

# Final Reports of the Interim Joint, Special, and Statutory Committees 2016

Informational Bulletin No. 251

December 2016





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

**2016**

**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

**Informational Bulletin No. 251**

**Legislative Research Commission**  
Frankfort, Kentucky  
[lrc.ky.gov](http://lrc.ky.gov)

**December 2016**



## Foreword

Colleagues and Constituents of the Legislative Research Commission:

The iconic image of a legislature in action is the busy floor of an ornate House or Senate chamber, but it is in the humble committee room where the heavy lifting of the legislative process takes place. It is in the committee process where citizen participation is directly heard. Between legislative sessions, the interim joint committees, as well as special and statutory committees, meet to discuss and receive testimony on a number of important issues that may come before the General Assembly. These committees provide important continuity between sessions.

During the 2016 Interim, all 15 interim joint committees and nine statutory committees met to conduct business. There were four special committees.

The Legislative Research Commission publishes this informational bulletin as a summary of committee activity since adjournment of the 2016 General Assembly. The reports were prepared separately by the committee staff.

Thank you for your interest in the business of the Kentucky General Assembly. The staff of the Legislative Research Commission stands ready to assist with any assistance you may need.

A handwritten signature in black ink, appearing to read 'DAB', with a long, sweeping horizontal line extending to the right from the end of the signature.

David Byerman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
December 2016



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**Report of the 2016  
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. Whitney Westerfield  
Rep. Lynn Bechler  
Rep. Denver Butler  
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. Tom Riner  
Rep. Bart Rowland  
Rep. Steven Rudy  
Rep. Dean Schamore  
Rep. Rita Smart  
Rep. Wilson Stone  
Rep. Chuck Tackett  
Rep. Jeff Taylor  
Rep. Tommy Thompson  
Rep. James Tipton  
Rep. Tommy Turner  
Rep. Susan Westrom

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

**Presented to the  
Legislative Research Commission  
and the  
2017 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. Denver Butler  
Rep. Kelly Flood  
Rep. Derrick Graham  
Rep. Martha Jane King  
Rep. Michael Meredith

Rep. David Osborne  
Rep. Sannie Overly  
Rep. Tom Riner  
Rep. Rita Smart  
Rep. Wilson Stone  
Rep. Chuck Tackett  
Rep. James Tipton  
Rep. Susan Westrom

Sen. Paul Hornback, ex officio

Rep. Tom McKee, ex officio

LRC Staff: Lowell Atchley and Marielle Manning

**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. 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. Jeff Taylor  
Rep. Tommy Thompson  
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 2016 Interim. Several committee meetings were held outside of Frankfort in order to visit various sites engaged in agricultural operations. The Subcommittee on Horse Farming and the Subcommittee on Rural Issues were reauthorized, 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 2017 Regular Session.

The committee visited several venues outside Frankfort, including a meeting at the Scott County Extension Office, where members received testimony from the Scott County Extension agent relating to the University of Kentucky Extension Program and its importance to the agribusiness community. Members received testimony relating to horticulture production and marketing in Kentucky. Representatives from the thoroughbred horse industry discussed issues that the industry is facing. Representatives from the Kentucky Veterinary Medical Association and a Scott County veterinarian discussed concerns relating to veterinary education.

The committee met at the Kentucky Department of Agriculture in Frankfort. Members received testimony from a variety of department officials. Members received updates from the Office of the State Veterinarian, the Office of Consumer and Environmental Protection and the Office of Marketing and Product Promotion, relating to the Kentucky Proud Program. Members were given the opportunity to tour program displays including the Ag Safety Trailer, Weights and Measurement Equipment, Industrial Hemp Program, Insect Fogger Truck, Agriculture Education Trailer, and Hay Testing Trailer.

At the State Fair, in Louisville, the interim chief executive officer of the State Fair Board updated committee members on fair activities and projects being undertaken by the board. The mayor of Louisville discussed the local food movement.

The committee met at Seay Auditorium at the University of Kentucky. The dean of the University of Kentucky's College of Agriculture, Food and Environment discussed its current projects and programs. The committee received testimony from the associate dean for research and the assistant dean and director of diversity. Members received an overview of the university's research efforts in the areas of the Department of Animal and Food Sciences; Department of Entomology; Distillation, Wine and Brewing Studies Program; and Equine Program.

The committee was invited to tour the University of Kentucky's Maxwell H. Gluck Equine Research Center.

In Frankfort, the committee discussed agriculture's economic outlook and received testimony relating to potential legislative issues for the 2017 Regular Session from the Kentucky commissioner of Agriculture, the Kentucky Cattlemen's Association, and the Kentucky Farm Bureau.

### **Administrative Regulations**

Three administrative regulations were referred to the committee during the 2016 Interim, from the University of Kentucky Agricultural Experiment Station. The regulations related to seeds.

### **Legislative Proposals/Policy Positions Received**

The committee received legislative proposals and comments for the 2017 Regular Session from representatives of the Kentucky Farm Bureau, Kentucky Cattlemen's Association, and the Kentucky Department of Agriculture.

The following legislative proposals were received in the full committee:

#### **Kentucky Farm Bureau**

- Support and continued progress for HB 529, relating to the Kentucky Water Resources Board.
- Address wildlife management issues relating to deer, turkey, and black bear and the harm being done to agriculture crops and Kentucky motorists.
- Support and assist in tax reform. Continue support for tax exemptions on agricultural products.
- Continue support for rural and secondary road fund.

#### **Kentucky Cattlemen's Association**

- Support local communities and local purchases of agriculture supplies by eliminating tax on agricultural pharmaceuticals.

#### **Kentucky Department of Agriculture**

- Amend industrial hemp statutes to reflect changes in federal industrial hemp pilot program.
- Amend amusement ride statutes to reflect changes in reporting requirements for amusement ride accidents.
- Amend Department of Agriculture statutes to reflect program changes and fees.
- Continue support for the statewide hunger initiative and prepare statewide policy goals.

### **Reports Received**

The committee received the following reports:

- Executive Order 2016-730, Relating to Reorganization of the Kentucky State Fair Board
- University of Kentucky: 2015 Kentucky Tobacco Research and Development Center Annual Report
- Kentucky Department of Agriculture: 2015 Kentucky Equine Health and Welfare Council Administrative, Programmatic and Financial Activity Report

- Kentucky Association of Food Banks, Surplus Agricultural Commodities Advisory Committee: FY16 Annual Report of the Farms to Food Banks Program

### **Subcommittee on Horse Farming**

The Subcommittee on Horse Farming met once during the 2016 Interim and heard testimony on issues related to horse racing and nonracing activities and to horse abandonment. During the meeting, the subcommittee heard from officials with the Kentucky Horse Racing Commission, who updated the subcommittee on developments within the commission, the current status of thoroughbred and standardbred racing in Kentucky, and the Breeders' Incentive Funds program, which benefits race and nonrace breeds.

In addition, the subcommittee heard a report from the state veterinarian, an equine specialist in his office, and the Mercer County attorney on how to deal with people who abandon or leave their horses without proper care. The presentation centered on a highly publicized horse abandonment investigation during the summer. Some of the discussion centered on possibly amending the animal cruelty and forfeiture statutes.

### **Subcommittee on Rural Issues**

The Subcommittee on Rural Issues met once during the 2016 Interim and heard testimony on pertaining to rural Kentucky. During the meeting, the subcommittee heard from the commissioner of the Department for Business Development within the Kentucky Cabinet for Economic Development and from the deputy commissioner of the Department for Business Development within the Kentucky Cabinet for Economic Development, who gave extensive testimony on the economic and employment climate in rural Kentucky. Numerous state initiatives have been deployed to cultivate economic growth, including Select Kentucky, the Kentucky Work Ready Skills Initiative, the Kentucky Federation for Advanced Manufacturing Education, the Kentucky Export Initiative, and the Build-Ready Program. Youth development programs include the Governor's School for Entrepreneurs, Lieutenant Governor's Entrepreneurship Challenge, Idea State U, and network sponsored events.



**Report of the 2016  
Interim Joint Committee on Appropriations and Revenue**

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

Sen. Ralph Alvarado  
Sen. Danny Carroll  
Sen. Chris Girdler  
Sen. David Givens  
Sen. Denise Harper Angel  
Sen. Stan Humphries  
Sen. Morgan McGarvey  
Sen. Dennis Parrett  
Sen. Wil Schroder  
Sen. Brandon Smith  
Sen. Robin L. Webb  
Sen. Stephen West  
Sen. Max Wise  
Rep. Linda Belcher  
Rep. John Carney  
Rep. Larry Clark  
Rep. Leslie Combs  
Rep. Ron Crimm  
Rep. Mike Denham  
Rep. Bob M. DeWeese  
Rep. Jeffery Donohue  
Rep. Myron Dossett

Rep. Kelly Flood  
Rep. Jim Glenn  
Rep. Joni Jenkins  
Rep. Martha Jane King  
Rep. David Meade  
Rep. Terry Mills  
Rep. Marie Rader  
Rep. Bart Rowland  
Rep. Steven Rudy  
Rep. Sal Santoro  
Rep. Dean Schamore  
Rep. Arnold Simpson  
Rep. Rita Smart  
Rep. Jim Stewart III  
Rep. Wilson Stone  
Rep. Tommy Thompson  
Rep. Tommy Turner  
Rep. David Watkins  
Rep. Jim Wayne  
Rep. Susan Westrom  
Rep. Addia Wuchner  
Rep. Jill York

LRC Staff: Jennifer Hays, Cynthia Brown, Charlotte Quarles, and Jennifer Beeler

**Presented to the  
Legislative Research Commission  
and the  
2017 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. Jeffery Donohue, 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. Ruth Ann Palumbo, nonvoting ex officio  
Rep. John Short, nonvoting ex officio  
Rep. Fitz Steele, nonvoting ex officio

LRC Staff: Joe Lancaster, Ray Griffith, Stephanie Rich, Greg Troutman, 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. Tom Riner
Sen. Johnny Ray Turner	

Rep. Brent Yonts, ex officio  
Rep. Will Coursey, nonvoting ex officio  
Rep. Tom McKee, nonvoting ex officio  
Rep. Steve Riggs, nonvoting ex officio

LRC Staff: Stephanie Rich, Joe Lancaster, Katherine Halloran, Ray Griffith, Seth Dawson, 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, nonvoting ex officio

LRC Staff: Miriam Fordham, Jonathan Eakin, and Benjamin Thompson

**Budget Review Subcommittee  
on Justice and Judiciary**

**Sen. Wil Schroder, Co-Chair  
Rep. Kevin Sinnette, Co-Chair**

Sen. Ray Jones  
Sen. John Schickel  
Sen. Robin Webb  
Sen. Whitney Westerfield

Rep. Johnny Bell  
Rep. Ron Crimm  
Rep. Martha Jane King  
Rep. Brent Yonts

LRC Staff: Zach Ireland 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  
Sen. Gerald A. Neal  
Sen. Johnny Ray Turner  
Sen. Mike Wilson  
Rep. Linda Belcher  
Rep. Larry Clark  
Rep. Jim DeCesare

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

Rep. Derrick Graham, nonvoting 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  
Sen. Gerald A. 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, nonvoting ex officio

LRC Staff: Chuck Truesdell, Jim Bondurant, 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. Jeff Greer

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

Rep. Hubert Collins, ex officio

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

Ex Officio Members for all subcommittees:  
Sen. Chris 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; veterans' 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 2016 Interim, the Interim Joint Committee on Appropriations and Revenue held six meetings. The committee received testimony regarding a wide range of topics.

### **Prison Population and Utilization of Private Prisons**

The secretary of the Department of Corrections explained how Kentucky's offender population is growing, with more significant growth during the last 7 months. This growth is why private prisons are being considered as a method to address the growing offender population. A graph showed approximately 23,700 total inmates in state custody as of June 15, 2016. Kentucky is distinctive when compared to other states because one-third of all state inmates are housed in county jails. The only other state that uses a similar model is Louisiana. As of June 15, 2016, approximately 11,176 state inmates were in county jails, which is well above the previous record set in June 2015. The total number of jail beds equals 19,160. A graph depicted the growth of prison population numbers over the last 10 years. During 2010 and 2013, a decrease in populations occurred, attributable to unusual outside factors. During that 10 year period, 2015 and 2016 had the highest growth rates at 2.35 percent and 5.73 percent, respectively.

The secretary stated that there are 26 jails that have populations higher than 140 percent of capacity. There are three private prisons in the state, all owned by the Corrections Corporation of America headquartered in Nashville, Tennessee: Marion Adjustment Center (MAC), Lee Adjustment Center (LAC), and Otter Creek. The maximum capacity for MAC and LAC is 1,642 inmates. If the state used the two prisons again, the extra capacity at these facilities would help to address overcrowding in county jails. If inmates were transferred to private prisons, the projected jail state inmate population would still be 905 more than the average jail state inmate population in 2013, which was when the last private prison was closed. Using the current growth rate, the average jail population in calendar year 2017 is projected to be 9,907 if 1,642 private prison beds are used.

### **Medicaid Costs and Projections**

The commissioner of the Department for Medicaid Services explained that the Medicaid program has approximately 1.3 million members, including 435,700 children, 76,000 of whom participate in KCHIP. A total of 1.2 million members are in the managed care program, 440,300 of whom were enrolled under Medicaid expansion. The system includes approximately 40,700 enrolled providers. Health spending is projected to grow at an average rate of 5.8 percent from

2012 to 2022. The Affordable Care Act (ACA) expansions and the aging of the population are drivers for faster projected growth in 2014 and beyond. After 2016, Medicaid spending growth is expected to be about 6.6 percent per year. Health spending is projected to be 19.9 percent of gross domestic product by 2022.

The commissioner stated that Medicaid enrollment has grown approximately 66 percent since the expansion was implemented in January 2014. The Medicaid expansion extends eligibility to individuals with income up to 138 percent of the federal poverty level. It also aligned benefit packages into one plan for both expansion and traditional populations. As of July 2015, there are five managed care organization (MCO) contracts, and all MCOs now provide services statewide. The new MCOs are required to use national standards to determine medical necessity and have strengthened network adequacy requirements. Two graphs illustrated expenditures compared to enrollment. The graphs indicate that the state spends almost \$20 million per day on Medicaid managed care and \$30 million per day overall. In the enacted budget, funding is provided for all existing Medicaid covered services, including the expansion of Medicaid, and for the development and implementation of the Medicaid Enterprise Management System.

The commissioner explained that the ACA was intended to extend coverage to 95 percent of all Americans through expanded Medicaid and the new marketplace exchanges. Nationally, the Congressional Budget Office estimated that 40 percent of the newly insured would obtain coverage through Medicaid and 60 percent would obtain coverage through subsidized commercial policies. The results are much different in Kentucky. Nearly 80 percent of the newly insured Kentuckians obtained coverage through Medicaid. Currently, 1.37 million Kentuckians—30 percent of the state's population—are enrolled in Medicaid. Projected fiscal year 2018 enrollment is 1.43 million, which is 32 percent of the state's population. As of February 2015, the projected cost to the state for fiscal years 2017 and 2018 will total \$247 million, and for fiscal years 2019 and 2020, it will total \$509 million.

There was discussion about Kentucky HEALTH and the Medicaid waiver proposal requested by the Governor. The chief of staff to the Governor stated that the goals of the Section 1115 waiver are to improve participants' health and help them be responsible for their health, to encourage individuals to become active participants and consumers of health care, to empower people to seek employment and transition to commercial health insurance coverage, to implement delivery system reforms to improve quality and outcomes, and to ensure fiscal sustainability. The waiver proposal was tailored for Kentucky and developed to provide benefits equivalent to the Kentucky Employees' Health Plan. This plan targets two eligibility groups: all able-bodied adults eligible for Medicaid (which includes the expansion population and other non-disabled Medicaid eligible adults) and low-income children. The paths to coverage are an employer premium assistance program option and a consumer-driven health plan option.

The proposal institutes monthly premiums in lieu of copayments, because data suggests that participants prefer premiums over copays. Pregnant women and children would be exempt from all cost sharing. Premiums would be determined at a flat rate based on a sliding scale equal to or less than 2 percent of income for each income group related to the federal poverty level. After 2 years, cost sharing will increase for individuals above 100 percent of the federal poverty level to prepare and encourage them to transition to private market coverage. The employer premium

assistance option would provide premium reimbursement for enrollment in employer sponsored plans. Under the proposal, Kentucky HEALTH would reimburse the employee for premiums paid and would provide wrap around benefits in the event that benefits are not as robust as those offered by the benchmark health plan.

The consumer driven health plan option is very similar to the Kentucky Employees' Health Plan. There will be a deductible, but the state will prefund an account with \$1,000 to cover deductible expenses, similar to a health savings account. Preventive services will be excluded from the deductible and will be fully covered. To encourage prudent use of that account, there will be a rollover of 50 percent of unused account balances at the end of each year into the My Rewards account. The My Rewards account can be used to pay for enhanced benefits such as vision, dental, over-the-counter medications, and gym membership reimbursement. As an incentive for members to move off the plan and into private insurance, any former member may apply to receive the unused portion of the account, up to \$500, after leaving the plan for 18 months.

The proposal includes nonpayment penalties for members who choose not to make a premium payment within 60 days of the due date. Members who do not pay will be subject to disenrollment from the program for up to 6 months. Individuals may reenroll before the 6 months have passed by paying 2 months of missed premiums and 1 month of premium going forward. The member must also complete a health or financial literacy course. These policies are designed to help members learn how to use commercial policies. Benefits begin when members make the first payment, and individuals with income below 100 percent of the federal poverty level who do not make the first payment will receive benefits 60 days after application approval. During the open enrollment period, beneficiaries must return reenrollment paperwork within a specific time period, or they must wait 6 months for the next open enrollment period to reenroll in coverage. Members select a managed care plan at enrollment and must maintain that plan choice for the entire 12 month benefit period.

## **Historic Preservation**

A representative from Hudson Holdings testified from a developer's viewpoint about the use of historic tax credits and the benefits of rehabilitating historic buildings into functioning properties. The process by which a developer would rehabilitate a property includes purchasing an underdeveloping property and spending approximately 5 to 10 times the purchase price in rehabilitation costs, resulting in hotels, apartments, retail, restaurants, and other types of properties that bring revenue and life back to underdeveloping historic neighborhoods. There are 33 states that offer historic tax incentives. Historic tax credits are on the rise, with 12 states enacting or expanding their tax credits since 2011. The percentage of expenses allowed as a credit varies. In Kentucky, there is a 20 percent credit, but because of the proration process, the credit is approximately 9 percent to 10 percent with an annual program cap of \$5 million and a project cap of \$400,000. Historic tax incentives can be a catalyst for new business, new residents, and the possibility of new jobs and higher property values in areas that have been under developing.

## **Budget Review and Update for End of Fiscal Year 2015-2016**

The state budget director reviewed the budget and revenues for fiscal year 2015-2016 (FY 2016) and the financial outlook for fiscal year 2016-2017 (FY 2017). Actual general fund receipts for FY 2016 exceeded the official estimate by 0.5 percent, generating a revenue surplus of \$48,984,795. The growth in receipts was driven primarily by the individual income tax and sales tax. These taxes provide the most elastic sources of revenue. Many of the remaining general fund revenue sources fell during the year. The underproducing areas included coal severance, cigarette taxes, and limited liability entity tax. Overall, the general fund revenue growth rate for FY 2016, compared to the prior year, was 3.7 percent. Even with that overall growth, the general fund revenue sources, other than individual income and sales taxes, fell a collective \$35.7 million.

Individual income tax (IIT) withholding grew by 4.8 percent, estimated payments grew by 10.2 percent, and the overall growth in FY 2016 was 5.2 percent, after 8.5 percent growth in FY 2015. The IIT contributed \$212.6 million of the total \$372.3 million in nominal general fund growth. The sales tax growth in FY 2016 was 6 percent, following 4.4 percent growth in FY 2015 and 3.6 percent growth in FY 2014. The 6 percent mark in FY 2016 was the highest growth since FY 2006. The sales tax contributed \$195.4 million of the total general fund growth. Sales tax growth in excess of income growth is not sustainable. The director explained the Governor's Budget Stabilization Plan; the total planned lapse was \$52,924,400, and the actual lapsed amount was \$52,313,600, which is a difference of \$610,800. This difference comes from \$478,000 from the Attorney General's office, \$112,000 from the Department of Agriculture, and \$20,800 from the Executive Branch Ethics Commission.

The revenue surplus was determined. General fund revenues in excess of the official estimate equaled \$49.0 million. After accounting for necessary government expenses of \$4.1 million, spending less than budgeted of \$2.5 million, fund transfers less than budgeted of (\$2.7 million), and small reductions in other areas, the general fund surplus equaled \$52.7 million. Pursuant to the general fund surplus expenditure plan contained in 16 HB 303, the current state budget, \$26.4 million of that total will be held for the Budget Reserve Trust Fund in FY 2017. This leaves a total of \$26.4 million to be deposited into the Kentucky Permanent Pension Fund.

According to the 2014-2016 Executive Branch Budget Bill (2014 RS HB 235), the tobacco fund estimate for FY 2016 was approximately \$98 million. When the current year appropriations and additional receipts are added to this amount, the total FY 2016 tobacco funds equal \$123,257,800. The budget bill sets forth how the additional receipts will be allocated, with 50 percent to the agricultural development fund, 36 percent to early childhood, and 14 percent to the health care improvement fund. FY 2016 road fund revenues, which also had a surplus of \$36.6 million, or 2.5 percent above the revised estimate. Even though there was a surplus, the difference between FY 2015 and FY 2016 resulted in a difference of negative \$44.2 million. Receipts still fell but were above the estimate. The motor vehicle usage tax receipts were up in FY 2016, and, even with the trade-in allowance for new vehicle purchases, revenues still totaled \$484.4 million. Motor fuels came in slightly higher than the estimate at \$750 million, and motor vehicle license revenues was up with actual revenues at \$113.1 million.

The motor fuels tax rate that was in effect for all of FY 2016 was 26 cents, of which 19.6 cents was the variable rate driven by a statutory formula. After the floor was frozen, the rate will remain at 19.6 cents until the wholesale price reaches \$2.17 per gallon, which would require the pump price to reach \$2.80 to \$2.90 per gallon sustained for a period of time. The rate can be changed only once per year. The road fund had a surplus of \$38 million, which is statutorily required to be deposited into the state highway construction account.

Regarding the outlook for FY 2017, the consensus forecasting group in December called for a growth rate of 3.2 percent, but due to receipts in excess of the revenue estimates in FY 2016 growth needed to hit the FY 2017 estimate, the rate falls to 2.7 percent. Nationally, the United Kingdom's exit from the European Union will continue to have a small negative impact on the US economy via trade channels. Uncertainty in the UK leads to a weaker UK currency against the US dollar. A strong dollar leads to a weaker demand for US exports, which is a concern for Kentucky's economy. Professional forecasters and economic experts have consistently lowered their forecasts for GDP growth to approximately 2 percent.

FY 2016 was a favorable year for the Kentucky economy, but it is not immune from external shocks. The Kentucky Cabinet for Economic Development recently expressed concerns about export growth due to the strong dollar and weaker international economies. The UK has traditionally been the commonwealth's second largest destination for exports. Aside from export concerns, economic conditions remain fairly solid.

### **Kentucky Retirement Systems Investment Returns**

The chief information officer of Kentucky Retirement Systems testified about Kentucky's investment performance. The performance is a product of asset allocation and manager selection. The board's policies establish asset allocation targets based on asset-liability modeling studies that are conducted by independent experts at least once every 5 years. The objective of the asset allocation policies is to produce returns that meet certain benchmarks or goals, on both a short-term and a long-term basis. To meet its objectives, the investment program employs diversification and rebalancing strategies among and within the asset classes. Several very detailed graphs and projection worksheets explaining the state's investment portfolio for the pension and insurance plans were presented. The graphs showed all investments and the returns. There were several more graphs that showed performance drivers for investments, investment returns, risk and return analyses for both 5 and 10 years, and a review of cash flow for the system.

### **State Park Renovations**

The deputy commissioner of the Division of Facilities Management discussed the \$18 million state investment that was given to the state parks. The \$18 million allocation was the largest investment that has been given to state parks in more than 10 years. These funds are being used to improve exteriors this year. In 2015, a \$5.8 million investment was used for updating the interior of some of the lodges. Over the last year, several parks have reflected the effects of deferred maintenance. The funds allocated have already been used for aesthetic and safety upgrades. An overview of the scheduled parks' upgrades included extensive exterior repairs over the next 18 months. As a result of the upgrades to the state parks, customers can book reservations online



through travel sites. Internet and Wi-Fi access is improving across the facilities. There are also alcohol sales within 11 of the state parks. Finally, state parks plan to take advantage of the opportunity provided by the recently enacted public private partnership legislation.

### **Actions Taken by AT&T Since 2015 Deregulation Was Enacted by General Assembly**

The president of AT&T Kentucky testified on its investments in the state's telecommunication network since the passage of 2015 Regular Session House Bill 152. HB 152 was a first step in updating Kentucky's outdated telephone lines. The bill increased the investment in high speed internet infrastructure and created jobs. By the end of 2016, AT&T will have expanded the fiber optic network to bring more Kentuckians access to the latest in wireless services through the construction of 32 new cell sites. AT&T has worked closely with other communication providers, the Kentucky Department of Education, and every school district to stretch fiber based high speed Internet to all 173 school districts. This upgrade in connectivity has allowed Kentucky to be the first state to hit a national benchmark set in 2012.

### **Affordable Housing Tax Credit Introduced in 2016 Regular Session**

Several representatives testified about the benefits of affordable housing credits and gave an overview of 2016 House Bill 542, which was introduced in the 2016 Regular Session but did not pass. The affordable housing tax credit bill mirrors the federal tax credit program that was enacted in 1986 and that provides a per capita allocation. In 2017, the US Treasury will allocate \$10.3 million of federal low income housing tax credits to Kentucky. Because the low income housing tax credit is a 10 year credit, the program will yield approximately \$97,850,000 of private equity investments. Between 2009 and 2014, the tax credit assisted an average of 1,045 individuals and families annually through the new construction or rehabilitation of multifamily residential units. Lexington and Louisville are seeking to establish local funding for housing finance. The Lexington Affordable Housing Trust Fund has received pledges of \$7 million total investment during the previous 3 years. Louisville CARES has a \$12 million total investment by Louisville Metro in workforce housing. These establishments address housing issues such as low household incomes, aging household stock, and lack of local resources.

The goals of the proposed legislation were to increase the number of annual housing construction starts, preserve Kentucky's stock of existing affordable housing, increase the amount of private equity invested in the Kentucky market, facilitate and enable investment in Kentucky's poorest counties, and allow for additional investment in special programs such as Recovery Kentucky. A recent study calculates that a state low income housing tax credit is expected to incentivize roughly 450 total additional units. Assuming that each unit costs an average of \$80,000 to construct, the total annual construction spending is expected to be \$36 million. The projected \$36 million of annual capital investment is estimated to annually generate 394 jobs, 187 direct construction jobs, and 208 indirect and induced jobs. With this credit, there will be no taxpayer cost in the biennium, and no state credits can be awarded until construction is complete. There is no possibility of a fiscal impact until at least 2019. Architects, development firms, and construction workers will be creating jobs and buying materials, which would create a short term increase in state and local revenues. The actual cost of implementation is minimal because the credit works in tandem with the federal credit.

## **University Pension Costs**

Representatives from Northern Kentucky University, Morehead State University, Kentucky Retirement Systems, and Kentucky Teachers' Retirement System testified on the impact of university contributions into the retirement system programs. Because of the increase in retirement system contributions and the decrease in state appropriations, revenue has been lost and jobs have been eliminated. Several universities that participate in the retirement system programs have started seeking third party vendors to outsource work, usually hourly employees limited in their ability to find other employment in the region.

## **Joint Funding Administration**

The commissioner of the Department of Local Government (DLG) explained that the Joint Funding Administration was created to unify funding to the area development districts (ADDs) from multiple state and federal sources. The number of participating agencies has declined over the years. DLG executes memoranda of agreement with each of the 15 ADDs. The Joint Funding Administration includes both federal and state dollars. Funds included are state general fund appropriation, economic development administration, community development block grant, and Appalachian Regional Commission match funding. DLG has been working on a new formula to distribute funds to the ADDs. DLG has brought the ADDs together to get feedback, and they are now working on developing the fairest way to distribute funds.

A representative from the Kentuckiana Regional Planning and Development Agency testified about the formula dating back to 1976 used to appropriate funds through the Joint Funding Administration (JFA). He stated that 70 percent of the JFA funds is divided evenly among the 15 ADDs, 20 percent is allocated based on population, and 10 percent has been used several ways in the past. This is the formula that the 15 ADDs have agreed on and discussed with the Department of Local Government with the goal of returning to this formula.

## **Costs Associated With Services Required by Agencies**

A representative of the Office of the State Budget Director said that the costs associated with services required by agencies are the costs of elections (Board of Elections), expert witness fees and other costs (Attorney General's Office), county costs (Finance and Administration), and jail per diem and jail design fees (Justice and Public Safety Cabinet). All these are necessary government expenses. The authority to spend funds on certain expenses is provided in the enacted budget without a sum-specific appropriation amount. Funds come from the General Fund Surplus Account or the Budget Reserve Trust Fund.

## **Contract Spaces Program**

Several representatives testified on the Contract Spaces Program and how money is appropriated. Kentucky participates in the Southern Regional Education Board (SREB) Contract Spaces Program for Veterinary Medicine Program and Optometry School Program. Kentucky pays the schools the difference between in-state and out-of-state tuition for a predetermined number of

Kentucky students. Kentucky residents compete for Kentucky's reserved spaces. Those who are awarded these spaces attend the institution and pay the in-state tuition rate.

Kentucky has funded 164 veterinary medicine slots that were filled at Auburn University and Tuskegee University, and 44 optometry slots that were filled at Southern College of Optometry, Indiana University, University of Alabama-Birmingham, and most recently University of Pikeville. House Bill 303 specifies that the Council on Postsecondary Education (CPE) maintain the program's FY 2015-2016 funding at \$5.6 million in each year of the 2016-2018 biennium. In order to stay within budget and maintain spaces, CPE took necessary action and negotiated a "hold" with SREB and partners, which saved Kentucky approximately 6 percent on tuition rate increases for most SREB spaces. This action funded all but one optometry space and all veterinary spaces for FY 2016-2017. For FY 2017-2018, CPE negotiated a lower rate for SREB spaces and funded all but four optometry and two veterinary spaces. Because of budget shortfalls, CPE would need approximately \$541,000 in order to recover the necessary funds to keep all contract spaces and recuperate CPE money that was used out of its general fund budget.

### **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 2018-2020 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 four meetings during the 2016 Interim. The commissioner and the deputy director of financial operations for the Department of Parks and the chief of staff/legislative liaison for the Tourism, Arts and Heritage Cabinet presented a budget update concerning the Department of Parks.

The commissioner provided information relative to the enacted 2016-2018 biennial capital budget, totaling \$18 million of approximately \$240 million estimated in the 6 year capital plan, for renovations and repairs to the state resort parks, state recreation parks, and state historical sites/shrines. The initiative is called the "Refreshing the Finest" campaign.

The commissioner addressed inquiries relative to splash park locations; possible statewide Workforce Investment Board job training partnerships for departmental cost reductions; travel website fees; the number of Kentucky parks, which is above the national average; campground improvements of \$1.3 million; increased regional promotional advertising campaigns; increased social media network initiatives; and maintenance pool resources.

The secretary, deputy secretary, commissioner, and deputy commissioner for the Department of Workplace Standards presented information concerning the apprenticeship

program in the Labor Cabinet. The Labor Cabinet collaborates with the Cabinet for Economic Development, Cabinet for Health and Family Services, and Justice and Public Safety Cabinet to expand and promote the apprenticeship program.

The vice president of the board of directors and the director for program development for the Waterfront Botanical Gardens presented a local economic development/tourism/recreation program and budget update, relative to the establishment of a new botanical garden in Louisville. The presenters addressed inquiries as to the establishment of a \$1.5 million long-term, dedicated trust and the positive feasibility study as supporting evidence of extended visitations, based on botanical garden attendance.

The executive director/general counsel of the Cabinet for Economic Development and the executive director, workforce development, Cabinet for Economic Development, presented an overview of the Economic Development Partnership Board, meeting schedule, and board member candidacy submissions to the Governor. Further presentation discussion included an overview of Kentucky Workforce Development Partnerships and apprenticeship program effectiveness.

The chief of staff/legislative liaison of the Tourism, Arts and Heritage Cabinet; the president/chief executive officer of the Louisville Convention and Visitors Bureau; the chief financial officer/chief business development officer/co-interim chief executive officer and the executive director of expositions/co-interim chief executive officer, both of the Kentucky State Fair Board, Tourism, Arts and Heritage Cabinet presented an overview of Louisville tourism and the condition/demolition of the Old Cardinal Stadium on the Kentucky State Fairgrounds. The presentation addressed demolition costs, underground electrical, water, and sewer infrastructure relocation issues, and new potential public-private partnership hotel and agribusiness complex development initiatives.

The director of the Division of Forestry and the fire chief and manager of the Reforestation and State Forest Branch testified about the forest fire suppression program and the state tree nursery programs. The division has initiated a new media campaign related to fighting forest fires, developed a memorandum of agreement with the Department of Corrections for bloodhound use, and developed a memorandum of agreement with the Department of Fish and Wildlife Resources for conservation officer assistance with law enforcement efforts.

The two state-owned tree nurseries, the John P. Rhody Nursery in Marshall County and the Morgan County Nursery, do not generate enough revenue relative to the cost. The division attempts to increase revenue through increased online seedling sales and seedling prices. The division further initiated cost saving measures, including inmate labor use and in-house seed collection.

The director of the Division of Water provided an update on the state-owned dam repair program. The major issues with state-owned dams are aging infrastructure, dam use evolution beyond intended use, and hazard creep. For example, hazard creep, represented by a change in the hazard classification, may be initiated by a new residential or business development occurring downstream of a dam.

State-owned dams have three hazard classifications: low hazard, moderate hazard, and high hazard. The hazard classification is not a measure of the condition of the dam, but a measure of potential property or infrastructure damage downstream, resulting from potential dam failure. The division conducts high hazard and moderate hazard dam inspections once every 2 years; low hazard dams are inspected every 3 years.

The executive director and deputy executive director testified about the Kentucky Claims Commission reorganization and current claim backlogs. The Board of Tax Appeals, Board of Claims, and Crime Victims' Compensation Board were subject to reorganization by executive order in August 2016, upon creation of the Kentucky Claims Commission. The executive director stated that the number of board members was reduced from eight to three, resulting in substantial savings.

The executive director reported that the current backlog of crime victim claims is 307, totaling approximately \$1.9 million. Backlogs of sexual assault examination claims, claims against the state, or tax appeals do not currently exist.

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

During the 2016 Interim, the Budget Review Subcommittee on General Government, Finance, and Public Protection held two meetings.

The deputy secretary of the Finance and Administration Cabinet (FAC) and the director of the Division of Engineering and Contract Administration in FAC provided an overview of the new state office building, addressing inquiries relative to construction, lease term, furniture, fixtures, management, utilities, maintenance, food service, parking, and state ownership transfer attributes. New agency occupants include the Energy and Environment Cabinet, Education and Workforce Development Cabinet, and Department of Education. Information concerning the Capital Plaza Tower sale or demolition plans is pending an outstanding request for proposal for the Capital Plaza Tower. A further status update was provided concerning the Lexington Convention Center expansion initiative.

The executive director, general counsel, and assistant architect for the Kentucky Communications Network Authority provided an update on the status of the Kentucky Wired Initiative. The executive director addressed inquiries concerning pole attachment agreements, easement costs, homeland security, grant availability, wholesale provider status, e-rate federal subsidies, public-private partnership attributes, and statewide geographical presence.

The Auditor of Public Accounts, assistant state auditor, general counsel, executive director of the Office of Technology and Special Audits for the Kentucky Auditor of Public Accounts provided an overview of the impact of Senate Bill 168, relative to special city audits or examinations. The Auditor addressed inquiries relative to the Kentucky Law Enforcement Foundation Program Fund expenditures, training and stipend amounts, fund transfers to the state general fund, local audit frequency, and local-elected official training.

### **Budget Review Subcommittee on Human Resources**

During the 2016 Interim, the Budget Review Subcommittee on Human Resources held four meetings.

The secretary and commissioner of the Department for Medicaid Services of the Cabinet for Health and Family Services, the secretary of the executive cabinet and deputy chief of staff for policy of the Office of the Governor, and the executive directors of the Kentucky Center for Economic Policy and Kentucky Voices for Health testified on Kentucky's Medicaid Section 1115 waiver application submitted to the US Department of Health and Human Services.

The secretary, deputy secretary, and budget director of CHFS testified on the implementation of the budget reductions in CHFS for fiscal year 2016.

The commissioner of the Department for Medicaid Services, the clinical director of the Department for Behavioral Health, Intellectual and Developmental Disabilities, and the inspector general of the Cabinet for Health and Family Services testified on Medicaid costs and coverage of medication-assisted treatments for substance use disorders. Health care providers including physicians, pharmacists, and directors of substance abuse treatment clinics testified about their experiences in the use of medication-assisted treatments for substance use disorders. A legislator and physician provided an overview of tamper resistant drugs.

The executive director of the Office of Administrative and Technology Services of CHFS and a constituent testified on the implementation of Benefind, the new eligibility and enrollment system for Medicaid and other services provided by CHFS.

The commissioner of the Department for Medicaid Services testified on the Medicaid reenrollment period during which enrollees are allowed to change their Medicaid managed care organizations.

The Kentucky Association of Health Care Facilities and a representative of a long-term care facility testified on the Medicaid issues facing Kentucky's long-term care community.

The deputy chief of staff for policy of the Office of the Governor testified on Kentucky's transition from a state-based health benefit exchange to the federal health benefit exchange. He provided information regarding milestones, websites, education and outreach, and a budget projection update.

### **Budget Review Subcommittee on Justice and Judiciary**

The Budget Review Subcommittee on Justice and Judiciary did not meet during the 2016 Interim.

**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 2016 Interim.

The Cabinet for Education and Workforce Development provided an update on the \$100 million Workforce Bond and Work Ready Skills Initiative application process, including a timeline and criteria.

The superintendent of Frankfort Independent Schools and officials from Rowan County Schools spoke about the impact of tax-exempt properties on their local revenue and the Support Education Excellence in Kentucky formula.

The Council on Postsecondary Education presented on the impact of the Budget Stabilization Plan on postsecondary institutions. The presentation included an overview of program and position eliminations at each public postsecondary institution.

The Kentucky Higher Education Assistance Authority (KHEAA) and the Education and Workforce Development Cabinet gave a joint presentation updating the subcommittee on the Dual Credit Scholarship Program and issues surrounding the program. The subcommittees also heard about the Mary Jo Young Scholarship, which has been redesigned for fiscal year 2017 to assist students ineligible for the new Dual Credit Scholarship program, such as those in private and parochial schools as well as home-schooled children. KHEAA also presented an update on the Kentucky Affordable Prepaid Tuition program, which faced an actuarial deficit of \$35.8 million at the end of fiscal year 2016.

**Budget Review Subcommittee  
on Transportation**

The Budget Review Subcommittee on Transportation held four meetings during the 2016 Interim.

The secretary of the Kentucky Transportation Cabinet (KYTC), along with the executive director of the Cabinet's Office of Budget and Fiscal Management, presented on cash management of the road fund and the "Pause-50" approach. This is the Cabinet's plan to preserve road fund cash balances by halting the start of new state-funded project phases (design, right-of-way, utilities, and construction) for the first year of the biennium, and in the second year aiming for \$50 million in state-funded project starts. In addition, right-of-way and utility phases totaling \$145 million on previously authorized projects were halted. Factors leading to the anticipated low road fund cash balances included expenditures exceeding revenues from fiscal year 2014 to fiscal year 2016, an increase in the dollar amount of unspent but obligated state projects, and a decrease in

motor fuels tax receipts. In October, the executive director of the Office of Budget and Fiscal Management reported that the road fund cash balance had not dropped below the \$100 million target minimum during August, the month in which the cash balance is typically lowest. Road fund revenues for fiscal year 2016 were \$36.6 million higher than anticipated by the revised official estimate. Because of the steps taken by the cabinet earlier in the year, as well as higher revenue estimates, the cash management outlook as of October had improved.

The commissioner of the Department of Vehicle Regulation presented on REAL ID, a federal law passed in 2005 to increase the security of state-issued driver's licenses and ID cards. Kentucky has implemented some of the steps required by the Act, but the main hurdle to full compliance is security issues related to the decentralized nature of Kentucky's production and distribution of licenses and cards. The General Assembly passed a bill in the 2016 session to put the state in compliance, but the bill was vetoed.

The director of the Division of Maintenance within the Department of Highways at KYTC provided an overview of highway maintenance spending. Roadway maintenance is the largest expenditure item, with lower amounts for traffic, bridge, and rest area maintenance. Within roadway maintenance, the largest item is snow and ice removal, which the director stated could be an area for savings if more work were brought in-house instead of being contracted out. He noted that the number of assets maintained by the division (lane miles of pavement, bridges, miles of cable guardrail, etc.) has increased, yet the budget has remained relatively stable. He noted the difficulty of hiring highway equipment operators due to low salaries. Actions taken to realize short-term savings included delayed striping of low-volume roads and fewer mowing cycles.

The commissioner of the Department of Vehicle Regulation at KYTC and the commissioner of the Kentucky State Police within the Justice and Public Safety Cabinet discussed commercial vehicle enforcement (CVE) and its impact on road fund revenues. Both agencies are working cooperatively to develop long-term solutions to enhance public safety, support the trucking industry, and ensure the timely, efficient, and proper collection of road fund revenues. Both commissioners expressed a desire to increase the number of CVE inspectors and to keep weigh stations open longer hours. They estimated that hiring an additional 25 to 50 inspectors at a cost to the state of just \$300,000 to \$500,000 could result in a doubling or tripling of revenues from the current level of about \$1 million annually.

Representatives of Kentuckians for Better Transportation discussed the importance of public transportation in Kentucky and the effect of toll credit changes on transit agencies. Previously, the Federal Highway Administration (FHWA) and KYTC had an agreement whereby the state earned toll credits for expending state dollars in certain circumstances. These credits are not cash but can be used on future federal projects as matching funds, eliminating the need for the state to provide its own funds. In recent years, FHWA has reevaluated how Kentucky earned toll credits and the proper balance going forward. It was previously thought that the credits would last for many years, but KYTC now anticipates that by 2020 toll credits will no longer be available to match federal funds for highway and transit projects. As a result, transit agencies will need to identify a new source of funds to match federal capital grants, if those funds are to be accessed. Options include increased local government support, service cuts within transit agencies to free up funds, increased fares, and increased state general fund support.



The deputy state highway engineer and the executive director of the Office of Project Delivery and Preservation within the Department of Highways at KYTC gave an overview of upcoming salary adjustments for a number of maintenance and engineering job classifications. The salary increases and compression adjustments are expected to affect approximately 2,600 employees at a cost of more than \$31 million annually, inclusive of salary and benefits. The cabinet expects this cost to be offset by reductions in turnover, reductions in certain contract work, and cross-training of the existing workforce.

The project manager for the Mountain Parkway Project and the deputy state highway engineer and executive director of the Office of Project Delivery and Preservation within the Department of Highways at KYTC gave updates on a number of major ongoing road construction projects. The Mountain Parkway Project consists of a number of segments, of which some are under construction and nearing completion, others are scheduled to be let in the near future, and others are still in the design phase. The Downtown Crossing portion of the Louisville-Southern Indiana Ohio River Bridges project, for which KYTC served as the lead agency, reached substantial completion in November 2016, ahead of schedule and on budget. The Kentucky Lake Bridge opened to traffic in summer 2016 and is scheduled to be completed by the end of 2016. The Lake Barkley Bridge is scheduled to be completed in fall 2017. The I-65 widening project from Elizabethtown south to Sonora is scheduled to be completed in fall 2018, with the portion just south of that scheduled to be completed by June 30, 2017. The I-75 widening project in Rockcastle County will be broken into three sections, with the northernmost section scheduled to be let in December 2016, the middle section in summer 2017, and the southernmost section in spring 2018.



**Report of the 2016  
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. 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. Jody Richards  
Rep. Steve Riggs  
Rep. Bart Rowland  
Rep. Jonathan Shell  
Rep. Kevin Sinnette  
Rep. Fitz Steele  
Rep. Wilson Stone  
Rep. Tommy Thompson  
Rep. James Tipton  
Rep. Ken Upchurch

LRC Staff: Sean Donaldson and Dawn Johnson

**Presented to the  
Legislative Research Commission  
and the  
2017 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 four times during the 2016 Interim.

#### **Credit Freezes for Protected Consumers**

Rep. Sannie Overly and Sen. Ralph Alvarado explained the provisions of legislation from the 2016 General Assembly that would have provided protection of online identities and credit profiles of children. Under current law, parents and legal guardians are unable to place a “credit freeze” on a child’s credit record. Twenty-two states have some form of similar protective legislation. Three other states have enacted legislation since the 2016 General Assembly. Rep. Overly and Sen. Alvarado discussed reintroducing legislation in the 2017 General Assembly. The bills included substantial penalties for consumer reporting agencies that commit a willful violation. The Consumer Data Industry Association requested that a delay be included in the effective date of any proposed legislation to allow time to implement the legislation.

#### **Air Ambulance Billing Issues**

The director of government affairs of Air Evac EMS explained that it has 18 air medical bases statewide that primarily serve rural areas. Air medical services are very costly and not for every patient. As part of the first responders system, Air Evac works under protocols established by the Board of Emergency Medical Services. Ninety percent of the \$2.5 million to \$3 million expenses to transport approximately 328 patients annually is fixed. Information was presented comparing Kentucky’s services to those of Montana. Nationwide, most private insurance companies pay 90 percent to 100 percent of billed charges, with the patient paying only coinsurance and deductibles. In Kentucky, major insurance companies often pay 30 percent to 40 percent of billed charges, with the patient paying the remainder plus coinsurance and deductibles. Florida’s HMO-based statutory language was discussed as a possible solution to equally address some of these issues.

#### **Mandatory Minimum Coverage for Automobile Insurance Policies**

A representative of Property Casualty Insurers Association of America explained that the minimum limit on private passenger auto insurance property damage is sufficient to cover the

majority of claims. During the last four quarters, the average property damage liability claim in Kentucky was \$3,467, which is far below the current \$10,000 limit. Other states' coverage limit requirements range from \$5,000 to \$25,000. Even with substantial penalties in place, Kentucky has a relatively high uninsured motorist rate. Raising mandatory minimum coverage increases insurance costs, which will affect those most often struggling to afford basic coverage and ultimately causing the number of uninsured motorists to rise.

The executive director of the Insurance Institute of Kentucky reviewed an Insurance Information Institute report on compulsory auto insurance requirements. The executive director testified that raising minimum coverage amounts results in higher premiums, which may drop financially struggling motorists out of the market. A policy decision must be made based on affordability and balancing underinsured motorists versus uninsured motorists. The financial impact of an increase in the minimum coverage requirements is difficult to determine, as it would vary from driver to driver based on other rating factors.

### **Insurable Interest in Life Insurance**

A constituent of Sen. Joe Bowen testified on the issue of insurable interest for life insurance policies. An insurable interest must exist for any insurance policy to be purchased. Under current law, an insurable interest is only required at the inception of the life insurance policy. She explained her story, which involved a former business partner and a business that dissolved after she was diagnosed with breast cancer. She urged amending current statutes to require insurable interests at all times during the period of an insurable interest life insurance policy for the policy to be enforceable.

### **Unclaimed Life Insurance Policies**

Rep. Chris Harris testified regarding his intention to refile legislation from the 2016 General Assembly that would make the 2012 Unclaimed Life Insurance Benefits Act retroactive following an appeals court decision that the legislation did not apply to policies sold before it went into effect. Many of those policies were sold in lower socioeconomic areas. The legislation would require biannual checks of the Death Master File by insurance companies to determine whether any policyholders are deceased. If so, the company must make reasonable efforts to pay any benefits owed.

The director of market regulation with the National Association of Insurance Commissioners (NAIC) reviewed NAIC's development of a policy locator and the role of the agency. All 50 states will participate in the program. The director said the scope of the program is to search all policies, not just specific time periods.

The Department of Insurance has not yet determined whether enabling legislation is needed for Kentucky's participation or whether an order from the commissioner will suffice to search all policies, not just those issued after 2012. The department is considering creating a similar system and participating in NAIC's program. The department's website would have a pass-through page for consumers to link to NAIC. Information for insurers, consumers, and regulators would be in the system. There is no cost to participate in or use NAIC's policy locator.

## **Title Insurance Agent Licensing**

Representatives of the Kentucky Land Title Association explained that Kentucky is the only state that does not license land title insurance agents. They urged support for legislation establishing a licensure system. There would be no cost to taxpayers. The association's primary concern is to give consumers a place to check licensing of agents, to check agent disciplinary action, or to lodge a complaint.

## **Banking and Financial Industry**

The commissioner of the Kentucky Department of Financial Institutions presented an end of year report on issues relating to the financial industry. The commissioner gave an overview of the banking industry in Kentucky and expressed concern that on a national level there is a tremendous concentration of economic power in a relatively low number of banks. There is a similar trend in Kentucky with significant consolidation within the industry from 2012 to 2015. The number of smaller banks in the state has decreased along with the number of banking employees.

The commissioner also discussed the 2016 Community Bank Conference. Topics included academic papers, banker interviews and surveys, and university case studies. A case study of Paducah Bank, submitted by Murray State University, was chosen as a finalist. It showed issues of concern expressed by bankers, which included economic conditions, competition with large financial entities in areas such as ease of access to credit and compliance burden, and the regulatory environment.

The commissioner also discussed current cybersecurity issues including ATM skimmers, hacking attacks including ransomware, corporate account takeover, and third party service providers.

Regarding the Wells Fargo scandal, the commissioner expressed concern that consumers received virtually no compensation from the \$190 million fine paid by the company. He said that incentive plans should have more oversight to prevent similar incidents.

## **Reports Received**

The committee had received four reports as of November 29, 2016:

- 2016 Annual Report on Payment Practices of Insurers
- Long Term Care Partnership Program joint report from Department of Insurance and Department for Medicaid Services
- Independent External Review Semiannual Report January-June 2016
- 2015 Annual Early Warning Analyst Report

**Report of the 2016  
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. 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. Daniel Elliott  
Rep. Chris Harris

Rep. Richard Heath  
Rep. Dennis Horlander  
Rep. Cluster Howard  
Rep. James Kay  
Rep. Dennis Keene  
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. Jeff Taylor  
Rep. Tommy Thompson  
Rep. David Watkins  
Rep. Gerald Watkins  
Rep. Russell Webber  
Rep. Jill York

LRC Staff: John Buckner, Chip Smith, and Karen Brady

**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

## **Subcommittee Organization and Membership**

### **Task Force on Economic Development**

**Sen. Alice Forgy Kerr, Co-Chair**

**Rep. Ruth Ann Palumbo, Co-Chair**

Sen. Perry 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. George Brown Jr.  
Rep. Denver Butler  
Rep. Jim DeCesare  
Rep. Mike Denham  
Rep. Bob M. DeWeese

Rep. Jeffery Donohue  
Rep. Daniel Elliott  
Rep. Richard Heath  
Rep. Dennis Horlander  
Rep. Cluster Howard  
Rep. Dennis Keene  
Rep. Thomas Kerr  
Rep. Kim King  
Rep. Terry Mills  
Rep. Dean Schamore  
Rep. John Short  
Rep. Arnold Simpson  
Rep. Wilson Stone  
Rep. Tommy Thompson  
Rep. Russell Webber

LRC Staff: John Buckner, Chip Smith, and Karen Brady



## **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**

The Interim Joint Committee on Economic Development and Tourism held five meetings during the 2016 Interim, three of which were at various locations in the commonwealth.

#### **National Corvette Museum**

The committee met jointly with the Interim Joint Committee on Labor and Industry to hear presentations concerning the tourism impact of the National Corvette Museum (NCM), production at the General Motors Bowling Green Assembly Plant, and workforce development in Bowling Green and Warren County.

The executive director of the NCM gave an overview of the museum, including its history, programs, and facilities. In the mid-1980s, the idea of a Corvette library and museum was discussed by the National Corvette Restorers Society at a meeting held at the General Motors Bowling Green Assembly Plant. Through the efforts of a task force created by the Bowling Green Chamber of Commerce, a museum annex opened in November 1990 and groundbreaking of the NCM began in June 1992. The grand opening of the NCM was September 2, 1994, and in 2009 a 47,000 square foot expansion was completed. The museum sits on a 55 acre campus, has a 115,000 square foot facility, and has a staff of 107 workers. Each year the museum has approximately 220,000 visitors

The NCM offers various programs and services to the public, with the mission of celebration, education, and preservation. A delivery program allows those who order vehicles at local dealerships across the country to take delivery of their car at the NCM. Participants may travel to Bowling Green to pick up their new Corvette and take VIP plant and museum tours. The museum houses the Corvette Museum Library and Archives, which stores the build sheets for all Corvettes manufactured at the Bowling Green Assembly Plant. The NCM started its own insurance agency for collector cars, which serves individuals across the United States. Visitors to the museum may purchase items at the Corvette Store, which generates approximately \$4 million in sales annually, and may dine at the Corvette Café. Museum in Motion Tours take people to places such as Michigan, Florida, and France. Other programs include the science- and education themed exhibits and the National Corvette Caravan.

The Motorsports Park, which opened in 2014, is owned and managed by the NCM; it was a \$25 million construction project. The park includes two road courses that are 3.15 miles long, with multiple configurations and 23 turns. There is a 21 acre paddock, autocross, and skid pad area along with a control tower, an administrative building, a fueling station, garages, and a pavilion. In the first year of operation, the park had 130,000 visitors, and currently 85 percent of park participants are from out of state, with most spending at least two nights in Bowling Green. Forty percent visit other attractions in the area, such as the NCM, the General Motors Assembly Plant, Lost River Cave, and Mammoth Cave. The NCM sponsors High Performance Driver Education events at the park, which allow a person to learn, practice, and apply advanced car control skills. The park offers track rentals to companies, car clubs, and motorcycle groups; corporate team building and hospitality events; math and science educational programs; teen driver safety; emergency response training; and Kentucky State Police training. In 2015, the Motorsports Park hosted events for Michelin, Ford, the Bowling Green Chamber of Commerce, Corvette Racing, and Nissan Nismo, just to list a few.

In 2014, a sinkhole formed and consumed eight rare cars that were on display. The NCM wanted to be as open and transparent as possible with the media and public, releasing updates online, sending press releases, and conducting press conferences. It allowed the media to film and photograph the sinkhole and the damage. The Skydome Sinkhole became a media sensation, and the story was picked up by major media outlets worldwide. The NCM took advantage of the attention and did not immediately fill the hole, instead opting to leave it on display, increasing their number of visitors by 67 percent in 2014. The Skydome Sinkhole has since been filled, with all eight cars back on display. The Corvette “Cave In Exhibit,” which opened in February 2016, allows visitors to learn more about the sinkhole and how the NCM recovered from the unfortunate events.

The NCM and the NCM Motorsports Park have an estimated economic impact of \$40 million on the surrounding region and an additional \$10 million statewide.

### **General Motors Bowling Green Assembly Plant**

The plant manager of the General Motors Bowling Green Assembly Plant said the plant is approximately 1 million square feet and is situated on a 212 acre site with production being done on first shift only, Monday through Friday. The production volume is 17.2 units per hour or 137 per day. There are approximately 1,000 salaried, hourly, and contract employees at the plant. Between March 2012 and September 2013, 370 permanent GM-UAW employees from Michigan, Ohio, Indiana, Missouri, Louisiana, and Texas transferred to the Bowling Green GM Assembly Plant, with 24 salaried positions being added. There have been several labor transitions in the last year. About 135 employees have transferred to Spring Hill, Tennessee, or moved to other GM sites, 75 employees retired, and 49 temporary employees have been converted to full time. Employees from the local area were hired to fill some of the positions of those who transferred or retired.

The plant manufactures several types of Corvettes, including the Stingray and Z06, which can be made either as a coupe or as a convertible. The 2017 Corvette Grand Sport is in production; it can also be either a coupe or convertible. Different types of engines, including the LT4 6.2L V

8 for the Z06 and the LT1 6.2L V-8 for the Stingray and Grand Sport, are available. All engines are built by hand by an assembly technician, although some customers have the option to build their own engine at the plant by paying an additional \$5,000 fee. By purchasing the Engine Build Experience package, a customer can work under the supervision of an assembly technician and receive a personalized engine plaque identifying him or her as the builder.

Ongoing investments have been made to ensure the assembly plant remains here in the state and continues to thrive. There has been a \$440 million investment made in the new state-of-the-art paint shop, which should be complete in late 2017 for work with 2018 model vehicles. Another investment of \$44 million was made in spring 2016 to support the new powertrain assembly operations and for some related but yet unannounced programs. There was also \$2 million invested in the new solar array, which is one of the largest in the state. In spring 2016, it was announced that \$290 million is being invested in process improvements to ensure the plant remains viable.

### **Bowling Green Chamber of Commerce**

The vice president of communications and public policy, Bowling Green Chamber of Commerce, said that, of the employers in South Central Kentucky, 88 percent have limited access to skilled workers as a barrier to expansion, 74 percent are concerned about maintaining a skilled and motivated workforce, 67 percent cannot find skilled candidates for critical positions, and 63 percent worry about the employability and work ethic skills of available candidates. The region will need 4,500 workers by the end of 2016 and more than 9,000 by the end of 2020 to fill middle-skill production, maintenance, management, and engineering jobs.

To repair some of the workforce issues in the area, the chamber has identified six sectors with the highest potential for growth in South Central Kentucky, including health care, hospitality, professional services, construction, manufacturing, transportation, distribution, and logistics.

In 2011, the chamber raised \$1.4 million to implement The Leader in Me in Bowling Green and Warren County Schools. It is the first program in the nation to focus on leadership infusion throughout all grades. The program has been successful and has six Lighthouse schools, with more projected this year. Once a child reaches middle school, the focus shifts to career and interest exploration. Beginning in 2017, students will be given the opportunity to participate in the Leadership Infused Career Immersion program, which combines Covey principles with career academy concepts and will include a partnership with the Ford Next Generation Learning Education initiative. This will be a national model with the goal of graduating 100 percent of students with some form of job experience.

An upcoming program is the On Track project based learning initiative, which teaches science, technology, engineering, and math disciplines through practical application while exposing students to manufacturing careers. The Warren County Area Technology Center and the South Central Kentucky Community and Technical College were each given a 1981 Camaro to rebuild for competition at the 2016 Holley LS Fest. The initiative received a \$70,000 grant from LIFT for 2017 to help focus on the use of lightweight metals and materials. Another initiative is the machine tool and robotics program, which will accommodate 80 students and offer dual credit

and certification upon completion. The Bowling Green Economic Development Association has donated funds, the Sun Products Corporation has donated equipment, and the center will provide instructors who will be paid by the Warren County School System. Individuals who are unemployed, underemployed, or incumbent workers are offered training and other resources through the Training Consortium of South Central Kentucky, the Manufacturing Career Center, and the program Team Workforce. Team Workforce is a monthly gathering of public workforce partners that offers a career connection event to assist people with barriers to employment, résumés, and skill training.

### **Kentucky's Economic Landscape**

The interim secretary of the Cabinet for Economic Development spoke about the commonwealth's economic opportunities and challenges. He stated that Kentucky is on pace for a third consecutive record year for new investments and job creation. Manufacturing is the biggest contributor to the state's gross domestic product (GDP), making up nearly 20 percent. Manufacturing GDP has grown at almost twice the national average since 2008.

The cabinet focuses on access to markets, workforce development and availability, and business environment. Kentucky's location helps in competing on a global stage. The state is on pace for its sixth record year in exporting, with aerospace products leading the way. The main obstacles to overcome in access to market are all related to infrastructure. Internally, the cabinet is focusing on personnel to become more efficient, with a greater focus on marketing.

The chair of the Kentucky Economic Development Partnership identified opportunities in tax reform, infrastructure in eastern Kentucky, education, and workforce development.

### **Lewis and Clark National Historic Trail**

The vice chair of the Lewis and Clark National Historic Trail in Kentucky requested a letter of support for efforts for a completed Lewis and Clark National Historic Trail in Kentucky. The trail will allow an increase in cultural heritage tourism and promote preservation of cultural and natural resources. A motion was adopted to allow all members an opportunity to sign the letter.

### **Tourism Trends in Appalachia**

The committee met at Shelby Valley High School in Pikeville to hear testimony from the secretary of the Tourism, Arts and Heritage Cabinet on the impact of tourism in eastern Kentucky. The secretary stated that tourism is the third biggest industry in Kentucky, adding \$13.7 billion to Kentucky's economy in 2015. In eastern Kentucky, tourism has a \$1.8 billion economic impact. Historical and cultural tourism is one aspect that has become important for the state. Other areas bringing visitors to Kentucky are the Kentucky Artisan Heritage Trails, Civil War: The Home Front, and Bon Appetit Appalachia. Coming soon will be a focus on statewide regional meals and the Covered Bridge Trail. The state has invested \$18 million for aesthetic and safety improvements at Kentucky State Parks. The estimated total investment in Appalachia for Kentucky state resort parks is \$5.3 million. The Kentucky Department of Fish and Wildlife contributes \$5.9 billion in annual economic impact to the state, from hunting, boating, fishing, and wildlife watching.

In 1997, the Elk Restoration Program was created, and there is potential for it to be much bigger than it is right now. The proposed visitor center project at the Appalachian Wildlife Center in Bell County will be for elk viewing. The area is also on the flight path for migratory birds. This visitor center is expected to be operational in 2018-2019.

The film industry is a growing business segment in the commonwealth. Over the last 6 years, film tax credits have been approved for 23 movies. To enhance the state's film industry, the cabinet is interested in working with industry to build film studios and to provide training for people to work in this industry segment.

Students from Shelby Valley High School commented about the economic crisis faced by the community and by eastern Kentucky because of the downturn in coal mining.

### **Adventure Tourism**

One Adventure Tourism initiative is the creation of the Cross Kentucky Master Trail Plan. Two of the state's longest trails are in eastern Kentucky. Water trails are very important to eastern Kentucky's trail development. The Trans America Bike Route, which crosses the country from the Pacific to the Atlantic, bisects Kentucky and is an opportunity to attract visitors. In addition, Kentucky is the only state to offer a statewide Trail Town program. The primary goal of the Trail Town program is to get communities to connect to their existing natural resources. The main benefit of becoming a trail town is that the community will be branded as such. Trail towns can be anywhere in the state, but most of them are in eastern Kentucky.

### **Economic Development Potential in Eastern Kentucky**

The executive director of Shaping Our Appalachian Region (SOAR) discussed the importance of job creation and diversification in eastern Kentucky. For every 100 people who are 18 years and older, Fayette County has 60 jobs while Floyd County has 28 jobs. There are 38 distressed counties in Kentucky—as many as in 12 other states combined. These counties are in the bottom 10 percent in the country economically. Eastern Kentucky needs to change the way it thinks about economic development, and that is what SOAR is for—to serve as a facilitator of partnerships, strategies, and priorities of the system that creates jobs in eastern Kentucky.

SOAR has numerous partners working on industrial development in the region, and this effort has helped the area to be more competitive in industrial recruitment. SOAR works to showcase the workforce of the region. The future of the Appalachian region hinges on its ability to embrace technology and to be a participant in the digital economy. Several of the community colleges teach the skill sets that are valuable in the digital economy. There is a pilot program in Paintsville that guarantees those who complete it a job working remotely in eastern Kentucky for a tech company in Louisville.

### **Kentucky Horse Park**

At the Kentucky Horse Park, the committee met in conjunction with the Interim Joint Committee on Labor and Industry and the Interim Special Committee on Tourism Development.

The executive director of the Kentucky Horse Park gave an overview and brief history of the facility, which opened in 1978. The Horse Park has 77 full-time employees, is a true working horse farm, and has over 900,000 visitors annually. At 1,224 acres, it is considered one of the best equestrian venues in the world. The park hosts more than 200 equestrian events a year, but it also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park offers concerts, can serve as a wedding venue, and hosts receptions, races, and other various events. Marketing efforts are focusing on Man o' War's 100th anniversary, a run-walk club, a cemetery crawl, education outreach, and riding camps.

A list of capital projects in excess of \$10 million has been compiled for reinvestment in core park facilities. These projects are important for the park not only to maintain certain signature events such as the Rolex Equestrian Invitational, but to also attract new events.

### **AT&T Infrastructure and Investment Update**

The president of AT&T Kentucky testified about the impact of 2015 HB 152, which was designed to accelerate telecommunications modernization and to increase investment in high-speed Internet infrastructure. By the end of 2016, AT&T will have expanded its fiber-optic network to bring more Kentuckians access to the latest in 4G wireless services through the construction of 32 cell sites. In addition, AT&T has also made more than 750 enhancements to existing sites. AT&T coordinated with the Kentucky Department of Education to bring fiber based, high-speed Internet to all 173 school districts in Kentucky. This established Kentucky as the first state in the country to meet new higher speed standards for school districts.

AT&T has certified 15 industrial parks across the state as AT&T Fiber Ready, a designation that gives economic development officials a huge advantage by raising awareness about the available fiber infrastructure for prospective industries and site selection consultants.

Through participation in the Federal Communications Commission (FCC) Connect America Fund, AT&T is aggressively deploying high-speed Internet capable facilities in rural parts of the state. Over the next 6 years, high-speed Internet will be brought to 84,000 new customer locations in rural Kentucky.

FCC data shows that 82 percent of Kentucky voice connections now occur over something other than a traditional landline.

### **Public-Private Partnership Legislation**

Representatives from the Transportation Cabinet, the Finance and Administration Cabinet, and the Tourism, Arts and Heritage Cabinet said that the benefits of public-private partnerships (P3s) are efficiency, private industry expertise, reduced risk and cost to taxpayers, and satisfying a public need or benefit. Any agency that uses P3 projects has the ultimate responsibility of ensuring that all qualifications are met.

Various criteria are used to determine whether a P3 is the most advantageous method of awarding and administering a capital project or other contract. The first criteria are qualitative considerations, which include looking at risk allocation, timeliness and efficiency, benefits gained/not gained with a P3, public interest, and the urgency of the project.

Three regulations relate specifically to the Transportation Cabinet concerning procurement method for P3s, unsolicited proposals, and how to decide whether a P3 is the correct method to use for a project.

P3 procurements will be conducted pursuant to competitive negotiation (KRS 45A.080). The Transportation Cabinet's process is slightly different.

Another aspect of P3 legislation is the ability for private industry to submit an unsolicited proposal. A valid unsolicited proposal must be independently generated, must be prepared without government involvement, and must include sufficient detail to determine benefits to an agency or local government.

### **Kentucky State Parks “Refreshing the Finest”**

The commissioner of the Department of Parks testified about maintenance and infrastructure issues facing the parks system. More than a year ago, the Kentucky State Parks system identified \$241 million in deferred maintenance and repair needs. During the 2016 Session, the General Assembly approved an additional \$18 million in capital funding. Deferred maintenance is imperative to the survival of the state parks system. The Department of Parks has begun work on 51 projects and has completed numerous safety and aesthetic projects at six parks. The work of the Refreshing the Finest campaign will continue throughout most of 2017. All projects are on time and on budget.

With regard to new initiatives, the commissioner spoke about improvements to resort parks. The Department of Parks has recently expanded reservation capabilities through Expedia and other online platforms, and this expansion has already generated \$100,000 in new sales. Digital marketing has been enhanced. All lodges will remain open 7 days a week this winter, in a new effort to generate revenue during the winter off-season. Nine parks now have alcohol sales, and such sales will be expanded to 12 resort parks by early 2017.

The commissioner spoke about siltation problems at lakes in some state parks. Many of the lakes were constructed and designed to last a century, but some are quickly being overtaken by siltation problems. Dredging and other measures are under way at some lakes, but siltation is a problem that will need to be carefully monitored and addressed for many years to come.

### **Appalachian Wildlife Center**

The Appalachian Wildlife Center plans to open in June 2019 in Bell County. It is located on 12,000 acres, of which 5,000 have been mined and reclaimed. Elk will be the marquee species for viewing. The executive director of the Appalachian Wildlife Center stated that by the fifth year

of operation, the center is projected to host 638,000 annual visitors, who will spend \$124 million annually in the region. This amount of spending should equate to 2,000 jobs created for the region.

The center has a \$24.5 million capital expense budget and is more than halfway there. This year it has raised \$15.1 million, and it has also received several grants (including a \$1.8 million Appalachian Regional Commission Power Initiative grant and a \$12.5 million Abandoned Mine Lands Pilot Project grant).

The Wildlife Center will reach more than 100,000 K-12 students a year with educational programs. Professional teachers will be hired to design the programs. The center is also going to fund \$200,000 in college scholarships each year.

The center is being modeled from a similar venture in Pennsylvania, which has had huge success. The executive director said that he is confident that the Appalachian Wildlife Center can exceed the Pennsylvania results. The Appalachian Wildlife Center will be much bigger and will also have a broader range of activities, such as birdwatching and a 15- to 20 mile scenic drive. The center is located within an hour's drive of three interstates, which should provide it with a noted locational advantage when compared to the venture in Pennsylvania.

### **Multistate Trail System**

The executive director of WMTH Inc. testified concerning ongoing efforts among many counties in eastern Kentucky to develop adventure trails spanning several states.

Southeastern Kentucky has more than 600 miles of public ATV trails and more than 200 miles of horse trails. If Kentucky were to add trails for motorcycles, canoes, hiking, and biking, the trail offerings would far exceed anything in Virginia or West Virginia.

Nineteen counties in southeastern Kentucky have partnered to create a multicounty trail system. Sixteen of them have passed resolutions that they want to work together, but in order to do so they need the legislature to create a central authority to help coordinate their efforts. The adventure trails are already in place, but only one county charges a user access fee.

## **Subcommittee Activity**

### **Task Force on Economic Development**

#### **Job Development in Rural Areas**

The Task Force on Economic Development met once during the interim at Shelby Valley High School, Pikeville, to discuss a legislative proposal designed to foster economic progress in rural Kentucky.

It was argued that a void has been created in small rural communities across Kentucky by the reduction of the number of small community banks, thereby reducing the amount of capital



available to local entrepreneurs. The proposed bill is modeled after the highly successful New Markets tax credit program but will focus on rural jobs instead of urban areas.

A representative from Advantage Capital Partners stated that access to capital for small businesses in rural areas has dropped off tremendously. This trend can be seen by the decline in employment and decline in business financing. Most significantly, more than 20 percent of community banks have disappeared in the last 5 years alone. This lack of access to capital has created both a challenge and an opportunity.

A rural jobs credit will be set up similar to the New Markets tax credit program. Federal licensing will apply, with either a license from the US Department of Agriculture to be a rural business investment company or a license from the Small Business Administration to be a small business investment company. The tax credit is structured so that it does not negatively affect the general fund. It is a 7 year credit; during the first 2 or 3 years, the credit is delayed. Also, 100 percent of the capital must be invested in the first 2 years.

For an applicant to qualify, the application to the Department of Revenue has to demonstrably revenue positive. If an applicant does not meet projections, there are back-end penalties. When the initial investments are made, reports will be filed with the Department of Revenue showing the companies receiving the capital, the amount of the capital, and who the investors are; then, annual follow up reports will show job creation, job retention, and economic impact.



**Report of the 2016  
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  
Sen. Reginald Thomas  
Sen. Johnny Ray Turner  
Sen. Steven West  
Sen. Max Wise  
Rep. Linda Belcher  
Rep. George Brown Jr.  
Rep. Regina Bunch  
Rep. John Carney  
Rep. Hubert Collins  
Rep. Leslie Combs  
Rep. Jim DeCesare  
Rep. Jeffery Donohue  
Rep. Kelly Flood  
Rep. David Floyd  
Rep. Jim Glenn

Rep. David Hale  
Rep. Cluster Howard  
Rep. James Kay  
Rep. Brian Linder  
Rep. Mary Lou Marzian  
Rep. Donna Mayfield  
Rep. Reginald Meeks  
Rep. Charles Miller  
Rep. Rick G. Nelson  
Rep. Ruth Ann Palumbo  
Rep. Marie Rader  
Rep. Jody Richards  
Rep. Tom Riner  
Rep. Sal Santoro  
Rep. Rita Smart  
Rep. Jim Stewart III  
Rep. Wilson Stone  
Rep. David Watkins  
Rep. Gerald Watkins  
Rep. Addia Wuchner  
Rep. Jill York

Interim Guest Members:     Rep. Joni Jenkins and Rep. Arnold Simpson

LRC Staff:     Jo Carole Ellis, Janet Stevens, Joshua Collins, Yvette Perry, Chris White, and  
Maurya Allen

**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

**Subcommittee Organization and Membership****Subcommittee on Elementary and Secondary Education****Sen. Danny Carroll, Co-Chair****Rep. Wilson Stone, Co-Chair**

Sen. Julie Raque Adams  
Sen. Jared Carpenter  
Sen. Jimmy Higdon  
Sen. Reginald Thomas  
Sen. Johnny Ray Turner  
Rep. Linda Belcher  
Rep. Regina Bunch  
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Rep. Charles Miller  
Rep. Rick G. Nelson  
Rep. Ruth Ann Palumbo  
Rep. Marie Rader  
Rep. Jim Stewart III  
Rep. Jill York

Sen. Mike Wilson, ex officio  
Rep. Derrick Graham, ex officio  
Rep. Joni Jenkins, Interim Guest Member

LRC Staff: Janet Stevens and Chris White

**Subcommittee on Postsecondary Education****Sen. Alice Forgy Kerr, Co-Chair****Rep. Cluster Howard, Co-Chair**

Sen. David P. Givens  
Sen. Gerald Neal  
Sen. Steven West  
Sen. Max Wise  
Rep. George Brown  
Rep. Leslie Combs  
Rep. Jim DeCesare  
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Sen. Mike Wilson, ex officio  
Rep. Derrick Graham, ex officio  
Rep. Arnold Simpson, Interim Guest Member

LRC Staff: Joshua Collins and Maurya Allen

## **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. Four of the meetings were at the Capitol Annex in Frankfort, one was a site visit to the iLead Academy in Carrollton, and one was a site visit to Jackson City School. The committee heard reports relating to early childhood through postsecondary education including career and technical education, workforce development and dual credit initiatives; implementation of the federal Every Student Succeeds Act; school choice initiatives; the Governor's Scholars Program; nontraditional instruction; childhood hunger; and postsecondary board training.

#### **iLead Academy**

The committee visited the iLead Academy, a regional career academy for high school students that provides a project-based, hands-on, self-paced learning environment using an online learning platform. Located in Carrollton, iLead Academy was formed through an interlocal agreement between five local school districts and approved by the commissioner of education. The school boards contract with Ohio Valley Educational Cooperative to run the facility.

Forty-five students from the five school districts of Henry, Carroll, Gallatin, Trimble, and Owen were accepted to attend the first year of the academy as high school freshmen based on their ability to self-motivate and work collaboratively and their interest in engineering and informatics career pathways. All materials are provided online, instruction is self-paced, and on-site instructors provide mentoring and guidance for the coursework and group projects. Students take benchmarking tests upon completion of their online coursework as well as final course exams, the statewide Kentucky assessments, and end-of-year assessment from Project Lead the Way, the curriculum used for the program. Students will also have the opportunity to enroll in the local community college and graduate with both a high school diploma and an associate's degree.

Several students spoke to the committee about their experience at iLead, including their group and community projects, dual credit courses, online instruction, and participating in statewide competitions such as the Student Technology Leadership Program.

#### **New Skills for Youth Initiative**

There are approximately 132,000 students enrolled in grades 9 through 12 in career and technical education (CTE) programs in Kentucky. Students in 165 districts are affected by CTE; of the remaining eight districts, five are K-8 districts that do not participate in exploratory

opportunities in middle school levels. Sixty-nine percent of Kentucky high school students are enrolled in a CTE program, and 98 percent of Kentucky's preparatory CTE seniors graduated from high school in 2015.

There are 42 locally operated career and technical centers and 53 state-operated centers. The Kentucky Department of Education (KDE) receives approximately \$17 million in Carl D. Perkins grant funds, of which 85 percent is distributed to schools and districts, 10 percent is used for state leadership training, and 5 percent remains for administration. Much of the state funding goes to support the 53 state centers and includes a Support Education Excellence in Kentucky line item of approximately \$22 million.

In 2016, KDE applied for a New Skills for Youth Initiative grant. This is a two-phase grant, and KDE has already received phase one funds totaling \$100,000 that will go toward a 6-month planning and design phase. Next, KDE will apply for phase two money, which can be up to \$2 million yearly for 3 years, to reshape CTE in the state. The four large visions for this grant are to create CTE that

- is employer-led through regional workforce areas ensuring cross-institutional involvement,
- encompasses career pathways that have seamless transitions from secondary to postsecondary education,
- involves shared resources and funding among all partners, and
- provides valuable industry certifications and credentials that are recognized by business and industry.

Grant partners include the Cabinet for Economic Development, Kentucky Chamber of Commerce, Council on Postsecondary Education, Education and Workforce Development Cabinet, Kentucky Center for Education and Workforce Statistics, Kentucky Community and Technical College System, KDE, and the Kentucky Labor Cabinet.

The executive director of the Kentucky Workforce Innovation Board gave an overview of the state sector data being used to inform the decision making during the phase one planning process. Kentucky's top employment sectors are business and technical services, construction, health care, manufacturing, and transportation. Initial findings indicate that Kentucky will see the most growth in these five sectors with more than 280,000 job openings in the next 5 years, especially in health care and business and technical services. Top demand is in high skill/high wage job, but low skill/low wage jobs will also be needed, and the CTE programs will have to address these needs as well.

### **Educational Policies to Improve Postsecondary and Workforce Readiness**

The secretary of the Education and Workforce Development Cabinet praised the General Assembly's appropriation of \$15 million for the dual credit initiative and \$100 million for the work ready skills initiative. He said that a high school diploma is not enough for the current jobs available and for future jobs coming to Kentucky. Of the 8 million jobs lost in the 2008 recession, 6 million were for individuals that had a high school diploma or less, and 2 million were for individuals with postsecondary education. As the recession eased, 11 million jobs were created, and all but 100,000 of those required some postsecondary education.

The secretary reported that recent Kentucky high school graduating classes had 26 percent graduating with postsecondary credits from dual credit programs, and 47 percent of all Kentucky high school graduates in 2012-2013 were considered not college or career ready.

In addition to educational initiatives, the secretary said other plans and initiatives are to modernize the commonwealth's workforce, balance industry demand to educational supply, promote equity, and provide access to specialized instruction. Modernization is possible through the use of the \$100 million allocated for the work ready skills initiative, by upgrading facilities and learning tools. The partnerships formed with employers, high schools, and postsecondary facilities will allow them to train students by day and adults by night.

Work continues with the Kentucky Workforce Innovation Board, the Kentucky Chamber of Commerce (KCC), and the state association for human resource officials to get a better idea of the skills pipeline needed for today and future expansion. There are five key industry sectors that are in top demand for trained and qualified employees. These include health care, manufacturing, transportation and logistics, business and information technology (IT) services, and construction and trades. There are 112,000 jobs available, including expected growth and replacement of existing workers.

The KCC president discussed a report coproduced by KCC and the Prichard Committee for Academic Excellence titled *A Citizen's Guide to Kentucky Education: Reform, Progress, Continuing Challenges*, which details Kentucky's workforce challenges from an employer's perspective. The report is available at [kychamber.com](http://kychamber.com).

Five years ago, KCC members were surveyed regarding the biggest threat facing their businesses. The top threats were the economy and federal health care. Today, KCC reports the biggest factor facing large and small businesses is an educated and trained workforce. A key recommendation of KCC is to engage additional business and community involvement to help students get experience by creating partnerships, internships, and apprenticeships.

Apprenticeship programs need to be demand driven as the needs of businesses change. They should also be employer led with employers informing educators and policy makers of the demand for certain types of skilled maintenance laborers and helping determine how to encourage college students to pursue these meaningful careers.

Soft skills, also called employability skills or professional skills, are the largest single issue facing industry today. Examples of soft skills include good attendance and punctuality, remaining drug free, getting along and communicating with co-workers, and working in teams. Employers are anxious for a solution to this issue.

The chairman of the Kentucky Federation for Advanced Manufacturing Education (KY FAME) said KY FAME is a partnership of regional manufacturers whose purpose is to implement dual-track, apprentice-style training that creates a pipeline of highly skilled workers. The primary way to achieve this goal is through partnerships with local educational institutions to offer the Advance Manufacturing Technician (AMT) program.

AMT was developed as the first model because of the importance of the maintenance field. The model was built to include any career or job classification in manufacturing, whether it is machining or logistics. The model can also be used in other sectors of the economy, such as health care, IT, and finance, and it can be duplicated by changing the technical skills that need to be taught. The model is used across the country now and is currently used in eight states where Toyota has facilities.

Employers recruit, select, and sponsor students in the program, typically using high school graduates as the primary source. Some companies need to improve their incumbent workers and put their own employees into the program. They have also been successful in selecting returning veterans and displaced workers. The program is a learn-and-earn program that lasts five academic semesters. For 2 days a week, classes are held in a simulated work environment, and during the other 3 days participants work side by side with mentors at the sponsoring company. Students can graduate debt free with an associate degree as an AMT with 2 years of experience.

KY FAME was started in 2009. In 2012, seven companies in Central Kentucky came together to develop the first Bluegrass Chapter with 22 students. To date, 124 AMT students have graduated; all have been employed. Three chapters were added within the next year across the state: the Northern Kentucky Chapter, the Lincoln Trail Chapter, and the Greater Louisville Chapter.

In 2015, the KY FAME Board was established to assist other areas of the state in duplicating the program. The state was divided into 10 regions, and there are now chapters in 9 of those 10 regions. Current enrollment in the nine chapters is 286 students, and with returning second year students across the state, KY FAME's enrollment is about 400. The student enrollment represents two-thirds of the 120 counties in Kentucky.

The human resources manager for Logan Aluminum in Lewisburg and president of the Southcentral KY FAME chapter, which was founded last fall, said their first KY FAME class was to start in August with 20 students. She said KY FAME helps raise the reputation of manufacturing in the area and across the state. Because it is industry led, the companies work together to recruit in high schools and in the community as opposed to competing against each other for the best skilled and best-trained employees. It is an opportunity to tell the students that manufacturing is not dirty, dark, and dangerous.

### **Every Student Succeeds Act**

The Elementary and Secondary Education Act (ESEA) originally passed in 1965 as part of the war on poverty. This Act was amended in 2001 to include the No Child Left Behind (NCLB) provisions that were repealed and replaced with the Every Student Succeeds Act (ESSA) in 2015. ESSA is intended to limit the United States Department of Education (USED) secretary's authority, provide more state and local control, end state NCLB waivers, be less prescriptive, and create a more meaningful accountability system for students, parents, and educators.

KDE staff discussed the impact of proposed ESSA regulations on accountability measures. To meet the proposed federal requirements, state-determined accountability measures must include



four academic indicators: proficiency on state tests, progress on English language proficiency for English language learner students, student growth or other academic indicators for elementary and middle school students, and graduation rates for high school students. Accountability standards must also include a measure of school quality and student success and have a participation rate of no less than 95 percent overall. Individual subgroup reporting is also necessary to focus on gap closure. Weighting will be determined by the states, but academic factors will count more than measures of school quality or student success. The state must establish ambitious long-term goals and each year will need to meaningfully differentiate schools and identified student populations based on the performance on indicators. The proposed ESSA accountability regulations maintain a requirement for state and local report cards with emphasis on disaggregated data and some expanded reporting requirements.

The KDE commissioner discussed the town hall meetings held in all areas of the state last year in order to better understand the perspectives of all education stakeholders. Over the course of 7 weeks, he attended 11 meetings, which had a combined attendance of 3,000 individuals such as teachers, administrators, parents, students, legislators, student support service staff, school board and council members, community members, and education partners. He has continued to receive comment via email from those who attended or could not attend.

The commissioner testified before Congress, speaking to the House Committee on Education and the Workforce, on June 23, 2016, and to the Senate Committee on Health Education, Labor, and Pensions on July 14, 2016. His testimony centered on his concerns with the proposed ESSA regulations and the impact they could have on states' accountability systems.

The process for developing Kentucky's accountability system will include work teams on college and career readiness, assessment, opportunity and access, school improvement, and educational innovations. The groups will filter ideas to three larger groups focused on systems integration, regulatory review, and consequential review. An overarching steering group composed of roughly 40 members will collect all the information and relay the commissioner's statements to the Kentucky Board of Education. The guiding principles for the system will include a focus on student welfare; holistic quality education for all students; and equity, achievement, and integrity. The new system must be simple and easy to understand and would ideally be reported in a dashboard that illustrates school/district progress or deficits better than a single number does. There is a very aggressive timeline for development aiming to provide a system plan to the USED by May 2017.

The primary sponsor of ESSA, a US senator from Tennessee, said Kentucky lawmakers have a rare opportunity to change Kentucky's future educational policy with the passage of ESSA. It is an unusual opportunity because a new coalition of people who normally disagree on education have come to a consensus with ESSA. It provides an opportunity for a coalition composed of governors, chief state school officers, superintendents, school boards, principals, parents, and teachers to create a new plan for Kentucky's future in elementary and secondary education. He said an opportunity is provided for states to assert themselves regarding the path to higher standards and better teaching, and the accountability lies with Frankfort and local school boards and classroom teachers and not with Washington, DC.

## **Governor's Scholars Program**

The executive director and academic dean of the Governor's Scholars Program (GSP) testified about the history and value of GSP. In 2016, Northern Kentucky University, Murray State University, and Morehead State University served as hosts, in the first year when all host sites were state universities.

Because of a small reduction in funding, only 1,060 scholars attended the program in 2016 (there had been 1,113 scholars in 2015). They represented 118 of the state's 120 counties. There was an underrepresentation of minority groups, largely because of an underrepresentation in applications. The program has a merit-based acceptance policy, which includes extracurricular merit in addition to school grades. Approximately 80 percent of scholars choose to attend a college in Kentucky, and many of those will choose a career in Kentucky upon graduation. This pattern is credited to the partnership between GSP and Kentucky's colleges and universities to create scholarships for GSP alumni.

GSP considers itself a program to develop confidence and leadership skills in the best and brightest of Kentucky high school juniors. During the 5-week program, which is free to scholars, there are no grades but a focus on collaboration and exploration of ideas. The program has been working to better reach minority students, largely by increasing awareness among parents and in underserved populations.

Applications are first received by high school guidance counselors, and a local group decides which applications to forward to the state review committee based on a school/district quota. The quota is reflective of the number of juniors enrolled in that school/district. The application includes academic records, community service, extracurricular activities, honors and awards, recommendation letters from a teacher and a community member, and a personal essay. State decision-making teams, consisting of three individuals each, review each section of the application individually and provide a score for their assigned section. The applications with the highest aggregate score are those that are accepted. The numbers of males and females accepted are different based on the number of beds available for each sex at the host locations based on a historic ratio of 40 percent males to 60 percent females.

The program raises approximately 25 percent of its funding from private sources. Past data analysis has shown that the cost per scholar is approximately \$2,500 for the full 5 week program, but this rate is based on the very generous support from host colleges and universities, which bid for the program and provide discounts on room and board costs.

## **Non-Traditional Instruction Program**

The Non-Traditional Instruction (NTI) program was enacted by the General Assembly in 2011 for school districts that miss a significant number of school days because of weather or other emergencies. The pilot provided districts an opportunity to conduct classes through NTI methods when schools were closed.

The five districts that applied for the original pilot for 2011-2012 were Leslie, Letcher, Owsley, Powell, and Wolfe. Letcher, Owsley, Powell, and Wolfe each were subsequently approved for NTI days. Districts must apply every year to be considered for the NTI program. In 2014, the pilot program was amended with the enactment of HB 211, which allowed all 173 Kentucky school districts to apply for nontraditional student attendance days by lifting the requirement for districts to have missed more than 20 days per year for 3 years. All districts can now apply to use 10 days of NTI, although they are not required to use all of those days.

For the 2016-2017 school year, 72 applications were approved for the program from 77 submitted applications. The participating districts provide evidence of student participation and learning to the commissioner of education. If the application is approved, the district does not have to make up the approved days.

The NTI program application process begins in the spring of each year and covers 12 areas of emphasis: delivery of instruction, access to online resources, access to equitable materials, how the NTI program learning parallels to regular instructional days, individualized educational programs, program services plans, gifted student service plans, gathering information, evidence of learning, a professional learning plan, how certified and classified staff will report their time, and how facilities with reciprocal agreements affect the program.

NTI provides the districts flexibility as to how the program is used. Most districts use a blended model of instructional delivery that allow students to complete assignments online or as a paper assignment, based on their at-home Internet connectivity.

During the monitoring process, each district provides written documentation, which includes lesson plans from all grade levels; samples of student work from elementary, middle, and high school; copies of teacher logs recording interaction with students; copies of teachers' reports regarding student participation; and completed assignments. After submission of the written documentation, KDE conducts site visits, including interviews with administrators, teachers, parents, and students. The group is asked about the process and the values found in the program. Following site visits, a random review of the district's written documentation is conducted.

The academic benefits of the NTI program are continuity, reduction of learning loss, engaging student and teachers, and evidence of learning. The program's nonacademic benefits include increasing communication between parents and teachers; interacting with community via social media; teaching time management, independence, and problem solving to children; providing an entry point into blended learning; and avoiding the make-up days at the end of the school year.

Three instruction methods are digital learning, blended learning, and project-based learning. Digital learning tools include providing Edmodo, Blackboard, and Google Classroom; posting tutorial videos and activities on the website; and enabling teachers to maintain a digital presence. Blended learning tools include documenting projects and activities and posting electronically, and flipping the classroom approach. Project-based learning entails cross-curricular teams building long-term projects, and students working on projects when not in school.

Challenges for districts include funding, curriculum, and technology. There is no monetary allowance for transportation or food reimbursement, and there is no average daily attendance for comparison from previous years for NTI days. The curriculum challenges include compliance with IEP/504 and the process of reviewing and enrichment versus providing new content. Technology challenges include some households having multiple students but only one electronic device, or households with no Internet or device access.

Oversight challenges KDE faces are flexibility for implementation of the program and the inability to monitor in person. Although the monitoring can be done electronically, most monitoring is done after the fact. Specifically tying the program to achievement improvement has been a challenge, and an outside evaluation of the program is being done.

The Wolfe County superintendent said his district has a higher rate of school-age child poverty than the entire state has, and because of more frequently missed days and the lack of Internet or devices, the closing of schools in poverty stricken areas increases the gap. With an NTI achievement rate of 94 percent to 95 percent, Wolfe County is among the top 10 percent for improvement in Kentucky during the pilot program. With NTI, snowbound days keep students involved in learning activities and engaged in technology.

The Boyle County superintendent said that, in 2014-2015, 5 days of NTI were used, and 3 days were used last year. In addition to eliminating the need to reduce school calendar days, NTI provides an incubator for digital learning ideas; deeper learning methods for engaging students in critical thinking activities; and student-centered, inquiry-based learning methods. The work completion rate of 98 percent during NTI exceeded the daily attendance rate of 95 percent.

## **No Kid Hungry KY**

There are seven food banks in the Kentucky Association of Food Banks. Food banks feed one in seven Kentuckians every year and serve all 120 counties. Last year, member food banks distributed 58 million meals. More than 220,000 children, or one in five, face hunger every day in Kentucky. Recent surveys show that 91 percent of homes with food insecurity purchase unhealthy food because it is cheaper. In a majority of homes, mothers will go without meals in order to provide more for their children or will water down foods such as milk and soup, making them last longer but also diluting the nutritive quality of the food. In 67 percent of homes, parents are forced to choose between paying utilities and buying food, and in 69 percent of homes, parents are forced to choose between buying medication and buying food.

Food insecurity and childhood hunger have many long term consequences for children including higher incidence of poor health and hospitalization, lower test scores in reading and math, lower cognitive development, and challenges with mental health and peer interactions. Childhood hunger results in higher education costs. Addressing childhood hunger can have positive effects by helping to break the cycle of poverty in rural Kentucky.

The Kentucky Association of Food Banks and the No Kid Hungry KY campaign are looking to increase awareness of the Summer Food Service Program. The program is federally funded through the US Department of Agriculture and reimburses providers that serve free meals

to children and teens in low-income areas during the summer months. It is administered through KDE. Challenges with the summer feeding program include the inability of students to travel to the sites to receive meals, staffing shortages, and school locations being closed in the summer for cleaning and repairs.

The No Kid Hungry KY campaign is a collaborative effort of state agencies, school districts, higher education, and nonprofit organizations to address childhood hunger by increasing access to federal nutrition programs among Kentucky's children. The 2016 goal of the campaign was a 10 percent increase in sponsors, sites, and meals served. Strategies implemented to reach that goal included increasing awareness of the program among families, engaging community organizations to serve and promote summer meals, and engaging schools to serve and promote summer meals.

The number of meals served increased by 15 percent, the number of sites increased by 30 percent, and the number of sponsors increased by 8 percent. In total, 129 new sites were established in the target counties this year. The collaborative hopes to build on the successes of this year by reaching out to statewide agencies next year and encouraging successful schools to serve as models and mentors for new schools. The collaborative hopes to work with school, nonprofit, government, and military sponsors to find ways to ensure that every child has an opportunity to receive summer food service.

### **2016 HB 15 Implementation**

To train and inform postsecondary institution board members, 2016 House Bill 15 directed the Council on Postsecondary Education (CPE) to develop a 6 hour curriculum covering the role of CPE; the CPE strategic agenda and accountability system; the respective institutions' mission, budget, finances, strategic plans, and campus priorities; institutional policies and procedures; board fiduciary responsibilities; legal considerations including open records and open meetings requirements; and ethical considerations arising from board membership. CPE must also provide continuing education for all board members either in person or electronically.

New board members must complete the training within 1 year of appointment, and completion of the orientation program is a condition of board service and eligibility for a second term. CPE must notify the General Assembly of new board members who do not complete training requirements within the first year. Private postsecondary institution board members may choose to participate in the training. CPE is also required to approve the campus-specific board orientation programs.

Colleges and universities will provide campus-specific information and materials for their respective board members, and CPE will coordinate and develop state-level curriculum in partnership with campus and board professionals. There will be in-person and online delivery options.

The first state-level orientation was to be November 30, 2016, in Frankfort, with online orientation available in the spring of 2017. The first certification report will be made to the General Assembly in August 2017. Campus-level orientation began in August 2016 and will continue

through August 2017. The completion report for campus-level training will be due to CPE on August 11, 2017. Campus orientation programs must be submitted to CPE by December 31, 2016, for approval. CPE will review and approve plans by February 2017.

### **New Orleans Charter Schools**

The Recovery School District (RSD) is a special district of the Louisiana Department of Education charged with transforming chronically underperforming schools. The RSD deputy superintendent of external affairs discussed Louisiana's experience with charter schools, assisting struggling schools, and improving student outcomes. Although significant progress has been made, more improvement is needed.

Progress in New Orleans was attributed to its being the first city in which 90 percent of public school students attend a public charter school and work hand in hand with high-quality, independent, mission-driven, nonprofit organizations for improving struggling schools. The schools are given standards of expected progress and accountability measures to ensure improved student performance. Also provided are core functions and services to ensure equal and fair access to all public schools. New Orleans fostered and developed new programs to meet the needs of students in special subgroups not being adequately served. The RSD has oversight of 49 autonomous charter schools and works closely with the local school district, which also runs 22 charter schools of its own.

Prior to 2005 and prior to Hurricane Katrina, more than two-thirds of the students attended failing schools. Today, 81 percent of New Orleans students attend schools that are not labeled as failing, and two-thirds of students attend schools that are rated A, B, or C by the state accountability system. Gains are attributed to the strategic use of charter schools by placing the curriculum, staff, budgets, expenditures, and other pertinent decisions in the hands of individuals closest to students. In exchange for the autonomy and the enormous amount of responsibility, the RSD and local school districts hold schools accountable through a performance contract. When the contract is eligible for renewal, the performance is assessed to determine whether objectives have been met. If the terms of the contracts are achieved, the schools get renewal contracts; however, if the terms are not met, those schools managers are replaced.

Although the RSD does not manage schools directly, it focuses strongly on equity for all students. Traditional attendance zones have been removed to ensure all students and families have fair and equitable access to schools across the cities. Intense focus is placed on students with disabilities through employing a differentiated funding formula for students. Diverse programs for groups of students with specific needs ensure that no students fall through the gaps, while an oversight and authorizing capacity ensures that charter schools are meeting the needs of students and families in the district.

### **EdChoice KY**

EdChoice KY is a coalition of individuals supporting the expansion of educational opportunities for all Kentucky students through the use of a scholarship tax credit program. This

program will allow all students to have high quality educational opportunities and resources that low- to middle income families often lack.

The program allows individuals and businesses to donate to scholarship-granting organizations and receive a nonrefundable tax credit. Seventeen organizations across the country award need-based scholarships for students to attend a nonpublic school best suited for their needs.

The Louisville-based School Choice Scholarships (SCS) is a nonprofit organization that grants need-based scholarships to K-8 students to attend any school of their choosing in Jefferson and Oldham Counties. SCS awarded scholarships to 374 students in 51 schools in the Louisville area. The students were selected from 3,500 applications, and they must qualify for federal free and reduced-price lunch to be considered.

The program is supported by private donations, but its goal is to reach more organizations across the state by allowing more children access to the classroom best suited to their needs.

### **Subcommittee Activity**

#### **Subcommittee on Elementary and Secondary Education**

The Subcommittee on Elementary and Secondary Education met four times during the Interim to discuss issues, initiatives, and programs that affect student learning and student performance. Agenda items included the following topics.

#### **A Citizen's Guide to Kentucky Education: Reform, Progress, Continuing Challenges**

The executive director of the Kentucky Chamber of Commerce and the executive director of the Prichard Committee for Academic Excellence discussed a collaborative report that outlined the progress made in educational achievements in Kentucky over the past 40 years.

In the 1980s, Kentucky's overall education achievement ranking was last among the states and the education system was marked by poor performance, disparity and inequity, and low public confidence. In a January 2016 report, the University of Kentucky Center for Business and Economic Research combined 12 educational attainment and achievement factors into a single index and reported that only 15 states ranked higher than Kentucky. The study considered obstacles faced by Kentucky students such as poverty, poor health, parents with low educational attainment, and disabilities. The report concluded that Kentucky is outperforming other states and is one of eight states whose academic performance for dollars per student invested exceeds the expectation of the National Assessment of Education Progress (NAEP).

Although Kentucky has increased achievement for all students, an achievement gap persists for at-risk students. A leader in the development of economic analysis of educational issues has estimated that if Kentucky were to bring all students up to the basic level of proficiency on NAEP, it would translate into an extra \$335 billion in Kentucky's gross domestic product.

## **An Overview of Kentucky's Special Education Programs in Public Schools**

Kentucky law requires that all students identified under the federal Individual with Disabilities Education Act (IDEA) be provided with a continuum of core instruction. An Admissions and Release Committee, made up of a student's parents, general education teacher, special education teacher, school administrator, and other interested individuals, develops an individualized education program (IEP) that contains educational goals for the student and a timeline for achieving the goals.

Since IDEA requires students to be educated in the least restrictive environment, students with mild disabilities are usually provided services in the general education classroom, sometimes co-taught with a special education teacher. Students with more significant needs may require a resource room, a self-contained classroom, a separate school, or a residential setting.

Families receive information and training opportunities to better understand IDEA, the IEP, and the rights of parents and students. Kentucky Special Education Parent Network (KY-SPIN) is a federally funded center that provides technical assistance to parents. The center staff conducted trainings and hosted conferences for parents on understanding the IDEA, the IEP, and the rights of parents and students. KDE provides federal funds to support KY-SPIN. KDE also funds a parent involvement coordinator to provide training to parents at regional parent conferences. KDE has an online parent handbook available and has plans for a series of videos that include IEP development.

### **Meeting the Needs of Kentucky's Special Education Students**

All areas of the state are represented by nine Special Education Cooperatives that are designed to improve educational opportunities for special needs students. In addition to providing direct assistance to schools in areas such as literacy, math, autism, assistive technology, and special education compliance, the staff of special education cooperatives collaborate with KDE, local school districts, postsecondary education institutions, and other service providers to offer training opportunities to school personnel and parents.

KDE distributes federal and state funding to local districts to ensure that teachers and staff of special needs students receive technical assistance, professional development, and specialized services. Each cooperative is allocated a base amount of \$280,000, with an additional \$14,511 per member district, \$25.40 per child from the December child count, and an additional initiative-based funding that varies by cooperative.

### **Overview of School Safety and Related Data**

KDE staff acknowledged three major conclusions identified in state statute regarding school safety: every student should have access to a safe, secure, and orderly school that is conducive to learning; all schools and school districts must have plans, policies, and procedures dealing with measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior; and state and local resources are needed to enlarge the capacities for research, effective programming, and program evaluation that successfully lead to addressing safety and discipline within the schools.



An average of 250,000 records of incidences in which students are engaged in any behavior involving assault, violence, bullying, harassment, alcohol, or drugs (including tobacco) are reported to KDE annually. Data is reported regardless of the resolution or consequence within the school system, and the data includes any behavioral event resulting in a student receiving in-school removal or out-of-school suspension, expulsion with or without services, corporal punishment, restraint, or seclusion.

KDE staff explained how the department and the Kentucky Center for School Safety (KCSS) work closely with one another to assist schools in providing a safe learning environment for students.

### **Kentucky Center for School Safety Annual Report**

The executive director of KCSS gave an overview of the KCSS Annual Report. Since February 1999, KCSS has been serving superintendents, principals, counselors, teachers, parents, and other groups that work with children and protect them on a daily basis. Basic services include responding to district school officials requesting assistance; providing professional development training; providing technical assistance; overseeing the distribution of safe schools funds; researching best practices in school safety; providing information and offering training on these practices; and providing input on policies, regulations, and legislative bills. KCSS has a solid partnership with KDE on school safety matters.

### **Transparency, Consistency, and Accountability in Special Education Programs**

The executive director of Kentucky Youth Advocates, the chief executive officer of the Council for Developmental Disabilities (CDD), a parent advocate, and a parent of a special needs child gave their perspective of how to make special education programs more transparent, consistent, and accountable.

The CEO of the CDD said statewide data indicates 15 percent of students have disabilities, yet 79 percent of the incidences of physical restraint and 95.4 percent of all incidents of seclusion and isolation involve children with special needs. Kentucky's regulations state that restraint and seclusion are emergency interventions that should not be a daily occurrence. He said many cases of physical restraint of developmentally disabled students have been referred to CDD and have caused a great deal of concern because physical restraint was used in cases that did not involve the possibility of serious harm.

The parent shared how a decision to move his child into an alternate assessment track caused the child to be moved from his mainstream classroom into a self-contained classroom. Instead of improving his performance, the child regressed. The parents asked the school to place him back in the mainstream program, but they were encouraged to leave him in the self-contained program where he would continue to take an alternate assessment. The parent found it disturbing that a student would be dismissed as early as 3rd grade in order for the school to pursue higher test scores. He said problems associated with current testing programs and decisions made in Admissions and Release Committee meetings can affect special needs students throughout their entire school career.

## **KYREADS: Kentucky Ready to Advocate for All Students with Dyslexia**

A special education teacher who is also the parent of a dyslexic child shared the difficulties these children face daily. She explained that dyslexia is not an area of exceptionality that is discussed in any preservice college courses. She explained that teachers should be introduced to specific strategies to work with dyslexic children.

A former special education teacher who is currently completing her PhD in the area of teacher knowledge of dyslexia said explicit instruction is needed for classroom teachers to be able to teach reading to students with dyslexia. Although average readers use three areas of their brains to analyze and process words, a student with dyslexia uses only one of those areas. She said the inability to read affects many dyslexic students in areas such as spelling, writing, listening, language processing, motor control, memory difficulties, spatial and temporal difficulties, and social and emotional well-being.

The mission of KYREADS is to see that every school in Kentucky has a tool kit including resources, question and answer sheets, reproducible materials, best practices and strategies for accommodations and modifications, presentation materials, posters, and brochures that teachers can use with dyslexic students.

### **Subcommittee on Postsecondary Education**

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

#### **General and Liberal Arts Education**

A 2013 study by Hart Research Associates commissioned by the Association of American Colleges and Universities found that 75 percent of employers wanted colleges to stress critical thinking, complex problem solving, written and oral communication, and applied knowledge in real world settings. All are skills that are central to a liberal arts education and contribute significantly to career development.

A 2014 KCC public policy survey showed that employers rated the need for improvement in literacy skills, problem-solving skills, and professional responsibility higher than the need for improvement in science, technology, engineering, and math programs for individuals entering the workforce. A survey of Kentucky Community and Technical College System (KCTCS) industry partners identified five high-demand soft skills in new employees: work ethic, communication, problem solving, professionalism, and teamwork. These skills are honed and enhanced through liberal arts and general education and contribute significantly to career development and employee value.

## **Colorado’s Career Pathways Program**

In 2013, Colorado passed House Bill 1165, also known as the “career pathway” legislation. The goal of HB 1165 was to align career pathways in postsecondary education with the skills needed by business and industry, with specific focus on the manufacturing industry.

Colorado’s manufacturing industry has been experiencing 15,000 unfilled manufacturing positions a year, echoing a similar trend in other high-demand sectors. A survey of Colorado employers revealed that positions remained unfilled because employment candidates were unable to work with others, maintain a quality product, plan ahead, create new solutions, or maintain customer satisfaction. Using information on needed employee skills in conjunction with data regarding the most in demand jobs throughout the state, the Colorado Community College System has created Advanced Manufacturing Pathways as a mechanism to inform students of possible career paths in manufacturing, the training necessary for each career path, and specific employment opportunities available upon completion of each path. Students choose a path and are trained to have the specific skills necessary to be quickly employable within their chosen career path.

## **Implementation of the Work Ready Scholarship**

During the 2016 Regular Session, House Bill 626 included implementation guidelines for the Kentucky Work Ready Scholarship Program. The goal of the scholarship program was to ensure that all Kentucky students have affordable access to obtaining a postsecondary degree and that Kentucky has a skilled, competitive workforce. The Governor vetoed HB 626, but funding for the program remained in the budget.

The executive director of the Kentucky Higher Education Assistance Authority (KHEAA) offered the following suggestions for implementation of the program: require completion of the Free Application for Federal Student Aid to be eligible for funds from the program; require that all other aid a student receives is applied to college costs prior to disbursement of Work Ready Scholarship funds; target specific college degree and certification programs as a way to encourage students to enroll in needed workforce development programs; include part-time and returning students among those eligible to receive funds from the Work Ready Program; and require students to earn a 2.0 cumulative grade point average at the end of the school year in order to be eligible for Work Ready funds for the upcoming year. All Kentucky public and private institutions with the designated target programs should be eligible for Work Ready Scholarships, but the amount of the scholarship should be capped at the KCTCS full-time, in-state tuition rate. KHEAA’s final recommendation regarding the Work Ready Scholarship Program was that lottery proceeds not be used as the funding source of the program.

## **Safety on Public Postsecondary Campuses**

Kentucky’s public postsecondary institutions have more than 200,000 students enrolled. Combined with faculty, staff and visitors, the campuses of these institutions form communities with all the needs of small towns, including security.

The president of the Council on Postsecondary Education shared that the Michael Minger Act (2000) and the federal Clery Act (1990) require postsecondary institutions to disclose criminal activity, issue notices of emergency situations, and promote awareness and prevention of sexual assault. These two Acts have helped to ensure the safety of staff and students and made safety a top priority on university campuses. Staff from Eastern Kentucky University, Western Kentucky University, and KCTCS presented information on safety and security initiatives that have been implemented on their campuses.

**Report of the 2016  
Special Subcommittee on Energy**

**Sen. Jared Carpenter, Co-Chair  
Rep. Dean Schamore, 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. Martha Jane King  
Rep. Jerry T. Miller  
Rep. Sannie Overly  
Rep. Tom Riner  
Rep. John Short  
Rep. Kevin Sinnette  
Rep. Fitz Steele  
Rep. Jeff Taylor  
Rep. Gerald Watkins  
Rep. Brent Yonts

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

**Presented to the  
Legislative Research Commission  
and the  
2017 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, and 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 2016 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 2017. The block grant application findings of fact were adopted by voice vote.

The committee did not consider any prefiled bills.

#### **Energy Issues: What to Look for in the Coming Months**

The secretary of the Energy and Environment Cabinet discussed clean power plan initiatives and other cabinet energy issues. The Environmental Protection Agency released the Final Rule for Clean Power Plans in August 2015. Kentucky and 27 other states filed a lawsuit seeking a stay. The US Supreme Court granted the stay. Courts may render decisions later this year or early next year. The secretary reported that the stay is providing Kentucky with the opportunity to focus on lowering emissions and that the cabinet is actively pursuing energy efficiency. The secretary gave an overview of Kentucky's energy history and what the future might look like as a result of the Clean Power Plan and emerging alternative fuel markets.

The director of the Kentucky Resources Council discussed work of the oil and gas work group. The group was formed from employees of the oil and gas industry, cabinet employees, and the general public. The group has been developing relationships and communication among different entities for the good of the environment and oil and gas industries. The work group was tasked with looking at the technologically enhanced naturally occurring radioactive material that is concentrated in parts of the oil and gas process known as fracking.

#### **Center for Applied Energy Research**

The committee met at the Center for Applied Energy Research (CAER). The director discussed CAER's history and current research initiatives. The General Assembly created CAER in 1974 for the purpose of researching, supporting, and developing synthetic fuels from coal and oil shale. In

1988, the General Assembly attached CAER to the University of Kentucky. CAER's mission is to develop more efficient and environmentally acceptable uses for Kentucky's fossil fuels and other natural resources. In 2014, 92 percent of Kentucky's electricity came from coal. The percentage has fallen to about 80 percent in 2016. Kentucky produces 3.2 percent of all the industrial electricity in the country and approximately 2 percent of residential electricity. CAER focuses on how to reduce the environmental impact of Kentucky's energy production and use.

### **Domtar Paper**

Domtar Paper hosted the committee at its Hawesville facility. The general manager discussed the operations of the facility and its energy needs. Domtar Paper is a Fortune 500 company, leading the market in the pulp and paper industry in North America and continuing to expand its personal care division. Domtar received the 2014 American Forest and Paper Association Leadership in Sustainability Award for Energy Efficiency and Greenhouse Gas reductions. The Hawesville plant generates 75 percent of the energy used on site. Through combined heat and power, Domtar produces enough renewable energy to power 22,600 average homes for a year.

### **East Kentucky Power Cooperative**

The committee met at the H.L. Spurlock Station owned by East Kentucky Power Cooperative (EKPC). EKPC is one of the largest electric generation and transmission cooperatives. EKPC is a not-for-profit owned by 16 rural distribution cooperatives. EKPC employs 711 people and serves 1.1 million customers. Its owner-member cooperatives serve 87 counties in Kentucky. The two key coal-fired generating facilities are the H.L. Spurlock Station, which employs 230 employees, and the John Sherman Cooper Station in Burnside. The J.K. Smith Station in Trapp and the Bluegrass Generating Station in La Grange are powered by natural gas.

### **Other Products From Shale**

The specialties marketing manager for Marathon Petroleum Company discussed the manufacturing of a variety of consumable products from shale oil and gas. Every day, people use products from shale gas. Products include medicine, toiletries, toothbrush, paint, windows, clothing, shoes, carpet, electronics, and automobiles.





**Report of the 2016  
Interim Joint Committee on Health and Welfare**

**Sen. Julie 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 Forgy Kerr  
Sen. Reginald Thomas  
Sen. Max Wise  
Rep. Robert Benvenuti III  
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 Becky Lancaster

**Presented to the  
Legislative Research Commission  
and the  
2017 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 2016 Interim.

### Children's Issues

**Childhood Cancer Awareness.** Representatives from the Kentucky Cancer Registry, the Kentucky Children's Hospital, and the Kentucky Cancer Consortium, and the mother of a child with cancer discussed the need for research and treatment of pediatric cancers. The Kentucky Cancer Action Plan (CAP) is the state's comprehensive cancer control plan to reduce the burden of cancer and is maintained by the consortium. One of CAP's 2016 goals is to promote overall health of cancer survivors from diagnosis onward to increase quality of life. Measurable objectives include the percentage of pediatric oncology patients seen at Children's Oncology Group at Kosair Children Hospital and the University of Kentucky, 5 year survival rate of childhood cancer patients, and the number of Kentucky-specific resource guides available to pediatric cancer patients and their families or caregivers. Children should not be treated the same as adults.

**Grandparents' Rights.** An adoptive parent testified on the complications that may arise from interpretation of the "best interest of the child" provision by judges in awarding visitation for grandparents.

**Making Smiles Happen: 2016 Oral Health Study of Kentucky's Youth.** Representatives from Delta Dental of Kentucky, Kentucky Youth Advocates, and Bellarmine University presented findings from a survey of children's oral health. Delta Dental of Kentucky partnered with the Kentucky Youth Advocates and the University Louisville School of Dentistry through the Making Smiles Happen initiative to conduct this statewide survey. A dentist went to 60 schools across five regions of the commonwealth to directly observe the mouths of 2,000 3rd- and 6th graders. The study found the percentage of 3rd- and 6th graders in need of dental care had increased since the first study conducted by the University of Kentucky in 2001. Geography and socioeconomic status are significant factors for oral health. Children in low-income families are more likely to not have visited a dentist in a year or more, to experience a toothache, to have tooth decay, and to have urgent dental care needs. Oral health is a significant issue for young people. Access to oral health has increased, but oral health outcomes have declined.

**Pediatric Extended Care.** Representatives from the Lily Pad at Easter Seals West Kentucky and The Kidz Club (KY PPEC Inc.) presented information on pediatric extended care and the need for additional resources and improvements.

**Pediatric Residential Treatment Facilities.** A representative from the Brooklawn Campus, a combination of Private Child Care program and the Psychiatric Residential Treatment Facility program cottages, testified on the services provided at this facility.

## Family Services Issues

**Fostering Success.** Representatives from the Cabinet for Health and Family Services and a Fostering Success graduate testified on the Fostering Success program. This is a statewide employment initiative to hire and empower current and former foster youth funded through the federal Temporary Assistance for Needy Families block grant. Forty-nine young adults completed the initial 10 week summer program to become office support assistants in local offices of the Department for Community Based Services. The salary is \$10 per hour, and the program requires a high school diploma or GED. In 2016, the National Youth Transitional Database identified 297 youths eligible for the Fostering Success program. Eighty-one young adults were hired between June 1 and July 1, 2016, and 34 were able to extend their employment up to 9 more months because supervisors rated them equivalent to or higher than other office support assistants. Of the 81 participants, 50 are committed to the cabinet, 6 were adopted, and 25 exited foster care on or after their 18th birthday.

**State Social Service Workers.** Representatives from the Cabinet for Health and Family Services testified that the cabinet is trying to build an environment conducive to long-term employment. The cabinet is visiting schools and universities to recruit new social workers. From January to July 2016, of the 443 statewide staff turnovers, 294 were from resignations. Prior agency reporting did not reflect past due cases, request cases, and staff that is not at capacity. Effective August 2016, these variables have been incorporated within staffing and caseload reporting. An Adult Protective Services (APS) caseload ranges from 40 to 46 cases. There are 4,623 open cases among 117 APS staff. A Child Protective Services (CPS) caseload ranges from 20 to 30 cases. There are 8,801 CPS cases being handled by 1,134 CPS staff. Statewide efforts to recruit and retain staff include salary increases for all frontline Department for Community Based Services (DCBS) staff, continued enhancements to the Assessment and Documentation Tool used during investigations, review of existing organizational and management structures, greater presence of leadership in local offices, and exploration of other quality improvements to recruit and retain staff. Some focused efforts in Jefferson County include temporary intensive leadership team, aggressive recruitment efforts and priority filling of frontline vacancies, improved work culture and environment, and development of a plan to address intake numbers to avoid future backlogs.

A judge from Jefferson Circuit Court, Family Trial Division, stated that since 2005, resources for family courts have diminished. More children are in foster care than ever before because of increased addiction issues, increased gun violence, and crime. A disproportionate number of African-American children are in state care. Judges depend on social service workers when hearing court cases. There is an enormous turnover rate of social workers, which makes

cases harder to adjudicate. Recruitment and retention of social workers is crucial. There needs to be better communication between the cabinet administration and DCBS social workers.

Social workers testified that \$50 million has been cut from the DCBS budget over the past 9 years. Social workers have stressful, low-paying, dangerous jobs. There is a huge need for more experienced staff. Areas that need to be addressed are systemic issues, funding for veteran workers, need for hazardous duty pay, higher pay for office support staff, updating intake criteria, evaluation of administrative tasks, and looking at employee criteria. Funding has to be part of the solution. In the past, social workers lived in fear of retaliation by the cabinet for speaking out about issues that need to be addressed.

## Public Assistance Issues

**Benefind Implementation. Representatives from the Cabinet for Health and Family Services presented an update on the** implementation of Benefind, the online self-service portal that allows families to access public assistance benefits and information at a single location. The agency indicated that difficulties with implementing the new system were caused by early implementation without thorough testing, complications with linking state and federal systems, slow Internet speeds in some areas of the state, and incomplete training of frontline staff. The agency indicated that most problems have been worked out but that some challenges remain. The agency stated that any problems reported by recipients should be referred to agency staff.

**Medicaid Section 1115 Waiver Application.** Representatives from the Cabinet for Health and Family Services presented an overview of the Governor’s Section 1115 Medicaid Waiver Application Proposal entitled “Kentucky Helping to Engage and Achieve Long Term Health (HEALTH).” The agency indicated that the application targets the Medicaid expansion population, specifically adults with income up to 138 percent of the federal poverty level and nondisabled adults covered under traditional Medicaid. The agency indicated that the major features of the application include charging premiums, requiring community engagement such as employment for those not disabled, a deductible account to pay for noncovered services, and penalties for nonpayment of premiums. The application was submitted to the federal government on June 22, 2016. The agency indicated that it may take 6 months to receive a response from the federal government.

Representatives from the Foundation for a Healthy Kentucky and other advocates testified on concerns and potential complications for consumers if the application was approved. One concern expressed was about the ability of low-income individuals to pay premiums or to find employment. One potential complication raised was regarding the implementation of the changes included in the application and whether consumers may find the new requirements too difficult to comply with. This may lead to fewer low-income individuals receiving health benefit coverage.

**Transitioning to the Federal Health Benefit Exchange.** A representative from Accenture discussed how the company could help with the logistics of transitioning from the state health insurance exchange to the federal health benefit exchange. He indicated that it would be important to have individuals trained on the new system so that it could be implemented effectively.

## Public Health Issues

**Diabetes Issues Update.** According to the Institute for Alternative Futures (IAF), 11.2 percent of Kentuckians had been diagnosed with diabetes in 2015. The total will rise to 12 percent in 2020 and 13 percent in 2025. The Centers for Disease and Prevention concludes that 35 percent to 37 percent of adults age 20 or older have prediabetes. According to the IAF, Projected Economic Impact in Kentucky, 2020, medical and nonmedical costs including lost productivity will cost the state \$6.5 billion. A representative from Babbage Cofounder stated that the Diabetes Prevention Program was allocated \$2.475 million from the Department for Public Health within the Cabinet for Health and Family Services. Diabetes self-management education shows economic benefit and merits major support. A major increase in diabetes screening in health plans and Medicare will identify new cases. The licensed diabetes educator law has been successful.

**Methicillin-resistant Staphylococcus aureus Administrative Regulations.** A representative from Health Watch USA presented information on methicillin-resistant Staphylococcus aureus infection, which is caused by a type of staph bacteria that has become resistant to many of the antibiotics used to treat ordinary staph infections.

**Northern Kentucky Health Department.** A representative from the Northern Kentucky Health Department testified regarding improvements in the board since the passage of SB 107 in 2015 allowing the board to reduce the number of individuals required by statute to be on the board.

**Zika Virus Update.** Representatives from the Cabinet for Health and Family Services and the Department of Agriculture presented an overview on efforts to prevent the spread of the Zika virus. The Department of Public Health (DPH) and Public Health Protection and Safety, Department of Agriculture, have purchased additional mosquito traps to be deployed throughout the state for increased surveillance to be completed by the Environmental Health Strike Team. The surveillance is being done in conjunction with the University of Kentucky's Department of Entomology. The DPH and local health departments' environmental health staff are conducting in-depth inspections at the homes of all travel associated Zika cases. The inspections focus on identifying and reducing breeding sites and areas that can harbor adult mosquitoes. Local health departments have drastically expanded mosquito control activities and messaging throughout communities and clinical health programs. As of August 16, 2016, there have been 19 confirmed cases in Kentucky, and all were related to travel.

## Medical Issues

**Family Caregiver Act.** Representatives from AARP testified on the importance of passing the Family Caregiver Act. This legislation permits an individual to provide hospitals the name of a lay caregiver to be contacted upon leaving the hospital. The lay caregiver should be given information to care for the individual by the hospital so that readmission rates to the hospital can be reduced and the health of the patient can be improved.

**Medical Marijuana.** A representative from the Alliance for Innovative Medicine (AIM) testified that after standard therapy has failed, cannabis has been highly effective for patients in treating conditions such as severe pain, nerve pain, nausea, loss of appetite, extreme weight loss,

and mental disorders. AIM consists of physicians, medical professionals, law enforcement, and business professionals and serves as the voice for professionals believing that medical cannabis should be legalized. Data from several studies as well as an individual private practice was discussed.

**Midwifery Draft Legislation.** State legislators and a representative from the Kentucky Home Birth Coalition testified on the need to pass legislation licensing midwives.

**Rural Physician Shortage.** Representatives from the University of Louisville School of Medicine, Trover Campus, Madisonville, presented data from the Health Resources Services Administration Data Warehouse. The data show that as of July 29, 2016, 81 percent of the 120 counties, or 68 percent, have a health professional shortage area (HPSA) designation. HPSA means that each citizen in these counties has to share their doctor with more than 3,500 neighbors, when a busy family physician typically cares for about 1,800 patients. The purpose of the University of Louisville Trover Campus is to provide first class medical education in a small town and place more graduating medical students in practice in small towns. Approximately 58 percent of Trover Campus graduates choose rural practice. Recruitment of one doctor to a small town adds \$1.6 million per year to the local economy. Approximately \$1 million from coal severance funding per year supports 60 Pathways students and produces 10 new doctors per year.

### **Services for Individuals With Intellectual, Developmental, and Physical Disabilities**

**Coordination of Services for Individuals With Brain Injuries.** Representatives from the Brain Injury Alliance of Kentucky and New Vista Health Inc. and a brain injury survivor testified on the need for improvement in the coordination of services to individuals with brain injuries. Services are accessed through at least four departments, creating unnecessary gaps and complications in services to individuals in need of consistency in services to improve and maintain their well-being.

**Court Ordered Outpatient Treatment for Individuals With Serious Mental Health Conditions.** Representatives from the Kentucky Mental Health Coalition, the National Alliance on Mental Illness Kentucky, and the Kentucky Association of Regional Programs presented an overview of Tim's Law, proposed legislation that would allow district courts to order outpatient treatment for a person with a serious mental illness and a condition called anosognosia, through a community mental health agency after getting a petition from the person's family, friends, or legal guardians or law enforcement or medical professionals. This law would help stop a circular pattern of entering treatment, incarceration, and release to the community for those suffering these illnesses. Parents and family members of individuals with these conditions testified that their loved ones become a danger to themselves and others when they are not receiving proper treatment. Representatives from Eastern State Hospital and Fayette County Mental Health Court also testified on the pros and cons of court ordered outpatient treatment. Representatives from the Justice and Public Safety Cabinet and the Cabinet for Health and Family Services testified on the efficacy and costs involved with this type of treatment. Representatives from Protection and Advocacy, the Kentucky Protection and Advocacy for Individuals with Mental Illness Advisory Council, the Department of Public Advocacy, and the Louisville-Metro Public Defender's Office testified that court ordered treatment could threaten individual liberties and may not be effective.

**Direct Support Professionals.** Representatives from the Kentucky Association of Private Providers and Kaleidoscope discussed the importance of high quality direct support professionals for well-being of individuals with disabilities.

**Medically Underserved Populations.** Representatives from the Lee Specialty Clinic discussed the importance of a federal designation for people with intellectual and developmental disabilities as a medically underserved. 2016 HCR 174 urged the Governor to request the Secretary of the US Department of Health and Human Services to make this designation. The presenters indicated that this designation would be a significant step toward addressing the unmet health needs in this population and would officially recognize people with disabilities as stakeholders in their own health care, entitled to concrete actions to decrease their health disparities, improve their health, and reduce barriers to their health care. Access to dental services in particular was discussed.

### **Referred Block Grant Applications**

Pursuant to KRS 45.353, the committee held legislative hearings on one block grant application: State Fiscal Year 2017 Social Services Block Grant.

### **Referred Administrative Regulations**

In performing its statutory legislative oversight responsibility, the committee reviewed 34 (as of November) 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 one executive order upon referral from the Legislative Research Commission: Executive Order 2016-496 relating to the Establishment and Operation of the Kentucky Office of Health Benefit and Information Exchange.





**Report of the 2016  
Interim Joint Committee on Judiciary**

**Sen. Whitney Westerfield, Co-Chair  
Rep. Darryl T. Owens, 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. Joseph M. Fischer  
Rep. Kelly Flood  
Rep. Jim Gooch Jr.

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. Lewis Nicholls  
Rep. Tom Riner  
Rep. Kevin Sinnette  
Rep. Ken Upchurch  
Rep. Gerald Watkins  
Rep. Brent Yonts

LRC Staff: Katie Comstock, Matthew Trebelhorn, Chandani Kemper, Alice Lyon, Dale Hardy,  
Elishea Schweickart, and Brad Gordon

**Presented to the  
Legislative Research Commission  
and the  
2017 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.

### **Implementation of Senate Bill 63**

The Kentucky State Police (KSP) central forensic laboratory manager testified about implementation of Senate Bill 63. Through a DANY grant, the KSP laboratory was able to outsource the processing of backlogged sexual assault kits. In addition, with funding appropriated by the General Assembly, the KSP laboratory hired additional forensic biologists and purchased additional laboratory equipment to help reduce DNA backlogs.

### **Opioid Problems in the Jails**

The director of the Louisville Metro Department of Corrections testified regarding the opioid problems his department is experiencing. The influx of opioid users is challenging because the jails may or may not know whether an individual recently used opioids or whether an individual is in the process of overdosing or detoxing. Opioid addiction is not only a health risk for inmates but a large health care cost for the jails. The department's health care contract is approximately \$10 million per year; opioid addiction drives a majority of the costs. The department sends approximately 70 individuals monthly to the emergency room for suspected overdoses. In addition, the department detoxes approximately 120 inmates a day on the jail's medical floor, which costs approximately \$230 a day.

A Jefferson District Court judge stated that many addicts come to her court on theft charges and not drug related charges. She stated that defendants who receive treatment typically do not reoffend. She advocated for more drug courts, sober housing, and recovery support.

## **Kentucky State Police Issues and Concerns**

The Kentucky State Police commissioner and the deputy commissioner testified that KSP troopers received their biggest pay raises this year and were placed on a progressive pay scale for the first time. In addition, the commissioner highlighted several KSP concerns such as the need for more KSP troopers, the need for pay raises for other departments within KSP, and the need to replace KSP's outdated radio system scheduled to die in 2018. The commissioner also spoke of plans to better integrate commercial vehicle enforcement (CVE) officers into KSP by providing new uniforms and better pay. He also said that drug addiction needs to be recognized as a disease and that addicts need to be treated before entering the criminal justice system.

## **Department of Criminal Justice Training**

The commissioner of the Department of Criminal Justice Training and the secretary of the Justice and Public Safety Cabinet testified about the nationally recognized Department of Criminal Justice Training (DOCJT). DOCJT trains police officers, dispatchers, and Fish and Wildlife officers and strives to promote team effort within the law enforcement community while teaching them how to stay safe and to follow the law.

DOCJT highlighted some of its concerns about the type of training it is allowed to conduct. Training in Kentucky consists of 23 weeks of basic training and 40 yearly hours of in-service training. However, Kentucky law does not require training in the basics except every 3 years and does not allow training in firearms, hand-to-hand combat, driving, first aid, or legal updates during the 40 hour in-service training. In 2015, Kentucky officers mirrored the national statistics, which included fatalities related to firearms, automobile accidents, and general health and fitness. As such, DOCJT hopes to add additional first aid classes, firearms training, tactical training, and driving training. In addition, traffic stop training is being updated, and officers are learning new ways to effectively communicate with citizens during a stop.

## **Senate Bill 200 Update**

The acting commissioner of the Department of Juvenile Justice (DJJ) and the secretary of the Justice and Public Safety Cabinet testified that, since implementation of Senate Bill 200, there has been a reduction in the number of youths committed and probated to DJJ. However, there has been a rise in the number of youths who are waived to adult court and convicted as youthful offenders, which DJJ is evaluating. Although the total number of probated youth and committed youth has declined and the number of white youths is decreasing at a similar rate as the total, the number of African American youth is experiencing a much smaller decline. Disproportionate minority contact (DMC) is a concern for DJJ. It has instituted three pilot programs in Lexington, Louisville, and Campbell County to help address the DMC concern.

Overall, DJJ has seen a 40 percent reduction in the total out-of-home population. This reduction includes sex offenders, youth with weapons charges, and general youthful offenders. DJJ has also seen a 73 percent reduction in the out-of-home population for youth who were committed for offenses that Senate Bill 200 was targeting.

Although DJJ is improving with the help of Senate Bill 200, there are still challenges such as cross-agency data collection and the implementation of mandated evidence-based treatment for youth due to a lack of qualified staff. DJJ has a 100 percent turnover rate for frontline workers due to low salary wages.

### **Kentucky Fraternal Order of Police Issues and Concerns**

The vice president of the Kentucky Fraternal Order of Police (FOP) and a member of the state FOP legislative group presented FOP's issues and concerns. The FOP advocated to amend the Kentucky Law Enforcement Foundation Program Fund statutes to include a statutory appropriation of at least \$4,000 and to add approximately nine Peace Officer Professional Standards (POPS) certified county detectives. In addition, the FOP is concerned about a lack of support for first responders and urges legislation that condemns violent offenses perpetrated against those responders. The FOP also advocates for legislation that allows officers to use their freedom of speech without fear of disciplinary actions from employers and legislation that would protect an officer's home address.

### **Licensure of Land Title Insurance Agents**

The president of the Kentucky Land Title Association and an attorney with Morgan & Pottinger urged the passage of a bill requiring title agents to be certified and licensed.

### **Prosecutorial Issues and Concerns**

The president of the Commonwealth Attorneys Association, the commonwealth's attorney for the 8th Judicial Circuit, the president of the County Attorney Association, and a Boone County attorney presented several issues facing Kentucky's prosecutors. The Commonwealth Attorneys Association highlighted the need to protect the persistent felony offender laws and the need to review parole eligibility and sentence restructuring by removing the terms violent and nonviolent and instead using a ranking system for parole eligible inmates. In addition, the Commonwealth Attorneys Association stated that DNA on arrest is the single most important potential law enforcement tool. Since 1974, 90 percent of state prisoners have been repeat offenders and 70 percent of America's crime is committed by 6 percent of the defendants. Twenty-eight states have a DNA on arrest law.

### **Updating Kentucky's Sex Offender Registry: 16 HB 575**

Rep. Kevin Sinnette, two KSP staff attorneys, a KSP lieutenant, and a KSP sergeant testified regarding the need to amend the Sex Offender Registry statutes. KSP urged updating the definitions, requiring the collection of palm prints, requiring registrants to provide passports and immigration documents, and several other technical amendments.

### **State of the Judiciary**

The Chief Justice of Kentucky's Supreme Court presented his State of the Judiciary address. After passage of the expungement bill, he highlighted that the Administrative Office of

the Courts (AOC) had its resources, information, and eFiling system current for the effective date in July. AOC also helped provide training on implementing the law to Kentucky judges and circuit court clerks. As of September 2016, AOC had received 8,400 expungement requests for misdemeanor and felony convictions.

The Chief Justice noted that Senate Bill 200's Family Accountability, Intervention, and Response (FAIR) Teams are the key to the bill's success. As of August 2016, FAIR Teams had reviewed 2,507 cases. Of the cases that have been reviewed and closed, 46 percent were resolved outside of court and 54 percent were referred to the courts. Twenty-nine percent of cases referred to the FAIR Teams continue to progress through reviews and the diversion program. Also, AOC is making it a priority to address the needs of minorities, and it is using the GAIN-Q3 assessment tool to more accurately identify the needs of youth in diversion programs.

The judicial branch played a major role in implementing Senate Bill 133, which is designed to combat drunken driving by using ignition interlock devices. In 2015, Kentucky district judges handled 26,000 cases involving people driving under the influence of alcohol or drugs. Also, AOC received a grant from the Kentucky Office of Highway Safety to provide SB 133 education at the annual District Judges College, which took place in September 2016.

The Chief Justice discussed judicial redistricting. As required by the 2014-2016 Judicial Branch Budget, AOC in conjunction with the National Center for State Courts developed a weighted caseload study that was presented to the legislature in February 2016. The final comprehensive judicial redistricting plan will be presented to the General Assembly in 2017.

AOC's work on the eFiling system was also highlighted. As of October 2015, eFiling is available in all 120 Kentucky counties. Development teams are expanding eFiling to nonattorney government filers and to other case types such as juvenile, forcible detainer, probate, and appeal cases.

## **Women in Prison**

The founder and chief executive officer of Freedom Forever Ministries discussed issues related to female prisoners and the program she operates. Although female prisoners are mostly nonviolent offenders, they are likely to be incarcerated for the same amount of time as male violent offenders. She mentioned the overmedication of female offenders and that 68 percent of women in prison were sole parents of their children before they were incarcerated.

## **Fentanyl**

Kentucky's Attorney General, Rep. Russ Meyer, Rep. Dennis Keene, and the police chief of the Nicholasville Police Department discussed the rise of drug overdoses and the need for BR 201 to combat fentanyl and its derivatives. In 2015, 1,248 overdose deaths were reported in Kentucky, an increase of 177 from 2014. Thirty-four percent of the overdose deaths were due to fentanyl. Fentanyl is 30 to 50 times as strong as heroin and has 830 known analogs. BR 201 concentrates on drug traffickers and increasing the criminal penalties for those drugs.

## **Reentry Drug Supervision Pilot Program**

Rep. Lewis Nicholls presented his idea for establishing a reentry drug supervision pilot program administered by the Department of Corrections. Nonviolent, nonsexual Class C and D felons convicted of either a drug offense or an offense arising from a substance use disorder could qualify for the pilot program. Participants in the pilot program would be paroled into the program and would be overseen by a reentry team modeled after drug court. Rep. Nicholls stated that the pilot program would increase the capacity of treatment for drug users, substantially reduce the prison population, maintain community safety, reduce recidivism, and create substantial cost savings.

## **Celebrating Families: An Evidence-Based Model to Strengthen Recovery**

A national trainer for the Celebrating Families program provided an overview of her program. Celebrating Families is an evidence-based cognitive behavioral, support group model written for families in which one or both parents have a serious substance use problem and in which there is a high risk for domestic violence, child abuse, or neglect. The program works with every member of the family by using supportive adults to give children a “safe space,” breaking the family cycle of addiction and abuse, and providing parents an opportunity to learn and practice critical skills that facilitate and nurture. The entire family is also taught anger management skills, how to show compassion and understanding, communication skills, feelings and defenses, boundaries, problem solving, and nutrition. An evaluation of those in the program found that time to reunify significantly decreased, the rate of reunification increased, there was a large effect on parenting, participants learned and applied new skills, and it was effective with Hispanic families.

## **Gross Misdemeanors: 2017 RS BR 22**

Rep. Brent Yonts discussed BR 22, which creates gross misdemeanors. A gross misdemeanor would be placed between a felony and a misdemeanor. It would classify flagrant nonsupport, 2nd degree forgery, and possession of a forged instrument in the 2nd degree as gross misdemeanors instead of felonies. Rep. Yonts stated that BR 22 would save more than \$21 million per year and that many people throughout the court system support the bill.

## **Department of Public Advocacy**

The public advocate with the Department of Public Advocacy provided an overview of his department’s concerns. He urged a realignment of correctional funds by moving toward scientifically informed treatment, lowering crimes and penalties, incentivizing the release of low- and moderate risk persons, increasing reentry support, reforming the penal code, having a financially unified statewide correctional system, increasing felony theft levels to \$2,500, and modifying the persistent felony offender statutes. In addition, the public advocate expressed support for gross misdemeanors.

## **Kentucky Association of Criminal Defense Lawyers**

Two representatives of the Kentucky Association of Criminal Defense Lawyers (KACDL) advocated for evidence-based, full scale penal code reform as well as a Young Adult Offender Task Force to look at offenders aged 18 to 25. In addition, the KACDL representatives spoke in support of the creation of gross misdemeanors, Senate Bill 200, more substance use treatment facilities, and tweaking Kentucky's expungement bill. They spoke against Marsy's Law, cautioning members that a constitutional amendment is a rare, drastic, and unnecessary measure.

## **Amending Kentucky's Divorce Laws**

A representative of the Fayette County Family Court proposed changing Kentucky's divorce laws to extend the waiting period in divorce cases involving children, where no domestic violence or abandonment is present, from 60 to 180 days. In addition, he would like to require an "irretrievably broken" hearing for those parents.

## **Strengthening Kentucky's Domestic Pet Protection Laws**

The administrator with Kentucky Citizens against Animal Abuse and Domestic Violence spoke about pet protection laws in Kentucky. She stated that 71 percent of animal abusers will abuse humans and that animal abusers are five times as likely to commit violent crimes against people. In addition, she noted that 80 percent of women who leave a domestic violence situation report animal abuse already present in the home and that 65 percent of domestic violence victims stay in their homes in order to keep and protect their pets from abusers. She advocated legislation that would make torture, gross neglect, or sexual assault of a dog or cat a Class D felony for the first offense.

## **Operator's License Testing: 2017 BR 111 and Arrest Powers for 4th Degree Assault in a Hospital: 2017 BR 215**

Sen. John Schickel testified in favor of two prefiled bills, BR 111 and BR 215. BR 111 requires the Kentucky State Police to include in the driver's manual and on the driving exam the proper way to interact with law enforcement officers. BR 215 allows a peace officer to make an arrest if there is probable cause that a 4th degree assault occurred in a hospital.





**Report of the 2016  
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  
Rep. Regina Bunch  
Rep. Larry Clark  
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 Miller  
Rep. Terry Mills  
Rep. Tom Riner  
Rep. John Short  
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  
2017 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 2016 Interim. One of the meetings was conducted jointly with the Interim Joint Committee on Economic Development, and one was conducted jointly with the Interim Committee on Economic Development and the Interim Special Committee on Tourism Development. The topics discussed included workforce updates from the Education and Workforce Development Cabinet and the Bowling Green Chamber of Commerce, updates from the Labor Cabinet, the aviation and aerospace industry, several other industry and business perspectives, and updates on recently passed legislation.

### Education and Workforce Development Cabinet Updates

**Tour of Workforce Issues.** The commissioner of the Department of Workforce Investment outlined the two main goals that the department currently has in regard to Kentucky's workforce, which include leveraging partnerships to build the state's talent pipeline and building a service delivery system that represents excellence in customer service while reflecting budget realities.

**Unemployment Insurance Update.** It has been estimated that by the end of 2016 there should be a net positive balance of \$240 million. The commissioner of the Department of Workforce Investment listed some legislative priorities for the department during the upcoming session, such as the clarification of the surcharge period, modernization of the employer payment process, revision of the employer protest period for appeals that is currently out of compliance with federal timeliness requirements, revision of the unemployment benefits for military spouses, and clarification of successorship regulations.

**Worker Adjustment and Retraining Notifications.** In 1988, Congress passed the Worker Adjustment and Retraining Notifications (WARN) Act, which required employers to provide adequate notice, 60 days, to workers to seek other employment before losing their jobs in the event of a plant closing or mass layoff. The department encourages employers to notify the Kentucky Division of Workforce and Employment Services as quickly as possible so comprehensive WARN materials can be distributed and services referenced to workers and employers.

**Workforce Innovation and Opportunity Act Implementation.** Integrated services are emphasized through the Workforce Innovation and Opportunity Act (WIOA), which was passed in 2014, by making it mandatory to maintain partnerships between the Department of Workforce Investment (which includes the Office for Vocational Rehabilitation, the Office for Employment and Training, and the Office for the Blind) and the local workforce boards. Once the federal WIOA

regulations are received, local and regional plans can be established and WIOA performance measures can be put in place.

**Newly Funded Initiatives.** The Workforce Investment Fund is a \$100 million bond pool that will fund qualifying projects to invest in Kentucky's workforce. The objective of the fund is to require local education institutions to partner with employers to develop training that is in demand among employers with the intention of continuing to build Kentucky's talent pipeline. The Dual Credit Expansion will create a seamless transition to postsecondary education into the workforce by making it possible for high school students to earn college credit or industry recognized certification.

### **Bowling Green Chamber of Commerce**

The vice president of communications and public policy for the Bowling Green Chamber of Commerce gave a presentation, giving an overview of various programs that are aimed at improving the workforce in the Bowling Green area. The South Central Kentucky Launch (SCK Launch) talent development strategy has been established. It extends from the earliest stage of kindergarten to unemployed, underemployed, and incumbent workers already in the system. The SCK Launch Experience will be a hands on career expo to expose students to career pathways that are in high demand. Another program, The On Track project, is a learning based initiative that teaches science, technology, engineering, and math through practical application while exposing students to manufacturing careers.

### **Labor Cabinet Updates**

**Department of Workplace Standards Apprenticeship Program Update.** The secretary of the Labor Cabinet and the commissioner and deputy commissioner of the Department of Workplace Standards gave a joint presentation on the registered apprenticeship program. A \$200,000 grant from the US Department of Labor (USDOL), with an application submitted for more funds, will help the cabinet propel its apprenticeship program and assist in supplying Kentucky employers with a well trained workforce. The secretary revealed the cabinet's new slogan for the apprenticeship program, "Kentucky Trained. Kentucky Built." There are 133 individual and joint sponsored programs in the state, representing more than 1,000 employers, and those numbers increase daily. The cabinet has a new 3 year plan with a goal of doubling the number of apprentices in the state.

**Department of Workers' Claims Coal Workers' Pneumoconiosis Update.** The commissioner of the Department of Workers' Claims gave an update on coal workers' pneumoconiosis (CWP), which included graphs that illustrated the current state of claims, agreements, awards, and dismissals. As of August 31, 2016, 561 new CWP claims had been filed this year, and by the end of 2016 it is anticipated that a total of 841 new claims will have been filed, making it the largest number of new CWP claims filed since 1993. Several other major issues were elaborated on. Kentucky now has the lowest number of coal miners since the late 1800s. Approximately 45 evaluations, on average, are performed each month, but approximately 80 new claims are filed each month. All claims must have an independent evaluation, which has become an obstacle. There has been an increase in the number of cases of progressive massive fibrosis,

also known as complicated pneumoconiosis. There is a 40 percent to 45 percent award rate in all claims filed, compared to 60 percent in 2014 and 2015.

### **Aviation and Aerospace Industry**

**Aviation and Aerospace Industry in Kentucky.** The executive director and general counsel of the Cabinet for Economic Development gave an update on the aviation and aerospace industry in the state. Kentucky has 60 aviation or aerospace facilities employing more than 15,000 people. The most recent expansion announcement was Safran Landing Systems. Safran, located in Walton, is a \$150.3 million investment. It was an expansion of Messier-Bugatti-Dowty and provided an addition of 80 new jobs. Within the past 5 years, there have been 51 announcements of new companies or expansions to existing companies in the aviation and aerospace industry, with an anticipated investment of \$677 million and 2,318 high wage jobs. The top five aviation and aerospace employers in the state are UPS, DHL Express, Lockheed Martin, Mazak, and GE Aircraft Engine, and the industry employers export to 87 countries. The aviation and aerospace industry has been Kentucky's top growing exporting industry, and in 2015 the industry had \$8.77 billion of exported products from within the state, which put Kentucky third nationally. In the 2015 Regular Session, the General Assembly passed HJR 100, which directed the Transportation Cabinet, the Cabinet for Economic Development, and the Commission on Military Affairs to study the economic impact of the overall aerospace/aviation industry in the commonwealth.

**Safran USA.** Safran is a tier one engineering company and the oldest aerospace propulsion company in the world. Its business is focused in aerospace, defense, and security. Fifty four percent of its sales are in aerospace propulsion, 28 percent are in aircraft equipment, 11 percent are in security, and 7 percent are in defense. In the United States, Safran has 7,000 employees at 58 locations in 22 states. The company makes \$1.5 million in purchases every year in the United States. Some of its leading US technologies include the automated fingerprint identification systems used by more than half of US law enforcement agencies, driver's license and identification issuance technology used in 40 states, and 100 percent of the wiring on the Boeing 787 Dreamliner. National customers include Boeing, Airbus, Lockheed Martin, Bell Helicopter, UPS, American Airlines, Southwest, and Delta.

**Space Tango.** Space Tango is a company that enables research and development, bioengineering, and manufacturing in microgravity, particularly in the area of exomedicine. It was formed in 2013 to assist in creating and commercializing a new industry to improve the lives of people on Earth. Exomedicine is being explored to test how living systems change and function outside Earth's gravity. Space Tango is also performing research to examine certain medical solutions outside Earth's atmosphere and how they can be applied on Earth. It recently installed its first permanent installation on the International Space Station, which is a laboratory called Tango Lab 1. The lab was designed and built in Kentucky, predominantly in Lexington, and has the ability to perform 21 experiments simultaneously. There are upcoming missions and testing to explore cystic fibrosis, cancer, regenerative medicine, neurobiology, and drug design.

## Industry Perspectives

**General Motors Bowling Green Assembly Plant.** The General Motors (GM) plant is approximately 1 million square feet on 212 acres with production being done on first shift only, Monday through Friday. The production volume is 17.2 units per hour, or 137 per day, with approximately 1,000 salaried, hourly, and contract employees. Between March 2012 and September 2013, 370 permanent GM-UAW employees from Michigan, Ohio, Indiana, Missouri, Louisiana, and Texas transferred to the Bowling Green GM Assembly Plant with 24 salaried positions being added. Recent and ongoing investments have been made to ensure that the assembly plant remains in Kentucky and continues to thrive. There has been a \$440 million investment made in the new state of the art paint shop, which should be complete in late 2017 for work with 2018 model vehicles. Another investment of \$44 million was made in spring 2016 to support the new powertrain assembly operations and for some related unannounced programs.

**National Corvette Museum.** The grand opening of the National Corvette Museum (NCM) was September 2, 1994, and in 2009 a 47,000 square foot expansion was completed. The museum has approximately 220,000 visitors each year, sits on a 55 acre campus, has a 115,000 square foot facility, and has approximately 107 staff members. The NCM offers various programs and services to the public with the mission of celebration, education, and preservation. The delivery program allows people who order cars at dealerships across the country to take delivery at the NCM. The Motorsports Park opened in 2014, is owned and managed by the NCM (which is a 501(c)(3) nonprofit foundation), and was a \$25 million project. The Corvette Cave In Exhibit opened in February 2016 and allows visitors to learn more about the sinkhole that formed in February 2014, consuming eight rare cars that were on display; it shows how the NCM recovered.

**Kentucky Horse Park.** The Kentucky Horse Park opened in 1978, has 77 full-time employees, is a working horse farm, and has more than 900,000 visitors annually. At 1,224 acres, the Horse Park is considered one of the best equestrian venues in the world. The park hosts more than 200 equestrian events a year, but it also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park offers concerts and can serve as a wedding venue, and it hosts receptions, races, and other events. Marketing efforts are focusing on the Man O' War 100th anniversary, a run-walk club, a cemetery crawl, education outreach, and riding camps.

## Recently Passed Legislation

**AT&T Infrastructure and Investment Update.** 2015 House Bill 152 spurred telecom modernization with the goal of increasing investment in high-speed Internet infrastructure and job creation. By the end of 2016, AT&T will have expanded its fiber-optic network to bring more Kentuckians access to the latest in 4G wireless services through the construction of 32 cell sites. AT&T has also made more than 750 enhancements to existing sites. AT&T coordinated with the Kentucky Department of Education to bring fiber-based, high-speed Internet to all 173 school districts in Kentucky. This established Kentucky as the first state in the country to meet new higher speed standards for school districts. Through its participation in the Federal Communications Commission (FCC) Connect America Fund, AT&T is aggressively deploying high-speed Internet capable facilities in rural parts of the state. Over the next 6 years, high-speed Internet will be

brought to 84,000 new customer locations in rural Kentucky. FCC data shows that 82 percent of Kentucky voice connections occur over something other than a traditional landline.

**Public Private Partnership Legislation.** Benefits of public private partnerships (P3s) are efficiency, private industry expertise, reduced risk and cost to taxpayers, and satisfaction of a public need or benefit. Any agency that uses P3 projects has the ultimate responsibility of ensuring that all qualifications are met. Various criteria determine whether a P3 is the most advantageous method of awarding and administering a capital project or other contract. The first set of criteria are qualitative considerations, which include looking at risk allocation; timeliness and efficiency; benefits gained or not gained with a P3; public interest; and the urgency of the project. Another aspect of P3 legislation is the ability for private industry to submit an unsolicited proposal. A valid unsolicited proposal must be independently generated, must be prepared without government involvement, and must include sufficient detail to determine benefits to an agency or local government.

**Report of the 2016  
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. Daniel Elliott

Rep. David Floyd  
Rep. Dennis Horlander  
Rep. Joni L. Jenkins  
Rep. Adam Koenig  
Rep. Reginald Meeks  
Rep. Charles Miller  
Rep. Jerry T. Miller  
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  
2017 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; prizefighting 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

#### Medical Marijuana

A researcher from the University of Louisville said that marijuana (cannabis) has been used for centuries. It was cultivated for use in garments, rope, paper and medicine. Even in the 1850s in the United States, cannabis' efficacy was shown to benefit a large number of medical ailments, including neuralgia, depression, hemorrhage, pain, and muscle spasm. There are two types of chemicals in cannabis that mimic chemicals in the brain and are released in response to nerve cell activity. Tetrahydrocannabinol (THC) binds to receptor proteins in the brain and is the cannabinoid that is psychoactive. In contrast, cannabidiol (CBD) is not psychoactive because it does not work on the typical THC receptors in the brain. There are vast differences between the compounds in CBD oil and in medical marijuana. CBD oil is not psychoactive.

The dramatic effects parents have seen in reducing childhood epileptic seizures with CBD use have driven a populist movement. In 2013, a partnership was formed between GW Pharmaceuticals in Great Britain and the pediatric epilepsy community in the United States. More than 20 centers, including the University of Louisville, are participating in clinical trials involving devastating epilepsy in children. Two double blind, placebo controlled trials have proved positive using Epidiolex, which is 98 percent CBD and has shown efficacy in reducing seizures. GW Pharmaceuticals will submit an application to the US Food and Drug Administration (FDA) by the end of 2016. If approved, this medication could be available in pharmacies by mid-2017. There is the potential to use this medication for treatment of anxiety, schizophrenia, addiction, autism, and cerebral palsy in infants due to lack of oxygen.

A major barrier for the clinical trials is that the CBD is a Schedule 1 drug, requiring a Schedule 1 Drug Enforcement Administration (DEA) license, as well as initial and repeat DEA inspections. GW Pharmaceuticals is the only approved laboratory to provide for clinical trials.

Sen. Perry Clark said that opinions are changing nationwide. 2016 SB 263 set a framework for the quality of cannabis and a good distribution system. The Salk Institute found that THC and other compounds found in marijuana can promote the cellular removal of amyloid beta, a toxic protein associated with Alzheimer's disease. Twenty-five states have legalized the use of medical marijuana. There are findings that provide strong evidence that marijuana use by teenagers does not increase after a state legalizes medical marijuana. The National Bureau of Economic Research



said that legalizing marijuana does not lead to more use by teenagers. Fifteen additional states are considering making marijuana legal.

Sen. Morgan McGarvey said 2016 SB 304 was an attempt to describe medically necessary marijuana administered to treat or alleviate life threatening illnesses. The bill focused on end of life conditions in people who have cancer or an incurable disease. A doctor provides the treatment in a responsible way. The state would grow and regulate the product. The definition of terminally ill is 6 months or less to live. The term palliative care covers people who live longer than 6 months after diagnosis but still need something to relieve their suffering. The bill recognizes that there are some therapeutic benefits to medical cannabis and that it does provide comfort and relief for patients who need it most.

Representatives of Kentuckians for Medical Marijuana said thousands of Kentuckians would like safe access to medical cannabis. FDA data shows that one person dies every 19 minutes from side effects of legal drugs. No one, according to the FDA, has died from responsible use of medical cannabis. Until 1942, physicians prescribed and used cannabis as a form of medication for their patients. In 1944, the LaGuardia Committee reported that a study by the New York Academy of Medicine found that marijuana was not physically addictive, or a gateway drug. In 1970, the Controlled Substance Act was created and marijuana was set as a Schedule 1 drug. In 2009, the American Medical Association recommended that the DEA review the status of marijuana's Schedule 1 status. Twenty-five states have taken the step to use their state rights to regulate medical cannabis. More than 1 million patients have registered as medical cannabis patients, although some states do not require their patients to register. Allowing medical marijuana to become legal will create jobs and a way to regulate the product. By creating a Cannabis Enforcement Department, Kentucky could set an application fee, have packaging and labeling, and provide a secure facility.

The Kentucky Medical Association said its policy supports further clinical research, as approved by the FDA, to determine whether cannabis can be effective in the treatment of medical conditions. Marijuana's status as a Schedule 1 controlled drug should be reviewed and possibly changed for the limited purpose of research and the development of cannabis-based medications. When done the right way, there can be very promising results for particular conditions.

A researcher from University of Kentucky with training in anesthesiology and pain management advocated restraint in using medical marijuana. In raw form, it is impossible to obtain consistent levels of active ingredients because they compete for the same receptors, which lowers the efficacy of needed drugs. CBD is not equal to medical marijuana. Although the different ingredients in marijuana have similarities, small variations can make a huge difference. Furthermore, there is little enforcement or oversight of additives, microbes, pesticides, fertilizers, and other chemicals that may change the effect. There are compounds within marijuana that are dangerous and psychoactive. Medical marijuana is not one product; it is 60 products, and research is needed to tell the good from the bad.

Following legalization in California, the average medical marijuana recipient was a 32 year old white male with a history of other drug use. The biggest impact in legitimizing marijuana will be in the adolescent populations. Teenagers reason that marijuana must be safe if it is used

medicinally. Although CBD does not appear to affect the developing brain, there are components of raw marijuana that clearly do. Early and regular use of marijuana creates signs of changes in areas of the brain that help with motivation and coping. Adolescents who used marijuana are biologically less capable of self-soothing and more prone to a lifetime of seeking chemical coping mechanisms. Marijuana irreversibly drops an IQ by at least 8 points. Marijuana users and children of marijuana users show lower life motivational and achievement rates. While it may give the illusion of calming effects to bipolar and PTSD patients, there is rebound volatility when the drug effects fade. Marijuana addiction rates exceed those for alcoholism. In the professional workforce, marijuana use is associated with higher absenteeism, more work injuries, and more disability. Kentucky is already in the top five in disability. The arguments of economic gains through taxation and jobs are easily offset by the intangible impact on productivity, accidents, and disability, not accounting for the health costs.

The president of the Kentucky Narcotic Officers' Association (KNOA) expressed concern regarding the legalization of cannabis for medical purposes. Officials in law enforcement are struggling to keep pace with the drug epidemic in Kentucky. In states where cannabis has been legalized for medical purposes, marijuana use by 12- to 17 year olds is the highest. Children and young adults are using cannabis at an alarming rate. Now they have access to marijuana with THC concentrations exceeding 30 percent readily available in states that have medicalized cannabis. KNOA sympathizes with those who are suffering debilitating diseases and those who are terminally ill, but raw marijuana, either smoked or ingested, is not medicine. KNOA believes that medications, including marijuana-based drugs, should go through the scientific process and should be accessed through legitimate physicians.

The executive director of the Office of Drug Control Policy said there is some medical benefit to marijuana, but, as with all medications, there are risks that have not been explored. The National Federation of State Medical Boards has issued guidelines for physicians who prescribe marijuana. Strict definition of medical conditions should be written. Physicians should have special training and a special license. There should be an agency familiar with regulatory issues to handle medical marijuana. Background checks for all involved are necessary. Prescription dispensers should report to the prescription monitoring program. If a bill is drafted, it should not allow people to grow their own medicine. Such a provision could lead to people selling what they grow but do not use themselves.

### **Real Estate Appraisers Continuing Education**

The executive director of the Kentucky Real Estate Appraisers Board (KREAB) said the General Assembly created the board in 1990 after Congress passed the Bank Lending Reform Act in response to the savings and loan collapse. The lack of appraiser education was noted as a common denominator throughout the United States. The federal Act recognizes three groups to work together for appraiser licensing enforcement, state agencies that enforce programs, a private non-profit organization that establishes national minimum appraisal standards and qualifications, and a federal agency that monitors both the state programs and a private nonprofit that approves the education courses. The course curriculum for the programs offered must comply with the minimum education requirements established by the Appraiser Qualification Board of the

Appraisal Foundation in Washington, DC. Kentucky has been cited as a model for offering approved courses.

In March 2016, KREAB began receiving notices from education providers that they were going to stop offering courses in Kentucky because of added requirements for approval from the Kentucky Commission on Proprietary Education that were expensive and burdensome. The requirements were more applicable to colleges and universities rather than the smaller education providers. KREAB requested an exemption, but because of existing language in KRS Chapter 165A, no exemption can be allowed for the education providers for Kentucky appraisers. There are other existing boards that are exempt as specified in statute. The director of administration for the Kentucky Real Estate Commission (KREC) said the commission shares many of the concerns of the appraisers board.

The executive director of KREAB said he would like for KREAB and KREC to be included in the group of boards exempted in KRS 165A from the criteria the Commission on Proprietary Education requires. Most of the requirements they have been asked to meet are not relevant to the scope of their providers. They do not operate like typical colleges and universities but are small independent business.

The executive director of the Kentucky Commission on Proprietary Education said the commission's role is to protect consumers. The commission regulates any for-profit, proprietary school. The real estate appraisal schools fall into the definition of privately owned for-profit school: a school that is privately owned, offering or administering a plan, course, or program of instruction in business, trade, technical, industrial, or related areas for which a fee or tuition is charged. KRS 165A exempts a school or a course or of study sponsored by the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the Kentucky Board of Nursing, the State Board of Embalmers and Funeral Directors, or the Kentucky Council of Postsecondary Education. Only those specifically mentioned are exempted from the provisions of the law.

Schools that are licensed by the commission must submit a course catalog, student transcript records, and other documentation with the application for license. When a school makes an application, it must submit a surety bond at a minimum of \$20,000. If the school employs staff enrolling people in Kentucky, the school must have an agent bond at \$5,000. Rep. Dennis Keene said he sponsored the 2012 proprietary education legislation. It was not intended to be so far reaching and has resulted in unintended consequences. The legislation will be revisited.

### **Kentucky Home Birth Coalition**

A representative of the Kentucky Home Birth Coalition said there are two types of midwives: nurse midwives and nonnurse midwives. Nurse midwives, licensed in all 50 states, have completed graduate level courses. These advanced practice registered nurses specialize in midwifery. There are 87 practicing in Kentucky. Only four of these attend home birth, and there are no physicians who attend home birth. The Kentucky Home Birth Coalition is asking for licensure for the other category of midwives, nonnurse midwives. They have completed specific education and training, and each is nationally credentialed as a certified professional midwife. The

program is accredited with competency based clinical requirements from the North American Registry of Midwives. The coalition is using the North American Registry of Midwives for credentialing of certified midwives. Kentucky law requires a state permit for practice as a midwife. In 1975, administrative regulations were changed to prohibit permits from being issued. Since 1975, a permit has been required, but no agency has issued the required permit.

The coalition has met with the American Congress of Obstetricians and Gynecologists to discuss similar legislation that will soon become effective in Maine. There are plans to meet with the Kentucky Hospital Association to discuss their concerns. The coalition has yet to meet with the Kentucky Medical Association.

### **Horse Racing**

The chairman of the Kentucky Horse Racing Commission said that the Governor has appointed all the members of the new commission. There are also nine committees that will soon have all appointments filled. The two priority areas are safety of the horse and jockey and adding value to the industry. The second is very challenging because the state is not on a level playing field. Kentucky is competing against 38 other entities. However, the commission looks forward to working on improving what the state has now.

Commission members also presented statistics in Kentucky relative to the other racing states. Kentucky is tied for third in average field size with Maryland and Indiana. Kentucky is also in third place in purse amount per race, with an average of \$42,421. The purse amount is supplemented at several Kentucky tracks by revenue generated by historical horse racing. When comparing tracks within Kentucky, Kentucky Downs shows the largest average field size by far. Commission members attributed this standing to purses supplemented by proceeds from historical horse racing. Kentucky Downs also has the largest average purse per race at \$151,094 per race. The next closest track is Keeneland at \$73,334 per race.

Commission members discussed an analysis of the excise tax generated by pari-mutuel racing. Wagers placed through advanced deposit wagering provide no revenue for the thoroughbred development fund, the Standardbred development fund, or other funds that receive revenue from wagers made live at the track or by simulcast. Advanced deposit wagers also provide less money to the general fund than other forms of pari-mutuel wagers.

The executive director of the Horse Racing Commission said the commission is awaiting results of a study regarding the use of Lasix 24 hours before a race. Currently, administration of Lasix on race day is limited to 4 hours before the race. Lasix issues are the biggest issues that need to be settled. They have been very divisive for the industry. This commission is dedicated to a resolution.

### **Department of Alcoholic Beverage Control Follow Up on SB 11**

The Alcoholic Beverage Control (ABC) commissioner said that the 2016 Regular Session alcohol bill, SB 11, eliminated population requirements in two areas: Any incorporated city may now hold a local option election, and any city or county can enact ordinances to permit Sunday

alcohol sales. ABC also has initiated a simultaneous renewal schedule, with the exception of Louisville, and an economic hardship exception was included for any local community that has a restaurant with limited seating. This change led to a major increase in local option elections. Since July 2016, there have been 23 local option elections, and seven more are pending. Hundreds of license applications have been filed with the department. Twenty counties remain completely dry.

SB 11 created two new licenses. A “pedal pub” license allows patrons to board the pedal pub with an unopened package and drink from nondescript containers while on the pub. Also, the Rectifier license was divided into Class A and B to reduce the cost to small producers. The Class A rectifier produces greater than 50,000 gallons annually; the Class B license is for those who produce less than 50,000.

Due to the increase in popularity of microbreweries, SB 11 increased the production cap on malt beverages to 50,000 barrels per year. Microbrewers can also sell their product by the package and by the drink at fairs and festivals in wet territories. Distilleries have also seen an increase due to the authorization of a moist precinct local option election. They may also acquire an NQ3 license for retail sale by the drink.

Small farm wineries have an increased production cap from 50,000 gallons per year to 100,000 gallons per year. They are allowed to “custom crush” fruit from other small farm wineries. Three wineries offer this service. In addition, bed and breakfasts may apply for a license to sell alcoholic beverages to registered overnight guests. Since July 15, three bed and breakfasts have applied for this license.

### **Home Delivery of Alcoholic Beverages.**

The chief executive officer of Drizly said his company has a simple consumer application that can be downloaded from its website. The consumer is then connected with local package liquor stores and can order from them. Retailers then deliver orders in as little as 20 minutes. There is no increased charge through the application; the consumer pays the same price charged in the store, although the retailer charges a \$5 delivery fee. Drizly is not involved in delivery. A consumer in a dry area, a college campus, or an area with an otherwise restricted address receives a message indicating that the product is not available in that area. The company is located in approximately 26 cities and works with hundreds of large and small retailers. The service allows retailers to use the Internet to expand their businesses and allows consumers the convenience of online shopping. Drizly has worked to ensure that taxes, consumer safety, and underage drinking are addressed within the system. The Internet is changing the way people do business. Massive companies like Amazon take money from local retailers. Drizly, however, ensures that local retailers are making money from this revenue stream. A statutory change would be needed to allow the Drizly model to work in Kentucky. KRS 244.310 prohibits retailers from providing delivery of distilled spirits or wine. Delivery of malt beverages is allowed.

### **Bourbon Industry Initiatives**

The bourbon industry has a couple of initiatives it would like to see adopted by the 2017 General Assembly. Distillers would like to have the same ability that small farm wineries and

microbreweries have to participate in local fairs, festivals, and charitable events under an existing distiller's license. Currently distillers must apply for and receive a special events license for every event they wish to participate in. On another issue, a legal definition of antique spirit would allow retail sale of rare spirits that are no longer in distribution. Currently, there is no legal way for individuals who own collections of old, rare spirits to sell them to retailers for resale.

### **Kentucky Guild of Brewers**

The Kentucky Guild of Brewers expressed gratitude for legislation that spurred growth in the brewing industry. 2016 SB 11 increased the production cap for microbreweries from 25,000 barrels per year to 50,000 barrels per year. This change made it possible for a number of breweries to expand. The craft brewery industry has seen a 600 percent growth rate in the last 5 years. There are 46 active microbreweries, and each microbrewery represents jobs and economic growth. The workforce has grown by more than 116 jobs in 2016 alone, bringing the total to 570 jobs in the craft beer industry. Rep. Keene noted that this industry has become an economic development success story.

### **Fantasy Sports**

The general counsel for the web-based fantasy sports site FanDuel said fantasy sports took off in the late 1990s with the growth of the Internet. In 2009, FanDuel launched a daily fantasy company. Players can compete against each other or in leagues. Today, there are more than 55 million fantasy players in daily and seasonal leagues. The manager for government affairs for DraftKings said his fantasy sports company started in Boston in 2012. Major League Baseball and the National Hockey League are equity stakeholders in the company. The Professional Golfers Association and NASCAR have marketing partnerships.

Both companies require age verification when a person registers for an account. Both companies offer free games and games that can be played for money. The most popular game on the DraftKings site costs \$3. By last fall, FanDuel operated in 45 states and began to look to verify regulatory status. FanDuel has pending legislation in 38 states. There are eight states that have passed fantasy sports legislation, while five states have gambling laws so expansive that it was believed that fantasy sports did not need legislation.

Both companies are operating in Kentucky, with an estimated 100,000 Kentuckians playing. Both companies believe that it is important to have legislation that protects the consumer against compulsive behavior, that verifies age, and that keeps the consumer's money separate from the company funds. The companies have an agreement with the NCAA to not offer betting on college sports.

### **Interstate Compacts**

The Board of Nursing and the Board of Physical Therapy submitted proposals for the interstate compacts concerning their respective fields. The proposals would make it easier for individuals licensed in either field in Kentucky to receive licensure in other member states. Each of the compacts would also create a commission to oversee the provisions of the compact and to

coordinate between the states that have joined each compact. The boards described the benefits of having an agreement between the states tracking licensure, continuing education, violations of professional conduct, and other issues; however, committee members expressed some reservations about each compact. Sen. David Givens was identified as the lead person for the issue of interstate compacts in the senate, and each board was encouraged to contact his office to incorporate concerns from the Senate.

## **Recreation Therapists**

Recreation therapists use a variety of techniques such as arts and crafts, trained therapy animals, dance, drama, and community outings. They practice in hospitals, mental health facilities, Department of Veterans Affairs facilities, assisted living communities, and other settings. Clients include people with brain injuries, mental illness, intellectual disabilities, dementia, spinal cord injuries, Alzheimer's disease, and cardiovascular and pulmonary diseases.

Eastern Kentucky University is the sole provider of therapeutic recreation curriculum in the state. Kentucky has 113 professionals with certified therapeutic recreation specialist (CTRS) credentials. Certified therapeutic recreation specialists are asking for licensure in order to ensure the safety and protection of the public and to provide a clear, concise definition for the scope of practice. Licensure will set minimum standards for education, experience, and testing of those practicing therapeutic recreation. Other states with licensure for recreation therapy include New Hampshire, North Carolina, Oklahoma, and Utah. Fifteen additional states are pursuing licensure.

A representative for the Kentucky Physical Therapy Association said that KPTA is not opposed to recreation therapists being licensed or billing for their services. However, KPTA has seen draft language and is concerned about scope of practice. Bills have passed in other states, so there is language that can be worked out. The proposed legislation should also have language that would not preclude other licensed professionals from providing services. Sen. John Schickel said it would be helpful if the committee could receive a draft of the proposed legislation as soon as possible.

## **Genetic Counselors**

Genetic counselors are health care providers with a master's degree with training in molecular biology, medical genetics, and psychosocial counseling. National accreditation of genetic counselors is administered by the American Board of Genetic Counseling. Subspecialists include cancer genetic counselors and pediatric genetic counselors.

Kentucky does not have a law for licensure of genetic counselors. Twenty-one states require licensure, and 20 others have considered it through legislation. Licensure would provide greater access to genetic counselors in Kentucky. There is rapid growth in the number of genetic tests available. In a survey of nongenetics physicians, 72 percent responded that their knowledge of genetics was fair to poor. Genetic counselors take the burden off physicians to research genetic conditions and treatment of genetic diagnosis to adequately inform patients. Genetic counselors help with deciding which tests are appropriate and then help with the interpretation and management of the results.

## **Advanced Practice Registered Nurses Review of HB 296 from 2016 Regular Session**

Rep. John Carney said the purpose of HB 296 was to amend the definition of practitioner of the healing arts so that it would include advanced practice registered nurses (APRNs). Under current law, the definition includes those practicing medicine, osteopathy, dentistry, podiatry, optometry, and chiropractic. In rural Kentucky, APRNs provide a vital service for health care. Adding APRNs to the definition of practitioner of the healing arts would not expand their scope of practice and would align the regulations with APRNs' current practice.

The president-elect of the Kentucky Coalition of Nurse Practitioners and Nurse Midwives said that 902 KAR 20:260, Special Health Clinics, was amended last year to exempt practitioners of the healing arts so that professionals in private practice would not be considered specialty clinics. This meant that APRNs who are in private practice, but not included in the definition of practitioners of the healing arts, would be considered to be operating a special health clinic and would experience unnecessary burden and costs. Many APRNs in primary care would have a hard time meeting the regulatory requirements. After help from Rep. Mary Lou Marzian, the APRNs were exempted from the regulation. APRNs are concerned that a future statute or regulation would exempt practitioners of the healing arts and have a negative impact on APRNs.

A physician representing radiation oncologists said there is a need for APRNs in Kentucky, but allowing APRNs to supervise technicians during a procedure raises concerns. Fluoroscopy is not the same as taking a chest X-ray. The potential for harmful radiation exposure is a real danger when equipment is operated by those without appropriate education and training. The inclusion of APRNs in the definition of practitioner of the healing arts would exempt them from radiation therapist licensure and allow them to operate radiation-producing equipment or administer ionizing radiation for the purpose of medical imaging or radiation therapy. Also, they would be allowed to supervise all licensees in the performance of all procedures. Currently, there is no educational training in the APRN DNP (Doctor of Nursing Practice) or master's curriculum covering radiation physics, radiobiology, radiation safety, or radiation management. Placing APRNs in a supervisory role over medical imaging therapists would conflict with federal and state guidelines.

Sen. Julian Carroll said both professions should meet and work out their differences. Representatives of the Board of Nursing and the Board of Medical Imaging and Radiation Therapy have agreed to meet to resolve this issue.

### **Physician Assistant Prescriptive Authority**

Sen. Tom Buford said 49 states allow physician assistants (PAs) to write prescriptions for controlled substances (in Missouri and West Virginia, PAs are allowed to write prescriptions only for Schedule III to Schedule V). Kentucky is the only exception, and he has requested a bill to change this. The University of Kentucky supports this legislation. A representative from the Kentucky Academy of Physician Assistants (KAPA) said KAPA will be seeking to modify prescription authority to allow PAs to prescribe controlled substances from Schedule II to Schedule V. This change will allow physician/PA teams to serve patients more efficiently.



PAs in Kentucky graduate with a thorough understanding of controlled substances, and that foundation improves with clinical practice. Students are familiar with electronic medication databases, including Meth-Check and Kentucky All Schedule Prescription Electronic Record (KASPER). Under proposed legislation to prescribe controlled substances, a supervising physician and PA would be required to submit an application to the Kentucky Board of Medical Licensure for approval. This legislation will allow a supervising physician to authorize a PA to prescribe controlled substances. The physician/PA team best determines the level of authority that is needed to give the most efficient care to patients. PA prescriptive authority for schedule medication will also provide more accurate tracking of controlled prescriptions. PAs would be required to register with the federal DEA and the state KASPER system. This legislation is not a mandate, and physician/PA teams who do not want the authority are not required to submit an application. PAs will be able to prescribe opiate-based prescriptions only if their supervising physician authorizes them to do so.

### **Kentucky Board of Optometric Examiners**

Representatives of the Kentucky Board of Optometric Examiners said that their license renewal fee was set by statute at \$200 and has not been increased in 20 years. They submitted proposed legislative language that would remove the statutory cap and place the cap in administrative regulation. They also proposed to increase the license renewal fee to \$250. They said their membership was uniformly supportive of the proposed fee increase.

### **Housing Industry**

The chief executive officer of the Kentucky Association of Realtors and the executive vice president of the Home Builders Association said that each purchase of a home generates significant economic activity, with benefits to a number of different industries. The economic impact of home ownership is hard to overstate. The committee could help the industry through a variety of measures. Protecting the mortgage interest and property tax deductions is crucial in any type of tax reform. Legal reform is needed to promote common-sense policies on landlord/tenant issues that protect a property owner's investment and promote personal responsibility. They spoke in support of the Governor's regulatory reform efforts and decried the damage caused by the substance abuse epidemic in the state and its effects on communities.

### **Kentucky Manufactured Housing Institute.**

The executive director of the Kentucky Manufactured Housing Institute said a bill passed in 2000 allowed for a title on a manufactured home to be surrendered and become part of the real property deed or deed of trust. This law gave consumers the opportunity to receive mortgage interest rates on manufactured homes. However, when a person surrendered a title on a single section home, because the title became part of the property deed, there was no longer a title to sell the single section home apart from the property. Other states allow selling the home by filing an affidavit with the county clerk. This process allows the owner to pull the home away from the property, file with the property valuation administrator to acquire a title, trade or sell the single wide home, and purchase a multi section home or build a home. The institute has met with county

clerks and has been provided with language that other states have used to allow homeowners to separate their house from the property to obtain a title for the house.

**Report of the 2016  
Interim Joint Committee on Local Government**

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Rep. Steve Riggs, Co-chair**

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Sen. Ralph Alvarado  
Sen. Denise Harper Angel  
Sen. Stan Humphries  
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**Presented to the  
Legislative Research Commission  
and the  
2017 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; 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**

#### **Bio-Digester Location**

A controversial planned location of a bio-digester near a residential area in Louisville Metro spurred local policy reviews and state legislation. The chairs invited stakeholders to address the committee.

The director of Develop Louisville with Louisville Metro Government said that in February a 6 month moratorium was put in place for bio-digesters to study the issue. In concert with public hearings, an ordinance was proposed. The director outlined the provisions of the ordinance.

The attorney representing the bio-digester noted that the bill from the 2016 legislative session intended to place controls on bio-digesters but did not become law. Louisville's proposed zoning regulation is not supported by comparative regulations in other jurisdictions, is not supported by the science of anaerobic digesters, and is not consistent with other urban digesters operating throughout the country. One size does not fit all with regard to regulating anaerobic digesters. Throughout the country, there are agricultural-based digesters, more than 1,200 wastewater treatment plants using anaerobic digesters (municipalities, industrial—food and beverage, breweries, distilleries, and food manufacturers), and 38 stand alone (nonagriculture and nonwastewater) anaerobic digesters (transfer stations and municipal solid waste).

There are several national examples of existing urban-based anaerobic digester projects, which would not be allowed given the rules proposed by the Louisville Metro ordinance.

The food and beverage industry is the second largest industry in Kentucky and employs almost 50,000 people. The facilities typically generate waste streams that are well suited for treatment using anaerobic processes. Digesters remove constraints for growth, facilitate expansion and job creation, and reduce stress on municipal systems such as wastewater treatment plants. Food and beverage companies in Louisville that could benefit from digesters include: Papa John's, Dean Foods, Krispy Kreme, Kellogg's Snacks, Sysco, and Heaven Hill.

Waste streams are close to people. The potential risks of anaerobic digesters are mitigated when they are designed safely. There is limited energy content on-site, which is approximately half of the energy of one tanker of gasoline. There is a narrow range for biogas to be explosive. The plants are built in compliance with fire codes, and ignition sources are limited. The plants include monitoring equipment, and the gas is contained at low pressure. Methane is lighter than air, so if there is an escape, it will dissipate. In addition, odor controls are put in place.

The chief executive officer of Star Energy Holdings said his company had been working on anaerobic digesters in Kentucky since receiving an invitation to work on the food port in West Louisville. The technology for bio-digesters came from Europe, which has 13,000 digester plants. The energy derived from digesters in some instances is used to heat homes, and digesters have been located in the neighborhoods containing the homes.

At the local level, his company has worked hard to educate people on the safety of these projects. No one disputes the necessity for waste diversion and the safety of these projects. The company has partnered with General Electric and has municipal solar installations in Benham in Harlan County.

A representative of the California Neighborhood Leadership Council said West Louisville is inundated with environmental injustices. Residents have respiratory disease from industrial and chemical factories. Anaerobic digesters are not conducive to being located in neighborhoods because of the gaseous products that they produce. The risks that accompany these gases are explosions, fires, asphyxiation, hydrogen sulfide poisoning, disease, and odor. The location of a digester will lower home values and raise insurance costs. The residents of the neighborhood want to feel safe.

The president of Neighborhood Planning and Preservation Inc. (NPP) said that, in 2015, NPP joined with West Louisville neighborhoods, community advocacy groups, environmentalists and many concerned citizens to halt the construction of two methane plants in West Louisville neighborhoods. During a visit to Louisville in 2015, an Environmental Protection Agency official noted that the close proximity of the proposed anaerobic bio-digesters to residential spaces in Louisville would set a precedent. She said that no one from NPP would say that this technology should be ignored, as there is a garbage problem. There is a need to deal with waste. A loop using that waste to provide energy would be better than a linear approach.

The original plan indicated that the energy products would be shipped out of state. A favorable plan would benefit residents of Kentucky in terms of reduced energy costs. The original proposal would have the local neighborhoods bearing the costs and providing benefits to persons outside of the neighborhood and the state.

Although the digester in Brooklyn, New York is pretty, there are no homes across the street. The Disney location is guaranteed to have no unpleasant sights or odors. The local California neighborhood proposal has homes across the street, and pedestrians and traffic are in close proximity to the plant. Concerns with malicious intent regarding the plants and terrorism are ever present.

The second proposed site near Muhammad Ali Boulevard had homes about a block and one-half or more from the site. The streets are narrow, and truck traffic would disrupt quality of life in the neighborhood.

The plan seemed rushed, and the group wanted more deliberation in the plan and expressed concerns about the developer.

During one of the preliminary meetings last year with a Louisville Metropolitan council-member, representatives of the project indicated that odors would not be present. A statement by an employee of the federal Environmental Protection Agency indicated that some plants had odors and some did not.

Keeping the plants profitable often necessitates a change in plan. The stillage from Heaven Hill, for example, may not be enough to keep the plant in operation. A plant in Wisconsin did suffer an explosion of one of its digesters.

The group asked for good planning and asked that Kentucky developers benefit.

The executive director of the Kentucky Resources Council said that a flexible, nuanced, and metered ordinance that is not “one size fits all” and that tries to ensure that these types of facilities are compatible with nearby land uses is being sent to the metro council for consideration.

### **Interlocal Agreement Training and Promotion Efforts**

The chairs of the committee invited representatives from the Kentucky County Judge/Executives Association (KCJEA) to address the committee on how widely interlocal agreements are being promoted among local officials and agencies representing local governments.

The legislative chair, the executive director of KCJEA, and the Garrard County judge/executive discussed interlocal agreements (ILAs).

The legislative chair provided a recounting of the statutes involved in forming ILAs. The origin of the Act can be found in legislation passed in the early 1960s.

ILAs have found quite extensive use in recent years. Beginning in 2000, the Department for Local Government (DLG) created an online database that houses all ILAs approved by DLG. Since then, 815 ILAs have been received DLG approval with more than 2,500 entities participating in the ILAs. Every county in Kentucky participates in some form of ILA. The database-listed

agreement with the most entities is the Google Fiber ILA, signed in Jefferson County, which has 76 participants.

The ILAs found in DLG's database cover a wide range of joint efforts including law enforcement and police protection, drug task force, industrial development, animal control, parks and recreation, regional jails, recycling efforts, enhanced 911 services, Workforce Development Act, emergency medical services, occupational license sharing, insurance premium revenue sharing, senior center operations, riverport authorities, solid waste boards, broadband infrastructure, farmers markets, cemetery maintenance, and 50 additional areas where local governments have determined to work jointly to provide services to their citizenry.

One of the possible primary reasons for a greater use of ILAs is the training and education now afforded local officials. Newly elected officials' training, the Governor's Local Issues Conference, and conferences of the Kentucky Association of Counties (KACo), the Kentucky League of Cities (KLC), KCJEA, and the Kentucky Magistrates and Commissioners Association contain extensive training that details the advantages afforded communities by working together and using ILAs.

DLG, KCJEA, and KACo have training for officials who have been in office longer, in addition to the newly elected ones. The area development districts (ADDs) also assist with training and executing ILAs.

The Garrard County judge/executive provided some examples of ILAs that his county has joined, including an occupational license taxes ILA with Boyle and Lincoln Counties that assisted in capturing the appropriate taxes owed in each jurisdiction; a local emergency management ILA with the City of Lancaster; a Run Park ILA with Lincoln County; a merged solid waste ILA with Lincoln County that has saved the counties hundreds of thousands of dollars in the past few years; and a Bluegrass 911 system ILA with Lincoln County. After combining the 911 dispatching service, there is only one system with one director, and \$504,000 has been saved from just the shared phone service system that is used among several counties.

### **Issues Relating to the Department for Local Government**

The commissioner of the Department for Local Government said that every effort is made to fund all Community Development Block Grant projects. August 1 was the deadline for project applications, which were all reviewed. DLG was working with applicants to work through any deficiencies. There was nearly enough funding for all of the eligible applications received. This year DLG encouraged applicants to submit strong applications and work with DLG so that the applications can be approved. Funding was received from HUD, and applications were promptly reviewed. DLG planned to announce awards in the fall.

Appalachian Regional Commission applications were due by August 15, but the deadline was extended to August 29. It appeared that DLG would have a continuing resolution this year and would not have its full funding allocation from Washington on October 1. However, DLG expected to be able to access a percentage of last year's allocation on October 1. DLG received \$22,067,783 in application requests with \$9 million available. Kentucky was able to get \$10 million for the

Appalachian Regional Commission Partnerships for Opportunity and Workforce and Economic Revitalization. DLG was to submit a new application for Eastern Kentucky and hoped to be selected for a clinic in 2018 that will fund optometrists to perform laser surgery.

Regarding the Recreational Trails Program, the board had met and made recommendations. DLG was to review the applications for compliance issues, and it planned to make announcements on the applications.

The board was meeting the same day as the committee meeting for the Land and Water Conservation Fund. Applications were to be reviewed by DLG for compliance issues, and DLG planned to make announcements on the applications.

The Innovative Readiness Training Program with the Delta Regional Commission has a military mission that is a coordinated troop effort—complete deployment using multiple branches. Dental, vision, medical, and pharmacy clinics are located in Paducah, Bardwell, and Mayfield. There are more than 13,000 patient contacts. The program is very popular with the troops.

### **KACo Legislative Platform for the 2017 Session of the General Assembly**

Kentucky Association of Counties leadership discussed issues considered for legislation in the upcoming legislative session. The president-elect said KACo wishes to explore separating the County Employees Retirement System (CERS) from the Kentucky Retirement Systems (KRS). CERS is 60 percent funded, and an autonomous retirement system board would focus only on its members and have investment decisions based solely upon the system's financial needs. Changes in legislation designed to improve the finances of the Kentucky Employees Retirement System (KERS) are not always necessary for CERS. CERS will be in a position to offer its retirees a cost of living adjustment earlier than KERS will.

Pension spiking reform was included in Senate Bill 2. Public employers are invoiced for any increase in creditable compensation greater than 10 percent in the final 5 years of an employee's employment. Although purposefully padding an employee's compensation to increase retirement benefits is wrong, so is penalizing the employer when a spiking event is triggered from a legitimate circumstance. Many circumstances may be considered spiking when an abuse is not intended. Examples of these are Family Medical Leave Act events; taking sick leave without pay; and workers' compensation events. The employers are sent an invoice regardless of the employee's intent. Since January 2014, county employers have received more than \$400,000 in spiking invoices. KACo is working with stakeholders and KRS to identify and redefine events that qualify as spiking that are not intended to increase retirement benefits in a manner contrary to the intent of the original legislation.

The first vice president of KACo noted that the transfer of individuals from one department to another can trigger the spiking provisions. The awarding of overtime in response to the training required by the peace officer professional standards requirements can also trigger the spiking provisions.



Regarding tax reform, Kentucky's tax code has not kept current with the economy. The local investments for transformation tax should be an option for local governments. It is the most democratic process and would reduce the need for local governments to turn to Frankfort for the funding of local projects. The outdated tax system combined with unfunded mandates pits counties against cities in the competition for limited revenues, a rivalry that legislators have said they wish to avoid. Constituents and governments do not favor increasing property taxes, but these mandates sometimes make it necessary.

Sometimes mandates are represented as a tax cut or a savings at some level, but in reality they are passed down and picked up by the local governments. Counties are left with three choices: cut services, lay off employees, or raise revenues to cover those expenses. Sometimes counties must use all three.

KACo has asked the Governor to include it in tax reform discussions and asks the same of the General Assembly.

Jail funding is an issue. In the previous fiscal year, fiscal courts have collectively transmitted an additional \$81 million to jails. When people overdose on heroin laced with fentanyl but do not die from it, they are arrested and brought to jail. The number of misdemeanants and pretrial felons is higher in county jails than ever before. Kentucky is not successful in rehabilitating drug addicts, who end up back in county jails. Drug crimes often involve property crime because of the need to fuel the habit. An addict who is returned to jail is often charged with a second crime, which then triggers persistent felon status, which increases jail time. Controlled intake prisoner numbers are increasing. The state is not classifying prisoners as quickly as in the past, which keeps them in the county jails longer. The parole rate has decreased because of crimes of paroled felons. Many judges have stopped issuing bail and bond credits. KACo hopes bail and bond credits will again be issued in higher numbers.

KACo also considers the road fund a priority. Dramatic reductions in gas prices have left the gas tax receipts \$130 million below original 2016 estimates. The "Pause-50" plan put in place by the Transportation Cabinet this summer has stopped badly needed projects until the road fund base can be rebuilt. Counties collectively spent \$48 million from their general budgets for road projects. Counties are responsible for more than 40,000 miles of roads. City annexation of tax-lucrative areas should be noted as a challenge. Roads are not the only infrastructure needs, and the conversation should turn to modernizing funding for all these infrastructure needs.

The first vice president noted that construction timing issues may result in road funds allocated to counties being expended in different times of the year and that this timing may contribute to the appearance that counties do not expend all the road funds allotted to them. The funds are spent, and they are spent for the purposes for which they are provided. KACo supports measures that contribute to the future integrity of the road fund and distribution of the formula that continues to reflect safety and economic development needs of the counties. KACo remains willing to discuss these measures with the stakeholders.

## **KLC Legislative Platform for the 2017 Session of the General Assembly**

Kentucky League of Cities leadership discussed issues being considered for legislation in the upcoming legislative session. The executive director and chief executive officer said that Kentucky cities, rather than KLC staff, developed the 2017 platform. The city classification reform bill of 2014 helped extend maximum flexibility for cities for self-governance, but there is yet more work to do, including assuring equal opportunity for all cities regardless of size and engaging in revenue diversification. KLC's agenda represents months of diligence from the 62-member board.

The KLC board ranked more than 25 issues. The highest-ranked issue is the road funding formula. In 1948, the General Assembly established the county road aid and rural secondary road funding formula. In 1972, the municipal road aid program was created. Population shifts to cities and other factors render the formula out of date. Each year cities spend more than \$250 million on construction and maintenance of more than 10,000 miles of city streets. Transportation Cabinet figures show that, in fiscal year 2014, cities received less than \$60 million—less than a quarter of the cost of constructing and maintaining cities' roads—from the road aid fund. During the last fiscal year, Sadieville received \$5,837 from the road aid fund. It spent \$41,730 of general fund money on road maintenance. Sadieville's total budget is \$287,000. In most years, Sadieville cannot afford to do any street maintenance. In the previous 2 years it spent \$51,000 and \$65,000 on road maintenance, most of which came from the general fund.

Over the same period, counties spent less than \$290 million and received almost \$325 million in road aid money.

The outdated funding formulas do not take into account lane miles traveled or other measures related to use and maintenance. KLC is proposing to change the formula from past proposals to allocate money to local governments that have higher traffic counts and more frequent needs. The new method will preserve the existing "formula of fifths" until revenues exceed \$825 million to ensure that no money is taken from the counties. Half of the funds in excess of that amount would be distributed based on the population living in incorporated areas versus unincorporated areas. The other half would be based on road miles in incorporated areas versus unincorporated areas.

The second priority noted was County Employees Retirement System and antispiking legislation reform. Kentucky cities support the separation of CERS from Kentucky Retirement Systems. According to a pension system study by R.V. Kuhns Inc., KRS is on track to undergo serious financial hurdles that include "persistent funding shortfalls, elevated contribution levels, unsustainable payout ratios, and in the worst case scenario, the potential for a complete depletion of assets." KRS is the worst-funded system in the US, but CERS is improving because its funding ratio has increased and employer contributions have decreased. The Kuhns study sees the probability of CERS being fully funded in approximately 20 years. CERS pays nearly 63 percent of the total administrative expenditures of KRS. These expenditures include lawsuits filed against the system, salaries of employees, and fees and other administrative costs.

The KLC board of directors voted to make antispiking legislation modifications a legislative priority. The language presently in law has resulted in a cost to Kentucky cities through

September 2016 of \$1.5 million. Nearly 3,400 spiking bills have not yet been evaluated. KLC supports maintaining the provisions that prohibit abuse and exorbitant artificial spikes while making considerations for legitimate increases in compensation where appropriate.

Kentucky cities need the full spread of revenue options necessary for today's economic challenges. KLC seeks to expand the restaurant tax to all cities in lieu of net profits or gross receipts taxes on the restaurants. Cities would retain up to 75 percent of the revenues, with the remaining 25 percent going to local tourism commissions. All Kentucky cities and tourism agencies should be equals when it comes to the tools available to their leadership. The KLC board of directors believes that adjusting the restaurant tax will allow for more direct investments in the community that are focused on economic growth. Cities would be required to use the revenue that they retain for the construction, operation, and maintenance of infrastructure that supports local tourism, recreation, and economic development. In 2014, the restaurant tax generated approximately \$13.8 million for tourism commissions. If all cities were to enact a 3 percent tax on restaurants, tourism commissions would receive at least \$43.5 million for marketing, allowing them to enhance tourism across the commonwealth.

Drug abuse was mentioned as plaguing and damaging Kentucky cities. Its consequences have a devastating impact on individual citizens' quality of life and on economic and workforce development efforts. Cities have been strong advocates for legislation addressing this issue.

Kentucky cities have been vocal about repealing the prevailing wage law. A current, state sponsored study shows that prevailing wage law can cost cities up to 30 percent more on construction projects subject to prevailing wage law as compared to construction projects not subject to it. The prevailing wage law offers no guarantee of a higher skilled labor or better work. Repealing this law would mean tax dollars could be stretched.

The KLC board noted its belief that protecting home rule is the likely the most important tenet of its agenda. KLC will oppose any unfunded mandates that allow one governmental entity to freely spend tax revenue raised by another governmental entity without consequence. KLC will support legislation that will prohibit the General Assembly from making mandates to any local government unless the mandate is fully funded by the state or the programs are approved for funding by a vote of the local legislative body.

The first vice president of KLC said KLC favors increasing police and fire incentive pay, as was done in the most recent budget, to \$4,000, as well as allowing an administrative reimbursement for the costs associated with the increased incentive, which could cost all cities as much as \$5 million a year.

The Local Investments for Transformation (LIFT) tax is a tool that will not only allow cities to grow their economies and create jobs, but will also give city leaders a chance to engage citizens in the process. The LIFT tax will allow city leaders to build a building, and the proposed restaurant tax expansion will allow city leaders to support the building. Both taxes must go hand in hand. It is hard for small communities to both build a building and maintain the building once built.

KLC opposes an extension of the occupational license tax crediting provisions that were enacted in the 2014 and 2016 legislative sessions. KLC expressed a desire to work with the members of the General Assembly and the Kentucky Association of Counties on the issue.

There are many issues that cause economic development not to happen. Limited revenue is one such issue. KLC wishes to look at increasing revenue without putting burdens on people.

KLC expressed a desire to be involved in criminal justice reforms, newspaper advertisement reforms, police body camera legislation, workers' compensation legislation, and solid waste planning and local government investments therein.

### **Package Sewer Treatment Plant Abandonment**

Representatives of the state and counties discussed issues related to package sewer treatment plant failures. The director of the Division of Water (DOW) said that DOW implements most of Kentucky's water regulatory programs, including the Clean Water Act. DOW regulates package wastewater treatment plants (WWTPs) via Clean Water Act discharge permits that require dischargers to meet technology standards and standards based on water quality. Package plants are operated by private utilities or are owned by neighborhood associations, school boards, or other entities, including the Kentucky Transportation Cabinet at state interstate rest stops. Package plants serve housing developments, subdivisions, mobile home parks, apartment buildings, campgrounds, and small businesses, and they are generally located away from municipalities and other regional wastewater treatment collection and treatment facilities.

There are 203 small package WWTPs. The Public Service Commission (PSC) regulates 36 of them. Most package plants date to the 1970s and 1980s and have significantly exceeded their design life. Older, poorly maintained infrastructure leads to poorer treatment and lower quality of effluent, which leads to problems with water quality and public health. These plants sometimes have aesthetic issues. They can become inundated with groundwater because of cracked piping, and they can be inundated with other sources of water inflow, such as sump pumps. They often have trouble conducting advanced treatment to meet modern standards.

The demographics of the owners of these plants are changing. Many owners are older, and homeowner associations that own them may no longer be capable of operating them.

The PSC regulates the abandonment of regulated WWTPs via KRS 278.021, which establishes the criteria and process for removing and replacing owners/operators due to factors such as sudden death and insolvency. DOW works with PSC to identify interim and permanent solutions. However, non-PSC regulated package plants with discharge permits far outnumber those regulated by the PSC. In many cases, the responsible party lacks the technical, financial, and managerial capacity to operate the system. Many of the systems are not sustainable and will eventually fail physically, or the operators of the facilities will seek relief from local governments or other responsible entities. Compliance failures result in impacts to water quality and potential public health risks.

Rates often do not reflect the true cost to treat the waste flow or maintain infrastructure. Consequently, little or no investment is made in infrastructure repairs and upgrades because of insufficient capital.

The facilities generally serve economically challenged customers, have numerous vacancies, and experience high rates of people not paying their utilities. There are limited options for income challenges. The communities that are experiencing abandonment are looking to other regional facilities, municipalities, sanitation districts, water districts, and local governments to take over operation and maintenance of the package plants. Options include rehabilitating the WWTPs or otherwise connecting the system to an existing regional wastewater system. Solutions are site specific and can be very complicated. Entities may not have the capital, the capacity or the authority to take on a system. Sometimes entities exist only on paper, have no assets, and are starting from scratch, such as Farmdale Sewer District in Franklin County and Harrison County Sewer District. Certified wastewater operators working for other systems are hesitant to take on a system that is out of compliance and run poorly without a guarantee that their license and livelihood will not be jeopardized.

Over the past 2 years, DOW has seen seven package plants go through some form of abandonment. In the previous 20 years, DOW had dealt with approximately five abandoned package WWTPs. Half of them were abandoned because the responsible party had died. DOW expects the trend of abandonment to increase over the next several years before leveling off.

Long-term solutions need to be identified for the systems. DOW is working with the Kentucky Infrastructure Authority (KIA) to tier and prioritize the WWTPs based on the age of the system, number of customers, potential for regionalization based on proximity to another system, willingness to be taken over by a local government or local entity, and creation of new entities. As abandonments occur, DOW is working with the PSC, KIA, local governments, sanitation and water districts, and potential receivers to identify a way forward. A funding source needs to be identified to provide capital and an incentive to potential interim and long-term owners and operators to take on the facilities. KIA has provided \$500,000 in FY 2016 State Revolving Funds (SRF) to two local government entities to take on abandoned facilities. Another \$500,000 is identified for similar purpose in the FFY 2017 SRF Intended Use Plan. These funds are only for capital improvements and not for operation and maintenance.

Enforcement of violations is needed against permittees and operators of package WWTPs. Penalties on undercapitalized systems and with low revenue streams often can make repairs even more difficult. DOW's goals are compliance and a long-term sustainable solution. Enforcement can push owners and operators of package WWTPs to abandon the facility.

To ensure reliable, sustainable, and compliant wastewater infrastructure, the following must be done: expanding and maintaining existing infrastructure, which involves using sewer rates revenue and using available grant and loan funding; regionalizing or finding financially viable and responsible partners for small and privately owned systems; and using new methods and old methods in new ways to address the issues.

The goal of regionalization is to bring the flows to regional WWTPs that provide better treatment and that are operated by in-perpetuity entities. Regionalization takes a long time and includes funding, cooperation, and creativity. Some scenarios for taking over a plant are better than others. The best scenario is one where there is a system within or near to the regional planning area; one having access to a cooperative regional planning authority that will receive the outflow; one having a sewer system that is “available,” near a regional system that has adequate capacity to receive the plant’s sewage; one that can use gravity rather than lift stations to transport the sewage to its destination; one that has limited inflow and infiltration in the collection system; and one having a large customer base, which would assist with economies of scale.

The most challenging scenario is one where a plant is far from a regional planning area and regional sewers; one where there is a lack of available, or willing, partners such as a county or city government or private entities; one possessing significant infrastructure issues—especially inflow and infiltration issues; and one having fewer service connections.

DOW, local governments, KIA, the PSC, area development districts, and KACo are working together to collect additional data to develop a robust risk profile for each WWTP and to rank those 203 WWTPs. The groups will assess the risk of abandonment (and not just the formal, PCS abandonment process), noncompliance due to poor operation and maintenance, and infrastructure failure. In addition, other factors will be used including the age of the infrastructure; flow; structural integrity; the monthly rate/cash flow for operation and maintenance; the number of connections to the WWTP; proximity to regional planning area and available sewers; the water quality of each system’s receiving stream; the quality of wastewater effluent produced by each system; their compliance history and active enforcement actions; and DOW’s general perceptions toward each.

Regarding solutions and recommendations, abandonments are increasing and the infrastructure is beyond design life, but there is no current emergency. Because of the importance of the issue, all groups involved need to make sure they understand the scope of the problem, including the prioritized risks, before they try to identify and implement solutions. The agencies need time to characterize the issues and develop recommendations. There are no global solutions.

The communications director for the PSC discussed utility abandonment procedures. Privately owned wastewater systems under PSC jurisdiction represent only a small fraction of sewer service in Kentucky, and it is a fraction that is steadily diminishing, which is good news. However, they attract much attention because of their financial vulnerability, which is due to their ineligibility to receive funds available to publicly owned systems. The abandonment statute applies only to systems under PSC control. The goal is to maintain continuity in service.

Abandonment does not equate to closure. Abandonment establishes an orderly process to address situations in which an owner is no longer able or willing to operate a utility in a way that provides adequate services. KRS 278.020 and 278.021 establish an orderly process for the abandonment of a jurisdictional utility. There are two forms of abandonment: voluntary and functional (involuntary). In voluntary abandonment, the owner/operator of the utility seeks to relinquish control and asks the PSC to declare the utility abandoned. In functional abandonment, the PSC determines the existence of an imminent threat to health or safety of the customers or to

the continued availability of utility service and initiates an abandonment case. In both types of abandonment, the statute directs the PSC to declare a utility abandoned if certain conditions occur with respect to the operations or financial viability of the utility. Financial nonviability tends to underlie both types of abandonment.

Examples of issues leading to abandonment are inability to get financing for capital improvements; inadequate cash flow for operations at current rates; unsustainability of rates necessary for adequate financing or operations; failure to pay wholesale suppliers, which is more prevalent in gas utilities; and loss of wholesale supply unrelated to financial issues.

There is a simplified rate amending process for systems having an annual operating income of less than \$5 million; it is a process called an alternative rate filing. PSC staff provide feedback for rates designed to effectively operate the WWTP. Information provided to the committee by the PSC notes which utilities have applied for rate changes. In most cases, the utilities get the requested rate or a figure very close to it. If the simplified process for smaller utilities is to be used, the operator of the utility must decide to use it.

The PSC's process in abandonment proceedings includes (1) required notice from sewer utilities to a number of entities, including local government; (2) investigation; (3) a hearing; (4) possible receivership; and (5) disposition, which would be a return to the owner, liquidation, or closure. The PSC views abandonment as a last resort. Every abandonment case considers what options are available to provide continued service under the current operator. The PSC's goal is to provide for continued operation of the utility. This goal usually entails finding a new owner/operator. If continued operation of the utility is not possible, the PSC will seek to arrange an orderly closure that gives customers enough time to make alternative arrangements for the service provided. This process may be done under the supervision of a receiver.

Cedarbrook in Harrison County is an example of a successful disposition to an abandonment issue. The Harrison County Sanitation District had been formed to take over the utility and operated as a receiver until it took over the utility services for Cedarbrook.

Transferring operations of the small WWTPs to existing systems is an effective solution for maintaining service to the customers when the viability of the system is threatened.

The research planning director with the KACo said local governments are ultimately responsible for wastewater treatment in private systems as well as public systems. The more significant and consequential impacts of a system abandonment are visited mostly upon its customers. Mechanical devices must be maintained and updated over time. Utilities' operations are ensured by regular inspections. The mechanical devices within utilities have an expected life and preparations must be made in order to not surprise customers with these expenses when the devices must be replaced. The customers of the plants must be the focus of managers, regulators, funding agencies, and others involved with the plants.

There has been a rash of abandonments. Package treatment plants operate differently from large private or public systems. The failing small package treatment plants have been charging

rates lower than those of other treatment facilities. The PSC's process for abandonment is extremely complicated and needs to be streamlined.

Legislative and regulatory measures could further protect the customers and owners of existing private wastewater systems in trouble and could assist with the results of a system abandonment when it occurs. These measures include

- consolidating DOW and PSC inspections, reducing the number of inspections on consistently complying systems, and increasing inspections on persistent violators;
- granting inspectors greater flexibility and greater enforcement authority, requiring them to provide hands-on technical assistance, and giving them the responsibility to follow through to the point of problem resolution before making a referral to the Division of Enforcement;
- devising and implementing formal mandatory training for all owners and managers of private wastewater systems, similar to the trainings provided to board members of public systems set out in KRS Chapter 74 and conducted by the PSC;
- encouraging KIA and DOW to continue the support provided to public utilities assisting with the aftermath of a system abandonment, through the SRF Program and possibly other targeted incentives; requiring each private wastewater system to establish and fund a facility replacement escrow account for major equipment repair or replacement in the event of abandonment. The funds deposited in the account would be generated by customer contributions built into the system's monthly rate structure, as approved by the PSC, and would accrue until a not-to-exceed amount has been reached. The use and control of the account would be limited exclusively to the entities that accept the responsibility of continuing the service to those customers affected by a utility abandonment. Funds in the escrow account would not be considered a system asset, and any funds withdrawn by the new owner would require prior authorization by the PSC; and
- considering new legislation or regulations authorizing DOW to require a bond, in an appropriate dollar amount, for each permit holder of each private wastewater system, as a condition of granting a permit or for permit renewal that would be payable to the entity taking over the services in case of an abandonment. Kentucky law requires surety bonds for new facilities but does not require bonds for existing facilities.

It is important that DOW and PSC are working together, but they need to reach out to include all concerned parties. The committee should not abandon previous progress and should keep pushing the different groups for solutions.

The Daviess County judge/executive said Daviess County has two plants: one with 67 customers and one with 125 customers. The first meets low to moderate income requirements; the latter qualifies for little if any help. The small system has paid \$11.50 per month for the last 40 years. The new cost for service, even with Community Development Block Grants and low cost partially forgivable loans, will be approximately \$70 per month. The larger system has paid \$15.00 a month since 2000. Its cost will increase to \$90 to \$100 per month. Daviess County is fortunate that it has a regional wastewater agency for people to turn to when a package system fails.

The judge/executive offered the following suggestions: require the PSC to request a rate review every 2 years for the package plants; require a certain amount of money per customer to be placed in a trust fund to accumulate, much as public landfills do, to provide funds for major



failures; and grant abandonment only if all required permits are in place and the plants are in reasonable working order.

### **Workers' Compensation as It Relates to Local Governments as Employers**

Recent court decisions have shaped the laws relating to workers' compensation. The chairs of the committee invited representatives of state agencies and local governments to brief the committee on the decisions and issues relating to the decisions.

The commissioner of the Department of Workers' Claims, the KLC deputy executive director, the KACo governmental affairs director, and an attorney with Fogle, Keller, and Purdy Law PLLC, working with KLC, were invited to address the committee.

The commissioner gave background information relating to the entitlement of temporary total disability (TTD) from a legal standpoint. There are three kinds of disability as it relates to income benefits: temporary total disability, permanent total disability, and permanent partial disability. KRS 342.0011(11)(a) defines temporary total disability as "the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment."

Maximum medical improvement is generally defined as the date after which reasonable medical probability indicates that further recovery from or lasting improvement to an injury or disease can no longer be anticipated. Although improvement is not ruled out, the individual has reached a plateau in substantial improvement.

The commissioner also outlined several court cases that provide the present construction of the existing workers' compensation laws. The attorney working with KLC said the statistics show that if an employee returns to work before reaching maximum medical improvement, there is a better chance that the person will succeed in the workforce later on. The goal has to be to return people to the workforce as early as possible, medical restrictions notwithstanding. Any existing restrictions should be accommodated, but if the employer is willing to and can accommodate them, double dipping on the employer's dime is not productive for anyone.

The deputy executive director of KLC said that KLC worked with KACo, the Kentucky Chamber of Commerce, and Kentucky Employers' Mutual Insurance on 2016 SB 151, which did not pass. Both private industry and governmental employers disagreed with the Court of Appeals opinion that the commissioner highlighted. Employers faced situations where employees could receive wages for light- or modified duty work while also receiving TTD benefits. This outcome did not serve the purpose of the workers' compensation statutes for wage replacement if employees were getting both wages for light duty work and total temporary disability benefits at the same time. SB 151, if enacted, would have clarified that if an employee returns to modified duty, the wages earned would be offset against the total temporary disability benefits. KLC and the other groups will continue the effort to get that legislation enacted in the next session of the General Assembly. There should be a consistent standard so that employers can predict situations in which they might fall into double indemnity.

### **Consideration of Referred Administrative Regulations**

The committee considered the following referred administrative regulations:

- 739 KAR 2:140 (Kentucky Fire Commission: volunteer fire department reporting requirements)
- 815 KAR 7:120 (Kentucky Building Code)
- 815 KAR 7:125 (Kentucky Residential Code)
- 815 KAR 8:095 (HVAC: vehicle identification)
- 815 KAR 20:020 (Plumbing: parts or materials list)
- 815 KAR 20:080 (Plumbing: waste pipe size)
- 815 KAR 20:084 (Plumbing: storage and installation of cross-linked polyethylene piping)
- 815 KAR 20:090 (Plumbing: soil, waste, and vent systems)
- 815 KAR 20:120 (Plumbing: water supply and distribution)
- 815 KAR 20:191 (Plumbing: minimum fixture requirements)
- 815 KAR 20:195 (Plumbing: medical gas piping installations)

**Report of the 2016  
Interim Joint Committee on Natural Resources and Environment**

**Sen. Jared Carpenter, Co-Chair  
Rep. Fitz Steele, 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. Daniel Elliott

Rep. Jim Gooch Jr.  
Rep. Chris Harris  
Rep. Cluster Howard  
Rep. Reginald Meeks  
Rep. Tim Moore  
Rep. Rick G. Nelson  
Rep. Lewis Nicholls  
Rep. Marie Rader  
Rep. John Short  
Rep. Kevin Sinnette  
Rep. Jim Stewart III  
Rep. Chuck Tackett  
Rep. Jill York

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

**Presented to the  
Legislative Research Commission  
and the  
2017 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; and the Energy and Environment Cabinet.

### **Committee Activity**

The Interim Joint Committee on Natural Resources and Environment held six meetings between June 1 and December 1 of the 2016 Interim. No subcommittees were authorized. The committee entertained diverse topics discussed during the 2016 Interim including forestland products, new employment and retraining for displaced coal miners, low-level radioactive wastes in landfills, and an update on Kentucky's drinking water. The committee met one time out-of-Frankfort at the BPM Lumber Company facilities in London.

### **Natural Resources: Wood Product Industries; Wildlife and Hunting; Coal Miners**

The committee received testimony on two segments of the wood product industry. White oak is a highly valued forest product procured by the bourbon industry to produce bourbon barrels. However, the stave logs needed for bourbon barrels are high grade and require a growth term of 60 to 80 years. Only a small percentage of white oak trees will produce a stave log. Researchers at the University of Kentucky are concerned that, in the long term, there will be a shortage of these logs, and they say forestland management should be implemented to minimize the impact of the future shortage. Representatives of Kentucky's distilleries testified that national forests in Kentucky produce white oak; however, the US Forest Service has been managing the lands via lawsuit, and logging has been halted. The lands are increasingly operated as parks rather than as natural resources. There is a 15 percent growth in demand for stave logs each year, and it is important to free up those resources to meet industry demand.

The committee met in London at the BPM lumber company, which is one of the largest sawmill operations in the commonwealth. The Forestland Group is the third largest private landowner of acreage in the United States, and a representative of the group reported that there are 1,200 logging firms and 700 wood processing facilities in Kentucky, and that Kentucky's forest products support a \$9 billion industry that produces roughly 28,000 jobs. The industry is diversified in that forest products produce biomass for the energy industry, which is a carbon neutral energy feedstock.

Timber theft has been a topic of interest for the committee for several years. The Kentucky Forest Industries Association discussed a recent Supreme Court ruling regarding timber theft, which left open the question of recouping triple damages, and the association urged the committee to file legislation to clarify damages for timber theft.

The committee received testimony from the Kentucky Department of Fish and Wildlife Resources on wildlife diseases and the health of Kentucky's game species. The update concluded

that Kentucky's wildlife is abundant and in good health. Habitat issues continue to affect certain species such as grouse, but deer and elk herds are growing, and people come from out of state because of the notoriety Kentucky receives from the high number of Boone and Crockett record book entries. Kentucky also has problems with Asian carp and feral hogs, and the growth of the bear population is creating some nuisances.

The committee received an update on workforce development and mine worker retraining programs administered by the Eastern Kentucky Concentrated Employment Program (EKCEP). EKCEP officials described some of the new workforce opportunities for coal miners including electrical linemen, teleworks, and fiber optic training through Teleworks and the Hiring Our Miners Everyday program.

### **Other Environmental Issues: Low-Level Radioactive Waste; Drinking Water Program**

The committee received testimony from the Estill County judge/executive regarding the dumping of low-level radioactive waste at the Blue Ridge Landfill in Estill County. Officials for the county have contacted various offices in the executive branch requesting information, and in July 2016, the Office of the Attorney General released a statement that no criminal charges would be filed over dumping radioactive waste. The county urged the committee to consider legislation to more carefully regulate deep drilling in Kentucky and to improve surveillance of moving wastes into the state. The Kentucky Resources Council briefed the committee on the handling of naturally occurring radioactive material (NORM) in Kentucky and explained that the host agreement for Estill County did not allow for dumping NORM. The US Environmental Protection Agency has not established clearance levels for NORM or a comprehensive program for managing radionuclides from oil and gas production. A representative of the Oil and Gas Working Group updated the committee on oil and gas activities in the state. There are 131 permitted oil and gas wells, but only 12 are horizontal and only 4 of the 12 had used fracking.

The Division of Water provided an update on the Drinking Water Program in the state. Drinking water is regulated by the US Environmental Protection Agency under the Safe Drinking Water Act, and most systems in Kentucky have a good record of compliance with providing safe, drinkable water from the 401 community public water systems. There are some problems with the age of drinking water systems and with compliance in removing disinfection byproducts. However, the Division of Water and the Kentucky Rural Water Association are working with public water systems to provide financial, managerial, and technical assistance.

### **Legislative Recommendations**

The committee received no formal legislative recommendations during the 2016 Interim.

### **Prefiled Bills Referred to the Committee**

The committee received no prefiled bills for 2017 Regular Session.



**Report of the 2016  
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. Kenny Imes

Rep. James Kay  
Rep. Martha Jane King  
Rep. Mary Lou Marzian  
Rep. David Meade  
Rep. Reginald Meeks  
Rep. Suzanne Miles  
Rep. Phil Moffett  
Rep. Lewis Nicholls  
Rep. Sannie Overly  
Rep. Jody Richards  
Rep. Tom Riner  
Rep. Steven Rudy  
Rep. Sal Santoro  
Rep. Kevin Sinnette  
Rep. Rita Smart  
Rep. Diane St. Onge  
Rep. Tommy Thompson  
Rep. Tommy Turner  
Rep. Ken Upchurch  
Rep. Jim Wayne

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**Presented to the  
Legislative Research Commission  
and the  
2017 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**

**Rep. Reginald Meeks, Co-Chair**

Sen. Julie Raque Adams  
Sen. Ralph Alvarado  
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Rep. Joseph M. Fischer  
Rep. Jim Gooch Jr.  
Rep. Derrick Graham  
Rep. Mary Lou Marzian  
Rep. Sannie Overly

Rep. Brent Yonts, ex officio

LRC Staff: Judy Fritz, Kevin Devlin, Roberta Kiser, Karen Powell, and Terisa Roland



## **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 2016 Interim, focusing on the Kentucky State Parks “Refreshing the Finest” campaign; Senate Bill 2 (2016 RS), relating to the retirement systems; the Kentucky Employees’ Health Plan; a presentation by LexisNexis relating to identity fraud and business tax noncompliance; judicial redistricting; and workforce investment transparency.

### **Kentucky State Parks “Refreshing the Finest” Campaign**

The commissioner of the Department of Parks, the director of facilities management, and administrative staff of the Office of the Secretary, Tourism, Arts and Heritage Cabinet, discussed the “Refreshing the Finest” campaign for Kentucky state parks. The campaign is funded by an \$18 million General Assembly appropriation to improve safety and aesthetics at the parks, including structural repairs, painting, and interior and exterior upgrades. The work was to be carried out in 2016 and 2017.

The commissioner said tourist business has been lost because of deteriorating conditions at the parks, and public awareness of the campaign has already resulted in increased park visitation. An in-depth study indicated that the cost of deferred maintenance had reached approximately \$240 million. In most years since 2008, the parks received only maintenance funding to “keep the doors open” but no funding for deferred maintenance. Forty-three projects were expected to be completed in 2016 (estimated cost, \$6.2 million) and 63 projects in 2017 (estimated cost, \$11.8 million). Approximately \$5 million of the \$18 million will be used to address safety issues, with special attention to electrical problems. The bulk of the funds will go toward makeovers at the resort parks. Approximately \$1.3 million was set aside for campground upgrades.

The cabinet’s legislative liaison said that public/private partnerships (P3s) should provide greater flexibility to finance park improvements and should facilitate attracting private capital and

expertise. The cabinet will explore the applicability and relevance of P3s that might improve the parks and be good for the commonwealth and the taxpayers.

The commissioner said it is envisioned that requests for proposal will be for individual properties rather than the entire parks system. The department intends to use Kentucky contractors whenever possible for work that is competitively bid. No parks are yet targeted for closure. Before considering action that severe, the cabinet would want to evaluate the potential of P3s and try to increase visitation. Even though the parks do not make a profit, the positive economic impact to local communities and the commonwealth is estimated at \$889 million per year, of which \$92 million goes into the State Treasury.

The commissioner said the department has met with staff of the Land Between the Lakes National Recreation Area and with four national park managers with Kentucky involvement in order to promote reciprocal advertising. He thanked the General Assembly for helping to restore the parks system and begin the P3 process. He also expressed appreciation to the many “friends” volunteer groups throughout the state.

### **Senate Bill 2 (2016 RS): Analysis and Discussion of National Trends**

LRC staff presented an overview of SB 2 and the various proposals that arose from that legislation during the 2016 Regular Session of the General Assembly. They reviewed significant components of SB 2 and the Senate committee substitute to HB 449—both passed by the Senate—and a proposed House committee substitute to SB 2. They also analyzed certain key aspects and national trends relating to the proposals and provided a detailed analysis of the Model Procurement Code, investment expense reporting, contract disclosure, and board composition, including the approach taken by other states.

Both the Senate and House versions would require the Judicial Form Retirement System (JFRS) to create a website for purposes of transparency. JFRS subsequently decided to do so, and a functioning website is in place. Although Kentucky Retirement Systems (KRS), Kentucky Teachers’ Retirement System (KTRS), and JFRS have chosen to ban the use of placement agents, the legislation would prohibit their use by statute. Both the Senate and House versions addressed investment experience required of KRS board members; reporting of investment expense; public disclosure of contracts and exemptions to disclosure; reporting of investment return; addition of legislative members to the Public Pension Oversight Board; and adherence to Chartered Financial Analyst (CFA) Institute standards. SB 2 would place KRS, KTRS, and JFRS under the Model Procurement Code, but they would remain exempt under the House version. SB 2/GA would require Senate confirmation of appointed KRS/KTRS trustees and the executive director and also would place KRS under the state personnel system; HB 449 SCS and the House proposed substitute would not. The Senate version also proposed adding members to the KTRS board.

The Governor’s Executive Order 2016-340, issued June 17, 2016, contained provisions similar to SB 2. The order abolished the KRS Board of Trustees, replacing it and transferring its powers to a KRS Board of Directors. It expanded the board from 13 to 17 members; reappointed 13 existing trustee positions; added 4 new appointed trustee positions, for a total of 10 appointees; required 6 appointed trustees to have investment experience as defined by KRS 61.645; and

provided that the Governor shall name the chair and vice chair. Effective 90 days from issuance, the order would place KRS staff—except the executive director—under the state personnel system and apply CFA Institute standards to the KRS staff, board, and outside managers. Effective July 1, 2016, it required posting to the KRS website of all investment holdings, fees and commissions (including those of underlying managers in Fund of Funds), profit sharing, carried interest, and partnership incentives; and all contracts or offering documents for services, goods, or property purchased by KRS. Litigation challenging the executive order was filed by the Attorney General and two existing members of the board of trustees. A Franklin Circuit judge issued a temporary order for injunctive relief on August 22 that addressed several of the Governor’s executive orders. His ruling enjoined the removal of a KRS board member but upheld Executive Order 2016-340, which is now in full effect.

SB 2 would make the governor’s appointees subject to Senate confirmation and would narrow the definition of investment experience. There were no proposed changes to the JFRS board. It would add gubernatorial appointees to the KTRS board, and two appointees would be required to meet a revised “investment experience” definition. A previous staff study of 25 similar integrated organizations found that those entities generally had boards with 7 to 20 members, with a combination of elected and appointed members; 14 states that were studied required some investment experience.

Sen. Joe Bowen, co-chair and sponsor of SB 2, said that it is a nonpartisan goal of the General Assembly to position the retirement systems to meet obligations to state employees and retired teachers and that transparency would be the natural first step. SB 2 is an attempt to salvage the systems and put them on the road to recovery. KERS and KTRS have had a fair amount of exposure in hedge funds and alternative investments. Those investments have the highest fee structure, and it is difficult to determine the actual cost of the fees. KRS and KTRS have not met their benchmarks in the last several years, despite an extended bull market. Their investments have failed to exceed nationwide standards, whereas JFRS has had a positive return on investment. The question was raised whether KRS and KTRS are using suitable investment models.

### **Kentucky Employees’ Health Plan**

The secretary of the Personnel Cabinet and the commissioner of the Department of Employee Insurance discussed successes of the Kentucky Employees’ Health Plan (KEHP) and highlights of the 2017 plan year.

The plan has 178,000 active employees and pre-65 retiree members, representing 290,000 covered lives. School boards constitute 54 percent of the membership; early retirees, 20 percent; state agencies, 20 percent; and quasi-governmental agencies, 6 percent. KEHP has a significant wellness component to help control costs and increase personal health awareness. The consumer driven health plans (CDHPs) encourage consumerism and increase health insurance literacy. Anthem is the third-party administrator; CVS/Caremark is the pharmaceutical benefit manager; HumanaVitality—rebranded as “Go365”—is the wellness program administrator; WageWorks administers flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs); and Vitals SmartShopper is the vendor that assists in choosing high-quality, best-price locations for health care services.

Enrollment for the 2017 plan year is mandatory, which means each member must actively enroll or waive coverage. The same four plans will be offered in 2017. LivingWell plan premiums will not increase for members who completed their LivingWell Promise in 2016 and choose a LivingWell plan for 2017. Premiums will increase 1 percent in the Standard CDHP and Standard PPO plans. A low-cost single coverage plan for non tobacco users will be offered for \$13.10 per month. The family cross-reference premium option is a valuable benefit not often found in other states' plans.

The medical deductible for the LivingWell PPO plan and the out-of-pocket maximum for all four plans will increase by \$250 (single) and \$500 (family) for in-network coverage. These increases will save KEHP approximately \$24 million. To comply with Internal Revenue Service (IRS) requirements, members may once again carry over \$500 of unused health care FSA funds to the new plan year. The minimum amount to carry over is \$50.

Beginning in 2018, the embedded HRAs in the CDHP plans, the waiver general purpose HRA, and the waiver dental/vision only HRA will have a maximum carry-over of \$7,500. The maximum would affect only 637 members, primarily in the waiver HRA plans. This change is expected to save \$1 million by preventing future carry-over of large liabilities to the plan. Starting in 2017, prescriptions on the prevention therapy drug benefit list will not be subject to the deductible for the LivingWell or Standard CDHP plans. The diabetes value benefit will continue.

LiveHealth Online Medical, which became available in July 2015, will continue to be covered at no cost to members. There have been 10,587 registrations for this benefit and 3,706 online visits with a provider. Even though it is covered 100 percent, this benefit has saved KEHP \$700,000 since its inception. A new benefit, LiveHealth Online Psychology, will be offered in 2017, also at no cost to members and their dependents age 10 and above.

Based on new guidelines of the Equal Employment Opportunity Commission, in the 2017 plan year KEHP will change how members are rewarded for their participation in wellness benefits. Members who completed their LivingWell Promise in 2016 and elect a LivingWell plan in 2017 will not have a premium increase. Members who did not complete the Promise in 2016 and choose a LivingWell plan for 2017 will have a \$40 surcharge added to their premium. The LivingWell promise requires members to complete either the HumanaVitality (Go365) health assessment or a biometric screening between January 1 and July 1, 2017. In 2016, almost 98 percent of members who elected a LivingWell plan completed the LivingWell promise. LivingWell plan enrollment was 85 percent in 2016, a slight decrease from 86 percent in 2015.

Although increased deductibles and out-of-pocket maximums save money for KEHP, the increases do not negatively affect all plan members. As mandated by the Affordable Care Act, medical and pharmacy out-of-pocket maximums accumulate together rather than separately in the CDHP plans. This is cost effective for members who take multiple prescriptions. It is a goal of KEHP to promote cost awareness as well as wellness. Because members are encouraged to continue their medications, there is no increase in the maximum pharmacy out of pocket cost.

Combined medical and pharmacy claims in 2015, per subscriber, were 12.5 percent less than in 2013. When Anthem became the third-party administrator in 2015, better medical discounts

were negotiated with network providers, and the medical cost per subscriber decreased from \$647 to \$514. A significant portion of claims cost is attributable to high-cost conditions such as coronary artery disease and musculoskeletal disorders. The paperwork necessary to communicate with members is a cost driver. In the years going forward, KEHP hopes to optimize electronic communications, where possible and appropriate.

KEHP includes almost 20,000 diabetic members. Overall use of diabetes prescriptions in the four plans has increased by 9 percent. This increase in use helps save costs because it means that members are using their medications as they should. The diabetes value benefit reduced members' out-of-pocket costs from 20 percent in the first 3 months of 2015 to 7 percent in the first 3 months of 2016. KEHP is considered a role model for its diabetes prevention program. The program has grown to 49 providers in 71 counties and has 332 active participants in 62 active classes.

When a committee member questioned whether the funds taken from the health insurance trust fund in 2016 to help balance the budget could have been used to keep deductibles stable and lower KEHP costs for the 2017 plan year, the commissioner said that, by statute, each plan year stands alone. Any surplus at the end of the year cannot be used to pay down premiums or benefits for the next plan year. The surplus remains in the trust fund, subject to budgetary action.

The medical telehealth benefit is saving KEHP approximately \$700,000. Online visits to a PhD psychologist will probably cost the plan \$95, or \$80 for visits to a therapist. Emergency room (ER) visits are one of the plan's biggest problems. In accord with KEHP's "pay and educate" program, members who go to an ER without a medical emergency are required to pay more of the cost.

### **LexisNexis Presentation—Identity Fraud and Business Tax Noncompliance: How They Could Be Crippling Agencies Unaware**

The manager of state government affairs for RELX, parent company of LexisNexis, said RELX is the fourth largest information solutions company in the world, with a goal of empowering government and businesses with information to make the best solutions and decisions possible. LexisNexis is a public records search tool helping government agencies to locate people, better detect fraud, accurately verify identity, perform in-depth due diligence, and more easily visualize complex relationships.

A senior client executive for LexisNexis was the major presenter. He said that almost 800 data breaches in the private and public sectors over the past couple of years have translated into approximately 27,000 identities being reported stolen every day. Military personnel and children are 52 times as likely as others to have their identities stolen. In 2015, more than 707 million records have been lost or stolen, 53 percent of them for the purpose of identity theft. Skimmers continue to be a tool of criminals who steal credit card information.

The Consumer Sentinel Network tracks identity theft complaints that are reported to the Federal Trade Commission. In 2014, 32.8 percent of reported identity thefts were for the purpose of tax or wage-related fraud. In 2013, 34.7 percent of military victims' stolen information was

misused for tax or wage-related fraud. In 2015, these percentages increased to 45 percent. Millions of American children were included among those who had their personal information stolen in the 2015 data breach of health insurance giant Anthem Inc.

Data indicates that when thieves steal information, 36 percent use it for credit and debit card fraud, and 21 percent commit tax or employment fraud. Personally identifiable information (PII) is being sold on the black market. Social Security numbers are a commodity in the underground and can reportedly be bought for as little as \$3.80. They have become so easy to obtain that thieves now usually bundle them with extra identifying information like birthdates and medical records.

A change in mindset has resulted in a change in the methodology for validating an identity. States are starting to think differently about identity fraud because of the number of personal records that have been compromised. LexisNexis is partnering with agencies and helping them recognize that identities are not represented only by a person's PII.

Fraudsters have learned to adapt. When agencies continue to do only data matching, it can result in what is known as toxic, or synthetic, identities. Many agencies—specifically revenue and tax agencies—are starting to realize the importance of not solely relying on a rules-based system but also coupling it with some type of identity filter to prevent fraud from occurring or to prevent criminals from using stolen information. Adding a dynamic ID fraud filter helps a system make smarter decisions, based on the evolving nature of individual identities. Since 2012, LexisNexis has partnered with Kentucky and several other states on identity fraud programs, especially those related to revenue. Tax Refund Investigative Solution is a proven patented identity fraud solution. The total amount of identity fraud it has stopped since 2012 is \$100 million, an amount that is still growing.

Business (tax) noncompliance is a major issue in Kentucky and other states. Government analysis shows that business noncompliance has increased as the number of small businesses has grown. The IRS estimates that 48 percent of annual revenue produced by small to midsize businesses from 1950 to 2010 was underreported—either intentionally or unintentionally. LexisNexis partnered with the Governing Institute to conduct in-depth interviews with leaders at state and local tax agencies of 25 states—representing 50 percent of the US population—on the subject of business tax compliance, which continues to weaken or cripple state and local government budgets. The survey found that 85 percent of people contacted—primarily tax administrators—indicated that business tax noncompliance is a problem in their jurisdictions; 45 percent termed it a major problem. The taxes with the most noncompliance issues were sales and use tax, corporate income tax, and withholdings. Those surveyed identified three areas that would be helpful to them: higher quality data, better capabilities to link data, and a secure data warehouse with data from all states.

Data silos for licensing, permits, and tax are making it difficult for states and local jurisdictions to collaborate and better understand the full picture of a business. Being able to use a platform or an exchange that links data allows states and local government agencies to educate businesses about compliance before they become noncompliant. A combined business analysis means no more hiding in data silos. Business Integrity Solution links data with LexisNexis data

on the same platform and increases effectiveness across agencies that are performing auditing, investigations, collections, and inspections. Users analyze combined LexisNexis and government data simultaneously for more effective and efficient compliance reviews and casework selection.

The Comprehensive Loss Underwriting Exchange has covered more than 300 million insurance claims records in 25 years. The Small Business Financial Exchange is a nonprofit organization that helps small businesses obtain credit. LexisNexis has been a strategic partner in helping with the cost of starting a new business. The National Accuracy Clearinghouse helps states combat identity fraud and helps recipients of government benefits from five southern states.

LexisNexis believes strongly in the importance of combating identity fraud and protecting the identities of Kentuckians, as well as the State Treasury. The company can also help state and local agencies build an exchange to help address the growing challenges relating to business tax noncompliance.

### **Judicial Redistricting**

The Chief Justice of the Kentucky Supreme Court, his chief of staff, and Sen. John Schickel discussed judicial redistricting and the Kentucky Judicial Workload Assessment Interim Report, which was presented to the legislature in February 2016. The report was compiled by the National Center for State Courts (NCSC), using data from a 2015 comprehensive judicial workload assessment of circuit, family, and district courts in the commonwealth.

The Chief Justice said judicial circuits and districts have remained largely unchanged since the passage of the Judicial Article in 1976. The commonwealth has undergone significant changes in caseload and population, and the court system has not always kept up with those changes. At his request, the 2014 judicial branch budget bill included a directive to undertake a judicial workload assessment for the purpose of eventually formulating a redistricting plan. The Kentucky Court of Justice and the Administrative Office of the Courts contracted with NCSC to help conduct a weighted caseload study.

Unlike redistricting for legislative boundaries, judicial redistricting cannot be accomplished on the basis of population. The process is more difficult because it affects commonwealth's attorneys as well as judges. It is the type of caseload—not population—that ultimately determines the workload of trial court judges. For four weeks in the spring of 2015, circuit, family, and district judges used an online program to log their time regarding the handling of cases and taking care of judicial duties outside of court. This was likely the first judicial time study ever conducted in Kentucky, and 95 percent of judges participated. The results were formulated to determine implied judicial need for each jurisdiction. Using this data, NCSC compiled a time study report that included case weights and measured workloads for each phase of a case and its jurisdiction. The judicial time study was followed up with site visits to courts in several jurisdictions. This initial process took about 18 months and provided critical information regarding weighted caseloads and implied judicial needs. The data was subsequently evaluated by the Kentucky Judicial Workload Assessment Committee (JWAC), composed of judges from each level of the court system, circuit court clerks, commonwealth's attorneys, and legislators from throughout the state. Smaller "Delphi" groups of circuit, family, and district judges also reviewed

the data for accuracy. The weighted caseload and implied judicial need data was compiled by NCSC into the January 2016 report that was presented to the legislature. The report was thoroughly vetted by the JWAC members and the Supreme Court.

The second phase of the project is to present a comprehensive judicial redistricting plan to the General Assembly in 2017, using the collected data to either redraw circuit and district boundary lines or reallocate judicial resources across the state—or a combination of the two. JWAC members voted to submit what is known as “Plan A” to the Supreme Court for its consideration in November.

The plan recommended by JWAC would do the following: make no changes until 2022, when all circuit and district judgeships are on the ballot; bring family court to all but eight jurisdictions; realign a limited number of boundary lines and reallocate existing resources; combine circuits and districts that are currently different; reduce the number of circuits from 57 to 55; and calculate the appropriate number of judges by using an implied judicial need of 1.4 as the cutoff to determine where more than one judge is needed. The plan would not affect every county or jurisdiction or require additional judgeships to be approved and funded. It would not accomplish the goal of statewide family court but would come close. Approximately 6 to 8 circuit judges may eventually be reallocated to family courts.

The Chief Justice said he looks forward to working with the legislature to agree on a final judicial redistricting plan. The singular goal of redistricting is to ensure that Kentucky’s judicial resources are allocated appropriately. This goal will require adding resources in jurisdictions with heavy caseloads and reducing resources in jurisdictions with lighter caseloads. The data is based on sound research principles, and best practices were applied when compiling and analyzing the information. The redistricting plan that is ultimately proposed will be solidly rooted in objective research and will reflect the input of key stakeholders throughout Kentucky.

Sen. Schickel, who introduced past judicial redistricting legislation, said he supports the efforts of the Chief Justice and is impressed with the NCSC report. It is important that resources be reallocated properly. The General Assembly should be supportive of the process, but there will be difficult decisions ahead.

When asked why the realignment of districts would be delayed until 2022, the Chief Justice said that an elected official’s term in office cannot be modified before the term expires, and all circuit and district judgeships will be on the ballot in 2022. To avoid disruption in the system as much as possible, that would be the logical turning point for establishing new district boundaries and will likely be the recommended effective date when the redistricting plan is presented. In the meantime, the Constitution grants the Chief Justice authority to make temporary changes when necessary. Minimal disruption is anticipated for commonwealth’s attorneys, who have 6 year terms and are on a different election cycle. They have been involved in discussions throughout the process.

The Chief Justice said he believes the process has included input and good representation from all areas of the state. The far eastern and western areas were expected to be especially affected by any analysis because they have suffered probably the state’s greatest population loss. JWAC



included a larger representation from the regions most involved so that they would have a strong voice in shaping the NCSC report. The primary obligation of the court system is to ensure that the citizenry is appropriately served and that all citizens have equal access.

### **Workforce Investment Transparency**

The vice president of public affairs, Kentucky Chamber of Commerce, said the chamber's members have expressed growing concern about transparency and accountability relating to the expenditure of public funds for workforce programs. Some of those concerns have focused on the distribution of funds by Kentucky's area development districts (ADDs). Transparency and accountability are key to ensuring that nearly \$175 million of ADD funds is distributed correctly and effectively. Many ADDs do an excellent job handling these public funds, but there are well documented concerns with some of these entities. Passage of legislation to ensure that all ADDs operate properly will not only help restore public trust but also help improve workforce training programs that are urgently needed in Kentucky. In 2016, legislation sponsored by Rep. Susan Westrom (introduced as HB 438) passed both the House and Senate but failed to be enacted. The Chamber of Commerce is committed to advocating for this important legislation again in 2017. The issue has been vetted and has support across party lines. The chamber looks forward to working on this effort with all involved in order to ensure that Kentucky has strong and effective programs with increased transparency and accountability.

The deputy secretary of the Education and Workforce Development Cabinet, accompanied by the general counsel and a senior policy adviser, said the cabinet has been working diligently to address concerns and to develop appropriate guidelines for oversight and compliance of Kentucky's ADDs so that they will be able to continue providing needed services with the available funding and build strong workforces in Kentucky communities.

He said the Auditor of Public Accounts' examination of one of the ADDs in March 2014 found that it had engaged in activities that exceeded its statutory authority and that appeared to create conflicts of interest. The ADD violated procurement policies, did not report possible criminal violations, and did not have internal controls in place to prevent excessive and unnecessary expenditures, including travel and business reimbursement. Significant noncompliance was identified relating to management of federal grants. Bonuses were paid to employees with grant funds, and the ADD used an outdated accounting system, leading to a lack of internal controls over the system.

The report was not an indictment of all ADDs. The cabinet appreciates its partnership with the ADDs and acknowledges the vital work they are doing. Since issuance of the Auditor's report, the cabinet has established an 18 month corrective action plan with the ADD in question, the local workforce investment board, and the chief local elected officials. As part of that corrective action plan, the Office of Employment and Training conducted outside monitoring and analysis of documentation to determine whether funds were improperly expended or inadequately documented. A final determination was issued by the cabinet in 2016 that included multiple findings and demanded repayment of approximately \$900,000 in funds for which proper documentation could be found. The final determination was challenged by the ADD and referred to an administrative hearing officer.

The cabinet has also instituted new drawdown procedures in its interaction with all ADDs across the state. It now requires that all supporting documentation be provided to the cabinet for review in advance of any distribution of funds. The cabinet is in the process of determining what regulatory changes can be made and intends to introduce those changes. After the report was issued, activities of another ADD were questioned. These issues need to be addressed both statutorily and through the promulgation of administrative regulations to safeguard against activities like those that were reported. The cabinet joins with the chamber in calling for increased transparency and will seek statutory language to clarify conflicts of interest between board members, boards, fiscal agents, and service providers. The language should also clarify federal and state procurement expectations and additional reporting measures to increase accountability. The cabinet looks forward to working with the State Government Committee and individual members in the House and Senate to draft the needed legislation.

The general counsel said the cabinet has been examining the possibility of criminal violations and has referred questions to the Office of the Attorney General. It is continuing to monitor ADDs across the state and implemented a program in July 2016 to require submission in advance of receipts, invoices, and reimbursement requests. Cabinet personnel are reviewing the documentation before funds are distributed.

The cabinet was identifying performance measures for the ADDs and expected to receive federal guidance in November regarding administration of grant funds under the Workforce Innovation and Opportunity Act (WIOA). That guidance should include performance measures required by the federal government, which will be incorporated into those at the state level. Some performance review was previously required under the Workforce Investment Act and WIOA through the monitoring process.

When asked about a reported management change at KentuckianaWorks, an agency of Louisville Metro Government, the policy adviser said that control will remain local and that the operators of KentuckianaWorks will continue to provide direction and choose policy. In accordance with the Personnel Cabinet organizational chart, duties are being shared in order to provide the proper organizational leadership while complying with the hiring freeze that was initiated in 2015. The cabinet seeks to strengthen local control across the workforce system in Kentucky. To the extent possible, control is in the hands of the Workforce Development Board, which consists of local citizens and local business and labor leaders.

### **Subcommittee Activity**

#### **Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs**

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held three meetings during the 2016 Interim, focusing on the 2016 primary election, online voter registration, overseas military voting, a review of constitutional amendments filed during the 2016 Regular Session, and testimony about Marsy's Law for Kentucky.

## **The 2016 Primary**

The secretary of state discussed the May primary election and noted that more than 668,000 Kentuckians cast ballots. She said preparations were under way for an elections training fair for county clerks prior to the November election. All state House seats, half of the state Senate seats, and a Supreme Court race were to be on the ballot.

## **Online Voter Registration**

The secretary stated that Kentucky launched an online voter registration system this year as part of its one-stop portal “Go Vote Kentucky.” The work for this historic update began in 2015 at the State Board of Elections. The online voter registration system permits Kentuckians to register to vote by using drivers’ license and Social Security numbers for identification.

The “Go Vote Kentucky” portal may be accessed for information on how to register online, update a voter registration, view sample ballots, find a polling location, and allow a member of the military or an overseas voter to request an absentee ballot. The system offers a security feature that the paper based system does not have. Two important features that set Kentucky apart from the other 32 states that offer online voter registration are the use of a person’s driver’s license number for identification and the ability to transfer the signature from a driver’s license to a voter registration card.

The online system, launched in March 2016, has been accessed by more than 100,000 Kentuckians. More than 37,000 online applications have been processed, and 11,000 of those were newly registered voters. The remaining 26,000 applications were by voters updating their registrations. Of the newly registered voters, 2,800 are 18-year-olds who will have their first opportunity to cast a ballot. The new system is decreasing costs to county clerks through paper reduction, as well as speeding up the voter registration process.

The assistant executive director of the State Board of Elections gave a brief overview of the electronic E Poll Book Pilot (EPBP) project. He said the State Board of Elections partnered with six county clerks during the May primary to participate in the pilot program. An iPad Mini loaded with driver’s license data and other information was used when a voter signed in. When a driver’s license was placed on the scanner, the voter’s signature roster appeared within a few seconds. Those without a driver’s license searched for a credit card or other authorized means of voter identification. The average check-in time for the pilot counties was approximately 1 minute, compared to 3 to 5 minutes in other counties. Driver’s licenses were used by 79 percent of the voters, and 21 percent used other authorized forms. Clerks, voters, and precinct election officers praised the EPBP pilot project.

When asked whether the system could validate a person’s identity through their Social Security number and whether information used during validation would be trackable, the secretary stated that the online voter registration system is more secure and that the paper-based system does not require provision of a Social Security number. Regarding party affiliation, she said that there are 3.2 million registered voters in Kentucky and that Democrats outnumber Republicans. In November 2015, Republican registrations increased statewide.

## **Overseas Military Voting**

The outreach to Kentuckians regarding overseas voting began during the 2014 election cycle to facilitate the timely receipt of ballots by county clerks. Even so, 311 ballots were rejected as untimely. There are currently 3,000 absentee ballot applications from military and overseas citizens in the system.

The secretary said 2016 would be the first presidential election cycle to use Kentucky's military and overseas voting platform. She encouraged renewal of the task force created by Senate Bill 1 in 2013 in order to address the military and overseas voting portal and to explore possible legislation to allow county clerks an additional 3 days to count ballots from military and overseas voters that were dated and time stamped prior to an election date.

Sen. Bowen suggested using a system that would allow a vote to be cast by proxy. The secretary responded that use of proxies would be a major change to Kentucky's entire system and that constitutional requirements, privacy concerns, and law enforcement issues would need to be addressed.

When Rep. Reginald Meeks asked about the ballots that were rejected, the secretary said the rejected ballots had not been received in time to be counted. Military and overseas voters continue to face hurdles in transmitting ballots back to the state securely and in a timely manner.

The assistant to the secretary said that, according to the secretary of the Department of Homeland Security, there is not a credible threat to cyber security relating to elections. Elections are controlled by individual states; there is no centralized system nationwide. Voting systems are not connected to the Internet but instead are connected to a separate closed network.

## **Overview of Constitutional Amendments Filed During the 2016 Regular Session**

Rep. Meeks, co-chair, shared the following information. Since 1891, the voters have approved 39 constitutional amendments, and 38 amendments have been defeated. As established in Section 256 of the Constitution, amendments may be proposed by either chamber of the General Assembly during a regular session, must have the approval of three-fifths of all the members, may be on the ballot only at a regular election for House members, are limited to no more than four amendments on any one ballot, must be voted on separately by the voters of the commonwealth, and must relate only to a single subject matter. The governor does not have to approve enacted bills that propose to amend the Kentucky Constitution. If the General Assembly does not provide the question that will appear on the ballot, the attorney general is required to formulate the substance of the amendment as it will appear on the ballot.

During the 2016 Regular Session, 24 constitutional amendments were proposed—8 from the Senate and 16 from the House. Amendments were proposed relating to administrative regulations, constables, election of state officers, property exempt from taxation, legislative and judicial redistricting, marriage, domestic relations, term limits, persons entitled to vote, criminal records, and the expungement process. Members of the task force discussed constitutional amendments that they have sponsored.

Since 2011, 16 amendments have been proposed relating to administrative regulations, 10 relating to constables, 3 relating to marriage, 4 relating to the Office of Judge of the County Court, 7 relating to property, 10 relating to term limits for the General Assembly, 6 relating to redistricting, and 12 relating to casino gambling.

### **Marsy's Law for Kentucky**

The task force heard testimony from victim advocates of "Marsy's Law." Sen. Bowen explained that in the 2016 Regular Session time ran out in the House of Representatives before a bill codifying victims' rights, known as Marsy's Law, could be called for a vote. Victim advocates pledged to make it a priority for 2017.

Kentucky is among 18 states that have not passed Marsy's Law, named after Marsy Nicholas, who was stalked and killed by her ex-boyfriend on her college campus in California. After her death, the accused boyfriend confronted Nicholas' mother and brother at a grocery store. Her relatives had no idea he had been released on bail.

If passed, Marsy's Law would require an amendment to the state constitution that would keep victims and their families informed of court proceedings, bail-setting for the accused, and parole board hearings. While many of these notifications are carried out by commonwealth's attorneys' offices or victim advocates, the law would ensure that procedural rights are in place for victims and their families. Kentuckians would be able to vote on the amendment in the November 2018 election, according to the Kentucky state director for Marsy's Law. Sen. Whitney Westerfield sponsored Marsy's Law legislation (SB 175) in 2016 and plans to introduce a similar bill in the 2017 legislative session.

A victim who wished to be identified only as "Lisa" spoke about her 20-year abusive marriage, which ended with her husband raping her. After she wore a wire, met him in a restaurant and recorded him admitting to the crime, her husband later accepted a plea offer to an amended misdemeanor assault charge instead of felonious rape. The victim stated that she felt powerless as the prosecutor negotiated a plea deal without her input. If passed, such a constitutional amendment would allow victims a greater voice in the process. "Lisa" said the prosecutor reminded her she was simply a witness in the case. After hearing about Marsy's Law, "Lisa" said she felt hopeful that other women would not endure the same feeling of hopelessness. In the court of law, her husband had more rights as the accused than she had as the victim. Had Marsy's Law been in place, she would have been permitted to stand before the court at the plea hearing and could have voiced her disagreement. Her input may or may not have influenced the case, but she would have been heard by the court system and her voice would not have been silenced.

The executive director of the Kentucky Association of Sexual Assault Programs and several task force members said during the hearing that the bill will be a priority in the upcoming legislative session.



**Report of the 2016  
Interim Joint Committee on Transportation**

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

Sen. Joe Bowen  
Sen. Jared Carpenter  
Sen. C.B. Embry Jr.  
Sen. Jimmy Higdon  
Sen. Gerald Neal  
Sen. Dorsey Ridley  
Sen. Albert Robinson  
Sen. Brandon Smith  
Sen. Johnny Ray Turner  
Sen. Whitney Westerfield  
Sen. Mike Wilson  
Rep. Leslie Combs  
Rep. Tim Couch  
Rep. Will Coursey  
Rep. David Floyd  
Rep. Donna Mayfield  
Rep. Tom McKee

Rep. Russ Meyer  
Rep. Charles Miller  
Rep. Jerry Miller  
Rep. Terry Mills  
Rep. Rick Nelson  
Rep. Marie Rader  
Rep. Steve Riggs  
Rep. Sal Santoro  
Rep. John Short  
Rep. Arnold Simpson  
Rep. Diane St. Onge  
Rep. Fitz Steele  
Rep. Jim Stewart  
Rep. Tommy Turner  
Rep. David Watkins  
Rep. Addia Wuchner

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

**Presented to the  
Legislative Research Commission  
and the  
2017 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 2016 Interim.

### **Introduction of Transportation Cabinet Secretary and Key Executive Staff**

The secretary of the Kentucky Transportation Cabinet (KYTC) introduced himself and several key executive staff. Several staff members of KYTC had changed because of the enactment of the new administration.

### **Implementation of 2016 Regular Session Legislation and Kentucky’s “Pause 50” Plan**

The secretary of KYTC explained the “Pause-50” approach, which is KYTC’s plan to preserve and shore up the road fund cash balance by halting all new state-funded projects in phases for the first year of the biennium and, in the second year, aiming for a goal of \$50 million to allocate on state-funded project starts. The pause in adding new state-funded projects for the first year will not apply to statewide resurfacing, which is funded at \$125 million per year. The \$50 million allocated on state-funded project starts could be higher or lower depending on the flow of revenue in fiscal year (FY) 2017-2018.

The net road fund cash balance dropped below \$100 million for 8 days in August 2016. Road fund cash is typically at its lowest point in the second or third week of the month because more than half of road fund revenues are deposited in the last few days of the month (low days). Normally, the cash balance builds from January to May, then declines from June to December, which is construction season. End of month cash balances have dropped significantly over the last year. The ending net cash balance for January 2015 was \$457 million, and the ending net cash balance for January 2016 was \$240 million.

If the cabinet continued past practice, it risked the possibility of a negative cash balance on the low days of August, September, and October 2016, and an even more alarming negative balance in August 2017. A negative cash balance compromises the cabinet’s ability to meet current financial obligations and the letting of state road projects. The last time the cash balance neared zero was in 2004 when it hit \$30 million.



The level of spending is unsustainable, and state spending has greatly exceeded revenues since FY 2014. Road fund revenues totaled \$4.537 billion over FY 2014-2016. Over the same period, expenses totaled \$5.035 billion, exceeding revenues by \$498 million. A contributing factor is the decline of 6.5 cents per gallon in the motor fuels tax in FY 2015. Road fund revenues over FY 2015-2016 are anticipated to be \$152 million less than FY 2014 revenues. The motor fuels tax is at the statutory floor of 24.6 cents per gallon for FY 2016, and it is expected to remain at the statutory floor for FY 2017 and FY 2018. The second factor is state construction spending of more than \$1 billion over the last 3 years and increased maintenance spending over the last 2 years. Maintenance costs for FY 2016 are projected to be \$401.8 million—\$63 million over budget. The third factor is the unspent but obligated balance of state projects at the end of FY 2016, which adds up to approximately \$1 billion, compared to \$506.6 million at the end of FY 2012.

KYTC has committed to continuing with I-69 improvements, Mountain Parkway and US 68/KY 80 roadway improvements, and the Louisville bridges project. Federal funding levels are sustainable (about \$700 million per year). The cabinet will proceed on new federally funded projects including the widening of I-75 in Rockcastle County, a new I-65 interchange in Bullitt County, and upgrading the William H. Natcher Parkway to interstate standards in order to establish the I-165 spur route between Bowling Green and Owensboro. Local county and city governments will use the Flex Fund and Bridge Replacement programs.

The Federal Highway Administration (FHWA) has eliminated approximately \$650 million of toll credits that Kentucky had banked. Toll credits cannot be used as cash but can be used for the state match on federal projects. FHWA disagreed with the way the state calculated these credits. The cabinet has assumed that any project that would qualify for federal dollars, where state dollars were invested, could qualify as a toll credit. FHWA stated that it has to be state money spent on tolling projects, so as of December 15 the state will have only the toll credits that are coming with the Ohio River Bridges Project. The cabinet estimates that approximately \$40 million will be required in 2020 for state match of federal projects, and then the number goes to \$100 million a year of required state funds to match federal dollars.

Three applications for FAST LANE grants are from northern Kentucky (on I-75), Rockcastle County, and Jefferson County (I-71 at the Gene Snyder Freeway North). The three TIGER grant applications are in Lexington at the Newtown Pike extension, Bullitt County on the I -65 interchange, and Jefferson County (I-64 at the Gene Snyder Freeway). The cabinet was not yet awarded grants in either program.

KYTC's staff attorney manager and assistant general counsel noted that public private partnership (P3) legislation passed, and the cabinet is working with the Finance Cabinet on implementation regulations needed to set up the P3 procurement process.

### **Road Fund Update and Report on Planned Federal Highway Funding**

The director of the KYTC Division of Program Management and the executive director of the KYTC Office of Budget and Fiscal Management testified about road fund status and planned federal highway funding. The total official enacted revenue estimate for FY 2016 was \$1.558 billion (\$870.5 million motor fuels tax, \$445.5 million motor vehicle usage tax, and

\$242.4 million other revenues). Because 2015 HB 299 froze the motor fuels tax floor, a revised official revenue estimate was made, resulting in a total revenue estimate of \$1.445.9 billion. Of that \$1,445.9 billion, \$742.9 million was motor fuels tax, \$463.1 million was motor vehicle usage tax, and \$239.9 was other revenues. The estimated shortfall between the enacted revenue estimate and the revised revenue estimate was \$112.5 million. Of that \$112.5 million, motor fuels tax revenues were reduced by \$127.6 million, motor vehicle usage tax increased by \$17.6 million, and other revenues were reduced by \$2.5 million.

A comparison was made between the road fund revised official estimate of \$1.445 billion total and that of the actual revenues. The actual total revenues were \$1.482 billion, of which motor fuels tax accounted for \$750.0 million (\$7.1 million over the revised estimate). The motor vehicle usage tax accounted for \$484.4 million (\$21.3 million over the revised estimate), and other revenues accounted for \$248.1 million (\$8.2 million over the revised estimate).

Actual revenues of FY 2016 were compared to FY 2015 actual revenues. In FY 2016, the total revenues were \$1.482 billion (\$750 million in motor fuels tax, \$484.4 million in motor vehicle usage tax, and \$248.1 million in other revenues). In FY 2015, the total revenues were \$1.526 billion (\$850.3 million in motor fuels tax, \$432.8 in motor vehicle usage tax, and \$243.6 million in other revenues). The net difference is a shortfall of \$44.2 million from FY 2015 to FY 2016, a -2.9 percent change.

A comparison was made between the FY 2017 official enacted revenue estimates and the FY 2016 actual revenues. The FY 2017 official enacted revenue estimated that the motor fuels tax would equate to approximately \$747.3 million, the motor vehicle usage tax would equate to approximately \$469.5 million, and other revenues would equate to approximately \$240.1 million, totaling a revenue estimate of \$1.456 billion. When FY 2017 estimates are compared to the FY 2016 numbers of \$750.0 million in motor fuels tax, \$484.4 million in motor vehicle usage tax, and \$248.1 million in other revenues, totaling an actual revenue of \$1,482 billion, the result is a difference of a shortfall of \$25.6 million (-1.7 percent change). Of that \$25.6 million, \$2.7 million is derived from motor fuels tax, \$14.9 million is derived from motor vehicle usage tax, and \$8.0 million is from other revenues.

Through KYTC's continued efforts to manage cash, the cash balance has improved from what had been communicated to the committee, due to increased road fund revenue (\$36.6 million for FY 2016 that had not been anticipated). The cabinet also took measures to reduce maintenance spending by approximately \$30 million for FY 2016. The "Pause 50" plan includes managing the cash situation by placing a hold on approximately \$145 million in authorized state funded projects.

With the combined efforts of Congress and the current administration, the passage of Fixing America's Surface Transportation (FAST) Act has set the stage for a successful and strong federal highway funding program. The FAST Act, the first long-term transportation Act in more than 10 years, enables the states to plan ahead. With approval of a new highway plan, the cabinet must submit a new Statewide Transportation Improvement Program (STIP) to FHWA. The STIP document is used to improve federally funded projects in order to be approved for federal program dollars. After a 30 day public review process, the cabinet is completing the new STIP document for final review by FHWA. The cabinet will use all federal fund dollars. The current STIP is still

available for use for the next 2 years. The federal fiscal year (FFY) 2016 Federal-Aid Funding Obligation Authority was funded at \$634 million. Of that \$634 million, \$604 million was obligated, with a balance of \$30 million to be obligated before October 1, 2016.

The cabinet anticipates receiving \$688 million in FFY 2017, \$702.7 million in FFY 2018, \$718.6 million in FFY 2019, \$607.5 million in FY 2020 (after rescissions), \$735.9 million in FFY 2021, and \$735.9 million in FFY 2022. The total federal funds for FFY 2016-2022 are \$4.188 billion. GARVEE bond debt service funding was set aside because of the requirement to pay those debt service payments each year. The director of the KYTC Division of Program Management stated that in FFY 2017, \$96.3 million would be needed to go toward GARVEE bond payments, and \$97.0 million in FFY 2018, \$97.0 million in FFY 2019, \$81.0 million in FFY 2020 (after recessions), \$81.0 million in FFY 2021, and \$81.0 million in FFY 2022 would all be needed to go toward repayment of GARVEE bonds and debt service funding.

The remaining core programs involved with federal funding include the National Highway Performance Program, the Surface Transportation Program, the Highway Safety Improvement Program, and others such as transportation enhancement and congestion mitigation.

### **Louisville Bridges Project**

The deputy state highway engineer, project delivery and the preservation and project manager for the Louisville Bridges Project stated that the downtown crossing project is on budget and should meet the December 2016 deadline. The Lincoln Bridge is open; it will ultimately have six lanes northbound. The Kennedy Bridge will have six lanes southbound. Work is continuing on the Kennedy Bridge. Improvements on the west side of the Kennedy Bridge were nearly complete. Now that traffic is on the Lincoln Bridge, rehabilitation of the deck and some of the floor system on the Kennedy Bridge (\$22 million in improvements) has begun.

The Story Avenue ramp has been returned to the function it served before the project began. A flyover will stop the weaving over three lanes of traffic by having dedicated access to I-65 and dedicated access to I-64. In Jeffersonville, 6th Street was to open to traffic later in the summer of 2016, and then southbound traffic was to return to the Kennedy Bridge, restoring that movement from southbound I-65 to eastbound I-64 and northbound I-71.

The construction of the East End Bridge is nearly complete. The pavement on the Gene Snyder extension to the river is near 55 percent complete. The tunnel that is part of the East End crossing is fully excavated and the tunnel liner is about 98 percent complete. The towers are complete and the cables are being sawed and erected. The main span is about 80 percent complete. The southern Indiana side is near completion, and nothing further can be done until the connection to the river on the Indiana side is complete. Both bridges were on track to be completed by December 2016.

## Finalized Toll Schedule

Tolls on the Louisville Bridges Project are

- for a 2-axle vehicle up to 7.5 feet in height: \$2 with a transponder, \$3 with a registered plate, and \$4 with an unregistered plate;
- for a 2-axle vehicle higher than 7.5 feet and all 3- and 4-axle vehicles: \$5 with a transponder, \$6 with a registered plate, and \$7 with an unregistered plate; and
- for a vehicle with 5 axles or more, \$10 with a transponder, \$11 with a registered plate, and \$12 with an unregistered plate.

There are two types of motorcycle transponders. The first is a Riverlink local transponder, which is free, although a replacement costs \$5. The Riverlink local transponder is a sticker, is not water resistant, and is not expected to be able to withstand weather. Removal would break the transponder. The Riverlink local transponder is not recommended for motorcyclists. The second type is the Riverlink E-Z Pass transponder, a box that can be used anywhere in the E-Z Pass network. The Kentucky Public Transportation Infrastructure Authority, which sold the bonds and will collect the tolls, is a member of the E-Z Pass network (interoperable agency), which allows customers to have a prepaid account in one location and use the transponders in other locations; money is distributed accordingly. The Riverlink E-Z Pass transponder costs \$15 and can be removed from the windshield and used on other vehicles. It is more water resistant and is the recommended choice for motorcyclists. Through the E-Z Pass membership, there are some contracts that allow for cooperation with large vehicle rental agencies. Customers renting vehicles will pay tolls as required through agreement with the rental agency. Some will have transponders in the car, and the driver will automatically be charged. Some will have a transponder option and have it billed.

Prepaid toll accounts became available in late summer of 2016. The toll revenue will be split 50/50 between Kentucky and Indiana. Tolling will begin when two of the three bridges are complete.

Kentucky will have roadside infrastructure and a service center, but the central location is in Texas as a cost- and time saving measure. However, after a 7 year contract, the expenses will be reevaluated and compared to see whether it would be more cost effective to move the central tolling location to Kentucky. There is a customer service web call center.

A discount is available for frequent users of the bridges. After a transponder in a vehicle makes either 20 round trips or 40 one-way trips across the bridges, there will be a \$40 credit to that account, and any trips made with that transponder the rest of that calendar month will be charged a toll rate of \$1.

## Registration of Surplus Military Vehicles in Secondary Public Market

The commissioner of the KYTC Department of Vehicle Regulation and the assistant director of the KYTC Division of Motor Vehicle Licensing discussed surplus military high mobility multipurpose wheeled vehicles (HMMWVs) in the secondary public market. In 2012, the federal government approved HMMWVs to be donated, transferred, or sold to local law

enforcement and fire department agencies for use in emergencies. KRS 186.060 permits registration of such vehicles for governmental units or emergency and ambulance nonprofits organized by units of government. In December 2014, the Department of Defense began auctioning used HMMWVs to the general public for off-road use only.

There have been inquiries as to private citizens owning HMMWVs and registering them for highway use. The manufacturer states that the 16-inch ground clearance of the HMMWV is an engineering feat, considering that the vehicle stands only 72 inches high. Full-time four-wheel drive, independent suspension, steep approach and departure angles, 60 percent slope-climbing, 40 percent side slope, and 60 inch water-fording capabilities combined with the high ground clearance make the HMMWV an exceptional off-road vehicle. The vehicles are demilitarized before the Department of Defense (DOD) sells them, but DOD sells to the general public by identifying the vehicle as being for off-road use only. No person is permitted to operate an off-road vehicle on any private or public property without the consent of the landowner, tenant, or governmental agency responsible for the property. Vehicles registered to law enforcement agencies in Kentucky use an official license plate.

Key considerations are that military configurations do not meet federal motor vehicle safety standards. In cases of federal donations to eligible agencies, such agencies must sign a “hold harmless” agreement that includes the following statement: “extra operator competence and caution should be exercised in the operation and use of this vehicle outside the design specifications because the vehicle does not comply with federal motor vehicle safety standards and is designed for use under conditions unique to the Department of Defense. In accepting the transfer/donation, the undersigned acknowledges that there may be hazards associated with the use of the vehicle.” Recipient agencies must provide appropriate operator training.

Other considerations were that Kentucky certified inspectors do not inspect mechanics of a vehicle, instead focusing on verifying vehicle identification numbers (VINs) and odometer readings per KRS 186A.115(4). The manufacturer does not certify demilitarized HMMWVs as roadworthy. Surrounding states that do not register HMMWVs for road use include Ohio, Indiana, Virginia, Missouri, and West Virginia. Tennessee allows registration and titling of them on condition of issuing a Tennessee VIN plate.

Kentucky law gives a specific list of vehicle characteristics that must be met for a vehicle to be deemed roadworthy. One criteria is the manufacturer’s original intent for the vehicle, even if the vehicle is modified to be able to be used on the road. If modifications are made, the vehicle specifications are sent back to the original manufacturer. The determination whether the vehicle has been made roadworthy will be considered. It is not certain that insurance companies will insure these vehicles. There is also uncertainty regarding the role the federal government would play if Kentucky changed statutes or regulations to allow the HMMWVs to become roadworthy.

### **KAVIS Vehicle Information Program**

The executive director of the KYTC Office of Information Technology testified on the progress of the Kentucky Automated Vehicle Information System (KAVIS). The purpose of KAVIS: 2 is to enhance the use of the Automated Vehicle Information System (AVIS) minimally

through interfaces to gain benefits for citizens and stakeholders, and replace AVIS gradually through implementation of modules.

The print on demand decal and scanning system was fully implemented in May 2015. The cabinet received the AAMVA Regional: Improvement through Efficiencies Award for Kentucky's print on demand decal project. There has been a process improvement in title approvals; instead of 41 days, it now takes 1 day. The new web renewal site was deployed in fall of 2015, and an enhanced web renewal was to be deployed in spring of 2016.

The future objectives of the project include automating web renewal for clerks, fleet renewal improvements, temporary tag system improvements and a centralized issuance of license plates.

Module one of the system—disabled placards—is complete. The cabinet is working on software after each sprint and is focused on value-added functionality. Because of the modular approach, there will be multiple releases that will increase functionality, decrease complexity, and increase the credibility of the agile process. The next module—boat titling—will encompass new areas such as ad valorem taxes, fees, and liens, which will be transferrable to other modules such as motor vehicles and commercial vehicles.

The cabinet is maximizing success of replacing AVIS by having project management reviews throughout the process, including KiZAN process guidance. The cabinet hired KiZAN to assist in overseeing and implementing the process. KiZAN has indicated that the project team is self-correcting, and its guidance is no longer needed. The cabinet is seeing independent verification and validation through the Commonwealth Office of Technology, which has provided very positive feedback and stated that other commonwealth organizations could find the KAVIS: 2 team a good model of agile discipline at work.

The cabinet has further maximized success on replacing AVIS by having Microsoft technical assessments in which technical recommendations are being implemented. The “scrum” process (an iterative and incremental agile software development framework for managing product development) is run effectively, and the solution architecture is sound. The production infrastructure hosting the application is adequately sized. The code metrics analysis has found that most code elements have good maintainability with exception of two with moderate maintainability.

The issues and risks that have arisen in the challenge to replace AVIS include the time requirement needed for the clerks to implement the new process, the buy-in needed from stakeholders, the challenge of adhering to the guiding principles, the acceptance of the agile methodology, the decentralized execution, the sharing of resources, issues with scheduling, and issues with assessment service.

The positive momentum to replace AVIS involves a highly motivated team that has a sense of pride and will to prove its capabilities to complete the task. The resources have formed a cohesive team, and feedback has been positive. Encouraging and supportive stakeholders have accepted the modular approach. A working committee that includes various stakeholders meets

weekly to validate requirements of the process and program. There was an initial \$11,295,013 budget for the project. KAVIS: 2 began in January 2015, and \$2,679,106 was spent from January 2015 to May 2016. \$4,292,188 was returned from the previous vendor, 3M, yielding a project balance of \$12,952,820—more funds than KAVIS: 2 began with.

### **Transportation Cabinet Maintenance Activities**

The director of the KYTC Division of Maintenance testified that the major assets maintained by the Department of Highways include 63,500 lane miles of pavement; 9,016 bridges; 5,000 traffic signals, flashing beacons, school flashers; 25,000 roadway lighting fixtures; 550,000 traffic signs; 4,500 miles of guardrail; 200,000 acres of right of way (approximately 100,000 of which is mowed and maintained); 22 rest areas; and 14 weigh stations. KYTC manages fence repairs, barrier wall repairs, curb repairs, shoulder grades, pollinator issues, and wildflower issues. There has been a 6 percent increase in funding in the maintenance budget between 2005 and 2010. The increase was consistent with increases in material and contracting costs over the same period. The 1 percent increase since 2010 has not kept pace with inflation. The construction cost index since 2010 has averaged 5.1 percent per year.

The FY 2017 maintenance budget is \$347.5 million. Of that amount, roadway maintenance is \$275.6 million, rest area maintenance is \$9.1 million, bridge maintenance is \$25.3 million, traffic maintenance is \$36.7 million, and new guardrail expense is \$0.8 million. These figures do not include construction or resurfacing funding.

Rest area maintenance covers 22 rest areas (not including the Hart County rest area that was destroyed in a fire), 14 weigh stations, 4 truck havens, janitorial and landscaping service contracts, utilities, and minor facility upkeep. New guardrail maintenance covers installation of new guardrails on state highways; priorities are based on severity. Guardrail maintenance is matched by the Highway Safety and Improvement Program; the funding total is \$1.5 million.

Bridge maintenance totals \$25.25 million, which includes deck replacement, structural steel repairs, expansion on joint repair/replacement, repair of piers and other substructure, painting steel structural members, and emergency repairs; it does not include major rehabilitation of bridges, which is funded by the highway plan. Traffic maintenance is budgeted at \$36.7 million this fiscal year and consists of traffic signal installation, operations, and repairs, bridge navigational lighting, roadway lighting operations and maintenance, utility costs for all electrical installations, and new sign installation.

Roadway maintenance includes snow and ice response, tree removal and trimming, mowing, guardrail repair, landslide repair, weed control, pothole patching, slope protection, striping, litter pickup, dead animal pickup, sweeping, ditching, crack sealing, drainage repairs, pipe/culvert repair, intelligent transportation systems, sign repair and replacement, and pavement markings.

The historic spending on snow and ice removal averages approximately \$60 million, with some years seeing a cost of only approximately \$30 million to \$35 million and some years seeing a cost of approximately \$90 million. Snow and ice costs for 2015-2016 consist of contract retrofit

costs of \$12 million, hourly contract costs of approximately \$5.4 million, material costs of \$21.1 million, KYTC equipment costs of \$6.3 million, KYTC labor costs of approximately \$19.5 million, and emergency equipment rental costs of approximately \$0.5 million, totaling a cost of \$64.8 million. The contracts are for 7 years. Contract costs are \$90 per hour when the contract services are actually used. In the average year, \$21.1 million in material cost is used, which includes the cost of salt, calcium chloride, and salt brine. During an average year, approximately 255,000 tons of salt is used. The cost of salt is usually \$70 to \$80 per ton. As much as 450,000 tons of salt has been used in a year.

A cost comparison between contract labor and KYTC labor efforts for snowplow costs was outlined. The cost of equipment and labor for contract workers to complete the job is approximately \$17,400,000. The cabinet spends an additional \$9,993,000 on equipment and labor costs for snowplows. Approximately 60,000 truck hours are contracted for snowplows and snow removal, and KYTC dedicates approximately 127,403 truck hours for snowplows and snow removal. The cost per truck hour is approximately \$290 for contract jobs and \$78 for KYTC. These figures are preliminary. More research is needed to confirm that all costs have been included.

The cabinet is reviewing snow and ice policies to identify opportunities for improved efficiency. It is focusing on reducing waste and ensuring that priorities are properly addressed. The cabinet is increasing use of technology to improve performance and communication with the public.

Other major FY 2016 approximated costs include pipe/drainage/ditch repair at \$34.3 million, mowing at \$26.4 million, rockfall/landslide repair at \$22.4 million, tree/brush cutting and removal at \$21.0 million, pavement patching at \$15.1 million, striping at \$13.2 million, guardrail repair at \$11.8 million, and pothole patching at \$8.2 million.

Major assets added over the past 10 years include 2,125 lane miles of pavement, 174 bridges, and 252 miles of cable guardrail (with an approximate cost of \$2 million per year to maintain). There are 579 structurally deficient bridges on state routes, and there are 3,725 miles in need of resurfacing or replacement. This has increased from 1,710 miles in need in 2005. A structurally deficient bridge is one whose deck, substructure, or superstructure has been rated a 4 or less on a scale up to 9. This does not necessarily mean the bridge is dangerous or an immediate hazard, but it means the deficiencies need to be addressed soon. There has been a reduction of structurally deficient bridges of about 10 bridges per year. Spending money for preventive maintenance saves money in future years.

### **Heavy Equipment Operators**

The issues related to hiring and retaining heavy equipment operators were discussed. There has been great difficulty in hiring these workers, and many counties have only three to five workers. Hiring issues were evident in a recent event needing 12 heavy equipment operators in Fayette and Scott counties. Approximately 130 people were contacted for interviews. Only 13 agreed to an interview; of those, 8 appeared, but only 3 had a commercial driver's license (CDL). Jobs were offered to all 8 people in anticipation that those without a CDL would obtain it before the end of employment probation. It is expected that only two of those positions will be filled, but



it is possible that none will be filled. Because of the lack of heavy equipment operators, the response time for snow and ice removal is affected. It was feared that when heavy equipment operators experience their first winter on the job, they will decide the pay is insufficient and leave employment before the end of winter. Contract lengths vary for activities such as mowing, landscaping, and snow and ice. Not all contracts are for 7 years. Many vendors were not able to obtain financing unless they could guarantee the banks that they had a sufficiently long guaranteed contract. Seven years may be longer than what is required, and that term is being assessed. The salary for a Heavy Equipment Operator I was approximately \$10.20 per hour, and \$10.80 per hour after probation is completed. The salary range for a Heavy Equipment Operator II and III was \$15.00 to \$17.00 per hour.

The Personnel Cabinet conducted a salary study that addressed the heavy equipment operators' salary issues. The salary study is based on a 40 hour work week. The results of the salary study are not final, but the Personnel Cabinet, with the approval of the Governor, recommended that raises be administered to 2,100 employees who work in maintenance for KYTC.

Within the Department of Highways, there are several series that work in the maintenance area, and several have the core function of providing snow and ice removal. Eight series have had recommendations for raises. The average raise is approximately \$3.20 per hour for the eight series within the maintenance staff, which include Highway Equipment Operators, Highway Laborers, Highway Traffic Technicians, Transportation Auto Truck Technicians, Welders, Auto Parts Specialists, Machinist Consultants, and Highway Equipment Maintenance and Management Technicians.

Some positions were omitted from the Engineers Salary study. Engineering Technologists II and III are series that are also included, and those employees will receive raises as well. Approximately 530 employees from the Engineering tech series will receive raises.

A lot of contract work will instead be given to cabinet employees, which will generate cost savings and needed funds. Cross-training of employees will generate cost savings. Approximately \$25 million in savings is projected.

Approximately 800 Highway Department employees will not receive a raise. Many are administrative and support staff such as secretaries or administrative assistants; because of the large number of those positions in each branch of Kentucky government, raises for secretaries or administrative assistants were not considered. The Personnel Cabinet has left some options open for the possibility of raises for other classifications specific to KYTC if the cabinet feels such actions are necessary.

## **Bicycle Safety**

A representative from the Transportation Engineering Branch, KYTC Division of Planning, and the police chief of Raceland spoke in favor of implementation of a bicycle safety law much like 2016 Senate Bill 80. KYTC looks at bicycle safety through the four E's: engineering, education, enforcement, and encouragement. The engineering portion has worked

with cities and counties to find out where they have cyclists. Strava heat maps are used to find out where cyclists are prevalent. The cabinet has an idea of how wide the bicycle lanes should be and where they should be located. The cabinet has worked with bicycle clubs to encourage them to ride together. They have educated riders, walkers, and drivers about bicycle safety and how they should conduct themselves around cyclists. The cabinet is approaching the enforcement portion of bicycle safety, which allows for officers to ticket only what they actually see occurring. The law requires a safe passing distance, and the proposed law states that a vehicle must pass a bicyclist by a 3 foot radius. Enforcement of the 3 foot law is important.

The police chief of Raceland testified that several communities have bicycle lanes for cyclists, because of the growing interest in bicycling. Motorists, pedestrians, and children must be educated on how to share the road and how to respect different types of traffic on roadways. The police chief has been working with Kentucky State Police to design a class on bicycle safety. Kentucky ranks 49th for bicycle friendliness because of lack of law enforcement training on bicycle safety and enforcement.

Sen. Robin Webb and a bicycle safety advocate spoke in favor of a bicycle safety law that includes the 3 foot radius requirement. Sen. Webb said her goal is to increase awareness about bicycle safety and to take the necessary steps to ensure that cyclists, pedestrians, and drivers are all aware of the steps needed to ensure safety and to share the road. She said the Kentucky Driver's Manual mentions that the safe passing distance is 3 feet.

The bicycle safety advocate, who is a commuter and recreational cyclist, echoed Sen. Webb's comments and said there have been five bicycle accident fatalities in Kentucky this year. She stressed the need for bicycle safety education and added that the proposed bicycle safety law would provide it. Arkansas, Virginia, and West Virginia have a similar law, and there have been no issues concerning the implemented laws and narrow roadways. The current law states that a slow vehicle must not impede the reasonable flow of traffic; if someone needs to pass a bicyclist on a narrow road but cannot, then it is the responsibility of the cyclist to pull to the side of the road to allow traffic to pass. Most cyclists are aware of the routes they like to travel and try to avoid dangerous roads. She advocated for share-the-road signs at appropriate locations.

A commuter bicyclist from Louisville also spoke in favor of the proposed bicycle safety law. He cited the practical and economic advantages of being a cyclist. A former Kentucky State Police officer, now the mayor of Prestonsburg, also stated his support for a proposed bicycle safety law. He said tourism is a major factor in needing a bicycle safety law to attract bicyclists to small towns where the economy needs a boost. In the last 2 years, there has been a 150 percent increase in bicyclists passing through Prestonsburg. The reasons include recreational cycling, commuter cycling, and children enjoying bicycling. All parties that testified agreed that education on sharing the road is necessary.

### **Activities and Operations of the Department of Vehicle Regulation**

The commissioner of the KYTC Department of Vehicle Regulation testified about the department's activities and operations. It ensures public safety through motor vehicle licensing, regulation, and driver licensing. It is involved in road fund revenue collection, supporting free flow

of commerce and economic development through business services and regulation, and customer service in all of those areas. The department has 220 full time state positions (including 26 vacancies) and 56 full-time temporary positions.

The commissioner's office consists of the commissioner, the deputy commissioner, and 16 full-time state employees with 1 vacancy. An Administrative Support Branch, a Medical Review Board, and the Motor Vehicle Commission are under the umbrella of the commissioner's office. The Motor Vehicle Commission, headed by an executive director, has 10 full-time positions. The Division of Driver Licensing, headed by a director, has 82 full time state employees, 14 vacancies, and 3 full-time temporary positions. The Division of Motor Vehicle Licensing, headed by a director, has 51 full-time state employees, 4 vacancies, and 24 full-time temporary positions. The Division of Motor Carriers, headed by a director, has 54 full-time state employees, 7 vacancies, and 5 full time temporary positions. The Division of Customer Service, headed by a director, has 7 full-time state employees and 24 full-time temporary positions.

The Division of Motor Carriers collected more than \$270 million of revenue in FY 2016. The division consists of three branches: Qualifications and Permits, Licensing and Registration, and Tax and Financial Processing. They serve approximately 120,000 customers such as trucking firms, independent truckers, U-Drive-It, solid waste companies, taxi/limo companies, transportation network companies, buses, and household good companies. Approximately 95,000 overweight and overdimensional permits have been issued for FY 2016. Partnering agencies consist of the Federal Motor Carrier Safety Administration, FHWA, Kentucky State Police (KSP), Commercial Vehicle Enforcement (CVE), and two tax collection entities, IFTA Inc. and IRP Inc.

Recent progress in the Division of Motor Carriers has consisted of the use of Kentucky Automatic Truck Screening real-time virtual monitoring, and Kentucky Highway Use (KYU) online tax payment system, which has won a national award. Some challenges that the division has faced are the historically low number of KSP CVE officers (which affects weigh station hours of operation, poses public safety risks, and creates trucking industry concerns) and a decrease in safe truck parking solutions. The division is looking into implementing some new initiatives such as the Soldiers to Semis program, which would be a one stop shop that provides CDLs on site to military personnel who are about to retire. Another new initiative is to transform the Motor Carrier Committee to a Motor Carrier Commission. The commissioner hopes for training for KSP CVE officers on use of new technologies. The training for public customers for online service use and continuous improvement to online resources is another new initiative the division is aiming to achieve.

The Division of Driver Licensing has three branches. The Hearings/Fraud Verification Branch consists of 12 field offices that handled 132,158 calls in 2015 and recovered \$679,000 in license reinstatement fees in 2015. The other two branches are the Court Records/CDL Management Branch and the Driver Education/Records Branch. The Division of Driver Licensing serves 3,598,073 license holders, 135,814 CDL holders (240,000 medical certification actions were handled last year), 251,586 permit holders, and more than 100,000 students. The division's partnering agencies are Circuit Court clerks, the KSP Driver Testing Branch, and the law enforcement community.

Recent progress in the Division of Driver Licensing has consisted of driver license system improvements and process efficiencies, the use of CDL online portals for document submission, and internal cross-training within sections. The division faces challenges such as the loss of federally funded CDL employees (57 percent of current staff), a mainframe system replacement, the Center for Advanced Traffic Solutions program, and the ignition interlock program (1,758 cases in 2016).

The division has plans for new initiatives such as central issuance of licenses, a longer-term license, new CDL document processing software, new customer service training curriculum, creative ways for employee recognition, new vendor rollout for the online CDL/Online Traffic School programs in October 2016, and a progression toward exploring digital driver's licenses.

The Division of Motor Vehicle Licensing has two branches: Registrations, which processes approximately 3,019,052 vehicle registrations annually, and Title Processing, which processes approximately 130,000 titles per month using 21 examiners. The division serves personal vehicle owners; commercial fleet vehicle owners; and dealers in new, used, and rebuilt vehicles. Partnering agencies include county clerks, KSP, the Department of Fish and Wildlife Resources, county sheriffs, law enforcement community, the Department of Revenue, and Kentucky Correctional Industries.

Recent progress in the Division of Motor Vehicle Licensing involves print-on-demand decal/document scanning, a storage and transmission system, and expanded online registration renewal. The division's challenges include the use of the AVIS mainframe system and problems with the special license plate program. New initiatives include streamlining fleet vehicle registration and print-on-demand license plate production.

The Division of Customer Service has 31 employees and consists of a call center and a website. Its customers include all Division of Vehicle Regulation customers. Approximately 425,479 customer support incidents were documented in 2015. There have been 290,777 incidents in 2016. The division's partnering agencies include county attorneys, county clerks, Circuit Court clerks, law enforcement, the Department of Revenue, and federal agencies.

Recent progress in the Division of Customer Service has included the ability for increased call volume handling by customer service professionals, improved first call resolutions, and upgraded software systems. Its challenges include high turnover of full time temporary employees, which results in constant training costs, and reliance on third-party technology resources. The division's new initiatives include use of the Drive.KY.Gov website and new online services, including live chat, social media, and new payment options. It is also seeking continuous software systems improvement.

The commissioner's office for the Department of Vehicle Regulation consists of an Administrative Support Branch, the Medical Review Board (which manages 6,000 cases per year), and the Motor Vehicle Commission (which licenses and regulates 2,700 vehicle dealers). New initiatives include completing the first comprehensive customer satisfaction survey; a commercial vehicle industry support initiative; changing the Motor Carrier Advisory Committee to the Motor Carrier Commission, which would handle CDL processing, truck parking, CVE enforcement, and

revenue collection; and the Soldiers to Semis program. Two additional initiatives include the full launch of Drive.KY.Gov and a paper reduction initiative.

### **Update on REAL ID and Status of Kentucky's Request for Extension**

The commissioner of the KYTC Department of Vehicle Regulation testified about REAL ID and Kentucky's request for an extension to be in compliance with the REAL ID Act. There are 25 states and territories that are compliant with the REAL ID program and 31 states and territories that are noncompliant or have extensions that expired October 10, 2016. Kentucky requested an additional extension on August 31, 2016, and a revised extension on September 30, 2016. A copy of that extension request was provided to the committee.

Kentucky is in compliance with several requirements of the REAL ID regulations. The state requires non-US citizens who apply for a driver's license to use a different location to apply for the license than the location used by citizens, in order to allow the cabinet to verify their identity and immigration status. Kentucky does not grant driver's licenses or identification cards to non-US citizens who are in the country without lawful immigration status. The physical card that Kentucky uses for a driver's license and an identification card has the security features required by the REAL ID law and regulations. The commissioner stated that the only feature that Kentucky licenses and ID cards lack is the distinguishing mark between the REAL ID compliant credential and a noncompliant credential. That feature is not available because a dual system has not been established.

One of the Department of Homeland Security's (DHS) requirements for an extension is that a territory or state must demonstrate substantial progress toward enhancing the security of the ID credentials. The commissioner highlighted four areas where he feels Kentucky has made such progress.

With respect to section 37.25(a)(2) of the regulations, which requires reverification of an applicant's Social Security number and lawful status before an ID is issued, the commonwealth uses the Social Security Online Verification Program and the Systematic Alien Verification for Entitlements Program to reverify an applicant's Social Security number and lawful status.

With respect to section 37.29 of the regulations, which does not permit an individual to hold more than one REAL ID document or more than one driver's license, KRS 186.412(16) prohibits any person from having more than one driver's license. The Kentucky driver's license application requires all applicants to attest, under applicable state and federal criminal and civil penalties, that they do not currently have a license or identification card from another state or jurisdiction. If the applicant holds a credential from another state or jurisdiction, the applicant must either submit a clearance letter from that state or jurisdiction, or surrender the driver's license or ID credential issued by the other state or jurisdiction. The commissioner said he is aware of at least two REAL ID compliant states that employ a comparable system. The Problem Driver Pointer System identifies drivers under suspension by another state or jurisdiction. The Commercial Driver License Information System determines whether CDL applicants hold a CDL issued by another state or jurisdiction. In addition, KYTC is investigating the requirements, including resource allocations and operational changes, to join the State-to-State (S2S) Verification System to further

enhance the security of credential issuance. Depending on the financial resources necessary to modify Kentucky's current information technology systems, a legislative appropriation may be necessary for the commonwealth's S2S participation.

Section 37.41 of the regulations indicates that compliance involves having a documented security plan for the Department of Motor Vehicle (DMV) operations. The commissioner said that this security plan will be enabled by legislative authority to develop a central issuance system for driver's licenses and IDs, which the cabinet plans to request from the Kentucky General Assembly during the 2017 Session. Kentucky's documented security plan will be included in the Certification Package per section 37.55.

The state also must have protections that ensure the security of personally identifiable information. As part of the central issuance system described above, KYTC plans to implement a "scan and capture" system to secure Social Security numbers and birth certificate information of citizens voluntarily applying for a REAL ID compliant driver's license or ID. The ability to implement this process is contingent on legislative approval of the request to transition to a central issuance system, a request the cabinet anticipates making during the next legislative session.

Areas were highlighted that will still need to be addressed with respect to section 37.41(b)(4), which requires states to implement documented procedures for controlling access to facilities and systems involved in the enrollment, manufacture, production and issuance of driver's licenses or IDs. Kentucky's full compliance with this provision is also dependent on a transition to a central issuance system.

One provision that Kentucky is pursuing is ensuring the physical security of the locations where driver's licenses and identification cards are manufactured or produced, as well as the security of document materials and papers from which such cards are made. Kentucky's contract with the driver's license and ID credential manufacturing vendor expires in January 2017. Because of the timing of the administration transition and the requirements of Kentucky's state procurement code, the cabinet plans to request a 1 year extension of the contract. During this extension, KYTC intends to develop a request for proposals from driver's license and ID manufacturers that will include a condition for consideration of full compliance with this provision. Kentucky's full compliance with this provision is contingent on legislative approval of the request to become a central issuance state.

Kentucky also must conduct name-based and fingerprint-based criminal history and employment eligibility checks on employees in covered positions, or must have an alternative procedure approved by DHS. The commissioner stated that, in a new central issuance system that is contingent on legislative approval, a fully compliant background check system will be developed and implemented for new employees. KYTC intends to partner with the Kentucky Administrative Office of the Courts to develop a fully compliant background check system for current employees in covered positions.

Kentucky must also submit a final certification package after compliance with all outstanding provisions has been achieved. If the state chooses to issue both compliant and noncompliant documents, the noncompliant status must be clearly be stated on the face of the

noncompliant document and in the machine readable zone that the card. The card must also incorporate a unique design or color indicator that clearly distinguishes it from compliant licenses and identification cards. Under a new central issuance system, Kentucky intends to offer noncompliant documents and to make their issuance strictly voluntary. A system will be developed that produces credentials that are clearly distinguishable as noncompliant or compliant through unique designs, a color indicator, or a combination of the two.

In early October, DHS denied Kentucky's application for an extension. Therefore, if the extension is not renewed at a later date, cumulative enforcement measures will remain in effect through successive phases. As of October 11, 2016, Kentucky driver's licenses and IDs were no longer accepted at DHS's Nebraska Avenue Complex headquarters. If the extension is not granted by January 10, 2017, Kentucky's driver's licenses and IDs may not be accepted at some federal facilities, including military installations and all nuclear power plants. If the extension is not granted by January 22, 2018, Kentucky driver's licenses and IDs will not be acceptable for boarding federally regulated commercial aircraft for domestic flights.

Access for activities directly relating to safety and health or life preserving services, to law enforcement, and to constitutionally protected activities, including legal and investigative proceedings, will not be affected, including access to the Social Security administration, US Department of Veterans Affairs, and federal courthouses. There will also be no effect in places that do not require presentation of identification, such as federal facilities like the Smithsonian or national parks. Federal agencies may accept other forms of identification documents such as a US passport or passport card. Prohibitions do not affect uses of driver's licenses or identification cards (including licenses and cards from noncompliant states) that are unrelated to official purposes as defined in the REAL ID Act, including voting, registering to vote, or applying for or receiving federal benefits.

The commissioner stated that the Governor heard more constituent outcry of concern on the REAL ID Act and SB 245 than on any other bill. Because the Governor had been elected only recently and was trying to enact a budget plan, the Governor felt it necessary to reevaluate the provisions involved in SB 245 and felt he was unable to sign the bill. The commissioner stated that concerns were documented by the American Civil Liberties Union, Take Back Kentucky, and several other organizations. Some concerns relating to the understanding and implications of the federal law were not necessarily accurate. In his SB 245 veto message, the Governor stated that he would like to take a proactive approach to communicate with those stakeholders in a transparent way about those provisions.

### **US Bureau of Prisons Presentation: Modifying Kentucky Law to Allow State Prisoners to Obtain Driver's Licenses and ID Cards Upon Release**

The reentry affairs coordinators from the mid-Atlantic region, US Federal Bureau of Prisons, gave a proposal to amend KRS 186.412 to include federal and state prisoners under existing provisions to issue IDs and driver's licenses to inmates upon release. The change would allow KYTC and/or circuit clerks to issue driver's licenses to current and eligible inmates. They argued that such a change would help inmates integrate back into society more easily and would aid inmates in participating in work release programs.

The Federal Bureau of Prisons is responsible for the custody and care of more than 190,000 federal inmates nationwide. There is a 34 percent rate of recidivism among federal prisoners. The federal recidivism rate has declined over the past 2 decades and is now half the rate found in many large state corrections departments. There are five custody classifications within the Federal Bureau of Prisons: administrative, high, medium, low, and minimum. All five classifications are in Kentucky and have both out and community custody levels of classifications.

All inmates who are physically and mentally able must participate in work programs. The prison systems use work programs in the food service industry, in the commissary, with the orderly, and in different facilities. The work details at federal camps that require road access are landscaping and groundskeeping, outside facilities operations, safety and recycling, and town drivers. States such as Pennsylvania, Texas, Florida, and Virginia have systems in place through which inmates can obtain appropriate identification in the form of driver's licenses.

Eleven factors would determine whether an inmate fits the eligibility criteria for a program allowing a driver's license. Inmates undergo great scrutiny to be able to participate in such a program. The driver's license is not kept on the inmate's person. Wardens have final approval for participation. The inmates receive no special treatment for obtaining their licenses and are held to the same standards and document production as citizens. Each inmate provides a Social Security card, a birth certificate, and any other necessary documentation per the statute.

The benefits to having inmates receive driver's licenses are that costs to taxpayers can be reduced, as well as relief provided to institutional budgets since inmate labor is significantly cheaper than staffing. Also, the safe, secure, and orderly running of the institution can be affected if officers are required to make trips. The use of government vehicles due to the Federal Tort Claims Act is also a benefit. Public safety through the vetting process and the use of the Governor's Criminal Justice Policy Assessment Council are two other benefits.

## **UPS and Its Natural Gas Fleet**

The vice president of public affairs, UPS, discussed the use of natural gas in the UPS fleet. UPS is more than just a package delivery company; there is an air division, and a logistics and distribution supply chain business component as well, where devices and products are warehoused and distributed.

UPS uses air fleet efficiencies in which 767s are fitted with winglets that reduce drag, thereby reducing fuel consumption. UPS also has a strategy of avoiding left turns when possible. Left turns can add time to routes and are more dangerous than right turns. UPS has 100,000 trucks on the road, and there is a savings of \$50 million for every mile taken off truck routes; emissions are also reduced. UPS uses Orion System software, which routes trucks with the best flow of traffic, rerouting them when it notes traffic problems.

UPS has used electric cars since the 1930s. It now also uses other fuel sources such as compressed natural gas, liquefied natural gas, and propane, along with electric and hybrid vehicles. Vehicles on most of its suburban routes use compressed natural gas or hybrid technology. The suburban routes average approximately 100 miles. The regional routes—which run from one UPS



hub to another and average 400 to 600 miles per haul—use liquefied natural gas, compressed natural gas, and biomethane. For city center routes, usually less than 60 miles, UPS uses electric and ethanol sources, although it does not use ethanol sources in Kentucky. In UPS' rural operating situations, where routes average approximately 100 miles or more, propane can be used. More than 8,000 of its vehicles use alternative fuel. In Kentucky, UPS uses natural fuels to run approximately 50 package cars and 73 tractors. Also, 8.3 million miles are run on natural gas vehicles in Kentucky each year. With the centennial hub expansion UPS has planned for Louisville, there will be another 75 compressed natural gas tractors and possibly more compressed natural gas package cars that will be added in 2017. It may add compressed natural gas package cars in Lexington and other locations.

When studying the use of alternative fuels, UPS considers the cost of diesel versus gasoline versus alternative fuel, vehicle miles, vehicle fuel economy, incremental cost of the alternative fuel truck and fueling infrastructure, shop modifications, the required internal rate of return, and incentives to alternative fuel usage.

The Trash to Gas program is being studied. Renewable natural gas (RNG), also known as biomethane, can be derived from many abundant, renewable sources including decomposing organic waste in landfills, wastewater treatment plants, and agriculture. Renewable natural gas can be used in any natural gas vehicle. UPS' rolling laboratory approach provides a unique opportunity for UPS to test different fuels and technologies and positions for UPS to use RNG in its extensive natural gas fleet. Methane is pulled from acres of buried waste, and naturally occurring methane is captured before it is released into the atmosphere as a greenhouse gas emission. The methane is then purified and processed into RNG. The RNG is then distributed across the country through pipelines. UPS reached its goal of driving 1 billion miles with alternative fuel and advanced technology fleet a year early, as the original goal was to complete this task in 2017. In Kentucky, no UPS vehicles run on pure ethanol or flex fuels such as E-85.

Concerning a lack of natural gas stations statewide and incentives to have companies increase their natural gas fleets, it was suggested that Florida's idea of waiving the natural gas fuel tax could be a way to incentivize the use of natural gas. Very few companies use natural gas, so the hit to the road fund would be minimal. After 5 years, and after more companies start using a natural gas fleet, the companies would be required to pay the tax. Florida has gone from 20 natural gas fueling stations to more than 200 because of its fuel tax holiday.

### **NCSL: Motor Fuels Taxes and Their Long-Term Sustainability; Alternatives in Other States**

A policy specialist from the National Conference of State Legislatures (NCSL) testified on issues pertaining to motor fuels taxes and alternatives being explored in other states. Kentucky ranks in the 7th percentile on major roads in poor condition, while Illinois and Ohio rank in the 15th percentile. The lowest ranking states were Tennessee and Virginia at the 6th percentile. Kentucky ranked at 8.7 percent in structurally deficient bridges, compared to the highest ranking of West Virginia at 13.2 percent and the lowest ranking of Tennessee at 5.8 percent. For functionally obsolete bridges, Kentucky had the highest percentage, 22.7 percent, and Illinois had the lowest, 7.4 percent. Kentucky's estimated costs to motorists were \$315.11 per year compared to a high of \$469.23 per year in West Virginia and a low of \$225.34 per year in Tennessee.

In all levels of government that fund highways and transit, the average annual own source spending by level of government is 25 percent funding by federal government at an estimated \$54 billion, 40 percent funding by state funds at \$84 billion, and 35 percent funding from local entities at approximately \$75 billion. Surface transportation investment has been declining since 2002. State spending has decreased by approximately 15 percent, and overall spending has decreased by 12 percent in 2012 dollars. The Congressional Budget Office has evaluated the spending levels since 2003 and found that, even while nominal spending was at 44 percent on transportation funding, real spending on specific price indexes of infrastructure has fallen by 9 percent.

Fifty-six percent of all transportation spending is on new capacities or expansion. States are spending nearly 60 percent of their dollars on operations and maintenance and 40 percent on expansion. Federal dollars have been applied toward expansion or capital programs at 95 percent. These figures were evaluated by the American Association of State Highway and Transportation Officials (AASHTO), which estimates that state departments of transportation spend approximately 71 percent of funds on system preservation and 29 percent on expansion.

The 2015 Fixing America's Surface Transportation Act is a \$305 billion, 5 year reauthorization of the federal program. There was a 5 percent funding increase in 2015. The increase will grow to 15 percent for highways by 2020. There was an 8 percent increase for transit funding in 2015 that will grow to 18 percent. The short term spending bill that Congress passed through December 9, 2016, included pre-FAST Act numbers. The FAST Act provided no new user-based revenues for the Highway Trust Fund. The Congressional Budget Office estimated that, by the end of term for this bill, there will be a \$70 billion shortfall between federal gas tax revenues and what is being authorized in federal government spending. Congress identified "pay-fors" that included \$53.3 billion from the Federal Reserve Surplus Account, \$6.9 billion in reduced Federal Reserve Stock Dividend payments, and \$6.2 billion from sale of Strategic Petroleum Reserve.

The FAST Act provides changes to federal programs including a \$2 billion increase to the Surface Transportation Block Grant Program by 2020 and a percentage split adjustment. There will also be lowered project size requirements and an increased share going to rural projects for the Transportation Infrastructure Financing and Investment Act. Funding of alternative grants will be funded at \$95 million in competitive grants and mileage-based user fee pilots.

According to the NCSL/AASHTO 2011 Transportation Governance and Finance Report, more than 50 mechanisms were found that could fund transportation, including fuel taxes, other taxes and fees, and private contributions. Federal and state governments rely heavily on gas tax revenue to fund highways. A motor fuel tax structure chart was provided for reference and comparison between fixed cent per gallon and variable indexing structures. Since 1993, there was a decreasing value of state gas taxes until 2011, when a slight increase was realized. Only 13 states have raised their gas taxes by more than 10 cents per gallon since 1993. Fifteen states have not raised the gas tax in more than 20 years. In 2011, motor fuel tax revenues accounted for 1.6 percent of total state and local general revenues, down from 2.3 percent in 1993. The small increases that have been seen have lagged behind growing funding needs. The goal is to increase the Corporate Average Fuel Economy (CAFE) standards to 54.5 miles per gallon by 2025, which would be an

increase of nearly 70 percent since 2012. Fully realizing these efficiencies would further erode fuel tax revenues.

As many as 33 states have considered legislation related to state gas taxes in 2016. About half of the legislation would explicitly increase the state tax rate. To date, no legislature has approved a gas tax increase in 2016. Eighteen states and Washington, DC, have enacted legislation since 2013 to increase their gas taxes. Among those 18 states, there does not appear to be a strong demographic, regional, or political trend. In 2015, Georgia, Idaho, Iowa, Nebraska, South Dakota, Utah, and Washington enacted gas tax increases ranging from 6 to 11.9 cents per gallon, an increase of 28 percent to 53 percent. Kentucky's motor fuels tax provides for 56 percent of state user revenues for state and local roads.

Nineteen states, representing 54 percent of the US population, index their state motor fuels tax. In 2013, Massachusetts, Maryland, Pennsylvania, Virginia, Vermont, and Washington, DC, enacted legislation to index their motor fuels tax aggressively. Wyoming chose to keep a fixed structure in 2013. In 2014, three states mildly indexed their motor fuels tax. Rhode Island decided to index but with no immediate increase, New Hampshire enacted a fixed increase based on Consumer Price Index (CPI) trends, and Massachusetts voters repealed the 2013 indexing measure. In 2015, Georgia adjusted its motor fuels tax by using CPI and CAFE standards, Michigan used inflation, North Carolina used population and CPI standards, and Utah used a percentage of retail tax. All of those states chose to index. Idaho, Iowa, Nebraska, South Dakota, and Washington chose to use fixed increases. Kentucky adjusted a percentage on wholesale tax to implement a price floor and limit losses. When asked how states have successfully implemented indexing, several states responded that they demonstrated the need and the proper use of revenues for improved transportation infrastructure. There has been a trend for states to use lockbox legislation, whereby money raised for transportation revenues is exclusively dedicated, either constitutionally or statutorily, to transportation funding.

Several states have implemented options other than gas taxes. In 2016, Alabama restructured allocation mechanisms; its funding bill is currently being considered. Also in 2016, Indiana arranged for budget reserve transfers and a local wheel tax. Nebraska implemented a gas tax increase in 2015 and in 2016 created a fund to manage new revenues. South Carolina moved \$200 million of transportation fees from the general fund to the transportation trust fund and the state infrastructure bank restructure to allow up to \$2.2 billion in bonds. Rhode Island instituted a commercial vehicle only toll and the use of GARVEE bonds. In 2015, Connecticut used \$2.8 billion in bonding as a non-gas tax option. Georgia, Idaho, Michigan, and Wyoming implemented electric vehicle fees. Also in 2015, Delaware increased various DMV fees and taxes, Georgia added a hotel and local option tax, Michigan implemented general fund transfers and fee increases, Massachusetts used \$200 million in bonding, North Dakota used oil and gas tax revenue, and Texas used an oil and gas severance tax.

In reference to electric vehicle fees, Georgia's fee is highest at \$200 per vehicle. Idaho and Michigan impose fees on hybrid vehicles. There are 45 states that levy a cent per gallon tax on alternative fuels. Thirteen states allow alternative fuel vehicle owners to pay a user fee in lieu of the tax. The alternative fuel tax/fee is 4 percent of the vehicle's value in Arizona; in Arkansas it is \$164, in California it is \$36, and in Kansas it is a mileage-based user fee or a prepaid permit.

Several states use tolls. Toll networks by mileage within a state shows that Ohio, Indiana, and Illinois, which are all neighboring states to Kentucky are within the top 10 network toll lanes in the country. Toll network revenues show that the New Jersey Turnpike Authority has the highest revenue from tolls at an estimated \$1.413 billion, and the Harris County Toll Road Authority in Texas has the lowest revenue from tolls at an estimated \$560 million.

Pay per mile, or mileage based user fees, is an option some states are reviewing. OreGo in Oregon has a pay per mile pilot can include 5,000 volunteers and is the largest pilot. Approximately 1,000 volunteers have taken part in the pilot program, which charges 1.5 cents per mile driven, followed by a rebate from the gasoline tax on gas purchased. California has a 9-month road charge pilot that began in the summer of 2016. Washington has a steering committee to study the feasibility of the road user charge program. Illinois legislation has been postponed dealing with a road user charge. The FAST Act offers \$95 million in competitive grants to study mileage based user fees or road user charges. The US Department of Transportation has supported other small pilots.

In 2016, approximately \$14.2 million in federal grants was awarded, and eight programs were funded along with the testing of approaches for alternative program selections to fund surface transportation systems. The Hawaii Department of Transportation received a nearly \$4 million grant to test a user fee collection based on manual and automated odometer readings at inspection stations. The California Department of Transportation received a \$750,000 grant to test a pay-at-the pump/charging station charge. Delaware, Minnesota, Missouri, Oregon, and Washington received study grants.

Transportation ballot measures for November 2016 include proposed constitutional lockboxes in Illinois and New Jersey. In Maine the use of \$100 million in bonds was to be on the ballot, and in Nevada the indexing of local fuel taxes to inflation was to be on the ballot. In 2015, ballot measures included the creation of a state infrastructure bank in Louisiana, an \$85 million bond package in Maine, a large-scale transportation package in Michigan (failed), and a \$2.5 billion General Fund transfer to transportation in Texas. The average percentage of approved transportation funding ballot measures from 2005 to 2015 was approximately 72 percent. There are proposed gas tax increases in at least 12 states in 2016; none have passed so far. California's transportation budget is being debated, and there is potential for a special session in Minnesota.

### **Prefiled Bills**

The committee took no action on prefiled bills referred during the Interim.

**Report of the 2016  
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. Linda Belcher  
Rep. Robert Benvenuti III  
Rep. Regina Bunch  
Rep. Tom Burch  
Rep. Larry Clark  
Rep. Leslie Combs  
Rep. Tim Couch

Rep. Ron Crimm  
Rep. Myron Dossett  
Rep. David Floyd  
Rep. Jim Glenn  
Rep. Jeff Greer  
Rep. David Hale  
Rep. Kenny Imes  
Rep. James Kay  
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. Jeff Taylor  
Rep. Russell Webber

LRC Staff: Erica Warren, Jessica Zeh, Jonathan Philpot, Lesley Nash, and Rhonda Schierer

**Presented to the  
Legislative Research Commission  
and the  
2017 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; garbage and refuse disposal.

### **Department of Veterans Affairs**

The commissioner of the Kentucky Department of Veterans Affairs (KDVA) discussed the vision of the department and updated the committee on how things are with nursing homes, and cemeteries. The nursing homes have set the standard across the nation for their business administration. The Radcliff Facility is close to opening; the construction date has been moved from June to July 11, 2016. The veterans' cemeteries are excellent, and the construction of the southeast cemetery will start soon.

KDVA is continuing to work on behavioral health issues among soldiers and looking at ways to reduce the number of suicides and serious tragedies that are occurring as soldiers return home. There is an emphasis on helping those with post-traumatic stress disorder and other conditions by making them aware of support organizations.

### **State Veteran Home Bed Allocations**

The commissioner discussed statistics for the four veterans' homes for 2016. Thompson-Hood Veterans Center in Wilmore has 285 beds, of which 233 are occupied; the Eddie Ballard Western Kentucky Veterans Center in Hanson has 156 beds, of which 105 are occupied; and the Paul E. Patton Eastern Kentucky Veterans Center in Hazard has 120 beds, of which 113 are occupied. The Radcliff Veterans Center has projected admissions for November 2016. The facility must have 21 residing veterans before it may ask for the US Department of Veterans Affairs (VA) recognition survey for final approval. After the facility is certified and recognized, the first neighborhood will be filled, and then admission will progress by neighborhoods of 30 veterans each. This facility is designed to be as close to home as possible with a community living concept and private patios.

The commissioner then explained the revised admission process. A webpage and phone applications have replaced the 16-page paper application. The burden has shifted from veterans and families to admissions staff of KDVA.

The commissioner discussed the future construction status of the Bowling Green Project and the Magoffin County efforts. The Bowling Green project's 90 beds did not receive funding support but it remains active on the federal VA unfunded priority list. He does not expect any movement on the Magoffin County efforts until a feasibility study has been completed.

The executive director for veterans' centers explained the federal VA's FY 16 funded projects list. There are more projects on the list than are feasible to be funded. The State Home Grant Construction Program (SHGCP) received an annual appropriation of \$120 million for FY 16 and an additional \$20 million from the Office of Rural Health for a total of \$140 million. Projects 1 through 36 were offered funding on FY 16's priority list. Funds are used for various projects throughout the year, so the list can change because of leftover funding; there is no guarantee that projects 1 through 36 will be built. The SHGCP updated list was expected to be published in December 2016.

After a facility is placed on the priority one list, construction should begin in 5 to 12 years. The Bowling Green project is at 109 on the list and will stay on the bottom tier as an application until the General Assembly supports state funding.

### **Thompson-Hood Veterans Center Staffing Concerns**

Rep. Tom Burch brought forth a constituent who is a member of the advisory board at the Thompson-Hood Veterans Center. Rep. Burch explained that it was brought to his attention recently that there are staffing concerns at the center. There are 282 beds, but only 232 can be filled because of staffing issues. The center cannot afford to pay staff what other facilities near Lexington pay because the Kentucky Personnel Cabinet has set salaries, and most nongovernmental facilities offer higher starting salary ranges.

The advisory board member stated that the decline in staff has been ongoing since 2014. The administrator of Thompson-Hood indicated that the facility has at least 35 beds that it could fill if it were adequately staffed and authorized. He stated that is not an issue with budget funding; rather, it is an issue with the state personnel policy and the starting salaries being offered. A registered nurse pay range in the private sector starts at \$24 to \$32 an hour. Thompson-Hood's entry level starts at less than \$22 an hour. He is authorized for 16 registered nurses and has only 3 on the payroll because of the need for higher pay.

### **Lady Vets Connect and Sheppard's Hands: Addressing Homelessness Among Female Veterans**

The founders of Lady Vets Connect and Sheppard's Hands discussed the merger between Sheppard's Hands and Lady Vets Connect. Originally operating as two nonprofit organizations, they merged to become Lady Veterans Hands for Hope. The new organization streamlined the work of both entities into one to provide high quality, comprehensive services to transitioning female veterans. The planned merger completion date was July 1, 2016.

A member of the National Association of Black Veterans donated the first home for female veterans to Sheppard's Hands. The home will house homeless female veterans for a year. During that year, the goal is to empower these three women and their children with health care, counseling, and job training skills.

A transitional home is needed because, on any given night, nearly 5,000 female veterans are homeless. Forty percent of female veterans have reported sexual trauma, women now constitute

1 out of 10 homeless veterans, and other shelters serving homeless veterans are not equipped for children. There is a need for bridging relationships with the VA and other resources, and female veterans struggle to be seen as veterans.

### **Veterans in Piping**

Representatives shared a video and presentation on the United Association Veterans in Piping (VIP) program, which illustrated how the VIP program helps veterans transition into civilian life with job opportunities. Veterans develop skills through the United Association (UA) of Journeymen and Apprentices in plumbing and pipe fitting industry who have partnered with the US military to create the VIP program. This training puts veterans in high demand positions nationwide. The training is provided at no cost, and all funding is from the UA's International Training Fund, a management and labor cooperative. Upon graduation, participants are given jobs and placed in the UA's 5 year apprenticeship program. UA is a private sector trade union with more than 340,000 members in the US, Canada, and Australia. It is a joint consortium of labor, private contractors, and administrators. UA members are trained as pipe fitters, welders, sprinkler fitters, plumbers, and heating, ventilation, air conditioning, and refrigeration service technicians. The UA worked with congressional leaders to pass the 2011 Vow to Hire Heroes Act, which authorized full-time active-duty participation. There are eight UA VIP programs at Department of Defense installations across the US, including one at Fort Campbell, which has had a welding program since 2014.

### **Service Dogs for Veterans**

A member of the Lyon County American Legion Post 68 described the Canine Partners for Life program. He said that 22 veterans commit suicide every day and many of these veterans suffer from severe PTSD. Many of the veterans' suicides could have been prevented if they had had a fully trained and certified PTSD service dog. After becoming aware of this issue, the Lyon County American Legion Post 68 committed to establishing a PTSD service dog program, and it will be a service dog center of training excellence for Kentucky. This initiative comes at a steep price, and Post 68 is searching for partners to help finance the program. Service dogs cost \$25,000 or more to train and match with the right veteran. The VA does not provide PTSD service dogs to veterans.

Post 68 uses a dog trainer with 30 years of experience. The program takes up to 18 months training with each dog chosen and another year of training with a veteran who has been chosen for that specific service dog. There are places where a person can pay \$150 to obtain a tag that indicates that the person has a service dog. The Post 68 member said there should be protections for veterans, as some puppy mills claim to have service dogs, but the dogs do not have proper training and the veterans do not get a real service dog. There are no legal standards for service dogs at this time.

### **Brain Injury Alliance of Kentucky**

The executive director of the Brain Injury Alliance of Kentucky (BIAK) explained the organization's mission. The BIAK military outreach program works independently and with other veteran service agencies to actively seek out veterans and their family members affected by



military traumatic brain injury (TBI) and connect them to resources they need to maximize recovery and success.

BIAK's veteran outreach coordinator described its early efforts in 2006. Brain injury is the signature wound of the global war on terror. Many TBIs were being misdiagnosed or ignored. Some veterans did not recognize the significance of an injury if they did not lose consciousness.

The veteran outreach coordinator explained that BIAK received a grant from the commonwealth in 2010. The Kentucky Air National Guard asked BIAK to serve those with mild TBI. One of the biggest challenges is letting veterans know about available services. BIAK hired a veteran as the program director to reach veterans, developed a resource journal, and worked to conduct "Operation: Headed Home" and "Operation: Immersion."

The veteran outreach coordinator explained the differences between TBI and PTSD. These conditions have co-occurring symptoms. Veterans with TBI suffer from physical cognitive and emotional issues, impulse control disorders, substance abuse, family disorders, and unemployment.

BIAK is working with veterans organizations, reaching out to schools and colleges, getting information to community based outreach clinics, and training service officers about brain injury. BIAK is advocating for veterans issues by helping get VA recertification of TBI, TBI and polytrauma clinic screenings, medical appointments, qualifications for assistance in state colleges, and resources for short- or long term care.

### **Epilepsy Foundation of Kentuckiana**

The executive director of the Epilepsy Foundation of Kentuckiana testified about outreach to veterans who develop seizures due to TBI or PTSD. In 2013, the program realized the need to use the mass media to reach veterans. Operation Outreach was able to get on Kentucky's airways and raise awareness about post traumatic epilepsy. The foundation now has broadcast media coverage on many TV channels and in print media to send a strong message. Operation Outreach also has an Internet and Facebook presence.

### **Joint Executive Council of Veterans Organizations**

The new chairman, vice chairman, and ongoing legislative director of Joint Executive Council of Veterans Organizations (JECVO), who were elected in October, provided an update on their organization and issues. JECVO serves 330,000 veterans and their families in the state. There are 27 service organizations that are part of JECVO. JECVO is independent of the Kentucky Department of Military Affairs and KDVA, but they work closely. JECVO uses a monthly newsletter, Facebook, and Twitter.

The legislative liaison expounded on two of the legislative priorities of 2016: fully funding KDVA's budget, and changing the Governor's Advisory Board membership to having two of seven members chosen by JECVO.

## **Kentucky National Guard Update**

The adjutant general discussed the federal aspects of the Kentucky National Guard (KYNG). Senior staff articulated four priorities for the KYNG known as Plan 105: federal mission proficiency; state mission proficiency, including responsibility to natural disasters, civil disturbances, and major infrastructure failures; relevance to the US Army and Air Force; and soldiers, airmen, and family readiness, which is the most difficult of the issues.

The strategic trends on the Army side are all going through a Budget Control Act in which the Army Guard is scheduled to reduce from 342,000 to 315,000 nationally. That means that the Kentucky Army National Guard could lose 1,400 of roughly 6,700 soldiers. Active component and reserve component training relationships are now part of the whole force Army concept. There are two units that are going to be with the 101st Division, and they will be assigned as needed. The whole force Army concept with the active component will make the guard more ready and relevant.

The strategic trends on the Air Force side are the limited C-130H models that are more than 20 years old. There are two avenues for modernization: limited modernization of the C-130H models themselves, or getting new air frames. Kentucky is hoping for new air frames or C-130J Juliet models. The Air Force Special Operations Command FY18 growth will add 41 personnel to 123rd Special Tactics Squadron, and cyber growth offers the potential to increase the 223rd Intelligence Flight from 16 to 71 and become a squadron.

Soldier and airman readiness includes a community partnership liaison, state tuition assistance, and behavioral health assistance. KYNG is going to have every armory and every community attach a responsible, highly respected retired guardsman to be a legacy mentor. That guardsman will be able to give perspective on both training and management but will also be a kind voice to the soldiers and airmen who are having a difficult time. Requests for tuition assistance have increased but are still under budget. Behavioral health has to do with responding to soldiers who have issues returning from deployment or any military service. There are many initiatives to support behavioral health issues, including applied suicide intervention skills training. There have been 618 personnel trained through this service.

KYNG has 56 armories and 12 maintenance facilities in 52 communities. There are three state training sites. The Louisville armory at the fairgrounds and the Maysville armory have been closed. Two underused armories that are in Henderson and Russellville. There is a plan to move all 56 armories into a regional readiness concept in Burlington, Richmond, Paducah, and Morehead. The next four that KYNG plans to invigorate are in the Louisville, Bowling Green, Somerset, and Lexington/Winchester areas.

## **Kentucky State Police**

The commissioner of the Kentucky State Police (KSP) stated that he appreciates the raise and pay scale given to troopers by the General Assembly but is concerned about the rest of KSP workers, including lab technicians, dispatchers, and clerks who have not had a raise in many years. KSP has approximately 1,100 state troopers, and the number has not increased in quite some time. There is a disparity between commercial vehicle enforcement (CVE) and KSP officers' pay, but

CVE officers do not do the same job as KSP officers; however, CVE officers are important and underpaid and understaffed.

The commissioner said that he has spent most of his career working against drug cartels, and while he believes that enforcement and focusing on cartels bringing drugs into the state are important parts of the solution, he believes that the KSP should not forget those who are addicted to drugs and should recognize that addiction is an illness. He discussed a program called the Angel Initiative, modeled on a program in Massachusetts, which helps people detox and get treatment before they begin a life of crime and enter the legal system. KSP needs to focus on traffickers and those committing serious crimes, but it also must help those who need access to treatment facilities. Finding available beds, program cost, and insurance coverage are some of the problems encountered.

The commissioner addressed the reinvestment of seized assets and acknowledged that it is controversial, but said it can be useful in fighting crime.

The commissioner said the KSP radio system is antiquated and no longer has easily obtainable parts. The entire system will expire by 2017-2018 and will be very expensive to replace.

For the current cadet class, the commissioner said a 23 week course started this year with 65 cadets; 41 cadets remain in the class.

### **Kentucky Division of Emergency Management**

The director of the Division of Emergency Management (KYEM) said the agency's vision is a resilient commonwealth that is safe, secure, and prepared for emergencies and disasters through mitigation, preparedness, and response and recovery by a dedicated and professional emergency management team. The mission is to protect and restore the commonwealth.

There are 10 administrative regions within the commonwealth, each comprising 10 to 14 counties. KYEM has 79 staff who cover all aspects of emergency management assistance, public assistance, individual assistance, fiscal administration, hazard mitigation, volunteer coordination, the chemical stockpile emergency program, the emergency management performance grant, area managers/assistants, search and rescue/hazmat, training, planning, executive staff, IT support, and 24-hour warning/duty officers.

The State Emergency Operations Center has had 31 activations from July 1, 2015, to June 30, 2016, and 7,502 incidents during that time. Most typical incidents reported have been fire responses, rescue responses, hazardous materials incidents, and vehicle accidents.

KYEM hosted 175 classes, provided 51,092.5 hours of classroom and hands-on training, and trained 3,341 first responders across the commonwealth. The program expenditures for FY 2016 are \$69,434,608.

From 2008 to the present, the total revenue for disaster declarations for all programs totaled \$813,368,072. There have been 10,000 projects worked through the Federal Emergency

Management Agency (FEMA), 16 federal declarations, and mitigated hazards. The mitigated hazards include dam failure, drought, earthquake, flood, sinkhole, landslide, severe storm, severe winter storm, and tornado. The hazard mitigation grant awards totaled \$170,113,822.

The director explained the anatomy of a disaster declaration. The state verifies and reports damage, including joint damage assessments, which must exceed \$6.12 million by local, state, and FEMA teams. The steps in determining a disaster declaration are

- the preparation of the governor's request for declaration, which must be submitted within 30 days and must demonstrate the event is beyond the recovery capacity of state and local governments;
- FEMA review and recommendation; and
- the presidential action of a declaration.

Even if the \$6.12 million threshold is met, there is no guarantee of receiving FEMA relief. FEMA gives reimbursements to restore a structure back to the pre-disaster status.

There are various stages for a disaster declaration, of which the final stage is for FEMA to approve the project and obligate funding. The funding is 75 percent federal, 12 percent state, and 13 percent applicant. On the completion of projects, KYEM reimburses the applicant for 90 percent of allowable costs of the federal and state portions, FEMA reimburses KYEM for the federal cost share, and FEMA performs final inspections and may deobligate funding or increase funding depending on eligibility of expenditures, and finally disburses the final funding to or requests reimbursement from applicants. The declaration is officially closed when all projects are closed.

The director outlined the audits, risk analysis, and monitoring of the mandatory oversight of federal grant awards. Any recipient of federal funds expending in excess of \$750,000 in federal awards must undergo an audit, and all subrecipient audits are provided to and reviewed by KYEM staff. Major findings must be corrected, or funding may be withheld. Annually, subrecipients must complete a risk survey to determine whether they are a risk for receiving federal funds. All costs must be supported by documentation that meets federal requirements, and all disbursements must be reviewed and approved by the specific program, program branch, KYEM Pre-Audit, KYEM Division, and the Department of Military Affairs.

The director explained the disaster declaration constraints and alternatives. Public assistance projects must exceed \$3,000, and large projects must exceed \$121,000. The Individuals and Households Program has no set threshold, and the maximum FEMA award is \$33,000. The program provides temporary housing assistance, repairs, replacement of household items, death benefits, and unemployment. The Small Business Administration's Disaster Loan Program must have at least 25 homes or businesses with uninsured damages greater than 40 percent of the property value, and low interest loans are available to qualified applicants. The US Department of Agriculture provides loan assistance for damaged crops, fencing, buildings, and debris removal. The National Resources Conservation Service has stream debris removal and flooding remediation through independent funding.

The director indicated that he has worked with FEMA to find ways to help small counties with low income individuals who have been hit with disasters but have struggled to understand how to contact FEMA or to understand the process needed to get help. The process needs to be simplified. During the past five disasters, FEMA has improved by having two types of representatives in every community to reach public affairs people, and to distribute announcements within the communities.

### **Kentucky Office of Homeland Security Update**

The executive director of the Kentucky Office Homeland Security (KOHS) said KOHS is an all-hazards fusion center. Hazards are defined as man-made or natural, while a threat is man-made only. KOHS has collaborated with KYEM, which is the operational or logistical piece of a hazard or event. KOHS receives information and intelligence from multiple entities. After making sure that the information is relative, timely, and accurate, KOHS produces intelligence reports for first responders in Kentucky and throughout the United States.

KOHS has clearly defined its mission, which is to identify all hazards that endanger the commonwealth. “KEVA” is a new acronym, coined to focus the mission, standing for “Kentucky Essential Vulnerability Asset.” A KEVA is a critical facility service located in the commonwealth and surrounding areas, the loss or disabling of which would have a catastrophic impact affecting one or more of the department’s 16 identified critical infrastructure sectors in Kentucky.

Approximately 70 percent of KOHS funding comes from federal funds, and 80 percent of federal dollars go to Kentucky communities for homeland security grants. In FY 2017, there is a potential of a 55 percent reduction of funds awarded from the US Department of Homeland Security even though there is still a great need for communication, first responder equipment, physical, and cybersecurity equipment.

The executive director discussed the Law Enforcement Protection Program. Eighty percent of funds, mostly from the sale of confiscated firearms, has been granted to city, county, and state programs.

The Kentucky Intelligence Fusion Center deals with international terrorism, cyberthreat analysis, real-time social media analysis, domestic terrorism, organized crime, geospatial analysis, and many critical infrastructure sectors. KOHS is the only agency that connects on local, state, and federal levels. KOHS has supported 49,000 first responders. It is KOHS’ mission to ensure that front line responders are able to securely perform their duties. Terror attacks are the “new normal” around the world. There were 22 terror attacks between January 15, 2016, and July 16, 2016, and global terrorism is close to home. There are ISIS investigations in all 50 states, and there are more than 1,000 individuals with connections to terrorism. Since 2014, 92 individuals have been charged in the United States, and nearly 70 terrorist plots have been foiled since the 9/11 attack.

The most likely threat for Kentucky, based on KOHS analysis with state, local, and federal homeland security partners, historical data, and current trends, would be homegrown violent extremists with military grade weapons or high powered rifles, improvised explosive devices, and readily available communication equipment and social media. Kentucky’s strategic critical

vulnerabilities are not having a single statewide interoperability system, not having a single statewide public radio system, the lack of state 9-1-1 system funding, and limited resources for evolving threats or hazards. Kentucky's interoperability is not sufficient for a catastrophe.

The director hopes to have transparency and visibility to accomplish an increased awareness of KOHS functions, track all issues that affect public safety and well-being of the commonwealth, develop Kentucky's homeland security strategy, allocate grants based on critical need, support and partner with entities seeking to mitigate threats and hazards, and unify common visions that affect everyone in order to do everything possible to respond to all threats.

**Report of the 2016  
Free-Roaming Horse Task Force**

**Sen. Jared Carpenter, Co-Chair  
Rep. Fitz Steele, Co-Chair**

Sen. Brandon Smith  
Sen. Robin L. Webb  
Rep. David Hale  
Rep. John Short  
Phillip Brown  
Rusty Ford  
Ginny Grulke  
Jonathan Lang

Steve Hohmann  
David Ledford  
Dave Moss  
Lori Redmon  
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**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

## **Free-Roaming Horse Task Force**

HCR 101 of the 2016 Regular Session created the task force in order to convene representatives from various stakeholder groups and representatives of state and local government to study the facts and consequences of free-roaming horses in Kentucky and to formulate recommendations on how to cope with those consequences. The task force was required to submit its recommendations to the Legislative Research Commission by November 30, 2016.

### **Task Force Activity**

The task force met three times during the 2016 Interim to discuss different aspects of the free-roaming horse issue. A final meeting was scheduled for December 2, 2016.

### **Overview of Issues Relating to Free-Roaming Horses**

As a result of the economic downturn of 2007 through 2009 and continuing poor economic conditions for some horse owners, the population of free-roaming horses in Kentucky has grown. Untended horses face illness, malnourishment, and neglect when they are abandoned, a cycle that continues when they are left to breed in the wild. The executive director of the Appalachian Horse Center said that with stallions also being turned out, a herd of mares can double the population in 4 years.

The executive director of the Kentucky Equine Humane Center stated that when coal mining operations are completed, the land is revegetated to mitigate for resource impact. Often those may be the only flat places, and she said it is an accepted practice that owners turn horses out onto reclaimed mine land during the summer to graze. While some bring the horses back to their land before winter, since the economic downturn, many leave their horses on the land permanently because they are no longer able to care for or pay for them.

Free-roaming, unmanaged horses can create public safety challenges for communities across the commonwealth. Large populations of free-roaming horses are now congregating on reclaimed mine sites and other areas, stripping them of vegetation and necessitating the replanting of lost vegetation in order to maintain the environmental benefits to the reclamation site and surrounding areas.

### **Local Government and Stakeholders' Concerns and Recommendations**

Many animal rescue or humane organizations are involved with the free-roaming horses through gelding, wellness clinics, and adoption. In addition, many people are concerned about the horses on or near the reclaimed mine sites; the three main issues are: public safety, health and welfare of the horses, and overpopulation of horses. Although there is no estimate on how many horses are free roaming in Kentucky, the problem was said to impact approximately 10 counties.

The president and chief executive officer of the Kentucky Humane Society stated that the environment cannot sustain the free-roaming horses during some parts of the year. The horses are coming into the roadways, pushing out wildlife, and destroying natural habitats because there is



not much vegetation left to sustain them. She further stated that stopping or slowing the growth of the free-roaming horse herds should be a priority.

One judge-executive said that visitors from out of state come to view the free-roaming horses and that both local citizens and government recognize that tourism is an opportunity that could help stabilize and rebuild eastern Kentucky. He also noted that since the slaughter market ceased to exist, it is hard to find an option for an older horse when the owner can no longer maintain the animal. Another judge-executive stated that they have problems relating to free-roaming horses in his area. An animal rescue representative testified that there are approximately 1,000 free-roaming horses on five strip mines and estimated that there are at least 800 horses that people do not claim in Floyd County alone.

An animal control and police officer stated that there were three accidents involving free roaming horses in the roadways and estimated there are fewer than 200 free-roaming horses in his county. Another animal control officer stated that officers need basic training on how to handle free-roaming horses. They also need vehicles, trailers and other equipment, and corral pens, along with additional funding to properly deal with free-roaming horse problems.

### **Local Veterinarian Recommendations**

A West Liberty veterinarian testified that there are only four or five resident veterinarians who work with horses in approximately 15 to 20 counties in eastern Kentucky. Castrating stallions should be a priority in solving the free-roaming horse issue. Some of his clients who can no longer afford to feed or care for their horses choose to turn the horses out to allow them to search for food. Another veterinarian suggested using birth control in mares, gelding stallions and colts, and strengthening laws to make them more enforceable so people would be less inclined to release their horses. There was some discussion about the best places and ways to educate people not to turn out horses and to notify the public of horses on a stray hold.

### **Possible Solutions: Legislative/Nonlegislative Recommendations, Goals and Objectives**

A number of draft findings and recommendations were presented to the task force for review and comment. A final meeting is anticipated to discuss and consider the various findings and recommendations.



**Report of the 2016  
Government Nonprofit Contracting Task Force**

**Sen. Max Wise, Co-Chair  
Rep. Russ Meyer, Co-Chair**

Sen. Danny Carroll  
Sen. Denise Harper Angel  
Sen. Steven West  
Rep. Dennis Horlander  
Rep. Arnold Simpson  
Rep. Addia Wuchner  
Norman Arflack  
Promod Bishnoi

Cyndee Burton  
Danielle Clore  
Samantha Davis  
Robin Kinney  
Mardi Montgomery  
Judy Piazza  
Michelle Sanborn

LRC Staff: Judy Fritz, Jay Jacobs, Van Knowles, and Karen Powell

**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

## **Government Nonprofit Contracting Task Force**

Authority: 2015 House Concurrent Resolution 89 created the Government Nonprofit Contracting Task Force to review contracting procedures between Kentucky nonprofits and the commonwealth and to become cognizant of the contracting concerns of the nonprofit agencies. The task force was directed to study the effect of current laws, regulations, and policies on nonprofit entities that contract with the commonwealth; procedures adopted in other states to facilitate a more cost-effective, streamlined, and accountable process for nonprofits that contract with those state agencies; and the feasibility of eliminating any redundant, unreasonable, or unnecessary laws, regulations, or policies that negatively affect nonprofit government contracting.

### **Task Force Activity**

The 17-member task force began meeting in July 2016 and convened six times during the 2016 Interim. Topics of discussion included statistical and general information about nonprofits; problems faced by nonprofits; Uniform Guidance and how its regulations standardize issues regarding prompt pay, indirect cost reimbursement, auditing issues, and midstream changes in contracts; state government contracting procedures; internal contracting procedures of state agencies; experiences in other states; and ways to improve the contracting process for nonprofits in Kentucky.

### **Statistics and General Information About Nonprofits**

The executive director and chief executive officer of the Kentucky Nonprofit Network explained that nonprofits are 501(c)(3) organizations that are exempt from federal and state taxes. They are self-governing entities, run by a volunteer board of directors, and they exist to contribute to the public good. Nonprofits are mission driven and serve as natural partners with federal, state, and local governments. Nonprofits are one of the largest industry employers in both the United States and Kentucky. They are the third largest labor sector in the country as of 2010, employing approximately 10.7 million people. In Kentucky, more than 1.8 million people were employed by nonprofits in 2012, with approximately 1 in 9 Kentucky workers employed by a nonprofit. Kentucky nonprofits in 2012 expended more than \$22.6 billion, making it one of the state's largest industries.

Most of the revenue received by nonprofits comes from program services and contracts (\$19.6 billion—approximately 84 percent); a smaller portion comes from contributions, gifts, and grants (\$2.7 billion—approximately 12 percent); and the remaining budget comes from dues, net sales, special events income, and investments. Many Kentucky nonprofits doing business with the state are in the health and human services industry. For fiscal year 2016, \$6.2 billion was appropriated from the US Health and Human Services Cabinet to the Kentucky Cabinet for Health and Family Services. Of the \$6.2 billion, \$2.7 billion was awarded to contractors, which included approximately 218 nonprofit organizations.

## **Problems Faced by Nonprofits**

A policy specialist with the National Council of Nonprofits described some of the concerns of nonprofits when contracting with the state. Budget constraints and an increased demand for programs and services have made it increasingly difficult for nonprofits to continue providing services to the government while staying in business. Many nonprofits have experienced late payments beyond contract specifications, government changes to contracts and grants midstream, complex and time consuming auditing and reporting requirements, and payments that do not cover the full cost of services or indirect costs.

Other concerns include the cost of staffing, the possible changes in minimum wage laws, and the changes to overtime laws made by the US Department of Labor. Nonprofits may not be able to continue providing services if the grants and contracts received do not adequately cover costs, especially overhead costs. Almost all nonprofit state contracts are cost-reimbursement and there is, on average, a 6 week lag from the time the services are provided to the physical receipt of the funds, making cash flow a serious concern. Additionally, the ways that grants and contracts are executed differ among cabinets with no uniformity as to applications, audits, and payment protocols, making nonprofits bear an unnecessary administrative burden.

## **OMB Uniform Guidance**

The Federal Office of Management and Budget (OMB) has issued Uniform Guidance to facilitate contracting between nonprofits and government. This Uniform Guidance is the consolidation of eight OMB circulars related to federal grants and contracts, codified in the Code of Federal Regulations, effective December 26, 2014. The goal of Uniform Guidance is to improve performance and outcomes while ensuring the financial integrity of taxpayer dollars. To achieve its goals, Uniform Guidance requirements were designed to ease administrative burden, to increase efficiency and effectiveness, to strengthen oversight, and to reduce risks of fraud, waste, and abuse.

A specialist with the National Council of Nonprofits explained that Uniform Guidance is divided into three sections: Administrative Reforms, Cost Principle Reforms, and Audit Reforms. Under Administrative Reforms, pre-award requirements for states include providing information specific to the contract or grant, making funds available for awards at least 30 days in advance, and following selection process criteria for competitive grants. There are approximately 1,000 OMB forms, but the federal government is looking at ways to reduce and standardize forms to ease the application and contracting processes. Cost Principle Reforms address the most important piece for nonprofits: paying allowable and indirect costs. The rules under Cost Principle Reforms are outlined and provide guidance as to which direct and indirect costs are accepted.

Procurement requirements, under Uniform Guidance, require nonprofits to follow federal acquisition regulations when making purchases using federal dollars. States may continue to use their own policies and procedures, but nonprofits must follow the new regulations.

Understanding Uniform Guidance definitions is important to ensure that monitoring procedure requirements are followed. Monitoring procedures differ depending on whether the procurement is considered a grant or a contract. Grants are used to carry out a public purpose.

Contracts are used to acquire property or services for the federal awarding agency or pass-through entity's direct benefit or use. A subaward is an award provided by a pass-through grant entity to a subrecipient for the subrecipient to carry out part of a federal grant award. It does not include payment to a contractor. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Uniform Guidance differentiates between a contractor and a subrecipient. The differences do not affect indirect cost reimbursement, but they affect how the recipient of the grant or contract should be monitored and audited. The Audit Reform section of the Uniform Guidance establishes that contractors typically are awarded contracts, while subrecipients are typically awarded grants. Determining whether the money will be used for a contract or grant and whether the recipient is a contractor or subrecipient establishes whether the money is counted toward a single audit and the reporting and auditing requirements. Almost all federal funding passed through the state and awarded to nonprofits would be considered grants, even though the state would consider the transaction a contract. The transaction may continue through the state's procurement system so long as the monitoring and risk assessment align with Uniform Guidance regulations.

Uniform Guidance also requires any pass-through entity, like the commonwealth, to notify a subrecipient in writing regarding the amount of funds awarded and the source of the funds. Notification is important because it will help the nonprofit determine whether the funds are federal or state or a combination of both, and whether Uniform Guidance will apply. Before an award using federal funds is finalized, the pass-through entity must complete a risk assessment of the subrecipient it has selected to receive the award. The risk assessment focuses on whether the nonprofit is able to properly manage government funds. The risk assessment will also determine what monitoring requirements apply.

### **Prompt Payment**

The Uniform Guidance requires agency reimbursements to nonprofits to be made within 30 days of billing unless the agency detects something improper about the request for reimbursement.

Kentucky also requires government agencies to pay vendors within 30 days of receipt of an invoice in accordance with KRS 45.453. If an agency receives a valid, properly submitted invoice and the agency is unable to issue payment within 30 days, a late payment will be added. However, the state is excused from prompt payment if the invoice is not correctly submitted. Invoices may be incorrect because of incorrect contract numbers, lack of supporting documentation, amounts that do not reflect the contract amount, and supporting documentation that does not match the invoice.

Most government contracts require performance of services before payment. This arrangement requires many nonprofits to take out loans to provide services and meet payroll requirements for the first month of service. Nonprofits are concerned that payments are not being remitted timely because of a lack of communication between the agency and the nonprofit. The delay in prompt payment forces some nonprofits to extend lines of credit, which in turn adds interest costs, forcing the nonprofit to operate at a loss and undermining its ability to provide

services. A nonprofit representative testified that he has waited on average 75 days before receiving payment, and he has been waiting for 3 months on a contract to be finalized.

Interest costs become a larger concern for nonprofits that handle large or multiple contracts. One nonprofit has taken out an \$800,000 line of credit with interest totaling \$93,000. Taking the line of credit is necessary to account for the \$600,000 to \$700,000 in services that the nonprofit is contracted to provide statewide.

The director of Kentucky Emergency Management (KYEM) and the assistant director of Emergency Management with the Department of Military Affairs explained how their division approaches prompt pay. KYEM has implemented a sophisticated reimbursement system, including a transparency tracker that covers approximately \$70 million in grants per year. Objectives of KYEM are to maximize available federal funding, provide general guidance to the recipients of federal grants, and ensure reimbursements are documented properly. In 2014, KYEM began a process to retool the grants management process. The solutions being sought were in the areas of customer service, transparency, efficiency of reimbursement, and accountability.

Over the past 8 years, KYEM has responded to 17 presidential declarations of emergency and has passed through \$830 million to subrecipients. Currently, KYEM has 3,000 projects with subrecipients. KYEM grant recipients include county and city governments, quasi-governmental entities, state agencies, and nonprofit entities. The assistant director stated that many problems encountered by KYEM subrecipients result from subrecipients not always understanding many of the federal procurement requirements, so KYEM has made an intensive effort to become compliant with federal requirements and to educate applicants in order to obtain the maximum amount of available funding.

Beginning in 2014, KYEM intensified monitoring of federal grants, developed and implemented online applications to simplify processes and increase transparency, and developed and delivered numerous grant management courses and workshops. These courses and workshops focused on federal program requirements, accounting, contracting, documentation, alternative funding opportunities, and Uniform Guidance. Grant specific training was conducted statewide, attended by approximately 3,500 people. KYEM will start conducting webinars in the coming months to make it easier and more affordable to train and educate their contracting partners.

KYEM developed three trackers, which have online and mobile access for all entities. The trackers illustrate different payment stages, granting entities the ability to see when they will receive payment after they make a reimbursement request. All submissions are electronic, and if there is an issue, the tracker shows a red signal and the reason why payment is stopped. If mediation is required, the process begins with an email and is followed up with a phone call. Payments can be made a day after a request is made. The tracker shows all the forms that are necessary for payment reimbursement and shows purchase orders and receipts. All boxes must be green to get a reimbursement. The program is WEB EOC, which is the disaster management software the entire nation uses. KYEM has not yet been able to integrate its system with eMars.

## Indirect Cost Reimbursements

Indirect costs are overhead costs or the cost of doing business such as rent, utilities, audit fees, legal fees, and insurance. According to Uniform Guidance, indirect costs are organizational costs that are shared across programs. Many nonprofits do not receive adequate payment to provide services and to cover their indirect costs. Indirect cost reimbursement applies to both contracts and grants under Uniform Guidance. There are exceptions if there is a cap in indirect costs in federal statute, or for any block grants created under the 1981 Omnibus Budget Reconciliation Act. Community services block grants, however, are subject to indirect cost reimbursement under Uniform Guidance. The indirect cost requirement is a significant step toward the goal of more reasonable reimbursement for nonprofits. Ensuring proper implementation of the indirect cost requirements across all cabinets and their subdivisions will help resolve some issues with paying full costs. However, no additional federal funds or budgetary authority has been made available from any source to increase the total payout to the nonprofit agencies for indirect costs authorized under Uniform Guidance.

Reimbursement for indirect costs has been troublesome for nonprofits and state agencies. State agencies and nonprofits are not in agreement as to the proper reimbursement rate. The problem compounds itself when there are both state and federal funding sources. State agencies indicated that they try to work with and negotiate with nonprofits if the contract and funding allows, but they generally stick to a 10 percent rate if the contract is funded by both state and federal funds, even if federal reimbursement rates were higher. There is also disagreement as to whether the 10 percent reimbursement rate for contracts funded by state funds is mandatory or discretionary. One agency sets a standard 10 percent reimbursement rate for contracts funded with state money, while another tries to keep reimbursement rates for indirect costs as low as 8 percent. One nonprofit representative testified that his organization has had indirect cost reimbursement rates as low as 3 percent and 4 percent, but the rate has now increased for the nonprofit to 10 percent.

Nonprofits also have difficulty understanding what costs are reimbursable. There have been times when nonprofits thought expenses were approved when they negotiated the contract, but later found out that the costs would not be reimbursed. One example is legal costs. Legal costs were approved in the contract, but the nonprofit did not get reimbursed for them. Similarly, other quasi-governmental agencies have received inconsistent responses on indirect cost reimbursement. State agencies have informed an area development district at different times that it would not be reimbursed for indirect costs, it must have a negotiated rate, or it could use 10 percent de minimis rate, even though the 10 percent de minimis rate does not apply to area development districts. The differing interpretations have caused area development districts at times to be out of compliance with Uniform Guidance.

However, if a nonprofit has a federally approved indirect cost rate, all pass-through entities are required to pay that rate under the Uniform Guidance. If a nonprofit does not have a federally approved rate and has never had a federally approved rate, it can elect to use the 10 percent de minimis rate, use 10 percent of modified total direct cost, or negotiate an indirect cost reimbursement rate based on federal cost principles. Federal cost principles are set to try to standardize allowable costs, but because of budget constraints, cost reimbursement may be offset



by a reduction in services. Federal regulations usually cap administrative costs but rarely cap indirect costs. However, in some agencies, administrative costs for program administration may be direct or indirect costs. The formula is not always user friendly.

### **Auditing Issues**

Any nonprofit expending more than \$750,000 in federal funds in a fiscal year will undergo a single audit under Uniform Guidance. This figure was raised from \$500,000, resulting in reduced administrative costs for many nonprofits, as well as governments. The single audit would be provided to each pass-through state agency. However, each state agency must review the audit and request a corrective action plan for any significant audit findings. Therefore, if a subrecipient receives federal funds from multiple state agencies, each state agency must receive a copy of the audit, examine the audit, and request applicable corrective action plans. Though this approach reduces the administrative costs for nonprofits, many agencies do not have the expertise to analyze audit findings and determine appropriate corrective actions. A possible solution proposed by a representative of a nonprofit is for one agency in state government to receive the single audits from all subrecipients, review the findings, request corrective actions plans, and determine the sufficiency of corrective actions.

As noted above, risk assessments must be performed for each subrecipient prior to disbursement of federal funds so as to determine whether the subrecipient is capable of properly using federal awards. An issue that arises from this arrangement is that if a subrecipient receives federal funds from multiple state agencies, those agencies will perform multiple risk assessments. A solution similar to that proposed for a single audit would be to have one agency in state government perform risk assessments for all agencies, resulting in subrecipients submitting only one risk assessment.

Discussion led to the possibility of a “document vault,” which would be a place where state agencies and nonprofits could store and retrieve certain documents such as audits and risk assessments. Such a document vault could potentially be cost effective and efficient.

### **Changes in Contracts During the Term of the Contract**

A nonprofit administrator stated that changes in a contract during its term cause serious issues for nonprofits. She referred to reduction in a grant that was slated to be used for hepatitis C testing along with HIV testing. There was a decrease in the amount of the contracted funds due to a 3 percent reduction in funding from the Centers for Disease Control and Prevention, as well as a reduction in state funding. The nonprofit continued its deliverables for HIV testing and discontinued hepatitis C testing after all the test kits were used. After hepatitis C testing was discontinued, those clients were referred to local health departments for that test, but most local health departments do not administer it. Those clients most likely will go without hepatitis C tests, and 54 percent of the tests administered prior to the cuts were positive.

A representative from the state Cabinet for Health and Family Services explained that there are several reasons the amount of money contracted may be reduced. Some contracts have funding-out provisions that permit termination of an agreement with 30 days’ written notice if funds are

not appropriated or not otherwise available. Budget shortfalls also trigger reduction of discretionary expenditures within contracts, narrowing the scope of services within a contract, and reduction of ancillary contracts before direct services. She stated that when there is a state budget shortfall, federal contracts that require state matching funds may be affected. Similarly, reduction in federal funds for a particular grant would result in contract reductions for agreements funded by that grant.

The president and chief executive officer of a consulting firm gave an overview of how midstream funding changes affect a nonprofit's overhead and its ability to provide efficient and high quality services. He stated that when funds are reduced, there is a limit on how much money a nonprofit agency can raise privately, and that levels of private fund raising vary by the services that the nonprofit provides.

Uniform Guidance invites nonprofits and government to work in collaboration to promote consistent interpretations and applications to make the contracting process as fair as possible. Adjusting to funding changes may proceed more smoothly when government and nonprofits engage in collaboration and communication. The hope is that as they evolve, contracting processes will be streamlined, saving taxpayer dollars for more services.

### **Experiences and Perspectives from State Agencies**

The director of budget and financial management with the Department of Education stated that the combination of all the OMB circulars into the Uniform Guidance has gone well and that it has been a painless transition for his department.

The managing director of corporate planning and accountability with the Kentucky Housing Corporation (KHC) stated that KHC is the recipient of federal awards as well as federal pass-through funds to subrecipients in the state. KHC is a pass-through agency for state funds as well. KHC has experienced some difficulty with different rule sets for state and federal awards. The biggest challenges so far are with subrecipient agencies and dealing with indirect cost rates. KHC does not have indirect cost rates approved, and there is a lack of education with the subrecipients on the allowable indirect cost rate. Subrecipient monitoring is going to create more work for KHC, but overall, the Uniform Guidance has been easy to implement.

The procurement director with the Cabinet for Health and Family Services (CHFS) said the CHFS cabinet level staff work closely with their departments to ensure that all federally mandated requirements are addressed and enforced. The boilerplate language in all of its contracts addresses the Uniform Guidance requirements so the cabinet will be in compliance with federal regulations.

A certified public accountant with CHFS stated that, if the definitional differences between Kentucky law and the Uniform Guidance could be reconciled, it would be very helpful.

## **Government Contracting Procedure in Kentucky**

Most contracts between agencies and nonprofits are in a memorandum of agreement (MOA). MOAs are agreements between governmental entities and nonprofits for the purpose of carrying out a governmental function. MOAs must be signed by the nonprofit, the government agency, and a government attorney. Generally, work may not begin until the MOA has been finalized and filed by the agency with the Government Contract Review Committee. State agencies are prohibited from entering into a noncompetitive agreement with a nonprofit that does not have 501(c)(3) status or is not carrying out a governmental purpose (KRS 45A.095 and 45A.700).

When contracting with nonprofits, agencies determine their need for resources related to a particular governmental function, contact one or more nonprofits that provide the needed function, negotiate the scope of work, draft an MOA, and have the appropriate persons sign the MOA. Once the agency has its approved signatures, it submits the MOA with the signatures to the Finance Office of Procurement Services. After the MOA is approved by the Office of Procurement Services, it is reviewed by the Finance Office of General Counsel and the Finance Secretary. After all of the parties give their approval, the MOA is submitted to the Government Contract Review Committee for approval. The submitted MOA should contain the final document, signature page, IRS 501(c)(3) documentation, affidavit for bidders and contractors, and the nonprofit's secretary of state's identification number in accordance with KRS 45A.695.

### **Agencies' Internal Contracting Procedure**

While each cabinet, agency, or department may have different or additional steps in its internal contracting processes, the general processes are similar. As was explained by the procurement office of the Department of Corrections, the department or agency first identifies the need for service. The department or agency's program staff will notify its procurement office that the nonprofit can provide the service. Then program staff corresponds with procurement staff to review and create a scope of work. The scope of work includes what the nonprofit is responsible for providing.

Once the scope of work is determined, the program staff and the nonprofit discuss pricing. At this stage, the nonprofit is aware of which department wants it to provide what services, and it can provide an accurate contract price. Examples of items contained in pricing include personnel costs, program supplies, and travel. Some programs, such as Medicaid and community health services, are based on a flat fee and are non-negotiable. Generally, departments and agencies try to negotiate pricing with nonprofits when applicable.

After department staff negotiate pricing with the nonprofit, that staff and the department's legal team review the MOA and send the MOA to the nonprofit through the procurement office for review and signature. If both parties agree to the terms and there are no changes, the nonprofit returns the original signed MOA to the department. Then the department will submit the MOA to the Finance Cabinet for review and submission into the eMars system.

Once the MOA is entered into the eMars database and the database shows all levels of approval, the department knows the MOA is approved and final. The procurement office scans

and sends the fully executed MOA to the nonprofit for its records. This notifies the nonprofit that the MOA has been approved.

### **Experiences in Other States**

The executive director and chief executive officer of the Kentucky Nonprofit Network stated that successful task forces in other states have embraced collaboration and are working to establish document vaults, to eliminate redundant applications and reporting requirements. However, the only state that has completely transformed its contracting process is Illinois.

### **Illinois' Government Nonprofit Contracting Task Force**

Rep. Patti Bellock, a member of the Illinois General Assembly, gave an overview via teleconference about her experience and perspective of working with the Nonprofit Contracting Task Force in Illinois. The task force was authorized when the state recognized that billions of federal grant dollars were not being dutifully tracked. The nonprofit community and government staff were included in the task force, and after 3 years of ongoing collaboration and work, the task force recommended that the entire contracting process in Illinois be restructured. The result of that recommendation was the creation of the Illinois Single Audit Commission.

The commission recognized that the grant process had no common application, no common grant agreement, no uniform administrative rules, no lists noting noncompliance, and a lack of transparency. To address these issues, the commission focused on how the federal government administered and managed grant money. After review, it was decided that if the grantees were held to a higher standard when they applied for a federal grant, then the state should also be held to a similar standard with regard to state grant money. The findings of the Single Audit Commission led to the Grant Accountability and Transparency Act, which the Illinois Legislature enacted in 2013 in House Bill 2.

HB 2 was the vehicle leading to Illinois' status as a national model for nonprofit contracting with a state. The White House recognized Illinois as the first state with legislation requiring the implementation of a comprehensive set of standards that mandate transparency and accountability throughout the entire grant life cycle.

House Bill 2 also created the Centralized Grant Management Union housed within the Governor's Office of the Management of the Budget. Rep. Bellock stated that HB 2 was major reform and that it has saved Illinois billions of dollars.

Rep. Bellock stated that it was critical to involve nonprofits in the process from the beginning. The Illinois nonprofits were initially worried that the changes were going to be duplicative and paperwork oriented, and the state government agencies also thought it would be more work for them. However, the efforts of the task force, the Single Audit Commission, and the legislature have resulted in the use of criteria that are the same for federal- and state-level grants, leading to accountability and transparency. Providing accurate data has proven to be key in enforcement and helps drive decision making.

## **Recommendations**

After its Interim work, the task force was left with more questions than answers, but with a better understanding and a healthy appreciation for the complexity of the subject matter it had undertaken. With the experience of Illinois in mind as to the cost and time needed to develop more comprehensive government nonprofit contracting solutions, the task force recommends:

That the Finance and Administration Cabinet will coordinate an ongoing collaboration between state agencies and nonprofits who contract with the Commonwealth to explore the following:

- The state mirroring all or part of OMB Uniform Guidance regulations and standardizing definitions;
- Address gaps between state and federal indirect cost reimbursement rates;
- Streamline the Commonwealth's contracting and auditing processes; and
- Establish and implement training of the state contracting processes and the OMB Uniform Guidance for both Kentucky nonprofits and state agencies.



**Report of the 2016  
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  
Sen. Max Wise  
Rep. James Kay  
Rep. Jerry T. Miller  
Rep. Lewis Nicholls

Rep. Darryl T. Owens  
Rep. Jill York  
Vicki Fitch  
Prakash Maggan  
Janette Marson  
Mitchell Pearson  
Lori Saunders

Sen. Alice Forgy Kerr (nonvoting ex officio)  
Rep. John Short (nonvoting ex officio)

LRC Staff: John Buckner, Chip Smith, and Karen Brady

**Presented to the  
Legislative Research Commission  
and the  
2017 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**

The committee met four times during the Interim, with three meetings held outside of Frankfort.

#### **Kentucky State Parks, Arts, and Heritage**

At a meeting in Stanford, the deputy secretary of the Tourism, Arts and Heritage Cabinet discussed state parks. The state parks system generates \$889 million in economic activity. State parks are being refreshed with an \$18 million aesthetic/safety investment. There will be new opportunities for the park system due to the public-private partnership legislation that passed in the 2016 session.

The cabinet is working to get more arts and crafts into the state parks and to increase the use of Kentucky Proud foods. In June 2016, the Artisan Center at Berea saw its visitor counts surpass 3 million, and its retail sales have increased 8 percent over the past year. Other initiatives and programs include the Kentucky Heritage Council, which is charged with helping to identify, preserve, and protect the cultural resources of Kentucky. The Kentucky State Historic Tax Credit is designed to help preserve historic buildings, stimulate private investment, create jobs, revitalize communities, and create tourist attractions. The credit has given \$83 million, which has resulted in \$900 million in reinvestments throughout the state. The Kentucky Main Street program, which has been in place since 1979, has reported more than \$76 million in total investments to eligible downtown areas. There are 45 participating communities. The importance of cultural tourism was also emphasized. Eleven percent of Kentucky visitors stated that their primary reason of visiting Kentucky was to visit historic sites, and 14 percent included arts and culture as a significant attraction to Kentucky. The cabinet is working with the Center for African American Heritage to develop an African American Heritage Trail.

#### **Kentucky Tourism: Full Steam Ahead**

The commissioner of the Department of Travel and Tourism spoke on the importance of tourism in Kentucky as an engine of economic development. In 2015, tourism added \$13.7 billion to Kentucky's economy, a 5 percent growth over the previous year. Tourism and travel is the third largest revenue producing industry in Kentucky. Tourism-related businesses support more than 186,000 Kentucky jobs.

#### **Stanford, Kentucky**

Stanford citizens and entrepreneurs discussed their efforts to promote development in the community, investments in Stanford and the local community, and the preservation of older and



historic buildings. They discussed the importance of tax credits and the need for government to make it easier to start a small business.

## **Tourism Trails**

The committee traveled to Woodford Reserve Distillery to hear presentations about the development of tourism trails. The master distiller at Woodford Reserve testified about the history of the distillery, where distilling began in 1812. In the late 1980s, Owsley Brown had a vision to develop a new Kentucky bourbon that has its own home, and for this home to be open for tourism and visitors. This vision of a new brand led to present day Woodford Reserve. In 1996, the distillery visitor center opened. Experts agree that it was Brown's vision that provided the spark that returned bourbon to the popularity that it enjoys today. This was the foundation for the Kentucky Bourbon Trail.

According to the International Wine and Spirits Register, Woodford Reserve is the top selling super premium Kentucky bourbon, and is also in the top five super premium whiskeys in the world. The brand is continuing to grow, with Woodford Reserve Double Oaked as the recent entry into the ultra-premium whiskey category; it is now the top-selling ultra premium Kentucky bourbon.

## **Kentucky Bourbon Trail**

A representative for the Kentucky Distillers' Association (KDA) said that its mission is to passionately and responsibly unite, promote, protect, and elevate Kentucky's signature bourbon and distilled spirits industry. The association has 28 members.

Kentucky makes 95 percent of the world's bourbon. The most recent economic impact study shows Kentucky bourbon is a \$3 billion industry and that the workforce has doubled since 2012 with more than 15,000 employees. Bourbon production has increased 315 percent since 1999. Total bourbon inventory topped 6.7 million barrels in 2015, the highest amount since 1974.

Kentucky's spirits exports have grown by 99 percent since 2009. In 2015, Kentucky bourbon and Tennessee whiskey exports to more than 126 countries topped \$1 billion.

There are seven taxes on every bottle of spirits in Kentucky, with nearly 60 percent of the price of every bottle going to taxes.

The Kentucky Bourbon Trail was started in 1999. KDA created it to give visitors a firsthand, intimate, and educational experience into the art and science behind crafting the world's finest bourbon. KDA launched the Kentucky Bourbon Trail Craft Tour in 2012 to showcase the state's microdistilleries. There are 9 distilleries on the Kentucky Bourbon Trail and 11 on the Craft Tour.

The bourbon trails are experiencing record-breaking growth. Last year, the Kentucky Bourbon Trail had 762,009 visitors, and an additional 133,864 traveled to the Kentucky Bourbon Trail Craft Tour. Visitors came from all 50 states and more than 50 countries. Eighty-five percent

of visitors are from outside Kentucky, and 75 percent came to Kentucky just for the Kentucky Bourbon Trail experience.

The official sponsor for the Kentucky Bourbon Trail is Louisville, which also serves as the official gateway. Official trailheads are Lebanon, Lexington, Bardstown, and Shepherdsville.

The Kentucky Bourbon Trail partners with numerous events. One is the Bourbon Chase, an annual overnight relay race to Kentucky Bourbon Trail distilleries. This event has sold out in all of its 6 years. It includes more than 400 teams with an average of 12 participants per team. Another event is Bike the Kentucky Bourbon Trail, which provides scenic bike routes to all member distilleries. The Kentucky Bourbon Affair is a 6 day bourbon fantasy camp that provides participants with unique day events and rare insider access at KDA distilleries, and nightly events with distilleries in Louisville to showcase the city's bourbon culture and cuisine.

Other KDA sponsored projects are Kentucky Bourbon Tales, the Kentucky Bourbon Festival, the Stave & Thief Society, and an exhibit at the Frazier History Museum entitled Spirits of the Bluegrass: Prohibition and Kentucky.

The KDA representative discussed 2016 Senate Bill 11. SB 11 grants distilleries the ability to apply for a "nonquota type 3" (NQ3) license, which allows by the drink sales of all types of alcoholic beverages, raises the limit for bottle sales at distilleries from 3 liters to 4.5 liters per visitor, per day, and increases free samples of distilled spirits from 1 ounce per visitor to 1.75 ounces total per visitor. Eight distilleries have the NQ3 license, and many others are in the application process.

With the passage of Senate Bill 11 and the skyrocketing growth of the Kentucky Bourbon Trail, KDA created a task force to focus on strengthening the industry's commitment to responsibility.

## **Trail Towns**

A representative from the Tourism, Arts and Heritage Cabinet discussed the development of adventure tourism. The mission of Kentucky Adventure Tourism is to promote and develop opportunities for outdoor adventure throughout Kentucky by partnering with public and private entities to foster economic growth and physical health with increased access to Kentucky's vast natural resources.

The main reasons for the development of the Kentucky Trail Town program are economic impact, health benefits of outdoor recreation, and quality of life in the communities of trail towns. A trail town serves as a portal to a trail system, provides needed services to trail users, has knowledgeable staff, and reflects its culture. The process for becoming a trail town is a local, grassroots initiative. The mayor's office is the official applicant. There are 14 certified Kentucky Trail Towns, and more than 40 applications are being processed.

## **Kentucky Horse Park**

The committee traveled to the Kentucky Horse Park to meet jointly with the Interim Joint Committee on Economic Development and Tourism and the Interim Joint Committee on Labor and Industry. The executive director of the Kentucky Horse Park gave an overview and brief history of the park, which opened its gates to the public in 1978. The park has 77 full-time employees, it is a true working horse farm, and it has over 900,000 visitors annually. At 1,224 acres, the park is considered one of the best equestrian venues in the world. The park hosts more than 200 equestrian events a year, and it also serves as a tourist destination featuring attractions such as museums, horse-drawn tours, trail rides, the Hall of Champions, and 260 camping sites. The park offers concerts; it can serve as a wedding venue; and it hosts receptions, races, and other events.

## **Public-Private Partnership Legislation**

Representatives from the Revenue Cabinet, the Transportation Cabinet, and the Tourism, Arts and Humanities Cabinet testified on recently passed public-private partnership (P3) legislation in the commonwealth. The benefits of P3s are efficiency, private industry expertise, reduced risk and cost to taxpayers, and satisfying a public need or benefit. Any agency that uses P3 projects has the responsibility of ensuring that all qualifications are met.

Various criteria determine whether a P3 is the most advantageous method of awarding and administering a capital project or other contract. The first set of criteria are qualitative considerations, which include looking at risk allocation, timeliness and efficiency, benefits gained or not gained with a P3, public interest, and the urgency of the project.

Three regulations are related specifically to the Transportation Cabinet. One regards the procurement method for P3s, one addresses unsolicited proposals, and one concerns how it is decided that a P3 is the correct method to use for a project. Additional transportation qualitative considerations are whether the P3 provides additional options for financing, whether it complies with federal requirements, and the long term effect on toll rates and excess toll revenue.

P3 procurements will be conducted pursuant to competitive negotiation (KRS 45A.080). The Transportation Cabinet's process is slightly different.

Another aspect of P3 legislation is the ability for private industry to submit an unsolicited proposal. A valid unsolicited proposal must be independently generated, must be prepared without government involvement, and must include detail sufficient to determine benefits to an agency or local government.

## **Tourism, Arts and Humanities Advertising**

The commissioner of the Department of Travel and Tourism said the mission is to promote the commonwealth as a travel destination and to generate revenue and create jobs for Kentucky's economy. The primary target demographic for the department's advertising is women age 25 to 54 with a household income greater than \$75,000 and likely to have children. The department

targets residents of Kentucky's contiguous states, outdoor enthusiasts, weekend travelers, and experience-seekers.

Research shows that travelers consider Kentucky a drive-through state, so most marketing is directed toward weekend plans.

Kentucky's 225th birthday will be heavily promoted in 2017. All year the focus will be on honoring the past by connecting historical moments to contemporary events. 2017 will be a planning year toward an effort to develop and promote regional cuisine, which the cabinet has never done. This focus will involve input from tourism offices, restaurant owners, and food critics. Each region will try to incorporate what is locally grown. This effort will all lead up to "2018: The Year of Kentucky Food."

The commissioner emphasized that tourism is economic development. Since 2011, the economic impact of tourism has grown dramatically. Last year, tourists contributed more than \$13.7 billion to Kentucky's economy. Tourism is the third largest generator of revenue for the state.

### **Louisville Metro Short-Term Rental Regulations**

The planning director of the Louisville Metro government stated that, until August 1, 2016, short-term residential rentals were not legal in Louisville. The Louisville Metro Council requested that Planning and Design Services research and make recommendations for best practices regarding short-term rentals. This summer, Louisville Metro Council approved two ordinances relating to short-term rentals.

Louisville Metro defines a short-term rental as a rental of a residential dwelling unit for a period of less than 30 consecutive days. Short-term rentals take the following forms: hosted home sharing, unhosted home sharing, or dedicated short-term rental. Short-term rentals vary in rental frequencies.

The first ordinance approved in Louisville (Metro Code Ordinance) relates to nonzoning issues that pertain more to the business nature of hosts. The second ordinance (Land Development Code Ordinance) is the zoning ordinance. In regard to the remittance of taxes, the platform that a host uses can remit taxes on the host's behalf, but Louisville's ordinance makes it clear that the host is the one responsible for making sure it is done.

The ordinances makes it clear that they do not supersede lease agreements, association bylaws, covenants, deed restrictions, or any other agreements, laws, or regulations that prohibit subletting or use of a dwelling as a short term rental.

The Louisville Land Development Code Ordinance has two levels: the Permitted with Special Standards Requirement, which is approved administratively by the Planning Director, and the Conditional Use Permit Requirement, which is approved at a public hearing. The steps a host must follow require obtaining a Conditional Use Permit (if required), registering with the Revenue Commission, and registering with Develop Louisville. This process can be completed in a day.

## **Sales Tax and Transient Room Tax on Short Term Rentals**

A representative for the Revenue Cabinet stated that a tax is imposed on the rental of any room or accommodation, including short term rentals. The 6 percent sales tax applies to the total amount paid by a visitor. Sales tax law requires that the tax must be stated separately from the sales price.

On the issue of whether an online travel company is liable for the 6 percent state sales tax on service fees charged and retained as part of the online booking, the Franklin Circuit Court ruled in March 2016 that the entire amount received is subject to the tax. The local transient room tax differ from the statewide 6 percent sales tax in that the courts have ruled that the statutes apply only to the physical establishments that provide lodging to patrons on site.

A representative from the Kentucky Hotel and Lodging Association board asked that all places of lodging be regulated on a level playing field with regard to zoning, permits, inspections, safety standards, and collection of any and all taxes.



**Report of the 2016  
Workers' Compensation Task Force**

**Sen. Alice Forgy Kerr, Co-Chair  
Rep. Chris Harris, Co-Chair**

Rep. Adam Koenig  
Sen. Dennis Parrett  
Steve Barger  
Chris Bartley  
John Bolton  
Carl Breeding  
JD Chaney  
Ray Daniels  
Joe Dawahare  
Rick Fouts

Larry Gardner  
Ched Jennings  
Michelle Landers  
Bill Londrigan  
Jeff Roberts  
Melissa Stevens  
Tim Sturgill  
Lori Sullivan  
Tom Underwood  
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**Presented to the  
Legislative Research Commission  
and the  
2017 Regular Session of the  
Kentucky General Assembly**

## **Workers' Compensation Task Force**

House Concurrent Resolution 185 of the 2016 General Assembly created the Workers' Compensation Task Force in order to study Kentucky's workers' compensation system and develop recommendations for legislation to improve the delivery of workers' compensation benefits to injured workers.

### **Task Force Activity**

The 24 member task force, made up of legislators, citizens, and 2 ex officio members from the Labor Cabinet, met four times over a 4 month period to gather information. Members also answered four questionnaires about current issues in the workers' compensation system to determine whether a consensus could be reached.

### **History and Status of Workers' Compensation System**

The commissioner of the Department of Workers' Claims said that Kentucky's workers' compensation system has been in effect for 100 years. The system is an agreement between labor and industry in which the employee gains expediency and certainty of benefits but loses the right to claim pain and suffering; the employer gains certainty that a civil lawsuit will not be filed but loses the right to claim that the employee was negligent or otherwise contributed to the injury. Workers' compensation is state specific, which makes interstate comparisons difficult because indemnity benefits, medical benefits, length of benefits, definitions of injury, and other components of the system differ.

In Kentucky, any person or entity with one or more employees is an employer required to provide workers' compensation coverage through an insurance company or a self-insurance group. Exemptions include agriculture employees, some domestic workers in private homes, employees working for sustenance for a charitable or religious organization, those covered by federal law, and certain religious organizations. A particular problem involves subcontractor coverage in the construction industry; if they do not offer coverage, the primary contractor may be responsible.

There are six self-insurance groups, and 108 self-insured employers are certified through the Department of Workers' Claims. There are 213 licensed insurance companies providing workers' compensation to Kentucky employers. A competitive state fund, the Kentucky Employers Mutual Insurance Company (KEMI), was created in 1994.

In 1973, major statutory changes were made to include lifetime both permanent partial disability and permanent total disability. The 1973 modifications were in effect until 1980 changes increased weekly income benefits increased and permanent partial disability was limited to 425 weeks instead of lifetime. A 1987 task force altered the adjudicatory system, moving from a part-time workers' compensation board to an Administrative Law Judge system with an appellate body known as the Workers' Compensation Board. The 1994 General Assembly addressed permanent partial disability and added retraining incentive benefits to the benefits covering black lung disease. A 1996 special session addressed black lung disease and made permanent partial disability follow a more strict mathematical formula involving the American Medical Association



guidelines. Generally, Kentucky is still operating under the 1996 law, although small changes were made in 2000 and 2002. Therefore, the workers' compensation system in the state has been fairly stable for about 20 years.

The National Council on Compensation Insurance (NCCI) reviews Kentucky's workers' compensation system annually. NCCI receives data from every insurance carrier that writes workers' compensation insurance in Kentucky. It performs an annual loss cost filing that is presented to the Kentucky Department of Insurance for its approval. Insurance companies are given the opportunity to review the Department of Insurance's loss cost recommendations to determine whether they want to alter their premiums. On August 18, 2016, NCCI recommended a 5 percent reduction on the loss cost for industrial classes of employers, representing the 10th year in which a loss cost reduction has been recommended. From 2006 to 2016, the recommended total loss cost recommended reduction has been 53.5 percent. Premium reductions are not automatic because premiums are based on different factors and are employer specific.

NCCI reviews coal industry rate filings separately. The coal industry recommendation was a 25 percent increase on underground mining and an 18 percent increase on surface mining.

Medical expenses are 57 percent of every workers' compensation dollar compared to 68 percent 9 years ago. Within the last 10 years, pharmaceuticals have increased from 6 percent to 20 percent of the total medical dollar.

The court decision in *Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455 (Ky. 2011) was the most significant system change in recent years, finding that KRS 342.316, regarding the consensus process and panel process used to determine eligibility for black lung benefits, was unconstitutional under the Equal Protection clause.

Representatives of the Workers' Compensation Research Institute (WCRI) presented findings from the institute's 2016 CompScope benchmarking study and injured worker outcome study relating to Kentucky's workers' compensation system. WCRI is a not-for-profit public policy organization with an objective to research important public policy issues in workers' compensation systems. It does not make policy recommendations or take positions on issues. Its research is assured through external peer reviews. This was Kentucky's first year to be included in the study. The study includes 18 states, accounting for 70 percent of the workers' compensation benefits in the United States.

When compared to systems in other states, Kentucky's workers' compensation system is typical in overall payment per claims in claims with 7 days of lost time and overall expenses to deliver medical and indemnity costs to injured workers. Kentucky was lower than typical with regard to medical payments per claim. With regard to medical and legal expenses, Kentucky was higher than typical.

Over a 12 month period, the average medical payment per claim was 13 percent lower than the median state at \$10,655. Factors that affected medical payments per claim were prices paid for medical services, outpatient facility payments, and ambulatory surgery center facility payments. Prices paid for professional services were 14 percent lower than the median.

The study found that Kentucky's costs per claim increased by 2.3 percent between 2009 and 2014. The total costs per claim grew slightly slower than in the median study state.

The executive director of the Kentucky Center for Economic Policy testified about the financial condition of the workers' compensation insurance industry. The commercial workers' compensation insurance industry constitutes about three-fourths of the workers' compensation market in Kentucky with self-insured employers making up the remainder of the market. Of the commercial market, the quasi-public provider, KEMI holds about 31 percent of the commercial market with private for-profit insurers making up the balance. No private for-profit individual carrier holds more than 3.71 percent of the market.

Losses in the commercial market decreased by 22 percent between 2005 and 2010. Direct premiums also declined by 22 percent in that same period. In recent years, the environment for workers' compensation carriers has been favorable. KEMI's net income per year averaged \$11.2 million between 2004 and 2015. That income has allowed KEMI to build up a policyholder surplus that totaled \$196 million in 2015, an amount that exceeded its total underwriting expenses of \$171 million that year. KEMI was able to build the surplus while paying more than \$45 million in dividends to policyholders between 2010 and 2014. The commercial market has remained consistently profitable.

An improved underwriting environment for all writers of workers' compensation insurance in Kentucky has led to consistent profitability, premium reductions, and accumulation of net assets for the insurance industry.

An attorney who represents several insurance interests including NCCI and several workers' compensation carriers said that loss cost filings have decreased for 11 consecutive years, but the average indemnity claim severity has risen since 2000. The number of claims filed has decreased mainly because of increased safety efforts by employers and employees. Although the number of claims has decreased, the value of each claim has increased. The applicable state average weekly wage increased from \$571.42 in 2001 to \$835.04 in 2015. He said that courts have made it easier for cases to be reopened, causing unpredictability for employers.

The executive director of the Workers' Compensation Funding Commission gave an update on the Funding Commission and the 2017 assessment rates to the task force. The special fund is required to be fully funded by 2029, and the fund is on track to meet that deadline. The funding commission must annually set assessment rates on workers' compensation insurance premiums. When setting the rates, the board of directors was presented with calculations by an actuary that included an optimistic estimate and a point estimate. For 2017, the board of directors have adopted a 6.29 percent assessment on premiums for the special fund.

The funding commission researched the causes of the significant impact on the assessment rates of the coal workers' pneumoconiosis fund. One factor driving the increase was the assessment history. For 16 years the assessment rates ranged from 0 percent to 1 percent. There has been a decrease in coal employers, coal severance tonnage, and coal employees. As a result, there has been an increase in the number of claims and awards with an increase in the severity of the claims.

Other factors included investment returns, Environmental Protection Agency regulations, decrease in coal purchases, the Chinese influence in the coal market, and political impacts.

The commission has adopted an alternative optimistic rate for the coal workers' pneumoconiosis fund of 49.50 percent. This was the lowest rate that would meet the legal requirement for funding the coal workers' pneumoconiosis fund. The board also adopted an alternative optimistic assessment on coal tonnage of \$0.4174.

### **Practitioners' Perspective**

Practicing attorneys said that workers' compensation should be not a business and labor issue, but rather an issue that relates to Kentucky families and injured workers. The workers' compensation system in Kentucky is a social system that should provide timely indemnity and medical benefits. They are concerned that there are too few administrative law judges. A 35 percent shortage of judges has resulted in a larger workload on the judges, not allowing for cases to be carefully examined and possibly leading to more appeals.

One suggestion is to increase the age limit at which income benefits terminate. Currently, income benefits stop when workers reach Social Security retirement age. People are now working well past Social Security age. The attorneys said the age at which benefits can be terminated should be moved to 70 years, or a minimum of 5 years after a work related injury, which would cost the system less than 0.5 percent.

Attorney fees should be increased. There has not been an increase in attorneys' fees in 20 years, causing difficulty for parties as well as attorneys. Many claimants do not seek legal counsel; however, some complex issues warrant legal assistance. The maximum legal fee in workers' compensation cases is \$12,000.

Benefit levels should be addressed to eliminate inequities. An employee making \$10 per hour in a 40 hour work week would receive temporary total disability benefits of \$266.67 per week. A person with a 5 percent permanent impairment rating who is unable to return to work would receive \$27 per week. A person with a 0 percent to 5 percent impairment receives only 0.65 percent of the value of the impairment because of statutory factors. There is not always a correlation between impairment ratings and the degree of occupational disability or limitations of a claimant. The administrative law judge has no discretion to determine occupational disability based on the injury and its effect on the claimant.

Capping the average weekly wage unduly affects high wage earners, causing a loss of income. The cap on the average weekly wage should be increased to not adversely impact higher wage earners, and lump sum payments for small weekly awards should be allowed.

Temporary partial disability (TPD) benefits should be considered to help get injured workers back to work. If TPD benefits are paid, then workers would still get the salary for light duty. An offset provision could be created for wages paid during a period of temporary total disability.

There should be help for pro-se claimants in post award medical disputes. There is no attorney fee for medical fee disputes, and many may have complex issues. A university evaluator could handle complex medical issues, such as those involving opioids or pain medicines.

Some attorneys do not request utilization reviews or peer reviews because those requests must be paid by claimants. The average cost of an independent medical exam is between \$300 and \$3,500. Some claimants' attorneys will not handle these cases, while others limit new cases such as this to a few per month. Some of the disputes do not require a brief or a hearing. The average attorney fees for medical disputes can be approximately \$600 due to limited involvement.

The interest rate for past due benefits is 12 percent. This could be lowered to 6 percent or tied to the federal rate. The practitioners said the interest rate on past due benefits should be reduced from 12 percent to 6 percent. An employer could be relieved from the interest provision when a claim is delayed due to unreasonable failure of an employee to participate.

Between 33 percent and 40 percent of newly filed claims are filed by recently laid off workers. In *Hale v. CDR Operations, Inc.*, 474 S.W. 3d 129 (Ky. 2015), the court held that the last employer is responsible for benefits even if the cumulative trauma was the result of work for several employers. An attorney said that the system could be changed to provide for apportionment among employers or possibly require a minimum period of employment before holding the last employer responsible.

In *Consol of Kentucky, Inc. v. Goodgame*, 479 S.W. 3d 78 (Ky. 2015), the court found that the 2 year statute of limitations begins when a physician first advises the employee that a condition is work related. This is inconsistent with occupational disease cases such as black lung that have a 3 year statute of limitations. These differences could be addressed in statute.

Some doctors are doing drug urine screens at every visit instead of following Kentucky Board of Medical Licensure requirements. If a claim is determined to be compensable, medical records should be given to the employer within 15 or 30 days of the request instead of being delayed. There should be more restrictions on the use of Schedule II narcotics in workers' compensation claims. An employer should not be responsible for paying for narcotics after a claimant reaches maximum medical improvement unless a claimant proves by clear and convincing evidence that it is necessary.

Vocational rehabilitation should be used more frequently and encouraged by putting timelines on vocational rehabilitation requests at the beginning of the claim. Parties should be required to request vocational retraining within 45 days of the filing of the claim so the issue is litigated fully. If the administrative law judge orders a referral for evaluation in the award, then that administrative law judge could retain jurisdiction over the claim until the report is received. The 1 year limit on vocational benefits might need to be extended because of the difficulty of retraining injured workers.

The timeline for reopening a claim needs clarification to keep the reopening to 4 years from the original award and not from subsequent orders. The subrogation statute should include medical benefits and not just indemnity benefits.

## Former Administrative Law Judges' Perspective

A former chief administrative law judge (ALJ) testified about the increase of ALJs from 10 to the current number of 17. Injured workers deserve quick delivery of benefits, and employers deserve quick determinations of their liability. The system should remain unpartisan and professional as possible in an effort to attract the best judges. The case timeline after filing of the initial claim is 60 days for developing proof by the plaintiff, 30 days proof by a defendant, a rebuttal proof period, and a period for the ALJ to reach a decision. While periods can be extended, the total time for a claim is about 6 months, which is a short amount of time compared to other litigation systems.

Some task force members had mentioned a summary judgment system in workers' compensation to allow cases without merit to be dismissed. The former ALJ believes this system could pose due process issues. Every person is constitutionally entitled to due process in an administrative proceeding. Every application for benefits has to be accompanied by a medical report that says an injury occurred at work. Summary judgment in a workers compensation case would most likely be overturned by a higher court. Form 101 requires certain minimal information, and it could be returned to allow the filer to correct deficiencies.

The ALJ said that current law provides an opportunity for mediation of medical disputes as to the entitlement to benefits under the chapter. ALJs may participate in the mediation process but must not issue findings or orders as a result of the process unless the parties agree. There have been several attempts by the current and past commissioners to set up mediation programs, but most have been discontinued. ALJs conduct benefit review conferences that are similar to settlement conferences. The recommendation is to have one or two ALJs be trained as mediators if the current open ALJ positions are filled. They could handle complex workers' compensation cases that may involve multiple injuries, multiple employers, or extraterritorial jurisdiction.

Another former chief administrative law judge said the Kentucky system sets a national standard for its administration and efficiency. He did not recommend changes to the ALJ system, although he said that having 35 percent of the administrative law judge positions unfilled places a burden on the remaining ALJs, who are handling overloaded dockets. However, he felt that other areas of the workers' compensation system could be improved. The subrogation laws could be amended to eliminate any double recovery. The statute of limitations in cumulative trauma claims should be addressed. The reopening period should be increased based on the age of the claimant. The former ALJ preferred giving an ALJ discretion in determining occupational disability if the functional impairment under the AMA Guides was not adequate. The system should be changed to provide clarity when determining whether a worker may be eligible for a multiplier effect applied to benefits, and it should be clear that an employee who returns to work light duty cannot receive temporary total disability in addition to light duty wages.

There should be a nominal increase in attorney fees. Low fees have resulted in fewer attorneys practicing workers' compensation in Kentucky. The average fee for an injured worker's attorney is about \$5,000. To get the maximum \$12,000 fee, the injured employee's award must be at least \$145,000. Attorney fees might be increased to 20 percent of the first \$35,000, 15 percent

of the next \$20,000, and 5 percent of the remainder, with a cap of \$20,000. All fees should be approved by ALJs. There should be a system allowing for an attorney fee in medical disputes.

### **Medical Profession Perspective**

Three neurosurgeons who examine medical issues in workers' compensation shared their experiences. Most of the workers' compensation patients that they treat have trauma to the head, neck, or peripheral nerves. These patients have experienced injuries that involved lifting, bending, twisting, falling, hits to the head or neck, and motor vehicle accidents, and are eventually referred to a neurosurgeon after seeing other medical providers for a surgical evaluation.

Workers' compensation injuries differ from other injuries in several ways. First, causation must be addressed. The difficulty with causation is deciding whether the injury at work is the primary cause of the symptoms that have led to medical treatment or whether there is a preexisting issue. Another issue is the appropriateness of imaging such as X-rays, computerized tomography scans, and magnetic resonance imaging. After the patient reaches a certain age, all of these scans will show normal formations of abnormalities, but it must be determined whether the patient has an active or passive preexisting disease.

Another determination that a workers' compensation doctor must make is whether the treatment is appropriate and necessary. A patient may see practitioners such as a neurosurgeon, a primary care physician, a physical therapist, a chiropractor, a pain management specialist, or a yoga instructor. The question is whether seeing these different providers is reasonable. The doctor must decide whether surgery is necessary. Maximum medical improvement status is another way that workers' compensation patients differ from typical patients. According to the American Medical Association (AMA) guidelines, maximum medical improvement refers to the point at which an injured worker's medical condition has stabilized and further functional improvement is unlikely, despite continued medical treatment and physical rehabilitation.

After the maximum medical improvement rate is obtained, it is determined if there is an impairment rating. In Kentucky, doctors depend on a series of textbooks and guidelines provided by the AMA and then make a quantitative decision. States such as Indiana and Tennessee use other guidelines to make determinations. Doctors are also concerned with prescribing appropriate medications. Finally, doctors must determine whether the worker has any restrictions for a return to work.

Most medical denials are due to lack of documentation and eventually get resolved. Most workers' compensation patients receive good care and sometimes even too much care. It might help to have a list of selected medical providers who provide high quality medical care for workers' compensation patients.

The practitioners discussed the problem of the frequency of drug screenings for opioids. Screening are unnecessary at every appointment and should be given only at random if the patient is reliable.

Evidence-based treatment guidelines could be adopted. The Occupational Disability guidelines are based on medical evidence. There are other types of treatment guidelines developed by companies as well as state-specific treatment guidelines. A state can choose aspects of each set of treatment guidelines. There are appeals if a surgery is denied. Treatment guidelines could help to reduce unnecessary treatment and keep treatment consistent from doctor from doctor.

Another problem involves pain. Prescribing opioids should be based on medicine and set treatment guidelines. A study concluded that epidural steroid injections are inappropriate and do not give permanent relief. Pain management centers and others prescribing opioids are benefiting instead of the patients. Other forms of treatment that need treatment guidelines include lumbar spine fusions and sacroiliac joint fusions. All medical specialties must review treatment guidelines and see what combination of treatment guidelines would work best for Kentucky.

The Workers' Compensation Research Institute's research should also be used in reference to the system when discussing appropriate treatment guidelines. Its comparative research among various states can be helpful in making beneficial changes to the system. Treatment guidelines must have language indicating that a doctor is not subject to a malpractice lawsuit if treatment guidelines are followed. Also, there should be a medical director within the Department of Workers' Claims to assist in making determinations between competing medical opinions.

The system becomes adversarial when medical care exceeds necessary levels for example when a surgery is unnecessary. A medical director could help shift care to proper facilities. Bad medical care is worse than no medical care. There needs to be a way to determine where good medical care can be found and get the patients to those providers. Another problem to address is why many good doctors will not take workers' compensation patients.

Kentucky should adopt the sixth edition of the American Medical Association (AMA) guidelines. Kentucky workers' compensation law requires doctors to use the latest edition of the AMA Guides to determine an impairment rating for injured workers, but a conflicting statute requires use of the fifth edition. Unlike the fifth edition, the sixth edition uses the same methodology in each chapter. The sixth edition gives an impairment based upon the result of the surgery and not the procedure itself. Regarding the AMA Guides, the doctors were surprised that the fifth edition increased the impairment for cervical surgeries. Physicians are often not familiar with the AMA guidelines until they enter medical practice.

Another neurosurgeon offered a differing opinion of the use of treatment guidelines. Implementation of treatment guidelines would prevent him from providing proper care to the patient. Treatment guidelines do not usually allow for exceptions even when the guidelines do not apply to all situations. Legislatively recognized treatment guidelines would establish a presumption that the guidelines are correct. Exceptions to treatment guidelines must be acknowledged and doctors' opinions given discretion. This doctor would like a method to prescreen treatment decisions. Also, the doctor's ethical obligation is to the patient, not the treatment guideline. Not all cases fit guidelines. Surgical review should not be undertaken without peer to peer review with the requesting surgeon and the reviewing specialist. If guidelines are used, there should be a dedicated multidisciplinary panel of physicians to review the various treatment guidelines and reach a consensus as to which should be used in Kentucky.

## **Conclusion**

The final disposition of recommendations was pending as of the publication date of this report.



**Report of the 2016  
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. Linda Belcher  
Rep. Will Coursey  
Rep. Tommy Turner

LRC Staff: Donna Little, Emily Caudill, Sarah Amburgey, Emily Harkenrider, Karen Howard,  
Carrie Klaber, Betsy Cupp, and Ange Darnell

**Presented to the  
Legislative Research Commission  
and the  
2017 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 (LRC). The subcommittee meets monthly and reviews an average of 35 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 13, 2015, through November 15, 2016, executive branch agencies filed 43 emergency administrative regulations and 414 ordinary administrative regulations. Of the ordinary administrative regulations filed, 110 were new, 251 were amendments to existing administrative regulations, and 53 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, none were found deficient, 229 were amended to conform to KRS Chapter 13A and other appropriate statutes, and 129 were approved as submitted by the agency. Additionally, 25 administrative regulations were withdrawn by the promulgating agencies during this period. These totals do not include the 114 administrative regulations that were filed on or before November 15, 2016, and that are scheduled for review during the subcommittee's December 2016 and January 2017 meetings.

As part of its review duties, the Administrative Regulation Review Subcommittee also examined each administrative regulation that was proposed for repeal to determine whether each of them was still needed to comply with statutory requirements. Many times, provisions of repealed administrative regulations were now established in statute or in another administrative regulation, or the underlying statutory program was eliminated or changed. However, the regulatory review process led to a determination that eight administrative regulations slated for repeal were still required by statute and should not be repealed at this time. In total in 2016, 14 agencies repealed 99 administrative regulations. Additionally, there are 24 administrative

regulations, from five agencies, slated for repeal by repealer administrative regulations pending on the subcommittee's agendas for December 2016 and January 2017.

The subcommittee staff and the regulations compiler conducted formal and 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. The formal presentations were presented to 400 attendees from the executive branch, representing 85 agencies, and explained the changes to KRS Chapter 13A based on the passage and implementation of 2016 Senate Bill 129 (2016 Ky. Acts Ch. 82); provided an overview of the administrative regulations process; and explained the drafting, formatting, and other requirements of KRS Chapter 13A.

In July, LRC published the Kentucky Administrative Regulations Service, which contains all administrative regulations in effect as of June 15, 2016. The Kentucky Administrative Regulations Service was made available both in a bound 14-volume set and in a one-CD format, and included 4,895 administrative regulations.



**Report of the 2016  
Capital Planning Advisory Board**

**Sen. Stan Humphries, Co-Chair  
Rep. Terry Mills, Co-Chair**

Sen. Whitney Westerfield  
Rep. Tom Riner  
Scott Brinkman  
Charles Byers  
John Chilton  
Jane Driskell  
Laurie Dudgeon

Carole Henderson  
Stephen Knipper  
William Landrum  
Dan Markwell  
Mark R. Overstreet  
Kaelin Reed  
Katie Shepherd

LRC Staff: Shawn Bowen, Julia Wang, and Jennifer Luttrell

**Presented to the  
Legislative Research Commission  
and the  
2017 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 2016 Regular Session, the board has held two meetings. The July meeting convened at the Kentucky International Convention Center (KICC) in Louisville, and the September meeting took place at The 300 Building in Frankfort. The board received testimony regarding a variety of planned and ongoing capital construction projects.

### **Kentucky International Convention Center Renovation Project**

At the board's July meeting, members heard a presentation from KICC staff regarding its renovation project. The facility, built in 1977, is managed by the Kentucky State Fair Board. KICC hosts a variety of national and international conventions and trade shows. A 1999 renovation, at a cost of about \$71 million, doubled the facility's size to 200,000 square feet of contiguous exhibit space. In 2012, the Louisville Convention and Visitors Bureau commissioned Fentress Architects to study the expansion of the convention center. Fentress concluded that the convention center's problems included a confusing layout, poor signs, a small registration area, and outdated facilities, including the elevators.

The renovation and expansion project was authorized in House Bill 235, 2014-2016 Executive Budget, with \$56 million in bond funds and \$124 million derived from bond proceeds issued by the Louisville and Jefferson County Visitors and Convention Bureau. In December 2015, the Capital Projects and Bond Oversight Committee approved a \$27 million bond-funded appropriation increase, bringing the total project scope to \$207 million. The project will include creation of an additional 230,000 square feet of contiguous exhibit space with the latest technology, and it will include 10,000 additional square feet of ballroom space for a total of 40,000. The space will be able to be divided into five flexible separate rooms with color-changing fabric walls to accommodate many different themes. The project also includes upgrades to fire, heating/ventilation/air conditioning, and communications equipment, and exterior finishes including a white canopy over the entire building to reflect heat and save energy.

KICC will remain closed for the duration of the 2 year construction period; full-time staff will remain at KICC or relocate to the Kentucky Exposition Center. Eighteen previously scheduled events were diverted to the Kentucky Yum! Center, the Galt House, the Hyatt, the Kentucky Center for the Arts, the Palace Theatre, or the Marriott. Three organizations with events planned during the 2-year period delayed their planned conventions so they could be held when KICC reopens.

Fair Board and city officials note that the renovation and expansion of the convention center will help retain events that are outgrowing the current building and could potentially increase new business bookings by 25 percent. According to an article published May 12, 2015, in the Louisville Courier-Journal, “Louisville missed out on 20 conventions and 67,000 hotel room nights last fiscal year—an economic impact of \$57 million—because downtown convention facilities were inadequate.”

### **University of Kentucky—Facilities Renewal and Modernization Project**

The board received two updates on the Facilities Renewal and Modernization Project. The project was authorized in the 2016-2018 Executive Budget (\$60 million in agency bonds) and will encompass 594,000 square feet of renovations to certain older buildings on campus.

This pool project was submitted as part of the university’s capital plan in July 2015. At the time of submission, the university did not submit information regarding the buildings potentially included in the pool and the project scopes. The chairs met with university officials, and subsequently agreed to include the project in the 2016-2022 capital plan with the understanding that the proposed projects will be reported to the board upon finalization.

The university has finalized the projects and identified seven primary buildings and eight alternative buildings that may be included in the project. The primary buildings include Chemistry-Physics; Funkhouser; Grehan; McVey, Pence, and Kastle Hall; and Reynolds #1. The alternative buildings include the Engineering Annex, and Frazee, Lafferty, Memorial, Bowman, Bradley, Breckinridge, and Kinkead Hall. The university will follow up with the project scopes once they are finalized.

### **The 300 Building**

Finance and Administration Cabinet staff testified about The 300 Building and the long-range plan for housing state agencies in Frankfort.

The new state office building, known as The 300 Building, is located at 300 Sower Boulevard in Frankfort. The building replaces the 49-year-old Capital Plaza Tower (Tower). On 34 acres of state-owned property, construction started in March 2015 after the Finance and Administration Cabinet signed a build-to-suit agreement with CRM/DW Wilburn of Lexington. Under the terms of the agreement, the property was conveyed to CRM/DW Wilburn and is being leased to the commonwealth. The lease term is 35 years, and the annual payment is \$4.5 million. At the end of the lease term, ownership of the property will revert to the commonwealth. CRM/DW Wilburn is responsible for maintaining and managing the building.

The new building will house up to 1,500 employees and uses 255 gross square feet (gsf) per person rather than 310 gsf per person that was typically used in past Kentucky buildings. There are 1,457 employees housed in the building, including 1,339 employees from the Energy and Environment Cabinet, 95 from the Education and Workforce Development Cabinet, and 21 from the Commonwealth Office of Technology. Two Kentucky State Police employees are situated at the front entrance.

The Department for the Blind will manage the food service area and the vending machines. The food service area, which will seat 200 indoors and 45 outdoors, is under construction and should be ready in 2017.

### **Long Range Plan for Housing State Agencies**

The Finance and Administration Cabinet, Department for Facilities and Support Services, has continued to reduce the dependency on leased space in Franklin County and take advantage of consolidating agencies when possible. The intention of this long-range plan is not to reduce the amount of square feet under lease to zero, but to find an optimal ratio of leased to owned properties. Keeping leased properties does allow the commonwealth to both grow and contract without having unoccupied state-owned buildings. In its 2016-2022 capital plan, the Finance and Administration Cabinet submitted three projects that would further reduce its dependency on leased space:

- Renewal of the Capital Plaza Complex (\$82 million in long-term financing) is proposed in the first biennium of the 2016-2022 plan. Phase II will include demolition of the Capital Plaza Tower building, demolition of associated parking and plaza, and construction of an office building on the site. This plan is consistent with the overall cabinet strategy to shift from using leased space to state-owned space. Of note is that the current plan no longer includes the construction of a parking structure on the site. Excess capacity in the Transportation Cabinet Office Building parking garage will be used.
- Renewal of the Capital Plaza Complex (\$30 million from general fund) is requested in the 2020-2022 biennium. This is Phase III of the project and includes renovation of the civic center and the YMCA garage.
- Repair Site Infrastructure Capital Plaza Complex (\$2.5 million from general fund) is proposed and will address, but not be limited to, repair of the heating, cooling, plumbing, electrical, concrete, and plaza deck elements and systems required to continue to have a safe and reliable operation of the Capital Plaza Complex. If the Renewal of the Capital Plaza Complex project is authorized, this project would no longer be needed.

### **Capital Plaza Tower Building**

The Finance and Administration Cabinet is evaluating the future usage of the Tower, as it is not suitable for use in its current condition. Part of the façade is falling off the building, the mechanical systems are old, and the building contains asbestos and other hazardous materials. The cost to demolish the building is estimated at \$21 million, and the estimated cost to renovate the building is \$68 million. Finance Cabinet officials noted that the building's façade continues to grow weaker over time and eventually will turn to sand. They have placed shelters over all the doors to protect people from softball-size pieces of concrete that are falling off the building. There are approximately 200 people in the Tourism, Arts and Heritage Cabinet and the Department of Agriculture left in the Tower, and they should be relocated to other office space by December 2016. After the Tower is empty, the utilities will remain on to protect the building from mold and other deterioration.

A request for expressions of interest was issued by the cabinet in October 2015, and no responses were received. In July 2016, the cabinet issued a request for proposal (RFP) for sale or



lease of the property. The RFP received one response, but, after reviewing the overall project, the cabinet decided to cancel the solicitation.



**Report of the 2016  
Capital Projects and Bond Oversight Committee**

**Sen. Stan Humphries, Co-Chair  
Rep. Chris Harris, Co-Chair**

Sen. Julian Carroll  
Sen. Stan Humphries  
Sen. Christian McDaniel

Rep. Will Coursey  
Rep. Steven Rudy  
Rep. Jim Wayne

LRC Staff: Josh Nacey, Julia Wang, and Jenny Wells

**Presented to the  
Legislative Research Commission  
and the  
2017 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, 2015, and October 31, 2016. The committee met nine times in Frankfort in the Capitol Annex.

### Review of Unbudgeted Capital Projects

The committee approved nine 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
Finance and Administration Cabinet	Kentucky Center for the Arts (KCA) Chiller Replacement	\$2,757,800 Private/Agency/Maintenance Pool
Finance and Administration Cabinet	Department for Income Support Renovate Grauman Building	\$2,150,000 Federal/Maintenance Pool
University of Kentucky	The UK Confucius Institute Renovation of Lucille Little Library	\$1,700,000 Private
Tourism, Arts and Heritage Cabinet	Department of Aviation Capital City Airport Lighting System Replacement	\$1,925,000 Federal/Restricted
Department of Military Affairs	Construct Bay Addition Field Maintenance Shop No. 4-Bluegrass Army Depot	\$1,103,700 Federal
Department of Military Affairs	Construct By-Pass Road-Wendell H. Ford Regional Training Center (WHFRTC) Greenville	\$831,700 Federal
Department of Military Affairs	Medical Command Building Expansion (MEDCOM)-Boone National Guard Center Frankfort	\$1,079,600 Federal/Restricted

<b>Agency</b>	<b>Title Of Project</b>	<b>Scope/Fund Source</b>
Department of Military Affairs	Convert Army Aviation Support Facility (AASF) to Readiness Center-Boone National Guard Center Frankfort	\$1,254,400 Federal/Restricted

The committee approved three appropriation increases for unbudgeted capital projects during the period. The Finance and Administration Cabinet requested a \$73,000 increase for the Kentucky Educational Television-DTV Antenna Upgrades project. The revised project appropriation was \$763,200 and was necessary to fund the bid for the project. The Finance and Administration Cabinet requested a \$900,000 increase for Kentucky State University for the Enterprise Resource Planning Information Technology System project. The revised appropriation was \$3,500,000, of which \$705,000 was paid from federal funds and \$195,000 was paid from restricted funds. The Transportation Cabinet requested a \$25,100 increase for the Department of Highways. The revised appropriation was necessary to expand the Traffic Response and Incident Management Assisting the River City (TRIMARC) Building in Louisville due to increased workload related to the Louisville-Southern Ohio Bridges project. The revised appropriation was \$980,600 and was paid from federal funds.

### Review of Budgeted Capital Projects

**Requests for Appropriation Increases.** The committee considered executive agency requests for appropriation increases to address increased costs of construction materials or expand the appropriation of projects. The committee approved six agency requests to increase the appropriation 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 appropriation must be funded by federal or private funds.

### Appropriation Increases for Budgeted Projects Approved

<b>Agency</b>	<b>Project Title</b>	<b>Increase</b>	<b>Revised Project Appropriation</b>
University of Louisville	Expand/Renovate Student Activities Center	\$30,400,000	\$40,000,000
University of Louisville	Athletic Academic Support Facility	\$2,000,000	\$19,000,000
University of Kentucky	Renovate/Expand Student Center	\$26,250,000	\$201,250,000
Northern Kentucky University	Renovate Old Science/Construct Health Innovation Center	\$17,000,000	\$114,000,000
Transportation Cabinet	Construct C-1 Garage	\$450,900	\$5,450,900
Department of Military Affairs	Renovate Bay A of Building 3 Bluegrass Station	\$300,000	\$2,300,000

## 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, Western Kentucky University, and Eastern 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 reviewed and approved three economic development bond (EDB) grants during the reporting period. This pool is capitalized through the issuance of general fund-supported bonds and makes grants (forgivable loans) to local governments to leverage against private investments for economic development in the commonwealth. In return for assistance, companies are required to make commitments regarding job creation and/or job maintenance.

The City of Morgantown in Butler County received a grant for \$325,000 for the benefit of ARC Automotive to offset expenses of installing new equipment to produce airbag inflators in its existing 60,000 square feet of leased space. Shelby County Fiscal Court received a grant for \$500,000 for the benefit of Diageo Americas Supply Inc. to offset the costs associated with the construction of a new distillery and warehouses. Lexington-Fayette Urban County Government received a grant for \$450,000 for the benefit of Ashland Inc. to offset the costs associated with the construction of the company's new headquarters for its Valvoline unit. The total amount of the grants was \$1,275,000.

The committee also received a report of EDB job creation and job maintenance requirements for previously approved projects from the Cabinet for Economic Development. Of the nine grants made in prior fiscal years, no projects have completed the requirements, three projects have reported employment, no projects have withdrawn from the program, one project is still in the process of executing an agreement, and five projects with executed agreements have not yet reached a reporting date.

**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 24 loans totaling \$66,477,725.

**Fund A Loans Approved**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Southern Water & Sewer District	Floyd	\$235,000
City of Harrodsburg	Mercer	\$1,566,370
City of Morehead f/b/o Morehead Utility Plant Board	Rowan	\$1,300,000
City of Morehead f/b/o Morehead Utility Plant Board	Rowan	1,800,000
Regional Water Resource Agency	Daviess	\$7,282,500
Regional Water Resource Agency	Daviess	\$3,296,951
City of Hopkinsville f/b/o Hopkinsville Water Environmental Authority (HWEA)	Christian	\$1,500,000
City of New Haven	Nelson	\$251,000
City of Elizabethtown	Hardin	\$11,005,000
City of Prestonsburg	Floyd	\$2,033,200
City of Prestonsburg	Floyd	\$2,163,000
City of Prestonsburg f/b/o Prestonsburg Utility Commission	Floyd	\$1,952,900
City of Hodgenville	LaRue	\$970,000
City of Frankfort	Franklin	\$4,529,000
City of Prestonsburg f/b/o Prestonsburg Utility Commission	Floyd	\$600,000
Regional Water Agency	Daviess	\$200,000
City of Elkhorn City	Pike	\$560,000
City of Hawesville	Hancock	\$3,000,000
Farmdale Sanitation District	Franklin	\$300,000
City of Pineville f/b/o Pineville Utility Commission	Bell	\$533,485
Harrison County Sanitation District	Harrison	\$1,567,885
City of Marion	Crittenden	\$587,200
Lexington-Fayette Urban County Government (LFUCG)	Fayette	\$2,355,600
Lexington-Fayette Urban County Government (LFUCG)	Fayette	\$16,888,634

**Fund A Loan Increases.** The committee approved three loan increases totaling \$2,890,793.

**Fund A Loan Increases**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Lincoln County Sanitation District	Lincoln	\$2,365,793
City of Hazard	Perry	\$100,000
City of Morganfield	Union	\$425,000

**Fund B (Infrastructure Revolving Fund).** The committee approved seven loans totaling \$2,149,681.

**Fund B Loans Approved**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Perry County Fiscal Court	Perry	\$350,000

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
City of Morganfield	Union	\$260,000
City of Lewisport	Hancock	\$115,000
City of Elkhorn City	Pike	\$402,061
City of Lancaster	Garrard	\$406,868
City of Hustonville	Lincoln	\$75,639
City of Calvert City	Marshall	\$540,113

**Fund B Loan Increases.** The committee had no Fund B loan increases.

**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 one Fund C loan for the City of Mt. Washington in Bullitt County totaling \$3,437,500.

**Fund C Loan Increases.** The committee had no Fund C loan increases.

**Fund F (Federally Assisted Drinking Water Revolving Loan Fund).** The committee approved 10 loans totaling \$20,048,358.

#### **Fund F Loans Approved**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Cumberland Falls Highway Water District	Whitley	\$1,720,500
Western Pulaski County Water District	Pulaski	\$3,304,000
City of Hopkinsville f/b/o Hopkinsville Water Environment Authority	Christian	\$8,000,000
Southern Water and Sewer District	Floyd	\$550,000
City of Hodgenville	LaRue	\$962,000
City of Cynthiana	Harrison	\$1,056,658
City of Hodgenville	LaRue	\$593,000
City of Harrodsburg	Mercer	\$2,887,200
Cave Run Water Commission	Menifee	\$700,000
City of Evarts	Harlan	\$275,000

**Fund F Loan Increases.** The committee approved one Fund F loan increase for the Monroe County Water District in Monroe County totaling \$3,550,694.

**Coal/Non-Coal 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 four new bond issues for State Property and Buildings Commission.

**Bond Issues**

<b>Bond Issue</b>	<b>Use</b>	<b>Amount</b>
State Property and Buildings Commission Judicial Branch Agency Fund Revenue Bonds, Project No. 109	Permanent, tax-exempt, Agency Fund for Phase I of the Administrative Office of the Courts' E-Case and Docket Management System	\$20,075,000
State Property and Buildings Commission Agency Fund Revenue Refunding Bonds, Project 112	Permanent, tax-exempt, financing for construction of a Research Building at University of Kentucky and Refund Outstanding SPBC Bonds	\$679,035,000
State Property and Buildings Commission, Revenue Bonds Project 113	Refund outstanding Agency Fund Revenue Bonds	\$10,850,000
State Property and Buildings Commission, Revenue Bonds Project 114	Permanently finance Agency supported capital projects (Build Smart)	\$44,555,000

**Postsecondary Institutions.** The committee approved or reviewed 11 new bond issues for postsecondary institutions.

**Bond Issues**

<b>Bond Issue</b>	<b>Use</b>	<b>Amount</b>
Western Kentucky University General Receipts Refunding Bonds, 2015 Series A	Refund General Receipts Bonds, 2006 Series A	\$5,960,000
University of Kentucky General Receipts Bonds, 2016 Series A, Tax-Exempt, and Series B, Taxable	Renovate/Expand Student Center	\$155,780,000
Murray State University General Receipts Refunding Bonds, 2016 Series A	Refund General Receipts Bonds, 2007 A	\$8,310,000
Western Kentucky University General Receipts Refunding Bonds, 2016 Series A	Refund General Receipts Bonds, 2009 Series A	\$28,915,000
Morehead State University General Receipts Revenue Refunding Bonds, 2016 Series A	Refund General Receipts Refunding Bonds, 2007 Series A	\$3,280,000
Eastern Kentucky University General Receipts Revenue Refunding Bonds, 2016 Series A	Refund General Receipts Refunding Bonds, 2007 Series A	\$5,825,000

<b>Bond Issue</b>	<b>Use</b>	<b>Amount</b>
University of Louisville General Receipts Bonds, 2016 Series A; General Receipts Refunding Bonds, 2016 Series B; and General Receipts Refunding Bonds, 2016 Series C	Renovate Student Activities Center, Refunding Outstanding Bonds	\$89,425,000
Northern Kentucky University Receipts Refunding Bonds, 2016 Series A	Refund General Receipts Bonds, 2007 Series A	\$25,765,000
Western Kentucky University Receipts Bonds, 2016 Series B; and General Receipts Refunding Bonds, 2016 Series C	Finance Construct Parking Structure III; Advance General Receipts Bonds, 2009 Series A	\$38,815,000
Northern Kentucky University General Receipts Refunding Bonds, 2016 Series B	Refund General Receipts Bonds, 2008 Series A	\$15,225,000
Morehead State University General Receipts Bonds, 2016 Series B	Construct Food Service/Retail Parking	\$6,640,000

**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**

<b>Bond</b>	<b>County</b>	<b>Amount</b>
KEDFA Healthcare Facilities Revenue Bonds, Series 2015 (Christian Care Communities, Inc. Obligated Group)	Kenton	\$46,900,407
KEDFA Healthcare Facilities Revenue and Refunding Revenue Bonds, Series 2015 (Rosedale Green Project)	Kenton	\$48,700,000
KEDFA Healthcare Facilities Revenue and Revenue Refunding Bonds, Series 2016 (Baptist Life Communities Project)	various	\$64,420,000
KEDFA Healthcare Facilities Revenue Bonds, Series 2016 (Masonic Home Independent Living II, Inc. Project)	Jefferson	\$140,000,000

**Kentucky Housing Corporation.** The committee approved or reviewed 11 conduit bond issues totaling \$216,405,000.

#### **Conduit Bond Issues**

<b>Bond</b>	<b>County</b>	<b>Amount</b>
Kentucky Housing Corporation Conduit Multifamily Housing Revenue Bonds Series 2016 (Watterson Lakeview Apartments-Louisville)	Jefferson	\$9,000,000

Bond	County	Amount
Kentucky Housing Corporation Single Family Housing Revenue Bonds Series 2016 A	various	\$72,465,000
Kentucky Housing Corporation Tax-Exempt Multifamily Housing Revenue Bonds (Jackson House Apartments-Paducah)	McCracken	\$28,000,000
Kentucky Housing Tax-Exempt Multifamily Housing Revenue Bonds (Riverport Family Apartments-Louisville)	Jefferson	\$19,400,000
Kentucky Housing Corporation Tax-Exempt Multifamily Housing Revenue Bonds (Riverport Family Scholar House-Louisville)	Jefferson	\$7,300,000
Kentucky Housing Corporation Tax Exempt Multifamily Housing Revenue Bonds (Riverport Senior Apartments-Louisville)	Jefferson	\$8,700,000
Kentucky Housing Corporation Tax Exempt Multifamily Housing Revenue Bonds, Series 2016 (Parkway Plaza Apartments-Lexington)	Fayette	\$10,000,000
Kentucky Housing Corporation Tax Exempt Multifamily Housing Revenue Bonds, Series 2016 (Arlington Lofts Apartments-Lexington)	Fayette	\$6,000,000
Kentucky Housing Corporation Tax-Exempt Multifamily Housing Revenue Bonds, Series 2016 (Arcadia Apartments-Louisville)	Jefferson	\$20,000,000
Kentucky Housing Corporation Tax-Exempt Multifamily Housing Revenue Bonds, Series 2016 (Bristol Bluffs Apartments-Louisville)	Jefferson	\$22,540,000
Kentucky Housing Corporation Tax-Exempt Multifamily Housing Revenue Bonds, Series 2016 (Downing Place Apartments-Lexington)	Fayette	\$13,000,000

**Kentucky Higher Education Student Loan Corporation.** The committee approved one bond issue for the Kentucky Higher Education Student Loan Corporation (KHESLC). The \$89,500,000 in bond funds from the KHESLC Student Loan Asset-Backed Notes, Series 2016-1 was issued to finance certain rehabilitated Federal Family Education Loan Program loans originated by KHESLC and currently held on KHESLC’s balance sheet and warehouse lines.

**Kentucky Infrastructure Authority.** The committee reviewed one bond issue for the Kentucky Infrastructure Authority (KIA). The \$49,070,000 in bond funds from the Wastewater and Drinking Water Revolving Fund Program Revenue Refunding Bonds, Series 2016 A and F, was issued to partially advance a refund of KIA Series 2010 A and 2012 A Revolving Fund Revenue Bonds and pay associated costs of issuance.

**Kentucky Asset/Liability Commission Funding Notes.** The committee reviewed one funding note, which was for the Department of Transportation. The ALCo Project Notes, 2015 Federal Highway Trust Fund Grant Anticipation Revenue Vehicles (GARVEEs) Series A, totaled \$106,850,000 and provided permanent tax-exempt financing of \$120,500,000 of the \$180,000,000

of GARVEEs, and was authorized for the US-68/KY-80 Lake Barkley and Kentucky Lake Bridges project.

**Turnpike Authority of Kentucky.** The committee reviewed two bond issues for the Turnpike Authority of Kentucky (TAK). The first issue was for \$222,670,000 in bond funds from the TAK Economic Development Road Revenue Refunding Bonds (Revitalization Projects), 2016 Series A, and was issued to refund TAK's Economic Development Road Revenue Bonds (Revitalization Projects) 2008 Series A and 2009 Series A bonds. The second issue was for \$180,000,000 in bond funds from the Turnpike Authority of Kentucky Economic Development Road Revenue Refunding Bonds (Revitalization Projects), 2016 Series B and C, and was issued to finance up to \$125,000,000 of road fund-supported projects authorized by the 2010 Extraordinary Session of the General Assembly in House Bill 3 and to advance refund \$50,045,000 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 121 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 31 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 six lease modifications greater than \$50,000 for the Labor Cabinet (Department of Labor Claims); the University of Kentucky; the Cabinet for Health and Family Services (Department for Community Based Services); the Energy and Environment Cabinet; the Unified Prosecutorial System; and the Finance and Administration Cabinet (Energy and Environment Cabinet, Education and Workforce Cabinet, and the Department of Education). The total cost for these modifications was \$1,662,764.

The committee approved seven new leases for a total annual cost of \$3,062,095. These leases were for the Justice and Public Safety Cabinet (Department of Corrections); Public Protection and Labor Cabinet; University of Kentucky (2); Cabinet for Health and Family Services (Department of Community Based Services); Department of Education; and the Tourism, Arts, & Heritage Cabinet (Department of Parks).

The committee approved 12 lease renewals for the Cabinet for Health and Family Services (4), Unified Prosecutorial System (2), Council on Postsecondary Education, Kentucky Community and Technical College System, and the University of Kentucky (4).

The committee also approved two amortization of leasehold improvements for the Cabinet of Health and Family Services (Department of Community Based Services).

**Projects Not Approved by Roll Call Vote**

The committee did not approve four projects during the reporting period for the Finance and Administration Cabinet (Land Acquisitions, March 2016 meeting), University of Kentucky (Alpha Gamma Rho Fraternity project, May 2016 meeting), Kentucky Center for the Arts (KCA) (Chiller Replacement project, August 2016), and Western Kentucky University (Sports Medicine Complex project, September 2016).

The Cabinet for Finance and Administration’s decision was to proceed with the Land Acquisitions and KCA’s Chiller Replacement project. The University of Kentucky’s decision was to review other options for the Alpha Gamma Rho Fraternity project pursuant to the university’s authorized capital items in the 2016-2018 Executive Budget Session. Western Kentucky University issued a request for proposals ensuring it is compliant with Kentucky statutes and the Model Procurement Code. The Sports Medicine Complex project will be brought back to the committee for review.

**Projects Not Approved Due to Lack of Quorum and/or Cancellation of Regular Meeting**

The committee did not meet in January, February, and April 2016, which resulted in 11 new projects, appropriation increases, or bond issues not being approved by the committee. The Finance and Administration Cabinet and one university notified the committee that it would proceed with the projects and bond issues.

**Projects Not Approved Due to Lack of Meeting**

<b>Agency</b>	<b>Project</b>	<b>Amount</b>
Department of Corrections	Lease renewal – Fayette County, PR-3086	\$116,908,000
Finance and Administration Cabinet	Appropriation Increase – Environmental Protection – Maxey Flats project	\$1,230,000
Finance and Administration Cabinet	Appropriation Increase – Military Affairs – Renovate Butler Reserve Center	\$500,000
University of Kentucky	Transfer of Funds Restricted to Private – Renovate Academic/Administration Facility 1 – Nutter Football Training project	\$9,500,000
Kentucky Infrastructure Authority	Wastewater and Drinking Water Revolving Fund Program Revenue Refunding Bonds, Series 2016 A & F	\$49,070,000

<b>Agency</b>	<b>Project</b>	<b>Amount</b>
Kentucky Economic Development Finance Authority	Healthcare Facilities Revenue and Revenue Refunding Bonds, Series 2016 (Baptist Life Communities Project)	\$64,420,000
Eastern Kentucky University General Receipts Refunding Bonds, 20154 Series A	Refund EKV General Receipts Bonds, 2007 Series A	\$5,695,000
University of Louisville General Receipts Revenue and Revenue Refunding Bonds, 2016 Series A; University of Louisville General Receipts Refunding Bonds, 2016 Series B; University of Louisville General Receipts Refunding Bonds, 2016 Series C	Refund U of L General Receipts Build America Bonds, 2010 Series A; Refund U of L Consolidated Educational Buildings Revenue Bonds, 2005 Series P; Refund U of L General Receipts Bonds, 2007 & 2008 Series A	\$91,110,000
Morehead State University General Receipts Refunding Bonds, 2016 Series A	Refund MSU General Receipts Bonds, 2007 Series A	\$3,365,000
Western Kentucky University General Receipts Bonds, 2016 Series A	Refund WKU General Receipts Bonds, 2007 Series A	\$25,830,000
School Facilities Construction Commission	Bond Issues – Allen County (2), Barren County, Berea Independent, Franklin County, Hardin County, Henry County, Kenton County, Leslie County, Montgomery County, Nelson County, Scott County, and Spencer County	\$88,320,000 (total bond proceeds)

**Report of the 2016  
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: Joshua Collins, Christal White, and Maurya Allen

**Presented to the  
Legislative Research Commission  
and the  
2017 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 (EAARS) met five times during the Interim.

As part of its duties to provide oversight and direction to the OEA, the subcommittee received and accepted the OEA's 2015 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.

In 2015, the OEA received a total of 612 written complaints. Of these, 393 complaints were submitted anonymously. From 612 written complaints, 49 cases were opened: 32 investigative cases and 17 school-based decision making council cases. From the 393 anonymous complaints, OEA opened 31 cases. OEA closed 59 cases in 2015. In 11 cases, no violation of school law was found. In the other 48 cases the OEA found 80 violations of school law. Seventy cases remain pending.

The subcommittee received and accepted four OEA study reports. The first report, Special Education Update 2016, updates previous studies with more recent data; summarizes recent changes in legislation, policy, and monitoring; and examines trends in the identification of students with disabilities. It also provides analysis of special education personnel and finances, along with assessment results and graduation rates of students receiving special education.

A Review Of The Safe School Program examines how well local and state officials are carrying out their statutory duties related to school safety. The review also analyzes coordinated services; the adoption of assessments, codes, safety and emergency plans; and notification, reporting, and tracking of student offenses past and present.

The third report, Kentucky District Data Profiles School Year 2015, 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 fourth report, Overview Of Achievement Gaps In Kentucky Schools, provides a broad overview of achievement gaps in Kentucky. It provides national, state, school, and district data for specific student groups; analyzes factors that appear to influence gap reduction in Kentucky districts and schools; and reviews challenges that have a disproportionate impact on "gap group" students.



The commissioner of education and KDE staff presented the 2015-2016 test scores for the Unbridled Learning assessment and accountability system. Because of the federal Every Student Succeeds Act, this will likely be the last time public accountability will be reported under the system. Graduation and college and career readiness rates continue to improve. Achievement in mathematics increased. While gaps in achievement between various student groups have improved, gaps remain a critical issue. Going forward, the state will be developing a new assessment and accountability system to take advantage of the flexibility granted to states under the new federal law.

The subcommittee approved the proposed OEA 2017 Study Agenda.



**Report of the 2016  
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. Lewis Nicholls  
Rep. Diane St. Onge  
Rep. Brent Yonts

LRC Staff: Kim Eisner and Jarrod Schmidt

**Presented to the  
Legislative Research Commission  
and the  
2017 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 2016 beginning July 1, 2015, and ending June 30, 2016, the committee reviewed 827 personal service contracts and 646 amendments to personal service contracts. The committee also reviewed 262 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

During FY 2016, the committee reviewed 882 memoranda of agreement and 912 memoranda of agreement amendments. The committee also reviewed 871 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only.

During FY 2016, the committee reviewed 1,735 personal service contract items, 2,665 memoranda of agreement items, 29 film tax incentive agreements, and 1 film tax incentive amendment for a total of 4,430 items.

Since the start of FY 2017 through November 10, 2016, the committee has reviewed 914 personal service contracts and 257 amendments to personal service contracts. The committee has also reviewed 177 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

Since the start of FY 2017 through November 10, 2016, the committee has reviewed 925 memoranda of agreement and 140 memoranda of agreement amendments. The committee also reviewed 551 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only. In addition, the committee reviewed 18 film tax incentive agreements and 4 film tax incentive amendments.

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 2016  
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, Ben Payne, and Becky Lancaster

**Presented to the  
Legislative Research Commission  
and the  
2017 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, use of services, quality of services, and cost containment.

### **Committee Activity**

The Medicaid Oversight and Advisory Committee met three times through November 2016. It heard testimony on a wide variety of issues relating to the Medicaid program.

### **Medicaid Section 1115 Waiver Application Proposal—Kentucky Helping to Engage and Achieve Long Term Health (HEALTH)**

Representatives from the Cabinet for Health and Family Services presented an overview of the Kentucky HEALTH waiver. Medicaid enrollment has increased by approximately 500,000 people since Medicaid expansion occurred in January 2014. Kentucky's anticipated costs for the Medicaid expansion are \$1.2 billion from January 2017 to January 2021. After 2021, the costs may be an additional \$400 million. The HEALTH waiver uses a four pronged approach: to use a pilot program relating to Medicaid expansion, to address substance abuse disorder delivery system improvements, to focus on chronic disease management, and to implement managed care reform. The goal is to improve participants' health and help them to be responsible for their health coverage. One method used will be encouraging able-bodied adults to seek employment and transition to commercial health insurance coverage. The state will also seek a waiver of the Institutes for Mental Disease exclusion to allow institutional mental health care to be provided in larger facilities. The cabinet plans to improve disease prevention and management. The cabinet has also changed the medical loss ratios relating to the Medicaid contracts, resulting in potential savings.

### **Benefind Update**

Representatives from the Cabinet for Health and Family Services presented an overview and update on the Benefind system. Benefind was a second release of a five part plan, the first being Kynect. Benefind is a single system for economic stability programs such as the Supplemental Nutritional Assistance Program, the Kentucky Transitional Assistance Program, Medicaid, and Medicaid 1315(c) waivers. After several delays, Benefind was released in February 2015. The cabinet became aware of several issues, including incorrect notifications. The cabinet created a rapid response team for cases that required immediate action, and it cleared a backlog of 50,000 cases via Operation Field to Frankfort on April 25, 2015.

### **Update to the KY HEALTH Waiver**

Representatives from the Cabinet for Health and Family services discussed the comment period and extended comment period relating to the KY HEALTH waiver. More than 1,400 written and oral comments were received. Revisions to the waiver included keeping the current allergy testing requirements and private duty nursing. The cabinet also delayed the transition of



eliminating vision and dental benefits for 3 months, this results in time for rewards to accrue. My Rewards account benefits now include GED testing costs, and qualifying activities include caretaking responsibilities, passing the GED, completion of child preventive services, and incentives for keeping health care appointments. The cabinet also described those not included in the waiver, exempted the medically frail from copayments, and clarified that premiums are only necessary for the medically frail to receive a My Rewards account. Premiums are collected on a household basis.

### **Update on 1915(c) Home and Community Based Services Waivers**

Representatives from the Cabinet for Health and Family services testified about the six types of Home and Community-Based Services waivers operated in Kentucky, the Michelle P., the Supports for Community Living, the Acquired Brain Injury, Acquired Brain Injury-Long Term Care, the Model II, and the Home and Community Based. The representatives explained the process by which waiver slots become open, and how waiting lists are used in each of the waivers. A workgroup has begun meeting to assess the waivers and discuss possible changes. Additional short-term fixes have been made including potentially changing daily notes into monthly notes, streamlining the exceptional rate process, and establish a consistent process for recoupment audits.

### **Managed Care Organizations Profit Margins and Contracts**

Representatives for the Cabinet for Health and Family Services outlined changes made to the managed care organization (MCO) contracts. The Department for Medicaid spends approximately 70 percent of each dollar with MCOs. In the first quarter of state FY 2017, the changes to the contracts resulted in a 4 percent decrease in the total rate charge per member per month. The contracts increased the minimum medical loss ratio (MLR) to 90 percent from a previous MLR of 85 percent. DMS also required the use of Interqual or Milliman for the majority of the services provided, and it required executive management to be based in Kentucky. Additional changes include the use of a common prior authorization and appeal form. MCOs must now contract with at least one federally qualified health center and one rural health clinic in each region. Kentucky had the highest rate in the nation for Medicaid managed care profits in 2015.

### **Provider Billing Issues With Medicaid Managed Care Organizations**

Representatives of the Clark Regional Medical Center testified regarding community hospital and rural health clinic billing concerns. The accounts receivable with the managed care plans was approximately \$3.1 million, with some dating to 2014. The Department for Medicaid Services program credentialing process can take 6 to 9 months, but the provider effective date was previously made retroactive to the beginning of the provider's credentialing request after credentialing is complete. This would allow for patients to be seen and providers to receive payment. The MCOs have not followed this practice and do not begin credentialing until after the Department for Medicaid Services has completed its credentialing process. This results in differing provider effective dates and the possibility of 6 months of unpaid services.



**Report of the 2016  
Program Review and Investigations Committee**

**Sen. Danny Carroll, Co-Chair  
Rep. Terry Mills, Co-Chair**

Sen. Julie Raque Adams  
Sen. Tom Buford  
Sen. Perry B. Clark  
Sen. Dan “Malano” Seum  
Sen. Reginald Thomas  
Sen. Steve West  
Sen. Whitney Westerfield

Rep. Tim Couch  
Rep. David Meade  
Rep. Ruth Ann Palumbo  
Rep. Rick Rand  
Rep. Arnold Simpson  
Rep. Chuck Tackett  
Rep. Jeff Taylor

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  
2017 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 agencies.

### **Committee Activity**

The committee held seven meetings through November. It elected Senate and House co chairs, selected study topics for 2016, and adopted five reports.

According to the report *Motor Fuel Taxes And Reformulated Gasoline In Kentucky*, Kentucky's current motor fuels taxes per gallon are 26 cents for gasoline and 23 cents per gallon for diesel. The largest component is the motor fuel excise tax, currently 19.6 cents per gallon, which is set to 9 percent of the average wholesale price of gasoline (AWP). AWP is determined through quarterly surveys of fuel suppliers, but the value of AWP used to set the tax rate is limited by a statutory minimum and maximum. HB 299, enacted in 2015, allowed the excise tax rate to fall but not as much as it would have otherwise. Kentucky's gasoline tax is slightly more than 1 cent per gallon below the US average and less than 1 cent per gallon below the average of surrounding states. Kentucky's diesel tax is 5 cents per gallon below the US average and 3.55 cents per gallon below the surrounding states' average. Growth in state motor fuels tax revenues has slowed, partly because drivers are traveling fewer miles. To help meet ozone standards set by the Environmental Protection Agency, Kentucky requires that only reformulated gasoline, which is designed to produce fewer emissions, be sold in certain areas of the state. Research has found that ozone aggravates the functioning of the heart and lungs, especially for the elderly, children, and those with respiratory issues. Nationally, reformulated gasoline costs approximately 18 cents more per gallon than conventional gasoline. The additional cost in Kentucky is uncertain.

The report *Medical Care For Kentucky Inmates In Community Medical Facilities: Feasibility And Savings Are Uncertain* explained that as the cost of prison health care increases, states are considering ways to provide acute hospital and long-term care in community medical facilities so that federal Medicaid funds may assist with the cost. Prison systems have been using community hospitals and billing Medicaid, and some states have reduced staffing costs by arranging for secured units inside hospitals. There is no corresponding approach for long-term care for inmates. Parolees may also be eligible for Medicaid, but nursing facilities are reluctant to accept them. Nursing facilities dedicated to accepting parolees and other hard-to-place individuals are

being tried in other states, but none so far has received federal Medicaid funds. Technicalities of the medical parole process may prevent Medicaid funding, and medical parolees in an unsecured facility must be carefully screened to minimize the risk to public safety. Even with federal Medicaid funds, net savings to the state budget may be small or zero in the short term because many prison costs are fixed, few inmates qualify for nursing care, and even fewer qualify for medical parole.

The report *State Funding Of The Bluegrass Water Supply Commission* documents the state funding of the commission, which was formed in 2004 in an effort to establish a regional water supply network in Central Kentucky. Current commission member municipalities are Berea, Cynthiana, Frankfort, Georgetown, Lancaster, Lexington-Fayette County, Nicholasville, Paris, and Winchester. The Kentucky American Water Company was an unofficial partner in the regional water supply effort. The commission has received \$1.8 million in state appropriations: \$900,000 in 2005 and a second \$900,000 in 2006. The commission received a \$30,000 grant from the Kentucky River Authority in 2005. The commission borrowed \$165,000 each from the Kentucky League of Cities and Kentucky Association of Counties. Legislation enacted in 2009 allowed funds from the second \$900,000 appropriation to be used to retire the commission's debt. Because loan proceeds had been used as a source of local matching required for the first \$900,000 appropriation, in effect, state funds from one year were used to match state funds from another year. The commission had difficulty securing adequate capital funding for a large-scale water infrastructure project. Kentucky American ended up doing a water supply project, which was initially proposed in a 2004 feasibility study, on its own. The commission reconvened in 2010 to reevaluate its focus. It paid off two outstanding loans in 2012 and began allocating remaining funds from the second state appropriation to assist member municipalities with water infrastructure projects.

The report *Cost And Policy Considerations For State-Mandated Local Public Notices* has three recommendations related to recovery of the cost of delinquent tax advertising, statutory clarification, and requirements for Internet posting of notices. A public notice is any attempt by a government to inform the public about some action, event, or circumstance of which members of the public might want or need to know. Most public notices are advertised in newspapers. Local officials have expressed a preference to post notices on the Internet in order to reduce costs. Typical local jurisdictions reported spending less than 1 percent of their general government funds on mandated public notices, but the cost of Internet posting could be negligible. Newspapers and the Internet reach different groups of people. Newspapers provide an opportunity for people who are not looking for notices to see them. The Internet provides little chance that these media "browsers" will see notices. Websites must be managed carefully to meet requirements such as timely and constant availability for the required time period. Two Department of Revenue officials responded to the report: the executive director of the Office of Tax Policy and Regulation and the director of property valuation. Also responding were the executive director of the Kentucky Press Association, the deputy executive director of the Kentucky League of Cities, and the director of governmental relations of the Kentucky Association of Counties.

According to the report *State Inmates Housed In County Jails In Kentucky*, local jails housed more than 11,000 state inmates of the more than 24,000 total inmates in the Department of Corrections system as of September 1, 2016. The 76 jails housing state inmates were at 120 percent of their authorized capacity. The number of controlled intake inmates, inmates without security

classifications, doubled since August 2011. Inmates must be classified before they are eligible for programs or work assignments that provide sentence credits. The number of jails offering evidence-based programming has increased, but programming is still not commonly offered in most jails. Inmates transfer between jails frequently. Transfers may disrupt completion of programs, which may affect service credits and recidivism. The department spent \$128 million in FY 2016 to house state inmates in local jails, a 33 percent increase since FY 2011. In 2015 and 2016, overcrowding of inmate spaces was commonly cited in the department's inspection reports. The report has three recommendations related to programs offered, jail inspections, and regional jails. The commissioner and assistant director of the Department of Corrections and the executive director and president of the Kentucky Jailers' Association responded to the report.

The committee heard testimony on four topics unrelated to reports. The director of the Kentucky Educational Collaborative for State Agency Children, a Rowan County school administrator, a representative of the Lake Cumberland Youth Development Center, the president of the Children's Alliance, and the executive director of Kentucky Youth Advocates made presentations on A6 Schools.

Three officials from the Cabinet for Health and Family Services testified about Benefind: the deputy secretary, the commissioner of the Department for Community Based Services, and the executive director of the Office of Administration and Technology Services. Also testifying were a principal of Deloitte, the executive director of Kentucky Voices for Health, and a representative of the Kentucky Equal Justice Center.

A private citizen, the Department of Revenue's executive director for Tax Policy and Regulatory Matters, and the manager of the department's Office of Sales and Excise Taxes testified about the state inheritance tax.

The executive director, a branch manager, and a program coordinator from the Kentucky Office of Drug Control Policy; the current and a retired state D.A.R.E. coordinator; and the branch manager of the Behavioral Health Prevention and Promotion Branch testified on drug abuse prevention programs in K-12 schools

For the December meeting, the committee is scheduled to select study topics for 2017, and consider a staff report on the External Child Fatality and Near Fatality Review Panel and a staff report on property taxation of agricultural property. Staff will also update the committee on the ongoing study of foster care.

**Report of the 2016  
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  
John Chilton  
Mitchel Denham

Timothy Fyffe  
Mike Harmon  
James M. “Mac” Jefferson  
Sharon Mattingly  
Alison Stemler

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes

**Presented to the  
Legislative Research Commission  
and the  
2017 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 state-administered retirement systems.

### **Committee Activity**

The board held nine meetings from January through November 2016 and heard testimony on a wide range of topics relating to the public pension systems.

### **Kentucky Retirement Systems Update on Agency Participation Issues/Contract Employees**

The executive director of Kentucky Retirement Systems (KRS) discussed the agency's participation and contract employee issues facing KRS. The KRS Board of Trustees reduced the payroll growth assumption from 4.5 percent to 4.0 percent. One reason proposed for the lack of payroll growth was that some agencies participating in the systems avoided making contributions for employees by hiring independent contractors or by using other methods. KRS collected data covering the last 4 fiscal years (2012-2015) that shows both member number trends and salary trends. The data shows that only the Kentucky Employees Retirement System (KERS) nonhazardous plan experienced a decrease in the number of members for whom contributions were being reported for this period. Over the 4 year period, the numbers dropped by 4,462 members, nearly all of which can be attributed to decreases from three agency classes: regional mental health units, health departments, and universities. Only the state plans showed a decrease in total payrolls. The KERS nonhazardous plan decreased by approximately \$150 million, and a majority of that is attributable to the same three classes. In the KERS hazardous plan, there was a decrease of just more than \$1 million; in the State Police Retirement System (SPRS), there was a decrease of approximately \$4 million.

The executive director said the various retirement systems have discussed presenting their returns as net-of-fees, which KRS already does. KRS had reached out to the Kentucky Teachers' Retirement System (KTRS), but no agreement had been reached. It was the understanding of the systems that Judicial Form Retirement System (JFRS) would follow the lead of the other two larger systems.

### **Investment Expense Disclosure and Trends**

Legislative Research Commission (LRC) staff provided a review of trends and discussed challenges that pension funds are facing with regard to reporting investment expenses. The topic has been a point of discussion across the industry and demand for more transparency has raised attention. Many states, including Kentucky, have introduced legislation in an attempt to create more consistency and disclosure. Staff's presentation provided an introduction to the topic, a review of fee structures and ways plans are reporting those expenses, and a comparison of peers across the nation.



Staff began by discussing the lack of clear reporting standards within the industry, specifically as it relates to alternative asset strategies. Current Governmental Accounting Standards Board (GASB) language has created ambiguity, which has led to a wide variety of reporting within the industry and makes relative comparisons across plans and states very difficult. Staff introduced a LRC Peer group, which included 35 state employee pension funds, and highlighted a very wide range of reporting currently experienced. While a plan asset allocation or use of internal management could drive total expenses, much of the dispersion was being driven by use of alternative assets and how plans chose to report those expenses.

Given the impact of alternative investments, staff provided a review of fee structures often used in the industry, including directly invoiced management fees, profit sharing or carried interest arrangements, and other expenses, which might include fund of fund fees. Staff noted the complexity of the agreements and how reporting is not always complete or easily understood. Staff included a summary of terms often found in private equity, hedge funds, or real estate investments and provided examples of how the investments operate and expenses are incurred. Staff reviewed three primary categories of reporting seen in the industry, identifying a few peers to provide examples of the variety of reporting and disclosure.

Staff discussed the benefits and difficulties of standardizing the reporting process and called attention to a recently released fee reporting template created by the Institutional Limited Partners Association (ILPA). Capturing the total cost of an investment would remove concerns over transparency and would allow for more effective performance review, but the process is very manual and time consuming, and it currently places the burden on plan sponsors to collect.

### **KRS Update on HB 62 Implementation and Process**

The executive director and the general counsel for KRS discussed the implementation of HB 62 (RS 2015) and the administrative regulation that creates the process for the voluntary withdrawal of certain types of entities from KRS.

HB 62 (codified in KRS 61.522) is the voluntary or involuntary withdrawal mechanism for KERS and the County Employees Retirement System (CERS). HB 62 created a voluntary and involuntary cessation mechanism that requires employers to pay the full actuarial cost of withdrawal and requires KRS to promulgate an administrative regulation to assist in the implementation of the voluntary and involuntary withdrawal process. KRS has promulgated a regulation to address the voluntary withdrawal process and is working on an involuntary removal process as provided by HB 62.

The executive director explained that under the statute only nonstock/nonprofit corporations created under Chapter 273 can use this voluntary withdrawal process. Other classes of employers, such as P1 state agencies, cities, and counties, are not permitted to voluntarily withdraw under KRS 61.522.

## Public Pension Funding Policies Overview

LRC staff discussed how the Public Pension Oversight Board (PPOB) has been studying how other states develop pension funding policies. GASB 25 and 27 became a funding standard for public pension plans across the country. GASB 67 and 68 standards have replaced GASB 25 and 27 and effectively divorced funding standards from accounting/reporting standards. This change resulted in the need for pension funds to develop a funding policy. In Kentucky, both KRS and KTRS have reviewed and developed written funding policies, KRS in 2013 and KTRS in 2014. Recent legislative funding proposals, such as HB 1 (RS 2016), have proposed adding statutory language to address the level of the KTRS pension's actuarially required contribution (ARC) over a longer period. HB 443 (RS 2016) addresses JFRS' request for a different amortization policy for their unfunded liability from what is currently provided in statute.

Pension fund management has various policies that will be put into play, such as an investment policy, a benefits policy, a governance policy, and a funding policy. The funding policy is a systematic approach for telling how much should be contributed and when. In general, pension funding is shown by the formula of  $C + I = B + E$  (contributions + investments = benefits + expenses), meaning what goes into the fund must ultimately equal what goes out of the fund. Pension funds hire actuaries to help determine what  $C$  should be and in turn what the employer contribution rate should be. Some of the common goals on developing funding policies include: benefit security, meaning will the money be there when the benefits come due; contribution stability, or achieving a contribution rate that does not have a lot of variance over the course of time; and intergenerational equity, meaning today's retirement costs are not pushed off to future generations.

Many components go into the actuarial valuation process, such as assumptions and methods, with some prescribed by statute and some by policy; benefits and funding provisions, which are prescribed by statute, regulation, and board policy; and the actuarial experience of the plan over the course of time against the assumptions. The output of the valuation includes the funding level, unfunded liabilities, and recommended employer contribution rates. Experience studies, actuarial audits, and asset/liability modeling studies are data reports that help drive these values into the pension fund.

Funding policy decisions include the actuarial cost method, assumptions such as investment return and payroll growth, an asset valuation method, and an amortization policy. Out of that funding policy there will be an ARC calculation that generally includes the normal cost plus an amortized payment on an unfunded liability. The normal cost is the ongoing cost of the plan assuming all assumptions play out as anticipated. However, assumptions do not always play out, resulting in an unfunded liability and amortized payment. Actuaries tend to project out liabilities over the course of time, using assumptions such as retirement rates and life expectancy. These future liabilities will be discounted to today's dollars using an assumed rate of return. Every year those liabilities grow by 7.5 percent (for most Kentucky pension funds).

LRC staff explained that the actuarial cost method allocates cost to different time periods, and between the actuarial liability and the normal cost, it defines what the normal cost will be. There are two common methods: entry age normal cost and projected unit credit. The entry age

normal cost method typically front loads cost, whereas the projected unit credit typically back loads costs. For these pension funds, KRS uses the entry age normal cost method by statute. KTRS uses entry age normal cost by board policy, but it used the projected unit credit prior to FY 2011. JFRS uses entry age normal cost, but statute allows either one. Forty-five of the 50 state employee plans use the entry age normal cost method, and GASB 67 requires entry age normal cost methods for the computation of accounting liabilities.

The asset valuation method is a process to smooth investment gains and losses to reduce contribution volatility, and most pension funds use a 5 year smoothing method to smooth those gains and losses. Once losses are recognized, it becomes part of the unfunded liability calculation. KRS, KTRS and JFRS use a 5 year smoothing method via policy.

One of the key assumptions in the investment return assumption is that liabilities are discounted back to today's dollars using the investment return assumption, and every year liabilities grow by that assumed rate of return. If there is a higher assumed rate of return, then it is going to produce lower unfunded liabilities today. If the investment return assumption is lower, then the unfunded liabilities are going to increase. KRS has a 7.5 percent investment return assumption that is changing in the 2016 valuation to 6.75 percent for the KERS and SPRS pension funds. The lower rate was assumed in the budget calculations, but there has been movement of the rate over the course of time. It moved from 8.25 percent to 7.75 percent in 2006 and from 7.75 percent to 7.5 percent in the 2015 valuation and, moving forward with the KERS and SPRS pension funds, it is going to go down as well. KTRS is at 7.5 percent. JFRS is at 7 percent and changed from 7.5 percent to 7 percent in 2009.

LRC staff explained that the amortization policy becomes a critical piece of how pension funding rates are determined. A term of 30 years is probably most common, but some are shorter. Some offer a layered approach where there is a 30-year amortization on some components and, if there is a new unfunded liability source, it will be financed over a new amortization period. There is also the difference between a closed and open period. A closed period would be much like a home mortgage and at some point the liability is paid off. With an open period, the unfunded liability is amortized every single year and may never get to a point where it is paid off at all.

The amortization method is the liability amortized using a level percent or level dollar method. Most pension funds are on a level percent of payroll method. Layering or separate bases is a common practice. Under one approach, legacy liabilities, which is what has happened in the past, are amortized over a certain time period, and then, if there are other changes to the unfunded liability, they are amortized over separate periods. KRS is on a 30-year closed period, and that period started in 2013. This arrangement is required by statute for KRS except for whether the period is closed or open and the payroll growth assumption, which is determined in the experience study by the KRS board in consultation with its actuary. The period has recently been reset twice: the KRS board reset it in 2007, and the General Assembly reset it in SB 2 (RS 2013). For KRS, the payroll growth assumption initially was 5 percent; it has decreased twice over the course of time and is now 4 percent. KTRS also has a 30-year closed period on legacy liabilities and is amortizing new sources of unfunded liability over a 20-year closed period. KTRS uses a level percent of pay method with a 4 percent pay growth. Generally, this is all established by board policy. An interesting distinction is that KRS has statutory requirements regarding amortization of

the unfunded liability, while KTRS' is set in board policy. JFRS has a statutory policy that is different from almost any pension fund that was seen in the review of other states. JFRS pays the interest, which is 7 percent, plus 1 percent of the unfunded liability. One of the concerns in the actuarial community is negative amortization, which occurs when the amortized unfunded liability payment is less than the interest on the liability.

LRC staff discussed how sensitive the payroll growth assumption is in the actuarial valuation. KRS has implemented a sensitivity analysis that is required for all systems going forward by HB 238. If the payroll growth assumption were decreased from 4 percent to 2 percent, the pension contribution alone would grow by 9.07 percent of pay. The retirement systems also did an analysis on level percent of pay versus level dollar. For all fund sources in 2018, the projected ARC is anticipated to produce \$823 million in contributions. Using the level dollar method, that would grow to \$1.2 billion, a difference just shy of \$400 million in additional contributions if payroll growth were taken out of the equation.

LRC staff discussed funding policy issues with the individual state funds. The KERS nonhazardous pension fund has a low funding level and cash flow issues impacted in part by payroll. Payroll over time is decreasing, in part because of a lack of pay raises but also because of a decline in participation of community mental health centers, health departments, and some higher education agencies. There may be question of what the ARC+ should be, or should the ARC simply be a higher value to address cash flow considerations, which can be achieved through a funding policy. KTRS, which has a fixed employer rate by statute and receives some supplemental contributions but then produces a valuation that does describe an ARC, has no clear long term funding plan in statute. As a result, there is a huge variance between the GASB liabilities at \$24.4 billion and funding liabilities at \$13.9 billion. Relative to JFRS' current statutory process of paying interest plus 1 percent of the unfunded liability, a bill was introduced this year that was requested by JFRS to move to a 25 year closed period on the legacy liability and use a 20-, 15-, and 10-year amortization period on future liability changes depending on whether it was a legislative change, assumption change, or future gain in loss. JFRS also wants to move to a level dollar amortization method.

### **Inviolable Contract Exceptions**

KRS staff spoke about inviolable contract language and said that it is a legal concept that was a part of Kentucky law long before it was put into the pension statutes. The inviolable contract was recognized between the commonwealth and various parties under various circumstances going back to the turn of the century, but the language that is in KRS 61.692, which is the KERS statute, states that the benefits promised to a member constituted a inviolable contract of the commonwealth and shall not be subject to reduction or impairment by alteration, amendment, or repeal. The language establishing the inviolable contract for KERS, CERS, and SPRS is identical in all three statutes.

Beginning January 1, 2014, pension benefits for new hires are no longer protected by the inviolable contract. The statute provides the benefits that are earned up to the time the changes made are protected but not thereafter. The cost of living adjustment (COLA) statute, KRS 61.691, is not protected by the inviolable contract and may be changed. In HB 1 (SS 2008) and SB 2 (RS

2013), the General Assembly made substantial changes, and there would be no expectations in the long term for a COLA award.

KRS staff stated that the health insurance benefit that is promised in the statute beginning July 1, 2003, is not protected by the inviolable contract, and since that time significant changes have been made in terms of the period of time of service before it is earned.

KTRS staff stated that the inviolable contract had wording similar to that of the KRS statute. In 2007, then-Governor Ernie Fletcher established a Blue Ribbon Commission on Public Retirement Systems, and one of the areas that it studied in the operations of the public retirement systems was the inviolable contract. To assist in this task, the services of two out of state law firms, one from Florida and one from California, were enlisted. The report's legal opinion states that, when analyzing the state's inviolable contract, there is a distinction between pension benefits and medical benefits. In regard to pension benefits, the existence of an inviolable contract seems clear. Further, in the report, the Kentucky statement of intent in regard to the inviolable contract is one of the strongest among the states. There are exceptions because, within the statutes that are covered by the inviolable contract, those statutes provide exceptions.

- Retirement allowances calculated on average of member's three highest salaries if member is at least 55 and has at least 27 years. (KRS 161.220(9))
- Postretirement reemployment provisions. (KRS 161.605(1)-(8))
- Retirement benefits for members providing part-time or substitute teaching services. (KRS 161.612)
- 3 percent retirement factor for qualifying years exceeding 30. (KRS 161.620(1)(c) and (d)2)
- Retiree health insurance—guaranteed access only to group coverage. (KRS 161.675)
- Sick-leave payments used for retirement calculation purposes. (KRS 161.155(10))

KTRS staff explained the maximum savings from three benefits that could potentially be reduced or eliminated despite the inviolable contract. Eliminating the ability to have the retirement allowance calculated on the three high salaries opposed to the five high salaries for those age 55 with 27 years of service saves a percentage of pay of about 0.65 percent, which is a savings of \$24 million. Removing the 3.0 percent formula multiplier for service beyond 30 years saves a percentage of pay of about 0.25 percent, which is about \$9 million. For the sick leave treatment (shift from salary credit to service credit), the system saves a percentage of pay of about 0.66 percent, which would save \$24 million. These are labeled maximum savings because there are potential consequences of these benefits' being removed July 1, 2017. Essentially, the concern is that with one in four teachers eligible to retire, if the benefit suddenly goes away, a lot of people will retire July 1, 2017, who would not otherwise have retired. Having teachers alter their retirement pattern and retire years earlier would mean paying out pensions and medical insurance years earlier, which would have a huge actuarial impact. The work group's actuary last advised that some of these benefits should be removed in a thoughtful way.

JFRS staff discussed that the inviolable contract extends to judges and legislators. The exceptions are

- judges and legislators electing membership in Judicial Retirement Plan (JRP) or Legislators' Retirement Plan (LRP) after January 1, 2014;

- cost of living adjustments;
- LRP members, or former members, convicted of a felony relating to legislative duties;
- JRP members removed for cause; and
- health benefits for legislators, which are not subject to the inviolable contract, except perhaps for members taking office between 1980 and 2005.

### **KRS Pension Administration Benchmarking Report**

CEM Benchmarking Inc. staff presented its pension administration study, which was performed for KRS to evaluate cost, efficiency, and service levels of the systems. The analysis included two kinds of comparisons, with the main comparison to a specific peer group and the secondary comparison to all funds that have participated in CEM's benchmarking service.

For each of the funds evaluated, the total pension administration cost was \$77 per active member and annuitant, which was \$35 below the peer average of \$112 and \$7 below the peer median of \$84. Total pension administration cost was \$19.5 million, which excludes the fully attributed cost of administering health care, and optional and third-party administered benefits of \$11.5 million. The fully attributed costs were excluded because only a small number of systems administer their own health care, with great variation between systems. The reasons that the total cost was \$35 below the peer average included

- economies of scale advantage;
- lower transactions per member (workloads);
- lower transactions per full-time equivalent (FTE) (productivity);
- lower costs per FTE for salaries and benefits, building and utilities, human resources and information technology (IT) desktop;
- lower third-party and other costs in front-office activities; and
- paying more/less for back-office activities including
- governance and financial control,
- major projects,
- IT strategy, database, and applications (excluding major projects), and
- actuarial, legal, audit, and other support services.

For service levels, KRS' total service score was 63, which is below the peer median of 80. The important thing to consider regarding the service score is that it incorporates only items that can actually be measured—for example, how fast things are done, what is available, and what choices there are. CEM will make suggestions on how to raise the service score, but the suggestions will be in the context of the fund.

The key service measures for which KRS is similar to peers are

- website,
- 1-on-1 counseling and member presentations:
  - percentage of active membership that attended a 1-on-1 counseling session and
  - percentage of active membership that attended a presentation,
- pension inceptions, and
- member statements.

Key service measures for which KRS differed with peers are

- member contacts—total call wait time including time negotiating auto attendants, etc. KRS call wait time is 6 minutes, 19 seconds, and the peer average is 2 minutes, 10 seconds;
- menu layers;
- written estimates—turnaround time for KRS is 180 days, but turnaround time for peers is 20 days;
- purchases; and
- 1-on-1 counseling:
  - percentage of membership counseled at 1-on-1 sessions in the field and
  - wait time for prescheduled in-house counseling sessions.

KRS' complexity is one of the highest in the peer group, and it is driven by pension payment options, customization choices, and multiple plan types.

## **Senate Bill 2 Analysis and Trends**

LRC provided a review of pension transparency proposals made during the 2016 Regular Session, discussing key aspects of the proposed legislation and changes that would occur in the Commonwealth of Kentucky, as well as a review of trends among peers across the nation. Key topics discussed included use of the state's procurement code, investment expense reporting requirements, disclosure of contracts, and board composition.

The use and current exemptions of the Model Procurement Code were topics of discussion during the regular session and were included in proposed legislation. Staff provided review of state administered plans' use of the Model Procurement Code and a history of statutory changes or exemptions, along with identifying any written or board adopted policies. In addition, staff provided results of research conducted to identify which pension plans were subject to model codes and which plans had exemptions similar to those in Kentucky.

Several proposals included additional reporting and transparency with regard to investment expense and fee reporting. Staff provided a review of the key categories of expense, including management fees, profit sharing or carried interest arrangements, and other expenses, which largely include underlying fund of fund fees. Staff discussed the key requirements of each legislative proposal, discussed additional reporting that would be required, and provided a review of what each state administered plan was currently reporting. Lastly, staff called attention to the amount of ambiguity within the industry, lack of clear reporting, and inconsistent level of disclosure found across the nation.

Proposals discussed during 2016 also included language that would have required additional disclosure of legal contracts and would have adjusted the composition of the plan's board of trustees. Staff discussed the requirements of each proposal, changes to current statutory exemptions, and additional language that would make contracts subject to select individuals regardless of exemption. Lastly, staff provided a review of the board compositions of each state plan and changes that would occur with each of the proposals.

## **Investment Expense Disclosure and Trends**

LRC staff provided a review of trends and discussed challenges that pension funds are facing with regard to reporting investment expenses. The topic has been a point of discussion across the industry, and demand for more transparency has raised attention. Many states, including Kentucky, have seen legislation introduced in an attempt to create more consistency and disclosure. Staff's presentation provided an introduction to the topic, review of fee structures and ways plans are reporting those expenses, and a comparison of peers across the nation.

Staff began by discussing the lack of clear reporting standards within the industry, specifically for alternative asset strategies. Current GASB language has created ambiguity, which has led to a wide variety of reporting within the industry and which makes relative comparisons across plans and states very difficult. Staff introduced a LRC Peer group, which included 35 state employee pension funds and highlighted a very wide range of reporting currently experienced. While a plan asset allocation or use of internal management could drive total expenses, much of the dispersion was being driven by use of alternative assets and how plans chose to report those expenses.

Given the impact of alternative investments, staff provided a review of fee structures often used within the industry, including directly invoiced management fees, profit sharing or carried interest arrangements, and other expenses, which might include fund of fund fees. Staff noted the complexity of the agreements and how reporting is not always complete or easily understood. Staff included a summary of terms often found in private equity, hedge funds, or real estate investments and provided examples of how the investments operate and expenses are incurred. Staff reviewed three primary categories of reporting seen in the industry, identifying a few peers to provide examples of the variety of reporting and disclosure.

Lastly, staff discussed the benefits and difficulties of standardizing the reporting process and called attention to a recently released fee reporting template created by ILPA. Capturing the total cost of an investment would remove concerns over transparency and would allow for more accurate performance reviews, but the process is very manual and time consuming, and it currently places the burden on plan sponsors to collect.

## **State-Administered Retirement Systems' Investment Updates**

The Hilliard Lyons Trust Company discussed JFRS investments and stated that JFRS has approximately \$8.3 billion in assets for individual clients and endowment foundation retirement plans. Current asset allocation as of June 30, 2016, for the judicial defined benefit plan, as well as the legislators' defined benefit plan, is approximately 74 percent equities and approximately 26 percent fixed income. The cash assets within the portfolio are in custody at State Street. The investment policy is 60 percent to 80 percent equities with a target of 70 percent and 20 percent to 40 percent fixed income with a target of 30 percent. The current yield of the equity portfolio is 2.6 percent and approximately 3.5 percent on fixed income, for a total of 2.9 percent. Dividends are up about 13 percent over the 12 months ending in June.



The core equity portfolio focuses on the long-term ownership of great companies purchased at compelling valuations. The average holding period of each investment in the portfolio is approximately 13 to 15 years. The goal is to find great companies, be long-term owners, and let the businesses generate attractive rates of return over long periods of time.

The portfolio attempts to mitigate business risk by looking for companies with long-term competitive and sustainable advantages. Hilliard Lyons reduces company risk by identifying management teams that allocate the capital intelligently and for the benefit of shareholders. Price risk is minimized by establishing an intrinsic value for each business that is evaluated and by making the investment a discount to what that intrinsic value is.

The fixed income side of the portfolios represents roughly 26 percent of the overall portfolios. Every holding in the portfolio is investment grade. The lowest rated credit holding rating is at least BBB+ and represents only 5 percent of the portfolio, while everything else is an AA credit rating or above. The portfolio is underweighted treasuries approximately 8 percent relative to the intermediate index, which is approximately 56 percent treasuries. The portfolio's total yield is approximately 3.5 percent versus the index at 2.4 percent, primarily because of the index's larger allocation to treasuries and government bonds, which have a lower yield than corporate credit. The portfolio's duration, which is present value of future cash flows, is shorter than the index at about 3.4 years versus 4 years for the index.

Over the last year, the LRP portfolio was up 3.3 percent versus 4.3 percent for the 70 percent equity and 30 percent fixed income benchmark. The performance goal for the equities is to substantially outperform the S&P 500 over a full market cycle. For JRP, during this last 1-year period the equities were up 3.29 percent versus 3.99 percent for the S&P 500. The trailing 3-year period return was slightly over the index, while the 5-year return was more than 300 basis points better. Looking at the 10-, 15-, and 20-year returns, all have substantially beaten the S&P 500. Fees have ranged between 6 to 8 basis points during those time periods. LRP numbers are very similar.

The chief investment officer for KRS discussed the investment performance and how 90 percent is a function of asset allocation while the remaining 10 percent is the result of manager selection and rebalancing. The S&P 500 Index had returned 12.1 percent for the last 5 years, which is above its longer term historical return of just below 10 percent. Additionally, the NCREIF Property Index had a return of 12.2 percent for the past 5 years with a very low risk versus its longer term historical returns.

The director of midwest consulting and senior consultant of R.V. Kuhns & Associates Inc. discussed a study conducted by his company that compared how large pension funds, such as KRS, allocated investments across multiple asset classes. The study began with 1995 and moved forward every month calculating a trailing 10-year return through December 31, 2015. The study calculated a 10-year return for a 60 percent US equity and 40 percent US fixed income portfolio and compared it to the return of diversified portfolio. Over the period studied, 88 percent of the time the diversified portfolio outperformed the 60/40 portfolio. It was not until the last 10-year period that a 60/40 portfolio outperformed a more diversified portfolio. Several factors drove this change, most notably the recession experienced in 2008. Looking forward, research shows that equity

valuations in the US market are overvalued and stock values are high relative to other markets. If one believes in reversion of the mean, then one would expect the US market to come down and the lower valuations that are seen in international markets and emerging markets will become more attractive. Also, as interest rates start to move up and fixed income is challenged from a returns standpoint, the more basic 60/40 portfolio return will begin to decline.

The chief investment officer for KRS continued with a review of composite performance, which he noted was becoming less important given that each individual system is its own entity and allocations are differing. In terms of performance drivers for the year, the more real estate, private equity, core fixed income, and US large cap equity exposure a portfolio had, the better it did. The more non-US equity, US small mid-cap equity, and hedge funds exposure, the worse the plan performed. Also, the underlying plan performance beginning with the insurance plans all had negative absolute performance, but each plan was close to the benchmark or outperformed it.

On the pension side, KERS nonhazardous and SPRS have different allocations and those were the two plans that trailed due to the change in asset allocation that occurred on January 1. The three healthier plans—KERS hazardous, CERS nonhazardous, and CERS hazardous—all rebalanced or purchased additional equity exposure at a low point in the equity market. Additionally, KERS' exposure to private equity is rather dated and mature at this point, which is limiting the upside or appreciation remaining and is serving to drag performance. At this point, KERS nonhazardous still has a lot of capital tied up in private equity, and its private equity is not being as additive to the portfolios as KRS would like. KRS has already done one secondary sale, and it is a reason why the pension private equity portfolio as a whole did only 5.5 percent, while the insurance private equity returned more than 10 percent last year. The private equity assets in the insurance plan are more representative of what could be done in private equity.

The first half of the fiscal year was very difficult, and the portfolio ended December down 2.95 percent. January continued to be a difficult market, and the portfolio hit a low point at the end of January when it was down 5.56 percent. The second half of the fiscal year was positive, and the portfolio got back to only 50 basis points down for the year. The year ended with a great quarter, up 1.3 percent, and the portfolio allocation started working well during the last 4 months.

The deputy executive director and general counsel for KTRS discussed that some asset classes struggled more than others, although many of the assets that had lackluster results had served the portfolio well in prior years and were the same assets that have helped achieve good returns in past years, such as 18.1 percent for 2014. Beyond tough markets, a big problem for KTRS was negative cash flow. KTRS has projected that approximately \$650 million in assets were sold during the fiscal year just to pay monthly retirement benefits. KTRS not only had to sell investments but also had to forgo several investment opportunities when markets were down and assets were available at an undervalued price. KTRS received a cash infusion of \$973 million from the budget. The first installment of approximately \$125 million was received on July 1, and timing was positive. Markets have been up since June 3, and the portfolio has created additional funding of approximately \$325 million in market value, which is about a 2 percent gain in the portfolio.

AON Hewitt provided a summary of performance during the fiscal year. When focusing on the 1 year numbers, the fiscal year return through June 30, 2016, was negative 1 percent (gross

of fees). It was a challenging year on an absolute and relative basis as the policy index that measures returns was up 1.5 percent. US equity, which fell 1.8 percent, and non-US equity, which fell 10.8 percent, were clear underperformers. The fixed income side of the portfolio was an area of strength, up nearly 7 percent and modestly outperforming the index. The additional categories, which are largely credit and higher yielding credits, were also challenged from a return perspective on both an absolute and a relative basis. The real estate portfolio was a standout performer on both an absolute and a relative basis, returning 13 percent and more than doubling the performance of the benchmark index.

AON Hewitt highlighted the funds asset allocation relative to policy targets. As of June 30, actual asset allocation was more or less in line with all long term policy targets. Over time, the plan has sought to diversify exposure to real estate, private equity, and other alternative assets, a strategy that the system plans to continue.

The past year was a very challenging market for active managers, with approximately 90 percent of active managers failing to add value over the benchmark index. Longer term returns remain strong compared to peers. Looking over 3, 5, or 10 years relative to a peer universe of large public plans, this system ranks in the top of that universe.

AON Hewitt continued with focusing on the 1-year period, during which the medical insurance trust fund fell 1.7 percent and trailed its policy benchmark by 1.2 percent. The largest driver of relative underperformance was the additional categories asset class, which was down almost 3 percent relative to a benchmark return of 1.5 percent. The current asset allocation for the medical fund, longer term performance, and investments in private equity and real estate will continue to be funded over the next several years. In fact, one of the reasons the fund trailed its benchmark index was the time it takes to get investments working in private equity and real estate. This portfolio was below its targets during the year as it established investments to be made. When looking at performance relative to the benchmark index, about half of the reason it lagged was that the portfolio was underweighted to those sectors of the market relative to its benchmark.

### **Fiscal Year Semiannual Investment Review**

As required by statute, LRC staff provided a semiannual investment review during the September 2016 meeting. The presentation included a review of recent market and peer group performance, historical asset allocation trends, fiscal year returns, and investment fees, as well as a discussion regarding hedge funds and the use of absolute return strategies.

Staff discussed asset classes used in the pension industry, noting that asset allocation has historically driven 90 percent of a plan's return. Plans are using traditional asset classes, such as stocks and bonds, and alternative asset classes, such as private equity, real estate, real return, and absolute return. Staff included an introduction to absolute return, which highlighted key differences of the strategies, expected returns from the asset class, and reasons investors choose to invest in them or not. Staff's presentation provided returns from each asset class over the past 10 years, while also comparing the results to long-term expectations. Staff also included a review of asset allocation for US pension plans over the past 25 years.

Historical returns for each state pension plan, current asset allocation, and a comparison to peer groups were also provided. Staff provided fiscal year returns for the past 20 years and discussed how various asset classes performed and affected returns during the period. Staff included a summary of current asset allocations, while comparing to both public and staff calculated peer groups. Reviewing the peer groups, LRC staff highlighted an above average weight to alternatives for KRS, while KTRS and the JFRS plans have slightly more public equity. Lastly, 1-, 3-, 5-, 10- and 20-year trailing returns were provided for each plan relative to benchmarks and appropriate peer groups. Staff testified that returns from all plans had failed to meet actuarial assumptions during the 1-year period.

Staff revisited the topic of investment fees and current reporting practices. Staff reviewed the three major types of fees: management fees, incentive or performance fees, and other fund of fund fees. Staff discussed emerging standards that had been introduced, such as a template created by ILPA, and how each state administered plan currently reported investment related costs. Staff reported total fees reported by asset class for each plan during the 2016 fiscal year.

### **2017 Kentucky Employees' Health Plan and Retirees Health Plans Update**

The secretary of the Kentucky Personnel Cabinet discussed the overview of the health insurance plan and stated that it is the largest self-insured plan in Kentucky and has been self funded since 2006. Approximately \$1.7 billion is spent annually. There are 178,000 eligible active employees and a total of 290,000 insured, including dependents. School board members make up the largest part of the plan at 54 percent, and retirees make up about 20 percent.

The commissioner of the Kentucky Personnel Cabinet stated that, since 2004, the KRS non-Medicare eligible retiree membership in the plan averaged 27,000 retirees excluding dependents. The lowest population was 25,000 in 2015, so the numbers are dropping. The highest was in 2009—almost 30,000 retirees.

The 2017 plan included no premium increase for the LivingWell plans if members completed their 2016 LivingWell promise. If a standard plan is selected, there will be a 1 percent premium increase for 2017. The single plan selection is offered at a low cost of \$13.10 per month. There is a slight change for the deductible and maximum out-of-pocket cost. The deductible is increased for the LivingWell PPO by \$250 for single level and \$500 for family level, and the maximum out-of-pocket cost is increased by \$250 for single level and \$500 for family level. With the pharmacy benefits, the continued focus is how to make sure members are adhering to their medications, especially preventive medications. The more the member adheres to the medications, the less expensive it is for the member and the health plan. A new benefit for 2017 is that CVS has developed a prevention therapy drug list for members with LivingWell or Standard consumer directed health plan (CDHP) and who are taking a preventive prescription to bypass the deductible and pay only the percentage coinsurance amount. Also, the Diabetes Value Benefit will continue, allowing members to pay a reduced copay and coinsurance with no deductibles for most of their maintenance diabetes prescriptions and \$0 for diabetes supplies. The positive result from this program is 9 percent increased use of those diabetic drugs. Twenty-two percent of members in a CDHP have started taking the diabetes medicines and the supplies that are included with the diabetes prescriptions are being covered under the plan without meeting a deductible. Telehealth

gives online access to a doctor 24 hours a day, 7 days a week, with a wait time of a few minutes. The program was started in July 2015 with the LiveHealth Online Medical; more than 10,000 people have enrolled, and approximately 3,500 have taken advantage of the program. From July 2015 to July 2016, there has already been a savings of \$700,000. With the difficulty of finding in-network providers for behavioral health issues, LiveHealth Online Psychology will start January 1, 2017.

The deputy executive director of KTRS discussed two of its plans. The first is the Kentucky Employees' Health Plan (KEHP), which provides coverage for members under age 65 who are otherwise ineligible for Medicare, which consists of about 15,000 enrolled members. The second is the Medicare Eligible Health Plan (MEHP), which provides coverage for members age 65 or older and which consists of about 31,000 enrolled members. The MEHP is a self-funded drug plan that is administered by Express Scripts and is a fully insured Medicare Advantage plan through United Health Care.

The executive director of JFRS stated that the Medicare eligible retirees coverage since 2014 has been through a Medicare advantage PPO plan provided by Humana. There are 158 policyholders in LRP and 253 policyholders in JRP.

The non-Medicare eligible retirees are covered under KEHP, which includes 97 policyholders in JRP and 21 policyholders in LRP. The medical actuarial funded status is more than 100 percent funded in both LRP and JRP.

The health insurance subsidies anticipated for 2017 will be approximately \$745,000 for LRP and approximately \$2 million for JRP.

The interim executive director of KRS said that 10 years ago KRS was approximately 20 percent funded for health care but it is now in the 60 percent range. There is one plan that is overfunded and only one that is below 60 percent. Costs have decreased in the last 5 years using Humana, and KRS is in a great position to serve the members.

KERS nonhazardous has experienced positive cash flow since 2012 and improved funding levels from 7.8 percent in 2006 to 28.8 percent in 2015. KERS hazardous has historically experienced positive cash flows, leading to increased funding levels from 34.3 percent in 2006 to 120.4 percent in 2015. SPRS has experienced stable cash flows, and funding levels increased from 18.1 percent in 2006 to 65.8 percent in 2015. CERS nonhazardous has historically experienced positive cash flows, and funding levels improved from 16.9 percent in 2006 to 68.7 percent in 2015. CERS hazardous also historically experienced positive cash flows, and funding levels improved from 21.9 percent in 2006 to 72.3 percent in 2015.

### **State-Administered Retirement Systems Housekeeping Legislation**

The interim executive director of KRS summarized its housekeeping legislation proposed for the 2017 Regular Session of the General Assembly. The legislation is designed to bring the system into compliance with federal law requirements, provide authority that will allow the system to increase efficiency, and resolve ambiguity in existing statutes. KRS also recommended

amending the process of cessation of participation by employers in the retirement system under KRS 61.522 by using a standard valuation methodology and procedures; tying the final cost to a fair market rate; using only a lump sum approach, eliminating the installment option; and requiring a lawsuit waiver.

The general counsel of KTRS summarized KTRS' housekeeping legislation proposed for the 2017 Regular Session of the General Assembly. The 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. There are a few substantive cost-saving changes, specifically recommendations to tighten provisions that allow retired members to return to work and provisions relating to disability.

For the 2017 Regular Session of the General Assembly, JFRS is considering legislation similar to HB 443, which it supported during the 2016 Regular Session. HB 443 provided that the unfunded liabilities of the JRP and the LRP be amortized over a closed 25 year period, except that

- any future legislative changes be separately amortized over a closed 20-year period;
- any future changes in actuarial methods or assumptions be amortized over a closed 15-year period;
- any future actuarial gains or losses be amortized over a 10-year closed period; and
- beginning with the next actuarial valuation, the actuarially accrued liability contribution be calculated using the level dollar amortization method.

### **Testimony and Recommendations From Employee, Employer, and Retiree Groups**

The Kentucky League of Cities (KLC) testified on behalf of local cities and counties, noting key differences of CERS compared to other state administered plans. KLC highlighted the reforms passed with Senate Bill 2 from the 2013 Regular Session and expressed satisfaction with the impact the legislation has had stabilizing CERS and its funding levels. However, given the distinctive nature of CERS, KLC indicated that its board was going to pursue legislation that would separate CERS from the jurisdiction of KRS. KLC's proposal will not attempt to change benefits, but it would allow opportunity for local governments to govern and look at investment experience for the plan differently. The proposal would address governance, ensure that the employees in CERS and those from the employer side have an opportunity to govern, address investment experience differently instead of being commingled and combined with the state retirement system, and ensure adequate staff attention. KLC mentioned a need to address unintended consequences related to recent pension spiking legislation. The current provisions enacted were well intended, but unanticipated results have placed a financial burden on cities and, ultimately, the taxpayer and have created a cause for reevaluation.

The Kentucky Association of Counties (KACo) reviewed four primary issues. First, KACo commended the legislature for its commitment during the last session to fund KERS at the ARC+ level. KACo noted the importance of public employee retirement systems and continues to honor the commitment by supporting the inviolable contract. Second, KACo supports the separation of CERS from KRS. As CERS funding levels continue to increase and CERS employers pay 100 percent of the ARC, KACo stated that a separate board should oversee benefits, investments,

and administrative decisions for the system. Third, KACo continues to push for a resolution regarding pension spiking and the difficulty this has created for counties. While fully conscious of the intent and in support of the law, KACo believes some clarifications are needed to address unintended consequences that have resulted when employees are away from work due to a Family Medical Leave Act action, a workers' compensation claim, or another legitimate reason. Lastly, this summer KRS notified reemployed Medicare eligible retirees that supplemental insurance benefits would be terminated if such employees were offered group insurance alternatives by their employer. KRS believes this decision is mandated by the federal Medicare Secondary Payer Act (MSPA), while KACo's own research indicates otherwise. KACo has met with KRS staff, who have made an inquiry with the Centers for Medicare and Medicaid Services and await a reply.

The Kentucky Chamber of Commerce expressed approval that a full comprehensive performance audit of KRS was taking place. The chamber also expressed concern over increasing ARC payments in the future as KRS struggled to meet investment return assumptions and payroll estimates that appear to be overstated. The chamber continues to support key features of Senate Bill 2, including increased transparency of investment fees, placing KRS under the state's procurement and personnel rules, and adding members to the KRS board with investment experience. The chamber commended the Governor and legislature on the commitment to budget additional and substantial funding to the pension systems, but it expressed concern that the commitment was not accompanied with structure reforms, specifically as it relates to KTRS. The chamber understands the new administration's desire to review and eagerly awaits results from the consultants evaluating the system, but it believes reforms will be required to make the retirement system sustainable. Lastly, the chamber discussed a larger question facing the legislature and state, which is whether KTRS should be converted to a defined contribution plan similar to the plan enacted for state and local employees during the 2013 Session. The chamber believes that more information is needed to make a judgement on this topic and expressed hope that the financial review would shed more light.

The Kentucky Public Retirees (KPR) expressed gratitude for the level of pension funding approved in the most recent budget. KPR highlighted recent developments related to KRS, which included the Governor's executive order and the financial audit currently in process. KPR would not speculate or form an opinion on either topic until a decision is made regarding the executive order or recommendations from the audit are made known. KPR expressed concern regarding the increased size of the KRS board and investment committee's structure. KPR noted that a 17-member board diminishes the relevance of the elected members, and it recommended a balance of members so that appointed members need support from elected members to make important decisions. KPR recommended the KRS investment committee be increased to seven members, with the two additional seats reserved for elected members of the board. KPR voiced the need to begin the discussion on how pensions would be funded after the current budget cycle. KPR noted a need to create a dedicated revenue stream to address the unfunded liability and suggested a review of the state's tax expenditures.

The Kentucky Government Retirees (KGR) recommends additional funding above the current required contributions in order to ensure long term stability of the funds. KGR supports the enhanced transparency proposals introduced during the 2016 session and believes that KRS should follow the state's procurement code, best practices in fee disclosures, and the CFA code of

conduct. KGR referred to the extensive changes made to the KRS board as a result of the Governor's executive order and stated that it would support legislative proposals restoring a reasonable measure of representation by elected trustees. KGR voiced concern about abandoning the cash-balance plan adopted in 2013, noting that the plan had reduced employer risk and long term costs as intended. KGR stated that any consideration of moving to a 401(k) plan should involve an actuarial analysis of the fiscal impact on legacy plans and voiced concern over the lack of new contributors that would result. Lastly, KGR believes the only way to provide ARC+ funding is through the adoption of tax reform and a structure that grows the economy and meets critical needs such as the pension system.

Representatives of the Kentucky Retired Teachers Association (KRTA) testified about the critical nature of retirement benefits for retired teachers, many of whom are older, single, and reliant on KTRS as their sole source of income. KRTA does support transparency but believes recent proposals to give gubernatorial appointees a majority were ill-advised. KRTA believes that information regarding KTRS should be easily accessible and performance should continue to be subject to PPOB review, but KRTA recommends the plan be independently governed by its members and free from political influences. KRTA recommendations included paying the ARC payment until the plan is fully funded. KRTA also recommended keeping the current defined benefit structure and does not support changes to the plan's governance structure. Lastly, KRTA emphasized the need to evaluate performance of the plan based on the long term and not just during periods of recession. Finally, KRTA supplied a copy of the National Institute on Retirement Security's Pensionomics 2016 Report to the board for its consideration.

The Kentucky Association of Regional Programs (KARP) voiced concern regarding pension spiking provisions, specifically as related to unpaid leave time such as military leave or Family Medical Leave Act leave. KARP noted examples in which employers are being invoiced because employees took uncompensated leave. KARP recommends a statutory change to address this issue and suggested excluding uncompensated time from the calculation or incorporating a 3-year review window, which would consider the year prior and after the uncompensated period.

The Bluegrass Institute commended the board on efforts to increase transparency with regard to investment fees and other pension practices, but it recommended that individual retiree benefit payments also be subject to public review. The institute noted that, although taxpayers have access to public employee salaries and benefits, upon retirement, current law removes retiree information from public record and serves as a deterrent to addressing the pension crisis. The institute believes the substantial increase in spending on pensions is unsustainable and believes taxpayers will be asked to participate. Making the individual retiree information public gives lawmakers more information to address the problem and make better decisions, while instilling confidence in the taxpayers. The institute highlighted its Legislative Pension Transparency Pledge, which vows support to making legislative pensions fully transparent. Several legislators have signed it.

## **2016 Actuarial Valuations, State Administered Retirement Systems**

In November, the board received the 2016 actuarial valuations of the state-administered retirement systems. KTRS presented its actuarial valuation, performed by Cavanaugh &



MacDonald, which presented a 54.6 percent funding level for its pension fund with an unfunded liability of \$14.531 billion. For its health care fund, KTRS reported a funding level that was improved at 21.9 percent with an unfunded liability of \$2.839 billion. KTRS reported that the key factors in the decrease in the pension funding level and increase in the unfunded liability included not receiving the full ARC in 2016, and adverse experience related to trends in retirement rates, mortality, and employee turnover. However, changing assumptions did provide a positive effect on the pension fund. The required sensitivity analysis demonstrated that changing the rate of return from 7.5 percent to 6.5 percent would have the following effects: change in funding level from 54.6 percent to 48.9 percent; change in unfunded liability by an additional \$3.75 billion; and change in the ARC by an additional 8.41 percent of pay.

KRS' interim executive director presented actuarial valuations for the five plans under its administration. Although three of the plans remain relatively healthy, the executive director described the KERS nonhazardous pension plan as in the triage stage at a decreased funding level of 16 percent and an unfunded liability of \$11.112 billion. The key factor in the change was reducing the investment return from 7.5 percent to 6.75 percent, which increased the unfunded liability by \$900 million. The KERS nonhazardous health plan was improved with a funding level of 30.3 percent and an unfunded liability of \$1.713 billion. The other funds demonstrated modest but manageable decreases in funding levels over the year for pension and solid increases for health.

The executive director and board chair for JFRS presented the actuarial valuation results for LRP and JRP. LRP was 79.0 percent funded with an unfunded liability of \$16 million. JRP was 71.0 percent funded with an unfunded liability of \$109 million. Health plans for both plans were more than 100 percent funded. The chart below demonstrates the 2016 actuarial data for all state-administered retirement plans as reported to the board.

### 2016 Actuarial Valuation Results

System	Funding Level (%)		Unfunded Liability (\$ in billions)	
	Pension	Health	Pension	Health
KERS NH	16.0%	30.3%	-\$11.112	-\$1.713
KERS H	59.7	125.3	-0.377	-0.095
CERS NH	59.0	69.6	-4.541	-0.908
CERS H	57.7	72.9	-1.565	-0.423
SPRS	30.3	67.2	-0.541	-0.084
KTRS	54.6	21.9	-14.531	-2.839
LRP	79.0	132.1	-0.016	0.009
JRP	71.0	108.6	-0.109	0.006
Total			-\$32.792	-\$5.857



**Report of the 2016  
Tobacco Settlement Agreement Fund Oversight Committee**

**Sen. C.B. Embry Jr., Co-Chair  
Rep. Wilson Stone, Co-Chair**

Sen. Paul Hornback  
Sen. Carroll Gibson  
Sen. Dennis Parrett  
Sen. Robin Webb  
Sen. Whitney Westerfield

Rep. Mike Denham  
Rep. Tom McKee  
Rep. Terry Mills  
Rep. Jonathan Shell  
Rep. James Tipton

LRC Staff: Tanya Monsanto, Lowell Atchley, and Marielle Manning

**Presented to the  
Legislative Research Commission  
and the  
2017 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 (MSA) money.

### **Committee Activity**

The Tobacco Settlement Agreement Fund Oversight Committee met 11 times during the 2016 calendar year.

In accordance with statutes, committee received monthly updates from the Governor's Office of Agricultural Policy (GOAP) regarding Agricultural Development Board (ADB) funding decisions on project applications. The committee received reports and testimony from executive branch agencies receiving tobacco settlement appropriations, from the Office of Attorney General, and from organizations that benefited from the availability of the funds.

The committee dealt with some issues within the scope of the legislative panel—for example, the enforcement of the MSA obligations at the state level. Committee members often asked questions about and commented on the spending decisions made by the ADB, officials in the state agencies who administer tobacco cessation and drug control programs, early child development, and conservation programs, as well as representatives of medical facilities involved in lung cancer research.

### **Review of Agricultural Development Fund Projects**

During each monthly committee meeting, GOAP officials testified about the projects that the ADB considered in its previous meeting. In doing so, the committee performed its responsibility of reviewing the allocation of tobacco settlement funds for rural development, and monitoring the pattern of MSA fund usage in accordance with statutes.

GOAP representatives reviewed projects affecting single counties, regions, or the state as a whole. They also presented a monthly listing of funding decisions made within three types of county-level programs: the County Agricultural Improvement Program, the Deceased Farm Animal Disposal Assistance Program, and the Shared-Use Equipment Program. At times, they reviewed information on other funding programs, such as the On-Farm Energy Efficiency and Production Program.

At each meeting, committee members asked for additional information on projects and sought clarification on funding decisions made and the rationale for reaching those decisions.

Committee members posed questions about the board's grant procedures; how funding applications were reviewed and prepared by GOAP staff for the board's consideration; the reasons why some project applicants received particular amounts of funding or were denied funding; and project monitoring, compliance, and reporting.

Some of the discussion topics emerging during the Interim were the growth and popularity in the state of farmers' markets, the interest in hemp as a farm commodity, the importance of local financial commitments on ADB-funded projects, and the continuing popularity of the deceased farm animal and shared-use equipment programs.

### **Agency Reports Received, Other Actions**

Among the health-related agencies reporting, the committee heard from officials with the Office of Early Childhood Development, which administers 25 percent of the state's tobacco settlement funds. The officials outlined progress made by the many programs operating under the Office of Early Childhood Development's administrative umbrella.

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.

In separate meetings, those involved with the Kentucky Agency for Substance Abuse Policy and with the Tobacco Prevention and Cessation Program reported to the committee on efforts to reduce tobacco use in the state, and to deal with alcohol and drug abuse. The director of the Division of Conservation reported on the solid waste and water quality cost share and soil stewardship programs.

The committee received testimony on other issues as well during the Interim, including a report from the Office of Attorney General on the state's enforcement of the MSA requirements, and a report on the dairy industry by the Kentucky Dairy Development Council.

