

Final Reports Of The Interim Joint, Special, And Statutory Committees 2015



Informational Bulletin No. 249

**Legislative Research Commission
Frankfort, Kentucky
December 2015**

**Final Reports of the Interim
Joint, Special, and Statutory
Committees**

2015

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

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Frankfort, Kentucky
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Foreword

Sections 36 and 42 of the Kentucky Constitution provide that the General Assembly shall meet on the “first Tuesday after the first Monday in January” for 60 legislative days in even-numbered years, and for 30 legislative days, including up to 10 days for an organizational component, in odd-numbered years.

Between legislative sessions, the interim joint committees of the Legislative Research Commission (LRC), as well as special and statutory committees, meet to discuss and receive testimony on a number of important issues that may confront the General Assembly.

All 15 interim joint committees and nine statutory committees met during the 2015 Interim. There were three special committees.

LRC provides this informational booklet as a summary of the activity of the interim joint, special, and statutory committees since adjournment of the 2015 General Assembly. The reports were prepared separately by the committee staff.

David A. Byerman
Director

Legislative Research Commission
Frankfort, Kentucky
December 2015

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**Report of the 2015
Interim Joint Committee on Agriculture**

**Sen. Paul Hornback, Co-Chair
Rep. Tom McKee, Co-Chair**

Sen. C.B. Embry Jr.
Sen. Chris Girdler
Sen. David Givens
Sen. Stan Humphries
Sen. Dennis Parrett
Sen. Dorsey Ridley
Sen. Damon Thayer
Sen. Robin Webb
Sen. Stephen West
Sen. Whitney Westerfield
Rep. Lynn Bechler
Rep. Johnny Bell
Rep. Will Coursey
Rep. Mike Denham
Rep. Myron Dossett
Rep. Kelly Flood
Rep. Jim Glenn
Rep. Derrick Graham
Rep. David Hale

Rep. Richard Heath
Rep. James Kay
Rep. Kim King
Rep. Martha Jane King
Rep. Michael Meredith
Rep. Suzanne Miles
Rep. Terry Mills
Rep. David Osborne
Rep. Sannie Overly
Rep. Ryan Quarles
Rep. Tom Riner
Rep. Bart Rowland
Rep. Steven Rudy
Rep. Dean Schamore
Rep. John Short
Rep. Rita Smart
Rep. Wilson Stone
Rep. James Tipton
Rep. Tommy Turner

LRC Staff: Tanya Monsanto, Lowell Atchley, Kelly Ludwig, and Susan Spoonamore

**Presented to the
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and the
2016 Regular Session of the
Kentucky General Assembly**

Subcommittee Organization and Membership

Subcommittee on Horse Farming

Sen. Stephen West, Co-Chair

Rep. James Kay, Co-Chair

Sen. Dennis Parrett
Sen. Damon Thayer
Sen. Robin Webb
Rep. Lynn Bechler
Rep. Kelly Flood
Rep. Derrick Graham
Rep. Martha Jane King
Rep. Michael Meredith

Rep. David Osborne
Rep. Sannie Overly
Rep. Ryan Quarles
Rep. Tom Riner
Rep. Rita Smart
Rep. Wilson Stone
Rep. James Tipton

Sen. Paul Hornback, ex officio
Rep. Tom McKee, ex officio

LRC Staff: Lowell Atchley and Kelly Blevins

Subcommittee on Rural Issues

Sen. Stan Humphries, Co-Chair

Rep. Mike Denham, Co-Chair

Sen. C.B. Embry Jr.
Sen. Chris Girdler
Sen. David Givens
Sen. Dorsey Ridley
Sen. Whitney Westerfield
Rep. Johnny Bell
Rep. Will Coursey
Rep. Myron Dossett
Rep. Jim Glenn
Rep. David Hale

Rep. Richard Heath
Rep. Kim King
Rep. Suzanne Miles
Rep. Terry Mills
Rep. Bart Rowland
Rep. Steven Rudy
Rep. Dean Schamore
Rep. John Short
Rep. Tommy Turner

Sen. Paul Hornback, ex officio
Rep. Tom McKee, ex officio

LRC Staff: Kelly Ludwig and Susan Spoonamore

Interim Joint Committee on Agriculture

Jurisdiction: Matters pertaining to crops, livestock, poultry, and their marketing; disease control; warehousing; tobacco; stockyards; agricultural cooperatives and marketing associations; agriculture weights and measures; veterinarians; the State Fair; county fairs.

Committee Activity

The Interim Joint Committee on Agriculture held six meetings during the 2015 Interim. Several committee meetings were held outside Frankfort in order to visit various sites engaged in agricultural operations. The committee reauthorized the Subcommittee on Horse Farming and the Subcommittee on Rural Issues, and each held one meeting during the Interim. A variety of topics were discussed, and several agencies and organizations updated committee members on projects and proposed legislative suggestions for the 2016 Regular Session.

The committee visited several venues outside Frankfort, including the Harrison County Extension Office, where the Harrison County Extension agent testified about agricultural diversification efforts made possible by Master Settlement Agreement funds. An official from the University of Kentucky College of Agriculture, Food and Environment, gave an overview of the University of Kentucky Extension Program. Extension agents from Scott, Bourbon, and Nicholas counties discussed the roles of county councils. The executive director of the Governor's Office of Agricultural Policy discussed statewide agricultural diversification efforts and Harrison County's shared-use equipment program.

The committee met at the University of Kentucky's Research and Education Center in Princeton, hearing testimony relating to the Princeton Research and Education Center and the proposed Grain Center of Excellence. Representatives from the Kentucky Cattlemen's Association, Kentucky Corn Growers Association, Kentucky Corn Promotion Council, Kentucky Small Grain Growers Association, Kentucky Small Grain Promotion Council, Kentucky Poultry Federation, Kentucky Soybean Association, and Kentucky Soybean Promotion Board offered support for the proposed Grain Center of Excellence. The Kentucky Farm Bureau and the Kentucky Farm Bureau Water Management Working Group updated members on its efforts to develop recommendations enhancing quality and quantity of water resources accessible for agricultural production.

At the State Fair, in Louisville, the president of the State Fair Board testified about fair activities and projects undertaken by the board. The mayor of Louisville discussed the Louisville/Jefferson County Farm to Table project and other food marketing programs.

The committee met at Seay Auditorium at the University of Kentucky. The president of the University of Kentucky discussed current projects and this year's student enrollment at the university. The dean of the College of Agriculture, Food and Environment, gave an overview of the college. The associate dean for Research testified about the university's efforts to secure land for the Grain Center of Excellence. Officials of the Department of Biosystems and Agricultural Engineering discussed the use of drones and their potential benefits to agriculture and precision

farming. Other officials testified about the University of Kentucky's industrial hemp research. The committee was invited to tour the University of Kentucky Butcher Shop.

In Frankfort, Alltech's chief innovation officer and vice president of corporate accounts gave an overview of Alltech and its agricultural outreach efforts. Representative Terry Mills and two producers from Marion County discussed the potential agricultural impacts of the proposed Tennessee Gas Pipeline product conversion transport plan.

The commissioner-elect of the Department of Agriculture discussed four priorities for the Kentucky Department of Agriculture. Representatives of the Kentucky Cattlemen's Association, Kentucky Corn Growers Association, Kentucky Soybean Association, Kentucky Small Grain Growers Association, and the University of Kentucky expressed support for the proposed Grain Center of Excellence. Representatives from the Kentucky Equine Education Project discussed the importance of equine tax equity. The executive director of the Kentucky Association of Food Banks testified about the Farms to Food Banks produce purchase program funded by General Assembly appropriations. An official of the University of Kentucky explained the effects of the wet growing season on produce.

Administrative Regulations

The committee had no administrative regulations referred to it during the 2015 Interim.

Legislative Proposals/Policy Positions Received

Representatives of the Kentucky Department of Agriculture, Kentucky Cattlemen's Association, Kentucky Corn Growers Association, Kentucky Soybean Association, and Kentucky Equine Education Project presented proposals for the 2016 Regular Session:

Kentucky Department of Agriculture

- Continue to support the Kentucky Proud program and connect farmers to consumers.
- Address international trade issues affecting Kentucky's agriculture industry.
- Emphasize urban agriculture especially as it pertains to agriculture education.
- Support the Kentucky Association of Food Banks and discuss hunger issues in Kentucky.

Kentucky Cattlemen's Association

- Address animal health issues and the use of antibiotics.
- Support and secure funding for the proposed Grain Center of Excellence.
- Evaluate food service contracts and the use of local foods at public institutions, specifically the University of Kentucky and Kentucky State Fair Board.

Kentucky Corn Growers Association and Kentucky Soybean Association

- Support and secure funding for the proposed Grain Center of Excellence.

Kentucky Equine Education Project

- Support equine tax equity.

Reports Received

The committee received the following reports:

- Executive Order 2015-398, Relating to Reorganization of the Kentucky State Fair Board.
- University of Kentucky, Office of the Treasurer: 2014 Kentucky Tobacco Research and Development Center Financial Statements.
- Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities: 2014 Locally Grown Food Use Report.
- Kentucky Department of Agriculture: 2014 Kentucky Equine Health and Welfare Council Administrative, Programmatic and Financial Activity Report.
- Kentucky Association of Food Banks, Surplus Agricultural Commodities Advisory Committee: Report of the Farms to Food Banks Program.
- University of Kentucky, College of Agriculture: Kentucky Tobacco Research and Development Center, First Quarter Report, ending March 31, 2015.
- From the Auditor of Public Accounts: FY 2014 Independent Accountant's Report of the Rural Development Fund
- From the University of Kentucky, Kentucky Tobacco Research and Development Center: Quarterly Report for the period April 1 through June 30, 2015.

Subcommittee on Horse Farming

The Subcommittee on Horse Farming met once during the 2015 Interim and heard testimony on issues related to horse racing and nonracing activities. Officials with the Kentucky Horse Racing Commission discussed the status of the Thoroughbred racing industry and the Breeders' Incentive Funds program, which benefits race and nonrace breeds.

An official from Keeneland Race Course talked about the positive effects, both on the track and regionally, of the Breeders' Cup races, highlighted by American Pharoah's domination of the Breeders' Cup Classic. The executive director of the Kentucky Horse Council talked about the programs offered by the council, including horse rescue and safety and trail riding.

Subcommittee on Rural Issues

The Subcommittee on Rural Issues met once during the 2015 Interim and heard testimony on issues pertaining to rural Kentucky. The chair of the Kentucky Farm Bureau Water Management Working Group discussed Kentucky's water resources. The Water Management Working Group is a 20-member task force working to develop recommendations to enhance the quality and quantity of water resources accessible for agricultural production and help alleviate demand pressure on municipal water supplies.

An official from the National Rural Child Poverty Nutrition Center, at the University of Kentucky, said the center focuses on families with children who live in 324 persistently poor rural counties in 15 states. The goal is to help families increase their participation in the US Department of Agriculture's Food and Nutrition Service Child Nutrition programs and other nutrition assistance programs.

Officials from the Kentucky Cabinet for Economic Development testified on the economic and employment climate in rural Kentucky. Numerous state initiatives have been deployed to cultivate entrepreneurship and economic growth, including the Kentucky Innovation Network, Work Ready Communities, Kentucky Federation for Advanced Manufacturing Education (KY FAME), Kentucky Export Initiative, Select Kentucky, Build-Ready Program, Kentucky Small Business Tax Credit, and Kentucky Small Business Credit Incentive.

**Report of the 2015
Interim Joint Committee on Appropriations and Revenue**

**Sen. Christian McDaniel, Co-Chair
Rep. Rick Rand, Co-Chair**

Sen. Ralph Alvarado	Rep. Kelly Flood
Sen. Danny Carroll	Rep. Jim Glenn
Sen. Chris Girdler	Rep. Joni Jenkins
Sen. David Givens	Rep. Martha Jane King
Sen. Denise Harper Angel	Rep. Reginald Meeks
Sen. Stan Humphries	Rep. Terry Mills
Sen. Morgan McGarvey	Rep. Tanya Pullin
Sen. Dennis Parrett	Rep. Marie Rader
Sen. Wil Schroder	Rep. Steven Rudy
Sen. Brandon Smith	Rep. Sal Santoro
Sen. Robin L. Webb	Rep. Arnold Simpson
Sen. Stephen West	Rep. Rita Smart
Sen. Max Wise	Rep. Fitz Steele
Rep. Denver Butler	Rep. Jim Stewart III
Rep. John Carney	Rep. Wilson Stone
Rep. Larry Clark	Rep. Tommy Turner
Rep. Leslie Combs	Rep. David Watkins
Rep. Ron Crimm	Rep. Jim Wayne
Rep. Mike Denham	Rep. Susan Westrom
Rep. Bob M. DeWeese	Rep. Addia Wuchner
Rep. Jeffery Donohue	Rep. Jill York
Rep. Myron Dossett	

LRC Staff: Pam Thomas, Jennifer Hays, Eric Kennedy, John Scott, Charlotte Quarles, and Jennifer Beeler

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2016 Regular Session of the
Kentucky General Assembly**

Subcommittee Organization and Membership

**Budget Review Subcommittee
on Economic Development and Tourism,
Natural Resources and Environmental Protection**

**Sen. Chris Girdler, Co-Chair
Rep. Fitz Steele, Co-Chair**

Sen. Perry Clark	Rep. Terry Mills
Sen. Denise Harper Angel	Rep. Marie Rader
Sen. Alice Forgy Kerr	Rep. Dean Schamore
Sen. Max Wise	Rep. Susan Westrom

Rep. Jim Gooch Jr., non-voting ex officio
Rep. Ruth Ann Palumbo, non-voting ex officio
Rep. John Short, non-voting ex officio

LRC Staff: Frank Willey, Joe Lancaster, Ray Griffith, Stephanie Rich, and Benjamin Thompson

**Budget Review Subcommittee
on General Government, Finance, and Public Protection**

**Sen. Danny Carroll, Co-Chair
Rep. Rita Smart, Co-Chair**

Sen. Julie Raque Adams	Rep. Mike Denham
Sen. Joe Bowen	Rep. Adam Koenig
Sen. Dennis Parrett	Rep. Brad Montell
Sen. Johnny Ray Turner	Rep. Tom Riner

Rep. Brent Yonts, ex officio
Rep. Will Coursey, non-voting ex officio
Rep. Tom McKee, non-voting ex officio
Rep. Steve Riggs, non-voting ex officio

LRC Staff: Katie Comstock, Frank Willey, Joe Lancaster, Ray Griffith, Stephanie Rich, and Spring Emerson

**Budget Review Subcommittee
on Human Resources**

Sen. Ralph Alvarado, Co-Chair
Rep. Joni Jenkins, Co-Chair

Sen. Julie Raque Adams
Sen. Carroll Gibson
Sen. Denise Harper Angel
Sen. Morgan McGarvey
Rep. George Brown
Rep. Bob M. DeWeese

Rep. Mary Lou Marzian
Rep. Donna Mayfield
Rep. Darryl T. Owens
Rep. David Watkins
Rep. Jim Wayne
Rep. Addia Wuchner

Rep. Tom Burch, non-voting ex officio

LRC Staff: Cindy Murray, Jim Bondurant, and Benjamin Thompson

**Budget Review Subcommittee
on Justice and Judiciary**

Sen. Wil Schroder, Co-Chair
Rep. Denver Butler, Co-Chair

Sen. Ray S. Jones II
Sen. John Schickel
Sen. Robin Webb
Sen. Whitney Westerfield
Rep. Johnny Bell

Rep. Ron Crimm
Rep. Thomas Kerr
Rep. Martha Jane King
Rep. Tanya Pullin
Rep. Brent Yonts

Rep. John Tilley, non-voting ex officio

LRC Staff: Zach Ireland, Frank Willey, Katie Comstock, and Benjamin Thompson

**Budget Review Subcommittee
on Postsecondary Education**

Sen. Stephen West, Co-Chair
Rep. Arnold Simpson, Co-Chair

Sen. Danny Carroll
Sen. C.B. Embry Jr.
Sen. Gerald Neal
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. Linda Belcher
Rep. Larry Clark

Rep. Jim DeCesare
Rep. Jim Glenn
Rep. Kenny Imes
Rep. Reginald Meeks
Rep. Jody Richards
Rep. Kevin Sinnette
Rep. Gerald Watkins

Rep. Derrick Graham, non-voting ex officio

LRC Staff: Jennifer Krieger and Amie Elam

**Budget Review Subcommittee
on Primary and Secondary Education**

Sen. Stephen West, Co-Chair
Rep. Kelly Flood, Co-Chair

Sen. Danny Carroll
Sen. C.B. Embry Jr.
Sen. Gerald Neal
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. John Carney
Rep. Will Coursey

Rep. Jeffery Donohue
Rep. Dennis Horlander
Rep. Charles Miller
Rep. Rick Nelson
Rep. Steve Rudy
Rep. Wilson Stone

Rep. Derrick Graham, ex officio

LRC Staff: Chuck Truesdell and Amie Elam

**Budget Review Subcommittee
on Transportation**

Sen. Max Wise, Co-Chair
Rep. Leslie Combs, Co-Chair

Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Dennis Parrett
Sen. Robin Webb
Rep. Jim Gooch Jr.
Rep. Jeff Greer

Rep. Dennis Keene
Rep. Russ Meyer
Rep. Sal Santoro
Rep. John Short
Rep. Jim Stewart

Rep. Hubert Collins, non-voting ex officio

LRC Staff: Justin Perry, Jeff Schnobrich, and Spring Emerson

Ex Officio Members for all subcommittees:

Sen. Christian McDaniel
Sen. Stan Humphries
Rep. Rick Rand

Interim Joint Committee on Appropriations and Revenue

Jurisdiction: Matters pertaining to the executive budget and other appropriations of state money; the levying of state and local taxes, including school taxes; property tax rates and assessments; the state debt; revenue bond projects; veteran's bonus; claims upon the Treasury; accounting of state funds by local officers; audit for state purposes; budget and financial administration; payment, collection, and refund of taxes; distribution and budgeting of state lottery proceeds.

Committee Activity

During the 2015 Interim, the Interim Joint Committee on Appropriations and Revenue held six meetings. The committee received testimony regarding a wide range of topics.

Public Service Commission Funding

The Public Service Commission (PSC) presented an overview of its operations. The General Assembly created it in 1934 as an independent regulatory, quasi-judicial agency. Its mission is to ensure that utility rates are fair, just, and reasonable for the services provided and that those services are adequate, efficient, and reasonable. The PSC does not set energy policy or broad utility regulatory policy. The PSC operates in accordance with statutes, regulations, and judicial precedent and is funded by an assessment imposed against 1,550 regulated utilities, which the utilities recover from ratepayers.

The state budget director informed the committee that amounts collected from the assessment are deposited in the General Fund and that, pursuant to KRS 278.150, unexpended amounts generated from the assessment at the close of a fiscal year do not lapse but instead remain credited to the account of the commission. The budget of the PSC is set by the General Assembly through appropriations in the biennial budget.

Master Settlement Agreement

Staff of the Governor's Office of Agricultural Policy (GOAP) gave a historical overview of the Master Settlement Agreement (MSA), including the circumstances surrounding the agreement as originally formulated, and the changes that have occurred since. The MSA settled lawsuits filed by 45 states seeking recovery of smoking-related public health costs. Under the MSA, the participating manufacturers (PMs) agreed to make annual payments to states in perpetuity to address these past and future expenses. PMs are subject to restrictions on marketing and advertising. Legislation was enacted in Kentucky to implement and enforce the MSA, including provisions enacted to require nonparticipating manufacturers (NPMs being those that did not sign the MSA) to register with the state and make escrow payments. These provisions are referred to as the "model (escrow) statutes" and are intended to "level the playing field" between manufacturers that are making payments and are subject to advertising and marketing restrictions and those that are not.

The GOAP staff explained that there are different adjustments that can be made to the amounts paid by the PMs to states, in particular on the NPM adjustment that would occur, and

focused on a determination that the MSA was a significant factor in market share loss of the PMs of at least 2 percent. States that were found to have not diligently enforced their model (escrow) statute by an arbitration panel would share in the resulting payment reduction. In September 2013, an arbitration panel found that Kentucky and five other states had not diligently enforced the model escrow statute in 2003. Twenty-two other states settled with the PMs prior to the arbitration hearing. Subsequent to the arbitration hearing, Kentucky appealed the panel's decision to the Franklin Circuit Court, then settled the case, but Kentucky's settlement was not as generous as the settlement the states settling before arbitration were able to negotiate. Kentucky is operating under an agreement term sheet while the final details of the settlement are negotiated. The term sheet amends the way in which Kentucky will receive future MSA payments.

According to the GOAP, Kentucky has received \$1.8 billion as a result of the MSA over 17 years. Each year, MSA funds have provided resources to support the agricultural development fund, youth leadership programs, cancer research programs, and childhood development programs. If an agreement to settle the NPM adjustment had not been reached, these programs would have suffered. It is difficult to predict future payments, but based on the best available estimates, there could be up to a 4.5 percent decline in MSA payments over the next 7 years.

Budget Review and Update for the End of Fiscal Year 2015

The state budget director testified that actual General Fund receipts for FY 2015 exceeded the official estimate by 1.7 percent, generating a revenue surplus of \$165,401,697. The growth in receipts was driven primarily by the individual income tax, sales tax, and business taxes (including the corporation income and limited liability entity taxes). These taxes provide the most elastic sources of revenue, and they performed well in creating a total of \$504.6 million in "new" money when compared to FY 2014.

The remaining General Fund revenue sources fell during the year. The underproducing areas included property, coal severance, and cigarette taxes, and lottery proceeds. Of these sources of revenue, cigarette taxes were in their fifth year of decline, in line with the national trend. Lottery receipts did not meet the budgeted estimate but did show some growth, with the underproducing areas being the national games, which have seen what the industry refers to as "jackpot fatigue" among players. Property tax receipts remained at the same level as in 2008.

Overall, the General Fund revenue growth rate for FY 2015, compared to the prior year, was 5.3 percent. When examined on a quarterly basis during the year, the revenue growth is accelerating, which is a good indicator of economic momentum and a strengthening state economy. According to the state budget director, based on current assumptions in revenue and expenditure growth, FY 2016 is expected to be the first year the state will have a structurally balanced budget in many years.

General Fund revenues in excess of the official estimate equaled \$165.4 million. After accounting for necessary government expenses (NGEs), a budgeted carryforward into FY 2016, spending less than budgeted in debt services and other areas, and other expenditure-related issues, the General Fund surplus equaled \$139.1 million. Pursuant to the General Fund surplus expenditure plan contained in HB 235 of the 2014 Regular Session (the current state budget),

\$56.6 million of that total will be held for NGEs in FY 2016. That leaves a total of \$82.5 million to be deposited into the budget reserve trust fund, more commonly called the “rainy day fund.”

After this deposit is made, the budget reserve trust fund stands at the highest balance in a decade. The state budget director said that this was not only a result of the FY 2015 surplus but is also due to the enactment of HB 510 of the 2015 Regular Session, in which the General Assembly transferred \$63.5 million from the Public Employee Health Insurance Trust Fund to the budget reserve trust fund. The current reserve balance equals \$209.4 million, which is 2.1 percent of FY 2016 General Fund revenues.

Road Fund revenues for FY 2015, which declined for the first time since FY 2009, resulted in a revenue shortfall of almost \$20 million or 1.3 percent below the official estimate. A large component of the decline in revenues was the motor fuels tax, due in large part to the falling average wholesale price of gasoline, which led to a reduced tax rate. The enactment of HB 299 of the 2015 Regular Session fundamentally changed the way the average wholesale price of gasoline is calculated for FY 2016 and beyond. This change preserved approximately \$20 million in revenues in FY 2015, with an even larger impact expected in FY 2016 and beyond. In FY 2015, the number of taxable gallons of fuel purchased increased, but not enough to fully compensate for the effect of the lower tax rate.

After 5 years of growth, motor vehicle usage tax receipts fell 2.3 percent in FY 2015, in large part because of the recently enacted trade-in allowance for new vehicle purchases, which reduced receipts by \$45.8 million for the year. The state budget director cautioned that this allowance eliminates the elasticity of this tax, which is the second-largest Road Fund revenue source. Despite strong new car and truck purchases, the impact of this allowance led to a decrease in revenues.

Kentucky Infrastructure Authority Operations

The executive director of the Kentucky Infrastructure Authority (KIA) stated that with the enactment of SB 409 in 2000, water and sewer infrastructure improvement became a top priority of state government, with three important components being a planning process to determine the best use of state funds, development of the best geographic information system for water and sewer infrastructure in the nation, and increased funding for project construction.

Planning begins at the system level and is led by the 15 regional water management councils, whose geographic boundaries align with the area development districts. The councils comprise elected and appointed leaders, representatives of utilities and health departments and citizens-at-large. The councils establish planning areas, identify needs within each area, and then rank specific water and sewer system construction projects based on those needs. State, federal, and other funding is then provided based on the rankings. Because of the capital-intensive nature of water and sewer systems, the planning is very long-term.

The KIA coordinates and reviews the council rankings, with priority given to projects that regionalize systems, have the highest impact in numbers of households served with the lowest average cost per customers, and provide services in areas that have a median household income

below the state average. After a project is ranked, the area development district approaches that utility to explore all possible funding sources. Each year, KIA publishes the Kentucky Water Management Plan, which is a compilation of data from the Water Resource Information System and each council's project rankings. The plan is publicly available on the KIA website and includes summary data for the entire state, broken down by county, area development district, and legislative district. There are 719 ranked water projects and 482 ranked wastewater projects in the plan

There are four KIA loan programs: Clean Water State Revolving Fund (Fund A); Drinking Water State Revolving Fund (Fund F); Infrastructure Revolving Fund (Fund B); and Governmental Agencies Program Fund (Fund C). Funds A and F are federally funded through the Clean Water Act, an environmental program, and the Safe Drinking Water Act, a public health program, respectively. Pursuant to federal law, all projects receiving loans through either of these federal sources are funded strictly in priority order. Funds B and C are state- or KIA-funded programs.

To receive a loan from any of the funds, a project must be listed on the state revolving fund priority list during the annual call for projects made each fall. KIA staff reviews all loan applications, and the KIA board makes loan approvals. The KIA board annually sets interest rates for loans, and repayment periods range from 20 to 30 years. All KIA administrative expenses, including staff salaries and benefits, are paid through the administrative fee imposed on each loan, with no state General Fund support.

The executive director further explained that in addition to administering the previously mentioned state and federally funded loan programs, KIA is also charged with administering legislatively authorized grant projects, which may be approved as line items in the state budget. Since 2010, there has not been much new grant activity, especially in the single-county coal severance area, due to lack of available funds. KIA does not have the authority to reallocate grant funds from one project to another, even in the case of a closed project with a remaining balance. Only the General Assembly may reallocate grant funds through legislation.

Overview of the School Facilities Construction Commission

Staff of the School Facilities Construction Commission (SFCC) explained that the renovation and construction of facilities are funded through a school district's unrestricted and restricted funds. Unrestricted funds are moneys in the district's general fund derived from the SEEK funding program. Restricted funds are those funds that are reserved for capital construction and renovation projects. Since the enactment of the Kentucky Education Reform Act in 1990, the state has funded facilities through a three-pronged approach based on the size, wealth, and need of each district.

The size component is the capital outlay funding included in the SEEK formula. The amount is \$100 multiplied by a district's average daily attendance. Amounts from the Facilities Support Program of Kentucky (FSPK) make up the wealth component of the facilities funding. FSPK provides funding based on property assessments and includes both local and state components. To participate in FSPK, school districts must levy a 5-cent equivalent tax to pay for capital construction projects. These levies are often referred to as "nickel levies." The state

component of the FSPK program equalizes the local tax levy. Equalization funding is provided as a General Fund appropriation in the state budget.

The need component is addressed through SFCC offers of assistance to districts for capital construction and renovation projects based on unmet facility need and for the purchase of new technology under the Kentucky Education Technology System (KETS) program. The SFCC requests funding for construction offers of assistance in each fiscal biennium. Funding for the KETS program is included in the Department of Education's budget request, although the SFCC administers the program. For a district to be eligible for SFCC assistance, the district must meet certain eligibility requirements. Funding is provided by the state and local districts. SFCC offers of assistance must be applied to a district's first-priority projects, or second-priority projects if the district has already addressed all of its first-priority projects.

The SFCC provides funding to school districts on an equitable basis using a formula that takes into account the appropriation made to the SFCC, multiplied by the district's unmet facility need expressed as a fraction of the state's total unmet facility need. Under the formula, the SFCC provides each district that has an unmet need its proportionate share of the amount appropriated to the SFCC during each fiscal biennium. In 2013, the state's total unmet school facility need was \$5.36 billion. This takes into account \$5.98 billion of total facility needs and \$627.6 million of total local available revenues.

SEEK Funding Formula Overview

Staff from the Department of Education explained that the SEEK program formula was enacted in 1990, and base funding is on a per-pupil basis. There are add-ons that increase the amount of funding each school receives, as well as transportation reimbursement and local effort impact. The formula was established to equalize the funding for schools, with resources including both state and local funds. The required local contribution is based on the school district's property assessment tax base, although revenues can be generated locally through a variety of taxes. The state provides funds necessary to make up shortfalls in local revenues. The per-pupil base amount is established by the General Assembly in the biennial budget. For FY 2015-2016 the per-pupil base is \$3,981.

In addition to the base allocation, there are add-ons that will increase the total funding a school district receives per pupil. The add-on categories are: at risk, which is based on the number of students who qualify for the free or reduced-price lunch program; exceptional child; home or hospital; and limited English proficiency. The department reimburses districts for transportation costs based on a formula that includes several components. Currently, districts receive reimbursement for only 49 percent of actual transportation expenses.

To qualify for SEEK funding, a district must generate an amount equivalent to at least 30 cents per \$100 in property assessments. All districts are making the required levies. A district must levy an additional 5 cents per \$100 of assessed property to qualify for FSPK. To qualify for additional Tier 1 funding, a district can levy taxes that generate an amount equal to 15 percent of SEEK base plus add-ons.

Kentucky Lottery Corporation's Sponsorship Agreement with the Kentucky Executive Mansion Foundation and Transfers to the General Fund

The Kentucky Lottery Corporation (KLC) discussed the dividend transfers from the lottery to the commonwealth. In FY 2015, \$221.8 million was deposited in the lottery trust fund, and \$9.4 million was transferred to the Kentucky Educational Excellence Scholarship reserve fund. KLC had record transfers to these funds over the last 5 years. The growth rate for KLC over the same 5 years was 3.1 percent, which closely mirrors the state's growth rate for sales and use tax of 3.2 percent. Because of jackpot fatigue, KLC experienced 23 weeks of Powerball sales below \$1 million in FY 2015 compared to 2 such weeks in FY 2014. Changes are being made with the goal of increasing jackpots and sales in future years.

The budget bill (HB 235 from the 2014 Regular Session) required KLC to transfer \$11 million to the General Fund in FY 15. The language required that the funds be transferred from the net unrestricted reserves held by KLC as identified in the Kentucky Lottery Annual Financial Report, dated June 30, 2013. KLC staff explained that these unrestricted reserves are either retained or prior-year undistributed earnings, are used to pay obligations, and include cash and other nontransferable, nonliquid assets. Cash on hand fluctuates daily as obligations are paid and payments are received. The board set KLC's minimum month-end unrestricted cash balance at \$9.5 million to meet ongoing obligations. After subtracting the \$9.5 million minimum balance, the \$11 million obligation to the General Fund was never actually available. The unrestricted cash in the unrestricted net position is used to pay prizes and other critical operating expenses on a daily basis and is necessary to continue successful operations.

After reviewing 1 year's activity of uses and sources of cash, the KLC board of directors determined that \$2.5 million became available for transfer to the General Fund following a policy change to lower the balance of unrestricted cash from \$9.5 million to \$7 million. The board approved a \$5 million transfer, and it occurred on June 30, 2015.

KLC entered into a sponsorship agreement with the Kentucky Executive Mansion Foundation for a total sum of \$15,000 for a period beginning June 1, 2015, and ending June 30, 2015. Under the agreement, KLC provided signage for display in the Capitol Education Center to promote the lottery scholarship and grant programs. It was the understanding of KLC that the education center receives 60,000 visitors annually.

State Police Compensation and Retention

Representatives from the Kentucky State Police Professional Association (KSPPA) explained that the KSPPA is an association formed for the purpose of advocating for troopers and dispatchers, and improving the welfare of current and former Kentucky State Police (KSP) personnel. KSP is governed by KRS Chapter 16, which requires a biennial salary survey of the states bordering Kentucky. The last significant increase in trooper compensation was in 2006, when, by executive order, the Governor allowed KSP troopers to begin receiving a \$3,100 stipend from the Kentucky Law Enforcement Foundation Program Fund. The results of the most recent salary survey confirm that KSP troopers remain underpaid compared to troopers in surrounding states, particularly with regard to compensation in relation to years of service.

According to the KSPPA, comparatively low starting salaries affect recruitment. As an example, the most recent cadet class was selected from approximately 600 applicants over a 5-month period. In contrast, 35 years ago, the number of applicants would have exceeded 4,000 for a class of the same size. Lack of adequate compensation also affects retention. Because of stagnant pay during the past 8 years, retaining troopers is proving difficult. In many cases, as soon as troopers are eligible for retirement, they leave to seek other employment to improve their financial status.

Kentucky Law Enforcement Foundation Program Fund and Firefighters Program Fund

Representatives of the Kentucky State Fraternal Order of Police gave an overview of the Kentucky Law Enforcement Foundation Program (KLEFP). Under KRS 136.392, all Kentuckians pay a 1.8 percent surcharge on casualty insurance premiums. The proceeds from this surcharge are statutorily designated for the purposes of the KLEFP and the Firefighters Program Fund.

Amounts from the KLEFP fund are used to pay the annual proficiency incentive to officers who complete the annual mandatory training; to fund the Department of Criminal Justice Training (DOCJT), which administers training for most of Kentucky's law enforcement officers; and to fund the Kentucky Law Enforcement Council, which manages the training standards and requirements statewide.

The Peace Officer Professional Standards (POPS) program was established in HB 455 of the 1998 Regular Session to address a need for a standardized pre-hiring process and an increased level of training across the commonwealth for all law enforcement officers. The DOCJT was the first nationally accredited public safety training program. The standards established by the POPS program have resulted in Kentucky's law enforcement officers being among the best trained in the nation, with a minimum of 888 hours for basic training and 40 hours per year for continued proficiency training. The KLEFP fund is the only funding mechanism for police standards and training. KLEFP started as an incentive program to encourage training before training became mandatory under POPS. The stipend has since evolved into a pay incentive for all officers who meet the high standards set forth through POPS. In 1998, the incentive was set at \$3,000 per year. The incentive was increased to \$3,100 in 2001 through budget language.

The stipend has remained the same since 2001 even though the total amount in the KLEFP fund has increased 410 percent from 2001, when the fund total was \$14.3 million, to \$58.7 million in FY 2013. According to the Bureau of Labor Statistics, because of inflation and cost of living increases, the proficiency pay would need to be \$4,177 in today's dollars to equal the purchasing power of \$3,100 in 2001. The groups of law enforcement officers who do not receive KLEFP proficiency pay are Fish and Wildlife Resources officers, Department of Agriculture officers, charitable gaming officers, parks officers, Alcoholic Beverage Control officers, Insurance Fraud officers, Attorney General investigators, and school resource officers.

Incentives for Saving for College and the Kentucky Education Savings Plan Trust

Staff from the Kentucky Higher Education Assistance Authority (KHEAA) discussed the Kentucky Education Savings Plan Trust, which is a 529 plan. The plan exists to help families save

for future higher education expenses of their children. KHEAA administers this plan, and TIAA-CREF tuition financing manages the funds. There are 15,400 active accounts totaling \$180 million, and the average account size is approximately \$11,700. Several surrounding states offer some form of tax incentive to encourage use of these plans. The KHEAA staff noted that, for these savings plans, Kentucky is one of eight states that has an income tax and does not provide some type of tax incentive to residents.

Developments in Northern Kentucky

A representative of Southbank Partners Inc. and area city officials gave an overview of developments and construction projects in Northern Kentucky.

Flow of Severance Tax Revenues

Staff from the Department for Local Government explained the distribution of coal and noncoal mineral severance taxes to local governments. Distributions are made through two funds: the Local Government Economic Assistance Fund (LGEAF) and the Local Government Economic Development Fund (LGEDF). Noncoal minerals on which severance taxes are paid include natural gas, limestone, and oil. Fifty percent of the funds generated from noncoal minerals are deposited in the General Fund. The remaining 50 percent is deposited in the LGEAF. From the amounts deposited in the LGEAF, distributions are made to producing counties based on actual tax collected in each county. Ten percent of each county allocation is then distributed to each municipality within the county based on population.

The distribution of the coal severance tax revenue follows a similar structure, with 50 percent of receipts going to the General Fund and 50 percent going to local governments. However, the amount of coal receipts going to local governments is split between the LGEAF and LGEDF and is subject to several alternative allocations, deductions, and redistributions before the statutory distribution formula is applied.

The Commonwealth's Credit Rating

Finance and Administration Cabinet staff discussed credit ratings generally and which agencies provide credit ratings of the commonwealth. They noted that credit rating agencies are independent entities that assign a grade based on the risk of default. None of the three top credit rating agencies rate Kentucky the same way. In June 2014, Moody's revised Kentucky's general obligation implied Aa2 rating outlook from negative to stable. In September 2015, Standard and Poor's downgraded Kentucky's general obligation implied rating from AA- with a negative outlook from A+ with a stable outlook primarily because of "chronic underfunding" of pensions. For the commonwealth's credit rating to improve, there would need to be significant improvement in pension funding levels, a continued build-up and maintenance of reserves, and continued economic and revenue growth.

KentuckyWired Project

Staff from the Kentucky Network Communications Authority explained that KentuckyWired is an open access, state-owned fiber network designed to provide “middle-mile” broadband access throughout the state. The network will bring broadband service closer to communities so that local providers can provide the “last mile” directly to the consumer’s premises. The network will serve approximately 1,100 government entities, and there will be a presence in every county. KentuckyWired is not a local Internet service provider (ISP). Historically, governmental agencies have obtained broadband services through separate carrier arrangements with outside entities. The existing system provides limited high-capacity fiber, which translates to limited speed, and Kentucky pays two to five times more for the service than what surrounding states pay for comparable services. Kentucky is choosing to use a public-private partnership to finance, construct, and operate the KentuckyWired network.

Total project financing will be approximately \$324.4 million: \$270.9 million will be generated through bond sales and private equity investors, \$30 million will come from state-issued bonds, and the remaining \$23.5 million will come from federal grants and other federal funding sources. According to the authority staff, open access network provided by KentuckyWired will be a unique opportunity for local public or private ISPs to tap into the system and offer broadband to businesses and homes. Third-party discussions and negotiations are under way with local service providers and power and utility companies regarding pole attachment agreements and use of their existing fiber in the KentuckyWired network.

Judicial Compensation

The chief justice of the Kentucky Supreme Court presented a proposal for increased judicial compensation, referring to the report of the Kentucky Judicial Compensation Commission, which was provided to members. The chief justice stated that Kentucky justices and judges earn less than their counterparts in almost every state. The impact of low salaries has been compounded by the recent reduction in pension benefits for new judges. The decline, if left unchecked, could have a long-term effect on Kentucky’s ability to continue to attract well-qualified lawyers to serve as judges.

In elaborating on the findings of the Judicial Compensation Commission, the chief justice noted that the commission found that a chronic failure to address judicial compensation during budgetary planning has jeopardized the strength, reputation, and performance of the judiciary. Judicial compensation must be adequate to encourage lawyers with appropriate experience, ability, and temperament to join and remain in the judiciary.

The chief justice testified that statutory changes are required to increase judicial compensation and that he therefore does not have the authority to provide for the increases on his own. Based on the commission’s recommendations, the Administrative Office of the Courts requested a 5 percent increase in judicial salaries in each of the next 2 fiscal years. The requested increases would cost \$1.8 million in FY 2017 and \$3.8 million in FY 2018.

Sales Tax Exemption for Food Sold Through Vending Machines

A board member from the Kentucky Automatic Merchandising Council gave a brief presentation regarding an exemption from sales tax on food sold through vending machines. The board member noted that in statute, certain foods are exempted from sales tax, but within that same statute, food sold in vending machines is specifically excluded from that exemption. Those provisions were enacted during a time when taxable and nontaxable items were unable to be individually identified for reporting purposes. The vending industry has evolved to the point that individual identification of products is now possible electronically.

BR 37, 2016 Regular Session, Relating to Problem Gambling

A member of the Kentucky Council on Problem Gambling briefly discussed BR 37, 2016 Regular Session, which would establish a Problem and Addicted Gambler Awareness and Treatment Program. Passage of the program would align Kentucky with 39 other states with legal gambling that provide publicly funded services for problem and addicted gamblers.

BR 442, 2016 Regular Session, Relating to a Tax Credit for Airport Noise Mitigation

One of the sponsors discussed BR 442, 2016 Regular Session, which would create a refundable tax credit for individuals who do not qualify for the federal Quieter Home Program to insulate their homes against airport noise. This credit would be capped annually at \$3 million.

Subcommittee Activity

The Interim Joint Committee on Appropriations and Revenue is organized into seven Budget Review Subcommittees. Their purpose is to review revisions to the enacted budget, to monitor the budgetary operations and programs of state government, and to address agency budget needs for the 2016-2018 biennium.

Budget Review Subcommittee on Economic Development and Tourism, Natural Resources, and Environmental Protection

The Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection held one meeting during the 2015 Interim.

The deputy secretary, the commissioner of business development, and the executive director of the Office of Financial Services spoke regarding the budgetary needs of the Cabinet for Economic Development.

The commissioner of business development noted that people trying to start small businesses can work with the Kentucky Innovation Offices to help them when they have no experience in entrepreneurship.

The deputy secretary reported that 2014 was a record year for business growth and that 2015 is on track to break those records. The deputy secretary also noted that the Bluegrass State Skills Corporation is just one of the workforce training programs in the Kentucky Skills Network.

The deputy secretary said that with the changed federal emissions guidelines, the Cabinet for Economic Development needs to find new ways to partner with utility companies and that aerospace is Kentucky's leading export, though the main reason for record growth has been Kentucky's automotive industry.

Budget Review Subcommittee on General Government, Finance, and Public Protection

During the 2015 Interim, the Budget Review Subcommittee on General Government, Finance, and Public Protection held five meetings.

The deputy secretary of the Finance and Administration Cabinet discussed the public-private partnership agreement to design, build, finance, and operate the new state office building in Frankfort. In addition, he provided an overview and update of the KentuckyWired project.

The executive director of the Kentucky River Authority provided a status report on the locks and dams on the Kentucky River. He also discussed the agency's fee structure and water withdrawal from the river.

The executive director of Kentucky Retirement Systems provided an overview of the retirement systems as well as their operating budget. He discussed the unfunded liability and highlighted the high turnover rate of staff due to low pay.

The chief of staff of the Department for Local Government provided an overview of special purpose governmental entities (SPGEs). The definition of an SPGE, the required registration of an SPGE with the department, and financial reporting compliance were all highlighted.

The executive director of the Commercial Mobile Radio Service Board outlined the board's history as well as its fiscal resources and expenditures. In addition, he noted the status of 911 funding as well as needed legislative changes.

The adjutant general of the Kentucky National Guard provided an update on the National Guard Tuition Award Program and the National Guard Youth Challenge Program. The tuition program functions as one of the National Guard's most effective recruiting and retention programs by providing in-state public or private postsecondary tuition for its soldiers. The adjutant general also discussed the changes the National Guard has made to its youth challenge program in light of the dropout age being raised to 18.

Staff from the Commonwealth Office of Technology updated the subcommittee on the agency's cost allocation and billing methodology as well as how the commonwealth approaches data accuracy and the use of mobile applications by state government.

Budget Review Subcommittee on Human Resources

During the 2015 Interim, the Budget Review Subcommittee on Human Resources held four meetings.

Representatives from the Kentucky Hospital Association and other health care entities testified on the influence of Medicaid managed care on health care providers.

The deputy commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, and the directors of Casey Family Programs and Sobriety Treatment and Recovery Teams (START) testified on the benefits of START programs in addressing substance abuse.

The deputy commissioner of the Department for Medicaid Services testified regarding Medical Loss Ratios and Medicaid Managed Care Organizations. Representatives from the Kentucky Health Benefit Exchange (KHBE) testified regarding the differences between the KHBE and federal health exchanges.

The commissioner of the Department for Medicaid Services testified about Medicare Part B premium increases and Medicaid waiver and therapy service changes. The commissioner of the Department of Insurance spoke about the failure of the Kentucky Health Co-op, a private non-profit health insurance company.

The chief executive officer of NECCO, a private child placement agency, presented on its success rate with placing children in homes at a lower cost than other private agencies.

Budget Review Subcommittee on Justice and Judiciary

The Budget Review Subcommittee on Justice and Judiciary held two meetings during the 2015 Interim.

The commissioner of the Department of Corrections testified regarding personnel pay increases in reference to ongoing staffing issues.

The public advocate from the Department of Public Advocacy testified on the department's Social Worker Program. Updates on the program were provided, including discussion on the use of funds from SB 192 of the 2015 Regular Session.

A representative of the Kentucky Association of Sexual Assault Programs provided an overview of human trafficking in Kentucky.

Representatives from Coventry Health Care, the Northern Kentucky Health Department, and the Fort Thomas Emergency Department provided discussion on substance abuse and substance abuse treatment options.

**Budget Review Subcommittee
on Postsecondary Education
and
Budget Review Subcommittee
on Primary and Secondary Education**

The Budget Review Subcommittee on Postsecondary Education and the Budget Review Subcommittee on Primary and Secondary Education held four joint meetings during the 2015 Interim.

Staff from the Council on Postsecondary Education (CPE) gave an update on the performance funding model for public postsecondary institutions. There is a general agreement among the institutions on the metrics to be used for performance funding and the ramifications for not meeting targets. However, some details remain to be determined on an institution-by-institution basis. In addition, CPE officials spoke on their budget requests for the 2016-2018 fiscal biennium.

Kentucky Educational Television (KET) gave an operations update, focusing on the resources provided to school districts. Among those resources are master teachers who provide instruction across multiple school districts, allowing students educational opportunities that would not otherwise be possible in districts with small enrollment. KET is also working with the Department of Education on the availability of technology to benefit students when classes are canceled due to weather or other catastrophes.

Staff from the Department of Education gave an update on the state K-12 broadband expansion. The biggest challenge is making dense wireless networks available to more districts. Instructional practice is the next step for digital learning.

Two school superintendents spoke on budgetary concerns and local mandates for school districts, while Murray State University officials discussed the university's progress and support for performance funding.

The executive director of AdvanceKentucky discussed the program's merits and benefits. The program expands opportunities for Advanced Placement exams and accompanying college credit for students in math, science, and English.

The president of the Kentucky Community and Technical College System gave an update on the BuildSmart Investment for Kentucky Competitiveness. The program involves matching funds, with local fundraising being supplemented with student fees. Ten of the 16 colleges have met their local match of 25 percent, with 15 projects currently in the design phase and one facility under construction.

The Kentucky Center for Education and Workforce Statistics (KCEWS) discussed its ongoing Kentucky Longitudinal Data System, which is being expanded in part thanks to a federal grant. KCEWS is charged with measuring and evaluating education and workforce data at all levels

to help improve policy decisions, and it is legislatively authorized to collect data from various education and workforce programs.

Budget Review Subcommittee on Transportation

The Budget Review Subcommittee on Transportation held two meetings during the 2015 Interim.

Representatives of Kentuckians for Better Transportation (KBT) spoke about the state's aviation network, public transit systems, and waterways and riverports. They spoke about the Aviation Economic Development Fund, its benefits for smaller airports, ongoing needs, and the importance of fully appropriating fees collected from the sale of aviation fuels for the rehabilitation and maintenance of airport facilities. They described the state's public transit network and stated that while \$1.7 million in General Funds is provided annually for transit systems, an increase to \$6.5 million annually would allow systems to match available federal dollars and begin to restore needed service routes. KBT representatives also discussed the state's riverports and waterways system and requested continuation of the \$500,000 in state funds provided annually for port improvements.

The deputy secretary of the Transportation Cabinet provided updates on Road Fund revenues and projected receipts, as well as the status of the federal highway program. He spoke about the \$124.8 million gap between what Road Fund revenue was budgeted for in fiscal year 2016 and what the updated projected receipts were, as well as the \$20.0 million gap between budgeted and actual receipts for fiscal year 2015. At the federal level, Highway Trust Fund receipts have not kept pace with outlays, requiring \$73.3 billion in transfers from other funds since 2008. The surface transportation reauthorization bills passed by the US House and US Senate were discussed.

The executive director of the Finance and Administration Cabinet's Office of Sales and Excise Taxes discussed the jet fuel tax, the history of the jet fuel tax, and the establishment of the Aviation Economic Development Fund. He also discussed the imposition of a cap of \$1 million annually per carrier for the jet fuel tax and the history of how many carriers reached the cap and how long it took.

**Report of the 2015
Interim Joint Committee on Banking and Insurance**

**Sen. Tom Buford, Co-Chair
Rep. Jeff Greer, Co-Chair**

Sen. Julie Raque Adams
Sen. Jared Carpenter
Sen. Chris Girdler
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dennis Parrett
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. John Schickel
Sen. Dan “Malano” Seum
Rep. Will Coursey
Rep. Ron Crimm
Rep. Mike Denham
Rep. Joseph M. Fischer
Rep. Jim Gooch Jr.
Rep. Mike Harmon
Rep. Chris Harris
Rep. Dennis Horlander
Rep. James Kay
Rep. Dennis Keene

Rep. Thomas Kerr
Rep. Adam Koenig
Rep. David Meade
Rep. Michael Meredith
Rep. Russ A. Meyer
Rep. Brad Montell
Rep. David Osborne
Rep. Sannie Overly
Rep. Ruth Ann Palumbo
Rep. Ryan Quarles
Rep. Jody Richards
Rep. Steve Riggs
Rep. Bart Rowland
Rep. Jonathan Shell
Rep. Kevin Sinnette
Rep. Fitz Steele
Rep. Wilson Stone
Rep. Tommy Thompson
Rep. John Tilley
Rep. Ken Upchurch

LRC Staff: Sean Donaldson, Dale Hardy, and Dawn Johnson

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Banking and Insurance

Jurisdiction: Matters pertaining to banking; banks and trust companies; petty loan companies; building and loan associations; credit unions; investment companies; industrial loan corporations; securities; Blue Sky Law; mortgage guaranty insurance; assessment and cooperative insurance; fraternal benefit societies; hospital service corporations; burial associations; medical and dental service corporations; life, accident, indemnity, and other forms of insurance; stock and mutual insurance companies; banking and insurance aspects of the Uniform Commercial Code; interest and usury; pawnbrokers; private credit; consumer credit; sale of checks; installment sales contracts; legal investments; principal and income.

Committee Activity

The Interim Joint Committee on Banking and Insurance met three times during the 2015 Interim.

Proposed Merger of Aetna and Humana Insurance Companies

The commissioner of the Department of Insurance, the executive vice president of government services for Aetna Inc., the Kentucky state director of government affairs for Aetna Inc., and a representative for Humana Inc. discussed the proposed acquisition of Humana by Aetna.

The commissioner stated that the Department of Insurance would be performing an analysis of the acquisition in accordance with state statutes and regulations. The department will not be considering economic effects of the merger, such as job loss or loss to the tax base, outside of the limited analysis to prevent monopolies.

The executive vice president of government services for Aetna stated that Aetna is committed to the community and that the Humana Headquarters will remain in Louisville and will be the headquarters for the new company's government business. As for the costs and premium reimbursement to doctors and what would happen to the premiums for consumers in the acquisition, Aetna forecast that there would be \$1.25 billion in savings annually through the elimination of redundancies and said that the company was steering toward value-based provider reimbursement and transitioning away from fee-for-service reimbursement. Value-based reimbursement allows for more providers and competition.

Community Ventures

The president and chief executive officer of Community Ventures discussed the history of the organization. The mission of Community Ventures is to build stronger communities, one home owner at a time. The company makes micro loans for starting or expanding businesses or simply helping a welfare mom with a \$500 loan to buy an air compressor. Community Ventures has helped more than 600 people purchase a home, helped 100,000 people get educated and trained, and provided financial counseling to more than 2,000 people. Community Ventures has helped more than 5,000 entrepreneurs start or expand their businesses and has helped create 10,500 jobs as a

result of this process. It has built small business incubators in Lexington and Louisville, serving 36 businesses.

In rural areas, Community Ventures helps build and rehabilitate homes. It is involved in revitalization of neighborhoods, having revitalized or built 26 homes in the blighted Russell neighborhood in Louisville. Community Ventures will start construction in November on vacant Cedar Street lots in Lexington. It saved 1,100 homes from foreclosures last year.

A Community Ventures kitchen incubator was to open in fall of 2015 in Louisville. Located at 1812 West Muhammed Ali Boulevard, this commercially licensed kitchen has space available with state-of-the-art equipment and business support services. It has 13,000 square feet, membership-based pricing plans, and member-exclusive benefits, and is open 24/7.

Banking and Financial Industry

The commissioner of the Kentucky Department of Financial Institutions discussed the state of the banking industry in Kentucky and noted that three Kentucky banks were recognized in American Banker's 2015 "Best Banks to Work For." The commissioner spoke about the condition of the state's chartered banks. Although the number of banks declined from 2011 to 2014, total bank assets and total portfolio saw growth of approximately 6 percent. The commissioner reviewed financial ratios through June 30, 2015. He noted that the state's banking industry employs 11,961 people.

The commissioner stated that from 2007 to 2013 there was a decrease, nationally, in the number of smaller banks due to increased business costs from increased regulation, while larger banks were becoming more numerous. He noted that banks are also less expensive to buy. He said community banking assets have declined by 50 percent during the last two decades. However, community banks are responsible for 77 percent of agricultural lending and more than 50 percent of small business lending. During the recession, community banks reported positive return on average assets and low mortgage default rates.

He also discussed legislation that the department would like to see sponsored this session dealing with regulation of consumer loan companies. The commissioner explained that the department will request the same regulatory authority over the consumer loan industry as exists for other industries regulated by the department including banking, payday lenders, mortgages and money transmitters.

Insurance

A representative from the Kentucky Department of Insurance discussed the state of the insurance industry. The department is focusing on specific areas relating to capital insolvency of companies. Following the financial crisis, states collectively decided to make changes to the solvency model. So far, Kentucky has instituted three of the five recommendations: supervisory colleges for regulators, Own Risk Solvency Assessment for strategic analysis, and addressing reserves dynamically based on risk and products issued. The other two recommendations are: reviewing corporate governance of companies that impact solvency, and reinsurance collateral.

The department is also monitoring mergers, including those between Aetna and Humana and Anthem and Cigna; cyber insurance and cyber security issues; service products in sharing economies like Uber, Lyft, and Airbnb; price optimization; and network-related health insurance issues including consumer education. The department is considering whether a separate license is needed for pharmacy benefits managers and other areas so consumers can better understand how pharmacy benefits work.

The department is working on life insurance suitability standards due to an existing loophole in the non-forfeiture benefit.

The department answered questions and addressed concerns about insurers requiring patients to purchase prescriptions via mail order from out-of-state pharmacies. The department has been asked to review this issue under the Any Willing Provider law. Currently, no state law exists to prohibit that type of arrangement. For the 2017 plan year, federal regulation will prohibit the requirement.

Administrative Regulations

The Kentucky Department of Financial Institutions referred five administrative regulations to the committee during the 2014 Interim. The committee reviewed four of them and found none to be deficient. The committee did not meet during October and so could not review the fifth regulation.

Reports Received

The committee had received these reports as of November 18, 2015.

- Biennial reports on Impact of Mental Health Parity on Health Insurance Cost
- Long Term Care Partnership Program joint report from Department of Insurance and Department for Medicaid Services
- Independent External Review Semiannual Report, January-June 2015
- 2014 Annual Early Warning Analyst Report

**Report of the 2015
Interim Joint Committee on Economic Development and Tourism**

**Sen. Alice Forgy Kerr, Co-Chair
Rep. John Short, Co-Chair**

Sen. Perry B. Clark
Sen. Carroll Gibson
Sen. Chris Girdler
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Wil Schroder
Sen. Reginald Thomas
Sen. Mike Wilson
Sen. Max Wise
Rep. Lynn Bechler
Rep. Kevin D. Bratcher
Rep. George Brown
Rep. Larry Clark
Rep. Hubert Collins
Rep. Leslie Combs
Rep. Tim Couch
Rep. Jim DeCesare
Rep. Mike Denham
Rep. Bob M. DeWeese
Rep. Jeffery Donohue
Rep. Myron Dossett
Rep. Jim Gooch Jr.
Rep. Mike Harmon

Rep. Chris Harris
Rep. Richard Heath
Rep. Dennis Horlander
Rep. Cluster Howard
Rep. James Kay
Rep. Dennis Keene
Rep. Thomas Kerr
Rep. Kim King
Rep. Martha Jane King
Rep. Brian Linder
Rep. Tom McKee
Rep. Terry Mills
Rep. David Osborne
Rep. Ruth Ann Palumbo
Rep. Dean Schamore
Rep. Arnold Simpson
Rep. Fitz Steele
Rep. Wilson Stone
Rep. Tommy Thompson
Rep. David Watkins
Rep. Gerald Watkins
Rep. Russell Webber
Rep. Jill York

LRC Staff: John Buckner, Lou DiBiase, and Karen Brady

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Economic Development and Tourism

Jurisdiction: Matters pertaining to commerce, industry, and economic and industrial development not specifically assigned to another committee; economic development planning, international trade and investment; investment companies and industrial loan corporations as they relate to economic and industrial development; recruitment of business and industry; small business matters relative to economic and industrial development; financing of business and industrial development; business regulatory matters, including the Uniform Commercial Code, relative to economic and industrial development; worker training; technology development and application; chambers of commerce; convention centers and publicly owned exhibition and parking facilities; arts and arts exhibition facilities; state, interstate, and national parks and historic sites; travel promotion and advertising.

Committee Activity

During the 2015 Interim, the committee held six meetings, four of which were at various locations outside Frankfort.

Workforce Development and Training

The committee met jointly with the Interim Joint Committee on Labor and Industry to hear presentations concerning workforce development and training at the Indiana/Kentucky/Ohio Regional Council of Carpenters and Millwrights Training Center, Louisville. A representative from the training center discussed the center's 4-year apprenticeship program, which is completely funded through its membership. The program has approximately 5,000 participants statewide in various stages of training in a variety of commercial industries. The center works with local companies in developing program curriculum and providing skills enhancement through training, and staff visit local high schools and work with groups including Job Corps, Skills USA, and Youth Build to attract a diverse group of trainees. Apprentices earn a wage while in training, and graduates also earn an associate's degree. Because many high schools no longer encourage vocational training, there is a significant shortage of skilled labor.

An instructor at the center explained that the facility serves approximately 600 trainees with three classrooms, a computer lab, and a shop area. The center creates and publishes its curriculum, and the program is registered and nationally recognized.

Salaries for millwrights and carpenters vary depending on the strength of the construction industry; however, skilled tradespeople earn salaries comparable to or exceeding those of college graduates. The center has a 78 percent graduation rate, and first-year apprentices earn approximately \$12 to \$14 per hour.

Pipeline Safety

A presentation was made concerning HB 272 from the 2015 Regular Session, the types of pipelines in Kentucky, and easement and eminent domain processes. Discussion centered on repurposing existing pipelines and the potential risks of doing so when natural gas liquids are

transported. Extensive monitoring is used to detect leaks. There was some discussion about which agency should have primary responsibility for monitoring.

Industrial Initiatives in Logan County

Workforce development and training were again key concerns of the committee when it traveled to Logan County to meet jointly with the Interim Joint Committee on Labor and Industry to learn more about local industrial development initiatives.

The committee saw how an industrial prospect is recruited, and the director of the Logan Economic Alliance for Development gave a presentation similar to one that he would give to a prospect interested in relocating to Logan County. The presentation is designed to highlight advantages such as the county's industrial park site, utilities, workforce, timeline, financing, and local incentives. Logan County is in south-central Kentucky and is within a day's drive of 60 percent of the US population, with agriculture accounting for 30 percent of its economic activity. The West Industrial Park is 200 acres, has been zoned for heavy industry, and has a 161-kilovolt transmission from the Tennessee Valley Authority, which has assisted in providing conceptual site plans to prospects. The group also offers studies on the area's soil and karst topography to industrial prospects.

The committee received the area's workforce profile, which emphasized that the county has a large metalworking cluster, which includes Logan Aluminum (1,200 employees), Emerson Electric (360 employees), Sensus Die Casting (188 employees), numerous welding and fabrication shops, and several electrical and mechanical contractors. The county population is almost 27,000 and, within a 30-mile radius, 43,684 workers are a part of the workforce. As of June 2015, the unemployment rate of 4.9 percent is below the statewide rate of 5.3 percent and the national rate of 5.5 percent. Workforce availability has been affected by some of the county's manufacturing closures, including Red Cap Apparel, Auburn Hosiery Mills, and Hemlock Semi-Conductor. In 2013, there were 305 high school graduates entering the workforce, including 118 students who had received National Work Ready Certificates.

Ventra Plastics

The engineering manager of Ventra Plastics testified about its facility, which was built in Russellville in 1992 and which had doubled in size by 1994. This expansion led to its purchase by Flex-N-Gate in 2001. The facility is 105,000 square feet and sits on 25 acres. The plant employs 274 workers in positions such as machine operator, injection molding processor, general maintenance technician, automations technician, and tooling repair technician.

The company's biggest client is Ford; every F-Series Ford truck has parts that were produced from Ventra Plastics. The plant sends 16 to 18 truckloads each day to the Ford truck plant in Louisville. Skilled workers who excel in areas such as geometry and trigonometry are extremely important. For example, if an angle is measured incorrectly by a tenth of a millimeter on a piece of steel, then a \$500,000 part mold would be unusable. The presentation included pictures of various machines that are used to produce parts and also a video demonstrating how one of the production machines works.

Having skilled workers is key for Ventra Plastics, and although good jobs are available, capable workers are in demand. Only 62 percent of youth graduating were deemed college or career ready. In the 10-county area, 25 percent of residents 25 or older have less than a 12th-grade education. For this reason, various partnerships, such as those with the local area technology school, would be useful in trying to train more potential employees.

Logan Aluminum

Representatives from Logan Aluminum spoke about the company's history, current status, issues, and anticipated needs. Construction began in early 1981, and the plant's start-up was in 1983. Logan Aluminum was established as a joint venture by Consent Decree when ACRO sold the remainder of its aluminum business to Alcan. The decision to locate in Logan County was based on the work ethic of the people in the area. Today the company is run by two owners, Novelis Corporation and Tri-Arrows Aluminum Corporation.

The plant is located on a 1,000-acre site, with 39 acres under roof, and has more than 1,000 team members including more than 500 operators and more than 180 maintenance workers. The company was built for a 400 million pound capacity of aluminum, but over the last 30 years it has increased its production to 2 billion pounds without expanding the original footprint. Logan is the largest can sheet facility in North America and supplies 45 percent of the North American can market.

Logan operates a corporate university to train employees in 600 to 800 internal classes each year. Topics include technical, safety, and behavioral/team skills.

Logan established an apprenticeship program 25 years ago. The 3-year program, offered to existing employees, provides training on mechanical systems, electrical systems, instrumentation, and automation. The plant partners with Southcentral Kentucky Community and Technical College to allow employees to receive a 2-year technical degree and be paid while in school.

The annual turnover rate at Logan Aluminum is 2 percent to 4 percent, but the company is facing the challenge of replacing retiring workers. Until now, the retirement rate has been relatively low, but as the baby boomer generation begins to retire, over the next 10 years Logan will lose an estimated 30 to 50 employees a year. Losing highly skilled workers will greatly affect the plant. Experienced and well-trained workers from the community and surrounding areas will be needed to fill those positions.

Champion Petfoods

A representative from Canada-based, globally distributed Champion Petfoods testified about its facility under construction in Logan County. Dog Star is the name of the 300,000-square-foot facility that will house the company's first US location. The company is building one of the most technologically advanced pet food manufacturing facilities in the world. The company has been distributing its products worldwide for more than 25 years. The company's mission emphasizes three attributes: biologically appropriate, fresh regional ingredients, and never

outsourced. Logan County was chosen because local ingredients would be readily available to provide customers with high-quality pet food.

Champion Petfoods has strong values that have allowed it to be a successful pet food manufacturer. Those values include teamwork, responsibility, authenticity, innovation, and leadership. Training and development programs are being created to ensure a well-trained and skilled workforce. Although Champion Petfoods has employees that have been with the company for many years, it is looking for new and innovative leadership within the group entering the workforce to help it continue to grow and thrive.

Nuclear Power

At a meeting held in Frankfort, the committee heard presentations concerning HB 84 of the 2015 Regular Session, which would lift a 31-year moratorium on construction of a nuclear power facility in Kentucky only at a location previously used in the manufacture of nuclear products. These restrictions would limit any new facility to within 50 miles of a property in Paducah. Five of seven surrounding states have operating nuclear power plants, and the other two do not have moratoria. Energy options must be diverse to enhance economic development opportunities.

Aerospace Industry

The committee received testimony about the rapid growth of the state's aerospace industry. The acting director of the Kentucky Aerospace Council spoke about job creation in the aerospace industry. He gave an overview of the council's history and mission. Funds from the state's jet fuel tax go into an airport development fund. The council oversees approximately \$8 million that is used to support small regional local airports. Kentucky's aerospace manufacturing industry is larger than the three automobile facilities in the state combined. Kentucky ranks third in the nation in aerospace manufacturing. The industry provides high-wage jobs with college graduates entering the field at an average annual salary of \$50,000. To capitalize on the aerospace industry, three things are needed: education, industry, and federal government support. The acting director asked members for their support in coordinating the three to become number one in the industry.

A representative of GE Aviation explained that the company manufactures and services commercial and military aircraft engines as well as an avionics. GE Aviation is a global, long-cycle business that is growing quickly—mostly fueled by international demand. The company has approximately 45,000 employees worldwide, with locations in 22 countries, 79 manufacturing sites, and 11 engineering centers. There are two sites in Kentucky: a manufacturing facility and a material handling distribution center.

The director of the Space Science Center at Morehead State University explained the importance of the aerospace industry on a state and national level. Including the Department of Defense sector, aerospace accounts for approximately 15 percent of the US gross domestic product. This year, Kentucky's aerospace manufacturing exports were \$8 billion.

The executive director of the National Air and Space Education Institute explained that its purpose is to bring the industry to the students with courses including dual college credit, industry certifications, competitions, informal learning opportunities, summer camps, and teacher professional development. The institute serves more than 40 school districts, with 1,000 students studying flight and aeronautics, aerospace engineering, and manufacturing and maintenance. Students use full-scale aircraft, nanosatellites, and unmanned aerial systems. Participants go through a process of design and engineering, manufacturing, operations, and logistics and maintenance. The institute's goals are a private/public support model with the private sector providing programs, equipment, and labs, and the public sector providing financial support to renovate a hangar to serve as a beacon for aerospace education in the state.

Kentucky's Bourbon Industry

The director of community relations at Beam Suntory gave an overview of the company. Beam Suntory is the world's third-largest distilled spirits company, and Jim Beam is the top-selling Kentucky bourbon in the world. Beam Suntory has 329 companies worldwide, more than 37,000 employees, and more than \$20 billion in annual sales, of which 36 percent is generated by alcohol sales. Jim Beam bourbon accounts for sales of more than 7 million cases to 130 countries.

Tourism plays a vital role in Jim Beam's brand development. The Jim Beam American Still House, Clermont, Kentucky, opened in September 2012 with a \$20 million investment. The facility alone hosts more than 135,000 visitors annually; for many visitors, it is the starting point of the Kentucky Bourbon Trail. A companion facility—the Jim Beam Urban Still House—opened in Louisville on October 1, 2015. Located on 4th Street Live, it represents a \$5.2 million investment and will capitalize on the 4 million annual visitors to 4th Street Live.

A spokesperson for the Kentucky Distillers' Association (KDA) explained several ways that Kentucky distillers can remain competitive. An economic impact study shows that bourbon is a \$3 billion industry. Its work force has doubled in the last 2 years, the number of distilleries has tripled, and it has produced a \$1.3 billion capital investment. KDA created the Kentucky Bourbon Trail in 1999 to highlight the bourbon industry. In 2012, KDA launched the Kentucky Bourbon Trail Craft Tour to showcase Kentucky's micro distilleries, becoming the first state in the country to have such a tour. Although Kentucky is well known for its bourbon, distilleries face many challenges.

Tourism

The committee traveled to Pikeville to receive testimony on the status of tourism in the state and the role that adventure tourism can play in a rural county's economic development efforts. The secretary of the Tourism, Arts, and Heritage Cabinet gave an overview on the state of tourism in Kentucky. In 2014, the state hit a record level of economic impact for tourism spending, topping \$13 billion for the first time. This was a 4.5 percent increase over 2013. All of the state's nine tourism regions benefited, as tourism spending supported more than 180,000 jobs with \$2.9 billion in wages. Spending by visitors in the commonwealth generated \$1.4 billion in state and local taxes. In 2014, the Kentucky Appalachians region's economic impact was \$391 million and supported 6,000 jobs; in Pike County alone, the economic impact was \$65.6 million and supported 900 jobs.

The potential for future growth in tourism in eastern Kentucky is outstanding. One exciting development is the Breaks Interstate Park's examination of the possibility of a new whitewater rafting season in the summer. The secretary also mentioned the new Dueling Barrels Distillery in downtown Pikeville and reported that Elkhorn City has been named one of Kentucky's trail towns.

The commissioner of the Department of Travel and Tourism explained the different marketing and advertising mediums used to promote the state. The Internet is the top source of travel information; print media and social media are also used to market tourism in Kentucky. The new film incentive that was passed last year represents an incredible opportunity. Between 2009 and 2014, 11 projects were approved; since April 2015, 17 projects have been approved. Production companies have stated it is now the best incentive in the country.

It has been a banner year for tourism development incentives. Kentucky was the first state to have such incentives, and since the initial law passed in 1996, more than \$1 billion has been invested in tourism attractions in Kentucky.

There were 20 million visitors to Kentucky in 2014, and 63 percent of all tourism dollars came from out-of-state visitors. Strategic Marketing and Research Insights studied advertising marketing's return on investment and found that for every dollar spent on advertising, \$151 was generated in economic impact (\$129 is average for other states) and \$15.69 in tax revenue. Since 2012, the transient room tax is up 21.5 percent; it is on pace this year to exceed \$12 million.

The Appalachian Opportunity

The executive director of Shaping Our Appalachian Region (SOAR) gave an overview of the initiative. SOAR is a catalyst to engage Eastern Kentucky to plan and effect change. The sitting Governor and US Representative of the Fifth District are co-chairs of SOAR. Sixty percent of SOAR's funding comes from private partners. SOAR's public partners are the Appalachian Regional Commission, the commonwealth of Kentucky, and the city of Pikeville. The executive director emphasized that SOAR is about a network of people who believe in the region and building a team to achieve changes.

Kentucky Historical Society

The committee met in Frankfort for its final meeting. The deputy director of the Kentucky Historical Society (KHS) gave an overview of how Kentucky history has been important. To be successful, KHS believes Kentucky history has to be made accessible. The mission for KHS is to engage and educate the public through Kentucky history in order to confront the challenges of our future. KHS provides grant opportunities for various organizations, and it administers the Kentucky History Tax Check Off Trust Fund, a program that hopes to bring in \$30,000 in its first year. This will give opportunities for local history sites to improve their professional services. KHS plays a vital role in the impact that local history organizations have in their communities.

Strengthen Kentucky's Craft Brewing Industry

The committee heard a presentation by representatives of the Kentucky Guild of Brewers. Over the past 5 years, Kentucky's craft brewery sector has experienced a growth rate of 600 percent. There are 33 active craft breweries in the state. In 2014, Kentucky craft brewers produced 71,640 barrels of beer and generated revenue of approximately \$45 million. A large portion of the state's total production is from a handful of breweries that are approaching their capacity.

The total economic impact of Kentucky-produced malt beverages moving through the three-tier system is \$495 million. Kentucky-brewed beer is available in 38 states and more than 12 countries.

Kentucky craft breweries do not receive any tax exemptions and generate tax revenues of \$2.50 a barrel, plus a 10 percent wholesale tax and a 6 percent retail tax, in addition to local and federal taxation. In 2014, malt beverages generated more than \$57 million in wholesale tax revenue and more than \$6 million in retail tax revenue.

Kentucky craft breweries have created more than 460 jobs and have \$23 million in start-up and infrastructure expenditures to date. Upcoming expansions and upgrades total \$16 million.

The Kentucky Guild of Brewers is requesting two legislative changes, both to KRS 243.157. The first is to raise the production volume cap on the existing microbrewer license from 25,000 barrels to at least 50,000 barrels. The second is to permit craft breweries to sell their products at fairs, festivals, and similar events.

Report of the 2015 Interim Joint Committee on Education

Sen. Mike Wilson, Co-Chair
Rep. Derrick Graham, Co-Chair

Sen. Julie Raque Adams
Sen. Jared Carpenter
Sen. Danny Carroll
Sen. David Givens
Sen. Jimmy Higdon
Sen. Alice Forgy Kerr
Sen. Gerald A. Neal
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Rep. Cluster Howard
Rep. James Kay
Rep. Brian Linder
Rep. Mary Lou Marzian
Rep. Donna Mayfield
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Rep. Charles Miller
Rep. Rick G. Nelson
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Rep. Marie Rader
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Rep. Tom Riner
Rep. Bart Rowland
Rep. Rita Smart
Rep. Jim Stewart III
Rep. Wilson Stone
Rep. David Watkins
Rep. Gerald Watkins
Rep. Addia Wuchner
Rep. Jill York

LRC Staff: Jo Carole Ellis, Ben Boggs, Janet Stevens, Joshua Collins, Amy Tolliver, and Daniel Clark

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

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Rep. Wilson Stone, Co-Chair

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Sen. Jared Carpenter	Rep. Brian Linder
Sen. Jimmy Higdon	Rep. Charles Miller
Sen. Reginald Thomas	Rep. Rick G. Nelson
Sen. Johnny Ray Turner	Rep. Ruth Ann Palumbo
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Rep. John Carney	Rep. Jim Stewart III
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Sen. Mike Wilson, ex officio
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Interim Joint Committee on Education

Jurisdiction: Matters pertaining to elementary, secondary, and postsecondary education; the Kentucky Board of Education; the Department of Education; the powers and duties of local boards of education; state support of education; operation of school districts; conduct of schools; attendance; curriculum; pupil transportation; school property and buildings; teachers' qualifications, certification, and retirement; vocational education and rehabilitation; state universities and colleges; community colleges; regional education; and educational television.

Committee Activity

The Interim Joint Committee on Education met six times during the Interim. Five of the meetings were at the Capitol Annex in Frankfort, and one was a site visit to Fairdale High School in Louisville. The committee heard reports relating to early childhood through postsecondary education including science, technology, engineering, and math (STEM) and dual credit initiatives; school choice initiatives; issues and efforts regarding achievement gaps and low-performing schools; early childhood readiness; assessment and accountability; and bullying.

The Craft and Gatton Academies

Information was provided on the Gatton Academy of Mathematics and Science in Kentucky at Western Kentucky University and the newly created Craft Academy for Excellence in Science and Mathematics at Morehead State University.

The Craft Academy is a 2-year dual credit residential high school for academically exceptional Kentucky students. The Craft Academy had 114 statewide applicants, and 60 students were selected. The first class of 60 students enrolled in August 2015, with 60 additional students being admitted in the fall of 2016. The students will be housed in the newly renovated Grote-Thompson Hall on the Morehead campus.

The Gatton Academy of Mathematics and Science in Kentucky offers a residential program for high school juniors and seniors who have demonstrated an interest in pursuing advanced careers in STEM. Students attend classes at Western Kentucky University with regularly enrolled students, receive a high school diploma, and earn a minimum of 60 hours of college credit. The Gatton Academy has enrolled students from 114 counties in Kentucky and has been named by Newsweek as the best high school in the country for the past 3 years.

The Gatton Academy has started an expansion and renovation project to be completed by July 2016. Once the expansion and renovation is complete, the Gatton Academy will house 160 students in 2016 and 200 students by August 2017.

Dual Credit

The commissioner of the Kentucky Department of Education (KDE), executive director of the Council on Postsecondary Education, and executive director of the Kentucky Higher Education

Assistance Authority presented information on the use and benefits of dual credit programs in Kentucky high schools and the newly developed statewide dual credit policy.

Dual credit increases the percentage of students participating in postsecondary education, especially among low-income and traditionally underserved populations; is associated with increases in college retention and completion rates; decreases the time and cost in completing a postsecondary credential; and increases the number of educational pathways made available to students.

The statewide policy on dual credit addresses four primary issues: increasing access to dual credit courses across the state; promoting quality and rigor in the courses offered regardless of the postsecondary institution providing the course; ensuring transferability of dual credit among postsecondary institutions; and safeguarding that dual credit remains affordable to all eligible Kentucky students and is cost effective to educational partners.

Possible funding options for dual credit include a line-item appropriation in the state budget or allowing part of the Support Education Excellence in Kentucky per-pupil guarantee to be expended to support eligible students taking an approved dual credit course for the purpose of covering tuition and fees.

Kentucky Rising

Kentucky Rising is an effort to increase Kentucky's global competitiveness in the high-value international trade of goods and services by exploring what it would take to achieve student outcomes comparable to the highest-performing states and nations. The primary strategy will be setting new standards for high school diplomas that are rigorous, are performance based, are built on academic core standards, and incorporate global literacy.

The Kentucky Rising initiative will use the results of a gap analysis that compares Kentucky to the four top-performing countries and states. Kentucky Rising work groups will build strategies to implement in the areas of career and technical education, early childhood education, and teacher preparation. Kentucky Rising is carefully looking at how to align programs of studies and pathways to leading Kentucky industry sectors and how to ensure students are getting the skill sets needed by those industry sectors.

Kentucky's Plan to Close Achievement Gaps

KDE staff reported that for students in grades 3-5, 6-8, and high school English II, during the 2013-14 school year, 80,097 were novice in reading and 62,450 were novice in math.

A 40-member cross-agency team is working to close the achievement gap through novice reduction by improving daily instruction. Eight key core work processes have been identified around which KDE will align resources so that schools in all districts are equipped to eliminate the achievement gap. These core work processes were further distilled into four basic building blocks for strengthening daily instruction which include curriculum, instruction, assessment, and learning environment.

KDE has taken three major action steps to support the identified key core work processes. An interactive novice reduction website has been developed as a resource for schools and districts. A novice reduction coordinator and five regional novice reduction coaches are available to help district and school leadership identify their novice students and use KDE's resources, internally aligned specifically for closing the gap through novice reduction. KDE is currently piloting the novice reduction plan in Fayette County, and regional coaches will be targeting other districts across the state to start with novice reduction.

Policies and Practices for Turning Around Persistently Low-Performing Schools

A school turnaround expert from the University of Virginia discussed school improvement efforts and issues. Staffing issues can be a major obstacle to school turnaround efforts, including high turnover of personnel in low-performing schools, non-competitive salaries, and difficulty in replacing ineffective teachers.

Some states can withhold funding from schools that fail to improve, and some direct how school improvement funds are spent. Several states allow financial incentives to attract educators to low-performing schools. State school turnaround initiatives may include dictating class sizes; requiring data-driven decision making; and requiring changes to the school day, school calendar, or curriculum.

State-mandated changes to daily school operations may not be effective if principals are not trained to monitor and manage changes and district leaders fail to provide support and oversight for changes. Periodic changes to state curriculum guidelines and testing programs can disrupt and derail turnaround initiatives.

According to the speaker, turning around low-performing schools begins with leadership. A school turnaround specialist must convey a sense of urgency without seeming to panic, promote collaboration, and inspire trust while letting everyone know that incompetence will not be tolerated.

To ensure first-year achievement gains in turnaround schools, there must be teamwork, more time for instruction, and interventions for struggling students. There must also be first- and second-order strategies. First-order strategies are the foundation of the turnaround process and are schoolwide drivers of change that deal with the overall program of studies and the general operational process. Second-order strategies are focused drivers of change and address specific problems related to student achievement. First- and second-order changes result in improved student achievement. Facilitators of change enable first- and second-order strategies to be implemented successfully.

To sustain success in turnaround schools, there must be strengthening in the curriculum beyond English and math, development of a continuum of interventions, reculturing of the school, recruitment and retention of capable staff, and distribution of leadership. School districts play a critical role in the turnaround process. Sustaining school improvement in a poorly led and ineffectively managed school district is unlikely.

Turning Around Low-Performing Schools

The executive director of the Kentucky Association of School Superintendents offered suggestions for improving school turnaround efforts. He said there must be more district flexibility, more collaboration between school-based decision-making councils and the community before a school becomes low performing, and more district input on principal selection at low-performing schools.

Other ideas include incentives for school staff to work in low-performing schools, more leadership skill development of school leaders, and early intervention for students in low-performing schools.

The president of the Jefferson County Teachers Association expressed the organization's support of expanding local control and flexibility at struggling schools in order to empower those schools to be more successful. He provided information about successful turnaround efforts in New York high schools as an example.

The executive director of the Jefferson County Association of School Administrators said his organization would like for school districts to have options for methods to use in assisting a low-performing school. Other recommendations include more incentives to place the best principals at low-performing schools and a lessening of reporting requirements to allow more time for principals to work with students.

Jefferson County Public Schools

The superintendent of Jefferson County Public Schools (JCPS) gave an overview of the district demographics. JCPS is the 27th-largest district in the country with 101,000 students; it includes one-seventh of the students in Kentucky. Thirty-seven percent of its students are African American, which is one-half of all the African American students in Kentucky. The district has 172 school sites. About 52.7 percent of students are minority, 63.6 percent receive free or reduced-price lunch, and 6.4 percent are homeless. Students speak 103 languages.

In 2011-2012, the district completed a school improvement audit resulting in Vision 2015, a roadmap for improving student achievement with specific strategies and measurements to ensure progress. Since its implementation, the percentage of students scoring at proficient and distinguished in reading and math increased each year in all student groups. Students' college and career readiness rate improved by 28 percentage points and is now at 63.5 percent. The graduation rate increased to 79 percent, and JCPS redirected \$245 million of school expenditures into classrooms.

Cambridge International Program

The principal of Fairdale High School explained that the Cambridge International Studies program is administered by a non-profit department of the University of Cambridge in England. The program gives students the opportunity to earn the Advanced International Certificate of Education (AICE) diploma, the most widely recognized international diploma. In its fourth year

of participation in the program, Fairdale has produced its first senior class of 38 AICE diploma-eligible students and has nearly 60 students enrolled in the freshman class.

Fairdale offers Cambridge stage three and four courses, which are eligible for Kentucky Educational Excellence Scholarship (KEES) bonus money. Fairdale's 11th- and 12th-grade Cambridge students have earned a total of more than \$20,000 in KEES bonus money. Fairdale's long-term vision is to offer all four stages of the Cambridge program, which would begin with Cambridge Primary at Fairdale Elementary. The principal explained that in the student-centered Cambridge classrooms, students learn to be self-aware, self-disciplined, and self-motivated critical thinkers who can work collaboratively in diverse groups.

Personalizing Learning Through Education Savings Accounts

An education savings account expert with the Independent Institute, Oakland, California, said educational savings accounts (ESAs) are the latest advance in parental choice in regard to education. Parents who do not prefer a public school for their child can inform the state education agency or local school district and sign a contract promising not to enroll their child in a public school. The state then deposits a percentage of the formula funding it would have spent into an ESA for that child instead. The parent receives a dedicated-use debit card for purchasing authorized educational services including private school tuition, home school curricula, online courses, tutoring, testing fees, and special education services. Any leftover funds roll over from one year to the next for future education expenses, including college.

Parental choice programs introduce competition for students and their associated funding, which puts pressure on public schools to perform and in turn benefits public school students. Also, ESAs expand the kind of personal learning options that have long been available for higher education students but not for school-age children.

Scholarship Tax Credits

The associate director of the Catholic Conference of Kentucky said scholarship tax credit programs allow individuals, businesses, and banks to make contributions to non-profit scholarship organizations to help provide scholarships for low-income students and help them attend a non-public school of their parents' choice. He said 16 states have adopted similar programs. Scholarship tax credit legislation was introduced in the 2015 General Assembly, and similar legislation is expected to be introduced in the 2016 General Assembly.

The School Choice Scholarships Program was founded in 1998 by a group of local business leaders in Louisville to provide scholarships for low-income students. The scholarships allow parents to choose any school for their child to attend in Jefferson and Oldham Counties from kindergarten through 8th grade. This year, the program has 345 children on scholarship at 51 schools.

Youth Bullying Task Force

The Kentucky Youth Bullying Prevention Task Force was established in October 2014 and charged with developing recommendations based on proven comprehensive bullying prevention strategies to lead to safe schools and communities. The task force issued its final report in October 2015. The task force said that to comprehensively address the issue of bullying, it must be recognized as a community-wide public health issue, rather than a school-specific issue.

The four main recommendations of the task force are: adopt a formal definition of bullying to help differentiate between bullying and other types of unwanted behavior; KDE should continue its support for the adoption of evidence-based standards and programs supporting a positive climate and culture within schools; school districts should invest in and support mental health counselors as a preventive measure; and a state-level agency or office should be established to coordinate and support bullying prevention.

Unbridled Learning Assessments and Accountability Results

The Kentucky Department of Education presented data on the 2015 statewide assessment results. The 2015 4-year cohort graduate rate is 87.9, an increase from the 2014 rate of 87.5. The 5-year adjusted cohort rate increased from 88.0 in 2014 to 88.9 in 2015. The percentage of high school graduates who are college- and/or career-ready increased from 62.5 in 2014 to 66.8 in 2015.

The percentage of students reading at proficient or distinguished at the elementary level dropped from 54.7 percent in 2014 to 54.2 percent in 2015, while the percentage increased from 53.2 percent to 53.8 percent at the middle school level and from 55.4 percent to 56.7 percent at the high school level. For mathematics, the percentage of students performing at proficient or distinguished dropped from 49.2 percent in 2014 to 48.8 percent in 2015 in elementary schools and from 44.8 percent to 42.8 percent in middle schools. At the high school level, the proficient/distinguished percentage increased from 37.9 percent to 38.1 percent.

The percentage of gap group students scoring proficient or distinguished increased from 2014 percentages in the areas of elementary social studies, writing, and language mechanics; middle school reading and language mechanics; and high school reading, mathematics, science, writing, and language mechanics. Gap group student performance dropped from 2014 in the areas of elementary reading, mathematics, and science; middle school mathematics, science, social studies, and writing; and high school social studies.

For 2015, 56 percent of all schools scored as proficient or distinguished, compared to 50 percent in 2014. The performance of school districts improved to 69 percent in 2015 from 55 percent in 2014. The number of priority schools decreased from 36 in 2014 to 29 in 2015. Ten schools met the criteria for exiting priority status and three schools entered priority status.

STARS for KIDS NOW

An update was given on the expansion of the state's child care quality rating and improvement system, STARS for KIDS NOW. All public-funded programs must now participate

in the program. A total of 1,431 child care programs are required to participate, and 383 programs voluntarily participate. Participation has increased from 42 percent of licensed and certified programs in October 2013 to 76 percent in September 2015.

Kindergarten Readiness Camps

Three kindergarten readiness camps were implemented in Jefferson County Public Schools during the summer of 2015. JCPS partnered with the CE&S Foundation to support three camp locations that included 20 classrooms, 20 teachers, and 330 incoming kindergarten students. Of the students who attended the kindergarten camps regardless of attendance rate, 70.9 percent scored ready to attend kindergarten on the state kindergarten screening test compared to 51.9 percent of all JCPS kindergarten students.

Subcommittee on Elementary and Secondary Education

The Subcommittee on Elementary and Secondary Education met four times during the Interim.

The Kentucky Alternate Assessment Program

Kentucky's Alternate Assessment Program allows students with the most significant cognitive disabilities to participate in an inclusive learning environment with a focus on bridging academic growth and strengthening independence. The alternate assessment addresses the needs of students by allowing greater depth of adaptations, modifications, and alternative modes of participation. This assessment is an alternate means of participation in the required state tests so students may demonstrate achievement.

The Kentucky Education Reform Act (1990) mandated an inclusive assessment system and the Individuals with Disabilities Education Act of 1997 required that all children with disabilities be included in all general, state, and district wide assessments with appropriate accommodations or an alternate assessment. In 2001, No Child Left Behind mandated all students to be tested in grades three through eight, and once in high school for both reading and mathematics. This required a link to grade level content and standards for alternate assessment.

Exceptional Students' Classrooms- A Teacher's Front-Line Experience

The alternate assessment is determined by an Admission and Release Committee that meets annually. Attainment tasks and the transition attainment record are the two major components of the alternate assessment. Each subject in the attainment tasks has six standards that are assessed each year, aligned with regular grade level standards. Students are assessed in reading, writing, math, and science readiness. Each test, administered in a one-on-one setting, consists of 15 multiple choice questions broken into three sections with five questions. A break is allowed between sections, if needed. Teachers are allowed to use visual and other supports when needed.

School Calendars

For the 2014-2015 school year, districts were required to provide a minimum 1,062 instructional hours. A school district was allowed to add time to the school day to reach the minimum, but could not exceed seven instructional hours per day unless the district was already on an approved innovative alternative calendar. School district certified and classified personnel were still required to complete all contract days.

School districts that were unable to complete 1,062 instructional hours by June 5, 2015, were required to seek assistance from the commissioner of education for maximizing instructional time. If the commissioner determined a district had maximized instructional time but could not complete the required hours, the remaining hours were waived. Three school districts requested and received a waiver for the 2014-2015 school.

Non-Traditional Instruction Program

Non-traditional instruction includes digital learning, blended learning, and project-based learning for students. The program benefits are academic continuity, reduction of learning loss, and more engaged students and teachers. The program has also produced increased communication with parents and interaction with the community via social media. Also, students learn time-management, independence, and problem-solving.

Thirteen districts participated in the non-traditional instruction program for the 2014-2015 school year. KDE conducted monitoring visits in all 13 districts during the winter and spring of 2015 to verify the quality of the programs. Districts provided evidence of student and teacher participation and evidence of student achievement.

Family Resource and Youth Service Centers

Family Resource and Youth Service Centers (FRYSCs) are school-based centers with a goal of helping academically at-risk students succeed in school by assisting in minimizing or eliminating noncognitive or nonacademic barriers to learning. Schools where at least 20 percent of the student population is eligible for free or reduced-price school meals are eligible to receive funding for a center. Locally operated FRYSCs are strengthened by community partnerships in their ability to provide programs, services, and referrals to students and their families. The goal of the FRYSCs is to meet the needs of all children and their families served by the centers as a means to enhance student academic success. Each center offers a unique blend of programs and services to serve the special needs of the student and family populations.

FRYSC's operating budget for fiscal year 2016 is \$52.1 million with a 3 percent administrative cost to run the program. The remainder of funds are divided among the 816 centers based on free lunch count. For fiscal year 2016, the per-student funding for FRYSC was \$172.65.

Allen County Backpack Program

More than 35 percent of families with children under the age of 5 in Allen County live below the poverty level. Also, 63 percent of students in the Allen County School System are considered low-income students who qualify for free and reduced-price lunch. The Backpack Program started in the 2012-2013 school year in response to the need of children who did not have adequate food in their household on weekends and long breaks at school. Every Friday afternoon, or before breaks during the school year, backpacks are filled with food items that are easily prepared. The number of students in the household determines how much food is placed in the student's backpack. The students return the backpacks on Monday, or after the break, and the backpacks are refilled the following week. Common items that are sent home with students are Pop-Tarts, crackers, cereal, canned food, microwaveable items, peanut butter, jelly, and macaroni and cheese.

Currently, all four schools in the Allen County School District have students who participate in the program, with the largest number of students coming from the two elementary schools. During the 2014-2015 school year, approximately 150 children received food weekly.

Students may be referred to the program by teachers, cafeteria workers, bus drivers, administrators, or parents. Other referrals have come from doctors' offices, health departments, church members, and child care providers.

United Way Born Learning Academies, Driven by Toyota

The United Way Born Learning Academy is a six-session project that teaches parents and caregivers of children from birth to age 5 how to turn everyday moments into learning opportunities. Classes take place at a local school one night after school each month for 6 months. Each academy is run by the school's Family Resource Center and the Family Resource Center's Implementation Team

There are 42 United Way Born Learning Academies in Kentucky funded by Toyota and led by United Way. Toyota made a \$1 million investment over 5 years for the Born Learning Academies, and by 2017, there will be more than 60 Toyota Born Learning Academies in more than 30 communities across the commonwealth. The academies have been successful in creating and sustaining partnerships that promote early learning and successful transition into school.

Superintendent School Readiness Toolbox

The Superintendent School Readiness Toolbox is available on KDE's home page. The Web-based toolbox is easily used to identify partners and promote best practices. The toolbox has six sections: an introduction that tells superintendents what to expect; a section on brain research and the return on investment; a section with data for superintendents; a section on community partners; a section that shows the approach on how to convene with partners; and a section on best practices in the commonwealth. The Superintendent School Readiness Toolbox is funded by a \$25,000 grant.

Standards Setting

Standards describe what students should know and be able to do by set points in time. KDE staff described the process used to develop Kentucky's academic standards. The criteria established for standards are based on desired student outcomes, with the framework for standards established by key shareholders. Standard writing is guided by research and by a review of current standards along with other state, national, and international standards. Writers draft grade level standards and seek comments and feedback from key shareholders and practitioners. Revisions are made, as needed, based on credible and defensible comments and feedback. The standards are then proposed for adoption by the state board, and if adopted, would then be introduced to schools and school districts for the implementation process.

Curriculum Development and Curriculum Initiatives

Staff from the Kentucky Association of School Councils explained that the curriculum is usually developed by each school district, but the school-based decision-making (SBDM) councils at the schools work with the district during this process. The SBDM councils approve the curriculum.

An elementary school principal and a high school principal explained how they and their respective staffs were involved in the curriculum development in their districts. They discussed various curriculum initiatives, such as weekly review of lesson plans, use of pacing guides, and monthly review of the school's Consolidated School Improvement Plan.

A school superintendent said his school district emphasizes formative testing. As an example, he said the district administers reading and math benchmark testing three times a year. The district has a credit recovery system in place in the schools that allows students to spend extra time on the standards with which they are having difficulty. Also, by using pacing guides and other forms of assessments, the teachers make sure those students who need more time to meet a standard are given it, while those who are ready to move on are allowed to do so.

Subcommittee on Postsecondary Education

The Subcommittee on Postsecondary Education met four times during the 2015 Interim.

Commonwealth College Initiative

The Commonwealth College Initiative is a statewide bachelor's degree completion program for adults offered through a competency-based online format at Kentucky public universities. The program focuses on high-need occupations that will enhance Kentucky's workforce development.

According to a 2012 report on the southern economy by the Georgetown University Center on Education and the Workforce, by 2020, 56 percent of Kentucky's jobs will require postsecondary education. Currently, only 23 percent of Kentuckians (between the ages of 25 and 44) have a bachelor's degree or higher. In response, HB 265 (the 2012 budget bill) directed the

Council on Postsecondary Education (CPE) to work with the Kentucky Community and Technical College System to develop an Adult Learner Degree Attainment Initiative to increase bachelor's degree completion. The result was the Commonwealth College initiative, which seeks to "capture" those adults who have some college credits and help them to complete their bachelor's degrees.

Commonwealth College brings multi-institutional efforts under one brand, with a curriculum designed in partnership with Kentucky's industries. The programs are competency-based, flexible, modularized, and marketed to working-age adults. Academic credit is given for prior learning. The initial programs focus on bachelor of science degrees in health leadership (sponsored by the University of Louisville) and advanced manufacturing (sponsored by Western Kentucky University). CPE will seek \$2.4 million for each year of the upcoming 2016-2018 biennium to enhance this initiative.

Kentucky Adult Education

A 2013 report from the Georgetown University Center on Education and the Workforce predicts that, by 2020, 65 percent of all US jobs and 63 percent of all Kentucky jobs will require postsecondary education or training. Kentucky Adult Education seeks to address this need through workforce preparation courses, integrated education and training, and career pathways accelerated learning opportunities. Their efforts have been effective and fruitful. Since 2000, the number of working-age Kentuckians without a high school or GED diploma has decreased from 29 percent to 14 percent. This is the fifth-best percentage decline in the nation.

In 2014, the GED was strengthened to better meet contemporary workplace and postsecondary standards. This enhancement has resulted in a year of reduced GED graduates with particular student anxiety and instructor discomfort in making the necessary adjustments. Coupled with these challenges is the overarching 15 years of adult education success, which has reduced the overall population of Kentuckians eligible for the GED. CPE and Kentucky Adult Education are closely monitoring the numbers of Kentuckians participating in adult education and taking the enhanced GED to see what support is needed. The success of other, newer high school equivalency tests are also being ascertained to see if they may be suitable for adult education students and their employers.

University Foundations

University foundations are separate 501(c)(3) nonprofit organizations that perform a wide range of functions. Their primary purpose is to raise and manage private support for their universities. These foundations can also establish for-profit subsidiaries such as research parks or real estate foundations that contribute to the mission and resources of the university while minimizing the university's investment risks.

Like other charitable organizations, foundations are governed by an independent volunteer board. In most cases, the university president or other senior staff sit on the foundation board, although they may be nonvoting members. This arrangement helps maintain open foundation/university communication. As public charities, foundations are accountable to their donors and to their institutions. They are also legally accountable to the Internal Revenue Service

(IRS). Foundations must file an annual IRS Form 990, which is a public document. Also, foundation annual reports, gift/ endowment reports, investment performance, and audit summaries are routinely made available or included in university annual reports.

Career and Technical Education

With the passing of HB 207 (2013 Regular Session), Career and Technical Education (CTE) was transferred to the Department of Education from the Cabinet for Education and Workforce Development. This change led to a redefined mission to help all students acquire the skills necessary for a successful transition to postsecondary education or work and a desire for lifelong learning in a global society. Today, almost 70 percent of Kentucky high school students are enrolled in a CTE program. The largest enrollments are in business and administration, family and consumer sciences, and agriculture and natural resources. CTE reports that, in 2014, a remarkable 98 percent of Kentucky's preparatory CTE seniors graduated from high school.

Computer Science and Computer Coding in Public Schools

Computer science is an educational issue that also is central to economic opportunities across all of the commonwealth's industries. In today's economy, every tech company applies coding to produce high-value products. Currently, thousands of computer science jobs are available in Kentucky but unfilled due to lack of local talent. However, Kentucky is not alone in this challenge: by 2020 a projected 1 million more tech jobs will exist nationwide than students finishing college with computer science training. Moreover, by that year, 50 percent of STEM jobs are projected to be in the computer science fields.

If computer science is taught by a certified math teacher, it can count toward the required fourth mathematics credit. As this has become better known, Advanced Placement computer science exams and qualifying scores have risen dramatically—but more growth is possible. In addition, high-quality curricula, resources, and help services are available to expose more students to the creativity of coding. Private sector companies consider computer science/coding as a new basic skill. This is the “new normal” of the 21st-century economy.

KET Study at Home Adult Education/GED Preparatory Courses

Kentucky Education Television's Adult Education Fast Forward program is an online GED test preparation program designed to help adults without a high school diploma prepare for college or career advancement. The program covers mathematics, language arts, science, and social studies and is designed not only to prepare learners through its educational content, but also to familiarize them with the computer skills necessary to take the GED test. The coursework is aligned with college/career readiness standards and includes online instruction, videos, interactives, and practice sessions with pre- and post-assessments. The project also includes teacher toolkits to help adult education instructors across the commonwealth be better prepared to serve their clients. Fast Forward can be used either independently or in classrooms in all Kentucky adult education and one-stop career centers.

**Report of the 2015
Special Subcommittee on Energy**

**Sen. Jared Carpenter, Co-Chair
Rep. Gerald Watkins, Co-Chair**

Sen. Joe Bowen
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Ray S. Jones II
Sen. Dorsey Ridley
Sen. Brandon Smith
Sen. Johnny Ray Turner
Sen. Robin L. Webb
Rep. Rocky Adkins
Rep. Hubert Collins
Rep. Leslie Combs
Rep. Tim Couch
Rep. Will Coursey

Rep. Jim Gooch Jr.
Rep. Thomas Kerr
Rep. Martha Jane King
Rep. Jerry T. Miller
Rep. Sannie Overly
Rep. Tanya Pullin
Rep. Tom Riner
Rep. Dean Schamore
Rep. John Short
Rep. Kevin Sinnette
Rep. Fitz Steele
Rep. Brent Yonts

LRC Staff: D. Todd Littlefield, Janine Coy-Geeslin, and Susan Spoonamore

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Special Subcommittee on Energy

Jurisdiction: Matters pertaining to investor-owned public utilities, the Public Service Commission, rates, permits, certificates of convenience and necessity; water district rates; public utility cooperatives; electric, oil, and gas transmission companies; telephone companies and cooperatives; Internet access; municipal utilities and water works; energy and fuel development, including alternative fuels and renewable energy; energy waste disposal; and hydroelectric and nuclear energy.

Committee Activity

During the 2015 Interim, the Special Subcommittee on Energy held six meetings. The committee received testimony regarding a wide range of topics.

Block Grant Application and Prefiled Bills

A representative from the Cabinet for Health and Family Services, Department of Community Based Services, Division of Family Support, explained the requirements and components of the Low Income Home Energy Assistance Program block grant application for federal fiscal year 2016. The block grant application findings of fact were adopted by voice vote.

The committee did not consider any prefiled bills.

Successes in School Energy Efficiency

The director of the School Energy Managers Program (SEMP) with the Kentucky School Boards Association (KSBA) and the energy manager for Woodford County and Scott County Schools presented for discussion successes in school energy efficiency. Pursuant to 2008 legislation, schools were directed to develop, implement, and monitor an energy management plan. KSBA collects annual reports and sends the results to the local department of education and the Legislative Research Commission. The average school district in Kentucky, K-12 (excluding Jefferson and Fayette), spends approximately \$843,000 per year on energy. In the past, Kentucky's School energy efficiency average was 60 compared to the national level of 73 (a smaller number indicates greater efficiency). From 2008 to 2014, school districts have saved \$48 million by focusing on energy management.

Scott County was the largest Kentucky district in which all schools met the Energy Star standards. Scott County went from number 25 in the nation to number 5. The cumulative cost saving was \$2,200,000. Woodford County came onboard in 2014, and so far there have been four schools to reach Energy Star level. The cumulative cost avoided in Woodford County has been \$470,000. According to KSBA, if every school in the state was part of the program, the annual savings potential could reach \$62 million. KSBA asked the committee to consider approving the Energy Cabinet's budget expansion of \$750,000 next biennium to fund continuation of KSBA and SEMP Core Leadership Group and emphasized the importance of an energy manager and the need for funding.

Transportation Technologies Across the Bluegrass

The Kentucky Clean Fuels Coalition (KCFC) gave an update of ongoing alternative fuel projects. Private companies and local government entities are changing their fleets to liquefied natural gas (LNG) and compressed natural gas (CNG). Examples include M&M Cartage, Lexington-Fayette Urban County Government, AT&T and UPS. E-Z Pak is a company in Cynthiana that is manufacturing cement haulers and refuse trucks to use CNG. There are seven operational CNG fueling stations in Kentucky with two under construction and five proposed. Not all CNG stations are available for public use. There is one operational LNG station in Walton and one in Georgetown seeking an anchor fleet.

KCFC provided an update on the various types of fuel being used by private companies and government entities. E85 is available in Louisville, Lexington, Elizabethtown, Frankfort, and other Kentucky locations. Approximately 30 propane-powered school buses are in operation in Kentucky; 65 more will be ordered in September. Propane-powered vehicles are also used by Mammoth Cave National Park and by Schwan's, the food delivery service. There is a biodiesel (B20) plant in Owensboro. Griffin Industries, Anheuser-Busch, UPS, and Carmeuse Lime Mines have been using biodiesel trucks. KCFC partnered with LG&E/KU to buy Chevrolet Volts (all-electric vehicles). TARC in Louisville has 15 all-electric Proterra buses that can recharge their batteries in 3 minutes; Lextran has ordered five buses. Mammoth Cave National Park is installing four electric recharge stations, which will be solar powered. There are 103 personal electric vehicles in Kentucky, and most recharging stations are at dealerships.

KCFC provided an update on energy projects in Kentucky. Five projects had been approved by the Cabinet for Economic Development for the Incentives for Energy Independence Act program. Owensboro Community and Technical College was awarded \$745,602 in grant funds from the National Science Foundation to develop a curriculum for training students to work on alternative fuel and regular fuel engines. The University of Louisville (U of L) is developing an energy school, a National Science Foundation program. U of L will be the anchor school and will partner with other schools outside Kentucky to establish a national research center to develop, advance, and apply technologies for improving energy efficiency and environmental sustainability of ground vehicles.

Cyber Security Framework for Electric Cooperatives

The Kentucky Association of Electric Cooperatives (KAEC) presented a report on creation of a cyber security framework proposal for electric cooperatives. There are 24 electric distribution cooperatives that are not regulated because they do not have generation assets. KAEC created a subcommittee to see how its members were dealing with cyber security issues and suggest how they might move forward. The Public Service Commission (PSC) received a grant and did a study on how distribution cooperatives were dealing with cyber security issues. Guernsey, a consultant, was hired to do an analysis of cooperatives' policies and procedures for cyber security. The cooperatives are developing procedures for dealing with cyber security. They found that the largest risk for a breach of cyber security was the employees of the cooperatives.

Guernsey looked at 6 electric distribution cooperatives of the 24 in the state. Areas of focus included 21 areas such as IT risk management, password parameters, personnel security, and remote access. The subcommittee worked with PSC to develop a framework, a package of policies, controls, and best practices to disseminate to the cooperatives throughout the state.

The subcommittee developed 25 policies. Some of them address open source best practice IT policies and controls, cyber security employee awareness and training, a Cyber Security Achievement Program, and sample cyber security procurement language. The proposed framework is meant to suggest options to co-ops that would adopt portions of it. The subcommittee did not intend for the framework to apply to all situations, and additional work is necessary for defined IT procedures, a disaster recovery plan, PCI compliance policies, and other issues. Cooperatives are different sizes with different staffing levels. The proposed framework is not mandatory, but all IT members in attendance are planning to adopt a formal program.

A source document was established to help cooperatives create formal cyber security programs. The Continuous Employee Training Program was recommended to keep cyber security current threats in front of the employees. Kenergy has already adopted this program. The subcommittee recommended that cooperatives have a formal cyber security program in place and provided documents to help them develop a strong program. However, if a cooperative already had a program in place, the subcommittee recommended using the documents as additional resources to enhance its cyber security program. The subcommittee has received requests for the proposed framework from the National Rural Electric Cooperatives Association, the Department of Homeland Security, and other states' cooperatives. Kentucky is being nationally recognized for the subcommittee's work on cyber security.

Economic Outlook for the Nuclear Industry

The committee met at the Emerging Technology Center, West Kentucky Community and Technical College, and toured the Paducah Gaseous Diffusion Plant in Paducah. A representative from the Nuclear Energy Institute (NEI) testified on the economic, technological, and policy issues faced by the nuclear industry.

Nuclear power provides 19 percent of the electricity in the US. There are 99 nuclear reactors in the US fleet. Five reactors are under construction today, with the first of these expected to come online this year in Tennessee. Because of improved technology in hydraulic fracturing, competitive production has changed how the electricity sector operates. Incentives for the deployment of renewable technologies have led to increased supply and depressing market prices as well. These issues will not likely affect Kentucky because Kentucky's system follows long-term planning for the infrastructure needs of the state rather than responding to the short-term market pressures.

Small modular reactors are changing the paradigm for the nuclear and manufacturing industries. These modular concepts have the potential for increased manufacturing and decreased construction time. Several small modular reactors can be put together quickly now and then add more power later.

The NEI representative also explained fuel cycles and how spent fuel is stored. Fuel replenishment for the nuclear plants tends to run on 18- or 24-month cycles. Approximately one-third of the fuel in a reactor will be removed every year and a half to 2 years. Used or spent fuel is hot and radioactive, so it is stored in cooling pools at the reactor site. Cooling pools are built with reinforced concrete and stainless steel linings with no drains anywhere. The spent fuel stays in these pools for at least approximately 10 years while it cools down. After 10 years, the fuel rods are usually put in dry cask storage. Casks are steel-lined concrete containers on site.

Originally, the federal government was responsible for the long-term management and disposal of used fuel. Every company that owns a nuclear plant has a contract with the federal government. For every kilowatt hour produced, owners would pay a fee, and in return the government would bear the responsibility for the long-term management and disposal of spent fuel. This plan was supposed to begin in 1998.

In 1987, the US Department of Energy (DOE) was directed to focus its attention on a geologic repository at Yucca Mountain in Nevada. In 2008, DOE submitted a license application to the Nuclear Regulatory Commission to move forward with the repository. Two years later the Obama administration decided to abandon the licensing effort, declaring the situation to be unworkable. A commission of eminent scholars, businessmen, and political figures was established to look at how the government should manage its program. There were a number of suggestions, but Congress has not agreed on management of spent fuel. The nuclear storage fund holds approximately \$35 billion, and approximately \$1 billion per year is added in interest.

DOE's Energy Information Administration forecasts its energy expectations and predicts about 10 percent growth in nuclear power over the next 10 years. If there are emission constraints under the Clean Power Plan, nuclear power would provide headroom for coal to remain a key part of electricity infrastructure. Nuclear energy could provide the emissions credits that would allow coal to operate as part of a diverse portfolio of electricity generation. NEI sees nuclear and coal as complementary pieces of a strategy for Kentucky's future.

Natural Gas

The committee looked at two issues related to natural gas. The first presentation addressed energy market forces expected to influence gas prices in the coming years. These include possible regulation of hydraulic fracturing in shale gas plays, the retirement of aging coal and nuclear generation facilities, growth in manufacturing, and the export of liquefied natural gas. State and regional gas price forecasts and the electricity rates that are increasingly influenced by them were reviewed. Industries that are benefiting from low natural gas prices include plastics, fertilizer, and manufacturing industries that require process heat. Long-term risks in the marketplace are expected to drive prices higher over time, ending the period of cheap gas. Gas supply and transmission facilities appear to be sufficient in the state, but new pipelines may be required in some areas.

A representative of the federal Pipeline and Hazardous Materials Safety Administration addressed the committee on safety concerns related to the conversion of a natural gas pipeline that runs through the state. The owner of the pipeline plans to change both the material in the pipeline

and the direction of flow. Whereas the line now carries natural gas from the Gulf Coast to the northeast, the plan is to carry natural gas liquids from wells in Ohio, West Virginia, and Pennsylvania to fractionation facilities on the Gulf Coast. Citizens concerned about human safety and environmental damage also addressed the committee.

Energy Efficiency at Fort Knox

The US Army base at Fort Knox hosted the committee and provided significant insight into the ways in which many of the same strategies that save energy for homeowners can save large sums for a big energy consumer like the base. After a 5-day power outage, the army concluded that immediate steps should be taken to reduce the strategic vulnerability of relying on off-base power generation. Although the base has spent \$60 million on energy projects since 2009, it predicts that the resultant energy savings will pay for the improvements in 7.5 years. Efficiency measures and generation facilities are combining to save the base \$8 million per year.

Management Audit of Big Rivers Electric

In the months and years leading up to the loss of two large industrial power customers, many legislators, local leaders, and utility interests were very concerned about the effect on Big Rivers, on the three electric cooperatives that own it, and on the ratepayers who depend on them for electricity. Two aluminum smelters that had previously required about 850 megawatts of electricity left Big Rivers when talks seeking to avoid this outcome failed. The loss of that load led to the idling of at least one and perhaps two coal-fired generation facilities. Concern for the financial health of the utilities and for the remaining customers who have already received two rate increases led the PSC to order a focused management audit of Big Rivers. A consultant hired to perform this audit testified that the audit required:

- Evaluation of efforts to mitigate the impact of the loss of the smelters
- Recommendation of further steps

The recommendations included augmenting both the board and management with targeted expertise, investigating the sale, retirement, or redevelopment of the Coleman generating facility, and pursuing increased power sales to new customers.

**Report of the 2015
Interim Joint Committee on Health and Welfare**

**Sen. Julie Raque Adams, Co-Chair
Rep. Tom Burch, Co-Chair**

Sen. Ralph Alvarado
Sen. Tom Buford
Sen. Danny Carroll
Sen. Julian Carroll
Sen. David Givens
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Alice Kerr
Sen. Reginald Thomas
Sen. Max Wise
Rep. Robert Benvenuti
Rep. George Brown

Rep. Bob M. DeWeese
Rep. Joni Jenkins
Rep. Mary Lou Marzian
Rep. Reginald Meeks
Rep. Phil Moffett
Rep. Tim Moore
Rep. Darryl Owens
Rep. Ruth Ann Palumbo
Rep. David Watkins
Rep. Russell Webber
Rep. Susan Westrom
Rep. Addia Wuchner

LRC Staff: DeeAnn Wenk, Sarah Kidder, Ben Payne, Jonathan Scott, Gina Rigsby, and
Miranda Deaton

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Health and Welfare

Jurisdiction: Matters pertaining to human development, health, and welfare; delivery of health services; support of dependents; public assistance; child welfare; adoptions; children's homes; disabled persons; family welfare; aid to the blind; commitment and care of children; mental health; substance abuse; health, medical, and dental scholarships; local health units and officers; vital statistics; communicable diseases; hospitals, clinics, and long-term care facilities; health professions; physicians, osteopaths, and podiatrists; chiropractors; dentists and dental specialists; nurses; pharmacists; embalmers and funeral directors; psychologists; optometrists; ophthalmic dispensers; physical therapists; senior citizens; elimination of age discrimination; non-public sector retirement; problems of aging; violent acts against the elderly.

Committee Activity

The Interim Joint Committee on Health and Welfare met seven times during the 2015 Interim.

State Health Plan Changes

Representatives from the Cabinet for Health and Family Services presented changes to the 2015-2017 State Health Plan including changes to the Certificate of Need process. The agency indicated that changes were based on the results of a commissioned health care facility capacity study conducted in 2013. The agency stated that the services deleted from the State Health Plan will be MRIs, adult day health programs, ambulance services, chemical dependency treatment beds, and outpatient health care centers and that all of these services will qualify for nonsubstantive review except MRIs, which are exempt by statute.

Disability-Related Issues

ABLE Act. Representatives of the Commonwealth Council on Developmental Disabilities testified about the ABLE Act, which creates a new section in Internal Revenue Code 529A establishing new tax-favored qualified ABLE savings account programs. The funds in these accounts would be disregarded for a disabled person for most federal means-tested programs. Each state is required to enact the program.

Assisted Outpatient Treatment. Representatives of the Kentucky Mental Health Coalition testified about 2016 BR 14, referred to as Tim's Law. This proposal is to permit individuals with brain diseases or severe mental illness who are involuntarily committed to the hospital to be discharged on the condition that they agree to and comply with assisted outpatient treatment, which is an evidence-based treatment program. The proposal also would allow a narrowly defined number of individuals to access outpatient treatment under a court order without having to again be involuntarily committed.

Autism Supports. A representative of Puzzle Pieces and a parent of a child with autism who has used its services testified about the importance of person-centered programs for individuals with autism.

Home and Community Based Waiver Changes

Representatives from the Cabinet for Health and Family Services testified about changes in state and federal regulations for the Home and Community Based Waiver. The Department for Medicaid Services contracted with the Department for Aging and Independent Living to be the new operating agency for the waiver. Advocates expressed concerns about the changes that will be made and how the changes will affect recipients.

National Background Check Program

The National Background Check Program (NBCP), formerly known in Kentucky as KARES, is a national fingerprint-based criminal background check and abuse registry check program for new employees of long-term care facilities and similar health care providers. Kentucky currently uses a paper-based state criminal background check program. Representatives from the Cabinet for Health and Family Services presented information to the committee about the advantages of enacting legislation approving the use of the NBCP in Kentucky.

Sheltered Workshops and Supported Employment

The committee heard testimony on the advantages and disadvantages of sheltered workshops for individuals with disabilities. Representatives from the Hugh Edward Sandefur Training Center indicated that individuals should have the option of working in a shelter setting as well as the option of having supportive employment. Representatives from Protection and Advocacy for Individuals with Developmental Disabilities Advisor Board indicated that wages in supported employment and sheltered workshops should be no less than the minimum wage.

Telehealth Services

Behavioral health providers testified about the advantages of permitting payment for direct patient reimbursable services provided as telehealth services in the patient's home or other non-clinic location. Kentucky currently covers only telehealth services provided by a physician in the telehealth network. Telehealth could provide delivery of support and wrap-around services to a much larger group of clients who have difficulties accessing services because of limited transportation and child care.

Medicaid Managed Care

At its December meeting, the committee is to hear testimony about the Foundation for a Healthy Kentucky and the Final Report on the Three Year Study of Kentucky's Transition to Medicaid Managed Care.

Pharmacy Benefit Managers

Representatives of pharmacy benefit managers (PBMs) stated that PBMs contract with health benefit companies to provide services including price, discount, and rebate negotiations; formulary management; mail-service pharmacies; drug utilization review; specialty pharmacy

services; pharmacy retail networks; and claims processing. More than 216 million Americans receive pharmacy benefits through PBMs. Removing caps on coinsurance or copays could reduce savings because of the continuous increase in the cost of prescription drugs.

Representatives of the Kentucky Pharmacists Association, including independent pharmacists, stated that Senate Bill 107 was passed in 2013 to address transparency in drug reimbursement costs by PBMs. Independent pharmacists expressed concerns about reimbursement rates for prescription drugs by PBMs.

Kentucky Association of Private Providers

A representative of the Kentucky Association of Private Providers testified regarding the regulatory challenges faced in operating services under the Supports for Community Living Waiver (SCL). SCL is a Kentucky Medicaid home-and-community-based 1915(c) waiver providing an alternative to institutional care for individuals with intellectual and developmental disabilities. The regulatory challenges include unfunded mandates, overzealous oversight, and regulatory burdens.

Health Issues

Biomedical Industry. Representatives from Translational Genomics Research Institute presented information on genomic research and the promise it holds for treating rare diseases and individualized treatment for diseases.

Biosimilar/Biologic Pharmaceuticals. Representatives from Amgen Inc., Genentech, and Express Scripts discussed legislation in the upcoming 2016 session that would safeguard practitioners' and patients' choice to use a specific biological product and require that the patient receive the prescribed product or only an FDA-approved interchangeable biosimilar.

Representatives from the American Pharmacy Services Corporation and the Kentucky Pharmacists Association testified that they would be in favor of this legislation if it did not require additional reporting to health care providers and manufacturers by pharmacists.

Colon Cancer Advisory Committee Update. At its December meeting, the committee is to learn about the progress in Kentucky in providing colon cancer screening and the need to increase the availability of screening to individuals who are underinsured or who have high copays or coinsurance.

Diabetes Action Plan. Representatives from the American Diabetes Association and the Department for Public Health, Cabinet for Health and Family Services, presented information to the committee on the current incidence of diabetes and prediabetes in Kentucky as well as the Diabetes Action Plan to address related complications and diseases. The representatives discussed the importance of screening for prediabetes in order to prevent progression to diabetes.

Genetic Counseling

Representatives from the University of Louisville School of Medicine testified about the licensure of genetic counselors in Kentucky. Twenty genetic counselors are employed in Kentucky.

Heuser Hearing and Language Academy

The committee heard testimony from representatives of the Heuser Hearing and Language Academy, which works with Kentucky's First Steps early intervention program for children with disabilities. The representatives indicated that they would like to pilot a program for hearing amplification for seniors in Kentucky.

Hospital-Acquired Infections

At its December meeting, the committee is to learn about the need for continued vigilance in reporting and monitoring hospital-acquired infections.

Kids Count Data and Oral Health Surveillance

At the December meeting, representatives from Kentucky Youth Advocates are to testify about the need to improve oral health care among children in Kentucky.

Lowering Blood Alcohol Levels

The committee heard testimony on the possibility of lowering the blood alcohol level from 0.08 percent to 0.05 percent for an arrest for driving intoxicated, to potentially save more lives.

Lung Cancer Treatment

A representative from the Markey Cancer Center, University of Kentucky College of Medicine, presented the committee with information on the Kentucky LEADS Collaborative, a joint initiative of the University of Kentucky, the University of Louisville, and the Lung Cancer Alliance. LEADS stands for Lung Cancer Education, Awareness, Detection, and Survivorship. The representative stated that the LEADS Collaborative is dedicated to reducing the burden of lung cancer in Kentucky and beyond through development, evaluation, and dissemination of novel, community-based interventions to promote provider education, survivorship care, and prevention and early detection regarding lung cancer.

Other Issues

Animal Rights. The December meeting is to include a presentation on the treatment of animals in Kentucky.

CASA. The December meeting is to include a presentation on the Court Appointed Special Attorney program.

Referred Block Grant Applications

Pursuant to KRS 45.353, the committee held legislative hearings on one block grant application: FFY 2016-2017 Community Services Block Grant.

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, the committee reviewed 49 administrative regulations upon referral from the Legislative Research Commission under the review process established in KRS Chapter 13A.

Referred Executive Orders

Pursuant to KRS 12.028, the committee held a legislative hearing on three executive orders on referral from the Legislative Research Commission: Executive Reorganization Order 2015-386 Relating to Reorganization of the Cabinet for Health and Family Services; Executive Reorganization Order 2015-387 Relating to the Establishment and Operation of the Kentucky Office of Health Benefit and Information Exchange; and Executive Reorganization Order 2015-397 Relating to the Advisory Council on Autism.

**Report of the 2015
Interim Joint Committee on Judiciary**

**Sen. Whitney Westerfield, Co-Chair
Rep. John Tilley, Co-Chair**

Sen. Danny Carroll
Sen. Perry B. Clark
Sen. Carroll Gibson
Sen. Ray S. Jones II
Sen. Alice Forgy Kerr
Sen. John Schickel
Sen. Wil Schroder
Sen. Dan “Malano” Seum
Sen. Robert Stivers II
Sen. Robin L. Webb
Rep. Johnny Bell
Rep. Robert Benvenuti III
Rep. Denver Butler
Rep. Joseph M. Fischer
Rep. Kelly Flood

Rep. Chris Harris
Rep. Jeff Hoover
Rep. Joni L. Jenkins
Rep. Thomas Kerr
Rep. Stan Lee
Rep. Mary Lou Marzian
Rep. Reginald Meeks
Rep. Suzanne Miles
Rep. Darryl T. Owens
Rep. Ryan Quarles
Rep. Tom Riner
Rep. Ken Upchurch
Rep. Gerald Watkins
Rep. Brent Yonts

LRC Staff: Jonathan Grate, Matthew Trebelhorn, Chandani Jones, Alice Lyon, Dallas Hurley,
Beth Taylor, Lindsay Huffman, Elishea Schweickart, and Natalie Burikhanov

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Judiciary

Jurisdiction: Matters pertaining to contracts; the Uniform Commercial Code; debtor-creditor relations; ownership and conveyance of property; private corporations and associations; competency proceedings; administration of trust and estates of persons under disability; descent, wills, and administration of descendants' estates; domestic relations; adoption; abortion; support of dependents; statutory actions and limitations; eminent domain; arbitration; summary proceedings; declaratory judgments; witnesses; evidence; legal notices; construction of statutes; civil procedure; the Supreme Court, the Court of Appeals, Circuit Courts, and District Courts; jurisdiction, rule, terms, judges, commissioners, selections, districts, qualifications, compensations, and retirement; clerk of court; juries; commissioners and receivers; court reporters; habeas corpus; crimes and punishments; controlled substances offenses; driving under the influence; criminal procedure; probation and parole; correctional penitentiaries and private pensions; civil rights; and juvenile matters.

Committee Activity

The Interim Joint Committee on Judiciary held six meetings.

HB 1 Impact Evaluation and 2014 Overdose Death Report

Representative John Tilley summarized the impact of HB 1. The mandatory use of Kentucky All Schedule Prescription Electronic Reporting (KASPER) has resulted in overall decreased prescriptions of controlled substances, decreased inappropriate prescribing, and decreased “doctor shopping.” Statistics have shown that since the passage of HB 1, heroin use and heroin-related deaths have increased. In order to better address this, Representative Tilley recommended matching supply-side interventions such as HB 1 with demand-side interventions to increase long-term effectiveness in treatment and prevention, which was included in SB 192. Another recommendation is the continued analysis of prescribing behavior, patient behavior, and outcomes, which is warranted to determine whether the observed supply-side effects are sustained.

Improving the Accuracy of Eyewitness Testimony

The state policy advocate for the Innocence Project discussed eyewitness testimony and several ways a wrongful conviction can occur. Some of the top contributing factors for wrongful convictions are eyewitness identification, improper forensic science, false confessions, and informants. Because the recall process is selective, suggestive, and malleable, eyewitness testimony can lead to wrongful convictions. Not only does memory fade quickly, but memory is also easily contaminated by post-event information. It is important that the “Core Four” are followed with an eyewitness: blind/blinded administration, proper filler composition, clear instructions to the witness, and immediately recording an elicited confidence statement. By following these low-cost steps, misidentification is less likely. Nationally, 13 states have adopted statewide reform.

Department of Corrections

The commissioner of the Department of Corrections (DOC) presented the challenges and limitations of DOC. Staffing is one critical issue. Not only are correctional officers underpaid, but many have to work mandatory overtime, up to 16 hours a day and several times a week. Compounding this issue is the high correctional officer vacancy rate, which stood at 22.1 percent as of July 1, 2015. The long hours that officers are required to work contribute to higher post-traumatic stress disorder (PTSD) rates and pose safety risks because of officer exhaustion. The amount of overtime that is required is very costly, with overtime costs for the 2015 fiscal year at \$9.4 million thus far. Another issue is that DOC is not able to offer competitive salaries compared to Kentucky jails and surrounding states, as indicated by a review by the Personnel Cabinet. The long hours and low wages contribute to the high turnover rate of 66.7 percent, and the low pay scale contributes to difficulty in hiring and staff exhaustion, since correctional officers often work second jobs. Under the new wage structure, the starting salary for correctional officers increased 13.1 percent, but it is too early to tell whether it will help with the high vacancy rate. Other challenges include lack of a career ladder, an increase in retirement requirements from 20 to 25 years, and lack of compensation for officers who are hurt or suffering from PTSD while on duty.

While the situation for correctional officers is critical, DOC's Division of Probation and Parole is also experiencing record vacancy rates. In 2014, the vacancy rate for probation and parole officers was at 19.44 percent, because of the officers' many extra duties and high volume of caseloads, which are currently 86:1. The highest rate of probation and parole employee turnover is within the first 5 years of employment.

Several positive changes are under way. HB 463 is working, and the number of women incarcerated has dropped. This development has allowed Western Kentucky Correctional Complex, which is split into two buildings, to now hold women in one location and men at the other; the change is expected to save about \$700,000 annually. Segregation has also improved with time spent by inmates in segregation cut to nearly half, and general population reentry training has improved the situation for inmates remaining in the general population.

Department of Public Advocacy

The public advocate, Department of Public Advocacy (DPA), spoke of the public value of public defenders, who reduce the cost of pretrial detention and the post-adjudication incarceration cost, seeing an average of 472 clients each year at only \$245 per case. He discussed DPA's nationally recognized Alternative Sentencing Social Workers Program, which focuses on cases with substance abuse, mental illness, or juveniles. It promotes evidence-based policies and practices that advance public safety and reduce incarceration costs. There are 23 social workers who do an average of 70 individualized plans a year.

Suggestions to save money in the criminal justice system include: responsibly reduce unnecessary costs in the criminal justice system by reducing the number of cases, reclassifying low-level misdemeanors to violations, not incarcerating low- and moderate-risk inmates for longer than is necessary for public safety, and creating more defense-generated community-based

alternative sentencing plans; provide resources to ensure that cases are timely, fully, and fairly resolved by reducing the average workload of full-time public defenders, realigning the 33 DPA trial offices to 57 to match the commonwealth's attorneys' offices, and establishing defender attorney positions and compensation at sufficient levels; ensure ethical workloads that allow for the timely processing of cases by creating a statute stating that legal representation of indigents accused of a crime is a necessary government expense; and ensure full, professional independence by converting DPA to a cabinet-level office in the executive branch organizational structure. The DPA also presented 10 ways to reduce waste in Kentucky's criminal justice system and reduce costs for counties and the state: reclassifying minor misdemeanors to violations; creating "gross misdemeanor" classification for low-level felonies; promoting employment and reducing recidivism by creating Class D felony expungement; reducing days in county jail by creating a "clear and convincing" standard for the pretrial release decision; presuming parole for eligible low-risk offenders; modifying violent offender and persistent felony offender statutes; providing alternative sentencing plans for flagrant nonsupport instead of imprisonment for felony; creating alternatives to incarceration; increasing the felony theft limit from \$500 to \$2,000; and reducing waste by limiting capital prosecutions.

Implementation of SB 192 Appropriation Authority

The secretary and executive director of the Office of Drug Control Policy discussed the appropriation portion of SB 192. The secretary recommended funding levels: \$1 million to go to DOC for the provision of substance abuse treatment in county jails, regional jails, or other local detention centers that employ evidence-based practices in behavioral health treatment or medically assisted treatment for nonstate inmates with opiate addiction or other substance abuse disorders; \$500,000 for Kentucky Agency for Substance Abuse Policy (KY-ASAP) programs operating under KRS Chapter 15A in county jails or in facilities under the supervision of county jails that employ evidence-based behavioral health treatment or medically assisted treatment for inmates with opiate addiction or other substance abuse disorders; \$1.5 million to DOC for an FDA-approved extended-release treatment for the prevention of relapse to opiate dependence; \$2.6 million for KY-ASAP to provide supplemental grant funding to community mental health centers for the purpose of offering additional substance abuse treatment resources; and \$1 million for KY-ASAP to address neonatal abstinence syndrome by providing supplemental grant funding to community substance abuse treatment providers to offer residential treatment services to pregnant women. Funding for these programs will first go to geographical areas in Kentucky with the most serious heroin threat. The secretary also recommended \$1.2 million for DPA to provide supplemental funding to the Alternative Social Worker Program; \$1.2 million for the Prosecutors Advisory Council to enhance the use of rocket docket prosecutions in controlled substance cases; and \$1 million to provide supplemental funding for traditional KY-ASAP substance abuse programming under KRS Chapter 15A.

Kentucky's SMART Court Experience

A chief regional circuit judge and a circuit judge testified about the Supervision Motivation Accountability Responsibility Treatment (SMART) Court experience, which is designed to be tough and smart on crime by incarcerating those who need to be incarcerated and providing alternative methods for those who would benefit most. There are seven programs across the state

with 393 offender participants. Because probation is no longer reserved for low-risk offenders, much of the prison population comes no longer only from direct sentencing but also from probation revocations and pretrial diversions. As a result, those on probation need to be monitored based on their risks and needs assessment. The usual probation approach does not work well for high-risk or high-need individuals, and it is not based on one's criminogenic needs, making it neither timely nor effective. The SMART program applies only to high-risk and high-need probationers and should not apply to all probationers. Results from studies on the SMART program have found that SMART probationers test positive less often for drugs, even though they test more frequently; pay their fines, fees, and costs with strict regularity; are far less likely to be rearrested; and serve less jail time, saving taxpayer dollars.

Overview of Office of the State Medical Examiner

The chief medical examiner at the Office of the State Medical Examiner presented an overview of the office, which has four regional offices in Frankfort, Fort Thomas, Louisville, and Madisonville, with 12 state medical examiners who are forensic pathologists. Each year, approximately 2,500 post-mortem examinations are conducted at the four regional offices. The requirements to become a forensic pathologist include medical school and an additional 5 years of training, and for this reason, there is a national shortage of these positions with fewer than 500 practicing full-time in the country. In addition to staff shortages, the Office of State Medical Examiner is also concerned about outdated facilities. The regional offices in Louisville and Fort Thomas inadequately meet current needs, with the Louisville Metro Government closing the current Louisville building. The office in Fort Thomas does not have enough storage space for forensic cases and evidence.

Overview of State Crime Lab and Emerging Issues—Synthetic Drugs and Drugged Driving

The central forensic laboratory manager and the executive director for the Kentucky Office of Drug Control Policy testified on the six state crime laboratories. In 2014, 38,000 cases were received and 36,000 completed with toxicology cases making up about 90 percent of the caseload. These crime labs face issues including employee retention. Between 2013 and 2015, the regional labs lost six out of seven biology screeners, and the central lab lost a DNA analyst. Kentucky has the second-lowest mean wage average for forensic scientist salaries; to address the issue, the state crime lab is planning to release a salary survey and work with the Personnel Cabinet. Another issue of concern is the age of the current equipment: Most items are 10-12 years old, and many parts are no longer manufactured. Not only are funds substantially low, but there are only 92 analysts working these caseloads, which also contributes to the backlog. Forensic biology casework is another area that affects the backlog, with the current average turnaround time for screening and identifying bodily fluids at 114 days and DNA analysis at 125 days. This backlog is due to the low levels of staffing at the lab. Despite these challenges, the state crime lab can now identify heroin in biological samples, in addition to several other drugs including lorazepam, clonazepam, temazepam, morphine, oxycodone, hydromorphone, fentanyl, and tramadol. The central forensic laboratory manager proposed potential legislative solutions to these challenges, including eliminating the discrepancy between federal Schedule II and Kentucky Schedule II classifications for hydrocodone and additional funding for operations and equipment. She also

testified in support of DNA upon felon arrest, which has been shown to prevent violent crimes. If such a measure is passed, the state crime lab expects an additional 25,000 DNA samples per year.

DNA on Arrest

A representative of DNA Saves testified in support of DNA on arrest, which has been passed in 28 states. The University of Virginia conducted an independent study pertaining to the cost of DNA on arrest and found that for every \$30 cheek swab collected, taxpayers could save up to \$27,000. Governments that have mandated DNA on arrest have shown promising results: New Mexico has matched 928 cases since 2006; California makes an average of 10 matches every day; and Denver has matched 500 crimes to the DNA database since 2010. The DNA collected is stored in the Combined DNA Index System (CODIS), which was developed specifically to protect individuals' privacy. For example, a DNA profile in CODIS contains only 13 markers, not DNA itself. Once there is a match to an offender profile, the state receives a notification and reanalyzes the DNA to ensure accuracy. If a match is verified, a separate and secure database is accessed with the identity of the offender. It is a federal offense to tamper with CODIS, and there has never been a federal breach since it went live in 1994. Furthermore, the US Supreme Court ruled in 2013 that arrestee DNA does not violate the Fourth Amendment of the US Constitution.

Prosecutorial Issues and Concerns

The president of the Kentucky Commonwealth's Attorneys Association presented concerns for prosecutors, including budget cuts that have negatively affected recruiting and retaining prosecutors and led to high turnover rates. Many prosecutors are also overwhelmed with a high volume of cases. The Christian County attorney discussed the rocket docket program and funding that was established during the 2015 Regular Session. The treatment programs have proven successful, and many individuals are assessed properly and receive the treatment they need. The County Attorneys Association suggested a clarification in misdemeanor expungement law. The Woodford County attorney provided legislative suggestions including using language from alcohol DUIs for drug DUIs, which would help eliminate sentencing issues; lowering the non-per se DUI no presumption level to 0.04 percent to make it consistent with the commercial driver's license DUI law; making technical changes to the ignition interlock law; and adding driving on a suspended license or driving without a license to the list of exceptions to KRS 431.015 allowing warrantless arrests.

A commonwealth's attorney recommended several legislative actions, including a statutory amendment to existing law addressing ongoing course of criminal conduct in regard to abuse that has occurred over an extended period of time; standardization of the discovery rule in obscenity cases so that it is consistent with the Adam Walsh Act; DNA felony upon arrest; increased protection for police K9s; rescheduling of hydrocodone to match the national Schedule II classification; and strengthening synthetic drug statutes with the goal of deterring abuse.

Juvenile Justice Reform: SB 200 Update

Senator Whitney Westerfield, Representative John Tilley, and a representative of the Department of Juvenile Justice (DJJ) presented an update on SB 200. Although the bill did not go

into effect until July 2015, positive results have already been seen, supporting the finding that only one-fourth of youths who have successfully completed diversion have a new offense within 1 year and approximately one-third have a new offense within 3 years. DJJ has been researching best practices and working with the technical assistance group from the Criminal Justice Institute to ensure that practices being put into place are data-informed and that the right services are being provided to Kentucky's youth. DJJ provides the courts with risk information that includes criminogenic need areas and treatment needs. DJJ has also been working on including a consistent system across programs based on treatment compliance; graduated sanctions protocol, which establishes limits for consequences that might extend length of stay; treatment plans based on needs assessment; and the addition of evidence-based programs. Juvenile justice reform is a matter not of simply implementing the four structural changes that were outlined in SB 200, but of identifying all procedures, processes, and revisions that need to be changed to receive more favorable outcomes for all youth. Furthermore, when SB 200 had been in effect for only 2 months, the Family Accountability Intervention and Response (FAIR) Teams had resolved 79 percent of juvenile cases without going to court. A lieutenant of the Louisville Metro Police Department discussed challenges the department has faced with the implementation of SB 200, including interference with Louisville's curfew ordinance and incarceration and crime control issues.

Transforming How We Look at Treatment

Representative Kim King, the president of Isaiah House, and a constituent testified on the importance of holistic approaches to treatment options for substance abuse. In these models, as demonstrated by Isaiah House, addiction is addressed while there is also a focus on clients' mental, physical, legal, educational, and financial needs. Isaiah House, which receives no state funding though it is state licensed and accredited, needs funding to carry out its mission.

HB 8 Implementation Update

Counsel for the Administrative Office of the Courts (AOC) testified that the court system has been updating forms and software systems to implement the new interpersonal protection order system that was authorized by HB 8 in order to meet the January 1, 2016, deadline. A district judge of Oldham, Trimble, and Henry counties stated that implementation of HB 8 has not resulted in drastic changes to court protocols. The family court judge of Crittenden, Union, and Webster counties said that her biggest concern is fear of the unknown in terms of the number of newly eligible persons seeking protection under HB 8. She has been meeting with county and school officials to formulate a plan for how to protect victims of dating violence who attend the same school as their assailants while ensuring that the assailants still have access to a constitutionally guaranteed education. The Fayette County Circuit Court clerk stated that AOC has properly trained circuit court clerks throughout the state in anticipation of HB 8 going online in January 2016. A circuit court judge in Owensboro suggested approving family court division in Davis County during the upcoming budget session.

Strengthening Kentucky's Response to Domestic Violence: Civil and Criminal Remedies

The executive director of Sanctuary discussed how her shelter is one of the few shelters that combines services for victims of both domestic violence and sexual assault. The executive

director of the Kentucky Coalition Against Domestic Violence (KCADV) described her organization as an alliance of the 15 domestic violence shelters operating throughout the commonwealth. In addition to asking for more financial support from the General Assembly, KCADV presented four domestic violence-related legislative initiatives for the 2016 Regular Session: creating a 12-hour hold for individuals charged with domestic violence whose pretrial assessment reveals a risk of further harm to victims; creating leasing protections for victims of domestic and dating violence, sexual assault, and stalking; providing parents with legal representation at the initial hearing for cases alleging dependency, neglect, and abuse proceedings; and creating a felony strangulation offense in the penal code. Representative Joni Jenkins informed the committee that she will file legislation allowing persons who have protective orders to terminate their leases.

The executive director of GreenHouse17 explained the need for civil representation of parents at the initial hearings for a case where the Cabinet for Health and Family Services (CHFS) alleges dependency, neglect, and abuse. CHFS often pressures nonoffending parents to stipulate to charges of dependency, neglect, and abuse because only the cabinet, not the parents, is represented by an attorney at the initial hearing, which often results in the wrongful loss of custody by the victimized parent. The assistant Jefferson County commonwealth's attorney spoke of the need for felony legislation addressing strangulation. Victims of strangulation are seven times as likely to be homicide victims at the hands of intimate partners. Thirty-eight states have passed strangulation-specific statutes.

Improving Justice for Victims of Sexual Violence in the Commonwealth

The executive director of the Kentucky Association of Sexual Assault Programs (KASAP) stated that the 2016 legislative goals come directly from requests by staff delivering services to victims. Kentucky's 13 rape crisis centers responded to more than 30,000 requests for services in 2014. As a result of KASAP's new funding requirements, more than 80,000 Kentucky college students participated in an unprecedented study that showed a 50 percent reduction in all forms of sexual violence where the GreenDot program was implemented at 13 Kentucky universities. The KASAP staff attorney stated that Kentucky has higher than average rates of sexual violence. She presented KASAP's 2016 legislative recommendations, including supporting legislation that implements the Auditor of Public Accounts' sexual assault kit testing recommendations; mandating uniform sexual assault reporting forms for statewide use; amending the Kentucky Crime Victims Bill of Rights to require continuous victim notification by law enforcement; extending the civil statute of limitations for cases involving sexual assault to allow victims to recover costs associated with medical care, therapy, lost wages, and relocation expenses; and combating "revenge pornography."

Reducing Recidivism Through Successful Economic Reintegration

Representative Darryl Owens stated that Kentucky employers are turning away thousands of applicants because of old low-level felony convictions, and he expressed his intent to reintroduce a bill to allow the expungement of a nonviolent Class D felony. A representative of Greater Louisville Inc. presented the organization's support for criminal record expungement reform, stating that it improves economic growth by addressing workforce shortages. An official

of the US Justice Action Network stated that his organization is a bipartisan entity founded to promote criminal justice reform through expungement and offender reentry programs. Expungement reform has been shown to reduce recidivism by allowing persons to reenter the workforce and rebuild their lives after paying their debt to society.

2015 State of the Judiciary Address

The chief justice of the Supreme Court of Kentucky presented a State of the Judiciary Address, calling 2015 a “seminal year for Kentucky courts” because of events, accomplishments, and turning points for the judicial branch in 2014. He spoke about the technological efforts within the judicial branch, including eCourts, which involves upgrading hardware and software infrastructure, replacing case management for trial and appellate courts, and creating a document management system for electronic storage of court documents. Another successful initiative of the judicial branch is eFiling, which is available statewide and is in discussion for opening access to self-represented litigants. AOC staff has offered on-site training to more than 6,200 attorneys and staff on eFiling thus far, and at the end of October 2015, approximately 42,000 eFiling submissions were recorded. The judicial branch also plans to implement a new appellate case management system—Thomson Reuter’s C-Track Court Case Management System—which is expected to be fully operational after 18 months. CourtNet 2.0, the first major upgrade to CourtNet, is another technological advancement for the justice system that occurred in the past year; more than 6,000 users have subscribed to CourtNet 2.0. Additionally, the court system’s new automated accounts receivable system is available to 113 counties, and it is expected to have statewide access once Jefferson County goes live in May 2016.

The chief justice also spoke about changes in the court system that have arisen from legislation, in particular SB 200 regarding juvenile justice reform and HB 8 regarding dating violence protection. AOC has redesigned the court-designated worker (CDW) program and the juvenile court process in response to SB 200, and AOC expects a large increase in the entry of juveniles into diversion programs in FY 2016 due to requirements under the bill for first-time misdemeanor offenders with no prior diversions or adjudications to enroll in these programs. The court system has also seen successes with FAIR Teams, which derived from SB 200, including a reduction in juvenile caseloads in District Court and Family Court. SB 200 also demonstrated a need for statewide juvenile court rules, and the chief justice discussed a pilot program for a uniform system. He discussed the ways the justice system has responded to the implementation of HB 8, including revisions on 18 legal forms in the domestic violence series and preparing an information brochure for the public on the protective order process.

There is an increasing demand for specialty courts in Kentucky, and the chief justice discussed the Drug Court program as an exemplary model of success that has allowed Kentucky to implement Veterans Treatment Court in Northern Kentucky and that serves as a basis for Mental Health Courts. In August, AOC created the Department of Specialty Courts to focus solely on the oversight of these programs. Additionally, AOC has developed a pilot program that uses Vivitrol, an opioid antagonist, as part of medically assisted treatment (MAT) for eligible Drug Court participants. Unlike other MATs, Vivitrol requires a monthly injection from a physician’s office and cannot be diverted or abused. However, Vivitrol is cost-prohibitive at \$1,200 a month. A Judicial Medically Assisted Treatment Panel was created in May 2015 to examine the use of MAT

in specialty courts. The chief justice mentioned other initiatives and priorities for the judicial branch, including the Retired Judges Program, the Judicial Workload Assessment Study, and Kentucky Judicial Compensation Commission.

The Need for Reform from the Criminal Defense Perspective

The executive director of the National Association for Public Defense, who is a former legislative liaison for the Kentucky Association of Criminal Defense Lawyers, spoke on the need for reform to the judicial system, particularly in regard to criminal justice. He proposed legislative solutions, including reducing costs and rates of imprisonment by addressing nonviolent felonies such as flagrant nonsupport and raising the felony theft threshold; continuing support for criminal reform bills filed in the past; using only evidence-based practices in parole decisions; reforming both the penal code and sentencing laws by establishing a penal code review commission, lowering sentences for persistent felony offenders, and lowering mandatory minimum time served from 85 percent to 50 percent; looking at models that have brought about successful criminal reform in other jurisdictions; additional funding for the public defender system; addressing the “death penalty regime”; recognizing the faults and limitations of eyewitness identification; and tackling collateral consequences of imprisonment, including post-jail prohibited activities.

**Report of the 2015
Interim Joint Committee on Labor and Industry**

**Sen. Alice Forgy Kerr, Co-Chair
Rep. Rick G. Nelson, Co-Chair**

Sen. Perry B. Clark
Sen. Carroll Gibson
Sen. Chris Girdler
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Wil Schroder
Sen. Reginald Thomas
Sen. Mike Wilson
Sen. Max Wise
Rep. Lynn Bechler
Rep. Linda Belcher
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Rep. Denver Butler
Rep. Will Coursey
Rep. Jeffery Donohue

Rep. Jim DuPlessis
Rep. Jeff Greer
Rep. Dennis Horlander
Rep. Joni L. Jenkins
Rep. Thomas Kerr
Rep. Adam Koenig
Rep. Mary Lou Marzian
Rep. Charles Miller
Rep. Jerry T. Miller
Rep. Terry Mills
Rep. Tanya Pullin
Rep. Tom Riner
Rep. Jim Stewart III
Rep. James Tipton
Rep. Brent Yonts

LRC Staff: Carla Montgomery, Andrew Manno, Adanna Hydes, and Sasche Allen

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Labor and Industry

Jurisdiction: Matters pertaining to the workforce and workplace not specifically assigned to another committee; labor unions; collective bargaining; liquefied petroleum gas and other flammable liquids; electricians; plumbers and plumbing; wages and hours; garnishments; safety and health of employees; child labor; employment agencies; apprenticeships; unemployment compensation; workers' compensation; consumer protection; industrial weights and measures.

Committee Activity

The committee held five meetings during the 2015 Interim; two of the meetings were conducted jointly with the Interim Committee on Economic Development. The topics discussed included workers' compensation, unemployment insurance, workforce investment, labor cabinet apprenticeship program, and many employment issues with presentations from the Education and Workforce Development Cabinet, the Labor Cabinet, the Department of Insurance, local school administrators, economic development officials, and private sector business leaders.

Workers' Compensation Updates

Black Lung Claims Progress. The commissioner of the Department of Workers' Claims updated the committee members on black lung claims in Kentucky before and after the Supreme Court ruling in *Vision Mining* that found the consensus procedure for black lung claims unconstitutional. As the department began its processing of the backlog of black lung cases through the university examinations, it learned that the University of Kentucky and University of Louisville medical centers have limited resources to process these claims. The department has contracted with two facilities to assist with the backlog of claims. Since January 2014, there have been 79 awards, 483 agreements, and 201 dismissals, for a total of 763 cases that have been resolved. The department is working diligently to eliminate the backlog of black lung claims so that new claims can go into a normal queue of being processed, but the department has not yet reached that point. The department is working on adding two facilities to assist with evaluations, and the commissioner predicted, based on recent figures, that the number of new claims next year will likely be less than this year.

Coal Self-Insurance Guaranty Fund. During the special session of 1996, guaranty funds for the self-insured industry were created, which included individual self-insured employers, group self-insureds, and individual coal employer self-insureds. To be self-insured, an employer must obtain a certification from the Department of Workers' Claims and security must be posted in case of a default. Employers of the coal self-insurance guaranty fund are responsible for the payment of claims, in the event of a default, if the security is insufficient. Originally there were 23 self-insured coal employers, but that number has decreased to four. One of those four is in the process of being sold, and another has only 11 employees and has filed for bankruptcy. Therefore, according to the commissioner of the Department of Workers' Claims, the Kentucky Coal Employers' Guaranty Fund could be down to only two self-insured coal employers by the end of 2015. Problems could arise if there are only two self-insured coal employers that constitute the totality of the guaranty fund.

Kentucky School Boards Insurance Trust

The commissioner of the Department of Insurance reported that the main goals of the rehabilitation of the Kentucky School Boards Insurance Trust (KSBIT) by the department has been attained. In November 2013, the department filed two rehabilitation assessment plans, one for the KSBIT Workers' Compensation Fund and one for the KSBIT Property and Liability Fund. In May 2014, the Franklin Circuit Court approved assessment plans put forth by the department.

Assessment plans allowed the members to financially prepare for upcoming payments. Members were also presented payment options. All members paid the assessment. Transfer of claims was made for the Property and Liability Fund to Risk Management Services Corporation in Louisville. Transfer of workers' compensation claims was made to Kentucky Employers' Mutual Insurance (KEMI). The department is pleased with the progress and does not have any major issues with transfers of claims to Risk Management Service Corporation or KEMI.

Workforce Education and Training Issues

Tech Ready Apprentices for Careers in Kentucky Program. The deputy commissioner of the Kentucky Labor Cabinet gave an update on the cabinet's registered apprenticeship program. The Tech Ready Apprentices for Careers in Kentucky program, nationally recognized, is a college and career ready accountability model whose focus is career and technical education. The pre-apprenticeship program, in coordination with approximately 96 area technology schools, the Kentucky Labor Cabinet, and the registered apprenticeship employers, uses the current secondary career and technical education infrastructure at no cost to produce a career pathway for students into postsecondary opportunities. The employer must register the apprenticeship program with the Labor Cabinet, work with the school to identify students and the selection process, and choose a minimum of a four-course sequence. The employer determines whether the student has successfully completed the program. The student receives credit for hours on the job along with industry certification. The employer determines the postsecondary requirements.

While going through the program, a student can do a co-op and earn dual college credit. Upon completion, the student becomes an employee of the company with no break in service. There is no cost to the student for the program. A person can complete an apprenticeship program in a variety of disciplines such as plumbing and medical coding. The Labor Cabinet is developing programs in health care, information technology, and business services. The cabinet is trying to change the outlook of apprenticeship programs by working with the Department of Education and other agencies promoting the advantages of the programs.

A representative of the Indiana/Kentucky/Ohio Regional Council of Carpenters presented an overview of its apprenticeship program and training center. The training facility offers a 4-year apprenticeship program in which the apprentices attend a week of class four times a year and spend the rest of the time being trained on the job by experienced journeypersons. The center also offers continuing education for members who may be experiencing challenges with work environments or new technology, in an effort to improve their abilities.

Career Prep Initiatives with Private Sectors. The executive director of the Logan Economic Alliance for Development (LEAD) provided committee members with a presentation similar to one he would give to an industrial prospect interested in relocating or expanding in Logan County from an economic development standpoint. He highlighted the county's community, industrial park site, utilities, workforce, timeline, financing, and local incentives. LEAD also offers studies on the area's soil and karst topography to industrial prospects.

Several local private business representatives discussed their needs to have a skilled workforce to be successful and competitive in their markets. They support and partner with the Logan County Area Technology Center to establish needed and marketable workforce skills for high school students and continuing adult education.

Kentucky Longitudinal Data System—Connecting Education and Outcomes. The Kentucky Center for Education and Workforce Statistics is an independent state agency that maintains the P20 W, which is the State Longitudinal Data System, and evaluates education and workforce at all levels. Personal identifiers are not attached to the information that is collected, making it possible for the center to create its reports. The center does receive some state funding, but it is maintained mostly through federal grants. A board of Kentucky education and workforce leaders oversees the center. The center can provide compiled analyses and data to state education and workforce agencies to assist them in planning and providing better services.

The center has completed reports such as the 2015 Early Childhood Profile, which details data for each county as well as statewide. Other reports include the High School Feedback Report on College Going and College Success and K-12 Employment Outcomes.

Education and Workforce Development Cabinet

Unemployment Insurance. The deputy secretary of the Kentucky Education and Workforce Development Cabinet testified that the \$972 million unemployment insurance loan has been paid off 7 years ahead of schedule. The federal Title XII advance balance became positive in August 2015 and was to remain positive through November 10, 2015, which ensures that Kentucky employers will no longer face a "credit reduction" when filing their 2015 taxes. This is an estimated savings of \$165 million for Kentucky employers. Receipts from a surcharge for the Title XII interest are expected to be sufficient by mid-2016 and are hoped to be ended at that time.

Referred Administrative Regulation Action

The committee approved 787 KAR 2:040 & E, establishing the membership criteria and operating guideline for local workforce development boards, requiring interlocal and partnership agreements for local workforce development areas, and establishing the process for the identification of regions and designing local workforce development areas under the workforce Innovation and Opportunity Act, 29 U.S.C 3122, et seq.

Employee Classifications and Certifications

Employee Misclassification. Kentucky has entered into a partnership with the US Department of Labor to prevent the misclassification of employees as independent contractors. The secretary of the Kentucky Labor Cabinet provided committee members with information regarding employee misclassification. When employees are misclassified as independent contractors, they are no longer eligible for overtime pay, unemployment benefits, or workers' compensation. While workers are being denied benefits, the government is also being denied revenue because of taxes not being withheld, unemployment insurance taxes not being paid, and workers' compensation insurance not being purchased. Lawful employers are also being denied a level playing field because of those employers that are misclassifying employees to reduce their costs and underbid their competitors.

Falsified Welding Certificates and Testing. The district council president of the Iron Workers Southern Ohio and Vicinity District gave a presentation on matters pertaining to the falsification of welding certificates, the current and possible future outcomes of forging these documents, and proposed legislation to address the problem. The Iron Workers Southern Ohio and Vicinity District Council covers Indiana, Kentucky, West Virginia, and southern Ohio.

Issues have arisen where welding certificates are being falsified and inspectors have not checked the forms, which could lead to improper welding on structural steel buildings. While the American Welding Society has required information that should be on actual welding certificates, unqualified welders have forged or falsified their welding certificates. A new school gymnasium in McCracken County collapsed in May 2011 during construction, potentially as a result of faulty welding. When welding certificates were examined, there were numerous issues with their legitimacy. The construction company is now closed and under investigation, and the matter has been referred to the Attorney General's office. The same company had worked on several other public works projects in Kentucky.

The district council president believes future legislation could limit the problem and ensure that all welders on structural steel buildings are properly certified by an accredited testing facility and that proper inspections on job sites are done.

Bourbon Industry Update

Beam Suntory. The director of community relations, Beam Suntory, gave an overview of the company, which employs more than 900 people in Kentucky. The company has plants and warehouses in Clermont, Frankfort, and Nelson County. Additional facilities in Louisville accommodate the global business services and a craft distillery.

The director discussed the significance of Kentucky bourbon tourism on the overall tourism economy for the state. He highlighted marketing efforts of the Kentucky Tourism, Arts and Heritage Cabinet; the Kentucky Bourbon Trail; local convention and visitor centers; the Kentucky Travel Industry Association; the Kentucky Bourbon Festival; and the Kentucky Distillers' Association. He emphasized the importance of tourism advertising and the need for agencies to retain state tourism funds and not have those funds swept for other purposes. Additional support

needed for the bourbon industry include alcoholic beverage control (ABC) regulatory updates. Current Kentucky ABC regulations have Kentucky at a competitive disadvantage with other states.

Kentucky Distillers' Association. Members heard a presentation by the director of governmental and regulatory affairs, Kentucky Distillers' Association (KDA), titled "Keeping Kentucky Competitive." KDA's goal is to strengthen the state's rightful place as the home of bourbon, as other states attempt to lure away lucrative distilling operations and opportunities. Kentucky produces 95 percent of the world's bourbon. An economic development study conducted with the University of Louisville found that bourbon is a \$3 billion industry and has a workforce that has doubled in the last 2 years with more than 15,000 employees in the state. The number of distilleries in Kentucky has tripled. Greater production and inventory of bourbon has increased tax assessments and revenues.

KDA also operates the Kentucky Bourbon Trail and Kentucky Bourbon Trail Craft Tour. Over the past 5 years, there has been an average growth of 62 percent with visitors from all 50 states and more than 50 countries and territories. Approximately 85 percent of the visitors to the Bourbon Trail have come from outside Kentucky. However, Kentucky is falling behind and is now ranked eighth in the US in operating distilleries. Other states have adapted quickly in changing their laws and reducing their fees to attract the next generation of distillers, jobs, and investment.

To ensure that Kentucky retains its historic bourbon monopoly, KDA recommends legislative changes to permit distillers to sell by the drink, expanding bottle limits for visitors, increasing sample sizes, authorizing local option precinct elections for distilleries, and permitting the sale of antique spirits at retail.

Discussion of 2015 HB 229, Relating to Economic Development

Representatives from Earthwell Energy Management Incorporated, HowSmartKY, Energy Efficient Enterprises, and the Appalachian Citizens Law Center spoke about HB 229 (2015). The proposed legislation is modeled after similar policies in 29 other states and is intended to drive investment and new jobs while keeping energy bills affordable. Other states have created their own policies to promote renewables and efficiency with clean energy being one of the fastest-growing job markets in the US.

**Report of the 2015
Interim Joint Committee on Licensing and Occupations**

**Sen. John Schickel, Co-Chair
Rep. Dennis Keene, Co-Chair**

Sen. Joe Bowen
Sen. Tom Buford
Sen. Julian M. Carroll
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Ray S. Jones II
Sen. Christian McDaniel
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Tom Burch
Rep. Denver Butler
Rep. Larry Clark
Rep. Jeffery Donohue

Rep. David Floyd
Rep. Dennis Horlander
Rep. Joni L. Jenkins
Rep. Adam Koenig
Rep. Reginald Meeks
Rep. Charles Miller
Rep. Brad Montell
Rep. David Osborne
Rep. Darryl T. Owens
Rep. Ruth Ann Palumbo
Rep. Sal Santoro
Rep. Arnold Simpson
Rep. Diane St. Onge
Rep. Susan Westrom

LRC Staff: Tom Hewlett, Bryce Amburgey, Michel Sanderson, Jasmine Williams, and Susan Cunningham

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Licensing and Occupations

Jurisdiction: Matters pertaining to professional licensing not assigned specifically to another committee; racing; prize fighting and wrestling; places of entertainment; laundry and dry cleaning; alcoholic beverage control; private corporations; cooperative corporations and marketing associations; religious, charitable, and educational societies; nonprofit corporations; professional service corporations; cemeteries; barbers and cosmetologists; professional engineers and land surveyors; architects; real estate brokers and salespeople; public accountants; watchmakers; detection of deception examiners; auctioneers; business schools; warehouses and warehousemen; partnerships; trade practices.

Committee Activity

The committee met six times during the 2015 Interim, including meetings at New Riff Distillery in Newport and at the METS Center in Erlanger. The committee heard testimony about a wide variety of topics.

Alcoholic Beverages

Alcoholic Beverage Competitions. The American Distilling Institute (ADI) held its annual conference in April. There were approximately 1,000 members representing 600 distilleries in the 50 states. The institute holds an annual judging of craft spirits, which currently cannot be held in Kentucky. The judging, referred to as a spirits competition, is a professional evaluation of a product that distilleries are producing. Typically 450 distilled spirits are entered. The distillers pay to enter these competitions, and in return they receive tasting notes and many receive awards. The next competition will be in San Diego next spring. Representatives of ADI said that the law in Kentucky does not specifically permit alcohol competitions, and therefore they are prohibited. ADI representatives encouraged lawmakers to consider revising the statutes to make competitions possible in Kentucky so they could hold bourbon competitions in the home of the bourbon industry.

Bourbon and Tourism. The Kentucky Distillers' Association (KDA) said Kentucky makes 95 percent of the world's bourbon. Production has increased more than 170 percent since 1999, and the state has the highest inventory since 1975. The Kentucky Bourbon Trail was created in 1999 to give visitors a firsthand educational experience of the art of creating the world's finest bourbon. In 2012, KDA launched a bourbon trail for craft distilleries. Both tours have seen record-breaking growth, with visitors from all 50 states and more tourists visiting every year.

Eighty-five percent of distillery visitors come from out of state. The majority of visitors come specifically for the Bourbon Trail, with 31 percent making more than one visit to complete their bourbon visit map. The average visitor spends approximately \$1,000 during a stay. Kentucky, however, is falling behind in bourbon production, ranking eighth in operating distilleries. Other states are changing laws and reducing fees to attract the next generation of distillers. The number of craft distilleries nationally is on the rise as well.

KDA stated that there is a direct correlation between what each state's legislature has done to change legislation making laws more business-friendly and the growth of distilleries in those states. KDA is asking the legislature for help by allowing distilleries to increase sample sizes, sell spirits by the drink, and authorize local option elections for distilleries. KDA also asks that the legislature permit the sale of antique spirits at the retail level. This concept is already permitted at Kentucky's beer and wine sites.

Kentucky Microbreweries Statutes. In 2009, Kentucky had only five breweries producing less than 15,000 barrels of beer. Today there are 33 active breweries. In 2014, production reached 71,640 barrels, generating approximately \$45 million. Kentucky-brewed beer is available in 38 states; Washington, DC; and foreign countries. Nationally, craft beer makes up about 12 percent of the beer volume sold. In 2014 malt beverages generated more than \$57 million in wholesale tax revenue and more than \$6 million in retail sales tax for Kentucky. A poll of some of the members of the Kentucky Guild of Brewers shows the creation of more than 460 jobs.

The guild is asking the General Assembly to raise the volume cap for microbreweries from the current 25,000 barrels to 50,000 barrels. The guild also asks that the General Assembly copy the language in legislation for the small farm wineries into the microbrewery statutes, allowing those licensees to sell their products directly to consumers at fairs, festivals, and similar events. This change would allow smaller brewers to gain recognition in their communities and would not require funding from the legislature, but would increase tax revenues.

Kentucky Winery Association. The president of the Kentucky Wineries Association said that there are 68 small farm wineries in Kentucky and that the industry is growing. Legislation that was proposed last year, but not passed, would allow wineries to do custom crushing of grapes that other farmers have grown but have not able to process themselves. Another key issue is the cap on annual gallons set at 50,000 gallons. Five wineries are at this cap and are unable to move forward. The ability to store wine offsite, in a bonded facility, would help wineries that are at capacity. The small farm wineries also have products that are not marketable as wine. Wineries would like either to sell these products as brandy, sherry, port, or Madeira, or to sell these unmarketable products to distillers for further production.

Powdered Alcohol. The general counsel for the Department for Alcoholic Beverage Control testified that powdered alcohol has been receiving national attention. Powdered alcohol is mixed with water, similar to Kool-Aid or Tang, but it becomes an instant alcoholic beverage. Mixed as directed, the product becomes 10 percent alcohol by volume. It comes in assorted flavors. The original concept for the product was for use during outdoor activities because of its ease in packing. Health officials are concerned about the potential for abuse and marketing that could attract underage drinking.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) initially approved powdered alcohol products, but because of public health concerns, the approval was rescinded in April 2014. In March 2015, the TTB granted approval of the product again. Currently, 39 states have proposed legislation to ban the product. Legislation has also been filed to ban powdered alcohol at the federal level.

Extended Hours Supplemental License. The general manager for the Kentucky Motor Speedway said the speedway is allowed to sell alcohol on Sunday after 1 p.m. If a Saturday evening race were postponed due to weather and rescheduled for noon Sunday, the track would not be able to sell alcohol to patrons until 1 p.m. The facility is also used for other venues that have activities scheduled past midnight Saturday. The speedway seeks legislation that would allow the sale of alcohol at an event on Sunday before 1 p.m. The proposed legislation would restrict the extended hours to facilities of 75,000 seats or greater.

The Thirsty Pedaler. The owners of The Thirsty Pedaler said they book 2-hour tours in downtown Louisville and Lexington for events such as birthday parties and bachelorette/bachelor parties. The tour stops include restaurants, bars, and museums. Each bike carries up to 15 passengers. The bike travels at approximately 3 miles per hour. There are headlights, taillights, three drum brakes, and two disc brakes. A sober driver steers the bike along a specific route, with rules in place to keep the bike safe. There are three bikes in Louisville and one in Lexington. However, the owners say they could expand the business if statutes would allow passengers to bring their own beverages to imbibe on the bike while going from one stop to another. Nine other states allow such a measure.

Malt Beverages as Prizes at Special Charity Events. Senator Morgan McGarvey spoke about a proposal that he said would help picnics at Catholic churches and other churches that hold events on their grounds. Currently, distilled spirits and wine may be raffled at charitable events. The Department of Alcoholic Beverage Control has said that, because raffling of beer is not in the statute, the churches would have to stop raffling beer at their events. The president of the Board of Trustees of St. Joseph Children's Home spoke on the history of the children's home. It was originally formed to take care of orphans after a cholera epidemic. Today it is a treatment facility, primarily for wards of the state. Fundraisers are necessary in order to help fund this facility. A beer raffle was a popular piece of the fundraising event, but it was stopped when the home learned that it was not legal, leading to the current request for legalization.

Firefighters' Cancer and Workers' Compensation

At two meetings during the Interim, the committee heard testimony on legislation concerning the presumption of the cause of cancer in firefighters. The Kentucky Professional Firefighters Association said that HB 156 passed the House in the 2015 Regular Session but did not clear the Senate. A similar cancer bill has been introduced for the last five sessions. Michigan and Arkansas are the most recent of the 35 states that have enacted similar bills creating some type of cancer presumption for firefighter cancers. HB 156 included restrictive coverage not found in all states, including limiting the scope of the bill to active firefighters or former firefighters for a period of 5 years after leaving service; individuals must be tobacco free for 10 years to be covered, and the coverage applies only to bladder cancer, brain cancer, colon cancer, non-Hodgkin's lymphoma, kidney cancer, liver cancer, testicular cancer, and cancer associated with lymphatic or hematopoietic cancer. Coverage includes paid and volunteer firefighters. The law would expire if the Kentucky Fire Commission could no longer support it. It is estimated that the total cost to cover the workers' compensation aspect is \$2 million per year.

There are multiple studies to support that firefighters suffer more cancer than the general public. In 2006, the University of Cincinnati combined data from 32 studies of firefighters covering 20 types of cancer. The risks for 10 types of cancer were significantly higher in firefighters. A doctor from the Johns Hopkins Bloomberg School of Health said firefighters are exposed to a wide range of cancer-causing chemicals, putting them at an increased risk of developing cancer. Often it is clear when an employee is hurt at work, but with an occupational illness such as cancer related to occupational exposure, the challenge is to determine exactly when the exposure happened. A period of latency between the start of exposure and the appearance of cancer is generally 5 to 10 years and as long as 30 to 40 years. The burden of proof is on the person filing the claim. The legislative intent of HB 156 was to allow a firefighter to submit a claim if all criteria are met.

Kentucky has approximately 3,700 paid firefighters and 20,000 volunteer firefighters. An evaluation by the National Council on Compensation Insurance shows negligible cost, less than 0.3 percent of the total premium in the state. The proposed legislation would allow workers' compensation to be used rather than vacation or sick time to cover leave. The new legislation will bring the paid firefighters under the Fire Commission, reducing cost for cities. Of the seven states that have presumptive coverage in place and are paying an average of one to three claims per year, there has been no increase in financial burden to the state.

Representative Denver Butler said the funding is from a surcharge of 1.8 percent paid on home and auto insurance policies. The split is 70 percent for police and 30 percent for firefighters. Because these funds are restricted funds, he has asked the Auditor of Public Accounts to perform an audit so that the entire amount of the funds collected can be returned to the departments.

Licensure of Historical Racing Machine Suppliers

The Kentucky Horse Racing Commission (KHRC) has the specific authority to license every participant in pari-mutuel horse racing, including individuals and entities such as race tracks, tote companies and advance deposit wagering companies. The commission does not have the specific authority to license entities that manufacture and sell historical horse race wagering equipment, or the specific authority to license the play of those machines at race tracks that offer historical horse race wagering. The commission will ask the General Assembly to amend KRS 230.260 to grant it permission to license the manufacturers and vendors of historical horse race wagering systems. This would be one license for one system with an annual license not to exceed \$50,000.

The proposal would also give KHRC the authority to grant a specific license for historical race wagering at horse race tracks. This annual license fee will not exceed \$100,000. Currently, the race tracks are required to pay for the cost of the testing of the wagers and the terminals to certify compliance with Kentucky law. All four of the race tracks that will be affected by these changes have written letters of support for these amendments. KHRC believes that historical race wagering should be taxed and properly regulated. The KHRC said it would have legislation in the 2016 Regular Session that will amend the distribution of the wagering tax on historical horse race wagers.

Department for Housing, Buildings, and Construction

Low-Voltage Electrical. In 2004, legislation was passed for low-voltage electrical certification. However, since that time, changes in the industry now require that the statute be updated. Low-voltage electrical, under the current code, is considered electrical work subject to licensure and regulation. This means that people in the low-voltage industry are working without the required electrical license, many without realizing they are violating the law. Since the statutes have not kept pace with the evolution of the industry, the existing licensing exceptions are obsolete. The Department for Housing, Buildings and Construction (HBC) is proposing legislation based on a collaboration from the low-voltage industry throughout the state. The language updates terminology and establishes a limited low-voltage exception for wireless home surveillance, security alarms, and energy management systems. It will also clarify the National Electrical Code for unlicensed electrical work. The proposal includes a multitiered classification system. The department will require certification, similar to an electrician license, for \$25. Under the current law, anyone installing low-voltage must have an electrical license. Individuals must pay \$50 annually for an electrical license. The new language applies to people who should be licensed but are not and makes the certification available to them at a lower cost.

HVAC. Permitting and inspection for the Heating, Ventilation, and Air Conditioning (HVAC) Division was first introduced in 2003 to allow for permitting of all new installations and major repairs. In 2007, SB 10 was amended to remove major repairs language and allow permitting of new installations only. The division is now proposing to expand the permitting and inspection authority to include equipment replacement or change-outs, defined as major repairs in all buildings covered in the Kentucky Building Code. The bill does not cover permitting and inspection in the Kentucky Residential Code.

Northern Kentucky Home Builders. The vice president of the Home Builders Association of Northern Kentucky said the Enzweiler Apprentice Training Program began in 1967 and is the longest continually operated, privately owned trade school in the nation. It began as a 4-year program in carpentry, and in 1978 a 4-year program in electric was established. There is also a 2-year program for HVAC. The curriculum is recognized by the US Department of Labor. The program is 26 weeks long, providing 126 hours of training. There is a 98 percent job placement rate and a 76 percent job retention rate after 3 years. This year, however, the state ceased to accept certificates of graduation from the Enzweiler program as a recognized education provider for HVAC and electric. The school has met with the Department of Labor and HBC to reestablish acceptance of the school's programs as a certified provider for these trades. Through this process, the school has also discovered that the ratio of apprentice to journeyman for residential contractors should be adjusted. The current state ratio is geared toward the needs of large public projects, whereas many contractors work in a residential setting rather than at large public jobs.

Sweeping of Board and Agency Funds. Representative Brad Montell said BR 72 of the 2016 Regular Session addresses sweeping restricted funds into the general fund. The last budget, FY 2014-2015, swept \$214 million from the accounts of boards and agencies, with an additional \$70 million coming from those accounts in the 2015 budget. This action makes it necessary for those boards and agencies that have been swept to raise fees in order to operate. In the last 8 years, \$10.8 million has been swept from three HBC agencies. The bill specifically addresses the

sweeping of funds from the department's divisions of electrical, HVAC, and plumbing. The bill defines excess funds by saying anything above 120 percent of the department's budget would be considered excess and could be swept. This ability to carry forward some revenue may allow for the reduction of license fees.

The executive director of the Kentucky Association of Master Contractors said his association supports BR 72. Since 2000, it has been a common practice to transfer funds from agencies into the general fund. When the fiscal year closed in 2000, an emergency meeting was called to notify all departments in HBC that fees would be raised across the board, some as much as 350 percent. In 2008 after \$5.9 million was swept, members of the association filed a lawsuit in Franklin Circuit Court. In 2014 the Kentucky Supreme Court ruled in favor of sweeping excessive restricted funds. By defining excessive funds and permitting only excessive funds to be swept, BR 72 allows programs to operate without raising fees. However, it is anticipated that the department will not support this legislation.

Economic Development in Northern Kentucky

In 2009, six cities and two counties in northern Kentucky created an interlocal agreement to develop the riverfront. The Route 9 corridor is important to the project. Along the corridor are vacant sites, including an old steel mill that will be developed. An extensive project in Dayton, known as Manhattan Harbor, includes 142 acres of development. Lots are being sold at prices of \$900,000 to \$1.6 million. East of this development, a commercial site is being planned. Riverfront Commons is an 11-mile walking and biking trail beginning in Fort Thomas and ending in Ludlow. Construction should be completed by the end of 2015. Another new attraction on the Commons is a 180-foot observation wheel that will have heated and air-conditioned gondolas accommodating up to six people each and providing a panoramic view of the city and the skyline. Newport, at the foot of the Taylor-Southgate Bridge from Cincinnati, supports a large amount of foot traffic to Reds and Bengals games. People come to Newport to have dinner and walk to the games. Red bikes have been installed in Covington and Newport that can be rented by credit card and returned to the rack after use. Ludlow is in phase one of development of a city park.

Christ Hospital Health Network

Christ Hospital was founded in 1888 by Methodist missionaries. Due to changes in health care, the hospital has gone through changes that have brought it to the network it operates today, performing approximately 25,150 inpatient/outpatient surgeries annually. The service area covers southeast Ohio, northern Kentucky, and southwest Indiana. The clinics offer musculoskeletal, heart and vascular, oncology, specialized surgery, women's health, and comprehensive medicine services. Of the network's business in 2015, 14 percent thus far has come from northern Kentucky. Because it is important to the network to provide services where patients live, there are plans to expand outpatient clinics in Fort Wright. The network also recently acquired land in Fort Mitchell. This development will bring additional outpatient services, including an emergency department with convenient access. There will be new jobs for the community, with an expected 200 additional professional positions. There will not be a hospital in the Fort Mitchell location. The focus of the network is to provide outpatient services with access to short-stay care to support observation.

**Report of the 2015
Interim Joint Committee on Local Government**

**Sen. Joe Bowen, Co-Chair
Rep. Steve Riggs, Co-chair**

Sen. Julie Raque Adams
Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Stan Humphries
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Linda Belcher
Rep. Ron Crimm
Rep. Mike Denham
Rep. Jim DuPlessis
Rep. Cluster Howard

Rep. Adam Koenig
Rep. Stan Lee
Rep. Brian Linder
Rep. Thomas M. McKee
Rep. Michael Meredith
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Rep. Jonathan Shell
Rep. Arnold Simpson
Rep. Kevin Sinnette
Rep. Rita Smart
Rep. James Tipton
Rep. Jim Wayne
Rep. Susan Westrom

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

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Local Government

Jurisdiction: Matters pertaining to the officers, organization, government, and financing of county and city governments; urban-county governments generally; county- and city-imposed taxes and licenses; special-purpose assessment and taxing districts within a city; financing of local government improvements; issuance of bonds for county, city, and special-district projects; local government indebtedness generally; compensation of county and city officers and employees; the imposition of duties and costs on local governments; interlocal government cooperation and consolidation of services; local government employees, civil service, and retirement; powers, duties, and composition of fiscal courts and municipal legislative bodies; offices of county judge/executive, magistrate, county attorney, sheriff, constable, jailer, coroner, surveyor, and county clerk; forms of local government; incorporation and classification of cities; housing projects; urban renewal and redevelopment; planning and zoning; annexation of territory; public works; parks and playgrounds; police and fire departments and their retirement systems; county roads; city streets and sidewalks; local government utilities and waterworks; acquisition of waterworks and water districts by local governments; sewers; metropolitan sewer and sanitation districts; public road districts; water districts; fire protection districts; drainage districts and local flood control and water usage; local air pollution control districts; urban service districts; library districts; city and county libraries; county law libraries; special districts not assigned to another committee.

Committee Activity

Property Valuation Administrators

The committee heard discussion from representatives of the Department of Revenue and several property valuation administrators (PVAs) regarding the valuation process of real property for taxation purposes.

The executive director of the Office of Property Valuation said that, according to Kentucky Constitution Section 172, all property shall be assessed for taxation at its fair cash value. In 1965, in *Russman v. Lockett*, the Court of Appeals reiterated that property must be assessed at its fair cash value and that any retreat from this standard is not tolerated. HB 44 from 1979 limited an increase in property tax revenue to 4 percent without voter recall. It does not limit assessment increases. With the passage of the Kentucky Education Reform Act in 1990, as of July 1, 1994, all real property located in the state and subject to local taxation was to be assessed at 100 percent.

The director of the Division of Local Valuation, Department of Revenue, explained the Kentucky property tax calendar, which details the assessment dates and specifies when certain valuations and taxes are due.

The executive director explained that several measures assure that property is assessed at its fair cash value. These include an annual conference on assessment administration, assessment classes provided by the Department of Revenue (DOR), a biennial performance audit by DOR, and a sales-assessment ratio study by DOR.

The director explained sales-assessment ratio studies and how they affect PVA offices. Sales-assessment ratio studies are authorized by KRS 133.250 and are conducted annually on each PVA office. These studies are the Department of Revenue's primary way of ensuring that assessments meet the fair cash value standards mandated by the Kentucky Constitution. For example, when a house sells, the PVA gets a ratio by setting the sale price against the assessed price. If a house sells for \$100,000 and it was assessed for \$90,000, the ratio would be 90 percent. An arms-length transaction is an agreement freely and independently made by two parties without some special relationship, such as being related, having another deal on the side, or one party having complete control of the other. Arms-length transactions were fewer than 25,000 in 2004, before the recession, but they are now trending upward.

The executive director explained that there has been an upward trend for residential sales since 2011. The ratio level measures how close to 100 percent of fair cash value the assessment level is. The coefficient of dispersion measures the average percentage by which individual ratios vary from the median ratio. A low coefficient of dispersion indicates that appraisals within the area or class of property are uniform.

The executive director explained that the department delivers its analysis of the assessment ratio study to each PVA by September 1 of each year.

An annual revaluation of real property includes a physical examination of the real property at least once every 4 years. After the initial evaluation, digital imaging technology can be used for inspections. Kentucky's physical examination schedule falls in the middle of the schedules in the surrounding states in terms of the time between each physical examination.

Digital imaging technology is an alternative to periodic on-site inspections if the initial physical inspections are completed in a timely manner. Each county determines whether it will use Pictometry, and 57 counties do so, in coordination with other tools, to determine property values. No state mandates dictate which tools local jurisdictions use to determine property values.

A professor in the Department of Urban and Public Affairs at the University of Louisville said that the Jefferson County PVA's office had provided assessment data for an independent study. He provided several examples of homes in the Louisville Metro area and discussed the variations of appraisals by real estate appraisers of the values of these homes and the accuracy of the Jefferson County PVA valuations of these homes.

Urban thinking uses a classic concentric zone model that illustrates how cities grow and are defined, and how home values change. Louisville reflected this model through the 1980s. Now with investment, property values are increasing in downtown areas where traditionally they had lagged. This effect has appeared in many cities nationally. Young people are attracted to downtown areas. PVAs are accurately capturing the values of these areas because of the volume of sales activity.

There are areas in Louisville Metro that are quickly appreciating in value as well as some areas that are appreciating slowly.

There are consequences to homeowners whose property is underappraised. Real estate appraisers—a different occupation from PVAs—do not necessarily appraise property fairly. They may lack formal education or may have training in disciplines that promote inaccurate valuations. Their methodologies may create biases against downtown neighborhoods, leading to difficulties in securing financing.

When PVAs throughout Kentucky use proper assessment tools, they perform as well as the Jefferson County PVA. It was the Jefferson County PVA's assessment methodologies that the professor had studied in detail and determined to be accurate and unbiased. State law requires a certain level of accuracy from all PVAs.

The Fayette County PVA said that PVAs reflect the market but do not set the market. Appraisals are different from valuations conducted by PVAs. The “high water mark” in sales in Fayette County was in 2005. Kentucky did not share other states' huge bubble in property values. Kentucky's values stayed somewhat flat during that time. The number of houses sold dropped dramatically, though, in 2008, when the recession began to head toward the low point reached in 2011. PVAs needed a critical mass of sales to conduct reassessment.

The Fayette County PVA said he did not see a need to change the state law requiring valuations to be done every year. There are 110,000 parcels of property in Fayette County. The Department of Revenue conducts reviews to include the assessment ratio study. The Lexington newspaper also prepared an in-depth article that found that all the PVAs were within the assessment ratio guidelines.

PVAs are required to assess each parcel at 100 percent of its fair cash value. HB 44 limits the total funding to a tax district to 4 percent of its previous year's revenue without a referendum. However, there is no similar 4 percent limitation for individual properties. There is no 10 percent deviation standard set by the Department of Revenue for individual real property assessments. There is an acceptable range of 90 percent to 110 percent sales ratio that reflects the median of all arms-length transactions in a county, arrayed as the sale price divided by the assessment. In addition to reassessments of the properties in the quadrants, the Department of Revenue may direct the PVAs to conduct reassessments in other areas outside the quadrants where sales ratios do not meet acceptable standards.

The Laurel County PVA said that, while offices still conduct physical inspections, Pictometry would aid in finding property changes in the field that are otherwise difficult to locate. Building permits are required only in the city. The Jefferson County PVA said that in the first year that Jefferson County used Pictometry, it added \$35 million of undocumented properties in inaccessible places.

The Jefferson County PVA read portions of the summary from the recently released 2012 audit for Jefferson County. It noted the advantageous use of electronic media and the fact that it passed the audit.

The Boone County PVA said that it is not uncommon for property values to rise 10 percent to 15 percent, or even 20 percent, in the course of 8 years. The Fayette County PVA said a few

properties in Fayette County saw similar increases. The Jefferson County PVA noted that he thought some of the spikes in Jefferson County were a result of map corrections, resulting from refining the actual boundaries of the original subdivisions.

Role and Function of Area Development Districts

Over the course of the Interim, the committee invited representatives from various area development districts (ADDs) to discuss the history, roles, functions, revenues, and expenditures of their districts.

The executive director of the Kentuckiana Regional Planning and Development Agency (KIPDA) presented background information and history of the ADDs. Congress enacted the Intergovernmental Cooperation Act of 1968 after many public meetings. Local governments and state leadership were considering how to improve services. Kentucky created 15 ADDs in 1972. Since then, they have evolved from conduits for regional and local economic development planning to catalysts of change in almost all aspects of life throughout the state. ADDs have been integrally involved with the Governor's 2020 Water Resource Plan and have worked to map roads efficiently and economically for the Transportation Cabinet.

The Shelby County judge/executive, a member of KIPDA's board of directors, explained the role of the board. Meetings are open to the public. There is tremendous participation within the ADDs. The board thoroughly reviews a financial report that is received each month. Questions are welcomed regarding the report.

Road updates are very important. When a road is accepted into the county road system, the ADD updates maps very quickly and transmits them to the state. Lags in updating this system cost Kentucky millions of dollars.

ADDs assist greatly in administering grants at a fraction of the cost that other entities would charge.

KIPDA recently completed a regional land use plan for all the members of the district to help each government coordinate its individual land use plans. KIPDA also has an economic development component to build infrastructure, which includes the regional provision of wastewater, water, and roadways, as well as plans that will effectively reduce flood insurance costs for citizens.

The Daviess County judge/executive, a member of the board of directors of Green River ADD (GRADD), noted that the assistance of GRADD is invaluable to his county. GRADD has delivered services to the elderly, young, and disabled.

Providing well-trained employees for the 21st century is a moving target for GRADD. At the beginning of the year, GRADD was tasked with putting the Workforce Innovation and Opportunity Act (WIOA) in place. GRADD settled on a plan and prepared to implement it. The biggest change between WIOA and the former Workforce Investment Act (WIA) is local

accountability. Education is the key for training in workforce development. WIOA is new and should be given a chance.

The executive director of KIPDA said the majority of funds for KIPDA comes from federal grants for aging and transportation. Eighty percent of overall income is federal, with a state match in some instances. Approximately \$17 million or \$18 million is spent per year for aging and disability programs. KIPDA board members are regularly informed, and there is accountability. An audit and financial report are required every month. A monthly financial report is shared with the public. ADDs want to be accountable and transparent.

The executive director of the Barren River Area Development District (BRADD), an executive committee member of the BRADD board of directors, and BRADD workforce development staff discussed BRADD's role and functions. The pay practice of bonus pay was broached, and the executive director indicated that bonuses had historically been paid to employees, but that the practice has been stopped. The subject of administrative fees for workforce development was raised, and the executive director indicated that federal law permits 10 percent of the funds to be used for administrative purposes.

Board meetings of BRADD are open to the public, as are the records. Audits of BRADD are also open.

BRADD workforce development staff noted that, through its workforce development function, BRADD facilitated 23,000 services working with more than 800 people. The state measures workforce performance using nine categories. The workforce development staff indicated that the state gave BRADD the highest marks in all but one category; for that category—relating to how much money the customers receive, which BRADD staff indicated was out of its control—BRADD met the performance standard.

Workforce Innovation and Opportunity Act

ADDs and the executive leaders of counties and cities have roles in the implementation of the federal Workforce Development Act and the newly passed Workforce Innovation and Opportunity Act. The committee invited a representative of the Kentucky Department of Workforce Investment to orient the committee on the primary elements of the act and the differences between it and the outgoing program.

The commissioner of the Kentucky Department of Workforce Investment said that the key ingredients of services in the workforce system are money (federal funds), rules (the WIOA), and plans (which are completed locally). The workforce system consists of job-driven individual and employer/customer services, which leads to effectiveness and evaluation of plans. All funding comes from the federal government.

The commissioner explained the major differences between the WIA and the WIOA. Regional planning was permitted under WIA but is required under WIOA, which is a key difference. WIA required a state annual report, but WIOA requires both state and local fiscal and

performance reports. WIOA makes accommodations for users of technology, such as in the job search, whereas the previous act was silent regarding that topic.

System transformation under WIOA involves governance, quality service delivery, the customer at the center throughout, designation, accountability, transparency, and results. While the local physical geography did not change, the regions take into account the reach of the employer. In terms of accountability and governance, the local boards are being assembled. Fiscal procurement is in process. Kentucky had a focus on career center certification before WIOA, but the new act requires it, so Kentucky is ahead of the game.

Kentucky Chamber of Commerce Report: “Kentucky’s Workforce Challenges”

The Kentucky Chamber of Commerce independently produced a report containing evaluations and recommendations regarding Kentucky’s implementation of the Workforce Development Act. The committee invited representatives of the chamber to present the findings of this report.

The president and chief executive officer of the chamber said that chamber members’ top concern is workforce challenges. Approximately 500 people responded to a survey relating to the workforce, with the following conclusions: 15 percent of potential employees cannot pass a drug test; 8 percent of the overall workforce has good skills; 23 percent of employers have trouble finding people with the right technical skills; 27 percent of employers have trouble finding people with good “soft” skills; 10 percent of employees have good skills but need retraining for specific technical skills; and 17 percent cite concerns with a generational difference in work ethic.

Challenges facing Kentucky’s workforce include: lack of employer engagement; serious skills gap; need for transparency in workforce programs; insufficient program coordination; inconsistent use of credentials; finding drug-free applicants; and better soft skills among workers.

Educational recommendations include: developing and incorporating soft skills and work readiness certification into college and career readiness requirements for schools; and increasing coordination between the education and business communities.

The chamber recommends the following: identifying all funding sources of workforce programs and ensuring accountability; building a greater role for employers in choosing local workforce board members; ordering, by Kentucky’s next governor, of a review of the state’s workforce training and development system; promoting what is available through outreach campaign; and incorporating drug screening into the application process for workforce training programs.

Congress passed the new WIOA, which will more meaningfully engage employers.

Louisville Zoo Programs and Plans

The committee traveled to Jefferson County and met at the Louisville Zoological Gardens. A representative of the zoo informed the committee of the zoo’s successes and future plans.

The zoo's development director said that the zoo is the largest nonprofit attraction in the region, attracting approximately 850,000 visitors on average annually. The zoo strives to meet the region's needs for lifelong academic attainment and increased quality-of-life amenities and environmental awareness through conservation and education programming.

The zoo plans to have an expanded elephant yard that will open early next spring and a new penguin exhibit. As part of the zoo's \$10.4 million campaign, there is going to be an expanded dining experience and an African primate experience. Much emphasis is put on education, and there is an award-winning school at the zoo. Also, the zoo will be taking early childhood education messaging throughout the state. The classroom that the zoo will be housing will focus on early childhood education. There is a great need to help preschoolers be prepared for kindergarten.

The zoo is producing a master plan that will be effective through 2028 or 2030, which will include a new African savannah. The zoo will have multiple species in the same exhibit, which is rare. In the United States and Europe, only a few zoos have multispecies sharing at the same exhibits booth and not just rotating through spaces.

The zoo plans an education expansion, to be housed at the front of the zoo. It intends to have a Kentucky trails exhibit featuring animals native to Kentucky, an animal encounter, an expansion of the waterpark to four or five times its current size, and the addition of a "Crocotorium," which no other zoo has, to feature Cuban crocodiles.

Special Purpose Governmental Entities: Implementation of 2013 HB 1

The Department for Local Government (DLG) is the executive branch entity responsible for implementing the provisions of 2013 HB 1, primarily codified in KRS Chapter 65A, relating to special purpose governmental entities (SPGEs). Representatives with the department made a presentation to the committee discussing the progress of the implementation of the legislation.

The chief of staff of DLG said that Florida was used as the benchmark in the drafting of HB 1. Prior to the 2012 report by the Auditor of Public Accounts, approximately 1,200 special districts had been identified. Today there are more than 1,800 in the registry.

A staff attorney with DLG said that special districts can be traced back almost to the time Kentucky became a state, and that they have been a part of American government almost since the nation was founded. There is evidence that a special district was organized in Philadelphia as early as 1790.

An SPGE is any agency, authority, or entity created or authorized by statute that exercises less than statewide jurisdiction; exists for the purpose of providing one or a limited number of services or function; is governed by a board, council, etc. with policy-making authority that is separate from the state, county or city; and has the independent authority to generate public funds or may receive and expend public funds, grants, awards, or appropriations from the state, from any agency or authority of the state, from a city, from a county, or from another SPGE.

Many citizens are likely to confuse the services of special districts with those of their cities and counties because their boundaries often match those of local governments and the local governments often retain the job of collecting fees, charges, or taxes for the district. This situations partly explains why special districts remained relatively obscure for such a long time.

In November 2012, the Auditor of Public Accounts published a report, *Ghost Government: A Report on Special Districts in Kentucky*. The Auditor noted the difficulty in determining the number of such districts and whether they comply with the law.

The Auditor's report found more than 1,200 special districts that have very little oversight and accountability yet spend \$2.7 billion annually. In all but three counties, taxpayers pay more to special districts in property taxes than to their county governments. The report paved the way for 2013's HB 1, which passed and created a new chapter of the Kentucky Revised Statutes—KRS Chapter 65A. For the first time in the history of the commonwealth, a law called for centralized oversight and transparency for special districts, and DLG was given this enormous responsibility. KRS Chapter 65A defines SPGEs, requires registration with DLG, and compels financial reporting.

One of the big challenges for DLG was to create a registry of these ghost governments. This meant identifying all known SPGEs, finding previously unknown entities, and letting them know about the new law. Due in part to the historical lack of a centralized registry, even contacting some of those entities has been a challenge—getting up-to-date contact names and information was merely one part of the task. But DLG staff worked diligently and contacted each known SPGE. Identifying new and existing SPGEs is an ongoing process. To date, 96.9 percent of identified SPGEs are registered through DLG's online portal, allowing unprecedented public oversight. Of the more than 1,800 SPGEs currently identified, 93.5 percent properly submitted their FY 2015 budgets for public review. DLG staff continues to notify delinquent entities as it pursues its goal of 100 percent compliance.

A branch manager for DLG explained that compliance with KRS Chapter 65A includes registration and financial disclosure. Registration should be completed annually, and basic information should be collected about the SPGE, including: the district's point of contact; the physical locale and area of operation; a list of entities that have oversight over the SPGE; the statute under which the SPGE was formed; date, time and location of board meetings; a listing of board members; if the entity has taxing authority; and types of services provided by the SPGE. Registration fee payment is calculated from previous fiscal years' total revenues and is between \$25 and \$500.

Financial disclosure includes 1 year's reflection of a SPGE's finances and audit/attestation engagement.

A demonstration was held on the use of the online public portal.

Kentucky League of Cities' Legislative Platform for 2016 Regular Session

Every fall, the Kentucky League of Cities (KLC) has a convention at which the membership decides issues of importance that they collectively wish to pursue in the upcoming legislative session of the General Assembly. The committee invited representatives of the league to present those issues.

The executive director of KLC said that the focus of cities is fixing negative issues and creating new opportunities and tools. The president of KLC said that the KLC board of directors had recently completed its meeting to rank more than 25 legislative issues. KLC's priorities include:

911 Funding Shortfall. The KLC board of directors voted the 911 funding shortfall as the top priority for the 2016 legislative session for the second year in a row. The growing concern of the unsustainable funding model for the 911 system has been increasing over the past several years. Advancements in technology and increased 911 call volumes from wireless devices, along with the migration away from landlines, have resulted in decreased funding for 911. From 2000 to 2013, the total number of landlines decreased by 23 percent while the number of wireless users increased by 294 percent, forcing cities and counties to use general fund dollars to replace lost funding for maintenance of this essential service.

In fiscal year 2014, local governments contributed more than \$32 million from their general funds to support local 911 efforts. Those general fund dollars accounted for 41 percent of all the resources used for funding public safety answering points in Kentucky. Local fees from landlines—ranging from 50 cents to \$4—made up 36 percent of funding. Funds generated by the wireless fee made up just 23 percent of total local 911 revenue but accounted for 71 percent of the 911 call volume. The wireless fee was set at 70 cents at its inception in 1998 and remains unchanged today.

The board of directors urged the General Assembly to support legislation that raises the Commercial Mobile Radio Services (CMRS) wireless fee to a reasonable level that would offer much-needed relief to local governments. In addition, cities remain committed to supporting legislation that maintains clear guidelines and transparency for 911 expenditures. While KLC has accomplished a great deal of efficiencies through consolidation by decreasing the number of public safety answering points (PSAPs) across the state to 112, KLC will continue to support policies that encourage interlocal cooperation and incentivize consolidation. Legislation will likely include components that eliminate provider reimbursement, address CMRS governance, and correct the collection issues surrounding prepaid wireless users.

Local officials are not seeking new revenues; instead they are seeking to replace lost revenues. Cities would prefer to do this without legislative assistance, but state laws preempt local governments from making the necessary adjustments, so KLC needs the General Assembly to be a partner to ensure a solution. City leaders also look forward to working with counties on this issue.

Road Aid Funding Formula. The president stated that the board of directors chose modernizing the state's road aid funding formula as its second priority in late September and

encouraged members of the committee to examine and support revisions to the antiquated formula. In 1948, the General Assembly established the road aid funding formulas, which include municipal road aid, county road aid, and municipal secondary road aid. These formulas have not been updated since their inception nearly 70 years ago.

Kentucky's cities spend more than one quarter of a billion dollars each year on constructing and maintaining nearly 10,000 miles of city streets, yet one-third of that money comes from intergovernmental resources such as the state municipal road aid program or federal grants. In fiscal year 2014, cities spent nearly \$270 million on municipal roads but received less than \$60 million from the municipal road aid fund. Conversely, unincorporated areas spent less than \$290 million to maintain county or rural roads yet received almost \$325 million from the county and rural road funds. The costs of constructing and maintaining unincorporated roads are funded more than 112 percent by the state road fund while city roads are funded less than 22 percent by the same fund.

KLC supports the restructuring of the road funding formulas for a more equitable allocation to local governments with higher traffic areas that have more frequent needs. KLC proposes retaining the 48.2 percent of Kentucky motor fuels taxes and consolidating all three separate road programs into one Local Road Aid Program.

Currently, the formula of fifths is used to divide the road aid dollars. One-fifth is divided equally among all counties, one-fifth is divided by rural road miles, one-fifth is divided by rural population, and two-fifths is divided by rural land area. KLC's proposal would eliminate equal shares to counties and references to urban and rural populations, reduce the influence of land area, and increase the influence of population and road miles. It would also require counties to spend road aid dollars based on the current proportional split between county road aid and rural secondary road aid so that roads in the state are adequately maintained. KLC proposes a formula of thirds. Under this funding formula, one-third of the funds would be divided by incorporated versus unincorporated population, one-third by incorporated versus unincorporated road miles, and one-third by incorporated versus unincorporated land area. This new funding formula would increase road aid dollars for all cities and some counties including Boone, Christian, Laurel, Oldham, Pulaski, and Warren. This would allocate enough funds to counties to cover almost 100 percent of total road fund expenditures in a year.

Revenue Diversification. The president stated that the Kentucky Constitution severely limits the revenue options available to city governments. Cities need access to varied revenue options to ensure the quality of life that makes Kentucky an attractive place to live and do business. Fifty-six percent of all nonutility Kentucky city revenue comes from taxes. Currently, Kentucky ranks 44th in local taxes collected.

KLC is asking for the legislature's support to expand the authority to impose a restaurant tax to all cities. Cities would retain 75 percent of the revenues for quality-of-life enhancements, and 25 percent would be remitted to local tourism commissions. The restaurant tax would be used in lieu of the collection of net profits or gross receipts taxes on restaurants; however, participating cities would still have the option of imposing payroll taxes on restaurant employees and maintaining their regulatory business licensing requirements. Note that this expansion of authority

to all cities only gives the cities the option to impose a restaurant tax. It will be up to local officials and communities to determine whether a restaurant tax would be a good revenue option for their city.

The board of directors strongly supports a constitutional amendment that would allow Kentuckians to decide on the issue of a voter-approved local option sales tax for a specific community project that would sunset after a period of time. The amendment passed the House last year, and KLC is asking that the full General Assembly approve the constitutional amendment in 2016 so that the voters can decide this issue. Thirty-eight states have given local communities the ability to make the decision to invest in themselves. Kentucky is the only southern state without this ability.

Abandoned and Blighted Properties. The president told the committee that abandoned, blighted, and code-deficient properties are a major source of concern for nearly every Kentucky city. KLC supports incentivizing property owners or other stakeholders to take responsibility for those properties and finding proven methods to reintegrate the properties into the community.

Amendment of Anti-Spiking Provision in Retirement Legislation; CERS Separation From KRS. KLC will seek legislation to maintain provisions from SB 2 of the 2013 Regular Session prohibiting the abuse that caused exorbitant artificial spikes, while making considerations for valid increases in compensation. The legislation will also provide relief to employers to authorize necessary work and allow employees to work without fear of being penalized for legitimate increases of their creditable compensation. Members of the coalition have been working on compromise language with the Kentucky Retirement Systems (KRS) and will have it ready to file for the upcoming session.

The board of directors also voted to seek legislation that explores options for the County Employee Retirement System (CERS) to separate from KRS. After the pension reform of 2013, CERS has been on an upward trajectory and has seen its funding ratio increase while employer contributions have steadily decreased.

Prevailing Wage. The vice president of KLC said that the repeal of prevailing wage would mean more tax dollars that can stretch further for economic development and capital and infrastructure projects. Kentucky's city leaders seek to be good stewards of the tax revenues that they receive and ask that members of the General Assembly consider repealing this costly unfair law.

Drug Abuse. KLC strongly supports legislation that proactively addresses drug abuse and its consequences. Cities will continue to advocate for legislation that addresses the evolving issue from both a criminal perspective and a treatment perspective.

Increase in Police and Fire Incentive Pay. Cities support the increase of the training incentive payments to police and professional firefighters to \$4,000 annually, and they urge the payment of the additional costs associated with the payment.

Rehiring of Retired Police Officers. Many cities in Kentucky struggle with maintaining a fully staffed police force as hiring a new recruit is costly and comes with a long waiting period because of training. Sheriffs' offices have the ability to rehire retired police officers without making employer contributions to retirement or reimbursing or otherwise providing health insurance benefits to the rehired retiree. City leaders ask that police departments be afforded the same ability as their county counterparts.

Newspaper Publication Reforms. The board of directors has voted to continue to work together to modernize the newspaper publication laws in the commonwealth by incorporating technology to provide citizens more access to information about the operation of their city government in a more cost-effective manner. The cities do not intend to do away with the printed word. Cities want expanded opportunities to use resources that are less expensive but equally effective.

Public-Private Partnerships. KLC asks that the legislature support legislation that would clarify the use of public-private partnerships in the commonwealth and would offer clear guidelines for entering into them for capital projects. A public-private partnership is a valuable economic development and alternative financing tool for local governments.

Home Rule. State officials can also expect city leaders to vigorously oppose any bills that other interest groups will likely introduce that attempt to preempt local home rule authority or impose unfunded costs on local taxpayers. Protecting home rule is the core of the organization's entire legislative platform.

Kentucky Association of Counties' 2016 Legislative Platform

The Simpson County judge/executive and Kentucky Association of Counties (KACo) president-elect discussed the primary four topics that the group plans to bring before the General Assembly. Additional topics, and topics proposed by the group's satellite membership, were made available in a printed document, available on KACo's website.

E911. The funding stream for landline phones constitutes a portion of the funds used for E911. Transparency will be a priority for the upcoming session. The 70-cent fee has less purchasing power than it did 17 years ago when the tax was first put into place. KACo would like to raise the fee to the current purchasing power of the dollar, which would put the fee at a little more than \$1. KACo wishes to include additional devices in the taxing structure. KACo wants more representation in the CMRS board and is interested in incentives to promote further consolidation of PSAPs. The group is also interested in eliminating the "cost recovery" provision for phone companies, as most other states have already done.

KACo members are also monitoring the most recent court decision allowing a local fee to be used to raise emergency telephone revenue. At present, there is a possibility of an appeal that is still available before the courts before the matter is completely settled.

KACo remains open to discussing the possibility of State Police-based dispatch.

Budgetary Issues. Many of the groups that KACo represents are funded by the state. KACo will lobby on behalf of these offices to have state funding increased. Two of the budgetary suggestions are:

- **PVA Funding.** PVAs are interested in seeing more funding for deputies who assist in the assessment of property valuation. The primary source of funding for PVAs is through the state executive branch budget.
- **Road Fund.** KLC is looking at changes to the fund. Although KACo opposes the proposal in its present form, it looks forward to working with KLC for a solution that helps KLC's members without harming KACo's constituency.

Local Investment for Transformation (LIFT). KACo supports legislation that would allow a special-purpose sales tax to be levied for specified projects.

Public Pension Issues. KACo membership includes individuals who are in the Kentucky Employees Retirement System (KERS) as well as individuals within the County Employees Retirement System. KACo asks the legislature to continue funding the actuarially required contribution to KERS. KACo is also examining the possibility of separating CERS from the KERS. Lastly, KACo supports recent anti-spiking legislation but is interested in refining the language to exempt from the spiking clause personnel moves that are legitimate moves to jobs that might have higher salaries.

Report of 2015 HJR 134: Kentucky Single Family Inspection Task Force

HJR 134, passed in 2015, required the formation of the Kentucky Single Family Inspection Task Force, which was composed of the commissioner of the Department of Housing, Buildings and Construction (HBC), and various stakeholders of the industry, local governments, and interest groups. The resolution required the task force to report its findings to the committee. The committee invited representatives of HBC to present that report. Making the report were the deputy commissioner, additional representatives of HBC, and a representative of the Home Builders Association of Kentucky.

The task force notes that 7,819 new homes were constructed in Kentucky in 2014. Of those, 748 were built in counties where there are no inspections on either the county or city level. A total of 1,094 homes were built in a county where one or more cities operated a local inspection program. Local jurisdictions currently must pass an ordinance to begin inspections of new home construction. The state does not have the statutory authority to inspect new homes. An amendment to statute would be required to authorize HBC to inspect new homes in areas that do not have local inspections. To begin the inspection program, HBC estimates the annual cost to be \$500,000 to initiate and staff the program. An appropriation would be required initially with inspection fees offsetting costs once the program is operational.

The report noted several effects from requiring statewide new home inspection:

- Increased consumer protection for high-quality construction;
- Potentially lower insurance premiums, on the premise that better-built homes suffer less damage in natural catastrophes;
- Lender confidence in the quality of the product;

- Potential delays in one or more phases of construction, at least in areas where enforcement is currently absent; and
 - Potential increases in building costs, at least in areas where enforcement is currently absent.
- The report also noted similar programs in other states.

Kentucky 811 Update

KRS 367.4901 to 367.4917 establish guidelines for the protection of underground facilities through the creation of a Kentucky Contact Center. This has been accomplished through the creation of the Kentucky 811 program. Recognizing that cities and counties use extensive underground facilities for the provision of utilities for citizens, and that such underground facilities can be damaged by construction, the committee invited a representative of Kentucky 811 to discuss the program.

The vice president of public affairs of Kentucky 811 informed the committee of the process involved in locating underground facilities once a call is made. He noted that awareness of such a program is greater in Kentucky than in the nation as a whole and that 95 percent of Kentuckians would plan to use Kentucky 811 before excavating for a project.

The vice president discussed the funding stream, which is funded with a usage fee paid by member utility operators and not with state or federal funds. The core statutes have been updated several times, and they presently include the important aspect that allows fire departments to cite for violations of the law and the ability to perform investigations relating thereto.

Kentucky 811 conducts more than 100 training sessions each year and hosts more than 50,000 radio commercials promoting public safety.

**Report of the 2015
Interim Joint Committee on Natural Resources and Environment**

**Sen. Jared Carpenter, Co-Chair
Rep. Jim Gooch Jr., Co-Chair**

Sen. C.B. Embry Jr.
Sen. Chris Girdler
Sen. Ernie Harris
Sen. Paul Hornback
Sen. Ray S. Jones II
Sen. John Schickel
Sen. Brandon Smith
Sen. Johnny Ray Turner
Sen. Robin L. Webb
Sen. Whitney Westerfield
Rep. Hubert Collins
Rep. Tim Couch

Rep. Jim DuPlessis
Rep. Chris Harris
Rep. Cluster Howard
Rep. Reginald Meeks
Rep. Tim Moore
Rep. Marie Rader
Rep. John Short
Rep. Kevin Sinnette
Rep. Fitz Steele
Rep. Jim Stewart
Rep. Jill York

LRC Staff: Tanya Monsanto, Kelly Ludwig, Stefan Kasacavage, Lowell Atchley, and Kelly Blevins

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Natural Resources and Environment

Jurisdiction: Matters pertaining to forestry; mining; fish and wildlife resources; soil and water conservation; flood control and water usage; drainage and irrigation; geology and water resources; waterways and dams; oil, gas, and salt water wells; state and national parks; drainage districts; water pollution; air pollution; management of waste; protection of the environment; Energy and Environment Cabinet.

Committee Activity

The Interim Joint Committee on Natural Resources and Environment held five meetings between June and November during the 2015 Interim. No subcommittees were authorized. The committee entertained diverse topics discussed during the 2015 Interim including timber theft, controlling depredating wildlife, coal mine reclamation, and controlling out-of-state solid waste. However, activities requiring permits under the Clean Water Act and Clean Air Act dominated the committee's attention. There were no committee meetings outside Frankfort.

Kentucky Coal and Response to the Federal Clean Air Plan

A representative from the Office of the Attorney General (OAG) testified regarding the commonwealth's challenge to the regulation by the US Environmental Protection Agency (EPA) of greenhouse gases under Clean Air Act Section 111(d). The federal rule is of concern because of the impact to the electric generating sector in Kentucky, which uses primarily coal for baseload generation. The effect of the federal Clean Air plan will be to discourage the use of coal while driving electricity rates higher.

The OAG reported that the timing of the lawsuit was in question because the EPA had not issued a final rule; however, the state will preserve its right to sue after the final rule is issued. Officials from 32 states have opposed the federal rule, and energy grid operators are concerned that taking generating assets offline in order to meet emissions limitations will affect reliability of electric service.

The secretary of the Energy and Environment Cabinet testified about plans to respond to the EPA after issuance of the final rule on greenhouse gases. The cabinet argues that a state-based approach is better than allowing the EPA to place Kentucky under a federal implementation plan. Kentucky has to submit a plan by June 2016.

A representative from the Department of Natural Resources (DNR) testified about the establishment of the Kentucky Reclamation Guaranty Fund and the associated bond pool in 2013 with the passage of HB 66. The fund aids in underwriting the performance bonds for coal companies operating in the commonwealth. The performance bonds are used to secure the reclamation of coal mine sites. According to DNR, the bond pool is operating successfully and the fund is growing slowly. There have been 41 forfeitures, but DNR is confident that the performance bonds are sufficient to cover costs.

Other Environmental Issues: Permits, Programs, and Problems

A representative of the Division of Water presented information about the types of permits required when removing storm debris from waterways. He described the differences between permits that could be obtained from the US Army Corps of Engineers (USACE) and from the Division of Water for debris removal activities under the Clean Water Act. The “one-step” process used by the Division of Water is much easier and does not require the locality to obtain a USACE Section 404 permit. Representatives from the Division of Water identified funding mechanisms under the Federal Emergency Management Agency and the Natural Resource Conservation Service.

The commissioner of the Kentucky Department of Fish and Wildlife Resources (KDFWR) testified regarding the Fee-in-Lieu program. This is a federal program managed by KDFWR to mitigate damage to and preserve and protect wetlands and waterways. Sixty-one percent of the revenue comes from transportation projects, but any activity that will cause damage to streams and wetlands can either mitigate the damage directly or pay money into the fees-in-lieu fund.

The committee focused on managing the inflow of out-of-state solid wastes that are landfilled in Kentucky. According to the commissioner of Environmental Protection, Kentucky has one of the lowest costs for landfill, which is why states like New Jersey and New York ship most of their solid waste to Kentucky. Big Run landfill in Boyd County has been receiving out-of-state waste for 23 years, but the landfill has been cited for numerous problems, including leakage, odor, and pathogens.

Other Natural Resource Concerns

The committee learned about depredating wildlife and timber theft. A representative with KDFWR responded to private citizen concerns that the method for acquiring permits to control depredating wildlife was too complicated and time consuming for nonresident tenant farmers. The definition of *tenant* in KRS Chapter 150 requires the tenant to be living on the farm. In 2014, HB 448 changed how farmers handle depredating wildlife by creating a request form for the tenant farmer and clarifying that the landowner retains all rights on how activities occur on the land.

The committee focused on timber theft with testimony from the Division of Forestry, Kentucky Forest Industries Association, and the Kentucky Resources Council. Representatives from the Division of Forestry explained that, while the division inspects commercial logging operations, there is no legal authority to investigate or enforce any laws relating to timber theft. Timber theft victims rarely obtain justice for the crime because it is difficult to engage law enforcement and prosecutorial resources.

Legislative Recommendations

The committee received no legislative recommendations during the 2015 Interim.

Prefiled Bills Referred to the Committee

The committee received no prefiled bills for the 2016 Regular Session.

**Report of the 2015
Interim Joint Committee on State Government**

**Sen. Joe Bowen, Co-Chair
Rep. Brent Yonts, Co-Chair**

Sen. Julie Raque Adams
Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Stan Humphries
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Johnny Bell
Rep. Kevin D. Bratcher
Rep. John Carney
Rep. Leslie Combs
Rep. Will Coursey
Rep. Joseph M. Fischer
Rep. Jim Glenn
Rep. Jim Gooch Jr.
Rep. Derrick Graham
Rep. David Hale
Rep. Mike Harmon
Rep. Kenny Imes

Rep. James Kay
Rep. Martha Jane King
Rep. Mary Lou Marzian
Rep. David Meade
Rep. Suzanne Miles
Rep. Phil Moffett
Rep. Brad Montell
Rep. Sannie Overly
Rep. Darryl T. Owens
Rep. Tanya Pullin
Rep. Jody Richards
Rep. Tom Riner
Rep. Steven Rudy
Rep. Sal Santoro
Rep. Kevin Sinnette
Rep. Diane St. Onge
Rep. Tommy Thompson
Rep. John Tilley
Rep. Tommy Turner
Rep. Ken Upchurch
Rep. Jim Wayne

LRC Staff: Judy Fritz, Kevin Devlin, Brad Gross, Alisha Miller, Karen Powell, Terrance Sullivan, Greg Woosley, Peggy Sciantarelli, and Terisa Roland

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Subcommittee Organization and Membership

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

Sen. Joe Bowen, Co-Chair
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Interim Joint Committee on State Government

Jurisdiction: Matters pertaining to the sovereignty and jurisdiction of the commonwealth; the General Assembly, its committees, officers, and service agencies; redistricting; the governor; the lieutenant governor; intergovernmental cooperation; state-federal relations; interstate compacts; administrative organization; administrative regulations; statutory administrative agencies; Department of Law; Secretary of State; state personnel; state retirement systems; public property and public printing; public officers, their terms, appointments, fees, compensation, removal, oaths, and bonds; public information; disaster and emergency services; state and regional planning; the libraries; archives and records; public corporations; commonwealth's attorneys; circuit clerks; the proposing of constitutional amendments and the calling of a constitutional convention; ratification of amendments to the US Constitution; the election of officers to state, local, and school board positions; election commissioners, officers, and precincts; qualifications, registration, and purging of voters; regular elections; primary elections; presidential and congressional elections; special elections to fill vacancies; contest of elections; corrupt practices and election financing; election offenses and prosecutions; voting machines; absentee ballots.

Committee Activity

The Interim Joint Committee on State Government held four meetings during the 2015 Interim, focusing on prefiled legislation relating to county clerks; funding of Kentucky Teachers' Retirement System (KTRS); the Kentucky Chamber of Commerce's overview of the governor's KTRS Funding Work Group; funding of Kentucky Retirement Systems; the Kentucky Employees' Health Plan; the new LRC director's ideas and vision for the agency's future; and the Kentucky League of Cities' views relating to police officer training requirements.

Prefiled Legislation Relating to County Clerks

The sponsor of BR 58 from the 2016 Regular Session, who is not a member of the Interim Joint Committee on State Government, presented the prefiled legislation for discussion only. It would repeal 1860 Kentucky Acts Chapter 351, which required individuals recording deeds and mortgages relating to properties in certain areas of Kenton County to file those in Covington rather than Independence. The Kenton County clerk testified that repeal of Acts Chapter 351 will benefit Kenton County through cost savings and increased efficiencies and will simplify the recording process. A Senate member of the committee also testified in support of the legislation.

Kentucky Teachers' Retirement System Funding

The executive secretary of operations/general counsel for Kentucky Teachers' Retirement System testified at two meetings during the Interim. He stated that KTRS has low administrative and investment costs. Investment performance has been solid and had a positive effect on Kentucky's economy. In 2012, the LRC Program Review and Investigations Committee reported that KTRS investment fees and administrative expenses from FY 2002 to FY 2009 were among the lowest in the nation. KTRS manages about one-third of its assets in house, which helps keep investment costs low. As of June 2014, administrative expenses, as a percentage of assets, were lower than those of similar size systems in Georgia, Indiana, Kansas, Louisiana, New Mexico, and

Ohio. The investment committee is structured to generate top investment performance, and KTRS does not do business with money managers who use placement agents.

KTRS has 141,520 members and distributes more than \$144 million monthly in retirement benefits. In FY 2015, KTRS paid approximately \$2.1 billion in retirement benefits. This has had a positive influence on Kentucky's economy, since 92 percent of retirees live in the state. Of 58,967 active members, almost 15,000 are eligible to retire.

The KTRS board has administered the retirement system in a reasonable and cost-efficient manner. Reemployment has been put on an actuarially sound basis. Average retirement age has increased from 54 to almost 58, and average years of service at retirement has increased from 27 to 30. Purchasers of "air time" are required to pay full actuarial cost. The annual guaranteed 1.5 percent cost-of-living adjustments (COLAs) are prefunded within the contribution rate. The medical insurance benefit is being funded on an actuarially sound basis. Since the passage of shared responsibility legislation in 2010, teachers now pay an additional 3.75 percent of their salary for retiree medical benefits. Other modifications to the health insurance program prevented an additional \$5 billion unfunded liability from accruing in the medical insurance fund. KTRS saves \$11 million annually on the purchase of retiree medical prescriptions through a coalition with the University of Kentucky, the University of Louisville, and other agencies. As a result of board action, the General Assembly enacted legislation to lower the benefit factor from 2.5 percent to 2 percent for retirees having less than 10 years of service. Pension reform legislation in 2008 further adjusted the benefit factors for service of less than 6, 10, or 20 years. The KTRS board has not been averse to change and has established a funding and benefits committee that examines possible plan adjustments.

Due to the flat market between 2000 and 2013 and the 2008 Great Recession, additional funding for pensions has been needed since the 2006-2008 budget biennium. Approximately \$42 million in additional funding was appropriated in the 2006-2008 budget, but additional funding has not been made available in subsequent budget cycles. Because income from contributions and investments was not sufficient, it was necessary to begin selling assets in order to pay retirement benefits. Approximately \$9.5 million in assets was sold in 2008. In the current budget cycle, KTRS is selling approximately \$1.4 billion in assets but will need to sell approximately \$3.4 billion in assets in FY 2016-2019. KTRS investments have performed well since 2013, with an exceptional return of 18.1 percent in FY 2014, but investment strategy is becoming increasingly constrained by liquidity requirements. Selling assets is a normal part of the investment process but is a problem when assets must be sold just to pay bills. When the market declined more than 10 percent in September 2015, KTRS had to sell assets at a loss.

In FY 2007, there was \$20 million positive cash flow in the pension fund. Since 2008, KTRS has experienced a negative cash flow that grew from \$10 million in FY 2008 to \$439 million in FY 2014. Negative cash flow is projected to be \$650 million for FY 2015 and, without additional funding, to be more than \$1.8 billion by FY 2026. As of June 30, 2014, the pension fund was 53.6 percent funded and had an unfunded liability of \$14 billion. Under new reporting requirements of the Governmental Accounting Standards Board (GASB), the FY 2014 funding level for the pension fund would drop to 45.6 percent.

Morgan Stanley executives advised the governor's KTRS Funding Work Group that the major bond rating agencies are concerned about the unfunded liability. They said a pension obligation bond by itself is not a solution and would have a negative impact on the commonwealth's credit rating. A pension obligation bond coupled with a plan can be a neutral event that would not lead to a downgrade in Kentucky's credit rating. They also said that the unfunded liability of pension plans can dry up debt capacity just as bonds do. The key to any solution is to fully fund the actuarially required contribution. The executive director of the Office of Financial Management, Finance and Administration Cabinet, said he receives inquiries weekly from bond rating agencies regarding the unfunded liability in the teachers' pension fund. He also receives inquiries from potential buyers of Kentucky bonds, and some are not buying them because of concern about the unfunded liability.

The deputy executive secretary said the fixed employer contribution rate of 13.105 percent is paid through the Support Education Excellence in Kentucky (SEEK) funding formula as part of the Kentucky Department of Education's budget request for school districts. It is currently funded at \$372 million in FY 2014-2015 and \$380 million in FY 2015-2016. For the new biennium, the employer contribution is projected at \$388 million in FY 2017 and \$395 million in FY 2018.

The employee contribution rate was 9.855 percent prior to enactment of the shared responsibility legislation in 2010. The FY 2015-2016 rate is 12.855 percent, completing the gradual phase-in of additional contributions by employees.

The KTRS budget request for the next biennium includes three significant items. The commonwealth's share of the cost for retiree health insurance is projected to be \$76 million in FY 2017 and \$83 million in FY 2018. A second portion of the KTRS budget request is a special appropriation for past benefit adjustments—referred to as green box dollars. The green box dollars are estimated at \$114 million in FY 2017 and \$112.7 million in FY 2018. The combined estimates for retiree health insurance and green box dollars total \$190 million in FY 2017 and \$196 million in FY 2018. Third, KTRS will need additional funds to maintain the pension fund on an actuarially sound basis. The additional funding requested for FY 2017-2018 has increased from the amounts requested for the previous biennium. Needs are projected for an additional \$520 million for FY 2017 and an additional \$488 million for FY 2018. If SEEK formula funding from the Department of Education budget is included, the total appropriation for KTRS is projected to be a little less than \$1.1 billion in the first year of the biennium and a little more than \$1.1 billion in the second year. The 1.5 percent COLA for teachers that is guaranteed by the inviolable contract is built into the contribution structure and is included in KTRS budget requests. Because teachers are not eligible for Social Security benefits, the guaranteed COLA is intended to replicate the annual COLAs provided by Social Security.

Funding needs have reached a critical point. As of June 30, 2014, KTRS had only 53.6 percent of the assets needed to pay for benefits already earned. In order to pay retirement benefits, KTRS sold approximately \$650 million in assets last year, and it will have to sell approximately \$755 million in assets in the current fiscal year. It is projected that approximately \$845 million in assets will have to be sold in FY 2017 and approximately \$940 million in FY 2018. If nothing changes, under the new GASB accounting rules, the pension fund would be depleted in approximately 20 years. The target date would be later under the old GASB standard. The

unfunded liability is increasing about \$1 billion each year, and without additional funding, the deteriorating pension fund will be in peril.

Kentucky Teachers' Retirement System Funding Work Group

The president of the Kentucky Chamber of Commerce, as a member of the work group, presented an overview of the group's progress from the chamber's perspective. He said that the chamber, which has represented more than 60,000 employers, has been consistently outspoken about the state's pension problems and has tried to be a constructive voice in solving those problems. A draft set of principles was discussed but not adopted in November. The final report, due in December, is expected to present a set of options with the financial consultant's best estimate of projected costs or savings and the pros and cons of each. The consultant is an actuary who has expertise in all retirement-related areas.

There is a broad range of opinions within the group. To address the underfunding of KTRS, some feel the legislature should pay the bill, which would involve new revenue and a probable tax increase. Others favor borrowing \$3.3 billion to leverage the market and take advantage of low interest rates, and some propose converting teachers to a 401(k) retirement system.

The chamber asked the consultant to estimate cost for a 50/50 plan in which half of the solution would come from additional revenue and half from restructuring benefits for future teachers.

The inviolable contract has not been seriously contested during work group proceedings. The chamber believes that the most significant cost savings would come from structural change relating to future teachers. The chamber does not have a solid proposal for a defined contribution plan but has requested an estimate of the cost to convert future teachers to a 401(k) plan; however, because Social Security does not cover teachers, the state and school boards would have to begin paying Social Security. That cost would be in addition to what is needed to address the current underfunding of the system.

At the November meeting, the consultant discussed a new proposal for 30-year additional funding, beginning in FY 2017. He is to provide specific cost data to KTRS, the Kentucky Education Association, and the chamber. The state would simply pay more under that plan, without any shared responsibility. The state of the economy, the condition of the state budget in future years, demographic changes, and the opinion of bond rating agencies would be factors to consider under the plan.

The chamber feels that structural change will be needed, in addition to any graduated or phase-in plan that might be considered. The calculation of sick leave as compensation in the last year of service produces an expensive benefit spiking and cost to the state. Minimum retirement age also should be examined. However, everyone should be mindful of how structural change would affect the teaching profession. There could be unintended consequences, and there is already concern about attracting new teachers, especially among the education community. The funding problem is so large and expensive that, however it is solved, there will be significant ramifications for the ability of future teachers to get salary increases. The chamber president also stated that if

bonding is considered as a funding option, it might be needed more for Kentucky Retirement Systems than to provide relief for KTRS.

A Morgan Stanley bond expert advised that Kentucky needs to take action in the 2016 Regular Session. If not, the state's bond rating would again decline. The chamber agrees that something must be done in the next session of the General Assembly to address the KTRS underfunding.

Discussion with the chamber president included comments from committee members that switching to a 401(k) system would not be easy when factoring in the state contribution for Social Security that would be required. Moving to a 401(k) system could affect teacher retention and recruitment and perhaps necessitate higher starting salaries for teachers. Also, it would add cost to local school districts if accumulated sick leave were not included in the retirement benefit calculation. Teachers would use their sick leave rather than save it, and school districts would have the added cost of hiring substitute teachers.

Kentucky Employees' Health Plan

The commissioner of the Department of Employee Insurance and the deputy executive director of the Office of Legal Services, Personnel Cabinet, discussed the 2016 plan year for the Kentucky Employees' Health Plan (KEHP). In January 2015, Anthem replaced Humana as plan administrator. Other KEHP vendors are CVS/Caremark, WageWorks, VitalsSmartshopper, and Humana Vitality. Benefits for 2016 are unchanged, and employee premiums will not increase. The employer contribution will increase 2 percent, which was appropriated in the last budget cycle.

KEHP, self-insured since 2006, has 153,000 plan holders and 266,000 covered lives. Total plan cost is approximately \$1.6 billion annually. School boards represent 54 percent of covered lives; state agencies represent 20 percent. Plan holders who waive coverage and have a health reimbursement account (HRA) represent 10 percent of covered lives. In 2015, 33 percent of covered lives have single coverage plans and 28 percent are enrolled in family plans.

Enrollment in consumer-driven health plans (CDHP) has increased dramatically—from 28,565 covered lives in 2013 to 140,292 in 2015. LivingWell CDHP, the highest value plan, currently has the largest number of enrollees—118,033, or 40 percent. This is one reason why KEHP has been able to accumulate substantial savings and to maintain the same rates, benefits, and coverage levels for the last several years. Consumerism and wellness components put in place in 2014 continue to be effective. Medical and pharmacy claims cost in 2014 decreased to the 2011 level, and it is projected that 2015 claims cost will be even lower. The 2015 savings can be attributed not only to consumers being more informed and making better choices but also to improved discounts after Anthem became plan administrator. KEHP has partnered with local health departments to provide the biometric screenings (Vitality Checks). They are also available at Kroger and Walgreen clinics, at select KEHP onsite locations, and from primary care doctors.

The Diabetic Value Benefit is new in 2016. Diabetic members will pay reduced copays and coinsurance, with no deductibles, for nearly all of their maintenance diabetic prescriptions and supplies. This benefit brings additional cost to the plan but should prove to be an appropriate and

cost-efficient investment. In 2014, Kentucky became one of the first states to offer a diabetes prevention plan and is a model for its 16-week Diabetes Prevention Program. Diabetes is expected to be a huge cost driver in the future. Almost 24,000 KEHP members are diabetic; probably 80,000 are pre-diabetic. Diabetic claims now total about \$70 million annually, and that cost is expected to increase substantially. The diabetes prevention program is free to members but costs the plan about \$350 per individual.

A telemedicine benefit—LiveHealth Online (LHO)—was launched in June 2015. Kentucky is one of the first states to offer this service. It provides instant doctor visits through live two-way video chat at no cost to members. The doctor will answer questions, will diagnose health problems, and may prescribe basic medicines when needed. The cost to KEHP is \$50 per visit, which is less than visits to a physician’s office. This service will save money by reducing the number of visits to emergency rooms and urgent treatment centers. LHO will improve access for rural members, create a viable medical service alternative, and reduce lost employee productivity. The service is not designed to replace the primary care doctor.

The commissioner said current projections indicate that KEHP will accumulate a significant surplus in 2015. The program has been performing very well for the last 2 years, but claims are likely going to increase in the future. HRA funds are preserved in the trust fund. Unused HRA funds represent an accrued liability and cannot be taken for other purposes. The deputy executive director said that the US Departments of Treasury, Labor, and Health and Human Services jointly issued guidance regarding nongroup coverage in September 2013. The federal government’s interpretation of the law is that persons cannot have the stand-alone general purpose HRA unless they can attest to having other group health insurance. Persons covered by government-sponsored plans such as Medicare or Tricare are also not eligible for the stand-alone HRA.

Discussion with the LRC Director

The new Director, who joined LRC in October, discussed his ideas and vision for the future of the agency. He wants to change the way LRC interacts both externally and internally. Academia is an important partner, and he plans to visit all of the state universities. He stated that there is a lot of work to do and some serious issues that need to be addressed in an expeditious manner. He welcomes feedback and ideas from legislators and asks also for their patience.

The Director said he does not plan to institute new policies and procedures that might imperil the ability to have a good session, prior to 2016. However, there are things that can be done now to begin altering the agency’s direction, build morale, and deliver on the promise of change. All job openings are being posted, other than those unique to only one individual, and there is a link on the LRC home page designated for career opportunities. The assistant director for human resources is retiring, and that position is being renamed “assistant director for human resources and professional development.” LRC staff need more professional opportunities to grow and develop, and the new human resources hire will be responsible for training. The Director said he has sought the help of former colleagues in other state legislatures to identify well-qualified prospects for that position. The person hired needs to be dynamic, with the ability to help craft personnel policy. Other senior management vacancies to be filled include a budget director who is

familiar with the process in Kentucky and a general counsel who is a member of the Kentucky Bar and knowledgeable about the Kentucky Constitution. Diversity in hiring is important, and it is his goal to have a workforce in LRC that is reflective of the population.

The Director said he has invited all staff to meet with him one on one, and he has already met with staff who represent a wide cross-section of the agency. They have voiced concerns, but the meetings have reflected a spirit of cooperation and collaboration, and he senses optimism among them. Public Information staff is working on an internal newsletter geared toward employees, with the first issue expected before Thanksgiving. The Director plans to begin working two or three days a week from a satellite office in the Annex, beginning next May or June.

There is a need to better disseminate information across the agency, and an atmosphere of internal communication is being encouraged. There is a new standard for responding to email, termed the “One Day Response Time Guarantee.” For emails containing a specific request or question, staff should at least send an acknowledgment within one business day. A new personnel policy manual is being drafted and will be submitted for approval at the December LRC meeting. That manual will not address pay equity or position classification. Discussion of those and other serious matters, and implementation of solutions, will be first priority after adjournment of the session.

The Director said his office is geared toward serving two constituencies—LRC staff and members of the General Assembly—and, by extension, the residents of Kentucky. He will be soliciting feedback from legislators on how to best move forward. He is confident that significant changes will be made and that agency problems will be solved.

State of the art for personnel management is his goal. He will collaborate with the new assistant director for human resources and professional development to determine new position classification and compensation policy. It will take time to transition to the new policy, and expertise from the National Conference of State Legislatures and the Southern Legislative Conference will be solicited to help identify best practices. The issue of compensatory (comp) time will also be addressed. There should be accountability for the amount of comp time awarded to an individual or team of employees. The process should be objective and also transparent, so that people understand the reason behind awards of comp time.

Kentucky Retirement Systems Funding

The executive director of Kentucky Retirement Systems discussed the projected increase in rates and dollars that will be needed to fully fund the actuarially required employer contribution (ARC) in FY 2017-2018. He said the actuary is working on the FY 2015 evaluation, which will be reported to the board of trustees at the December 3 meeting. At that time, the board will set the 2-year employer contribution rate for the Kentucky Employees Retirement System (KERS) and the State Police Retirement System (SPRS). The current rate for KERS-nonhazardous is 38.77 percent of payroll. It is projected to rise to 45.46 percent in 2017 and 45.8 percent in 2018. The current rate for KERS-hazardous is 26.34 percent of payroll; it is projected to decrease to 24.13 percent—a savings of approximately \$2.5 million. For SPRS, the increase to fully fund the ARC would be approximately \$6 million. The rate would increase from 75.76 percent of payroll

to approximately 86.71 percent. The total projected increase in FY 2017-2018 for KERS and SPRS is \$130.4 million.

The total projected increase to fully fund the County Employees Retirement System (CERS) is approximately \$34 million for the next biennium, spread across almost 1,500 participating employers. The rate for CERS-nonhazardous is projected to increase from 17.06 percent to about 17.89 percent. The CERS-hazardous rate is expected to decrease slightly—from 32.95 percent to 32.91 percent.

The executive director said that the KERS-nonhazardous pension plan is the major problem. At the end of FY 2014, it was funded at 21.7 percent. Even with 100 percent payment of the ARC and 7.5 percent investment return, actuaries have projected that the funded status will eventually drop to about 15 percent and not start to rise until after 7 years. The board recently changed a number of important assumptions based on a 5-year experience study. The payroll growth assumption was reduced from 4.5 percent to 3.5 percent. The assumed investment rate of return assumption has been reduced and the mortality table extended to account for the fact that people are living longer.

KRS invests differently in the KERS-nonhazardous plan, by not choosing long-term investments that may lock up funds for 8 to 10 years. Any infusion of money into KERS-nonhazardous over and above the ARC would help cash flow. An actuarial analysis of yearly bonding in the amounts of \$250 million, \$1 billion, \$2 billion, \$3.5 billion, and \$5 billion indicated that bonding of \$1 billion or \$2 billion would have little impact. Bonding at \$5 billion would only raise the funding level into the range of 53 percent to 58 percent. A series of small bond issues over a period of years would improve cash flow, but it would take several years to reach the point where long-term investments would be feasible.

When more employees retire than expected, it adds to the system's liability and the need to increase the ARC. The 1998 retirement window legislation that increased the retirement factor for certain employees, the downturn in the economy, and the lack of cost-of-living increases for state employees have all led to higher than usual retirement rates.

The executive director confirmed that the Kentucky Communications Network Authority, a new state agency, has been approved by the board to participate in KERS-nonhazardous, pending issuance of the required executive order by the Governor.

Several members of the committee expressed disapproval of the executive director's recent 25 percent salary increase. He responded that his decision to delay retirement had not been easy and that he would not have stayed at the same salary level. The board hired a national executive search firm to fill his position. The search firm indicated it would be a difficult hire due to location, because the position was significantly underpaid compared to other public pension plans, and because of the funding and other problems facing KRS. The consultant advised that the salary would have to be in the \$200,000 to \$230,000 range in order to attract qualified applicants. Three internal applications were received, and five persons applied from outside Kentucky—a tax commissioner, a development corporation finance officer, a city comptroller, a benefits attorney with a research organization, and a former city pension plan executive director who had received

negative publicity nationally. The board determined that the applicants were not suitable, and none were interviewed.

With respect to transparency, the executive director said that KRS is probably as transparent as any public retirement system in the country. KRS has changed its investment reporting. In the past, fees were not reported as line item amounts but were netted against investment activity, as done in other public pension plans. The fees are now reported as separate line items for every manager. The board passed a resolution requesting an independent comprehensive audit, to be initiated and paid for outside of KRS with separately appropriated funds. A host of audits, studies, inquiries, and investigations of KRS in the past have found no significant problems. Although it will burden staff resources, KRS is willing to undergo another comprehensive audit.

The Senate co-chair of the committee announced that he will introduce legislation in 2016 to increase oversight of the pension systems. The bill will add four nonvoting legislators to the KRS and KTRS boards, which will enable the legislative members to gain important knowledge early in the process. The legislation will make all future appointed KRS and KTRS board members subject to Senate confirmation and will also remove the KRS and KTRS exemption from the Model Procurement Code.

Police Officer Training Requirements

The deputy executive director of the Kentucky League of Cities (KLC) discussed that organization's concerns about the process used to establish law enforcement training requirements for police officers. He said that state law requires every police officer in the state to receive at least 640 hours basic training within 1 year of being hired in order to participate in the Kentucky Law Enforcement Foundation Program Fund. The law also allows the Kentucky Law Enforcement Council to increase the number of hours beyond 640 through administrative regulation 503 KAR 1:110. It was amended in July to provide that a candidate for graduation from the Department of Criminal Justice Training should achieve a minimum of 888 hours. KLC's position is that the governing statute provides that the administrative regulation should set a specific numbers of training hours rather than a minimum number that would be subject to increase outside the regulatory process. KLC is not questioning the law enforcement expertise of the council and the department but feels that they, as executive branch agencies, should not be making decisions that have a cost impact without first collaborating with the city governments that bear the cost. KLC and its members want those involved to work together and to consider the financial consequences of decisions. KLC originally expected to request legislation to ensure that training requirements would be established in a collaborative manner by the department, the council, cities, and taxpayers. KLC is now hopeful that the issue can be resolved through cooperation; if not, the KLC board of directors will pursue legislation.

The assistant general counsel for the Kentucky Department of Criminal Justice Training and the Kentucky Law Enforcement Council; the assistant director of the Department's Training Operations Division; and the executive director of the Kentucky Law Enforcement Council testified that they are currently not in full agreement with KLC but will work with the organization in an effort to resolve their differences. The final version of the administrative regulation specifies

a minimum number of hours in order to give the department needed flexibility in providing the mandatory training. The department submits proposed training curricula to the council, which includes police chiefs, sheriffs, mayors, and county judges as members. The department requires the least amount of basic training of the commonwealth's three other academies—Kentucky State Police, Lexington Police Department, and Louisville Metro Police Department. The current curriculum is based on needs approved by the council, as well as job task analyses and recommendations of instructors.

The training was first expanded from 18 to 22 weeks because trainees were being paid 120 to 160 hours overtime weekly while at the academy. It was later increased to 23 weeks in response to the nationwide law enforcement climate and findings of the 2014 job task analysis. The administrative regulation sets a floor rather than a cap on training hours to allow flexibility to deal with emerging issues such as those that occurred in Ferguson, Missouri, and Baltimore, Maryland. All four Kentucky academies in 2015 increased the number of training hours in response to those events. Lexington requires 1,000 training hours; state police, 969; and Louisville, 970. The Department of Criminal Justice Training requires fewer hours, partly because it does not represent a specific home jurisdiction.

Subcommittee Activity

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held two meetings during the 2015 Interim, focusing on the current status of electioneering restrictions in Kentucky; the Kentucky County Clerks Association's 2016 legislative agenda; the Kentucky Registry of Election Finance's proposed reporting system modernization; and the voting equipment used in the commonwealth.

Restrictions on Electioneering in Kentucky in the Wake of *Russell v. Lundergan Grimes*

The general counsel of the State Board of Elections testified about the status of electioneering restrictions in the state following the case of *Russell v. Lundergan Grimes*, in which a federal court struck down Kentucky's electioneering statute on First Amendment grounds. In *Russell*, the US Court of Appeals for the Sixth Circuit found that Kentucky's statute was overbroad for two reasons: that the then 300-foot ban on electioneering near the polls on the day of an election was greater than the 100-foot bans previously upheld by the Supreme Court as a "safe harbor" for prohibiting electioneering, and there was no evidence in the record to justify a more expansive restriction; and that there was no private property exception to the ban, which the Sixth Circuit has held is a requirement for any electioneering ban. Because the ruling was issued only 3 weeks before the primary, the State Board of Elections promulgated an emergency administrative regulation, as well as an ordinary regulation, to institute a restriction on electioneering near the polls on the day of an election consistent with the court's opinion. The promulgated regulations include a 100-foot ban on electioneering with a private property exception, unless the property is being used as a polling place; retain the bumper sticker and exit polling exceptions; and reinstate the electioneering ban applicable to buildings used for absentee voting prior to election day.

Kentucky County Clerks Association's 2016 Legislative Agenda

The executive director and the chair of the Elections Committee of the Kentucky County Clerks Association led a discussion of the Kentucky County Clerks Association's 2016 legislative agenda.

KRS 116.095 currently requires county clerks to permit any citizen to inspect or make copies of voter registration records, but the clerks would like to redact Social Security numbers from those records prior to permitting inspection or copying. This suggested amendment is to prevent the dissemination of personally identifiable information of a voter. KRS 117.087 sets out the process for counting absentee ballots, which must be conducted between 10 a.m. and 6 p.m. on the day of an election, but because some of the larger counties have difficulty getting all the ballots counted by 6 p.m., the clerks would like to amend this statute to allow counting to begin at 8 a.m. KRS 117.227 deals with the confirmation of a voter's identity, and because the military is amending its identification cards to remove a person's signature those cards will no longer be an acceptable form of identification for voting in Kentucky. The clerks would like this statute amended to allow any identification card that has a picture of the voter to be considered acceptable for the purposes of identifying the voter, if the card is issued by federal or state government.

The clerks would like to again propose requiring that local option elections be held on primary or regular election days, with a slight change from past proposals that would require that, if a measure passes, the local government would collect a small portion of the initial license fee and renewal fees to pay for the cost of the election. The proposal would also extend the moratorium on additional local option elections if a measure fails to 7 years from the current 3 years.

The clerks association also proposes to codify the changes in the electioneering restrictions that were contained in the administrative regulations promulgated by the State Board of Elections. The clerks believe that it is preferable to have these new restrictions enacted by legislation rather than simply relying on the administrative regulation.

Kentucky Registry of Election Finance—Filing System Modernization

The task force heard testimony from the executive director of the Registry of Election Finance, regarding the registry's proposed project to modernize the campaign finance reporting system. The current system was built in the mid-1990s, and the modernization project would allow the registry to jump ahead to the technology that is in use today. The projected cost of the update to the system is \$1.8 million, and the Capital Projects and Bond Oversight Committee recommended funding for the project during the 2015 Interim.

The software the system is based on is no longer supported by the vendors that made the software, which is increasingly becoming a problem. In fact the registry is concerned that a catastrophic failure could occur and disrupt the registry's ability to fulfill its statutory mandate. The modernization project would also make the registry more efficient. Currently, a staff person has to key in all of the information supplied by a candidate in his or her reports, but the new system would allow the report to be scanned into the system in the exact form that the candidate filed. The registry does not have the staff to type in the expenditures by candidates, so the public is receiving

information only on contributions to candidates, which is only half of the campaign finance data being reported.

Voting Equipment

The task force also heard from a panel of presenters on the voting equipment used in the commonwealth. The assistant director of the State Board of Elections testified that in 2002 the Election Assistance Commission (EAC) appropriated \$2.0 billion to the states to update their voting systems, with Kentucky receiving approximately \$32 million. A majority of Kentucky's counties (66 percent) updated their equipment in 2008 with this federal money, but many of the machines are nearing the end of their 10-year lifespan. The Presidential Commission on Election Administration issued a report in 2014 noting that voting equipment in the United States is aging and urging states to begin strategizing on ways to extend the useful life of the machines and to plan for replacing current voting systems. The State Board of Elections stated that by the 2020 presidential election the majority of the commonwealth's machines will be 2 years past their expected lifespan, and they noted that aging voting equipment is expensive to maintain and is prone to failures. The cost of replacing the voting equipment across the commonwealth is an estimated \$60 million, and the State Board of Elections stated that a plan should be in place to begin funding for equipment replacement during the next biennium.

Approximately 99 counties are using machines by Harp Enterprises, approximately 20 are using machines by ES&S, and Jefferson County uses equipment from an old vendor that is serviced by ES&S. Jefferson County has not yet used the federal money because it was not enough to replace all the machines in the county, and approximately \$3 million remains for Fayette County and Jefferson County to replace equipment. The State Board of Elections stated it is unlikely that additional federal money is coming, and they stressed that waiting until 2018 to find all of the approximately \$60 million to fund the replacement cost could be problematic. It was noted that replacement will entail an 8- to 10-year cyclical replacement process and that a funding source should be identified now to gradually transition into replacement.

Fayette County replaced its equipment in 2006, but Jefferson County is using equipment from the mid-1990s. The government affairs director for the Jefferson County Clerk stated that Jefferson County's AccuTouch equipment dates from 1998, but that Jefferson County has updated the system periodically with new CPUs and other parts. He also noted that it is fairly reliable and is a failsafe system in that it has backup paper ballots, but because the vendor no longer makes the machines the spare parts over the long run are running out. The clerk is working on a replacement plan with the Metro Council, and Jefferson County will likely couple the approximately \$2 million of federal money available with other funding and/or financing to replace its equipment within the next 3 years.

The Fayette County clerk then testified that Fayette County had purchased nearly all new machines in 2006 just before the EAC released federal money for equipment replacement, and consequently, Fayette County did not need to immediately replace its equipment in 2008. He also noted that the EAC could certify new machines to be used in elections at any time, so Fayette County thought it was most prudent to continue using the 2006 machines that were certified until they needed to be replaced and then to update to the most current machine in use at that time.

Counties have a choice of using any machines certified by the EAC and the state, and it was noted that historically counties paid for voting equipment. As machines reach the end of their useful life, some will fail on election day and for counties without backup machines this could be a problem as soon as the 2016 elections. The county clerks recommended that the General Assembly consider to begin replacing approximately 20 percent of the machines in use and keep the old machines as backup equipment for elections. Under this partial replacement program a county would not have discretion in the type of machines used because they would need to replace machines with the same equipment they are currently using so that the old machines could serve as backup equipment. The clerks noted that the General Assembly would likely need to fund replacement because many counties cannot afford new equipment.

The State Board of Elections is compiling data on what equipment was purchased by the counties in 2006 to 2008, as well as the overall condition and maintenance of the machines in each county. The board is also gathering information on what other states are doing on the issue, as well as discussing different options with vendors that might allow the counties or the General Assembly to save money in replacement costs.

The Leslie County clerk and chair of the elections committee of the County Clerks Association stated that approximately 85 percent of county clerks do not feel that their county can afford to replace the county's voting equipment. Many counties do not have backup equipment, and although they perform regular maintenance on the machines, there is still some risk that even one or two machines failing on election day could create a major problem for some counties. He reiterated that ensuring the integrity of the election process is one of the most important functions of a county, and that because there will be a need to replace the equipment in the near future it would be prudent for county fiscal courts and the General Assembly to have a plan in place for funding.

The president of Harp Enterprises testified on voting equipment generally. He noted that Harp services 97 counties with voting equipment and has been in business since 1972. Kentucky used paper ballots up to the 1960s, and in 1962 the General Assembly mandated that all counties use lever machines. The mandated machines were not funded and counties had to purchase them with county money, but the machines were tough and lasted in many counties up through the mid-1980s. In the 1980s the counters in the machines began to fail, and Harp then began to sell a new type of electronic machine, which also lasted a long time but was too expensive for most counties. Consequently, many counties financed their equipment through the Kentucky Association of Counties on a 5- or 10-year installment basis when equipment needed to be replaced.

Following the 2000 presidential election there was sudden interest in voting equipment. New voting systems have been developed, and every system has to be certified by the EAC and the state. This limits the number of available choices of machines. However, the dual certification process ensures that the equipment being used is good. Harp has a failure rate of less than 1 percent on every piece of equipment it sells and services. The proposal to replace a little at a time was the process generally used prior to the Help America Vote Act (HAVA) funds from the federal government, and Harp believes this is a good idea for a regular replacement program. Future equipment will be faster and more efficient, and it will likely have accessibility functions built into

one machine, which will cut the replacement cost in half since counties will not have to purchase a regular machine and an accessible machine to be HAVA-compliant.

The counties are ultimately responsible for ensuring that a citizen's right to vote is protected. The clerks noted that just as all politics are local, all efforts to administer elections according to law are conducted at the local level by the county clerks and the county boards of elections, and reliable machines are essential to the process.

**Report of the 2015
Interim Joint Committee on Transportation**

**Sen. Ernie Harris, Co-Chair
Rep. Hubert Collins, Co-Chair**

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Sen. Jared Carpenter
Sen. C.B. Embry Jr.
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Rep. Addia Wuchner

LRC Staff: John Snyder, Dana Fugazzi, Brandon White, and Christina Williams

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Transportation

Jurisdiction: Matters relating to airports and aviation; boats and boating; licensing of motor vehicles; operators and trailers; financial responsibility law; nonresident motorists; motor vehicle sales; railroad rates, service, and operating regulations; motor carriers; construction and maintenance of the state highway system; the Department of Transportation; state aid for local roads and streets; the State Police; the Federal Highway Safety law; turnpike authority; state and federal highways; limited-access facilities; use of road bond money; automobile recyclers; highway beautification; bridges, tunnels, and ferries; traffic regulations; vehicle equipment and storage; driver training schools.

Committee Activity

The Interim Joint Committee on Transportation met six times during the 2015 Interim.

Aviation—Partnership for Open and Fair Skies

The director of public affairs, Kentucky Chamber of Commerce, spoke in support of airports such as Cincinnati/Northern Kentucky International Airport, Louisville International Airport, Blue Grass Airport, and other smaller airports that play a vital role in Kentucky communities, serving as hubs for commerce and economic development.

For more than two decades, the passenger airline industry has benefited from the Open Skies agreements that expand markets, increase tourism, and bring numerous benefits to airports and communities across the country. Recently it has come to light that Qatar and the United Arab Emirates (UAE) have been undermining these international agreements by subsidizing their airlines by more than \$42 billion over the past 11 years, which is negatively affecting US airlines. This issue crosses party lines and has united both labor and business groups because market-distorting practices that violate international agreements have no place in today's trade environment. The stakes are high: Every daily international round-trip flight a US airline loses to a subsidized Gulf carrier means an estimated 821 US jobs lost.

The Kentucky Chamber is supportive of Open and Fair Skies, Delta, and other US and global carriers that are playing by the rules, and it urges all lawmakers in Kentucky to be vocal on this issue and sign letters to the Obama administration to seek a freeze on further expansion by these Gulf carriers and to open government to consultations to resolve this dispute as quickly as possible.

The director of state and local government affairs, Delta Air Lines, stated that since 1992, the US has signed 116 Open Skies agreements, which are bilateral trade agreements between the US and other countries. These agreements give each country's airlines free and open access to other country's market for international flights. Delta fully supports the Open Skies policy and has concerns relating to only two of the agreements. Delta is asking for the US government to open consultations with Qatar and the UAE and to seek a freeze on new Gulf carrier capacity into the US during the talks. Qatar and the UAE have provided three state-owned airlines—Qatar Airways, Etihad Airways, and Emirates airline—with \$42.3 billion in quantifiable subsidies and other unfair

benefits since 2004 alone. Emirates has made more than \$11 billion in purchases of goods and services from other government-owned companies at below-market prices since 2004. The Gulf carriers are expected to grow capacity at more than three times the growth rate of global gross domestic product between 2012 and 2020. By 2020, the Gulf carriers' capacity will far exceed that of US carriers.

Implementation of 2015 Legislation

General Transportation-Related Legislation. The secretary and the legislative liaison of the Kentucky Transportation Cabinet (KYTC) provided a brief update on the implementation of general transportation legislation from the 2015 Session. In regard to HB 179, HB 209, HB 315, HB 378, HJR 100, SB 133, and SJR 78, KYTC is in full implementation mode and is continuing to implement the legislative changes.

HB 299, Stabilization of Motor Fuel Tax Rates. The deputy secretary of KYTC provided a brief history of the gas tax from FY 2010–FY 2016. Kentucky's gas tax has three components: a variable rate, based on a percentage of the average wholesale price (AWP) of gasoline; a fixed tax of 5 cents per gallon; and a fee of 1.4 cents per gallon for underground storage tank mitigation. The first quarter of FY 2015 had a total tax rate of 32.5 cents. In October 2014, at the end of the first quarter, because of falling gas prices, 0.6 cents per gallon was lost off the tax rate. In January 2015, again because of falling prices, an additional 4.3 cents per gallon was lost off the tax rate. Entering into calendar year 2015, prices continued to drop. In January, the weighted AWP of gas was 1.441 cents per gallon. That was the lowest the AWP had been since January 2009. As a result, starting April 1, an additional 5.1 cents would be lost off the gas tax for a loss of 10 cents per gallon since the beginning of FY 2015. The passage of HB 299 established the AWP floor at \$2.177 per gallon, yielding an effective rate at the pump of 26.0 cents per gallon and preserving 3.5 cents per gallon that would have been lost on April 1; held the \$2.177 AWP floor constant through FY 2016; changed the AWP calculation from quarterly to annual; and limited the year-to-year increase or decrease of the AWP to not more than 10 percent beginning in FY 2017.

The deputy secretary discussed HB 510, which was funded through the general fund. Its primary purpose was to minimize the impact to the county and municipal road aid program. Approximately \$8 million is going to local governments to help them compensate for anticipated loss this fiscal year. Looking ahead to FY 2016, the construction account and rural secondary programs will feel the full effect because of falling gas prices.

The deputy secretary stated that the needs of highway infrastructure far exceed the state's ability to pay for them. The road system requires a great deal of money to keep it functioning as it should and to keep Kentucky in the forefront. The decrease in gas tax revenues will prevent many things from being done. The deputy secretary stated that vehicles that use flex fuels, such as natural gas and ethanol, are covered under existing formulas but that some vehicles (electric cars) do not pay any fuel tax and are essentially driving free on the roads.

SB 153, Omnibus Revision of Motor Carrier Statutes. The commissioner, general counsel, and deputy commissioner for the Department of Vehicle Regulation, KYTC, reported on 2015 SB 153. There are 13 regulations to implement the changes. The cabinet started with the

Transportation Network Company regulation. If those regulations relate to regulations, those updates were made as well to get them into compliance. The cabinet has worked out processes to determine how all regulations might be affected. Forms have been updated.

The deputy commissioner stated that the motor carrier training that was repealed in SB 153 had one approved training entity and another entity with a pending application during the past session. The requirement applied to motor carriers at 26,000 and above. There was some question as to whether private carriers were included.

KYTC Personnel Issues

Engineer Salary Study. The commissioner of the Department of Human Resource Administration, Kentucky Personnel Cabinet, and the executive director, KYTC Office of Human Resource Management, gave an update on KYTC actions in response to the Engineer Salary Study mandated by 2014 HB 236.

The plan developed to revise engineer salaries has allowed KYTC to be competitive with private entities as well as state engineering salaries in surrounding states. This was a joint effort by the Personnel Cabinet and KYTC to collect data and survey various entities. Information collected included variables of work week schedules, benefits, and salaries. The engineer series contains 13 classifications, and the plan presents two options for addressing the salary concern.

The highest turnover rates of the engineer classifications tend to be for Engineer I (57 percent) and Engineer II (40 percent). The director of KYTC's Office of Human Resource Management stated that, because of the turnover rate, KYTC has faced the challenge of losing engineers whom the commonwealth has spent time, money, and resources to train. Many private consultants, contractors, and city or county governments are offering higher salaries to engineers. Because of this loss, contract costs for engineering services have increased. In 2014, KYTC contracted for approximately \$150 million in professional engineering services in comparison to just more than \$100 million in 2004, a 48 percent increase. Approximately 15 years ago, KYTC employees performed 70 percent of design work. Currently, 70 percent of design work is performed by outside consultants.

The study surveyed various entities, including the National Compensation Association of State Governments (NCASG), the American Association of State Highway and Transportation Officials (AASHTO), and other public and private entities. The state uses NCASG often when trying to obtain classification data from various states to determine how other states are paying their employees, including the amount of pay, the benefit packages, and incentives. Of the 13 states that responded to one survey, all have problems retaining engineers. Of the 14 states that responded to a separate survey, 8 stated that recruitment and retention is a problem particularly because of the lack of competitive salaries. One problem that states, including Kentucky, generally have is that they are not able to offer signing bonuses, moving expenses, or any incentives that most private sector companies offer engineers. The NCASG has offered some strategies that states have shared, but nothing has been as successful as raising an employee's salary.

The AASHTO study paid particular attention to six of the seven states surrounding Kentucky (Illinois did not participate), comparing entry, midpoint, maximum, and average salaries for nine engineering job classes. Tennessee and Indiana ranked above Kentucky in every job classification surveyed.

Other public and private entities were surveyed, which showed that KYTC engineer salaries were well below those in neighboring states. For a position comparable to Kentucky's Transportation Engineering supervisor (\$60,950), the average annual salary is \$94,400 in the Midwest Region, \$92,500 in the South Central Region, and \$91,400 in the Southwest Region. The US Bureau of Labor Statistics showed that Kentucky ranked sixth among surrounding states in civil engineer salaries for both private and public sectors.

The study found that, by reviewing the classifications, education, and experience needed for each classification, and using a point factor analysis, pay grade changes became options for eight of those classifications. Pay grades may increase based on market conditions as determined through a point factor analysis or salary surveys of both public and private employers. A personnel regulation permits a combination of grade changes and special entrance rates to reach a salary necessary to combat problems of recruitment and retention.

The commissioner stated that special entrance rates (SER) are available options for nine classifications. SERs can alleviate recruitment problems, primarily when a grade change is not possible. An SER sets the minimum salary for a class above the minimum of the pay grade and can be any amount up to the grade midpoint.

Salary compression is also an issue. The Personnel Cabinet provided salary compression adjustment options for seven classifications. For employees in a class for which an SER is established, employees may receive a salary adjustment equal to the difference between the former entrance rate and the new entrance rate if funds are available.

The study resulted in higher pay grades and/or higher minimum salaries within some classifications for approximately 550 employees effective June 16, 2015. The cost for these salary changes, in addition to fringe benefits, is approximately \$7.8 million per year.

Heavy Equipment Operators. The secretary of KYTC discussed heavy equipment operator (HEO) and superintendent salary equity efforts. The issue involves the classifications of HEOs I, II, III, and IV and Superintendents I and II. These classifications often include employees who plow snow and repair potholes. The labor market for such employees is different in every county across Kentucky. In some areas, particularly urban areas, HEO and superintendent jobs are more plentiful. The cabinet must train new employees for these jobs and help them obtain commercial driver's licenses (CDLs), only to lose a significant number to city or county governments that are looking for trained employees with CDL experience. The average annual salary for an HEO I is \$23,300, which is \$1,000 less than the poverty level for a family of four in Kentucky. Few of the HEOs and superintendents make more than the midpoint salary in their classification range.

The cabinet has been working with district engineers on a per-county basis to address this salary issue. Because there are 120 counties and more than 120 maintenance facilities with six classifications, the cabinet has not been able to address all situations at once. KYTC has asked the Personnel Cabinet to complete a study similar to the one for district engineers. It is imperative for KYTC to have high-quality employees who know how to run and maintain snowplows and other high-tech equipment. If the salary pattern continues, it can become costly to the state.

Kentucky Automated Vehicle Information System

The commissioner of the Department of Motor Vehicle Regulation, KYTC, and the deputy executive director of the Office of Information Technology, KYTC, testified about the Kentucky Automated Vehicle Information System (KAVIS). The previous update was through a letter in November 2014 stating that the cabinet rejected the 3M software after a technical assessment. The commonwealth took control of the project and was planning to proceed with new development, which consisted of a modular approach. A team was assembled to finish the development of KAVIS, which is now being referred to as KAVIS:2. The cabinet has broken down the KAVIS:2 approach into two objectives: to enhance the use of AVIS minimally through interfaces to gain benefits for citizens and stakeholders, and to replace AVIS gradually through the implementation of modules.

Some of the accomplishments for enhancing the use of AVIS include a print-on-demand decal system and scanning within the county clerk offices, which was fully implemented in May 2015. The benefits of these processes include decreased wait time in the county clerk offices for customers, elimination of double entry of data for clerks, reduced paper handling and archiving, decreased maintenance of aging printers, reduced postage for clerks and motor vehicle licensing, reduced annual audit time, and greatly improved access to vehicle documents. All of those benefits have been realized, as well as immediate access to title documents and other vehicle-related documents by other agencies and improved tax review and audits by the Department of Revenue.

In enhancing the use of AVIS, there were some implementation problems, the most critical of which was that gradual implementation required two processes to be run concurrently in Motor Vehicle Licensing, causing a title application backlog. The initial backlog of 41 days has been reduced to 21 days. Resources have been retrained, and business and technology process improvements are being implemented.

Another enhancement for the use of AVIS is a new Web renewal site that includes the same functionality with a new design. With this model, county clerks will immediately receive money collected. An enhanced site will allow online renewal for all eligible plates, not just standard-issue plates. The process for county clerks to approve renewals will be streamlined.

There will be a modular approach to replacing AVIS. The benefits of a modular approach are that the cabinet can roll out smaller pieces of functionality over time; incrementally remove functionality pieces from AVIS; minimize the risk for KYTC, Motor Vehicle Licensing, county clerks, and stakeholder groups; focus data cleansing/conversion efforts just on specific modules that need to be converted; focus training efforts; and allow organization by vehicle type and volume.

The modules for replacing AVIS are menu and disabled placards; boats; off road vehicles; mobile homes; all trailers; motor home/house cars; buses; motorcycles; trucks/wreckers; and passenger cars. The modular approach will build on the implementation of various aspects of the registration process to develop more complex modules later. The project life cycle is a sprint development cycle, and the modules will be completed through iteration.

The project life cycle will include seven iterations of work in 3-week periods. During the sprint development, the starting and initiating of module two will develop as module one is being completed. As soon as module one is completed, the cabinet will move into development of module two. There is no estimate of completion of the entire KAVIS:2 system; however, as the modules are completed, each module will have a completion estimate. The hope is that some modules can be combined to shorten the life cycle of the entire project. Later modules should take less time to complete because many functions will have been addressed in previous modules. KYTC will have project management office reviews throughout the process.

KYTC hired KiZAN, which is experienced in the sprint development life cycle that KYTC is following. The cabinet has Microsoft technical assessments to review the project, including the architecture that has been planned and the code that is being developed. The Microsoft technical assessment team will be called on for 1-week checkpoints throughout the course of the project. The Commonwealth Office of Technology will independently verify and validate the process.

Some issues and risks with replacing AVIS involve the sharing of resources with AVIS maintenance and support staff. Staff must be able to do their work to support the AVIS system while the cabinet continues to try to replace it. Working with different stakeholders' busy schedules (such as elections or the end of the month, when county clerks are always busy) is a challenge. Assessment services are consuming resource time.

Existing and new resources have formed into a cohesive team, and feedback on completed work has been positive. The modular approach was easily accepted, and the Working Committee (various stakeholders) meets weekly to validate requirements.

Road Fund/Financing Issues for FY 2015

September Road Fund Report for FY 2015. The secretary of KYTC presented the final road fund report for FY 2015. Comparing the actual receipts for FY 2015 to the Consensus Forecasting Group (CFG) estimate for the same period, the road fund in total was down \$20 million, approximately 1.3 percent. The bulk of the main source into the road fund is the Motor Fuels Tax, which was \$32.9 million less than the CFG estimate. The shortage in fuel tax revenue was partially offset by receipts from motor vehicle usage tax and other higher-than-expected tax receipts and fees.

The secretary stated that the effects of 2013 HB 440, which contained the trade-in credit for new motor vehicle purchases and took effect at the beginning of FY 2015, incentivized people to purchase vehicles. HB 440 was estimated to reduce motor vehicle usage tax receipts between \$40 million and \$50 million annually, but actual receipts declined by only \$10 million, which means there were more cars sold to help ease the loss in road fund revenues because of the trade-

in credit. The total actual motor vehicle usage tax receipts were down \$10.3 million from FY 2014 to FY 2015.

This decline is the first decline in road fund receipts since 2009. There had been relatively steady growth since then. The biggest part of the reduction was fourth-quarter collections. Overall, the road fund was down 8.7 percent in the fourth quarter of 2015, largely because motor vehicle fuels collections decreased 13.3 percent in the quarter. The motor vehicle usage weight distance collections increased 2.9 percent over FY 2014. With the increase in weight distance taxes charged for motor carriers as they transport goods across roadways, this increase is an indication that the economy is growing again; the Governor's Office of Economic Analysis often uses such an indication as a sign of how the general fund may do. Motor vehicle licensing was also up in FY 2015 from FY 2014. The CFG's preliminary numbers for the road fund estimated FY 2016 receipts at \$1.42 billion. The operational budget is based on a \$1.56 billion estimate, leaving a difference of \$139.2 million. Motor fuels collections are the largest part of that amount at \$132.2 million because, when the CFG put the estimate together in December 2013, it could not predict what would happen to gas prices. The \$132.2 million shortfall could have been much worse had HB 299 not been enacted in the 2015 Session.

If the preliminary numbers are correct for 2016, the total receipts for the road fund will decrease 7 percent compared to FY 2015. Road fund growth is fairly stagnant over that time. Road fund receipts may not reach FY 2015 levels again until 2020.

There have been 34 congressional actions since 2009 for Congress to either shore up the Federal Highway Trust Fund (FHTF) or to extend the surface transportation program. The FHTF is operating under another extension through the end of the year. The consensus is that there will be another short-term extension that will carry the FHTF into FY 2016. With the action taken in late July, an additional \$8 billion was transferred into the FHTF to keep it solvent.

December Road Fund/ Federal Highway Trust Fund. The deputy secretary of KYTC testified on the status of the road fund for FY 2016 and beyond, and the future of FHTF.

The FY 2016 budget is based on the December 2013 CFG estimate of approximately \$1.56 billion. CFG met in October 2015, and its preliminary estimate for FY 2015 is \$1.43 billion, a total estimated decline of approximately \$125 million. The estimated motor fuels decline is \$127 million, which is the cause of the overall decline in road fund collections.

If the preliminary estimate of \$1.43 billion is realized, there would be a 6.1 percent decline from FY 2015 receipts. If the motor fuels tax is down \$127 million, that would result in a 17 percent reduction for the County Road Aid Program and the Municipal Road Aid Programs compared to FY 2015. The first-quarter receipts for FY 2016 show that the total road fund receipts are down 8.3 percent, and the motor fuels tax receipts are down 16.1 percent.

In projecting future revenues, CFG's preliminary road fund estimates from October 2015 show that the FY 2017 projections are essentially flat. FY 2018 is projected for a slight growth at \$1.46 billion. If that growth is realized, Kentucky would be at about FY 2012 collections. Long-

range estimates show that it would take until 2020 to get back to 2015 numbers if estimations are accurate.

The deputy secretary discussed the FHTF program. The last fully funded transportation bill to pass Congress on time was TEA-21 in 1998. It expired on September 30, 2003. SAFETEA-LU was the successor to TEA-21, and it was passed in 2005. After TEA-21 expired in 2009, 33 months elapsed before MAP-21, the current authorization, was passed. MAP-21 was originally set to expire on September 30, 2014, but the expiration was extended to December 14, 2015.

Congress has passed 35 short-term extensions in the past 6 years. The reason it is so difficult to pass a long-term bill is FHTF insolvency. There has been a funding gap since 2006, and revenues have essentially been flat. There has been slight growth that has only counted for inflationary adjustments. The average gap is \$16.9 billion a year between 2015 and 2023. Since 2008, most of the extensions have required additional deposits into the FHTF. Since 2008, a little more than \$73 billion has had to come in from other sources—mostly the general fund—to support FHTF spending. The primary source for the FHTF is the federal gas tax. The last increase in the gas tax, to 18.4 cents, occurred in 1993. The needs continue to mount, and the purchasing power of that 18.4 cents per gallon has continued to erode since 1993. Because of inflation, the federal motor fuels tax has lost approximately two-fifths of its purchasing power. There is no long-term solution absent congressional action.

As Congress has been unable to fund the needs of the FHTF, more pressure is placed on the states. States either increase their funding or impose tolls. There has been no change in the funding for highway surface transportation at the federal level, and thus, tolls have been discussed more often.

The US House of Representatives just passed its version of a long-term transportation bill, similar to what was passed by the US Senate in July 2015. The DRIVE Act (Developing Roadway Infrastructure for a Vibrant Economy) is the US Senate's bill. The STRR Act (Surface Transportation Reauthorization and Reform) is the US House of Representatives' bill. Both are 6-year bills, but so far they contain only 3 years of funding. Unless the additional 3 years are funded, it will only be a 3-year funded bill. The US Senate and US House of Representatives have named their conferees and are working out the differences between the bills. Both bills give slight increases for total spending (\$44 billion–\$46 billion per year as opposed to the current \$41 billion). This current level translates into a federal share for Kentucky of \$650 million per year. Both bills move discretion from the states to local governments in some degree, primarily in the Surface Transportation Program (STP), which is the most flexible federal program.

The current split for the STP is 50/50. Both the Senate and the House bills change that split to 45 percent state control and 55 percent local control, but the change in the House version takes place more gradually over the next 6 years.

Presentation on the Ohio River Bridges Project

The professional engineer KYTC project manager and the deputy commissioner, Indiana Department of Transportation, testified about the Ohio River Bridges Project. The regional growth

of the area—along with traffic demands, particularly with cross-river mobility—created a gridlock that needed to be addressed. The community was divided over solutions for the issue, and debate continued for years until a two-bridge system was agreed on. The Governors of Kentucky and Indiana united to lower costs and speed up construction of the bridges.

The economic impact of the bridges project over the next 30 years will be significant as it will infuse \$87 billion into the local economy, create 15,000 area jobs, add \$29.5 billion in personal income, and add \$7 billion in tax revenues according to the economic impact study prepared for the Indiana Finance Authority. The Ohio River Bridges Project is a \$2.3 billion project consisting of a downtown Louisville bridge crossing that Kentucky will oversee, and an east end bridge crossing that Indiana will oversee. Tolling for the bridges will begin in late 2016, and the revenues from the tolls will be split between Kentucky and Indiana.

The downtown crossing consists of a new cable-stayed bridge, an improved Kennedy Bridge, and new interstate connections to both Louisville and southern Indiana. Walsh Construction was selected to undertake the project. Construction began on the nearly \$1.3 billion project in July 2013. The downtown crossing bridge is on budget and on schedule. The design portion of the project is nearly complete, and the construction portion of the project is 70 percent complete. Completion of the downtown bridge is expected in December 2016. The project will be delivered 18 months earlier than what was required.

The workforce to complete the downtown bridge consists of nearly 800 workers, including subcontractors who are hired through local unions. The Disadvantaged Business Enterprise (DBE) goal is 8.22 percent, or just more than \$70 million. The project is on track to meet and beat the DBE goal with a projection of 8.49 percent. The downtown portion of the project consists of more than 60 overpasses and bridges, more than 60 retaining walls, more than 440,000 tons of asphalt, and removal of more than 1.3 million cubic yards of soil. The new bridge will be 2,100 feet long. The bridge ends are being driven down to solid rock on steel pile, and more than 100 miles of pile are being driven.

Section one of the downtown bridge project is the Kentucky approach portion. This portion reconfigures the Kennedy Bridge interchange, eliminating the weaves of “Spaghetti Junction” by making I-65, I-64, and I-71 all come together in downtown Louisville. Northbound traffic will pair up with northbound traffic, and southbound traffic will pair up with southbound traffic. More than 40 ramps and overpasses are being built in Kentucky, several of which have already opened to traffic. Two lanes of interstate traffic are being maintained in peak hours in order to prevent interruption of the economies of Louisville and southern Indiana.

Section two of the project is the new I-65 cable-stay bridge and the Kennedy bridge work. All three of the towers for the I-65 bridge have reached their finished heights. All 88 cable stays were installed by October 2015. Deck connections are being made, and the deck should be poured late in the fall of 2015. The I-65 bridge should be open to two-way traffic by January 2016. The bridge has a strong foundation supported by nine piers, four on land and five in the water. Three of the piers include tower supports, which include four drilled shafts, a waterline footing and two tower legs. The drilled shafts are 30 feet deep and 12 feet in diameter. In southern Indiana, approximately a mile of I-65 is also being widened to accommodate traffic.

Section three of the project is the Indiana approach. New lanes of I-65 north are complete, with I-65 south traffic shifting over in September 2015. Crews will demolish old lanes and build new lanes of I-65 south. The Indiana approach now connects to tower five. The flyover ramp from US 31 north to I-65 north is set to open in late 2015.

The downtown bridge will be open to two-way traffic in late 2015. After that time, the new bridge will carry northbound and southbound traffic while the Kennedy Bridge will be closed for \$22 million in improvements. The total project—six lanes of northbound traffic on the new bridge and six lanes of southbound traffic on the Kennedy Bridge—will be completed by December 2016. The public can stay informed about the project through multiple media and online outlets.

The committee was updated on the east end bridge project. The downtown crossings consist of sections one, two, and three, and the east end crossings are referred to as sections four, five, and six. Indiana's public-private partnership (P3) owner is the Indiana Finance Authority (IFA). The Indiana Department of Transportation and the IFA are sister agencies that work together when any P3s are created in Indiana. The P3's equity agreements were developed through a joint venture among Walsh Construction, Vinci Construction, and Bilfinger Berger (WVB). A design-build team was hired, which is made up of Walsh and Vinci construction. Both the downtown and east end crossings have Jacobs Engineering Group as their lead engineer for the project. The Indiana Department of Transportation has relationships with a number of consultants that are helping manage the east end crossing.

The east end crossing's original construction cost was \$763 million, of which the WVB partners had \$81.9 million in equity; \$702 million in private activity bonds were sold. The Indiana Department of Transportation and IFA are putting in \$392 million of milestone payments that include a \$162 million Transportation Infrastructure Finance and Innovation Act loan that was taken out during the project process to help with the final milestone payments. Availability payments (annual payments to the contractor) will be made for 35 years and will begin at substantial completion, approximately December 2016. The base maximum availability payment of \$27.7 million will be made for the first year and then will be indexed as payments go forward for the next 35 years. There will be an operation and maintenance portion of the availability payment to operate and maintain all of section six, the bridge, and then a small approach piece in Kentucky as part of section four as well as paying down the debt.

The design portion of the east end crossing is approximately 82 percent complete, and the construction portion is approximately 66 percent complete. The project's contract amount is \$765.5 million, of which \$105 million is paid. There are some changes in progress in all three sections that are totaling approximately \$17.7 million, of which a good portion is due to the halting of work for approximately 37 days because of a flood. The east end crossing has a 9.23 percent DBE goal, which is equal to \$70.5 million, of which 88 percent has been awarded and 60 percent has been paid. The east end crossing has an expected substantial completion date of October 31, 2016.

Section four of the east end crossing consists of the approach bridge coming off the river, which is approximately 2000 feet long; the Harrods Creek Bridge, which is approximately 1,200 feet long; the tunnel, which is approximately 1,680 feet long; and Wolf Pen Branch Road bridge,

which was completed in 2014. Section four totals 3.2 miles long, \$2.1 million in cubic yards excavation, and 180,000 square yards of concrete pavement. Section five is a 2,500-foot cable-stayed bridge with a 1,200-foot center span and 300 feet high towers. The bridge also includes a shared-use path. Section six, the Indiana approach, consists of the State Road 265/State Road 62 Port Road interchange with a roundabout design and the Salem Road interchange with a connection to River Ridge. Section six is approximately 4.1 miles long with \$1.6 million in cubic yards excavation and 263,000 square yards of concrete pavement.

Electronic Tolling Processes Used on the Ohio River Bridges Project

The innovative finance manager, KYTC, testified about the electronic tolling process that will be used on the Ohio River bridges. The Kennedy Bridge and the two new bridges that are being constructed will be tolled using a single all-electronic tolling system. The Sherman Minton and Second Street Bridges will remain toll free. Indiana and Kentucky procured the services of Kapsch to construct, test, and operate the tolling system. There will not be an ability to pay cash for the tolls at the bridges, which will improve safety and time and reduce costs.

There are different tolling costs associated with crossing the bridges depending on the option for passing. If a customer opens a prepaid account and places a transponder in a vehicle, the transponder is recognized on the bridge and the appropriate toll is deducted from the account. The costs associated with the use of a transponder are \$1 for a frequent user, \$2 for a passenger vehicle, \$5 for a medium truck, and \$10 for a heavy truck. The number of times a person crosses the bridge to be considered a frequent user has not been decided, but the initial suggestion is that a person must cross the bridge 40 times within a month. The second tolling option that a customer can choose when crossing is to open a prepaid account but not place a transponder in the vehicle. The license plate is recognized when crossing the bridge, and the appropriate toll is deducted from the account. This option is referred to as the registered video option, and the costs are \$3 for a passenger vehicle, \$6 for a medium truck, and \$11 for a heavy truck. There is no frequent user alternative for the registered video option. The third tolling option is the unregistered video option. This option is for a customer who chooses not to establish a prepaid account. The license plate is photographed upon crossing, and an invoice is sent to the registered owner for the appropriate toll. The costs associated with the unregistered video option are \$4 for a passenger vehicle, \$7 for a medium truck, and \$12 for a heavy truck. There is no frequent-user alternative for the unregistered video option.

The transponders will be available online, at a customer service center, and at retail outlets. The local transponders will be free, and the E-ZPass transponders will cost less than \$20, but the exact price has not been set. A customer preferring to deal only in cash can reload a prepaid account at a customer service center or a retail outlet.

If a person does not pay after the original invoice is mailed to the registered vehicle owner, a series of reminders is mailed. Fees are then charged to cover the cost of collection. Eventually, a customer will receive a violation notice along with additional fees. Enforcement may include a vehicle registration renewal hold, collection activity, and legal action.

The next step to finalizing the electronic tolling process is that business rules were finalized in November 2015. The public information campaign was to begin shortly thereafter and to continue through 2016 and beyond. The electronic tolling system will be capable of opening accounts in spring of 2016. The system will then be capable of collecting tolls in the fall of 2016.

The toll rates were adopted by a tolling body in 2013 consisting of three Kentucky members and three Indiana members. The chosen rate was based on a traffic and revenue study and the rate needed to support a bond sale on the Kentucky side. The tolling body can override the toll rates at any time, and there is a mechanism for the rates to increase annually by the rate of inflation or 2.5 percent to ensure that the collected tolls are sufficient to pay the ongoing costs of the project. The cameras and antennas will be located close to the bridges' entries, but not on the bridges themselves.

If an invoice is returned to sender and the intended party does not receive it, KYTC will send the invoice to the registered owner of the vehicle. If the invoice does not reach the intended recipient, third parties will use tracing to try to reach the intended party. The cabinet will also work with automobile dealers to come to an equitable solution to figure out how temporary tags should be tolled.

The total loss due to the inability to collect tolls that are owed is estimated to be approximately 2.5 percent of all tolls due, according to the traffic and revenue study.

It is in the best interest of the tolling system and all customers that as many people as possible use the transponders; in an effort to distribute transponders, the cabinet has decided that local transponders will be free. Local transponders work only on the three Louisville and southern Indiana bridges and not on any other tolling system.

The tolls will be in place until all of the financing of the project is paid, which should be 2053 at the earliest. Fifty percent of the combined toll revenue collected from both the Louisville and east end bridges will go to Kentucky, and 50 percent will go to Indiana. The cost of collection depends on how many people use transponders and how many people use invoicing. The cost could range from 4 or 5 cents per dollar collected, if people heavily use transponders, to 25 cents or 30 cents per dollar collected if most people use invoicing. It is more advantageous to the cabinet for customers to use transponders, so the toll rates have been set to try to drive the customers to use transponders.

Motorists using rental cars have two options for paying tolls. One option is that a rental agency in a toll area would place a transponder in the rental car and offer the renter the option to use the transponder for the tolls. If the renter agrees, tolls will be charged on the renter's credit card through the rental agency. This option often involves a fee assessed by the rental agency. The other option is to open a prepaid account and add the rental vehicle to the account. The second option does not require that the motorist pay an additional fee to the rental agency, but the motorist must be sure to add the rental car to the prepaid account and delete it from the account after the car is returned.

The Kapsch contract has a 7-year term with a renewal option for 1 additional year. After that time, there would be a new competitive procurement process. The tolls rates are independent from the contractor that is selected.

REAL ID and Possible Alternatives

The commissioner of the Department of Motor Vehicle Regulation, KYTC, gave a brief presentation concerning REAL ID and possible alternatives. The REAL ID process began in 2005 as a result of a federal mandate. It has now reached the implementation phase. There are four phases of REAL ID; three of them have already been implemented. Phase one includes the requirement of a REAL ID to enter the Department of Homeland Security Office in Washington, DC. Phase two includes a REAL ID to have limited access to most federal facilities and nuclear power plants. Phase three includes the requirement of a REAL ID to enter most federal facilities, including military bases but not including health services offices and Social Security offices. The fourth and final phase of REAL ID implementation includes the requirement of a REAL ID or alternative identification such as a passport to be able to board commercial aircraft within the United States. The fourth phase will be implemented no sooner than 2016.

Visits in Indiana and Virginia, which are compliant with REAL ID, were made to observe the processes of producing a REAL ID. Georgia, where Kentucky's current print vendor is located, was also visited to discuss REAL ID compliance. The University of Kentucky Transportation Center has also completed a study on Kentucky becoming REAL ID compliant. The Department of Homeland Security has given Kentucky an extension until October 10, 2016, to become REAL ID compliant. Within the past year, the Systematic Alien Verification for Entitlements program was implemented, resulting in the ability to ensure the legal status of people being processed for non-citizen IDs.

The cabinet suggested it would be beneficial for Kentucky to move to a central issuance system for driver's licensing and identification cards. The recommendation is for the Circuit Court Clerk's office to continue to take applications and photos for licenses, then issue a temporary driver's license by paper or perhaps a mobile identification process in the future. A private vendor would then produce the license and mail it to the recipient. A central issuance system would ease the security issues of using 141 locations by transitioning to one location where the vendor produces the card. KYTC recommends switching from a 4-year renewal cycle to an 8-year renewal cycle for IDs.

Further discussion was suggested on the possibility of grandfathering current Kentucky citizens into the system and giving them the option to choose a non-REAL ID. However, all new and incoming residents will be required to obtain a REAL ID. Breeder documents that are currently needed to receive a Kentucky driver's license, such as birth certificates, will also be required to obtain a REAL ID; therefore, the cabinet would push for the issuance of a REAL ID instead. By undertaking REAL ID and a central issuance system, KYTC has the possibility of moving the entire application process for non-US citizens, including the photography, to KYTC field offices. Currently, for such individuals, applications are taken at the field office, and photos and cards are processed at the county clerk's office. Streamlining applications for this population would reduce the burden on circuit clerks. Another idea that has been brought to the attention of the cabinet from

the Federal Bureau of Prisons and the Department of Justice is a possible program to have prisoners' photos taken while they are still in a prison facility; then the required documents, along with the photograph, will be sent off to be processed. When the prisoners are no longer incarcerated, they may be provided with IDs that will be needed to integrate them back into society.

The cabinet proposes an increase in renewal fees as well as initial ID acquisition fees. This increase would require a statutory change. Of the seven states surrounding Kentucky, four are REAL ID compliant, five use a central issuance system, and four are either already using an 8-year issuance or are moving toward an 8-year issuance. Currently, the \$20 fee charged for receiving a driver's license is distributed as follows: \$0.50 goes to the county issuing the license, \$0.50 goes to driver's education, \$1 goes to the cost of the card itself, \$4.40 goes to the Administrative Office of the Courts, and \$13.60 goes to the road fund. After a proposed increase from a \$20 fee to a \$50 fee for an 8-year driver's license, the distribution would be \$2 to the county, \$2 to driver's education, \$8 to the cost of the photo taken, \$10 to the Administrative Office of the Courts, and \$28 to the Road Fund. The proposed fee increase would cover the cost to Kentucky of going to a central issuance system. The next step to make Kentucky REAL ID compliant is legislative assistance via statute change. These statutory changes are needed during the 2016 Regular Session of the General Assembly.

If REAL ID legislation is passed in 2016, it will take until approximately early 2017 to implement a request for proposal and begin the work. Approximately 2 years from that time, the first REAL IDs will be issued. The Department of Motor Vehicle Regulation has reached a limit on the number of extensions the federal government will grant in order to allow Kentucky to become REAL ID compliant. From this point on, legislation is needed. Kentucky has a federal extension until October 10, 2016. Passage of legislation may make Kentucky eligible for another extension as it works to become compliant.

Feasibility of Displaying Driver's License Info on Electronic Devices

The manager of government relations and the vice president of corporate affairs from HID Global gave a brief presentation on the feasibility of displaying driver's license information on electronic devices. HID Global, headquartered in Austin, Texas, is the world's leading manufacturer of secure identity credentials. HID Global has developed an interoperable mobile platform to allow users to carry identity credentials on mobile devices. Identity tokens in smartphones are already in use for many applications including ID badges, credit cards, student IDs, and hotel keys.

There is significant momentum in the United States to examine the feasibility of providing a smartphone platform for driver's licenses. HID is reaching out to key stakeholders—which include state divisions of motor vehicles, law enforcement, citizen and privacy organizations, the Transportation Security Administration, and state and federal legislators—to understand the implications of providing such an option to citizens. Seven states are looking into provisions and implications of mobile driver's licenses.

HID Global is working with law enforcement to understand its concerns and objectives regarding mobile driver's licenses. When appropriate, a secure mobile driver's license platform

would allow the authentication of a person's ID from a safe distance by using Bluetooth technology to give law enforcement officers more time to determine whether a traffic stop is routine or complex. A highly secure mobile platform that allows for validation and authentication of a driver's license by authorized entities and individuals can help reduce the prevalence of fake IDs. A mobile credential would be sent to a mobile device only through a secure service by an authorized state licensing authority. HID Global's mobile driver's license solution is built on Seos secure technology, which incorporates best-in-class cryptographic standards defined by the National Institute of Standards and Technology.

No state yet has a public program that offers an optional mobile driver's license. It is unknown whether states would realize a cost savings. The fiscal implications are being studied by a few of the seven states that are looking into provisions and implications of mobile driver's licenses. Iowa has a pilot program that is offered to select Iowa Department of Transportation employees. A physical driver's license would continue to exist alongside a mobile driver's license for the foreseeable future because of many instances where citizens need to prove their identity by presenting physical driver's licenses; accordingly, a mobile driver's license would complement, not replace, the physical license.

Privacy is a major consideration of a mobile driver's license solution. Citizens want to know that their information is safe, and state licensing authorities want to know that the solution they choose for a mobile driver's license will protect the privacy of their citizens. Such a solution must take into account Fair Information Practice Principles, which include transparency, individual participation, purpose specification, data minimization, use limitation, data quality and integrity, security, and accountability and auditing. Citizens may opt for the mobile driver's license, may control who sees their information, and never have to hand over their smartphone.

Any transmitted data from a mobile device used to obtain a citizen's credential information will be usable only by the intended authenticating party, such as the division of motor vehicles and law enforcement, and is protected in transit by standard-based cryptography, reducing opportunities for identity theft.

Vendors other than HID Global are developing their own concepts, such as the vendor working on the Iowa pilot. It is important that any solution be based on interoperable standards, so that no matter the vendor, it will work. The services could be competitively bid out between the states and different vendors.

The cost of implementing a mobile ID program is unknown.

Administrative Regulations

The committee reviewed 601 KAR 9:135 and KAR 14:020. No objections were raised. It also reviewed 603 KAR 5:155, 603 KAR 10:010, 603 KAR 10:002, and 603 KAR 10:021, regarding outdoor advertisement devices; the committee heard testimony on the regulations, but did not take action to find them deficient.

Fees for Electric Vehicles

Owners of gasoline- and diesel-powered vehicles pay local, state, and federal fuel taxes at the pump, but owners of electric vehicles that rely only on electric power do not. Gasoline taxes are the most important source of transportation funding, making up nearly 55 percent of all state highway revenues and more than 90 percent at the federal level.

States are addressing concerns regarding the effect that the growing use of electric vehicles may have on transportation infrastructure, by exploring new fees for ownership of electric and hybrid vehicles to help make up for lost gasoline tax revenues. Georgia, Idaho, and Wyoming enacted legislation in 2015 requiring new fees on certain hybrid and electric vehicles. Colorado, Nebraska, North Carolina, Virginia, and Washington have adopted fees for electric vehicles. These annual fees range from \$50 to \$200.

Kentucky's gasoline tax is 26 cents per gallon, and the federal gasoline tax is 18.4 cents per gallon. Drivers of gasoline-powered cars that average 35 miles per gallon pay \$86.75 in state fuel taxes and \$60.06 in federal fuel taxes each year, based on the 2013 Federal Highway Administration (FHWA) average miles traveled per vehicle of 11,674. Federal gasoline tax revenues are placed in the Highway Trust Fund and then distributed to the states based on formulas provided in federal legislation. On average, Kentucky receives about a dollar from the Highway Trust Fund for every dollar sent to Washington, DC.

Based on the 2013 FHWA average miles traveled per vehicle, Kentucky is losing \$146.81 per year in state fuel tax revenue and in Highway Trust Fund revenue for each electric car driven on its roads. Electric vehicles currently make up a small portion of the number of vehicles on the road, but sales of electric cars in the United States have increased each year since they first went on sale in December 2010. For example, there was a 27 percent increase in electric car sales in 2014 over 2013. Establishing fees on electric vehicles would ensure that the growing number of electric vehicle drivers pay their fair share for using the roads. Electric car advocates claim that these fees work against efforts to get more people to drive electric vehicles, but some policy makers and some experts argue that taxing owners of hybrid and electric vehicle is a matter of making sure all drivers help maintain and construct roads they use.

Senator Joe Bowen presented BR 61, a bill that has been prefiled for the 2016 Regular Session of the General Assembly, for discussion. The bill defines the term "plug-in electric vehicle" and establishes an initial and renewal registration fee of \$100 for such vehicles. This fee would go directly to the state road fund in lieu of the fuel taxes these vehicles would otherwise pay.

Prefiled Bills

The committee took no action on prefiled bills referred during the Interim.

**Report of the 2015
Interim Joint Committee on Veterans, Military Affairs, and Public Protection**

**Sen. Albert Robinson, Co-Chair
Rep. Will Coursey, Co-Chair**

Sen. Julian M. Carroll
Sen. Perry Clark
Sen. C.B. Embry Jr.
Sen. Carroll Gibson
Sen. Ernie Harris
Sen. Stan Humphries
Sen. Chris McDaniel
Sen. Gerald A. Neal
Sen. Dennis Parrett
Sen. Dan “Malano” Seum
Sen. Whitney Westerfield
Sen. Mike Wilson
Sen. Max Wise
Rep. Robert Benvenuti III
Rep. Regina Bunch
Rep. Tom Burch
Rep. Denver Butler
Rep. Larry Clark
Rep. Leslie Combs
Rep. Tim Couch

Rep. Ron Crimm
Rep. Myron Dossett
Rep. David Floyd
Rep. Jim Glenn
Rep. Jim Gooch Jr.
Rep. Jeff Greer
Rep. David Hale
Rep. Kenny Imes
Rep. Martha Jane King
Rep. Donna Mayfield
Rep. David Meade
Rep. Terry Mills
Rep. Tim Moore
Rep. Rick G. Nelson
Rep. Tom Riner
Rep. Dean Schamore
Rep. Rita Smart
Rep. John Tilley
Rep. Russell Webber

LRC Staff: Erica Warren, Jessica Zeh, Jonathan Philpot, and Rhonda Schierer

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Veterans, Military Affairs, and Public Protection

Jurisdiction: Matters pertaining to military affairs and civil defense; National Guard; veterans; retention of military bases; veterans' rights, benefits, and education; veterans' nursing homes; military memorials and cemeteries; safety of citizens and security of public buildings and property; fire prevention and protection; foods, drugs, and poisons; pure foods and drugs; trailer park regulations; hotel and restaurant regulations as they pertain to public health; sanitation plants; and garbage and refuse disposal.

Committee Activity

Kentucky Wounded Heroes

The executive director of the Kentucky Wounded Heroes (KWH) organization said the entity was first the Kentucky Wounded Warriors program from 2007-2011, when it was under the safety organization of the National Guard. In 2012, the program became a totally non-profit public charity that covered the military but was expanded to include police, firefighters, and emergency management services (EMS) personnel, which precipitated the name change.

The program is community based, with no compensation for staff. Previously, no organization had taken care of police, firefighters, and EMS personnel injured in the line of duty. Members of active duty at Fort Knox and the Fort Campbell Warrior Transition Units have been helped through the organization. KWH also includes spouses, children, and significant others. There have been 600 participants. The program is serving as a model for programs in other states.

KWH needs to find wounded heroes and asked legislators to share information about KWH with their constituents in need. KWH received \$12,000 from the Department of Military Affairs (DMA), and the program is looking to acquire another \$12,000 through grants or donations.

Veterans Benefits

The Speaker of the House, and a constituent who is a World War II veteran, discussed the constituent's plight with the US Department of Veterans Affairs to grant his veteran's benefits. He is a 93-year-old veteran who learned that his papers had been burned in a fire in St. Louis. Following discharge, he filed a copy of his service records and discharge papers in the Floyd County Clerk's Office. This proves his service, but he wanted to tell his story for others who could have similar problems. Members were intrigued by his remarkable war stories and memorabilia. All members regretted that he had gone so many years without benefits and expressed gratitude that he had brought the issue forward for others who could be going through something similar. The commissioner of the Kentucky Department of Veterans Affairs (KDVA) assured him that KDVA is going to make sure that the situation is resolved and that he receives his benefits.

Kentucky Department of Veterans Affairs: Year of the Woman Veteran

The legal counsel and women veterans' coordinator discussed KDVA's Year of the Woman Veteran and services provided to female veterans. There are more than 30,000 female

veterans today. The newly appointed Women Veterans Coordinator is an Army veteran who served in Iraq and Afghanistan and a National Guard member who knows about the importance of veterans' benefits for women. The objective of the Kentucky Women Veterans Program (KWVP) is to provide information, advocacy, outreach, and support to female veterans and their families. KWVP strives to ensure that female veterans receive benefits and services parallel to their male counterparts, to discourage discrimination, and to assure that women are treated with respect and are understood by veteran service providers. Its goals are to perform outreach to improve female veterans' awareness of eligibility for federal and state veterans' services and benefits, to make recommendations to improve benefits and services, to incorporate female veterans' issues in the department's strategic planning, and to participate in national forums and committees for female veterans.

Part of KWVP's outreach is establishing a database for Kentucky's female veterans. The database includes volunteered information that is strictly confidential. There are 2,300 female veterans who have provided their information, which allows KDVA to distribute information of interest to them. The outreach efforts will work to increase shelter space for homeless female veterans and enroll female veterans in US Department of Veterans Affairs (VA) health care. KDVA has financially assisted 55 female veterans at a cost of \$13,737.43 through the KDVA Homeless Veterans Program.

National Guard Association of Kentucky

The executive director and president of the National Guard Association of Kentucky (NGAKY) said the organization's members are current and retired officers of the Kentucky National Guard (KYNG). It is affiliated with the National Guard Association of the United States (NGAUS), the nation's oldest military association. NGAKY is a volunteer, nonprofit, nonpartisan association, with a primary mission to advocate for the interests of current and retired soldiers and airmen, as well as families and their employers; ensure that KYNG has sufficient resources and budget to carry out its mission; and provide modern equipment, training, and personnel benefits. NGAKY achieves its mission through its lobbying and legislative activities and provides members with specific insurance benefits that provide immediate support to families. The organization is operated by a board of directors with five elected positions and 27 members, along with five staff, and represents more than 7,500 soldiers, airmen, and retired personnel. Officers in KYNG are eligible to become members of both NGAKY and NGAUS.

The association president shared the legislative priorities. He discussed the importance of protecting the KYNG tuition assistance plan. The plan is a great incentive for Kentuckians to remain in Kentucky at an increased educational level. It fills the gap where National Guard soldiers and airmen do not qualify for federal military service tuition programs. There are 1,000 applicants per semester, and fewer deployments mean more soldiers and airmen are available to take classes, maxing out available funds. The newest soldiers and airmen are far less likely to qualify for post-9/11 GI bill eligibility.

The association president discussed the KYNG Youth Challenge program and the changes required to comply with SB 97, the "dropout" legislation. The program is highly effective as a preventive at-risk youth program, targeting 16- to 18-year-old participants failing to progress

toward a high school degree. SB 97 raised the compulsory attendance age to 18. The change brought the unintended consequence of putting the Harlan and Hardin Youth Challenge campuses out of business if there is no associated accommodation to the status of their unique students who are coded as dropouts. This was not the intent of the bill. The Governor has directed DMA and the Department of Education to find a resolution. Recoding students in Youth Challenge programs to permit attendance, for example, by potentially creating a new code classification, may be the easiest and best solution. The association president discussed the varied effects that federal military budget allocations may have on KYNG.

The director of the DMA's Administrative Services Division announced that the NGAUS General Conference and Expo will be in Nashville in 2015, in Baltimore in 2016, and in Louisville on September 7-10, 2017.

Kentucky Commission on Military Affairs: Briefing on Military Activity in Kentucky

The executive director of the Kentucky Commission on Military Affairs (KCMA) testified on military activity in Kentucky. He reminded the committee of KCMA's goals, which include protecting and developing Kentucky Department of Defense (DOD) installations, strengthening the defense-related economy in Kentucky, communicating strategically, and conducting interagency program support for a strong military in Kentucky.

The director discussed the military friendliness of state-level policies and legislation. Kentucky has an excellent record in regard to retirees and veterans, but a few areas could be addressed. Several states offer a 100 percent exemption on property taxes for service-connected totally disabled veterans, plus some level of exemption for veterans who are not disabled. Twenty-two states exempt 100 percent of military pensions from taxation or achieve the same effect through the lack of state income tax. For military and families who are currently serving, Kentucky is among the most favorable states, with more than 120 pieces of military-friendly legislation in the past several years. The military student identifier is something to consider next session as it is something DOD wants to pursue at the state and federal levels.

KCMA's economic development initiatives for 2015-2016 are to discover opportunities and encourage growth of businesses and employment in defense and related industries. Over the next 12 months, KCMA is undertaking in-depth studies on unmanned aerial systems, aviation, aerospace and defense, economic importance of Kentucky's military installations, veterans, and cyber security. The results will establish an updated knowledge base for KCMA, the Cabinet for Economic Development (CED), and local, regional, and state leaders; will inform legislators of opportunities for legislation; and will enable CED and KCMA to partner effectively in support of future growth.

The executive director testified about recent decisions on troop reduction at Fort Knox and Fort Campbell. Last year, a US Army Environmental Command report found that, in the "worst-case scenario" of possible cuts, Fort Knox could lose 4,100 soldiers and civilian jobs in addition to those already cut, and Fort Campbell could lose 16,000 military and civilian personnel. With a large coordinated push showing state and community support, Fort Knox was spared; the post will gain 67 soldiers, and Fort Campbell will lose only 363 soldiers. Sequestration is the primary driver

to these cuts, and the force strength is already at the lowest levels in the military since before World War I.

The executive director gave an installation update on Fort Knox, Fort Campbell, and the Blue Grass Army Depot. Fort Knox has a new medical facility projected for requests for proposal in late 2015. Several long-term growth objectives are under study, and the local advocacy organization is expanding. Fort Campbell has been minimally affected by the latest round of force structure cuts. It has a public partnership effort under way to enable the use of Army-owned rail for benefit of the mega-site at Hopkinsville, and it is constructing a 5-megawatt solar array. The Bluegrass Army Depot is \$7 million ahead in revenue this fiscal year. Blue Grass Army Depot saved about \$10 million in process improvements this year as a result of aggressive cost avoidance. Construction of the Chemical Demilitarization Plant is approximately 98 percent complete with an approximate completion date of October 28, 2015.

The executive director said that the DOD has excess infrastructure and desires a Base Re-Alignment and Closure (BRAC) round to reduce inventory and associated costs. DOD is taking a risk in infrastructure to fund readiness and is increasing longer-term costs associated with facilities sustainment. Congressional resistance to BRAC is decreasing. If a BRAC is authorized in 2017 or soon thereafter, DOD would spend approximately \$6 billion during the 6-year implementation period but would expect to recoup approximately \$6 billion within that same period. After that initial 6-year period, BRAC reductions in infrastructure would result in \$2 billion in annual recurring savings. Kentucky would prepare by having a Strength, Weakness, Opportunities and Threats (SWOT) analysis and strategic plan. The SWOT plan would pursue installation-specific strategies designed to leverage strengths, mitigate weaknesses, exploit opportunities, and defend against threats, enhance the military value of the installations, reduce installation operations costs, and ensure that data is accurate. The executive director stated that the way ahead in 2015-2016 is through installations and economic development. The installations would advance mission growth targets outlined within the SWOT analysis and strategic plan, support growth of local and regional advocacy groups, and monitor military construction projects. The economic development federal grant will support economic development studies related to defense, support the Fort Campbell Army railhead co-use partnership, identify public-public and public-private partnerships with the Army, and support small business opportunities with DOD and defense contractors.

Update on Federal Military Trauma Legislation

Representative Susan Westrom introduced a constituent who is a female veteran who was subjected to sexual assault while serving in the military. Representative Westrom explained how the two of them met and what she has learned from female veterans in counseling and support groups. She also discussed proposed legislation from US Representative Andy Barr that will amend the Veterans Access, Choice, and Accountability Act of 2014 to improve the private treatment of veterans who are victims of military sexual assault, known as the Military Sexual Assault, Victims Empowerment (Military SAVE) Act. Approximately 26,000 active veterans expressed that they have been victims of sexual assault and that they need help. The constituent testified that she was sexually assaulted by her superior officer only 4 months after she enlisted in the military. She was told that she would be sent home if she reported her assault. She wanted to serve her country and continued to do so but developed an eating disorder as a result of military

sexual trauma (MST). She was hospitalized and was then told that she was not stable enough to testify against her superior officer when she was being discharged. After leaving the military, she joined a military sexual assault victims group and realized that, years later, assault in the military has continued to grow, and many veterans continue to suffer from MST.

After pleas from MST survivors, Representative Westrom turned to US Representative Barr for help with legislation in Congress to protect MST victims and allow them to seek medical help outside the VA. The constituent stated that there are only two VA locations in the US that have MST specialists and almost no resources in this state for female veterans to go outside the VA to get care.

Welcome and Overview of Bluegrass Station's Mission, Past, and Future

The director of Bluegrass Station gave an overview of its status and the factors making it a success. Bluegrass Station has 777 acres, almost 300 of which is developed. In 2013, Bluegrass Station was able to repurpose 211.71 acres from a solely recreational area and a former golf course to usage defined by the US Department of Homeland Security and the Federal Emergency Management Agency for emergency response; 273.86 acres are still undeveloped. The property houses more than 2.2 million square feet of commercial space and 112 buildings.

Bluegrass Station's capabilities include a military culture with a better business plan; operations- and management-based lease versus rent-based lease; expansion without federal military construction funding; integrated anti-terrorism plan with local, state, and federal agencies, including use of on-site and statewide military response; secure access control points, roving patrols, and electronic surveillance; access to military networks, email, and domain; linkage with local and military weather warning systems; redundant broadband and buried fiber capability; access to the defense switching network telephones; environmental permits including air, water, and waste, onsite railhead, and rail loading coordination; separate fire system to achieve 1,500 to 2,300 gallons per minute on-site with a staffed 24/7 fire department; electronic billing using federal wide-area workflow system; surge capability with offsite storage; and on-site vehicle exercise and test area.

At the Bluegrass Station, DOD, the National Guard Bureau, the Kentucky Logistical Operations Center, military units, and state police have a mission to meet task order and tenant needs and to develop strategic partnerships with Bluegrass Station tenants, creating capabilities for tenant success and using complementary abilities of local, state, and federal governments. The goal is to continue improving and gaining jobs.

Kentucky Air National Guard

The adjutant general and the wing commander of the Air National Guard base in Louisville announced that the 123rd Airlift Wing had been honored with a prestigious award recognizing its current and continued excellence in service and practice. The Kentucky Air National Guard (KYANG) has 1,200 members, and the 123rd Airlift Wing is the only one located in Kentucky out of 90 throughout the US. The wing commander explained that the airlift wing has Operations, Maintenance, Mission Support, Medical, and Contingency Response groups. The base was

relocated in 1995 when UPS wanted its property for expansion. The current base is 88 acres and can park 12 to 16 aircraft. Since 9/11, KYANG has had more than 393,000 man days in 45 countries. There is an air guardsman deployed somewhere around the world every day, and KYANG has participated in numerous federal operations worldwide in the past decade while also being an integral part of state missions throughout the commonwealth.

The committee is scheduled to meet in December, and the agenda will include a discussion on state trooper safety measures that may be considered in the 2016 Regular Session.

**Report of the 2015
Federal Environmental Regulation Impact Assessment Task Force**

**Sen. Jared Carpenter, Co-Chair
Rep. Jim Gooch Jr., Co-Chair**

Sen. Brandon Smith
Sen. Robin L. Webb
Rep. Tim Couch
Rep. Fitz Steele
Rodney Andrews
Rusty Cress
Jeff Derouen
John Enochs
Eric Evans
Greg Higdon

Rob Jones
Richard Knighten
Michael Kurtz
Andrew McNeill
Dave Moss
Len Peters
James See
Mahendra Sunkara
Tom Underwood
Jim Ward

LRC Staff: D. Todd Littlefield, Stefan Kasacavage, Janine Coy-Geeslin, and Kate Talley

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Federal Environmental Regulation Impact Assessment Task Force

HCR 168 of the 2015 Regular Session created the task force in order to convene representatives from Kentucky's economic, educational, scientific, industrial, and political sectors to study the consequences of federal environmental regulations on the affordability and reliability of electricity generation and to formulate recommendations on how to cope with those consequences. The task force is required to submit its findings and recommendations to the Legislative Research Commission by December 31, 2016.

Task Force Activity

The task force met three times during the 2015 Interim to discuss different aspects of the Clean Power Plan of the US Environmental Agency (EPA).

EPA's Clean Power Plan

Explanation of Differences Between EPA's Finalized Carbon Dioxide Emission Rate Targets for Power Plants in Kentucky and Previously Proposed Targets. The deputy secretary for Climate Policy, Energy and Environment Cabinet, explained how the EPA's Clean Power Plan (CPP), received in early August, affects Kentucky's existing power plants. The current fleet of power plants average a CO₂ emissions rate of 2,166 pounds of CO₂/MWh. The proposed target rate was 1,763 pounds of CO₂/MWh. In the finalized rule, Kentucky's target rate is 1,286 pounds of CO₂/MWh, which amounts to a 41 percent rate reduction from current levels and 27 percent rate reduction from that which was proposed. Coal-fired generation, which currently accounts for 93 percent of the commonwealth's power, would have to drop to 38 percent and be replaced with natural gas to reach the final target rate. Given the steep decline in emissions mandated by the finalized plan, the cabinet believes the EPA's intention is for states not to rely on natural gas but to develop renewable energy resources.

States are expected to submit a state implementation plan (SIP) by September 6, 2016, that will detail how they will comply with their emissions targets. A state can receive a 2-year extension if it submits an initial SIP that meets all the requirements. If a state fails to submit a SIP, a federal implementation plan (FIP) will be implemented. The FIP will be either a rate-based or mass-based cap-and-trade plan. The FIP offers less flexibility and will likely be more onerous than a state-crafted SIP.

Attorney General's Lawsuit to Block the Clean Power Plan. The chief deputy attorney general said that Kentucky is actively involved in litigation with 15 other states on this plan. A petition for extraordinary writ had been filed, in which the plaintiff states are arguing that the EPA is double-regulating carbon dioxide, which is already regulated under a different section of the Clean Air Act. The petition for review will discuss all possible legal arguments that the joining states can bring forth.

Potential Impacts on Grid Reliability of Clean Power Plan Compliance. The director of reliability assessment and system analysis for North American Electric Reliability Corporation (NERC) testified that the initial CPP rule caused two major concerns for NERC: timing and

reliability assurance. There was an increase in total reduction from 30 percent to 32 percent in the final CPP rule, which may be difficult for some states to attain. There are also significant increases in renewable energy and energy efficiency within the Clean Energy Incentive Plan. The EPA projects trading to be a large mitigating factor for attaining compliance goals.

In November 2014, NERC conducted an initial reliability review of the EPA's CPP. It highlighted potential reliability impacts such as accelerated changes to the resource mix, the impacts on essential reliability services characteristics and increased dependency on natural gas, displacement or retirement of baseload capacity, expansion of natural gas and variable resources, and potential transmission needs. It also served as a platform to inform policy discussions on bulk-power systems reliability. NERC determined that Kentucky is going to need more transmission, and construction of the necessary infrastructure to increase transmission capacity will take a long time. For example, a new urban, 20-mile, 115-kV transmission line takes 64 months to complete. The reliance on gas-fired generation is growing based on gas prices that have been at historic lows, and the CPP will accelerate this reliance.

NERC is working on a comprehensive guidance document to provide recommendations and guidance for states seeking to comply with the CPP. The guidance document will be ready in January 2016, and analysis of the finalized version of the CPP is scheduled to be completed in March 2016.

Compliance With Rate-Based or Mass-Based Emissions Targets Under the Clean Power Plan. The secretary and deputy secretary for Climate Policy, Energy and Environment Cabinet, presented information on whether the commonwealth should choose to comply with the CPP's rate-based CO₂ emission target or the mass-based CO₂ emission target. Meeting the rate-based target would require reducing the average amount of CO₂ emitted per megawatt hour from the total generation fleet, while the mass-based emission target would require the total amount of CO₂ emitted within the commonwealth per year to be reduced.

According to an analysis performed by the cabinet, the rate-based target is more onerous than the mass-based reduction requirement for Kentucky. To meet the final rate-based emissions target, Kentucky would have to replace 60 percent of its coal generation with natural gas combined cycle plants. Given projected electricity demand, choosing the mass-based emissions target will allow the commonwealth to continue to use more coal-fired generation for longer and would reduce the potential for stranding existing generation assets. Opting to meet the mass-based target would also allow the commonwealth to trade emissions allowances with other states that choose to meet the mass-based target.

**Report of the 2015
SB 192 Implementation Oversight Committee**

**Sen. Christian McDaniel, Co-Chair
Rep. Denver Butler, Co-Chair**

Sen. Morgan McGarvey
Sen. Whitney Westerfield

Rep. David Floyd
Rep. Joni L. Jenkins

Rep. John Tilley, ex officio

LRC Staff: Alice Lyon, Jon Grate, Sarah Kidder, Jonathan Scott, and Cindy Smith

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

SB 192 Implementation Oversight Committee

Jurisdiction: The committee was a special committee charged with overseeing the implementation of SB 192 for one Interim.

Committee Activity

The SB 192 Implementation Oversight Committee met six times during the 2015 Interim.

Justice and Public Safety Cabinet Spending

SB 192 of the 2015 Regular Session granted the secretary of the Justice and Public Safety Cabinet express authority to determine the distribution of up to \$10 million in one-time funds for programs to combat prescription drug and heroin abuse in Kentucky. The secretary reported on the allocation and distribution of the funds through November 9, 2015: \$1 million allocated to jails for substance abuse treatment programs for nonstate inmates, with \$500,000 transferred to four jails; \$500,000 allocated for state inmates in jails, with \$250,000 transferred to two expanded programs and six new programs; \$1.5 million allocated for purchasing the extended-release opioid antagonist Vivitrol in a pilot program to help released inmates avoid relapse, with four jails participating to serve an estimated 2,000 offenders; \$2.6 million allocated to community mental health centers, with 10 of 14 of the centers being awarded those funds through a grant request process; \$1 million to local treatment providers for residential treatment for pregnant drug users, with four programs receiving \$250,000 each; \$1.2 million allocated to the Department of Public Advocacy for alternative sentencing social worker positions, with \$600,000 distributed; \$1.2 million to the Prosecutors Advisory Council for drug court “rocket dockets” making treatment a condition of release, with \$600,000 distributed; \$1 million to supplement local Kentucky Agency for Substance Abuse Policy boards through budget increases and competitive grant awards.

Public Health Issues

Authorization and Implementation of Needle Exchanges. Representatives of health departments from Louisville, Lexington, Northern Kentucky Independent Health District, and Three Rivers Health District reported on establishing and operating needle exchanges in their districts. The Louisville needle exchange opened in June 2015 and by early November had served 1,102 participants, distributing 85,958 clean needles and collecting 37,432 dirty needles. A total of 133 people were tested for HIV, 65 were tested for hepatitis C, and 64 were referred to drug treatment programs. The Lexington needle exchange started in early September and by early November had served 104 participants, distributing 1,976 clean needles and collecting 2,104 dirty needles. Five people were tested for HIV, nine were referred to the health clinic for tests for hepatitis or sexually transmitted diseases, and none had been referred to treatment. In the Northern Kentucky Independent District, a program is ready to execute upon the SB 192-mandated approval by local governments in the district, but no fiscal court in the area has taken a vote to authorize needle exchanges. In the Three Rivers District, the city of Falmouth established an exchange in September, but no one had participated in the program as of November 9. Health department officials believed this was because drug users in the community feared that local law enforcement would track participants.

Naloxone Protocols and Distribution. Representatives of the Kentucky Board of Pharmacy and the Kentucky Pharmacists Association reported on the promulgation of regulations to train and certify pharmacists to dispense naloxone to any person or agency requesting it. As of November 3, 11 training programs had been conducted across the state, with 444 pharmacists receiving training and 173 completing certification. Three additional trainings were scheduled through the end of 2015.

Substance Abuse Treatment

Evidence-Based Treatment Practices. Representatives of the Cabinet for Health and Family Services, a director of substance abuse services at a regional Comprehensive Care Center, the clinical director of the Department for Behavioral Health, the executive director of the Office of Drug Control Policy, and the director of the Center on Drug and Alcohol Research presented testimony on the standards used to qualify a treatment practice as “evidence based.”

Each of the agencies follows the federal definition of evidence-based practices used by the Substance Abuse and Mental Health Services Administration (SAMHSA). SAMHSA publishes a directory of programs and practices, the National Registry of Evidence-Based Programs and Practices. Inclusion in the registry indicates that a program has been assessed for outcomes, that there is evidence that these outcomes are positive from at least one study using an experimental design, and that the results of the study have been published within the last 25 years.

Pre-Natal/Post-Partum Substance Use Treatment and Neonatal Abstinence Syndrome. Three doctors treating pregnant drug users in clinical academic settings and the director of a residential treatment program for pregnant drug users reported on the particular issues facing women who use opioids while pregnant and their children. Data is scarce on the impact of in utero opiate exposure and developmental outcomes because the infants are often exposed to multiple risk factors that cannot be isolated.

Sudden detoxification from opioids during pregnancy can lead to birth defects or miscarriage. Residential care for both mothers and infants is ideal, with methadone given to the mother as a stabilization drug during pregnancy, followed by detoxification or maintenance medications after birthing, and broad assistance with transitioning to a home environment such as behavioral modification counseling, parenting skills trainings, or peer support.

Medicaid Coverage of Opioid Treatment. Representatives of the Department for Medicaid Services and the Office of Inspector General within the Cabinet for Health and Family Services presented information on Medicaid coverage. The cabinet estimates that 93 percent of Kentuckians needing substance abuse treatment are income-eligible for Medicaid under the Affordable Care Act (ACA). The commissioner of the Department for Medicaid Services reported that, after the passage of the ACA and the 2014 expansion of Medicaid in Kentucky to cover individuals at or below 138 percent of the federal poverty level, the average recipient is 38 years old, with an equal distribution between men and women.

A wide array of inpatient and outpatient drug rehabilitation services became covered by Medicaid under the ACA, including targeted case management to coordinate services across agencies.

In anticipation of increased demand through Medicaid expansion, the provider types that could deliver behavioral health services to Medicaid recipients were expanded to include licensed practitioners, licensed organizations, and provider groups in community-based and residential programs. Residential Crisis Stabilization Units are another new separate licensure category being developed to augment existing community mental health centers and residential psychiatric crisis stabilization services. There are also some nonlicensed service professionals—including targeted case managers, community support associates, or peer support specialists—who must meet training and supervision requirements as approved by the Department for Behavioral Health.

Drug Treatment for Inmates. Testimony was received regarding both state prison treatment programs and local jail treatment programs. Representatives of Jefferson, Fayette, and Marion Counties' jail-based substance abuse programs reported that the most challenging aspect of housing inmates with opioid addictions was detoxification. Inmates going through withdrawal require close supervision and medical attention. Some opioid users arrested for low-level offenses are not in custody long enough to finish detoxification and are at greater risk for overdose when released from custody. For jail inmates who are serving 6 months or longer, substance abuse programming is available, but relapse upon release is common. Coordinating care between jails and community resources for inmates released from custody is challenging, and many inmates who abuse opioids have co-occurring mental and physical disorders.

From 2005 to 2015, the number of residential substance abuse programming beds within the Department of Corrections has risen from 475 to 3,621, including contracts with Recovery Kentucky, community mental health centers, and halfway houses.

Vivitrol. A Circuit Court judge presented information on the use of Vivitrol in a drug court pilot program. Vivitrol is a once-per-month injectable formulation of naltrexone, which blocks opioid cravings and the euphoric effects of opioids. Vivitrol is a nonaddicting form of medical treatment that does not have any potential for abuse or diversion. It can be used only after detoxification. After a consultation with physicians and lawyers, a drug court defendant who wishes to try Vivitrol agrees to frequent drug testing, counseling, and 12-step meetings as an alternative to incarceration. Every court system in Kentucky has received information on Vivitrol, and there has been one statewide meeting among court personnel.

A physician assistant who is one of the largest Vivitrol distributors in the state reported that there are no special conditions for any type of medical practice to offer Vivitrol. Vivitrol does not show up in drug screenings, making it easier for patients to find jobs. The national average for the length of time a patient uses Vivitrol is approximately 6 months. Some patients have difficulty getting Medicaid or private insurance to cover Vivitrol without first requiring patients to try other medications. The cost for a shot is approximately \$1,200 per monthly injection; the patient is responsible for approximately \$700. It is also available in pill form for \$6 per pill, but the relapse rate is much higher for the pill because it requires daily rather than monthly doses.

Referrals. SB 192 requires hospitals to inform overdose patients of local treatment options, and to get the patients' permission to make contact with providers on the patients' behalf. The chief executive of a Lexington behavioral health treatment center and an emergency room nurse manager from Northern Kentucky praised SB 192 for its emphasis on implementing care, but they said providing local referrals is problematic because treatment near patients is not always available. Other barriers to treatment include lack of transportation, lack of insurance, and long waiting lists. Treatment providers that want to expand offerings often face delays in receiving credentials from Medicaid managed care organizations.

SB 192 also requires local health departments to follow up with those who request emergency services for help with overdoses when contact information is available. The president of Health Departments Association reported a low number of referrals to treatment under that provision, citing a lack of clarity on which agency is to report the contact information to the health department.

Criminal Justice Issues

Good Samaritan Immunity. Defense attorneys and prosecutors presented differing views on immunity from drug possession and drug paraphernalia charges for those who call first responders to the scene of a potential drug overdose. Prosecutors testified that immunity meant prosecutors could not force a person who overdosed into jail-based detox and treatment programs, or create a conditional release based on getting drug treatment. Defense attorneys testified that removing the fear of prosecution for drug possession or paraphernalia was necessary to get people to call for emergency help; if the drug user dies of an overdose, no amount of treatment offered in any setting can save them.

Department of Criminal Justice Training. The assistant director for Training Operations at the Department of Criminal Justice Training (DOCJT) reported on heroin-specific training for law enforcement. DOCJT provides entry-level and in-service training to approximately 11,000 students each year, including city and county police officers, sheriffs, deputy sheriffs, university police, airport police, law enforcement telecommunications, court security, and coroners. Heroin-specific training at police academies began prior to SB 192 and expanded after the law was passed. From 2013 to 2015, 4,716 officers received in-service heroin training, and 700 officers received heroin training in basic training. Upon passage of SB 192, an 8-hour course was created, and it has been taught once in each of the 15 area development districts. Topics of the course include detection and interdiction of heroin trafficking, the dynamics of heroin abuse, and treatment options for addicts.

Tools to Disrupt Supply of Heroin. A group of four law enforcement officers who work in narcotics presented a review of legislative initiatives that could disrupt the supply chain of heroin. The panel requested that legislators consider changing the law to allow wiretaps with roving interceptions and suggested lowering the 100-gram threshold for aggravated trafficking to approximately 25 grams. In regard to manslaughter or homicide overdose death prosecutions, the panel suggested legislation to allow a presumptive cause of death to be established at a post-indictment court hearing through lab testing of body fluids rather than requiring a full autopsy. The panel asked members to consider mandatory minimum sentences for drug crimes to encourage

more defendants to identify others in the drug supply chain in exchange for reduced sentences or earlier parole eligibility. Laws on asset forfeiture for drug crimes require the assets to be located in the same jurisdiction where the criminal conviction occurs; the panel recommended only requiring a felony drug conviction without regard to where.

A group of prosecutors from Kenton, Warren, and Jefferson Counties also addressed tools to disrupt heroin supply. The panel supported wiretaps as the single most effective tool in dealing with large-scale narcotics organizations. The panel also supported collection of DNA upon arrest. Regarding asset forfeiture, some prosecutors would prefer to change the statutes to not require a conviction prior to seizure. Prosecutors asked that the rocket docket program become a permanent fixture in future budget allocations.

New Heroin-Specific Crimes in SB 192. The commonwealth's attorney for the 16th judicial circuit, the secretary of the Justice and Public Safety Cabinet, and the director of the Office for Drug Control Policy discussed the heroin-specific offenses created in SB 192: importation of heroin and aggravated trafficking. Statistics on the number of charges and cases were presented, with the Office of Drug Control Policy saying numbers are expected to increase as awareness of the new crimes grows.

The commonwealth's attorney said that in that circuit, aggravated trafficking charges would likely be dismissed in favor of federal drug charges because the price of 100 grams of heroin would likely be over \$10,000, and it is more likely that a federal narcotics unit could finance such operations. Federal trafficking penalties are also higher than Kentucky penalties. As of November 5, 2015, the commonwealth's attorney had charged only three people with importing heroin, citing the importance of training patrol officers on those charges and the difficulty in proving that heroin had been imported. Greater surveillance on bridges was suggested as a solution.

**Report of the 2015
Subcommittee on Tourism Development**

**Sen. Chris Girdler, Co-Chair
Rep. Rita Smart, Co-Chair**

Sen. Carroll Gibson
Sen. Stan Humphries
Sen. Morgan McGarvey
Sen. Johnny Ray Turner

Rep. Denver Butler
Rep. James Kay
Rep. Jerry T. Miller
Rep. Jill York

Sen. Alice Forgy Kerr, non-voting ex officio
Rep. John Short, non-voting ex officio

LRC Staff: John Buckner, Lou DiBiase, Karen Brady

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Subcommittee on Tourism Development

Jurisdiction: Matters pertaining to tourism and travel promotion and development; state, interstate, and national parks and historic sites; entertainment, arts, heritage, and cultural destinations; the economic impact of the tourism and travel industry.

Subcommittee Activity

During the 2015 interim, the subcommittee met four times at various locations around the state.

Creative Industries

The president of Eastern Kentucky University said the university's Center for the Arts plays an important role in the cultural life of the university and the local community and attracts people to the area. The General Assembly helped in funding the construction and operation of the center.

The executive director of the Kentucky Arts Council defined creative industries as anything that involves services or products that originate in artistic, cultural, creative, authentic, or aesthetic content. These industries intersect with tourism by providing interest and destination points for those visiting the state. The council commissioned the Kentucky Creative Industry Report, released in December 2014, which stressed the role and importance of creative industries to the economy. The council is expanding and supporting fine arts programs and other creative industries to enhance community and economic development.

The mayor of Berea and the executive director of the Berea Tourism Association spoke about the importance of arts-related tourism to their community. Creative industries tourism has been important to Berea for more than half a century, and it is critical to the community to build on this historic foundation. Berea's "Festival of Learnshops" involves such disciplines as glass and beadwork, wood turning, storytelling, and music. The festival draws thousands of participants from across the nation and provides an enormous boost to the local economy. Arts-related tourism is an important part of a community's overall economic profile.

State Fair and Exposition Center

The president and chief executive officer of the Kentucky State Fair Board stated that board events contributed \$482 million in 2014, generating about \$36 million in state and local tax revenue. The fair receives 74,000 visitors on a given day, with more than 230 hosted events, only a small part of which are related to agriculture. The fair employs approximately 1,500 workers. The Exposition Center hosts events such as the North American International Livestock Exposition. The president discussed the center's value and uniqueness compared to similar facilities around the nation, and discussed the facility's concerns, such as work on Cardinal Stadium and the West Wing.

The president and chief executive officer of Kentucky Kingdom spoke about that facility's history and commitment to providing high-quality rides and attractions.

School Calendars

The president and chief executive officer of the Kentucky Travel Industry Association emphasized the contributions of the tourism industry to the state's economy in terms of employment, tax revenue, and out-of-state money. All of these factors are negatively affected by school calendars that have young people returning to school before the end of summer. He mentioned Cave City's Jellystone Park Resort Campground, which is a small family-owned business, the income from which, along with state and local tax revenue, declines precipitously when school starts in early August.

The president and chief executive officer of Kentucky Kingdom said that Kentucky Kingdom employs 1,000 young people who have to leave each August to return to school, and that attendance at the attractions declines significantly about the same time. The president of the Kentucky Marina Association discussed the boating and marina industry and said that school calendars negatively affect it.

State Parks

The secretary of the Tourism, Arts, and Heritage Cabinet spoke about the economic impact of the state parks. In 2014, visitor spending in the parks was approximately \$890 million. Visitor spending has been declining over the last 10 years because of underfunding and growing maintenance and capital construction needs. The parks continue to lose money.

The commissioner of the Department of Parks explained that recent budget increases from the General Assembly helped with some facilities upgrades, but much is still needed. Problems include aging water and sewer lines. The four priorities for improvement are technology, maintenance, infrastructure, and staffing.

The Department of Parks operates according to a 6-year plan. The executive director of the Office of Finance explained that this \$241 million plan contains three categories: general maintenance, with a budget of \$53.6 million; repair and infrastructure, with a budget of \$137 million; and facility improvements, with a budget of \$50.3 million. The plan is submitted every 2 years to the Capital Planning Advisory Board.

The commissioner stated that Internet connectivity is lacking at many parks because of an overloaded system, but the department is working on a solution. The process for making Internet reservations needs to be simplified.

The subcommittee recognized the Friends of Rough River and thanked them for their continued efforts on behalf of the park.

Horse-Related Tourism

The executive director of the Kentucky Horse Park spoke about the park's operations and contributions to the economy. The park sits on 1,224 acres and was opened to the public in 1978. It employs 78 full-time staff and 70 seasonal staff. The park has 100 standing structures, and it has approximately 250,000 tourists annually. The World Equestrian Games were held at the park in 2010, generating approximately \$200 million in revenue for the state in direct and indirect spending. A 2011 study by the University of Louisville found that the park has a substantial positive economic impact for the state.

The challenge for the park is to use business principles to become financially self-sufficient. It receives a \$2.5 million subsidy from the state.

The director of marketing for Keeneland testified that, according to a 2014 study, racing and sales at Keeneland brought in \$590 million to Fayette County. More than 90,000 people attended the Breeders' Cup in 2015, bringing ticket revenue of \$19 million and total wagers of \$150 million. Nearly 4.6 million people watched the event. Keeneland is evaluating the possibility of bringing the Breeders' Cup back to Lexington in 2018.

The executive director of Horse Country Inc., a privately funded nonprofit corporation, said that its goal is to promote and encourage tourism to horse farms and other agritourism sites. The organization sold 577 tickets to tour and meet American Pharoah at Coolmore in less than 24 hours, and it has made a big impact on participating horse farms.

Tourism as an Industry

The president and chief executive officer of the Kentucky Travel Industry Association provided an overview of the association and its mission. Service is divided into advocacy, education, information, and business development. Tourism can be seen as an export industry, where tourists are buyers who come into Kentucky to make purchases and then leave with products and memories. The industry had a \$13.1 billion economic impact in 2014, directly supporting 179,000 jobs and generating \$1.37 billion in local and state tax revenue.

The president also spoke about tourism promotion and advertising. There is insufficient awareness of available tourism opportunities, due largely to insufficient tourism marketing funds. In 2013, Kentucky was last among southeastern states in tourism advertising funds. This is compounded by the diversion of existing funds, such as when the state took \$9 million in transient room tax revenue and moved it to the General Fund budget. He said the Kentucky League of Cities is proposing to remove up to 75 percent of the restaurant tax from local tourism commissions to be provided directly to city governments; thus, he asked for help protecting tourism funds.

**Report of the 2015
Administrative Regulation Review Subcommittee**

**Sen. Ernie Harris, Co-Chair
Rep. Mary Lou Marzian, Co-Chair**

Sen. Julie Raque Adams
Sen. Perry B. Clark
Sen. Alice Forgy Kerr

Rep. Denver Butler
Rep. Will Coursey
Rep. Tommy Turner

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard,
Carrie Klaber, Ange Bertholf, and Betsy Cupp

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Administrative Regulation Review Subcommittee

Jurisdiction: Review and comment on administrative regulations submitted by the Legislative Research Commission; make nonbinding determinations concerning the statutory authority to promulgate administrative regulations filed with the Legislative Research Commission; review existing administrative regulations; recommend the amendment, repeal, or enactment of statutes relating to administrative regulations; conduct a continuous study of the administrative regulations procedure and the needs of administrative bodies; study statutes relating to administrative hearings; make legislative recommendations.

Subcommittee Activity

KRS Chapter 13A established the subcommittee as a permanent subcommittee of the Legislative Research Commission. The subcommittee meets monthly and reviews approximately 43 administrative regulations each month. In addition to the review of proposed administrative regulations at each month's meeting, the subcommittee reviews issues relating to the intent and implementation of KRS Chapter 13A and issues relating to existing administrative regulations. Pursuant to KRS Chapter 13A, the subcommittee assists administrative bodies in the drafting of administrative regulations. After the subcommittee has reviewed an administrative regulation, LRC assigns it for a second review by the legislative subcommittee with jurisdiction over the subject matter.

From November 14, 2014, through November 13, 2015, executive branch agencies filed 52 emergency administrative regulations (a decrease of 33 percent from the prior year) and 588 ordinary administrative regulations (an increase of 11 percent over the prior year). Of the ordinary administrative regulations filed, 75 were new, 412 were amendments to existing administrative regulations, and 101 were amended after comments.

In accordance with KRS Chapter 13A, the Administrative Regulation Review Subcommittee reviewed all of the ordinary administrative regulations that were not withdrawn or expired before its monthly subcommittee meetings. Of those ordinary administrative regulations reviewed, four were found deficient, 327 were amended to conform to KRS Chapter 13A and other appropriate statutes, and 116 were approved as submitted by the agency. Additionally, the promulgating agencies withdrew 21 administrative regulations during this period. These totals do not include the 118 administrative regulations that were filed on or before November 13, 2015, and that are scheduled for review during the subcommittee's December 2015 and January 2016 meetings.

The four administrative regulations found deficient became effective notwithstanding the findings of deficiency, based on written determinations made by the Governor. The administrative regulations found deficient included the following three administrative regulations promulgated by the Public Protection Cabinet, Horse Racing Commission: 1) 810 KAR 1:300, International medication protocol as a condition of a race (which applies to thoroughbred racing); 2) 811 KAR 1:300, International medication protocol as a condition of a race (which applies to harness racing); and 3) 811 KAR 2:300, International medication protocol as a condition of a race (which applies to quarter horse, Appaloosa, and Arabian racing). The last administrative regulation

found deficient was 900 KAR 5:020, State Health Plan for facilities and services, promulgated by the Cabinet for Health and Family Services, Office of Health Policy.

The subcommittee staff and the regulations compiler conducted informal training sessions with executive branch agencies as requested by the agencies. The training sessions focused on the administrative regulations process and the requirements for drafting and formatting administrative regulations.

In July, LRC published the Kentucky Administrative Regulations Service, which contains all administrative regulations in effect as of June 15, 2015. The Kentucky Administrative Regulations Service was made available both in a bound 13-volume set and in a one-CD format.

**Report of the 2015
Capital Planning Advisory Board**

**Sen. Stan Humphries, Co-Chair
Rep. Terry Mills, Co-Chair**

Sen. Whitney Westerfield
Rep. Tom Riner
Charles Byers
Jane Driskell
Laurie Dudgeon
Carole Henderson
John Hicks

Sherron Jackson
Mary Lassiter
James W. Link
Dan Markwell
Mark R. Overstreet
Katie Shepherd

LRC Staff: Shawn Bowen, Katherine Halloran, and Jennifer Luttrell

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Capital Planning Advisory Board

Jurisdiction: The 1990 General Assembly established the Capital Planning Advisory Board of the Kentucky General Assembly, composed of members representing the executive, judicial, and legislative branches of government. Pursuant to KRS Chapter 7A.120, the board is charged with creating a 6-year comprehensive statewide capital improvements plan encompassing state agencies and universities. The plan is to be submitted to the heads of the three branches of government by November 1 of each odd-numbered year. This schedule enables the comprehensive capital plan to be used in the subsequent budget process and legislative session.

Board Activity

Since adjournment of the 2015 Regular Session, the Capital Planning Advisory Board has held five meetings. The meetings focused primarily on the review of agency capital plans in preparation of the 2016–2022 Statewide Capital Improvements Plan. At these meetings, the board received testimony from executive branch agencies, postsecondary institutions, and the judicial branch. The testimony included discussion of each agency’s capital construction, information technology, and equipment needs. The agencies also discussed potential funding for the grant and loan programs they administer. The agency capital plans reported the need for 1,460 projects totaling approximately \$19.2 billion from all fund sources over the next 6 years. General fund dollars represent approximately \$7.9 billion of the total need. For the 6-year period, approximately \$9.2 billion is needed for construction projects such as new facilities and expansions; \$8.0 billion for maintenance and renovation of existing facilities; \$139 million for equipment; \$919 million for information technology projects; and \$915 million for the grant and loan programs that provide assistance to nonstate entities for water and sewer infrastructure, schools, and economic development.

In addition to the review of agency capital plans, the meetings also included special reports provided by the Commonwealth Office of Technology (COT) and the Council on Postsecondary Education (CPE). As part of the capital planning process, these agencies are responsible for the review and evaluation of capital construction and information technology projects. At the July meeting the COT chief information officer presented his report regarding COT’s review of executive branch information technology projects. The evaluations were conducted over a 1-week period by an eight-member review panel. A total of 42 qualifying information technology projects were submitted for the 2016-2018 biennium. Twenty projects totaling \$140 million were identified as high in value, meaning they had the best return on investment for the commonwealth. The panel also recommended 12 general fund projects valued at \$62 million and three additional projects valued at \$32 million. The three additional projects did not mathematically make the cut as high in value but were deemed important to the commonwealth in achieving its strategic goals.

The CPE president testified about CPE’s review and evaluation of capital construction projects and information technology projects submitted by the postsecondary institutions. A model developed in 2011 was used to evaluate postsecondary capital projects for the 2016-2018 biennium. Rather than recommend funding for individual capital projects, CPE recommended a pool of funding for each institution using a formula that takes into account factors such as an institution’s deferred maintenance needs and full-time equivalent student enrollment. The

approach was adopted to achieve a more equitable distribution of capital funds among institutions, rather than a request based on highest-priority projects at each institution. To fund this initiative, in its 2016-2018 budget request, CPE plans to request \$600 million in general funds, with \$288 million allocated for asset preservation and renovation projects and \$312 million allocated for new/expanded space projects. This request is part of the 3-biennia (6-year) \$1.8 billion capital budget plan that would use a pooled approach for allocating capital funding among institutions. CPE's report also specified a pool of \$60 million in general funds for information technology projects. A total of 21 information technology projects were submitted to CPE for review; 10 were designated as high value, and 7 were designated as very high value.

The board gave final approval to the 2016–2022 Statewide Capital Improvements Plan at its October meeting. The plan included policy and project recommendations developed and approved by board members.

Relative to the policy recommendations, the following were adopted in conjunction with the 2016-2022 capital plan:

- Budget Reserve Trust Fund: The board recommended that the Governor and the General Assembly place a high priority on fully funding the Budget Reserve Trust Fund at a level that represents 5 percent of general fund revenues.
- Council on Postsecondary Education-Balanced Capital Investment Approach: The board recommended that the Governor and the General Assembly use a funding approach balanced between new construction and capital renewal when deciding on capital project funding for postsecondary education institutions.
- State Agency Maintenance Pools: The board recommended that, in each biennium, sufficient funding be appropriated for agency miscellaneous maintenance pools to address maintenance projects that would protect the state's significant investment in its physical plant.
- Commonwealth Office of Technology: endorsement of the agency's approach to developing enterprise-wide business solutions for capital information technology projects.

Relative to projects proposed to be financed from state general funds in the 2016–2018 executive budget, the board recommended a total of 47 projects in three areas: construction (maintenance/renovation), construction (new), and information technology. The following projects were recommended:

Construction (maintenance/renovation)

Building Roof/Wall/Window Repair & Replacement (Phase 1)–Department of Parks
Electrical and Telecommunications Upgrade Western State Hospital–Cabinet for Health and Family Services
Expand Kentucky Veterans Cemetery Central–Department of Veterans Affairs
Facilities Renewal and Modernization Project–University of Kentucky
HVAC Replacement Project CHR Building–Finance and Administration Cabinet
Kentucky Exposition Center Roof Repair–State Fair Board
Kentucky School for the Blind Howser Hall Renovation–Department of Education
Renovate Combs Classroom Building–Morehead State University
Renovate Moore Building–Eastern Kentucky University

Renovate Natural Science Building–University of Louisville
Replace Underground Infrastructure Steam/Electric–Western Kentucky University
School of Nursing–Kentucky State University
Stabilization of Dorm 8 Kentucky State Reformatory–Department of Corrections
Upgrade Campus Electrical Distribution System–Murray State University
Upgrade Campus Fire and Security Systems–Morehead State University

Construction (new)

Commonwealth Energy Management and Control System–Finance and Administration Cabinet
Construct Bowling Green Veterans Center–Department of Veterans Affairs
Construct Center for Excellence in Education for Performing Arts–Morehead State University
Construct College of Education Complex–Eastern Kentucky University
Construct Four 3-Bed Homes Pilot-Central Region–Cabinet for Health and Family Services
Construct Instructional Building at Health Sciences Campus–University of Louisville
Construct New Academy Firing Range–Kentucky State Police
Construct New Gordon Ford College of Business–Western Kentucky University
Convert Existing Army Aviation Support Facility to Armory/Administrative Facility–
Department of Military Affairs
Expand Herrmann Science Center–Northern Kentucky University
Expand Pikeville Campus Big Sandy Community and Technical College (Additional funding)–
Kentucky Community and Technical College
Mason County Court Facility Repair Project–Court of Justice
Renovate Medical Examiner’s Office and Jefferson Lab–Justice and Public Safety Cabinet
Roof Repair and Replacement Pool–Kentucky State University
Simpson County Court Facility Repair Project–Court of Justice

Information Technology

Cable Infrastructure Planning and Implementation–Department of Parks
Child Support System (KASES III)–Cabinet for Health and Family Services
Commonwealth College (HB 265) Technology System–Council on Postsecondary Education
Enhance Network/Infrastructure Resources (Additional funding)–Morehead State University
Enterprise Document Management Project–Commonwealth Office of Technology
Expand, Upgrade Campus Data Network–Eastern Kentucky University
Kentucky Business One Stop Phase 3–Finance and Administration Cabinet
Kentucky Human Resources Information System–Court of Justice
KREF System Modernization–Kentucky Registry of Election Finance
Purchase Research Computing Infrastructure–University of Louisville
Upgrade and Expand Distance Learning–Morehead State University
Upgrade Campus Network–Murray State University
Upgrade Information Technology Infrastructure–Kentucky State University
Upgrade Information Technology Infrastructure–Western Kentucky University
Upgrade Kentucky Offender Management Systems (Additional funding)–Department of Corrections
Vehicle/Mobile Radio Replacement–Kentucky State Police
Vital Statistics Phase I Digitized System–Department of Public Health

In addition to the state-funded project recommendations, the board also provided recommendations relative to the authorization of capital projects funded with sources other than state funds. The following recommendations reflect the desire to emphasize the priority the board believes should be placed on appropriately maintaining existing facilities and equipment.

Statutory Capital Funding Pools/Programs

The board recommended that funds be appropriated to each of the three pools established in KRS Chapter 45 to address capital project needs throughout state government. The amount recommended is consistent with the Finance and Administration Cabinet request of \$12,500,000 for the FY 2016-2018 biennium. The pools are:

- The Capital Construction and Equipment Purchase Contingency Account, which is used primarily to address cost overruns on authorized projects;
- The Emergency Repair, Maintenance, and Replacement Fund, which is used to address unanticipated projects needed to prevent or minimize injury or damage; and
- The Statewide Deferred Maintenance Fund, which is a supplemental funding source to address deferred maintenance or government mandate needs primarily for agencies that have inadequate maintenance funds.

State Agency Maintenance Pools for Construction Needs

The board recommended that maintenance pool appropriations for all agencies be significantly increased in the 2016-2018 biennium. In a separate policy recommendation, the board reiterated its belief in the importance of the state agency maintenance pools to finance minor planned and unanticipated construction project needs (usually costing less than \$600,000 each). In their 2016-2022 capital plans, the agencies identified the need for approximately \$259 million for maintenance pools over the 6-year period. In the first biennium, the request for maintenance pool funding totaled \$97 million. This is significantly more than has been appropriated for this purpose in past biennia.

State Agency Equipment Maintenance Pools and Replacement Schedules

The board also recommended that funds be provided, as appropriate, for equipment and systems maintenance pools. Similar to the need to protect the state's investment in facilities, various agencies that are responsible for major equipment assets of the state need the ability to address ongoing maintenance needs of those items. This would include aircraft and communications equipment. The board further recommended that funding be appropriated on a regular basis to allow agencies to establish and adhere to equipment replacement schedules so that replacement and upgrade needs can be addressed on a periodic basis, rather than accumulating until a major infusion of funds is required.

Long-Range Plan for Housing State Agencies in the Frankfort Area

The board commended the Department for Facilities and Support Services in the Finance and Administration Cabinet on its continuing progress toward implementing the plan developed in response to KRS 42.425 to reduce the amount of space leased to house state agencies in Franklin

County. The board requested that the department continue to address reducing the amount of space leased by state government in other locations around the state. This action is consistent with KRS 42.425(2)(b)2, which directs the development of long-range plans for housing state agencies in metropolitan areas.

Grant and Loan Programs

Various agencies proposed significant funding in 2016-2018 for programs that would provide assistance, through a competitive application process, to nonstate entities. Included are programs of the Cabinet for Economic Development, the Department for Local Government, the Kentucky Infrastructure Authority, and the School Facilities Construction Commission. Because of the limited resources available and the significant needs in other areas of government, the board urged that decision makers carefully analyze existing fund balances/carry forwards prior to authorizing additional appropriations for these programs.

The complete 2016–2022 Statewide Capital Improvements Plan, as approved by the board, was transmitted to the heads of the three branches of government by the statutory due date of November 1.

Capital Projects and Bond Oversight Committee

Sen. Chris Girdler, Co-Chair
Rep. Linda Belcher, Co-Chair

Sen. Julian Carroll
Sen. Stan Humphries
Sen. Christian McDaniel

Rep. Will Coursey
Rep. Steven Rudy
Rep. Jim Wayne

LRC Staff: Josh Nacey, Katherine Halloran, and Maurya Allen

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Capital Projects and Bond Oversight Committee

Jurisdiction: The committee is a permanent subcommittee of the Legislative Research Commission and is charged with overseeing the expenditure of funds for state capital projects; the allotment of funds from the Emergency Repair, Maintenance, and Replacement Account, the Capital Construction and Equipment Purchase Contingency Account, and the Statewide Deferred Maintenance Fund; the state's acquisition of capital assets, including the lease of real property; the issuance of bonds by the commonwealth and related statutory entities; and the issuance of bonds by or on behalf of local school districts.

Committee Activity

As a statutory committee, the Capital Projects and Bond Oversight Committee meets monthly. This report covers committee activity between November 1, 2014, and October 31, 2015. The committee met seven times in Frankfort in the Capitol Annex.

Review of Unbudgeted Capital Projects

The committee approved 12 unbudgeted capital projects pursuant to KRS 45.760(7), which permits a capital construction project to be authorized even though it is not listed in an enacted budget, if at least 50 percent of the costs are from private or federal sources and the project is presented to the committee for review.

Unbudgeted Projects Approved

Agency	Title Of Project	Scope/Fund Source
Office of Employment and Training	Unemployment Insurance State Identified Prevention Strategy Upgrade	\$975,600 federal
Office of Employment and Training	Unemployment Insurance System Improvements	\$750,000 federal
Morehead State University	Construct Volleyball Facility	\$1,400,000 private
University of Louisville	Athletics Maintenance Facility	\$1,250,000 private
Western Kentucky University	Confucius Institute Facility	\$2,300,000 private
Kentucky Transportation Cabinet	Whitley County Rest Area Pump Station	\$928,000 federal
University of Louisville	Herman and Heddy Kurz Visitor's Center	\$2,000,000 private
University of Louisville	Soccer Practice Field	\$2,000,000 private

Agency	Title Of Project	Scope/Fund Source
KCTCS - Big Sandy CTC	Construct Pikeville Technology Center	\$4,500,000 federal/agency
Department of Military Affairs	Install Solar Panels - Richmond Armed Forces Reserve Center	\$659,000 federal/restricted
Department of Military Affairs	Install HVAC - Lexington National Guard Armory	\$842,800 federal/maintenance pool
Department of Military Affairs	Construct Fire Station Storage Building - Wendell H. Ford Regional Training Center	\$750,000 federal

The committee approved two scope increases for unbudgeted capital projects during the period. The University of Kentucky requested a \$1,100,000 increase for the Center for Applied Energy Research Slipstream project. The revised project scope was \$2,700,000 and was necessary to address discovery of below-grade structures and cover additional crane time. The Finance and Administration Cabinet requested a \$5,026,400 increase for the Eligibility Systems Integration Services project. The revised scope was \$85,026,400, to be paid from federal funds.

Review of Budgeted Capital Projects

Requests for Scope Increases. The committee considered executive agency requests for scope increases to address increased costs of construction materials or expand the scope of projects. The committee approved six agency requests to increase the scope of authorized capital projects, using private, federal, or restricted (agency) funds. Pursuant to KRS 45.760(6), to be eligible for interim approval, any increase in excess of 15 percent of a project’s authorized scope must be funded by federal or private funds.

Scope Increases for Budgeted Projects Approved

Agency	Project Title	Increase	Revised Project Scope
University of Kentucky	Expand/Renovate Commonwealth Stadium and Nutter Training Center	\$6,500,000	\$126,500,000
Eastern Kentucky University	Construct Addition to the Ashland Building	\$400,000	\$3,800,000
Eastern Kentucky University	Commonwealth Hall Repurposing and Renovation	\$375,000	\$2,875,000
Northern Kentucky University	Renovate Residence Halls Project	\$375,000	\$3,875,000
Northern Kentucky University	Replace Callahan Roof Project	\$180,000	\$1,380,000
Eastern Kentucky University	Renovate/Improve Athletics Facilities	\$1,000,000	\$16,000,00

General Oversight and Review Topics

Allocation From Various Pool Programs. Allocations authorized by the budget bill were reported for capital projects costing more than \$600,000 and equipment costing more than \$200,000.

Quarterly Status Reports. The committee received statutorily mandated status reports from the Finance and Administration Cabinet, the universities that manage their own capital construction programs (University of Kentucky, University of Louisville, Murray State University, Northern Kentucky University, and Western Kentucky University), the Administrative Office of the Courts, and the Commonwealth Office of Technology.

Energy Savings Performance Contracts. The committee did not review any energy savings performance contracts during this reporting period.

Review of Bond-Funded Loan/Grant Programs

Economic Development Bond Projects. The committee did not review any Economic Development Bond grants during the reporting period.

Kentucky Infrastructure Authority Projects. The committee reviewed and approved Kentucky Infrastructure Authority loans and grants to local government entities for public infrastructure projects.

Fund A (Federally Assisted Wastewater Revolving Loan Fund). The committee approved 22 loans totaling \$89,917,139.

Fund A Loans Approved

Borrower	County	Amount
City of Catlettsburg	Boyd	\$2,485,000
City of Morganfield	Union	\$2,642,200
City of Frankfort	Franklin	\$3,731,000
City of Harrodsburg	Mercer	\$1,420,000
City of Barbourville	Knox	\$1,856,109
Lexington-Fayette Urban County Government	Fayette	\$36,000,000
City of Harrodsburg	Mercer	\$10,000,000
City of Harrodsburg	Mercer	\$810,000
City of Nicholasville	Jessamine	\$340,980
Sanitation District #1 of Northern Kentucky	Boone, Campbell, Kenton	\$3,000,000
Sanitation District #1 of Northern Kentucky	Boone, Campbell, Kenton	\$2,750,194
City of Corbin f/b/o Corbin City Utilities Commission	Laurel	\$8,684,115
City of Frankfort	Franklin	\$747,041
City of Glasgow f/b/o Glasgow Water Company	Barren	\$3,500,000

Borrower	County	Amount
City of Frankfort	Franklin	\$1,570,000
City of Frankfort	Franklin	\$1,500,000
City of Frankfort	Franklin	\$1,320,000
Augusta Regional Sewer Authority Inc.	Bracken	\$600,000
City of Brodhead	Rockcastle	\$1,275,000
City of Liberty	Casey	\$4,156,000
City of Hardinsburg	Breckinridge	\$1,279,500
City of West Point	Hardin	\$250,000

Fund A Loan Increases. The committee approved one Fund A loan increase for the City of Owensboro Sherm Ditch Rehabilitation Project in Daviess County totaling \$397,500.

Fund B (Infrastructure Revolving Fund). The committee approved eight loans totaling \$5,666,713.

Fund B Loans Approved

Borrower	County	Amount
Bracken County Water District	Bracken	\$358,000
City of Hustonville	Lincoln	\$476,400
Northern Kentucky Water District	Kenton	\$1,500,000
City of Barbourville	Knox	\$130,000
City of Catlettsburg	Boyd	\$270,000
US 60 Water District	Shelby	\$2,300,000
City of Jeffersonville	Montgomery	\$309,000
City of Pineville f/b/o Pineville Utility Commission	Bell	\$323,313

Fund B Loan Increases. The committee approved two Fund B loan increases totaling \$159,316.

Fund B Loan Increases

Borrower	County	Amount
Symsonia Water District	Graves	\$29,016
City of Hustonville	Lincoln	\$130,300

2020 Program (Subaccount of Fund B). The committee did not review any 2020 Program grants during this reporting period.

Fund C (Governmental Agencies Program Loan Fund). The committee approved two Fund C loans totaling \$2,512,420.

Fund C Loans Approved

Borrower	County	Amount
City of Richmond f/b/o Richmond Water, Gas, and Sewerage Works	Madison	\$1,422,370
Warren County Water District	Warren	\$1,090,050

Fund F (Federally Assisted Drinking Water Revolving Loan Fund). The committee approved 12 loans totaling \$21,573,466.

Fund F Loans Approved

Borrower	County	Amount
Northern Kentucky Water District	Kenton	\$4,000,000
City of Pineville f/b/o Pineville Utility Commission	Bell	\$220,000
City of Burkesville	Cumberland	\$811,600
City of Harrodsburg	Mercer	\$326,660
Monroe County Water District	Monroe	\$8,000,000
City of Fleming-Neon	Letcher	\$143,616
City of Paducah f/b/o Paducah Water Works	McCracken	\$4,493,000
Whitley County Water District	Whitley	\$932,500
City of Crab Orchard	Lincoln	\$265,000
City of Nicholasville	Jessamine	\$416,120
Bath County Water District	Bath	\$925,470
Crittenden-Livingston County Water District	Livingston	\$1,039,500

Fund F Loan Increases. The committee approved one Fund F loan increase for the City of Carrollton f/b/o Carrollton Utilities in Carroll County totaling \$119,171.

Coal/Noncoal Projects. The committee did not review any grants for coal and noncoal counties during this reporting period.

Review of Bond Issues and Financing Agreements

In addition to the individual bond-funded projects, the committee approved or reviewed the following bond issues and financing agreements.

State Property and Buildings Commission. The committee approved or reviewed three new bond issues for the State Property and Buildings Commission.

Bond Issues

Bond Issue	Use	Amount
State Property and Buildings Commission Revenue (Series A) and Refunding Revenue (Series B) Bonds, Project Number 108	Funding of authorized projects; refunding; and costs of issuance	\$384,000,000
State Property and Buildings Commission Judicial Branch Agency Fund Revenue Bonds, Project Number 109	Permanent, tax-exempt financing for Phase I of the Administrative Office of the Courts' E-Case and Docket Management system	\$20,075,000
State Property and Buildings Commission General Fund Revenue and Refunding Revenue Bonds, Project Number 110 and Road Fund Revenue Bonds, Project Number 111	Funding of authorized projects; refunding; and costs of issuance	\$115,855,000*

*Estimated-Preliminary Subject to Change

Postsecondary Institutions. The committee approved or reviewed four new bond issues for postsecondary institutions.

Bond Issues

Bond Issue	Use	Amount
Morehead State University General Receipts Bonds, 2015 Series A	Construct Student Residential Facilities project	\$28,185,000
Eastern Kentucky University General Receipts Bonds, 2015 Series A	Renovate/Improve Athletics Facilities project	\$14,280,000
Murray State University General Receipts Bonds, 2015 Series A	Replace Franklin Hall project	\$26,000,000
University of Kentucky General Receipts Bonds, 2015 Series A; Refunding Bonds, 2015 Series B; and Refunding Bonds, 2015 Series C	Renovate/Upgrade Healthcare Facilities project; refund debt	\$259,040,000

Kentucky Economic Development Finance Authority. With Kentucky Economic Development Finance Authority (KEDFA) bond issues, the state is a conduit issuer and has no legal or moral obligation for the repayment of the debt. The bonds are issued for the benefit of the developer, but the developer has full responsibility for the repayment of the bonds. The committee reviewed or approved four KEDFA conduit bond issues during the reporting period.

Conduit Bond Issues

Bond	County	Amount
KEDFA Healthcare Facilities Revenue Bonds, Series 2015 (Carmel Manor, Ft. Thomas – Campbell County)	Campbell	\$18,630,000
KEDFA Hospital Revenue Refunding Bonds, Series 2015A (The Trover Clinic Foundation, Inc.—which funded Baptist Health Madisonville Project)	Hopkins	\$20,000,000 ⁺
KEDFA Tax-Exempt Senior Revenue Bonds Series 2015A; KEDFA Taxable Senior Revenue Bonds, Series 2015B-1, and Series 2015B-2; KEDFA Subordinate Revenue Bonds, Series 2015C (Next Generation-Kentucky Information Highway)	various	\$305,175,110
KEDFA Hospital Revenue Bonds, Series 2015A and KEDFA Hospital Refunding Revenue Bonds, Series 2015B (Owensboro Health, Inc.)	various	\$92,470,000

⁺Amount to not exceed

Kentucky Housing Corporation. The committee approved or reviewed four conduit bond issues totaling \$85,755,000.

Conduit Bond Issues

Bond	County	Amount
Tax-Exempt Multifamily Housing Bonds (Heritage Green—Louisville)	Jefferson	\$18,675,000
Kentucky Housing Corporation Single Family Housing Revenue Bonds 2014 Series A (Refinancing of Series 2005 G and Series 2005 H)	various	\$30,000,000
Tax-Exempt Indebtedness for the Benefit of Roosevelt House, LLLP	Daviess	\$22,080,000
Tax-Exempt Multifamily Housing Bonds (BTT Development—Western Kentucky)	various	\$15,000,000 ⁺

⁺Amount to not exceed

Kentucky Higher Education Student Loan Corporation. The committee approved one bond issue for the Kentucky Higher Education Student Loan Corporation (KHESLC). The \$134,605,000 in bond funds from the KHESLC Student Loan Asset-Backed Notes, Series 2015-1 were issued to finance certain rehabilitated Federal Family Education Loan Program (FFELP) loans originated by KHESLC, all remaining failed auction rate securities (ARS) held under the 1997 General Bond Resolution, and two other FFELP loan portfolios serviced by the Issuer.

Kentucky Infrastructure Authority. The committee reviewed one bond issue for the Kentucky Infrastructure Authority (KIA). The \$69,235,000 in bond funds from the Wastewater and Drinking Water Revolving Fund Program Revenue Refunding and Improvement Bonds, Series 2015 A, and Governmental Agencies Program Revenue and Improvement Bonds, Series

2015, were issued to partially advance refund KIA Series 2010 A Revolving Fund Revenue Bonds, current refund the Fund C Governmental Agencies Program and Series 2004 A Revenue Refunding and Improvement Bonds, add \$10 million to the Fund C Governmental Agencies Program, and pay associated costs of issuance.

Kentucky Asset/Liability Commission Funding Notes. The committee did not review any funding notes during the reporting period.

Turnpike Authority of Kentucky. The committee approved one bond issue for the Turnpike Authority of Kentucky (TAK). The \$190,885,000 in bond funds from the TAK Economic Development Road Revenue Refunding Bonds (Revitalization Projects), 2015 Series A and Series B, were issued to provide permanent, tax-exempt, Road Fund-supported financing for \$75 million of projects authorized by the 2010 Extraordinary Session of the General Assembly in HB 3 and to advance refund approximately \$134.43 million of existing debt.

Louisville/Southern Indiana Ohio River Bridges Project. The committee received status reports on the project throughout the year but did not review any bond issues for the Louisville/Southern Indiana Ohio River Bridges Project.

School Bond Issues

School Facilities Construction Commission. During the reporting period, the committee approved 81 school bond issues with School Facilities Construction Commission (SFCC) debt service participation for new schools, improvements at existing schools, and refunding outstanding debt.

Local School District Bond Issues. During the reporting period, the committee reviewed 34 local school district bond issues with 100 percent local debt service support and no SFCC debt service participation. These bonds were used for financing improvements at existing schools and refunding outstanding debt.

Review of State Leases

The committee approved three lease modifications greater than \$50,000 for the Kentucky State Nature Preserves Commission, Transportation Cabinet, and Cabinet for Health and Family Services. The total annual cost for these leases was \$535,178.

The committee also reviewed four leases with agency-requested modifications. The costs of the improvements are amortized over the remaining lease term. The total annual cost of the improvements for all three leases was \$689,856.

The committee approved seven new leases for a total annual cost of \$5,999,510. These leases were for the Department of Corrections, University of Kentucky, Department of Public Advocacy, Kentucky Community and Technical College System, Energy and Environment Cabinet (Department of Natural Resources), Cabinet for Health and Family Services (Department

for Community Based Services), and one Build-to-Suit Lease for the Finance and Administration Cabinet—Frankfort Office Building.

The committee approved 25 lease renewals for the Department of Military Affairs, Cabinet for Health and Family Services (Department for Community Based Services) (17), Department of Corrections, University of Kentucky, Energy and Environment Cabinet, Department of Insurance (2), Public Protection Cabinet (Alcoholic Beverage Control), and Department of Juvenile Justice.

The committee also approved one foreign jurisdiction lease for the Department of Fish and Wildlife in Scioto County, Ohio, for an annual cost of \$2,037.

Projects Not Approved

The committee did not meet in February, March, June, July, or September 2015, which resulted in 20 new projects, scope increases, or bond issues not being approved by the committee. The Finance and Administration Cabinet and University of Kentucky notified the committee that it would proceed with the projects.

Projects Not Approved

Agency	Project	Amount
University of Kentucky	Scope Increase – Renovate Old Softball/Soccer Locker Room	\$700,000
Kentucky Infrastructure Authority	Wastewater and Drinking Water Revolving Fund Program Revenue Refunding and Improvement Bonds, Series 2015 A and Governmental Agencies Program Revenue and Improvement Bonds, Series 2015	\$69,235,000
Morehead State University	Construct Food Service, Retail Space and Parking Structure	\$17,600,000
Kentucky State University	Enterprise Resource Planning Information Technology System	\$2,600,000
Kentucky Community and Technical College System	Campus Improvements – Jefferson Community and Technical College System	\$625,000
Cabinet for Economic Development	Economic Development Bond (EDB) Grant to the City of Bowling Green f/b/o Quiver Ventures, LLC	\$750,000
Finance and Administration Cabinet	Scope Increase – Next Generation Kentucky Information Highway	\$254,400,000
Cabinet for Economic Development	Economic Development Bond (EDB) Grant to City of Harrodsburg f/b/o Hitachi Automotive Systems Americas, Inc.	\$250,000
Kentucky Economic Development Finance Authority	Revenue and Revenue Refunding Bonds (Rosedale Green)	\$48,700,000

Agency	Project	Amount
Kentucky Asset/Liability Commission Project Notes	2015 Federal Highway Trust Fund (GARVEEs) First Series A	\$106,850,000*
Kentucky Housing Corporation	Conduit Multifamily Housing Revenue Bonds (Winterwood Portfolio) Series 2015	\$19,853,000*
Western Kentucky University	General Receipts Refunding Bonds, 2015 Series A	\$6,190,000*
Morehead State University General Receipts Bonds, 2015 Series A	Construct Student Residential Facilities project	\$28,185,000
Eastern Kentucky University General Receipts Bonds, 2015 Series A	Renovate/Improve Athletics Facilities project	\$14,280,000
Murray State University General Receipts Bonds, 2015 Series A	Replace Franklin Hall project	\$26,000,000
University of Kentucky General Receipts Bonds, 2015 Series A; Refunding Bonds, 2015 Series B; and Refunding Bonds, 2015 Series C	Renovate/Upgrade Healthcare Facilities project; refund debt	\$259,040,000
KEDFA Healthcare Facilities Revenue Bonds, Series 2015 (Carmel Manor, Fort Thomas – Campbell County)	Campbell	\$18,630,000
KEDFA Tax-Exempt Senior Revenue Bonds Series 2015A; KEDFA Taxable Senior Revenue Bonds, Series 2015B-1, and Series 2015B-2; KEDFA Subordinate Revenue Bonds, Series 2015C (Next Generation-Kentucky Information Highway)	various	\$305,175,110
KEDFA Hospital Revenue Bonds, Series 2015A and KEDFA Hospital Refunding Revenue Bonds, Series 2015B (Owensboro Health Inc.)	various	\$92,470,000

Agency	Project	Amount
School Facilities Construction Commission	Bond Issues – Bardstown Independent, Boyle County, Breathitt County, Bullitt County, Butler County, Carlisle County, Carroll County, Carter County, Cloverport Independent, Covington Independent, Daviess County, Dawson Springs Independent, Estill County, Fort Thomas Independent, Gallatin County, Garrard County, Green County, Hart County, Hopkins County, Jefferson County, Johnson County, Knox County, Laurel County, Lincoln County, Marshall County, McCreary County, Metcalfe County, Morgan County, Ohio County, Paris Independent, Rockcastle County, Russell County, Trimble County, Walton Verona Independent, Warren County, Wayne County, Williamstown Independent, and Wolfe County	\$225,034,000 (total bond proceeds)

* Estimated-Preliminary Subject to Change

**Report of the 2015
Education Assessment and Accountability Review Subcommittee**

**Sen. Mike Wilson, Co-Chair
Rep. James Kay, Co-Chair**

Sen. Alice Forgy Kerr
Sen. Gerald Neal
Sen. Max Wise

Rep. Linda Belcher
Rep. John Carney
Rep. Mary Lou Marzian

LRC Staff: Ben Boggs, Joshua A.J. Collins, Janet Stevens, and Amy Tolliver

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Education Assessment and Accountability Review Subcommittee

Jurisdiction: To review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability and to provide oversight and direction to the Office of Education Accountability (OEA).

Subcommittee Activity

The Education Assessment and Accountability Review Subcommittee met five times during the Interim.

Review of Administrative Regulations

The committee is charged with reviewing all referred administrative regulations related to Kentucky's assessment and accountability system. The following administrative regulations were referred to the subcommittee during the Interim and were presented by Kentucky Department of Education staff: 703 KAR 5:200 Next-Generation Learners; 703 KAR 5:225 School and district accountability, recognition, support, and consequences; and 703 KAR 5:240 Accountability administrative procedures and guidelines.

Oversight of the Office of Education Accountability

As part of its duties to provide oversight and direction to OEA, the subcommittee reviewed a report of OEA's investigative activities. For the 2015 fiscal year, OEA received 514 written complaints. Of these, 437 were filed online; 283 of those complaints were submitted anonymously. From those 283 complaints, 26 cases were opened: 19 investigative cases and 7 school-based decision-making council cases. No violation of school law was found in 19 of 63 cases completed by OEA in 2014. In the other 44 cases, OEA found 57 violations of school law.

The subcommittee received and accepted OEA's *2014 Annual Report* required by KRS 7.410(2)(c)8. The report is a summary of the status and results of the current year annual research agenda and a summary of completed investigative activity conducted during 2015.

The committee received and accepted four OEA study reports, and OEA provided an update on one multiyear study. The first report, *Kentucky Independent School Districts: A Primer*, reviews statutes and regulations that are relevant to independent school districts. It provides an overview of the history of independent school districts in addition to the legislative changes over time that have helped to sculpt their identities.

The *Compendium Of State Education Rankings 2015* is a convenient reference tool regarding how Kentucky's education indicators compare to those of the nation, Southern Regional Education Board states, and other states that border Kentucky.

The third report, *Kentucky District Data Profiles School Year 2014* is an annual compilation of data collected from various sources on all school districts with an individual profile

for the entire state. It includes student demographics and performance data, staffing data and related information, and district expenditure and revenue data.

The subcommittee received an update on the ongoing study regarding safe schools. The update outlined the complex web of statutory requirements and interagency interaction that cover everything from building safety and emergency management to discipline and reporting requirements. The update also included data detailing board violations since 2012 of bullying, harassment, verbal abuse, threatening staff, and threatening another student. OEA staff will continue to work on this study and report the results back to the subcommittee during the 2016 Interim.

The fourth report, *Recess And Physical Education (K-5)*, analyzes the amount and types of physical activity provided in the 2014-2015 school year by Kentucky schools containing grades kindergarten through 5. It also describes educators' views about whether time provided is sufficient and their views of challenges associated with increasing physical activity time. The report reviews state and federal requirements associated with K-5 physical activity, the degree to which districts and schools are meeting these requirements, and their impact as perceived by educators.

The subcommittee approved the proposed OEA 2016 Study Agenda.

**Report of the 2015
Government Contract Review Committee**

**Sen. Max Wise, Co-Chair
Rep. Dennis Horlander, Co-Chair**

Sen. Julie Raque Adams
Sen. Julian Carroll
Sen. Paul Hornback

Rep. Jim Gooch Jr.
Rep. Brad Montell
Rep. Brent Yonts

LRC Staff: Kim Eisner, Daniel Carter, and Jarrod Schmidt

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Government Contract Review Committee

Jurisdiction: Review of all nonexempt memoranda of agreement by and between state agencies, and review of all nonexempt personal service contracts by state agencies and by off-budget agencies, that include, but are not limited to, the Kentucky Lottery Corporation, the Kentucky Housing Corporation, state universities within the commonwealth, the Kentucky Employers' Mutual Insurance Corporation, the Kentucky Higher Education Assistance Authority, the Kentucky Student Loan Corporation, and the Kentucky Retirement Systems to examine the stated need for the service, whether the service could or should be performed by state personnel, the amount and duration of the contract or agreement, and the appropriateness of any exchange of resources or responsibilities; and review of all qualifying motion picture or entertainment production tax incentives.

Memoranda of agreement review exemptions include agreements between the Transportation Cabinet and political subdivisions of the commonwealth for road and road-related projects; agreements between the Auditor of Public Accounts and other government agencies for auditing services; agreements of a state agency as required by federal or state law; agreements between state agencies and state universities or colleges, and agreements between state universities and colleges and employers of students in the Commonwealth Work Study Program; agreements involving child support collections and enforcement; agreements with public utilities, providers of certain direct Medicaid health care to individuals, and transit authorities; nonfinancial agreements; any obligation or payment for reimbursement of the cost of corrective action made pursuant to the Petroleum Storage Tank Environmental Assurance Fund; exchanges of confidential personal information between agencies; agreements between state agencies and rural concentrated employment programs; and any other agreement that the committee deems inappropriate for consideration.

Personal service contract review exemptions include agreements between the Department of Parks and a performing artist or artists for less than \$5,000 per fiscal year, per artist or artists; agreements with public utilities, foster care parents, providers of certain direct Medicaid health care to individuals, individuals performing homemaker services, and transit authorities; agreements between state universities or colleges and employers of students in the Commonwealth Work Study Program; agreements between state agencies and rural concentrated employment programs; agreements between the State Fair Board and judges, officials, or entertainers contracted for events promoted by the State Fair Board; and any other contract that the committee deems inappropriate for consideration.

Committee Activity

The Government Contract Review Committee is a statutory committee of the Legislative Research Commission and is required to meet monthly. During fiscal year 2015 beginning July 1, 2014, and ending June 30, 2015, the committee reviewed 1,164 personal service contracts and 495 amendments to personal service contracts. The committee also reviewed 295 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

During FY 2015, the committee reviewed 1,138 memoranda of agreement and 649 memoranda of agreement amendments. The committee also reviewed 952 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only.

During FY 2015, the committee reviewed 1,954 personal service contract items, 2,739 memoranda of agreement items, and 1 film tax incentive agreement for a total of 4,694 items.

Since the start of FY 2016 through November 10, 2015, the committee has reviewed 382 personal service contracts and 222 amendments to personal service contracts. The committee has also reviewed 153 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

Since the start of FY 2016 through November 10, 2015, the committee has reviewed 637 memoranda of agreement and 256 memoranda of agreement amendments. The committee also reviewed 574 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only. In addition, the committee reviewed 6 film tax incentive agreements.

Note: The totals reflect all personal service contracts, memoranda of agreements, and film tax incentive agreements entered into the eMars procurement system, by Government Contract Review Committee staff or other agencies, and captured by the LRC Contract Reporting Database.

**Report of the 2015
Medicaid Oversight and Advisory Committee**

**Sen. Ralph Alvarado, Co-Chair
Rep. David Watkins, Co-Chair**

Sen. Julie Raque Adams
Sen. Tom Buford
Sen. Morgan McGarvey
Sen. Dan “Malano” Seum

Rep. Robert Benvenuti III
Rep. Jim Glenn
Rep. Joni L. Jenkins
Rep. Ruth Ann Palumbo

LRC Staff: Jonathan Scott, DeeAnn Wenk, Cindy Smith, Gina Rigsby, and Miranda Deaton

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Medicaid Oversight and Advisory Committee

Jurisdiction: The Medicaid Oversight and Advisory Committee is required to meet annually and provide oversight on the implementation of Medicaid within the commonwealth, including access to services, utilization of services, quality of services, and cost containment.

Committee Activity

The Medicaid Oversight and Advisory Committee met two times through November. It elected House and Senate co-chairs.

Medicaid Overview and Update

Representatives from the Cabinet for Health and Family Services and the Department for Medicaid Services presented an overview of Medicaid. Medicaid is a state and federal partnership designed to provide health care to qualifying individuals. Medicaid provides health care to more than 1 million Kentuckians. The federal government provides 70 cents of every dollar spent for persons in the traditional Medicaid program, which includes the aged, blind, and disabled. The federal government pays for 100 percent of the expansion population, which includes individuals who earn up to 138 percent of the federal poverty level until 2017. Medicaid enrollment in December 2014 was approximately 1.2 million people, and 381,000 were in the expansion population. In addition, traditional Medicaid covers approximately 412,600 children. Approximately 25,000 people enter and exit Medicaid each month in a process called churning. Payments made in calendar year 2014 totaled \$6,691,540,817, including Disproportionate Share Hospital payments and supplemental payments to universities.

Medicaid Waiver Program Overview

Representatives from the Cabinet for Health and Family Services and the Department for Medicaid Services testified that the Medicaid waiver program provides states with flexibility to deliver and pay for health care services in Medicaid. There are four types of waivers: Section 1115 Research and Demonstration Projects; Section 1915(b) Managed Care waivers; Section 1915(c) Home and Community-Based Service waivers; and Concurrent Section 1915(b) and 1915(c) waivers. Kentucky has six waiver programs: the Home and Community Based waiver, the Supports for Community Living waiver, the Michelle P. waiver, the Model Waiver II, the Acquired Brain Injury-Acute Care waiver, and Acquired Brain Injury/Long Term Care waiver. The department testified that it was amending waivers to comply with new federal rules.

Medicaid Managed Care Contract Update

Representatives from the Department for Medicaid Services and the Cabinet for Health and Family Services testified about new Medicaid Managed Care contracts effective in July 2015. Ninety percent of the Medicaid population is served by managed care organizations (MCOs), and 10 percent of the population is enrolled in fee-for-service programs. The managed care population accounts for approximately 69 percent of the Medicaid budget, and the fee-for-service population accounts for the other 31 percent. Five MCOs serve the managed care population: Anthem,

Coventry/Aetna, Humana, Passport, and Wellcare. The new contracts are all very similar. Contractual changes include that all MCOs have the same capitation payments, statewide coverage, medical loss ratio requirement, CMS-mandated “risk corridor” for expanded Medicaid, Healthcare Effectiveness Data and Information Set Measures Incentive Program, specific national standards to determine “medical necessity,” standardized appeal form, standardized prior authorization form, requirement that MCO credentialing must conform to a national standard, increased access for behavioral health services, updated network adequacy standards, heightened involvement by MCOs when individuals with severe mental illness are discharged from mental health hospitals, improved fraud recovery requirements, retroactive eligibility, and increased oversight of services denied for lack of medical necessity.

Long-Term Care Presentation

Representatives from AllyAlign Health and Signature HealthCare testified about Medicare Advantage Plans and Medicaid Special Needs plans. This plan serves patients who are institutionalized for more than 90 days in a nursing facility. The plan was sold on the insurance market starting on October 1, 2015, with coverage to begin in January 2016. In the future, a Medicaid special needs plan could offer additional benefits to certain institutionalized vulnerable patients.

Program Review and Investigations Committee

Sen. Danny Carroll, Co-Chair
Rep. Martha Jane King, Co-Chair

Sen. Tom Buford
Sen. Perry B. Clark
Sen. Christian McDaniel
Sen. Dorsey Ridley
Sen. Dan “Malano” Seum
Sen. Stephen West
Sen. Whitney Westerfield

Rep. Leslie Combs
Rep. Tim Couch
Rep. David Meade
Rep. Terry Mills
Rep. Ruth Ann Palumbo
Rep. Rick Rand
Rep. Arnold Simpson

LRC Staff: Greg Hager, Christopher Hall, Colleen Kennedy, Van Knowles, Jean Ann Myatt,
Chris Riley, William Spears, Shane Stevens, Joel Thomas, and Kate Talley

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Program Review and Investigations

Jurisdiction: The Program Review and Investigations Committee is a 16-member bipartisan committee authorized under KRS Chapter 6. The committee is empowered to review the operations of state agencies and programs, to determine whether funds are being spent for the purposes for which they were appropriated, to evaluate the efficiency of program operations, and to evaluate the impact of state government reorganizations. State agencies are obligated to correct operational problems identified by the committee and must implement the committee's recommendations or propose suitable alternatives.

Any official in the executive, judicial, or legislative branch of government may request a study. A majority vote of the committee is required to initiate research studies and to approve final reports. Reports are based on staff research but represent the official opinion of the committee once approved. The committee issues a final report for a study after public deliberations that include the responses of officials of relevant state agencies.

Committee Activity

The Legislative Program Review and Investigations Committee held seven meetings through November. It elected a Senate co-chair and adopted five reports.

The report *Local Defined-Benefit Pension Plans In Kentucky* makes three recommendations directed to the General Assembly related to pension plan governance, administration, and reporting. Statute closed entry to new enrollees in 1988 for almost all local defined-benefit pension plans. Existing plan members could switch to the County Employees Retirement System or stay in their plans. There remain 30 such plans, mostly for police and firefighters, in 22 cities. The only plan still accepting new enrollees is the one for Lexington-Fayette County police and firefighters. It has nearly one-half of the more than 2,100 retirees and beneficiaries in the 30 plans. The 29 closed plans have practically no active employees, and many have relatively few retirees and beneficiaries. For closed plans reporting ages, two-thirds of retirees and beneficiaries are at least 75 years old. Statute requires that funds be actuarially sound, but there is nothing in Kentucky statute to indicate that the state is financially responsible for retirement plans outside of those in the Kentucky Retirement Systems. The Lexington-Fayette County police and firefighter plan is 76 percent funded. Of the 29 closed plans, 12 have assets valued at 65 percent or more of liabilities; 6 plans have funded ratios of less than 5 percent. For each of three cities, the annual actuarially required contribution to its pension plan is the equivalent of nearly 5 percent or more of its general fund revenue. The finance director of the City of Henderson and the commissioner of public safety, commissioner of finance and administration, and senior adviser to the mayor of the Lexington-Fayette Urban County Government responded to the report.

The report *State Procurement: Requests For Proposals, Competitive Exemptions, And Leaseback Agreements* has 10 recommendations. Requests for proposals are used to solicit vendors in a competitive process to provide goods or services that cannot be produced or provided by state employees. Based on samples of requests for professional services, nonprofessional goods and services, and architectural and engineering services, there were issues with requests not stating the need for a procurement, not indicating why in-house staff could not be used, and not providing

performance requirements. Sole source contracts are the result of procurements exempt from the competitive procurement process. Based on samples of nonprofessional contracts and professional sole source requests, some contracts did not state why procurements were needed, why in-house staff could not be used, why specific vendors were chosen, and why a competitive exemption was necessary. Leaseback agreements are transactions to sell an asset to a third party and lease the asset to the original owner. Kentucky has not used leasebacks but has a similar process, built-to-suit leases, to fund facility construction. Four built-to-suit requests for proposal have been issued in recent years. The deputy executive director of the Finance and Administration Cabinet's Office of Procurement Services responded to the report.

According to *Comparison Of Salaries Paid To State Executive Branch Supervisory And Nonsupervisory Employees And To School Administrators And Teachers*, the Personnel Cabinet works with state agencies to group job positions with similar duties and responsibilities into classifications and assign the classifications to a pay grade. Employees are hired based on the alignment of their skills and attributes with requirements for the position. Supervisors of salaried executive branch employees earned 48 percent more than the employees they supervised. Supervisors of hourly executive branch employees earned 71 percent more than the employees they supervised. Staff also compared the salaries paid to principals, vice principals, and teachers in Kentucky's public schools during the 2013-2014 school year. Compared to teachers, principals were paid 69 percent more and vice principals were paid 51 percent more on average. Of the difference between principals and teachers, 42 percent was accounted for by working more days, 24 percent was due to differences in education and experience, and 34 percent was due to additional responsibilities. Of the difference between vice principals and teachers, 37 percent was accounted for by working more days, 33 percent was due to differences in education and experience, and 30 percent was due to additional responsibilities. The executive director of the Personnel Cabinet's Center for Strategic Innovation office responded to the report.

The report *Kentucky Law Enforcement Foundation And Firefighter Foundation Program Funds* makes eight recommendations related to funding and compliance with statutes. The sole source of revenue for both funds is a 1.8 percent surcharge on certain insurance premiums, which generated \$103 million in FY 2014. The Kentucky Law Enforcement Foundation Program Fund, which was allocated \$60.6 million in FY 2014, is used to provide officers \$3,100 in annual training incentive pay and to support the Department of Criminal Justice Training, Criminal Justice Council, and Law Enforcement Council. The Kentucky Firefighter Foundation Program Fund, which was allocated \$42.3 million in FY 2014, is used to support the Commission on Fire Protection, Personnel, Standards, and Education and its staff; the volunteer fire department aid and loan programs; the hepatitis B inoculation program; the thermal vision grant program; the firefighter training facility grant program; the health and wellness program; and to provide professional firefighters \$3,100 in annual training incentive pay. The secretary of the Justice and Public Safety Cabinet and the commissioner of the cabinet's Department of Criminal Justice Training responded to the report.

Quasi-governmental entities (QGEs), which are not defined in statute, are defined for the report *Quasi-Governmental Entities In The Kentucky Retirement Systems* as entities that are created by governments to serve public interests but that maintain a legally separate status. Almost all employees and retirees of QGEs participating in the Kentucky Retirement Systems (KRS) are

in the Kentucky Employees Retirement System Nonhazardous or County Employees Retirement System Nonhazardous or Hazardous plans. As of FY 2014, there were more than 26,000 active members of 602 QGEs participating in KRS, accounting for nearly 20 percent of the active membership of the three plans. There were more than 12,000 QGE retirees, accounting for nearly 13 percent of total retirees of the three plans. More than \$238 million in retirement benefits were paid to QGE retirees in FY 2014. QGEs had nearly \$2.8 billion in actuarially determined net pension liabilities for FY 2014, accounting for nearly 21 percent of the total for the three plans. Less than 40 percent of QGEs are community action agencies, health departments, regional mental health units, utility boards, or QGEs providing other services. These agencies accounted for more than 70 percent of QGE members, retirees, benefits, and net pension liability in KRS in FY 2014, however. The executive director and general counsel of Kentucky Retirement Systems responded to the report.

The committee heard testimony on three topics unrelated to reports. The assistant director of the Division of Adult and Child Health Improvement, an official from the Nutrition Services Branch, and a staff attorney of the Cabinet for Health and Family Services made a presentation on the Kentucky Special Supplemental Nutrition Program for Women, Infants and Children. The commissioner and deputy commissioner of the Department for Medicaid Services and general counsel of the Cabinet for Health and Family Services made a presentation on Kentucky Medicaid managed care. The executive directors of the Lincoln Trail and Pennyryle Area Development Districts and judges/executive of Christian County and Garrard County made presentations on area development districts.

For the December meeting, the committee is scheduled to consider staff reports on motor fuel taxes and unformulated gasoline in Kentucky, medical care for Kentucky inmates in community medical facilities, and the External Child Fatality and Near Fatality Review panel.

**Report of the 2015
Public Pension Oversight Board**

**Sen. Joe Bowen, Co-Chair
Rep. Brent Yonts, Co-Chair**

Sen. Jimmy Higdon
Sen. Gerald A. Neal
Rep. Brian Linder
Rep. Tommy Thompson
Robyn Bender
Tom Bennett

Robert Damron
Jane Driskell
James M. “Mac” Jefferson
Sharon Mattingly
Alison Stemler

LRC Staff: Brad Gross, Bo Cracraft, Terrance Sullivan, Greg Woosley, and Maurya Allen

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Public Pension Oversight Board

Jurisdiction: Assists the General Assembly with its review, analysis, and oversight of the administration, benefits, investments, funding, laws and administrative regulations, and legislation pertaining to the Kentucky Retirement Systems.

Committee Activity

The Board held nine meetings from January through November 2015 and heard testimony on a wide range of topics relating to the public pension systems.

Investment Peer Comparison

LRC staff testified about investment returns of the Kentucky Retirement System (KRS) relative to its peers. Reviewing peer group returns, staff looked at the policy benchmark, which is the targeted weights for each asset class, and noted that one of the stated goals of KRS and most pension plans is to exceed the return of the policy benchmark. The KRS nonhazardous pension plan portfolio for the 1-, 5-, and 10-year performance period has matched or exceeded the benchmark return. The second return target is the assumed actuarial rate assumption of 7.5 percent. As of June 30, 2014, in the short term of 1 to 5 years, KRS has exceeded the return target; however, over the 10-year period both the pension and insurance plans have fallen short.

Staff included an historic asset allocation for US public pension funds for the last 25 years, as well as for the KRS for the last 14 years, and it was noted the trend in KRS is similar to the industry allocation. For example, at the turn of the century KRS was largely a public equity portfolio with about a quarter of the portfolio in fixed income, whereas holdings in real estate were just less than 5 percent and the remainder was held in cash. As with the overall industry, over the last 15 years KRS slowly diversified out of public equity and increased the exposure to alternative assets. In 2014, KRS had a 34.5 percent allocation to alternatives. However, the summary on peer comparison investment data showed that KRS appears to have taken a different approach as to how assets are allocated. There is an underweight of public equity and a higher allocation to alternative assets compared to the larger peer group, and based on the peer group performance comparison this approach has resulted in a head wind because of recent strong equity market returns.

LRC staff also discussed investment expenses in fiscal year 2014 and disclosure of those expenses, contracts, and agreements. The total investment expense of KRS as reported on the Comprehensive Annual Financial Report (CAFR) was \$46.3 million, which equates to 40 basis points of the total fund. In using the same LRC peer group for 33 funds, the median expense for the peer group was 36 basis points, slightly below KRS, and the average was just less than 0.5 percent at 45 basis points, or slightly above KRS. The amount of fee disclosure of KRS relative to their peer group was also reviewed. The majority of the peer groups report by asset class, but many report by manager and some provide a total amount. KRS reports consistently with the majority of plans by asset class, but it was noted that more plans are beginning to incorporate manager level data. KRS is also beginning to disclose more data on investment fees on the KRS website.

Kentucky Retirement Systems Personnel and Compensation System

The executive director of KRS discussed the agency's personnel and compensation system, with a focus on the numbers of employees, the work they perform, and the personnel system applicable to KRS.

The internal legal department has 10 staff attorneys, 2 paralegals, and 2 support staff. These employees perform hearings, review legal documents and reemployment requests, and conduct conferences, among other things. There are 122 employees in the benefits section, which over the last 2 years handled approximately 250,000 calls per year. Additionally, there were more than 5,000 in-office visits in 2014, 10,000 preretirement audits, and more than 4,000 retirement recalculations and audits. KRS staff also conducts events and enrollments for retiree health care each year, with almost 26,000 Kentucky Employees Health Plan enrollments and more than 48,000 Medicare-eligible enrollments.

The KRS personnel system is not under the state merit system. In 2001, a comprehensive review with cost benefit analysis was performed, which identified problems with the personnel and pay system. Some of the problems were that the classification system did not allow for accurate placement of KRS employees, and compensation was based on the state's system and did not take into consideration comparable positions in other retirement systems; as a result, there were excessive overtime hours and staff turnover. The recommendations to address the problems were to move KRS from the merit system and recreate a new classification and compensation system.

KRS 61.645 established the separate personnel system for KRS, passed by legislation in 2002. The KRS Board of Trustees adopted personnel policies and established a classification and pay system to attract, hire, and retain qualified individuals. KRS has a goal-oriented performance management system. The executive staff and division managers establish division goals and meet with employees to establish employee goals. Pay is based on available revenue and on the employee's rating and uses the state's budgeted increases as the base for salary increases.

The number of employees increased from 225 as of December 31, 2003, to 252 as of December 31, 2014, and the salary increases for the same period decreased from 3.55 percent in 2004 to 2.29 percent in 2014, with employees receiving no increases in some of those years. The percentage increases were those received by all state employees and also included an amount above the state level that was granted by the KRS board.

2015 Legislative Action

The Public Pension Oversight Board received an update of the bills enacted in the 2015 session that directly affected the state-administered retirement systems. HB 47 added other state-administered systems to the board's oversight functions; HB 62 established a process for voluntary and involuntary cessation of agency participation in the KRS; SB 62 related to the reemployment of elected officials in the same position; and HB 163 and HB 181 limited employer payments on retirees reemployed on or after September 1, 2008.

Kentucky Retirement Systems Actuarial Audit Process—Segal Consulting

Actuaries with Segal Consulting (Segal) discussed the overview of the valuation process; the purpose of an actuarial audit; the types of actuarial audits; and Segal's approach to the upcoming KRS actuarial audit.

An actuarial valuation is an annual snapshot of the assets and liabilities of a pension or retiree health program. As part of the valuation process the actuaries determine the actuarial accrued liability or benefit obligations that have been earned and compare this value to the assets in the pension trust to determine the unfunded liability and funded status of the plan, as well as the employer contribution rate. This helps provide an understanding of the current financial soundness of the pension system, as well as how the funded status of the plan has progressed over the years and how it is expected to progress in the future based on the funding policy. They also analyze changes from the actuarial accrued liability from year to year and identify trends in the funding status and the reason for the change in the contribution rate from one year to the next.

After staff gather all the information, project the benefit for each member, and apply assumptions, a comprehensive picture of the funding policy is developed to determine the employer contribution rate. An actuarial audit is performed to enhance the credibility of the valuation process by providing independent assurance that it was performed in accordance with actuarial standards of practice; to increase public trust of how the plan is governed; to assess whether the plan is meeting its funding objectives; and to identify and address any errors and to make recommendations for improvement. Of the three types of actuarial audits that could be performed, Segal would perform a level two or limited scope audit of KRS. A level two audit has much of the same review as a level one audit, but the actuary is actually reviewing rather than replicating all the results over the test life. The objective is to provide an opinion and evaluation regarding the reasonableness and accuracy of the valuation results, including accrued liability, normal cost and employer contribution rates, and any improvements that can be made, with comments, comparative tables, and detailed recommendations given on the overall profile of KRS.

Kentucky Retirement Systems Asset Liability Modeling Study

Representatives of RV Kuhns Inc. discussed asset liability modeling (ALM) studies, why they are conducted, their importance, and the results of the studies on the five KRS pension plans.

Asset liability studies are a tool to gauge the financial health of a plan and the direction it is headed over time. The objective of an ALM study is to present valuation results of the plan forward in time as to the funded status of the plan, including minimum required contributions and the expected return over the next 20 years, and it projects the asset values based on several portfolios to determine the outcome to the plan based on the assumptions in the valuation process. An ALM study also estimates the liquidity demands on a plan's assets and investigates mixes of asset allocation to determine what mix best protects or increases funding levels while providing adequate liquidity for benefit payments and minimizing risks.

The analysis tested six portfolios ranging from the most conservative asset allocation portfolio to an aggressive portfolio, including the current portfolio allocation, and used different

asset classes in differing percentage amounts to predict funding ratio and payout outcomes. The most conservative portfolio is invested in the intermediate duration core fixed income, and the most aggressive portfolio is fully invested in global equity and private equity asset classes.

The results for the County Employees Retirement System (CERS) non-hazardous plan showed a value as of June 30, 2014, of \$403 million and a 20-year projected value of \$737 million (employer contribution only). The current liability for this plan is \$9.8 billion, and it is projected to grow about 50 percent over the next 20 years to \$15.1 billion. The assets are \$6.5 billion and are projected to grow to \$11.8 billion over the next 20 years. The results for this plan showed a probability of full funding in the next 20 years and a significant chance of being better off in 20 years than today. Continued diversification of plan assets to avoid large market declines while generating the near assumed rate of return will maximize the outcome and should be the focus.

The summary results for the CERS and Kentucky Employees Retirement System (KERS) hazardous plans are similar to the CERS nonhazardous. The current liability for the CERS hazardous plan is \$3.3 billion with a projection to grow to \$5.1 billion in the next 20 years; it has assets of \$2.1 billion with a projection of \$3.9 billion; and it has an employer contribution of \$137 million with a projection of \$261 million in 20 years. The payout ratio is projected to be the same over the next 20 years. The conclusions are the same for this plan as for the CERS nonhazardous plan.

The KERS hazardous plan results showed an accrued liability of \$817 million, projected to grow to \$1.4 billion in 20 years, with assets of \$560 million and with expected growth over the next 20 years to \$1.1 billion. The employer's annual contribution is at \$31 million and is expected to grow to \$70 million. The payout ratio decreases over the next 20 years from 10 percent to 9 percent, and the conclusion is the same as for the previous two plans.

The accrued liability of the State Police Retirement System (SPRS) plan on June 30, 2014, was \$681 million with a projection to grow to \$754 million over the next 20 years, while assets were \$261 million with a projected growth to \$336 million. The employer contribution of \$28 million today is expected to grow to \$66 million over the next 20 years, and the payout ratio is expected to decrease from 21 percent to 19 percent. The funded ratio of this plan is at 38 percent and is projected to grow to 45 percent over the next 40 years. This plan faces severe challenges, and investing to improve financial health is not possible. The plan will face liquidity constraints in the near future, making investments focused on active liquidity management and planning a priority.

The KERS nonhazardous plan has accrued liability of \$11.6 billion and a 20-year projected growth to \$13.1 billion. The assets of the plan are at \$2.6 billion and are projected to grow to \$4.2 billion over the next 20 years. The current deficit is \$9 billion and will only reduce to \$8.9 billion over the next 20 years. The payout ratio is at 36 percent with a 27 percent projected growth to a maximum of 54 percent in 2023. The annual employer contribution of \$565 million is projected to increase to \$1.4 billion. The 36 percent payout ratio of the plan implies that approximately one-third of assets would need to be sold each year to meet current obligations, assuming there were no contributions, which is prohibitively high. This rate is projected to grow rapidly to about 50 percent in 10 years before starting a decline in the latter part of the projection

period. The summary reflects that there is very little probability of full funding over the next 20 years under any investment approach and there is a significant chance of being in worse condition than today and a probability of depleting assets during the projection period. The fund faces severe challenges with a shortfall of \$9 billion. Investments would not significantly improve the financial health of the fund. The plan will face liquidity constraints in the near future, and investment in private equity and real estate will be difficult going forward, which hurts the investment outcomes of the plan in the long term.

Overview of Kentucky Teachers' Retirement System Funding

The executive secretary and the general counsel of the Kentucky Teachers' Retirement System (KTRS) provided an overview of its funding.

KTRS was established in 1938 to provide retirement security for the state's educators. The total normal cost of pension benefits is 16.75 percent of payroll, with teachers contributing 9.11 percent toward the normal cost of benefits and the state contributing 7.64 percent. Teachers also contribute an additional 3.75 percent to pay for retiree medical benefits.

Over the last 30 years, the compounded return on investments of KTRS has been 9.5 percent. Returns over the last 10 years have ranged from 8.6 percent for the year ending March 31, 2015, to 11.3 percent over a 3-year period, 10.4 percent over a 5-year period, and 7.2 percent over the 10-year period.

According to the executive secretary, in July 1985, the system was 54 percent funded with \$1.8 billion in assets. Since that time, members have contributed \$6 billion and the state has contributed \$10.2 billion. Investment income for this period has totaled \$21.5 billion, payouts have been \$21.2 billion, and the administrative costs have been \$200 million. The plan balance as of June 30, 2014, was \$18.1 billion, reflecting a 53 percent funded status at that time. In 2015, KTRS will pay about \$2.1 billion in benefits.

The retiree medical benefits for teachers have been in effect since 1964. This was established when Medicare was passed and was a pay-as-you-go benefit until 2010. Since 1985, members have contributed \$1.3 billion and the state has contributed \$2.1 billion. The investment income has been \$300 million, and the medical benefits paid out have totaled \$3.2 billion, leaving a balance as of June 30, 2014, of \$500 million. The medical benefits fund became a prefunded fund as of July 1, 2011. In the mid 1990s, the fund was significantly underfunded, and because of this, in the early 2000s, \$800 million in contributions were redirected from the pension fund to the medical benefits fund.

KTRS has over 141,000 members with more than 49,500 receiving benefits monthly. KTRS pays out more than \$144 million in benefits monthly and has more than \$18.5 billion in assets for pension and medical plans. Since 2008, the system has experienced negative cash flow and will have sold \$1.3 billion in assets to meet benefits over and above the income coming into the plan through 2015, which will lower future investment returns. Additional funding is necessary to stabilize the situation.

Budgeted contribution rates for the state have been consistent since fiscal year 1999 through fiscal 2016 at 13.105 percent, with the exception of fiscal 2007, which increased to 13.215 percent, and in fiscal 2008, which increased to 14.425 percent. There is also an employer contribution rate paid directly from the general fund to fund cost of living adjustments (COLAs), minimum benefits, and sick leave payouts. Payments are amortized over 20 years and are a percentage of salary. No additional COLAs have been awarded since 2011 above the statutory 1.5 percent amount.

Fiscal year 2007 was the last year to see a positive cash flow, with total contributions of approximately \$704 million; investment income of \$1.14 billion; and benefits, refunds, and administrative expense of \$1.124 billion, resulting in a positive cash flow of \$20 million. Since fiscal 2008 through fiscal 2014, there has been a negative cash flow of \$10 million to \$439 million, respectively, resulting in a selloff of assets to meet benefit obligations.

The executive secretary said that HB 4 in the 2015 session would have provided a long-term funding solution for teachers' pensions with a proposed bond of \$3.3 billion. With bonding, the state would have been able to step into the additional needed actuarially required contribution (ARC) at approximately \$44 million per year over the next 8 years. Without bonding, the new contribution into the ARC would be about \$400 million per year in additional general fund dollars, and KTRS will be requesting approximately \$1 billion per year in the next budget cycle.

Kentucky Retirement Systems Anticipated Budget Needs

The executive director and the chief investment officer of KRS discussed the budget needs and impact of the ARC on the 2017-2018 budget.

It was first noted that the information for the fiscal year will be provided to the actuaries conducting the valuation process, which will result in the recommended contribution rates for the 2017-2018 fiscal years. Projected contribution rates have been submitted to the State Budget Office and LRC staff. Certain assumptions were made to determine the impact of paying 100 percent of the ARC for the KERS nonhazardous plan. Total payroll reported to KRS as of June 30, 2015, was used, which was \$1.669 billion. A growth factor of 3.5 percent, which is the actuarially assumed growth rate, was then applied to determine an estimated total payroll for 2017 of \$1.7 billion. In 2015, the total contribution for the pension plan was \$526,756,713 at a contribution rate of 30.84 percent, and the insurance contribution was \$135,446,846 at a rate of 7.93 percent, for a total contribution of \$662,203,559. The total contributions for fiscal 2017 to pay the full ARC are projected to be \$785.6 million, or an increase of \$123,396,788 over what was paid in fiscal 2015. The combined rate using these assumptions will be 45.46 percent of the projected payroll (36.93 percent for pension and 8.53 percent for insurance). The contribution rate set by the KRS board will be for both years of the biennium.

The same assumptions were used to project the estimated contributions for 2017 for the KERS hazardous plan. Using a contribution rate of 20.05 percent with an estimated \$29.5 million in contributions for the pension plan, and a contribution rate of 4.08 percent with an estimated \$6.0 million in contributions for insurance, the total contribution in dollars will be \$35.6 million or a decrease of about \$2.0 million from the total contributions in 2015 of \$37.5 million. The

reason for this decrease is that the KERS hazardous insurance plan is more than 100 percent funded, which dropped the rate approximately 6.0 percent.

The total contributions for the SPRS plan were \$35.7 million in 2015. The same assumptions were made for the SPRS plan to estimate the contributions required for 2017. The rate of contributions required for this plan are 66.67 percent for the pension and 20.04 percent for insurance, for a total contribution of \$42.3 million in 2017. This is an increase of approximately \$6.6 million. The total impact in dollars is projected to be about \$128 million more to pay 100 percent of the ARC in the 2017-2018 fiscal years. The total contributions for all systems (KERS and SPRS) for 2016 are estimated at \$863.5 million.

For the CERS hazardous and nonhazardous plans, payroll growth was decreased to 2.5 percent for the estimates. Using that assumed rate, the total estimated contributions for 2017 for both the pension and insurance is \$432.5 million, or 17.89 percent combined, compared to contributions in 2015 of \$402.3 million, or 17.06 percent, representing an increase of \$30.1 million to fully fund the ARC.

Kentucky Teachers' Retirement Systems Anticipated Budget Needs

The executive secretary of KTRS discussed the budget needs for the next biennium. For fiscal 2017, the budget request for the contribution funded through the Support Education Excellence in Kentucky (SEEK) formula in the Department of Education budget is \$388 million, increasing to \$395 million projected for fiscal 2018, and assuming a 3 percent increase over and above the current payroll. The state's portion of the health insurance shared responsibility funding is projected to be \$76 million in fiscal 2017 and \$83 million in fiscal 2018. From time to time, COLAs were awarded over and above the 1.5 percent statutory level and were amortized over 20 years, and payments for these COLAs are projected to be \$52 million in each of the next 2 years of the biennium. Contributions for minimum benefits, sick leave salary benefits, and prior-years medical benefits were also amortized, so that in fiscal 2017 the requested amount is \$114 million and in fiscal year 2018 it is \$112 million.

In addition to the contributions provided through the SEEK formula and direct appropriations, KTRS will also request additional contributions to pay down unfunded accrued liabilities. A total additional contribution of \$520 million in fiscal 2017 and \$488 million in fiscal 2018 will be requested.

General Fund Budget Needs for KRS and KTRS

The state budget director and deputy state budget director discussed the budgetary costs for the KRS and KTRS pension systems.

The budget director discussed the employer contribution rates, the amount included in the current budget for the 2016 fiscal year, and an estimate of how much more is needed in the 2016-2018 biennial budget for the KRS plans. The statutory employer contributions rates are used for SEEK and other state government participating employers for the KTRS, and estimates from the actuarial analysis are provided by the KRS for the employer contributions rates. The amounts for

pension are explicitly budgeted in all three branches. Other agencies are treated differently, with amounts partially included, such as for participating universities and the Kentucky Community and Technical College Systems (KCTCS), public health departments, and mental health/mental retardation boards.

The contribution rates for the KERS employers for the pension plans have increased from 26.79 percent for the nonhazardous plan in fiscal 2014 to estimated rates of 45.46 percent in fiscal 2017 and 45.80 percent in 2018. The hazardous rates have decreased from 32.21 percent in 2014 to estimated contribution rates of 24.15 percent in fiscal 2017 and 23.71 percent in fiscal 2018. The SPRS contribution rates have increased from 71.15 percent in 2014 to estimated rates of 86.71 percent in fiscal 2017 and 88.0 percent in fiscal 2018. The nonhazardous rates rose 44.7 percent in fiscal year 2015 and are estimated to rise an additional 17.3 percent in fiscal 2017. In the 2016 budget, an additional \$194 million was added to fund the full ARC for KRS, of which \$106 million came from the general fund. In fiscal 2017, those rates will require an additional estimated amount of \$108 million with about \$60 million coming from the general fund.

The deputy budget director discussed costs of the KTRS in the 2015-2016 budget. There are two approaches to funding KTRS from a budget standpoint: the statutory employer contribution rate that provides funding targets that are placed in the SEEK appropriation, and direct general fund appropriations. There was \$380.5 million in general fund dollars within the SEEK budget, which represented 13.105 percent of the statutory employer contribution rate for school districts; \$14.2 million in state agency employer contributions, of which \$8.6 million was from the general fund; and \$31.9 million in federal funds from the school districts. The KTRS also receives direct general fund dollars to cover any amount not covered by the employer contribution rate. In fiscal 2015-2016, there was \$299.3 million in direct general fund appropriations to KTRS, and a total of approximately \$726.0 million to the system that is placed in the SEEK formula and other state agencies, of which \$688.4 million was from the general fund. The 2014-2016 budget bill language contained a pledge that, as bonds issued in 2011 were paid down, the funds to make those bond payments would be applied to the unfunded liability. By the end of fiscal 2024, that amount would be \$116.5 million that could be diverted and used for paying the unfunded liability. The additional amount needed to get to the full ARC for KTRS will be \$520.4 million in fiscal 2017, and for fiscal 2018 the amount has not yet been determined and will be available in November.

In summary, the total amount included in the 2016 budget for retirement costs for the KRS was \$731.5 million, of which \$301.9 million was general fund dollars, and for the KTRS it was \$725.9 million, of which \$688.4 million was general fund dollars. For the two systems, the amount is \$1.457 billion, with \$990.3 million coming from the general fund.

Kentucky Retirement Systems Nonhazardous Cash Flow Issues

LRC staff discussed cash flow issues of the KERS nonhazardous plan. In terms of cash flow for the 2015 fiscal year, employee contributions at 5 percent contributed approximately \$100 million to the pension fund; employer contributions contributed \$523.0 million, with \$132.0 million going to retiree health; and approximately \$13.0 million was derived from other sources such as court settlements and spiking. KERS nonhazardous investment income for the year was 2.38 percent, with the net investment income of \$44.0 million for the pension and \$8.7 million

for health. So, there was a total of \$681.4 million to the nonhazardous pension plan and \$144.0 million to the health plan. Benefit payments and expenses totaled \$929.8 million in fiscal 2015, resulting in a net decrease of \$248.4 million on the unaudited financial statements. The assets from the beginning of the fiscal year dropped from \$2.6 billion to \$2.3 billion. There was improvement in the retiree health, and assets continue to improve.

In 2000, the funding level for the KERS nonhazardous pension fund was at 139.6 percent with a \$1.9 billion surplus. In 2014, the funding level was at 21.0 percent and the unfunded accrued liability was \$9.13 billion. The plan assets have decreased from \$5.48 billion in 2001 to \$2.33 billion as of June 30, 2015. However, the retiree health fund assets have grown from \$396.3 million in 2001 to \$665.6 million as of the current fiscal year. Current funding projections indicate that the funding level will fall from 21.0 percent in fiscal 2014 to 14.9 percent before improvement is seen, and that asset values are anticipated to drop to approximately \$1.9 billion.

Moving forward, key factors for improving cash flow are paying the full ARC, payroll growth, and investment returns. If no additional action is taken for funding, the ARC is anticipated to increase by \$112 million in fiscal 2017 based on the payroll, with \$100 million going to the pension fund. Legislative action could be taken to bond additional contributions, and KRS has analyzed the impact of additional funding of between \$1 billion and \$5 billion, as well as the impact of adding additional funding in increments of \$250 million for 4 years for \$1 billion, or \$250 million over 8 years for \$2 billion. Another option to increase cash flow is to supplement the funds flowing into KRS by setting the employer contribution rate above the ARC.

Kentucky Retirement Systems Investment Fees

The executive director, the deputy chief investment officer and director of fixed income, and the director of public equity discussed the investment fees of KRS.

Reported fees have increased 75 percent since 2014, from \$62 million to \$108 million. However, the fees actually paid did not increase from 2014 to 2015, but rather changes to the investment reporting methodology are the reason for the differing amounts over the last year. The new reporting methods are an effort to provide greater transparency and more information to the public and to the board. For 2014, and before, investment fees for private equity were reported using the equity method of reporting, which is used across the country for public pension plans and investors, but it does not report private investment fees as a separate line item. For 2015, it was decided to report fees using the investments share method, which reports investment fees as a separate line item instead of netting them against the investment activity. The fees year to year would have been the same if they had been reported in the same, rather than a different, method. Also, the different method does not affect net returns; it was merely a different view of the system's investments and expenses.

Kentucky Retirement Systems Health Insurance Contributions

The executive director of KRS explained changes in the contributions toward health insurance for dependent children of hazardous duty retirees. As a result of the federal Affordable Care Act changes in 2010, access to health insurance for dependent children was assured up to

age 26. Prior to 2011, KRS contributed to the cost of health insurance for hazardous duty dependent children as defined in KRS 16.505, where a dependent child is defined as “a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22).” In 2011, KRS erroneously began paying health insurance contributions on dependent children up to age 26. The error was not discovered until 2014 during an internal audit, so in February 2015, a regulation was promulgated that contributions would be paid only for dependent children as defined in statute. Because of the hardship on retirees with children between the ages of 22 and 26, and because the 2015 plan year had already begun, it was decided that the regulation would be effective for the upcoming 2016 plan year.

Kentucky Teacher Retirement Systems Actuarial Audit

The executive secretary and deputy executive secretary of the Kentucky Teachers’ Retirement System notified the board about an actuarial audit of the system. KTRS contracted with Segal Consulting in June 2015 to conduct an audit that will include a full replication of the pension and health insurance actuarial reports for 2014, which is consistent with industry best practices. The audit began in July 2015 and must be completed by December 2015, when the results will be presented to the KTRS board of trustees.

Judicial Form Retirement Systems Overview and Actuarial Audit

The executive director and chair of the board of trustees of the Judicial Form Retirement Systems (JFRS) gave a brief overview of the system. The JFRS is charged with the administration of the judicial and legislators retirement plans. The board of trustees for the system consists of eight members: three judicial appointees, three legislative appointees, and two gubernatorial appointees. These individuals also serve on the investment committee for the system. The system is on schedule for an actuarial audit to be completed, and a draft of proposed insurance rates will go before the board at the next meeting and would be shared with the oversight board once those rates are approved.

FICA Withholding on Employee Pension Contributions

The State Social Security Administrator gave an update on Federal Insurance Contributions Act (FICA) withholding on employee pension contributions. A recent Internal Revenue Service (IRS) ruling determined that the method used by the Commonwealth of Kentucky to calculate Social Security tax liability was incorrect, and the IRS is requiring a reasonable plan to address the treatment of pension contributions to bring the state into compliance. The agreement was reached via contract negotiations, and the new calculation will go into effect on January 1, 2017, giving agencies time to plan, implement payroll systems, and communicate with affected employers and employees. All governmental employers (including the executive, legislative, and judicial branches of state government); eight universities and the Kentucky Community and Technical College System; and 1,471 county, city, and local school districts are affected. This will cost an estimated \$5.7 million in additional payroll taxes, but for employees who participate in Social Security the additional contributions will result in increased Social Security benefits upon retirement.

Kentucky Retirement Systems Actuarial Audit Results

The senior vice president and vice president of Segal Consulting presented the results of the actuarial audit recently performed on the KRS. The audit was limited in scope, and Segal did not perform a full replication audit, but rather used “test life” data. Test lives are actual members and highlight the scope of the system and its benefits, including all the tiers, retirement systems, and benefits covered by KRS. The data was compared and found to be accurate, although several recommendations were provided concerning some assumptions made regarding the data. The data provided to the actuaries for evaluation of liabilities and contributions showed a match within 1 percent, which is better than the 5 percent generally accepted as good. The only difference greater than 5 percent was the data applicable to beneficiary age; however, the difference seems to be a result of the way the data was reported and this small discrepancy would have no measurable impact on the results. Concerning the valuation report, it was noted that the recommended employer contribution rate appeared to contain a slight miscalculation.

Regarding the “experience gain/(loss)” assumptions, it was noted that the demographic and asset values were currently totaled and expressed as a percentage of the actuarially accrued liability, and it was recommended that these values be split. Also, the demographic gains and losses should be expressed as a percentage of liabilities, while the asset gains and losses should be expressed as a percentage of the assets.

There were no major issues noted with the economic assumption recommendations and only one question regarding the mortality data, where actual deaths were nearly double what was expected for the 55 to 64 age range. They also highlighted recommendations to the retirement rate analysis and lower term rates regarding turnover and termination and gave a brief overview of valuation methods. Overall, the data appeared complete and the assumptions and methods were reasonable and complied with actuarial standards of practice. Some suggestions were made to improve the usefulness of reports and to fine tune the actuarial liabilities.

Kentucky Retirement Systems Consulting Actuary Response to Actuarial Audit

The KRS consulting actuary, Cavanaugh MacDonald Consulting, responded to the actuarial audit results. The actuarial audit is a value to the system, improving the valuation process. It also helps the KRS board and members of the Public Pension Oversight Board be more confident that the numbers reported have been calculated correctly. The methodology of using raw test case data for the audit allowed for a more nuanced audit.

Cavanaugh MacDonald disagreed that the employer contribution rates were slightly understated because the valuation rate was presented as a dollar contribution that is adjusted for the timing of payments. Also, because the valuation reports are always accompanied by a 20-year projection, any significant understatement would be reflected in the 20-year projection, which was not seen. One of the benefits of an outside audit is having an objective party interpret reports and highlight where communication would be better, and Cavanaugh MacDonald noted that there were some areas where the reports did not communicate effectively and that efforts will be made to correct that going forward. Cavanaugh MacDonald is working with the KRS board of trustees to implement most of the corrections recommended by Segal in its report.

In the area of projected benefits, Cavanaugh MacDonald agreed with the findings concerning differences and has corrected the numbers applicable to liabilities, which now range from 0.06 percent to negative 0.09 percent. It was noted that this was further evidence that this was a very thorough audit because it was able to increase accuracy to this level.

KRS also addressed concerns about the scope of the audit and explained that a limited-scope audit was chosen because it is an accepted actuarial process. Also, they noted that the costs of conducting a full-scope audit on such a complex system as KRS would have been much higher. Additionally, the KRS board decided to put some sensitivity analysis in the valuation reporting this year to address some concerns of the Public Pension Oversight Board members.

Fiscal Year 2015 State-Administered Retirement System Investment

LRC staff provided an investment review of the state-administered retirement systems for the 2015 fiscal year. It was noted that over the 10- and 20-year periods most of the plans have come close to or exceeded their benchmarks and their investment return assumptions. Staff discussed the sources of fees and fees reporting, and several factors that influence fees, including internal management and asset allocation, were highlighted.

Testimony and Recommendations From Employee, Employer, and Retiree Groups

The government relations director of the Kentucky School Boards Association (KSBA) stated that healthy pension systems for all school district employees are a top priority for KSBA. KSBA has been working with the many unique constituent groups and KRS to address pension spiking because a solution to this issue is a top priority for KSBA in the upcoming legislative session. Finding a solution to the issues facing KTRS is also a top priority for KSBA. The largest concern from school board members is what impact changes will have on the quality of teachers being recruited to replace retiring teachers. Additionally, KSBA recognizes that the budget is currently strained, but it requests adequate funding of the ARC for KRS and KTRS.

The deputy executive director of the Kentucky League of Cities (KLC) spoke briefly about the retirement crisis and the perspective of city governments and the employers who participate in CERS. He stated that the KLC constituent groups are very satisfied that SB 2 from the 2015 Regular Session is working to reduce contribution rates in CERS, while the percentage of funding is increasing, so the organization feels that it is in a slightly better position relative to other retirement systems. As a result, KLC is not seeking any structural changes in regard to CERS. However, the KLC board of directors voted in June to explore the option of separating CERS from KERS, and KLC is seeking greater distinction between the two systems from the legislature in the future. KLC is also very interested in pension spiking and will continue to seek a solution to the inadvertent effects of SB 2. Finally, he directed members' attention to BR 63 prefiled by Representative Denver Butler for the 2016 Regular Session. The legislation would allow cities to operate the way sheriff's offices do in regard to hiring, or rehiring, retired law enforcement officials without making an employer contribution for pension or health insurance. This is extremely important for smaller cities having difficulty entering new hires into the Department of Criminal Justice training program.

The director of governmental relations with the Kentucky Association of Counties (KACo) stated that funding may be even more urgently needed for KERS than for KTRS, which is currently funded at 53 percent, compared to 19 percent for KERS. KACo has members in both the KERS and CERS systems, as well as retired school professionals and former legislators, and therefore has a vested interest in all the public pension systems. KACo encouraged the legislature to remain committed to the schedule established by SB 2 in order to provide 100 percent funding for the ARC. Secondly, it suggested the legislature explore options for a dedicated revenue stream to meet the ARC payment.

The president and chief executive officer of the Kentucky Chamber of Commerce testified on behalf of 60,000 member employers. He said businesspeople across the state are concerned about the pension system as well as the repeated downgrading of Kentucky's bonds and the extremely low rating of the state's financial situation. The chamber requested a performance audit for KRS and suggested that the board make a recommendation to have LRC appropriate existing LRC funds to finance the audit rather than waiting for a budgetary appropriation. Secondly, the chamber suggested that the board members look more deeply into the use of placement agents by the pension systems. Third, the chamber noted that the depletion of investment assets for KTRS threatens taxpayers with huge bills in the future and suggested a shared responsibility strategy, much like that used for KTRS in 2010 regarding health insurance expenses, including structural changes in benefits to help ensure the system can be sustained and additional funding to meet current obligations of the system. Finally, if bonding will be part of the final solution, which the business community is skeptical of, it will be necessary to consider KTRS in relation to KRS regarding lack of assets, and any bonding capacity the state can use to rescue KTRS should also be considered for KERS.

The cofounder of Kentucky Government Retirees spoke on behalf of 6,000 member retirees. He stated that more resources are needed for the KERS nonhazardous fund and the SPRS fund. As of the end of the fiscal year in June, the assets had declined by \$248 million; in 2014 they had declined by \$183 million; in 2013 by \$212 million; and in 2012 by \$556 million. This comes to a total of \$1.2 billion of lost value over the course of the last 4 years, even when the assumed rate of investment returns was sometimes exceeded. As a solution, Kentucky Government Retirees advocates an ARC-plus strategy, where the full employer contribution is made with additional contributions to provide a cushion. However, the budget cannot sustain ARC-plus, so a separate revenue stream must be found, such as an incremental bond issue of \$250 million a year laddered over 8 years where bond payments would be nominal in the early years.

The state KRS liaison of Kentucky Public Retirees (KPR) urged the board to consider several recommendations. KPR asked for continued commitment to fully funding the ARC in the upcoming budget, and to improve the condition of the most vulnerable fund, KERS nonhazardous, to explore additional options such as a dedicated funding source to supplement, but not replace, the fully funded ARC. KPR also asks legislators to resist attempts to reduce the amount of benefits paid to current retirees who rely on their benefits. KPR strongly recommended that the General Assembly pass the KRS housekeeping legislation in the upcoming session, and he specifically addressed the investment committee voting membership provision, stating it was necessary to increase the number of voting members to match the increase in the size of the board. Finally, by the end of the biennial budget that will be approved next year, KRS retirees will have had their

benefits eroded by 6 years of inflation, so KPR requested some consideration of a COLA for retirees.

The president of the Kentucky Education Association (KEA) stated that members were dependent on their benefits and that underfunded obligations were creating a growing problem. Many members are concerned that the pensions they have paid into over many years will not be there when the members retire. The KEA supported HB 4 during the 2015 Regular Session as a viable solution that the state could maintain. Bonding and a commitment to fully funding the ARC would have put KTRS on a path to solvency.

The president of the Kentucky Retired Teachers Association (KRTA) stated the need for a comprehensive and long-term solution for the crisis facing the public pension system without delay. She presented three aspects of a solution from the perspective of the KRTA. First, it must ensure that retired teachers receive the benefits that they have earned over their many years of service. Second, the state must provide competitive pension benefits to active and future teachers; otherwise potential teachers will be lost to other states or professions. Third, the solution must not make mistakes made by other states, such as the hard lessons learned from West Virginia, Michigan, and Alaska when switching from pensions to individual accounts, and she reiterated that the KRTA supports a defined-benefit group retirement plan.

Kentucky Retirement Systems Housekeeping Legislation and Litigation Update

The executive director of Kentucky Retirement Systems (KRS) summarized the housekeeping legislation proposed for the upcoming legislative session. It is designed to bring the system into compliance with federal law changes, provide authority that will allow the system to increase efficiency, and resolve ambiguity in existing statutes. The mandatory requirement to issue benefits through electronic funds transfer or debit card in lieu of a paper check has been removed from the new language as it was highly controversial in the last legislative session.

The executive director also gave the board an update regarding KCTCS' cessation of reporting new employees to the KRS beginning in January 2014. He stated there is a perceived ambiguity in the statute, which has prevented KRS from challenging the action, and that KRS prefers to wait for the General Assembly to determine through legislation whether KCTCS can use this mechanism to leave the system. It was noted that other organizations were using the same mechanism to avoid making contributions and that this process is starving the system for the current members.

The general counsel of the Kentucky Retirement Systems spoke about litigation involving KRS. The case with Seven Counties Services is under appeal at the federal district court level, and KRS has requested that the court seek guidance from the Kentucky Supreme Court regarding the contractual nature of the relationship between KRS and Seven Counties Services. Also, there are local litigation cases regarding the City of Fort Wright and a CERS member asserting that some of the investments are not authorized by the CERS enabling statute. KRS maintains that the General Assembly amended the investment statutory scheme to allow KRS to invest CERS, SPRS, and KERS moneys to a point where they can earn a competitive return.

Kentucky Teachers' Retirement System Housekeeping Legislation and Litigation Update

The executive secretary and deputy executive secretary of KTRS summarized housekeeping legislation and litigation against the system.

In its current form, the KTRS housekeeping legislation is identical to HB 500 from the 2015 Regular Session. The legislative committee and the KTRS Board of Trustees will meet once more and may recommend some minor additional changes, but the draft is considered largely complete. Proposed legislation makes technical amendments to the plan to ensure continued compliance with federal tax law, to take advantage of efficiencies from a recent overhaul of the information technology used by the system, and to make a couple of other technical changes that will not change current practice or procedure. Additionally, there are several substantive changes, specifically recommendations to tighten provisions that allow retired members to return to work and relating to disability.

In regard to litigation, KTRS reported that there were no large litigation matters, and most of the KTRS cases were appeals by members regarding benefits. One item filed in Louisville by three plaintiffs—two active teachers and one retired teacher—has been reported as a class-action lawsuit but has not been certified by the court as a class. Additionally, the plaintiffs filed without the assistance of counsel and are seeking for KTRS to lobby members of the General Assembly for funding for the pension fund and to undo the 2010 shared responsibility legislation. They are also requesting to restrict KTRS' ability to invest in government-backed bonds and debt obligations, certificates of deposit with banks, and real estate approved by the Franklin District Court.

KTRS said that it has major concerns about KCTCS not reporting new hires, similar to those voiced by the KRS representatives. KCTCS has changed job descriptions so that no new positions at KCTCS qualify for participation at KTRS as a way to circumvent participation and payment into the system.

Judicial Form Retirement System Housekeeping Legislation

The executive director of the Judicial Form Retirement System also spoke on the JFRS proposed housekeeping legislation, which consists primarily of technical corrections to SB 2 of the 2015 Regular Session. As implementation of hybrid plans has begun, the system has discovered the need for more direction and some ambiguities that need clarification. Additionally, there are some items that deal with legislative intent or federal regulations. The board also discussed the practice of continuing health care benefits to dependents up to age 26, which KERS attempted and then had to change after the Affordable Care Act specified that coverage had to be offered but not necessarily paid, and it was noted that the JFRS proposed language, if adopted, would make the policies governing JFRS beneficiaries different from the policies in the other public pension systems.

Retirement Systems Investment Updates

KRS provided an investment update at each monthly meeting, as well as for the fiscal year, with data given on total portfolio performance relative to the plan benchmark, as well as a summary of asset class return characteristics. Monthly investment performance ranged from a low of a negative 92 basis points return to a high of a positive 1.39 percent return. The total fund returned 2.02 percent for the fiscal year ending June 30, 2015, compared to the benchmark of 3.31 percent, and below the assumed rate of return of 7.5 percent. Private equity was the best performer at 9.61 percent; the real estate return was 7.85 percent; US public equity was up 6.04 percent; absolute return was up 5.489 percent; and fixed income was up 1.44 percent. The emerging market equities, non-US equity and real return asset classes resulted in negative returns of -6.66, -3.99, and -3.98 percent, respectively.

KTRS also provided investment performance data for the fiscal year ending June 30, 2015, reporting a portfolio return of 5.1 percent. The assumed rate of return for KTRS is 7.5 percent.

**Report of the 2015
Tobacco Settlement Agreement Fund Oversight Committee**

**Sen. C.B. Embry Jr., Co-Chair
Rep. Wilson Stone, Co-Chair**

Sen. Jimmy Higdon
Sen. Carroll Gibson
Sen. Dennis Parrett
Sen. Robin Webb
Sen. Whitney Westerfield

Rep. Mike Denham
Rep. Tom McKee
Rep. Terry Mills
Rep. Ryan Quarles
Rep. Jonathan Shell

LRC Staff: Tanya Monsanto, Lowell Atchley, and Kelly Blevins

**Presented to the
Legislative Research Commission
and the
2016 Regular Session of the
Kentucky General Assembly**

Tobacco Settlement Agreement Fund Oversight Committee

Jurisdiction: Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans; planning by the board to establish short-term and long-term goals, to devise strategies, and to make investments that will assist farmers, and the administrative, financial, and programmatic activities of the board; expenditures under the Early Childhood Development Fund and the Kentucky Health Care Improvement Fund; efforts of agencies and educational institutions to assist in the revitalization and diversification of tobacco farms; efforts of institutions of public postsecondary research in conducting alternative crop development research; review of county agricultural development council plans; review of the use of Tobacco Master Settlement Agreement money.

Committee Activity

The Tobacco Settlement Agreement Fund Oversight Committee met nine times during the 2015 calendar year.

Each month the committee received regular updates from the Governor's Office of Agricultural Policy (GOAP) regarding Agricultural Development Board (ADB) funding decisions on project applications, as required by statute. Also, the committee received reports and testimony from executive branch agencies that receive tobacco settlement appropriations, from the Office of the Attorney General, and from agencies and organizations that use tobacco settlement funds.

Committee members asked questions about aspects of spending decisions made by the ADB and by those executive branch agencies and universities using the money. During the year, the committee discussed a range of additional issues, including passage of two pieces of legislation related to the Master Settlement Agreement (MSA), the use of tobacco funds to improve water infrastructure, a Department of Agriculture "Kentucky Proud" marketing division, and an agricultural loan organization.

Review of Agricultural Development Fund Projects

During each monthly committee meeting, the panel received a report from GOAP officials on the projects that the ADB considered in its previous meeting. By virtue of receiving the reports, the committee met its responsibility of reviewing the allocation of tobacco settlement funds for agricultural diversification, and monitoring the pattern of MSA fund usage in accordance with statutes.

GOAP representatives reviewed projects affecting counties, regions, or the state as a whole. They also presented a monthly listing of funding decisions made within county-level programs—County Agricultural Improvement, Deceased Farm Animal Disposal Assistance, and Shared-Use Equipment. At times, they reviewed information on other funding sources, such as the On-Farm Energy Efficiency and Production Program.

At each meeting, committee members sought clarification on funding decisions made and the rationale for reaching those decisions, and asked for additional information on projects. Committee members posed questions about the board's grant procedures; about how GOAP staff

reviewed and prepared funding applications for the board's consideration; about the reasons why some project applicants received particular amounts of funding or were denied funding; and about project monitoring, compliance, and reporting. At times, committee members offered suggestions for the ADB and GOAP to consider.

Committee members reviewed and discussed a range of ADB-funded projects aimed at increasing net farm income, fostering new agriculture-based endeavors, and exploring new agricultural marketing opportunities. Ten of the largest board-approved projects reported to the committee during the year included: funding for the Department of Agriculture's popular Kentucky Proud entity; a dairy promotion group; a beef promotion group; a horticulture promotion group; a grant and loan for a new hemp processing venture, the first such allocation approved by the board; a US Geological Survey water monitoring study; a university viticulture research project; a large farmers market in south central Kentucky; a microloan program in Eastern Kentucky; and a Department of Agriculture program for agriculture and environment in the classroom.

Agency Reports Received, Other Actions

On a number of occasions, the committee discussed the 2014 settlement negotiated between the Office of the Attorney General and tobacco companies in a dispute revolving around enforcement obligations by Kentucky and other states. The settlement resolved the dispute for tobacco payments from 2003 through 2012. Following the 2015 Regular Session, a deputy attorney general discussed one of two major tobacco settlement bills passed during the session, HB 512, which will address the enforcement of the MSA in Kentucky. Another measure, HB 510, amended the current budget to use proceeds from the previous settlement to adjust funding levels for state and county tobacco settlement programs and for health agencies receiving the funds.

Among the health-related agencies reporting at various meetings, the committee heard from officials with the Governor's Office of Early Childhood, the Tobacco Cessation and Prevention agency, the Kentucky Agency for Substance Abuse Policy (KY-ASAP), and the Kentucky Lung Cancer Research Program.

Officials with the Office of Early Childhood Development, which administers 25 percent of the state's tobacco settlement funds, outlined progress made by the many divisions operating under the Office of Early Childhood Development's administrative umbrella.

Appearing in separate meetings, those involved with the Tobacco Prevention and Cessation agency and with KY-ASAP reported to the committee on efforts undertaken to reduce tobacco use in the state, and to deal with alcohol and drug abuse.

The directors of the University of Kentucky Markey Cancer Center and the University of Louisville Brown Cancer Center discussed research and other work being done under the Kentucky Lung Cancer Research Program.

The committee received testimony from other agencies that receive tobacco settlement funds appropriations either through the General Assembly or the Agricultural Development Board.

A representative of the Kentucky Infrastructure Authority reported on infrastructure loan and grant water and sewer projects made possible with tobacco settlement money.

The executive director of the Department of Agriculture's Office of Marketing updated the committee on Kentucky Proud, which has multiple components aimed at assisting companies that sell Kentucky agricultural products.

The director of the Division of Conservation reported on the solid waste and water quality cost share and soil stewardship programs.

Committee members heard from the director of the Kentucky Agricultural Finance Corporation, which offers an array of farm loan opportunities.