While Senator Buford was explaining his yes vote, a motion to withdraw the roll call vote request was made by Representative Wuchner. Senator Denton stated that a motion for a roll call vote had been withdrawn. Senator Buford stated that if the committee did a roll call vote, once a quorum has been established, and it was earlier, the committee was at that moment just to have the majority, and that he needed to go back on his statement that it did not matter because it does. Senator Denton stated that there was a quorum. Senator Denton stated that only 11—not 14—members were needed to have a quorum. If the quorum was established, and it was in the beginning of the meeting, a vote at this moment and time does have meaning, so Senator Buford withdrew his statement that it does not matter, because it does. It takes a simple majority of what is remaining in the room once the quorum was established at the beginning of the meeting. This is a valid vote that will be taken. He stated that he thought a roll call should be taken, but wanted the record to show that all present voted aye and there was no opposition if only a voice vote is to be taken. Senator Denton stated that the motion had already passed with a voice vote, but if it is the will of the committee to go back and to do a roll call, the committee could go back. Senator Kerr seconded the motion to withdraw the roll call vote made by Representative Wuchner.

Senator Denton stated that the record would show the vote on the motion was unanimous with no dissenting votes.

In response to questions by Senator Denton, Executive Director Banahan stated that there is no additional cost information available. The cabinet is in the procurement process and hopes to have a signed contract in the next few weeks at which time the developmental costs, operational costs, and future costs to be incurred will be known. Deputy Director Nold stated that the PowerPoint presentation is self-explanatory.

In response to questions by Representative Wuchner, Executive Director Banahan stated that the cabinet has received \$65 million in planning and establishment grants. Most of the \$1 million planning grant has been expended. Approximately \$1 million of the \$7.6 million is left from the first Level I establishment grant. The second Level I grant for \$57.6 million will be paid to the vendor as soon as the contract is signed. Mr. Nold stated that when the cabinet applied for the federal grants, information was provided on how much money was needed and why and then the grants were awarded by the federal government. All of the planning and establishment grant funds is in the cabinet’s budget system and is being tracked by cost center numbers attributable to each grant.

In response to questions by Senator Stine, Executive Director Banahan stated that approximately a year and a half ago a stakeholder survey was conducted that asked questions about establishing a state-based exchange and is posted on the cabinet’s web site. Anybody was able to respond to the survey. Of the 45 stakeholders, 24 responded. The majority of the stakeholders that responded had proposed that Kentucky establish a state-based exchange. She would have to check to see how much of the \$1 million planning grant was used for the survey. Senator Stine requested that information on the accounting of the grants be provided at the next committee meeting.

Senator Denton requested that an update and accounting information of the health benefit exchange be given at the October meeting.

Legislative Hearing on Executive Order 2012-585, relating to the Establishment of the Child Fatality and Near Fatality External Review Panel

Dana Cox Nickles, Policy Advisor to the Secretary, Cabinet for Health and Family Services, stated that child safety is important to the executive, legislative, and judicial branches, private partners and advocates. The executive order is very specific on who the 17 members appointed to the panel. The panel will meet quarterly to analyze data and recommend improvements to the cabinet as well as the Department for Community Based Services (DCBS) and any other private or public agency that can assist in making things safer for children. An annual report will be published of the panel’s findings and recommendations.

Dr. Terry I. Brooks, Executive Director, Kentucky Youth Advocates,

stated that he has three recommendations: 1) inclusion of a medical professional in the legislation; 2) create a more reliable data system; and 3) external fatality review panel. The review panel needs to be independent of the cabinet and the Governor's office and needs to be in a constitutional office. The board members cannot represent groups whose financial reliability comes from the cabinet. The powers and protocols need to be included in the legislation. A decision needs to be made about what and how data is released in order to have transparency and if the panel has subpoena power. Legislation needs to be enacted in 2013 in order for the panel to continue its work.

Representative Wuchner stated that the review panel needs to be in a location that is totally objective.

Adjournment

There being no further business, the meeting was adjourned at 3:22 p.m.

INTERIMJOINTCOMMITTEE ON HEALTH AND WELFARE Subcommittee on Families and Children

Minutes of the First Meeting of the 2012 Interim
October 17, 2012

Call to Order and Roll Call

The first meeting of the Subcommittee on Families and Children of the Interim Joint Committee on Health and Welfare was held on Wednesday, October 17, 2012, at 10:00 a.m., in Room 131 of the Capitol Annex. Representative Tom Burch, Co-Chair, called the meeting to order at 10:05 a.m., and the secretary called the roll.

Present were:

Members: Senator Katie Stine, Co-Chair; Representative Tom Burch, Co-Chair; Senators David Givens, Alice Forgry Kerr, and Joey Pendleton; Representative Addia Wuchner.

Guests: Teresa James, Commissioner, and Jim Grace, Director, Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services; Michelle Sanborn, President, Children's Alliance; Kraig E. Humbaugh, M.D., M.P.H., State Epidemiologist, Director, Division of Epidemiology and Health Planning, Department for Public Health, Cabinet for Health and Family Services; Kay Kennedy, Director, Division of District Support, Office of Administration and Support Services, Karen Erwin, and Cheri Meadows, Kentucky Department of Education; Sara Osborne, Legislative Liaison, and Tom Cannady, Staff Advisor, Justice and Public Safety Cabinet; Jim Cecil and Andrea Burnett, Kentucky Youth Advocates; and Jill Seyfred, Prevent Child Abuse Kentucky.

LRC Staff: Jonathan Scott, Sarah Kidder, and Gina Rigsby.

Kentucky Foster Care System and Strategic Planning Committee for Children in Placement Updates

Teresa James, Commissioner, Department for Community Based

Services, Cabinet for Health and Services, shared data concerning Child Protective Services in 2012 and trends in out of home care among Kentucky's children over the last seven months. Testimony also covered the costs to the state to provide foster care, long term goals for children in foster care, and types of placements. Michelle Sanborn with the Children's Alliance discussed foster care from the perspective of private child caring agencies and talked about the revival and future direction of the Statewide Strategic Planning Committee for Children in Placement.

In response to a question by Representative Burch, Commissioner James stated that there are 42 DCBS children in out-of-state placements. Recently, there have been a significant number of reports filed with DCBS on children between the ages of six to eighteen years.

In response to questions by Senator Stine, Commissioner James stated that the cabinet keeps track of relative caregivers, but does not break it down by grandparents raising grandchildren. There are approximately 11,000 children involved in the Kinship Care program. If family support criteria are met for caregivers not receiving Kinship Care services, a caregiver is eligible to receive Temporary Assistance for Needy Families (TANF) services, medical card, and/or services in the community. Mr. Grace stated that DCBS does not define homeless and does not track homeless children unless a report of abuse or neglect has been filed with the department. The McKinney-Vento Homeless Assistance Act of 1987 is the primary piece of federal legislation dealing with the education of children and youth experiencing homelessness in United States public schools. In January 2002, it was reauthorized as Title X, Part C, of the No Child Left Behind Act.

In response to questions by Senator Givens, Mr. Grace stated that different rates are paid for DCBS foster homes, private foster homes, private residential facilities, and other settings. Commissioner James stated that the cabinet is looking at performance based contracts to make sure it receives the purchased services and, if not, how best to be able to ascertain the services for the children that are being served. The goal for the department is to use residential care when appropriate and then stepping children down appropriately to more family and homelike settings.

In response to questions by Representative Wuchner, Commissioner James stated that an abuse or neglect report on a homeless child would have to be filed with the cabinet for a child to be in the system. Mr. Grace stated that some situations go directly to the court and not the cabinet. When children are placed in the custody of the cabinet, normally the child receives Medicaid services, but there have been some incidences where the child is allowed to stay on a parent's private insurance plan.

In response to concerns about

services for Western Kentucky residents by Senator Pendleton and Representative Burch, Commissioner James stated that the department is looking out for the needs of the children in Western Kentucky. DCBS just received a federal grant for the Owensboro area for a START program targeted for substance abuse parents that has good outcomes in managing children at home safely, reunifying families quicker, and helping parents stop the substance abuse.

School Required Immunizations for Children

Dr. Kraig Humbaugh, M.D., M.P.H., State Epidemiologist, and Director of the Division of Epidemiology and Health Planning, Department for Public Health, Cabinet for Health and Family Services, and Kay Kennedy from the Kentucky Department of Education, discussed the current coverage requirements for children entering kindergarten and children entering the sixth grade. Testimony also highlighted the vaccine coverage rates for children in kindergarten and the sixth grade and discussed methods of securing an exemption to vaccination requirements. Compulsory school attendance and vaccination requirements were also discussed.

In response to questions by Senator Stine, Ms. Kennedy stated that it is not the intention to keep a child out of school due to an incomplete immunization record. The goal is to identify children prior to the enrollment to make sure there is up-to-date documentation provided by the parent or caregiver.

Senator Pendleton stated that the Family Resource and Youth Service Centers (FRYSCs) are an integral part of helping children and parents.

In response to a question by Representative Burch, Ms. Kennedy stated that there are 35,000 students statewide classified as homeless, and the McKinney-Vento definition is used to define homelessness by the Kentucky Department of Education.

In response to questions by Senator Givens, Dr. Humbaugh stated that currently implemented the lifespan Kentucky Immunization Registry that is available to all providers. State health departments and approximately 350 providers are currently using the registry. The goal is to ultimately allow schools to have access to the registry.

In response to a question by Representative Wuchner, Ms. Kennedy stated that data relative to a specific type of withdrawal of students relating to immunizations is not collected.

Executive Order 2012-585, relating to the Child Fatality and Near Fatality External Review Panel

Sara Osborne, Legislative Liaison, and Tom Cannady, Staff Advisor, Justice and Public Safety Cabinet, discussed the Child Fatality and Near Fatality External Review Panel and offered a status update from the perspective of the Justice and Public Safety Cabinet. Judge Roger

Crittenden has been appointed the chair of the panel. The first meeting will be November 27, 2012 at the Kentucky State Police Academy.

In response to a question by Senator Stine, Ms. Osborne stated that Executive Order 2012-585 is a reorganization and not a creation of a completely new entity.

There being no further business, the meeting was adjourned at 11:25 a.m.

INTERIMJOINTCOMMITTEE ON JUDICIARY

Minutes of the 4th Meeting of the 2012 Interim
September 7, 2012

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Judiciary was held on Friday, September 7, 2012, at 10:00 AM, at the Department of Criminal Justice Training, Richmond, Kentucky. Senator Tom Jensen, Chair, called the meeting to order, the secretary called the roll, and a quorum was present.

Present were:

Members: Senator Tom Jensen, Co-Chair; Senators Ray S. Jones II, John Schickel, Dan "Malano" Seum, and Robin L. Webb; Representatives Joseph M. Fischer, Kelly Flood, Sara Beth Gregory, Joni L. Jenkins, Thomas Kerr, Stan Lee, Mary Lou Marzian, Michael J. Nemes, Tom Riner, and Brent Yonts.

Guests: Commissioner John Bizzack, Department of Criminal Justice Training; Secretary J. Michael Brown, Justice and Public Safety Cabinet; Ed Monahan, Department of Public Advocacy; Ernie Lewis, Kentucky Association of Criminal Defense Lawyers; Chris Cohron, Warren County Commonwealth Attorney; Jackie Steele, Laurel/Knox County Commonwealth Attorney; Lynn Pryor, Christian County Commonwealth Attorney; Bill Patrick, Kentucky County Attorney's Association; Mike O'Connell, Jefferson County Attorney; Commissioner Rodney Brewer and Morgain Sprague, General Counsel, Kentucky State Police; Jerry Wagner, Kentucky Sheriff's Association; Les Russell, Kentucky State Fraternal Order of Police; Guy Howie, Hopkinsville Chief of Police; Mike Bischoff, Executive Director, Kentucky Association of Chiefs of Police; David Lightty, Priddy, Cutler, Miller and Meade; J.D. Chaney, Kentucky League of Cities; Shellie Hampton, Kentucky Association of Counties; Bert May, Dinsmore; Berl Perdue, Jr., and Bill Burch, Fraternal Order of Police; Bob Stokes, Attorney General's Office; Gerald Ross, Department of Criminal Justice Training; Jan Gould, Kentucky Retail Federation; and Bill Patterson and Charles Horton, Jefferson County Attorney's Office.

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

The minutes of the July 6 and August 3, 2012 meetings were approved without objection.

Senator Jensen announced that Co-

Chair Representative John Tilley was recently appointed by Governor Beshear to represent Kentucky at the Service Members, Veterans and Families Policy Academy and was attending a meeting in Washington, D.C., relating to veteran's substance abuse and mental health issues.

Senator Jared Carpenter and Representative Rita Smart welcomed the committee to Richmond, Eastern Kentucky University, and the Department of Criminal Justice Training.

Secretary J. Michael Brown, Justice and Public Safety Cabinet, welcomed the committee to the Department of Criminal Justice Training and introduced Commissioner John Bizzack. Commissioner Bizzack presented a video on the Department of Criminal Justice Training (DOCJT), the first nationally accredited police training institute in the United States. DOCJT provides basic training for local police, sheriffs, and other law enforcement personnel, and annual certification training for peace officers, training approximately 12,000 people annually. Senator John Schickel said he graduated from DOCJT in 1976 as a member of the law enforcement community prior to being elected to the State Senate. He commended long-time instructor Paul Cleveland and said he still uses things he learned from him years ago. He and Senator Jensen complimented the department on the quality of training provided to the law enforcement community across the state. Representative Riner said his son is also a graduate of DOCJT.

Defense Bar's Concerns

Ernie Lewis, Kentucky Association of Criminal Defense Lawyers (KACDL) said the mission of KACDL is to ensure fairness and justice for all citizens, while protecting public safety. KACDL supports implementation of 2011 House Bill 463 but several issues need further review, including inconsistent use of the pretrial release assessment by judges, denial of bail credits without specific justification, lack of a clear and convincing evidence standard for pretrial release, inconsistent application of deferred prosecution, presumptive probation, and graduated sanctions by the judicial community, and inconsistencies in issuing citation only misdemeanors by some law enforcement agencies. KACDL's recommendations include the need to reclassify Kentucky's many misdemeanor offenses by adjusting penalties and converting some to fine-only offenses, reforming the persistent felony offender and violent offender laws, clarifying parole restrictions, considering converting to a determinate sentencing system, implementing the American Bar Association recommendations on the death penalty, restoring the Criminal Justice Council to the 1998 version, developing a significant system for felony expungement and restoration of civil rights, and rewriting the Kentucky penal code.

Ed Monahan, Public Advocate,

Department of Public Advocacy (DPA), made recommendations for improving the criminal justice system in Kentucky, including a presumption of parole for eligible low-risk offenders, expanding DPA's social worker program to assist courts in addressing the needs of offenders, creating a new classification for gross misdemeanors that would fall between felonies and misdemeanors, reclassifying minor offenses to violations or civil infractions, establishing a legal standard requiring clear and convincing evidence for pretrial release decisions, reforming the persistent felony offender and violent offender statutes to make sure the harshest punishments are used to protect public safety, amending the juvenile code to protect Kentucky's youthful offenders, expanding judicial discretion on expungement of convictions, expanding post-conviction DNA testing beyond capital cases, and implementing the ABA Death Penalty Assessment Team recommendations.

Prosecutor's Concerns

Chris Cohron, Warren County Commonwealth's Attorney, noted the recent passing of Martin Scott, a highly respected member of the prosecutorial community, and expressed his deepest sympathy. Mr. Cohron said prosecutors are still assessing implementation of House Bill 463. He recommended creation of a new classification of felony offenses with fifty percent parole eligibility, and elimination of credit for pretrial incarceration. He said it is probably time for Kentucky to consider switching from the current indeterminate sentencing program to a determinate sentencing program, and abolishing the Parole Board. Virginia recently made this change and it has been successful. He said it is very difficult to tell victims how long a person will serve under the current law, because of the many credits which can be applied to a sentence. Inmates are the only ones who can accurately determine their serve out date, which is unfair to victims of crime. Pretrial risk assessments do not always consider the nature of the offense or victim impact when setting the conditions of bail or pretrial release.

Jackie Steele, Laurel/Knox County Commonwealth's Attorney, recommended the statutes relating to aggregate drug sales under House Bill 463 not be limited to repeat sales of the same drug. Drug dealers sell a variety of drugs, and he recommended that law enforcement be able to aggregate different types of drugs over 90 days, and not be limited to the same exact drug for aggregate purposes. He said prosecutors are working on draft language for the change.

Lynn Pryor, Christian County Commonwealth's Attorney, discussed the increasing problem of gangs and gang related activities in Kentucky and recommended passage of criminal gang legislation which would permit prosecutors to tell juries a crime was gang related, establishing a uniform tracking system for gang members and gang activity for law

enforcement, enhancing penalties for gang related crimes, forfeiture of gang property, and making gang recruitment a felony.

Bill Patrick, Kentucky County Attorney's Association, and Mike O'Connell, Jefferson County Attorney, discussed the current statutes on misdemeanor expungement. Mr. O'Connell suggested clarifying the language on second and subsequent offenses, and specifying which offenses should be allowed to defeat an expungement. He said his organization is working with the Kentucky State Police and others to develop a proposal to address this concern.

Mr. O'Connell discussed the confidentiality of juvenile court proceedings. There may be a need to open certain types of juvenile court proceedings for felony public offense cases, but not misdemeanor public offenses. He said 39 states have open juvenile proceedings.

In response to a question from Senator Seum about expungement of felony records, Mr. O'Connell said felonies cannot be expunged and only certain misdemeanor records can be expunged under current law. Senator Webb suggested prosecutors, police, and defense attorneys work on a unified draft of legislation.

Law Enforcement Concerns

Commissioner Rodney Brewer and Morgain Sprague, General Counsel, Department of Kentucky State Police (KSP), suggested the misdemeanor expungement process could be improved by implementing a certificate of eligibility process for submission to the court, vetted by KSP and the Administrative Office of the Courts (AOC), prior to granting an expungement so uniform standards would apply. Commissioner Brewer said KSP processes approximately 12,000 records checks for expungement annually. Senator Webb said there needs to be an appeal process for applicants if a request for expungement is denied by KSP or AOC, so they have an opportunity to challenge incorrect information. Other KSP recommendations include clarifying circumstances for vacating judgments and expungement when new evidence exonerates the defendant, changing the laws on criminal background checks for appointees to boards and commissions to allow periodic checks following their initial appointment, and amending the driving under the influence statutes to specify that refusal to sign a hospital consent form for blood tests is the same as refusal to take the test with the same penalties. Another recommendation is requiring pawn shops to electronically report purchases to law enforcement, and requiring them to maintain paper records of their transactions. Commissioner Brewer said there is an excellent nationwide record management system called LEADSONline which helps law enforcement track, identify and recover stolen property. The computer program is available to pawn shop owners free of charge. Senator Webb

said recyclers and scrap metal buyers need to be held accountable for the items they purchase. She said her area has seen an increasing number of storm grates being stolen and sold to scrap yards, in addition to copper thefts. Commissioner Brewer said the LEADSONline program has a component which would allow recyclers to report and track their transactions.

Jerry Wagner, Kentucky Sheriff's Association, agreed with Senator Webb about the need for more accountability for recyclers and scrap yard owners. The LEADSONline program is very good, and the association supports efforts to expand the system.

Ms. Sprague recommended that administrative subpoena powers now limited to the Attorney General be expanded to the Commissioner of Kentucky State Police, which would allow their crimes against children unit to subpoena computer records to determine internet signal locations. She recommended prohibiting sex offenders from photographing children without the informed written consent of the parent, amending the child solicitation statutes to include internet chatting without actual traveling in furtherance of the offense, and permitting forfeiture of real property on conviction for manufacturing or producing child pornography.

Guy Howie, Hopkinsville Chief of Police, agreed with Commissioner Brewer about the LEADSONline computer program and said it has made recovery of stolen property easier for law enforcement. Gangs and gang related activity are an increasing problem across Kentucky, and are no longer limited to urban areas. He concurred with the recommendations suggested by Christian County Commonwealth's Attorney Lynn Pryor. Senator Jensen said it appears that many people become gang members while in prison. Chief Howie agreed and said more programs are needed to discourage young people from joining gangs. Mike Bischoff, Kentucky Association of Chiefs of Police, said his organization will be meeting the first week of October to discuss legislative matters and make recommendations.

Police Officers Bill of Rights

Les Russell, Kentucky Fraternal Order of Police (FOP), and David Leightty, an attorney representing police officers for the FOP, discussed KRS 15.520, known as the Police Officer Bill of Rights. The statute sets forth procedures for handling complaints against police officers, requires 24-hour notice, and permits the presence of an attorney if requested by the officer. The FOP believes the statute applies to all complaints, whether citizen generated or department generated. However, recent Court of Appeals decisions have ruled the statute applies only to citizen complaints. Mr. Leightty said most complaints against police officers are departmentally generated, and the FOP disagrees with the court's decisions. One of the cases has been accepted for appeal by the Kentucky Supreme Court but has not been

heard. A 2012 Regular Session legislative proposal to address these concerns did not pass when the parties could not reach an agreement.

J.D. Chaney, Kentucky League of Cities, and Shellie Hampton, Kentucky Association of Counties, said the right of government to control and discipline its employees is set forth in other statutes and they feel it should also apply to police officers. They agreed to work with the FOP and other parties to reach an agreement for consideration by the 2013 Regular Session of the General Assembly. Senator Jensen urged all parties to reach an agreement before the next session.

Senator Webb said she agreed with Judge Caperton’s dissent in one of the cases, which said KRS 15.520 clearly applies to all complaints, not just citizen complaints.

Chief Howie said police officer disciplinary actions do not always merit the presence of an attorney. Many are minor violations such as an officer caught sleeping in his patrol car, maybe the officer is having trouble at home, or just needs a schedule adjustment because he reports late for duty. Mr. Bischoff agreed and said requiring an attorney to be present and requiring 24-hour notice to the officer limits the police department’s ability to deal with minor problems efficiently. He said his organization wants to be part of the discussion to reach a compromise.

The meeting adjourned at 12:50 p.m.

**INTERIMJOINTCOMMITTEE
ON JUDICIARY**
Minutes of the 5th Meeting
of the 2012 Interim
October 5, 2012

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Judiciary was held on Friday, October 5, 2012, at 10:00 AM, at the Kentucky State Police Central Forensic Laboratory, Frankfort KY. Senator Tom Jensen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; Senators John Schickel, Dan “Malano” Seum, Brandon Smith, Katie Stine, and Robert Stivers II; Representatives Johnny Bell, Joseph M. Fischer, Kelly Flood, Sara Beth Gregory, Joni L. Jenkins, Stan Lee, Mary Lou Marzian, Michael J. Nemes, Tom Riner, and Brent Yonts.

LRC Staff: Jon Grate, Ray DeBolt, Joanna Decker, Matt Trebelhorn, Shane Orr and Rebecca Crawley.

The minutes of the September 7, 2012 meeting were approved without objection.

The Resurgence of Heroin in Kentucky

Colonel Spike Jones, Chief of Police, Covington, discussed the increase in heroin problems in Northern Kentucky.

Coinciding with that is increased incidence of copper and metal theft, and prostitution directly tied to heroin addiction. He said his officers are finding heroin users passed out with needles in their arms with children in the back seat. Heroin users differ from crack users, who buy and sell crack to support their habit, whereas heroin users use all the heroin they buy to support their own addiction. Heroin addicts are not homeless, but rather have jobs and families. Many are addicted to prescription painkillers. House Bill 1, passed in the 2012 General Assembly, makes it much harder to get prescription drugs legally, and their street price is increasing. People are turning to heroin as a less expensive and more readily available alternative. In response to a question from Senator Stine about legislation to address this problem, Colonel Jones said while arresting and jailing heroin users is a necessary tool to protect the public, the users cannot overcome their addiction without successful treatment programs.

Van Ingram, Office of Drug Control Policy, agreed that heroin use and addiction are increasing statewide. Eighty heroin overdose deaths have been reported through September 18, 2012. He attributed this increase to the low price of heroin, easy availability, perception of low risk, and public opinion. The DEA is reporting increases of black tar heroin sold by Mexican drug cartels. During the 1960s and 1970s, there were public service announcements to educate the public about the dangers of heroin use, but today’s young people have never been exposed to that kind of public education effort. The medical community needs to be educated to recognize heroin addiction and learn how to make referrals to treatment programs, which are limited at this time. He agreed with Colonel Jones that heroin addicts are not homeless junkies living in a warehouse, but are people with jobs and families, many who are addicted to opiates, and who choose heroin as the next drug of choice.

Senator Schickel commended Colonel Jones for his distinguished service to northern Kentucky and noted that he is a former president of the Kentucky Fraternal Order of Police. He looks forward to working with him to address heroin addiction problems in northern Kentucky.

In response to a question from Representative Jenkins about existing treatment programs for heroin addiction, Colonel Jones said Probation and Parole in northern Kentucky told him there is a waiting list for placement. Representative Jenkins said the Department of Corrections’ budget is also impacted as more inmates need treatment for heroin addiction. Mr. Ingram said they are seeing increased cases of Hepatitis C and HIV from needle sharing. Colonel Jones said heroin use endangers law enforcement from needle sticks and increases workers’ compensation claims.

Karen Hascal, The Healing Place,

said her organization offers long-term residential treatment programs across the state to approximately 600 people, including those addicted to heroin. Ashley, a 26-year old resident, told the task force about her successful recovery from opiate addiction at The Healing Place, where she has lived for about a year. She credited the Healing Place for saving her life and teaching her how to be a good person and a good employee. If she had gone to jail and been released without treatment, she would have returned to drugs right away. Long-term residential treatment gave her the tools she needs to be successful. The Healing Place helped her get a job at Our Lady of Peace, so she can restart her life. In response to a question from Senator Jensen, she said she started drinking as a teenager, then began smoking marijuana, was in a car wreck and received pain pills for an injury which she then began abusing, and became addicted to prescription painkillers.

In response to a question from Senator Stine, Ms. Hascal said addiction alters brain chemistry, and it takes nine to twelve months to rewire the brain, learn good decision making skills, and practice those new skills under supervision. Women who are heroin addicts have more heart problems, arrhythmias, and hepatitis C from needle sharing. In response to a question from Representative Bell about seeking a job with a felony record, Ashley said The Healing Place offers a three-month aftercare program, where residents mentor new clients, sharing their experience, strength and hope, and help them to successfully complete treatment. Our Lady of Peace is aware of her history and is willing to give her a chance to prove she can be a good employee. Ms. Hascal said The Healing Place works with the corporate community to show that recovering addicts can be successful employees, and The Healing Place urges clients to be completely honest with prospective employers. A criminal record is a huge barrier to employment, and failure leads many clients right back into addiction. They need to be able to support themselves and their families. Ashley said she has learned a new way of living and how to apply her new life skills, but realizes her recovery will last a lifetime.

Representative Tilley said he visited The Healing Place with the House Bill 1 Oversight Committee and was very impressed. Recover Kentucky operates ten centers across the state, and the centers have added treatment beds since passage of House Bill 463. Faith-based treatment programs have been successful, and he hopes these programs will help address the unmet needs of citizens with addiction problems. House Bill 463 encourages deferred prosecution with treatment instead of jail time, which has saved the Department of Corrections an estimated \$25 million since passage of the bill. There are many barriers to employment for persons with a felony record, and a number of professions prohibit licensure to

persons with criminal records. Employers cannot find a qualified workforce. He said Senator Dan Kelly began the push for treatment instead of incarceration, and he urged expansion of available treatment programs across the state.

The State Crime Laboratory – an introduction to its leadership, functions, personnel, and role within the criminal justice system

Laura Sudkamp, Kentucky State Police Central Forensic Laboratory Manager, gave an overview of the central laboratory facility and the services it provides to law enforcement in Kentucky. There are six KSP laboratories with 131 employees across the state, providing forensic services free of charge to 450 law enforcement agencies in the areas of controlled substances, toxicology, trace, firearms and toolmarks, DNA casework, and the DNA database. The laboratories are funded by KSP general funds and restricted accounts, DUI service fees, DNA court fees, and federal grants, and processed about 38,000 cases in 2011. She reviewed the number of cases processed and the case backlog by section.

In response to a question from Senator Schickel about a high profile case in northern Kentucky that is awaiting DNA analysis by KSP, Ms. Sudkamp said the normal procedure is for the analyst to pull the oldest cases first, although cases are expedited if the court informs of a pending court date. However, sometimes the evidence presented does not have enough DNA to be tested, and KSP must wait for more evidence to be submitted, which backs the system up even further. KSP gives priority to homicide and sexual assault cases normally. Typical evidence used to be fingerprint analysis, but technology is more advanced today with more effective DNA testing. The biggest increases in cases worked are in the controlled substances and toxicology sections.

Jeremy Triplett, Supervisor, Controlled Substances Section, said his section provides chemical analysis of evidence from suspected drug crimes and clandestine laboratory analysis, with an average case turnaround of approximately 25 days. The number of heroin cases has increased significantly in the last three years. He thanked the committee for passage of House Bill 433 to address the bath salts problem in Kentucky.

Ryan Johnson, Supervisor, Toxicology Section, said his section provides chemical analysis of blood and urine samples to detect the presence of alcohol and a variety of drugs. The section analyzes 15,000 cases annually, including DUI, drug facilitated sexual assaults, accident investigations, and murder, assault and drug offenses. The most commonly detected drugs include marijuana and illegal drugs (mostly cocaine), and prescription drugs (mostly Xanax, Lortab, Oxycontin and Suboxone). He said many DUI cases also have marijuana in the bloodstream, with

marijuana being almost as common as alcohol. The section has also seen a surge in the presence of Suboxone.

Jack Reid, Supervisor, Trace Section, said his section tests for gunshot residue, hairs, fibers, paint, lamp filaments and glass, arson, physical matches, and soil analysis. There is only one trace laboratory in the state, with six employees who are also trained as expert witnesses.

Matthew Clements, Supervisor, Firearms and Toolmarks Section, said his office differs from other sections because they rely on their powers of observation, training, and experience. His section provides firearms and toolmark identification, serial number restoration, muzzle to garment distance observations, and shoe and tire print identification. After evidence is received, most cases can be completed in about a week, but evidence may be held up in other sections with their own backlog, which affects the turnaround time.

Whitney Collins, Supervisor, DNA Casework Section, said her section provides serological analysis, bloodstain pattern analysis, DNA analysis, and entries to the Combined DNA Index System (CODIS) system. Most cases relate to murder and death investigations, sexual assault/sodomy, assault/kidnapping, robbery and arson. Violent crime analysis turnaround is about six to nine months, and property crime analysis is about nine to twelve months. Her caseload is about 2,500 annually, a 32 percent increase in the past five years, mostly related to increased property crimes. She discussed the difficulties of analyzing touch DNA samples because of the very small amount of contact and evidence presented for analysis. Her section needs more employees and equipment to maintain their turnaround time. She made recommendations for amending the statutes relating to post-conviction testing.

Stacy Warnecke, Supervisor, DNA Database Section, said her section conducts DNA testing of convicted felons and registered sex offenders, and enters their profiles into the CODIS system. CODIS has local, state and national levels, and they search and report matches to unsolved cases. The section receives about 12,000 cases annually, and the backlog is about 6,000 cases. She discussed the proposed arrestee database, with an estimated 42,000 arrestees and offenders, which will require additional personnel and equipment, and said estimating how much the system will cost is very difficult. She said the system will need a sustainable funding source as grant funds continue to decrease. Privacy protections are set forth in state and federal statutes, and expungement processes are in place if the DNA sample does not match the crime.

Senator Jensen thanked everyone for their informative presentations and for hosting the committee meeting at the facility. He told the members that Marylee Underwood, Kentucky Association of

Sexual Assault Programs was providing a packet of information relating to human trafficking, and extending an invitation to attend the Association's conference in northern Kentucky in December.

The meeting adjourned at 12:45 p.m.

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

**Minutes of the 4th Meeting
of the 2012 Interim
September 11, 2012**

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Labor and Industry was held on Tuesday, September 11, 2012, at 2:30 PM, in the Convention Center at Kentucky Dam Village State Resort Park. Representative Joni Jenkins, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senators Julian M. Carroll and Ken Winters; Representatives John A. Arnold Jr., Will Coursey, C.B. Embry Jr., Bill Farmer, Richard Henderson, Dennis Horlander, Wade Hurt, Joni L. Jenkins, Adam Koenig, Mary Lou Marzian, Michael J. Nemes, Tom Riner, Jim Stewart III, and Brent Yonts.

Guests: Joseph Meyer, Secretary, Education and Workforce Development Cabinet; Tom West, Executive Director, Kentucky Workforce Investment Board; Mark Brown, Secretary, Kentucky Labor Cabinet and Kim Perry, Kentucky Labor Cabinet.

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

Representative Jenkins, presiding as Chair, informed the committee and attendees that the Co-Chairs of the committee, Senator Kerr and Representative Nelson, were not able to attend the meeting. A welcome was extended to Representative Keith Hall, former Representative Charlie Hoffman, former Representative Jack Coleman, and former Representative Mark Brown, who were in attendance. As the elected representative from Marshall County, Representative Coursey thanked the members for their continued support of the annual Kentucky Labor-Management Conference, held at Kentucky Dam Village State Resort Park in Gilbertsville. A moment of silence was observed in remembrance of the eleventh anniversary of September 11, 2001.

Good Jobs and the Skills Gap

Secretary Joseph Meyer, Education and Workforce Development Cabinet, and Executive Director Tom West, Kentucky Workforce Investment Board, presented information regarding the job market in Kentucky and the apparent skills gap that inhibits the filling of many high-skilled technical and manufacturing jobs. Secretary Meyer stated that, according to a 2011 study by Deloitte, there are 600,000 manufacturing jobs unfilled because employers are unable to acquire employees with the necessary skills and

training for the jobs. According to the study, while technical and manufacturing jobs have changed significantly, the education and training curriculum has not been modified to instruct students in critical-thinking and problem-solving skills, commonly referred to as soft skills. These soft skills are necessary to fill and maintain the available positions.

A study completed in 2012 by Brookings showed that in metropolitan areas, including Louisville, higher unemployment rates may occur when the jobs require more secondary education and training than the average adult in these areas has attained. Kentucky has responded with an approach to education and training programs that will strengthen the relationship of business and industry. Secretary Meyer informed the committee of an executive order which places all career and technical education programs within the Department of Education. This reorganization aligns post secondary and technical programs with the department updated curriculum standards, to prepare every student to be career-ready as well as college-ready.

The Kentucky Workforce Investment Board (KWIB) seeks to develop tools to promote accountability within communities and the workforce by strengthening the relationship with local business and industry. The growth of secondary technical education programs in Kentucky is crucial to employment in emerging manufacturing and technical sectors. However, there is an apparent gap in instruction of soft skills, including practical and critical problem solving skills in the workforce. A key initiative to the program is identifying statewide, regional, and local sectors of business and industry that are emerging as valuable, high wage employment fields. Data-driven identification and training investment decisions are helping to bring these jobs to Kentuckians. The initiative faces funding challenges in developing career pathways to put people on the job.

KWIB assists in developing work ready communities, where the entire community is committed to accountability in education and training results so that the workforce has all of the skills necessary to do the work required, including digital literacy. Mr. West stated that ten communities have been certified by KWIB as Work Ready Communities, eight applications for certification are pending, and 30 communities in Kentucky have applied for certification in 2013. There are ten local workforce investment boards in Kentucky.

In response to questions from Representative Yonts, Secretary Meyer explained that according to the 2011 Deloitte study, nationwide there are 600,000 manufacturing jobs unfilled because of the skills gap. Many representatives of Kentucky manufacturing businesses have expressed the need for highly skilled, trained workers to fill high paying positions. A factor attributing to the lack

of workers is that high school graduates often place factory and manufacturing jobs at the bottom of their desired workplace lists. Businesses need to engage in major outreach to the education community, parents, and students to help them understand what economic opportunities exist. The Education and Workforce Development Cabinet has taken initiative to heighten the role of Kentucky's business and technical schools through Career Pathways and SB 38. Secretary Meyer said that budgeting remains a challenge.

In response to questions from Representative Farmer, Secretary Meyer explained that the soft skills, in particular time management and discipline, are not taught expressly in post secondary education. This presents a problem when graduates enter the workforce. Employers experience issues with employees not showing up to work on-time and every day. The ability to attain a degree or certification in a field through a college or education program does not necessarily mean that the graduate has attained the soft skills needed to maintain employment. Mr. West said that the Work Ready Community programs have made some very creative efforts to raise awareness of this issue.

In response to questions from Representative Koenig, Mr. West said any member or group representative of the community may apply for work ready certification, whether it is the school board, chamber of commerce, or the local workforce. At a recent meeting in Madison County, half of those in attendance were from local businesses and the other half were representatives of education.

Senator Winters stated that a standard curriculum between career and technical colleges needs to be established, as well as early guidance for students who express an interest in a particular field.

The minutes of the meeting on August 16 were approved by voice vote.

Employer Education Program

Secretary Mark Brown, Kentucky Labor Cabinet, provided the members with an overview of the six education and training program partnership opportunities offered by the Cabinet to employers. Participation in the programs is voluntary. All services provided by the staff of the Education and Training Division are free.

Voluntary Protection Partnership (VPP) is the most prestigious and rigorous for companies to earn. The Education and Training Division staff work with most companies several months/years before the company will complete the criteria to achieve this recognition. There are 11 active VPP sites in KY with an additional eight to ten in various stages of the program.

Safety and Health Achievement Recognition Program (SHARP) is the fastest growing partnership in general industry with 17 active sites. While similar to VPP, it is not as stringent and the initial process differs. Recertification for this program occurs every two to three years.

Construction Partnership Program

(CPP) is for construction companies/sites only. CPP involves all employees on site, including sub contractors. Companies may have several active sites in the partnership at the same time. There will be at least 16 active sites by the end of September 2012, the most open CPP partnerships at one time. CPP is a fast growing program, and the division expects several more requests before the end of the year.

Safety Partnership program (SPP) is designed for the company struggling with safety and health issues. SPP is a three year program with the goal to greatly improve rates and overall safety of the facility in the three year time frame. Successful competition of this program can also be used as a stepping stone to apply for the SHARP partnership. The division is currently looking for companies to assist.

Voluntary Protection Partnership for Construction (VPPC) is very similar to the VPP but geared for the construction industry. When an active site is chosen a complete and highly detailed safety and health audit is conducted. Kentucky is one of only a few states that offer the VPPC program. There are two active VPPC companies.

OSH Strategic Partnership (OSP) is offered to groups looking to partner with OSH that may not fit into another partnership, such as unions or trade associations. There are no active OSPs.

The Partnership Branch is very busy, and all services are provided by the four consultants and three program administrators. Employers have offered very favorable responses and comments to the partnership programs provided.

Additional safety initiatives conducted by the Cabinet include the 2012 Heat Campaign and the Tornado Outreach. In early July, Education and Training Division staff traveled to 77 counties providing educational information on the dangers of working in heat. After the early March tornadoes in West Liberty and Salyersville, teams of E & T staff traveled to the affected areas handing out free personal protection equipment and urging people to work safely. The personal protection equipment was donated to the Labor Cabinet for outreach.

In response to Representative Nemes' inquiry regarding insurance premium reductions for employers participating in the partnerships, Secretary Brown indicated the companies do experience premium reductions.

Representative Farmer asked if a cost/benefit analysis for the partnership programs had been performed. Secretary Brown stated that, while he could not provide a dollar amount, the programs are saving Kentucky employers money.

Representative Coursey stated his appreciation to Secretary Brown for his assistance and accessibility to the members of the General Assembly.

Chair Jenkins informed members that staff is working with Chair Kerr on arrangements to have the October meeting at Midway College.

There being no further business, the meeting adjourned.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

Minutes of the 4th Meeting
of the 2012 Interim
September 14, 2012

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Licensing and Occupations was held on Friday, September 14, 2012, at 10:00 AM, at Southern Wine and Spirits in Louisville, Kentucky. 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, Jimmy Higdon, and Dan "Malano" Seum; Representatives Tom Burch, Larry Clark, Dennis Horlander, Wade Hurt, Joni L. Jenkins, Adam Koenig, Reginald Meeks, Charles Miller, Michael J. Nemes, David Osborne, Darryl T. Owens, Ruth Ann Palumbo, Arnold Simpson, and Susan Westrom.

Guests: Pat Crowley, Wine and Spirits Wholesalers of Kentucky, Kentucky Beer Wholesalers Association and Kentucky Malt Beverage Council; Paul Coomes, PhD, Dan Meyer, Wine and Spirits Wholesalers; Rick McQuady, CEO, Kentucky Housing Corporation; Tom Underwood National Federation of Independent Businesses and Raleigh Brunner, Wildcat Moving, and Joshua P. Thompson, Pacific Legal Foundation.

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

Approval of minutes

A motion to approve the minutes from the August 27, 2012 meeting was made by Representative Keene and seconded by Senator Seum. The motion carried by voice vote. Pete McLaughlin, Vice President and General Sales Manager of Southern Wine and Spirits of Kentucky, welcomed the committee to the facility.

Alcohol Taxation in Kentucky

Pat Crowley, representing the Wine and Spirits Wholesalers of Kentucky, Kentucky Beer Wholesalers Association, and the Kentucky Malt Beverage Council, and Paul Coomes, PhD, an economist formerly with the University of Louisville, presented a video regarding taxation of the malt beverage, wine, and distilled spirits industry in Kentucky. The 2007 census of the industry showed \$871 million in annual sales, with 1,711 wholesale distribution jobs and a total payroll of \$70.4 million. The figures do not include jobs at retail distributors such as grocery stores, bars, restaurants, and specialized stores. In 2011, the industry collected over \$112 million in wholesale tax receipts. Kentucky law mandates the use of a three-tier system. The first tier is

the supplier who must sale to the second tier, the wholesaler, who must then sale to the third tier, the retail outlets.

In 1982, Governor John Y. Brown, Jr., asked the industry for help with tax collection. Because not all entities were paying their appropriate taxes, legislation was passed removing the retail tax and putting the tax at the wholesale level. Thus, the wholesalers were in a sense collecting the retail tax for the Commonwealth. In 2006, Kentucky raised its wholesale tax from 9 percent to 11 percent. In 2009, a 6 percent tax was added on retail sales. Since 2006, taxes on the wine, malt beverages, and distilled spirits have risen 88 percent.

Wine, malt beverages, and distilled spirits are triple taxed. There is the 11 percent wholesale tax. There is an excise tax that has specific taxes for beer (\$2.50 per barrel), wine (50 cents per gallon), and distilled spirits (\$1.92 per gallon plus an additional 5 cents per case sold). There is the blanket 6 percent sales tax on all types of beverages sold.

Dr. Coomes commented that Kentucky is one of the most porous states in the nation with seven bordering states, with only Missouri and Tennessee having more borders. A census in 2010 shows that over 50 percent of Kentuckians live in a county that borders another state. Forty-Four percent of this population is in Northern Kentucky on the Ohio River. This creates more opportunities for Kentuckians to purchase alcohol from other states with lower prices. Since the implementation of the 6 percent sales tax in 2009, the number of cases of beer sold has declined by over 6 percent and this appears to be a continuing trend. Retailers in Northern Kentucky have reported that Ohio customers are now staying in Ohio; and Kentucky customers have begun to drive to Ohio, purchase beer, and bring it back to Kentucky for consumption. Additionally, wine sales have not been on par with national growth, even though wine consumption has increased. Between 2007 and 2010 the reduction in the number of cases sold amounted to \$32 million. This led to a loss of 63 wholesale distribution jobs and \$2.6 million in lost payroll.

When comparing tax rates on alcohol sales in surrounding states, Kentucky is among the highest in wine, malt beverages and distilled spirits taxes. States where beer is produced--such as Colorado and Wisconsin--have the lowest tax rates on alcohol. Kentucky has the highest rate of taxation on wine. In California and New York, the two highest producers of wine, the tax on wine sales is the lowest. Kentucky accounts for 95 percent of all the bourbon produced in the world and accounts for 35 percent of the distilling jobs. However, taxation of distilled spirits is still heavy at the retail level, sending a bad signal to distillers. The industry feels that another tax increase will create further deterioration in the industry.

In response to a question from Representative Owens, Dan Meyer said the industry would like to see a roll back

of the wholesale tax from 11 percent to 9 percent. Also, the sales tax in 2009, which was levied on retail sales, has caused Kentuckians to purchase alcohol across the border, particularly in Ohio. Elimination of the retail tax on alcohol could boost sales significantly. Senator Buford opined that reducing the tax would increase sales in Kentucky, allowing for more taxes paid on those sales. Also, increased sales from reduced taxes would create a need for more jobs and more payroll taxes paid. In response to a question from Representative Meeks, Dr. Coomes said he would supply a copy of his full report produced for the wholesalers. That report looks at all areas of consumption and sales comparing Kentucky to its border states, using controls for the general state of the economy.

Kentucky Housing Corporation

Rick McQuady, CEO of the Kentucky Housing Corporation (KHC) said the agency was created in 1972 to provide affordable housing opportunities to low and moderate-income families. Since that time, KHC has provided funds for mortgage loans for first homes, administered federal dollars provided to agencies throughout Kentucky that assist the homeless population, and financed construction. All federal resources for housing in Kentucky come through KHC.

The Affordable Housing Trust Fund (AHTF) was created by the legislature in 1992 to provide additional financing resources to address the housing needs of Kentuckians whose maximum income is no more than 50 percent of an area's median income. In the past, funding has come from different sources, such as the General Fund. Money from unclaimed lottery winnings was used to fund the AHTF, but the AHTF is now funded by money received from the county clerks. Six dollars from each fee collected by the county clerks goes to the trust fund. KHC was also required to deposit \$500,000 into the AHTF from its discretionary account.

Over 9,000 units have been created with AHTF dollars statewide. The fund fills a gap for low-income families and provides a way for them to achieve home ownership. Additionally, 40 percent of the dollars must be spent in rural areas of the state. The KHC has been able to fund units in 119 of the 120 counties in Kentucky.

The KHC would like to expand the eligibility for nonprofit sponsors and developers that utilize housing credits to create affordable multi-family housing. Housing credits were created by the federal government in 1986 to provide for affordable multi-family housing. The statute requires the board of directors to apply deed restrictions on the sale of a house that has received AHTF dollars. The KHC funds multiple rehab projects that cost less than \$1,000. It is cumbersome for staff and families receiving the funds to have a five year deed restriction for small projects such as a new roof.

Mr. McQuady said KHC would like to amend KRS Chapter 198A in the KRS.

KHC wants to remove language regarding the unclaimed lottery proceeds and change reporting requirements since the agency no longer receives those monies. Also, the law requires applications for funds to be reviewed within 60 days. KHC would like to extend this time to 90 days. The application for funds is called a “consolidated funding application.” It is used to apply for all the resources at once. Some of these resources could be federal funds that require an environmental review that could take a longer amount of time. KHC partners are fully supportive of this longer application time. Because priorities of the state change over time, KHC would also like to remove the graded priorities.

KHC would like to raise fees for recipients who are local non-profit organizations. Recipients receive a five percent administrative fee. The KHC recommends that this be raised to 10 percent.

KHC also requests more flexibility in determining geographic distribution. Urban areas are listed in statute. In other programs administered by KHC, criteria are used to determine urban and rural eligibility based on incomes in the area as well as the area’s population. KHC would like this criteria-based approach to be added to the statutes instead of simply listing locations.

Finally, regarding the notification to a community of the construction of a multi-family project, the proposed change would allow for transparent notification. It would ensure that the CEO of the community, whether it is a county judge or mayor, is notified prior to the application, as well as after the funding for the project is approved. This would also ensure that KHC is in compliance with all fair housing laws.

Senator Higdon said he plans to file legislation regarding all the items Mr. McQuady discussed. He added that the AHTF board did a good job handling allotted money.

In response to a question from Representative Keene, Lisa Baron, KHC General Counsel, stated that the change in deed restrictions the agency is requesting would secure the dollars that KHC lends to the home. It is separate from the deed restrictions involving a development. In response to a question from Senator Seum, Mr. McQuady said “recipients” are either units of local government or non-profit agencies. Organizations such as the Housing Partnership in Louisville or Frontier Housing in Morehead and Self Help Housing in Vanceburg are non-profit organizations that serve a community and are examples non-profits that receive a five percent fee under the current system.

KHC is funded through a variety of methods. The only state money received is for the AHTF. The largest amount of money the KHC receives comes from the Department of Housing and Urban Development at the federal level. KHC administers Section 8 funds for smaller counties whose housing

development departments cannot handle the administrative burden. The Home Program, a block grant program, funds rental production, home ownership production, rental rehab, home ownership rehab, and tenant-based rental assistance. Kentucky is one of the few states that uses the home funds for all eligible uses. KHC also receives housing credits from the Internal Revenue Service to be used for construction of rental houses.

KHC recently received federal funds for a program called the unemployment bridge program. This program provides assistance to persons who have lost their jobs to help them stay in their homes. This resource has helped over 2,000 families. In addition to the other source already noted, tax exempt revenue bonds with an interest rate spread are used to fund KHC operations.

In response to a question from Representative Koenig, Mr. McQuady said if fees were raised for local nonprofits there would be less money available for construction. In response to another question he said the AHTF statute specifically defines the areas that are urban. Urban areas are Ashland, Bowling Green, Covington, Henderson, Hopkinsville, Jefferson County, Fayette County, Owensboro and Paducah. In other programs, KHC urban area criteria are median incomes of \$48,000 or more and a population of at least 20,000. KHC will work with the committee on language to define urban versus rural.

In response to a question from Representative Owens about locating multifamily units, Mr. McQuady said the review process includes a market study that takes into account zoning ordinances and fair housing laws. The community will still have control over where multifamily units are placed.

In response to a question from Representative Meeks, Mr. McQuady said the statute requires the corporation to use at least 40 percent of all funds received for rural areas. KHC staff will supply further information regarding the exact percentage going to rural areas. The Housing Policy Advisory committee has studied census data to determine the needs.

Representative Clark said he appreciated the job the KHC does; however, the local government should not be the only one consulted. The mayor or county judge should allow the local governing body should have some say in the decision making regarding where multifamily units are placed. There should also be more background checks in place for the companies awarded contracts for developments.

Wildcat Moving Company

Tom Underwood, State Director, National Federation of Independent Business, said that to become a mover of household goods in Kentucky a company must have a Department of Transportation (DOT) inspection, insurance, and bonding, and a Kentucky Household Goods Moving Certificate. When an application

is made for a moving certificate, the DOT sends a copy of the application to current certificate holders in the area for comments. This process, along with hearings from involved parties in the area, can take up to a year to complete. Since 2007, there have been five licenses issued. This statute was enacted in 1957.

Raleigh Brunner, owner of Wildcat Moving, told the committee that, since his business started two years ago, it has grown to have 31 employees and six trucks, and is doing well in the Central Kentucky market. Competitors have complained that he does not have the Household Good Moving Certificate. He has found the application process anti-competitive.

Joshua Thompson, staff attorney, Pacific Legal Foundation, told the committee that Pacific Legal Foundation is the nation’s oldest and most successful legal foundation dedicated to private property rights, limited government, and economic liberty. The competitive veto scheme that is in place in Kentucky for household goods moving certificates prevents people such as Mr. Brunner from pursuing his right to earn a living. This competitive veto does not allow him to attend the hearing to present his case to the administrative board; rather he must hire an attorney, and there is a time commitment of multiple years. Mr. Brunner must prove that the market is inadequate, that there is a public convenience for his business, and that his business is in the public interest. None of this criteria has been defined, and only the administrative board knows what Mr. Brunner has to prove at the hearing. Meanwhile, the competitors can file an objection based on vague standards.

Mr. Thompson believes that the competitors’ veto is unconstitutional under the United States Constitution. Pacific Legal Foundation and Mr. Brunner have filed suit in federal court in Lexington under the Fourteenth Amendment’s Equal Protection, Due Process, and Privileges or Immunities clauses. The United States Supreme Court has ruled that laws that restrict the right to enter into a business must be rationally related to the applicant’s fitness, and capacity to practice the profession. Mr. Brunner has demonstrated that he meets the requirements to operate a moving business in Kentucky. However, the competitors’ veto scheme that prevents him from earning a living is not rationally related to his profession. The requirement to prove inadequacy has no relation to health, safety or welfare. The Sixth Circuit has held that it is not a legitimate state interest to protect established businesses against competition. There are also lawsuits filed in Oregon and Missouri against similar certificate of necessity laws. In both states, laws were amended to remove the competitors veto scheme and certificate of necessity before the cases went to court.

In response to a question from Representative Westrom, Tom Underwood said that certificates can be sold. There is a certificate being sold in Lexington

for \$40,000. Representative Meeks commented that the same competitors’ veto scheme is in place regarding limousine and taxi companies. Prior legislation regarding this has not been successful. In response to a question from Representative Palumbo, Mr. Underwood said that because the sale was pending on the moving company in Lexington, he would prefer not to comment on the identities of the parties involved.

In response to a question from Senator Higdon, Mr. Underwood said that based upon the entries on the internet service, Craig’s List, there are many companies that operate using available labor. Most of these companies are operating without insurance or bonding and present a risk to public safety.

Senator Buford commented that Certificate of Need discriminates against minorities. It protects businesses and not consumers, and it blocks new competition.

Senator Schickel told committee that there was a tour of the facility that would begin immediately following the conclusion of the meeting. There being no further business to come before the committee, the meeting was adjourned at 11:10 AM.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 4th Meeting of the 2012 Interim September 6, 2012

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, September 6, 2012, at 10:30 AM, in the Salato Center of the Department for Fish and Wildlife Resources. 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 Joe Bowen, Ernie Harris, Ray S. Jones II, Bob Leeper, Dorsey Ridley, Johnny Ray Turner, and Robin L. Webb; Representatives Hubert Collins, Tim Couch, Keith Hall, Stan Lee, Reginald Meeks, Tim Moore, John Short, Kevin Sinnette, Fitz Steele, Jim Stewart III, and Jill York.

Guests: Mr. Greg Harkenrider and Mr. John Hicks, Office of the State Budget Director; Commissioner Tony Wilder, Department for Local Government; Commissioner Jon Gassett, Department for Fish and Wildlife Resources.

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

There being a quorum present, Representative Collins moved that the minutes from the August meeting be approved. Representative Steele seconded the motion and the minutes were approved by voice vote.

Chairman Smith remarked that the budget revenue forecasts are used by

local government to make their budget priorities. Many counties have water projects with federal matches and those projects are funded by coal severance revenues. Projects with federal matches should be funded. The first approach to dealing with revenue shortfalls from coal severance taxes should be across the board cuts rather than targeted reductions.

Update from the Office of the State Budget Director regarding trends in coal severance receipts and the impact on counties and projects

Mr. Greg Harkenrider, Deputy Director of the Office of the State Budget Director (OSBD), testified that there were two consecutive years of increase in coal severance tax receipts after the recession. Four or more years have been record receipts for coal severance; however, the Consensus Forecasting Group expects to see a reduction in receipts this year and next. Coal prices have dropped, and OSBD has identified a softening in the coal market. July 2012 posted a 19 percent decrease in coal severance receipts, and the expectation is that in 2013 coal severance receipts will decrease by 22.8 percent.

In response to a question regarding the difference in receipts from one quarter to the next, Mr. Harkenrider replied that receipts were down 19 percent from the previous quarter in 2011. There have been a few factors affecting demand, and lower demand has reduced the price of coal. Input substitution on energy feedstock, changes in type of coal being purchased, and weather patterns affecting demand and supply have all played a role in the reduction in coal severance receipts. In 2013, Kentucky will likely experience a 22.8 percent decline in coal severance. Compounding that situation, Kentucky realized a 19 percent reduction from the earlier quarter this year.

In response to inquiries on the administration of severance tax, Mr. Harkenrider explained that the company pays the severance tax at the point of sale. The reason is that the time of the mining, the price that the coal will obtain in the market is unknown. There is no severance paid on stock piles of coal.

Mr. Harkenrider explained that the impact of estimated reductions on the budget. Two funds will lose revenue: the general fund and single county funds. The multi-county fund will be affected too. Coal severance is only two to three percent of total revenue receipts, so the significance to the state's overall revenue picture is not stark. The overall impact on the state budget becomes acute when there is a total revenue shortfall, meaning revenues of all types, rather than a shortfall in one specific type of revenue which is a small percentage of the total state revenue.

Mr. John Hicks, Deputy Director at OSBD, told the committee that there is a 31 percent reduction to the Local Government Economic Development Fund (LGEDF) and 13 percent reduction to the Local Government Economic Assistance

Fund (LGEAF). These reductions are principally due to the decrease in coal severance. Both funds receive a proportion of the total coal severance receipts paid to the Commonwealth. Within the LGEDF, coal severance is further apportioned for the single county and multi-county funds.

The single county fund receives two-thirds of the total severance going to LGEDF. For 2012, there is \$29 million to be spent on new projects, and \$50 million budgeted for 2013. Therefore, for FY 2012-2013, with the coal severance allocation being less than expected, there is about a \$20 million difference. In 2012, the General Assembly repealed the law which allocated \$19 million to the Workers Compensation Special Fund which resulted in an additional \$4.5 million being allocated to LGEDF.

In response to a question regarding a pending legal case dealing with workers compensation that might affect coal severance further, Mr. Hicks responded that statutorily \$19 million of coal severance receipts was combined with an assessment. This money was then used to pay workers compensation claims. There was a question about whether severance dollars were comingled with other funds. Part of the case has been settled, but the payback requirements have not been resolved. It is another step in the law suit.

Mr. Hicks explained that even though the state is losing an estimated \$15 million due to the shortfall in coal severance receipts. The state's obligations are expected to be less than expected receipts.

In response to a question about developing benchmarks for revenue expectations, Mr. Hick responded that benchmarks do exist and are used as part of the forecast.

In response to a question about debt service being paid from coal severance receipts, Mr. Hicks said that debt service was paid from coal severance in the 2004 or 2006 biennial budget. In response to another question about when the third quarter forecast of coal severance revenues would be available, Mr. Hicks responded by October 30th. A task force is needed to see what can be cut to save single-county and multi-county money.

Commissioner Tony Wilder, Department for Local Government (DLG), testified that DLG will be looking at quarterly receipts, projects pending, and estimates to determine project approvals. DLG will use low projections while attempting to fund good projects. Currently, DLG is in the black with respect to revenues, but being cautious about the future. Projects are based on demand and project merit. DLG does not look at the amount of coal severance in the county when reviewing a project request.

Senator Smith presented a committee resolution that proposed the formation of a working group. Representative Steele moved for the adoption, with a second by Representative Couch; the motion passed by unanimous voice vote.

Update from Commissioner Jon Gassett, Kentucky Department for Fish and Wildlife Resources, on Laws Governing Trade in Wildlife and Wildlife Parts

Commissioner Jon Gassett, Kentucky Department for Fish and Wildlife Resources (KDFWR), described the department's role in enforcement explaining the corporate mission is fisheries, wildlife, and boating safety. The commissioner explained that the officers have the most contact with the public. However, conservation officers also perform duties such as search and rescue, first responder, and water survival. Kentucky has one officer per county on average. The primary authority for KDFWR enforcement is found under KRS 150. KDFWR is involved with boat accident investigations, homeland security issues, and KDFWR plays a role in the protection of the state's bridges, dams, and power plants.

Commissioner Gassett commented that the department has been put into situations such as the discovery of methamphetamine laboratories and the provision of aid in relief efforts after disasters such as Hurricane Katrina, the 2009 ice storm. Due to their training and equipment, KDFWR enforcement officers are asked to work with other enforcement agencies. Commissioner Gassett described the organization of the conservation officers and stated that there is a cap of 165 officers. KDFWR is working to fill nineteen vacancies.

Commissioner Gassett discussed the issue of trafficking animal parts, noting KRS 15.4111 requires the use of a certified taxidermist to broker sales. Regulation and documentation on the front end of the illegal trafficking can increase penalties for illegal take. Commissioner Gassett explained how the penalties are assessed and discussed legislative precedent regarding illegal sale of paddlefish.

An emerging issue is catfish in the Ohio River. The fish are being commercially targeted by pay lakes in other states. KDFWR expects that catfish, in the future, will need to be regulated like paddlefish. Currently, there are no protections in place for the catfish.

KDFWR made policy recommendations which included: protecting premier species by statute; allowing trade of inedible parts for legal harvest; and setting penalty fee of \$1000 and six months jail time.

In response to a question regarding a flea market raid where 32 counts of illegal sales were filed, Commissioner Gassett remarked that the incident is being investigated. The officers involved in the raid were taking part in an undercover operation. No excessive force was taken. Regardless of whether the animal was killed legally, it is illegal to sell inedible parts of the animal.

There being no further business the meeting adjourned at 12:40 pm.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

Minutes of the 5th Meeting of the 2012 Interim October 4, 2012

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Natural Resources and Environment was held on Thursday, October 4, 2012, at 10:30 AM, 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, Katie Stine, and Johnny Ray Turner; Representatives Tim Couch, Keith Hall, Stan Lee, Reginald Meeks, Marie Rader, John Short, Kevin Sinnette, Fitz Steele, and Jim Stewart III.

Guests: Mathew Morey, Ph.D., Senior Consultant, Christensen Associates; Laurence Kirsch, Ph.D., Senior Consultant, Christensen Associates; and Pam Schneider, Human Resources Manager, Rio Tinto Alcan (Alcan Primary Products Corporation).

LRC Staff: Stefan Kasacavage, D. Todd Littlefield, and Susan Spoonamore, Committee Assistant.

A quorum being present, the September 6, 2012 minutes were approved without objection by voice vote, upon motion made by Representative Steele and second by Representative Hall.

Consultants from Christensen Associates Energy Consulting discuss their report on the impact of utility rates on the aluminum smelting industry in the Commonwealth.

Mr. Mathew Morey, Ph.D., Senior Consultant, and Laurence Kirsch, Ph.D., Senior Consultant, discussed the energy rate impacts on Kentucky industries. Mr. Morey stated that the report examined issues and policies associated with retaining Kentucky businesses in five specific manufacturing industries: aluminum smelting, automobile manufacturing, chemical processing, paper mills, and steel making. Kentucky's low retail electricity rates have attracted manufacturing industries that are particularly dependent upon electricity. Access to cheap coal-fired electricity generation will likely erode over the coming years with the implementation of federal standards that to regulate the adverse effects of the atmospheric emissions of coal-fired generation sources.

Mr. Morey said that the aluminum smelter plants in Kentucky, Century Aluminum and Alcan, are under financial pressure because of the recent decline of the world price of aluminum. Because electricity is roughly one-third of the cost of producing aluminum, the smelter plants are seeking concessions in the prices that they pay to Big Rivers Corporation,

their electricity supplier. The purpose of the report was to examine options open to the Commonwealth for mitigating the adverse impacts of rising electricity costs on heavy industry in Kentucky. The recommendations in the report apply to Kentucky's industry in general and to the aluminum smelters in particular.

Mr. Kirsch explained that the recommendations were informed by two general principles: Kentucky should spend its scarce economic development dollars in a manner to produce the greatest bang for the buck; and a short-term fix for any industry only makes sense if there are good long-term prospects for that particular industry. The report gave the following policy options with recommendations to address the problems of the aluminum industry:

Electricity priced discounts. Customers receiving discounts should make largest possible contribution to the utilities' fixed cost recovery.

Direct access to electricity markets. The utility should have no obligation to resume providing generation services to those customers who choose direct market access.

Electricity prices pegged to world aluminum prices. This is problematic because it passes aluminum price risk to the utility.

Forgiveness of Big Rivers' debt. This is not feasible.

Big Rivers' merger or acquisition. This would not address the fundamental aluminum price financial risks, merely shifts risks.

Economic development support by the Commonwealth. Support should depend on the smelters standing on their own in the long run.

Mitigating the adverse effects of a smelter closing. Mitigation can include: a) attraction of other industries with better long-term financial prospects; b) job training of former smelter employees; and c) information services regarding job opportunities elsewhere in Kentucky.

The report also contained the following general policy recommendations to help strengthen all large industrial firms:

Continue to rebalance utility rates to reduce or eliminate any existing cross-subsidies from industrial customers to commercial and residential customers.

Devote greater resources to Kentucky's educational systems, including technical training and employee re-training.

Provide greater assistance and guidance to businesses on the use of Industrial Revenue Bonds to help small-to-medium-sized businesses invest in energy efficiency projects.

Establish a revolving loan program to support business investment in energy efficiency projects.

In response to questions from Representative Lee, Mr. Kirsch stated that electricity rates for the two smelter plants in Kentucky were higher than the global

average rates paid by smelters. He said that the major industries using aluminum included air and ground transportation manufacturing, paper mills, and building material producers. Short-term state support could help Alcan get past a bump in the road, but assistance should only be given if Alcan could survive without continuing subsidies over time. In the long run, an industry needs to be able to stand on its own without government support. The study shows that Big Rivers has all the incentives that it needs to figure out how discounts might work.

Representative Gooch noted that Big Rivers was a small co-op whose income was derived from the smelter plants.

In response to Senator Bowen, Mr. Kirsch said that defining what constitutes "short-term" assistance is up to the General Assembly. The Commonwealth would have to figure out how long it would give aid to the smelter industry, and is in the position to define short-term and what the conditions will be. If Big Rivers and the smelters could determine what the short-term assistance will be, Big Rivers would still need to recover the costs of providing service. If rate discounts are given to the smelters, then Big Rivers will have to shift their costs to other customers.

In response to Representative Stewart, Mr. Kirsch said that the research did not look at the advertising costs of Big Rivers to see if money could be saved.

In response to Senator Ridley, Mr. Morey stated that the low retail electricity prices enjoyed by major aluminum smelters abroad are the result of government support from the countries where those smelters are located.

In response to Senator Stine, Mr. Kirsch said that the competitive electric market price projections were not completely accurate because of a recent federal district court decision in *EME Homer City Generation vs. EPA*. The court vacated EPA's latest cross-state pollution rule that would have required electric plants to install new pollution controls. As a result of the decision, it is uncertain what new pollution controls, if any, electric plants will be adopting and what costs they will be passing on to ratepayers. Mr. Kirsch expressed no opinion on what the courts would end up doing. Senator Stine stated that the recommendations were pessimistic, and she is hopeful that various levels of government, particularly the federal government, would see the error of their ways and try to work with businesses so that Kentucky can have reasonable energy prices.

In response to questions from Senator Gibson, Mr. Kirsch said that he doubted that onsite electricity generation at Century from natural gas would be less expensive than Midwest Independent Transmission System Operator (MISO) prices once capital expenditures and the cost of pipeline construction are taken into account. Mr. Morey said the report encourages industrial customers to be allowed to go to the market. However,

once market prices rebound and rise higher than the regulated rate that the industrial customer has been paying, the industrial customer cannot be allowed to return to that regulated rate. Mr. Kirsch said that any subsidies given to the aluminum industry ultimately are coming from someone else's pocket. Therefore, the General Assembly must determine how much money in subsidies should be expended per job per year in the aluminum industry to make taking the money from other sources worth it.

Representative Gooch said it was important that Big Rivers and the aluminum smelters work out some agreement. The aluminum industry is important to the state and the committee is committed to finding a way to save the industry. Federal regulations will soon affect other Kentucky companies with higher utility costs, and they too will not be able to compete in the global economy.

Pam Schneider, Human Resources Manager, Rio Tinto Alcan, explained that the Sebree smelter plant is one of the most efficient smelters in the world, but its short-term viability is at risk because of high energy prices. Ms. Schneider said that the aluminum industry is viable for the long-term if electricity prices can be fixed.

In response to Representative Gooch, Ms. Schneider agreed that, if the Century plant were to close and stop purchasing electricity, utility rates would rise, which would put the viability of the Rio Tinto Alcan plant at even higher risk.

The meeting was adjourned.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

Minutes of the 1st Meeting of the 2012 Interim

August 28, 2012

Call to Order and Roll Call

The 1st meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, August 28, 2012, 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, R.J. Palmer II, John Schickel, Dan "Malano" Seum, and Robert Stivers II; Representatives Mike Cherry, Larry Clark, Joseph M. Fischer, Derrick Graham, Mike Harmon, Mary Lou Marzian, and John Will Stacy.

Guests: Alison Lundergan Grimes, Secretary of State.

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

May 2012 Primary

Secretary of State Alison Lundergan

Grimes began the meeting by giving the Task Force a review of the May 2012 primary. Secretary Grimes used a PowerPoint presentation to cover the topics of: (1) voting equipment used by each county; (2) the number of 2012 primary precincts; (3) the Kentucky counties affected by Congressional redistricting in the 2012 Regular Session (HB 302) that required precinct changes; (4) voter registration statistics; (5) a comparison of past Kentucky election turnout percentages and the turnout percentages for the May 2012 primary; and (6) a review of issues in the primary as indicated by calls to the State Board of Elections or the Attorney General.

The primary focus of the presentation was on the data relating to voter registration and turnout. The Secretary noted that based on past primary turnout results her office had predicted that approximately 10-12 percent of Kentucky's registered voters would participate in the May primary, but that the actual total statewide turnout was 13.9 percent of registered voters. She also stated that within the total turnout statistics there was a range of 10-40 percent turnout in individual counties and 25 counties that had a turnout greater than 20 percent, with counties that had local races on the ballot, especially circuit clerk races, seeing greater participation numbers.

The Secretary testified that there were a total of 28 calls to the State Board of Elections on primary day, with all calls referred to county attorneys or the Attorney General when appropriate. An additional 31 calls were received by the Attorney General's fraud hotline.

Elections Issues for 2013 Regular Session

Secretary Grimes also discussed a few legislative initiatives that were either considered in the 2012 Regular Session or that her office would pursue in the 2013 Regular Session.

The Secretary said her office had advocated for, and the General Assembly had passed, HB 293 in the 2012 session, which established cost saving mechanisms for uncontested special elections for vacant General Assembly seats. The Secretary stated that the new language had not yet been applied because no applicable special election had been conducted, but that the new measure could save a county or counties considerable money when conducting such elections in the future.

The Secretary then reviewed a recent lawsuit that her office had filed in Franklin Circuit Court relating to the inability of her office to comply with the federal Military and Overseas Voter Empowerment (MOVE) Act of 2009 with the current statutory filing periods for special elections. The Secretary stated that under Kentucky law, in KRS 118.770, "When a writ of election or proclamation is issued to fill a vacancy, independent, or political organization, or political group petitions and certificates of nomination shall be filed at least twenty-eight days before the election." However, the MOVE Act

requires absentee ballots to be transmitted to military and overseas voters within 45 days of the election, and that the timing of the special elections and the filing periods would not allow the 45 day period to be met. The lawsuit seeks to enjoin her office from enforcing the KRS 118.770 filing period, and an agreed order has been submitted to move the deadline up, which will correct the issue for this year's special elections. The Secretary noted that the General Assembly needs to amend KRS 118.770 to correct the deadline conflict, and that her office would be advocating for that amendment in the 2013 session.

Before moving on to additional legislative initiatives, the members asked the Secretary several questions relating to the prior agenda item on registration and turnout statistics. A few members were concerned that the total number of registered voters reported by the Secretary appeared to result in nearly 100 percent voter registration when the under-18 population was subtracted from the state total population. The Secretary noted that the voter rolls often have a lag time in registration statistics because her office must both protect a person's constitutional right to vote and comply with a statutory framework to purge from the voter rolls a registered voter that may have died or otherwise become ineligible to vote in Kentucky. The members also asked several general questions relating to the time periods available to register to vote, as well as on the costs of elections and the ability to recruit, train, and pay precinct workers to work the polls on primary and election days.

The questions on costs were timely because the Secretary next noted that her office would also propose that the General Assembly should consider amending candidate filing fees in the 2013 Regular Session. The Secretary noted that many of Kentucky's filing fees are lower than in neighboring states, and that an increase in fees would directly increase funds available to administer elections – a cost that is borne by the counties if fees are insufficient. Her office would support efforts to amend KRS 118.255(1) and (2) to increase fees for candidates at both the state and county level for most offices. The Secretary also testified that the General Assembly should consider amending KRS 118.255(1) to permit the Secretary of State to waive a second filing fee for a candidate that has previously filed and paid the filing fee for a General Assembly office, when redistricting changes the district number and/or boundaries for a district that requires the candidate to withdraw and re-file in the new district.

A copy of the handout summarizing these topics can be found in the Legislative Research Commission library.

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

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

Minutes of the 3rd Meeting
of the 2012 Interim
September 27, 2012

Call to Order and Roll Call

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

Present were:

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

Guests: Fred Nelson and Joe Cowles, Personnel Cabinet.

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

Approval of Minutes

The minutes of the August 22 meeting were approved without objection, upon motion by Representative Rudy.

Kentucky Employees' Health Plan (KEHP) and Wellness Program – 2013 Plan Year

The guest speakers from the Personnel Cabinet were Fred Nelson, Commissioner, Department of Employee Insurance; and Joe Cowles, Deputy Executive Director, Office of Legal Services, and General Counsel for KEHP. They provided copies of their slide presentation; "KEHP Benefits Selection Guide"; and an informational sheet, "Getting Started with Humana Vitality."

Responding to a question from Representative Henley, Mr. Cowles explained that the loss of grandfathered status would result in additional costs due to plan design mandates of the Affordable Care Act. KEHP has saved approximately \$15 million by retaining grandfathered status.

Mr. Cowles discussed the impact of the Commonwealth budget crisis and other challenges confronting KEHP in the new plan year. He said that two percent increases in the employer contribution were budgeted for both plan years 2013 and 2014. Health care inflation continues to increase, and there is a continued need to improve member tools and education and increase participation in the wellness and disease management programs.

In keeping with federal healthcare reform mandates, W-2s for the 2012 tax

year will report the health insurance contributions of both employer and employee. This is a federal reporting requirement and is for informational purposes only. The Cabinet is in the process of finalizing a *Summary of Benefits and Coverage*, a document required by healthcare reform to help consumers better understand their coverage and compare different coverage options. It will be available online and should be helpful to plan members. A new federal law has reduced the maximum that may be contributed annually to a flexible spending account (FSA) from \$5,000 to \$2,500 per participant. Permissible plan design and employee contribution changes for 2013 are limited in order to maintain grandfathered status.

Representative Cherry said a constituent told him that a Personnel Cabinet webinar mentioned that emergency room (ER) coverage would apply only to life-threatening events. Mr. Cowles said that is not correct. There was a small modification to ER coverage, but he does not believe there will be a material impact on the ER benefit. The criteria for emergency services will be based on a "reasonable layperson standard." There is no attempt to reduce access. Persons who do not need ER care may still seek it, but it would not be a covered benefit. Responding to Representative Owens, the speakers explained that for minor injuries it is more cost efficient to seek care from urgent treatment centers. The Benefits Selection Guide states on page one that seeking care from a primary care doctor or urgent treatment center may be more appropriate than an ER.

When Representative Rudy asked whether the two percent employer contribution increases for 2013 and 2014 will apply also to cities and counties, Mr. Cowles said he is unable to answer because the Personnel Cabinet relies on the state budget office to provide that information.

Mr. Nelson recited the principles and goals for 2013: provide uniform coverage across the Commonwealth; encourage wellness and healthy lifestyles; provide preventive care at little or no cost; improve chronic disease care; educate members about plans that are more appropriate for their health needs; provide plan alternatives that are accessible for retirees; provide a quality PPO option; and strive to hold down costs for families and dependents. Goals are to maintain a low cost plan option, including a zero dollar plan for singles; offer the same four plans as 2012, consumer-driven healthcare options, and a benefits analyzer; keep premiums competitive with other states; provide preventative care at little or no cost; promote the Humana Vitality incentivized wellness program; maintain benefits comparable to 2012; and maintain medical benefits and contribution increases within grandfathered limits.

Mr. Nelson said that open enrollment for 2013 will be passive—that is, no action is required unless a member wants to

change plans or coverage level, or renew or start a healthcare/dependent care FSA. Open enrollment will be held October 8-26, with eight benefit fairs being held throughout the state from October 8-18. Many of the fairs will offer biometric screenings, free flu shots, and computer kiosks for on-spot enrollment. The Benefits Analyzer tool will be provided in paper format and mailed to all KEHP members, with the exception of some members of Kentucky Retirement Systems and Kentucky Teachers' Retirement System. Rate increases and benefit adjustments are relatively minor for the new plan year.

When asked by Representative Cherry, Mr. Cowles said that KEHP will probably lose grandfathered status in 2014, which means the plan will become subject to at least an additional \$15 million in benefits. The Cabinet is already beginning to plan for 2014 and the changes that will be brought by federal healthcare reform.

Representative Ford asked whether there has been an analysis relating to usage of the 90-day maintenance drug benefit at retail pharmacies versus mail order. Mr. Nelson said pharmacies that participate in the 90-day retail network are required to offer rates at least as good as mail order rates. There are no administrative fees associated with the 90-day benefit. Mr. Cowles said he is not aware of any analysis but that utilization of the 90-day benefit is approximately five percent for retail pharmacies and only two percent for mail order. The mail order program receives no favoritism over independent retail pharmacies.

When Representative Ford asked whether the Cabinet could provide legislators a side-by-side comparison of 2012 and 2013 plan year changes to share with their constituents, Mr. Nelson said they would. When asked whether retiree premiums have increased significantly, Mr. Cowles advised Representative Ford that under-65 retirees covered by KEHP do not pay higher premiums than other plan members.

When Representative Napier asked questions about Medicare Plan-B and health insurance for himself and other retiring legislators, Mr. Cowles explained to him that he would lose KEHP coverage upon retirement because he would no longer be an active employee and would be Medicare-eligible. He advised him to contact Donna Early [Executive Director, Judicial Form Retirement System] regarding eligibility for coverage through the legislator/judicial retirement plan. Representative Lee described elements of the Medicare program and offered to meet with Representative Napier later to discuss them.

Mr. Nelson gave a detailed review of 2013 premium rates and benefit copays, coinsurance, deductibles, and out-of-pocket limits for the Standard PPO, Maximum Choice, Capitol Choice, and Optimum PPO plans. He noted that employer contributions will increase by two percent. The average increase in

employee contributions is five percent, but rates for single coverage will not change. The Standard PPO plan will continue to offer a zero dollar employee contribution (nonsmoker rate). Sixty-five percent of plan members are enrolled in the Optimum PPO plan. In order to comply with federal law and retain grandfathered status, coinsurance percentages will not change. Walgreens returned to the Express Scripts pharmacy network as of September 15.

Mr. Cowles said the single coverage annual premium for Optimum PPO is \$753, compared to the national average of \$1,002, according to the Kaiser Family Foundation. KEHP's actuarial consulting firm Aon Hewitt reports a gradual shifting of costs from employer to employee in other state employee plans over the past year. Copays have increased in 30 percent of states, and deductibles have changed significantly in 10 percent of states. There were incentive-oriented design changes in 20 percent of states.

KEHP has received approximately \$95.5 million from the Early Retiree Reinsurance Program (ERRP), established by federal healthcare reform to help employers with the cost of medical claims for early retirees (age 55-64). Kentucky ranks in the top 10 states relative to the amount of funds received and will use the funds to offset KEHP's and member health benefit costs. ERRP reimbursement funds must be used no later than December 31, 2014. The program has ended because the funds have been exhausted.

Mr. Cowles discussed KEHP's wellness program, now rebranded as *LivingWell*. He said 80 percent of KEHP costs are attributed to preventable or manageable chronic health conditions. According to Kaiser, life expectancy in Kentucky is 76.2 years versus 78.7 nationally. Kentucky exceeds the national average with respect to the percentage of overweight or obese adults and children ages 10-17, the percentage of adults who smoke or report poor mental health, and the number of deaths due to cancer. KEHP is dedicated to wellness and providing the tools and information to help members live healthier, longer lives. The worksite wellness program includes employee care clinics, a wellness coalition, a healthy meetings initiative, and employer-sponsored events. Programs targeted for children include *Vitality Kids* and the Alliance for a Healthier Generation. Prevention and healthy living programs are promoting tobacco cessation, nutrition, physical activity, mental health, preventative care at little or no cost, and disease management. Free flu shots will be available from September 15 to November 30. In 2011, 73,000 flu shots were provided.

Mr. Cowles gave a detailed overview of HumanaVitality, a fully incentivized, interactive wellness program that is the main tool of the wellness plan. This relatively new program utilizes behavioral economics to improve health with actuarially optimized incentives and

provides seamless integration of a broad network of devices, health clubs, coaching services, and providers. The program has also been implemented at Georgetown's Toyota Motor Corporation. Business First Louisville has recognized KEHP as one of Kentucky's healthiest employers.

Thus far, 12,195 health assessments have been completed, 21,908 members have achieved bronze status, and over 2,300 members have taken advantage of biometric screenings. Rewards are redeemed based on Vitality points earned through completion of a health assessment, Vitality Check, and other goals and activities. Public health departments are providing Vitality Checks, and the wellness program is being promoted through the Kentucky Department of Education. HumanaVitality and Walmart are establishing a partnership to incentivize healthful eating by offering a five percent discount on purchase of healthy foods. Representative King said she would like grocers in areas without a Walmart to also have the opportunity to partner with HumanaVitality.

After applauding the wellness program, Representative Belcher said she was contacted by a parent who said her child was prescribed Adderall and that the required \$600 urine test was not covered by insurance. Mr. Nelson and Mr. Cowles said they had not heard similar complaints but would investigate the matter for Representative Belcher.

When Representative Harmon asked whether HumanaVitality would have an app for smartphones, Mr. Cowles said he knows of a HumanaFit app and a pedometer app and will e-mail more information about available apps to Representative Harmon.

Representative Stacy referred to a resolution sponsored by Representatives Ford and Hoover in the 2012 Regular Session relating to mail-order policies and practices and retail pharmacy participation in the pharmacy benefits program. He asked whether KEHP has done an analysis of net cost to the plan for purchase of maintenance drugs by mail order compared to cost at retail pharmacies. Mr. Cowles said there has not been an analysis but he believes the cost should be the same for both. Representative Stacy asked for a cost comparison of the 20 most common maintenance drugs, based on the net cost billed to KEHP—and not based on NBC (National Drug Code) codes. Mr. Cowles said they would look into that.

Subcommittee Report – Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

Representative Darryl Owens, Co-Chair of the Task Force, read a brief subcommittee report of the August 28 meeting.

Adjournment

With business concluded, the meeting

adjourned at 2:44 p.m.

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

Minutes of the 4th Meeting of the 2012 Interim September 13, 2012

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 13, 2012, at 1:30 PM, at the Kentucky State Police Training Facility in Frankfort, Kentucky. Senator Jack Westwood, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Joe Bowen, Vernie McGaha, Dennis Parrett, Kathy W. Stein, and Mike Wilson; Representatives Royce W. Adams, Tom Burch, Mike Cherry, Tim Couch, Ron Crimm, Robert R. Damron, Myron Dossett, Martha Jane King, Jimmie Lee, Donna Mayfield, Tim Moore, Tom Riner, Carl Rollins II, Rita Smart, John Tilley, Ben Waide, and Alecia Webb-Edgington.

Guests: Boyce Wells, Operations Division, Lt. Col. Leslie Gannon, Administrative Division Director, Lt. Tom Pyzik, Assistant Academy Commander, and Morgain Sprague, Legal Counsel, Kentucky State Police.

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

Minutes

The committee's August meeting minutes could not be adopted due to a lack of a quorum. The minutes will be presented at the October meeting for adoption.

Kentucky State Police Training Facility Tour

The Veterans, Military Affairs, and Public Protection committee members toured the new Kentucky State Police training facility at 380 Coffee Tree Road, Frankfort, Kentucky. Boyce Wells led members on a tour of the facility and discussed the accomplishments made with it. He discussed the advantages of the facility's central location and stated that KSP be able to offer training to federal, state, and local agencies. Mr. Wells discussed the benefits of KSP having its own administration building, cafeteria and dining facility, multipurpose room for ceremonies and other events, a weight room, dorms where cadets can be housed, and land for physical training, among many benefits to having the property and facilities.

Along with Mr. Wells, Lt. Col. Leslie Gannon indicated KSP's vision for the future of the facility beyond the remodeling of the dorms and administration building, including hopes for an indoor firing range so that KSP can dictate its own training

schedule rather than conform to the schedule of borrowed facilities. The added space and the new sites potential will allow KSP to have more cadet classes, which will help increase the number of troopers in the field. With 900 total troopers in Kentucky and only 475 of them on the road, KSP has fewer troopers in the field than ever before.

There being no further business, the meeting was adjourned.

CAPITAL PLANNING ADVISORY BOARD

Minutes of the 3rd Meeting of the 2012 Calendar September 21, 2012

Call to Order and Roll Call

The 3rd meeting of the Capital Planning Advisory Board was held on Friday, September 21, 2012, at 10:00 AM, on the campus of Bluegrass Community and Technical College (Leestown), in Lexington, Kentucky. Senator Jack Westwood, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Melvin B. Henley, Co-Chair; Representative Ron Crimm; Charles Byers, John Hicks, Bill Hintze, Sherron Jackson, Mary Lassiter, James W. Link, Mark Overstreet, and Carol Palmore.

Guests testifying before the Board:

Dr. Augusta Julian, President, Bluegrass Community and Technical College; Tom Denton, Vice President of Facilities and Administrative Services, Kim Oatman, Chief Facilities Officer, and Dr. Brian Van Horn, Murray State University; Bob Wiseman, Vice President for Facilities Management, Angela Martin, Vice President for Financial Operations and Treasurer, and Steve Byers, Director of Government Relations, University of Kentucky.

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

Welcome and Remarks

Senator Westwood thanked Dr. Julian and her staff for hosting the Capital Planning Advisory Board's last meeting of the year. Dr. Julian briefed members and guests about the history of Bluegrass Community and Technical College (BCTC) and future projects the college is planning. BCTC is one of 16 two-year colleges in the Kentucky Community and Technical College System (KCTCS). The college, currently operating in six locations in central Kentucky, is constructing a new campus on the site of Eastern State Hospital in Lexington. The *Classroom Building - Lexington Community College - Planning and Design*, was authorized in the 2000-2002 Executive Budget with \$1 million restricted funds. The project was later transferred from Lexington Community College to KCTCS and redesigned to be the first building on the Newtown Campus. Subsequent budget appropriations included \$35,741,000 bond funds and restricted fund authorizations

totaling \$17,800,000 for three related projects. No restricted funds for the related projects have been identified at this time.

The scope of work for Phase I includes construction of an approximately 90,000-square-foot facility that will house labs and faculty/staff offices, general education classrooms and other auxiliary spaces. Additional work will include renovation of the historic Administration and Laundry buildings, demolition of the remaining structures and cemetery improvements. The new facility is scheduled to be substantially complete by February 2013, and classes are scheduled to begin in August 2013.

The funding request of \$45 million for half of Phase Two for BCTC's Newtown Campus was not included in the 2012-14 biennial budget. Phase Two will include construction of three buildings at an estimated cost of approximately \$100 million. The buildings will create new facilities for nursing and allied health, science, and mathematics. Additional renovations are planned to areas such as the Administration Building's fourth floor ballroom to provide space for community activities.

In response to a question from Mr. Hintze, Dr. Julian stated that Eastern State Hospital should be completely off the Newtown Campus by April 15, 2013. [Eastern State Hospital will move to a new facility located on the Coldstream Campus of the University of Kentucky.]

In response to a question from Senator Westwood regarding the feasibility of demolishing versus constructing new buildings, Dr. Julian replied that BCTC and its community partners prepared an analysis two years ago in regards to which buildings at the new site should remain and which buildings should be demolished. To preserve the historic nature of the campus, it was decided the Administration and Laundry buildings should be renovated for adaptive use. The cemetery will also remain on the site. Other buildings considered not functional will be demolished.

In response to a question from Ms. Palmore, Dr. Julian stated that the BCTC Film Studies Program started five years ago and is a one-semester program. The program promotes awareness of America's place in the world through the viewing and discussion of films that represent unique perspectives from around the world. BCTC recently obtained approval to offer an Associate of Fine Arts degree, which will expand the program in an effort to bring film companies to Kentucky.

Resolutions for Retiring Board Members

Mr. Hicks and Mr. Hintze read resolutions honoring the Board's two Co-Chairs, Representative Melvin Henley and Senator Jack Westwood. Both members will retire from the General Assembly at the end of the year. The resolutions were adopted by voice vote.

Approval of Minutes

A motion to approve the minutes of

the May 22 and July 20, 2012 meetings was made by Representative Henley, seconded by Mr. Jackson, and approved by voice vote.

Amendment to the 2014-2020 Capital Planning Instructions

Shawn Bowen, Committee Staff Administrator for the Board, discussed an amendment to the 2014-2020 Capital Planning Instructions. This change applies to capital planning system online forms for proposed construction projects and equipment purchases. Agencies will now be required to estimate a proposed project's impact on the agency operating budget for a five-year period rather than a two-year period. The agency capital planning instructions and Form SYP-P2 will be amended to reflect this change. The capital planning instructions were approved by the Board at its May 22, 2012, meeting and no further action was required. This change was requested by staff in the Governor's Office for Policy Management to preserve the uniformity between the Kentucky Budgeting System and the Capital Planning System.

The Use of Third-Party Financing for Postsecondary Construction Projects

Murray State University – Construct Paducah Regional Campus Facility

Mr. Denton discussed the Construct Paducah Regional Campus Facility project. The 2010 Extraordinary Session HB 1 (2010-12 Budget) authorized \$17,646,000 in other funds (third-party financing) for this project. This project involves the design and construction of a new regional campus facility on land at the intersection of I-24 and US 62 in Paducah. This property is also known as the Barkley Woods tract. It was purchased in late 2008 at the recommendation of a task force established to evaluate alternatives for establishing an extended campus in the area. The new facility will provide 50,000-square-feet of classroom space, administrative office space and computer laboratories, and will support programs offered through the Commonwealth Virtual University. The anticipated completion date is December 2013.

A Memorandum of Agreement (MOA) was executed by the University and the McCracken County Fiscal Court, the City of Paducah, and the Greater Paducah Economic Development Council. Under the MOA, the University will design, construct and assume responsibility for operation of the building and grounds, and the County will issue \$10 million of general obligation bonds to finance the project. The projected annual debt service is \$790,000, of which the City and the County will be responsible for \$500,000, and the University will pay \$290,000.

In response to a question from Mr. Hicks, Mr. Denton replied that the City of Paducah and McCracken County, in their past budgets, ensured funds were available for the project.

In response to a question from Mr.

Hicks, Dr. Van Horn stated that Western Kentucky Community and Technical College (WKCTC) does not have a contractual role in this new facility, but because the purchased land is across the street from WKCTC, degree programs will not be duplicated at the new facility.

In response to a question from Mr. Jackson regarding the advantages of using third-party financing as opposed to the traditional state construction process, Mr. Denton said there are two benefits to financing construction projects in this manner. Projects are constructed at a faster rate and the University will pay less debt service over a 20-year period.

In response to a question from Ms. Palmore, Dr. Van Horn replied that the Paducah site will offer online degree programs will be offered in the fields of Nursing, Business Administration, Social Work, Education, and Computer Information Systems.

In response to a question from Representative Simpson, Mr. Denton said this is the first time the University has used third-party financing. Mr. Hicks added that this project is unique because third-party financing is being used to construct an academic facility rather than a sports facility.

Representative Henley said even though the universities are using private funds, the state is still responsible for the maintenance of these facilities, and this should not be the case. Senator Westwood added that another concern of the General Assembly is whether agency bonds affect the overall bond rating for the state.

University of Kentucky – Construct New Student Housing

Mr. Wiseman and Ms. Martin discussed the University's plans to construct new student housing with third-party financing. The University of Kentucky (UK) has entered into a long-term ground lease with Education Realty Trust (EdR) to construct, expand and potentially manage student housing. The lease is for 2.167 acres located at the intersection of Huguelet Drive and University Drive.

The first project under the lease arrangement, entitled *Lease-Purchase New Housing*, was authorized in the 2010-2012 Executive Budget (\$52.5 million, Other – Third Party Financing). The project includes construction of two residence hall facilities on Haggin Field near the William T. Young Library. The buildings comprise approximately 313,000-gross-square-feet and will contain classrooms, faculty offices and 601 undergraduate beds. The total cost of the project is estimated at \$25.8 million, and construction should be complete by fall 2013.

EdR will provide 100 percent equity investment in UK's student housing, and no state funding is involved in the project. Under the terms of the EdR/UK management agreement, EdR will receive a four percent management fee based on gross revenues derived from the annual

revenue from the premises (student rents). The fee will be reduced to two percent upon execution of the contract to construct 2,500 beds or to manage student housing. EdR will also receive a minimum nine percent internal rate of return. Beginning at the rent commencement date and continuing throughout the term of the lease, EdR shall pay UK base rent in an amount equal to 10 percent of EdR's total annual revenue from the premises. The base rent will increase by 2 points to 12 percent upon execution of the contract for EdR to construct at least 2,500 beds or to manage student housing. The University will receive 25 percent of net income in each year in which EdR achieves a nine percent internal rate of return. The initial lease term is 50 years, and contains the option to renew for successive periods of 10 and 15 years.

In response to questions from Representative Henley, Ms. Martin said the cost of capital construction is based on timing. EdR can construct the project faster than UK, and while it may not be the least expensive method of construction, the project is completed in a more efficient manner.

In response to questions from Representative Simpson, Ms. Martin replied that the management agreement with EdR stipulates that housing rental rates will start slightly above the University's premium housing rate. The rates cannot be increased more than three percent for the next two years, and then to a maximum of four percent, or the two-year rolling average increase in the consumer price index. The University must approve any proposed rental rate changes. In addition, EdR must set aside \$260 per bed annually to improve or replace these facilities. If EdR defaults on one building, the University may claim default on all of the facilities. The University will then have the option to cancel the agreement in total and, if there is a financial loss, the University can apply that loss against the purchase price of the facilities.

In response to a question from Ms. Palmore, Ms. Martin replied that the private contractor will pay prevailing wage.

In response to a question from Mr. Hintze, Ms. Martin replied that four dormitories constructed in 2006 still have debt associated with them. This debt cannot be refinanced until 2015.

In response to a question from Representative Henley, Ms. Martin said the variables included in the calculation of the Consumer Price Index Indicator included the cost of energy, labor, and supplies.

In response to a question from Senator Westwood, Ms. Martin stated there are also other buildings on campus, Page, Keeneland and the Towers, which have bonds issued against them.

Adjourn

Senator Westwood stated that the Board will not meet until the 2013 General Assembly adjourns. At that time, the focus

will be the preparation of the 2014-2020 Six-Year Capital Improvements Plan. With there being no further business, Senator Westwood made a motion to adjourn the meeting. The motion was seconded by Representative Henley, and the meeting adjourned at 12:28 P.M.

CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Minutes of the 9th Meeting
of the 2012 Interim
September 18, 2012

Call to Order and Roll Call

The 9th meeting of the Capital Projects and Bond Oversight Committee was held on Tuesday, September 18, 2012, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Representative John Will Stacy; Bob Wiseman, Vice President for Facilities Management, University of Kentucky; Larry Owsley, Vice President of Business Affairs, University of Louisville; Laurie Dudgeon, Director, Administrative Office of the Courts; Tim Conley, Morgan County Judge/Executive; Jeff VanHook, Construction Manager, Codell Construction; Tim Sturgill, General Counsel, Kentucky Association of Counties; Scott Aubrey, Director, Division of Real Properties; John Hicks, Deputy Director, Governor's Office for Policy and Management; Katie Smith, Executive Director, Office of Compliance, Financial, and Administrative Services for the Cabinet for Economic Development; Robin Brewer, Financial Analyst, Office of Financial Management; Rick McQuady, Chief Executive Officer, Kentucky Housing Corporation; Lisa Beran, General Counsel, Kentucky Housing Corporation; Mark Offerman, Chief Operating Officer, Kentucky Housing Corporation; Chris Thieneman, Highview community representative; Jon Bingham; Highview community representative; Michael Gross, Project Manager, LDG Multifamily LLC; Scott Bryan, Chief Operating Officer, LDG Development; Sonja Minch, City of Hollow Creek; David Steff, President, Apple Valley Homeowners Association.

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

Approval of Minutes

Representative Rudy moved to approve the minutes of the August 21, 2012 meeting. The motion was seconded by Representative Wayne and approved by voice vote.

Correspondence Items

Kristi Culpepper, Committee Staff Administrator, said there were two letters for committee members to review. The first was a letter from the committee

to the Secretary of the Finance and Administration Cabinet explaining that the committee did not take action on the Kentucky Health Benefit Exchange Information Technology System project for the Cabinet for Health and Family Services. The second letter was from the Finance Secretary advising the committee that the Cabinet intends to proceed with the project.

Information Items

Ms. Culpepper said there were two information items for committee members to review. The first was the annual report of bonds outstanding from the Office of Financial Management. As of June 30, 2012, the Commonwealth had \$9.31 billion of appropriation-supported debt outstanding. The Commonwealth retired \$382 million of appropriation-supported debt during the last fiscal year and paid \$352.4 million in interest.

The second item was a report from the Administrative Office of the Courts (AOC) on the status of the Court Facility Use Allowance Contingency Fund. The fund has a balance of \$236,600. Ms. Culpepper said AOC would be requesting an allocation from the fund later in the meeting.

Reports submitted by the University of Kentucky (UK)

Bob Wiseman, Vice President for Facilities Management at UK, presented four items to the committee. The first was a report of consolidation of projects with no overall scope increase. UK is merging \$1,400,000 of the Repair, Upgrade, or Improve Mechanical Systems appropriation with the appropriation for Renovate Dentistry Class Lab, for a combined scope of \$4,700,000. The combined authority will allow UK to upgrade the ventilation systems and modernize technology used in teaching dental students. No action was required.

The second item was a request for a scope increase on an unbudgeted capital project. The \$2,200,000 scope increase to the Renovate/Upgrade Softball Complex project is due to bids exceeding the original scope of the project. The new scope for the project is \$7,500,000. The increase will be funded with private donations.

The third item was a request for a new, unbudgeted capital project. The project, Renovate/Expand Soccer Facilities, involves improvements to the locker, shower, and lounge spaces for both the men's and women's teams, renovations to the training and umpire rooms, new seating, a new press box, and upgrades to the plumbing, electrical, and HVAC systems. The project is not expected to exceed \$7 million and will be funded with private funds. In response to a question from Representative Wayne, Mr. Wiseman said the private funds are in hand.

The third item was a request for a new, unbudgeted capital project. The \$3.6 million Construct Farmhouse Fraternity project will be funded with private funds and will include a new fraternity house that will provide housing for 52 fraternity

members on Rose Lane on university-owned property.

In response to a question from Representative Wayne, Mr. Wiseman said the three projects would be built under the provisions of prevailing wage.

Senator Buford made a motion to approve the scope increase and two unbudgeted capital projects. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

Reports submitted by the University of Louisville (UL)

Larry Owsley, Vice President for Business Affairs at UL, presented two items to the committee. The first item was a report of an emergency project to repair and replace the roofs on three on the university's buildings due to damage from a hail storm on April 28, 2012. The cost estimates total \$2,704,000 for the three buildings, but the projects have not been bid yet. No action was required.

The second item was a new unbudgeted capital project. The \$1.1 million Health Sciences Center Utilities Hazard Mitigation project involves the replacement of approximately two blocks of high voltage overhead utility feeders with underground lines. The project will be funded with \$825,000 in federal funds and \$275,000 in university plant funds. Senator Carroll made a motion to approve the project. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

Report submitted by the Administrative Office of the Courts (AOC)

Laurie Dudgeon presented a request for an allocation in the amount of \$118,700 from the Court Facility Use Allowance Contingency Fund. This would be an allocation of General Fund money each year to support a new bond issue for the Morgan County Judicial Center, which was still under construction when it sustained significant structural damage when a tornado hit West Liberty in March 2012. Ms. Dudgeon said Morgan County's settlement with the insurer, Kentucky Association of Counties (KACo), was \$1.5 million dollars less than the construction estimate to rebuild the damaged facility.

In response to a question from Representative Wayne, Ms. Dudgeon said Morgan County had been paying insurance premiums while the courthouse was under construction.

In response to another question from Representative Wayne, Jeff VanHook, Codell Construction, said the reason extended services fees had increased from \$40,000 to \$912,308 was due to change orders and the increased length of time needed to complete the construction. He said the fees are being calculated in accordance with Chapter 15 of AOC's procedures.

In response to another question from Representative Wayne, Mr. VanHook said Codell has continued to perform work on the project since the tornado, including assessing damage, demolition, and

working with subcontractors, architects and engineers. He said some components of the building could be salvaged and used.

In response to another question from Representative Wayne, Mr. VanHook said Codell had presented KACo with a good faith estimate of how much it would cost to rebuild the project to the same specification as ordered in the architect's original plans for the building.

Tim Sturgill, General Counsel for KACo, also responded to Representative Wayne's question. He said KACo's original offer of \$7.6 million was based upon work of adjusters to meet KACo's obligation, which is to bring the building back to its level of completion at the time of the tornado. At that time, the building was between 60 and 70 percent complete. KACo had some questions about numbers from some of the contractors and eventually settled with Morgan County at \$8.2 million.

Tim Conley, Morgan County Judge/Executive, also provided information on the subject of how the settlement was reached with KACo. He said both Codell and the architecture/engineering firm of Murphy and Graves have continued to work on the project since the tornado. The structure was insured for \$9.5 million, but KACo paid out less than that because some materials on site were salvageable. Construction materials for the project have gone up in price since the original bid in 2009. There are also demolition costs associated with the project and risk to Codell because of the unknowns associated with the damage sustained. AOC is renting space at an annual cost of \$100,000.

In response to another question from Representative Wayne, Judge/Executive Conley explained that Morgan County settled with KACo on the amount of \$8.2 million because negotiations had gone on for six months and the county wanted to proceed without further delay.

In response to a comment by Senator Carroll, Mr. Sturgill explained that on any property insurance claim, KACo is responsible for the first \$250,000, and anything above that amount is paid by the reinsurance company, Munich Re.

Representative Damron stated that he believed the contingency fund was established for situations like the one Morgan County experienced and supported the allocation.

Senator Buford echoed Representative Damron's sentiments and said he supported the allocation.

Representative Wayne commented that he believed that every step of a construction project needed to be fully and properly insured so that taxpayers are not left filling the gap between insurance payments and rebuild costs.

Senator Carpenter said his understanding of the cost difference had to do with having to make sure the parts of the structure that are still in place are safe to use.

Representative Stacy said the damaged structure is an eyesore and hazard to the community, and the contingency account was put in place for this type of incident. He appreciated the committee's consideration of the request for the allocation request.

In response to a question from Senator Leeper, Judge/Executive Conley said the warranty from Codell will be in writing. Mr. VanHook said the warranty on the workmanship would be for one year. There are additional warranties on materials provided by the material manufacturers. In response to another question from Senator Leeper, Mr. VanHook said Codell bid the project to 100 percent completion, taking into account what materials were still useable at the site.

In response to another question from Senator Leeper, Judge/Executive Conley said the difference between the cost to rebuild and the insurance settlement was based in part on demolition that was done and in part on because insurance was not purchased to cover the cost associated with initial demolition at the site. Mr. VanHook added that the job is complex because work will be completed out of sequence.

In response to a question from Senator Leeper, Ms. Dudgeon said that the contingency fund is an amount of bonding for court facilities. Judge/Executive Conley said that Ross Sinclair was the original financial advisor, and the county was working with bond counsel to be sure they use the appropriate financial advisor on the new bond issue.

In response to another question from Senator Leeper, Ms. Dudgeon said that this project would take about half of the existing contingency fund.

Senator Carroll made a motion to approve the allocation. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

Lease reports submitted by the Finance and Administration Cabinet

Scott Aubrey, Director, Division of Real Properties, presented two new leases to the committee for approval. The first was for 15,466 square feet of office space at \$11.00 per square foot for the Cabinet for Health and Family Services in Madison County. The lease will consolidate space currently leased in two locations and will relieve overcrowding at both currently occupied spaces. The proposed annual cost is \$170,126. Senator Carpenter made a motion to approve the lease. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

The second lease was for 1,638 square feet of office space at \$10.00 per square foot and 97,853 square feet of warehouse space at \$5.41 per square foot for the Department for Libraries and Archives (KDLA) in Franklin County. The lease will allow for consolidation of two existing leases, and will allow KDLA to accept storage requests that it currently denies due to lack of space. The proposed annual cost is \$545,765. Representative Rudy made a motion to approve the lease. The

motion was seconded by Representative Wayne and passed unanimously by roll call vote.

Project report submitted by the Finance and Administration Cabinet

John Hicks, Deputy Director, Governor's Office for Policy and Management, presented a request for a scope increase for the Department of Military Affairs (DMA). The \$750,000 (100 percent federal funds) Construct CERF-P Facility at the Boone National Guard Center project received approval from the committee in August 2011. However, the lowest bid for the project came in \$78,300 above original budget, requiring a scope increase. The additional funding has been provided through a Department of Defense Military Construction Agreement and through the Air National Guard FY 2012 Master Cooperative Agreement.

In response to a question from Representative Wayne, Mr. Hicks said that this unit deals with the response to chemical and biological issues and this facility will house staff and the storage needed to support the unit.

Senator Carroll made a motion to approve the scope increase. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

Kentucky Infrastructure Authority Grant

Ms. Culpepper said that KIA reported a \$200,000 grant authorized in the 2008-2010 budget for Greenhill Water System in Harlan County.

Economic Development Bond (EDB) Pool Grant

Katie Smith, Executive Director, Office of Compliance, Financial, and Administrative Services for the Cabinet for Economic Development, presented an Economic Development Bond grant in the amount of \$250,000 to the City of Bowling Green for the benefit of Graham Packaging, L.P. The company, which designs, manufactures, and sells custom blow-molded rigid plastic containers, will be required to create 48 new, full-time jobs for Kentucky residents paying not less than \$22 per hour, excluding benefits. The bond funds will be used to offset the costs associated with the project, which include building improvements, new equipment, and a rail spur. Representative Wayne made a motion to approve the project. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

New bond issue-Kentucky Housing Corporation-Frontgate Apartments

Robin Brewer, Financial Analyst, Office of Financial Management, presented a new bond issue: Kentucky Housing Corporation (KHC) Conduit Multifamily Housing Revenue bonds (Frontgate Apartment) Series 2012. The gross proceeds are anticipated to be \$15,810,000 and will not exceed \$17,480,000. Proceeds from the sale of the conduit bond issue will be used to construct a new apartment complex at 7144 Outer Loop in Louisville. The 180-unit complex will be reserved for families earning 60 percent or less of the

area median income.

In response to a question from Senator Leeper, Rick McQuady, Chief Executive Officer of KHC, said that there is a standard review done for all projects seeking KHC assistance. The application and past performance of the requesting entities are evaluated and KHC found this project to be in order.

Jon Bingham, a community representative, and Chris Thieneman, another community representative, asked to address the committee regarding this project. Mr. Thieneman, a property owner near the proposed development and real estate developer, said the community was not against low-income housing being built in the proposed location, but did object to the developer in charge of the project.

Mr. Bingham asked that members of the committee vote "no" on the Frontgate Apartment project. He said in 2009 an apartment complex at the same location was originally proposed as a market-rate project and was met with strong opposition from the community. Another developer was sought and a similar project was proposed, with similar opposition from the community. The community opposes the height and number of units proposed for the location and believes additional retail or mixed-use development would be a better fit. He also said the community was concerned with developer (LDG) with the other properties it owns and manages. Mr. Bingham said he does not believe the community can absorb a project of this size. He said the cost for a 3-bedroom apartment at Frontgate is as expensive or more expensive than other existing units in the area. He said there is bipartisan opposition to the project as proposed from Representative Larry Clark, Representative Kevin Bratcher, and Senator Dan Seum.

In response to a question from Senator Buford, Mr. Bingham said the community leaders have met with developers three times, once in a community forum setting, and twice in smaller workgroup meetings. LDG proposed to remove the originally planned retail space and spread out the apartment units but still keep many three-story buildings. He said he would rather see another developer interested in a more mixed-use plan.

In response to another question from Senator Buford, Mr. Bingham said the developer could go forward without KHC financing. However, the community has an appeal on file on a separate issue claiming the developer is not in full compliance with the land development code. A hearing on the matter is scheduled for October 1st in Louisville.

In response to a question from Representative Damron, Mr. Bingham said the property is owned by a separate entity but he understands there is an agreement in place under which, upon approval of funding and approval of the land development code, ownership would transfer to LDG. In response to another

question from Representative Damron, Mr. Thieneman said that in another instance in Louisville, the community was successful in getting the original developer to leave a project. Another developer came in on the project and worked with the community.

In response to another question from Representative Damron, Mr. Bingham said the property is under category three review.

Michael Gross and Scott Bryan with LDG asked to address the committee. Mr. Gross provided the committee with background information on LDG. Mr. Bryan said LDG seeks to resolve every issue with their properties. He also told the committee that LDG would continue to work with the community to find a solution.

Senator Carpenter said he wanted to allow LDG to address the issues raised by the community representatives and he does not want to change the local decision-making process.

Mr. Bingham replied to Senator Carpenter's comments by saying that at the local level, only Mayor Greg Fisher has supported the project, and their councilman is opposed to it. This committee was the next step in the process. Mr. Bingham also expressed concerns with KHC's scoring process.

Senator Leeper asked Mr. Bingham to provide to LDG the same material that was provided to the committee. Mr. Bingham agreed to provide the material to LDG.

Sonja Minch, with the City of Hollow Creek, addressed the committee and said she was not opposed to low-income housing. She also said the community is seeking a minimum of 25 percent green space, no three-story buildings, and a reduced building height on the Michael Drive side of the property to one level. She said LDG will not reduce the number of apartments from 212 to 180 units.

Mr. Gross said he was willing to come back before the committee and not seek approval for the bond issue through the Finance and Administration Cabinet.

Representative Damron made a motion that the issue be passed over until the November committee meeting, or until all parties could come to an agreement prior to the deadline for the October committee. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

New bond issue-Kentucky Housing Corporation-Hillebrand House

Ms. Brewer presented a second bond issue: Kentucky Housing Corporation (KHC) Conduit Multifamily Housing Revenue Bonds (Hillebrand House) Series 2012. The gross proceeds will be \$12,630,732 and will be used to acquire and renovate property at 1235 and 1249 South Third Street in Louisville. The project is anticipated to include 75 one-bedroom units and 135 studio units. The property currently serves and will continue to serve as a multifamily residence for seniors. Representative Wayne made a motion to

approve the bond issue. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

New bond issue-Kentucky Economic Development Finance Authority-Masonic Home of Kentucky

Ms. Brewer presented a third new bond issue: Kentucky Economic Development Finance Authority Healthcare Facilities Revenue and Revenue Refunding bonds, Series 2012 (Masonic Homes of Kentucky, Inc.). The bond proceeds, not to exceed \$50,000,000, will finance and refinance the acquisition and construction of healthcare facilities in Louisville and Shelby County. Representative Wayne made a motion to approve the bond issue. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote, with two members abstaining.

New school bond issue with School Facilities Construction Commission debt service participation

Ms. Brewer said there was one new school bond issue with School Facilities Construction Commission participation this month (Franklin County). No tax increase was required to fund the project. Senator Carroll made a motion to approve the bond issue. The motion was seconded by Representative Wayne and passed unanimously by voice vote.

New school bond issues with 100 percent locally-funded debt service participation

Ms. Culpepper said there were three local school district bond issues with 100 percent locally-funded debt service were reported to the committee this month: Jessamine County, Paducah Independent, and Webster County. Two of the bond issues will be used to fund energy improvements and one will fund the completion of a new middle school. No action was required.

With there be no further business, the meeting adjourned at 3:09 p.m.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the September Meeting
September 17, 2012

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Monday, September 17, 2012, at 10:30 AM, in Room 149 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll. The minutes of the August 2012 meeting were approved.

Present were:

Members: Senator Joe Bowen, Co-Chair; Senators David Givens, Alice Forgy Kerr, and Joey Pendleton; Representatives Robert R. Damron, Danny Ford, and Jimmie Lee.

Guests: Jennifer Jones, Kentucky Retirement Systems; Carol Borden, Board of Nursing; Pam Duncan, Dr. Sandy Hunter, Bill Young, Board of EMS; Janine Coy-Geeslin, Katie Smith, Cabinet for Economic Development; Ann D'Angelo,

Godwin Onodu, Transportation Cabinet; Amy Barker, Department of Corrections; Dawn Bellis, David Moore, Department of Housing, Buildings and Construction; Karen Chrisman, Governor's Office of Electronic Health Information; Stephanie Brammer-Barnes, Van Ingram, Cabinet for Health and Family Services; Mary Sparrow, and Steven Veno, Division of Child Support Investment.

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

The Administrative Regulation Review Subcommittee met on Monday, September 17, 2012, and submits this report:

Administrative Regulations
Reviewed by the Subcommittee:

FINANCE AND
ADMINISTRATION CABINET:
Kentucky Retirement Systems: General Rules

105 KAR 1:400 & E. Federal taxation limitation year. Jennifer Jones, interim general counsel, represented the retirement systems.

In response to a question by Co-Chair Bowen, Ms. Jones stated that these administrative regulations did not relate to the Pension Task Force or to legislation pending with the General Assembly. These administrative regulations were being amended to comply with federal requirements as part of the two (2) economic recovery acts. Every five (5) years the retirement system was required to submit determination letters to the IRS. As part of this round of determination letters, the retirement system was required to show that these amendments had been made.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 6 through 11 and 13 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:420. 401(h) account established under 26 USC 401(h).

In response to a question by Senator Givens, Ms. Jones stated that the payment priority option established in this administrative regulation was required by federal and state law.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct statutory citations; and (2) to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

105 KAR 1:430. General compliance with federal tax laws.

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

amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 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.

GENERAL GOVERNMENT
CABINET: Board of Nursing: Board

201 KAR 20:230. Renewal of licenses. Carol Borden, executive legal assistant, represented the board.

201 KAR 20:370. Applications for licensure.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

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

202 KAR 7:601. Training, education, and continuing education. Pam Duncan, legal counsel; Dr. Sandy Hunter, professor; and Bill Young, director of EMS education, represented the board.

In response to a question by Senator Givens, Ms. Duncan stated that this administrative regulation had not been updated for a long time. A task force had been convened to develop updates to this program. Mr. Young stated that these revisions brought this program up-to-date with national standards. Kentucky did not previously have an advanced EMT program, and the addition of an advanced EMT program would benefit Kentucky, especially its smaller communities. Dr. Hunter stated that this administrative regulation moved Kentucky closer to the board's goal of national accreditation. This administrative regulation was extensively vetted by stakeholders.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add 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 24 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 25 to add and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR ECONOMIC
DEVELOPMENT: Kentucky Economic Development Finance Authority: Economic Development

306 KAR 1:011. Repeal of 306 KAR 1:010, 1:020, 1:030, 1:040, 1:050, 1:060, 1:070 and 1:090. Janine Coy-Geeslin, staff attorney, and Katie Smith, executive director, represented the authority.

Kentucky Economic Development Finance Authority

307 KAR 1:005. Applications for Kentucky Incentive Programs.

A motion was made and seconded

to approve the following amendments: to amend Sections 1 and 5 to: incorporate by reference the required instruction sheet for the application forms. Without objection, and with agreement of the agency, the amendments were approved.

307 KAR 4:020. Kentucky Enterprise Initiative Act.

Kentucky Business Investment Program

307 KAR 8:011. Repeal of 307 KAR 8:010.

Kentucky Reinvestment Act (KRA)

307 KAR 9:010. Application for Kentucky Reinvestment Act Program.

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

501 KAR 6:230. Little Sandy Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) correct citations; (2) clarify provisions; and (3) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:270. Probation and parole policies and procedures.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) clarify provisions; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:999. Corrections secured policies and procedures.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

Asset Forfeiture

501 KAR 11:011. Repeal of 501 KAR 11:010.

TRANSPORTATION CABINET:
Department of Vehicle Regulation:
Division of Motor Vehicle Licensing:
Motor Vehicle Tax

601 KAR 9:090. Procedures for inspecting vehicles. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division.

In response to a question by Co-Chair Bowen, Mr. Onodu stated that candidates for certified inspectors were nominated by local sheriffs. A certified inspector inspected vehicles for road worthiness and for transfer into Kentucky from other states. The division conducted the training and certified qualified candidates nominated by local sheriffs.

PUBLIC PROTECTION CABINET:
Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:034. Requirements for

approval of continuing education courses and providers. Dawn Bellis, general counsel, and David Moore, director, represented the division.

Division of Building Codes Enforcement: Electrical

815 KAR 35:020. Electrical inspections. Dawn Bellis, general counsel, represented the division.

In response to questions by Representative Ford, Ms. Bellis stated that this administrative regulation distinguished if an electrical inspection was optional or mandatory and created consistency statewide. In particular, there had been confusion regarding agricultural poultry houses. This administrative regulation clarified the different types of agricultural poultry houses and which were required to be inspected.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to delete requirements already contained in KRS 227.460; (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; and (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Governor's Office of Electronic Health Information: Kentucky Health Information Exchange

900 KAR 9:010. Kentucky health information exchange participation. Karen Chrisman, staff attorney, represented the office.

In response to a question by Co-Chair Bowen, Ms. Chrisman stated that the questions from the August meeting of the Interim Joint Committee on Health and Welfare pertained to the health insurance exchange program. This administrative regulation established provisions for the health *information* exchange program, which providers had been using for years. This administrative regulation established contract requirements commensurate with current practices. It provided continuity of health care by facilitating dissemination of health care information among providers. The intent was to reduce duplication of services, especially laboratory testing, imaging, and immunization.

Representative Damron stated that this administrative regulation was the result of telehealth legislation from the early 2000s and was not part of the federal Affordable Care Act. Over eighty (80) providers were already participating. This administrative regulation enhanced immunization records to avoid unnecessary re-immunizations.

Representative Lee stated that this administrative regulation and accompanying program was in its infancy, but would save money by avoiding unnecessary duplicative tests and immunizations. Electronic health records

were used by most hospitals already. Representative Lee heartily endorsed this administrative regulation, but noted that the cabinet still needed to enhance confidentiality. The General Assembly needed to continue to support and fund this program. The cost-savings was only one issue of concern. Patients who may not be able to explain previous tests were also suffering unnecessary physical pain and suffering.

In response to questions by Senator Givens, Ms. Chrisman stated that HIPAA regulations developed a definition for "participant." The definition was very restrictive and included stringent security provisions, which were now enhanced as a result of the HITECH Act. Billing offices could not access personal health information. Only treatment providers who had proven treatment status could access personal health information. The cabinet had hired an outside security agency to prevent hacking and other security breaches. That vendor had a hacker on staff to search for system weaknesses, and the security monitoring was an on-going process. Staff and stakeholders were developing a cost-savings analysis, but that data was not yet available, although there was anecdotal evidence to support the hypothesis that the program would overall be a money saver. Other states and national groups had their own health information exchange systems, which seemed to be successful. The program was currently funded through a grant from the Office of the National Coordinator for Health Information Technology (ONC). Sustainability for future costs was being researched. Medicaid and payors would experience savings.

Senator Givens stated that the cabinet should engage providers in the cost-savings issues.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct 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, 2, 3, 4, 5, 8, and 9 and the forms incorporated by reference to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 9 to incorporate by reference the document called "HITSP Summary Documents Using HL7 Continuity of Care (CCD) component," version 2.5, July 8, 2009. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Audits and Investigations: Office of Inspector General

906 KAR 1:160 & E. Monitoring system for products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Stephanie Brammer-Barnes, policy analyst, and Van

Ingram, executive director, represented the division.

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

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions. Mary Sparrow, supervisor, and Steven Veno, deputy commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to place the definitions in alphabetical order. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

921 KAR 1:410. Child support collection and enforcement.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to require the cabinet to submit a delinquent obligor's list to the Attorney General. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co-Chair Bowen encouraged all Subcommittee members to contact staff if an absence from a Subcommittee meeting is expected. Additionally, each member should be directly contacted and polled by Subcommittee staff prior to the meeting of attendance expectations.

Senator Pendleton stated that administrative regulations pursuant to HB 1 from the 2012 Special Session of the General Assembly were being misinterpreted, with the result being that senior citizens were being refused medication without first being subjected to drug screening. Some were driving to other states to get their prescriptions, even though these patients had been on these medications for many years. Senator Pendleton urged those concerned to submit public comments during the public comment period for these administrative regulations. Some senior citizens were testing positive for drug use because they had been taking legally prescribed

medications for pain management. The testing was expensive. It seemed unfair that criminals were screened for drug use at the state's expense, while innocent seniors were being charged for unnecessary screening. Senator Pendleton urged a cessation of drug screening pursuant to HB 1 of the Special Session of the General Assembly.

Subcommittee staff stated that administrative regulations pursuant to HB 1 of the Special Session of the General Assembly were being considered by the promulgating agencies for public comment during the month of September, and the deadline for written comments was October 1, 2012. These administrative regulations were filed as both ordinary and emergency administrative regulations. It was possible to amend the ordinary, but not the emergency, versions of these administrative regulations.

Representative Damron commended the Inspector General for addressing problems pertaining to the drug screening. The Inspector General had done an admirable job in educating providers, patients, and agencies regarding the enforcement ramifications of these administrative regulations. Some providers may have misunderstood the requirements and therefore been overzealous in requiring the drug screening. Other providers may have intentionally required unnecessary screening to oppose HB 1 of the Special Session of the General Assembly. It may be necessary for the General Assembly to clarify the law; however, the repeal of HB 1 of the Special Session of the General Assembly was unnecessary and unanticipated.

The following administrative regulations were deferred to the October 9, 2012, meeting of the Subcommittee:

ENERGY AND ENVIRONMENT
CABINET: Public Service Commission: Utilities

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

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

900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed.

The Subcommittee adjourned at 11:45 a.m. until October 9, 2012.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October Meeting
October 9, 2012

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2012, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Johnny Bell, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Johnny Bell, Co-

Chair; Senators David Givens, and Joey Pendleton; Representatives Danny Ford and Jimmie Lee.

Guests: Alicia A. Sneed, Education Professional Standards Board; Todd Leatherman, Elizabeth Natter, Kevin Winstead, Office of Consumer Protection; Jonathan Buckley, David Cox, Board of Licensure for Professional Engineers and Land Surveyors; Angela Evans, Sienna Newman; Board of Prosthetics, Orthotics, and Pedorthics; Margaret Everson, Benjy Kinman, Mark Mangeot; Department of Fish and Wildlife; Clint Quarles, Department of Agriculture; Steve Sims, Division of Environment Services; Sean Alteri, Andrea Smith, Division for Air Quality; Frank Goins, DJ Wasson, Maggie Woods; Department of Insurance; Chandra Venetozzi and Phyllis Sosa; Cabinet for Health and Family Services.

LRC Staff: 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, October 9, 2012, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Administrative certificates

16 KAR 3:010. Certification for school superintendent. Alicia A. Sneed, director, legal services, represented the board.

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

Assessment

16 KAR 6:030. Examination prerequisites for principal certification.

A motion was made and seconded to approve the following amendment: to amend Section 5 for clarity. Without objection, and with agreement of the agency, the amendment was approved.

OFFICE OF THE ATTORNEY GENERAL: Office of Consumer Protection: Division of Consumer Protection

40 KAR 2:330. Mold remediation. Todd Leatherman, executive director; Elizabeth Natter, assistant attorney general; and Kevin Winstead, assistant attorney general, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 2, to: (1) specify the types of training, education, and experience required for mold remediation; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT

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

201 KAR 18:040. Fees. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to specify an internal cross-reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 18:192. Continuing professional development for professional land surveyors.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend Sections 3 and 4 to specify internal cross-references; (3) to amend Sections 5, 7, and 8 to clarify provisions; (4) to amend Section 10 to incorporate by reference a required form; and (5) to amend Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Board of Prosthetics, Orthotics, and Pedorthics: Board

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013. Angela Evans, assistant attorney general, and Sienna Newman, chair, represented the board.

In response to a question by Co-Chair Bowen, Ms. Newman stated that these requirements were not established previously because the statute formerly contained these provisions. The statutory provisions expired and authorized that the requirements be established in an administrative regulation.

In response to a question by Co-Chair Bell, Ms. Newman stated that these administrative regulations did not impact negatively on practitioners.

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

201 KAR 44:100. Inactive status.

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

201 KAR 44:110. Licensure by endorsement.

A motion was made and seconded

to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to correct statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 44:120. Post residency registration.

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

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

301 KAR 2:030. Commercial guide license. Margaret Everson, counsel, and Benjy Kinman, commissioner's office, represented the department.

In response to a question by Co-Chair Bell, Mr. Kinman stated that requirements regarding guide helpers had been amended in this administrative regulation so that, on public land, a helper shall be required to be certified as a guide with regard to safety, CPR training, and other requirements, and, on private land, helper requirements did not change.

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

Hunting and Fishing

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

A motion was made and seconded to approve the following amendment: to amend Section 2 to allow rather than require the department to establish an agreement with Camp Piomingo. Without objection, and with agreement of the agency, the amendment was approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Consumer and Environmental Protection: Division of Environmental Services: Structural Pest Control

302 KAR 29:020. General provisions. Clint Quarles, staff attorney, and Steve Sims, manager, Structural Branch, represented the division.

In response to questions by Senator Givens, Mr. Sims stated that commercial pesticide application involved the application to another owner's property. Noncommercial application was pesticide application to a structure on one's own property. Mr. Quarles stated that government agencies also were required to keep pesticide application records. This administrative regulation clarified pesticide application recordkeeping requirements. A person applying a pesticide was required

to follow all directions on the pesticide label. Mr. Sims and Mr. Quarles stated that most pesticide applications were already compliant with the new requirements.

In response to a question by Co-Chair Bowen, Mr. Sims and Mr. Quarles stated that enforcement application was triggered if pesticides were being applied to another owner's property.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to include additional relevant citations; (2) to amend the TITLE and Section 3 for clarity; (3) to amend Section 4 to correct a citation; and (4) to amend Sections 2, 3, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 29:060. Certification.

In response to a question by Senator Givens, Mr. Quarles stated that the deadline change was intended so that all certifications would expire on the same date, even those certifications that had been on different certification cycles. Only five (5) percent of applicants were affected, and those were affected positively. The department had a new computer system that worked better if all certifications were on the same expiration cycle.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, 5, and 8 to specify an internal cross-reference; (2) to amend Sections 2 and 5 to clarify provisions; (3) to amend Section 9 to update the form incorporated by reference; (4) to amend Sections 1, 2, 4, 5, and 8 to comply with the drafting requirements of KRS Chapter 13A; and (5) to amend the structural pest control certification requirements to also require applicants to demonstrate practical knowledge of environmental conditions. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001. Definitions for 401 KAR Chapter 51. Sean Alteri, assistant director, and Andrea Smith, manager, Program Planning Branch, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1(207) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 51:017. Prevention of significant deterioration of air quality.

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

PUBLIC PROTECTION CABINET: Department of Insurance: Agent Licensing Division: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:211. Repeal of 806 KAR 9:210. Frank Goins, director, Property and Casualty Division; D. J. Wasson, administrative coordinator; and Maggie Woods, director of agency licensing, represented the division.

Property and Casualty Division: Surplus Lines

806 KAR 10:060. Cancellation of financial responsibility.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to correct a citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:540. ICARE Program high-cost conditions.

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

806 KAR 17:555. ICARE Program requirements.

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

900 KAR 6:060. Timetable for submission of certificate of need applications. Chandra Venettozzi, health data administrator, represented the cabinet.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation authorized the cabinet to reject a CON application if the application was filed more than eighty (80) days before the desired public notice.

900 KAR 6:085. Implementation of outstanding Certificate of Need when ownership has changed.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation authorized a facility to transfer an unused CON only to a facility purchasing the facility with the other existing CONs as well.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 6:090. Certificate of Need filing, hearing, and show cause hearing.

In response to a question by Co-Chair Bell, Ms. Venettozzi stated that this administrative regulation was amended as part of a reorganization of requirements.

A motion was made and seconded to approve the following amendments: to amend Section 4 to: (1) correct a citation; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

900 KAR 6:130. Certificate of Need criteria for physician exemption.

In response to a question by Senator Pendleton, Ms. Venettozzi stated that she would investigate why Cumberland Hall transferred prospective military patients to Tennessee. Cumberland Hall had twenty (20) unoccupied beds; however, Cumberland Hall stated that those beds could not be used for adult or military patients. Ms. Venettozzi agreed to report the findings of the investigation to the Subcommittee.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; and (2) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Division of Operations Support: Aging Services

910 KAR 1:240. Certification of assisted-living communities. Phyllis Sosa, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 7 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the November 13, 2012, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:020 & E. Examination.

201 KAR 2:030 & E. License transfer.

201 KAR 2:050 & E. Licenses and permits; fees.

201 KAR 2:061 & E. Procedures followed by the Kentucky Board of Pharmacy in the investigation and hearing of complaints.

201 KAR 2:205 & E. Pharmacist-in-charge.

Board of Optometric Examiners: Board

201 KAR 5:010 & E. Application for licensure; endorsement.

201 KAR 5:030 & E. Annual courses of study required.

201 KAR 5:130 & E. Controlled substances.

Board of Dentistry: Board

201 KAR 8:520. Fees and fines.

201 KAR 8:532 & E. Licensure of dentists.

201 KAR 8:540 & E. Dental practices and prescription writing.

Board of Medical Licensure: Board

201 KAR 9:081 & E. Disciplinary proceedings.

201 KAR 9:200 & E. National Practitioner Data Bank reports.

201 KAR 9:210 & E. Criminal

background checks required for all new applicants.

201 KAR 9:230 & E. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

201 KAR 9:240 & E. Emergency orders and hearings; appeals and other proceedings.

201 KAR 9:310 & E. Continuing medical education.

Board of Nursing: Board

201 KAR 20:056 & E. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization.

201 KAR 20:161 & E. Investigation and disposition of complaints.

201 KAR 20:215 & E. Continuing competency requirements.

Board of Podiatry: Board

201 KAR 25:011 & E. Approved schools; examination application; fees.

201 KAR 25:021 & E. Annual renewal of licenses, fees.

201 KAR 25:031 & E. Continuing education.

201 KAR 25:051 & E. Procedure for complaints and hearings involving licensees: temporary suspension.

201 KAR 25:090 & E. Prescribing and dispensing controlled substances.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 5:076. Alternative rate adjustment procedure for small utilities.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Elevator Safety

815 KAR 4:030. Elevator contractor licensing requirements.

815 KAR 4:040. Elevator mechanic licensing requirements.

815 KAR 4:060. Requirements for approval of continuing education courses and providers.

The Subcommittee adjourned at 1:40 p.m. until November 13, 2012.

GOVERNMENT CONTRACT REVIEW COMMITTEE

Committee Minutes

October 9, 2012

Call to Order and Roll Call

The Government Contract Review Committee met on Tuesday, October 9, 2012, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Dennis Horlander, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Chuck Stribling, Earl Gresham, Bob Nowell, Larry Arnett, Allen Luttrell, Nini Hughes, Virginia Underwood, Travis Powell, Yvonne

Lovell, Bill Harris, Harry Dadds, William Skaggs, Lona Brewer, Amy Monroe, Paul Gannoe, Kent Whitworth, Trevor Jones, Winn Turney, Craig Farmer, and David Richardson.

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

A motion was made by Senator Carroll to approve Minutes of the September 2012 meeting of the committee. Representative Housman seconded the motion, which passed without objection.

DEFERRED ITEM

DEPARTMENT OF WORKPLACE STANDARDS:

University of Kentucky Health, 1200002168. Chuck Stribling discussed the contract with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Housman seconded the motion, which passed without objection.

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

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

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

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

THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:

Kentucky School Board Association, 1300000639.

DEPARTMENT FOR PUBLIC HEALTH:

Heartland Cares Incorporated, 1300000889.

EDUCATION, DEPARTMENT OF:

Multi, 1300000386.

FINANCE AND ADMINISTRATION CABINET -

DIVISION OF ENGINEERING:

THP Limited Incorporated, 1300000504; DDS Engineering PLLC, 1300000777; Paladin Incorporated, 1300000829; Paladin Incorporated, 1300000830.

JUSTICE CABINET:
Medical Legal Consultants Incorporated, 1300000976.
MILITARY AFFAIRS,
DEPARTMENT OF:
Quail Unlimited Incorporated, 1300000877.
STATE POLICE, DEPARTMENT OF:
Law Enforcement Services Incorporated, 1300000878.
TRANSPORTATION CABINET:
D.P. Associates Incorporated, 1300000361; WMB Incorporated, 1300000794; Palmer Engineering Company, 1300000803.
UNIVERSITY OF KENTUCKY:
Selge Holdings & Ventures, LLC d/b/a Wheless Partners Executive Search, K13-164.
UNIVERSITY OF LOUISVILLE:
Pettit Environmental, 13-127; Studio Kremer Architects Incorporated, 13-130.
THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:
DEPARTMENT FOR ENVIRONMENTAL PROTECTION:
Amec Environment & Infrastructure, Incorporated, 0800008129; Amec Environment & Infrastructure Incorporated, 0800011004.
DEPARTMENT FOR PUBLIC HEALTH:
National Jewish Health, 1200003711; National Jewish Health, 1200003731.
FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:
Lucas Schwing Architects, 0700003164; Kersey and Kersey Incorporated, 0700003358; Third Rock Consultants, LLC, 0900013200; GRW Engineers Incorporated, 1000000839; Brandstetter Carroll Incorporated, 1000000845; Amec Environment & Infrastructure, 1000002150; Omni Architects, 1100001422; Myers Jolly Architects, 1200000117; Architectural Investments, 1200001704; BFMJ Incorporated, 1200002456; K. Norman Berry Associates, 1300000110; Voelker Blackburn Niehoff Architects, C-01056705-7.
JUVENILE JUSTICE, DEPARTMENT OF:
Mid America Health Incorporated, 1200003413.
KENTUCKY EMPLOYERS MUTUAL INSURANCE:
Multi, 13-CLD-002.
MEDICAL LICENSURE, BOARD OF:
Multi, 1200002107.
MURRAY STATE UNIVERSITY:
Multi, 008-13.
NORTHERN KENTUCKY UNIVERSITY:
Jeri Geisser, 2013-573-1.
TRANSPORTATION CABINET:
J M Crawford and Associates Incorporated, 0700003229; HMB Professional Engineers Incorporated,

0700004075; American Engineers Incorporated, 0700005389; J. M. Crawford & Associates Incorporated, 0800010334; HDR Engineering Incorporated, 0900012406; HMB Professional Engineers Incorporated, 0900012535; American Engineers Incorporated, 1000003300; Palmer Engineering Company, 1000003302; HMB Professional Engineers Incorporated, 1000003309; WMB Incorporated, 1000003312; QK4, 1100000191; Strand Associates Incorporated, 1200000036; PB Americas Incorporated, 1200000666; Stantec Consulting Services Incorporated, 1200001744; Acutecare Etown, PLLC, 1200001970; J. M. Crawford & Associates, C-03026967-1; Presnell Associates Incorporated d/b/a QK4, C-04536741-1; Presnell Associates Incorporated d/b/a QK4, C-99005372-3; WMB Incorporated, C-99005589-8.
UNIVERSITY OF KENTUCKY:
KPFF Consulting Engineers, K12-143-1; Intech Contracting, LLC, K12-144; Siva Corrosion Services Incorporated, K12-146.
THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:
AGRICULTURE, DEPARTMENT OF:
Kentucky FFA Foundation Incorporated, 1300000863; Kentucky 4-H Foundation, 1300000864.
CORRECTIONS, DEPARTMENT OF:
Kentuckianaworks, 1300000819; Louisville Metro Criminal Justice Commission, 1300000870.
DEPARTMENT FOR COMMUNITY BASED SERVICES:
Madison County Fiscal Court, 1300000558; Maryhurst Incorporated, 1300000689.
DEPARTMENT FOR ENVIRONMENTAL PROTECTION:
University of Louisville Research Foundation, Incorporated, 1200003698.
DEPARTMENT FOR PUBLIC HEALTH:
University of Louisville Research Foundation, 1200003160.
DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:
National Energy Education Develop Project, 1300000879.
EARLY CHILDHOOD ADVISORY COUNCIL:
Oldham County Health Department, 1300000661; Eastern Kentucky Child Care Coalition, 1300000757; Kenton County Public Library, 1300000809.
EDUCATION, DEPARTMENT OF:
University of Kentucky Research Foundation, 1200002224; Madisonville Community College, 1200003099; Fleming County Board of Education, 1200003143; Eastern Kentucky University, 1200003144; University of Kentucky Research Foundation, 1200003912; Floyd County Board of Education, 1300000037;

Walton Verona Independent Board of Education, 1300000052; Boys & Girls Club of Greater Cincinnati, 1300000074; Carlisle County Board of Education, 1300000076; Carroll County Board of Education, 1300000078; Floyd County Board of Education, 1300000094; Grayson County Board of Education, 1300000098; Greenup County Board of Education, 1300000099; Hart County Board of Education, 1300000104; Jackson Independent Board of Education, 1300000111; Leslie County Board of Education, 1300000142; Whitley County Board of Education, 1300000177; Eastern Kentucky University, 1300000271; Fleming County Board of Education, 1300000352; Kentucky Valley Educational Cooperative, 1300000355; Western Kentucky University Research Foundation Incorporated, 1300000432; University of Louisville Research Foundation, 1300000497; Kentucky State University, 1300000515; Murray State University, 1300000517; University of Louisville Research Foundation, 1300000522; Jefferson County Board of Education, 1300000527; Northern Kentucky University Research Foundation, 1300000577; University of Kentucky Research Foundation, 1300000579; Northern Kentucky University Research Foundation, 1300000581; Jefferson County Board of Education, 1300000585; Jefferson County Board of Education, 1300000586; Jefferson County Board of Education, 1300000587; University of Kentucky, 1300000607; Advanced - Kentucky University of Kentucky, College of Education, 1300000627; Western Kentucky University Research Foundation, 1300000703; Jefferson County Board of Education, 1300000718; Green River Regional Education, 1300000726; Green River Regional Education, 1300000727; Green River Regional Education, 1300000728; University of Kentucky Research Foundation, 1300000731; University of Kentucky Research Foundation, 1300000753; Treasurer Todd County Board of Education, 1300000755; Eminence Independent Board of Education, 1300000758; Scott County Board of Education, 1300000765; University of Kentucky Research Foundation, 1300000802; Knox County Board of Education, 1300000831; Spencer County Board of Education, 1300000833; Fayette County Board of Education, 1300000897.
FISH & WILDLIFE, DEPARTMENT OF:
Jackson Purchase Resource Conservation and Development Foundation, 1300000562.
JUSTICE CABINET:
Access to Justice Foundation, 1300000288.
MILITARY AFFAIRS,
DEPARTMENT OF:
Multi, 1300000009; Multi, 1300000592.
OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL

GOVERNMENT:
Henderson County Fiscal Court, 1300000740; City of Jackson, 1300000748; City of Paris, 1300000770; City of Cumberland, 1300000771; City of Danville, 1300000783; Lewis County Fiscal Court, 1300000793; Harlan County Fiscal Court, 1300000800; Webster County Fiscal Court, 1300000804; Webster County Fiscal Court, 1300000805; City of Sturgis, 1300000811; City of Nicholasville, 1300000859; City of Greensburg, 1300000884; Mercer County Fiscal Court, 1300000886; City of Lebanon, 1300000887; City of Nicholasville, 1300000905; City of Pikeville, 1300000923.
TRANSPORTATION CABINET:
Kentucky Association of Chiefs of Police, 1300000737; Kentucky Association of Chiefs of Police, 1300000738; Kentucky Crime Prevention Coalition, 1300000739; Kentucky Association of Chiefs of Police, 1300000741; Kentucky Crime Prevention Coalition, 1300000742; Kosair Children's Hospital, 1300000743; Kosair Children's Hospital, 1300000744.
THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:
AGRICULTURE, DEPARTMENT OF:
Multi, 0900011602; Multi, 0900011666.
DEPARTMENT FOR COMMUNITY BASED SERVICES:
Lexington Fayette Urban County Government, 1200001514.
EDUCATION, DEPARTMENT OF:
Barren County Board of Education, 1200003135; Morehead State University, 1300000244; University of Kentucky Research Foundation, 1300000498.
MILITARY AFFAIRS,
DEPARTMENT OF:
Multi, 0800011286; Multi, 1000000949; Multi, 1100001405; Multi, 1200000537.
NURSING, BOARD OF:
University of Louisville, 1300000414.
OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:
Community Ventures Corporation, 1000000718.
TRAVEL, DEPARTMENT OF:
Multi, 1200003751; Multi, 1200003752; Multi, 1200003753; Multi, 1200003754; Multi, 1200003755; Multi, 1200003756; Multi, 1200003757; Multi, 1200003758; Multi, 1200003759.
THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:
DEPARTMENT FOR MEDICAID SERVICES
Cognosante, LLC, 1300000766. Bob Nowell and Earl Gresham discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative

Horlander seconded the motion, which passed with Senator Hornback and Representative Housman voting NO.

DEPARTMENT FOR NATURAL RESOURCES

Multi, 1200003386. Larry Arnett, Allen Luttrell, and Nini Hughes discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Senator McGaha seconded the motion, which passed without objection.

EASTERN KENTUCKY UNIVERSITY

McBrayer, McGinnis, Leslie & Kirkland, PLLC, 14-022. Virginia Underwood 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 without objection.

POST SECONDARY EDUCATION COUNCIL ON

TPR Education, LLC d/b/a The Princeton Review, 1300000501. Travis Powell and Yvonne Lovell discussed the contract with the committee. A motion was made by Senator McGaha to consider the contract as reviewed. Representative Housman seconded the motion, which passed without objection.

UNIVERSITY OF KENTUCKY

Baker Donelson Bearman, Caldwell & Berkowitz, PC, K13-165. Bill Harris and Harry Dadds 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 voting NO.

WESTERN KENTUCKY UNIVERSITY

RuffaloCODY, 121335. William Skaggs discussed the contract with the committee. A motion was made by Representative Housman to consider the contract as reviewed. Senator McGaha seconded the motion, which passed without objection.

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

DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE

TRK Limited, 1200002718. Lona Brewer and Amy Monroe discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Senator Hornback seconded the motion, which passed without objection.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING

Wells Engineering, P.S.C., 1200001198. Paul Gannoe discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Senator Hornback seconded the motion, which passed without objection.

THE FOLLOWING PERSONAL

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

HISTORICAL SOCIETY, KENTUCKY

Lindsay Elizabeth Merritt, 1300000717. Kent Whitworth and Trevor Jones discussed the contract with the committee. A motion was made by Senator McGaha to consider the contract as reviewed. Senator Carroll seconded the motion, which passed without objection.

EXEMPTION REQUESTS

TRANSPORTATION CABINET:

The Transportation Cabinet requested an exemption from the committee's routine review process for the KYTC's Aviation Economic Development Grant Agreements and will provide quarterly reports. Winn Turney, Craig Farmer, David Richardson discussed the exemption with the committee. A motion was made by Senator Carroll to grant the exemption through June 30, 2014. Senator McGaha seconded the motion, which passed without objection.

ENERGY & ENVIRONMENT CABINET, DEPARTMENT FOR ENERGY DEVELOPMENT:

The Energy and Environment Cabinet requested an exemption from the two year contracting restrictions, specifically for the Department for Energy Development and Independence projects funded through DOE federal grants for projects, which by design cannot be completed within a two year period. The agency will provide quarterly reports. Lona Brewer discussed the exemption with the committee. A motion was made by Senator Carroll to grant the exemption through June 30, 2014. Senator McGaha seconded the motion, which passed without objection.

With no further business before the committee, the meeting adjourned at 11:24 AM.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

September 13, 2012

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, September 13, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Tom Buford, Vernie McGaha, Joey Pendleton, Dan "Malano" Seum, and Brandon Smith; Representatives Dwight D. Butler, Leslie Combs, Jim DeCesare, Ruth Ann Palumbo, Rick Rand, and Arnold Simpson.

Legislative Guests: Representatives Jim Gooch and Derrick Graham.

Guests: Eric Friedlander, Deputy Secretary, Cabinet for Health and

Family Services. T.J. Carlson, Chief Investment Officer; Jennifer Jones, Interim General Counsel; Kentucky Retirement Systems. Robert Barnes, Deputy Executive Secretary of Operations and General Counsel; Kevin Carrico, Director, Investment Management; P.J. Kelly, Investment Consultant; Kentucky Teachers' Retirement System. John Steffen, Executive Director, Executive Branch Ethics Commission.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall; Colleen Kennedy; Katie Kirkland; Van Knowles; Lora Littleton; Jean Ann Myatt; William Spears; Joel Thomas; Leonard Evans, Graduate Fellow; Jenna Skop, Graduate Assistant; Program Review and Investigations Committee Staff; Rick Graycarek, LRC Staff Economists Office.

Senator Higdon asked for a moment of silence in memory of the granddaughter of Representative Mills.

Approve Minutes for August 14, 2012

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

Follow-up on Impact Plus

Mr. Friedlander said that the provider that he has testified about in previous committee meetings is back in the system as a Michelle P and Impact Plus provider. The cabinet continues to look at Impact Plus and how improvements can be made in the context of managed care.

Senator Higdon asked if the cabinet is looking at the grievance process. Mr. Friedlander said that the cabinet is looking at all processes and how they can be improved.

Senator McGaha said that he has heard complaints from providers about managed care organizations denying services. Mr. Friedlander said that he has also heard complaints about provision of Impact Plus services. This is a complex issue, and the cabinet is working to ensure that children remain eligible.

Mr. Friedlander complimented the Program Review staff who are working on the committee's study of personal care homes.

Staff Report: Governance, Funding, and Investments of the Kentucky Retirement Systems and the Kentucky Teachers' Retirement System

Katie Kirkland, Colleen Kennedy, and Rick Graycarek presented the report. Ms. Kirkland said that the Kentucky Retirement Systems (KRS) is a state agency that provides retirement and insurance benefits to primarily state and local government retired members and their beneficiaries. There are nearly 325,000 total members in KRS's three systems. Generally, state government workers participate in the Kentucky Employees Retirement System (KERS, 124,119 members), city and county workers participate in the County Employees Retirement Systems (CERS,

198,308 members), and state police officers participate in the State Police Retirement System (SPRS, 2,172 members). Over the past 10 years, the number of active members of KRS has been relatively stable. The number of persons receiving benefit payments, however, has been increasing. The ratio of active members to retired members and their beneficiaries has declined from 2.5 to 1 in FY 2001 to 1.7 to 1 in FY 2011. In FY 2012, 73 percent of individuals received less than \$25,000 in benefits from KRS. Of the 84,826 total benefit recipients, 141 individuals received \$100,000 or more in benefits.

The Kentucky Teachers' Retirement System (KTRS) is a state agency that provides pension benefits to members retired from local school districts and other KTRS employers such as the Kentucky Department of Education. The system provides medical, disability, and life insurance benefits for eligible members. As of June 30, 2011, there were nearly 127,000 active members, inactive members, and retired members and beneficiaries receiving benefits from KTRS. In 2003, the ratio was 2 active members per retired member and beneficiary, but it fell to 1.7 by FY 2011. For FY 2012, nearly one-third of benefit recipients received less than \$25,000. Nearly 55 percent of recipients received \$25,001 to \$50,000; 135 individuals received benefits of more than \$100,000.

HB 146 from 2010 added requirements for the composition of the KRS investment committee and that two members are the trustees with investment experience appointed to the board by the governor. The KTRS Investment Committee has seven members: two lay trustees with "investment experience," three other trustees, and two investment advisors with "investment experience." The investment advisors are nonvoting members of the committee but still act as fiduciaries to KTRS. Investment experience is defined in KTRS's governance manual but it is not defined in statute or administrative regulation. In comparison, for KRS, investment experience is defined in statute.

For KRS, investment constraints are primarily imposed by the board of trustees. For KTRS, statute limits the amount of assets internal and external managers can invest, and administrative regulations limit the types and amounts of investments KTRS can make.

HB 1 from the 2008 Special Session required the KRS and KTRS boards of trustees to establish formal trustee education programs for all board trustees, including an orientation program and annual required training. The systems were also required to incorporate the trustee education program by reference in administrative regulation. According to KRS officials, as of May 23, 2012, all trustees were up to date on their training except the newest trustee whose term began in April 2012. KTRS reported that

as of May 30, 2012, all trustees were current on their training requirements. HB 1 also required the boards of KRS and KTRS to post specified information on their system's websites and make it available to the public.

HB 300 from the 2012 Regular Session added a requirement for each board to post a searchable database of the system's expenditures and a listing of each individual employed by the system along with the employee's salary or wages. The systems have the option to provide the information through an executive branch website.

Staff's review of KRS's website on June 18 determined that each required document was accessible. Staff's review of KTRS's website on July 11, 2012, determined that some information was unavailable: the quarterly investment performance update for the period ending March 31, 2012 was missing a benchmark for cash. As of July 2012, information was not available for KTRS on expenditures and employees' salaries. KTRS reported that it had sent the required information on salaries to the Finance and Administration Cabinet in May 2012, and that it had been providing expenditure information to the Cabinet but that it recently learned that only summary information was being posted to the website. KTRS reported that it contacted the cabinet about the need to post detailed expenditure information.

Recommendation 1.1 is that KTRS should ensure that information is posted online as required by KRS 161.250(4).

Ms. Kennedy gave an overview of the inviolable contract question. In general, the modern judicial interpretation of state pension obligations has been that they are contracts between plan members and the state government. As contracts, pension obligations are often considered to be constitutionally protected by the US Constitution's Contracts Clause and state equivalents. Support is sometimes also found in state statutes and case law.

Constitutional Contract Clauses prohibit a state from passing a law that diminishes or impairs existing public or private contracts. The US Constitution says "no State shall...pass any...Law impairing the Obligation of Contracts...." Many state constitutions, including Kentucky's, have language that mirrors the Federal Constitution's. Some states have language in their state constitutions that specifically declares public employee pensions to be an inviolable contract, New York, for example. Kentucky's Constitution does not have such a clause.

Inviolability of existing public pension plans has also been found to varying degrees in state statutes and state case law. In Kentucky, the statutes creating KTRS and each system in KRS state that it is "an inviolable contract of the Commonwealth." A number of court cases around the country have interpreted such statutes to mean that a change in retirement benefits for new employees is not covered by an inviolable contract. In some states,

case law has supported the inviolability of public pension contracts. For example, the Kentucky Supreme Court said in a 1995 case that KERS members "have the right to the pension benefits they were promised as a result of their employment, at the level promised by the Commonwealth."

Recent policy changes and several lower court legal cases in other states are testing the inviolability of public employee pension contracts. For example, in Illinois public pension retirees are now required to contribute to their health insurance coverage. Rhode Island recently made sweeping changes to its public employee pension system. The report summarizes recent cases in Arizona, Colorado, Florida, Minnesota, and Rhode Island regarding whether public employee pension benefits are considered inviolable contracts between plan members and government. These cases are illustrative; they are not binding on the Commonwealth.

Mr. Graycarek said that as of FY 2011, KRS's unfunded liability was \$12 billion, and KTRS's was \$11 billion. Funded ratios are 36 percent for KERS, 63 percent for CERS, 45 percent for SPRS, and 57 percent for KTRS. Reported funded levels are likely to drop due to recently approved changes in accounting standards by the Governmental Accounting Standards Board (GASB). The primary reasons funded levels are falling is investment losses and employer contributions being less than the actuarially recommended rates. Investment gains generally account for approximately 70 percent of annual additions to a retirement system. Since FY 2005, KRS investment returns by year rose by as much as \$1.9 billion and fell by as much as \$2.3 billion. KTRS's investment returns rose by as much as \$2.8 billion and fell by as much as \$2.0 billion.

In response to a question from Representative DeCesare, Mr. Graycarek said that the unfunded liability included investment losses.

Mr. Graycarek said that over the previous 30-year period KRS averaged a 9.47-percent return per year, which was better than its actuarially assumed benchmark of 7.75. KRS's long-term benchmark is also 7.75 percent, which it has outperformed since inception. KTRS averaged a 9.7-percent annual return over this period, which was better than its actuarially assumed benchmark of 7.5 percent. KTRS's long-term benchmark is also 7.5 percent but it does not provide a period of evaluation for it.

The return for KRS in FY 2011 was 18.96 percent, which was below its 20.34-percent fund benchmark. KRS's 10-year return was approximately the same as its benchmark rate; its 3-year and 5-year returns underperformed benchmarks. KTRS's return in FY 2011 was 21.6 percent, which was above its 20.9-percent benchmark. KTRS outperformed its 3-year benchmark, but prior to 2008, KTRS did not benchmark overall fund

performance.

In the report, staff compared KRS's and KTRS's investment performance to the average performance in the Bank of New York Mellon-Public Funds benchmark. KRS's returns were lower for the 1-, 5-, and 10-year periods and higher for the 3-year period. KTRS's returns were lower for the 10-year period but higher for the other periods.

Staff also identified state public employee and teacher systems comparable to KRS and KTRS. KRS's returns were lower than the median for its comparable systems for the 1- and 5-year periods, about the same over 10 years, and higher for the 3-year period. KTRS's returns were lower than the median for its comparable systems for the 1- and 10-year periods and higher for the 3- and 5-year periods.

KTRS was relatively late allocating assets to some riskier asset classes such as international equities. KTRS has administrative restraints on the types and amounts of assets invested.

Ms. Kennedy said that placement agents are third parties that are paid a fee to secure potential investors. A 2011 Kentucky Auditor of Public Accounts (APA) report found that a placement agent had "questionable access" to a former Chief Information Officer at KRS. The APA made several recommendations, discussed in the study, that KRS has since implemented.

At the federal Securities and Exchange Commission (SEC) level, placement agents fall into the category of municipal advisors under the Securities Exchange Act of 1934. The 2010 Dodd-Frank Act required all municipal advisors to register with the SEC and to abide by its rules and regulations. In several states, the retirement systems themselves have instituted stricter controls on the use and disclosure of placement agents.

Other states, like Kentucky, require placement agents to register as lobbyists. The New York State Common Retirement Fund has banned the use of placement agents.

House Bill 300 enacted during the 2012 Regular Session requires placement agents to register as executive agency lobbyists. As defined in the statute, placement agent means an individual or firm who is compensated or hired by an employer for the purpose of influencing an executive agency decision regarding the investment of the KRS or the KTRS assets. In Kentucky, although a placement agent is a subcategory of executive agency lobbyist, a placement agent can be compensated on a contingency basis; other types of executive agency lobbyists cannot. The statute defines an unregulated placement agent as a placement agent who is prohibited by federal securities laws from receiving compensation for soliciting a government agency. Such a placement agent must register with the Executive Branch Ethics Commission but cannot be paid on a contingency basis. The circumstances under which a placement

agent would not be allowed by the SEC to receive compensation is one of the areas of confusion surrounding placement agents. Staff were unable to determine from any source an example of an unregulated placement agent.

Recommendation 3.1 is that the Executive Branch Ethics Commission, KRS, and KTRS should confer on the implementation of the sections of KRS 11A.201 dealing with placement agents and unregulated placement agents. They should report to the Program Review and Investigations Committee at its December 2012 meeting on the status of implementation and should specify recommendations for any needed revisions to the statute.

Senator Buford asked for the number of retirees and beneficiaries who work for quasigovernmental entities and the annual amount of their pensions. Mr. Graycarek said that staff had talked to KRS about this and will provide the requested information to the committee.

Senator Buford said it appears that statutory language is vague on what a placement agent is. Mr. Graycarek said that the report recommends that the interested parties confer on the implementation of the statute. Senator Buford suggested that consideration should be given to having placement agents register with the Legislative Branch Ethics Commission too.

Senator Buford asked how investment returns were impacted after the New York State Common Retirement Fund banned the use of placement agents. Mr. Graycarek said that staff could check into this.

In response to questions from Representative DeCesare, Mr. Graycarek said that KRS may be able to provide information on how much is paid out by KRS per year to placement agents. He noted that KTRS's policy is not to use placement agents. KRS uses them but has a disclosure policy. He said KRS staff can address what information is required to be disclosed about the use of placement agents.

In response to a question from Representative DeCesare, Ms. Kennedy said that placement agents are registering with the Executive Branch Ethics Commission.

Upon motion by Representative DeCesare and second by Representative Simpson, the report was adopted by roll call vote.

Representative Simpson asked if there are any substantial differences between the report sent to members prior to the meeting and what was presented today. Mr. Hager said that staff correct any typos and writing errors in the previous draft. Committee members are notified when any substantive revisions are made.

Representative Simpson said that he would like more information on the relative contribution of the pension and medical insurance plans to KTRS's liability. Mr.

Graycarek said that staff could get more information on this.

Mr. Barnes said that a medical insurance benefit for KTRS members was established in 1964 on a pay-as-you-go basis. Beginning in the late 1980s and early 1990s, contributions were no longer sufficient to pay benefits. In late 1998, KTRS's actuary approved redirecting some contributions from the pension fund to the medical fund. In 2004, KTRS's actuary advised that pension contributions could no longer be redirected without being repaid. In 2005, the General Assembly agreed to continue redirecting some pension contributions to the medical insurance fund but with the promise to repay. To repay the pension fund, the state made payments on a 10-year amortized schedule. In 2010, interested parties developed a shared responsibility plan enacted as HB 540, which mandated higher contributions from teachers, school districts, and retired teachers under age 65. The state pays the net cost of new retirees under age 65.

In response to a question from Representative Simpson, Mr. Barnes said that there is no inviolable contract for medical insurance. The only requirement is that members have access to group insurance coverage.

Representative Steele asked for a timetable for the future funding status. Mr. Barnes said that it is hard to tell. According to KTRS's actuary, there should be \$1 billion in assets in the medical insurance fund within 10 years.

In response to a question from Senator Seum, Mr. Barnes said that provision of healthcare through KTRS is not part of the inviolable contract. The only requirement is that members have access to a group plan, which could be paid for by members.

Senator McGaha asked whether the effects of the statutory and regulatory constraints on KTRS's investments were more negative or positive. Mr. Barnes said that KTRS is an outlier among public employee retirement systems and has less flexibility to change. In response to a follow-up question from Senator McGaha, Mr. Barnes said that the regulations are not as constraining as they used to be.

In response to questions from Representative Rand, Mr. Barnes said that the state has repaid in full the amount the medical insurance fund borrowed from the pension fund and it is on pace for paying benefits for those under 65.

In response to a question from Representative Rand, Mr. Barnes said that KTRS is actively involved at the state level and is a member of the Health Policy Board that establishes benefit levels of the health insurance policies on the state health insurance policy. Internally, KTRS has been making many changes to the medical insurance plan and takes advantage of available federal programs which has resulted in substantial reduction of unfunded liabilities for the medical insurance fund. On the national level,

KTRS is a charter member of the National Public Sector Healthcare Roundtable, which makes recommendations to Congress about improvements and best practices.

In response to questions from Senator Buford, Mr. Barnes said that the ratio of active to retired members is 1.7 to 1. He said there is no state obligation for health care for teachers. Senator Buford referred to a previous attempt to change healthcare benefits and asked whether this could still be done. Mr. Barnes said yes.

Senator Buford said that some teachers qualify for Social Security benefits through other jobs but they do not receive the full amount of benefits because they are members of a system, KTRS, which is not a participant in the Social Security. In response to a question from Senator Buford, Mr. Barnes said that Congress has been lobbied on this issue, but to his knowledge no one has pursued a challenge in court.

Representative Simpson said that the ultimate issue is the funding ratio and unfunded liability. In response to questions from Representative Simpson, Mr. Barnes said that KTRS will be requesting funds in the next budget cycle to cover any shortfall as recommended by the actuary.

Senator Higdon asked whether a shared responsibility solution could work for other state pension systems. Mr. Barnes said that the KTRS situation is unique in that medical insurance is not part of an inviolable contract.

Representative Graham referred to the slide in staff's presentation that compared KTRS's investment performance to other systems. He asked whether KTRS has also underperformed compared to other systems that do not participate in Social Security. Mr. Graycarek referred to a table in Appendix G of the Program Review report. He said that staff identified five systems similar to KTRS in that most members did not participate in Social Security. Over a 10-year period, their investment returns ranged from 5.4 percent to 6.5 percent, all higher than KTRS's return of 4.8 percent. He noted that results for some of the systems were gross of fees; some were net of fees.

Representative Butler noted that Appendix C of the report indicates that for the Kentucky Employees Retirement System, the average benefit payment is much higher for nonhazardous employees than hazardous. For employees in the County Employees Retirement System, the relationship is reversed. He asked why this would be the case. Mr. Graycarek said that KRS would be better able to answer this.

Senator Higdon asked whether the 7,102 KRS members who are receiving benefits and are members of two systems are getting two checks. Mr. Graycarek said that this is not necessarily the case but that he can get more detailed information.

Senator Higdon said the chart on page 30 of the report seems to indicate that KRS's expenses are high and increasing.

Mr. Graycarek said that the increase is primarily due to a change in how expenses are accounted for.

Senator Higdon said that he would like to know the amounts, not just the percentage rates, of the actuarially required contributions listed in Appendix A of the report.

Representative Graham said that the report should go to the staff of the Kentucky Public Pensions Task Force for distribution to members of the task force. Senator Higdon agreed and said that the other handouts from today's meeting should also go to staff and members of the task force.

Representative Simpson asked for clarification that members of the KRS board of directors are volunteers and part time. He noted that the executive director is not part of the investment side of the organization. Mr. Carlson replied that Representative Simpson is correct about the board members. As chief investment officer, he is responsible for investments. He reports to the investment committee and the board. He reports to the KRS director for administrative purposes.

Mr. Carlson showed the organizational chart for KRS and noted that everyone is directly reachable by email. He described the educational qualifications of the 10 investment department staff. Together, they have more than 150 years of pension fund experience. The struggle will be to retain the high level of staff. He listed some of the information available on the KRS website and noted that many of transparency items required by statute were already being provided. There is a new self-service program for plan members to use online. He showed a chart of asset allocations for the different KRS plans. It has become more important that plans be managed independently. He described investment performance for the year to date. Total equity and real estate are performing below their benchmarks. He noted that KRS's real estate investments focus on current cash flow so performance below the benchmark is not unexpected. Fixed income, private equity, and cash investments are performing better than their respective benchmarks, as are two relatively new investment categories: real return and absolute return. Overall, KRS investments had a return of 11.3 percent over 3 years, underperformed on a 5-year basis, returned 6 percent over 10 years, and returned 9.36 percent long-term. He showed charts to illustrate that KRS has traditionally been managed with a lower risk profile than is typical of other systems. He showed a chart with fiscal and calendar year returns since 1990.

In response to a question from Representative DeCesare, Mr. Carlson said that the benchmarks in the report and the benchmarks in the presentation do not match because the benchmarks in the report are for FY 2011 and the benchmarks in the presentation are for FY 2012.

Senator Higdon noted that KRS's

return of 9.36 percent since inception is above the actuarial assumed rate of 7.75 percent. He asked, given that KRS is meeting this goal, why its liability is so high. Mr. Carlson said that an actuary did a study for KRS. The numbers he will give from memory may not be exact, but about 18 percent of the liability is due to investment underperformance over recent years, about 20 percent is due to unfunded cost-of-living allowances, about 5 percent is due to missing other actuarial assumptions, 20 percent is due to employers not making full actuarially required contributions, and about 30 percent is due to foregone investment returns due to the other reasons. A white paper on this topic is being presented to the investment committee next week. If the committee approves, he can send a copy to the committee.

Senator Higdon noted that KRS had investment expenses of \$57 million in FY 2011. In response to a question from Senator Higdon, Mr. Carlson said that there is no requirement for KRS to issue requests for proposals, but KRS often does issue RFPs. Whether to use an RFP depends on the specific investment being undertaken.

Senator Higdon asked what the source of health insurance funding is. Ms. Jones said that it is prefunded. It is an inviolable benefit for those hired prior to July 1, 2003.

In response to a question from Representative DeCesare, Mr. Carlson said that the difference in assets reported in the Program Review report and today's presentation is that the amounts were for different years.

In response to a request from Representative Simpson, Mr. Carlson said he would provide a memo detailing the elements of the unfunded liability. In response to a question from Representative Simpson, Mr. Carlson said that the total liability for health plans is about \$10 billion, with about \$3 billion in assets. Kentucky health insurance is a little ahead compared to other states because it is prefunded.

In response to questions from Representative Simpson, Mr. Carlson said that it is unclear whether the new GASB requirements will affect reporting of healthcare. He added that calculating liability to the employer level will be problematic because there are so many employers in KRS. Ms. Jones said that KRS pays a portion of the health care premium for those hired before July 1, 2003, based on numbers of years of service. For those hired after this, a defined contribution amount per year is paid.

In response to questions from Representative Simpson, Ms. Jones said that nongovernmental participants in CERS pay the same employer contribution rate; all outside entities in KERS came in by executive order and are paying the same rate as the state is paying. Representative Simpson asked if anyone has analyzed rejecting an entity based on how great a

burden its employees would be. Ms. Jones said the requirement is that an entity be sufficiently governmental based on IRS standards.

In response to a question from Representative Simpson, Ms. Jones said KRS is in litigation with the Kentucky River Community Care, which fired its employees and rehired them through a new company.

In response to a question from Senator Higdon, Ms. Jones said that the inquiry into KRS by the US Securities and Exchange Commission is ongoing, and the SEC has interviewed some KRS employees and board members.

In response to a question from Senator McGaha, Mr. Carlson said that any fees paid to placement agents are paid by investment managers. When placement agents are used, the details must be provided to the investment committee. KRS has not made an investment with a placement agent in 3 years. KRS requires detailed disclosure from investment firm members prior to any investment recommendation, and this information is provided to the KRS investment committee.

In response to a question from Senator McGaha, Mr. Carlson said that the Auditor of Public Accounts report indicated that there is no correlation in fees paid to placement agents and KRS's performance. Based on the latest information, investments with placement agents involved have outperformed those without but the difference is minimal.

Senator McGaha asked for clarification that KTRS does not use placement agents. Mr. Barnes said that this is correct, it does not.

Senator McGaha said that not using placement agents seems to remove some of the complexity of managing investments. Mr. Carlson noted that placement agents are involved in more than 50 percent of private equity deals in the US. The KRS will consider investments with placement agents but with guidelines.

Mr. Barnes said that for almost all teachers, KTRS is the only source of retirement benefits, not Social Security. He described the high quality of the KTRS Board of Trustees and how important this is. He described the actuarial status of KTRS's pension and medical benefit funds. The pension fund, which is 57.4 percent funded, has assets of \$14.9 billion and liabilities of \$26 billion, for an unfunded liability of \$11 billion. The medical fund, which is 8.6 percent funded, has assets of \$295 million and liabilities of \$3.4 billion, for an unfunded liability of \$3.1 billion. He mentioned HB 540, which he described earlier in answering a question. He described the qualifications of KTRS's two independent investment advisors, Bevis Longstreth and George M. Philip, who serve on the investment committee.

Mr. Carrico showed an organizational chart for KTRS's investment staff. KTRS has broadened and deepened its staff in recent years. A change in KTRS leadership in 2004 and the economic crisis in 2008

were driving forces behind KTRS making changes in asset allocations. He discussed these changes, including a decrease in the percentage of investments in fixed income and increases for international stocks, real estate, alternative investments, and opportunistic credit. The majority of alternative investments are in private equity, which has become more attractive after the financial crisis.

Mr. Kelly said that KTRS's returns net of fees had outperformed a broad universe of public funds for FY 2012 (2.2 percent versus 0.7 percent), over 3 years (11.9 percent versus 11.5 percent), and over 5 years (2.4 percent versus 1.5 percent).

In response to a question from Representative Simpson, Mr. Carrico said that KTRS does not have credit default swaps, but they would be classified as fixed income or opportunistic credit.

Representative DeCesare said that he would like to know what percentage of those who have the option of participating in the KTRS plan or another plan choose KTRS. He asked whether KTRS would offer an optional plan for anyone outside universities. Mr. Barnes said that he will consult with the actuary and provide a response.

In response to a question from Representative DeCesare, Mr. Steffen said that it is unknown how many placement agents have registered with the Executive Branch Ethics Commission. Placement agents are just another type of executive agency lobbyists who have to register. By statute, the ethics commission registers lobbyists, but it does not track types of lobbyists. Representative DeCesare said that when the retirement systems report back to the committee, it may be recommended that a way be added to be able to identify placement agents. Mr. Steffen said that his concern with HB 300 is that lobbyists who are placement agents can be paid on a contingency basis.

The meeting adjourned at 12:48 pm.

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes

October 11, 2012

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, October 11, 2012, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Fitz Steele, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Tom Buford, Vernie McGaha, Joey Pendleton, Dan "Malano" Seum, and Brandon Smith; Representatives Leslie Combs, Jim DeCesare, Terry Mills, Ruth Ann Palumbo, Rick Rand, and Arnold Simpson.

Guests: James Grace, Assistant

Director; Diane Glenn, Medical Support Section, Nurse Administrator; Division of Protection and Permanency, Department for Community Based Services, Cabinet for Health and Family Services. Eric Friedlander, Deputy Secretary; Beth Jurek, Executive Director, Office of Policy and Budget; Cabinet for Health and Family Services.

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

Approve Minutes for September 13, 2012

Upon motion made by Senator Buford and seconded by Senator Higdon, the minutes of the September 13, 2012 meeting were approved by voice vote, without objection.

Staff Report: *Medically Fragile Foster Children*

Colleen Kennedy, Leonard Evans, and Joel Thomas presented the report. Ms. Kennedy said that medically fragile foster children are those with medical conditions that require special care and monitoring. They need to be placed in foster homes that meet specified requirements with foster parents who have received special training. The number varies over time, but as of May 2012, 116 foster children in Kentucky were designated medically fragile. The designation is based on the level of care the foster parent must provide, not specified diagnoses.

A specialized medically fragile child requires an even higher level of care. The home must have a foster parent who is a health professional. This category represents a very small percentage of children in the medically fragile system.

The Division of Protection and Permanency of the Department for Community Based Services (DCBS) administers Kentucky's foster program. A Medical Support Section nurse administrator oversees the medically fragile portion. The nurse administrator makes the final decision as to whether a child is to be designated medically fragile. DCBS also has a caseworker in each of its nine regions who doubles as a medically fragile liaison between the social worker, the foster family, and the nurse administrator. When a child receives a medically fragile designation, a nurse consultant with the Commission for Children with Special Health Care Needs is notified and becomes part of the child's team.

DCBS has agreements with a number of private placement agencies that are used if a DCBS home is unavailable or a child requires care unavailable in a DCBS home. Nearly one-half of foster placements are within DCBS homes, and more than one-third with private agency homes.

Ms. Kennedy described the process by which children are designated medically fragile and the types of medically fragile

foster homes.

All medical care given to children in foster care must be documented. Each child is issued a Medical Passport binder, which is a repository of the child's health information, ongoing procedures, and appointments. The foster parents are responsible for updating and maintaining the Medical Passport. Concerns have been raised that this may not be the best way of ensuring that all necessary care is taking place, or of allowing all team members involved, including physicians, necessary access to the child's medical history.

Recommendation 1.1 is that an electronic system should be created to replace the paper medical passport. Policies and protocols for accessing the information should be developed.

An Individual Health Plan must be created within 30 days after a child receives a medically fragile designation. The plan assesses the actions needed to address the child's medical needs, as well as a follow-up plan. It is to be updated every 6 months. Based on Program Review staff's analysis of the May 2012 cohort of 116 medically fragile cases, an Individual Health Plan was created within the 30-day regulatory time period in about 55 percent of cases. In 13 percent of cases, it took longer than 90 days to create the plan. In September 2012, the cabinet revised a Standard of Practice to address this issue.

The DCBS Medical Support Section nurse administrator is responsible for coordinating input from all team members and foster parents, and collecting all information and data related to medically fragile children. If the nurse administrator is involved in another case or is away, there is no backup. The nurse administrator does not have managerial authority over other team members and must gather important data for record-keeping by personally contacting others in the system individually.

Recommendation 1.2 is that the cabinet should consider adding staff to the DCBS Medical Support Section to increase support and timeliness of the coordination needed to maintain the medically fragile system's foster homes.

Mr. Thomas said that medically fragile foster parents must meet the same requirements as regular foster parents and must have solid references and performance records. Both DCBS and private agency medically fragile foster parents must take DCBS-sponsored training. Medically fragile training is composed of three modules: the 2-hour online prerequisite course, the Join Hands Together program, and CPR/First Aid. Join Hands Together is offered five times a year. It educates and certifies DCBS resource homes, private agency foster families, and respite providers. The medically fragile training program is conducted by the University of Kentucky's Training Resource Center.

Once the initial 24-hour medically fragile training is complete, foster parents are then required to maintain their medically fragile certification

through the completion of 16 hours of additional annual training and CPR/First Aid recertification. Annual training is offered twice a year with two make-up sessions. Training sessions are presented by medical professionals who volunteer their time. Training expenses incurred by DCBS foster parents may be reimbursed up to \$200 per year.

Respite care is temporary care for medically fragile foster children to provide relief for foster parents. Reimbursements for respite care are calculated at the level of care per diem rate. Medically fragile homes receive 3 days per month of respite care, and specialized medically fragile homes receive 4 days per month.

Respite care providers must complete the initial medically fragile training program but are exempt from annual retraining sessions because they receive training specific to their medically fragile child. Lodging and food expenses are not reimbursed for prospective respite care providers. Although the current training structure is not conducive to recruiting respite care providers, DCBS is revising the 2-day schedule to include a larger online component.

As of May 2012, the two most common diagnoses of medically fragile foster children were diabetes (23 percent of children) and epilepsy (20 percent). Of these 116 medically fragile children, 29 had been classified as medically fragile for 6 months or less, 25 for 7 to 12 months, and 21 for 13 to 24 months. The median length of time classified as medically fragile was 14 months.

Mr. Evans said that foster care medical costs are paid through Medicaid. A medically fragile designation does not affect Medicaid funding. Medically fragile per diem payments cover the cost of housing, food, clothing, daily supervision, school supplies, incidentals, liability insurance, and local travel. The medically fragile maintenance per diem rates are \$40 to \$48. The specialized medically fragile rates are \$56 or \$91, depending on the training of resource parents and the level of care provided.

Private placement agencies are community-based, mostly nonprofit organizations providing resource home care for medically fragile foster children. Facilities of placement include licensed resource homes and residential child caring facilities such as pediatric convalescent centers. It is DCBS policy to use private placement agencies as a resource of last resort. A level 3, 4, or 5 is assigned to each foster child in private placement. Each elevation in the level of care represents an elevation in the level of supervision needed in the home. Level 5 includes children with emotional and behavioral disorders. In FY 2010, 22 children were designated a level 5 private placement, more than double the number of placements in levels 4 and 3.

Funding for the medically fragile program comes from the same sources as funding for the general foster care population. Title IV, part E of the Social

Security Act authorizes federal funding through the Department of Health and Human Services for foster care services. This is the largest nonstate source of funding for medically fragile foster care services. Other sources of funding include the Supplemental Security Income (SSI) program and child support payments from the birth home. In FY 2010, federal Title IV-E funding covered 32 percent of Kentucky's medically fragile costs. Other restricted funds, such as SSI, covered 29 percent. Kentucky general funds covered the remaining 39 percent.

Because there is no distinct budget allocation for medically fragile foster care cost or services, training and administrative costs for medically fragile foster care could not be separated from the general foster care population. It is known that more than \$117,000 has been allocated for Fiscal Year 2013 to the University of Kentucky's Training Resource Center dedicated to its annual training program for specialized medically fragile foster families.

In FY 2010, federal Title IV-E funding was nearly \$928,000; Kentucky's match was nearly \$376,000. Title IV-E reimbursements and state matches in Fiscal Years 2011 and 2012 are lower at this time but will be adjusted as more reimbursements are added retroactively.

Ms. Kennedy said that the forms submitted to Title IV-E are reimbursable based on correct boxes being checked by the court. Before a child is placed in foster care, there must be a showing that reasonable efforts were made to keep the child in the home. This must be documented in the court order. Some Title IV-E reimbursement claims are filed without the correct court documentation in this regard. Reasonable efforts may not have been made, or the court itself may not have checked the box on the court order. The court order must also document, by means of checked boxes, that it is contrary to the child's welfare to remain in the home and that it is in the best interest of the child to be removed from the home. Not checking the boxes is often a procedural oversight by the court.

In FY 2010, the payments that were not reimbursable under Title IV-E because of these procedural errors totaled \$370,316. The amounts not reimbursed for these reasons have decreased to about \$225,000 in FY 2011 and \$104,000 in FY 2012. Cabinet officials note that this is being addressed on an ongoing basis via education programs for judges, court personnel, social workers, and others involved in the process.

Senator McGaha said that the report indicated that foster parents were reimbursed for training but that the presentation said that they "may" be reimbursed. Mr. Thomas said that they are reimbursed.

In response to a question from Senator McGaha, Mr. Thomas said that respite care providers do not pay training

costs but are not reimbursed for travel, lodging, and food.

In response to a question from Senator McGaha, Mr. Thomas said that it is preferred that a respite care provider is someone from the foster parent's family.

Senator McGaha said that getting respite care is difficult; the travel and lodging costs related to training are burdensome. Mr. Thomas said that DCBS is working on revising the training schedule to have more online training to reduce the in-person training to one day.

Senator Buford said that autism was not among the diagnoses of medically fragile shown in the presentation. Ms. Kennedy said that no children who were medically fragile as of May 2012 were listed with this diagnosis. The diagnoses for the current group of children could be different.

In response to a question from Senator Buford, Ms. Kennedy said that Program Review staff did not estimate the cost of additional staff for the Medical Support Section as covered in Recommendation 1.2. It is possible that a part-time staff person would be enough. The concern is that there is no backup when the nurse administrator is called away.

Senator Buford said that there is probably a fixed amount of funding in this area. Adding staff could reduce funding for provision of services.

Representative Palumbo described a situation in Fayette County in which neighbors have questioned foster parenting skills in a home. Representative Palumbo has called about this herself. There is concern that the parents are misusing reimbursement money. She asked if foster parents are required to turn in receipts. Ms. Kennedy said that they could in some circumstances, but that cabinet staff could better address this question.

Representative Palumbo asked how is it determined what the child support payment is from birth parents. Ms. Kennedy said that birth parents who do not meet the deprivation standard for foster care, but do not have the resources to care for a medically fragile child, can still provide financial support.

In response to a question from Senator Seum, Ms. Kennedy said that a medically fragile case could be initiated by a caseworker or a physician, or a caseworker could notice conditions meriting medically fragile status for a child already in foster care.

In response to a question from Senator Seum, Ms. Kennedy said that courts decide if a child enters the foster system but that courts do not designate a child as medically fragile.

Mr. Grace said that the medically fragile designation was established years ago to provide for the care of foster children with extreme medical needs. The nurse administrator makes the designation as medically fragile. The hope is that the designation for a child is short term but it can be long term.

Ms. Glenn said Type I diabetes is becoming more common as a reason for being medically fragile. Being medically fragile is traumatic for children and parents. It is important that children be prepared to cope as adults.

Mr. Grace, referring to Senator Buford's earlier question about autism, said that unless an autistic child has related physical health needs, the child would not be designated as medically fragile. Behavioral issues would be dealt with through other programs.

Ms. Glenn expressed appreciation for Commission for Children with Special Health Care Needs nurses.

In response to a question from Senator Seum, Ms. Glenn said that the cabinet is always recruiting and is considering targeting retired people as potential foster parents.

Representative Steele said that he would like a phone number to be provided to committee members for situations like that described by Representative Palumbo.

In response to a question from Senator McGaha about Recommendation 1.2, Mr. Grace said there is discussion about providing administrative support for the nurse administrator. It is not a question of needing help with decision making.

Senator McGaha asked whether having tiered decision making affects responding to medical emergencies. Mr. Grace said that medical decisions are made in the field. It is the process of designating a child as medically fragile that is tiered.

Senator McGaha asked if there is any anecdotal evidence of problems due to lack of staff. Ms. Glenn said lack of support can be an issue when she is on vacation. Mr. Grace said that he can fill in to help with the designation process. Ms. Glenn said that timeliness is an issue when deciding what kind of foster home is needed.

Senator McGaha asked whether an autistic child who suffers seizures and requires injections would be designated as medically fragile. Ms. Glenn said that autism in itself would not result in medically fragile status, but if there were seizures or the child was diabetic, the child would be medically fragile.

Senator McGaha asked if it was a failure of the courts that the appropriate boxes are not checked on a form to qualify for Title IV-E funding. Mr. Grace said that there are a number of factors. AOC [Administrative Office of the Courts] and DCBS [Department for Community Based Services] have worked to revise the forms, which are now electronic. He said this problem occurs in a small percentage of cases.

Upon motion by Senator Higdon and second by Senator McGaha, the report was adopted by roll call vote.

Staff Report: *Implementation Status of Four Laws Related to Health and Welfare*

Christopher Hall, Lora Littleton, and Jean Ann Myatt presented the report.

Mr. Hall said that HB 501, enacted in 2003, directs the chairperson of the 144 Commission to appoint a subcommittee for making recommendations on how to implement a self-determination model of funding services within the Supports for Community Living Program. The subcommittee was created and reported its recommendations for a pilot program before the 144 Commission in December 2003. The 144 Commission voted to accept the subcommittee's report and recommendations, but delayed action in favor of endorsing HB 166 in 2004. Mr. Hall described HB 144 and its implementation.

Ms. Myatt said that the first provision of HB 322, enacted in 2004, requires a membership change to the State Interagency Council for Services to Children with an emotional disability. These changes were made. A second provision directs the 144 and 843 Commissions to establish a joint ad hoc committee to make recommendations related to individuals transitioning from the state's children's services systems to adult services systems. The ad hoc committee was not created. The third provision requires state postsecondary institutions to provide priority first-floor housing to students with disabilities and to allow off-campus housing if the school cannot provide the first-floor housing. State postsecondary schools reported to Program Review staff that they have implemented measures to ensure compliance with this provision.

Mr. Hall said that HB 671, enacted in 2004, requires the Cabinet for Health and Family Services (CHFS) to conduct an internal review of any case in which child abuse or neglect resulted in a child fatality or near fatality, and in which the cabinet had prior involvement with the child or family. The cabinet does have standard operating procedures in place for conducting the internal reviews.

HB 671 also requires the cabinet to submit an annual report to the governor, the General Assembly, and the state child fatality review team. Reports since 2004 are available on the cabinet's website. The Program Review report suggests that the use of different statistical techniques could improve the cabinet's ability to identify cases in which the risk for child fatalities or near fatalities is highest. Also, better explanation of actions taken by the cabinet is needed.

Ms. Littleton said that SB 23, enacted in 2005, has two primary components: a legend drug repository program and the Kentucky Pharmaceutical Assistance Program. The legend drug repository program was not implemented. Officials from CHFS noted concerns with implementing that program and said that the need is addressed by other programs. Creation of the Kentucky Pharmaceutical Assistance Program was contingent upon approval and funding. A separate prescription assistance program, the Kentucky Prescription Assistance Program, has been created, but it is not the

same program authorized by SB 23.

Ms. Jurek said that Program Review staff did a thorough job of describing the status of implementation.

Representative DeCesare said that he is getting many calls about the adult work program of LifeSkills in Bowling Green. Mr. Friedlander said that the relevant waivers were updated two years ago. Regulations are being updated—with a lot of public review. Regulations are changing reimbursement for all providers in the system. Individualized services are the priority. There is higher reimbursement for working in the community than in sheltered workshops. There have been major changes in regulations; the cabinet has more to do to clear up misconceptions. The regulations were not done as emergency regulations, which allows more time for comment.

Ms. Jurek said that many of these changes are being adopted in response to requirements by CMS [Centers for Medicare & Medicaid Services].

Representative DeCesare agreed that getting individuals into the community is important. The concern he is often hearing from parents is that their children do not have the capability to work in the community. It will be detrimental for caregivers if sheltered workshops are discontinued.

Representative DeCesare said that the death of an individual killed in Todd County is relevant to the discussion of HB 671. When a parent or student complains about a school, the cabinet is quick to act. It is not so quick to act when there is a school complaint against a parent. Mr. Friedlander said that it is a question of who has greater standing to lodge a complaint. The cabinet is in discussion with courts and schools as to how to improve. Ms. Jurek said that ways to communicate online are being added, but that there are still limits as to what can be done without violating confidentiality. Mr. Friedlander said that there was testimony last session about the length of time that physicians had to wait on the phone to make a complaint. Ms. Jurek said that the addition of an online system should help alleviate problems with phone waiting time.

Representative DeCesare asked why call centers and workers are located so far apart. Ms. Jurek said that call centers are expensive, and that staffing is done on a regional basis. The ways that people can make reports have been expanded.

Representative DeCesare said that his understanding is that the seriousness of a situation is determined at intake. All calls should be seriously considered. Ms. Jurek said that judges have been recruited to help with training. All calls are taken seriously but some are collateral, which means they do not involve abuse and neglect and are more appropriate for other agencies. The legal definitions of abuse and neglect are not always commonly understood. For example, no food in the house would not legally be abuse or neglect. A referral to a food bank could be appropriate. Mr.

Friedlander said that what happened in Todd County is a tragedy for everyone involved. It revealed to the cabinet some holes in the system.

Representative DeCesare stressed that it is important to keep up the focus on this.

Senator McGaha said that what struck him about the staff report is that some legislation or parts of legislation are never implemented. He asked if there is a mechanism in place to inform LRC and a bill's sponsors that parts of a bill will not be implemented. Mr. Friedlander said that for SB 23, the cabinet should have reported concerns regarding implementation to the Health and Welfare Committee and the bill's sponsor. Ms. Jurek said that it is routine after every session for the cabinet to review legislation that was enacted. There is no formal process in place across the executive branch though; it is up to each cabinet and secretary.

The meeting adjourned at 11:51 a.m.

2012 SS HB 1 IMPLEMENTATION AND OVERSIGHT COMMITTEE

Minutes of the 3rd Meeting of the 2012 Interim

September 19, 2012

Call to Order and Roll Call

The 3rd meeting of the 2012 SS HB 1 Implementation and Oversight Committee was held on Wednesday, September 19, 2012, at 10:15 AM. This was an out-of-town meeting held at the Women and Children's Campus of The Healing Place located at 1503 South 15th Street, Louisville, Kentucky. Representative John Tilley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Representative Susan Westrom, Danny Jones, Cumberland River Regional Mental Health, Developmental Disabilities, and Substance Abuse Center, Corbin, Kentucky; Mike Porter, Executive Director, Kentucky Dental Association; Bert Guinn, Greater Louisville Medical Society; Pearl Ray LeFevers, Cumberland River Regional Mental Health; Sarah Nicholson, Kentucky Hospital Association; D. J. Beyer, Executive Director, Kentucky Board of Dentistry; and Frankie Spencer, Morehead Inspiration Center and Morgan County Magistrate.

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

Approval of Minutes of July 23, 2012 and August 15, 2012 Meetings

Representative Stivers moved approval of the minutes of the July 23 and August 15, 2012, meetings, and Representative Belcher seconded. The minutes were approved without objection.

Effect of HB 1 on Substance Abuse Treatment in Kentucky

Discussing the broad scope of drug treatment were: Van Ingram, Executive

Director of the Kentucky Office of Drug Control Policy; Karyn Hascal, President of Mission Advancement, The Healing Place; Steve Shannon, Executive Director of the Kentucky Association of Regional Mental Health-Mental Retardation Programs (KARP); Mark Jorrich, MD, FASM, Medical Director of the Methadone Education and Rehabilitation Center (MORE Center); Pastor Bernard Foschini, Director of Teen Challenge of Western Kentucky; and Robin Peavler, MD, FACEP, American Board of Addiction Medicine Certified Addictionologist.

Ms. Hascal provided an overview of The Healing Place, founded by Jay Davidson and doctors representing the Jefferson County Medical Society, which has been in existence in the Louisville area for a over 22 years. The Healing Place is a long-term, social model recovery program for drug and alcohol addiction. The program involves one alcoholic or drug addict reaching back to help another alcoholic or addict. It is a 12 step program and is long term, meaning that it is six to nine months. The Healing Place program is a model of empowerment, empowering, and allowing those going through the program to make mistakes, learn from them, and make better decisions. It operates as a therapeutic community in that each individual in the program has a chore such as cooking, cleaning and maintaining the facility, landscaping, and supporting the operations of the facility on a daily basis. The Healing Place has three campuses in Kentucky: two in Louisville, the Women and Children's campus and the Men's campus, and a campus in Campbellsville, Kentucky that is part of the Recovery Kentucky Initiative.

The program does not charge the client any out-of-pocket fee or insurance payment, and the client can stay at the facility as long as needed. Funding is derived primarily from private donations from individuals, corporations, and foundations, with less than 25 percent derived from public sources. There are contracts with the Department of Corrections at the women's facility in Louisville and the Campbellsville facility to provide recovery services for individuals who are on parole or coming out of an institution and who have not had services while in the institution. The Healing Place offers a broad range of services such as overnight emergency shelter for housing and food, a detoxification program, intensive recovery programs and transitional living such as finding housing, jobs, reunification with family, and parenting classes. The programs and models have been researched by the University of Kentucky Center on Drug and Alcohol Research for a number of years and most recently found that The Healing Place model has a 75 percent success rate, five times the national average, which means that three out of four individuals who complete the program are still sober and clean one year upon leaving. Ms. Hascal invited a client, "Kenny," to talk to committee members

about his life experiences and experiences at The Healing Place.

Kenny said that at the age of 30 he was diagnosed with degenerative disk disease, and his doctors placed him on 80 milligrams of oxycontin for pain relief. He was diagnosed with thyroid cancer shortly thereafter, and obtaining prescription pain medication was easy. He was not able to obtain the amount of oxycontin he needed for the pain and would devise ways to obtain more from his and other doctors. Between the ages of 30 and 40, he was dishonest and involved in criminal activity. He would make copies of his MRIs, put another person's personal information relating to his MRI on it, then make it look like an original. He would then send that person whose name was on the MRI, along with the MRI, to a doctor he knew would provide a prescription for the oxycontin. A prescription of 120 oxycontin pills with a street value of \$70.00 per pill or \$8,400 was real motivation. It was common knowledge which doctors in the Louisville area would provide a patient with what was needed. Kenny became involved with The Healing Place when his intervention came from Louisville's Department of Narcotics at the age of 40, and after talking with his attorney and looking at ten years in a federal prison, he determined he needed long term treatment. The Healing Place had changed his life, and after going through the twelve step program, he felt like a new person. He is employed at The Healing Place and has some benefits.

In response to a point of clarification and questions by Senator Stivers, Kenny said that his MRI with another individual's personal information would be taken to a doctor. When the doctor looked at the MRI of the patient it was in fact his, not the individual patient in the doctor's office. His goal of choice prescription was 120 pills of 80 milligrams oxycontin. The stable of patients would go to pain management clinics in Louisville. There were about eight such doctors, and all the doctors the prescriptions were obtained from are no longer practicing physicians. Kenny would call for an appointment with these doctors and the appointment times staggered. These were initial new patient visits so that if the appointment with the first doctor did not work out with a prescription for the 120/80s, then the individual would go to the other appointments until an appointment resulted in the choice prescription written, and then the other appointments would be cancelled. The stable patient would continue to see that doctor for prescriptions, and the medications would be collected and dispersed. This was occurring in the early 2000s. A KASPER report may have been requested but not to the level it is today. Doctors wanted the money as bad as the patient or drug addict; they were all greedy. Kenny said that 120 pills was the maximum that could be obtained at one time, and he both used and sold the pills.

In response to questions from Representative Belcher, Ms. Hascal

indicated that The Healing Place focuses on accepting clients from the 13 counties surrounding Jefferson County, although they will accept clients from all over the country since the organization is not limited by public funding. All programs are full and have waiting lists.

Steve Shannon talked about the Community Mental Health-Retardation Centers (CMHCs) throughout the state that are the public safety net for mental health, substance abuse addictions, and intellectual and developmental disability services. In fiscal 2011, the centers served 179,000 individuals or about one for every 25 Kentuckians. About 18,000 of those individuals had a primary diagnosis of substance abuse or addiction. The centers employ over 9,000 individuals, or about one out of every 200 working Kentuckians. The agency is established by statute, and the system was created as a result of federal legislation in 1963. The agency receives funding from the state general fund, a substance abuse prevention and treatment block grant from the federal government, and a small portion from Medicaid for services to pregnant and postpartum women only. Also, a federally mandated Medicaid program for children called EPSDT, Early and Periodic Screening, Diagnosis and Treatment, allows services to adolescents. Some funding is received from the Administrative Office of the Courts for drug court, and the agency is in the process of negotiating contracts with the Department of Corrections to develop outpatient services. Substance abuse is the number one public policy issue facing the Commonwealth because it impacts employment and education, among other things. The Centers for Disease Control indicates that overdose deaths have reached epidemic levels.

The CMHCs' prevention services are an evidence-based practice that saves dollars in the corrections system, law enforcement, and the Department for Community Based Services, and they increase employment. As House Bill 1 becomes more fully implemented, there will be a need or demand to address medical and social detox at a hospital supervised by a doctor. There is a great need for adolescent residential programs. Outcome measures from independent studies reflect that the outcomes are effective through the drug and alcohol research. One of the concerns of the agency is whether House Bill 1 will result in more individuals being incarcerated or accessing treatment. He emphasized the need for treatment rather than incarceration.

In response to questions from Senator Stivers regarding adolescent treatment centers, Mr. Shannon said that CMHC is operating one adolescent treatment center in Mount Sterling and one in Louisville, and the approximate ages range from fourteen to eighteen. A lot of the abuse and addiction is related to marijuana, a gateway drug. The program in Mount Sterling is designed for 16 weeks while Medicaid managed care is 30 days. Each

center holds about 16 individuals. In response to a question by Chair Tilley, Mr. Shannon said in Mount Sterling the mental health center administers this treatment program, and in Louisville it is Seven County Services. In other areas of the state, the treatment program would be considered outpatient treatment rather than residential treatment.

Doctors Mark Jorrich and Robin Peavler discussed medications to treat opiate addiction. Dr. Jorrich is an internal medicine physician, and within that practice he prescribes suboxone. Addiction is a brain disease and has a biologic basis with genetic and environmental influences on how the brain works. Methadone, which is not the same as methamphetamine, is specifically for opioid addiction treatment. The treatment of choice for pregnant women addicted to opioids is opioid replacement therapy using methadone. Obstetricians refer individuals, and some referrals come from the criminal justice system. He did not recall referrals from other medical treatment providers. Kentucky is a strong advocate of medication-assisted treatment, and the regulations that exist for methadone clinics are sufficient. House Bill 1 is unlikely to affect methadone clinics because methadone patients come to the clinics every day, are seen regularly by a physician, and annual reviews are required by the physician who has to be credentialed in addiction medicine or addiction psychiatry.

Dr. Peavler is a board certified Addictionologist and emergency medicine doctor practicing 23 years. Pain pill addiction kills 95 Kentuckians per month and is now the leading cause of accidental death. In the last 12 to 15 years, there has been an amazing increase in the number of patients coming into the emergency room for pain. Pain has become the fifth vital sign. Emergency room doctors have begun giving a secondary diagnosis as drug seeking behavior (DSB). Although the United States has five percent of the world's population, its residents consume 95 percent of the pain pills manufactured in the world. Addiction is a scientifically proven disease that permeates all levels of society. He referenced an article by Dr. Malcolm Butler discussing how doctors have contributed to this epidemic. Pain medication addiction it is not about the "high" but once an individual is addicted he or she needs more and more medication. If the person has no medication, he or she becomes very sick or dope sick with such symptoms as aching, vomiting, diarrhea, and chills, and it takes more medication to keep from becoming sick.

The average pain medication addict spends \$3,200 per month on pills. Dr. Peavler said that he treats with suboxone and counseling, which studies have shown is effective in treating addiction and requires a medical doctor to be a central part of the recovery from beginning throughout the disease. Suboxone does not give a euphoric effect to those who

have addiction and dependence, but it stabilizes the patient's brain as he or she becomes normal again. Counseling and psychosocial services, the twelve step programs, and the spiritual cleansing can be utilized because the patient is clear-headed and understands the life skills being learned in the programs. Suboxone can be weaned over time so the brain actually undergoes the biochemical change back to normal or near normal.

House Bill 1 has increased the medication assisted treatments. There are 11 treatment clinics that see 2,500 ongoing patients per month and 250 new patients each month. Patients are held accountable. There is room for about 2,000 to 3,000 more patients in the private sector clinics using suboxone and unlimited amount of counseling.

In response to statements by Senator Jones for input from the panel concerning the prescribing and administering of suboxone and the issue of training for those who prescribe it, Dr. Peavler indicated that there are physicians who obtain licensure by a special eight hour course online that allows a special drug enforcement administration number to be issued to write prescriptions for suboxone. It is very important to have parameters of how this drug is prescribed. A physician cannot just prescribe three or four prescriptions for suboxone of 120 pills because of diversion on the streets. Eight-five percent of suboxone bought on the street is bought for the purpose of self treatment. The Kentucky Board of Medical Licensure issued an opinion as to how suboxone should be prescribed, and he and Dr. Jorrich are working through the Kentucky Society of Addiction Medication (KSAM) on how to strengthen or reinforce the prescribing of suboxone.

Dr. Jorrich agreed that there needs to be parameters and guidelines. He said that some practices are primary addiction specialty practices that can provide a certain amount of care on site, but there is a larger number of physicians who are not in primary specialty practices but who just have the eight hour certification. The expectation should not vary except that the specialty practice will be able to provide onsite those services for which the nonspecialty practice will have to utilize outside resources. In rural areas, those resources of pain and addiction specialists, psychiatrists, and counselors are limited.

Senator Jones indicated that one solution is to require physicians who write prescriptions for suboxone to attend the Clinical Applications of the Principles in Treatment of Addictions and Substance Abuse (CAPTASA) conference. There needs to be some level of on-going continuing education for those treating opioid addiction in an outpatient setting other than taking an eight hour online course.

In response to a question by Senator Jones regarding board certification of physicians in the state by the American

Board of Addiction Medicine (ABAM) or the American Society of Addiction Medicine (ASAM), Dr. Shannon indicated he believed there are approximately 2,300 to 2,500 nationwide, and that in Kentucky the number is 100 or less. Senator Jones encouraged the medical licensure board to look at the quality of care that is provided to patients who are prescribed suboxone and provide feedback to the committee. A heightened level of training and education is needed before physicians are allowed to prescribe suboxone. Dr. Jorrich cautioned about a one size fits all paradigm. He said there needs to be flexibility or general guidelines in what physicians can do. Physicians are intimidated since the passage of House Bill 1 when prescribing pain drugs and need to better understand the differentiation as to what is criminal or not criminal, and what is a guideline and what is a standard of care. Mr. Ingram stated that as of September 17, there are 336 providers who have the license to prescribe suboxone. One year ago there were 250.

Faith based organizations such as Teen Challenge also partner in treating substance abuse. Pastor Foschini, Director of Teen Challenge of Western Kentucky, stated that Teen Challenge is a nationwide ministry. The minimum age for the western Kentucky center is 17. There are over 218 Teen Challenges across America and nearly 1,000 worldwide. The western Kentucky center has capacity for 40 students, receives no funding from the government except that students may sign up and receive food stamps, and charges a \$1,000 insurance fee and \$500 per month thereafter. The program depends on donations from local churches and individual donors. Approximately 30 percent of the clients are directly from jail and are indigent, and about half of the center's population is the result of pill abuse. He graduated Teen Challenge in Pennsylvania when he was 25 years old. The duration of the Teen Challenge program is 12 months, and after that time students are allowed to remain on campus in a less supervised environment and during which they may get jobs and pay rent. The program encourages a person to have a relationship with God, teaches life skills, and has a re-entry program if needed.

Prescription for Tragedy – Kentucky's Addicted Babies

Laura Ungar discussed a recent exposé she wrote in the Courier journal investigating the growing problem of drug addicted newborns. Hospitalizations for addicted newborns rose from 29 in 2000 to 730 last year. A Journal of the American Medical Association study indicated that hospitalizations nationally rose about 330 percent from 2000 to 2009. She recently visited the University of Louisville hospital neonatal intensive care unit and discovered that more than

half of the 16 babies were suffering from neonatal abstinence syndrome. According to the hospital's statistics, 132 newborns have been treated for addiction to opioids or narcotics. The UK Medical Center reported seeing 90 to 100 addicted babies per year, with Kosair Children's Hospital caring for 65 addicted babies in 2011. These are difficult visits, as the babies cry out in pain with ridged blotched skin and are going through the same withdrawal symptoms as adult addicts, including diarrhea, excessive or high pitched crying, excessive sucking, fever, and hyperactive reflexes. Financially, the national overall health costs for addicted newborns rose from \$190 million in 2000 to \$720 million in 2009, resulting from an average 16 day hospital stay costing \$53,400 per infant, with Medicaid paying in eight of ten cases. While medical research is developing, early studies indicate that neurological behavior problems and attention deficit and hyperactivity disorders are more likely with these babies. State health officials have indicated solutions to this pill addiction need to be a priority but that answers are illusive due to ongoing funding issues and continued drug problems in society. However, drug treatment centers work.

In response to questions by Senator Stivers concerning how mothers became addicted, Ms. Ungar cited a number of factors, including initial marijuana or alcohol use during the early teenage years. Some mothers have indicated that their addictions came about as an illicit or illegal situation where they began buying pills on the street. None of the women she interviewed said that prostitution was a means to pay for their chemical dependence, but she was sure that it occurs. She said that many recovering addicts told her in her interviews that they were never asked by prescribers about their or their family's addiction history.

Mary Burnett, Program Director of the Independence House Pregnant and Postpartum Women's Residential Treatment Program, and Danny Jones, Executive Director, Cumberland River Comprehensive Care Center in Corbin, Kentucky, discussed their treatment programs for pregnant and postpartum women addicted to substances. Mr. Jones said that Independence House was started four years ago with a three year federal grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) for a residential treatment program for pregnant and postpartum women addicted to substances. The grant ended last October, but Independence House has managed to remain open. Medicaid pays for pregnant and postpartum women's outpatient services but does not pay for residential services. There is a lack of funding, although the program was given a \$250,000 grant by the Office of Local Development earlier in the year and is receiving support and assistance

from First Lady Beshear. In developing the program, he worked with Dr. Robert Walker and the University of Kentucky. The committee was provided a report by Dr. Walker that contains information of what has been accomplished in the first three years of the program.

Ms. Burnett explained that the program begins with an initial 40 days of intensive treatment where the women do educational therapy groups all day--except for lunch breaks--using a holistic approach addressing substance abuse issues. Upon completion, if appropriate, the women remain at the facility long term until they deliver, as some residents do not have a place to go after treatment due to homelessness or continuing drug situations in their home environment. Others come from good homes and already have life skills and supportive families. Upon delivery, mother and child remain at the home for 30 days, with the mother having the responsibility of taking care of her baby and performing all the chores of Independence House. The program receives many referrals from the legal system, with authorities reluctant to release them from jail unless they go to treatment. Among the home's residents, the average age of first use of drugs is seven with habitual use beginning as teenagers due to peer pressure, with residents coming from all walks of life, rich and poor. Out of fifteen women in the program, the primary drug of only one individual is alcohol, while the others are prescription drugs. She has taken a survey of the women asking such questions as to what lengths they would go to obtain drugs, where they got them, or how much was paid for the drugs, and she determined that individuals who sell the pills see it as a business endeavor. They go out of out-of-state to obtain the pills. The new laws and regulations have decreased the number of pills on the street, and medical professionals have become more cautious in their prescribing, although persons crossing state lines remain problematic. Ms. Burnett invited the committee to tour the Independence House and talk with residents.

Chair Tilley referred committee members to a letter in the meeting packets from the law firm of Stoll Kenon Ogden regarding Dr. Ricky Collis and Dr. Dean Collis and the regulations concerning licensure of pain management facilities.

Misconceptions Regarding House Bill 1 and its Associated Regulations

Chair Tilley noted the summary of common misconceptions contained in member packets. Stephanie Hold, Assistant Director, Office of Inspector General, Cabinet for Health and Family Services, which oversees the KASPER system, and Mike Rodman, Executive Director, Kentucky Board of Medical Licensure (KBML), discussed the misconceptions regarding House Bill 1 and associated

regulations.

Ms. Hold indicated that the Inspector General's Office had compiled the list from actual calls and issues that have arisen that have been addressed in the office as well as from the KASPER Help Desk. There had been tremendous support and input from the stakeholder meetings. Mr. Rodman said that the KBML had also been meeting with stakeholders such as the Kentucky Medical Association, the Kentucky Hospital Association, Lexington Clinic, and others that have identified issues and offered solutions. She stated that technical staff has been increased to accommodate the operation of KASPER 24/7 with monitors in place and that this has been greatly improved with the number of down hours decreasing from 29 in July to two in September. Patient consent forms are not required for a provider to request a KASPER report. A KASPER report can be placed in a patient's medical record and discussed by the physician with the patient. Practitioners with a valid Drug Enforcement Administration license must register with KASPER, although they may not have the need to write a prescription for a controlled substance. If a practitioner has an office out-of-state and treats patients in that state, the practitioner must follow the law and guidelines in that state.

Senator Stivers said the committee was concerned about the advice being given to physicians, and that a doctor had previously testified that he could not write a narcotic prescription unless he sent the patient or individual to have a urine test. The doctor indicated that his lawyer had advised him not to write the prescription. He said the regulation clearly states that a urine test only applies after 90 days of prescription. Mr. Rodman noted that the interval after a urine drug test is another question the board receives, and that a urine test is not required for initial prescribing but only after 90 days. Random intervals are required thereafter as determined by the physician. Mr. Rodman indicated that there is nothing in House Bill 1 or the regulations that prohibits a physician from prescribing controlled substances.

In response to a question by Senator Jones concerning the confusion in the medical community regarding controlled substances how they are reflected in the regulation, Mr. Rodman stated there is confusion because there are standards contained in statute and standards in the regulation, and physicians are accustomed to advisory language rather than regulatory language.

In response to questions by Representative Belcher, Mr. Rodman said that it is not true that emergency rooms can prescribe pain medication only for broken bones or chest pains, nor is it true that a physician can prescribe only one round of pain medication with no refills. He also said that ADD and ADHD medication are Schedule II controlled substances, and that

comments from pediatricians and families concerning these medications may need to be addressed by the legislature. To prescribe these drugs, a KASPER report is needed with a monthly visit upon initial prescription to make sure the amount was appropriate, but thereafter it would be up to the physician. Mr. Rodman pointed out that there is flexibility in the board's regulations.

In response to a question by Representative Gregory as to where individuals could be referred for addressing these misconceptions, Mr. Rodman indicated that identified misconceptions will be posted and available on the KBML website. Constituents can also call KBML.

The Governor's Office Stakeholder Regulatory Outreach Activities

Kate Wood Foster discussed the Governor's convening of a roundtable workgroup consisting of regulatory board and stakeholder representatives, which had had three previous meetings. The Governor fully supports House Bill 1. The administration has taken the position that House Bill 1 requires more deliberate and conscientious decisions in prescribing between the patient and prescriber. Comments have been requested from stakeholders in three areas: interpretation issues, recommended regulatory suggestions, and statutory changes. KBML and other licensure boards are working on refinements and expect those to be more public in the next few weeks. The boards will continue to receive comments as to whether the refinements will address their concerns. As an example, one recommendation has been for institutional accounts for hospitals and long-term care facilities that will make it easier for those institutions to utilize KASPER. The roundtable group will return comments to the stakeholders by the end of September and will be continuing its meetings with the groups.

The meeting adjourned at 12:50 p.m.

TASK FORCE ON KENTUCKY PUBLIC PENSIONS

Minutes of the 4th Meeting
of the 2012 Interim
September 18, 2012

Call to Order and Roll Call

The fourth meeting of the Task Force on Kentucky Public Pensions was held on Tuesday, September 18, 2012, 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:

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

Guests: Representatives Linda Belcher, Mary Lou Marzian, and Arnold Simpson; David Draine, Pew Center on the States; Josh McGee, Laura and John Arnold Foundation; Greg Fischer, Louisville Metro Government; Steve Arlinghaus, Kenton County government; Steve Pendery, Campbell County government; and Mike Buchanon, Warren County government.

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

Approval of Minutes and Announcements

The minutes of the August 21 meeting were approved without objection, upon motion by Representative Yonts. Senator Thayer announced that the date of the Task Force's next meeting has been changed to October 29 at 1:00 p.m. The final meeting is scheduled for November 20 at 1:00 p.m.

Overview and Preliminary Report by the Pew Center on the States and the Laura and John Arnold Foundation

The guest speakers were David Draine, Senior Researcher, Pew Center on the States (Pew), and Dr. Josh McGee, Vice President for Public Accountability Initiatives, Laura and John Arnold Foundation (LJAF). Copies of their slide presentation and Mr. Draine's prepared statement were provided.

As emphasized at previous Task Force meetings, Mr. Draine said Kentucky policy makers will need to achieve three things as part of comprehensive pension reform: develop a plan to responsibly pay down the unfunded liability over a reasonable time frame that, ideally, should not impinge on funding for key services or impair the Commonwealth's economic viability; adopt a reformed retirement system that is affordable, sustainable, and secure; and ensure that under whatever plan is adopted, the state can effectively recruit and retain a talented public-sector workforce. Today's presentation should not be viewed as an endorsement by Pew or LJAF for any particular policy or approach.

Mr. Draine said there is no quick fix to Kentucky's pension problems. Under all plausible scenarios, there will be substantial cost to state and local governments to pay for pension promises over the next 30 years. Refinancing the state's pension debt through bond issuance has the potential to improve the funding situation and reduce long-term costs. Bonding, however, would force the state to take on additional risk and should only be used as part of a comprehensive reform effort. Changing the tax rules for retirement benefits could potentially produce enough revenue to close a substantial portion of the funding gap and lessen the need for other significant tax increases or service cuts. Changing benefits for new employees will not reduce current pension debt or have large cost implications in the near term. The plan offered to new employees is relatively inexpensive, and employees pay

much of the cost. While the plan for new employees is not projected to be expensive under Kentucky Retirement System (KRS) assumptions, it exposes Kentucky to a substantial level of risk. Alternative plan designs could better manage the risk and ensure full funding to deliver benefits that are affordable, sustainable, and secure. The model used to analyze Kentucky's pension plans is based on aggregate plan data and projections provided by KRS. The figures presented should not be viewed as exact savings or cost estimates but instead as offering a means to assess scale and scope. Plan design is about more than only cost. Policy makers need to consider other relevant factors, such as how different plan designs share risk and distribute retirement wealth across employees' careers.

Over the next 25 years, KRS contributions are expected to rise to almost \$5 billion, assuming all assumptions are met. If investment returns are lower than expected, contributions could increase considerably. If contributions grow faster than the economy, which seems likely, this cost would crowd out key public services, stunt public sector hiring, and make it harder to offer raises.

The problem is of such scale that unfunded liabilities will continue to grow over the next decade and only start to dip after 2027. Assuming the state meets its payment schedule and there is no significant economic downturn, the unfunded liability should be largely paid off by 2037. Even so, the Kentucky Employees Retirement System (KERS)-nonhazardous plan will have less than two years of benefit payments on hand in 2022 and will be vulnerable to any deviation from plan assumptions. Solvency concerns impact the plan's security and investment ability. Paying the full ARC in a shorter time frame or finding other ways to bolster this dangerously depleted plan could be helpful in remedying solvency concerns. While the KERS-nonhazardous plan is in the worst shape, the other KRS plans also have funding shortfalls that need to be paid.

Analysis under the baseline assumptions suggests the present value of KRS contributions by state and local governments to be \$20.8 billion. Under a pessimistic scenario, if investments do not perform as hoped, the value of future contributions will jump to \$23 billion. If investments outperform, under an optimistic scenario, taxpayers will only need to set aside about \$18 billion. If Kentucky simply closed the existing plan and did not replace it, this drastic change would simply eliminate benefits for new employees and reduce the value of future contributions by just \$1.3 billion. Pew and LJAF think it would be a terrible idea to eliminate retirement benefits for new employees. Changing benefits for new employees would not eliminate the funding gap and, even under the most extreme scenarios, would reduce total costs by less than 10 percent.

Increasing the employee contribution rate by one percent would have a \$1.26 billion impact on the value of employer contributions over the next 30 years; decreasing the multiplier by one percent, including for current employees, would reduce the value of contributions by \$600 million. Changing the benefit calculation by averaging salary over six rather than five years would create savings of \$255 million. These approaches may or may not be viable based on the inviolable contract. While use of such traditional levers may offer reasonable savings, they will not be enough to close the funding gap on their own.

Raising the retirement age in Kentucky will not necessarily result in savings because benefits are heavily back-loaded, based on the benefit formula and projected salary increases for late-career workers. If plan assumptions do not match what actually occurs, this result may not hold.

There are many ways in which refinancing pension debt through bonding could be beneficial, but there are substantial risks. Analysis estimates that issuing \$1.37 billion in bonds would reduce the value of future contribution costs by about \$1.38 billion. Bond service payments are included as part of the employer contribution estimate. The combined cost of paying for both the bond and pensions under this scenario is less than the projected pension contributions. Savings would result from borrowing at a rate less than the investment return delivered by the pension plan and frontloading contributions into the retirement system. Under pessimistic scenarios, the estimated value of savings would be \$1.19 billion. Kentucky's borrowing costs are conservatively estimated at six percent, based on assumptions provided by LRC, but previous pension bond issuances have resulted in borrowing costs below five percent. Beyond the potential savings, bonding would also help alleviate the KERS-nonhazardous plan's solvency problems.

Increasing salaries by three percent and, in exchange, increasing employee contributions by two percent would save almost \$2 billion from the present value of future contributions. Raises can help defray the immediate cost to employees, who have had their salaries frozen for the last three years, and bolster pension funding over time.

Changing the tax exclusion for retirement income has the potential to inject much needed revenue into the pension system. Preliminary estimates from the office of the State Budget Director suggest that counting nonretirement income against the inclusion would initially increase annual revenue about \$150 million. If the legislature eliminated the exclusion, revenue would increase by \$500-\$600 million. Putting that new money into the pension system would reduce the need for contributions from other sources by \$2.3 billion under the

more modest change, and by \$7.5 billion with removal of the exclusion.

Measured use of the options that have been presented would not come close to eliminating the funding gap but would have some impact on future contributions. The analysis did not model elimination of reciprocity for legislative pensions or methods for reducing administrative costs, since they would not offer meaningful reductions in the contributions that state and local governments need to put into the pension system. Mr. Draine concluded the first half of his presentation, and the floor was opened for questions.

When Senator Pendleton questioned whether blame for the pension dilemma is primarily due to the economy or failure to pay the full ARC, Dr. McGee said the two factors are linked and that blame cannot be assigned to one or the other. Poor performance in the economy led to increased costs. Mr. Draine noted that even though full contributions were made by the County Employees Retirement System (CERS), that system faces a substantial shortfall.

Representative Montell asked about the potential insolvency of the KERS-nonhazardous plan and its failure to meet projected investment return. Mr. Draine confirmed that their analysis presumes an assumed investment return of 7.75 percent and compliance with the contribution schedule adopted in House Bill 1 (2008 Special Session). He said that one consequence of the KERS-nonhazardous plan's low funding level is that there are few assets available to invest. Later in the meeting, Representative Cherry advised that the 10-year investment return as of June 30, 2012, was 5.99 percent and has shown improvement during the past six months.

Representative Yonts suggested the need for bonding as a means to protect potential revenue accruing from the reduction or elimination of tax exclusions. Mr. Draine said that issuing a bond would "lock in" ARC payments. While reducing flexibility in state policy, it would also prevent the state from avoiding necessary payments. Connecticut, when bonding for its teacher retirement system, included a provision that failure to make ARC payments would result in technical default on the bond. Dr. McGee said that explicitly stating legislative intent is another possible way to ensure dedication of resources. Representative Yonts spoke about a recent *Courier-Journal* article relating to Kentucky's multiple tax code exemptions. He advised the Task Force to begin working in coordination with the Governor's Blue Ribbon Commission on Tax Reform.

Senator Higdon said he hopes the Task Force will address the issue of COLAs. Dr. McGee explained that their analysis is based on KRS' calculation of the current liability and does not include costs that would be incurred by future COLA increases. He said they would be able to quantify the size of the increased

liability in the event of future COLA increases but that paying for future COLAs would necessitate additional revenue. Discussion followed regarding Rhode Island's method of awarding COLAs. The discussion also included a review by Representative Cherry of 2005-2011 KRS cost figures associated with investment return, COLAs, and reduced ARC payments.

Representative Montell inquired whether the proposals forthcoming from Pew and LJAF will address Kentucky-specific issues such as double-dipping, overtime pay, and spiking. Dr. McGee said that those issues, while related to good governance, are generally not huge cost drivers. Mr. Draine said their proposals will be well designed and also look at protections that would be considered good policy but not necessarily major cost drivers. Senator Thayer advised members that they will have the opportunity to offer and vote on suggested "good government" type reforms. He reminded them, too, that proposed reforms will also apply to the legislative and judicial retirement plans.

Mr. Draine began the second part of his presentation by describing four alternative models illustrated for the KERS-hazardous and nonhazardous plans: the traditional defined benefit (DB) plan currently offered to new employees, a simple defined contribution (DC) individual retirement account, a cash-balance plan, and a stacked hybrid pension plan in which workers have both a traditional pension and an individual retirement account. He explained that each alternative model was designed to cost the same as the current plan under the plan's assumptions, keeping employee contributions the same. He also reviewed charts comparing projected wealth accumulation for the plan design alternatives for a hypothetical employee hired at age 25, under both optimistic and pessimistic scenarios; and illustrating pay replacement ratio for the hypothetical employee, both with and without social security benefits.

Mr. Draine said the cash-balance option requires the plan to manage investment account moneys, with the employer guaranteeing a minimum return. Workers in a cash balance plan can use the money in their account to purchase an annuity. Cash balance plans offer two key protections commonly associated with DB plans: a guarantee against investment risk and protection against outliving one's retirement assets. Stacked hybrid plans include a small traditional pension and an individual retirement account for participating employees. Kentucky's current DB plan offers a 1.1 percent multiplier for employees who work nine years or fewer in state or local government—more or less the same level of generosity as the DB component of the sample hybrid plan, but without the advantage of an individual retirement account to which the employer contributes. It is clear that workers earn

a lot less pension wealth early in their careers than late in their careers. This creates an incentive to work longer and can help the state retain talent, but it also places workers on a retirement savings path that is less than secure for much of their working life. Research indicates that workers respond more strongly to wage increases than retirement benefit increases; thus, wage may be a more effective retention tool. Back-loaded benefits are a key characteristic of a traditional pension plan. Whether back-loading benefits is the right way to structure retirement savings is a question that policy makers will need to answer.

Mr. Draine posed questions for the Task Force to consider. How should workers earn benefits over time—a limited benefit early in the career with a spike in late career, or smoother? Should the taxpayer bear all the risk, should it all go to the worker, or is there an effective way to share it? What will be the best way to recruit the workforce needed to deliver public services, considering that retirement savings is only one element of compensation?

Representative Montell asked whether the retirement system would assume the risk for purchase of annuities under a cash balance plan, or would the annuities be purchased through the private sector. Dr. McGee explained that the private sector has more constraints than government with respect to annuitization rates. Because insurance companies are constrained in how they are allowed to invest money set aside for annuities, the annuitization rate would go down substantially under a third-party purchase. If the state chooses to subsidize annuitization, it would be best to do it through the retirement plan. Mr. Draine said that as long as the annuities are purchased in a fair and responsible manner, the risk should be manageable. Nebraska's model provided for annuitization through the state.

There were no further questions. Senator Thayer thanked the speakers and said the Task Force looks forward to continuing the dialogue at the next meeting.

Testimony From Interested Groups

The guest speakers were Greg Fischer, Mayor of Louisville Metro Government; Steve Arlinghaus, Kenton County Judge/Executive; Steve Pendery, Campbell County Judge/Executive; and Mike Buchanon, Warren County Judge/Executive. They provided copies of their PowerPoint presentations.

Mayor Fischer said their group has been working together on issues affecting Kentucky's metropolitan areas, along with Boone County Judge/Executive Gary Moore and Lexington Mayor Jim Gray, who were unable to attend today. He said that the rising pension costs are alarming and unsustainable, as demonstrated by pension reform initiatives passed this summer by the cities of San Diego and San Jose, and the declared bankruptcy of

the city of Stockton, California. On behalf of the group, he urged that Kentucky act to reverse the trend of escalating annual contribution rates; fundamentally redirect the system to provide long-term relief and predictability for local governments; and provide for shared responsibility from all stakeholders, including current and future employees, employers, and retirees.

Judge Buchanan said Warren County's general fund contributed \$325,910—3.5 percent of total spending—toward pension costs in 2003, and \$398,000 in 2004. Workforce cuts began in 2008, mostly through attrition and utilization of part-time employees. In 2011, pension costs rose to \$1.194 million—7.88 percent of total spending. The Warren County sheriff's hazardous duty contributions are even higher. If this trend continues, within 10 years Warren County will have a considerably smaller workforce and will be providing fewer services to constituents, and most Kentucky counties will probably become insolvent.

Judge Pendery spoke for both Campbell and Boone Counties. He said pension costs for Campbell County were more than double in 2011 than in 2004. The employer contribution rate increased by 193 percent—from \$630,000 in 2004 to over \$2.1 million in 2011. The workforce has been reduced by five percent. Boone County contributed 10.45 percent of total spending toward pension costs in 2004; pension costs rose to 14.70 percent of total county spending in 2011. Boone County has reduced the number of full-time employees by 12 percent over the last four years, to partially offset increases in retirement expenditures. In FY 2013, Boone County is projected to spend \$5.5 million on pension contributions for the workforce. Judge Pendery stated, too, that a state's unfunded pension liability can affect its choice as a suitable location for business and industry.

Judge Arlinghaus noted that the figures on the Kenton County slide are incorrect. He said that in 2004 Kenton County contributed 2.7 percent of total spending to pension costs; in 2011, this increased to six percent. Revenue has declined by more than \$2 million since 2004. Full-time employees have decreased from 277 to 248. Part-time employees have increased from 99 to 115 and now comprise nearly one-third of the workforce—a trend due in part to burgeoning pension costs. The true cost for pensions is significantly higher than six percent, when considering the number of part-time employees. Kenton County now requires a full year of employment for CERS pension eligibility. Judge Arlinghaus said the counties need the legislature's help, and he expressed support for the work of the Task Force.

Mayor Fischer said that Louisville Metro contributed 5.3 percent of total spending to pensions in 2004; pension costs rose to nine percent in 2011, or \$67 million. If pension costs increase five percent annually over the next 10 years, this could result in a 12 percent reduction

of the Metro workforce. The counties represented today have taken action to become more efficient. Louisville Metro has launched major efficiency improvement and cost saving initiatives, including a reduction in overtime, introduction of modern quality principles, and containment of health care costs.

The speakers offered the following recommendations: continue suspension of the COLA until it can be funded; explore options such as cash balance and stacked hybrid plans; offer separate solutions and board governance for CERS and KERS; strongly consider requiring employees to pay more toward their retirement; and reduce state tax code exemptions on pension earnings.

Judge Buchanan said they have concerns about bonding as a solution for the unfunded liability. This option should be further evaluated, coupled with possible adoption of a statutory definition of full funding as 80-85 percent of true actuarial cost.

Representative Graham expressed reservation about creating a separate board for CERS with respect to potential risk and future accountability. Mayor Fischer pointed out the lower level of risk for CERS, which has been paying the full ARC each year. He said the main point of the recommendation is to look at different governance options and models, while keeping in mind the big picture of the state as a whole. Representative Cherry said that the issue of separate boards was discussed in 2008 when House Bill 1 was passed. The biggest concern, as he recalls, was how to divide existing assets. Increased administrative costs and investment management were also viewed as concerns.

Answering questions from Representative Simpson, Judge Pendery agreed that health insurance is a cost driver in pension funding and needs to be addressed. He noted that local governments review health care arrangements for their employees annually. In regard to the suggested review of tax code exemptions, he said the economic development aspect is important and that if there is not a solution to the pension problem, it will be harder to draw businesses into the state. Mayor Fischer said the main driver for their proposals is to reverse the trend of escalating, uncontrollable cost. They defer to the experts on how this may be accomplished and hope that the system will ultimately provide long-term relief and some predictability for local governments. Representative Simpson said he recognizes possible solutions for the retirement system proper but doubts that the recommendations offered today would provide relief at the local level. He added that his heart will always be with local governments, and he hopes that there is a mechanism that will be able to grant the relief being sought for their pension challenges.

Senator Pendleton emphasized that local governments, as well as the

legislature, must have the political will to solve the pension problem. He said there are things that can be done at the local level, and it will be necessary for everyone to work together to find a solution.

Closing Comments and Adjournment

Senator Thayer thanked the speakers for their attendance and participation in the effort to address the pension problem. He stressed the importance of remaining focused on solutions—not blame—as the Task Force completes its work in preparation for the final report that is due by December 7. Representative Cherry said he looks forward to proposals that will be offered at the October meeting.

In response to a request from Senator Ridley, Representative Cherry said, if possible, he would have staff provide members with draft proposals in advance of the October meeting, which he will chair. He pointed out, however, that the Task Force will not be voting on proposals at that time.

With business concluded, the meeting adjourned at 2:55 p.m.

TASK FORCE ON STUDENT ACCESS TO TECHNOLOGY

Minutes of the 2nd Meeting of the 2012 Interim August 27, 2012

Call to Order and Roll Call

The second meeting of the Task Force on Student Access to Technology was held on Monday, August 27, 2012, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Katie Stine, Chair, called the meeting to order, and the secretary called the roll.

Present were

Members: Senator Katie Stine, Presiding Chair; Representative Carl Rollins II, Co-Chair; Senators Jared Carpenter, David Givens, Dennis Parrett, and Mike Wilson; Representatives John “Bam” Carney, Derrick Graham, and Ruth Ann Palumbo.

Guests: Gene Kirchner, Superintendent, Ft. Thomas Independent Schools; Ginger Webb, Assistant Superintendent for Teaching and Learning, Ft. Thomas Independent Schools; Diana McGhee, Director of Technology and Information, Ft. Thomas Independent Schools; Matthew Constant, Assistant Superintendent of Technology and Federal Programs, Owensboro Independent Schools; and Jim Jackson, District Technology Coordinator and Chief Information Officer, Bullitt County Schools.

LRC Staff: Jo Carole Ellis, Sarah Kidder, Perry Papka, and Ashlee McDonald.

Approval of the August 27th, 2012 Minutes

Representative Rollins moved to approve the minutes of the August 27, 2012, meeting and Senator Givens seconded the motion. Motion carried.

1:1 Mobile Computing Device Programs in Kentucky Schools

Gene Kirchner, Superintendent, Ft. Thomas Independent Schools, provided the committee with background information regarding Ft. Thomas’ ‘Bring Your Own Device’ (BYOD) initiative. Ft. Thomas is a suburban school district that is part of the greater Cincinnati metropolitan area with a population of nearly 1.7 million. The student population of Ft. Thomas Independent Schools for the 2012-2013 school year is 2,822 students. Of the 2,822 students, 16 percent of students are on free or reduced lunch, 7 percent are minority, and 200 are tuition students.

Although Ft. Thomas is well-known for its high school football record, Mr. Kirchner stated that Ft. Thomas has also ranked first in Kentucky in state assessment for 17 consecutive years. Ft. Thomas is also ranked first in Kentucky for college and career readiness. The fall 2011 test scores proved that Ft. Thomas is well above the state and national averages. Mr. Kirchner stated that any technology the school implements will need to support this level of performance.

Mr. Kirchner said that Ft. Thomas Schools began an initiative called “Vision 2020,” in which the school made a commitment to students that by the year 2020 they will have been exposed to the skills and competency necessary to compete in a global, knowledge-based economy. The model of Vision 2020 is critical and creative teaching and learning. Ft. Thomas wants to give students exposure to all the necessary 21st century skills including:

- Energetic classrooms;
- Creating, performing, and designing;
- Real world applications;
- Problem solving;
- Global citizenship;
- Digital literacy; and
- Transformative uses of technology.

Mr. Kirchner said that Ft. Thomas is not where it would like to be in the technology area. The district goal for 2012-13 is to clearly define and articulate the vision for technology going forward. He said that it has been difficult because many technology initiatives are based on a one-to-one mobile device plan. Mr. Kirchner explained that the problem is by the time you buy each student their own mobile device with software, a newer, better version is out and you have to buy the equipment and software again. With the BYOD program, students are able to stay up-to-date on their own with the latest software and programs. The BYOD also allows students to choose the device they are more comfortable working with.

Ginger Webb, Assistant Superintendent for Teaching and Learning, stated that this is Ft. Thomas’s first full year of having the capability for students to bring their own device. Teachers are using this technology creatively to enhance student engagement. Ms. Webb said BYOD is being utilized by Ft. Thomas teachers with Quick Response codes (QR codes), Edmodo, and Poll Everywhere.

By using the QR codes in a lesson or textbook, students can scan the code with their device and have a more interactive demonstration of the lesson. Teachers are putting these QR codes on posters and items around the school to share more information with students. Ms. Webb said that this process is enhancing student engagement by allowing a more hands-on approach with lessons.

Ms. Webb discussed Edmodo, which is similar to the social networking site Facebook, but is designed specifically for teachers and students. It is a secure place to connect, and the teachers and students are given a code to use to ensure that no outside users may join a specific group. Teachers are able to share content and educational applications with their students. Students, teachers, and parents may access homework, grades, review class discussions, and receive notifications.

Poll Everywhere is another useful application that teachers are using with their students. Ms. Webb explained that Poll Everywhere is a web application that can be used to gather live responses in any venue. It replaces the expensive clicker systems to provide quick formative assessments by polling students. It works internationally on the web, texts, and Twitter and can provide up-to-the-minute poll results. Students can text questions to a teacher or presenter and can download the results and save them into a PowerPoint presentation.

Diana McGhee, Director of Technology and Information, explained why they have implemented BYOD and not 1:1. As a district, it was problematic to buy equipment for all students and then have to continue buying as newer technology becomes available. It is more beneficial for the district to allow BYOD rather than providing 1:1 devices. The recent results of the district’s Technology Readiness Survey showed that:

Over 307 personally owned devices were reported;

96 percent students have a home computer;

93 percent have internet access at home; and

96 percent have internet access – either broadband, DSL, or satellite.

Ms. McGhee explained how Ft. Thomas prepared for BYOD. The district partnered with the vendor Enterasys to begin their network. Ft. Thomas invested over \$25,000 to get the technology ready and ensure Children’s Internet Protection Act (CIPA) compliance. The district did not advertise the new network to the students and within the first week they had over 500 devices connect to their network. The district’s network has over 1,724 devices connected.

Ms. McGhee said that Ft. Thomas has two types of wireless networks:

- District-owned devices,
- Personally-owned devices (PODNET)
- PODNET has four layers of speed

adjustment:

- Leadership (Administrators/Principals),
- Normal (Students with ID key code),
- Guest (Parent), and
- Unregistered.

Mr. Kirchner said that the reason the district did not advertise the new network to the students was because it did not want it to be a separate program but rather have it become seamless with the educational process. Ms. McGhee said that in keeping with the seamless integration, the district has not implemented a special BYOD policy other than the Annual Use Policy (AUP). The AUP was updated last summer and covers both personal and district-owned devices. Every student in the district has signed the new AUP agreement this school year.

Responding to Senator Stine, Mr. Kirchner explained that what is in the AUP agreement is implemented and applied to the privacy policy that all students and teachers sign every year.

Responding to Senator Stine, Ms. McGhee stated that since implementing this program, the teachers are able to accomplish more in the classroom, and the students are becoming more engaged in the lessons. The teachers are able to incorporate more into their lessons.

Responding to Senator Parrett, Mr. Kirchner stated that the small percentage of students who do not have access to technology are encouraged to use the school's resources during school hours. The school allows extended hours in the library, and the students who do not have internet at home can take advantage of that resource.

Responding to Representative Carney's statement about his district utilizing Performance Based Education, where if a student excels he or she can move to a higher level class, Mr. Kirchner said that Ft. Thomas has the same policy.

Responding to Representative Carney in regards to support for the staff with the technology, Ms. McGhee said that she offers technology training and support classes at least one day a week. The teachers are able to fill out an assessment and get specific training on the areas they need. Ms. McGhee said that numerous teachers go to training on their own during the summer to stay on top of the latest technology developments. Ms. Webb added that the majority of the newer teachers are already experienced in utilizing technology.

Responding to Senator Wilson, Mr. Kirchner said that even in the districts where the percentages of free and reduced lunches are higher, more than likely those students will have a smart phone or some other device.

Representative Graham commented that his district provided the devices but asked parents to pay the insurance fee, and his district has a high number of students that are receiving free or reduced lunches. Although they may not have internet at

home, they usually have smart phones that enables them to participate with the lessons.

Responding to Representative Collins, Ms. McGhee stated that a student may only have two devices connected under their username on the district network. Leadership may have up to five connected on the network. This helps reduce bandwidth use.

Mr. Kirchner also added that the teachers are being sent to training workshops that will show teachers how to create their own apps to reach a more specific student audience.

Owensboro Independent Schools

Matthew Constant, Assistant Superintendent of Technology and Federal Programs, gave the committee an overview of Owensboro Independent Schools. The district enrollment is approximately 4,500 P-12 students, which is up 650 students since 2007. The district deployed the 1:1 laptop program for grades 5-12, which includes about 2,400 students. Seventy-five percent of the students participate in the free or reduced lunch program.

Mr. Constant said that the students are able to have access to the laptops 24/7, which are collected at the end of the school year. Mr. Constant stated that the district wants to cultivate the students' 21st century skills. The district wants students to create new knowledge and wants every child to be proficient and prepared for success. The results will be strategic and operational engagement.

Mr. Constant stated that Owensboro has created levels of excellence that include cognitive complexity, real world preparedness, technology integration, and student/teacher engagement. The district feels that using technology is an integrated and essential part for promoting student collaboration among students. Students are able to partner with the teacher to define the content and process. The district wants teachers to initiate integrated learning resources and wants students to have access to the information.

Mr. Constant said that the mission of digital innovation involves challenging their team to design and model innovative digital instruction, which empower teachers to facilitate differentiated student learning. Students are challenged to take responsibility to become lifelong learners, creatively utilizing technology to reach full potential. Teachers are challenged to collaborate and create innovative, individualized digital instruction that empowers and engages all students.

Mr. Constant explained that the district wanted to make sure they planned the implementation effectively. In the fall 2010-spring 2011, they began by piloting laptop carts. In 2010-2011, digital curriculum developers were hired. The district began intensive professional development and wrote over 400 digital lessons written for the school district. The district had full-scale deployment in 2011-2012 and will have the second year of full-scale deployment in 2012-2013.

In regards to funding, Mr. Constant explained that in the future they may look at BYOD as an option. He said the technology has a four year life expectancy, and the projected costs for the entire process is approximately \$5 million.

Mr. Constant said the reason behind Owensboro's success is its strong and visionary leadership. The digital curriculum developers intensely worked on comprehensive learning, and the district put an emphasis on the technical and instructional mesh.

Mr. Constant discussed a few of the barriers that Owensboro faced while implementing the 1:1 program. When the program was first deployed, the district completely maxed out its bandwidth; however, that was resolved by Kentucky Department of Education (KDE) within the first two months of deployment. The district has constant communication with the technical team to make sure that the district ensures success for the students and teachers. The district is struggling with funding and resources, and wants more advanced technical programs with less funding.

Responding to a question from Senator Givens regarding improved learning, Mr. Constant explained that with 21st century learning, they are getting students ready for the world and environment they are encountering. The by-product of this will be increased academic achievement. Mr. Kirchner added that, if students are using the technology to create, perform, and design in real world ways that will better enable them to compete in the global economy, they have achieved success.

Responding to Senator Givens regarding what motivates the districts to move forward technologically, Mr. Kirchner stated that it is using technology as a tool to promote success and performance.

Bullitt County Schools

Jim Jackson, District Technology Coordinator and Chief Information Officer, began by saying that Bullitt County added wireless access points for every four classrooms, as well as in large gathering areas such as the gym, cafeteria, and other offices. That began the first phase of mobile device implementation.

Mr. Jackson said that after Apple released the iPad, new devices were constantly being released. Suddenly, laptops dropped significantly in price after the release of the smaller tablets. Students have been using smart phones, iPods, Nooks, Kindles, and many other mobile devices.

Bullitt County Schools have decided to embrace the internet-capable device as a learning tool. After looking at the pros and cons of 1:1 versus BYOD, Mr. Jackson said they have decided to use the BYOD approach as it is much more affordable for the district. This was implemented in January 2011. There is no cost to the district for devices or support staff. Each student is responsible for securing and protecting their own device.

Mr. Jackson said that in the current phase, the district is working on installation of needed network and wireless infrastructure to support an access point in every classroom. This will include the access points, switches, and wiring so students can connect to the internet. In addition, Bullitt County will be managing over 1,000 access points once this stage is complete. The district was able to work with KDE to be granted more bandwidth, which has helped significantly. Some of the costs and challenges for the district include charging stations, repairs, and digital content.

Representative Carney requested that an email version of all three presenters' PowerPoints be sent to him so that he may forward them to the district he represents.

Representative Graham stated that as a legislative body they need to take up the matter of budgetary concerns in order to help the school districts prepare for implementing this technology.

Responding to Senator Stine in regards to whether a statewide or state-sponsored digital course is available, Mr. Kirchner said that currently there are some programs available but not many. The districts would like to see more free resources for students and teachers.

Responding to Senator Carpenter regarding the cost of textbooks in relation to the cost of mobile devices, Mr. Kirchner said that although the cost of a textbook is spread over a five year life span, you are able to keep the mobile devices more current on content for a lot less. The cost of technology is continuing to go down, and eventually we will be in a paperless environment.

Adjournment

The next meeting is scheduled for Tuesday, September 25th at 10:00 a.m.

With no further business to come before the committee, the meeting adjourned at 3:00 p.m.

TASK FORCE ON STUDENT ACCESS TO TECHNOLOGY

Minutes of the 3rd Meeting
of the 2012 Interim
September 25, 2012

Call to Order and Roll Call

The third meeting of the Task Force on Student Access to Technology was held on Tuesday, September 25, 2012, at 10:00 a.m., in Room 149 of the Capitol Annex. Senator Katie Stine, Co-Chair, called the meeting to order, and the secretary called the roll.

Members Present: Representative Carl Rollins II, Presiding Chair; Senator Katie Stine, Co-Chair; Senators Jared Carpenter, Dennis Parrett, and Mike Wilson; Representatives John "Bam" Carney and Derrick Graham.

Guests: Tim Maggard, Director of Technology, Hardin County Schools.

LRC Staff: Jo Carole Ellis, Sarah Kidder, Perry Papka, and Ashlee McDonald.

Approval of the August 27th, 2012 Minutes

Senator Parrett moved to approve the minutes of the August 27, 2012, meeting and Representative Graham seconded the motion. Motion carried.

Kentucky Digital Textbook Project

Tim Maggard, Director of Technology, Hardin County Schools, said that 21 of his 29 years in the education system have been spent in the classroom. Mr. Maggard expressed his concern over the students that were harder to connect with in regards to learning. The Kentucky Digital Textbook Project is an effort to bridge the gap for those students to ensure a better educational experience.

Mr. Maggard showed the committee an example of the digital textbook. With the digital textbook, students can see the lesson and icons to represent what activities are included in the lesson. Some of the lessons include a Google translator so that the students who are struggling with the English language are still able to participate effectively in the lesson. There are also several websites that Hardin County schools use that will read the lesson content to the student. Mr. Maggard said that there are many students who are very bright and can comprehend the lesson; however, they cannot read on grade level.

Mr. Maggard said that the idea of the digital textbook is to keep the students engaged and hands-on in the lesson. All the information and other resources are readily available so there is no interruption in the learning process. The digital textbook allows the students to learn, regardless of the level they are on. It individualizes the lessons for each student's learning process.

Mr. Maggard provided an example to the committee in regards to digital test taking. The digital textbook has been designed so that when a student answers a question incorrectly, the program explains why the question was wrong and provides further detail about the correct answer to enhance the learning process.

Mr. Maggard said that because funding and budgeting is a concern to the schools and the state, the program and the information used is free. Hardin County is using a product called Moodle to provide the textbook project. It is an open source, meaning that no one owns it and anyone can contribute information to it. Hardin County schools have approximately 40 teachers developing information for this program.

Mr. Maggard explained that the teachers can personalize each lesson so that it may specifically teach the students about the environment or history in their state or even their area. The teachers can create each lesson to reach each student, and it allows the students to apply each lesson to their area and surroundings.

Mr. Maggard said that using the digital textbook costs about one-fourth of using traditional methods such as using printers, ink, and buying equipment.

Responding to a question from

Senator Parrett, Mr. Maggard said that the intent is to reach K-12 students. Mr. Maggard said that he feels that teachers who are actually in the classroom and creating the lessons are better at reaching students than the people who create the textbooks. Mr. Maggard also explained that the district is working together to get more Wi-Fi access points for the students to use while they are out of the classroom.

Mr. Maggard responded to Senator Stine's question in regards to validating the information that is submitted by explaining that a committee of a teacher's peers must review the content before it is submitted and accepted. This committee must include people that teach the same subject and are from the teacher's state or district. Regarding Senator Stine's question about using Moodle, Mr. Maggard explained that his district is considering a Bring Your Own Device (BYOD) program, and the main reason they chose Moodle for the textbook project is because it will work on any device. One of the main concerns of BYOD is how to extend the battery life of each student's device.

In regards to Senator Stine's concerns related to students struggling with reading issues, Mr. Maggard said that the digital textbook is also serving as a tutoring mentor for those students.

Mr. Maggard responded to Representative Carney by stating that the district has put the digital textbook idea out in the community so they may see the concept at hand and understand exactly how it will work.

Discussion of Possible Task Force Recommendations

Representative Rollins explained that there were two different versions of the draft task force recommendations included in the committee folders. The only difference between the two was the second bullet point.

Senator Stine explained that she sees the Kentucky Department of Education (KDE) as a resource or a centralized entity that can help resolve legal issues or be a clearing house for educational suggestions. The recommendation change will allow more flexibility for the schools to share ideas and practices. She wants the schools to feel like there is room for innovations and changes.

Senator Stine also suggested that the committee think about how to measure the effectiveness and efficiency of what each school does so that the legislature can use that information to ensure that the schools are getting good results from digital learning efforts and programs.

Representative Graham added that how the schools are performing in yearly evaluations should be reviewed as well.

Senator Parrett commented that the content in regards to the digital learning should be reviewed so that all the standards of the curriculum are addressed.

Adjournment

The next meeting is scheduled for October 22nd at 1:00 p.m.

With no further business to come before the committee, the meeting adjourned at 11:15 a.m.

TASK FORCE ON THE UNIFIED JUVENILE CODE
Minutes of the 3rd Meeting of the 2012 Interim
September 26, 2012

Call to Order and Roll Call

The 3rd meeting of the Task Force on the Unified Juvenile Code was held on Wednesday, September 26, 2012, at 1:00 PM, in Room 171 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

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

Guests: Shannon Stiglitz and Teresa Combs, Kentucky School Board Association; Bo Matthews, Barren County School System; Denise Perry, Henry County School System; Ronnie Nolan, Kentucky Educational Collaborative for State Agency Children; Mike O'Connell, Jefferson County Attorney; Cameron Blau, Campbell County Attorney; Eric Wright, Jessamine County Attorney; Colonel Spike Jones, City of Covington; Marissa Castellanos, Catholic Charities, Gretchen Hunt and Marylee Underwood, Kentucky Association of Sexual Assault Programs, Vince Robison, Louisville Metro Police, Clyde Caudill, Kentucky Association of School Administrators; Mary Ritchie, Women's Crisis Center-Northern Kentucky.

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

The minutes of the August 23, 2012 meeting were approved without objection.

Mr. Schuler told the members about the recent passing of Gail Robinson, a long time advocate for children, who was very interested in juvenile law and criminal law, and asked for a moment of silence in her honor.

Education and juvenile code concerns

Shannon Stiglitz, Kentucky School Boards Association (KSBA), and speaking on behalf of the Kentucky Association of School Administrators and Kentucky Association of School Superintendents, thanked the members for including KSBA in the discussion of revisions to the juvenile code. Appearing with her were Denise Perry, Director of Pupil Personnel, Henry County School System, Teresa Combs, Director of Administrative and Legal Training Services, Kentucky School Boards Association, and Bo Matthews, Superintendent, Barren County School System.

Ms. Perry said the priority of educators and school administrators is

to keep children in school and educate them in a safe environment. Students who are out of control adversely impact all other students in the classroom, making it more difficult for them to get an education. She discussed the steps taken by school systems to address habitual truancy, including parental notification and interventions with school counselors and family resource officers. She said the school system does everything they can to resolve problems before filing truancy charges against the student.

Bo Matthews, Superintendent, Barren County School System, told the members he would like to see a stronger partnership between the education system and the Department of Community Based Services (DCBS), so issues can be resolved before the matter goes before the judicial system. He suggested revising KRS Chapter 159 to include virtual learning opportunities and specify the remedies available to school systems when at risk students who participate in virtual learning do not follow their course work. He discussed the Babil Academy in Barren County, a virtual learning program that has been very successful in meeting the educational needs of at risk students outside the classroom. The Academy offers virtual learning programs from general education credits to advanced placement courses for students in systems that may not offer all classes in their curriculum. At risk students who participate in virtual learning have done very well on their ACT examinations. In response to a question from Ms. Priddy, Mr. Matthews agreed to provide the members with the number of at risk children attending Babil Academy. Mr. Matthews said virtual learning programs are not the best fit for all at risk students, but they offer another tool for schools to offer students who are ready to drop out of school.

Other recommendations included increased parental accountability for at risk students and limitations on home schooling for students with truancy problems to get around a court order to attend school. He said if diversion programs are successful, the education system will support their expansion, but they need to be adequately funded by the state.

Ms. Combs said there is nothing in the statutes to force parents to comply with orders from school systems about truant children, which needs to be addressed. She suggested an enabling statute relating to federal FERPA law to allow sharing of student records between the schools and courts. It takes a court order to share information today, and many times parents will not sign the consent form. Non-compliance with FERPA can endanger federal education funding. She said the necessary language was contained in Representative Flood's 2012 legislation that did not pass.

Commissioner James said DCBS is hampered by federal HIPPA law relating to the sharing of student information. She welcomed the opportunity to be involved

in developing language to address both HIPPA and FERPA restrictions. Ms. Combs also urged the task force to retain judicial discretion, including secure detention as a last resort, and agreed there should be better parental accountability.

Mr. Schuler was concerned about the recommendations for judicial discretion in truancy cases. He suggested strengthening the neglect and dependency statutes, which might be a better option for schools. Ms. Perry responded that schools must file truancy charges before they can pursue educational neglect against parents who do not comply.

In conclusion, the presenters recommended: (1) increased funding for alternative interventions for at risk students charged with status offenses; (2) that DCBS become more involved in early interventions; and (3) increased limitations on home schooling of status offenders to circumvent court orders. They urged court designated workers to connect student and families with intervention services. These suggestions will help school systems keep children in school until graduation.

Senator Stine was concerned that children and parents are ignoring court orders to attend school. She said there is a generation of children who do not respect the judicial system. Commissioner Davis said many children do not learn respect and obedience at home. Schools are charged not only with educating children but also teaching basic values and good citizenship. Any revisions to the juvenile code must address the needs of the entire family and not be limited to the needs of the juvenile. After a child enters the Department of Juvenile Justice system, the chance for success falls dramatically, so it is very important to develop a system of early intervention to help the child succeed in school and become a good citizen.

Senator Stine assumed the chair at 2:40 p.m.

Ronnie Nolan, Kentucky Educational Collaborative for State Agency Children (KECSAC), discussed Kentucky's system of educating state agency children (SAC). These children are referred to KECSAC by the Department of Education, Department of Juvenile Justice, Department of Community Based Services, and the Department of Behavioral Health, Developmental and Intellectual Disabilities. KECSAC provides residential and community based services to 13,700 children annually, offering 98 programs in 53 school districts, with an annual budget of \$9.5 million. KECSAC programs have a longer school year and a smaller teacher to student ratio. Children are educated in non-traditional settings including group homes, juvenile justice detention centers, mental health day treatment programs, residential treatment programs, community based shelter programs and hospital settings. Many state agency children are below grade level in reading and math and may have learning disabilities. KECSAC recommendations include increasing transition services for

children returning to their home schools, improving assessments of children before and after referral to SAC programs, increasing access to virtual learning programs, especially in the Department of Juvenile Justice residential programs, and consistency in graduation requirements for state agency children.

Prosecutors and juvenile code concerns

Mike O'Connell, Jefferson County Attorney, discussed confidentiality of juvenile records and suggested opening juvenile court hearings under certain circumstances. Kentucky is one of 13 states with closed juvenile courts, while 37 states have open juvenile courts under specific circumstances. Opening juvenile courts to an acceptable degree of public scrutiny will benefit the victim, the public, and the courts, and balance the rights of the juvenile and public safety. Revising KRS 610.070 will insure accountability of judges, prosecutors, and defense attorneys, and alert the community to the presence of juveniles who commit violent crimes. He also suggested revising KRS 610.320, relating to juvenile records, to allow access to those records under specific conditions. He will propose legislation for consideration by the 2013 General Assembly to open juvenile court hearings and records. He urged the task force to consider his suggestions in its final report and recommendations.

Mr. Schuler was concerned about opening juvenile court hearings and juvenile records. He said identifying offenders and their victims takes away the juvenile's right to protection under the law, which was designed to give juvenile offenders a second chance. Mr. O'Connell said opening juvenile court proceedings will promote public confidence and let the public know about juveniles who commit crimes in their communities.

Eric Wright, Juvenile Prosecutor, Jessamine County Attorney's Office, agreed the task force should consider opening juvenile court hearings. He also supported retaining judicial discretion for detention of juvenile status offenders because the threat of jail is sometimes the best and last option to keep children in school. In Jessamine County, where parents and children understand violation of a court order can lead to detention, school attendance is improving. He also suggested the task force review the abuse, neglect, and dependency statutes to ensure the best interest of the child is always considered.

Cameron Blau, Chief Assistant Campbell County Attorney, was concerned that teachers and administrators will have no way to deal with disruptive students if changes to the juvenile code go too far. It is a balancing issue to protect teachers and other students who are entitled to an education in a safe environment. He urged the task force to develop a system of early interventions to determine the root cause of an at risk student's behavior or truancy problems. Confidentiality of juvenile

records is a problem for the courts because judges cannot see the entire record, and the courts should have judicial discretion for detention as a last resort.

Senator Stine told the task force representatives of the teachers unions were invited to testify, but scheduling conflicts prevented them from appearing.

Law enforcement and juvenile code concerns

Spike Jones, Covington Chief of Police, said there has been a marked increase in heroin use in Northern Kentucky, possibly the result of tighter controls on prescription drugs. Heroin is less expensive and more accessible, more juveniles may begin selling heroin to support their drug habits and to obtain income. Transporting juvenile offenders can tie up an officer for three to four hours, which is difficult for law enforcement agencies that have fewer officers due to budget cuts. He suggested officers be allowed to drop off juveniles offenders at detention centers and turn them over to court designated workers and the judicial system.

Commissioner Davis said many status offenders are in juvenile detention facilities for violating a court order, without committing an actual crime. While it is contemptuous behavior, it is not criminal behavior. These may involve such charges as skipping school or missing curfew, and can result in juvenile detention for 90 days. He said spending time in the Department of Juvenile Justice (DJJ) system greatly increases chances of a juvenile reoffending or committing a more serious offense. All juvenile offenders in the DJJ system are treated as if they have committed serious crimes, not simply skipping school or violating a curfew.

Marylee Underwood, Kentucky Domestic Violence Association, and Mary Ritchie, Women's Crisis Center of Northern Kentucky, discussed human trafficking and juvenile status offenders. Ms. Underwood said young runaways may be kidnapped and forced into prostitution, and then be arrested and treated the same as other juvenile status offenders. She recommended that these juveniles be referred to child protective services instead of the juvenile justice system. She said Kentucky needs to develop a system of care and services for children who are forced into prostitution.

Senator Stine announced the next task force meeting will be October 25. The meeting adjourned at 4:20 p.m.

TASK FORCE ON MIDDLE SCHOOL INTERSCHOLASTIC ATHLETICS

Minutes of the 3rd Meeting
of the 2012 Interim
September 17, 2012

Call to Order and Roll Call

The 3rd meeting of the Task Force on Middle School Interscholastic Athletics was held on Monday, September 17, 2012, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Carl Rollins II,

Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Mike Wilson, Co-Chair; Representative Carl Rollins II, Co-Chair; Senator Joe Bowen, Representatives Tom Burch, Keith Hall, and Joni L. Jenkins; Adam Lantman, Greg E. Mitchell, Rita Muratalla, Wilson Sears, Dan Seum, Jr., Julian Tackett, Dan Volpe, and Jerry Young.

Guests: Richard McWhirter, Assistant Executive Director, Tennessee Middle School Athletics Association (available via conference call). Steve Endsley, Executive Director, Illinois Elementary School Association.

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

Approval of the Minutes from August 20, 2012, Meeting

Upon motion made by Representative Burch and second by Senator Wilson, the minutes of the August 20, 2012, meeting were approved by voice vote, without objection.

Presentation: Current Practices Regarding the Oversight and Management of Middle School Athletics

Representative Rollins introduced Richard McWhirter, Assistant Executive Director, Tennessee Middle School Athletics Association (TMSAA), available via conference call. The online presentation, narrated by Mr. McWhirter's assistant, Lauren Lynch, was viewed. She said that the TMSAA was formed in 1995 with 69 member schools. Ronnie Carter selected the first TMSAA committee, which consisted of 6 middle school principals. The committee wanted middle schools to be affiliate members of the Tennessee Secondary School Athletics Association (TSSAA), to have a set of rules for everyone to follow, and to have the benefit of catastrophic insurance that membership would provide. The committee felt that the new middle school association should follow the TSSAA bylaws as closely as possible; 14 to 15 exceptions were made, to be middle school specific.

The TMSAA is an affiliate of the TSSAA. All expenses associated with the formation and operation of the TMSAA are borne by the member schools. Failure to meet the financial obligations of the TMSAA will result in the immediate dissolution of the TMSAA.

Since the TMSAA is an affiliate of the TSSAA, the TSSAA Board of Control and Legislative Council oversee the TMSAA. An advisory committee for the TMSAA, known as the TMSAA Committee, has been put in place, which consists of 8 representatives, each being either a school principal or a school system administrator, with 2 or 3 representatives from each area of the state. The committee meets twice a year at the TSSAA State Office prior to Board of Control meetings, typically in November and February. The TMSAA Committee makes recommendations to the

board regarding bylaws, regulations, and policies; serves as liaison to area schools; helps provide enrollment information and sets classifications; and helps organize and direct area and sectional tournaments.

TMSAA has 344 member middle schools divided into three sections: east, middle, and west. Each section is broken into multiple areas and then divided, based on the enrollment of the schools. These classifications are available on the web. Membership in TMSAA is limited to schools that terminate in the 6th, 7th, or 8th grades. All TSSAA member schools that contain 8th graders may become a TMSAA member at no additional fee. All other schools pay \$100 membership dues, \$200 for catastrophic insurance, \$40 per non-faculty coach to a maximum fee of \$100, and \$5 per football player for the catastrophic insurance assessment. The Middle School Membership Packet is available online. The main reason that many schools join is for the catastrophic insurance. Other services provided with membership are the TSSAA Directory, four TMSAA ID cards with the option to purchase four additional cards for \$25 each for access to regular season events, two TSSAA Championship event cards that allow free admission into all TSSAA sectional and state championship events, rulebooks for each sport, and a membership certificate.

TMSAA does not assess fines. In hindsight, this is probably not the best approach. The disciplinary actions that TMSAA can take without imposing fines do not prevent the same schools from committing the same violations repeatedly. As the association continues to grow, fines would be beneficial, but it is difficult to change the policy after many years without a fine structure. The TMSAA recommends setting a fine structure for the middle school association upon formation, but setting lower fines than those used for the high school association.

The TMSAA sports calendar is less complex than the high school calendar and allows more flexibility for the schools. In Tennessee, at the middle school level, not all areas of the state play the same sports during the same seasons. The local education association determines in which season each sport is played, and the TMSAA sets the first practice date for each sport season rather than for each sport.

This is the second year that the TMSAA has its own handbook. The handbook contains the TSSAA Constitution and the TMSAA bylaws. The TMSAA bylaws correspond to the TSSAA bylaws, and exceptions and differences are clearly marked. Both handbooks are available online.

There are some major differences in the TMSAA Bylaws and the TSSAA Bylaws. Middle schools have three categories of coaches: full-time employees, retired educators, and non-faculty coaches. High schools, in addition to these three categories, also have classified employees. Both middle school

and high school non-faculty or first year coaches must complete the free TMSAA or TSSAA online coaches' training session. Middle schools are allowed an unlimited number of non-faculty coaches. These coaches have five years to complete the ASEP Coaches Education Program, while high school non-faculty coaches only have two years to complete the training. This program costs \$250 and tests coaching principles and sports first aid. Middle school coaches are not required to attend State Rules Meetings; high school coaches are required to attend at least every other year.

TMSAA and TSSAA bylaws also differ regarding academic rules and eligibility. To be eligible, a middle school student must be academically promoted to the next higher grade. Any student repeating a grade is ineligible. A student may gain eligibility the second semester by passing five subjects, or the equivalent, the preceding semester, provided the student is not repeating the same grade. A student has six semesters to complete a possible four semesters of participation after entering the 7th grade. No student below the 6th grade may participate. If a student turns 15 on or before August 1, the student is not eligible. A student who repeats the 7th or 8th grade and participates in school athletics while repeating shall be ineligible to participate on a TSSAA team in the 9th grade. This rule helps identify students who attended a non-member school and repeated a year. An 8th grade student may participate on a TSSAA team if they are enrolled at the school. Participation as an 8th grader shall not reduce the number of semesters a student is allowed to participate after enrolling in the 9th grade. Students may only participate in either the middle school or high school division, not both at the same time.

Fines are not imposed at the middle school level for violations such as unsportsmanlike conduct, playing of ineligible athletes, eligibility lists, and schedule reports. Rules that do not apply to the TMSAA are tuition and financial aid, All Star games, and the 50 Percent Rule. The Independent Game Rule frequently is discussed to be removed from the TMSAA bylaws, but currently still applies to both the TMSAA and the TSSAA.

Middle school sports regulations for football, girls' volleyball, pre-game warm-ups, spirit rules for cheerleaders during basketball games, basketball, wrestling, and baseball pitching rules are included in the handbook.

The biggest difference between the TMSAA and the TSSAA are the regulations and setup at the middle school tournaments. For the TMSAA, all tournaments must be held on consecutive days with no other regular season games being played during the tournament unless permission is granted by the executive director. A tournament is defined as a competition of three or more teams and three or more games, matches, etc., which progress to determine a winner.

Tournaments shall count as two games or dates, notwithstanding the number of games or dates in which each team participates in a tournament. Postseason tournaments or bowl games may be played, provided the plan is approved by the state office annually. Any postseason tournament or play-off format that exceeds the number of regular season contests allowed must be approved by the state office.

Regulations specific to basketball tournaments are that 18 regular season games may be played, with all tournaments counting as two games, notwithstanding the number of games in which each team participates in a tournament. Also, the season ending TMSAA Area and Sectional Tournament series will count as one tournament, provided no other games are played between or after.

At the middle school level, each section coordinates its own Sectional Basketball Tournament. The TMSAA does not provide awards for these tournaments, but the schools may purchase sectional awards from the same company that supplies the high school awards. The winners of the Sectional Basketball Tournaments are presented during halftime of the high school state championship. Some areas and sections hold tournament series in other sports, but basketball is the only sport that has similar sectional tournaments statewide.

Tournament guidelines state that area and sectional administrators, athletic directors, and coaches must meet to select directors, dates, and sites for each tournament they conduct. They may have tournament series in any sport, and all specific details must be submitted to the state office. Basketball tournaments should be completed each year by the Saturday prior to the TSSAA high school district basketball tournaments. During tournament play, each area and section may decide to divide schools into classifications as membership in the area increases. TSSAA and TMSAA recognize any league that contains at least six member schools competing among themselves. Any member school may choose not to participate in the tournament series. A school team may enter only one tournament series to advance to the sectional tournament. Schools must participate in the tournament series in their assigned area. They must submit a written request to the state office if they desire to move to a different area, but no school will be moved without a legitimate reason. The most important tournament guideline that is different for middle schools is that the TMSAA does not sanction any middle school state tournaments in any sport.

In response to questions from Mr. Sears, Mr. McWhirter said that the rule stating that a student who repeats the 7th or 8th grade and participates in school athletics while repeating shall be ineligible to participate on a TSSAA team in the 9th grade applies to students who attended a non-member school. This year a change was made to this rule to

say "being held back" to catch students being held back on purpose to be able to play the following year. No information is available on students being held back in the 4th or 5th grade. He said schools ending in the 7th or 8th grade may have a team. Schools ending in the 6th grade can co-op with other schools to make a team. The high school bylaws allow an 8th grader to play on the high school team. The middle school bylaws state that a student cannot move back to play on a middle school team after he or she has played on a high school team.

In response to questions from Mr. Young, Mr. McWhirter said that not all sports end in season-ending contests. Middle schools choose their own calendar and seasons. Should they play in a season-ending basketball tournament, those games count towards their maximum of 18 games. Normally teams play fewer games than allowed. Basketball is the only sport with a sectional season-ending tournament because almost all schools play it. Baseball is strong in Eastern Tennessee, so that area has a sectional season-ending tournament.

In response to a question from Senator Wilson, Mr. McWhirter said that it is up to the schools whether they pay the \$5 fee per football player for catastrophic insurance or charge it to the students.

In response to questions from Representative Hall, Mr. McWhirter said that the association receives no appropriation from the state and no funds from local tournaments. Schools pay all expenses with the money collected, and revenue left over is divided among the schools. The schools are required to submit a financial report to the association. Dues go to the catastrophic insurance and paying for handbooks.

Representative Hall said that the TMSAA is running an excellent program and he likes the idea of a basketball state tournament.

In response to a question from Representative Rollins, Mr. McWhirter said that about half of the over 700 middle schools in Tennessee are members of the TMSAA. Middle schools in the Nashville area are not members because at the time that the TMSAA was formed they had their own insurance. Middle schools in the Knoxville area dropped their membership a few years ago because they were in violation of the independent game rule in regards to soccer. The Knoxville middle schools wanted students to play independent games, but over 80 percent of member schools want to keep this rule. Private schools are not members because they have their own league. Member schools are those that want a governing body and rules.

In response to a question from Representative Rollins, Mr. McWhirter said that the association adheres to the Title IX rule. An equal number of sports are offered to boys and girls. It is a local decision as to what sports schools offer to their students.

In response to a question from Mr. Mitchell, Mr. McWhirter said that the coaches have up to 5 years to complete the ASEP training. The recommendation this year will be to require online training prior to coaching.

Steve Endsley, Executive Director, Illinois Elementary School Association, said that the Illinois Elementary School Association (IESA) is different from the rest of the country. It is similar to a high school association. Its governing body is completely separate from the state high school association. The IESA is not to be mistaken for the Southern Illinois Junior High School Athletic Association, which governs only athletics and has one employee and about 130 member schools.

The IESA is a governing body for junior high athletics and activities such as speech, music, and scholastic bowl. It has been in existence for 83 years. Membership is voluntary and it has 791 member schools. Of the more than 600 junior high schools in Chicago, only about 10 are members of the association. IESA has 8 full-time office staff and one part-time technology expert. The state is divided into 15 divisions, and one superintendent or principal from each division is elected to serve on the Board of Directors.

The association's mission statement is that the IESA provides the leadership and framework to ensure safe, equitable opportunities for students who are enriched through participation in education-based interscholastic activities. Mr. Endsley highlighted some of the belief statements: the IESA warrants a separate governing body; actively teach and promote good sportsmanship and ethical behavior; develop personal growth and self esteem; recognize excellence; and students deserve to be directed and/or coached by highly qualified personnel.

Mr. Endsley pointed out some of the IESA bylaws. The key eligibility bylaw is the weekly bylaw, which states that a student has to pass all subjects each week to be able to participate in activities the following week. Passing is determined by the local school district, and the bylaw applies to athletics and activities. Ineligibility applies for one calendar week before the possibility of becoming eligible again. If a 7th grader is retained, that student cannot participate as a 7th grader. The student can participate again once he or she has passed to the 8th grade.

The independent team bylaw, stating that if a student is a member of a non-school team, he or she may not participate in a school team at the same time, was removed effective July 1, 2012, and is now a local school decision. It was violated repeatedly, mostly in wrestling, basketball, and volleyball, and only honest schools were being penalized.

Another important bylaw is that school teams are only allowed to compete against other school teams. They may compete against schools that are not members of IESA, but they may not compete against club or non-school

teams.

IESA does not offer football or soccer as a state series. Soccer is a huge club sport; some schools play interscholastic soccer and some play football, but most schools do not. IESA has girls softball, baseball, cross country, girls and boys basketball, girls volleyball, wrestling, and boys and girls track and field, with different classes for each of these. Class structure is based on enrollments. IESA used to have lightweight and heavyweight classes, but now has a 7th grade division and an 8th grade division. A regular season precedes a state tournament series. The association follows national federation playing rules with some exceptions instituted for the age level of the students. Member schools must use officials registered by the Illinois High School Association. Some schools play sports at different seasons to the IESA and therefore cannot participate in the state series.

IESA offers activities such as cheerleading, speech, music, and scholastic bowl. Mr. Endsley showed his medal he won as a 7th grader in the speech contest to illustrate how important these activities are to students. The association started a chess competition in 2011, and recently added bowling and golf.

Mr. Endsley shared information on various activities the IESA offers. Most member schools participate in cross-country. Cheerleading was started 12 years ago, and 75 schools participate in 3 divisions based on squad size, not school size, with a cheer category and a routine category, conducted in accordance with the National Federation of State High School Association (NFHS) guidelines. Softball and baseball are played in opposite seasons to that of high schools, using the same coaches and officials for both. Wrestling has 19 weight classes, starting at 65 pounds up to 275 pounds; 141 schools participate, and body fat testing is not conducted. Students are limited to 5 matches per day and 37 matches in a season. For baseball, the diamond is 80 feet between bases and the pitching distance is 54 feet, with limits on innings. For volleyball, the net height is 7 feet, the libero is not used, and 2 out of 3 games to 25 points are played. Scholastic bowl is an academic competition; 374 schools participate.

IESA writes its own rule book and case book, and it conducts a state workshop for coaches each fall. IESA has girls and boys basketball, and each school is allowed to play 22 games per season prior to entering the state series. Individual players are limited to 5 quarters per night and 8 quarters per regular season tournament, and they play 6 minute quarters. For track and field, individuals are limited to any 4 events, but if they run two relays, one of them has to be the 4 x 400 relay. The IESA uses a smaller shot and a smaller discus. Speech is performed as an individual or as a duet, reciting memorized pieces in front of a judge. A music state contest is offered once a year. All activities are listed on the IESA website, including useful

information such as host brackets and entry centers.

Certified teachers are automatically eligible to coach. Anyone who is not a teacher but wants to coach has to complete an online coaching education course and score 100 percent in the test prior to the season. IESA also accepts a person who has met the high school coaching requirements. IESA allows high school students and student teachers to assist under the direct supervision of a coach who meets the coaching requirements.

The sportsmanship bylaws state that any player or coach ejected for unsportsmanlike conduct shall be ineligible for the next interscholastic contest at that level of competition. Any school that receives two ejections in a school year shall be required to communicate in writing to the Sportsmanship Review Panel on the steps it is taking to address the issue.

The IESA is completely separate from the state high school association and receives no state funds. All funds are generated through the association in four main ways. Schools pay \$75 annual membership dues and a \$50 entry fee for each sport they enter. This generates a total of approximately \$389,000 each year. Admission is charged at tournaments, and the association and the host school each receive a share. The total amount of revenue generated for the IESA from the tournament admissions is approximately \$546,000. The total amount of revenue generated from t-shirt and sweatshirt sales at state events is \$280,000. The total amount of revenue generated from corporate support is approximately \$63,000.

The IESA requires that all students have a current physical issued within the past 395 days by a licensed physician prior to try out, practice, or participation in a contest.

Mr. Endsley showed a clip from the IESA state track meet in which approximately 2,500 students participated, with 6,000 to 7,000 spectators.

In response to a question from Mr. Tackett, Mr. Endsley said that the Illinois High School Association does not allow students below the 9th grade to participate on high school teams. Middle schools allow students from the 5th to the 8th grade to participate. The state series activities are only at the 7th and 8th grade level.

Representative Hall commented that he would like to see dance being added to the activities. Mr. Endsley said that the high school association has started dance this year.

In response to a question from Representative Hall, Mr. Endsley said that the t-shirt vendor contract was a bid process when it switched to the current vendor, and it was renewed for another five years without rebidding. Of the \$280,000 that the association receives, \$155,000 is guaranteed for sale of merchandise at the state final. The rest of the money comes from sales at the sectional level, where the association gets a per piece amount.

In response to a question from Mr. Lantman, Mr. Endsley said that the individual schools decide their own passing grade for the academic criterion.

In response to questions from Mr. Lantman, Mr. Endsley said that all wrestling club teams in Illinois are non-school teams. The last change made to the classes, based on a members' survey, was the addition of a class between 185 and 275 pounds. Students are limited to 37 matches. He said that, as the wrestling administrator, he does not like the change in the independent team rule, especially in wrestling. He is concerned that there will be more injuries, fatigue, burn-out, and diseases.

Mr. Sears said that he is very impressed with the way the IESA is encouraging participation. In response to questions from Mr. Sears, Mr. Endsley said that, for tournaments, multiple basketball games can be played in one day, which avoids an extra travel day, and athletes are allowed to play 8 quarters per day.

In response to a question from Mr. Tackett, Mr. Endsley said that the board of directors has final authority in setting rules. IESA has advisory committees for each sport that can make recommendations to change rules. The IESA Board of Directors is made up of principals or school administrators, whereas the board for the Southern Illinois association consists of coaches.

In response to questions from Mr. Young, Mr. Endsley said that the IESA allows cooperative arrangements where there is a lack of participating students in a school. This can be across districts. Students are only allowed to play for the school they attend. If schools team up, they have to sign up as a team for two years.

In response to questions from Mr. Seum, Mr. Endsley said that the training course for coaches is a general overview of middle school programs. The focus is more on the handbook and not safety. This course has been in place for four years, and he would like to add more on safety education. Sports trainers are not required to attend regular season events, but they are required to be present at state final events.

In response to questions from Mr. Mitchell, Mr. Endsley said that there are fundamental differences between the Illinois high school and middle school associations. Almost every high school in Illinois is a member of the Illinois High School Association; not every middle school is a member of the IESA. The high schools have the same seasons for sports, which is not the case for the middle schools. The attendance/transfer policies are different at the middle school level. The middle school level does not get as much publicity as the high school level does. The IESA does not license its own officials, but all member schools have to use licensed officials registered in Illinois.

Mr. Mitchell said that they looked at Illinois and other states when they started the Kentucky Middle School Football Association. He said minimum regulations are needed. He likes the enthusiasm and the inclusion of other activities in the Illinois association. In response to a question from Mr. Mitchell, Mr. Endsley said that football is not played in the schools and very few schools play interscholastic football. The same is true for soccer; it is a huge club sport. Close to 50 percent of member schools charge their own participation fee to be able to offer sports, rather than eliminating that activity.

In response to a question from Mr. Lantman, Mr. Endsley said that, in order to get more schools to participate, they should focus on the handbook, stress the rules, and stress the state series.

In response to a question from Representative Rollins, Mr. Endsley said that IESA does not offer catastrophic insurance; the teams are covered through their schools.

Representative Rollins said that Mr. Tackett's presentation will be postponed to the next meeting.

Staff distributed a memo requesting recommendations from members for the final report to be submitted by the task force.

Mr. Lantman made an announcement about the Kentucky State Wrestling Association Fall Meeting.

Adjournment

Representative Rollins announced that the November 19 meeting has been moved to November 26. The meeting was adjourned at 3:30 PM.

TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE Minutes

October 3, 2012

Call to Order and Roll Call

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, October 3, 2012, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Wilson Stone, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Paul Hornback, Co-Chair; Representative Wilson Stone, Co-Chair; Senators David Givens, Vernie McGaha, Dennis Parrett, and Joey Pendleton; Representatives Royce W. Adams, Terry Mills, Ryan Quarles, and Tommy Turner.

Guests: Mr. Roger Thomas, Mr. Joel Neaveill, Mr. Bill McCloskey, Mr. Brian Murphy, Ms. Angela Blank, and Mr. Biff Baker Governor's Office of Agricultural Policy; Ms. Irene Centers and Ms. Angela Criswell, Department for Public Health; Mr. Josh Crain, Department of Alcoholic Beverage Control; Mr. Steve Cambron, Department for Behavioral Health; and Mr. Randy Gooch, Jessamine County Health Department.

LRC Staff: Lowell Atchley,

Kelly Ludwig, and Ashlee McDonald, Committee Assistant.

The September 5, 2012, minutes were approved, without objection, by voice vote, upon motion by Senator Parrett and second by Representative Quarles.

Governor's Office of Agricultural Policy

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

GOAP officials summarized funding allocations under the County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-Use Equipment programs from the previous month.

The committee discussed the methods used in and funding alternatives for deceased farm animal disposal. Representative Mills described to the committee a field day he attended in Casey County, at the Large Animal Composting of Kentucky composting operation, which received \$22,500 in agricultural development funds last June. The operation serves farmers in several south central Kentucky counties.

Responding to committee members' questions, Mr. Thomas indicated the Casey County operation is the only regional composting operation and is a pilot project for other potential composting operations. According to Mr. Thomas, some counties offer deceased livestock disposal services at no charge while others assess charges. Some disposal takes place in landfills.

Replying to Representative Adams, GOAP staff went over the Casey County operation's disposal fees.

As the discussion ended, Mr. Thomas said that he considered cost-share investments in deceased farm animal disposal to be "one piece" in the overall investments made in Kentucky's growing livestock industry.

Mr. Neaveill summarized four projects that received funding under the ADB's 2012 Farmers' Market Infrastructure Competitive Grant Program. The markets included: the Lincoln County Farmers' Market, the UK Robinson Center Farmers' Market in Breathitt County, a Muhlenberg County farmers' market sponsored by the Muhlenberg County Fiscal Court, and the Owsley County Farmers' Market on the grounds of the Owsley County school system. The amounts awarded, to be matched with local funds, ranged from \$20,500 to \$40,000.

Responding to Co-Chair Hornback, the GOAP officials said there was no review of the markets' bylaws regarding how they screen sellers. Mr. Thomas noted that applications for farmers' market funding generally come with broad-based support from the communities applying and described to Co-Chair Stone how

facility and grounds ownership are dealt with.

Mr. Thomas also responded to Senator Givens' question about court proceedings involving a portion of 2003 Master Settlement Agreement payments being disputed by some participating tobacco companies that claim a lost market share over time. Potentially, reduction of multistate MSA payments could total over a billion dollars.

According to Mr. Thomas, Kentucky's legal counsel will be arguing before a federal arbitration panel in April. Since dozens of states are involved, the hearing process could be drawn-out.

Tobacco Prevention and Cessation Program

The committee received the annual report from officials with the Tobacco Prevention and Cessation Program in the Department for Public Health. The program received almost \$2,124,000 in tobacco settlement fund appropriations for FY 2013. Coupled with federal funds, the money is used for tobacco cessation interventions, state and community interventions, health communication, and administration and management. Program officials addressing the committee included: Ms. Irene Centers, Health Promotion Branch Manager, and Ms. Angela Criswell, Tobacco Control Manager.

The committee heard reports from Mr. Josh Crain, Assistant Director of Enforcement, Department of Alcoholic Beverage Control (ABC), Mr. Steve Cambron, Synar Coordinator with the Substance Abuse Prevention Branch, and Mr. Randy Gooch, Public Health Director with the Jessamine County Health Department.

Mr. Crain described the way the ABC goes about performing random checks at tobacco retail stores, often using teenagers working undercover to attempt to make purchases. The agency made 3,280 inspections in 2011, with 120 violations found. Since July 2011, the ABC has performed tobacco inspections under a U.S. Food and Drug Administration contract.

Senator Pendleton indicated he was concerned about the idea of using older-looking undercover buyers, thereby confusing some retailers. Mr. Crain made note of the senator's concerns while also saying there are protocols in place to use age-appropriate buyers. He said the intent is to check for compliance with tobacco retail laws.

Mr. Cambron discussed the state's enforcement role in the Synar law, named after a U.S. congressman who sponsored the legislation in the early 1990s. One aspect of the program is to track data on retailers caught for selling tobacco to underage persons. Kentucky had a 5.7 percent violation rate in 2011. The rate has declined or remained at that level for a number of years. Also, Kentucky's Synar violation rate is well below the national average and has been that way for a

number of years.

Responding to Senator Pendleton, Mr. Cambron said it is not determined to what extent youth obtain cigarettes and the like from relatives or others, but he acknowledged there is social access. Senator Pendleton suggested those questions need to be asked.

Responding to a question from Senator Givens, the witnesses described the working relationship between ABC and the Synar program.

Mr. Gooch discussed how his health department budgets for and handles the funds awarded to it and reports on the spending. He described some of the local programs.

Responding to Representative Stone, Mr. Gooch acknowledged that his agency has had to deal with funding declines in recent years because of ongoing budget constraints.

Ms. Criswell described some of the programs within her agency. Those include efforts to establish 100 percent tobacco-free schools, the TRUST tobacco retailer underage sales training, the tobacco toll-free quit line, and efforts to see smoke-free laws passed. The agency will be establishing a Web site to help people quit smoking. She mentioned some of the comments recorded from people who quit smoking in 2011.

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

Cities, from page 3

Louisville-Lexington partnership carry over to rural communities. "When you move beyond the boundaries of (Louisville and Lexington) there are lots of economic development opportunities," he said. "This might be an example of how mayors of smaller cities might work together and achieve something they cannot achieve working alone."

Handmaker agreed that much of the information collected through the Louisville-Lexington effort will help cities throughout Kentucky. While taking a regional approach to economic development isn't unique nationwide, Louisville and Lexington's joint effort puts Kentucky ahead of many other parts of the nation, she said.

"There's a lot of encouraging stuff going on. We wish it could change overnight," Handmaker said. "We're a little bit ahead of other areas. We just need to execute."

2013 Prefiled Bills

BR 17 - Representative Mike Harmon (06/08/12)

AN ACT relating to driving under the influence.

Amend various sections in KRS Chapter 189A, relating to driving under the influence, to restructure the existing penalties from a four-tiered structure to a three-tiered structure; expand the look-back window for prior offenses from five years to ten years, and to allow forfeiture of motor vehicles used in a DUI if the operator's license had been previously suspended; amend KRS 281A.2102 to conform.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 26 - Senator Denise Harper Angel (06/20/12)

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.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 40 - Representative Arnold Simpson (08/22/12)

AN ACT relating to the sale of alcoholic beverages on election days.

Amend KRS 244.290 to permit the sale of distilled spirits and wine on any primary, or regular, local option, or special election day; authorize the legislative body or fiscal court of a first through fourth class city or the legislative body of any form of county government to adopt an ordinance to prohibit or limit the hours and times of distilled spirits and wine sales within its boundaries on any primary, or regular, local option, or special election day; limit the changes regarding election day sales to territories that already allow some form of alcohol sales; forbid the fiscal court of a county containing a first through fourth class city from changing an election day sales decision made by a first through fourth class city within

that county; preclude the county from imposing an action on a first through fourth class city if that city has taken no formal action regarding election day sales; amend KRS 244.295 to remove the prohibition against the sale of distilled spirits and wine on a primary or election day in an urban-county government; amend KRS 244.480 to permit the sale of malt beverages on any primary, or regular, local option, or special election day; authorize the legislative body or fiscal court of a first through fourth class city or the legislative body of any form of county government to adopt an ordinance to prohibit or limit the hours and times of malt beverage sales within its boundaries on any primary, or regular, local option, or special election day; establish malt beverage territorial limitations and county government restrictions identical to those for distilled spirits and wine; make technical changes; amend KRS 119.215 to conform; repeal KRS 242.100.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Licensing and Occupations

BR 45 - Representative David Floyd (07/12/12)

AN ACT relating to fire protection services.

Create a new section of KRS Chapter 75 to define "city" and "fire district"; grant cities the primary right to provide fire protection services for city territory, subject to certain limitations; create a process for the provision of fire protection services to newly annexed territory; create a formula to determine the proportion of fire district indebtedness owed by the city and allow three years to pay this indebtedness; allow a fire district to continue to provide fire protection services in certain situations if written agreements are entered into with the city; amend KRS 75.010, 75.020, and 75.040 to conform.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Local Government

BR 47 - Senator John Schickel (10/03/12)

A RESOLUTION in honor

and loving memory of Duane Ray Skavdahl.

Adjourn in honor and loving memory of Duane Ray Skavdahl.

(Prefiled by the sponsor(s).)

BR 48 - Senator John Schickel (10/03/12)

A RESOLUTION adjourning the Senate in loving memory and honor of Michael E. Apgar.

Adjourn in loving memory and honor of Michael E. Apgar.

(Prefiled by the sponsor(s).)

BR 49 - Senator John Schickel (10/03/12)

A RESOLUTION adjourning the Senate in honor and loving memory of Albert "Butch" Arlinghaus.

Adjourn in honor and loving memory of Albert "Butch" Arlinghaus.

(Prefiled by the sponsor(s).)

BR 50 - Senator Alice Forgy Kerr (09/17/12)

AN ACT relating to violent offenders.

Amend KRS 439.3401 to provide that persons convicted of criminal homicide under KRS Chapter 507 shall be classified as a violent offender and subject to mandatory service of time and all applicable restrictions on parole and service credits.

(Prefiled by the sponsor(s).)

BR 54 - Representative Dennis Keene (08/14/12)

AN ACT relating to dogs.

Amend KRS 258.095 to amend the definition of who qualifies as the owner of a dog to include persons permitting the dog to remain on or about premises owned and occupied by the person.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Agriculture

BR 55 - Senator Perry B. Clark (08/15/12)

AN ACT relating to medical marijuana.

Create various new sections

of KRS Chapter 218A to establish a comprehensive system for medical marijuana in Kentucky, including provisions for medical verification of need, persons allowed to cultivate, use, and possess the drug, organizations allowed to assist in providing the drug, regulation by the state Department for Public Health, the interaction with state and local governments, including law enforcement, with persons and entities coming within the purview of the Act, and establishing required reporting and review procedures; amend KRS 218A.040 to conform; name the Act the Gatewood Galbraith Medical Marijuana Memorial Act.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 64 - Senator Robin L. Webb (10/12/12)

AN ACT relating to controlled substances.

Amend KRS 218A.205 to replace the requirement that various medical licensing boards promulgate administrative regulations establishing mandatory prescribing and dispensing standards related to controlled substances with a requirement for the promulgation of recommended guidelines.

(Prefiled by the sponsor(s).)

BR 65 - Representative Kim King (08/02/12)

AN ACT relating to legislative procedures for state fiscal measures.

Create a new section of KRS Chapter 6 to require roll call votes on any appropriation or revenue raising measure voted upon in the Senate or House or a committee thereof; require identification of appropriation or revenue measures as state fiscal measures by the Director of the Legislative Research Commission, or upon a determination by the Senate or House or a committee of either; require separate votes for appropriations or revenue measures; require committees to vote on appropriation and revenue measures by roll call votes.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 66 - Representative Kim King (08/02/12)

AN ACT relating to foreign law.

Create new sections of KRS Chapter 454 to establish legislative intent that the rights of an individual afforded under the Constitutions of the Commonwealth and the United States take precedence over the application of any foreign law in any judicial or quasi-judicial proceeding; define specific terms; strictly construe waivers of constitutional rights; provide exceptions for corporate entities; prohibit choice of venue outside of the Commonwealth or United States to preserve the constitutional rights of the person against whom enforcement is sought.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Judiciary

BR 68 - Representative Kim King (08/02/12)

AN ACT relating to school notification of persons authorized to contact or remove a child.

Create a new section of KRS Chapter 620 to require the Cabinet for Health and Family Services, if the cabinet is granted custody of a dependent, neglected, or abused child, to notify the school in which the child is enrolled of persons authorized to contact the child or remove the child from school grounds.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Education

BR 77 - Representative Arnold Simpson (08/14/12)

AN ACT relating to the angel investor tax credit.

Create new sections of Subchapter 20 of KRS Chapter 154 to establish the angel investor tax credit program for certain investments in small businesses; define terms; state Act's title and purposes; list requirements for small businesses and investors to qualify for participation; require the Kentucky Economic Development Finance Authority (KEDFA) to establish the application process; cap the total amount of angel investor and Kentucky Investment Fund Act tax credits available in all years at \$40,000,000; require KEDFA to maintain a Web site listing all businesses and investors certified and all credits awarded; require small

businesses to report annually and allow for tax credit recapture in certain circumstances; amend KRS 152.20-255 to provide that the total amount of tax credits available in the Kentucky Investment Fund Act program and the angel investor program is \$40,000,000 in all years; create a new section of KRS Chapter 141 to establish the credit; amend KRS 141.0205 to provide the ordering of the credit.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 82 - Senator Dennis Parrett (08/22/12)

AN ACT relating to retirement.

Amend KRS 6.505 to close the Legislators' Retirement Plan to new participants effective August 1, 2013; amend KRS 6.515 to increase the cost of purchasing active duty military service to the full actuarial cost in the Legislators' Retirement Plan, to prohibit service purchases made on or after August 1, 2013, from being used to vest for retiree health benefits in the Legislators' Retirement Plan, and to require service purchased on or after August 1, 2013, in the Legislators' Retirement Plan to assume the earliest retirement date and cost-of-living adjustments in determining the appropriate actuarial cost; amend KRS 6.525 to prohibit salary earned in another state-administered system from being used to determine benefits in the Legislators' Retirement Plan if the member does not have service in the other state-administered retirement systems prior to August 1, 2013; amend KRS 61.680 to conform and to make technical amendments; EFFECTIVE August 1, 2013.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on State Government

BR 84 - Senator John Schickel (08/23/12)

AN ACT relating to the sale of alcoholic beverages on election days.

Amend KRS 244.290 to permit the sale of distilled spirits and wine on any primary, or regular, local option, or special election day; authorize the legislative body or fiscal court of a first through fourth class city or the legislative body of any form of county government to adopt an ordinance to prohibit or limit the hours and times of distilled spirits and wine sales within its boundaries on

any primary, or regular, local option, or special election day; limit the changes regarding election day sales to territories that already allow some form of alcohol sales; forbid the fiscal court of a county containing a first through fourth class city from changing an election day sales decision made by a first through fourth class city within that county; preclude the county from imposing an action on a first through fourth class city if that city has taken no formal action regarding election day sales; amend KRS 244.295 to remove the prohibition against the sale of distilled spirits and wine on a primary or election day in an urban-county government; amend KRS 244.480 to permit the sale of malt beverages on any primary, or regular, local option, or special election day; authorize the legislative body or fiscal court of a first through fourth class city or the legislative body of any form of county government to adopt an ordinance to prohibit or limit the hours and times of malt beverage sales within its boundaries on any primary, or regular, local option, or special election day; establish malt beverage territorial limitations and county government restrictions identical to those for distilled spirits and wine; make technical changes; amend KRS 119.215 to conform; repeal KRS 242.100.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Licensing and Occupations

BR 88 - Representative Fitz Steele (08/14/12)

AN ACT relating to sales and use tax holidays and declaring an emergency.

Create a new section of KRS Chapter 139 to establish a three day sales and use tax holiday the first weekend in August each year to exempt clothing, school supplies, school art supplies, computers, and school computer supplies; EMERGENCY.

(Prefiled by the sponsor(s).)

To: Interim Joint Committee on Appropriations and Revenue

BR 89 - Representative Fitz Steele (08/29/12)

AN ACT relating to dextromethorphan abuse.

Create new sections of KRS Chapter 218A to prohibit any person from possessing one gram or more of pure dextromethorphan

or dextromethorphan that has been extracted from solid or liquid form; prohibit sale of products containing dextromethorphan as the only active ingredient to individuals younger than 18; require any person selling a product containing dextromethorphan to require that prospective buyers show a photo ID and sign a document stating the customer is older than 18 before purchase; create an affirmative defense for the retailer if a minor utilizes a fraudulent ID; prohibit individuals younger than 18 from possessing a product that contains dextromethorphan as the only active ingredient; prohibit individuals younger than 18 from misrepresenting their age and from utilizing a fraudulent ID to purchase or obtain dextromethorphan; establish penalties for violation.

(Prefiled by the sponsor(s).)

BR 90 - Senator Tom Buford (09/19/12)

AN ACT relating to exemption of religious organizations from the insurance code.

Amend KRS 304.1-120, containing exclusions from the insurance code, to delete the religious publication exclusion and substitute a religious organization exemption; require notice for delivery to all participants that sharing of medical expenses is not insurance and establish notice requirements; delete the requirements that payments shall be made directly from one subscriber to another, that subscriber amounts are voluntary with no assumption of risk or promise to pay, and the verbatim disclaimer statement.

(Prefiled by the sponsor(s).)

BR 91 - Representative David Floyd (09/04/12)

AN ACT relating to retirement.

Create a new Section of KRS 61.510 to 61.705 to prohibit future members of the General Assembly from participating in the Kentucky Employees Retirement System unless they participated in the Kentucky Employees Retirement System as a member of the General Assembly prior to August 1, 2013; allow current members of the General Assembly participating in the Kentucky Employees Retirement System to make a one-time election to discontinue participation; amend KRS 6.505 to close the Legislators' Retirement Plan

to new members effective August 1, 2013, and to allow current members of the General Assembly participating in the Legislators' Retirement Plan to make a one-time election to discontinue participation; amend KRS 61.510 and 61.680 to conform.

(Prefiled by the sponsor(s).)

BR 92 - Representative David Floyd (09/04/12)

AN ACT relating to retirement.
Amend KRS 6.525 to prohibit members of the Legislators' Retirement Plan, who begin contributing on or after August 1, 2013, from using salary earned in another state-administered retirement system or plan to calculate benefits in the Legislators' Retirement Plan; allow members of the Legislators' Retirement Plan contributing to the plan prior to August 1, 2013, to make a one-time election to have their benefits from the Legislators' Retirement Plan based solely on their legislative salary.

(Prefiled by the sponsor(s).)

BR 99 - Senator Tom Buford (09/11/12)

AN ACT relating to retirement.
Amend KRS 6.505 to close the Legislators' Retirement Plan to new members who take office on or after August 1, 2013; amend KRS 61.510 to close the Kentucky Employees Retirement System to members of the General Assembly who take office on or after August 1, 2013; amend KRS 61.680 to conform.

(Prefiled by the sponsor(s).)

BR 103 - Representative Stan Lee (09/24/12)

AN ACT relating to abortions.
Create a new section of Subtitle 17A of KRS Chapter 304 to define "health benefit exchange" and "small employer" for the purposes of health benefit exchange group health plans; prohibit abortion coverage by a qualified health benefit plan through a health benefit exchange in accordance with the opt-out provision of the federal Patient Protection and Affordable Care Act; amend KRS 304.5-160 to conform; amend KRS 311.800 to provide that the amendments to KRS Chapter 304 contained in this Act shall

not limit or amend the provisions of this statute, which shall remain in full force and effect.

(Prefiled by the sponsor(s).)

BR 149 - Representative Michael J. Nemes (09/19/12)

AN ACT relating to non-felony expungements.
Amend KRS 431.078, relating to expungement of misdemeanor and violation arrest records, to clarify that the term "violation" as used in that statute has the same meaning as set out in the Kentucky Penal Code.

(Prefiled by the sponsor(s).)

BR 166 - Representative Jesse Crenshaw (10/01/12)

AN ACT proposing an amendment to Section 145 of the Constitution of Kentucky relating to persons entitled to vote.
Propose to amend Section 145 of the Constitution of Kentucky to allow persons convicted of a felony other than treason, intentional killing, a sex crime, or bribery the right to vote after expiration of probation, final discharge from parole, or maximum expiration of sentence; submit to the voters for ratification or rejection.

(Prefiled by the sponsor(s).)

BR 167 - Representative Steve Riggs (10/05/12)

AN ACT relating to retirement benefits for legislators.
Amend KRS 6.505 to close the Legislators' Retirement Plan to legislators who have not previously participated in the plan and who begin their first term of office on or after the effective date of the Act; amend KRS 6.520 to provide that retirement benefits in the Legislators' Retirement Plan shall be based upon the legislator's highest 5 years of salary rather than his or her highest 3 years of salary; amend KRS 6.525 to prohibit salary earned in another state-administered system from being used to determine benefits in the Legislators' Retirement Plan if the member does not have service in the other state-administered retirement systems prior to the effective date of the Act; limit the use of salary credited to other retirement systems in calculating benefits in the Legislators' Retirement Plan if the member does have service in the other state-administered systems prior to the effective date of the Act; create new

sections of KRS Chapter 6 to establish the Legislators' Defined Contribution Plan for legislators who begin their first term of office on or after the effective date of the Act; provide that the plan shall be administered by the Kentucky Deferred Compensation Authority; allow the authority to utilize plans already established or to establish new plans to administer the Legislators' Defined Contribution Plan; provide an employer match of up to 5 percent of the legislator's wages; provide that a legislator participating in the plan shall be vested for employer contributions on a sliding scale that fully vests the legislator for the employer contributions at six years; provide that the benefits under the Legislators' Defined Contribution Plan shall not constitute an inviolable contract of the Commonwealth; amend KRS 18A.245 to establish responsibilities of the board of the Kentucky Deferred Compensation Authority to administer the Legislators' Defined Contribution Plan; amend KRS 61.510, governing the Kentucky Retirement Systems, to clarify that a legislator who begins his or her first term of office on or after the effective date of the Act shall not participate in these plans as a result of service in the General Assembly; amend KRS 61.680 to conform.

(Prefiled by the sponsor(s).)

BR 168 - Representative Ron Crimm (09/28/12)

AN ACT relating to retirement.
Amend KRS 6.525 to prohibit salary earned in another state-administered system from being used to determine benefits in the Legislators' Retirement Plan if the member does not have service in the other state-administered retirement systems prior to August 1, 2013.

(Prefiled by the sponsor(s).)

BR 172 - Representative Michael J. Nemes (10/22/12)

AN ACT 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.
BR 176 - Representative Linda Belcher (10/03/12)

AN ACT relating to reemployment after retirement.
Amend KRS 61.637 to provide that local school districts shall not be required to reimburse Kentucky Retirement Systems for retiree health care premiums on reemployed retirees who work less than 80 days a year.

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* - denotes primary sponsorship of BRs

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Clark, Perry B.
BR55*
Harper Angel, Denise
BR26*
Kerr, Alice Forgy
BR50*
Parrett, Dennis
BR82*
Schickel, John
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Webb, Robin L.
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House

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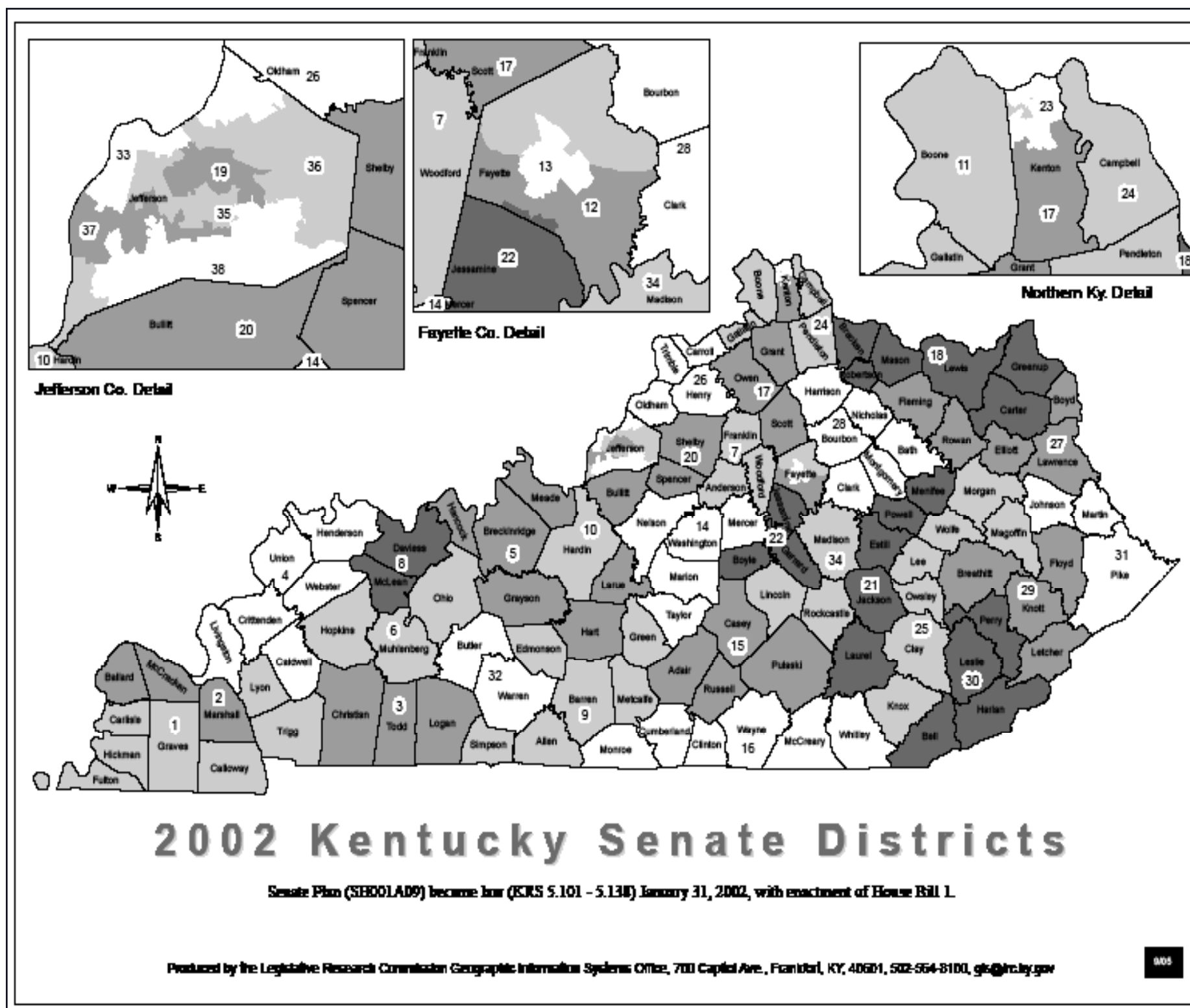
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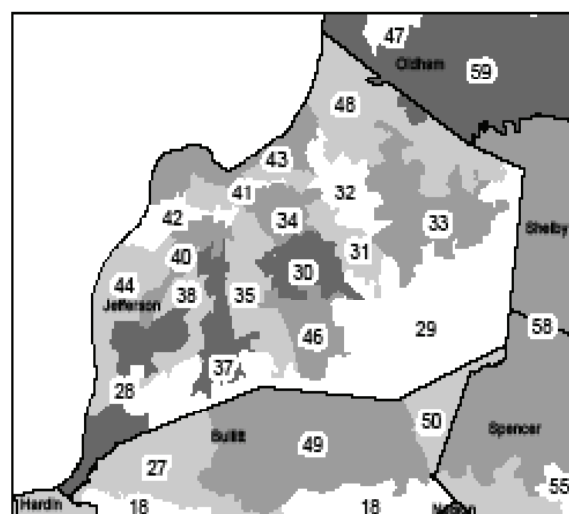
Informational Bulletins

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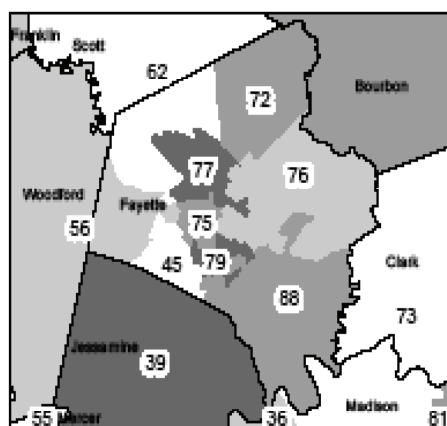
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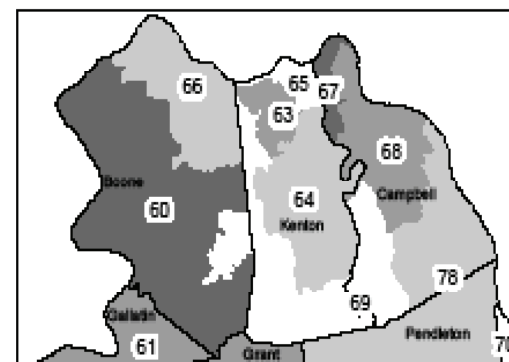




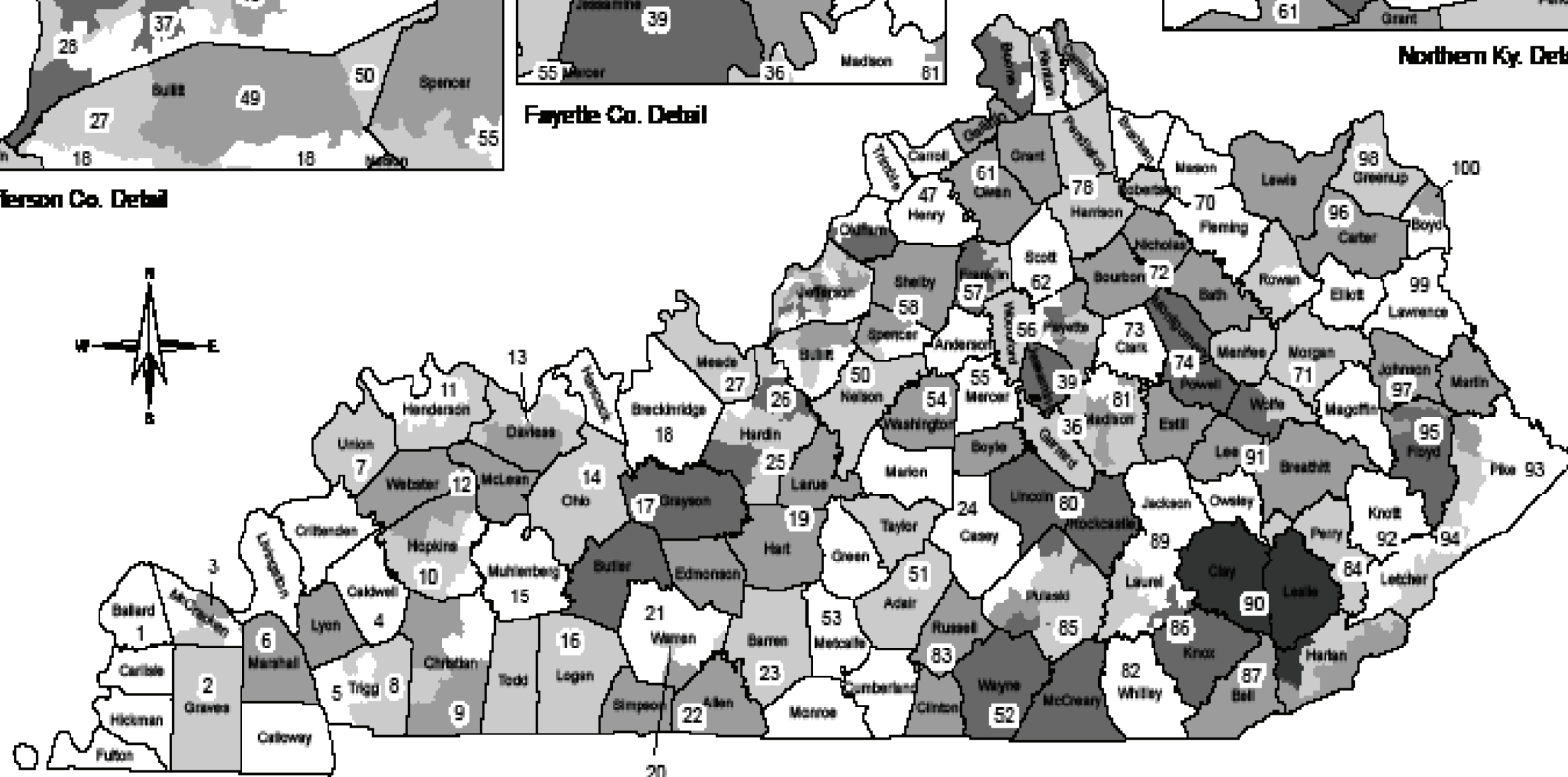
Jefferson Co. Detail



Fayette Co. Detail



Northern Ky. Detail



2002 Kentucky House Districts

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

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