

# Final Reports of the Interim, Joint, Special, and Statutory Committees 2010



**Informational Bulletin No. 234**

**Legislative Research Commission  
Frankfort, Kentucky  
December 2010**



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

**2010**

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

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

**December 2010**



## Foreword

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

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

During the 2010 Interim, all 15 interim joint committees held meetings. Two special committees met in 2010. All eight statutory committees met during the 2010 Interim.

LRC provides this informational booklet as a summary of the activity of the interim joint, special, and statutory committees since adjournment of the 2010 General Assembly. The reports were prepared separately by the committee staff.

Robert Sherman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
December 2010



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**Report of the 2010  
Interim Joint Committee on Agriculture**

**Sen. David Givens, Co-Chair  
Rep. Tom McKee, Co-Chair**

Sen. David Boswell  
Sen. Ernie Harris  
Sen. Bob Leeper  
Sen. Vernie McGaha  
Sen. Joey Pendleton  
Sen. Dorsey Ridley  
Sen. Kathy W. Stein  
Sen. Damon Thayer  
Sen. Ken Winters  
Rep. Royce W. Adams  
Rep. John A. Arnold, Jr.  
Rep. Johnny Bell  
Rep. John “Bam” Carney  
Rep. Mike Cherry  
Rep. James R. Comer, Jr.  
Rep. Mike Denham  
Rep. C.B. Embry, Jr.  
Rep. Jeff Greer

Rep. Richard Henderson  
Rep. Charlie Hoffman  
Rep. Martha Jane King  
Rep. Terry Mills  
Rep. Brad Montell  
Rep. Fred Nesler  
Rep. David Osborne  
Rep. Sannie Overly  
Rep. Don Pasley  
Rep. Tom Riner  
Rep. Steven Rudy  
Rep. Dottie Sims  
Rep. Kent Stevens  
Rep. Wilson Stone  
Rep. Tommy Turner  
Rep. Ken Upchurch  
Rep. Susan Westrom

LRC Staff: Tanya Monsanto, Lowell Atchley, Biff Baker, Stefan Kasacavage, Tom Middleton, and Susan Spoonamore

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

**Subcommittee Organization and Membership**

**Subcommittee on Horse Farming**

**Sen. Damon Thayer, Co-Chair**  
**Rep. Susan Westrom, Co-Chair**

Sen. David Boswell  
Sen. Ernie Harris  
Sen. Joey Pendleton  
Rep. Royce W. Adams  
Rep. Richard Henderson  
Rep. Charlie Hoffman  
Rep. Martha Jane King  
Rep. Brad Montell

Rep. Fred Nesler  
Rep. David Osborne  
Rep. Sannie Overly  
Rep. Don Pasley  
Rep. Tom Riner  
Rep. Kent Stevens  
Rep. Wilson Stone  
Rep. Ken Upchurch

Sen. David Givens, ex officio  
Rep. Tom McKee, ex officio

LRC Staff: Lowell Atchley and Kelly Blevins

**Subcommittee on Rural Issues**

**Sen. Vernie McGaha, Co-Chair**  
**Rep. Mike Denham, Co-Chair**

Sen. Bob Leeper  
Sen. Dorsey Ridley  
Sen. Kathy W. Stein  
Sen. Ken Winters  
Rep. John A. Arnold, Jr.  
Rep. Johnny Bell  
Rep. John “Bam” Carney  
Rep. Mike Cherry

Rep. James R. Comer, Jr.  
Rep. C.B. Embry  
Rep. Jeff Greer  
Rep. Terry Mills  
Rep. Steven Rudy  
Rep. Dottie Sims  
Rep. Tommy Turner

Sen. David Givens, ex officio  
Rep. Tom McKee, ex officio

LRC Staff: Stefan Kasacavage and Susan Spoonamore

## **Interim Joint Committee on Agriculture**

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

### **Committee Activity**

The Interim Joint Committee on Agriculture held six meetings during the 2010 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 by the committee, and each held one meeting during the Interim. A variety of topics were discussed, and several agencies and organizations updated the committee members on ongoing projects and proposed legislative suggestions for the 2011 Regular Session.

The committee visited swine and poultry farms in Marshall County and a dairy farm and a farm raising test plots of miscanthus in Logan County.

Another venue outside of Frankfort was used to illustrate the importance of diversification in Kentucky agriculture. In Pulaski County, representatives of the Kentucky Department of Agriculture and Kentucky Farm Bureau discussed the Certified Roadside Farm Market Program, agritourism, and other programs related to agricultural diversification. The committee members were also given a tour of the Mill Springs Battlefield Visitor Center and Museum and a tour of an orchard.

The committee met at the Kentucky State University (KSU) Research and Demonstration Farm in the new Center for Sustainability of Farms and Families. Representatives of KSU updated the members on the agricultural activities being undertaken at the university, including the creation of a college of agriculture beginning in the fall of 2011. In addition, representatives from the Attorney General's office updated the members on the status of the Eastern Livestock Company's financial troubles, which have affected stockyards and livestock producers throughout the country, including Kentucky.

At the State Fair, the President of the State Fair Board updated committee members on fair activities and projects being undertaken by the board. In addition, an update on the upcoming World Equestrian Games was given by representatives from the Governor's Office of Agricultural Policy and the Kentucky Department of Agriculture. At this meeting, the committee members voted to send a letter to representatives of the World Health Organization urging them to vote against proposed restrictions on cigarette ingredients.

The committee received legislative proposals and comments for the 2011 Regular Session from representatives of the Kentucky Department of Agriculture, the Governor's Office of Agricultural Policy, the University of Kentucky College of Agriculture, Kentucky Farm Bureau, and the Community Farm Alliance. The committee also received a brief overview of activities of the Kentucky Milk Commission.

### **Administrative Regulations**

As of November 10, the committee had seven administrative regulations referred to it during the 2010 Interim, all from the Department of Agriculture, relating to livestock sanitation and structural pest control.

### **Legislative Proposals Received from State Agencies**

The following legislative proposals were received in the full committee. Each proposal is identified below.

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

- Cap grain bond requirements at \$1 million.
- Put language allowing metrology lab to establish fees in statute rather than in budget.
- Adopt federal American Society for Testing and Materials standards for propane and kerosene.
- Allow department leeway to probate penalties for motor fuel violations.

#### **Kentucky Farm Bureau**

- Continue allocating 50 percent of Master Settlement Agreement funds to Agricultural Development Fund.
- Appropriate funds for dead animal removal.
- Amend makeup of State Board of Agriculture.

#### **Community Farm Alliance**

- Maintain intent of 2000 Regular Session House Bill 611.
- Support Farm to School Programs by making it easier to participate in the procurement process.

### **Reports Received**

The committee received one report:

- The Kentucky Tobacco Research and Development Center: Quarterly Report for January 1, 2010-March 31, 2010.

### **Subcommittee on Horse Farming**

The Subcommittee on Horse Farming met once during the 2010 Interim and heard testimony on three topics. Representatives of the Kentucky Thoroughbred Association and PBI Bank discussed the impact of the current economic downturn on thoroughbred breeding operations. Representatives of the Kentucky Quarter Horse Association (KQHA) and the KQHA Breeders' Incentive Fund testified on the activities of the association and trends in the quarter horse industry in Kentucky. Finally, the Director of the Kentucky Horse Racing Commission's

Division of Incentives and Development gave an update and progress report on the Kentucky Breeders' Incentive Program.

### **Subcommittee on Rural Issues**

The Subcommittee on Rural Issues met once during the 2010 Interim, hearing testimony from faculty of the University of Kentucky on the state of the rural economy and strategies for economic development in rural communities. Additionally, representatives from the Farm Service Agency of the United States Department of Agriculture discussed the farm assistance programs that it administers in Kentucky.



**Report of the 2010  
Interim Joint Committee on Appropriations and Revenue**

**Sen. Bob Leeper, Co-Chair  
Rep. Rick Rand, Co-Chair**

Sen. David E. Boswell  
Sen. Tom Buford  
Sen. Denise Harper Angel  
Sen. Ernie Harris  
Sen. Jimmy Higdon  
Sen. Ray S. Jones II  
Sen. Alice Forgy Kerr  
Sen. Vernie McGaha  
Sen. R. J. Palmer II  
Sen. Joey Pendleton  
Sen. Tim Shaughnessy  
Sen. Brandon Smith  
Sen. Robert Stivers II  
Sen. Gary Tapp  
Sen. Elizabeth Tori  
Sen. Jack Westwood  
Rep. Royce W Adams  
Rep. John A. Arnold, Jr.  
Rep. Scott W. Brinkman  
Rep. Dwight D. Butler  
Rep. James R. Comer, Jr.  
Rep. Jesse Crenshaw

Rep. Mike Denham  
Rep. Bob M. DeWeese  
Rep. Danny R. Ford  
Rep. Derrick Graham  
Rep. W. Keith Hall  
Rep. Jimmie Lee  
Rep. Reginald Meeks  
Rep. Harry Moberly, Jr.  
Rep. Lonnie Napier  
Rep. Fred Nesler  
Rep. Sannie Overly  
Rep. Don R. Pasley  
Rep. Marie L. Rader  
Rep. Jody Richards  
Rep. Charles L. Siler  
Rep. Arnold Simpson  
Rep. Tommy Thompson  
Rep. Tommy Turner  
Rep. Jim Wayne  
Rep. Alecia Webb-Edgington  
Rep. Ron Weston  
Rep. Brent Yonts

LRC Staff: Pam Thomas, Brett Gabbard, Jennifer Hays, Eric Kennedy, Charlotte Quarles,  
John Scott, and Sheri Mahan

**Presented to the  
Legislative Research Commission  
and the  
2011 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. Brandon Smith, Co-Chair**  
**Rep. John Arnold, Co-Chair**

Sen. David E. Boswell  
Sen. Alice Forgy Kerr  
Rep. Tim Firkins  
Rep. Dennis Horlander  
Rep. Dennis Keene

Rep. Lonnie Napier  
Rep. Marie Rader  
Rep. Fitz Steele  
Rep. Jim Stewart  
Rep. Susan Westrom

Rep. Jim Gooch, Jr., ex officio  
Rep. Ruth Ann Palumbo, ex officio

LRC Staff: Kelly Dudley, Melissa Lueker, Perry Papka, and Christina Williams

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

**Sen. Jack Westwood, Co-Chair**  
**Rep. Royce Adams, Co-Chair**

Sen. Julian Carroll  
Sen. Joey Pendleton  
Sen. Elizabeth Tori  
Rep. Dwight Butler  
Rep. Leslie Combs  
Rep. Mike Denham

Rep. Charlie Hoffman  
Rep. Adam Koenig  
Rep. Brad Montell  
Rep. Tanya Pullin  
Rep. Charles L. Siler  
Rep. Wilson Stone

Rep. Thomas M. McKee, ex officio  
Rep. Steve Riggs, ex officio

LRC Staff: Jenny Anglin, Kelly Dudley, Melissa Lueker, Katherine Halloran, Perry Papka, Frank Willey, Stewart Willis, Tom Willis, and Spring Emerson

**Budget Review Subcommittee on  
Human Resources**

**Sen. Tom Buford, Co-Chair**  
**Rep. Jimmie Lee, Co-Chair**

Sen. Julie Denton  
Sen. Denise Harper Angel  
Rep. Linda Belcher  
Rep. Bob M. DeWeese  
Rep. Mary Lou Marzian

Rep. Darryl T. Owens  
Rep. Steve Rudy  
Rep. David Watkins  
Rep. Jim Wayne  
Rep. Addia Wuchner

Rep. Tom Burch, ex officio

LRC Staff: Cindy Murray, Frank Willey, and Amie Elam

**Budget Review Subcommittee on  
Justice and Judiciary**

**Sen. Tom Jenson, Co-Chair**  
**Rep. Jesse Crenshaw, Co-Chair**

Sen. Gerald A. Neal  
Sen. Ray Jones  
Sen. Dan Seum  
Sen. Robert Stivers  
Rep. Johnny Bell

Rep. Scott Brinkman  
Rep. Martha Jane King  
Rep. Alecia Webb-Edgington  
Rep. Brent Yonts

Rep. John Tilly, ex officio

LRC Staff: Jenny Anglin, Mike Mullins, and Christina Williams

**Budget Review Subcommittee on  
Postsecondary Education**

**Sen. Vernie McGaha, Co-Chair**  
**Rep. Arnold Simpson, Co-Chair**

Sen. Tim Shaughnessy  
Sen. Ken Winters  
Rep. Jim DeCesare  
Rep. Kelly Flood  
Rep. Jim Glenn  
Rep. Melvin Henley

Rep. Reginald Meeks  
Rep. Harry Moberly, Jr.  
Rep. Jody Richards  
Rep. Kevin Sinnette  
Rep. Tommy Turner

Rep. Carol Rollins, ex officio

LRC Staff: Linda Ellis, Greg Rush, Tom Willis, and Amie Elam

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

**Sen. Vernie McGaha, Co-Chair**  
**Rep. Tommy Thompson, Co-Chair**

Sen. Tim Shaughnessy  
Sen. Ken Winters  
Rep. James Comer  
Rep. Will Coursey  
Rep. Ted Edmonds

Rep. Derrick Graham  
Rep. Charles Miller  
Rep. Rick Nelson  
Rep. Dottie Sims  
Rep. Kent Stevens

Rep. Carl Rollins, ex officio

LRC Staff: Linda Ellis, Greg Rush, Tom Willis, and Amie Elam

**Budget Review Subcommittee on  
Transportation**

**Sen. Jimmy Higdon, Co-Chair**  
**Rep. Sannie Overly, Co-Chair**

Sen. Ernie Harris  
Sen. R.J. Palmer  
Rep. Eddie Ballard  
Rep. James R. Comer, Jr.  
Rep. Tim Couch  
Rep. Danny R. Ford  
Rep. Jim Gooch

Rep. W. Keith Hall  
Rep. Richard Henderson  
Rep. Fred Nesler  
Rep. Don Pasley  
Rep. Ancel Smith  
Rep. Ron Weston

Rep. Hubert Collins, ex officio

LRC Staff: Stephanie Craycraft, Stewart Willis, and Spring Emerson

**Ex officio members for all subcommittees**

Sen. Bob Leeper  
Sen. Ernie Harris  
Rep. Rick Rand

## **Interim Joint Committee on Appropriations and Revenue**

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

### **Committee Activity**

During the 2010 Interim, the Interim Joint Committee on Appropriations and Revenue held four meetings. The committee received testimony regarding a wide range of topics.

#### **General Fund—Fiscal Year 2010 Update**

The Secretary of the Governor's Executive Cabinet and the State Budget Director provided a year-end update on the fiscal year 2010 General Fund. The secretary reported that the General Fund declined 2.4 percent (\$201.2 million) in FY 2010. This decline represents the first time receipts have declined in 2 consecutive years since 1945. The Consensus Forecasting Group (CFG) estimate for FY 2010 was \$8,197 million, and the actual revenues received for the year were \$8,225 million. The CFG estimates for FY 2011 are \$8,570 million and for FY 2012 are \$8,871 million. The General Fund is not expected to recover to FY 2008 levels until the end of FY 2012.

The secretary discussed the General Fund FY 2010 year-end balance. The General Fund closed FY 2010 with a surplus of \$29.7 million. The surplus resulted from revenues in excess of enacted estimates, fund transfers in excess of those budgeted, and various lapses. Any surplus will be applied to necessary governmental expenses and to replenish the Budget Reserve Trust Fund, which currently has a \$0 balance.

The secretary also provided an update regarding the FY 2010 Road Fund. The year-end revenues were \$1,206.6 million, which was an increase of 1.2 percent from FY 2009. This was \$7.5 million more than the CFG estimate of \$1,199.1 million. The Road Fund is expected to return to FY 2008 levels by FY 2011. The ending balance for FY 2010 resulted in a surplus of \$41.9 million. These funds will be deposited into the State Construction Account in accordance with the 2010 Special Session House Bill 1 Road Fund Surplus Expenditure Plan.

The secretary discussed debt restructuring, stating that restructuring outstanding liabilities will realize debt service savings over the biennium. The principal is amortized over the remaining life of the existing debt to gain upfront savings which can be used to keep from cutting priority expenditures. This strategy increases costs in the long term and may be viewed negatively by debt rating agencies. Restructuring efforts will realize savings to the General Fund of \$162.8 million in FY 2010, \$139.8 million in FY 2011, and approximately \$130.0 million in

FY 2012. The Road Fund will realize savings of \$81.4 million in FY 2010, \$52.0 million in FY 2011, and \$53.0 million in FY 2012.

### **State Employees – Furlough Implementation and Personnel Reductions**

The Secretary of the Kentucky Personnel Cabinet discussed state employee furloughs and personnel reductions and restrictions being implemented. The furlough implementation goals are to achieve budget savings to avoid layoffs, to honor HB 1 obligations, to provide equitable and transparent administration, and to minimize the impact to the public. The 3 designated furlough days have been planned in conjunction with existing state holidays. Nondesignated days are expected to be staggered, which will allow for limited closures of state offices. The cabinet will meet the required expenditure reductions of \$131 million, which will include an estimated \$5 million reduction of nonmerit personnel costs.

### **State Employees – Insurance Plan Updates**

The Commissioner of the Department of Employee Insurance addressed the committee regarding changes in the 2011 state employee health insurance plan. Various challenges faced while developing the 2011 plan included the state's budget shortfalls, continued health plan inflation, and federal health care reform mandates. The commissioner discussed the plan's 2011 principles and goals as approved by the Kentucky Group Health Insurance Board and provided a basic outline of the employee health insurance plans to be offered for 2011. The commissioner discussed the 2011 plan open enrollment, which is set to begin October 11, 2010. He discussed the Kentucky Employees Health Plan Benefits Analyzer and various wellness efforts.

### **General Fund – FY 2011 Economic Outlook**

The Secretary of the Governor's Executive Cabinet and the State Budget Director provided an overview of FY 2011 first quarter revenue receipts and contract expenditure reductions. The state has posted 2 quarters of revenue growth after 5 consecutive quarterly declines. General Fund revenue growth of 4.2 percent is budgeted for FY 2011. Although the state individual income and sales taxes have been slow to recover, corporate income and coal severance continue to show strength. The Road Fund has shown modest gains.

The Deputy Executive Director for Financial Analysis for the Office of the State Budget Director stated that the first quarter of FY 2011 showed a 4.4 percent growth in the General Fund as compared with the first quarter of FY 2010. Most tax revenues are improving, most notably the corporate income tax (up 44.1 percent) and coal severance (up 3.6 percent). The first quarter receipts are on target, with budgeted revenue of \$2,055.1 million, which represents a budgeted growth of 4.2 percent for the year. The deputy executive director then discussed the Road Fund, stating that increased revenue from motor fuels taxes and the end of the motor vehicle usage tax credit is leading the fund's recovery. Improvements in the weight distance tax signal increased shipment of goods, showing a rebound in the manufactured goods sector. The Road Fund shows 11.9 percent growth for the first quarter of FY 2011, and increases were seen in the third and fourth quarters of FY 2010.

The deputy executive director provided a brief overview of the current national economic status, stating that Kentucky is showing a slight recovery. Although employment in the state is increasing, previous peak employment is not projected to occur during this biennium. The employment outlook is consistent with CFG's assumptions during the last forecast. Personal income, however, is recovering more robustly.

### **Alternative Sentencing Social Worker Program**

A representative from the Department of Public Advocacy discussed the alternative sentencing social worker program. There are currently nine social workers in this program, four of which are provided for in the budget. The remaining five are funded through stimulus funds provided to the department. These social workers conduct presentencing assessments, obtain records, and identify treatment resources. During sentencing, the social workers help to prepare alternative sentencing plans for public defenders to present to judges, develop reentry support plans, and provide assistance necessary to all parties in cases. After sentencing, social workers arrange for the client's treatment and provide support and follow-up after treatment has begun. About 10,000 days of incarceration are saved by each social worker. The program's net annual savings to the state have totaled \$290,508. For every dollar invested in alternative sentencing social workers, the state saves \$3.25 in incarceration costs. Projected savings for statewide implementation is estimated to be \$3.1 million per year.

### **Middle College Program**

Representatives from the West Kentucky Community and Technical College and the Commonwealth Middle College provided information regarding the middle college program. This program allows students to take core high school courses to receive their high school diploma and graduate while also taking college courses.

### **Miscellaneous Reports**

The committee received a formal report from the Finance Cabinet regarding the reduction of contract expenditures as mandated in the budget bill. The committee received a formal report from the Cabinet for Health and Family Services regarding the Medicaid recipient identification study. The committee received testimony regarding an analysis evaluating Medicaid benefits and efficiencies. The cabinet provided testimony concerning responses and proposed solutions to the issues presented in the report on the Passport program of the Auditor of Public Accounts.

## **Subcommittee Activity**

### **Budget Review Subcommittees**

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, monitor the budgetary operations and programs of state government, and address agency budget needs for the 2010-2012 biennium.

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

The Tourism, Arts and Heritage Cabinet presented information regarding the Department of Parks' strategic plan and its impact on the agency's budget. The cabinet also discussed personnel changes, including the reduction in weekly work hours and the 6 furlough days required by executive branch employees. Also addressed was the potential of concessioning certain portions of parks' operations to private vendors.

The Tourism, Arts and Heritage Cabinet presented information on the 2010 Alltech FEI World Equestrian Games. The cabinet described the Kentucky Experience Exposition that was built for the event and discussed the study that the Lexington-based firm, Certec, will be conducting to determine the economic impact of the games. The Horse Park provided information about the execution of the games, feedback received from visitors, and the legacy of the games. The agency also discussed the state public infrastructure project investments at the park and how they will be utilized in the future.

The Commissioner of the Department of Insurance presented information regarding the impact of the federal health care legislation on Kentucky. The commissioner provided an overview of the federal health care legislation, as well as the impact it will have in Kentucky. The commissioner specifically discussed the impact of the legislation on rural parts of the state, including the impact to rural Appalachia.

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

The Executive Director of the Finance and Administration's Office of Policy and Audit provided the subcommittee with a report detailing recipients of American Recovery and Reinvestment Act (ARRA) funding, including receipts and expenditures through the first quarter of FY 2010.

The Commissioner of the Department of Veterans Affairs provided an overview of the department's current budgetary status, focusing on the Office of Kentucky Veterans Centers. The commissioner and the department's fiscal manager discussed the management of budget reductions (partially offset by the nursing home per diem from the U.S. Department of Veterans Affairs, which was higher than projected), furloughs, increased healthcare costs, and capital projects. The Manager of the Cemeteries Branch spoke of the Burial Honors Stipend Program.

**Budget Review Subcommittee on  
Human Resources**

The Budget Review Subcommittee on Human Resources did not meet during the 2010 Interim.

**Budget Review Subcommittee on  
Justice and Judiciary**

The co-chair of the Task Force on the Penal Code and Controlled Substances Act provided an update concerning its activities during the 2010 Interim. This included the status of the final report that will be issued by the task force, with assistance from the PEW Foundation's Center for the States.

A representative from the Administrative Office of the Courts provided information concerning new judicial centers that are currently under construction or in the planning and design process.

**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 joint meetings during the 2010 Interim.

The Associate Commissioner of Administration and Support for the Department of Education presented an update on the funding for the Read to Achieve and Math Achievement programs; local district use of capital funds for operating purposes; the status of the review of the classification of primary and secondary school buildings; and the status of Category 5 facility projects.

The President of the Council on Postsecondary Education presented information relating to the amounts and uses of ARRA funds. This included the amounts and uses of State Fiscal Stabilization Funds and competitively awarded grants.

The Commissioner of the Department of Education provided an overview of the status of ARRA funds awarded to and used by local school districts.

The President and the Assistant Vice President of the Council on Postsecondary Education presented an overview of the process and results of the postsecondary education facilities study. This included an overview of the development of the request for proposals and the results of the study.

The Commissioner of the Department of Education presented information relating to the status of the local school district facilities study mandated by the 2010-2012 enacted Budget of the Commonwealth. The commissioner also provided an update on various school district issues, such as end-of-year fund balances, current tax year levies, teacher salaries, and school calendars.

The President of the Council on Postsecondary Education presented information relating to college completion in Kentucky. This included information on graduation and retention rates, total degrees and credentials awarded, and related funding issues.

The President of the Council on Postsecondary Education provided an overview of the accreditation process in Kentucky. Also provided was information relating to the licensing of private colleges and universities within the state.

Staff from the Collaborative Center for Literacy Development provided an update on funding for the center and a summary of activities currently underway.

### **Budget Review Subcommittee on Transportation**

The Executive Director of the Office of Budget and Fiscal Management provided an update on Road Fund revenues, the revenue sharing programs, the Highway Construction Contingency Account, and the motor vehicle usage tax credit. Total Road Fund receipts for FY 2010 were slightly over \$1.2 billion, exceeding the CFG estimate for the year by \$7.5 million. The CFG Road Fund revenue estimate for FY 2011 is nearly \$1.3 billion, and for FY 2012 the estimate exceeds \$1.3 billion. A portion of the growth is attributable to the motor fuels tax, which increased to 25.9 cents per gallon on July 1, 2010. The total Revenue Sharing Program, which is funded with 48.2 percent of the motor fuels tax receipts, is estimated to be \$295.5 million for FY 2011, which includes \$112.2 million for the County Road Aid Program, \$136.1 million for the Rural Secondary Program, and \$47.2 million for the Municipal Aid Program. The update on the Highway Construction Contingency Account included budgeted and expenditure levels from FY 2005 to FY 2011. Of the \$25 million motor vehicle usage tax credit, more than \$21.5 million was expended from September 1, 2009, through June 30, 2010, leaving less than \$3.5 million for FY 2010. The executive director also provided a status report for 2009 and 2010 highway-bond funded projects, including a detailed explanation of the cash management practices utilized by the cabinet to ensure that projects and payments are not delayed and that arbitrage is avoided.

The Secretary of the Transportation Cabinet provided an estimated bid letting schedule for several large bridge projects included in the Biennial Highway Construction Plan and an update on federally funded highway projects. Anticipated letting dates for the Ledbetter Bridge in McCracken County and the Milton-Madison Bridge in Trimble County are in FY 2010. The cabinet plans to let the Lake Barkley and Kentucky Lake Bridges simultaneously in FY 2012. As of September 2010, 63 Federal-Aid Highway projects had been authorized by the cabinet for a total authorization level of more than \$308 million.

The Director of Highway Safety and the Director of Traffic Operations provided an update on Highway Safety Programs. The Strategic Plan for the Highway Safety Programs includes the areas of impaired driving; lane departures; Drive Smart safety corridors; incident management; occupant protection; commercial vehicle safety; motorcycles; and young, aggressive, and distracted drivers. The cabinet's efforts to address those safety issues are through engineering, education, enforcement, and emergency response. The director's report included

fatalities on Kentucky roads from 2000 through 2009, which reached a high of 985 in FY 2005 but had fallen to 791 by FY 2009.

Committee chairpersons from the Kentuckians for Better Transportation provided information related to alternative-fueled vehicles and discussed the potential impact on the Road Fund, which relies heavily on the motor fuels tax receipts. They provided information related to motor fuel taxes nationwide, which, when adjusted for inflation, decreased 20 percent from 2000 to 2010. That decrease occurred with 13 percent more vehicles on the roads and 7 percent more miles being driven. Production numbers and specifications for many electric power vehicles were provided, along with current plans for natural gas and hydrogen-fueled vehicles.

An update on the Kentucky Public Transit System was provided by the President of the Kentucky Public Transit Association and officials from large urban area transit authorities in Louisville, Lexington, and Northern Kentucky. Public transit operations in the Commonwealth provide 29.1 million trips per year. The public transit system partners with many large employers and universities providing transportation for employees and students. A list of those organizations and many service organizations dependent on public transit was provided. The Federal Highway Administration estimates that for every \$1 billion investment in public transit, 47,500 jobs are produced and business activity increases by \$6.1 billion. For FY 2010, General Fund dollars available to assist public transit systems with local match was less than \$1.2 million. The president expressed his interest in working with members of the General Assembly to identify a dedicated funding stream for that purpose.

**Report of the 2010  
Interim Joint Committee on Banking and Insurance**

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

Sen. Julian M. Carroll  
Sen. Julie Denton  
Sen. David Givens  
Sen. Tom Jensen  
Sen. Gerald A. Neal  
Sen. Mike Reynolds  
Sen. Dorsey Ridley  
Sen. John Schickel  
Sen. Dan “Malano” Seum  
Sen. Tim Shaughnessy  
Sen. Brandon Smith  
Rep. Johnny Bell  
Rep. Dwight Butler  
Rep. James R. Comer, Jr.  
Rep. Will Coursey  
Rep. Ron Crimm  
Rep. Robert R. Damron  
Rep. Mike Denham  
Rep. Ted Edmonds  
Rep. Tim Firkins

Rep. Joseph M. Fischer  
Rep. Danny Ford  
Rep. Jim Gooch, Jr.  
Rep. Mike Harmon  
Rep. Dennis Horlander  
Rep. Brent Housman  
Rep. Dennis Keene  
Rep. Adam Koenig  
Rep. Brad Montell  
Rep. Sannie Overly  
Rep. Jody Richards  
Rep. Steve Riggs  
Rep. Arnold Simpson  
Rep. Kevin Sinnette  
Rep. Wilson Stone  
Rep. Tommy Thompson  
Rep. John Tilley  
Rep. Ken Upchurch  
Rep. David Watkins

LRC Staff: Rhonda Franklin, Emily Bottoms, Jens Fugal, and Jamie Griffin

**Presented to the  
Legislative Research Commission  
and the  
2011 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 2010 Interim.

### **Federal Health Care Reform**

The Commissioner of the Department of Insurance provided the committee with an overview of the federal health care reform legislation. Department staff created seven working groups within the department to read and analyze the legislation and determine necessary action by the state to comply with the law. Based upon a recommendation from the department, the Governor decided that Kentucky would opt out of the temporary high-risk or preexisting insurance plan and allow the federal government to operate the pool to protect the state from unknown and unfunded liability.

The commissioner addressed the immediate market reforms that took effect in 2010, including rate reviews, medical loss ratios, a prohibition on lifetime benefit limits, a prohibition on rescissions, extension of dependent coverage to age 26, and uniform explanation of coverage documents and standardized definitions. The commissioner explained the term “grandfathered plans” and the known requirements for grandfathered health plans. Federal grants available to the state for implementation of the reforms were also addressed.

The commissioner explained that the purpose and operation of health exchanges is to provide an organized marketplace for the purchase of health insurance by individuals and small groups; these exchanges are to be implemented in each state by 2014. The commissioner updated the committee on the rules issued by the Secretary of the Department of Health and Human Services concerning health care reform requirements.

### **Financial Institution Regulation**

The Commissioner of the Department of Financial Institutions reported to the committee on the provisions of the Dodd-Frank Act, commonly known as “Wall Street Reform.” Borrowers and consumers will see greater consumer protections under the federal legislation with federal regulations to be issued in the coming years. One immediate reform was the permanent increase

in depository insurance provided by the Federal Deposit Insurance Corporation from \$100,000 to \$250,000. The Consumer Financial Protection Bureau was created by the Dodd-Frank Act within the Federal Reserve to oversee banks with assets of \$10 billion or more, nondepository institutions which include mortgage lenders, payday lenders, and student loan providers.

Numerous financial consumer protection laws are subject to oversight by the bureau, including the Truth in Lending Act, the SAFE Act, and the Home Mortgage Disclosure Act. The bureau will assume responsibility for oversight of mortgage loan origination standards, minimum standards for mortgages, regulation of high-cost mortgages, and mortgage servicing. Other areas to be regulated pursuant to the Dodd-Frank Act include appraisals and appraisers and risk retention. The Dodd-Frank Act established the Financial Stability Oversight Council to monitor and identify risks to financial stability and to provide market oversight.

The Kentucky Bankers Association addressed the impact of the Dodd-Frank Act on Kentucky state banks, stating that the Act does not address the problems that caused the current financial problems, but negatively impacts community banks. The negative impact will result from the compliance and regulatory burden to be imposed on banks, which will have a greater impact on small banks under the \$10 billion dollar threshold than on the larger firms due to economies of scale. Small banks will spend an increasing amount of time and money on compliance. The bankers stated that securities firms, referred to as “Wall Street” firms, were a major cause of the financial decline but are exempt from the provisions of the financial reform legislation.

Community banks will face uncertainty regarding whether state or federal law applies because the standard preemption was modified by the financial reform. In addition to an increased regulatory burden and uncertainty regarding whether to apply state or federal law, the bankers cited the need to expend additional resources to comply with new disclosure and reporting requirements to be established by the newly created Consumer Financial Protection Bureau.

### **Deferred Deposit Transaction Database**

The Commissioner of the Department of Financial Institutions provided an overview of the data obtained from the Deferred Deposit Transaction Database, created by 2009 Regular Session House Bill 444, since its effective date of April 30, 2010. Due to the ability of the database to disapprove a payday loan in excess of statutory limits, in the first month of operation transactions declined by 27 percent, which includes a maximum of two loans at any time for a total up to \$500. Prior to the implementation of the database, the borrower certified that a new loan would not exceed the statutory maximum number of loans or the loan dollar amount. Since implementation of the real-time database, the commissioner reported that the number of loans per borrower had declined from 2.05 to 1.62, and the total number of transactions had declined from almost 300,000 per month to approximately 175,000 per month. Enhanced enforcement authority for the department has resulted in the assessment of six fines.



**Report of the 2010  
Interim Joint Committee on Economic Development and Tourism**

**Sen. Alice Forgy Kerr, Co-Chair  
Rep. Eddie Ballard, Co-Chair**

Sen. Julian M. Carroll  
Sen. Julie Denton  
Sen. Denise Harper Angel  
Sen. Ray S. Jones II  
Sen. Jerry P. Rhoads  
Sen. Katie Kratz Stine  
Sen. Gary Tapp  
Sen. Robin Webb  
Sen. Jack Westwood  
Sen. Ken Winters  
Rep. Royce W. Adams  
Rep. Linda Belcher  
Rep. Kevin D. Bratcher  
Rep. John “Bam” Carney  
Rep. Larry Clark  
Rep. Leslie Combs  
Rep. Will Coursey  
Rep. Jim DeCesare  
Rep. Mike Denham  
Rep. Bob M. DeWeese  
Rep. Myron Dossett  
Rep. Ted Edmonds  
Rep. Kelly Flood  
Rep. Jim Gooch, Jr.

Rep. Keith Hall  
Rep. Mike Harmon  
Rep. Melvin B. Henley  
Rep. Dennis Horlander  
Rep. Joni L. Jenkins  
Rep. Dennis Keene  
Rep. Thomas Kerr  
Rep. Martha Jane King  
Rep. Adam Koenig  
Rep. Tom McKee  
Rep. Terry Mills  
Rep. Tim Moore  
Rep. Fred Nesler  
Rep. David Osborne  
Rep. Ruth Ann Palumbo  
Rep. Don Pasley  
Rep. Dottie Sims  
Rep. Ancel Smith  
Rep. Fitz Steele  
Rep. Tommy Thompson  
Rep. Ron Weston  
Rep. Addia Wuchner  
Rep. Jill York

LRC Staff: John Buckner, Karen Armstrong-Cummings, Louis DiBiase, and Dawn Johnson

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## **Subcommittee Organization and Membership**

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

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

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

Sen. Julian M. Carroll  
Sen. Julie Denton  
Sen. Denise Harper Angel  
Sen. Ray S. Jones II  
Sen. Jerry P. Rhoads  
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LRC Staff: John Buckner, Karen Armstrong-Cummings, Louis DiBiase, and Dawn Johnson

## **Interim Joint Committee on Economic Development and Tourism**

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

### **Committee Activity**

During the 2010 Interim, the committee held three meetings in Frankfort and two meetings out of town.

#### **2010 Alltech FEI World Equestrian Games**

Prior to the games, one of the legislative representatives on the Governor's Advisory Commission for the World Equestrian Games, Senator Damon Thayer, gave an update on statewide events that were scheduled to occur. There were many planned activities outside the Kentucky Horse Park, including international equine expos in downtown Lexington and Georgetown. State funds were invested in the games indirectly through needed improvements to the park and its infrastructure, which will allow the park to compete with larger venues in Tulsa, Oklahoma City, Columbus, and Indianapolis.

The Executive Director of the Horse Park said the reason the games were being held outside of Europe for the first time was the park's international reputation. Over the last 30 months, 12 major infrastructure projects have been completed within the park. Of the \$110 million invested, approximately \$80 million were state funds, and these investments were in the park itself and not the games. The principle projects were the state-of-the-art equestrian arena (\$42 million), a new outdoor stadium (\$25 million), and park infrastructure upgrades to roads. Because of the renovations, approximately 20 new annual events have been booked at the park. Some of the newly acquired events include the Intercollegiate Horse Show Association National Championships, the Arabian Sport Horse National Championships, and the East Coast Reining Championships. The outdoor stadium will host the North American Junior and Young Riders National Championships, which have committed for 3 consecutive years; the United States Equestrian Federation Junior Hunter National Championships; and the United States Equestrian Federation National Pony Finals.

The Horse Park Museum featured A Gift From the Desert, which is a major art and artifacts exhibit, and the exhibition will run throughout the games. The park reaches out to other cultures to honor a shared association with the horse. With the award of the games, a group of

Arabian American horse enthusiasts raised \$10 million to fund an expansion to the International Museum of the Horse at the park. It features the Almara Arabian Galleries and a state-of-the-art, interactive experience that explores the Arabian horse.

The Equine Village at the park will celebrate the diversity of all horse breeds with exhibits and demonstrations featuring over 500 horses, 40 equine organizations, 150 clinicians, and a wide variety of entertainment acts that include a Dakota Sioux Indian tribe exhibit; Equimania, a children's interactive program; and demonstrations by the National Cutting Horse Association. The remains of Lexington—a horse that was instrumental in making Kentucky a key state in the thoroughbred industry after the Civil War—will be moved from the Smithsonian Institution, where he has stood since 1870, to the park. A variety of other exhibits were discussed, one that includes Elvis Presley's horse riding equipment and that is on loan from Graceland.

The Chief Executive Officer of the World Games 2010 Foundation, Inc., explained that, with park construction complete, games' preparations began immediately and included a temporary driving stadium and over 300 temporary structures ranging in size from 10 square feet to 30,000 square feet. On May 1, per Federation Equestre Internationale rules, 62 countries submitted "entries of intent" to send participants. By comparison, the 2006 World Equestrian Games held in Aachen, Germany, had 59 countries to compete. Over 900 horses and approximately 1,000 athletes competed in the 2010 games.

The foundation works closely with the Kentucky Horse Park to ensure the games will benefit the park's ongoing operations. Throughout June, approximately 500 of the 2,000 Kentucky volunteers are being trained per week. With a full-time staff of 45 people, the foundation needed 7,000 volunteers for the 16-day event.

By June, the foundation entered into its final marketing phase. The first two phases focused primarily on national and international markets, and the third phase was more locally and regionally focused, with marketing directed toward regional centers such as Indianapolis and Nashville. Since hotel accommodations were a great concern, the foundation worked with the industry to promote hotels throughout the state.

Ticket sales were not as strong as originally anticipated, most likely due to the economic downturn and many people who are waiting to make purchasing decisions. Empirical data suggested that people were planning to attend but delayed purchasing tickets. According to travel representatives, the European market was involved in the World Cup and would focus on the games once that was over. The projected \$150 million economic impact given by Dr. Paul Coomes of the University of Louisville was revised to \$167 million. Events like the World Equestrian Games draw corporate attention to the state for future economic endeavors.

Regarding health concerns to horses being brought into the state from other countries, a group effort between the University of Kentucky, the United States Department of Agriculture, and the equine industry was established to create a quarantine facility and to monitor all horses coming to the park. Only competition horses that were tested for equine pyroplasmosis were allowed onto the grounds. Competition horses were flown into the Cincinnati/Northern Kentucky

International Airport and were quarantined for the requisite 42 hours. Measures were taken to eradicate the tick population on park grounds.

After the games, the Executive Director of the Kentucky Horse Park gave follow-up testimony. Choosing Nicholasville-based Alltech as the title sponsor was representative of Kentucky and indicative of the state's future. Kentucky presented itself as a friendly place worthy of business investment and relocation. The Kentucky Experience pavilion at the games demonstrated that there has never been a greater effort at selling all the regions of Kentucky at one event. Lexington has experienced a renaissance, with the games playing an important role.

The legacy for the Horse Park, the state, and the community was at the center of all efforts for the games. The games allowed Kentucky to present itself as the horse capital of the world. The state's investment will pay dividends in future events and economic activity. With the completion of the stadium, the new arena, and infrastructure improvements, there are 19 new national events coming to the park in 2011 and beyond. Additionally, 34 existing events have expanded and will be held in the new indoor arena.

### **Kentucky State Parks**

The Secretary of the Tourism, Arts and Heritage Cabinet reviewed the 2010 state parks strategic plan. In January 2009, a consulting firm was selected to perform a complete review of the parks system and create a strategic plan. Eighteen months later, the 2010 *Kentucky State Parks Financial and Operations Strategic Plan* was submitted. Because of the ongoing budget crisis, the Department of Parks is required to make an additional \$6 million General Fund reduction in the 2011 budget, and the system faces closures without the changes recommended in the plan.

The Commissioner of the Department of Parks testified that, with 51 state parks and 17 resorts, Kentucky has the highest number of resorts and rooms among all states. Kentucky ranks third nationally in the number of state-operated marinas and second in the number of golf courses. Restaurant revenues are \$14 million per year.

The commissioner reviewed the key recommendations of the consulting firm's study. To cut expenses and increase the quality of services over the next 5 years, the Department of Parks must improve daily operations and address key areas of poor performance such as loss of money in food services and golf courses. Parks must implement more progressive business practices and outcomes, streamline expenses, improve earned revenues, create innovative partnerships, and ensure customer satisfaction. Since the parks system has insufficient resources to meet current needs, it must find new avenues of funding and more efficient ways of doing business. Recommendations include restructuring rates and fees, cutting expenses, streamlining operations, creating partnerships increasing revenue from programs and events, and planning programs and services to better meet user needs and interests. Parks must develop and implement programs that have the greatest appeal to wider audiences. Better programming will increase the number of overnight guests at lodges and campgrounds.

Other key recommendations from the study include using a sales approach to marketing. Parks must create a proactive team with targeted goals and objectives that are measured and monitored on a regular basis. Tools for increased sales should include incentives, reward programs, customer follow-ups with feedback opportunities, and packaging. Parks must develop a standardized process for identifying, evaluating, and prioritizing capital projects. A regular maintenance schedule should preserve and protect assets.

The Secretary of the Tourism, Arts and Heritage Cabinet said management of the state parks brand can influence the success of marketing and promotions. Guests should be encouraged to stay longer and use more services and amenities during their visits. Better events and programs can be used to increase guests' length of stay as well. Amenity recommendations in the plan include the sale of liquor by the drink at meetings, conferences, and social events as well as packaged beer sales for golf outings at parks located in "wet" areas. Parks management must provide better training and more recognition for high-quality work by its employees, with an emphasis on outcome versus effort. Kentucky parks need legacy programming that establishes enduring themes and perceived quality for visitor experiences. Themed categories could be designed to highlight each park's unique attributes.

Regardless of the study recommendations, the commissioner said the steps in the cost avoidance plan were necessary to cut \$6 million from the department budget. Full-time employees will now work 37.5 hours per week instead of 40, temporary employment services will be used for seasonal staff, the operation of Ben Hawes State Park was transferred to the city of Owensboro, seasonal schedule reductions at all parks will be implemented, and concessions at dining rooms in selected parks and all golf operations will be implemented to eliminate debt carryover. The estimated total cost avoidance for fiscal year 2011 is \$6,029,000 and for 2012 is \$6,054,000. All parks will remain open.

The commissioner addressed concerns expressed about the plan. He said the Department of Parks is not privatizing the state park system but is simply allowing concession operations for two park services—food and golf. Marina operations at nine parks have successfully operated in this fashion for several years.

The Executive Director of the Department of Personnel for the Tourism, Arts and Heritage Cabinet addressed the changes in hours worked by full-time employees. The change to a 37.5 hour work week is consistent with most state employees. The department is currently looking for a temporary employment agency to handle all seasonal labor.

During the winter, all resort parks will be closed Sunday through Tuesday evening due to single digit occupancy rates. If a large group makes a request, the park will consider opening to accommodate them. The parks will be open Wednesday afternoon through Sunday during mid-November through mid-March.

Concessionaires will be allowed to operate or seek liquor licenses at parks in "wet" areas. Bars and cocktail lounges will not be permitted. This amenity plays a significant role in attracting meetings, conferences, weddings and other events at the parks. Working with the Alcohol Beverage Control Board, three resort parks have been identified for liquor sales: Lake

Barkley, General Butler, and Jenny Wiley. Three golf courses will allow package beer sales: My Old Kentucky Home State Park, John James Audubon State Park, and Kincaid Lake State Park.

The immediate cost savings by using temporary employment services is reflected in a reduced amount of unemployment and workers' compensation funds paid out, as well as no longer having to pay leave time to interim employees. This responsibility will be shifted to the temporary agency. Efficiency will be increased by having an immediate seasonal labor pool when it is needed.

The Secretary of the Tourism, Arts and Heritage Cabinet said the national parks system is concessioned, and the Kentucky State Fair Board and the Kentucky Horse Park hold a liquor license.

The committee heard testimony about the issues and challenges facing Kentucky's airports. The committee met jointly with the Program Review and Investigations Committee and asked representatives from Kentucky's major airports to testify.

### **Kentucky Airports**

The President of the Northern Kentucky Chamber of Commerce said that, even with the downsizing of Delta Airlines, the Cincinnati/Northern Kentucky International Airport is still an important generator of economic activity. The national economy is highly dependent on commercial aviation, which is directly or indirectly responsible for 5.2 percent of the gross domestic product and represents 10.9 million jobs nationally. Aviation is critical in Kentucky. According to the Federal Aviation Administration, in December 2009, 5 percent of Kentucky's jobs were civil aviation related with salaries averaging approximately \$31,000 and representing 5.3 percent of the state's GDP. According to a 2004 University of Cincinnati study, the Cincinnati/Northern Kentucky Airport provided an annual net economic benefit of \$4.5 billion and supported over 50,000 local jobs. The presence of air service with options is critical to economic development, and businesses often consider air service a major factor in determining where they will locate. Robust air service is also critical on the international level. According to the Economic Development Cabinet, Kentucky is home to 394 international companies employing 72,581 people full time. Northern Kentucky has many international businesses; many of them are from Germany, England, and Japan. The Cincinnati/Northern Kentucky International Airport used to offer direct flights to Amsterdam and London—a major attractor of many of those firms. Since these flights are no longer offered, the ability to attract international companies is uncertain.

The Chief Executive Officer of the Kenton County Airport Board at the Cincinnati/Northern Kentucky International Airport discussed an air service investment program to help Kentucky's commercial service airports compete with surrounding states. The airport's influence on corporate site selection is evident with companies like Toyota, Ashland Oil, Dunhumby, GE Capital, and Fidelity. However, domestic seat capacity with network carriers is at its lowest level since 1991. Reducing air capacity increases air service competition, resulting in communities competing against each other. New economic development tools are necessary to improve Kentucky's competitive advantage to attract and retain businesses.

In the past decade, air service at the Cincinnati/Northern Kentucky International Airport has decreased significantly; from 2005 to 2010, average weekday departures have gone from 670 to 225. The number of passengers has dropped from 22 million to 10 million, the number of nonstop domestic flights has decreased from 130 to 70, and the number of nonstop European destinations from five to one. Once a major connecting passenger hub, the airport now services an equal number of local and connecting traffic. Two terminal concourses have been closed and thousands of airline employees have been laid off. To increase air service, the airport is pursuing all avenues, including identifying new air service opportunities with existing carriers, meeting with business and political leaders, seeking a diversified mix of domestic and international carriers, and improving customer service. Restoring lost international service is a priority, as the ability to shorten travel time between international destinations is a distinct advantage in the global marketplace. With the loss of four European nonstop destinations in 2009, the ability to retain and attract international businesses is jeopardized. Cities such as Pittsburgh, Portland, and San Diego have invested millions in incentives to secure or retain international service, citing hundreds of new jobs and an approximate \$100 million annual economic benefit from one direct transatlantic flight.

The targeted travel market segment must be considered in developing an air service investment program, as well as the program's value to the community. International air service offers the most economic benefit and requires the most resources. Historically the Cincinnati/Northern Kentucky International Airport has proven that there is local demand for transatlantic nonstop service; however, competition from cities that offer air service incentives makes it hard to complete. The implementation of an air service investment program for Kentucky's airports will create a level playing field.

The Executive Director of the Louisville Regional Airport Authority testified that the airport offers 92 commercial service flights daily by 7 major airlines. There are 25 nonstop destinations, 17 of which service the top 20 destinations. The airport served 3.2 million passengers in 2009. The airport's main goal is enhancing access to destinations important to the business community. Business travel is the core component of the commercial airline industry. An example of good investment in aviation is the United Parcel Service, which provides a significant economic benefit to the state through jobs, taxes, and the ability to attract other companies.

The airport's passenger air service development strategy is to create sustainable air service while focusing on new domestic nonstop service; this is done particularly through expanded hub access as well as regional connections and enhanced leisure options without sacrificing network carriers that support the business marketplace. Partnerships, including one with the Louisville Chamber of Commerce, have been formed to help build a sustainable service. A successful air service development program has three essential ingredients: a well thought-out plan, sustainable service that is efficient and reliable, and buy-in through the community to help attract and promote service and reduce start up costs.

The Executive Director of Lexington Blue Grass Airport said the airport serves approximately 1 million passengers a year, averaging 40 flights a day to 14 cities. The airline industry has suffered from enormous economic pressure since deregulation in 1978, resulting in

many communities having decreased passenger service as a result. Lexington recently received a United States Department of Transportation Small Community Air Service Development Grant for \$600,000, with a local match of \$150,000 to attract a low-fare service to Lexington to counter the steady drop in passenger activity over the previous 4 years. Through a revenue guarantee, AirTran Airways began direct service to Orlando and Fort Lauderdale. In the first 6 months, passenger activity increased 16 percent over 1 year ago. This demonstrates the challenge airports have of legally providing a revenue guarantee regardless of whether the money is available. Because of this challenge, it is not uncommon for state governments to implement air service grants. Kansas offers incentives based on the belief that an annual investment of \$5 million will save citizens over \$40 million through lower airfares.

Airlines are most concerned with minimizing risk when entering a new market, and one way to avoid this is to minimize the cost of entry into the market. As an example the state provided a \$400,000 jobs incentive for the 1994 Delta and ComAir expansion at the Cincinnati/Northern Kentucky International Airport that resulted in the purchase of property that is still in use by the airport.

The largest European markets from the Cincinnati/Northern Kentucky Airport are London, Frankfurt, and Paris. The use and lease agreement with Delta expires in 2015, and separate terminal leases with Delta expire from 2015 to 2025. The original exclusive lease with Delta was modified when it filed bankruptcy.

## **Cultural Environment**

The Executive Director of the Owensboro Museum of Fine Art said that, since its inception in 1977, the museum has become the state's second largest art museum, with over 70,000 annual visitors. It has evolved into a regional center for the visual arts. The museum, which is now housed in three wings, also offers two outdoor sculpture parks. This dynamic growth is the result of generous financial support and extensive gifts to the art collection and the enthusiastic response from regional residents to its broad programming and arts education. Two of western Kentucky's most important historical structures enhance its physical plan. Both are national historic sites—the Carnegie Building, built in 1910, and a Civil War era mansion, the John Hammond Smith House. They were structurally joined by a \$2.5 million expansion creating an architectural concept called the village environment, which contains 14 galleries. The site also features two outdoor sculpture parks that include green space and a walking trail. The museum features local artists, folk art, and national touring exhibitions. More than 30,000 school children visit the museum annually to view the exhibits, watch performing arts events, and participate in the museum's educational opportunities. There is a monthlong summer camp.

The Chairman of the museum's Board of Directors explained that the museum needs financial help. The community saw a need for greater cultural awareness and decided to commit its time and resources to making it happen. These enhanced opportunities are even more important in light of the recent financial challenges faced by regional school systems, and the museum's experience in planning and implementing creative educational programs could benefit the region in much the same way as the Kentucky Historical Society does with its state-assisted programs. Eastern Kentucky is represented through the Prestonsburg Mountain Arts Center and

the Kentucky Artisan's Center in Berea. A western Kentucky center for the visual arts could serve the same purpose for that part of the state. The chairman asked that the legislature include funding for the museum as a line item in the next biennium budget. The museum is requesting approximately \$400,000 each year to develop the regional center.

The committee traveled to Paducah to see and learn more about what has come to be known as the "Paducah model" for redeveloping distressed inner city areas by recruiting artists and fine art galleries.

The Mayor of Paducah said that the LowerTown Artist Program began as a grassroots movement conceived as an effort to fight area drug problems and slumlord housing conditions. Many of the LowerTown district historic homes had fallen into disrepair. A local artist and member of the LowerTown Neighborhood Association suggested an artist relocation program. Thus far, \$30 million has been invested in the program and Paducah has become a national model.

The Director of the Downtown and LowerTown Development Area explained that, like many cities in the United States, inner city Paducah was in need of investment. In 2000, over 50 percent of the LowerTown area residents were in poverty, 70 percent of the structures were renter occupied, and the vast majority of the structures were dilapidated. Unemployment was 17 percent and per capita income was less than \$9,000. To revitalize the area, city officials and area residents decided to target artists, galleries, and arts programs because of the ideal living and workspace the area and structures offered. Zoning flexibility, the Kentucky Renaissance Program, and private funding were some of the tools used. The program created over 70 permanent jobs and numerous temporary construction jobs. Every dollar invested by the city saw an \$11 return in private investment. The program has energized the entire community and has become a national model.

The Executive Director of the Paducah Convention and Visitors Bureau said projects such as the National Quilt Museum and the Luther F. Carson Four Rivers Center have helped revitalize downtown Paducah. Quilters account for 75 percent of visitor inquiries. Arts and crafts are a part of the creative economy. With the success of the LowerTown Artist Program, Paducah had to change the way it did business. By participating in the Tourism Cabinet's Tourism Incentive Marketing Plan, Paducah was able to double its marketing budget. It partnered with other cities, including Lexington, Elizabethtown, and Shepherdsville, to place ads in publications such as the *Chicago Tribune*, *Architectural Digest*, and Chicago's Grant Park Music Festival brochure.

Because of the downturn in the economy, people are buying less art, but the Paducah School of Art has seen increased enrollment. The school is recruiting students from as far away as China. Paducah officials have also applied for the city to become a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Creative Cities Network as an arts and crafts/fiber arts location. There are 25 cities in the network worldwide with 2 in the United States—Iowa City for literature and Santa Fe for the arts.

The Vice Chair of the board of EntrePaducah explained that EntrePaducah is a local nonprofit business advocacy group that focuses on entrepreneurialism. In 2007, local business leaders formed a think tank to study local economic development. An advisory board was created to establish an entity to focus on serving start-ups and existing small businesses. EntrePaducah was created in 2008. The organization recruits, guides, and retains entrepreneurs involved with start-up and existing businesses. It helps with business plans and marketing suggestions, and it provides a connection with local investors and mentors. While a majority of clients consist of retail and service businesses, last year 20 percent were from the medical, medical technology, and manufacturing industry. The organization recently received an Innovator Award from the Southern Growth Policy Board for assisting small businesses facing challenges due to the economic downturn. EntrePaducah has also focused on industry-specific workshops and it has partnered with the Kentucky Arts Council to host a symposium on the essentials for a strong art business.

The President of West Kentucky Community and Technical College said Kentucky's community colleges are deeply involved in economic development and regional growth. Approximately 5 years ago, the college was approached about developing an arts school in Paducah. After a year of studying the issue, the college developed the Paducah School of Art. The city purchased a 50,000 square foot warehouse, and in 2007 a director was hired. In 2008, property was leased and classes began. In just 2 years, enrollment has grown from 130 to 369 students. The college is committed to the arts school and they are considering expanding into another facility to offer more workshops and to sponsor out-of-town guest artists and international students.

### **Lexington Civic Center and Distillery District**

The President and Chief Executive Officer of the Lexington Center Corporation expressed appreciation for General Assembly appropriations in previous years of approximately \$30 million that funded major improvements at the center. Along with \$20 million in new debt service issued by the center, these improvements, which were made between 2001 and 2005, included significant renovations to Rupp Arena and the creation of new convention center space, including the Bluegrass Ballroom prefunction lobby space. With the investment, the center has attracted more business, including the 2010 Southeast Theater Conference, which brought over 4,000 delegates, and the 2010 International Little League Congress, among others. Improvements at the center helped initiate a \$17 million renovation at the Hyatt Regency and a \$14 million renovation at the Hilton.

The developer of the Lexington Distillery District testified that the distillery district project consists of 6 partnerships that represent 30 current or former Kentuckians who are dedicated to the reinvention of a heritage distilling corridor in Lexington. The project is an attempt to combine a number of Kentucky's finest elements: a rich historic heritage, an appreciation and promotion of the bourbon industry, and rejuvenation of Kentucky's resources. In the past 4 years, over 20 parcels have been created in the 25-acre development. Elements of the development include legacy distillery buildings and a water tower. The distillery area dates back 140 years.

The distillery project received tax increment financing (TIF) approval in late 2009. Project leaders worked with the Lexington officials to create new zoning overlays and rezoning the area for mixed use. In 2008, property surveys identified the area as predominantly underutilized and vacant property. Over 300,000 square feet of building space had been left unused over the past 10 years. Under the new zoning classification, buildings that were once zoned industrial can now be used as residential or commercial space. The distillery project was selected by the National Brownfield Association as one of 15 showcase properties among over 100 applicants. The project is working with the Kentucky Distillers Association in an attempt to become part of the Kentucky Bourbon Trail.

The distillery project represents a significant private/public partnership and investment. Although it is in an economically distressed area of Lexington with a high poverty rate, there has been significant community building over the last 5 years. Efforts include those by the University of Kentucky's College of Design and Architecture, neighborhood meetings, and local interest in the possible business opportunities the proposed arts and entertainment district may provide. More than \$1 million has been used on predevelopment. The project is Kentucky's first mixed-use redevelopment of a blighted area using TIF. Lexington approved \$2.2 million for the corridor—a direct result of the TIF program. Being designated a historic building qualifies the Pepper Building for historic preservation tax credits. A project coordinator has been appointed to work through the difficulties of brown fields, historic preservation, flood plain location, and improving an area that has not seen public infrastructure improvements in decades.

In making the area environmentally friendly, consideration is being given to the entire neighborhood and how to best create a sustainable green environment well into the future. The Lexington-Fayette Urban County Government has invested over \$1 million in the Distillery District's section of the Town Branch Trail, a proposed shared-use greenway trail that will connect downtown Lexington with its world famous equine landscape via area neighborhoods, parks, and historic sites.

The project's progress is incremental. Barrel House Distilling Company, Lexington's first producer of vodka and bourbon, has increased from 200 to 600 the number of retail outlets that carry its products. Buster's Billiards and Backroom has created a music venue that caters to artists and now hosts national acts. Barrel House Events, a catering company, has events booked into December.

### **Subcommittee Activity**

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

The Task Force on Economic Development did not meet during the Interim.

**Report of the 2010  
Interim Joint Committee on Education**

**Sen. Ken Winters, Co-Chair  
Rep. Carl Rollins, Co-Chair**

Sen. Walter Blevins, Jr.  
Sen. David Givens  
Sen. Jimmy Higdon  
Sen. Alice Forgy Kerr  
Sen. Vernie McGaha  
Sen. Gerald A. Neal  
Sen. R.J. Palmer II  
Sen. Tim Shaughnessy  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner  
Sen. Jack Westwood  
Rep. Linda Belcher  
Rep. John “Bam” Carney  
Rep. Hubert Collins  
Rep. Leslie Combs  
Rep. Jim DeCesare  
Rep. Ted Edmonds  
Rep. C. B. Embry, Jr.  
Rep. Bill Farmer  
Rep. Tim Firkins

Rep. Kelly Flood  
Rep. Jim Glenn  
Rep. Derrick Graham  
Rep. Jeff Greer  
Rep. Reginald Meeks  
Rep. Charles Miller  
Rep. Harry Moberly, Jr.  
Rep. Rick G. Nelson  
Rep. Marie Rader  
Rep. Jody Richards  
Rep. Tom Riner  
Rep. Charles Siler  
Rep. Dottie Sims  
Rep. Kent Stevens  
Rep. Wilson Stone  
Rep. David Watkins  
Rep. Alecia Webb-Edgington  
Rep. Addia Wuchner  
Rep. Jill York

LRC Staff: Audrey Carr, Sandy Deaton, Henry Smith, Janet Stevens, Ken Warlick, Lisa Moore, and Janet Oliver

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## Subcommittee Organization and Membership

### Subcommittee on Elementary and Secondary Education

**Sen. Vernie McGaha, Co-Chair**

**Rep. Ted “Teddy” Edmonds, Co-Chair**

Sen. Walter Blevins, Jr.

Sen. David Givens

Sen. Jimmy Higdon

Sen. Tim Shaughnessy

Sen. Jack Westwood

Rep. Linda Belcher

Rep. John “Bam” Carney

Rep. Hubert Collins

Rep. Derrick Graham

Rep. Jeff Greer

Rep. Charles Miller

Rep. Harry Moberly, Jr.

Rep. Rick G. Nelson

Rep. Marie Rader

Rep. Dottie Sims

Rep. Kent Stevens

Rep. Wilson Stone

Rep. Alecia Webb-Edgington

Rep. Jill York

Sen. Ken Winters, ex officio

Rep. Carl Rollins II, ex officio

LRC Staff: Janet Stevens, Sandy Deaton, and Janet Oliver

### Subcommittee on Postsecondary Education

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

**Rep. Leslie Combs, Co-Chair**

Sen. Gerald A. Neal

Sen. R.J. Palmer II

Sen. Elizabeth Tori

Sen. Johnny Ray Turner

Rep. Jim DeCesare

Rep. C. B. Embry, Jr.

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Rep. David Watkins

Rep. Addia Wuchner

Sen. Ken Winters, ex officio

Rep. Carl Rollins II, ex officio

LRC Staff: Ken Warlick, Audrey Carr, and Lisa Moore

## **Interim Joint Committee on Education**

Jurisdiction: Matters pertaining to elementary, secondary, and postsecondary 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 vocational rehabilitation; state universities and colleges; community colleges; regional education; educational television.

### **Committee Activity**

The Interim Joint Committee on Education met seven times during the 2010 Interim. Five of the meetings were in Frankfort and two were site visits. The committee heard a series of program reports relating to primary through postsecondary education, including career and technical education and green schools initiatives, and received updates regarding the state budget, identification and support for persistently low achieving schools, federal support and grant initiatives, and governance and consumer issues relating to proprietary education. The committee heard a practitioner's view of effective public charter schools and comments from special interest groups.

### **Assessment and Accountability**

The Commissioner of Education reported on the development of the new assessment and accountability system—a balanced assessment system including formative, interim, and summative assessments.

Kentucky was the first state to adopt the national content standards for mathematics and for language arts to be used in 2012 and thereafter. Development of standards in the other academic areas is ongoing. Content leadership networks are guiding district teams to understand the new standards with focus on change in classroom practice. Professional development networks are focusing on outcomes, curriculum resources, and leadership.

Program reviews of arts and humanities, writing, and practical living and career studies were piloted in 48 schools in 34 districts during the 2009-2010 school year. Revisions were made during the summer of 2010 with full implementation of program assessments scheduled for the 2011-2012 school year. In the meantime, schools may voluntarily implement program assessments during the 2010-2011 school year.

The committee was provided the 2009-2010 student assessment results. Until the new assessment and accountability system is implemented in 2011-2012, students are being tested with the Kentucky Core Content Test and a nationally norm-referenced test, the Iowa Test of Basic Skills. This year all test results by school and district are located on the department's Open House Web site. There was significant improvement in reading and mathematics at the elementary level and in middle school reading. National Assessment of Educational Progress scores were comparable in these levels and content areas. Significant gaps still exist with various

subgroups at all levels in the other core content areas. High school results are very poor in all areas. A new model will be implemented at the high school level with end-of-course assessments.

The commissioner said that a “gap to goal model” with the goal of 100 percent proficiency will be included in Kentucky’s revised accountability system if approved by the Kentucky Board of Education.

The commissioner pointed out that 93 of the 174 districts are in some form of consequences, and 130 of the 174 districts did not make adequate yearly progress. The lowest-scoring five school districts will receive state assistance to create corrective action plans.

### **College and Career Readiness**

The President of the Council on Postsecondary Education and the Commissioner of Education discussed issues around college and career readiness. The president identified the two goals in Senate Bill 1 from the 2009 Regular Session: reduce college remediation rates by at least 50 percent by 2014 in comparison to the 2010 rate and increase the college completion rates of students enrolled in one or more remedial classes by 3 percent annually from 2009 to 2014.

New college readiness standards are in effect for entering freshmen in the fall of 2010; these standards reflect minimum ACT scores. An estimated 37 percent of students will need developmental education in mathematics, compared to 29 percent under the current standard, an increase of 1,595 students. About 28 percent of students will need remediation in reading, compared to 17 percent under the current standard, an increase of 1,969 students.

The Commissioner of Education reported that the college and career readiness rate showed that approximately 40,000 students graduated in 2010, of which 34 percent met benchmarks for college readiness on the ACT. The goal for college/career readiness is 67 percent of graduates by 2015.

### **Career and Technical Education**

The committee toured the Green County Area Technology Center and met at Green County High School. The committee heard from teachers and students in the various career and technical education programs. Staff from the KY Tech System, state-operated area technology centers, the central office, and the director of the college and career readiness branch gave a detailed overview of programs, enrollments, governance, funding of the locally operated centers and high school and state-operated programs, student leadership organizations, and business and industry certifications. There was also a brief discussion of the Carl D. Perkins Federal Act for Career and Technical Education. During the presentations, several issues related to the governance, the role of career and technical education in college and career readiness, and funding were raised.

## Charter Schools

In August, the school leader of the Knowledge Is Power Program (KIPP) Reach College Preparatory Middle School in Oklahoma City, Oklahoma, described to the committee how the charter school went from being the lowest performing middle school in the state to one of the high achieving schools in the state.

The school leader reported that many of the students were several grades below reading level comprehension and many of the parents were shocked to learn their children were behind in reading. In 2010, 100 percent of his students passed 7<sup>th</sup> and 8<sup>th</sup> grade math, 100 percent of the students passed 8<sup>th</sup> grade reading, and 97 percent passed 7<sup>th</sup> grade reading. He also reported that 93 percent of his 7<sup>th</sup> grade students scored in the advanced level on the state math assessment, and 89 percent in 8<sup>th</sup> grade scored at an advanced level.

The KIPP model was implemented before the school became a charter school. The school leader testified that the biggest change was that the school has autonomy to make decisions and is relieved of local board regulations. Other characteristics of this charter school are that teachers have an extended work day, reporting to work at 7:15 a.m. and usually leaving around 5:15 p.m.; students usually have 2 hours of homework each night; students are encouraged to call their teachers at any time if they have questions with their homework; and teachers have extensive professional development and training. All teachers in the school are certified. The school leader said if he were in a traditional school, he would still use the same methods and concepts that he currently uses in the charter school.

Stakeholder groups presented comments relating to charter schools. The President of the Jefferson County Teachers Association said there is a difference between innovative educational programs and strategies, such as KIPP, and a charter school concept. He said charter schools are not necessary in Kentucky because of the level of local school empowerment through the school-based decision making councils (SBDM).

The Pastor of the Midwest Church of Christ in Louisville, Kentucky, testified on behalf of charter schools. He stated public charter schools would allow teachers and principals the ability to redirect their efforts to meet children's needs without impeding the progress of the students that are progressing at a faster pace. He said that low-income and African American parents have no input on where their children attend school, the curriculum they are taught, or the policies that control their education. SBDMs do not provide the same opportunities for children as public charter schools in the inner city. The Vice President for Policy and Communications at the Bluegrass Institute for Public Policy Solutions also spoke in favor of charter schools. He maintained that charter schools do work and deserve a chance to operate in Kentucky.

The Executive Director of the Kentucky Education Association (KEA) testified that the association does not support any previous charter legislation proposals in Kentucky, but is open to future discussions on the subject. She testified that a major concern of KEA is that charter schools too often do not live up to their promises.

An associate superintendent speaking on behalf of the Kentucky Association of School Administrators said that the association does not oppose charter schools but would like to see more collegial work being done to identify the pros and cons.

The Executive Director of the Kentucky Association of School Superintendents said research findings show no clear evidence that charter schools significantly improve student achievement. Seventy percent of Kentucky superintendents are opposed to charter schools. Legislative and financial support of quality public schools is a better educational direction than a charter school system.

The Public Policy Agent for the Kentucky School Boards Association (KSBA) said KSBA believes that if there are charter schools in Kentucky that local school boards should be the sole authorizers of those schools. KSBA is concerned that charter schools would take away much needed funding from the other public schools. The association would like more research on charter schools located in rural areas.

### **Certified Personnel Evaluation**

The Commissioner of Education discussed the importance of having effective teachers and principals and an evaluation system that measures their effectiveness. He described Kentucky's current evaluation system that permits individual districts to use their own methods of evaluation as long as the standards for evaluation set by the state board are used. A new system will require uniform statewide standards although district options would be allowed if the validity and reliability of the requirements can be verified. The new system should include more frequent assessments for all teachers and professional growth targets for individual teachers. A new system will be field tested in the next 3 years and will include feedback from affected parties; teacher presentations, including artifacts and evidences; and student test scores. Currently, 23 districts have volunteered to help in the pilot project. Principal evaluation will be similar to the teacher evaluation system and will be based on the learning environment, instructional practice, and leadership and professionalism.

Stakeholder groups, including the Kentucky Education Association, the Kentucky Association of School Administrators, the Kentucky Association of School Superintendents, and the Kentucky Association of School Boards testified that they supported strengthening evaluation but expressed the need for careful attention to the details and that no inadvertent harm be done to the teaching profession, that adequate training be provided to effectively implement any new system, that the system be balanced with formative and summative components, and that the system be designed to ensure that teachers are growing professionally and students are receiving adequate instruction as a result.

### **Persistently Low-achieving Schools**

The Commissioner of Education informed the committee of interventions in low-performing schools by the Kentucky Department of Education (KDE) and the Kentucky Board of Education as a result of the school and district audits as required by 2010 Regular Session House Bill 176. Intervention required the identification of the lowest-scoring 5 percent or lowest

5 schools in 2 categories: schools receiving Title I funds and schools eligible to receive Title I funding but not receiving that funding; and, in addition, a high school with a graduation rate of less than 60 percent for 3 consecutive years.

Ten schools were identified, five Title I and five who would become Title I-eligible in spring 2010. A new group of persistently low-achieving schools was identified in fall 2010. The largest number of schools are in Jefferson County. The options available to persistently low-achieving schools are external management, restaffing, school closure, and using a transformation school improvement model. The most drastic action taken by the department resulted in restaffing in some schools, including replacement of the principal. The state board also established District 180, in which the department in partnership with Western Kentucky University, Eastern Kentucky University, and the University of Louisville provides technical assistance to the 10 persistently low-performing schools and other struggling schools in the respective service areas.

Some legislative members expressed concerns of constituents who believe the reporting and classification of schools as persistently low-achieving need to be changed—particularly when some otherwise high-performing schools do not make Average Yearly Progress under No Child Left Behind because of a subgroup in its school.

### **Proprietary Education**

The committee heard an overview of the structure and jurisdiction of the State Board for Proprietary Education by officials of the Public Protection Cabinet and heard testimony from two students who expressed their concerns relating to quality of programs, fairness in advertising, tuition costs, students' financial liability, program completion jeopardy when programs are put on probationary status, and the difficulty of the complaint process. Committee members expressed concern about false promises to students; the makeup of the board; how to ensure students are fairly treated; and what appeared to be adequate oversight of for-profit education in Kentucky, including online and other distance learning programs.

In a follow-up meeting, representatives from the proprietary education institutions, the State Board for Proprietary Education, and the Board of Nursing addressed issues relating to programs, approval of licensure programs, and handling of student complaints.

### **Race to the Top Application and Status**

The Commissioner of Education reported in June that Kentucky had submitted a Phase II application and described changes made to the original application to address the areas in which Kentucky received low scores in Phase I, including evaluation of teachers and principals. The committee later learned that while Kentucky was again a finalist, the state was not awarded a Phase II award.

## **School Facilities and Green Schools Initiatives**

In September, the Interim committee toured the South Warren County Middle and High School Campus. Members saw many efficient design and energy conservation features in the schools and learned about the total building program in Warren County, which is focused on green schools initiatives. Not only are the design features saving money, but they provide hands-on learning opportunities for students. To date, Warren County Schools' energy efficient measures have resulted in savings of \$5.4 million dollars.

Representatives from the Kentucky School Boards Association provided an overview of the Energy Managers Project that was developed as a result of 2008 Regular Session HB 2, which directed all school districts to reduce rising energy costs and to enroll in the Kentucky Energy Efficient Program for Schools (KEEPS) by January 1, 2010. All 174 school districts have enrolled in KEEPS, which provides technical expertise and energy management assistance to them.

### **Administrative Regulations and Executive Orders**

The committee reviewed the following administrative regulations: 11 KAR 12:060, Cancellation, partial withdrawal, and payment of refund; 102 KAR 1:320 & E, Qualified domestic relations orders; 102 KAR 1:330 & E, Travel and administrative expenses; 702 KAR 7:130 & E, Approval of innovative school calendars; 703 KAR 5:060, Interim assessment and accountability process; 703 KAR 5:180 & E, Intervention system for persistently low-achieving schools; 704 KAR 3:540, Uniform academic course codes. None were found deficient.

The committee reviewed Executive Order 2010-430 relating to reorganization of the Council on Postsecondary Education; Executive Order 2010-856 relating to the reorganization of the Education and Workforce Development Cabinet; and Executive Order 2010-927 relating to the reorganization of the Kentucky Governor's Scholars Program.

### **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 impact student learning and student performance.

#### **School Calendar**

The Commissioner of Education provided data related to lost instructional time over the past 3 years. Significant issues resulting from missed days are the loss of student instructional time, its effect on retention, and accounting for instructional days and hours for students and staff. The commissioner has met with parties in every region of the state and sought feedback from superintendents. The consensus appears to be that a virtual learning system may be the most viable alternative.

Three district superintendents explained some of the problems associated with existing school calendar requirements and how “banked time” is used to make up lost instructional time. All saw a virtual learning system as an option but stated that the lack of countywide designated service lines could prove to be an obstacle.

### **Alternative Education**

KDE staff and the director of the Kentucky Educational Collaboration for State Agency Children gave an overview of A-5 and A-6 alternative education programs. KDE staff members’ concerns and considerations include ensuring that A-5 and A-6 programs have highly qualified, effective teachers; adequate facilities; rigorous instruction; adequate resources and teaching materials; adequate funding; and appropriate entry and exit academic assessments. KDE has identified eleven alternative programs as “exemplary,” and staff from two of these schools gave testimony.

### **Arts and Humanities Programs**

On a visit to the new Warren County South High School, committee members heard a discussion of the benefits of having a quality arts and humanities program. The assistant superintendent explained that the goals of the district’s art education program include exposing students to the visual arts, different media, different purposes and meanings of art, and various artists and cultures. Research indicates that students who participate in music and art programs also improve their performance in academic areas.

Currently, no statewide student testing is required in arts and humanities programs, but beginning in 2012 programs assessments will be required to assess schools’ arts and humanities programs.

### **Certificates of Attainment and High School Diplomas**

KDE staff explained the difference between a “diploma” and a “certificate of attainment” and described how each is awarded. There are approximately 5,000 special needs students enrolled in alternative programs that will lead to a certificate of attainment, not a diploma. Staff from the University of Kentucky Community Based Work Transition Program explained how the program works with students who will receive a certificate of attainment to help them gain employment after high school.

Several parents suggested an alternative education diploma be available that would bridge the gap between a certificate of attainment and a diploma.

The Executive Director of the Community Based Work Transition Program explained that students with certificates of attainment could enroll in postsecondary programs under certain conditions.

## **Subcommittee on Postsecondary Education**

The Subcommittee on Postsecondary Education met five times during the 2010 Interim.

### **Applied Research and Technology Program of Distinction (Western Kentucky University)**

Administrators from Western Kentucky University explained the Applied Research and Technology Program (ARTP), a program of distinction.

ARTP is comprised of 13 centers and institutes: the Advanced Materials Institute, Agricultural Research and Education, the Applied Physics Institute, Architectural and Manufacturing Science, Bioinformatics, Biotechnology, Biodiversity, Engineering Services, Environmental Research, the Institute for Astrophysics and Space Science, the Institute for Combustion Science and Environmental Technology, and the Kentucky Climate Center. The administrators indicated that ARTP is including undergraduate students and Gatton Academy students in research.

Three of the ARTP initiatives reported are as follows:

- The Applied Physics Institute, which is conducting research related to Homeland Security container scanning, cyber defense, and machine learning to test new algorithms.
- The Mesonet, built and run within the Kentucky Climate Center of the ARTP.
- The Institute for Combustion Science and Environmental Technology, which integrates research with economic development such as energy sustainment, mercury pollution, carbon dioxide emission, and biological waste.

It was reported that the university had been asked by a group of physical therapists to start a doctor of physical therapy program and has a commitment of \$650,000 commitment to support the program. Western Kentucky University will be asking the General Assembly for approval for this program in the near future. It was also suggested that the General Assembly could amend current statutory requirements to permit the Council on Postsecondary Education to approve new doctoral programs at comprehensive universities in Kentucky in order to streamline the process.

### **College Completion**

The President of the Council on Postsecondary Education provided an overview of issues impacting college completion and trend data showing the progress Kentucky has made in the last decade and national comparisons.

Campus representatives discussed initiatives to address college completion at the state's two research universities, the six comprehensive universities, and the Kentucky Community and Technical College System. All of these initiatives appear to have individualized outreach to students as a key component.

## **Inclusion of Students with Intellectual Disabilities in Postsecondary Education**

University of Kentucky staff and a student and her parent discussed two projects designed to provide meaningful higher education opportunities for students with intellectual or developmental disabilities, students who have traditionally been excluded from postsecondary education.

The Postsecondary Inclusion Project began as a pilot partnership between the University of Kentucky, Blue Grass Technical and Community College, the Office of Vocational Rehabilitation, and Fayette County Schools. University of Kentucky's commitment to the project led the university to apply for and win a \$2.2 million grant from the U.S. Department of Education to expand the program statewide over the next 5 years. The new Supported Higher Education Project will provide a variety of educational plan options for students in addition to tutoring, social networking, internships, and assistive technology supports.

## **Independent Colleges and Universities**

The President of the Association for Independent Kentucky Colleges and Universities provided an update on Kentucky's 20 independent, nonprofit colleges and universities. These programs are regionally accredited, employ 6,000 employees, and enroll 33,000 students, 70 percent of whom graduate within 4 years. The schools offer a variety of learning environments: traditional residential campuses, distance learning, community-based programs, Kentucky Community and Technical College System partnerships, and accelerated degree completion. These schools educate 25 percent of Kentucky's new teachers; 20 percent of the nurses; and 20 percent of the nonengineering science, technology, and math bachelor's degrees. Tuition and fee rates remain below the regional and national average.



**Report of the 2010  
Special Subcommittee on Energy**

**Sen. Brandon Smith, Co-Chair  
Rep. Keith Hall, Co-Chair**

Sen. David E. Boswell  
Sen. Tom Jensen  
Sen. Ray Jones  
Sen. Bob Leeper  
Sen. Dorsey Ridley  
Sen. John Schickel  
Sen. Katie Kratz Stine  
Sen. Gary Tapp  
Sen. Johnny Ray Turner  
Rep. Royce W Adams  
Rep. Rocky Adkins  
Rep. Eddie Ballard  
Rep. Dwight D. Butler  
Rep. Leslie Combs

Rep. Tim Couch  
Rep. Will Coursey  
Rep. Jim Gooch  
Rep. Thomas Kerr  
Rep. Martha Jane King  
Rep. Harry Moberly, Jr.  
Rep. Lonnie Napier  
Rep. Rick G. Nelson  
Rep. Sannie Overly  
Rep. Tanya Pullin  
Rep. Tom Riner  
Rep. Fitz Steele  
Rep. Brent Yonts

LRC Staff: D. Todd Littlefield, Taylor Moore, and Susan Spoonamore

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Special Subcommittee on Energy**

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

### **Subcommittee Activity**

During the 2010 Interim, the Special Subcommittee on Energy held six meetings and received testimony regarding a wide range of topics.

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 fiscal year 2011. The block grant application findings of fact were adopted by voice vote.

### **Nationwide Permit 21 in the Appalachian Region**

A representative of the US Army Corps of Engineers, Louisville District, explained that the Nationwide Permit 21, a water quality measure important to coal miners, was suspended on June 17, 2010, in the Appalachian region of six states, including Kentucky. The current and pending permit applications will be converted to individual permits. The representative stated that this was not an attack on coal; the suspension means that the application process will be done differently. The Louisville District had three pending applications and none had been completed. The applications will be converted to individual permits and reprioritized with the existing individual permit applications to avoid delay in the processing of those applications.

### **Renewables**

The committee received several presentations regarding renewable energy generation. A representative from Solar Energy Solutions, LLC, discussed federal solar incentives. A 30 percent commercial tax credit can be taken through December 2010. There is also a 30 percent installation cost tax credit for residential. Kentucky incentives include a 30 percent commercial tax credit or \$3/watt for solar electric, capped at \$1,000, and a 30 percent residential tax credit or \$3/watt for solar electric, capped at \$500. TVA and non-TVA grant programs are available to solar energy producers. The representative also discussed solar generation incentives in surrounding states.

The president of Genesis Development of Kentucky, LLC, testified about federal incentives for wind generation. Wind energy is the only power generation technology that can deliver the necessary cuts in CO<sub>2</sub> emissions in the period leading up to 2020. The Energy

Information Administration predicts that wind, solar, and other green energy sources will be the most rapidly expanding sector, contributing approximately 10 percent to global supplies.

A representative of Wind Energy Corporation reported that on-site commercial wind energy is a \$70 billion market. Kentucky should make investment incentives for on-site wind and solar energy that are competitive with other states. Kentucky should also support the establishment of renewable energy companies to bring jobs and technology to the state.

### **Role of Coal in the Future of Kentucky and the Nation**

The President of White Energy Coal North America, Inc., discussed coal upgrading technology. White Energy is an exclusive worldwide licensee of a patented technology that upgrades high-moisture, lower-energy coals through a low-cost process of dehydration and compaction that forms a higher-density, higher-energy briquette.

The Jefferson Riverport Project in Louisville has the potential to be the first United States binderless coal briquette plant. The company planned to proceed with the project in August once the local air permit was issued if it qualified for incentives under the Kentucky Incentives for Energy Independence Act. White Energy hopes to have the plant operational by the fourth quarter of 2011. Several utilities were interested in this project, although most of the interest has come from outside Kentucky. Kentucky utilities are more interested in the development of a biomass briquette. It is the goal for White Energy to create a briquette out of Kentucky coal and Kentucky-grown energy crops that would fit within a renewable portfolio standard. White Energy is working with an energy crop company focusing on crops that work well for briquetting.

A representative from the Kentucky Coal Association discussed Kentucky coal statistics, stating that Kentucky ranks third in production of coal. Kentucky mined 115 million tons of coal in 2009. He said that 92 percent of Kentucky's electricity comes from coal, therefore Kentucky benefits from inexpensive electricity rates just behind Utah, Wyoming, and West Virginia. The representative explained that the coal severance tax revenues for FY 2010 fell 7.1 percent due to a decline in production. In addition, the industry is struggling with federal regulations, including 404 water protection permits that are vital to the mining of coal. He said it was hard to get answers from the Environmental Protection Agency and the U.S. Army Corps of Engineers as to why the permits were being delayed or not issued. One of the new rules adversely affecting Kentucky is conductivity standards for water.

The Chairman and Chief Executive Officer of Arch Coal reported to the committee that coal remains an abundant and secure energy resource. Coal usage continues to grow rapidly worldwide. Eighty percent of the energy fueling China's explosive growth comes from coal. Low-cost electricity enhances a country's standard of living and competitiveness. America must work with the developing world to address the climate challenge. Carbon capture and storage will be essential for both coal and natural gas. Converting coal to syngas and into liquids is expected to increase. Increasing federal environmental regulation jeopardizes the advantages that coal provides to Kentucky.

## **Coal Transportation, Olmsted Locks and Dam, and Nationwide Permit 21**

The Commander of the Louisville District, United States Army Corps of Engineers (USACE) discussed coal transportation, the Olmsted Locks and Dam Project, and Nationwide Permit 21. There are four USACE districts that have responsibility for parts of Kentucky: Memphis, Tennessee; Louisville, Kentucky; Huntington, West Virginia; and Nashville, Tennessee. Coal is the largest commodity that moves on the river. Lock closures slow the flow of coal transportation along the Ohio River.

The commander said Locks 52 and 53 are the last wooden wicket dams in Kentucky. These projects were built in the 1920s. Each lock has a 600-foot chamber approach wall that is now out of alignment and 1,200-foot chamber cells that are split apart and losing fill material. It is critical that Olmsted is finished in a timely fashion before Locks 52 and 53 fail.

There is a requirement to keep a 9-foot deep channel for barge traffic. When the river drops too low, it is necessary to pool water above the dam to allow barges and tows to navigate that section. Barges and tows then must pass through the locks. Locks 52 and 53 are the busiest locks within the waterway system, and losing these two locks and moving the same cargo by land would result in an additional 11,000 trucks added to the roadways every day for a year. When the Olmsted Dam was originally authorized in 1985, it was projected to cost \$750 million, but current completion is projected to cost \$2.1 billion. The dam is not scheduled for completion until 2016, when USACE will remove Locks 52 and 53. The Olmsted dam will become the nation's busiest spot on the waterways system. Twenty-five percent of the country's coal will move through the locks at Olmsted.

The state's first ever comprehensive energy plan calls for a 20 percent reduction in greenhouse gas emissions while creating 40,000 jobs tied to energy production and conservation between now and 2025. McAlpine and Markland Dams produce hydropower. The USACE is adding generation capacity to Smithland and Cannelton Dams. When those projects are complete, the total hydropower generation capacity in the Commonwealth will be 750,000 kilowatts, which will be enough electricity to light about 250,000 homes for a full year.

Subcommittee members toured the Olmsted construction site.

## **Kentucky-Argonne Battery Manufacturing Research and Development Center**

The Director of the Conn Center for Renewable Energy Research at the University of Louisville and the Director of the Center for Applied Energy Research at the University of Kentucky reported on a collaborative project between the two centers and the Argonne National Laboratory. The Kentucky-Argonne Battery Manufacturing Research and Development Center seeks to develop better battery cells using nanomaterials and lithium-ion technology. Integration of renewable energy resources will require large-scale energy storage. The Center for Applied Energy Research is proud to be breaking ground on a new 43,000 square foot laboratory building.

## **Federal Regulations and Electric Generation**

The President and Chief Operating Officer of Kentucky Power spoke to the subcommittee on its visit to the Matthews Service Center in Cannonsburg and expressed concern over EPA regulatory changes being phased in over the coming 7 years. These regulations will set new requirements for ozone, sulfur, nitrogen, particulate matter, water, mercury, and carbon dioxide. There is concern that utilities will not have enough time to comply with the new regulations and that compliance will cause the price of electricity to increase. He predicted severe impacts on ratepayers as well as on utility and coal industry jobs.

## **Carbon Storage Development**

American Electric Power's Director of New Tech Development and Policy Support testified about the pilot project capturing and storing carbon dioxide emissions from the Mountaineer Plant in New Haven, West Virginia. This project uses a chilled ammonia process to capture more than 85 percent of the carbon dioxide from a small portion of the flue gases at the Mountaineer plant. The CO<sub>2</sub> captured is compressed and injected into a deep saline formation 1.5 miles below the surface. American Electric Power plans to scale up to a full commercial demonstration in 2015, storing 1.5 million tons of carbon per year. Remaining challenges include improving CO<sub>2</sub> absorption and reducing the power required to capture and store the carbon. Legal issues involving property rights, liability, and government regulation remain.

## **School Energy Managers Project**

The Executive Director of the Kentucky School Boards Association and the director of its School Energy Managers Project (SEMP) explained that House Bill 2, enacted in 2008, requires that public school districts enroll in the Kentucky Energy Efficiency Program for Schools (KEEPS). In December 2011, the Kentucky Pollution Prevention Center (KPPC), which runs KEEPS, will begin reporting on the status of the development of energy management plans by districts and anticipated energy savings. The project manager explained that SEMP funding is used to pay 75 percent of the costs of the energy manager in the first year and 50 percent in the second year. In the third year, SEMP hopes that the program will be self-sustaining. The districts that had energy managers were offered the option of employing an energy curriculum coordinator or getting additional support for their ongoing activities.

The executive director stated that 74 of Kentucky's 174 public school districts have fewer than 4 school buildings. Another 74 districts have between 5 and 9 school buildings. Districts were asked to form partnerships to share an energy manager. Energy managers are serving 1,000 school buildings in 145 of 174 public school districts. Each public school district has been asked to review and adopt an energy policy.

A representative of KPPC discussed the KEEPS program and school district energy costs. Energy costs have risen more than 100 percent since FY 2000. In FY 2008, schools spent \$183 million on energy, or \$273 per student. From FY 2000-2008, the price of electricity has increased 87 percent, natural gas has increased 113 percent, and petroleum has increased 184 percent. KPPC is a primary resource to help businesses, industries, and other organizations to

develop environmentally sustainable, cost-saving solutions for improved efficiency. All school districts are now enrolled in KEEPS.

### **Energy Efficiency Potential in Kentucky**

The Director for Policy and Research of the Mountain Association for Community Economic Development (MACED) discussed energy efficiency potential in Kentucky. MACED's work includes forestry, energy efficiency, policy analysis, and small business development. The association has invested approximately \$9 million in entrepreneurial endeavors in the region, including child care centers, artisan businesses, and small manufacturing facilities. He suggested that Kentucky's energy policy should make energy efficiency a top priority and promote the development of clean renewable energy. In discussing the cost/benefit projections made by MACED in a report on the coal industry in Kentucky, the director stated that the largest state expenditures were for road repair although the methodology did not attribute all the wear and tear on any particular road to coal trucks.

### **Energy Efficiency and Job Creation Aspects of Residential Weatherization for Low-income Kentuckians**

The Executive Director of People's Self Help Housing, a community based nonprofit housing organization that serves Lewis County, stated that one of its goals is to improve the housing of families by building new energy efficient homes and by training people to build homes and make repairs, which would help create jobs. Over 28 years, 275 new homes have been built and 550 homes have been repaired in Lewis County. In June 2010, the organization completed a LEED-certified home at the Gold level, making it the second Gold home in Kentucky.

**Report of the 2010  
Interim Joint Committee on Health and Welfare**

**Sen. Julie Denton, Co-Chair  
Rep. Tom Burch, Co-Chair**

Sen. Tom Buford  
Sen. Julian Carroll  
Sen. Perry Clark  
Sen. Denise Harper Angel  
Sen. Alice Forgy Kerr  
Sen. Joey Pendleton  
Sen. Katie Kratz Stine  
Sen. Jack Westwood  
Rep. John Arnold  
Rep. Scott Brinkman  
Rep. Bob M. DeWeese

Rep. Jim Glenn  
Rep. Brent Housman  
Rep. Joni Jenkins  
Rep. Mary Lou Marzian  
Rep. Tim Moore  
Rep. Darryl Owens  
Rep. Ruth Ann Palumbo  
Rep. David Watkins  
Rep. Susan Westrom  
Rep. Addia Wuchner

LRC Staff: DeeAnn Mansfield, Miriam Fordham, Ben Payne, Jonathan Scott, Gina Rigsby,  
and Cindy Smith

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

**Subcommittee Organization and Membership**

**Subcommittee on Families and Children**

**Sen. Katie Kratz Stine, Co-Chair**  
**Rep. Tom Burch, Co-Chair**

Sen. Tom Buford  
Sen. Perry B. Clark  
Sen. Alice Forgy Kerr  
Sen. Joey Pendleton  
Rep. John A. Arnold, Jr.

Rep. Scott W. Brinkman  
Rep. Jim Glenn  
Rep. Brent Housman  
Rep. Joni L. Jenkins

Sen. Julie Denton, ex officio

LRC Staff: DeeAnn Mansfield, Ben Payne, and Cindy Smith

**Subcommittee on Health Issues and Aging**

**Sen. Julie Denton, Co-Chair**  
**Rep. Mary Lou Marzian, Co-Chair**

Sen. Julian Carroll  
Sen. Denise Harper Angel  
Sen. Jack Westwood  
Rep. Bob DeWeese  
Rep. Tim Moore

Rep. Darryl Owens  
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Rep. Addia Wuchner

Rep. Tom Burch, ex officio

LRC Staff: DeeAnn Mansfield, Miriam Fordham, Jonathan Scott, and Gina Rigsby

## **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; eliminating 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 2010 Interim.

### **Aging Issues**

The Executive Director of the Thomson-Hood Veterans Center Nursing Home spoke about the 285-bed facility located in Wilmore. The facility has an average of 260 residents. Services provided to veterans include 24-hour medical and nursing care, rehabilitation, nutritional, recreational therapy, social activities, laundry, transportation, spiritual services, computers, and wireless Internet access. The staff includes physicians, registered nurses, licensed practical nurses, a physical therapist and assistants, a speech therapist, an occupational therapist, nursing assistants, and support staff. The facility receives very few deficiencies and each week the Quality Assurance Committee reviews patient charts to make sure patients are receiving all the services they need.

The Director of Geriatric Pharmacotherapy, Department of Family and Geriatric Medicine, University of Louisville, reported that polypharmacy is the use of five or more medications at the same time. The signs and symptoms are mental status changes, not eating or sleeping, generalized pain, and falling. Approximately 2,216,000 hospitalized patients experienced an adverse drug event. Approximately 30 percent of older persons are admitted to the hospital due to medication-related problems. The more diagnoses and the more drugs a person has, the more risk there is of an adverse drug event. According to the director there are too many drugs available and there is poor monitoring and follow-ups with a doctor.

### **Children's Issues**

The Director, Office of Child Advocacy, Norton Kosair Children's Hospital Foundation presented information on a pilot program started in June 2010 at three Norton Healthcare facilities to provide education to parents of newborns prior to discharge from the hospital about the dangers of shaking a baby. The curriculum, Portrait of a Promise, emphasizes that it is never alright to shake a baby. To date, nurses at the Norton Healthcare facilities have educated families

in 3,557 households. In September 2010, the nurse managers and staff of the University of Louisville Hospital's neonatal intensive care unit started using the curriculum to educate new parents. Baptist Hospital Northeast and Baptist Hospital East plan to implement the program in 2011. Norton Healthcare feels very strongly that continued education is the key to reducing and preventing child abuse, particularly pediatric abusive head trauma.

Representatives of Save the Children, Kentucky Youth Advocates, and the Kentucky Chapter of the American Academy of Pediatrics proposed monitoring of children's body mass index (BMI). BMI monitoring would be done in a physician's office every other year and reported to the Centers for Disease Control and Prevention (CDC) via the statewide Infinite Campus database. The American Academy of Pediatrics and the CDC recommend using BMI to identify possible weight issues beginning at age 2. There are no apparent additional costs to Kentucky to aggregate BMI data.

Representatives from Kool Smiles; the University of Kentucky College of Dentistry; the University of Louisville Pediatric Dental Residency Program; the Kentucky Dental Association; the Kentucky Chapter of Remote Area Medical; Delta Dental of Kentucky; and the Department for Public Health, Cabinet for Health and Family Services testified on access to affordable, quality dental care for children in Kentucky. Recommendations for improving the dental health of children in Kentucky include increasing the number of Medicaid dental providers, improving access to dental care in rural areas, and increasing dental health education for children and parents. The required screening for 5- or 6-year-olds entering into the public school system implemented in 2010 is the newest attempt to address Kentucky's dental problems. Parents should be made aware that this is not a complete examination and follow-up is needed to ensure treatment is sought for identified problems. Providers often will not accept Medicaid because of the low Medicaid reimbursement fee schedule.

Representatives from the Cabinet for Health and Family Services and the Division of Protection and Advocacy, Department of Public Advocacy, discussed trends in child abuse and neglect cases in Kentucky. The discussion focused on the procedures and outcomes of investigations.

## **Disability Issues**

The committee held a meeting at the Scottsville Center for Courageous Kids, which is a multidisease therapeutic camp program that provides medically supervised, recreational activities for children ages 7 to 15 with chronic or life-threatening illnesses. Approximately 4,500 children and family members from 22 states and Canada have attended the summer camps. The center remains open due to the generous contributions of individuals, foundations, and corporations.

The committee also met at the Owensboro Wendell Foster's Campus for Development Disabilities. Services include an intermediate care facility, supports for community living, independent living, outpatient rehabilitation and community supports, early intervention therapies and training, an assistive technology center and evaluations, work training program, the Western Kentucky University Kelly Autism Program, and professional internships.

## Health Care Reform

The Health Policy Director of the National Conference on State Legislatures reported on the provisions of the federal health care law, the Patient Protection and Affordable Care Act. The legislation maintains an employer-based health care system, expands and modifies Medicaid to become the foundation for the reformed health care system, requires individuals to obtain qualified coverage, establishes subsidies for premiums and cost sharing for individuals with incomes between 133 percent and 400 percent of the federal poverty level (FPL), and initially establishes health care exchanges to help individuals and small businesses to purchase qualified coverage.

The law makes significant changes to the state's role in Medicaid by changing the status of Medicaid in relation to the rest of the health care system in the United States. Ongoing state budget issues as related to Medicaid include underfunding of the underlying program, failure to address coverage for undocumented immigrants, failure to include a statutory countercyclical trigger, implications of a reduction in federal assistance in the future, and no serious effort to address long-term care. The law gives states more flexibility and the transformation of the Medicaid program is left largely to state governments. The challenges will be new eligibles versus others, systems upgrades, staffing, workforce and infrastructure, infrastructure improvements, marketing of the new Medicaid provisions, maintaining public support, and improving quality.

The Medicaid expansion establishes a national minimum eligibility level at 133 percent of the FPL with eligibility to be based on income and adds new mandatory categories of Medicaid-eligible recipients. An enhanced federal matching rate for new recipients will be implemented between 2014 and 2020. Medicaid expansion features include temporary maintenance of effort and eligibility, the option of state financial hardship exemption from maintenance of effort, and Medicare rates for Medicaid primary care physicians for 2013 and 2014.

New Medicaid mandates include coverage of preventive services with no cost sharing, reimbursement of Medicaid services provided by school-based health clinics, quality measures for adult beneficiaries, nonpayment for certain health care acquired conditions, state use of National Correct Coding Initiative, coverage of comprehensive tobacco cessation services for pregnant women, and background checks for direct patient access employees of long-term care facilities and providers. States have a number of grant opportunities under the health care reform law.

Additional provisions under the Affordable Care Act include new prevention and wellness programs, prescription drug rebates, long-term care programs, establishment of a federal Coordinated Health Care Office with the Centers for Medicare and Medicaid Services for dual eligibles, and a reduction in Disproportionate Share Hospital payments. Employer responsibilities include penalties for failure to provide coverage and large employers with waiting periods. Beginning in 2014, individuals are required to maintain minimum essential coverage. Exceptions to the individual responsibility requirement to maintain minimum essential coverage are made for religious objections, illegal immigrants, and incarcerated individuals.

Health insurance reforms to be implemented immediately include temporary high-risk pools and new rules on minimum medical loss ratios.

Effective for plan years beginning on or after September 23, 2010, there will be a prohibition on rescissions except for fraud, extension of dependent coverage for young adults until their 26<sup>th</sup> birthday, limits on preexisting condition exclusions for children, limits on lifetime and or annual caps, and reinsurance for early retirees that apply to state and local government plans. Health insurance reforms that will be implemented later are a prohibition on preexisting condition exclusions, guaranteed issue and guaranteed renewal, premium rating rules, nondiscrimination in benefits, mental health and substance abuse services parity, prohibition on discrimination based on health status, and a prohibition on annual and lifetime caps. The law also creates a new national long-term care insurance program.

### **Medical Technology**

The Executive Director of the Kentucky BioAlliance reported that biotechnology is technology based on biology—especially when used in agriculture, food science, medicine, and medical devices—or any technological application that uses biological systems, living organisms, or derivatives thereof to make or modify products or processes for specific use. The industry provides high-tech, high-paying jobs for Kentucky citizens. Representatives from Kentucky BioProcessing and MetaCyte Business Lab discussed the number of jobs and amount of research funding generated by biotechnology businesses in Kentucky. Challenges for the biotechnology industry include workforce development, capital, regulatory issues, and infrastructure.

The Vice President of State Solutions, Sandlot, and the Vice President for Marketing and Communications, Availity, reported that health information exchanges provide the capability to move clinical information electronically across organizations within a region, community, or hospital system. An interoperable health information exchange takes an electronic medical record and incorporates it into the patient's electronic health record. This process is efficient and saves money.

### **Public Health**

The Public Health Director of the Green River District Health Department discussed its mission is to promote, protect, and enhance the health and well-being of the public. The health department serves Henderson, Union, Webster, McLean, Hancock, Ohio, and Daviess Counties and serves a population of approximately 212,000 individuals. It provides services for chronic diseases, teenage mothers, well-child screenings, adult and child immunizations, breast and cervical cancer screenings, communicable diseases, family planning, WIC, 38 school sites, home health, HANDS, and point of entry for First Steps. The health department has a \$17 million budget and has 260 employees.

The Board Chairman of Health Watch USA stated that the Centers for Disease Control and Prevention estimates that there are 1.7 million hospital-acquired infections in the United States each year that cause nearly 100,000 deaths. The cost to Kentucky's health care system is

approximately \$392 million to \$462 million yearly. Evidence indicates that with focused efforts, these infections can be greatly reduced in number, leading to a new normal for health care-associated infections as rare and unacceptable events. The combined tools of health care payment, oversight and accreditation, and public reporting are emerging ways to increase adherence to hospital acquired infections prevention practices.

The Director of the Infection Prevention and Control at Saint Joseph Health System said its primary focus is keeping patients, health care providers, and employees safe through scientific-based systematic approaches. The goal is to completely eliminate preventable health care-associated infections. In January 2011, the Centers for Medicare and Medicaid Services will require hospitals to use the Centers for Disease and Control Prevention's National Healthcare Safety Network database for surveillance.

The Director of the Division of Epidemiology and Health Planning at the Kentucky Department for Public Health for the Cabinet for Health and Family Services stated that while reporting individual hospital acquired infections is not required, by law all outbreaks are to be reported to the Department for Public Health. The Kentucky Department for Public Health was awarded a \$276,125 grant from the American Recovery and Reinvestment Act to establish a Healthcare Associated Infections Prevention Program starting September 1, 2009, and ending December 31, 2011.

The Executive Director of AIDS Volunteers, Inc., of Lexington stated that the Kentucky HIV/AIDS Planning and Advisory Council is a federally and state-mandated committee made up of people from around the state who are infected or affected by HIV/AIDS as well as those who serve those living with HIV/AIDS. The council's recommendations for preventing the spread of HIV in Kentucky include providing comprehensive, science-based sexuality education in public middle and high schools and holding those schools accountable for delivering the information to students; making HIV education a part of all substance abuse counseling programs in Kentucky and expanding the number of those programs wherever possible; and establishing clear procedures for offering voluntary HIV testing to inmates in the Kentucky prison system.

The Director of the James Graham Brown Cancer Center at the University of Louisville testified that cancer is a major public health problem in Kentucky. Gardasil was developed at Georgetown University and is the first 100 percent effective cancer vaccine; the drug is expensive at \$360 per person. The University of Louisville is in the process of developing a tobacco-based vaccine for cervical cancer that would be much less expensive to produce. Since 1999, approximately \$50 million has been invested in building the drug development program and approximately \$80 million in federal funding has helped support drug development research. The university has a satellite cancer research center located in Owensboro that concentrates on natural products, particularly those produced in plants.

A consumer discussed hysterectomy alternatives and the possible effects of the procedure. She suggested that changes be made to the informed consent laws pertaining to hysterectomy that will truly inform and educate women in regard to the functions of the female sex organs throughout their lives and the consequences of them being removed.

Representatives from the Council on Developmental Disabilities, the Division of Protection and Advocacy, Department of Public Advocacy, and the Bingham ICF/MR Family Group discussed the transparency of the Mortality Review System and the possibility of implementing an Adult Abuse Registry and Background Check.

A representative from Clean Water, Edge Outreach, discussed initiatives to provide clean drinking water to needy populations.

### **Referred Block Grant Applications**

Pursuant to KRS 45.353, the committee held legislative hearings on one block grant application: the Community Mental Health Services Block Grant.

### **Referred Administrative Regulations**

In performing its statutory legislative oversight responsibility, the committee reviewed 28 administrative regulations upon referral from the Administrative Regulations Review subcommittee under the review process established in KRS Chapter 13A.

### **Referred Executive Orders**

Pursuant to KRS 12.028, the committee held legislative hearings on one executive order upon referral from the Legislative Research Commission: Legislative Review of Executive Order 2010-431, relating to the Cabinet for Health and Family Services

### **Subcommittee Activity**

#### **Subcommittee on Families and Children**

The Subcommittee on Families and Children did not meet during the 2010 Interim.

#### **Subcommittee on Health Issues and Aging**

The Subcommittee on Health Issues and Aging met one time during the 2010 Interim.

### **Adult Stem Cell Research**

The Executive and Scientific Director of the Cardiovascular Innovation Institute at the University of Louisville reported on adult stem cell therapies for cardiovascular disease. The overall goal of stem cell therapy is to replace medical devices with cellular therapies. Affecting about 8 million individuals in the United States, peripheral arterial disease results in poor blood flow to the lower extremities. Adult stem cell therapy is used to build blood vessels to try to avoid the amputations associated with peripheral arterial disease. The source of the stem cells is fat. The adipose stem cells are used in a number of different clinical applications, such as peripheral vascular grafts, dialysis access grafts, and osteoarthritis. Some of the companies involved in the field of regenerative medicine are located in Kentucky, and it is anticipated that

more companies will locate in the Commonwealth due to the type of work currently underway in the field of regenerative therapies.



**Report of the 2010  
Interim Joint Committee on Judiciary**

**Sen. Tom Jensen, Co-Chair**

**Rep. John Tilley, Co-Chair**

Sen. Perry B. Clark

Sen. Carroll Gibson

Sen. Ray S. Jones II

Sen. Gerald A. Neal

Sen. Mike Reynolds

Sen. Jerry P. Rhoads

Sen. John Schickel

Sen. Dan "Malano" Seum

Sen. Katie Kratz Stine

Sen. Robert Stivers II

Sen. Jack Westwood

Rep. Johnny Bell

Rep. Jesse Crenshaw

Rep. Joseph M. Fischer

Rep. Kelly Flood

Rep. Jeff Hoover

Rep. Thomas Kerr

Rep. Stan Lee

Rep. Mary Lou Marzian

Rep. Harry Moberly, Jr.

Rep. Darryl T. Owens

Rep. Tom Riner

Rep. Steve Rudy

Rep. Brent Yonts

LRC Staff: Norman Lawson, Jr., Joanna Decker, Raymond Debolt, Jonathan Grate, Kyle Moon, and Rebecca Crawley

**Presented to the  
Legislative Research Commission  
and the  
2011 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 trusts and estates of persons under disability, descent, wills, and administration of decedent's 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 the court; juries; attorneys; 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 prisons; civil rights; juvenile matters.

### **Committee Activity**

The Interim Joint Committee on Judiciary held five meetings. The meetings were held in Frankfort, Glasgow, and London.

### **Failure of Out-of-state Commercial Driver's License Holders to Appear in Kentucky Courts for Trucking Offenses**

A district judge discussed the problem of out-of-state holders of Commercial Driver's Licenses (CDL) who fail to appear in court after being cited for traffic offenses in Kentucky. When a Kentucky CDL holder fails to appear in court, the court reports the failure to appear to the Transportation Cabinet. If the driver does not appear within 30 days, the cabinet suspends the driver's license. Because of a narrow definition of "moving violation" in KRS 186.570 and KRS 281A.190, the cabinet cannot report out-of-state drivers to their home states. The judge suggested that the statutes be amended to include such violations as missing logbooks, vehicle safety violations, or driving longer hours than permitted as moving violations so that other states could enforce appearance of out-of-state drivers in Kentucky courts.

### **PEW Public Safety Performance Project and Criminal Justice Institute Support for the Task Force on the Penal Code and Controlled Substances Act**

Representatives of the PEW Public Safety Performance Project and the Criminal Justice Institute, which is working with the PEW Public Safety Performance Project, described the goals of the project to assist states to advance fiscally sound, data-driven sentencing and corrections policies that protect public safety, hold offenders accountable, and control corrections costs. The project has assisted other states in reducing crime, reducing recidivism, and promoting the successful reintegration of offenders into society through the use of intensive alternatives to incarceration programs.

## **Sex Offender Management**

A representative of the Center for Sex Offender Management of the Center for Effective Public Policy described that organization's work with the Department of Corrections under a federal grant to provide an improved sex offender treatment and management program. He reviewed statistics relating to sex offenders and victimization and noted that many programs for released sex offenders—such as residence restrictions, sex offender registration, and similar programs—have little effect on public safety. The organization is working with the Department of Corrections to provide education and other programs for incarcerated offenders and to assist released sex offenders to reenter society and prevent reoffending.

## **Global Positioning Monitoring of Offenders—The Tennessee Experience**

The Director of Field Services and the GPS Director of the Tennessee Board of Probation and Parole discussed the implementation of the Tennessee Serious and Violent Sex Offender monitoring program. The program started as a pilot project in 2004 and has since been expanded into a permanent program. The board originally contracted with a vendor but since has taken over the program which is now operated totally by the state. The system monitors offenders through the use of GPS monitoring devices that high-risk, serious offenders wear; these devices track the offenders' movements to ensure that they remain in locations where they are authorized to be and stay out of locations where they are not allowed to be. Supervision is conducted from a central monitoring center, which monitors each offender to ensure that the offender is complying with the conditions of release and to identify patterns of offender movement and behavior. Specially trained probation and parole officers monitor offenders and respond to violations. The current contract for monitoring devices costs \$5.60 per offender per day with the total cost of monitoring and supervision being \$26 per person per day. Of 946 offenders monitored, 98 had their parole revoked with 28 of the violations being discovered from GPS data.

## **Ignition Interlock Devices**

The Director of the Traffic Injury Research Foundation from Canada spoke on the use of ignition interlock devices, which are designed to prevent persons convicted of drunk driving from operating a vehicle while under the influence of alcohol. The director described the various types of devices available and indicated that interlock devices reduce drunk driving recidivism by an average of 64 percent. Prior to operating the vehicle, the driver must blow into the device, which measures breath alcohol content. The test is repeated intermittently while the person is driving. If the breath alcohol content exceeds 0.02, the vehicle will not start. The installation cost for a device is about \$70, with the monthly fee for use of the device being approximately \$70.

The public advocate indicated that there are approximately 39,000 DUI arrests each year in Kentucky, with the Department of Public Advocacy representing 20,000 of the arrestees because they are indigent. He expressed concern that indigent persons cannot pay the fees and will lose their driving privileges and consequently lose their jobs. He also said that setting the device at 0.02 conflicts with the presumption that an adult with a blood alcohol concentration below 0.05 is presumed by law not to be driving under the influence of alcohol.

### **Department of Public Advocacy Social Worker Program**

The public advocate testified about alternative sentencing social workers who have been utilized by the Department of Public Advocacy to provide alternative sentencing options—such as evidence-based treatment, education, and supervision programs—to prosecutors and courts so that defendants can receive targeted interventions. The goal is for the interventions to aid defendants in not reoffending and enhance public safety. Social workers provide prosecutors and judges with relevant mitigating information about the defendant's physical and mental health, social history, and resources available in the community and they identify positive alternatives to incarceration. The public advocate indicated that the program has reduced recidivism by 18 percent after 6 months and that, for every \$1 invested in the program, the state saves \$3.25. The department wants to have at least one social worker available in each court statewide. The Director of the Office of Drug Control Policy supported the Department of Public Advocacy's social worker program and said that 30 social workers would cost approximately \$2 million but would save the state \$30 million in incarceration costs.

### **Eliminating the Death Penalty for the Mentally Ill**

Representatives of the Kentucky Mental Health Coalition, the Kentucky Psychological Association, and the Kentucky Association of Criminal Defense Lawyers spoke in support of enactment of 2010 Regular Session House Bill 16, which would prevent the execution of persons who are severely mentally ill and thus are unable to premeditate a homicide, lack moral capacity, and do not fear punishment. Severe mental illnesses include schizophrenia, delusional disorders, fixed erroneous beliefs, hallucinations, or depression. A representative of the Kentucky Association of Criminal Defense Lawyers indicated that persons with severe mental disorders are protected by the United States Constitution's Eighth Amendment, which prohibits cruel and unusual punishment. The Legislative Chairman of the Commonwealth's Attorneys Association indicated that state supreme courts in Indiana, Georgia, Pennsylvania, and Ohio have rejected elimination of the death penalty for the severely mentally ill. The chairman said that the proposed definition of severe mental illness is so broad that it would permit every person who commits a homicide to argue that he or she had a personality disorder.

### **Expanding the Hate Crime Statute to Include Homicide**

The Assistant Jefferson County Attorney described possible oversight in KRS 532.031, which does not involve permitting a homicide to be listed as a hate-related offense even though the statute includes assaults. A case in Jefferson County was described where an African American victim was murdered under circumstances that the Commonwealth believed to be a hate crime; the judge in the case dismissed the argument that the offense was a hate crime because homicide was not listed as an eligible offense in the statute. The Trial Division Director of the Department of Public Advocacy commented that fiscal reality suggests that the General Assembly not lengthen punishments. He said that penalty enhancements for violent offenses are already included in existing law, and the department opposes the change.

## **Kentucky Court of Justice**

The Chief Justice of the Supreme Court of Kentucky testified that Kentucky has one of the few unified court systems in the United States. Prior to 1976, courts were funded by fines, fees, and court costs, but since adoption of the Judicial Article in the Constitution of Kentucky, courts no longer generate their own funding. Money goes to the General Fund, and the General Assembly funds the court system. The Chief Justice indicated that the courts had generated \$143.6 million in fiscal year 2010 against a budget of \$200 million. Revenue conditions have resulted in a \$6.8 million reduction in the court's budget, resulting in reductions in programs such as drug court, pretrial services, truancy diversion, and foster care review boards, and the layoff of numerous employees. The Chief Justice described the accomplishments of the court system as including the pretrial release program, drug courts, teen court, and the truancy diversion.

## **Uniform Adult Guardianship and Protective Proceedings Act**

Representatives of the Alzheimer's Association, Greater Kentucky and Southern Indiana Chapter, and the Jefferson County Attorney's Office spoke in favor of the Uniform Adult Guardianship and Protective Proceedings Act, which has been proposed by the National Conference of Commissioners on Uniform States Laws. The Act is designed to provide a uniform procedure for handling guardianship proceedings across state lines, including such items as definitions, which court has primary jurisdiction over a guardianship proceeding, and providing full faith and credit for out-of-state proceedings. The Act has been adopted in 16 states. Several members of the committee asked if the Act required a jury trial in order to determine that a person is disabled. The response was that while this is a requirement of Kentucky law, the Act does not require a jury trial. Other states that have adopted the Act do not require a jury trial.

## **Requiring Movie Theaters to Accommodate Deaf and Hard-of-hearing Persons**

Representatives of the Kentucky Commission on the Deaf and the Kentucky Commission on Human Rights spoke in favor of 2010 Senate Bill 102, which would have required movie theaters with 5 or more screens to show captioned movies for the deaf and hard of hearing. The Kentucky Commission on Human Rights would have monitored and enforced the bill's provisions and would have regulated the types of captioning the bill required. Representatives of the deaf state that many hard-of-hearing persons cannot understand the spoken word, and that increasing the volume of the presentation will not assist in understanding a movie at a theater when the movie is presented without captioning. Representatives of the Motion Picture Association of America and the Regal Entertainment Group indicated that the motion picture industry is making progress in installing captioning in more theaters, but that in smaller communities cost is a problem. On-screen captioning, a captioning device at seats, and glasses that the viewer can wear to see the captioning are being experimented with and placed in service. Theater industry representatives would prefer a uniform federal standard rather than individual state standards.

## **Substance Abuse and Other Programs in Kentucky Prisons**

The Commissioner of Corrections, a representative of the University of Kentucky Center on Drug and Alcohol Research, and the Trial Division Director of the Department of Public Advocacy discussed delays in the delivery of substance abuse and other treatment programs for inmates at state correctional institutions and county jails. Complaints have been received by legislators that inmates who have been approved for parole but have been required to complete a substance abuse or other program cannot enter the programs because of insufficient program availability resulting in waiting lists. Some inmates are serving out their sentences without being paroled because of the waiting time required to enter the programs. The commissioner and the representative from the University of Kentucky described efforts to increase the number of programs in institutions, in jails, and in the community, and the newer evidence-based, computer-assisted programs and telemedicine-based programs that are currently being used on an experimental basis to increase inmate access to the programs.

The Interim Joint Committee on Judiciary is scheduled to meet in December 2010 to hear from the Auditor of Public Accounts on the audit of the Aramark contract for supplying food to prisons, proposals relating to changes in the Controlled Substances Act, the Kentucky Penal Code, and probation and parole statutes, which have been considered by the Task Force on the Penal Code and Controlled Substances Act.

The Interim Joint Committee on Judiciary is scheduled to have a meeting in January 2011 for the purpose of receiving and acting upon recommendations and legislative proposals by the Task Force on the Penal Code and Controlled Substances Act relating to the Controlled Substances Act, the Kentucky Penal Code, and probation and parole statutes.

**Report of the 2010  
Interim Joint Committee on Labor and Industry**

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

Sen. Julian M. Carroll  
Sen. Julie Denton  
Sen. Denise Harper Angel  
Sen. Ray S. Jones II  
Sen. Jerry P. Rhoads  
Sen. Katie Kratz Stine  
Sen. Gary Tapp  
Sen. Jack Westwood  
Sen. Robin L. Webb  
Sen. Ken Winters  
Rep. John A. Arnold  
Rep. Will Coursey  
Rep. C.B. Embry, Jr.  
Rep. Bill Farmer

Rep. Tim Firkins  
Rep. Richard Henderson  
Rep. Charlie Hoffman  
Rep. Dennis Horlander  
Rep. Joni L. Jenkins  
Rep. Thomas Kerr  
Rep. Adam Koenig  
Rep. Mary Lou Marzian  
Rep. Charles Miller  
Rep. Terry Mills  
Rep. Tom Riner  
Rep. Charles Siler  
Rep. Jim Stewart III  
Rep. Brent Yonts

LRC Staff: Linda Bussell, Carla Montgomery, Adanna Hydes, and Betsy Bailey

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Interim Joint Committee on Labor and Industry**

Jurisdiction: Matters pertaining to the work-force 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 four meetings during the 2010 Interim. The topics discussed included unemployment insurance, workers' compensation rates, a workers' compensation dividend plan of the Kentucky Employers' Mutual Insurance (KEMI), the General Motors Corvette Plant in Bowling Green, and the strategic plan of the Kentucky Workforce Investment Board.

The Commissioner of the Department of Insurance presented an overview of the annual workers' compensation loss cost filing filed in July by the National Council on Compensation Insurance, Inc. (NCCI), a national workers' compensation advisory and ratemaking organization. NCCI recommended a 10.3 percent average decrease in workers' compensation rates in its annual loss cost filing. The Commissioner of the Department of Insurance reported that this is the 5<sup>th</sup> consecutive year NCCI has recommended a decrease in workers' compensation rates for Kentucky employers. Officials from NCCI informed the committee that a continuing decline in the frequency of workers' compensation claims is the primary reason for the decreasing loss costs for workers' compensation. The NCCI filing was approved by the Department of Insurance to become effective on October 1, 2010. NCCI officials stated that the loss cost filing contained advisory loss costs that are not the final workers' compensation rates charged by insurance carriers. Workers' compensation insurance carriers in Kentucky add expense factors and multipliers to determine the ultimate rates charged to employer policyholders.

The commissioner also provided an overview of the workers' compensation policyholder dividend distribution plan filed in July by KEMI. KEMI officials reported that in March the KEMI Board of Directors approved a \$30.8 million workers' compensation dividend distribution to its policyholders. Under the distribution plan, approximately 66,000 employer policyholders would be eligible to receive a dividend payment. The dividend payments would come from KEMI's surplus funds. The commissioner said the Department of Insurance reviewed the dividend plan and determined that it would not jeopardize the financial solvency of KEMI and was not discriminatory to policyholders.

Representative Jody Richards spoke to the committee on the significance of the Bowling Green Corvette Assembly Plant to Kentucky and the Bowling Green area and expressed appreciation to the members of the General Assembly for enacting 2010 Regular Session House Bill 104, which designated the Corvette as the official sports car of Kentucky. The new plant manager of the Corvette plant commented on the financial difficulties, including bankruptcy, experienced by General Motors during 2009. The company is in a better position, financially and

competitively, after restructuring, retooling, and discontinuing certain brands, and General Motors has added 9,100 jobs nationwide since 2009.

The plant manager said that the Bowling Green Assembly Plant has approximately 480 employees and produces 4 models. Over 1.3 million visitors have toured the plant during its 29 years. The plant partners with Western Kentucky University, and many students are employed in various operations of the plant. Tours of the plant and tourists visiting the Corvette Museum have produced an economic impact of over \$200 million since the plant opened.

The Secretary of the Education and Workforce Development Cabinet provided an update on unemployment issues in Kentucky. The drop in the unemployment rate during the summer was a result of discouraged workers dropping out of the workforce rather than an improvement in the state's job situation. The average duration that unemployed workers receive benefits is currently 19.6 weeks. The average duration that an unemployed worker received benefits in 2008 was 14.1 weeks, which confirms that workers are remaining unemployed for longer periods. Since January 2009, the state has borrowed approximately \$795 million to continue paying benefits to unemployed workers. Additional borrowing of \$100 million might be necessary during the remainder of 2010. The secretary discussed the implementation of 2010 Special Session House Bill 5, which contained reforms to restore solvency and stability to the unemployment insurance program. The secretary reported that the unemployment revisions in HB 5 that became effective on August 28 were changes in the tax schedule triggers for new unemployment tax rates; calculation date changes for employers rate notices; recoupment of subsidized costs for reimbursing employers; and changes relating to the increase in the maximum weekly unemployment benefit amount. The other reform measures relating to the increase in the taxable wage base and benefit calculations become effective in January 2012. Discussions with employers had begun regarding 2011 interest payments due on federal unemployment insurance loans.

Officials with the Education and Workforce Development Cabinet presented the new strategic plan of the Kentucky Workforce Investment Board. The new strategic plan, called WorkSmart Kentucky, was designed to develop a workforce system that is aligned with the Commonwealth's education objectives and economic development strategies. The workforce system is designed to promote sustainable economic job growth. The Commissioner of the Department of Workforce Investment reported that federal resources available to the state for job training and job skill development come primarily from the Workforce Investment Act, the Wagner-Peyser Act, the Vocational Rehabilitation Act, and the Perkins Act. Kentucky is aligning those resources to avoid duplication of efforts. The Executive Director of the Office of Employment and Training reported that the new WorkNow program, which is a joint venture between the Health and Family Services Cabinet, the Education and Workforce Development Cabinet, and 10 local workforce investment areas, subsidizes local employers who hire employees. The program has provided job training services to approximately 10,000 individuals and over 1,000 businesses provided jobs to individuals. The program has generated \$30 million for Kentucky's economy, and approximately 2,000 individuals have retained unsubsidized employment.



**Report of the 2010  
Interim Joint Committee on Licensing and Occupations**

**Sen. Gary Tapp, Co-Chair  
Rep. Dennis Keene, Co-Chair**

Sen. Tom Buford  
Sen. Julian M. Carroll  
Sen. Perry B. Clark  
Sen. Julie Denton  
Sen. Carroll Gibson  
Sen. Denise Harper Angel  
Sen. John Schickel  
Sen. Dan “Malano” Seum  
Sen. Kathy W. Stein  
Sen. Damon Thayer  
Sen. Robin L. Webb  
Rep. Tom Burch  
Rep. Larry Clark  
Rep. Ron Crimm  
Rep. Tim Firkins

Rep. David Floyd  
Rep. Dennis Horlander  
Rep. Joni L. Jenkins  
Rep. Adam Koenig  
Rep. Reginald Meeks  
Rep. Charles Miller  
Rep. David Osborne  
Rep. Darryl T. Owens  
Rep. Ruth Ann Palumbo  
Rep. Carl Rollins II  
Rep. Sal Santoro  
Rep. Arnold Simpson  
Rep. Ron Weston  
Rep. Susan Westrom

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

**Presented to the  
Legislative Research Commission  
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2011 Regular Session of the  
Kentucky General Assembly**

## **Interim Joint Committee on Licensing and Occupations**

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

### **Committee Activity**

The Interim Joint Committee on Licensing and Occupations met five times during the 2010 Interim. Issues related to the production and sale of alcoholic beverages were the most frequently discussed topics, and the committee held out-of-town meetings at the Lexington Brewing and Distilling Company, the Jim Beam Distillery in Claremont, and Acres of Land Winery in Madison County.

### **Distilleries**

While at the Lexington Brewing and Distilling Company, the committee heard from the president of Alltech, which owns the facility. The brewery produces three varieties of ale: Kentucky Ale, Kentucky Ale Light, and Kentucky Bourbon Barrel Ale. The Bourbon Barrel Ale is a unique product that is aged for 6 weeks in used bourbon barrels; it recently won number 2 in the world at the World Beer Cup. In August 2010, the first malt whiskey to be made in Kentucky, Pearse Lyons Reserve, was produced at the micro distillery, which shares space with the brewery. The brewery is growing, with plans for a visitor center and expanded distillery operations, which will bring additional jobs to the Lexington area.

While at the Jim Beam Distillery, members of the committee learned that Jim Beam currently employs 835 people in Kentucky, with plans to bring an additional 120 jobs to the Frankfort plant in 2011. The bottling facility in Frankfort is one of the most advanced in the country, filling more than 23,000 cases per shift. Jim Beam also operates sites in Claremont and in Loretto, home of the Maker's Mark facility. The Director of U.S. Manufacturing said that Jim Beam purchases barrels from in-state companies and uses eastern Kentucky coal, and much of the grain used to produce bourbon is raised in Kentucky. Its products generated \$7.81 million in state tax revenue last year.

Jim Beam is committed to expanding the tourism industry. The distillery is increasing tourism opportunities at the Maker's Mark facility and at the Jim Beam American Outpost in Claremont. The Bourbon Trail is very important in the visitor's experience, and Beam is taking a leadership role in social responsibility. Jim Beam is working with all aspects of the community to correct the irresponsible use of alcohol.

## **Winery**

While at Acres of Land Winery, the Executive Director of the Office of Agricultural Marketing and Product Promotion testified that the small farm winery industry has progressed dramatically since the legislature authorized the small farm winery license. There are 65 small farm wineries in Kentucky. These wineries grow grapes, produce wine, and host events that attract tourists, and all these services provide a positive economic impact in rural Kentucky. The Department of Agriculture has continued to promote the industry by developing advertising and signage, producing video documentaries, and printing brochures. The department had a visible presence at the World Equestrian Games, and two wineries were featured at each of the James Beard Celebrity Chef dinners. At the 2010 Kentucky State Fair, 95 medals were awarded based upon the quality of the wine produced.

The quality of Kentucky wine has been improving each year. The executive director said the enologist at the University of Kentucky has also been helpful in teaching farmers to grow high-quality grapes in the different growing areas of the state. As a result, both the total acres planted in grapes and the tonnage produced have increased. The Grape and Wine Council has discussed the positive and negative aspects of Sunday sales at small farm wineries. Because most tourists visit wineries during the weekend, 20 to 30 percent of sales for the week come on Sundays. Small farm wineries have decreased revenues if they are located in areas with restrictions on Sunday liquor sales.

## **Alcoholic Beverage Control**

The Commissioner of the Department for Alcoholic Beverage Control (ABC) testified that the department has undertaken a special focus to combat youth access to alcohol and tobacco products. The department has combined outreach programs and enforcement efforts to stop the sale of alcoholic beverages to minors and to reduce underage drinking. Operation Zero Tolerance uses underage investigative assistants working with investigators to determine if retailers are selling alcoholic beverages to customers under 21 years of age. The Servers Training in Alcohol Regulation (STAR) program trains people who work with, sell, and serve alcohol. The main goals of the program are to reduce alcohol sales to minors, reduce sales to intoxicated people, provide information on statutes relating to alcohol sales, and inform servers of legal liabilities when serving or selling alcoholic beverages.

The commissioner said the licensing division of ABC issues and assists with over 13,000 active licenses statewide, with 84 different types of alcoholic beverage licenses under statute. Each license type has its own set of rules and regulations. Annual license fees generate revenue of approximately \$5 million. An ongoing computer project is seeking to implement online registration and tracking for STAR classes. The department is also working on a precinct level wet/dry database. Additional plans call for enabling the public to submit complaints, apply for a license or renew a license, and search for wet/dry areas through an Internet-based system.

## **Alco-pops**

Representatives from the Bluegrass Regional Prevention Center and Mothers Against Drunk Driving spoke to the committee about the dangers associated with Alco-pops. Alco-pops are highly sweetened malt beverages with caffeine and other stimulants added. They are often marketed in packaging that resembles nonalcoholic energy drinks. Similar packaging can promote confusion among parents, retailers, and even law enforcement, and also makes the product more familiar and inviting to youth. Combining the malt beverage with levels of caffeine masks the feeling of intoxication, but does not reduce the impairment. As a result, youth drink even more of the product, lowering inhibitions and often leading to high-risk behavior. Alco-pops often contain high levels of alcohol, as much as 12 percent alcohol by volume. Since many of these drinks are purchased in 24 ounce cans, one can is equivalent to four beers. Alco-pops may be cheaper than nonalcoholic energy drinks. Because these are classified as malt beverages, they can be sold in convenience stores and other retail outlets where beer is sold; they are not restricted to package liquor stores. Underage drinking is not only a problem because of the high-risk behavior that often accompanies it, but also because the brain continues to develop into the mid-20s. Alcohol affects the structure and function of the brain as it develops, and drinking before the age of 15 has a high degree of association with alcohol dependence at some future point in a person's life.

## **Housing, Buildings, and Construction**

The Commissioner of the Department of Housing, Buildings and Construction testified about implementation of Senate Bill 10 from the 2007 Regular Session. SB 10 required a permit and an inspection for initial HVAC installations. When SB 10 passed, there were no funds identified to implement the program. Federal stimulus money for energy conservation has been identified as a source of funding, and the agency has received \$1.2 million to implement SB 10. Nearly all of the necessary administrative regulations have been promulgated, and the program should be operational by January 1, 2011.

An online permitting system will allow individuals to apply for a permit over the Internet, but it will not be mandated for all counties because some do not have compatible computer systems. Local jurisdictions that already have a permitting program may continue it if they contract with the HVAC board. Thirteen field inspectors will be placed across the state, and budgetary needs should be met by license fees.

The Commissioner and the Director of the Division of Housing, Ventilation, and Air Conditioning addressed changes to the process of HVAC contractor license renewal and the creation of an inactive license category. The division wishes to amend some of the statutes relating to HVAC licensure during the 2011 Regular Session. KRS 198B.658 requires an individual to serve a 2-year apprenticeship under a Kentucky master HVAC contractor but does not allow licensure for well-qualified and trained HVAC personnel from other states. The division only has a reciprocity agreement with Ohio, thus it wants authority to establish specific requirements for qualified, experienced candidates from other states.

KRS 198B.664 automatically places a license into delinquent status if a licensee does not renew by the final day of his or her birth month. Ninety days after becoming delinquent, the license would become void if the licensee took no action. The director said the Board of Heating, Ventilation, and Air Conditioning Contractors would like to bring consistency by amending the statute to mirror requirements for the renewal of electrician licenses. The board also wishes to have an inactive license that would allow a licensee to retain a license even if the person is no long active in the profession.

The state fire marshal spoke on Bill Request 46, a bill prefiled by Representative Coursey, to strengthen oversight provisions of the Underground Petroleum Storage Tank Program. Those who install underground petroleum storage tanks are required to be certified, but the fire marshal's office has little authority over those who are not certified. Problems have been reported with out-of-state firms installing tanks without being certified in Kentucky. BR 46 would give the fire marshal the authority to issue stop-work orders when work is being done by uncertified contractors. The bill would assist in the ability to curtail illegal underground petroleum storage tank installations.

The fire marshal stated that his office only has enforcement authority for the installation of a tank. After the tank is installed, the Energy and Environment Cabinet monitors future activity associated with the tank. There is an increasing problem with out-of-state contractors leaving a site after removal of a tank but before the site is cleaned up. Senator Webb wants interagency cooperation to be included in the proposed legislation.

### **Charitable Gaming**

The Commissioner of the Department of Charitable Gaming testified that the most common complaint is that charities must complete too much paperwork. The department issued a request for proposals to develop an automated system, but funding for the new software was not available and the approach has been canceled.

Gross receipts have declined by about 5 percent in recent years. Gross receipts were approximately \$470 million dollars in 2009. Approximately 80 percent of gross receipts are returned to players in the form of winning prizes. Forty percent of the remainder must go to the charity, with the balance to be used to defray the cost of supplies, rent, and other expenses.

### **Horse Racing**

The Executive Director of the Kentucky Horse Racing Commission testified that the Governor's Task Force on the Future of Horse Racing recommendation that equine drug testing be conducted by a lab located in Kentucky will be a reality on February 1, 2011, when HFL Sports Science, a corporation currently located in the United Kingdom, will open a laboratory in Lexington. The lab will employ 25 people.

A regulation has been promulgated on out-of-competition drug testing in order to test for some substances that are not detectable after a race. This will be done to prevent catastrophic failures, the signs of which could be masked by drugs administered prior to a race. Such testing

has been done at the Red Mile and for the Breeders Cup. All results were negative and all parties cooperated fully. The tracks were supportive of this regulation.

Racing dates and racing purses have been declining in Kentucky. The director of breed incentive funds said that nearly \$14 million in incentive funds were allocated this year to Kentucky-bred winners of thoroughbred races. An additional \$2.4 million was awarded in standardbred incentives, and over \$1 million was awarded in incentives for nonrace breeds, including quarter horses.

The executive director said that Kentucky is the horse capital of the world, and it is important for the Kentucky Horse Racing Commission to play a leadership role. The commission's biennial report is available online. The commission's 2011 agenda will be to work on the National Racing Compact.

**Report of the 2010  
Interim Joint Committee on Local Government**

**Sen. Damon Thayer, Co-Chair  
Rep. Steve Riggs, Co-Chair**

Sen. Walter Blevins, Jr.  
Sen. Julian M. Carroll  
Sen. Ernie Harris  
Sen. Jimmy Higdon  
Sen. Tom Jensen  
Sen. Alice Kerr  
Sen. Mike Reynolds  
Sen. John Schickel  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner  
Sen. Robin Webb  
Rep. Scott W. Brinkman  
Rep. Ron Crimm  
Rep. Mike Denham  
Rep. Ted “Teddy” Edmonds

Rep. Derrick Graham  
Rep. Richard Henderson  
Rep. Charlie Hoffman  
Rep. Brent Housman  
Rep. Dennis Keene  
Rep. Adam Koenig  
Rep. Stan Lee  
Rep. Thomas M. McKee  
Rep. David Osborne  
Rep. Arnold Simpson  
Rep. Kevin Sinnette  
Rep. Ancel Smith  
Rep. Ken Upchurch  
Rep. Jim Wayne

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

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Interim Joint Committee on Local Government**

Jurisdiction: Matters pertaining to the officers, organization, government, and financing of county and city governments; urban-county governments generally; county and city imposed taxes and licenses; special purpose assessment and taxing districts within a city; financing of local government improvements; issuance of bonds for county, city, and special district projects; local government indebtedness generally; compensation of county and city officers and employees; the imposition of duties and costs on local governments; interlocal government cooperation and consolidation of services; local government employees, civil service, and retirement; the powers, duties, and composition of fiscal courts and municipal legislative bodies; the 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**

The committee met five times during the 2010 Interim.

### **Regional Wastewater Initiative: 2010 Regular Session House Bill 221**

Representative Belcher, Representative Clark, the Executive Director of the Louisville Metropolitan Sewer District (MSD), and a Louisville councilmember discussed 2010 Regular Session House Bill 221, relating to wastewater, in preparation of a similar bill being filed for the 2011 Regular Session. Senator Thayer expressed concern that the bill would create a less than optimum situation in that the officials in charge of making the rate decisions were not directly answerable to the citizens.

The Executive Director of MSD noted that its board members are appointed in a balanced way and are subject to removal. The board members of the regional wastewater commission proposed by the legislation would be similar to MSD and would only be responsible for establishing the true rate for water treatment. This initiative was modeled on the Allegheny County Sanitary Consortium in Pennsylvania.

### **House Bill 44 Rate Calculations**

The Boone County Property Valuation Administrator (PVA) and her attorney addressed the committee on the compensating tax rate calculations and the 4 percent rate calculations executed under 1979 House Bill 44. The PVA noted that HB 44 was intended to establish a

benchmark rate, called the “compensating tax rate,” to raise approximately the same amount of revenue as the previous year and to establish a benchmark rate that would then equal 4 percent above the compensating tax rate. Interpretations of the steps necessary to calculate the compensating tax rate, in counties with different tax rates for personal and real property, resulted in revenues in excess of the bill’s intentions without the possibility of voter input. The attorney discussed the possibility of seeking a declaratory judgment on the interpretation of the statutes.

The PVA noted the following steps that the General Assembly could take to remedy the situation:

- mandate that the personal property rate and the real property rate be the same; or
- calculate the compensating tax rate for each class of property (both real and personal).

The PVA noted that “personal property” should be excluded from the definition of “compensating tax rate” in KRS 132.010.

A representative of taxpayers’ interests noted that library districts were encouraged to set their rates at the compensating tax rate. The representative of taxpayers noted that the Kenton County Library received almost as much as the county did in *ad valorem* tax revenues.

The Director of the Campbell County Public Library noted that the property tax was the sole income for libraries in contrast to multiple income sources for counties. According to the director, libraries have been good stewards of the public’s money and should be considered when the General Assembly wishes to change any provisions of HB 44.

### **Economic Impacts of Toyota Motor Manufacturing Kentucky**

The Manager of Community and Government Relations at Toyota Manufacturing Kentucky (TMMK) addressed a joint meeting with the Interim Joint Committee on State Government at TMMK’s Georgetown facility. Toyota spent \$800 million to construct and operate the automobile assembly plant. The plant has assembled more than 8.2 million vehicles and has 6,800 employees from 77 counties in Kentucky, with most residing in Scott, Fayette, Harrison, Jefferson, and Clark County. The average annual payroll of the plant is \$523 million. Total corporate gifts have totaled \$38 million.

In 2009, Toyota did business with 90 Kentucky-based suppliers who employ more than 24,000 people. It spent \$2.3 billion on parts, goods, and services. Toyota has 350 suppliers in 33 states in the U.S., Canada, and Mexico. Nationally, Toyota has a direct investment of more than \$18 billion, employs 28,783 persons directly, and employs 163,880 persons indirectly. Erlanger, Kentucky, hosts Toyota’s North American headquarters, and Hebron, Kentucky, hosts a parts distribution center. Statistics on automotive sales since 2000 indicated expected slowing sales due to the economy, with an upturn with the “Cash for Clunkers” program. Sales are increasing. Toyota has taken specific actions in response to vehicle recalls and vehicle defect allegations.

## **Kentucky Association of Counties and Kentucky League of Cities Compliance with 2010 Regular Session Senate Bill 88 and Responses to Auditor of Public Accounts' Reports**

In the 2009 interim, the Interim Joint Committee on Local Government requested the Kentucky Association of Counties (KACo) and the Kentucky League of Cities (KLC) to appear before the committee to discuss news articles written about the agencies' accountability and changes to internal policy to address those issues. During the 2010 Regular Session, the General Assembly passed Senate Bill 88 to mandate accountability requirements for the groups. The Auditor of Public Accounts audited both KACo and KLC and published the results of each audit.

Speaking on behalf of KLC, the President and First Vice President of KLC outlined efforts taken as a result of the passage of SB 88 and the auditor's report:

- a new comprehensive employee handbook,
- a policy to address open records requests,
- policies to satisfy open meetings requirements,
- a procurement policy,
- a policy setting forth an employee compensation schedule,
- a policy for the process for handling internal and external complaints,
- board member training opportunities,
- adoption of a code of ethics,
- guidelines for annual audits, and
- the provision of published online financial databases.

Speaking on behalf of KACo, the President-elect and the First Vice President of that organization outlined efforts taken as a result of the passage of SB 88 and the auditor's report:

- the adoption of board member and staff travel policies,
- the adoption of policies relating to staff usage of credit cards and business expenses,
- the conducting of an internal review process initiated to review KACo's organizational structure,
- compliance with open meetings and records requirements,
- the adoption of policies for equitable personnel pay,
- the adoption of a code of ethics,
- the creation and use of financial disclosure statements and procedures for board members and employees,
- the adoption of a policy on the employment of relatives,
- the creation of a procedure for handling internal and external complaints,
- the adoption of policies for procurement,
- the provision of published online financial databases, and
- the adoption of guidelines for annual audits.

## **Aspects of the American Recovery and Reinvestment Act Relating to Local Government**

The Executive Director of the Office of Policy and Audit in the Kentucky Finance and Administration Cabinet discussed the distribution process for American Recovery and Reinvestment Act (ARRA) money and how local governments were affected.

Kentucky has received \$3.5 billion in ARRA funds in the form of grants, loans, and federal contracts. Congress appropriates ARRA funds to federal agencies, who in turn make a part of the funds available to state and local governments or directly to academia, businesses, and other organizations. State and local governments make certain funds available to academia, businesses, and organizations. Several grant categories benefit local governments:

- health and human services,
- education,
- workforce,
- transportation,
- energy,
- environment,
- housing,
- public safety, and
- community development.

### **Review of Administrative Regulations**

The committee reviewed the following administrative regulations:

- 109 KAR 15:020, County Budget Preparation and State Local Finance Officer Policy Manual;
- 815 KAR 7:110, Building code enforcement—criteria for expanded local jurisdiction;
- 815 KAR 8:100, Criteria for local jurisdiction HVAC programs; and
- 815 KAR 20:191, Plumbing—minimum fixture requirements.

### **Review of Executive Order**

#### **Executive Order 2010-429**

The Chief of Staff and General Counsel from the Department for Local Government and representatives from the Cabinet for Economic Development indicated that the goal of the executive order was to simplify the administration of the Coal Severance Program. The executive order was approved by the committee.



**Report of the 2010  
Interim Joint Committee on Natural Resources and Environment**

**Sen. Brandon Smith, Co-Chair  
Rep. James Gooch, Co-Chair**

Sen. David Boswell  
Sen. Tom Jensen  
Sen. Ray S. Jones  
Sen. Robert J. Leeper  
Sen. Dorsey Ridley  
Sen. John Schickel  
Sen. Katie Kratz Stine  
Sen. Robert Stivers  
Sen. Gary Tapp  
Sen. Johnny Ray Turner  
Rep. Hubert Collins

Rep. Tim Couch  
Rep. Keith Hall  
Rep. Stan Lee  
Rep. Reginald Meeks  
Rep. Tim Moore  
Rep. Don Pasley  
Rep. Marie Rader  
Rep. Kevin Sinnette  
Rep. Ancel Smith  
Rep. Fitz Steele  
Rep. Jim Stewart

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Kentucky General Assembly**

## **Interim Joint Committee on Natural Resources and Environment**

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

### **Committee Activity**

The Interim Joint Committee on Agriculture and Natural Resources held six meetings during the 2010 Interim. No subcommittees were authorized. The predominant theme in most of the committee meetings was how changes in federal rules are affecting the state's economic development and core industries. Several of those meetings focused specifically on coal mine permitting. However, budgetary concerns and other natural resource concerns such as forestry issues were reflected in testimony across all topics. The committee did not meet out of Frankfort and passed a resolution requesting the Office of the Attorney General to join any current and prospective lawsuits filed against the United States Environmental Protection Agency's use of guidance documents and other conductivity measures on coal mining.

### **Changes in Federal Rules**

For several years, the United States Environmental Protection Agency (US EPA) has laid the basis for regulation of carbon dioxide as a pollutant. This is the result of international protocols dealing with climate change, global warming, and greenhouse gases. These points were demonstrated by the Division of Air Quality at the November meeting; however, it is uncertain whether the new greenhouse gas rules issued by US EPA will have dramatic effects on industries at this time. Several rules have been finalized, including the greenhouse gas reporting rule and the tailoring rule. The former will impose reporting requirements for greenhouse gases on those entities that already report emissions of several previously regulated pollutants, such as sulfur dioxide and nitrogen oxide. The latter will impose emissions limitations on the same industries, but it is uncertain how those limitations will be achieved. The Commonwealth has promulgated administrative regulations to implement the tailoring rule and has until March 2011 to implement the rules or US EPA will pursue a federal implementation plan.

Over several years another contentious issue has been gaining national salience. Mountaintop mining predominantly has been a regional issue in Appalachian states and has resulted in many attempts to stop the mining method. However, coal-related issues have converged with climate change issues resulting in a broader national coalition and recent federal action to control coal mining through federal water laws. In June 2010, the United States Army Corps of Engineers (USACE) suspended use of all Nationwide 21 permits in six Appalachian states, including Kentucky. Nationwide 21 is required for a surface mining operation to permit discharges of surface mining soil and debris into U.S. waters. This action, along with a US EPA guidance document that regulators are required to use when issuing other required water permits, has impeded the operations of several coal mining companies located in Kentucky.

The Kentucky Coal Association (KCA) expressed its objections to the actions taken by USACE and US EPA toward coal mining permits. According to KCA, the coal industry's investment in Kentucky is substantial and decisions by federal agencies are made improperly and absent of proper statutory authority. The National Mining Association, Kentucky Coal Association, and the state of West Virginia filed separate suits against US EPA in October of 2010. In November, KCA returned to the committee and explained that the Energy and Environment Cabinet, on behalf of the Commonwealth, joined KCA's lawsuit against US EPA.

Three of the committee's meetings were devoted to coal mining or technology topics. These topics either elucidated the extent of impact of federal regulatory actions or showcased the benefits of coal-related products and technologies. The Center for Applied Energy Research (CAER) and the Institute for Combustion Science and Environmental Technology (ICSET) described ongoing research at the University of Kentucky and Western Kentucky University respectively. Focusing on new generating technologies, such as low nitrogen oxide burners and supercritical high-temperature steam plants, CAER explained that Kentucky is reliant on more efficient technologies due to the state's dependence on coal use for electric generation and the state's heavy industrial sector. According to CAER, Kentucky has few alternative energy options except for efficiency gains. Focusing on options that continue to use coal and reduce harmful emissions is essential given upcoming federal air emission restrictions. In terms of developing technologies that are suitable for carbon capture, ICSET conceived of and is developing a chemical looping process and technologies to utilize biomass fuels derived from chicken waste.

As the nation focuses on harmful environmental impacts from mining and tries to find practical solutions, testimony from companies engaged in beneficial reuse and clean of waste coal impoundments demonstrates the future of making fuel from residuals from mining and household waste. Kentucky has 650 million tons of waste coal fines, and beneficial reuse serves the purpose of environmental cleanup as well as an underutilized energy resource. The Kentucky Pollution Prevention Center (KPPC) elaborated on methods to make industries more efficient through energy efficiency and pollution reductions. KPPC established a Kentucky Energy Efficiency Program for schools and a consortium that awards project grant money that will help schools reduce energy waste.

### **Budgetary Concerns and Other Natural Resource Concerns**

Assistance to counties that are victims of high-water events is provided via the Federal Emergency Management Agency and through the Small Business Administration. There is also a hazard mitigation grant assistance program. High-water events affect drinking and wastewater systems necessitating boil water advisories and continual attention to the requirements for upgrades to the sanitary sewer system to prevent overflows. Dam failures can result, but there was only one partial earthen dam failure from the 2010 May flood. However, the Commonwealth is engaged in risk mapping to find areas in the flood hazard data and to improve floodplain management in the event that such high-water events occur in the future.

The Division of Forestry discussed the findings and recommendations of the Statewide Assessment of Forest Resources and Strategy and a report from the State Forester. The Statewide Assessment is a report mandated by the 2008 U.S. Farm Bill and describes the problems, themes,

and resources that can be utilized to deal with forestry problems specific to each state in the nation. In Kentucky, top forestry issues ranged from forest health and management to problems of fire, public access, and fragmentation. The State Forester provided an update on controlling the infestations of the emerald ash borer and described the quarantine zones in the state. The Kentucky Woodland Owners Association requested the committee to support policies that promote certified forests. Certified forests would be certified by private organizations such as the American Tree Farm System and the woodland owner would agree to develop the forest in accordance with certain sustainability guidelines.

The Division of Waste Management updated the committee on the PRIDE fund, which receives revenues from the environmental remediation fee. The fund pays for cleanup of historic landfills, hazardous waste grants, and cabinet administrative costs. Because of the reduction in General Fund money along with increases in federally imposed responsibilities, the cabinet needs to address their budgetary outlays. One major concern is whether the federal government will regulate coal combustion wastes more stringently as hazardous wastes. Currently coal ash is treated as a special waste.

Many agencies continued to express budgetary needs, in part due to ongoing revision in federal laws and rules that place more responsibility on the state's regulatory divisions and departments. The Division of Water and the Division of Waste Management expressed concern that federal rules will make it difficult to perform their requisite functions. The Division of Forestry identified the need to preserve legacy forests as being important for Kentucky but dependent upon federal dollars. The Kentucky Forest Industries Association identified increasing the remittances on outstanding fines imposed on individuals designated by the Division of Forestry as "bad actors." The money from those bad actor fines goes into the Kentucky Forest Stewardship Incentives Fund and can provide needed cost-share dollars for forest management plans and for developing the certified forest program.

The Division of Mine Permits reported that revenues generated from the increase in mine permit fees are sufficient to address the backlog of permits. On average, there is a backlog of around 500 permit applications and the Division expects to make substantial reductions in those numbers. Training of new personnel and upgrading permit application processes including electronic permitting are the primary focus for the Division of Mine Permits.

### **Administrative Regulations**

As of November 4, 2010, the committee had received 26 administrative regulations pertaining to programs in the Department of Agriculture, the Department of Fish and Wildlife Resources, and the Division for Air Quality and Division of Waste Management within the Environmental and Public Protection Cabinet. Those administrative regulations were approved.

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

The committee received no prefiled bills for the 2011 Regular Session.

## **Legislative Proposals Received From State Agencies**

Several legislative proposals were received by the committee. Each proposal is identified below.

### **Mine Equipment Review Panel**

- Require rollover protection and falling object protection for excavators used at mine sites.

### **Kentucky Pollution Prevention Center (University of Louisville)**

- Change the definition of pollution prevention to cover more than hazardous wastes and toxic chemicals.
- Delete language from the Hazardous Waste Fund statutes to prevent the diversion of the 20 percent designated to KPPC.
- Amend statutes that govern KPPC board members to require ex officio members to attend meetings.

### **Kentucky Woodland Owners Association**

- Reauthorize the Kentucky Forest Health Task Force in 2011.
- Increase or create criminal penalties for timber theft and reinforce bad actor provisions of the Master Logger Program.
- Explore marking logs to prevent timber theft.
- Create a special unit in the Division of Forestry to assist forest landowners with timber theft investigations.
- Create economic incentives to encourage use of woody biomass.
- Establish a certified forest program to promote sustainability.

### **Kentucky Forest Industries**

- Increase the remittance of fees from those loggers designated bad actors.
- Establish a date certain for payment of fees and a payment plan program for outstanding fees.

### **Kentucky Division of Waste Management, Department of Environmental Protection (Energy and Environment Cabinet)**

- Redistribute the environmental remediation fee funds, giving priority to historic landfill cleanups.
- Increase the environmental remediation fee to generate more funds for cleanup and for solid waste programs.

## **Reports Received**

The committee received 5 reports as of November 4, 2010:

Commonwealth of Kentucky. Division of Waste Management. Biennial Report on Revenues and Expenditures of the Hazardous Waste Management Fund, FY 09 and FY 10.

Commonwealth of Kentucky. The Kentucky Department of Fish and Wildlife Resources: "The Status of Hunting Land Access in Kentucky."

Commonwealth of Kentucky. The Kentucky Department of Fish and Wildlife Resources. "The Status of CWD and Other Diseases."

Commonwealth of Kentucky. Energy and Environment Cabinet. "Agency Owned Lands Open and Closed to Hunting."

University of Louisville. Kentucky Pollution Prevention Center. "KEEPS Status Report." Available online at <[www.kppc.org/KEEPS](http://www.kppc.org/KEEPS)>.

**Report of the 2010  
Interim Joint Committee on State Government**

**Sen. Damon Thayer, Co-Chair  
Rep. Mike Cherry, Co-Chair**

Sen. Walter Blevins, Jr.  
Sen. Julian M. Carroll  
Sen. Ernie Harris  
Sen. Jimmy Higdon  
Sen. Tom Jensen  
Sen. Alice Forgy Kerr  
Sen. Mike Reynolds  
Sen. John Schickel  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner  
Sen. Robin L. Webb  
Rep. Eddie Ballard  
Rep. Johnny Bell  
Rep. Kevin D. Bratcher  
Rep. Dwight D. Butler  
Rep. John “Bam” Carney  
Rep. Larry Clark  
Rep. Leslie Combs  
Rep. James R. Comer, Jr.  
Rep. Tim Couch  
Rep. Will Coursey  
Rep. Joseph M. Fischer  
Rep. Danny Ford

Rep. Jim Glenn  
Rep. Derrick Graham  
Rep. Mike Harmon  
Rep. Melvin B. Henley  
Rep. Charlie Hoffman  
Rep. Jimmie Lee  
Rep. Mary Lou Marzian  
Rep. Brad Montell  
Rep. Lonnie Napier  
Rep. Sannie Overly  
Rep. Darryl T. Owens  
Rep. Tanya Pullin  
Rep. Tom Riner  
Rep. Carl Rollins II  
Rep. Steven Rudy  
Rep. Sal Santoro  
Rep. Kent Stevens  
Rep. Tommy Thompson  
Rep. John Tilley  
Rep. Jim Wayne  
Rep. Alecia Webb-Edgington  
Rep. Ron Weston  
Rep. Brent Yonts

LRC Staff: Judy Fritz, Karen Armstrong-Cummings, Kevin Devlin, Sean Donaldson, Brad Gross, Alisha Miller, Clint Newman, Karen Powell, Bill VanArsdall, Greg Woosley, Terisa Roland, and Peggy Sciantarelli

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Subcommittee Organization and Membership**

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

**Sen. Damon Thayer, Co-Chair**

**Rep. Darryl Owens, Co-Chair**

Sen. Walter Blevins, Jr.  
Sen. Julian M. Carroll  
Sen. Ernie Harris  
Sen. Jimmy Higdon  
Sen. Tom Jensen  
Sen. Alice Forgy Kerr  
Sen. Mike Reynolds  
Sen. John Schickel  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner

Sen. Robin Webb  
Rep. Kevin D. Bratcher  
Rep. Larry Clark  
Rep. James R. Comer, Jr.  
Rep. Joseph M. Fischer  
Rep. Mike Harmon  
Rep. Melvin B. Henley  
Rep. Mary Lou Marzian  
Rep. Ron Weston

Rep. Mike Cherry, ex officio

LRC Staff: Greg Woosley, Judy Fritz, Karen Powell, Bill VanArsdall, 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 United States 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 five meetings during the 2010 Interim, focusing on an asset-liability study of Kentucky Retirement Systems, privatization of state parks, state employee furloughs, taxpayer transparency legislation, transparency in Kentucky state government, an overview of Toyota Motor Manufacturing, Kentucky, Inc., the 2011 Kentucky Employees' Health Plan, national health insurance reform, legislation relating to Native Americans, executive reorganization, and administrative regulation review.

### **Kentucky Retirement Systems (KRS)**

The president of R. V. Kuhns & Associates, Inc. discussed the KRS asset/liability study completed by his firm in 2010. According to estimates in the study, if future investment markets and the need to avoid excessive risk do not permit the fund to earn 7.75 percent on average, the pension fund's assets will shrink as pension obligations grow. Shrinking assets would make long-term investments difficult or impossible for the KRS board's investment program to utilize, which could substantially reduce the ability of the program to produce expected returns. Under the worst possible outcomes, the plan's assets could shrink to zero before the higher contributions called for by 2008 Special Session House Bill 1 begin to gradually create a smaller pool of assets available for investment. The KRS board faces a difficult decision—whether to adopt a more conservative investment policy with lower returns and less risk or to become more aggressive in order to seek higher returns with greater risk. KRS pension fund performance has followed a pattern similar to all public pension plans of comparable size.

The Executive Director of KRS testified that funding has changed due to the economic environment and that unfunded benefit enhancements, combined with poor investment return, have been a major factor contributing to the deficit. KRS is prepared to make recommendations

to the General Assembly to address the problem. The executive director stated his opinion that the system will be affordable in 20 years when employees hired under the provisions of HB 1 are starting to retire, but the current challenge is to address the unfunded liability that has accrued over time.

### **State Parks**

The Secretary of the Tourism, Arts and Heritage Cabinet and the Commissioner of the Kentucky Department of Parks spoke about the lack of funding, lagging revenue, escalating personnel costs, and major maintenance concerns for the state parks system. Strategies being employed from recommendations in the Financial and Operations Strategic Plan that was launched in June 2010 would prevent closure of state parks and layoffs of full-time employees. Under the cost avoidance plan, selected dining and all golf operations will be operated by private concession companies; employees currently working 40 hours a week will begin working 37.5 hours per week; an existing statewide contract for temporary services will be used for hiring seasonal employees; and seasonal schedule reductions will be implemented at all parks. Estimated total cost avoidance will be over \$6 million in each of the 2011 and 2012 fiscal years. The committee was generally complimentary of the cabinet's operation of state parks, but there was concern about the combined impact on staff salaries and benefits by the planned changes and the mandatory 6-day furloughs of state employees. Some members questioned how money will be saved through the planned privatization of golf and food operations, and they also requested additional information on the planned short-term improvements at the parks. The secretary and commissioner appeared before the committee again in October. At that time, they emphasized that whether to privatize certain park operations is still in the investigative stage and that no decision had yet been made.

### **State Employee Furloughs**

The General Counsel for the Personnel Cabinet reported on implementation of the executive branch 6-day furloughs that were authorized by the budget bill enacted in the 2010 extraordinary session. All 6 days are to be implemented in FY 2011, with no determination yet made regarding FY 2012. The cabinet will have an opportunity to determine flexibility demands and is also working on concerns about overtime and other issues, including those relating to parks employees. Representatives of the American Federation of State, County and Municipal Employees, which represents 9,000 state workers, testified in opposition to the executive branch furloughs.

### **Transparency in State Government**

The Director of Economic Education for the Mercatus Center at George Mason University in Arlington, Virginia, spoke on the subject of transparency in government, how transparency can lead to greater accountability, and the obvious benefits of transparency. The best way to achieve lasting transparency is through legislative action. The legislative process allows full and open debate regarding what should be made transparent, how it should be made transparent, and how to protect confidentiality when rightfully needed. Thirty-one states have enacted transparency legislation. The Bluegrass Institute for Public Policy Solutions, based in

Kentucky, is a valuable resource with respect to transparency at the school district level. The committee co-chairs provided copies of relevant legislation that they plan to prefile for 2011.

The Secretary of the Finance and Administration Cabinet gave an overview of Kentucky's Open Door transparency Web site, which was launched on January 1, 2009, and its sister site, Kentucky at Work, which provides detailed information on use of American Recovery and Reinvestment Act funds. The Open Door portal was established with existing staff and resources. Both expenditure and contract data are updated twice daily.

The Executive Director of the Administrative Office of the Courts spoke about transparency in the judicial branch. Rather than creating its own transparency Web site, the judicial branch opted to participate in the Open Door portal and has been "live" since November 24, 2009.

The General Counsel for the Legislative Research Commission (LRC) presented information about transparency in the legislative branch, which plans to establish a Web site that will allow public access to LRC records regarding agency expenditures, personal service contracts, and salaries. It will be a component of the current "Kentucky Legislature" Web site. Records displayed will be those considered available under open records statutes applicable to the legislative branch.

### **Toyota Motor Manufacturing, Kentucky, Inc. (TMMK)**

The committee met in conjunction with the Interim Joint Committee on Local Government in Georgetown, Kentucky, at TMMK. The Manager of Community and Government Relations for TMMK reported on Toyota growth and its impact in the United States; impact of the economic downturn on the U.S. auto industry and how Toyota has weathered the downturn, vehicle recall issues and activities, potential changes for the auto industry, TMMK leadership and milestones; Kentucky's incentive package for Toyota and Toyota's commitment to Kentucky, resident counties of team members, motor vehicle-related plants and suppliers, corporate gifts, and the TMMK Environmental Education Center. May 2011 will mark the 25<sup>th</sup> anniversary of groundbreaking in Georgetown. The "first car" ceremony was held in May 1988. Following the meeting, members were treated to a buffet luncheon and a guided tour of the Toyota plant.

### **Kentucky Employees' Health Plan (KEHP)**

The Commissioner and the General Counsel for the Personnel Cabinet's Department of Employee Insurance gave an overview of KEHP for the 2011 plan year, including how the plan is affected by federal health care reform mandates. Guiding principles for KEHP are to provide uniform coverage across the Commonwealth, plan alternatives that are accessible for retirees, preventive care at little or no cost, a quality PPO option, and plans with unlimited lifetime maximums; encourage wellness and healthy lifestyles; improve chronic disease care; educate members about plans appropriate for their health needs; and strive to hold down costs for families and dependents. KEHP's subsidy for single coverage ranks in the top 10 percent nationally, while the subsidy for family coverage ranks closer to the middle.

The Commissioner of the Department of Insurance (DOI) and the Director of the department's Health and Life Division briefed the committee on federal health insurance reform. Its implementation in Kentucky has greatly increased DOI's responsibility and workload. Kentucky opted for the federal government to operate the temporary high risk pool—the preexisting condition insurance plan—in lieu of state operation. Kentucky has been awarded a \$1 million Exchange Planning Grant. The exchange, which is an organized marketplace for the purchase of health insurance, must be operational by January 1, 2014. At that time Kentucky's high risk pool will end because there will be guaranteed issue for any person, regardless of preexisting conditions. Kentucky has approximately 600,000 uninsured, and DOI must find out who these people are. Exchange planning will be a collaborative effort between DOI and the Cabinet for Health and Family Services. It was the consensus of every group that met with DOI that Kentucky should opt for a state-operated, rather than federally-operated, exchange. This would give Kentucky the flexibility to do what is best for its population. DOI will be making recommendations in the 2011 Regular Session for legislative changes needed to conform Kentucky's insurance laws to the federal provisions.

### **Native Americans**

Representative Reginald Meeks gave an overview of two bills he prefiled relating to recognition of native Americans. Officials from the Kentucky Heritage Council and the Kentucky Native American Heritage Commission accompanied him and spoke in support of the legislation. A number of persons of Native American heritage also attended the meeting and were recognized individually.

### **Executive Reorganization**

During the Interim the committee reviewed Executive Order 2010-428, reorganizing the Personnel Cabinet, and Executive Order 2010-436, reorganizing the Finance and Administration Cabinet.

### **Subcommittee Activity**

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

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held four meetings during the 2010 Interim, focusing on a report on the May 2010 primary; an update on the election equipment used in counties; implementation of new federal requirements for military and overseas balloting; voter identification; a review of developments in campaign finance law; the National Popular Vote initiative; a summary of current recount, recanvass, and election contest procedures; signature requirements for independent candidates in consolidated local government elections; and a review of the November 2010 general election.

The Secretary of State and the Executive Director of the State Board of Elections reviewed the May 2010 primary. The Secretary of State reported that voter turnout was about average for an “off-year” primary, with approximately 32 percent of registered Kentucky voters

casting ballots. Both reported that the election was conducted fairly smoothly overall, with only a few glitches common to primary election cycles.

The Secretary of State updated the task force on the expenditure of the Help America Vote Act (HAVA) funds and the implementation of the Military and Overseas Voter Empowerment (MOVE) Act requirements. He testified that Kentucky counties have continued to upgrade voting equipment using HAVA funds, with \$28 million spent over the last 4 years buying new machines, 80 percent of which provide a paper trail of voting results. He gave an overview of MOVE Act requirements, stating that military or overseas voters can request an absentee ballot by e-mail and that the ballots are transmitted to the voter by facsimile or e-mail. He also testified that 118 counties were fully compliant with the Act's requirements as of August, and that it was anticipated that the remaining two counties would be compliant by the November general election.

The Secretary of State and the General Counsel of the State Board of Elections presented an overview of Kentucky's current voter identification requirements, as well as the trend in some states to move to a more stringent photo identification requirement. The Secretary of State testified that Kentucky's law requires a precinct worker to confirm a voter's identity by personal acquaintance or a document, such as a motor vehicle operator's license, social security card, or credit card. He also gave the task force statistics on the methods used in the 2010 primary, noting that personal acquaintance and motor vehicle license were nearly equal in number and accounted for nearly 95 percent of all voters. The General Counsel of the State Board of Elections presented an overview of an Indiana law that requires all voters to present a government-issued photo identification card prior to voting and the United States Supreme Court ruling upholding that law against a constitutional challenge.

The General Counsel of the Registry of Election Finance gave a review of the United States Supreme Court's opinion in *Citizens United v. Federal Election Commission*. She testified that the Supreme Court held that no sufficient governmental interest justified limits on the political speech of nonprofit or for-profit corporations and concluded that independent expenditures by corporations do not give rise to or create an appearance of quid pro quo corruption. The general counsel also testified that the Supreme Court held that corporations and unions may make independent expenditures in political campaigns in the same way as individuals. However, she noted that because the case was limited to independent expenditures, direct campaign contributions from corporations were still likely prohibited by Section 150 of the Constitution of Kentucky.

Representative Ruth Ann Palumbo and a spokesperson with the National Popular Vote initiative testified that the National Popular Vote bill would guarantee the presidency to the candidate who receives the most popular votes in all 50 states. They noted that the bill has passed 31 legislative chambers in 21 jurisdictions and has received broad bipartisan support in the New York Senate. The bill has been enacted by states possessing 73 electoral votes—27 percent of the 270 votes necessary to activate the law.

The General Counsel of the State Board of Elections reviewed the current election contest, recanvass, and recount procedures applicable to Kentucky primaries and elections. She

summarized recent recounts in two Kentucky counties, as well as Kentucky Supreme Court and United States Court of Appeals' opinions on the votes that are required to be counted in a recount process. A Boone County attorney testified regarding his experience with an election recount in the May 2010 primary for Boone County Judge Executive and offered suggestions for how the procedures could be improved.

The Executive Director and the General Counsel of the State Board of Elections summarized the November 2010 general election. The executive director reported that the election was conducted relatively smoothly, with only a few minor problems relating to the number of ballots printed in several counties and some equipment maintenance issues that were remedied with little to no effect on voting. The general counsel discussed litigation prior to the November election concerning the number of required signatures for an independent candidate in a consolidated local government election. She said that the Jefferson Circuit Court found an ambiguity in the law, and she offered the task force one suggestion for how the law could be clarified.

**Report of the 2010  
Interim Joint Committee on Transportation**

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

Sen. Walter Blevins  
Sen. David Boswell  
Sen. David Givens  
Sen. Bob Leeper  
Sen. R.J. Palmer  
Sen. John Schickel  
Sen. Brandon Smith  
Sen. Gary Tapp  
Sen. Damon Thayer  
Sen. Ed Worley  
Rep. John Arnold  
Rep. Eddie Ballard  
Rep. Linda Belcher  
Rep. Leslie Combs  
Rep. Tim Couch

Rep. Will Coursey  
Rep. Jim DeCesare  
Rep. David Floyd  
Rep. Keith Hall  
Rep. Richard Henderson  
Rep. Melvin Henley  
Rep. Jimmie Lee  
Rep. Charles Miller  
Rep. Lonnie Napier  
Rep. Rick Nelson  
Rep. Tanya Pullin  
Rep. Marie Rader  
Rep. Steve Riggs  
Rep. Sal Santoro

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

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Subcommittee Organization and Membership**

### **Subcommittee on Waterways**

**Sen. Bob Leeper, Co-Chair**  
**Rep. Will Coursey, Co-Chair**

Sen. Ernie Harris  
Sen. John Schickel  
Sen. Ed Worley

Rep. Charlie Miller  
Rep. Tanya Pullin  
Rep. Alecia Webb-Edgington

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

## **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 moneys; 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 five times during the 2010 Interim with a variety of issues discussed.

#### **Plate to Customer Vehicle Licensing**

Representatives from the Transportation Cabinet discussed the merits of the state changing its motor vehicle license format from the current plate to vehicle (P2V) format, where the plate remains with the vehicle upon transfer, to a plate to customer (P2C) format, where the plate remains with the individual who sold the vehicle to be placed on a new vehicle he or she obtains. Kentucky is one of 12 states that utilizes the P2V format. The potential change arose with the state's conversion of the old AVIS technology system to the more technologically advanced KAVIS system, developed by 3M.

Since the P2C format is built into KAVIS, retaining the P2V procedure would cost the state an additional \$150,000 to have 3M reprogram its system. If the state decides to go to the P2C format after the system is implemented, it would cost the state an additional \$500,000 to program the system back to its original format.

Transportation Cabinet officials stated that every state using the P2C format stressed its convenience not only to clerks and transportation agencies, but to law enforcement offices and court systems. The three groups that would be impacted the most by the new format (law enforcement, county clerks, and the Motor Vehicle Commission) are largely in favor of this move.

A local county clerk stated that there needed to be a date certain of when the buyer must transfer the automobile into his or her name. It was stressed that, by not stipulating a date-certain clause, there is a potential of state and taxpayer confusion, particularly over the determination of ownership for property tax purposes. The county clerks were also concerned with temporary tags. County clerks realize significant amount of money from these tags and do not see how the temporary tags would play a role in the P2C format.

## **Travel Restrictions of Overdimensional Permits**

The committee heard testimony regarding rush hour time restrictions on overdimensional permit travel in metropolitan counties. KRS 189.270 allows the Transportation Cabinet to limit travel on overdimensional permits from 6:00-9:00 AM and 3:00-6:00 PM. The Transportation Cabinet has promulgated a regulation, 601 KAR 1:018, to prohibit travel on an overdimensional permit in metropolitan areas, including Fayette County, from 7:00-9:00 AM and 4:00-6:00 PM, Monday through Friday.

A representative from Prestress Service Industries, LLC, stated that the time restrictions on traveling cause problems when traveling north to Indiana and Ohio. The company recognizes the danger in transporting large components and has made the decision to only transport them during daylight hours. However, by making this safety decision, the company has faced extreme travel constraints that make it nearly impossible to conduct business in certain areas. The company lost approximately \$20 million last year, and in 2010 has lost \$10 million due to the transporting time restrictions.

The Transportation Cabinet has proposed changes to 601 KAR 1:018 to address these concerns.

## **Kentucky Transportation Center**

The Kentucky Transportation Center (KTC) testified about its research efforts. Its mission statement is to provide services to the transportation community through research, technology transfer, and education. The center creates and participates in partnerships to promote safe and effective transportation systems. The KTC library provides over 20,000 volumes of materials, 800 videos, online lending library, manuals, and a Traffic Center loan program.

A representative from KTC said that its budget is about \$10 million per year, a \$4 million increase from 10 years ago. The General Assembly appropriates \$290,000 annually to KTC, and the program is able to leverage that to generate the \$10 million research program funding from a variety of sources. The breakdown of KTC funding sources includes funding from State Planning and Research, the U.S. Department of Homeland Security, other universities, state agencies, and federal programs.

KTC discussed two recent research projects that resulted in cost savings. The first pertains to the use of ground-penetrating radar at the Cumberland Gap Tunnel, and the second is the bridge retrofit using carbon fiber reinforced polymer fabric.

The Technology Transfer Program (TTP) also provides publications, marketing services, and technical assistance across the state. In the areas known to have high crash rates, the program provides low-cost roadway safety improvements. In counties visited by TTP, there has been up to a 26 percent decrease in crashes. These projects usually cost less than \$10,000.

## **Budget/Road Fund Update and Project Bonding History**

A representative of the Transportation Cabinet stated that, at the end of fiscal year 2010, the state had exceeded the road revenue estimate by \$7.5 million, exceeding the revised estimate by less than 1 percent. The cabinet lapsed a total of \$41.9 million, with \$23.3 million in debt service and \$11 million in operating funds.

The cabinet testified that the biennial Road Fund total revenue estimate for FY 2011 is \$1.265 billion and for FY 2012 is \$1.340 billion. The FY 2011 estimate was reduced by legislative action to extend the motor vehicle usage trade-in allowance by \$4.8 million. The motor vehicle usage trade-in credit was legislatively extended until 2011 or until the \$25 million cap was reached, whichever came first. The \$25 million dollar cap was reached in August 2010. The legislation allowed for a trade-in allowance on the purchase of a new vehicle.

The cabinet discussed the advancement of 2009 and 2010 bond projects. No projects are being delayed because bonds are not being sold. The cabinet is managing bond programs cash using sound cash management practices, which include starting projects as soon as possible using all available program cash, only selling bonds as cash as needed, and avoiding arbitrage. Arbitrage is a future potential interest rebate due to the IRS if funds are not spent for designated purposes within defined IRS time frames.

A representative from the Transportation Cabinet gave a brief update during the November meeting of the FY 2011 estimated Road Fund compared to FY 2010 actual revenue. She stated that for FY 2011, total revenue is projected to increase by 4.9 percent over FY 2010. When broken down into the three major categories, the motor fuel tax is estimated to increase by 3.8 percent, the motor vehicle usage tax is estimated to increase by 9 percent, and the other taxes are estimated to increase by 1.9 percent. Through October, FY 2011 actual Road Fund revenue that has been collected totals approximately \$439 million. The actual revenue through October exceeds the revenue estimate by over 4 percent.

## **2009 Ice Storm Cleanup**

A representative from the Transportation Cabinet testified that 103 out of 120 Kentucky counties were declared disaster counties due to the 2009 ice storm. The cabinet removed 15.7 million cubic yards of material from roadsides and spent \$134 million in total clean up expenses. The cabinet has received reimbursements of \$20 million from the Federal Emergency Management Agency and \$16 million from the Federal Highway Administration. Of the \$134 million, \$3 million was paid to lease from private property owners and \$4 million to cities and counties for their effort in the cleanup. There was a wide variety of options as to where to dispose of the debris; much of the 2009 storm debris was put in landfills, and some debris was ground onsite.

## **Aviation**

The committee heard testimony from the Transportation Cabinet and the Department of Aviation regarding the programs of the Department of Aviation. A representative stated that

many of the projects are funded through the Federal Aviation Agency (FAA), 95 percent coming from the FAA, 2.5 percent coming from local government, and 2.5 percent from the state. Kentucky has 60 airports; 3 of those are larger, commercial airports—Cincinnati/Northern Kentucky, Louisville International, and Blue Grass—that are self-sufficient with their own staff and not maintained by the state. The Department of Aviation oversees the other 57 general aviation airports. Because of ongoing budget problems, the main priorities at these airports are maintenance and safety; the department is working year-to-year on maintenance as they can afford it.

The Department of Aviation discussed the 10 findings and recommendations from the audit completed by the Auditor of Public Accounts in 2008. The cabinet discussed each finding and how it has corrected each issue.

### **Voluntary Contributions Accompanying Special License Plates**

The committee discussed the statutory changes necessary requiring separate identification of voluntary fees for special license plates. Some citizens do not know that contributions on vehicle license renewal cards are voluntary, and it is often assumed by plate holders that the contributions are part of the total to license a vehicle. KRS 186.164 provides that the contributions are voluntary, and committee members were concerned the public should be made aware of the voluntary nature of the fee.

A representative from the Transportation Cabinet stated that approximately 4.5 million plate renewal notices are mailed each year by the Department of Revenue. Of those notices, approximately 300,000 notices fall under the category of "special plates," with most special plates requiring a special mandatory fee. Farm plates and about 30 other plates carry special fees that are optional, allowing the plate holders to opt out of paying that special fee. The registration renewal notice does not indicate that the fee on these special plates is optional.

If the renewal notices were to be changed to include the additional line stating certain fees were optional, there would be two forms that would have to be reprogrammed and redesigned: the registration renewal notice and the registration receipt. Each of those notices would cost about \$60,000 as a result of Commonwealth Office of Technology reprogramming. There would also be an additional redesign cost from outsourced vendors.

### **Locks and Dams**

The committee met in Louisville to hear a presentation from the United States Army Corps of Engineers (USACE) highlighting its role in fostering navigation on Kentucky's waterways and to hear information about the Markland and McAlpine Locks and Dam.

A representative from the USACE stated that the locks at McAlpine are the newest in the country. The Ohio River system supports 16,000 jobs in Kentucky, and McAlpine has dual 1,200-foot locks to allow the industry standard barge to go through. The prior standard was a 600-foot lock. USACE stated that it is working to expand the use of hydropower in Kentucky locks and dams. McAlpine, Markland, Greenup, Wolfe Creek, Laurel Lake, and Lake Barkley

are the only working hydropower facilities. Cannelton and Smithland will soon be working hydropower facilities.

The committee was briefed on the recent Markland Dam failure and repair. The industry suffered about \$9.2 million in losses because of the locking times being doubled and shipments not getting to their destinations in a timely fashion.

### **Design-build Projects**

The Transportation Cabinet testified about 9 design-build projects totaling approximately \$258 million. These nine projects have either been completed or are at an advanced stage of completion. Work on another proposed design-build projects was cancelled.

### **Transportation Cabinet Legislative Priorities for the 2010 Session**

The Transportation Cabinet discussed its future 2011 legislative package with the committee. These measures included an enhanced booster seat legislation to match the federal requirements that a child under the age of 8 and under 57 inches in height be restrained in a booster seat. The second measure is P2C legislation, which would change Kentucky from a P2V registration titling system to P2C with the implementation of KAVIS.

### **Prefiled Bills**

Two prefiled bills were referred to the committee during the interim:

- BR 98, An Act relating to emergency vehicles; and
- BR 143, An act relating to coroners.

No formal action was taken on either of these bills.

### **Subcommittee on Waterways**

The Subcommittee on Waterways met twice during the 2010 Interim.

The United States Army Corps of Engineers (USACE) testified about the Olmstead Locks and Dam project. The Olmstead Dam was originally authorized in 1985 at a projected cost of \$750 million; now it is projected to cost \$2.1 billion. It is not scheduled for completion until 2016, when the USACE will remove Locks 52 and 53. Olmstead will be the busiest spot on the inland waterways system in the nation. Coal is the largest commodity transported on the river, and 25 percent of the nation's coal will move through the Olmstead Locks.

The value of the Ohio River to commodities is transparent during normal operations. When there are lock closures, traffic can be slowed or stopped, affecting the delivery of goods and ultimately increasing costs to the consumer. In the absence of the Ohio River navigation system, the United States would lose 80,000 jobs and \$41 billion in economic income over the next 40 years.

In 2008, Governor Beshear unveiled the state's first comprehensive energy plan. The plan calls for a 20 percent reduction in greenhouse gas emissions and the creation of 40,000 jobs tied to energy production and conservation between now and 2025. McAlpine and Markland are the only dams in Kentucky that produce hydropower. However, the USACE is in the process of converting Smithland and Cannelton to hydropower dams.

Representatives from the Kentucky Transportation Center (KTC) testified on ways to develop a research agenda for water transportation. KTC is a \$10 million program that receives \$290,000 in legislative funding.

KTC stated that the opportunities for water transportation in Kentucky include the widening of the Panama Canal, as well as the significant benefits of water transportation of freight in terms of fuel efficiency, safety, air quality, reduced highway congestion, and preservation of highway infrastructure.

KTC is initiating an Inland Waterways Research Needs Project to develop a research agenda for water transportation. This will include identification of potential projects and exploration of potential funding sources.

Representatives from the Transportation Cabinet stated that waterways are determined navigable by USACE. Kentucky is surrounded by three navigable waterways: the Mississippi River, the Ohio River, and the Big Sandy River. Loss of infrastructure on the Kentucky, Green, and Cumberland Rivers has greatly reduced Kentucky's navigable waterways mileage. Some locks and dams in Kentucky have been closed because USACE no longer has funds to maintain or operate these facilities.

One of the major challenges facing the river ports is the number of agencies involved. Each port has a highway district office, economic development contact, and area development district office. There are four USACE districts and six metropolitan planning organizations; six transportation improvement programs and long-range transportation plans are impacted by port activity.

Kentucky has 10 operational ferries, 1 of which is privately funded, 2 that are federally funded, and 7 that are state funded. There are 12 river ports, 7 of which are operational and 5 of which are developing. The ferries are considered moving bridges, and their operational budget comes from the Road Fund. In 2006, the cost of building a bridge to replace a ferry moving 11,000 vehicles per year was \$6.5 million without ongoing maintenance costs. The average cost of operations funding for the ferry is \$235,000 per year. The cabinet can fund the average ferry for 27 years for the same cost as building a new bridge. For July 2010, the 7 state-funded ferries moved 41,863 vehicles, 1,072 foot passengers, and 165 cyclists.

Most ferry capital expenses are funded by federal Ferry Boat Discretionary grants. Three projects were awarded these grants under the recent federal stimulus package.

**Report of the 2010  
Interim Joint Committee on Veterans, Military Affairs, and Public Protection**

**Sen. Elizabeth Tori, Co-Chair  
Rep. Tanya Pullin, Co-Chair**

Sen. Perry Clark  
Sen. Carroll Gibson  
Sen. Denise Harper Angel  
Sen. Vernie McGaha  
Sen. Joey Pendleton  
Sen. Jerry Rhoads  
Sen. Dan “Malano” Seum  
Sen. Kathy Stein  
Sen. Jack Westwood  
Sen. Ken Winters  
Rep. Linda Belcher  
Rep. Tom Burch  
Rep. Dwight Butler  
Rep. Mike Cherry  
Rep. Larry Clark  
Rep. Leslie Combs  
Rep. Tim Couch  
Rep. Ron Crimm  
Rep. Robert Damron

Rep. Myron Dossett  
Rep. Bill Farmer  
Rep. David Floyd  
Rep. Jeff Greer  
Rep. Jimmie Lee  
Rep. Terry Mills  
Rep. Tim Moore  
Rep. Rick Nelson  
Rep. Fred Nesler  
Rep. Tom Riner  
Rep. Carl Rollins  
Rep. Steven Rudy  
Rep. Sal Santoro  
Rep. Charles Siler  
Rep. Dottie Sims  
Rep. Ancel Smith  
Rep. John Tilley  
Rep. Alecia Webb-Edgington

LRC Staff: Erica Warren, Jessica Causey, Mustapha Jammeh, Tiffany Opii, Clint Newman,  
and Rhonda Schierer

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Interim Joint Committee on Veterans, Military Affairs, and Public Protection**

Jurisdiction: Matters pertaining to military affairs and civil defense; national guard; veterans; retention of military bases; veterans' rights, benefits, and education; veterans' nursing homes; military memorials and cemeteries; safety of citizens and security of public buildings and property; fire prevention and protection; foods, drugs, and poisons; pure foods and drugs; trailer park regulations; hotel and restaurant regulations as they pertain to public health; sanitation plants; and garbage and refuse disposal.

### **Committee Activity**

#### **Veterans**

**Resolutions Honoring Fallen Soldiers.** The Veterans, Military Affairs, and Public Protection Committee honored the memory and sacrifice of 14 fallen soldiers from Kentucky.

**Louisville's Robley Rex VA Medical Center Update.** The Facility Planner of Louisville's Robley Rex VA Medical Center briefly updated the committee on the ongoing process for the future location of the center. Recently, the Veterans Affairs Chief of Staff and a representative from the Veteran Affairs secretary's office toured the two final locations where there is already current development: the facility on Zorn Avenue and the downtown location near the University of Louisville Hospital. During May 2010, a site selection board toured 20 possible "greenfield" sites and submitted a site selection report with recommendations to the Secretary of Veterans Affairs. That report is in the concurrence process. It is anticipated that, after approval is given on the greenfield site options, it will take approximately 1 year for the due diligence process for those sites, at which time will the there be a final determination. The timeline for this process is on schedule based upon past VA site processes.

**Kentucky Department of Veterans Affairs Update.** The Deputy Commissioner, an internal policy analyst, a staff assistant, the Executive Advisor for Field Operations, and the Fiscal/Budget Manager for the Kentucky Department of Veterans Affairs (KDVA) updated the committee on the department's activities.

The Internal Policy Analyst for KDVA discussed the three veterans' centers in Kentucky. He testified about the number of residents and employees at each facility and the number of veterans on the waiting list at each. He also described the capital projects, including the Western Kentucky Veterans Center's 36-bed expansion and a fourth veterans' center to be built in Hardin County.

A staff assistant for KDVA updated the committee on the state veterans' cemeteries, including when each opened and how many interments each has had. He also described the new and fourth cemetery, the Kentucky Veterans Cemetery Northeast in Greenup County, which was to be dedicated in September 2010. Through the Burial Honors Stipend Program, KDVA paid out \$117,120 for honors in fiscal year 2010. So far for FY 2011, KDVA has paid out \$12,575.

The Executive Advisor of Field Operations for KDVA stated that his office tries to help veterans and their families in filing all claims from the time of the veteran's discharge to the date of burial. There are 18 field representatives located throughout the state, four regional administrators, and one administrative employee. There have been significant increases in the number of claims for benefits in the past year for disabilities and enrollment into the VA health care system. Fort Knox and Fort Campbell each has a field operations branch to assist soldiers who are filing claims while in the process of getting out of the military. Field Operations also helps at the Soldier Family and Assistance Center, the Warrior Transition Unit, retiree services, casualty assistance, and community-based outpatient clinics.

The Fiscal/Budget Manager for KDVA gave an overview of the department's budget. KDVA's overall spending budget is \$43.8 million, and most of that money is for personnel. The administration is expecting an additional \$673,800 cut for this fiscal year. To address this expected cut, KDVA is reducing vehicles in the motor pool, delaying filling key positions, and reducing several programs. The General Assembly provided \$100,000 per year for Veterans Service Organizations, the Acquired Brain Injury Alliance, and the Epilepsy Foundation. Additional federal money supports the programs, but additional cuts could impact services.

**Report on the Implementation of 2010 Regular Session House Bill 377.** The Pretrial Executive Officer, State Supervisor, and Boyd County Pretrial Services Program Supervisor from the Administrative Office of the Courts spoke on the implementation of HB 377 from the 2010 Regular Session. HB 377 added the question "Have you served in the National Guard or United States Armed Services and been in combat?" to those asked of arrestees when interviewed by a pretrial services officer. The state supervisor described the training process that all pretrial service officers completed and described how the interview with a veteran proceeds. If an arrestee indicates he or she is a combat veteran, the veteran is helped to make a phone call for assistance. If the arrestee refuses at that time, the pretrial officers will make the call. Written information is offered. One concern is that there are no toll free calls from a jail cell, which makes it difficult if an arrested individual originally refuses to call the offered number for assistance and later wishes to receive assistance.

The pretrial executive officer stated that, between July 1st, 2010, and the beginning of September, pretrial services have come into contact with 40,017 defendants statewide. Of those, 1,327 veterans have been identified, of which 523 have been in combat. During a 60-day period, pretrial officers have given 202 combat soldiers information and confirmed that 26 of those have received some form of services.

The State Family Program Director for the Kentucky National Guard commended pretrial services and how they have reached out to veterans. In the two months since the implementation of HB 377, the program director's office has had five phone calls on the emergency assistance phone line. Four of the calls were about substance abuse issues, and one was a domestic violence issue. His office has a multitude of agencies across the state that can provide resources and services to veterans. The program director also commended a representative from the Lexington Veterans Affairs office who has been instrumental at the law enforcement level by briefing state troopers and local police on HB 377 and what the Kentucky Department of Veterans Affairs

provides. The program director felt the success of the bill in such a short period of time has been astounding.

**Tuskegee Airmen.** The Executive Director of the Ron Spriggs Exhibit of Tuskegee Airmen, who is also the President of the Brigadier General Noel F. Parrish Chapter of Tuskegee Airmen, Inc., testified about the history of the Tuskegee Airmen. He discussed some little-known facts about Kentucky Tuskegee Airmen and recognized individuals connected with Kentucky who participated in the program, including Colonel Noel Parrish and Willa Beatrice Brown. His organization and the chapter keep the history for the Tuskegee Airmen alive through sessions with students, lectures, keynote speeches, newsletters, touring exhibitions, a Web site, and multimedia presentations. In 2007, Kentucky became the first state to officially name a roadway honoring the African American flyers who made history more than 60 years ago.

**Purple Heart and Tuskegee Airmen Trails.** The Director of the Division of Maintenance for the Transportation Cabinet provided a visual for the committee of the locations of the Purple Heart Trail and the Tuskegee Airmen Trail on Kentucky interstates and highways.

**TRICARE Health Insurance.** An individual with the Personnel Cabinet gave a brief presentation on the Veterans Affairs-sponsored TRICARE health plan for veterans and the federal restrictions that prohibit state employee health care plans from providing incentives to employees for using TRICARE rather than the state health care plan.

## **Military Affairs**

**Kentucky Department of Military Affairs Update.** The Assistant Adjutant General-Army of the Kentucky National Guard updated committee on the Kentucky National Guard and the Kentucky Department of Military Affairs. The Assistant Adjutant General-Army briefed the committee on the force strength of the Kentucky Army and Air National Guard and summarized the primary roles these men and women play at home and in stateside and overseas deployments. He also provided information on the 53 armories and one airbase in 49 counties, and the two training sites in Kentucky: the Wendell H. Ford Regional Training Center in Greenville, Kentucky, and the Harold L. Disney Training Center in Artemus, Kentucky.

Challenges facing the Kentucky National Guard include frequent deployments, citizen-soldier turned active duty resources, and family and financial stress. He also described the varying state and federal programs available to the members of the National Guard to help them deal with these challenges.

**Overseas Military Voting.** The Secretary of State and the Executive Director of the State Board of Elections spoke to the committee about military and overseas voting. The Secretary of State explained some of the difficulties and challenges that overseas citizens and military members and their spouses face in getting a ballot and completing the voting process. A 2009 federal law attempts to address the difficulties as applied to federal elections. The secretary explained that, compared to other states, Kentucky law already does a great deal to help overseas and military voters be able to vote. He described the actions the State Board of Elections has taken through administrative regulation to comply with the new federal law. The Executive

Director for the State Board of Elections described a proposed law provided by the Uniform Law Commission that, if passed by state legislatures, would provide similar protections and requirements currently found in federal law for state elections. She also explained certain areas where Kentucky law does not follow the proposed uniform law.

**Base Realignment and Closure (BRAC) Update.** The BRAC advisor in the Office of the Governor updated the committee on the ongoing BRAC process at Fort Knox, where the post is transforming from one primarily housing an armor division to a centralized location for the human resource component for the entire Department of Defense. The Human Resources Center is operating and still hiring. The advisor indicated the status of other projects at Fort Knox, and he updated the status on transportation, education, housing, and other infrastructure projects meant to assist the communities surrounding Fort Knox in dealing with the influx of people.

## **Public Protection**

**Safe Schools.** The Executive Director of the Kentucky Center for School Safety gave a presentation to the committee on school safety issues in general and the resources provided by the Kentucky Center for School Safety. The Kentucky Center for School Safety consists of the Kentucky School Board Association, Eastern Kentucky University, Murray State University, and the University of Kentucky. School safety is defined as addressing the needs of educators and students as it relates to the provision and enhancement of providing safe and healthy learning environments for both. These needs fall into four categories: physical safety, relationships, personal safety, and behavioral expectations. Campus and building safety is helped through Crime Prevention Through Environmental Design, which consists of physical plant safety, bus safety, parking lot safety, and hazardous materials. Relationships between staff and students are helped by finding ways for students to be connected to the school and establishing a welcoming school climate and culture. Personal safety issues have been addressed by having emergency preparedness plans and addressing bullying issues, outside aggression, Internet safety, and gang issues. There are 212 school resource officers to help with these issues, and they are in nearly 300 schools daily.

**811: Call Before You Dig.** The Director of External and Regulatory Affairs for the Kentucky 811 Call Center provided background information to the committee on the origins of the 811 system, including the process by which anyone digging near potential underground utility lines is required to call and alert the utilities 2 business days in advance that excavation will be taking place, the utilities' requirement to come and mark the location of their underground lines, the idea of a centralized 811 system where only one call is required for notification to all utilities, and the bifurcated system provided for in Kentucky statutes requiring additional phone calls to non-811 Call Center member utilities. The Executive Director of the Kentucky Public Safety Commission spoke in favor of requiring all utilities to become members of the Kentucky 811 Call Center so that there was truly a one-call process in Kentucky, and indicated that the commission's report in the wake of wind and ice storms in 2008 and 2009 promoted mandatory membership.

Representatives from the Kentucky Rural Water Association, the Kentucky Municipal Utilities Association, and the Kentucky Telephone Association all spoke in favor of maintaining

the current statutory system that allowed for optional membership in the Kentucky 811 Call Center and stated that, while many of their member utilities are currently members of the center, a majority of member utilities oppose mandatory membership. The Executive Director of the Kentucky County Clerks Association and two county clerks testified that they currently do not receive many, if any, phone calls for lists of nonmember utilities, as contemplated by the statute. If they did receive those calls, the county clerks indicated that they would likely be overwhelmed by the number of requests they would receive.

**U.S. Army Corps of Engineers, Huntington District.** The District Commander of the U.S. Army Corps of Engineers Huntington, West Virginia district briefed the committee on the corps' flood prevention operations in Eastern Kentucky and provided a detailed overview of the Greenup Locks and Dam failure that occurred in January 2010. He described what caused the dam failure, what was required to fix it, and the impact on the national economy during the closure and delay. He also discussed the modernization plan that has been designed but not yet funded for the Greenup Locks and Dam.

**Kentucky Office of Homeland Security.** The Executive Director of the Kentucky Office of Homeland Security briefed the committee on the 2010 Annual Report and the grants administered by the office to local and regional public protection programs throughout the state.

**Methamphetamine Cleanup.** Representatives from the Division of Waste Management in the Energy and Environment Cabinet provided an overview of the office's role in the state methamphetamine cleanup program. The division established a tiered response system to address the level of decontamination services required for a property contaminated by the production of methamphetamines; this system was based upon the degree of production and potential contamination. The division also established standards for decontamination and for certification of cleanup contractors. The Kentucky State Police and the Department of Public Health within the Cabinet for Health and Family Services administer other aspects of the methamphetamine cleanup program.

**Report of the 2010  
Task Force on Medicaid Cost Containment**

**Sen. Katie Kratz Stine, Co-Chair  
Rep. Jimmie Lee, Co-Chair**

Sen. Tom Buford  
Sen. Julie Denton  
Sen. Denise Harper Angel  
Sen. Bob Leeper

Rep. Tom Burch  
Rep. Rick Rand  
Rep. David Watkins  
Rep. Jill York

LRC Staff: Miriam Fordham, Mike Clark, Lashae Kittinger, DeeAnn Mansfield, Cindy Murray, Pam Thomas, Frank Willey, and Cindy Smith

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Task Force on Medicaid Cost Containment**

**Jurisdiction:** Determines the major cost drivers for the Medicaid program and develops a strategic plan to address those cost drivers and identifies cost-containment strategies that may be implemented in the Kentucky Medicaid program.

### **Task Force Activity**

The Task Force on Medicaid Cost Containment met 12 times during the 2010 Interim. Three of the meetings were held jointly with the Medicaid Oversight and Advisory Committee.

### **Medicaid Overview**

Staff from the Legislative Research Commission provided an overview of the Medicaid program including the types of coverage provided, eligibility requirements, categories of individuals covered, and funding sources. Growth in the Kentucky Children's Health Insurance Program (KCHIP) Medicaid population and the number of children enrolled in Medicaid contributed to the increase in the number of Medicaid eligibles in Kentucky's program. An examination of state General Fund expenditures for Medicaid indicated that the dollar amounts of expenditures increased steadily over time.

### **Cost Drivers**

The Commissioner of the Department for Medicaid Services reported that costs in the Medicaid program have been driven by unprecedented eligibility growth, extraordinary expenditure events, and cost and utilization growth. Medicaid provides coverage to nearly 800,000 individuals and over 60,000 children enrolled in KCHIP. Unprecedented growth in the number of enrollees is due to a weakening economy. During the last biennium, the Medicaid program added over 3,000 new recipients each month, compared to 930 per month in the prior biennium.

There were two extraordinary expenditure events that occurred in fiscal year 2009 that contributed to Medicaid costs. One of the expenditures was hospital settlement payments made dating back to 2004. In addition to having to make the payments, the Department for Medicaid Services was also required to pay settlements at the enhanced Federal Medical Assistance Percentage rate. The settlement payments were made using only state General Funds and not federal matching funds. The other expenditure event was accelerated claims payments as required by the American Recovery and Reinvestment Act (ARRA) of 2009. Under ARRA, payments to practitioners, nursing facilities, and hospitals were required to meet Medicaid prompt pay requirements.

The provision of new services and increased KCHIP enrollment also contributed to cost and utilization growth in the Medicaid program. The new services include the Michelle P. waiver, implemented in November 2008; the Money Follows the Person program, implemented in October 2008; and the Acquired Brain Injury Long Term Care Waiver Program, implemented

in November 2008. KCHIP increased in enrollment from 53,186 to 59,798 from October 2008 to November 2010.

### **Cost-containment Measures**

A representative of the National Conference of State Legislatures reported on states' approaches to Medicaid cost containment. States are exploring new strategies for improving care and containing costs. Basic findings based on state analyses indicated that recommendations were derived from data and trend analysis from the particular state, many approaches to institute cost-effective care and the approaches are multiyear in nature, different issue areas required different approaches, there are no magic bullets, and an adequate information system is essential to track change. Themes across states include eliminating inefficiencies to reduce costs and improve quality, tying pay to performance, and creating more unity in Medicaid budgeting and management. State recommendations include more care management to promote appropriate use of services, better pharmacy purchasers and assurance of access, new approaches to setting rates and to assure appropriate use of Medicaid funds, moving toward a broader mix of community choices, and promoting stronger preventive efforts.

A representative of FrogueClark, LLC, reported that some cost-containment options include expanding managed care plans, expanding use of the benchmark coverage plans, offering premium assistance, improving enforcement of payer of last resort, and offering disease management incentives. It was recommended that beneficiaries be allowed a choice of competing health plans based on publicly available quality ratings, performance ratings, benefits, programs, cost, and providers and offering financial incentives to Medicaid beneficiaries who follow prescribed treatment plans.

The Commissioner of the Department for Medicaid Services reported on the cost-containment measures that the department implemented effective July 1, 2010. These include post payment pharmacy audits, prior authorization for the drugs Suboxone and Zanaflex, changes to the early refill limit for prescriptions, a requirement that only prescriptions written by a Medicaid enrolled provider are filled, modification of coverage of over-the-counter medications, an enhanced lock-in program, discontinuation of payments for hospital-acquired conditions, purchase of diabetic supplies through pharmacy instead of durable medical equipment, acquisition of a new program integrity support vendor, and payment of health insurance premiums if Medicaid recipients are eligible for group health insurance.

The Secretary of the Cabinet for Health and Family Services and the acting Commissioner of the Department for Medicaid Services reported on Medicaid cost savings. There is a newly created shortfall of \$100 million dollars in the state Medicaid budget caused when federal funding did not meet the budget assumptions made in formulating and passing the FY 2011 and FY 2012 budget. The Medicaid budget as introduced and enacted included cost-containment measures of \$125.5 million and \$83.6 million General Funds in 2011 and 2012 respectively. There are planned changes that will save \$86.5 million current fiscal year with a continuing effect of \$80.2 million for the next fiscal year. The new shortfall of \$100 million in General Funds or \$470 million in total funding must also be addressed. The plan will not require any additional General Funds over the biennium.

The cabinet is addressing antifraud initiatives and other initiatives including performance-based, capitated managed care programs for all eligibles within a county or grouping of counties; performance-based, capitated managed care dental programs designed to improve access for children and increase preventive dental care; provider-incentive performance programs for KenPAC physicians and participating dentists to improve patient health care outcomes; a capitated pharmacy benefit program; a long-term care capitation model designed to improve care coordination for elderly and disabled patients requiring long-term care services and supports; and management of high-cost radiology and imaging services. These new initiatives are in addition to the cost-containment initiatives announced earlier in the year.

### **Fiscal Issues**

The President and Chief Executive Officer and the Vice President of Public Affairs of the Kentucky Chamber of Commerce discussed fiscal issues relating to the Medicaid program. According to the representatives from the Kentucky Chamber of Commerce, Medicaid spending is putting stress on other parts of Kentucky's budget, particularly education. Some solutions suggested were expanding Medicaid managed care, incorporating wellness activities, and improving Medicaid program administration.

### **Pharmacy Services**

The Commissioner of the Department for Medicaid Services reported on administration of the pharmacy benefit within the Medicaid program. Under federal Medicaid rules, pharmacy is an optional service. Pharmacy is the largest optional service before accounting for rebates. Pharmacy costs totaled \$508 million in FY 2009, which represents 9 percent of total Medicaid dollars. The Pharmacy and Therapeutics Committee and Drug Management Review Advisory Board provide input to the administration of the Medicaid pharmacy program.

A professor from the College of Pharmacy at the University of Kentucky discussed prescription benefit management. Kentucky leads the nation in prescription drug use overall, which is driven by many factors, including the lack of efficiencies in the system, obesity rates, and diabetes rates. Nationally, there is a shift to a more consumer-oriented market. Important factors to consider in prescription benefit management include establishment of a transparent contract with the vendor, ensuring that programs on paper are actually in place, and providing evidence to show that the program is saving money. The drivers of prescription drug trends include price, utilization, and mix. The professor discussed relationships between legislation requiring patient consent for generic substitution and generic fill rates. Research showed a projected savings of \$100 million dollars if states with patient consent policies would remove the need for patient consent for generic substitution. Waste in prescription drug spending is significant across the United States and in Kentucky. The pharmacy benefit is complex, making transparency, evidence, and timeliness critical. Payers can lower costs without compromising quality. Cost-management challenges will be even greater in the future given the specialty pipeline and other trends.

A representative from the Magellan Medicaid Administration reported on Kentucky's Medicaid Drug Rebate Program. The Medicaid Drug Rebate Program, created by the Omnibus

Reconciliation Act (OBRA) of 1990, requires drug manufacturers to enter into a National Rebate Agreement to ensure that their drugs are covered by Medicaid agencies. The program establishes minimum rebate amounts and Magellan administers the program in Kentucky. The contract under which Magellan operates is fee-based and requires that 100 percent of the rebate revenue is returned to the state. In Kentucky, the OBRA rebates averaged \$51.7 million per quarter in 2009. The supplemental rebates averaged \$7.3 million per quarter in 2009.

A professor from the Department of Family and Geriatric Medicine at the University of Louisville discussed polypharmacy. Polypharmacy is defined as the use of five or more medications at the same time, the use of more medications than are clinically indicated, or the inappropriate use of medication. Over 2 million patients are hospitalized every year after experiencing serious adverse drug events and 106,000 die each year from an adverse drug event. Up to 30 percent of older persons are admitted to the hospital due to medication-related problems. From 2000 to 2008, the percentage of Americans who used at least 1 prescription drug in the past month increased to 48 percent, while the percentage of Americans using at least 5 prescription drugs increased to 11 percent. There are many things that lead to adverse drug events, including more drugs on the market, poor monitoring and follow-up, guidance that doesn't apply to the particular patient, and very short office visits and consultations. Kentucky ranked 4<sup>th</sup> in prescriptions per capita in 2009.

### **Long-term Care**

A representative from AARP discussed long-term care issues. Elderly and disabled individuals account for about 38 percent of Medicaid participants and 67 percent of the Medicaid expenditures in Kentucky. Surveys have shown that nearly all individuals want to remain in their own homes and local communities. Medicaid costs are significantly less to provide services and supports in a person's home or community setting than in an institution. According to the AARP representative, in 2008, the per capita expenditure for nursing home services was \$188.95, while Medicaid Home and Community-Based Waivers for the elderly and disabled was \$17.01. In 2007, Kentucky expended an average of \$9,303 for each of its elderly Medicaid participants and \$9,456 for each of its disabled participants. The average for nonaged and disabled adults was \$3,831 and the average for children was \$2,399. The average for all participants was \$5,244, which was close to the national average of \$5,163.

The Vice President of the Center on Long Term Care at the Lewin Group discussed considerations for the provision of long-term care services and supports. The need for long-term services and supports (LTSS) greatly increases with age. The total national LTSS expenditures for 2008 were \$243.4 billion. In Kentucky, the cost for long-term care services varies. Assisted living services cost approximately \$2,557 per month, while nursing facility care costs approximately \$5,779 per month. Medicaid covers limited LTSS benefits, and eligibility criteria among LTSS users make Medicaid the payer of last resort. Long-term care insurance plays a limited role. In the last decade, Medicaid LTSS spending grew more quickly than total health spending. However, Medicaid LTSS spending grew at a slower rate than total Medicaid spending. There has been a significant decline in the use of nursing homes for the oldest groups of individuals due to the use of alternative residential settings.

Financing strategies for long-term services and supports in successful states include use of global budgeting, expansion of home and community-based alternatives, capitated managed long-term care, long-term care insurance partnership programs, targeted state funds, and nursing home bed buy-backs. Other things that successful states do differently include articulating a governmentwide vision and planning in accordance with that vision, executing the plan, monitoring the execution of the plan with data, and regularly reassessing the vision.

## **Mental Health**

The Executive Director of the Kentucky Mental Health Coalition provided an overview of mental health issues. There are three very costly issues that affect those with mental illness: premature death, repeated psychiatric hospitalizations, and babies born with addiction. An investment of new or additional money results in cost savings in the long run. The executive director encouraged the establishment of a nonpsychiatrist physician rate in the community mental health centers and reevaluation of the prohibition against paying for two Medicaid services delivered in the same day. Bridgehaven Mental Health Services, a program for individuals with severe mental illness, and Independence Hall, a program for treating substance abuse in pregnant women, were highlighted as model programs that produce cost savings.

## **Health Care Reform**

The Deputy Commissioner of the Department for Medicaid Services provided an overview of the provisions in the new federal health care reform law, the Patient Protection and Affordable Care Act (PPACA), regarding Medicaid and the Children's Health Insurance Program (CHIP). The maintenance of eligibility provisions in the law require states to maintain current income eligibility levels in place on the dates of enactment for children in Medicaid and CHIP through September 30, 2019; for adults, the eligibility levels remain in place until the Secretary of Health and Human Services determines that the state exchanges are fully operational. The income eligibility standard section establishes minimum eligibility level at 133 percent of the federal poverty level effective January 1, 2014. The law adds 3 new mandatory eligibility categories and allows states to cover these populations at 133 percent of the federal poverty level effective April 1, 2010.

PPACA provides full federal funding for individuals newly eligible for Medicaid. Funding for CHIP is extended through 2015 and requires states to maintain income eligibility levels in place on the date of enactment. It provides for a 23 percentage point increase in the CHIP match rate up to a cap of 100 percent and creates a new option for states to provide CHIP coverage to children of state employees. PPACA allows the state Medicaid and CHIP agency to enter into an agreement with the exchanges to determine eligibility for premium subsidies through the exchange. The deputy commissioner also discussed the health care reform provisions relating to reimbursements for primary care providers, long-term care, drug rebates, quality measures, preventive care, fraud and abuse, and demonstration projects.

The Commissioner of the Department of Insurance gave an overview of health insurance reform and state implementation. After considering a number of factors, the department recommended to the Governor that Kentucky opt for having the federal government operate the

temporary high risk pool. Grandfathered plans are defined as a health plan existing on March 23, 2010. Changes to grandfathered plans will result in a loss of grandfathered status. There are immediate market reforms that apply to all plans and some that apply to new plans, not grandfathered plans. Kentucky has many of those provisions currently in statute. The commissioner also discussed the grants available to states related to health care reform. Kentucky was awarded a \$1 million grant that was to be used for activities related to the rate review process and consumer education. Thirty million dollars in grants are available to states to establish and operate offices of health insurance consumer assistance or health insurance ombudsman programs, and the department planned to submit a grant application. There is a \$1 million grant to states for planning and activities related to the establishment of an exchange. The Department of Insurance and the Cabinet for Health and Family Services planned to collaborate on the grant application.

A representative of FrogueClark, LLC, reported that a study showed that there will be an additional 294,373 Medicaid enrollees in 2014 with the new eligibility guidelines, which will mean a \$508 million increase in Kentucky Medicaid spending. Another study showed there will be an additional 329,000 Medicaid enrollees in 2019, with a \$515 million increase in Kentucky Medicaid spending. The Medicaid expansion will add to Kentucky's budget, and the maintenance of eligibility requirement limits options to balance the Medicaid budget.

### **Medicaid Cost Containment Statutory and Regulatory Framework**

Staff from the Legislative Research Commission provided an overview of the existing statutory and regulatory framework for achieving cost containment or expenditure reduction in the Medicaid program. They identified various statutory provisions requiring or authorizing actions intended to contain costs in the Medicaid program.

### **Fraud and Abuse Detection**

The Executive Director of the Office of Medicaid Fraud and Abuse Control and an assistant Attorney General reported on the activities of the Office of Medicaid Fraud and Abuse Control. All states are required to have a Medicaid fraud control unit that must be separate from their Medicaid agency. It is funded in part by a federal grant, in part by the state, and must have a certain professional staff of attorneys, investigators, and auditors. The jurisdiction of the Medicaid fraud control unit is provider fraud and abuse, neglect, and exploitation of patients in Medicaid-funded facilities.

Fraud cases involving average wholesale price (AWP) for prescription drugs involved lawsuits filed against 47 pharmaceutical companies from 2003 to 2004. Total AWP Medicaid recoveries—including jury verdicts, fines, and settlements to date—were \$75,564,226.50. In global recovery cases, teams from the National Association of Medicaid Fraud Units negotiate on behalf of the states. Cases include kickback, off-label marketing, rebate, and nominal price schemes. There are civil suits pending against the Wyeth Company and the Johnson and Johnson Company.

Sources of criminal complaints include utilization reviews from the Department for Medicaid Services, the Office of Inspector General, the Medicaid fraud control unit hotline, the Web site of the Attorney General, internal findings, federal government, professional boards, and providers. The executive director explained the process for conducting investigations in preliminary cases and full investigation and prosecution. From 2008 through 2010, there were 18 new indictments; these indictments resulted in 16 convictions and the ordering of \$2,059,039.58 of restitution.

The Inspector General of the Cabinet for Health and Family Services reported on the activities of the Office of Inspector General Audits and Investigations. Investigations include both Medicaid providers and recipients. The majority of both provider and recipient complaints are received through the fraud hotline. Hotline callers include recipients, other providers, patients, border state program integrity units, and the general public. Other source referrals include the Department for Medicaid Services, the Office of the Attorney General, the Medicaid Fraud Control Unit, other state agencies such as the Department of Revenue, the Office of Inspector General, cabinet contractors, and licensure boards. Fraud detected by KASPER can reveal providers and recipients engaged in fraudulent activity. The inspector general explained the process for conducting investigations. Common provider fraud allegations include up-coding, excessive billing, duplicate billing, unbundling, and billing for services not rendered. Common recipient allegations include unreported household members, unreported income, unreported resources, reported household members not in the home, client not working as required, and receiving benefits in two states. Frequent noneligibility allegations include Medicaid card sharing and overutilization of benefits.

The Commissioner of the Department for Community Based Services in the Cabinet for Health and Family Services discussed Medicaid fraud and abuse prevention within the eligibility determination process. The Kentucky Automated Management and Eligibility System (KAMES) is a single, statewide eligibility system that assigns a unique identifier to each individual to prevent duplicate participation. KAMES also conducts both real-time and routine computer matches with federal and state data sources to ensure program participants meet technical and financial eligibility requirements. Verification of income, resources, citizenship, and residency are completed by family support eligibility workers at application and recertification. Family support eligibility workers conduct data matches at application and recertification, or when notification is received that recipient information may have been inaccurate. The KAMES eligibility system also matches against the income and eligibility verification system, a federal data match system designed to identify cases with income. Pursuant to Section 1940 of the Supplemental Appropriations Act of 2008, all states are required to implement an asset verification system. The asset verification system will match financial institution data to locate and verify resources that may be unreported.

Staff from the Program Review and Investigations Committee of the Legislative Research Commission reported on findings from previous research on fraud and abuse among providers. In preventing or recovering fraud and abuse, postpayment review is essential. Information systems assist in fraud and abuse prevention and recovery and must be adaptable. Individuals are essential for the review of suspended claims before payment and for postpayment review. Insider information is essential; for this reason hotlines exist, but they offer no incentive.

False claims, however, can provide that incentive. Saving money can be expensive as reviewers and investigators are costly. Limited resources must be targeted for the greatest impact. Recommendations for improving Medicaid fraud and abuse detection included considering a Kentucky False Claims Act; implementing a comprehensive plan for the Medicaid program; measuring cost effectiveness for all initiatives; establishing a program integrity plan covering all vendors and agencies involved in fraud and abuse detection; establishing a staffing plan for the Department for Medicaid Services, the Department for Community Based Services, and other vendors and agencies; and using an aggressive a fraud and abuse program as possible, balanced with quality of care and the concerns of providers.

A representative of FrogueClark, LLC, discussed options to reduce waste, fraud, and abuse. Options for reducing fraud include modeling the credit card industry by validating claims prior to paying for Medicaid services, facilitating better data sharing across departmental jurisdictions and with local government agencies, avoiding the failed pay-and-chase model, contracting with private firms to audit data to identify potential cases of fraud for further reviews, asking Health and Human Services and Congress for a waiver of the 60-day rule, and posting all claims online for public access in order to better identify outlier or fraudulent billing.

### **State Medicaid Policy Initiatives**

A representative of Health Management Associates discussed state Medicaid policy initiatives. An annual survey of Medicaid directors focused on actions implemented in FY 2010 and adopted for FY 2011. The purpose was to track state budget trends, Medicaid spending, enrollment, policy initiatives and issues, and state impacts of federal policies. Federal stimulus funds had a significant impact on state Medicaid programs. The largest percentage of enhanced Medicaid funding in FY 2009 and FY 2010 was used to close or reduce the Medicaid budget shortfall. The survey showed that Kentucky's rates were not quite as high as other states in projected and actual total Medicaid spending and enrollment growth for FY 2010. On average, budgeting for the overall increase in enrollment growth is 6.1 percent. The most common area of cuts for states was in the provider payments area. It was shown that 48 states took 1 cost-containment action in 2010 and that 46 states will do so in 2011. In 2010, 39 states cut one provider rate, and 37 states planned a cut in 2011. There was not as much action as anticipated for states to expand or add a higher co-payment between 2003 through 2011. Many states implemented benefit cuts or restrictions.

Despite the budget environment, the trend was to continue expansion of community-based options. States were still expanding waivers but at a slower rate than a few years ago. Many states are still reaping the benefits of cost-containment efforts from a few years ago. States continue to rely on various types of delivery system models. New or expanded Medicaid disease management or care management continues to be a focus area for states. Kentucky reported an expansion with a program going statewide. All states with managed care used tools to manage and promote quality. Although the recession is technically over, states still feel the impact and will for the next few years. There are few options left for significant Medicaid savings in most states. There are major concerns among the states about the end of ARRA funds in 2012.

## Primary Care Physician Training

The Dean of the Pikeville College School of Osteopathic Medicine (PCSOM) reported on the school's primary care physician training program. The mission of PCSOM is to provide students with an osteopathic medical education that emphasizes primary care, encourages research, promotes lifelong scholarly activity, and produces graduates who are committed to serving the health care needs of communities in Eastern Kentucky and other Appalachian regions. Over 600 students have graduated since May 10, 2001, and over three-fourths of those graduates have entered primary care specialties. Thirty-two percent of PCSOM graduates practice in Kentucky, with 62 percent of those practicing in the Appalachian region. Currently, 53 percent of PCSOM students come from Kentucky. Since the Kentucky Osteopathic Medical Scholarship's inception in 1998, nearly \$13 million has been awarded to 461 osteopathic medical students.

The Dean of Admissions of the School of Medicine at the University of Louisville reported that the mission statement of the School of Medicine is to meet the medical needs of the Commonwealth. The school seeks those underrepresented in medicine who are likely to be "generalists" or to practice in rural areas. The school's goal is to graduate 40 to 50 percent of the class to be generalists. Trover rural scholarships are offered to the medical students, and the school also has a summer medical dental education program. The student loan indebtedness for the University of Louisville is less than the average college loan indebtedness in the United States.

The Associate Dean of the Trover Campus of the School of Medicine at the University of Louisville reported on the rural training setting. Doctors tend to practice near where they train, and they practice in towns like those where they train. Over 60 percent of Kentucky's counties are medically underserved. The Trover Campus in Madisonville provides a way for those from small towns to find a comfortable path through medical school. To date, 64 percent of Trover campus graduates from small towns are practicing in small Kentucky towns and 86 percent in primary care. Nationally, about 3 percent of medical school graduates intend to practice in rural areas, and most medical schools place about 10 percent in family medicine.

The Dean of the College of Medicine at the University of Kentucky reported on the college's primary care physician training program. There are 13,618 licensed physicians; 8,981 licensed physicians are active in Kentucky. Forty-three percent of Kentucky's population lives in rural areas, and 28 percent of those licensed physicians practice in rural areas. Forty-eight percent of Kentucky students go into primary care. Debt may influence specialty choice. Factors influencing future demand of physicians include an aging population, chronic disease, education, socioeconomic level, and changes in physician demography and interests. By 2020, 48 to 60 percent of the physicians in Kentucky will be in primary care. Recommendations include strategies to increase physicians and strategies to address maldistribution. Rural physician leadership program objectives include taking students from rural areas and training them in rural areas; promoting health and disease prevention; studying community health systems, services, and agencies; identifying the role of community leaders in health care; identifying community and public health problems and solutions; and evaluating and economics of a medical practice. Suggestions for reducing Medicaid costs include making more use of lay health workers,

educating patients to not use emergency rooms, authorizing more use of the TeleHealth Network, and taking care of Kentucky's own.

### **Emergency Room Use**

The Executive Director of Health Care Access Now reported on the results of a pilot project to reduce inappropriate use of emergency rooms. In Kentucky, the emergency room utilization is 519 per 1,000 individuals, and estimated visits in 2009 were 2,239,000. The evidence-based care coordination approach is known as a pathway that enables patients to be guided to appropriate medical and supportive care services and establishes a consistent medical home relationship. The emergency care coordination pilot project reduces avoidable emergency room visits by navigating patients to primary care settings and establishing a medical home. There are currently three pilot program partnerships in Kentucky. Northern Kentucky emergency room care coordination pilot projects resulted in reduced hospital charges.

The care coordination model can be customized for patients with chronic disease and behavioral health disorders. However, the care coordination model also presents challenges. Currently, a reduction in emergency room utilization provides disincentives to contracted emergency room physicians and hospital management. Hospitals must redesign their emergency room services to capture any direct cost savings from reduced volume. The executive director suggested that the task force consider developing a statewide or regional Medicaid pilot that will provide the forum for spreading methods and approaches that eliminate avoidable emergency room visits and stimulate rapid cycle improvement and measure. The goal would be to engage providers from all sectors, consumers, and other key stakeholders to set specific service targets with specific timelines.

### **Public Forum**

Individuals and groups provided public testimony regarding Medicaid cost efficiencies. The areas of concern addressed were sleep apnea treatment, mental health issues, services for the disabled population, long-term care for the elderly, and pharmacy services.

### **Passport Health Plan**

Representatives of the Passport Health Plan provided an overview of the Medicaid managed care plan. Passport serves Medicaid recipients and also Medicare recipients with the Passport Advantage HMO plan. Passport is a provider-sponsored HMO with over 165,000 members in 16 counties and an extensive provider network. The health plan operates under an 1115 waiver from the federal government that must be renewed every 3 years and must remain budget neutral. The number of children with Passport has increased, and the Early and Periodic Screening, Detection, and Treatment rates continue to remain high. Regarding the plan's efficiency, it was reported that Passport Health Plan provider payments have consistently equaled or exceeded those of Kentucky's fee-for-service Medicaid program. Ninety-three cents out of every dollar goes to providers. Passport also has a primary care physician pay-for-performance model.

The health plan has established a number of programs to help enrollees, including a childhood obesity program, a cultural and linguistic services program, an asthma program, a research and development program, and a smoking cessation program. The representatives reported on efforts to combat waste, fraud, and abuse. The plan's total recovery efforts yielded \$19,852,690 from 2005 through 2010, and Passport is enhancing its efforts to mirror the best practices of Kentucky Medicaid and the Office of Inspector General.

The health plan's pharmacy innovations and trend management were discussed. Passport has established a pharmacy medical utilization review program. Passport has also implemented an online member portal that offers an overview of the individual's care including information about lab claims, medical claims, diagnoses, and prescribed medications.

A meeting was scheduled for December 1 to discuss the results of the Auditor of Public Accounts' examination of the Passport Health Plan.

### **Recommendations and Findings**

A meeting was scheduled for December 2 to discuss the task force findings and recommendations.

**Report of the 2010  
Task Force on the Penal Code and Controlled Substances Act**

**Sen. Tom Jensen, Co-Chair  
Rep. John Tilley, Co-Chair**

J. Michael Brown  
Tom Handy  
John D. Minton, Jr.

J. Guthrie True  
Tommy Turner

LRC Staff: Norman Lawson, Jr., Joanna Decker, Jonathan Grate, Raymond DeBolt, and  
Rebecca Crawley

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Task Force on the Penal Code and Controlled Substances Act**

Jurisdiction: Provide to the Interim Joint Committee on Judiciary and the Legislative Research Commission draft changes to the Penal Code, the Controlled Substances Act, and other necessary statutes. The draft shall be based on the principles of "Justice Reinvestment" and shall provide for alternatives to incarceration; the use of community treatment, education, and rehabilitation programs that have been proven to reduce recidivism; the monitoring of defendants where necessary; and a reduction of recidivism while protecting and enhancing public safety.

### **Task Force Activity**

During the 2010 Regular Session, the General Assembly created the Task Force on the Penal Code and Controlled Substances Act to draft statutory changes based on the principles of justice reinvestment to reduce the number of repeat criminal offenders, control corrections costs, and maintain public safety. In support of the Task Force's justice reinvestment efforts, the 2010 Special Session of the General Assembly appropriated \$200,000 to the Pew Public Safety Performance Project to partner with the Task Force to develop justice reinvestment strategies. The Task Force met at least monthly in locations across Kentucky, including Frankfort, Glasgow, and London. The Task Force, consisting of members from all branches of state government, heard a series of reports relating to the state's prison population, received updates regarding the analysis of the state's criminal justice statistics, discussed proposed policy changes, and heard testimony from various criminal justice stakeholders regarding the proposed changes.

### **Population and Cost Growth in Prisons and Jails**

A representative of the Pew Public Safety Performance Project (PPSPP) reviewed national trends in state prison populations and noted that in 2007 Kentucky had the highest rate of increased inmate population in the country. A second representative reported that the state has a crime rate that is much lower than the national average, but the incarceration rate is much higher than the national average. Kentucky courts have a much higher rate of sending persons to prison than the national average. Over the last 2 years, the prison population has decreased due in part to an increase in the parole grant rate.

The PPSPP has contracted with James Austin Associates (JFA) to collect criminal justice data from within the state and conduct statistical analysis on the data to detect trends and cost drivers. JFA reported to the Task Force that there has been a marked increase in the number of arrests and court cases. A significant portion of the arrests are for drug offenses and "other offenses." State courts have a very high prison disposition rate coupled with a low probation rate, which creates a significant cost driver for corrections. There is a significant number of nonviolent offenders in prison. The local jail population is twice the national average, and Kentucky is second behind only Louisiana in the number of state prisoners housed in county jails, which creates a substantial expense for many counties. The current prison population could decrease by 4,000 to 5,000 inmates if the state brings its practices more in line with other states. The JFA representative also discussed the significant recent increase in the parole grant rate, which has resulted in a slight decrease of the inmate population. Approximately half of new

prison admissions each year are people who violated probation or parole. He predicted that Kentucky's current prison population will continue to increase over the next 10 years if current trends and policies continue. He described how data can be used to design better programs and to simulate proposed reforms and their impact.

PPSPP has worked with over a dozen states to advance fiscally sound, data-driven sentencing and corrections policies that protect public safety while holding offenders accountable and controlling corrections costs. In lieu of building new prisons, Texas opted to fund alternatives to incarceration, increase supervision of offenders who are released, and increase the availability of treatment programs. These efforts, in addition to other reforms, produced a lower crime rate and lowered recidivism rates. PPSPP has worked with South Carolina to address the overcrowding of its prison system. The goal of the partnership between PPSPP and the Kentucky Task Force is to give the state a better return on its public safety investment by analyzing the prison population and its associated cost drivers to develop alternatives to incarceration and targeted policy options that will generate savings. These savings could be reinvested in evidence-based practices that will increase public safety.

A representative of PPSPP presented the findings of a national poll of public attitudes on crime and punishment conducted by bipartisan policy research groups. The respondents were concerned foremost with keeping communities safe. They wanted a strong public safety system that holds offenders accountable and has consequences for illegal activities. They believed a strong public safety system is possible while reducing the size and cost of the prison system.

PPSPP has also contracted with the Crime and Justice Institute (CJI) to provide in-state research into potential problem areas within the sentencing and corrections system and conduct research into other states' best practices and provide recommendations for potential policy options. A representative of CJI presented options for changes to the Controlled Substances Act. A recent study found that investing money in community-based supervision and treatment programs for drug offenders will bring a far better return in terms of reduced crime than money spent to incarcerate drug offenders.

Another representative of CJI testified that many states have started using evidence-based practices in corrections to produce improved assessments and effective interventions to target programs based on an offender's risks and needs. A comprehensive approach to evidence-based practices in pretrial supervision, sentencing, and corrections can reduce recidivism up to 30 percent, translating into significant cost savings. Decades of corrections research provides guidance for effectively reducing recidivism and improving public safety.

### **Potential Policy Options**

The Task Force is considering changes to the probation and parole system that will create a system that holds offenders accountable and reduces the number of offenders that commit new crimes. Representatives from PPSPP and CJI provided the Task Force with policy options to reach this goal. They stressed the need to base key decisions on risks and needs data. This can be accomplished by using scientifically validated risk and needs assessment tools to gather

information about offenders to improve pretrial and probation and parole supervision, sentencing information for judges, and decisions about parole release and setting terms of parole.

The Assistant Director for Psychological Services for the Department of Corrections provided the Task Force with a presentation on the recent adoption of the Level of Service/Case Management Inventory (LS/CMI) risk/needs assessment tool by the Department of Corrections. The assessment tool is used in institutions and for the Department of Probation and Parole, but it is not used in the presentence phase at this time. The LS/CMI has been scientifically validated and is designed to supply a complete picture of an offender's risks and needs to determine the appropriate method for dealing with the offender. The assistant director described categories of criminogenic need and explained the principles of risk, need, and responsivity that make up effective correctional treatment. The tool can effectively determine appropriate treatment for the offender and to what extent appropriate treatment reduces recidivism. The LS/CMI also provides a record of case information from intake to case closure.

A representative of CJI recommended that the validated risk/needs assessment currently used post conviction by the Department of Corrections be incorporated in the presentence report provided to the judge prior to a defendant's sentencing. The representative also recommended that the reports be provided to the prosecution, defense, and the judge when plea negotiations are conducted. This will give all parties reliable information about the defendant's risks and needs and can be used as a guide to determine which interventions will work best for the defendant and ensure public safety.

To increase the chances that inmates will successfully reenter society, representatives from PPSPP and CJI recommended codifying provisions allowing parolees to complete programming in the community and expanding the use of community-based transitional housing options and community monitoring. To improve probation and parole supervision, representatives proposed the use of technology and proven supervision programs. One example to accomplish this is the expanded use of GPS for pretrial supervision that targets supervision to medium-risk offenders. A representative of CJI recommended consolidating the currently authorized GPS monitoring program under one program with a single statewide vendor, discussed methods for reducing caseloads for probation and parole officers so they can focus on high-risk offenders, and described various methods for increasing accountability for violations of probation or parole.

Representatives from PPSPP and CJI testified that an analysis of Kentucky's prison population revealed a significant number of low-risk, nonviolent offenders who could be supervised effectively in the community at a lower cost. The state could reinvest the money saved by not incarcerating these individuals for long periods into creating a stronger system of community punishments and treatment to reduce new offenses. This would help ensure there are enough prison beds for violent and career offenders. Several options were discussed to modify the Controlled Substances Act to focus resources on high-level drug offenders and provide effective alternatives and substance abuse treatment for nonviolent offenders.

A representative from CJI testified that other states' controlled substances statutes are based on the quantity sold or possessed, and that Kentucky could modify its statutes in this way

to distinguish users and low-level peddlers from true traffickers. The sentences for these offenses could be adjusted accordingly to reflect the varying degrees of culpability associated with increased quantities of drugs. The state's drug-free school zone statute, which prohibits trafficking in a controlled substance within 1,000 yards of a school, is the broadest in the country. Most states' prohibitions are 1,000 feet or less or require some intent to sell to minors.

A representative from CJI addressed the Task Force regarding the issue of sentencing enhancements. The Task Force should consider either the elimination of sentencing enhancements for second and subsequent offenses or a requirement that the subsequent offense must occur within a specified number of years from the prior offense. This would also avoid double enhancement through use of the drug enhancement and the persistent felony offender statute.

Representatives from PPSPP and the Task Force members also discussed the potential expanded use of medical parole to remove from prison terminally ill or disabled inmates that pose no risk to society for placement in other settings.

A representative of PPSPP testified about ways to improve the criminal justice system's support of crime victims. He discussed policy options that would help ensure that courts and victims are better informed about offenders. These include providing more accurate information at sentencing regarding expected time served, the offenders' risks and needs information, and the likelihood of reoffending under various sentencing alternatives. He also updated the Task Force on ways the state could improve the tracking and collection of restitution for crime victims.

A final set of policy options the representatives from PPSPP and CJI recommended are designed to improve government performance by ensuring that the state's criminal justice programs and policies achieve the desired results. A representative from CJI testified that performance accountability can only be achieved if information on overall performance of correctional and alternative programs is available. This requires established mechanisms to measure a program's accountability and cost effectiveness and the provision of funding incentives for programs with good performance. The representative also testified that the state could consider requiring a certificate of need before new jails can be built.

### **Tennessee Probation and Parole**

The Tennessee Commissioner of Correction addressed the Task Force regarding her state's efforts to address its corrections overcrowding. The Department of Correction and the Board of Probation and Parole developed new programs to reduce recidivism and the number of persons returned to prison for technical violations of probation and parole. Evidence-based programs were created in the institutions and for offenders in the community. Another major change was the implementation of the Level of Service/Case Management Inventory (LS/CMI) program that provides a scientific instrument to assess each offender's risks and needs. This information can be used by courts, probation and parole, and corrections to determine the risk level of each offender and the most appropriate course of action for dealing with each person, whether it is through incarceration, supervision and treatment, or other programs. The state also increased its community corrections capacity, increased its treatment programs, created a new

program for transitioning prisoners back into society, and hired more probation and parole staff. An intermediate sanctions program has also been instituted that allows probation and parole officers to utilize more immediate sanctions for technical violations instead of returning the offender to prison or jail. These changes have resulted in a decrease in the prison population and the closing of one prison.

### **Colorado Controlled Substances Legislation**

A deputy attorney general and a district attorney from Colorado testified about the state's recent reform of controlled substances legislation. Faced with declining revenues, a prison population that was doubling every 9 years, and serious issues with drug abuse and drug-related crime, the Colorado legislature created a commission supplemented by working groups to study evidence-based changes to the state's criminal statutes. Many of the changes focused on controlled substances offenses. The goals were to distinguish between user/addicts and distributors/manufacturers and to redirect resources to certain users/addicts to establish meaningful assessments and treatment as an alternative to jail or prison.

Some of the solutions passed by the legislature included increased amounts of controlled substances required for possession, elimination of aggravators for subsequent offenses, increased penalties for certain more serious drug crimes, and directing the immediate savings to treatment programs. Changes in eligibility for parole and probation and intermediate sanctions were also included in the legislative package.

### **Treatment Capacity**

A professor from the University of Kentucky Center on Drug and Alcohol Research reported on Kentucky's substance abuse treatment capacity, costs, and persons served. Funding for treatment has remained flat for 14 years. He testified that the remaining available capacity is limited due to the large use by corrections and that policy makers would achieve more immediate results by funding outpatient treatment, which can be provided in all 120 counties. The cost of treatment in the state is much lower than the national average and significantly lower than the cost of incarceration. Court-referred cases for treatment do better than voluntary cases because there is more accountability to the program.

### **Future Task Force Action**

The Task Force on the Penal Code and Controlled Substances Act is scheduled to meet in December 2010 and January 2011 for the purposes of taking final action on policy options recommended by PPSPP and drafting proposed legislation based on those options. The Task Force will make its recommendations to the Interim Joint Committee on Judiciary during a special January meeting, and legislation based on those recommendations will be introduced to the 2011 General Assembly shortly thereafter.

**Report of the 2010  
Administrative Regulation Review Subcommittee**

**Sen. Elizabeth Tori, Co-Chair  
Rep. Leslie Combs, Co-Chair**

Sen. David Givens  
Sen. Alice Kerr  
Sen. Joey Pendleton

Rep. Robert R. Damron  
Rep. Danny Ford  
Rep. Jimmie Lee

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

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
Kentucky General Assembly**

## **Administrative Regulation Review Subcommittee**

**Jurisdiction:** Review and comment upon administrative regulations submitted to it 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 approximately 38 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 an administrative regulation has been reviewed by the subcommittee, it is assigned by LRC for a second review by the legislative subcommittee with jurisdiction over the subject matter.

From January 2010 through November 15, 2010, executive branch agencies filed 79 emergency administrative regulations (an increase of 18 percent over the prior year) and 452 ordinary administrative regulations. Of the ordinary administrative regulations filed, 97 were new, 308 were amendments to existing administrative regulations, and 47 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 prior to the date of its monthly subcommittee meetings. Of those ordinary administrative regulations reviewed, none were found deficient, 269 were amended to conform with KRS Chapter 13A and other appropriate statutes, and 87 were approved as submitted by the agency. Additionally, five administrative regulations expired due to failure to meet statutory deadlines, and 28 administrative regulations were withdrawn by the agency during this period. These totals do not include 135 administrative regulations scheduled for review during the subcommittee's December 2010 or January 2011 meetings.

The subcommittee staff and the regulations compiler conducted a training session for approximately 100 representatives of about 25 executive branch agencies. The 3-hour training session focused on the administrative regulations process and the requirements for drafting and formatting administrative regulations. Three hours of Continuing Legal Education credit was available for the attorneys who attended the training seminar. The material was also presented informally on many occasions to small groups of two to seven persons from executive branch agencies.

LRC is in the process of publishing the Kentucky Administrative Regulations Service, which contains all administrative regulations in effect as of June 15.



## **Report of the 2010 Capital Planning Advisory Board**

Sen. Jack Westwood, Co-Chair  
Rep. Melvin Henley, Co-Chair

Sen. David Boswell  
Rep. Ron Crimm  
David Buchta  
Charles Byers  
Laurie Dudgeon  
John Esham  
Ben S. Fletcher

Carole Henderson  
John Hicks  
William H. Hintze, Jr.  
Mary Lassiter  
Mark Overstreet  
Katie Shepherd  
Laurel True

LRC Staff: Shawn Bowen, Don Mullis, and Jennifer Luttrell

**Presented to the  
Legislative Research Commission  
and the  
2011 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, with members representing the public and the three branches of government. Pursuant to KRS Chapter 7A.120, the board is charged with creating a six-year comprehensive statewide capital improvement plan encompassing state agencies and universities. The plan is to be submitted to the heads of the three branches of government—the Governor, the Chief Justice, and the Legislative Research Commission—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

In 2010 the Capital Planning Advisory Board held three meetings. The June and October meetings were held in Frankfort, and the August meeting was held in Murray, Kentucky.

The board reviewed and approved instructions for the 2012-2018 Agency Capital Plans. The timeline for the capital plan is set by statute; April 15 of odd-numbered years is the due date for agencies to submit their plans to the board, and by November 1 the board must submit its statewide capital improvement plan to the heads of the three branches of government.

Staff from the Department of Corrections testified about the status of the Northpoint Training Center (NTC) Rebuild From Fire Project. This \$18.8 million bond-funded project was necessitated by a fire after an inmate riot at NTC in August 2009. Inmates set fire to five buildings: the Food Service, Sanitation, Multipurpose, Visitation, and Medical Treatment/Inmate Canteen buildings. The NTC Rebuild From Fire project is expected to be complete by November 2011. At the time of reporting, the insurance proceeds were anticipated to be \$6 million.

The board also provided updates on capital projects related to actions of the 2010 General Assembly, including capital projects authorized in the 2010-12 budget.

The board met at Murray State University. Members toured the campus and were briefed by the university's president about current capital projects, including the Construct Paducah Regional Campus Facility Project, the James Richmond Residential Facility Project, and the Renovate Elizabeth Hall Project.

The President of Western Kentucky University (WKU) and other WKU staff testified about the university's energy policy and a recently completed Energy Savings Performance Contract (ESPC). The ESPC is expected to save the school over \$1 million on its annual utility bills, with a total projected savings of \$15.2 million over a 15-year period. The project will cost \$9.7 million, and it is to be financed through a tax exempt lease at an interest rate of 5.10 percent. Energy saving measures include installation of energy efficient lighting, upgrade or replacement of water fixtures, and installation of an 80-panel solar heating system on the Preston Center roof.

The Senior Advisor and Director of the Green Bank of Kentucky Program addressed the board at its August meeting. The mission of the Green Bank is to promote energy efficiency in state buildings through the provision of low interest loans to state agencies, which may be used to reduce operating costs and energy use.

The Green Bank of Kentucky Program is funded through federal stimulus dollars and subsidies through the American Recovery and Reinvestment Act. In January 2010, the Green Bank announced the recipient of its first loan, the Kentucky Department of Education. The department received \$1.3 million to make improvements and implement energy conservation measures to three of its facilities: the Kentucky School for the Blind in Louisville, the Kentucky School for the Deaf in Danville, and the Future Farmers of America Leadership Training Center in Hardinsburg. This loan will enable the Department of Education to realize operating savings of nearly \$140,000 a year and a total savings of approximately \$2.15 million over the life of the project. The savings generated through reduced operating costs and energy usage pay back Green Bank loans. Green Bank funds are then recycled into new loans.

The Green Bank began with \$14 million and now has approximately \$10 million available for loans. Three loans have been closed to date. The minimum amount that may be borrowed is \$50,000.

The board met at the Kentucky State University Research and Demonstration Farm in Frankfort. Members received testimony from the university's president regarding its capital needs and recent capital projects.

Staff from the Council on Postsecondary Education, the Finance and Administration Cabinet, and the Office of the State Budget Director presented two status reports on 2008 Senate Bill 189. The bill required the Finance and Administration Cabinet to produce a report with recommendations addressing the establishment of a process for funding deferred maintenance and renovation needs costing \$600,000 or more each for facilities owned by the Commonwealth and operated by state agencies. The bill also required the Council on Postsecondary Education to produce a report with recommendations addressing the establishment of a process for funding deferred maintenance needs costing \$600,000 or more each for facilities owned by the Commonwealth and operated by the postsecondary institutions. Both reports were to be prepared with the assistance of the Office of the State Budget Director and were to be presented to the Legislative Research Commission by December 1, 2008.

Staff of the Finance and Administration Cabinet and the University of Louisville testified about implementation of 2008 House Bill 2, relating to energy efficiency in state-leased and state-owned facilities.

Representatives from the Department of Education and the School Facilities Construction Commission testified about 2010 Senate Bill 132, relating to efficient design of school buildings. Among other things, the bill encourages the Department of Education to meet or exceed efficient school design standards in planning and design of all new buildings or major renovations, to use life cycle cost analysis to evaluate different design proposals, and to consider the possibility that each new school building or major renovation of a building could be a "net zero building." A net

zero building is a building in which the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used.

The President of CMTA Consulting Engineers testified regarding the newly constructed Richardsville Elementary school near Bowling Green. The facility is the first net zero elementary school in the nation, and was constructed at a cost of \$195 per square foot, slightly below the state's average of \$200 per square foot for school buildings.

**Report of the 2010  
Capital Projects and Bond Oversight Committee**

**Sen. Robert Leeper, Co-Chair  
Rep. Susan Westrom, Co-Chair**

Sen. Tom Buford  
Sen. Julian M. Carroll  
Sen. Elizabeth Tori

Rep. Robert Damron  
Rep. Steven Rudy  
Rep. Jim Wayne

LRC Staff: Kristi Culpepper, Don Mullis, and Samantha Gange

**Presented to the  
Legislative Research Commission  
and the  
2011 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, 2009, and October 31, 2010. The committee met 12 times in Frankfort in the Capitol Annex. A summary of those meetings follows.

### Review of Unbudgeted Capital Projects

The committee approved 14 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 if the project is presented to the committee for review.

#### Unbudgeted Projects Approved

Agency	Title of Project	Scope
University of Kentucky	Wildcat Lodge Student Housing	Private \$7,000,000
University of Kentucky	Renovate Nutter Training Center	Private \$750,000
Cabinet for Health and Family Services	Department for Income Support—Diesel Fueled Generator	Federal \$355,000
Kentucky State University	Old Federal Administration Building Renovation	Federal \$1,000,000
Education and Workforce Development Cabinet	Office of Education and Training—Unemployment Insurance Benefit Payment Control System	Federal \$1,700,000
University of Kentucky	Renovate 4 <sup>th</sup> Floor Sanders-Brown Center on Aging	Federal \$6,428,471
University of Kentucky	Construct Center for Applied Energy Research Lab #2	Federal \$19,776,613
Tourism, Arts and Heritage Cabinet	Department of Fish and Wildlife—Marion County Land Acquisition	Federal \$1,825,000
Department of Military Affairs	Road Repairs at Harold L. Disney Training Center	Federal \$750,000
Department of Military Affairs	Construct Rifle Range at Wendell H. Ford Regional Training Center	Federal \$610,000
Department for Facilities and Support Services	Comprehensive Energy Management System	Federal \$3,650,000

Agency	Title of Project	Scope
Department of Military Affairs	Wendell H. Ford Regional Training Center—Install Solar Panels	Federal \$750,000
Department of Military Affairs	H.L. Disney Training Center—Solar Energy Improvement	Federal \$750,000
University of Kentucky	Renovate Track and Field Facility	Private \$7,100,000 Restricted \$6,900,000

### Review of Budgeted Capital Projects

**Requests for Scope Increases.** The committee considered executive agency requests for scope increases to address increased costs of construction materials or expand the scope of projects. The committee approved eight agency requests to increase the scope of authorized capital projects, using private, federal, or restricted (agency) funds. In several cases, requests were made to increase the scope because of the availability of private or federal funds. Pursuant to KRS 45.760(6), to be eligible for interim approval, any increase in excess of 15 percent of a project’s authorized scope must be funded by federal or private funds.

#### Scope Increases Approved

Agency	Project Title	Increase	New Scope
University of Kentucky	Renovate Nursing Building	\$1,988,000	\$3,088,000
University of Louisville	Expand and Renovate Dental School	\$1,000,000	\$43,700,000
Eastern Kentucky University	New Science Building	\$5,558,300	\$64,666,300
Eastern Kentucky University	Renovate Residence Hall	\$450,000	\$10,950,000
University of Louisville	Expand and Renovate Dental School	\$1,150,000	\$45,200,000
University of Louisville	Papa John’s Cardinal Stadium Expansion	\$5,100,000	\$77,100,000
Kentucky Horse Park	Renovate Big Barn	\$229,700	\$1,193,700
Department of Military Affairs	Construct Rifle Range—Wendell H. Ford Regional Training Center	\$140,000	\$750,000

### General Oversight and Review Topics

**Allocations From Various Program Pools.** Allocations authorized by the budget bill were reported to the committee for capital projects costing more than \$600,000 and equipment costing more than \$200,000.

**Quarterly Status Reports.** The committee received statutorily mandated status reports from the Finance and Administration Cabinet, the universities that manage their own capital construction programs (University of Kentucky, University of Louisville, Murray State University, Northern Kentucky University, and Western Kentucky University), the

Administrative Office of the Courts, and the Commonwealth Office of Technology. These reports have been posted to the committee's Web page since 2008.

**Official Notification From Agencies of Plans to Use Alternative Construction Delivery Methods.** The committee received official notification of plans to use alternative construction delivery methods, pursuant to KRS 45A.180(2). The traditional construction delivery method is the design-bid-build procurement process, whereby the state bids out the design first, which is then the basis for soliciting construction bids from a general contractor.

The design-build method of construction is where the owner executes a single contract with a single firm for both design and construction. The Finance and Administration Cabinet reported the use of this delivery method for the Division of Engineering and Contract Administration for the Department of Fish and Wildlife's Salt Lick Stream Restoration project in Bath County; and the Department of Military Affairs Wendell H. Ford Regional Training Center in Muhlenberg County for metal roofing retrofits for three existing buildings. The University of Louisville Athletic Association reported the use of this delivery method for the Boathouse Facility project.

Under the construction management-at-risk method, a construction manager rather than a general contractor is used and is typically brought in early during the design phase to assist with cost estimates and scheduling. At some point in the process, the construction manager-at-risk takes the risk typically assumed by a general contractor for delivering the project on time and within budget. The Finance and Administration Cabinet reported the use of this delivery method for the Lexington Community College Classroom/Lab Building (Classroom/Student Services Building for Bluegrass Community and Technical College) at its Newtown Pike Campus. The University of Kentucky reported the use of this delivery method for the Wildcat Coal Lodge project and the Center for Applied Energy Research Laboratory Building #2 project.

**Energy Savings Performance Contracts.** The committee reviewed six Energy Savings Performance Contracts (ESPC). Under an ESPC, a contractor agrees to design, finance, and install energy conservation measures in state buildings and guarantees a level of energy savings. If the project does not generate the guaranteed energy savings in any given year, the contractor must reimburse the owner the amount of the shortfall. All ESPCs must be reviewed and approved by the Finance and Administration Cabinet's Office of Financial Management.

#### Energy Savings Performance Contracts

Agency	Total Scope	Total Projected Savings
Western Kentucky University	\$9,640,561	\$15,267,306
Education Cabinet—Carl D. Perkins Training Center	\$400,283	\$661,427
Tourism, Arts and Heritage Cabinet—Kentucky Horse Park	\$5,694,117	\$6,983,420

Agency	Total Scope	Total Projected Savings
Cabinet for Health and Family Services—Oakwood Hospital	\$4,480,906	\$6,155,676
Department of Corrections—Kentucky State Penitentiary and Western Kentucky Correctional Complex	\$3,171,294	\$5,529,570
University of Louisville	\$21,713,289	\$31,629,541

**Review of Bond-funded Loan / Grant Programs**

**Economic Development Bond (EDB) Projects.** The committee reviewed and approved five grants from the EDB pool. 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 EDB grant made to the city of Shepherdsville for the South Bullitt Regional Wastewater Project will be funded from a \$50 million appropriation specifically for Base Realignment and Closure related projects. These grants do not involve job requirements.

**Economic Development Bond Fund Grants Approved**

Grantee	Company/Project	Amount
Pike County Fiscal Court	EQT Corporation	\$250,000
Boone County Fiscal Court	Coating Excellence International	\$250,000
Louisville/Jefferson County Metro Government	Dometic Corporation	\$250,000
City of Shepherdsville*	South Bullitt Interceptor Regional Wastewater Project	\$3,000,000
Simpson County	Tractor Supply Company	\$500,000

\*Base Realignment and Closure project.

The committee approved one amendment to a previously approved EDB grant to the City of Richmond for Sub-Zero Wolf, Inc. The amendment extended the company’s deadline for meeting its job requirements.

The committee received a report of EDB job creation and job maintenance requirements for previously approved projects from the Cabinet for Economic Development. One previously approved project failed to meet its job requirements fully and was required to repay a portion of the grant funds to the local government.

**Allocation From the New Economy High-tech Construction Pool.** The committee received a report from the Department of Commercialization and Innovation within the Cabinet for Economic Development of an allocation from the New Economy High-tech of up to \$3.5

million to the Kentucky Argonne National Battery Manufacturing Research and Development Center in Fayette County for research into next-generation automotive batteries.

**2008-2010 Research Challenge Trust Fund and Comprehensive University Excellence Trust Fund Program.** During the reporting period, the committee reviewed a final report from the Council on Postsecondary Education (CPE) regarding allocations of monies from the Research Challenge Trust Fund and the Comprehensive University Excellence Trust Fund. CPE received reports of action by the boards of regents/trustees of the universities detailing the official designation of trust funds among the endowment match and capital projects match programs. CPE reviewed all allocations and found them to be in compliance with the council's guidelines. (The 2008-2010 Research Challenge Trust Fund and Comprehensive University Excellence Trust Fund Program were authorized in 2008 Regular Session House Bill 406.)

**Kentucky Infrastructure Authority (KIA) projects.** The committee reviewed and approved various Kentucky Infrastructure Authority loans and grants to local government entities for public infrastructure projects. The American Recovery and Reinvestment Act of 2009 (ARRA) allocated \$66.7 million to KIA for wastewater projects through the Clean Water State Revolving Fund (Fund A), and the Drinking Water State Revolving Fund (Fund F). Of those projects, 38 are through the Clean Water State Revolving Fund and 17 are through the Drinking Water State Revolving Fund. The projects were selected with consideration given to job creation, economic hardship, and environmental benefits, as well as having a signed construction contract or construction start date prior to February 16, 2010. The awarded projects were structured as 50 percent low interest loans and 50 percent principal forgiveness loans. During the reporting period, the committee approved five ARRA Fund A loans and one ARRA Fund F loan.

**Fund A (Federally Assisted Wastewater Revolving Loan Fund).** The committee approved 17 loans totaling \$60,452,284. Of the 17 loans, 5 were funded through ARRA.

#### Fund A Loans Approved

Borrower	County	Amount
City of Hopkinsville	Christian	\$7,500,000
City of Hardinsburg	Breckinridge	\$550,000
City of Princeton	Caldwell	\$975,000
City of Warsaw*	Gallatin	\$2,000,000
Ohio County Regional Wastewater Commission*	Ohio	\$497,409
Mountain Water District*	Pike	\$750,000
Meade County Riverport Authority*	Meade	\$625,000
City of Madisonville*	Hopkins	\$3,800,000
Troublesome Creek Environmental Authority	Knott	\$1,500,000
City of Ashland	Boyd	\$6,000,000
Oldham County Sewer District	Oldham	\$1,500,000
Oldham County Sewer District	Oldham	\$1,000,000
Oldham County Sewer District	Oldham	\$1,930,000

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Lexington-Fayette Urban County Government	Fayette	\$10,500,000
Lexington-Fayette Urban County Government	Fayette	\$3,928,375
Oldham County Sewer District	Oldham	\$250,000
Sanitation District No. 1	Boone, Kenton, Campbell	\$17,146,500

\*ARRA projects.

**Fund A Loan Increases.** The committee approved five Fund A loan increases. Of the five increases, four were funded through ARRA.

**Fund A Loan Increases**

<b>Borrower</b>	<b>County</b>	<b>Increase Amount</b>	<b>New Loan Amount</b>
City of Bowling Green	Warren	\$7,500,000	\$51,735,960
City of Falmouth*	Pendleton	\$122,429	\$611,898
Sanitation District No. 1*	Boone, Campbell, Kenton	\$787,220	\$1,527,220
City of Pineville*	Bell	\$490,000	\$2,193,000
City of Calvert City*	Marshall	\$250,000	\$1,046,065

\*ARRA projects.

**Fund B (Infrastructure Revolving Fund).** The committee approved three loans totaling \$2,746,754. The committee also approved a \$2,336,206 loan assumption for the Boone County Water District.

**Fund B Loans Approved**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
Marshall County Fiscal Court*	Marshall	\$1,000,000
Bullitt County Sanitation District	Bullitt	\$500,000
City of Marion	Crittenden	\$1,246,754

\*This loan was structured as 80 percent grant funds and 20 percent loan.

**Fund B Grant.** The committee approved a Fund B grant amendment for the city of Owingsville in Bath County for \$50,000.

**2020 Program (Sub-account of Fund B).** The committee approved one grant totaling \$150,000 for the McLean County Fiscal Court on behalf of the Driving Area Water Needs Consortium.

**Fund F (Federally Assisted Drinking Water Revolving Loan Fund).** The committee approved 6 loans totaling \$20,236,194. Of the six loans, one was funded through ARRA.

**Fund F Loans Approved**

<b>Borrower</b>	<b>County</b>	<b>Amount</b>
City of Hardinsburg	Breckinridge	\$3,251,590
City of Greenup*	Greenup	\$1,590,604
Northern Kentucky Water District	Kenton	\$8,000,000
Columbia/Adair County Water Commission	Adair	\$1,694,000
Adair County Water District	Adair	\$4,000,000
City of Louisa	Lawrence	\$1,700,000

\*ARRA project.

**Fund F Loan Increase.** The committee approved one Fund F loan increase of \$50,000 for the Breathitt County Water District for a total loan amount of \$572,000. The loan increase was funded through ARRA.

**Coal/Noncoal Projects.** Pursuant to KRS 224A, the committee reviewed various grants authorized by the 2003, 2005, 2006, and 2008 General Assemblies prior to KIA entering into assistance agreements with local state entities. The committee also reviewed projects reauthorized and reallocated by the 2010 General Assembly.

The 2003 General Assembly authorized 103 line-item projects in coal-producing counties totaling \$54,861,998 and 164 line-item projects in tobacco-producing counties totaling \$59,071,343. In this reporting period, the committee reviewed 2 grants for coal counties totaling \$22,241 and 1 grant for tobacco counties totaling \$150,000.

The 2005 General Assembly authorized 193 line-item projects in coal counties totaling \$79,395,960 and 306 line-item projects in tobacco counties totaling \$120,660,220. In this reporting period, the committee reviewed 1 grant for coal counties totaling \$20,000 and 5 grants for tobacco counties totaling \$843,000.

The 2006 General Assembly authorized 210 line-item projects for coal counties totaling \$100,955,072 and 349 line-item projects for noncoal counties totaling \$151,250,000. In this reporting period, the committee reviewed 1 grant for coal counties totaling \$200,000 and 9 for noncoal counties totaling \$2,681,933.

The 2008 General Assembly authorized 163 line-item projects for coal counties totaling \$79,240,000 and 435 line-item projects for noncoal counties totaling \$160,584,650. In this reporting period, the committee reviewed 19 projects for coal counties totaling \$6,720,837 and 102 projects for noncoal counties totaling \$25,974,279.

The 2010 General Assembly reauthorized and reallocated projects for coal counties and noncoal counties from previous budget bills. In this reporting period, the committee reviewed 3 grants for noncoal counties totaling \$493,859.

## **Review of Bond Issues and Financing Agreements**

In addition to the individual bond-funded projects, the committee approved the following bond issues and financing agreements.

**State Property and Buildings Commission (SPBC).** The committee approved three SPBC issues. SPBC Road Fund Revenue Refunding Bonds Project No. 73 refunded outstanding debt for a 3.788 percent net present value savings. The issue had a par amount of \$13.7 million.

SPBC Taxable Agency Fund Revenue Bonds Project No. 97 provided \$3.4 million in permanent financing to construct a hangar at Bluegrass Station in Lexington for the Department of Military Affairs as authorized in 2010 Regular Session HB 302.

SPBC Revenue and Revenue Refunding Bonds Project No. 98 provided \$22.9 million in permanent financing for the Kentucky Human Resource Information System project authorized in the 2010-12 budget. The transaction also refunded outstanding SPBC and Asset/Liability Commission bonds to provide approximately \$140.7 million in budgetary relief for fiscal year 2011. This budgetary relief was achieved by pushing payments on the state's outstanding debt out into later years. This was the fourth General Fund-supported bond issue to restructure the state's debt in this manner.

**Asset/Liability Commission (ALCo).** The committee approved two new ALCo bond issues. ALCo Project Notes 2010 Federal Highway Trust Fund Series A provided \$89.7 million in permanent financing as part of the \$231 million authorization in 2008 Regular Session HB 406 for the Louisville-Southern Indiana Ohio River Bridges Project. These bonds are considered Grant Anticipation Revenue Vehicle debt and are secured by future federal highway appropriations.

The committee also approved \$467.6 million in ALCo Funding Notes, 2010 General Fund First Series, to reimburse the Kentucky Teachers Retirement System (KTRS) for obligations used to fund the KTRS State Medical Insurance Fund from FY 2005 to FY 2010.

**Turnpike Authority of Kentucky (TAK).** The committee reviewed one TAK bond issue. Proceeds from the \$340 million (par amount) TAK 2010 Series A and B bonds will permanently finance \$250 million of Road Fund-supported projects authorized by 2008 Regular Session HB 406 (2008-10 budget) and 2009 Regular Session HB 536. The financing also included a debt restructuring component to provide \$81 million in budgetary relief for the Road Fund. Similar to the SPBC transactions, this restructuring pushed principal payments due during the fiscal year out into later years.

**Postsecondary Institutions.** The committee approved four new bond issues for postsecondary institutions. The committee approved two new bond issues for the University of Kentucky. The university's General Receipts Bonds, 2010 Series A deal was the first bond issue used to fund an ESPC project. The issue will provide approximately \$25.5 million to finance campuswide energy conservation improvements. The committee also approved an approximately \$33 million University of Kentucky bond issue to refund outstanding debt.

The committee approved a \$20.6 million bond issue for Murray State University that would have refunded all of the university's outstanding housing and dining bonds, but the bonds were ultimately not issued. The university rejected the bids it received on the bonds because interest rates in the municipal and Treasury bond markets had diverged, which would have made it more expensive to fund an escrow account.

The committee also approved a \$12.3 million issue for Northern Kentucky University to refund the university's outstanding Housing Certificates of Participation. The issue produced a 5.08 percent net present value savings.

**Kentucky Economic Development Finance Authority (KEDFA).** The state is a conduit issuer of KEDFA bonds and has no legal or moral obligation for repayment of the debt. As a conduit, the bonds are issued for the benefit of the developer, but the developer has full responsibility for the repayment of the bonds.

The committee approved four conduit bond issues during the reporting period: \$31 million for Madonna Manor, Inc.; \$50 million for Masonic Homes of Kentucky, Inc.; \$75 million for Ashland Hospital Corporation; and \$27.8 million for Goodwill Industries of Kentucky.

**Kentucky Housing Corporation (KHC).** The committee received a report related to \$100 million of revenue bonds that KHC issued in conjunction with a federal program established to assist state housing finance agencies. KHC issued \$100 million of new bonds, a portion of which were privately placed with the U.S. Treasury. The committee also approved a \$176 million KHC bond issue to refund outstanding debt.

## **School Bond Issues**

**School Facilities Construction Commission (SFCC).** During the reporting period, the committee approved 139 school bond issues with SFCC debt service participation. Total annual SFCC debt service participation for the period was \$13,872,501. Of these bond issues, 11 were for new schools, 46 were for improvements and renovations, and 82 were for refunding.

**Local School District Bond Issues.** During the reporting period, the committee reviewed 84 local school district bond issues with 100 percent local debt service support with no SFCC debt service participation. Of these bond issues, 4 were for new schools, 15 were for improvements and renovations, and 65 were for refunding. The committee also reviewed two bond issues for Kentucky Interlocal School Transportation Association, which provides buses for various counties across the state.

## **Review of State Leases**

During the reporting period, the committee reviewed 26 leases with square footage modifications. Although the overall square footage and total annual rent changed, the rental rate per square foot remained the same. Of these modifications, 16 increased annual rental payments

by a total of \$866,578, 8 decreased annual rental payments by a total of \$132,155, and 2 had no increase or decrease in annual rent.

The committee also reviewed 12 leases with agency-requested modifications. The costs of the improvements are amortized over the remaining lease term. The total annual cost of the improvements for all 12 leases is \$208,210.

The committee reviewed one lease modification with square footage increase. The square footage increase was 6,111, with an annual rental increase of \$92,193.

The committee reviewed 10 lease renewals, with 1 lease increasing rental space by 1,120 square feet.

The committee approved two new leases for office space during the reporting period. The leases were for the Cabinet for Health and Family Services in Daviess County, with an annual rental cost of \$530,979; and for the Department of Military Affairs in Boone County, with an annual rental cost of \$108,000.

Also reviewed by the committee during the reporting period were four emergency leases. The ice storm that occurred in January 2009 created a need for emergency action to acquire sites available for handling storm debris. The Transportation Cabinet sought approval to utilize the emergency provisions to acquire sites to handle the trees, limbs, and debris. In February 2009, the Finance and Administration Cabinet delegated authority to the Transportation Cabinet to identify and enter into lease agreements as necessary to acquire locations to handle the debris. The declaration was approved by the Governor. The committee reviewed three leases related to the ice storm, which were located in Logan, Fulton, and Bullitt Counties. Total annual costs were \$42,000.

In addition to the ice storm related leases, the committee reviewed one lease for the Department for Workforce Investment in Rowan County. The Department obtained emergency replacement space due to water damages that occurred during the flooding in May 2010. The new lease has a cost of \$1,500 per month.

### **Review of University Leases**

During the reporting period, the committee approved 2 lease modifications for the University of Kentucky Federal Credit Union with a total annual rental increase of \$47,721. The committee also reviewed two lease renewals for the Department of Psychiatry and the Department of Social Work.

The committee approved 1 lease modification for the University of Louisville MedCenter One, LLC, with a total annual rental increase of \$29,723. The committee approved 6 new leases, with annual rent exceeding \$100,000 for the Watterson Med Center, LLC, Human Resources, Central Receiving and Central Storages, Archaeology and Physical Plant, Human Resources, and Family and Geriatric Medicine.

The committee reviewed one lease renewal for the Northern Kentucky University METS Center.

### Projects Not Approved

**Projects Not Approved Due to Lack of Quorum.** There was not a quorum present to conduct business at the committee's February 16, 2010, and May 26, 2010, meetings. The committee was not able to take action on the projects listed in the below table. Pursuant to KRS 45.800, the committee co-chairs notified the Secretary of the Finance and Administration Cabinet, who subsequently notified the committee that the state would proceed with the projects.

#### Projects Not Approved Due to Lack of Quorum

Agency	Title of Project	Scope
<b>FEBRUARY 2010</b>		
Western Kentucky University	Scope Increase—Construct Chapel and Columbarium	Private \$255,000
Eastern Kentucky University	Scope Increase—Renovate Residence Hall (Walters Hall)	Restricted \$500,000
Department of Military Affairs	New Unbudgeted Project—Construct New Armory Readiness Center (Owensboro)	Federal \$10,500,000 Restricted \$3,500,000
Kentucky Infrastructure Authority	Fund A loan Increase—City of Prestonsburg (Floyd County)	\$272,000
Kentucky Infrastructure Authority	Fund A loan Increase—City of Prestonsburg (Floyd County)	\$786,000
Kentucky Infrastructure Authority	Fund A Loan—City of Prestonsburg (Floyd County)	\$1,860,405
Kentucky Infrastructure Authority	Fund A Loan Increase—City of Prestonsburg (Floyd County)	\$2,670,000
Kentucky Infrastructure Authority	Fund A Loan Increase—City of Princeton (Caldwell County)	\$1,103,744
Kentucky Infrastructure Authority	Fund A Loan Increase—City of Princeton (Caldwell County)	\$1,149,256
Kentucky Infrastructure Authority	Fund A Loan Increase—City of Warsaw (Gallatin County)	\$2,060,156
Kentucky Infrastructure Authority	Fund A Loan—City of Winchester (Clark County)	\$36,600,000
Kentucky Infrastructure Authority	Fund B Loan—Bullitt County Sanitation District	\$500,000
Kentucky Infrastructure Authority	Fund B Loan—Hart County Industrial Authority	\$1,000,000
Kentucky Infrastructure Authority	Fund F Loan Increase—Louisville Water Company (Jefferson County)	\$4,173,200

<b>Agency</b>	<b>Title of Project</b>	<b>Scope</b>
Kentucky Economic Development Finance Authority	Economic Development Bond Pool Project—Coating Excellence International, LLC in Hebron (Boone County)	\$250,000
Kentucky Infrastructure Authority	New Bond Issue—Kentucky Infrastructure Authority Wastewater and Drinking Water Revolving Fund Revenue Bonds, Series 2010	\$221,955,000
Kentucky Higher Education Student Loan Corporation	New Bond Issue—Kentucky Higher Education Student Loan Corporation Straight A Conduit (2004 Trust Restructuring)	\$733,400,000
Kentucky Higher Education Student Loan Corporation	New Bond Issue—Kentucky Higher Education Student Loan Corporation Series 2010-1 LIBOR Floating Rate Notes (2004 Trust Restructuring)	\$246,000,000
Kentucky Economic Development Finance Authority	New Bond Issue—Kentucky Economic Development Finance Authority Medical Center Revenue Bonds, Series 2010 (Ashland Hospital Corporation d/b/a King’s Daughters Medical Center Project)	\$75,000,000
<b>MAY 2010</b>		
Finance and Administration Cabinet Division of Real Properties	New Lease—Department of Public Advocacy	\$103,350 annually
Personnel Cabinet	Scope Increase—Kentucky Human Resources Information System project	Restricted \$2,200,000
Kentucky Community and Technical College System	Scope Increase—Construct Bowling Green Fire Training Center	Restricted \$100,000
Kentucky Economic Development Finance Authority	Economic Development Bond Pool project—Todd County Industrial Foundation, Inc. Guthrie, KY (Todd County)	\$100,000
Kentucky Economic Development Finance Authority	Economic Development Bond Pool project – Tiffany and Company Lexington, KY (Fayette County)	\$300,000
Kentucky Economic Development Finance Authority	Economic Development Bond Pool project- Remington Arms Company, Inc. Hickory, KY (Graves County)	\$250,000
State Property and Buildings Commission	State Property and Buildings Commission Revenue Refunding Bonds, Project No. 98	\$73,415,000

Agency	Title of Project	Scope
Morehead State University	Morehead State University General Receipts Bonds, Taxable Build America Bonds 2010 Series A	\$5,790,000
Northern Kentucky University	Northern Kentucky University General Receipts Bonds, 2010 Series A.	\$8,890,000
School Facilities Construction Commission	New School Bond Issue – Bowling Green Independent (Warren County)	\$580,000
School Facilities Construction Commission	New School Bond Issue – Clinton County	\$2,055,000
School Facilities Construction Commission	New School Bond Issue –Clinton County	\$380,000
School Facilities Construction Commission	New School Bond Issue—Fairview Independent (Boyd County)	\$2,160,000
School Facilities Construction Commission	New School Bond Issue—Letcher County	\$4,950,000

**Projects Not Approved.** At the committee's November 19, 2009, meeting, the committee did not approve three proposed KIA loans, including a \$500,000 loan to General Burnside Park, a \$500,000 loan to Green River State Park, and a \$2.5 million loan to Pennyrile Forest Resort Park. Pursuant to KRS 45.800, the committee co-chairs notified the Secretary of the Finance and Administration Cabinet, who subsequently notified the committee that the state would proceed with the projects.

**Report of the 2010  
Education Assessment and Accountability  
Review Subcommittee**

**Sen. Jack Westwood, Co-Chair  
Rep. Kent Stevens, Co-Chair**

Sen. Vernie McGaha  
Sen. Ken Winters  
Sen. Ed Worley

Rep. Bill Farmer  
Rep. Mary Lou Marzian  
Rep. Harry Moberly

LRC Staff: Sandra Deaton, Lisa Moore, and Janet Oliver

**Presented to the  
Legislative Research Commission  
and the  
2011 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.

### **Subcommittee Activity**

The subcommittee met five times during the 2010 Interim.

The subcommittee heard testimony about three administrative regulations, reports of studies conducted by the Office of Education Accountability (OEA), and various other education reports including the results of 2010 test scores.

The subcommittee reviewed 703 KAR 5:060, 703 KAR 5:180 (and E), 703 KAR 5:170, and 703 KAR 5:190. 703 KAR 5:060 establishes an interim assessment process as required in 2009 Regular Session Senate Bill 1. 703 KAR 5:180 (and E) establishes an intervention system for low-achieving schools required by 2010 Regular Session House Bill 176. 703 KAR 5:170 repeals the Kentucky Highly Skilled Educator Program criteria so it can be replaced with 703 KAR 5:190, which establishes the definitions, administrative structures, and procedures for the operation of the Kentucky Department of Education's Division of District 180 and Centers for Learning Excellence to provide assistance to low-achieving schools.

The six new members of the National Technical Advisory Panel on Assessment and Accountability were introduced to the subcommittee in January, and two of the members presented a report of the panel's work at the May meeting. The panel has agreed to certain test design features, including a short version of a norm-referenced test (NRT) and a criterion-referenced test constructed by the contractor to fill in the gaps in the curriculum not covered by the NRT. Information on measuring academic growth was presented with the ways the measures can be used, including reconceptualization by identifying strengths and weaknesses in student performance beyond traditional achievement data; targeting assistance; conducting program evaluations; and assisting in making accountability decisions, such as school, district, and teacher evaluations.

The Commissioner of Education and the President of the Council on Postsecondary Education (CPE) reported on the implementation of 2009 Regular Session Senate Bill 1 and the collaborative work being done by the two agencies. The Kentucky Department of Education (KDE) and CPE are developing a unified strategy to reduce college remediation rates by at least 50 percent by 2014. The agencies plan to increase the college completion rates of students enrolled in one or more remedial classes by 3 percent annually from 2009 to 2014.

The Commissioner of Education and KDE staff presented the 2010 test scores for the Kentucky Core Content Test (KCCT), No Child Left Behind, and the ACT. KCCT results show that although steady progress is being made in reading and math in grades 3-8, middle schools improved slightly and high schools had a decrease in math scores. Science results were similar to

reading and math, showing some improvement at the elementary school level, a decrease at the middle school level, and no change at the high school level. Social studies showed a drop at the elementary school level, slight improvement at the middle school level, and a drop at the high school level. There was significant improvement at the elementary school level in writing, but only slight improvement at the middle and high school levels. The Gap to Goal information related to results for various demographic groups showed slight improvement for some of the groups. This measurement will help districts focus on specific groups of students that need greater attention.

College readiness rates showed that 12,896 of the 40,528 graduates met CPE benchmarks on the ACT. In the 2010-2011 school year, Kentucky's seniors will be provided access to COMPASS<sup>®</sup>, which is a computer-adaptive college placement test, and the KYOTE (Kentucky Online Testine Examination) to predict college readiness. Career readiness rates showed that 718 seniors achieved national industry certifications. WorkKeys, vocational aptitude battery assessments for the Armed Services, and other key industry certifications may be provided to this year's senior class. Overall, 34 percent of the 2010 graduating class was college or career ready based on testing and certifications.

Thirteen districts did not make adequate yearly progress for several consecutive years, and KDE is prioritizing those districts to determine which districts will be audited and provided support and assistance. Although there are 93 districts in various phases of consequences, KDE only has the resources and staff to provide assistance to 5 out of the lowest 13 districts and 10 of the lowest achieving schools. In the 2011-2012 school year, KDE will intervene in 20 of the lowest achieving schools and 10 of the lowest achieving districts. There are 61 non-Title I schools in their first year of eligibility for state assistance and 107 in their second year for a total of 168 based on the requirements set forth in 2010 Regular Session House Bill 176.

OEA presented its report *Leadership Training for Superintendents, Board Members, Principals, and School-based Decision Making Councils*. The study focused on leadership duties and responsibilities, training requirements, monitoring of training, and survey results for each of the four leadership entities. It was determined that statutory requirements are being met. Survey respondents credit training for positively impacting their duty-related preparedness and most consider training requirements to be appropriate.

OEA's *Compendium of State Education Rankings 2009* was presented. This is the third annual compendium of state rankings intended as a convenient reference tool regarding how Kentucky's education indicators compare to the nation, Southern Regional Education Board states, and other states that border Kentucky.

OEA presented *Kentucky District Data Profiles School Year 2009*, a compilation of data collected from various sources on the 174 school districts with an individual profile for the entire state. The report includes student demographics and performance data, staffing data and related information, and district expenditure and revenue data.

During the last meeting, OEA completed its 2010 work schedule by presenting the reports *Review of Teacher Evaluation and Compensation; Analysis of Collective Bargaining*

*Agreements in Kentucky Districts; Assistance to Low-achieving Schools and Districts: Strengths, Limitations, and Continuing Challenges; and the Compendium of Education Statistics 2010.* The proposed OEA 2011 study agenda was adopted.

**Report of the 2010  
Government Contract Review Committee**

**Sen. Vernie McGaha, Co-Chair  
Rep. Dennis Horlander, Co-Chair**

Sen. Julian Carroll  
Sen. Carol Gibson  
Sen. Elizabeth Tori

Rep. Jesse Crenshaw  
Rep. Brad Montell  
Rep. Brent Yonts

LRC Staff: Kim M. Eisner, Matthew T. Ross, and Rebecca A. Brooker

**Presented to the  
Legislative Research Commission  
and the  
2011 Regular Session of the  
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## 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 all qualifying motion picture or entertainment production tax incentives.

Memoranda of agreement review exemptions include 1) agreements between the Transportation Cabinet and political subdivisions of the Commonwealth for road and road-related projects; 2) agreements between the Auditor of Public Accounts and other government agencies for auditing services; 3) agreements between a state agency as required by federal or state law; 4) 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; 5) agreements involving child support collections and enforcement; 6) agreements with public utilities, providers of certain direct Medicaid health care to individuals, and transit authorities; 7) nonfinancial agreements; 8) any obligation or payment for reimbursement of the cost of corrective action made pursuant to the Petroleum Storage Tank Environmental Assurance Fund; 9) exchanges of confidential personal information between agencies; 10) agreements between state agencies and rural concentrated employment programs; or 11) any other agreement that the committee deems inappropriate for consideration.

Personal service contract review exemptions include 1) agreements between the Department of Parks and a performing artist or artists for less than \$5,000 per fiscal year, per artist or artists; 2) agreements with public utilities, foster care parents, providers of certain direct Medicaid health care to individuals, individuals performing homemaker services, and transit authorities; 3) agreements between state universities or colleges and employers of students in the Commonwealth Work Study Program; 4) agreements between state agencies and rural concentrated employment programs; 5) agreements between the State Fair Board and judges, officials, or entertainers contracted for events promoted by the State Fair Board; or 6) 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 2010, the committee reviewed 641 personal service contracts and 548 amendments to personal service contracts. The committee also reviewed 243 personal service contracts for \$10,000 and under, which were submitted to the committee for informational purposes only.

During FY 2010, the committee reviewed 992 memoranda of agreement and 1,045 memoranda of agreement amendments. The committee also reviewed 787 memoranda of agreement for \$50,000.00 and under, which were submitted to the committee for informational purposes only.

During FY 2010, the committee reviewed 1,432 personal service contract items, 2,824 memoranda of agreement items, 1 film tax incentive agreement, and 1 film tax incentive agreement amendment for a total of 4,258 items.

Since the start of FY 2011 through November 10, 2010, the committee has reviewed 1,081 personal service contracts and 264 amendments to personal service contracts. The committee has also reviewed 231 personal service contracts for \$10,000 and under, which were submitted to the committee for informational purposes only.

Since the start of FY 2011 through November 10, 2010, the committee has reviewed 939 memoranda of agreement and 847 memoranda of agreement amendments. The committee also reviewed 603 memoranda of agreement for \$50,000 and under, which were submitted to the committee for informational purposes only.

Since the start of FY 2011 through November 10, 2010, the committee has reviewed 1,576 personal service contract items, 2,389 memoranda of agreement items, and 1 film tax incentive agreement for a total of 3,966 items.

The above totals reflect all personal service contracts and memoranda of agreements entered into the eMARS procurement system and captured by the LRC Contract Reporting Database.

As required by 2010 Regular Session House Bill 387 (codified at KRS 45A.695), the committee established a personal service contract invoice form that must be completed by an individual, firm, partnership, or corporation prior to receiving payment from a contracting body on a personal service contract. KRS 45A.690 defines “contracting body” to include executive and judicial branch agencies and universities.



**Report of the 2010  
Medicaid Oversight and Advisory Committee**

**Sen. Katie Kratz Stine, Co-Chair  
Rep. Jimmie Lee, Co-Chair**

Sen. Walter Blevins  
Sen. Tom Buford  
Sen. Julie Denton  
Sen. Dan “Malano” Seum

Rep. Bob M. DeWeese  
Rep. Jim Glenn  
Rep. Joni L. Jenkins  
Rep. David Watkins

LRC Staff: Miriam Fordham, Jonathan Scott, and Cindy Smith

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## Medicaid Oversight and Advisory Committee

Jurisdiction: Oversight of the implementation of Medicaid within the Commonwealth including access to services, utilization of services, quality of services, and cost containment.

### Committee Activity

The Medicaid Oversight and Advisory Committee met three times during the 2010 Interim. The meetings were held jointly with the Medicaid Cost Containment Task Force.

### Cost Drivers

The Commissioner of the Department for Medicaid Services (DMS) reported that costs in the Medicaid program have been driven by unprecedented eligibility growth, extraordinary expenditure events, and cost and utilization growth. Medicaid provides coverage to nearly 800,000 individuals and over 60,000 children enrolled in the Kentucky Children's Health Insurance Program (KCHIP). Unprecedented growth in the number of enrollees is due to a weakening economy. During the last biennium, the Medicaid program added over 3,000 new recipients each month, compared to 930 per month in the prior biennium.

There were two extraordinary expenditure events that occurred in fiscal year 2009 that contributed to Medicaid costs. One of the expenditures was hospital settlement payments made dating back to 2004. In addition to having to make the payments, DMS was also required to pay settlements at the enhanced Federal Medical Assistance Percentage rate. The settlement payments were made using only state General Funds and not federal matching funds. The other expenditure event was accelerated claims payments as required by the American Recovery and Reinvestment Act (ARRA) of 2009. Under ARRA, payments to practitioners, nursing facilities, and hospitals were required to meet Medicaid prompt pay requirements.

The provision of new services and increased KCHIP enrollment also contributed to cost and utilization growth in the Medicaid program. The new services include the Michelle P. waiver, implemented in November 2008; the Money Follows the Person Program, implemented in October 2008; and the Acquired Brain Injury Long Term Care Waiver Program, implemented in November 2008. KCHIP increased in enrollment from 53,186 to 59,798 from October 2008 to November 2010.

### Cost Containment Measures

The Commissioner of the Department for Medicaid Services reported on the cost-containment measures that the department implemented effective July 1, 2010. These include postpayment pharmacy audits, prior authorization for the drugs Suboxone and Zanaflex, changes to the early refill limit for prescriptions, a requirement that only prescriptions written by a Medicaid enrolled provider are filled, modification of coverage of over-the-counter medications, an enhanced lock-in program, discontinuation of payments for hospital-acquired conditions, purchase of diabetic supplies through pharmacy instead of durable medical equipment,

acquisition of a new program integrity support vendor, and payment of health insurance premiums if Medicaid recipients are eligible for group health insurance.

### **Pharmacy Services**

The Commissioner of the Department for Medicaid Services reported on administration of the pharmacy benefit within the Medicaid program. Under federal Medicaid rules, pharmacy is an optional service. Pharmacy is the largest optional service before accounting for rebates. Pharmacy costs totaled \$508 million in FY 2009, which represents 9 percent of total Medicaid dollars. Medicaid dispensing fees are \$5.00 for generic drugs and \$4.50 for brand name drugs. The Pharmacy and Therapeutics Committee and the Drug Management Review Advisory Board provide input to the administration of the Medicaid pharmacy program.

A representative from Magellan Medicaid Administration reported on Kentucky's Medicaid Drug Rebate Program. The Medicaid Drug Rebate Program, created by the Omnibus Reconciliation Act (OBRA) of 1990, requires drug manufacturers to enter into a National Rebate Agreement to ensure that their drugs are covered by Medicaid agencies. Approximately 550 pharmaceutical manufacturers currently participate. The program establishes minimum rebate amounts, and Magellan administers the program in Kentucky. The contract under which Magellan operates is fee-based and requires that 100 percent of the rebate revenue be returned to the state. In Kentucky, the OBRA rebates averaged \$51.7 million per quarter in 2009. The supplemental rebates averaged \$7.3 million per quarter in 2009.

### **Long-term Care**

A representative from AARP discussed long-term care issues. Elderly and disabled individuals account for about 38 percent of Medicaid participants and 67 percent of the Medicaid expenditures in Kentucky. Surveys have shown that nearly all individuals want to remain in their own homes and local communities. Medicaid costs are significantly less to provide services and supports in a person's home or community setting than in an institution. According to the AARP representative, in 2008, the per capita expenditure for nursing home services was \$188.95, while Medicaid Home and Community-Based Waivers for the elderly and disabled was \$17.01. In 2007, Kentucky expended an average of \$9,303 for each of its elderly Medicaid participants and \$9,456 for each of its disabled participants. The average for nonaged and disabled adults was \$3,831, and the average for children was \$2,399. The average for all participants was \$5,244, which was close to the national average of \$5,163.

### **Mental Health**

The Executive Director of the Kentucky Mental Health Coalition provided an overview of mental health issues. There are three very costly issues that affect those with mental illness: premature death, repeated psychiatric hospitalizations, and babies born with addiction. An investment of new or additional money results in cost savings in the long run. The executive director encouraged the establishment of a nonpsychiatrist physician rate in the community mental health centers and reevaluation of the prohibition against paying for two Medicaid services delivered in the same day. Bridgehaven Mental Health Services, a program for

individuals with severe mental illness, and Independence Hall, a program for treating substance abuse in pregnant women, were highlighted as model programs that produce cost savings.

## **Health Care Reform**

The Deputy Commissioner of the Department for Medicaid Services provided an overview of the provisions in the new federal health care reform law, the Patient Protection and Affordable Care Act (PPACA), regarding Medicaid and the Children's Health Insurance Program (CHIP). The maintenance of eligibility provisions in the law requires states to maintain current income eligibility levels in place on the dates of enactment for children in Medicaid and CHIP through September 30, 2019; for adults, the eligibility levels remain in place until the Secretary of Health and Human Services determines that the state exchanges are fully operational. The income eligibility standard section establishes the minimum eligibility level at 133 percent of the federal poverty level effective January 1, 2014. The law adds 3 new mandatory eligibility categories and allows states to cover these populations at 133 percent of the federal poverty level effective April 1, 2010.

The health care reform bill provides full federal funding for individuals newly eligible for Medicaid. Funding for CHIP is extended through 2015 and requires states to maintain income eligibility levels in place on the date of enactment. It provides for a 23 percentage point increase in the CHIP match rate up to a cap of 100 percent and creates a new option for states to provide CHIP coverage to children of state employees. The PPACA allows the state Medicaid and CHIP agency to enter into an agreement with the exchanges to determine eligibility for premium subsidies through the exchange. The deputy commissioner also discussed the health care reform provisions relating to reimbursements for primary care providers, long-term care, drug rebates, quality measures, preventive care, fraud and abuse, and demonstration projects.

The Commissioner of the Department of Insurance gave an overview of health insurance reform and state implementation. After considering a number of factors, the department recommended to the Governor that Kentucky opt for having the federal government operate the temporary high risk pool. Grandfathered plans are defined as a health plan existing on March 23, 2010. Changes to grandfathered plans will result in a loss of grandfathered status. There are immediate market reforms that apply to all plans and some that apply to new plans, not grandfathered plans. Kentucky has many of those provisions in statute. The commissioner also discussed the grants available to states related to health care reform. Kentucky was awarded a \$1 million grant that was to be used for activities related to the rate review process and consumer education. Thirty million dollars in grants are available to states to establish and operate offices of health insurance consumer assistance or health insurance ombudsman programs, and the department planned to submit a grant application. There is a \$1 million grant to states for planning and activities related to the establishment of an exchange. The Department of Insurance and the Cabinet for Health and Family Services planned to collaborate on the grant application.

## **Passport Health Plan**

A meeting was scheduled for December 1 to discuss the results of the Auditor of Public Accounts' examination of the Passport Health Plan.

## **Report of the 2010 Program Review and Investigations Committee**

**Sen. John Schickel, Co-Chair**

**Rep. Kelly Flood, Co-Chair**

Sen. Jimmy Higdon

Sen. Vernie McGaha

Sen. R.J. Palmer

Sen. Joey Pendleton

Sen. Dan “Melano” Seum

Sen. Brandon Smith

Sen. Katie Kratz Stine

Rep. Dwight D. Butler

Rep. Leslie Combs

Rep. Terry Mills

Rep. David Osborne

Rep. Ruth Ann Palumbo

Rep. Rick Rand

Rep. Arnold Simpson

LRC Staff: Greg Hager, Rick Graycarek, Christopher Hall, Sarah Harp, Colleen Kennedy, Van Knowles, Lora Littleton, Jean Ann Myatt, Katherine Thomas, Cindy Upton, and Stella Mountain

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## 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 branches 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 majority of the committee once approved. The committee issues a final report for a study after public deliberations that include the responses of officials of relevant state agencies.

### Committee Activity

The Program Review and Investigations Committee held six meetings through November. The committee elected Senate and House co-chairs and selected one new topic for study by committee staff: incentives for airline service in Kentucky.

The committee adopted two reports. According to *School Health Services for Students With Chronic Health Conditions*, schools must provide health services to students with diabetes, asthma, severe allergies, or epilepsy. However, the laws and regulations are complex and oversight is fragmented and inadequate. Health services may be provided by physicians, nurses, or trained unlicensed school staff. There is controversy about the proper role of unlicensed staff. It appears that inappropriate care and improper limitations on care have occurred, but they appear to occur less often when school nurses are present. School districts have struggled to find school health funding and most have turned to health departments that can use Medicaid to offset some of the costs.

The report's seven recommendations cover facilitating access to health and educational records under federal law, clarifying relevant state laws, coordinating services among school districts and health service providers, ensuring compliance with laws and regulations, clarifying regulations and policies, and funding of services. Respondents to the report were an executive vice president of University Health Care; an official with the Lincoln Trail District Health Department; a deputy commissioner of the Kentucky Department of Public Health; the Executive Director, Director of Legal Training Services, and another official from the Kentucky School Boards Association; an official with the Justice and Public Safety Cabinet's Division of Protection and Advocacy; the Director of the Division of Operations and Transportation and a school nurse consultant from the Department of Education; the General Counsel and Practice Consultant from the Kentucky Board of Nursing; parents representing Kentucky Families with Food Allergies; and a legislative agent and professor from the University of Kentucky College Nursing representing the American Diabetes Association.

The report *Workforce Development Options Targeted to Older Kentuckians Are Limited* examines 13 publicly funded workforce development programs for adults. For some programs, the number of clients who are older is unknown. Only 1 of the 13 programs is targeted to people 55 and older. The population of people 55 and older in the workforce continues to increase, but the percentage of older workers in Kentucky who are employed is among the lowest in the country. In general, older workers are more likely to lack technological skills, have outdated workforce skills, be less educated, and remain unemployed longer. The report makes recommendations related to access to training services and to whether additional services for older workers are merited. The Commissioner of the Department of Workforce Investment, the Executive Director of the Workforce Investment Board, the coordinator of the Senior Community Service Employment Program, and the associate state director of AARP Kentucky responded to the report.

Staff presented three reports that have not been voted on by the committee. According to *Air Service at Kentucky's Commercial Airport*, the air transportation industry has undergone significant changes, such as airline bankruptcies and mergers and the increased presence of low-cost carriers. Since 2000, total flights have decreased by more than 25 percent at Kentucky's five commercial airports, passenger boardings have declined by nearly half, and available seats have decreased by 49 percent. Most of the decreases were at the Cincinnati/Northern Kentucky International Airport. Passenger boardings over this period were also down at Louisville International Airport and Lexington's Blue Grass Airport, but the number of flights increased at each.

Kentucky's three largest airports have made proposals to facilitate incentives to increase air service. The use of airport revenues for providing incentives to airlines is generally restricted by Federal Aviation Administration policies and procedures. Agreements between airports and airlines may also affect the provision of such incentives. There are numerous examples of airports, local governments, and private entities in the U.S. providing incentives to airlines to expand or maintain air service. Cases of state governments providing incentives are less common. Two states have ongoing programs for funding incentives for air service. The Chief Executive Officer of the Cincinnati/Northern Kentucky International Airport, the Executive Director of the Louisville International Airport, the Executive Director of the Owensboro, Daviess County Regional Airport, and counsel from Taft Stettinius & Hollister responded to the report. Officials from Cincinnati/Northern Kentucky International Airport and Louisville International Airport, the Executive Director of Blue Grass Airport, and the President of the Northern Kentucky Chamber of Commerce testified about air service in Kentucky at a joint meeting with the Interim Joint Committee on Economic Development and Tourism.

The report *Transparency and Accountability of Quasi-governmental Entities* considers quasi-governmental entities, which are entities created by governments to serve public interests but have a legally separate status. Board members often are appointed by government officials, and government officials may serve on a governing board. Typically, quasi-governmental entities are created or authorized in statute. The number and types of quasi-governmental entities in Kentucky are unknown, as there is no central information repository for reporting them. Most quasi-governmental entities publish audited financial statements and are subject to open meetings and open records requirements. Government responsibilities for debts of quasi-

governmental entities vary. Employees of many quasi-governmental entities participate in state-administered benefit plans. The report assesses transparency of quasi-governmental entities in terms of whether information on the entity's use of public funds is available to the General Assembly and the public. The report assesses accountability in terms of whether the entity publishes audited financial statements and other reports required by the General Assembly. The report makes three recommendations for increased transparency and accountability. Responding to the report were a staff attorney and general counsel from the Department for Local Government, and the Executive Director and Legal Counsel of Kentucky Retirement Systems.

The report *The Impact of Industrial Revenue Bonds on Property Taxes and School Funding* covers industrial revenue bonds, which cities and counties may issue to purchase or construct industrial buildings for private entities. Ownership of the property may be transferred to the city or county for the duration of the bond. During this time, the property may be subject to a reduced state tax rate and may be exempt from local taxes, which reduces the tax base for these districts. Some districts receive a payment in lieu of taxes from the private entity to compensate for the reduced tax base. A local taxing district might also adjust its real and personal property tax rate to offset the lower tax base. The property transfer can also affect the distribution of funds under the Support Education Excellence in Kentucky (SEEK) school funding formula, which is based on school districts' property tax base. As property is removed from a district's tax base, the school district is required to contribute less funding under SEEK and the state will contribute more funding. By statute, the effect that some types of industrial revenue bonds have on local governments must be reviewed by at least one of three state agencies. A recommendation is made that the General Assembly may wish to consider requiring state review of all types of industrial revenue bonds.

Investment consultants from R.V. Kuhns & Associates, Inc. and a retired state worker testified on issues related to the Kentucky Employee Retirement Systems, including asset/liability studies done by the consultants.

**Report of the 2010  
Tobacco Settlement Agreement Fund Oversight Committee**

**Sen. Carroll Gibson, Co-Chair  
Rep. Dottie Sims, Co-Chair**

Sen. David E. Boswell  
Sen. David Givens  
Sen. Vernie McGaha  
Sen. Joey Pendleton  
Sen. Damon Thayer

Rep. Royce W. Adams  
Rep. James R. Comer  
Rep. Charlie Hoffman  
Rep. Tom McKee  
Rep. Tommy Turner

LRC Staff: Tanya Monsanto, Lowell Atchley, and Kelly Blevins

**Presented to the  
Legislative Research Commission  
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## **Tobacco Settlement Agreement Fund Oversight Committee**

Jurisdiction: Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans; planning by the board to establish short-term and long-term goals, to devise strategies, and to make investments that will assist farmers, and the administrative, financial, and programmatic activities of the board; expenditures under the Early Childhood Development Fund and the Kentucky Health Care Improvement Fund; efforts of agencies and educational institutions to assist in the revitalization and diversification of tobacco farms; efforts of institutions of public postsecondary research in conducting alternative crop development research; review of county agricultural development council plans; review of the use of Tobacco Master Settlement Agreement money.

### **Committee Activity**

The Tobacco Settlement Agreement Fund Oversight Committee met nine times in 2010.

As required by statute, the committee received monthly activity reports from the Governor's Office of Agricultural Policy (GOAP) regarding the Agricultural Development Board's (ADB) funding decisions on Agricultural Development Fund project applications. In addition, the committee heard testimony periodically from the executive branch agencies that receive 50 percent of the tobacco settlement funds.

As it received reports throughout 2010, the committee continued to exercise its oversight function regarding funding decisions made by the ADB in allocating Master Settlement Agreement funds. The committee also questioned and commented on the spending decisions made by the executive branch agencies.

### **Review of Agricultural Development Fund Projects**

In monthly meetings, the committee received a report from the GOAP on the projects on which the ADB acted in its previous meeting, plus other updates. In doing so, the committee performed its responsibility of monitoring the expenditure of funds received under the Master Settlement Agreement, receiving reports of the board through the GOAP, and overseeing the pattern of Master Settlement Agreement revenues usage in accordance with requirements of the agreement.

GOAP representatives reviewed projects affecting multiple counties, regions, and the state as a whole. They also presented a monthly listing of county programs receiving funding.

During the months that GOAP officials reviewed ADB state and county project funding approvals, committee members questioned the decisions made and the rationale for making those decisions.

Projects reviewed in 2010 ranged from classes aimed at teaching farm producers welding and computer skills, to projects to teach farm producers how to produce and sell value-added

foodstuffs, to several energy-related endeavors and projects to assist statewide commodity associations offer programs to their members.

The committee exercised its oversight function by asking questions of GOAP staff regarding policies affecting county councils, why funds were allocated in certain manners for particular projects. It also sought out additional information on the ADB's loan procedures, how funding applications are reviewed and prepared for the board's consideration, the reasons why some projects were denied funding, and project monitoring and compliance.

### **Agency Reports Received**

In addition to the monthly reports from representatives of GOAP, the committee received status reports during the year from administrators of state and university programs receiving tobacco settlement funds through the state budget.

During each presentation, committee members asked a range of questions, focusing in many instances on how the agencies are using the Master Settlement Agreement funds appropriated to them to assist citizens.

Representatives of the Health Care Improvement Authority and Kentucky Access, high-risk insurance program, testified about how the new federal health care legislation may affect the Kentucky Access program.

The Director of the Division of Early Childhood Development testified that on the division's use of the 25 percent of the tobacco settlement moneys it receives to help operate programs.

The Executive Director of the Tobacco Prevention and Cessation Program in the Department for Public Health detailed how funds are used in various smoking prevention programs.

Officials with the Kentucky Agency for Substance Abuse Policy reported on that agency's efforts to help communities combat alcohol and substance abuse and tobacco use.

Representatives of the University of Louisville and the University of Kentucky, partners in the Kentucky Lung Cancer Research Program, submitted written reports in lieu of testimony about the universities' use of tobacco settlement dollars as a part of their overall funding.

The Director of the Division of Conservation briefed the panel on that agency's use of tobacco settlement funds to continue ongoing farmland soil erosion and water quality cost-sharing programs.

### **Other Reports and Actions**

An agronomy specialist with the University of Kentucky addressed the committee on an ongoing project to assess the growth characteristics, energy production potentials, and income possibilities of switchgrass.

Representatives of a southcentral Kentucky company that harvests, processes, and sells native grass and plant seeds testified that, through the years, the company has benefitted from an ADB grant and a Kentucky Agricultural Finance Corporation loan.

As the year ended, the committee was prepared to receive a report regarding on-farm, county, and regional energy projects paid for by tobacco settlement funds and federal American Recovery and Reinvestment Act funds.

After receiving testimony about a proposed World Health Organization cigarette ingredients ban, the committee voted to send a letter to appropriate officials expressing its concerns about the possible impact of the ban on tobacco growers.