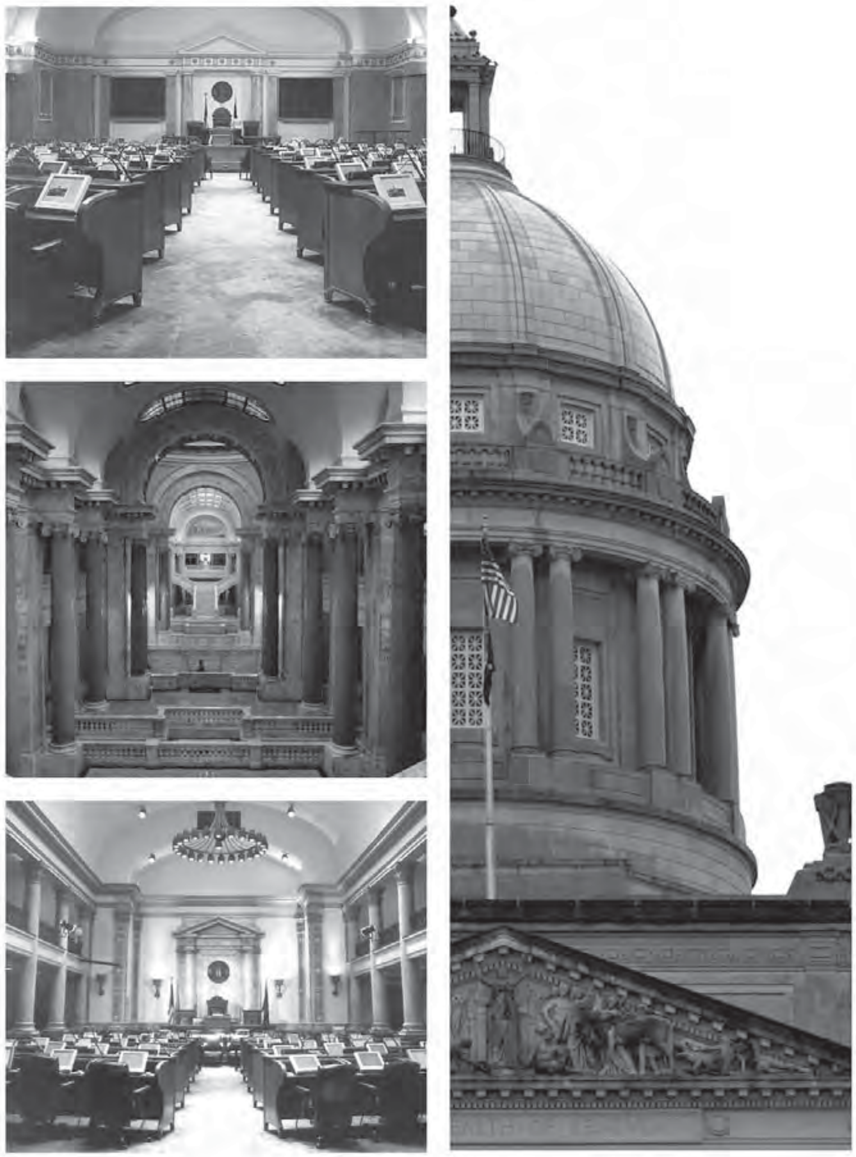
# Final Reports of the Interim Joint, Special, and Statutory Committees 2011



**Informational Bulletin No. 237**

**Legislative Research Commission**
**Frankfort, Kentucky**
**December 2011**

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

# 2011

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
**Kentucky General Assembly**

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**Legislative Research Commission**
Frankfort, Kentucky
lrc.ky.gov

**December 2011**

# 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 2011 Interim, all 15 interim joint committees held meetings. One special committee met in 2011. All eight statutory committees met during the 2011 Interim.

LRC provides this informational booklet as a summary of the activity of the interim joint, special, and statutory committees since adjournment of the 2011 General Assembly. The reports were prepared separately by the committee staff.

Robert Sherman
Director

Legislative Research Commission
Frankfort, Kentucky
December 2011

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**Rep. Tom McKee, Co-Chair**

Sen. Joe Bowen
Sen. Carroll Gibson
Sen. Paul Hornback
Sen. Bob Leeper
Sen. Vernie McGaha
Sen. Dennis Parrett
Sen. Joey Pendleton
Sen. Dorsey Ridley
Sen. Damon Thayer
Sen. Robin Webb
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. Will Coursey
Rep. Jim DeCesare
Rep. Mike Denham
Rep. Myron Dossett
Rep. C.B. Embry, Jr.
Rep. Jim Glenn
Rep. Sara Beth Gregory
Rep. Richard Henderson
Rep. Kim King
Rep. Martha Jane King
Rep. Michael Meredith
Rep. Terry Mills
Rep. Brad Montell
Rep. Fred Nesler
Rep. David Osborne
Rep. Sannie Overly
Rep. Ryan Quarles
Rep. Tom Riner
Rep. Steven Rudy
Rep. Rita Smart
Rep. Wilson Stone
Rep. Tommy Turner
Rep. Susan Westrom

LRC Staff: Tanya Monsanto, Lowell Atchley, Biff Baker, Stefan Kasacavage, Kelly Blevins, and Susan Spoonamore.

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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. Carroll Gibson
Sen. Dennis Parrett
Sen. Joey Pendleton
Sen. Robin Webb
Rep. Royce W. Adams
Rep. Sara Beth Gregory
Rep. Richard Henderson
Rep. Martha Jane King
Rep. Michael Meredith
Rep. Brad Montell
Rep. Fred Nesler
Rep. David Osborne
Rep. Sannie Overly
Rep. Ryan Quarles
Rep. Tom Riner
Rep. Rita Smart
Rep. Wilson Stone

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. Joe Bowen
Sen. Paul Hornback
Sen. Bob Leeper
Sen. Dorsey Ridley
Sen. Ken Winters
Rep. John A. Arnold, Jr.
Rep. Johnny Bell
Rep. John “Bam” Carney
Rep. Mike Cherry
Rep. James R. Comer, Jr.
Rep. Will Coursey
Rep. Jim DeCesare
Rep. Myron Dossett
Rep. C.B. Embry
Rep. Jim Glenn
Rep. Kim King
Rep. Terry Mills
Rep. Steven Rudy
Rep. Tommy Turner

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

LRC Staff: Stefan Kasacavage and Susan Spoonamore

## Interim Joint Committee on Agriculture

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

### Committee Activity

The Interim Joint Committee on Agriculture held six meetings during the 2011 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 two meetings during the Interim. Various topics were discussed, and several agencies and organizations updated the committee members on ongoing projects and proposed legislative suggestions for the 2012 Regular Session.

The committee received legislative proposals and comments for the 2012 Regular Session from representatives of the Governor's Office of Agricultural Policy, the Kentucky Farm Bureau, the Community Farm Alliance, the Animal Control Advisory Board, the Kentucky Board of Veterinary Examiners, and the Kentucky Department of Agriculture.

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, a proposed USDA rule for improving livestock traceability was discussed by the state veterinarian, and an update on the status of a federal guidance document regarding agricultural vehicles was given by LRC staff.

The committee toured the Eastern Kentucky University Center for Renewable and Alternative Fuel Technologies and heard a discussion of biofuels and bioenergy from the director of the center, the director of the Division of Biofuels, and the executive director of the Governor's Office of Agricultural Policy.

The committee also visited the Veterinary Diagnostic Laboratory in Lexington and a stockyard in Glasgow. At the stockyard, there were updates from the state veterinarian regarding the disposal of dead animals and the status of the Eastern Livestock Bankruptcy. At this meeting, the committee members voted to send a letter to Kentucky's congressional delegation opposing an effort to remove tobacco products from the Trans-Pacific Partnership free trade agreement.

The committee heard from representatives of The Catfish Institute regarding the institute's proposal to require restaurants to disclose the country of origin of catfish sold in the restaurants. The committee also heard testimony from the executive director of the Kentucky Association of Food Banks regarding the status of the food supply in Kentucky.

### Administrative Regulations

The committee received two administrative regulations during the 2011 Interim, both from the Department of Agriculture: One related to pest control and the other to ginseng.

## Legislative Proposals Received from State Agencies

The following legislative proposals were received in the full committee.

**Governor's Office of Agricultural Policy**

- Increase the loan cap and change the definition of "Beginning farmer" under the Kentucky Agricultural Finance Corporation statutes

**Kentucky Farm Bureau**

- Maintain 50 percent of the Master Settlement Agreement to the Agricultural Development Fund
- Pay $28 million in debt service on bonds from the General Fund rather than from the Agricultural Development Fund
- Fund the Breathitt Veterinary Center
- Adequately fund the Kentucky Department of Agriculture
- Support the Kentucky Proud program
- Support the Kentucky Soil Erosion and Water Quality Cost-Share Program
- Continue the 22.2 percent allocation of the gas tax revenue to rural roads
- Keep in place the Property Tax Cap
- Protect property rights and enforce trespass laws

**Community Farm Alliance**

- Create a Kentucky Food Policy Council

**Kentucky Animal Control Advisory Board**

- Fund $3 million for animal control officer training, shelters, and spay/neuter programs

**Kentucky Board of Veterinary Examiners**

- Update KRS Chapter 321 (Veterinarians)

**Kentucky Department of Agriculture**

- Allow the department to regulate non-native species of bees

## Reports Received

The committee received the following reports:

- The Kentucky Tobacco Research and Development Center: Quarterly Report for April 1 through June 30, 2011
- The Kentucky Tobacco Research and Development Center: Quarterly Report for July 1 through September 30, 2011
- The Cabinet for Economic Development: Letter informing the LRC that no activity occurred with the Agricultural Warehousing Sites Cleanup Fund for FY 2011
- Report of the Audit of the Kentucky Department of Agriculture Spay and Neuter Program for FY 2011

- Kentucky Small Business Development Center Annual Report (received from the Subcommittee on Rural Issues)
- 2011 Report from the state apiarist

## Subcommittee Activity

### Subcommittee on Horse Farming

The Subcommittee on Horse Farming met twice during the 2011 Interim and heard testimony on a number of equine-related issues. The equine program manager from the office of the state veterinarian discussed ways the office monitors, prepares for, and deals with equine diseases and outbreaks affecting the horse industry in Kentucky. He also reported on the activities of the Equine Health and Welfare Council, created by the General Assembly in the 2010 session. In addition, representatives of three horse rescue organizations discussed how each organization conducts equine rescue.

The executive director of the Kentucky Horse Council discussed the activities and legislative goals of the council, and a representative of the American Saddlebred Horse Association discussed the history, status, and uses of the breed. The subcommittee also heard from the director of the new HFL Sports Science Laboratory in Lexington, which does drug testing for the pari-mutuel racing industry.

### Subcommittee on Rural Issues

The Subcommittee on Rural Issues met twice during the 2011 Interim. Officials from USDA Rural Development discussed federal rural assistance programs, and the state director of the Kentucky Small Business Development Center testified regarding its rural business development programs. Additionally, Kentucky hospital representatives testified on the state of rural access to health care in Kentucky, and members of the Kentucky Milk Commission updated the subcommittee on recent activities of the commission.

The subcommittee received an update from the Attorney General’s office on its prosecution of the Eastern Livestock case, and the conservationist of the USDA Natural Resources Conservation Service testified on federal conservation programs available to rural Kentuckians. In addition, several stakeholders testified on the economic development opportunities provided by the Houseboats to Energy-Efficient Residences project in southeastern Kentucky.

# Report of the 2011
# Interim Joint Committee on Appropriations and Revenue

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

Sen. Walter Blevins Jr.
Sen. Joe Bowen
Sen. Tom Buford
Sen. Jared Carpenter
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Ray S. Jones II
Sen. Alice Forgy Kerr
Sen. Vernie McGaha
Sen. Gerald A. Neal
Sen. R.J. Palmer II
Sen. Joey Pendleton
Sen. Brandon Smith
Sen. Jack Westwood
Sen. Mike Wilson
Rep. Royce W Adams
Rep. John A. Arnold, Jr.
Rep. Dwight D. Butler
Rep. John “Bam” Carney
Rep. James R. Comer, Jr.
Rep. Jesse Crenshaw
Rep. Ron Crimm
Rep. Mike Denham
Rep. Bob M. DeWeese
Rep. Kelly Flood
Rep. Danny R. Ford
Rep. Derrick Graham
Rep. W. Keith Hall
Rep. Richard Henderson
Rep. Jimmie Lee
Rep. Reginald Meeks
Rep. Lonnie Napier
Rep. Fred Nesler
Rep. Sannie Overly
Rep. Marie L. Rader
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Rep. Arnold Simpson
Rep. Jim Stewart III
Rep. Tommy Turner
Rep. Jim Wayne
Rep. Alecia Webb-Edgington
Rep. Susan Westrom
Rep. Brent Yonts

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

**Presented to the**
**Legislative Research Commission**
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**2012 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. Ray S. Jones II
Sen. Alice Forgy Kerr
Rep. Lonnie Napier
Rep. Marie Rader
Rep. Fitz Steele
Rep. Susan Westrom

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Rep. Leslie Combs, nonvoting ex-officio
Rep. Jim Gooch, Jr., nonvoting ex-officio
Rep. Ruth Ann Palumbo, nonvoting ex-officio

LRC Staff: Kem Delaney-Ellis, Perry Papka, Jennifer Rowe, and Christina Williams

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

**Sen. Jack Westwood, Co-Chair**
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Sen. Joey Pendleton
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Rep. Brad Montell
Rep. Tanya Pullin
Rep. Tom Riner
Rep. Wilson Stone

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Rep. Steve Riggs, nonvoting ex-officio

LRC Staff: Katherine Halloran, Perry Papka, Jennifer Rowe, Frank Willey, Tom Willis, and Spring Emerson

**Budget Review Subcommittee on**
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Sen. Denise Harper Angel
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Rep. Addia Wuchner

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Rep. Brent Yonts

Rep. John Tilley, nonvoting ex-officio

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Rep. Jim DeCesare
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Rep. Melvin Henley
Rep. Reginald Meeks
Rep. Jody Richards
Rep. Kevin Sinnette
Rep. Rita Smart

Rep. Carol Rollins, ex-officio

LRC Staff: Kelly Dudley, Linda Jacobs Ellis, Tom Willis, and Amie Elam

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

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**Rep. Derrick Graham, Co-Chair**

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Rep. James Comer
Rep. Will Coursey
Rep. Ted Edmonds
Rep. Dennis Horlander
Rep. Charles Miller
Rep. Rick Nelson
Rep. John Will Stacy

Rep. Carl Rollins, ex-officio

LRC Staff: Linda Jacobs Ellis, Jennifer Rowe, Tom Willis, and Amie Elam

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**Rep. Sannie Overly, Co-Chair**

Sen. Ernie Harris
Sen. Ray Jones
Sen. R.J. Palmer II
Rep. Tim Couch
Rep. Danny R. Ford
Rep. Jim Gooch
Rep. Jeff Greer
Rep. W. Keith Hall
Rep. Richard Henderson
Rep. Dennis Keene
Rep. Fred Nesler
Rep. Sal Santoro
Rep. John Short
Rep. Jim Stewart

Rep. Hubert Collins, nonvoting ex-officio

LRC Staff: Jenny Anglin, Chuck Truesdell, 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 2011 Interim, the Interim Joint Committee on Appropriations and Revenue held six meetings and received testimony regarding a wide range of topics.

#### Consensus Forecasting Group's Preliminary Revenue and Economic Forecast

A staff member of the Legislative Research Commission presented the Consensus Forecasting Group's (CFG) preliminary revenue and economic forecast for the next 2 years. He provided a brief description of the statutorily required reports from the CFG, along with an overview of the process used by the CFG to produce the group's reports. He discussed and provided statistics regarding various factors, both national and Kentucky specific, that influence the CFG's findings.

Staff provided an overview of fiscal years 2012, 2013, and 2014 general fund estimates. The estimated revenues for FY 2012 are $9,008 million, an increase of 2.8 percent, with significant increases projected in the corporate income tax. The estimated revenues for FY 2013 are $9,172 million, an increase of 1.8 percent. The estimated revenues for FY 2014 are $9,397 million, an increase of 2.4 percent. The CFG projection for FY 2012 represents an increase of $137 million over the amount projected for FY 2012 as part of the 2010-2012 official forecast.

Staff discussed road fund revenues, stating that FY 2011 revenues surpassed FY 2008 pre-recession revenue levels. The estimated revenues for FY 2012 are $1,413 million, an increase of 5.5 percent over FY 2011. The estimated revenues for FY 2013 are $1,496 million, an increase of 5.9 percent. The estimated revenues for FY 2014 are $1,582 million, an increase in revenues of 5.7 percent. The CFG projection for FY 2012 represents an increase of $72 million over the amount projected for FY 2012 as part of the 2010-2012 official forecast.

Finally, staff discussed the Tobacco Master Settlement Agreement payment estimates. The current estimates are $97 million in FY 2012, $92 million in FY 2013, and $91 million in FY 2014.

#### Kentucky's Bonded Indebtedness

The staff administrator of the Capital Projects and Bond Oversight Committee of the Legislative Research Commission discussed a memo prepared for the committee relating to state debt. The report examines trends in the state's debt, the cost of issuing new debt, the state's financial management of its debt structure, and the state's credit profile. According to the report, as the state's outstanding debt increases, the amount of money that the General Assembly must appropriate to pay debt service, also increases. One-time resources such as fund transfers, federal aid to states, and debt restructurings are not available in the future to address recurring expenditures such as debt service. Using nonrecurring revenues to offset recurring expenditures results in a structural budget gap. The state's use of nonrecurring resources was cited by the rating agencies as a factor contributing to Kentucky's recent credit rating downgrade. Kentucky's structural imbalance predates the economic downturn.

As of FY 2010, the state had $7.8 billion in appropriations supporting outstanding debt. Outstanding debt is projected to be about $9.65 billion in FY 2012, assuming that all debt that has been authorized by the General Assembly that has not been marketed yet will be issued. Approximately $1.6 billion of the new appropriations debt has not been issued, including approximately $498 million in general fund debt, $482 million in agency fund debt, and $667 million in road fund debt.

The staff administrator stated that the state has restructured outstanding general fund- and road fund-supported debt through six transactions for the purpose of providing budgetary relief. These debt restructurings are nontraditional refunding transactions, which replace outstanding bonds with new bonds that have different terms. Debt restructuring does not extend the maturity date on the existing debt, but pushes the amount the state has to pay on its debt out to later fiscal years. Although this reduces the state's debt service payments during the current fiscal biennium, it will cost the state additional interest on the debt over the life of the bonds. As a result of these restructurings, the state avoided $427.7 million in debt service payments from FY 2009 to FY 2012. However, the state eventually will pay an additional $171.6 million in interest over the life of the restructured bonds. The rating agencies have cited these debt restructurings as contributing to the state's structural imbalance, thus resulting in the downgrade.

**Reductions Mandated and Gaps Created by the Budget for FY 2012**

The secretary of the Governor's Executive Cabinet provided the committee with an overview of FY 2012 budget balancing measures to be implemented by the Executive Branch. The secretary summarized cuts that have been implemented to date, and reported that agencies were informed that an additional cut of 2 percent would be implemented during FY 2012, noting that for the most part, state agencies exempt from prior cuts would also be exempted from the cuts in FY 2012. She noted that revenues are improving; however, FY 2013 and FY 2014 will still be very challenging. The secretary reported that actual revenue collections continue to exceed the CFG forecast, and that a portion of those revenues will be used to balance the FY 2012 budget. Additional spending reductions will be imposed, including recurring savings from nonmerit reductions during 2011, debt restructuring, and the 2 percent reduction. These measures will result in $189.1 million in revenues to offset the projected shortfall. The secretary noted that despite our revenue shortfalls, Kentucky has still fared better than many other states during the recession.

The deputy budget director then discussed the potential impact of federal budget sequestration on Kentucky.

**Third-quarter FY 2011 Revenue Update**

The deputy executive director of the Governor's Office for Economic Analysis discussed Kentucky's current economic conditions and provided an overview of general fund and road fund revenues for the third quarter of 2011. Growth has occurred in the individual income tax, corporate income tax, and coal severance tax segments. The general fund showed a total increase of $95.7 million, but after subtracting the $31.1 million for local coal severance distribution, the net general fund balance over that projected was $64.6 million for the third quarter.

The deputy executive director discussed the state's road fund revenues and interim forecast, compared to the CFG estimates. The motor fuels tax and motor vehicle usage tax increased, causing a higher than expected growth in the fund. The motor fuels tax was $55.3 million over the CFG projection, while the motor vehicle usage tax was $18.4 million over the amount projected. The total road fund revenue is $75.6 million over the CFG estimate, and when $26.6 million is removed for motor fuels tax sharing, the road fund showed a net revenue increase of $49 million for the third quarter over the CFG estimate.

The deputy executive director stated that since the third quarterly report, the general fund grew by 7.9 percent in April and 17.8 percent in May. In May, there was a nominal revenue increase of $113.6 million. This was accomplished by a 37.5 percent single-month growth in individual income tax, with the withholding component growing by 12.3 percent. The coal severance tax increased 37.1 percent in May with a nominal revenue increase of $9.0 million.

**FY 2011 Year-end Totals for the General Fund and Road Fund**

The secretary of the Governor's Executive Cabinet and the state budget director provided an overview of FY 2011 year-end totals for the general fund and road fund. She updated the committee regarding incoming Tobacco Master Settlement funds and American Recovery and Reinvestment Act (ARRA) expenditures for FY 2011. General fund revenues increased by 6.5 percent for the year. There was growth in all of the major taxes, with 3.7 percent in sales tax, 8.3 percent in individual income tax, 26 percent in corporate income tax, and 47.8 percent in the limited liability entity tax. The receipts exceeded the official FY 2011 estimate by $166.1 million. After deduction for dedicated severance tax appropriations and adding in unbudgeted lapses, the total general fund surplus is $156.8 million. In accordance with the HB 1 surplus expenditure plan, $35 million will be used for FY 2012 necessary government expenses, and $121.8 million will be deposited in the Budget Reserve Trust Fund.

The secretary discussed FY 2011 necessary government expenses (NGE) and budget-balancing measures. The total NGE for FY 2011 was $29.8 million, and the FY 2010 general fund surplus to cover the FY 2011 NGE was $29.7 million. The FY 2011 budget required a total of $193 million in reduced spending, which was divided between $62 million in enacted appropriation reductions and a $131 million budgeted gap. The balancing measures included debt restructuring, operating cost reductions, state employee furloughs, nonmerit personnel reductions, and asset sales. Additional measures included reduced contract spending, improved fleet management, reduced state leases, and reduced phone and information technology costs.

She said that $22 million of contract reductions were accomplished with contract renegotiations. She outlined the reduction of 105 nonmerit employee positions and provided more detail about additional efficiency measures including the sale of assets and energy management in state-owned buildings.

The secretary discussed FY 2012 budget-balancing plans, stating that most agencies have a 6 percent reduction from FY 2010 appropriations levels and a budgeted gap for FY 2012 of $189.9 million. The revenue outlook for FY 2012 is improving, and there are no plans for furloughs in FY 2012.

The secretary discussed the FY 2011 road fund revenues. The road fund revenues increased by 11 percent in FY 2011, due to increases in the motor fuels tax and motor vehicle usages tax receipts. Revenues exceeded the projected estimate by $73 million. The road fund finished FY 2011 with a surplus of $67.5 million, with all surplus funds deposited into the State Construction Account.

The secretary discussed Tobacco Master Settlement Fund receipts for FY 2011. The receipts were 10.3 percent less than budgeted so proportionate reductions were made in the Rural Development Fund, and areas of early childhood development and health care improvements.

The secretary provided an update regarding ARRA expenditures for FY 2011. Kentucky was awarded $3.5 billion, which includes funds that are distributed through state government. The total comprises 2,645 individual grants, 47 loans, and 916 federal contracts. Approximately $3 billion of the total was channeled through state government by formula, match, or competitive award. To date, 92 percent of the funds has been expended. She gave a brief accounting of the areas where ARRA funds have been distributed.

**Department of Revenue/Finance Cabinet Contingency Fee Contracts for Collecting Taxes**

The executive director of the Office of Processing and Enforcement of the Department of Revenue informed the committee that an agreement between the Department of Revenue/Finance Cabinet and ACS State and Local Solutions relating to assistance with corporate audits was not continued after the initial term, and that no taxes were collected that would have resulted in contingency fees being paid to ACS during the term of the agreement.

**Current Economic Development Incentives and Programs**

The secretary of the Cabinet for Economic Development discussed the cabinet's reorganization and staffing reductions. He stated that the number of new jobs created in Kentucky so far this year is 22 percent more than the number of jobs created last year at this time, and the amount of investment per new job created this year is 30 percent more than last year. Also, 30 percent of the total economic investment in the state last year was from foreign sources.

The commissioner of the Department for Business Development stated that some of the state's economic development programs have become antiquated. He stated that the cabinet is using innovative methods to recruit new business and to work with existing industries going through consolidation to keep them in Kentucky, rather than possibly losing those businesses to another state with more programs.

The commissioner discussed House Bill 3, which provides more tools for the cabinet in encouraging new job creation and recruiting of new industries. According to the commissioner, HB 3 has allowed the flexibility needed to keep existing companies in Kentucky. HB 3 has allowed the cabinet to help companies retool their facilities and become more cutting edge in the types of products produced or services provided. The commissioner also discussed the provisions of HB 3 that increase accountability and transparency relating to companies that take part in new economic development programs. Since the implementation of HB 3, approximately 350 companies have received preliminary approval for incentives. Those projects have potential investment of $3.5 billion statewide and could result in the creation of 19,600 new jobs and retention of 7,350 existing jobs.

The commissioner discussed tax increment financing (TIF) use in the state. He stated that to date, there are 13 active projects that have received final approval. These projects are in Louisville, Lexington, Bowling Green, Newport, Dayton, Georgetown, and Versailles. In addition to these active projects, there are three projects in the preliminary stages of development. The approved projects represent more than $7 billion in new investment in the state and more than $2 billion in recoverable funds through the TIF program. He said that the five completed projects are generating new revenue above the baseline.

**Implementation of the 2011 Penal Code Reform Bill**

The secretary of the Justice and Public Protection Cabinet discussed the provisions and implementation of HB 463, the 2011 penal code reform bill. He provided a brief overview of the current inmate statistics and provisions of the bill, focusing on the bill’s requirements for the measurement and documentation of cost savings. He stated that there are 21,692 inmates in the Department of Corrections system. Of those inmates, 8,051 are housed in county jails, representing 37 percent of the felon population. He discussed the percentage of the total population that represents drug and repeat offenders.

The secretary stated that the bill divides the fiscal savings into different cost saving areas. The bill requires the Department of Corrections to measure and document fiscal savings resulting from changes to the Controlled Substances Act. These savings are to be used solely for expanding and enhancing evidence-based drug treatment programs. Twenty-five percent of the documented savings from other law changes is directed to the Local Corrections Assistance Fund. These funds will be used to supplement county jail reimbursement for housing a portion of the state felon population. A portion of the remaining savings is to be directed to expanded probation and parole services, additional pretrial services, and the addition of drug court case specialists.

The secretary discussed additional cost saving measures in the bill, including the use of risk and needs assessment tools, improvement of release planning services to expedite discharge of inmates, use of new types of supervision for offenders, and the expanded use of home incarceration. The secretary provided the committee with additional information regarding these types of measures. He also provided examples of provisions of the bill that the department has implemented. These include biweekly meetings with key staff, hiring of 50 new parole officers, use of a violation matrix for probationers, and expansion of home incarceration.

The secretary discussed the challenges faced by the department in implementing the provisions of HB 463. The department has seen an increase in the prison population of about 1,000 inmates since July 2010. The department's current budget was based on flat population growth, leading to reduction in funds in some areas. The population will diminish by 1,200 to 1,300 in January 2012 when mandatory supervision is implemented. Another challenge for the department is finding the resources to provide appropriate substance abuse programs to inmates who require this service.

The secretary stated that the projected annual cost savings associated with the implementation of HB 463, once fully implemented, will be $42 million.

**Medicaid Managed Care Contracts**

The secretary of the Cabinet for Health and Family Services provided the committee with an update regarding the recently awarded Medicaid managed care contracts. The secretary gave an overview of the history of the contracts and discussed the budgeted shortfall and assumed program management savings for FY 2012, which total $177 million. She discussed the cost-containment measures implemented July 1 of FY 2011, and stated that these would continue into FY 2012 to cover the $97.3 million budgeted shortfall. Cost savings anticipated through the managed care contracts for FY 2011 are $83.2 million. Additional cost savings of $10.5 million will be realized from Passport contract savings and $2.4 million from long-term care cost containment. The total funds saved in FY 2012 are $97.5 million, leaving a remainder of $200,000. This will allow the FY 2012 Medicaid budget to balance.

The secretary identified the three managed care organizations (MCOs) awarded contracts as CoventryCares of Kentucky, Kentucky Spirit Health Plan, and WellCare of Kentucky. These providers will be servicing all regions of the state outside the Passport service region. The organizations will provide selected Medicaid-covered benefits for selected recipients for a fixed price per member per month. The contracts are for a 3-year term, effective from July 6, 2011, through June 30, 2014. Services will begin starting October 1, 2011, and will be provided to approximately 560,000 recipients throughout the state. The services provided through the MCOs exclude long-term care waiver programs and nursing homes. The secretary noted that the contracts will reduce expenditures and create an infrastructure to improve health care outcomes and quality of care.

The secretary discussed the patient protection provisions included in the MCO contracts. The provisions include a grievance and appeals process, robust reporting requirements, quality assessment and performance improvement programs, and an external quality review organization. Other contract provisions provide for termination by the Commonwealth for convenience clause; termination of the contract for non-performance or non-reporting; financial disclosures regarding key management; caps on administrative costs at 10 percent; and MCOs' required compliance with open records and open meeting laws.

The secretary provided estimates of MCO savings for the term of the contracts. The estimated savings is $289.3 million for FY 2012, $464.1 million for FY 2013, and $552.5 million for FY 2014. The total estimated savings for the term of the MCO contract is $1.3 billion. She gave historical data regarding per-member per-month costs for FY 2003 through FY 2010. She provided projected costs for FY 2011 through FY 2014 and contrasted these projected costs with the lower contracted MCO rates for the same period. She also provided historical and projected data regarding numbers of MCO-eligible population in the seven regions and discussed projected growth rates within the regions.

The secretary discussed the oversight of the MCOs, which will be provided by the cabinet. An administrative unit has been established, staffed with individuals with health plan experience and technical skills. The unit will provide statutory accounting and financial analysis; will contract monitoring, auditing and accounting, and data analysis; and will assess quality of care.

**Implementation of the New Personnel System**

A representative of the Division of Technology Services, Personnel Cabinet, discussed implementation of the Kentucky Human Resources Information System (KHRIS). He reported that the system is the largest enterprise-wide technology transformation in the history of Kentucky state government. The new system replaced the payroll system, benefits administration system, life insurance system, and approximately 25 other systems used for human resource functions in state government. The system went live on April 4, 2011, and has been implemented with very few problems or issues. Some reports from the system for use in budgeting and planning purposes are currently available, and others are in the final testing phases and will be available soon.

**Student Financial Aid in Kentucky**

The vice president of government relations for the Kentucky Higher Education Assistance Authority provided general information about the federal Pell Grant program. It is the single largest source of federal grant aid supporting postsecondary students. The program is designed to make higher education accessible to low-income students and is administered by the US Department of Education. It is funded through discretionary and mandatory appropriations, and it provided more than $34.8 billion in aid to 9.5 million students in 2010-2011. Of this total, $486.5 million was disbursed to students in Kentucky. She stated that 51 percent (133,991) of students attending Kentucky postsecondary institutions received grant awards for the 2010-2011 school year. The grant money was distributed as follows: 45 percent to 2-year public institutions, 29.5 percent to 4-year public institutions, 14.5 percent to proprietary institutions, and 11 percent to private institutions. Kentucky's total postsecondary financial aid sources are as follows: 22 percent from Pell Grant funds, 58 percent from other federal sources, 11 percent from institutional sources, and 9 percent from state funds.

The director of student aid for the Kentucky Higher Education Assistance Authority discussed recent federal financial aid legislation, highlighting several pieces of legislation and discussing their effect on federal student financial aid. She discussed Pell Grant eligibility, stating that the applicant must be a US citizen or an eligible non-citizen, must have a high school diploma or equivalency, and must meet academic progress standards. In addition, the applicant must be enrolled in an undergraduate course of study without having received a prior bachelor's degree and must never have been in default on a Title IV loan or liable for an overpayment on a Title IV grant.

The director discussed the federal needs analysis associated with the Pell Grant program. Expected Family Contribution (EFC) is the standard formula used in determining financial need. Factors used to determine EFC are adjusted gross income, untaxed income, taxes paid, assets, household size, and number of persons in the household attending college. The maximum EFC for Pell Grant eligibility is $5,273. She discussed the application process for federal financial aid, outlining the Free Application for Federal Student Aid (FAFSA) form, which provides data needed to determine EFC. FAFSA also serves as the application for other aid programs, including state financial aid. Pell Grant award amounts range from $555 to $5,500 per school year. Award amounts are based on a student's EFC and enrollment status. When determining the award amount, the lower the EFC, the greater the Pell Grant eligibility. Students making satisfactory academic progress may receive Pell Grant awards for up to 18 semesters.

The director discussed funding issues in the Pell Grant program. The present grant budget does not meet current funding needs, due to an increase in students enrolling in college who qualify for assistance. Changes in EFC eligibility and the economic downturn have also contributed to underfunding. The current federal administration plans to change the program to a full entitlement grant program which would rely solely on mandatory federal funding, and not on discretionary funding subject to annual cuts.

The legislative liaison for the Kentucky Association of Student Financial Aid Administrators discussed financial aid packaging. The Pell Grant is considered the foundation of a student's financial aid package. These types of aid are added to help cover the student's total costs of attendance. Other types of aid include state grants and scholarships, institutional aid, student work programs, and student loans. Kentucky's three major financial aid programs are the College Access Program (CAP) grant, Kentucky Tuition Grant (KTG), and the Kentucky Educational Excellence Scholarship (KEES). Nearly 100 percent of net lottery proceeds are designated for these programs, minus $3 million for literacy initiatives. CAP and KTG receive 55 percent of net lottery proceeds, and KEES receives 45 percent. The CAP grant has a maximum award of $1,900 for the 2011-2012 academic year, and recipients must be eligible for Pell Grants and enrolled in college at least half time. The KTG has a maximum award of $2,964 for the 2011-2012 academic year and the recipient must be enrolled full time at an accredited independent institution and demonstrate financial need. This program has a total of $19.6 million in unfunded potential awards for FY 2011.

The liaison discussed the KEES financial aid program. This program is designed to reward students for earning good grades in high school. Award amounts are based on students' yearly grade point averages (GPAs) and their highest ACT or SAT scores. Students earn awards each year of high school based on a yearly GPA of 2.5 or higher, with awards ranging from $125 to $500 per year. Students who earn at least one GPA award can receive a bonus for scoring at least 15 on the ACT or 710 on the SAT. She finally discussed KEES bonus awards, which include achieving qualifying scores on Advanced Placement or International Baccalaureate exams. There is no limit to the number of bonus awards a student can receive. She outlined other state financial aid programs, which include teacher scholarships, osteopathic medicine scholarships, coal county scholarships for pharmacy students, Kentucky National Guard tuition awards, and work-study programs.

**Department of Parks**

The secretary of the Tourism, Arts and Heritage Cabinet provided an update of the state's park system. The secretary discussed the department's budget, stating that general fund appropriations decreased by 15.3 percent from FY 2010 to FY 2011. Funds available to the department were down by 10 percent for the same period, and the department was able to decrease expenditures by 9.5 percent. She discussed various ways the department has been able to reduce its 2011 budget, including implementation of operational efficiencies, introduction of a winter schedule, attrition of full-time employees, and the shifting of full-time staff to a 37.5-hour work week.

The commissioner of the Department of Parks discussed the effect of flooding on the park system. He stated that the estimated lost revenue due to flood and storm damage for FY 2011 was $750,000. Several system golf courses, marinas, and campgrounds have remained closed for extended periods. He discussed plans and expectations for FY 2012. The department intends to continue to implement study recommendations, to introduce new room rates, and to launch a more user-friendly website in late September. He briefly discussed the effects of the economic downturn on the travel industry, with consumer spending remaining flat over the last two quarters.

The commissioner discussed the implementation of alcoholic beverage sales at state parks. Alcohol is now available at Jenny Wiley, General Butler, Lake Barkley, John James Audubon, and My Old Kentucky Home state parks. All these parks are located in locally voted wet territories and have been properly licensed.

The commissioner provided a brief overview of park facilities and then discussed maintenance issues. He stated that while the maintenance budget has declined, the department is nonetheless responsible for maintaining 20 more facilities than in 2000. Park infrastructure has deteriorated at a rate that far exceeds the maintenance budget and the current estimated need exceeds $200 million. He provided examples of critical need capital projects, including Kentucky Dam Village and Rough River water distribution system upgrades, and Lake Cumberland electrical system upgrades. The current maintenance pool fund is $5.25 million.

**Kentucky Census Data Results**

The director of research and statistics for the Office of Employment and Training of the Kentucky Education and Workforce Development Cabinet discussed Kentucky's census data results, including data regarding population, employment, income and economic status. Nationwide, the northeast, southwest, and midwest are in major decline, the northwest is in moderate decline, and the southeast is poised to become the economic engine of the nation. He discussed worldwide population trends, stating that only 12 percent of the global population is under 25 years of age; between 2010 and 2020, he said, the majority of population growth, 53.5 percent, will be in people older than 65. Longevity is driving the world's population growth, but most developed countries have seen population replacement decline.

The director discussed Kentucky-specific trends, providing data in the following areas: percentage change in population from 2000 through 2010; change in employment by industry from 2001 through 2010; the ratio of employment to population among ages 15 to 64 for all counties; median income by county; average monthly earnings by county; average monthly earning including health care and social assistance; percentage of births to unmarried mothers by county; and current personal transfer receipts for the state by county.

## 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, to monitor the budgetary operations and programs of state government, and to address agency budget needs for the 2012-2014 biennium.

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

The Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection held two meetings during the 2011 Interim.

The Owensboro Museum of Fine Arts presented an overview of the museum, its programs, and its regional impact. Museum staff requested $500,000 in each year of the state's 2012-2014 biennial budget to support program expansion efforts.

Preservation Kentucky, a statewide nonprofit organization, presented information regarding the status of historic preservation efforts in Kentucky. Preservation Kentucky staff discussed the success of the state's historic preservation tax credit, but indicated that more could be achieved if the cap were raised from $5 million to $10 million.

The executive director of the Kentucky State Nature Preserves Commission presented information on the commission's activities, including species inventory, rare species protection, and land acquisition. The director indicated how recent budget constraints have limited the activities of the commission's staff.

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

The Budget Review Subcommittee on General Government, Finance, and Public Protection held one meeting during the 2011 Interim.

Staff from the Finance and Administration Cabinet discussed the Smart Government Initiative. The goal of this initiative is to improve efficiencies and reduce costs within and across state agencies. The program has focused on five areas: postal services, procurement services, transportation services, assets, and information technology. While it is early and somewhat difficult to quantify the savings and efficiencies that have been achieved, staff members are confident that the amount saved is several million dollars.

There was a discussion with staff from the Department for Local Government regarding the Area Development Fund. The discussion centered on the process used to allocate funds to the Area Development Districts and how those funds may be used.

Representatives from the Kentucky Association of Food Banks and area food banks addressed their operations and the overwhelming need that exists in the Commonwealth. In fiscal year 2011 the food banks distributed more than 50 million pounds of food to more than 600,000 Kentucky citizens. They also discussed the Farms to Food Banks program and detailed how produce farmers are able to get excess produce to the food banks.

There was a brief discussion of the state’s allocation of funds to assist with health insurance for employees of various quasi-governmental agencies in the Commonwealth.

## Budget Review Subcommittee on Human Resources

The Budget Review Subcommittee on Human Resources did not meet during the 2011 Interim.

## Budget Review Subcommittee on Justice and Judiciary

The Budget Review Subcommittee on Justice and Judiciary held two meetings during the 2011 Interim.

The commissioner of the Department of Corrections, commissioner of the Department of State Police, and the Department of Juvenile Justice provided an update on the budget status of their respective agencies for FY 2012, and discussed major budget issues for the 2012-2014 biennium.

The director of the Administrative Office of the Courts, the Justice Cabinet secretary, and the public advocate provided the subcommittee members with an update on the budget status of their respective agencies for fiscal year 2012 and discussed major budget issues for the 2012-2014 biennium.

### 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 five joint meetings during the 2011 Interim. Two of the meetings covered issues related to primary and secondary education, and three of the meetings covered issues related to postsecondary education.

The associate commissioner of administration and support for the Kentucky Department of Education (KDE) provided a summary of state grant allocations for FY 2011 and FY 2012 along with a status report on the implementation of 2009 Senate Bill 1. The key item related to SB 1 was a review of the time line for implementation and whether KDE and local school districts were meeting the mandated time lines.

Representatives from Parsons Commercial Technology Group, Inc. and MGT of America presented an update on the Facilities Inventory and Classification System, a study mandated by the General Assembly in 2010.

KDE's associate commissioner of administration and support discussed the financial condition of local school districts. This report included the general fund, capital fund and EdJobs fund balances at the close of FY 2011. The associate commissioner presented an overview of the status of education technology in local school districts.

Representatives from KDE briefly discussed the Support Education Excellence in Kentucky shortfall in FY 2011 and the projected shortfall in FY 2012.

The chair of the Council on Postsecondary Education (CPE) presented information on postsecondary education reform. This included an update on postsecondary progress toward meeting the goals set forth in the Kentucky Postsecondary Education Improvement Act of 1997 (HB 1). The president of CPE also discussed the development and components of the council's *2011-2015 Postsecondary and Adult Education Strategic Agenda: Stronger by Degrees*.

The president of CPE and the council's senior vice president for budget, planning and policy discussed the National Center for Higher Education Management Systems report titled *Realizing Kentucky's Educational Attainment Goal: A Look in the Rear View Mirror and Down the Road Ahead*. This report focuses on the state's advancements in the past decade and the gains that need to be made between now and 2020 for Kentucky to realize its college attainment and degree production goals under HB 1.

The senior vice president for academic affairs and director for student success for CPE provided an overview of the council's new academic policy and procedures for approving degrees, certificates, and diploma programs at the public institutions.

Representatives with Morehead State University, the Kentucky Community and Technical College System (KCTCS), and the University of Kentucky presented information regarding trends in planning and budgeting for virtual education.

A representative with KCTCS discussed the system's procedures for determining capital project priority rankings.

### Budget Review Subcommittee on Transportation

The Budget Review Subcommittee on Transportation held four meetings during the 2011 Interim.

The executive director and branch manager of the Office of Budget and Fiscal Management, Transportation Cabinet, provided updates on road fund revenues. The state's gasoline tax, based in part on the fluctuating average wholesale price of gasoline, varied between 25.6 and 25.9 cents per gallon for FY 2011 compared to the FY 2010 rate of 22.5 to 24.1 cents per gallon. For FY 2011, final road fund revenue receipts were $1.339 billion, an excess of $73 million over the original state estimate and 11 percent higher than FY 2010 road fund revenues. Motor fuels tax receipts were up 11.8 percent over FY 2010, while motor vehicle usage tax receipts were up 14.7 percent. Looking ahead to FY 2012, the Governor's Office of Economic Analysis projects revenues of $1.424 billion, an excess of $83.3 million over the original estimate. Of the difference, $79.9 million is derived from the motor fuels tax. Road fund revenue planning estimates for FY 2013 and FY 2014 are for $1.497 billion and $1.582 billion, respectively.

The executive director also updated members on the status of federal debt obligations. The amount of remaining debt service capacity on GARVEE bonds depends on reauthorization of the current program or the funding levels of the replacement program. Currently, the General Assembly has authorized $1.106 billion in GARVEE-funded projects.

The Transportation Cabinet secretary provided updates related to the Biennial Highway Construction Plan, including the difficulties of scheduling projects due to the need to design, buy right-of-way, and relocate utilities before actual construction can begin. The Highway District 12 chief engineer discussed state bond-funded projects, with $1.45 billion authorized since 2005, including a $200 million bond issue planned for early 2012.

The secretary also provided information related to federal highway funding for Kentucky projects. Of the federal gasoline tax collected in Kentucky, the state receives 85-92 percent back. The federally authorized transportation funding program, SAFETEA-LU, has expired and been reauthorized for short-term periods, but no long-term replacement program has been approved. Both the US House and Senate proposals consolidate highway programs into more manageable core program areas, provide more flexibility in the use of funds, require performance measures, and require greater transparency. No agreement between the two chambers has been realized, however, putting federally funded projects in a precarious position.

The secretary and the Louisville-Southern Indiana Ohio River Bridges Project manager discussed scope changes and cost savings to the project. Since December 2010, five scope changes have been made totaling $1.235 billion in savings. Although some of those cost savings will be shared by both states, an $800 million cost reduction in the reconstruction of Spaghetti Junction will mean savings for Kentucky exclusively. In total, the savings reduced the estimated project cost from $4.1 billion to $2.9 billion, based on a projected completion date of 2022 and anticipated annual inflation rate of 4 percent. An earlier completion date could result in added savings.

Information was provided to members on several other regional transportation issues during the interim. Legislators and local government officials from the Interstate 65 area presented an overview of safety issues along that corridor. The Highway District 12 chief engineer provided an overview of the Appalachian Development Highways program. The executive adviser to the Office of the Secretary and the base realignment and closure adviser informed members regarding those projects. The General Assembly has authorized $162 million in the last two biennia, but US Department of Defense cuts in coming years could mean federally funded infrastructure reductions near the state’s military bases.

The state highway engineer provided an update on the contract that was awarded for necessary repairs on the Interstate 64 Sherman Minton Bridge. He explained that the bid package had two components, one based on cost and the other based on the number of days estimated to complete the project. A value of $100,000 was assigned to each day. For each day the contractor exceeds the estimate, a penalty of $100,000 will be assessed. If the contractor completes the project early, it will receive a bonus of $100,000 per day up to a maximum of $5 million. The contract was awarded in the amount of $13.9 million to Hall Contracting, a Kentucky-based firm, which has experience completing projects with aggressive time lines. The contract cost will be shared equally with the state of Indiana.

Representatives from Kentuckians for Better Transportation testified on the impact of airports on the broader state economy. The state has 53 general aviation airports.

# Report of the 2011 Interim Joint Committee on Banking and Insurance

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

Sen. Jared Carpenter
Sen. Julian M. Carroll
Sen. Julie Denton
Sen. Tom Jensen
Sen. Dennis Parrett
Sen. Jerry P. Rhoads
Sen. Dorsey Ridley
Sen. John Schickel
Sen. Dan "Malano" Seum
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. Joseph M. Fischer
Rep. Danny Ford
Rep. Jim Gooch, Jr.
Rep. Sara Beth Gregory
Rep. Mike Harmon
Rep. Dennis Horlander
Rep. Brent Housman
Rep. Dennis Keene
Rep. Adam Koenig
Rep. Michael Meredith
Rep. Brad Montell
Rep. Sannie Overly
Rep. Ryan Quarles
Rep. Jody Richards
Rep. Steve Riggs
Rep. Arnold Simpson
Rep. Kevin Sinnette
Rep. Wilson Stone
Rep. Tommy Thompson
Rep. John Tilley
Rep. David Watkins

LRC Staff: Rhonda Franklin, Sean Donaldson, Jens Fugal, and Jamie Griffin

**Presented to the
Legislative Research Commission
and the
2012 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 two times during the 2011 Interim.

### Banking

Representatives of the Kentucky Banking Association stated that Kentucky's state banks are strong and viable. They addressed the potential impact of the Dodd-Frank Wall Street Reform Act on state banks, including burdensome regulation that was intended for the banks that were "too big to fail," which should not include the smaller state banks; the need to regulate providers of nontraditional financial services with the same level of scrutiny as banks; and the need to ensure that consumers have the information needed to make informed financial decisions.

Areas being reviewed by the association for possible legislative consideration include changes to the Uniform Commercial Code to maintain the ability of Kentucky businesses to enter into transactions consistently; changes to assure conformity with the federal Dodd-Frank Wall Street Reform Act; changes to conform to actual current business practices; and additional notices and reasonable restrictions on third-party tax purchasers to protect communities, citizens, and banks.

### Credit Unions

The Kentucky Credit Union League president explained the status and history of credit unions in Kentucky. Credit unions are member-owned, not-for-profit financial institutions. Credit unions consist of volunteer boards, supervisory committees, and paid professional staff. Credit union capital is accumulated retained earnings, and the membership is single sponsor, multiple group, and community.

Kentucky became the 13$^{th}$ state to enact a credit union act on March 24, 1922, predating the 1934 Federal Credit Union Act. The first Kentucky credit union charter was granted in November 1923, to Berea Credit Union, which still exists with more than 500 members and $1.3 million in assets. The second charter was issued to the Louisville Federal Credit Union in 1924 and still exists with about $35 million in assets. In the height of credit unions' presence in the mid-1970s, there were 280 credit unions in Kentucky and 22,600 nationwide. By the end of 2010, there were 86 credit unions in Kentucky, with 722,983 members and more than $6 billion in assets. As of March 2011, there were 7,431 credit unions in the United States, with 84 of those in Kentucky. Sixty of the state's credit unions are federally chartered, and 24 are state chartered. The federally chartered credit unions are regulated by the National Credit Union Administration, and the state-chartered credit unions are regulated by the Kentucky Department of Financial Institutions. All credit union deposits are federally insured up to $250,000 by the National Credit Union Share Insurance Fund, and the National Credit Union Administration is the administrator of that fund.

Credit unions have been cooperative with one another. The Credit Union Centers of Kentucky, LLC, is a prime example, with 14 credit unions that formed this shared branching organization in 1999. There are two stand-alone centers in Louisville, plus 19 other locations across Kentucky and 4,400 locations nationally. Credit union members can visit these locations and make transactions on their credit union accounts. Participating credit unions pay a transaction fee to the shared branching network, typically about $2 to $2.50.

**Insurance**

The commissioner of the Department of Insurance stated that potential legislation for the 2012 session would focus on consumer protection and departmental administration. Consumer protection legislation would redefine "dependent for life" for life insurance purposes. Other consumer protections would include property insurance changes to prohibit or limit cancellations and nonrenewal of property insurance due to a lack of or minimal credit history or cancellation of a policy based on the volume of inquiries regarding credit history, establish responsibility of an insurance agency for an agent's action, and prohibit previous year's audit as basis for cancellation. Health insurance legislation would incorporate the Affordable Care Act provisions already in effect. Without specific legislation addressing the provisions of the Act and clarification of the commissioner's enforcement authority, Kentucky's regulatory power over domestic insurance companies may be in jeopardy.

**Health Care Providers**

Independent pharmacist representatives addressed the challenges that independent retail pharmacies face with the advent of Pharmacy Benefit Management Companies. There are more than 550 independent pharmacies that are dealing with severe cuts in reimbursement rates and dispensing fees, or the abolition of dispensing fees. Many reimbursement amounts are less than the cost of the prescription to the pharmacy. They also discussed the challenges they will face with Medicaid managed care.

Kentucky home medical equipment providers addressed cancellation of existing provider contracts with one of the state's largest health insurers. The cancellation was due to a provider contract entered into between the health insurer and a national home medical equipment provider located in another state. Home medical equipment providers are not included in the "any willing provider" statutory language, which in effect allows insurers to exclude them from participating in provider contracts. The providers stated they would seek licensure of home medical equipment providers and their inclusion in the definition of “any willing provider” to ensure their participation in contracts with health insurers.

Representatives of a health insurer stated that the contract with the national medical equipment provider was not exclusive and that clinical management of more than 2,000 home medical equipment providers nationwide was too difficult. A contract with a national provider was more manageable.

# Report of the 2011 Interim Joint Committee on Economic Development and Tourism

**Sen. Alice Forgy Kerr, Co-Chair**
**Rep. Leslie Combs, Co-Chair**

Sen. Jared Carpenter
Sen. Julian M. Carroll
Sen. Julie Denton
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jerry Rhoads
Sen. Tim Shaughnessy
Sen. Kathy W. Stein
Sen. Katie Kratz Stine
Sen. Jack Westwood
Sen. Ken Winters
Rep. Julie Raque Adams
Rep. Royce W. Adams
Rep. Linda Belcher
Rep. Kevin D. Bratcher
Rep. John “Bam” Carney
Rep. Larry Clark
Rep. Will Coursey
Rep. Jim DeCesare
Rep. Mike Denham
Rep. Bob M. DeWeese
Rep. Myron Dossett
Rep. Ted Edmonds
Rep. Jim Gooch, Jr.
Rep. Jeff Greer
Rep. Keith Hall
Rep. Mike Harmon
Rep. Melvin B. Henley
Rep. Dennis Horlander
Rep. Wade Hurt
Rep. Dennis Keene
Rep. Thomas Kerr
Rep. Kim King
Rep. Martha Jane King
Rep. Adam Koenig
Rep. Donna Mayfield
Rep. Tom McKee
Rep. Terry Mills
Rep. Fred Nesler
Rep. David Osborne
Rep. Ruth Ann Palumbo
Rep. John Short
Rep. Fitz Steele
Rep. Wilson Stone
Rep. Tommy Thompson
Rep. Addia Wuchner
Rep. Jill York

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

**Presented to the**
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**and the**
**2012 Regular Session of the**
**Kentucky General Assembly**

## Subcommittee Organization and Membership

### Task Force on Economic Development

**Sen. Alice Forgy Kerr, Co-Chair**
**Rep. Ruth Ann Palumbo, Co-Chair**

Sen. Jared Carpenter
Sen. Julian M. Carroll
Sen. Julie Denton
Sen. Denise Harper Angel
Sen. Ernie Harris
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Rep. Dennis Keene
Rep. Thomas Kerr
Rep. Martha Jane King
Rep. Adam Koenig
Rep. Donna Mayfield
Rep. Terry Mills
Rep. Fred Nesler
Rep. John Short
Rep. Wilson Stone
Rep. Tommy Thompson

Rep. Leslie Combs, ex officio

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 2011 Interim, the committee held four meetings in Frankfort and two meetings out of town.

### KFC Yum! Center

The president and chief executive officer of the Kentucky State Fair Board testified about how the board manages the KFC Yum! Center arena and its bookings. He said the arena's success has exceeded all expectations. Since opening in October 2010, the arena has hosted 38 basketball games, 79 practice season games, 28 concerts and family shows, and 136 miscellaneous events that include meetings, food functions, and various other activities. The arena is a magnet for downtown Louisville and has generated a great deal of economic development in the area. In addition to the University of Louisville's basketball program, the arena has hosted a number of entertainers including sold-out concerts by internationally famous groups such as The Eagles, Lady Gaga, Kid Rock, and Elton John, along with performances by George Strait, Michael Bublé, and Justin Bieber.

With most concerts being held at the new arena, Freedom Hall Exposition Center has been affected. Through negotiations with the Arena Authority, beginning in 2011, the authority agreed to make up for any decrease in revenue at the Freedom Hall Exposition Center, using 2009 revenues as a base line because it was the center's last full year of operation. It is anticipated that after the newness of the arena fades, some events will return to Freedom Hall. The Exposition Center has maintained many of its events, including the Kentucky State Fair and the National Farm Machinery Show. The center is working with local athletic groups to draw sporting events to the center.

The international trade publication *Venues Today* rated the KFC Yum! Center 42nd among the top 50 ticket sales venues worldwide. After the arena's first anniversary, an economic impact analysis will be conducted. It was noted that media reports on development in the area have been positive. The arena is supported by 60 sponsorships with agreements ranging from 1 to 10 years with a value of more than $50 million.

With the opening of the arena, new venues have come to the area. Eight restaurants have opened nearby, including Bluegrass Brewing Company, Doc Crow's Southern Smokehouse and Raw Bar, and Eddie Merlot's. Before the arena was built, major conventions could not be held in downtown Louisville for lack of a large gathering place. The Louisville International Convention Center has the capacity for meetings but not for large gatherings. Now, large conventions can be held in the new arena, which seats more than 20,000, while break-out meetings and meal functions can be held at the convention center. Because of a well-designed parking plan designed in conjunction with the University of Louisville, Louisville Metro Police, and arena staff, event parking is not an issue.

The president of the Kentucky Fair Board testified about the Kentucky Kingdom Theme Park. The previous owners of the park, Six Flags Entertainment Corporation, did not maintain the park and closed or removed some rides before deciding not to renew the lease. Based on an analysis of the park, significant investment is required to return the park to good status, and the Fair Board is working diligently to establish a public/private partnership. The Fair Board is also working with Louisville Metro Government to establish the funding needed to open the park in 2012. About $23 million in loans and assistance will be needed to open the park at 80 to 85 percent capacity in 2012. The board will ask the 2012 General Assembly for the additional $20 million needed to operate the park at 100 percent and to bring in needed additional rides. If funding is not found soon, the park will be unable to open in 2012. The key to theme park success is the introduction of new rides and major experiences at least every other year. With the success of this plan, the park can return to 1997 income levels of $1.2 million.

**Tiffany & Co., Lexington Manufacturing Facility**

The vice president of operations at Tiffany & Co. spoke to the committee about Tiffany's new manufacturing facility in Lexington. Tiffany & Company's mission is to enrich the lives of customers by creating enduring objects of extraordinary beauty that will be cherished for generations. While the company has some cutting-edge products, it is not a fashion house but rather a luxury house of jewelry. In 2012, Tiffany & Co. will celebrate its 175$^{th}$ anniversary.

For a period of time, the company was owned by Avon Products, which advanced the company technologically by introducing new warehouse operations and point of service operations, turning a one-store operation into a growth opportunity. In 1984, senior management orchestrated a leveraged buyout followed by an initial public offering in 1987. In 1997, the company eclipsed $1 billion in sales. Sales for 2011 will reach $3.5 billion. Key strategies include expanding multiple channels of distribution. Fifty-two percent of sales come from the Americas, but international sales are growing rapidly. By the end of 2011, there will be 250 Tiffany & Co. stores in 24 countries. Although the company has moved to a regionalized approach, headquarters, merchandising, marketing, and supply management are still located in New York.

High-quality products are the hallmark of Tiffany & Co. The cornerstone is the shopping and customer service experience. Tiffany & Co. does not offer price promotions and sells its products only at full value. The company has great control over its diamond supply by having arrangements with selected mines to buy all diamonds and then sell off those of lesser quality. Stones are cut, polished, and then delivered to manufacturing to be set. The company has taken a strong stance in controlling its supply chain, and its efforts on social and environmental practices are the best in the luxury industry. The famous Tiffany ring setting, which is now being made in Lexington, remains the company's number one selling product. The vice president of operations said 60 to 65 percent of Tiffany jewelry merchandise is made by its American employees.

Tiffany & Co.'s vice president of manufacturing gave a profile of the company's current facilities. The company leases or owns eight manufacturing centers — all in the United States. The 900 factory employees are mainly craftspeople. The Kentucky facility will help provide better results in quality, delivery, and profits.

The new Lexington factory reflects the future of Tiffany & Co. In other locations, bench jeweler work is generational. The Lexington facility, however, is trend setting with the use of microscopes and high-definition television for setting diamonds and for polishing. The Lexington facility also houses computer programmers who program machines at other locations through networks.

The new 25,000-square-foot facility in Bluegrass Park opened in July. Tiffany is pursuing Leadership in Energy and Environmental Design certification as well. The Lexington facility will include a training center for new hires and retraining.

Consumer focus groups concluded that customers expect Tiffany & Co. products to be made in the United States. In 2009, the company looked at 50 locations for a new facility, which were then narrowed down to five. With every site having advantages and disadvantages, the decision to locate came down to people. The company needed people who could be trained to preserve and cultivate its culture. Lexington's arts and values and the sincerity of its people brought it to the forefront. State and local officials were helpful and accommodating during the decision-making process. The 90 employees hired have done an excellent job, and staff will increase to 125. The Lexington facility can double in size if necessary. Tiffany & Co. views Lexington as a critical point for its operations.

The attributes of a Tiffany & Co. employee include dexterity, strength, hand/eye coordination, a willingness to learn, physical stamina, and a willingness to be a team player. Employees are tested in these areas. The company is especially interested in those with a background in jewelry making and electronics. Employees come from varied backgrounds, including sales clerks and truck drivers. While other training may be helpful, each employee is trained in specific techniques at Tiffany & Co. Bench workers make $18 per hour. Employees make less during training, but upon graduation they receive a substantial raise with the ability to advance based on performance.

**Alcohol Sales in Selected State Parks**

The secretary of the Tourism, Arts and Heritage Cabinet said alcoholic beverage sales at selected state parks have been explored during prior legislative sessions. A study of the state park system commissioned by the cabinet in 2009 was the most extensive in its 85-year history and resulted in a detailed financial and strategic plan. A key recommendation was the sale of liquor by the drink at selected state parks. Peer park systems in other states have demonstrated that liquor sales by the drink have dramatically increased meeting and special event bookings, overall park attendance, and golf operations. Given the state's current financial situation, it is the cabinet's duty to explore all avenues to keep facilities running, keep employees working, and increase the park system's bottom line. Other states, including Ohio, West Virginia, Tennessee, Georgia, and Arkansas, offer this amenity, as do national park lodges, including Mammoth Cave Hotel.

This spring, the Department of Parks applied for alcoholic beverage licenses for the five parks located in areas where the sale of alcohol is allowed: Jenny Wiley State Resort Park, Prestonsburg; General Butler State Resort Park, Carrollton; Lake Barkley State Resort Park, Cadiz; John James Audubon Park Golf Course, Henderson; and My Old Kentucky Home Golf Course, Bardstown. The agency believes these parks can offer alcoholic beverages responsibly while retaining their family-friendly atmosphere. Parks will not have bars or cocktail lounges, and age restrictions will be strictly enforced. Many customers have requested alcohol sales, and there were no negative comments from citizens during the 30-day public comment period. The cabinet will not pursue beverage sales for parks in areas where alcohol cannot be purchased legally.

The general counsel of the Public Protection Cabinet said initially the parks' authority to sell alcohol was questioned. After reviewing Kentucky statutes, regulations, and the constitution, it was determined that there is no prohibition on the sale of alcoholic beverages at state parks and no prohibitions for an appropriately licensed state agency to make the sale. There is a long history involving the sale of alcoholic beverages by state entities on state grounds, beginning with the Kentucky Fair and Exposition Center, which has held a license and engaged in the sale of alcoholic beverages by the drink for decades. Many of Kentucky's cities and municipalities have held alcoholic beverage licenses. The Kentucky Horse Park has obtained a license and is selling alcoholic beverages through catering and the park's restaurant during events at the park. Legislation has been introduced in previous sessions to allow special local option elections for state park facilities in dry areas of the state. Absent this, the parks would apply like any entity to receive a license and engage in the sale of alcoholic beverages.

The commissioner of the Department of Parks discussed how the parks would responsibly serve alcoholic beverages. All park employees serving alcoholic beverages are required to complete the STAR licensing program (Server Training in Alcohol Regulations), which is sponsored by the Kentucky Department of Alcoholic Beverage Control. The program provides information and testing on serving alcohol, state liquor laws, and the proper method to check customer identification. More than 95 employees have completed training. Security of alcoholic beverages on premises is being addressed. Park rangers will work with local law enforcement to enforce the law. Guests at restaurants who do not order food will be limited to two drinks. The Department of Parks has purchased liability insurance for the protection of state employees who would be subject to negligence claims and for any negligence claim against the parks. The cabinet will work closely with the Kentucky Distillery Association and the Grape and Wine Council on special promotions and marketing

A spokesman for Chaplain Ministries expressed concern about the sale of alcoholic beverages in state parks. He said the state's decision to offer alcoholic beverages in state parks is scripturally, constitutionally, and economically unsound. He said that, biblically, it is wrong to consume alcohol, and that the 10th Amendment of the US Constitution bars the state from acquiring a liquor license. He said that economically the state should be more concerned about the private sector, and that every meeting or hotel room booked with a state park is one less for the private sector.

**Strategic Planning Initiatives, Kentucky Cabinet for Economic Development**

The executive director, Office of Legal Services, Kentucky Cabinet for Economic Development, discussed the cabinet's statewide strategic planning process. Following statutory guidance, Boyette Strategic Advisors was retained to undertake this task.

A consultant with Boyette Strategic Advisors gave a brief company overview. The company's experience includes work with the Oklahoma Department of Commerce, on a project similar to Kentucky's.

The project focus is to develop a statewide strategic economic development plan, titled "Kentucky's Unbridled Future," to provide direction for the cabinet and the state in economic development efforts over the next 5 years. It will include a review of economic trends, identification of targeted business sectors, and a review of assets and challenges in the state to develop strategic recommendations to move forward, attract new sectors, and retain existing business and industry. The process began in late May and will continue through late October with the completion of the strategic plan.

Plan development is a four-phase process, with the competitive assessment portion nearly complete. The assessment includes research and data accumulation of demographics, major employers, economic successes and losses, available sites, and education, among other topics. Consideration will be given to any strategies completed in the last 3 to 5 years locally, regionally, or statewide. Assessment of global, national, state, and regional trends that could affect Kentucky in its economic development efforts is part of the process.

The next step is identifying the top 10 strategic business or industry sectors for the state to focus its efforts on over the next 5 years. Through this process, niche opportunities will be identified. Policy and procedural changes that are needed to move the state forward will be addressed as well as areas such as workforce education, organization, site building, entrepreneurship, existing industry, global development, incentives, infrastructure, product development, real estate, rural development, and regionalism.

The final phase of the plan is delivery and roll-out, set for late October. The process includes an implementation action plan.

**Murray State University**

The committee traveled to Murray State University (MSU) to learn about the university's telecommunications system management (TSM) program. The university president gave introductory remarks concerning how the program was initially developed and has evolved over the past decade. While the TSM program is in the forefront at the university, every initiative at MSU strives for excellence. He noted that for the past 20 years, MSU has been ranked a regional top-tier school according to *US News and World Report* and was voted as one of *Forbes America's Best Colleges* among Kentucky's public universities. Public universities should strive to create a better quality of life for the regions they serve. The university's state-of-the-art science campus has been 15 years in the making, and MSU's top capital request is an engineering/physics facility. Other capital requests include a new library and an agriculture center to be built on donated land. The university is in its final year of fund raising and in 2012 will celebrate reaching its $60 million goal. Approximately $30 million is designated for scholarships.

The director of the Center for Telecommunications System Management (TSM) said the combination of business, telecommunications, and information technology training creates graduates unique in their field. Students can complete core requirements through the community college system and complete the TSM program online. Industry helps support the program through scholarships, internships, and employment. Outreach programs include the CyberCave, a high school recruiting tool; the Cyber Academy, a weeklong program where college students teach high school students about technology; and Networks-to-Go, a portable equipment student outreach program.

**Small and Minority Business**

The founder of Mission Vision Partner Consulting suggested ways the Commonwealth can help small and minority businesses. He said that while the Cabinet for Economic Development's 1997 strategic plan was helpful, there is still room for improvement. Recommendations included creation of a state regional office in western Kentucky, a statewide economic development summit, and increased emphasis on exporting Kentucky products. The state should make entrepreneurship and innovation more accessible and improve funding for minority businesses.

**Regional Business and Innovation Center, Murray State University**

The director of the Regional Business and Innovation Center explained that the center's purpose is to help build successful businesses with a focus on technology and innovation. To date, the center has assisted more than 300 clients and helped obtain more than $29 million in capital through state and federal grants and private investments. This has added 458 new jobs in the area and client-generated revenue of more than $116 million. The center is part of the Kentucky Innovation and Commercialization Center Program, which has helped to start 866 new companies in Kentucky, raise $554 million in capital, and create 4,740 jobs, generating $2.2 billion in revenue. The center works to increase understanding of innovation and entrepreneurship, but it also provides support services including regional outreach initiatives and access to entrepreneurial resources. The center has three key industry initiatives: West Kentucky AgBioworks, Professional Organization for Information and Network Technology, and Make It Kentucky. There is a small business incubator at the center, and the center provides access to service providers and access to university resources that assist entrepreneurs.

### Broadband Mapping

The Hutchens Distinguished Professor of Marketing at Murray explained the research methods of data collection for the state's broadband mapping project. Areas of interest included speed and availability, demographic profiles, and accuracy of information reported. The material and profiles were provided by Business GIS software that was purchased for the project and is currently available in the center for other commercial uses. The software is very useful in providing geographic information for economic development and tourism. The conclusions of a survey about broadband availability are that the broadband map was accurate for the state but less so for each of the providers. There were some speed issues in areas claiming broadband availability, there were discrepancies in profiles of coverage in rural areas, and mobile wireless showed some discrepancy in speeds reported by consumers and speeds reported by providers. The federal broadband map reported that Kentucky had lower coverage than actually existed due to one service provider not participating in the survey.

### Emergency Communications Research and Undergraduate Security Research

In 2005, MSU, in conjunction with the University of Louisville and the Kentucky Community and Technical College System, set out to develop military-style command posts for emergency response. The project integrated existing technologies to be used by first responders. The Man-Portable Interoperable Tactical Operations Center (MITOC) provided the only area communications during the 2009 ice storm and has been used during other disasters. The goals of the MITOC project are affordability, ease of operation, and commercial viability. The mobile unit sells for approximately $10,000, which is within the budget range for rural communities. Each unit's range of usage is based on electricity, network, and cellular service availability. MSU is working on ResponderLink software that allows radio transmissions over the Internet as well as Incident Management Decision Support System (IMDSS) and IMDSS-Health incident management software for health care-related information such as hospital bed availability.

### KentuckyUnited

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

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

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

**Asian Carp Processing Facility**

The legislative liaison for the Department of Fish and Wildlife Resources discussed Asian carp in Kentucky waterways and their negative effects on the environment, tourism, and economic development.

Carp have been cultured in China for at least 2,000 years and are a major food item. They were brought to the US as a food product and as a solution to pond nutrification problems and overnutrified tertiary treatment plants. The fish escaped their confines during flooding in the late 1970s and entered the Mississippi River basin. They competed with native fish species for food and began dominating other species. Asian carp are in the Ohio River and Mississippi River, as well as their tributaries.

Asian carp are a danger to boaters. Vibrations in the water caused by boats make them jump, and they often strike boaters and skiers. This has the potential to affect tourism in Kentucky's lakes. Giving an example of their numbers, the department Liaison explained that during a 2009 Kentucky Lake study on paddlefish, over 5,000 pounds of Asian carp was caught in one day by one fisherman.

Efforts are under way to create a processing facility in Wickliffe, Kentucky. The facility must be large enough to become a profitable exporter to China. Existing processing facilities in other areas lack storage space. Four fish processors are interested in the Wickliffe facility. Negotiations with economic development representatives and Chinese businessmen have them within $700,000 of reaching an agreement on a processing facility. The facility will create up to 20 new jobs. One facility can process up to 50,000 pounds of Asian carp per day. To address government concerns of perpetuating the Asian carp market, the department liaison said an Asian carp restricted waters regulation proposal was passed recently that prevents this. It allows government entities to work with commercial fishermen by allowing controlled fishing and developing measures to avoid hurting the sport fishing industry. Chinese businesses are interested in other rough fish species; after the Asian carp population is reduced, the program can transition to rough fish.

**Kentucky Horse Park**

The executive director of the Kentucky Horse Park testified about the success of the park 1 year after the Alltech FEI World Equestrian Games. An economic impact study commissioned by the Tourism, Arts and Humanities Cabinet indicates that the games brought $201.5 million to the state including $45 million in wages, $18.4 million in state taxes, and $4.5 million in local taxes. In addition to the 70 national shows already held at the park annually, the state's investment in the park has resulted in 14 new equine events, 12 of which are annual events such as the Alltech National Horse Show, the oldest and most prestigious horse show in America, which was formerly held at Madison Square Garden. The annual economic impact of these new events is estimated at $44.2 million. The cabinet is conducting an economic impact study of the Horse Park.

Referencing *Chronicle of the Horse*, the executive director quoted the equestrian sport publication's statements about the legacy the Alltech FEI World Equestrian Games left for United States horse sports. The park updates resulted in its being the "go to" location for national championships and other major equine events including the Junior Rider Championships and the National Horse Show.

**Department of Travel and Tourism**

The deputy commissioner of the Department of Travel and Tourism outlined the agency's mission to promote travel to and within the Commonwealth. The vision is to enable the traveling public to understand and feel the state's uniqueness. In 2010, tourism resulted in an $11.4 billion economic impact, with $2.5 billion in payroll, $1.2 billion in local and state taxes, and 170,000 jobs. The Southeast Tourism Society will announce that the department has been selected as the southeast state travel office of the year. The key to this award was "The Kentucky Experience" exposition at the World Equestrian Games. The exposition was later moved to the Kentucky History Center and then to the state fair. Next year, it will be part of the *Travel South* conference in Louisville.

Other promotional efforts include upcoming commercials, the Kentucky Visitors Guide, and the award-winning website launched in 2010. Upcoming events include the Civil War

Heritage Trails Program, which is part of the Civil War Sesquicentennial; the Bill Monroe Centennial; the Kentucky Inaugural Sprint Cup Race; and the Senior PGA Championship.

**Kentucky American Water Company**

The president of the Kentucky American Water Company (KAW) discussed what the company and its parent company, American Water, can do to help economic development in the area. KAW, with approximately 150 employees, provides water and waste water services to approximately 500,000 people in portions of 10 counties by producing 86 million gallons of water daily. During the World Equestrian Games, KAW saw its maximum usage, with high temperatures being a contributing factor to increased demand. Maintaining a substantial water supply has been an issue over the past 20 years. In 2008, KAW and the Public Service Commission agreed that the best solution was a new 20 million-gallon treatment plant and distribution system in Owen County. The facility was completed in 2010. More than 200 people were employed during construction. The project contributed more than $1.1 million in new property and real estate tax revenue in the four counties involved, and the revenue supplied needed school funding during a period of cutbacks.

**Recruiting High-tech Business**

The president of Aveta Lifesciences and Coldstream Laboratories testified about how site selection firms see Kentucky in comparison to other states, and what Kentucky should do to increase its ability to attract high-tech businesses. Site Selection magazine, in its November 2011 issue, ranked Kentucky 19th in the nation in terms of “business climate,” with Texas being ranked 1st, Tennessee 8th, and Ohio 9th; in a survey of business executives, Kentucky ranked 31st. Because Kentucky has so much to offer in terms of location, labor availability, and other factors, the marketing of the state to business must be studied.

If information cannot be found on the Internet, then it figuratively does not exist. Because so many states and localities are competing to recruit businesses, time constraints place emphasis upon information being readily and easily accessible to business leaders. The state should try to have needed information on every database possible.

The state should make every effort to seek foreign direct investment. Eighteen percent of new business facilities are foreign owned, with foreign direct investments worth over $1.7 trillion, resulting in the creation of 5 million jobs. Business sites should be “shovel ready,” and business parks should be certified.

In regard to skilled labor, Deloitte’s Manufacturing Institute survey found that there is a 600,000-person deficit of available skilled labor, with the number increasing in the next 3 years. A Tower and Watson survey found that 60 percent of United States companies have problems attracting critical skilled employees. As a result, business location decisions are often based on the availability of skilled labor.

A strong alliance between Kentucky’s universities and the business community is critical to fostering high-tech firms. Research being conducted at the University of Kentucky and the

University of Louisville gives Kentucky a world-class standing and attracts the best talent from around the globe, but recent budget cuts in higher education are causes for concern.

The availability of capital is a key for small business development. Banks are increasingly reluctant to provide lending to small businesses, and angel investors are needed to help with start-up businesses. The state should consider ways to help small businesses secure lending.

The executive director of the Office of Commercialization and Innovation in the Cabinet for Economic Development discussed the cabinet's efforts to recruit and develop high-tech firms and to assist start-up companies. The entrepreneurial activity growth rate in Kentucky was the third fastest nationally in 2008-2010 and the fifth fastest nationally over the past decade. Kentucky has recently been the host to several major national conferences such as the MidAmerica Healthcare Venture Forum and the 2012 National Institutes of Health SBIR-STTR Conference, and these conferences are important to showcase Kentucky's resources and to lure business to the state. Kentucky has labored to develop its high-tech infrastructure, with examples including numerous centers such as the Eastern Kentucky University Business and Technology Center, MetaCyte, LLC, Murray State University Innovation and Commercialization Center, and the University of Louisville Cardiovascular Innovation Institute, that are located throughout the state.

Start-up business plays a critical role in job creation. Virtually all net new jobs have been created by start-up companies since 1977. The cabinet employs both incentive-based strategies and other funding mechanisms to assist start-up businesses, and since 2006, the SBIR matching program has resulted in 12 high-tech firms locating in Kentucky. Kentucky lacks sufficient venture capital, ranking 42nd in 2010. Efforts are under way to increase the availability of seed capital.

The Cabinet for Economic Development is making varied efforts to develop and assist entrepreneurial activity. The high-tech pool has 48 active companies with more than $15 million awarded, resulting in approximately 960 high-tech jobs having an average annual salary of more than $66,000. The awards have gone to 19 counties throughout the state. The Kentucky New Energy Ventures Fund has awarded $3.19 million to 28 Kentucky companies involved in renewable and alternative energy, with 18 of the awards going to firms in rural counties. The cabinet has sponsored a competition in business plans to develop entrepreneurial talent at public universities. Last April, an all-time high of 20 student teams from all eight public universities competed, with some advancing to national and international competitions. One team, TNG Pharmaceuticals and the University of Louisville, won more than $800,000 in 2011 after winning the Rice University Business Plan Competition and the Global Championship at the Venture Labs Investment Competition.

**The Muhammad Ali Center**

The Muhammad Ali Center's interim director and its vice president of public affairs and communications testified about the Ali Center and its mission and goals. The center was built to preserve and share the legacy and ideals of Muhammad Ali, and in that sense it is more than a history museum for Ali's boxing career. The center encourages visitors to come away from their experience knowing more about themselves and what they can do to positively influence their communities by seeing how Muhammad Ali was able to change lives through his efforts.

The center was built through a $10 million contribution by the state, $48 million in private donations (50 percent of which was from out-of-state donors), and $22 million of in-kind funding by the city of Louisville. The center has 93,000 square feet, a three-floor state-of-the-art exhibit hall, galleries, classrooms, an auditorium, a library, and a retail store. It has received more than half a million visitors, 50 percent of whom are from out of state, and the center hosts more than 300 events annually. The center has also won numerous awards, including Event Design's 2006 silver award for "Best Museum Environment."

The center cannot support itself from revenues earned by admissions, rentals, and sales, and as with most non-profit museums, it relies on outside funding.

**Kentucky's Bourbon Industry**

The president of the Kentucky Distillers Association discussed the background of the association and the impact of bourbon production in Kentucky. Kentucky produces 95 percent of the world's bourbon, and in response to rapidly escalating demand, production has increased by more than 50 percent since 1999. Driving market demand is premium, small-batch bourbon. There are more than 5 million barrels of bourbon aging in warehouses in Kentucky, which is the biggest total inventory since 1982. The 2011 tax-assessed value is $1.5 billion.

Bourbon production in Kentucky is directly responsible for 3,200 jobs with an annual payroll of $244 million. The distilling industry has a high job multiplier (3.29), which ranks fourth among the 244 manufacturing industries in the Commonwealth. Bourbon production is responsible for a total economic impact of 10,000 jobs with an annual payroll of $442 million. Additionally, $125 million annually is generated in state and local taxes. There are seven taxes on every bottle of bourbon produced in Kentucky, and nearly 60 percent of the price of every bottle of spirits goes to taxes. Kentucky bourbon is exported to 126 countries, with England, Germany, Australia, Japan, France, and Spain being top importers of the product.

Bourbon tourism is growing rapidly. Maker's Mark spent $54 million to enhance its visitors' experience, increase distillation capacity, and supplement its warehouse. Wild Turkey spent $50 million to double distilling capacity, and Jim Beam spent $28 million to increase bottling, which resulted in 120 new jobs. Four Roses recently completed a $2 million office building and expansion of its visitors' center and gift shop.

Kentucky's Bourbon Trail, which was created in 1999 and modeled after wine country tours in California and whisky trails in Scotland, has had visitors from all 50 states and 52 foreign countries. It has received nearly 2 million visits in the last 5 years, and more than 9,000 visitors have completed the "passport" tour of all participating distilleries. The demographics of Bourbon Trail tourists show that 50 percent have annual household incomes greater than $80,000, 61 percent are 21-54 years old, and 85 percent come from out of state. Fifty-one percent stayed 3 or more days, and 70 percent stayed in a hotel or bed-and-breakfast.

The committee heard a presentation about the Bourbon Chase Relay along the Bourbon Trail. This was the third year for the event, and it has sold out each time. The relay is a 200-mile race that links all distilleries along the Bourbon Trail, starting at Clermont and ending in Lexington. Teams of 12 runners raced through the night. More than 1,000 volunteers staffed the race. There were 262 teams from 44 states and three foreign countries, and more than $140,000 was raised this year to benefit local charities. The 2012 race is September 28-29, with registration opening January 2. The race is so popular that it is expected to sell out within days.

## Subcommittee Activity

### Task Force on Economic Development

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

# Report of the 2011
# Interim Joint Committee on Education

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

Sen. Walter Blevins, Jr.
Sen. Jared Carpenter
Sen. David Givens
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Alice Forgy Kerr
Sen. Vernie McGaha
Sen. Gerald Neal
Sen. R.J. Palmer II
Sen. Johnny Ray Turner
Sen. Jack Westwood
Sen. Mike Wilson
Rep. Linda Belcher
Rep. Dewayne Bunch
Rep. John "Bam" Carney
Rep. Hubert Collins
Rep. Leslie Combs
Rep. Jim DeCesare
Rep. Ted Edmonds
Rep. C.B. Embry
Rep. Bill Farmer
Rep. Kelly Flood
Rep. Jim Glenn
Rep. Derrick Graham
Rep. Donna Mayfield
Rep. Reginald Meeks
Rep. Charles Miller
Rep. Rick G. Nelson
Rep. Ruth Ann Palumbo
Rep. Ryan Quarles
Rep. Marie Rader
Rep. Jody Richards
Rep. Tom Riner
Rep. Rita Smart
Rep. Wilson Stone
Rep. Ben Waide
Rep. David Watkins
Rep. Alecia Webb-Edgington
Rep. Addia Wuchner
Rep. Jill York

LRC Staff: Ken Warlick, Ben Boggs, Sandy Deaton, Jo Carole Ellis, CJ Ryan, Janet Stevens, Daniel Clark, Lisa Moore, and Janet Oliver

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Jack Westwood
Rep. Linda Belcher
Rep. Dewayne Bunch
Rep. John "Bam" Carney
Rep. Hubert Collins
Rep. Derrick Graham
Rep. Charles Miller
Rep. Rick G. Nelson
Rep. Ruth Ann Palumbo
Rep. Marie Rader
Rep. Wilson Stone
Rep. Ben Waide
Rep. Alecia Webb-Edgington
Rep. Jill York

Sen. Ken Winters, ex officio
Rep. Carl Rollins II, ex officio

LRC Staff: Janet Stevens, Ben Boggs, and Janet Oliver

### Subcommittee on Postsecondary Education

**Sen. Alice Forgy Kerr, Co-Chair**
**Rep. Reginald Meeks, Co-Chair**

Sen. Jared Carpenter
Sen. Gerald Neal
Sen. R.J. Palmer II
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. Dewayne Bunch
Rep. Leslie Combs
Rep. Jim DeCesare
Rep. C.B. Embry, Jr.
Rep. Bill Farmer
Rep. Kelly Flood
Rep. Jim Glenn
Rep. Donna Mayfield
Rep. Ryan Quarles
Rep. Jody Richards
Rep. Tom Riner
Rep. Rita Smart
Rep. David Watkins
Rep. Addia Wuchner

Sen. Ken Winters, ex officio
Rep. Carl Rollins II, ex officio

LRC Staff: Jo Carole Ellis, Ken Warlick, 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 2011 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 assessment system updates; career and technical education; teacher preparation and evaluation; green school and other energy efficiency initiatives; alternative diplomas; and academic, leadership, and distance learning opportunities for students.

### AdvanceKentucky

AdvanceKentucky is designed to dramatically expand student access and participation in accelerated learning in Kentucky high schools as measured by results on rigorous national Advance Placement (AP) math, science, and English (MSE) exams. Begun in 2007, this is a 6-year partnership between the Kentucky Science and Technology Corporation and the National Math and Science Initiative.

AdvanceKentucky demonstrates that Kentucky students are as capable as any in the nation when given the opportunity, high-quality teaching, and rigorous materials to support their efforts. The first 12 schools (cohort one) showed an 80 percent increase in MSE exams in the first year. The next 16 schools (cohort two) had a 62 percent increase in their very first year as compared to the state and the nation, which is below 10 percent. Cohort three students showed a 140 percent increase in one year of passing MSE exams. On the most recent 2010 AP exams, the 28 AdvanceKentucky schools contributed 43 percent of all new AP Qualifying Scores (QS) earned across Kentucky and 69 percent of new QS earned by minority students. These early participants performed at up to 12 times the national rate of 1-year growth in student performance.

For the 2011-2012 school year, 64 high schools are participating, involving 17,000 enrollments in AP MSE being taught by 480 AP teachers. By 2014, program goals are to serve 50 percent of Kentucky's public high schools. The goal for 2020 is to serve 100 percent of interested schools within 10 cohorts.

**Alternative Diplomas**

Two parents of students with a disability testified in favor of an alternative diploma option for students with disabilities who complete high school, meeting the goals designated in their individualized education program. They stated that studies show that students who earn a certificate of attainment will earn 15 to 20 percent less than a high school graduate. One parent suggested adding “honorary” at the bottom of the high school diplomas if students had not met all the criteria for graduation.

Representatives from the Kentucky Department of Education (KDE) discussed the American Diploma Project benchmarks, the role of local Admissions and Release Committees in determining diploma or certificate of attainment options for students with disabilities, and the status of the Commonwealth Diploma. According to KDE staff, the Commonwealth Diploma was initiated as a special recognition for students taking a very rigorous curriculum and is considered a higher level than a standard diploma. There are currently 1,500 students on the path to receive the Commonwealth Diploma. The Kentucky Board of Education has voted to delay the repeal of the Commonwealth Diploma for 1 year in order not to affect the students who registered for the courses prior to the 2012-2013 school year.

**Assessment Update**

The director of the KDE Division of Support and Research provided an update on assessments. She said grades 3-8 will be assessed using a blended model of criterion-referenced test (CRT) items based on Kentucky standards and norm-referenced test (NRT) items based on national comparative standards. The new assessment program will be called the Kentucky Performance Rating for Educational Progress (K-PREP). 2009 Senate Bill 1 requires that on-demand writing be measured twice at the high school level and editing and mechanics be measured once at the high school level. Grades 3-8 content areas to be assessed are reading, writing, mathematics, science, and social studies. The NRT portion will be the Stanford Achievement Series (Stanford 10). K-PREP must be administered in the final 14 instructional days of the district’s calendar, and a district will use 5 days maximum to complete the testing in that period. The student and school reports will include national percentile rankings for NRT items and novice, apprentice, proficient, and distinguished student performance levels for the combination of NRT and CRT items.

KDE staff also reported that the end-of-course (EOC) assessments will be administered in Grades 9-12. The assessments will be purchased from a nationally recognized company and results can be compared to other states. The Kentucky Board of Education recommends that school councils use assessment results to account for a minimum of 20 percent of a student’s final grade, although each individual council has final authority over grading policies.

The ACT QualityCore examinations will be used for English II, algebra II, biology, and US history. The assessments will consist of a combination of multiple-choice and constructed-response tasks. The multiple-choice portion will be available online or in paper-pencil format. Online assessment scores are immediately available, and results for paper-pencil assessments will be available within 10 days of receipt of the examination by ACT.

The KDE associate commissioner of the Office of Next Generation Learners reported that the program reviews required in 2009 Senate Bill 1 provide a systematic way for assessing instruction in arts and humanities, practical living and career studies, and writing to ensure quality programs are in place. A rubric is being developed to set forth expectations, and only paper-pencil assessments will be used in these areas to test student knowledge. Affected stakeholders have been involved in the process, including representatives from various associations. Performance levels will include “needs improvement,” “proficient,” and “distinguished.” The rubric was piloted in the 2009-2010 school year in volunteer districts; a mandatory field test will be done in the 2011-2012 school year; and full implementation with reporting for accountability will occur in the 2012-2013 school year.

**Career and Technical Education**

The executive director of the Office of Career and Technical Education discussed plans to implement recommendations made by the Governor’s Task Force on Transforming Education in Kentucky. He said the members of the task force want to find ways to improve career and technical education throughout the state. Career and technical education should be included in the high school reform effort and should equip students with the 21st-century skills necessary for college and a career.

The steering committee comprises 25 individuals representing the Education and Workforce Development Cabinet, business and industry, education, professional associations, and the legislature. They will review best practices in career and technical education nationwide and recommend a new model for Kentucky. The steering committee will rely on work from six subcommittees including sector strategy, curriculum and program development, assessment and accountability, professional development, Perkins fund management, and operations. The executive director noted that all the work would be facilitated by the National Center for Career and Technical Education housed at the University of Louisville. The report is scheduled to be provided to the Interim Joint Committee on Education at its December meeting.

The committee members toured the Elkhorn Crossing School (ECS), a career and technical high school operated by Scott County Schools. ECS focuses on rigor, relevance, and relationships. The district offers initial exposure to career and technical education through an ECS Gateway Academy summer camp for elementary school students. All middle school students are required to take a Gateway to Technology program and may choose from various disciplines, including design and modeling; automation and robotics; energy and the environment; flight and space; science of technology; and magic of electrons. Feeder introductory courses in engineering design, principles of biomedical sciences, media arts, and health sciences are offered at the Scott County Ninth Grade School, and 60 percent of the students take a career course.

The ECS principal explained that the ECS philosophy is that small, personalized learning villages make a better school. Each village has three teachers with one teaching the elective course and the other two teaching a core content required subject such as English, math or science. The ECS village structure for sophomores and juniors includes engineering, biomedical sciences, media arts, health sciences, and Bluegrass Community and Technical College early college courses. A sixth village in culinary arts will be added in fall 2012. ECS enrollment for the 2011-2012 school year was 1,007 students, of which 384 were off-campus freshmen and the remainder a combination of sophomores, juniors, and seniors. ECS students have received numerous awards for various projects and activities and score high on college entrance examinations and AP classes. The village has an advisory committee that includes professionals and community leaders who mentor the students. Students elect to come to ECS even though rules are stricter than in traditional high schools. Rules include completion of 6 hours of community service each semester and a dress code.

**Green Schools and School Energy Efficiency**

A green school as defined by the US Green Building Council (USGBC) is a school building or facility which creates a healthy environment that is conducive to learning while saving energy, resources, and money. The USGBC is a non-profit organization composed of industry professionals, including architects, engineers, design professionals, attorneys, and others interested or involved in the sale of products used in green building technology. Kentucky has one chapter, and there are 79 chapters nationwide and more than 160,000 accredited Leadership in Energy and Environmental Design (LEED) professionals. The USGBC legislator's guide to "Greening Our Schools" was provided to the legislators.

Kentucky is building more green schools, including those in Warren, Scott, and Kenton counties, and is participating in green school-related initiatives such as green cleaning techniques that use environmentally sound and healthy chemicals in schools or technology that works without any chemicals.

In 2010, the Kentucky legislature passed Senate Bill 132 creating an Efficient School Design Trust Fund in KDE, but funding was unavailable. The trust fund would have established a reporting mechanism on how school projects are being built or renovated, such as Energy Star or LEED certified, and would have provided funding to offset incremental costs for K-12 public school building design. It was suggested by presenters that a percentage of fines levied by the Environmental Protection Agency, which is estimated to be between $880,000 and $3 million annually, could be used to offset any costs relating to design and construction of green schools. The Green Bank was established in 2009 with $14 million in American Recovery and Reinvestment Act funds and provided a low-interest-rate revolving-loan fund to upgrade state-owned buildings. The Kentucky Finance and Administration Cabinet and the Department of Energy Development and Independence coordinate the use of these funds in Kentucky. It was recommended that the funds remaining in the Green Bank, estimated to be around $5 million, be made available to school districts for energy-efficient improvements.

The LEED for Existing Buildings Rating System helps building owners and managers maximize operational efficiency while minimizing environmental impact. A legislative initiative is being explored that would create a task force to investigate how K-12 public schools could achieve LEED Existing Building certification in partnership with KY USGBC to provide for more efficient, sustainable energy savings and a mechanism to share knowledge and information.

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

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

The 2008 executive and legislative initiatives, including KRS 160.325, mandated the reduction of school energy costs and providing intelligent energy choices for Kentucky's future. A seven-point strategy for energy independence was identified, and the goal is to reduce projected 2025 consumption by 16 percent. The director encouraged public school districts to respond to rising energy costs by focusing on the management of various uses of energy. Local boards of education were required to enroll in KEEPS. KEEPS will produce an annual report on the development of energy management plans and anticipated savings to be obtained by those plans.

The director said the creation of the SEMP resulted in 144 districts benefiting from services of a full-time energy specialist. During a 2-year grant period, local energy managers will visit every school in the districts they serve. They will establish energy teams; facilitate development of energy-efficient goals; analyze utility bills; evaluate heating, ventilation, and air conditioning (HVAC) and lighting systems; educate staff and students; foster wise energy choices; and develop and implement an energy management plan. In just 7 months, energy managers have identified more than $2 million in annual cost savings and more than $400,000 in refunds and rebates for districts. Energy Star schools have increased from 68 to 107. The energy manager for Montgomery, Clark, Bourbon County Schools, and Paris Independent Schools said anticipated cost savings will result from rate corrections, lighting retrofits, HVAC control, computer hibernation, awareness, refunds, rebates, and equipment shutdown.

### The Leader in Me Program

A representative of Franklin Covey said that 80 percent of the most in-demand jobs require postsecondary education. To be competitive, Kentucky will need an additional 120,000 degrees attained by 2020. One out of every three potential college students does not return for the sophomore year of school, and this issue needs to be addressed. He said the “Leader in Me” program gives students a mind-set, skill set, and tool set to demonstrate leadership skills to address the graduation and readiness crisis in the United States.

The “Leader in Me” program began at a failing school in Raleigh, North Carolina. Fifty percent of the students were eligible for free and reduced lunch, and 26 percent spoke a foreign language as the first language in the home. The program incorporates the seven habits of highly effective people conceived by Stephen R. Covey, a nationally respected leadership expert who has worked with CEOs of major corporations. After 7 years of implementing the “Leader in Me” program, the failing school in North Carolina was rated as the number one magnet school in America.

Consistent trends of the “Leader in Me” program are student improvement in math and reading, increased parental involvement, increased teacher satisfaction, and enhanced student self confidence. There is also a marked reduction in discipline referrals in schools that implement the program.

### Postsecondary Virtual University and Distance Learning Initiative

The president of the Council on Postsecondary Education (CPE) said that CPE serves postsecondary, K-12, adult education, and various state agencies, and that distance learning has become an integral part of providing those services. The Kentucky Virtual Library (KYVL) is a cost-effective mechanism used to provide high-quality services to libraries across the state. The CPE strategic agenda component, known as “Stronger by Degrees,” focuses on preparing K-12 students for higher education; making available the necessary financial, emotional, academic, and technological resources to ensure the success of higher education students; and conducting research to improve community, state, and national economies. The strategic agenda includes methodologies for accomplishing these tasks and others in a cost-effective manner using new technologies and innovations.

One-third of Kentucky postsecondary students are taking at least one online class. The Kentucky Community and Technical College System (KCTCS) system ranks first and Kentucky 4-year institutions rank seventh among the Southern Regional Education Board states on the percentage of credit hours delivered through online classes. Innovative distance learning programs now being offered in Kentucky include a doctorate of nursing practice, which is one of five in the nation; a 100 percent online master’s in telecommunications management offered by Murray State University; degree completion programs for 2-year adult learners, particularly at Morehead State University; and a joint engineering program between Morehead State University and Eastern Kentucky University.

The chancellor of KCTCS discussed the KCTCS Learn on Demand program that started in 2009, which allows students to enroll at any time and begin classes on the following day. Learn on Demand is competency based and modularly delivered and enables students to complete a piece of curriculum in a 3- to 5-week period. Online programs being offered by KCTCS include business, information technology and an associate degree in nursing. Kentucky is among 10 states to be awarded a Complete College America Grant that will be used to provide tutoring, adviser, and counseling services for online students. Skill-specific developmental education courses will also be available to help students needing remedial education.

The Kentucky Virtual Campus (KVC), created by 1997 House Bill 1, has increased access to postsecondary education. Data have shown that students using the virtual campus tend to be from rural, less populated counties; that KCTCS students use online courses more than students in 4-year institutions do; and that the number of credit hours earned through the KCTCS system has increased from 200,000 in 2005 to approximately 800,000 hours. The number of students taking online courses or a mix of classes has steadily increased with a corresponding decrease in the number of students taking only face-to-face instruction.

CPE has a course management system license that allows any student in any Kentucky higher education institution to access specific courses. These courses may also be accessed by educators and K-12 students through KDE’s Kentucky Virtual Schools. Basic skills and career readiness courses are also available online for adult education program students, and training is available for GED examiners. The KVC GED examiner program is being used nationwide and in Canada. The Kentucky Virtual Campus for K-12 Students provides online programs for K-12 students needing supplemental or enhanced education and is also used by parents who home school their children. This component also contains eMentoring as part of the Gear Up program that allows college students to mentor middle school students and encourage studies that will prepare them for postsecondary education.

The Kentucky Virtual Library is administered by the University of Kentucky by contract with CPE and is used to enhance scholarship, research, and lifelong learning through shared digital archival collections. Guidance and instruction is provided to Kentucky libraries, archives, historical societies, and museums on the appropriate use of technology to produce digital library resources. KYVL now contains 350,000 book pages, 550,000 newspaper pages, 50,000 pages of journals, 90,000 photographs, and 800 world histories, and continues to expand daily. KYVL has a Kaleidoscope program used to create convenient models for K-12 educators to access Kentucky history.

The Kentucky Learning Depot is a P-20 initiative that creates, scans, and inventories digital content that becomes infinitely available to every teacher for classroom instruction. It is also connected to content repositories in other states, including North Carolina, Georgia, and Florida. The Kentucky Regional Optical Network (KyRON) connects all public postsecondary education institutions to each other with high speed Internet2. Internet2 is exclusively used for research and education purposes and will eventually morph into a Community Anchor Institution Network. The Federal Communications Commission has asked for input and assistance from KyRON and 30 other regional networks across the nation to develop a robust education network using $100 million in American Recovery and Reinvestment Act funds to provide the backbone for the project. KyRon has approximately 150 locations across the state.

**Teacher Preparation Programs and Teacher Evaluation That Support Teacher Effectiveness**

The executive director of the Education Professional Standards Board (EPSB) testified about changes in various teacher and educator preparation programs. EPSB is one of 13 independent professional standards boards across the nation and is not part of the Kentucky Department of Education. Responsibilities include accreditation of teacher preparation programs; certification of educators; prosecution of educator misconduct cases; and oversight and management of programs mandated by the legislature, such as the Kentucky Teacher Internship Program (KTIP), National Board Certification Incentive Fund, and others.

There are 30 teacher preparation programs in Kentucky. The General Assembly has established eight alternative routes for teacher certification since 1995. Data from the 2010-2011 school year show that there are 42,708 practicing teachers, which is a decline from 44,790 in the 2005-2006 school year, and 2,181 persons holding principal or assistant principal positions.

EPSB has already redesigned the KTIP program to include performance assessments; revised goals to show direct commitment to student learning and not just teaching; redesigned the master's degree program for rank changes; and redesigned the principal preparation program. The board is currently changing requirements for clinical experiences, student teaching, and admission to teacher certification; raising scores on practice assessments used to measure content knowledge; and redesigning the state accreditation and program review process.

The redesign of the master's degree program for teachers is focused on student achievement through teacher leadership with an emphasis on teachers instead of principals serving as instructional leaders. The board's focus was to create a program to improve the teacher core by helping teachers gain additional advanced skills specifically geared toward closing the student achievement gaps. All of the master programs for teachers were closed effective December 31, 2010, and, 16 universities have received EPSB approval for new master's programs.

The principal preparation program was redesigned to encompass student-centered preparation models as directed by 2006 House Joint Resolution 14. All principal preparation programs will be closed in December 2011. The new program will be a two-tiered post-master certificate model and will no longer be available to teachers to accomplish rank change. It will focus on instructional leadership, student achievement, and student gap closure. Effective superintendents and principals from various districts will assist in instruction and ongoing mentoring services. EPSB has approved programs from Asbury College, Spalding University, Western Kentucky University, Murray State University, University of Louisville, and Northern Kentucky University.

The superintendent preparation program is being redesigned, although none of the existing programs will be closed. The programs will be consistent throughout the state, and there will be a notable difference in the curriculum and program requirements. Program changes will be established by regulation.

EPSB is involved in admission standards for teacher candidates. New guidelines include skills tests in math, reading, and writing prior to admission to a preparation program; raising the grade point average for admission from 2.5 to 2.75; and documentation of essential classroom skills, including critical thinking, collaboration, creativity, and communication. All teacher candidates will be required to have at least 200 hours of field experience prior to student teaching. The new regulation detailing the changes will be presented to the education committees in early 2012.

EPSB is redesigning the 7-year cycle of accreditation and program review of teacher preparation programs to a new model that will provide continuous electronic program review to ensure quality. The EPSB Data Dashboard, which will be available to the public, will provide information on teacher preparation programs, including quality indicators, certification data, educator ethics, and teacher placement in the workforce. A quality performance index will be published for all Kentucky teacher preparation programs and will include K-12 student assessment data.

The commissioner of education indicated that procedures to evaluate teachers and other educational leaders need revision to more accurately reflect professional growth and effectiveness. The department is currently using two steering committees to design, develop, and test new methods for evaluating teachers and principals.

The first phase of implementation includes defining effective teachers and leaders; developing methods to measure effectiveness; and implementing processes to support all educators in refining the knowledge, skills, and behaviors that support effective practice. The new system will use rubrics with multiple measures and descriptors that can be validated and used to establish a system of continuing improvement of skills and professional growth throughout the educator’s career. The proposed evaluation system would be standardized throughout all districts. A KDE associate commissioner indicated that 25 districts field tested the new system in 2010-2011 and that up to 50 districts would be added in 2011-2012. The plan is to fully implement the evaluation systems in the fall of 2013. Validation of the rubrics is a critical part of the process since teacher and principal effectiveness will be measured and future employment decisions and other high-stakes conclusions may be affected by evaluation results.

A statewide survey identified as Teaching, Empowering, Leading, and Learning Kentucky was recently conducted with approximately 80 percent of Kentucky educators responding. The results of the survey are available at http://www.tellkentucky.org/reports.

## Subcommittee Activity

### Subcommittee on Elementary and Secondary Education

The subcommittee on Elementary and Secondary Education met three times during the interim to discuss issues, initiatives, and programs that affect student learning and student performance.

**Energy Awareness and Energy Management**

The director of the Kentucky National Energy Education Development (NEED) Project explained that its mission is to promote energy awareness through the delivery of education programs. NEED is a nonprofit organization involving a network of students, educators, business leaders, government representatives, and interested citizens that partners with the Kentucky Department for Energy Development and Independence, the Kentucky Energy Efficiency Program for Schools, the Green and Healthy Schools Program, and other energy-conscious programs and organizations to fully develop energy education programs for Kentucky's schools. The project supports energy education workshops and professional development programs for K-12 teachers and makes a model curriculum available for the teachers to use with their students. All materials, free and available online, are science based and provide an "Energy 101" class for all students.

A discussion followed regarding the significance of energy managers and the importance of energy efficiency in new and existing school buildings. It was suggested that the Department of Education review the energy use in all school buildings identified as Category 3, 4, and 5 and report findings to the subcommittee.

**Prevention and Control of Infectious Diseases**

Each year, Kentucky hospitals experience almost 1,400 deaths at a cost of $400 million as a result of approximately 23,000 infections. Legislation has previously been introduced to require worker and staff education programs and also require the use of an approved method of collecting data and reporting on infections acquired in a health facility. The importance of this data and how it is collected might help reduce the spread of infections in our schools and communities.

Staff from the Kentucky Department of Public Health and a physician from southeastern Kentucky discussed the five major causes of methicillin-resistant *Staphylococcus aureus* (MRSA) infection and explained the best ways to prevent the spread of disease in schools. These include washing hands frequently, keeping cuts and scrapes clean and covered, avoiding contact with others that have infected skin, and avoiding the sharing of personal items such as towels and soap. The department has made available to school districts guidelines to use when cleaning school buildings to make the building as free from infection-causing bacteria as possible.

In 2007, a MRSA outbreak was reported in Pike County. The superintendent of Pike County Schools reported that all 23 schools in the district were closed for 2 days for a thorough cleaning. The experience resulted in the hiring of extra custodians and in the providing of annual training on how to clean with correct cleaning supplies.

### Career and College Readiness

The transition from high school to college or career is often a giant leap for many of Kentucky's graduating students. Two school superintendents and two university presidents discussed collaborative efforts under way to help students be more successful following high school graduation. They expressed appreciation to the General Assembly for keeping education a priority during difficult budgetary times.

Various programs being implemented in school districts assure every child has an opportunity to reach his or her full potential. The "Excellence for All" program started this year with 41 freshmen enrolled in an accelerated program that allows them to receive a high school diploma in 2 years. The "Middle College" program enrolled 39 juniors who may earn 18 college credit hours while still enrolled in high school. Included in these programs are students who would typically not be considered "college bound." A discussion of the challenges and barriers to ensuring student success followed.

To decrease the number of college freshmen who need developmental math and English courses, Eastern Kentucky University and Morehead State University have offered these same courses at the high school level, allowing students to enter college with those classes having been completed. Through this effort, students and their families have saved approximately $200,000 since they do not have to pay the cost for a non-credit-bearing college course.

The presidents of Morehead State University and Eastern Kentucky University discussed their partnerships with high schools in their service areas. They explained the importance of 2009's Senate Bill 1 and the positive effect it has had across the state in focusing the collaborative efforts of the Council on Postsecondary Education, the Education Professional Standards Board, the Kentucky Department of Education, the colleges and universities, and the local schools.

Staff from the Early Childhood Education Center in Anderson County testified about the importance of early childhood education. They explained the significance of early intervention and thanked the members for their continued support.

## Subcommittee on Postsecondary Education

The Subcommittee on Postsecondary Education met three times during the 2011 Interim.

### Postsecondary Analysis of High School Assessment Results

Representatives from the Council on Postsecondary Education analyzed the recent statewide high school assessment results and how they might affect postsecondary college readiness efforts. They discussed the college readiness initiatives under way as a result of 2009 Regular Session Senate Bill 1 mandates. They provided data that showed Kentucky is making improvements in college readiness; however, significant progress is still needed, particularly in closing the gaps for minority and low-income students.

### Postsecondary Outreach Initiatives

Representatives from CPE and the Kentucky Higher Education Assistance Authority (KHEAA) testified about postsecondary outreach initiatives to underrepresented, at-risk, and nontraditional students. Data were presented regarding the bachelor degree attainment gaps for low-income, underprepared, and minority students and the at-risk population by geographic region across the Commonwealth.

CPE initiatives that were discussed included the Annual Academically Proficient African-American High School Junior and Senior Conference, the Governor's Minority Student College Preparation Program, and Kentucky Gear Up.

KHEAA outreach programs that were highlighted included the College Access Challenge Grant, The College Info Road Show, the new KHEAA College Cost and Planning Report, and the inaugural College Coaches Program.

### Postsecondary Student International Initiatives

The president of Education Kentucky, Inc. presented information about international students attending Kentucky's universities, including the benefits such students bring to the universities and the Commonwealth and the barriers to international students coming here.

The chair of the Kentucky Council on Education Abroad and the director of the Kentucky Institute for International Studies gave an overview of study abroad programs for Kentucky students and discussed the benefits such programs provide to Kentucky students and the Commonwealth.

Former Governor Collins testified on the benefits of global engagement to the Commonwealth. She stressed the importance of international markets to Kentucky's economic future and said international study programs can lay the groundwork to help Kentucky be more prosperous.

### Workforce Skills Gap

Representatives from the Education and Workforce Development Cabinet, the Kentucky Community and Technical College System, and Kentucky Adult Education discussed efforts to close Kentucky's workforce skills gap. The KCTCS chancellor discussed the new Accelerating Opportunity Grant program, the Kentucky Workforce Investment Network System, and the expansion of the KCTCS Learn on Demand program.

The vice president of Kentucky Adult Education discussed the importance of and challenge to providing a highly educated and trained workforce. He said there are significant challenges facing Kentucky Adult Education students and discussed some of the strategies for serving those students.

The commissioner of the Kentucky Department of Workforce Investment discussed the goals of the WorkSmart Kentucky plan and efforts to reach those goals including identifying sector strategies, establishing high-impact Workforce Investment Boards and Work Ready Communities, and focusing on solutions-based business services and talent pipeline development.

# Report of the 2011
# Special Subcommittee on Energy

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

Sen. Joe Bowen
Sen. Ernie Harris
Sen. Tom Jensen
Sen. Ray Jones
Sen. Bob Leeper
Sen. Dorsey Ridley
Sen. Katie Kratz Stine
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Sen. Robin Webb
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Rep. Will Coursey
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Rep. Tanya Pullin
Rep. Tom Riner
Rep. Kevin Sinnette
Rep. John Will Stacy
Rep. Fitz Steele
Rep. Brent Yonts

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**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
**Kentucky General Assembly**

## Special Subcommittee on Energy

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

## Committee Activity

During the 2011 Interim, the Special Subcommittee on Energy held six meetings. The committee received testimony regarding a wide range of topics.

### Block Grant Application and Prefiled Bills

A representative from the Cabinet for Health and Family Services, Department of Community Based Services, Division of Family Support, explained the requirements and components of the Low Income Home Energy Assistance Program block grant application for FY 2012. The block grant application findings of fact were adopted by voice vote.

The committee considered two prefiled bills. BR 197, which seeks to prohibit utility franchisees from recovering the franchise fee from ratepayers through fees or surcharges on their bills, is sponsored by Representative Kevin Sinnette. BR 368, sponsored by Chairman Keith Hall, seeks to end the transfer of coal severance funds to the workers compensation benefit reserve fund. Both bills were considered for discussion only, and no action was taken.

### Fuel Diversity

A representative of NextEra Energy Resources, LLC discussed diversifying the Commonwealth's energy portfolio. He suggested that there are opportunities for Kentucky to expand its use of natural gas and hydropower, and recognized the work being done to improve the ways to use coal. Gasification and coal-to-liquids projects as well as beneficial reuse of waste products and carbon storage will play a role in the state's energy outlook.

Representatives of the Department for Energy Development and Independence discussed efforts by the Energy and Environment Cabinet to foster alternative transportation fuels and renewable energy industries. Under the governor's 2008 energy plan, the cabinet had adopted a multifaceted approach to develop clean, reliable, and affordable energy sources to help improve energy security. As part of this strategy, Kentucky has adopted the goal of developing a coal-to-liquids industry that will use 50 million tons of coal to produce 4 billion gallons of liquid fuel per year by 2025. Another goal is to produce the equivalent of 100 percent of the state's annual natural gas demand by augmenting in-state natural gas production with synthetic natural gas from coal-to-gas processing by 2025. With regard to biofuels and renewable sources of energy, the strategy strives to derive 12 percent of Kentucky's motor fuel demands from biofuels and seeks to triple Kentucky's renewable-energy generation to 1,000 megawatts by 2025.

### Mine Permitting and the EPA

The effect of water, air, and land use regulations on the coal industry was the subject of several discussions. Many legislators shared concerns about overregulation by the EPA and the Army Corp of Engineers and how this may affect the future of coal mining. Members cited the ripple effects on employment, tax revenues, electric rates, and economic development. The elimination of Nationwide Permit 21, the introduction of new conductivity standards, and routine designation of headwater streams as "aquatic resources of national importance" are among actions that have contributed to permit delays and denials. Cabinet officials and an east Kentucky mine permit consultant testified about upcoming federal actions and the lawsuits being pursued against EPA by the state.

### Transporting Kentucky Coal to Emerging Markets

Continuing a line of investigation begun in the 2010 Interim, the committee heard presentations from the barge industry and the railroads during two meetings. The director of coal facilities and origin sales for CSX railroad explained why east Kentucky coal is important to the region and what CSX is doing to support the east Kentucky coal industry. He discussed the challenges and opportunities for transporting east Kentucky coal, and asked that Kentucky consider the inclusion of Class I railroads in the Maintenance Credit. He suggested that raising the $1 million cap on the Fossil Energy Expansion Credit would boost economic activity.

A representative of AEP's River Operations explained that center gulf coal exports have been rising since 2008 and that 2011 exports could reach 15 million tons. AEP River Operations projects 2012-2014 exports could reach 18 million to 20 million tons. A closure at Markland Dam will result in an estimated loss of $12.8 million to industry, and will make export commodities less competitive in world markets. Locks and dams create pools that benefit flood control efforts, municipal water supplies, and recreational opportunities.

### Natural Gas

The executive director of the Public Service Commission (PSC) discussed the findings of the commission's report on retail competition in natural gas distribution, which had been prepared pursuant to House Joint Resolution 141 during the 2010 Regular Session. He explained the reasons for the PSC's finding that natural gas markets should be opened to broader retail competition only if expanded safeguards for residential customers and natural gas distribution companies are also adopted. The PSC concluded that the benefits of retail competition for residential customers could not be established with certainty. If the General Assembly were to move Kentucky toward expanded retail competition, the PSC recommends placing third-party marketers under the same requirements as local natural gas distribution companies. Such requirements would allow the PSC to review a marketer's ability to provide gas service; authorize the commission to revoke a marketer's permission to operate in Kentucky or otherwise penalize it for failure to comply with PSC standards; allow it to adjudicate complaints against marketers; and require marketers to file tariffs setting forth their rates, terms, and conditions of service.

Representatives from two companies encouraged the potential utilization of compressed natural gas and liquefied natural gas as transportation fuel. Domestic sourcing and lower emissions were offered as advantages of natural gas as transportation fuel. Early adopters of this idea have been commercial and industrial short-haul fleets that can be refueled at a central, proprietary fueling location. Fleet vehicles such as buses, taxis, delivery and garbage trucks, and coal mining equipment and coal hauling trucks could take advantage of this opportunity. The presenters stated that natural gas well-head conversion facilities could be employed to process raw gas into acceptable truck fuel. Although the conversion of vehicles from diesel to natural gas is expensive, the fuel savings could pay for the conversion in a relatively short period if natural gas prices remain low. Members expressed interest in a domestic market for Kentucky gas.

**Incentives for Energy Independence Act (KRS 154.27-010 to 154.27-090)**

Representatives of the Cabinet for Economic Development and companies that are developing projects that qualify for Incentives for Energy. Independence Act (IEIA) incentives reported on how the Act is being implemented and whether it is effective in encouraging projects that involve alternative transportation fuels, fuels made from coal or biomass, and renewable fuels for electric generation. Because of the IEIA, the cabinet is able to provide tax incentives for alternative fuel facilities, renewable energy facilities, and gasification facilities. Through later amendments, other fuels qualify for tax incentives, including shale and tar sands; natural gas as a feedstock; projects producing energy-efficient fuels other than transportation fuels; and $CO_2$ pipeline projects. The speaker for the cabinet stated that the IEIA also included funding of $5 million for the Kentucky New Energy Ventures Fund. The Kentucky Science and Technology Corporation is responsible for administering the program by providing grants and investing in small start-up companies. The funds are invested in alternative renewable energy projects from Kentucky-based, early-stage technology companies.

The CEO for ecoPower Generation LLC spoke about his project and experience with IEIA incentives. EcoPower was founded in 2009 to build and operate renewable bioenergy facilities utilizing sawmill residuals and low-quality logs as fuels. The project was given pre-approval for $15 million in tax credits, based on a 2009 preliminary estimate of the cost of the facility. The current estimate is higher, and ecoPower has applied to the cabinet for an adjustment based on the current estimated cost. The incentives are a promise to offset future tax obligations and become available only during construction or operation. The speaker suggested creating incentives that would enhance the company's profile when it takes its projects to market.

The committee also heard from the president of C2O Technologies, a firm seeking to build a plant to convert coal to oil in western Kentucky. Like ecoPower, the project is having difficulty finding financing in a tight economy. IEIA incentives are not a significant asset in this regard. The president stated that, in addition to coal-to-liquids production, C2O's technology can help reduce $CO_2$ emissions, increase efficiency in coal-to-oil operations, and increase the use of biofuels.

# Report of the 2011
# Interim Joint Committee on Health and Welfare

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

Sen. Joe Bowen
Sen. Tom Buford
Sen. Perry Clark
Sen. David Givens
Sen. Denise Harper Angel
Sen. Alice Kerr
Sen. Dennis Parrett
Sen. Joey Pendleton
Sen. Katie Kratz Stine
Sen. Jack Westwood
Rep. Julie Adams
Rep. John Arnold
Rep. Bob M. DeWeese
Rep. Kelly Flood
Rep. Jim Glenn
Rep. Brent Housman
Rep. Joni Jenkins
Rep. Mary Lou Marzian
Rep. Tim Moore
Rep. Darryl Owens
Rep. Ruth Ann Palumbo
Rep. Ben Waide
Rep. David Watkins
Rep. Susan Westrom
Rep. Addia Wuchner

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 Clark
Sen. David Givens
Sen. Alice Forgy Kerr
Sen. Joey Pendleton
Rep. Julie Adams
Rep. John Arnold
Rep. Kelly Flood
Rep. Jim Glenn
Rep. Brent Housman
Rep. Joni Jenkins

LRC Staff: Ben Payne and Cindy Smith.

### Subcommittee on Health Issues and Aging

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

Sen. Joe Bowen
Sen. Denise Harper Angel
Sen. Dennis Parrett
Sen. Jack Westwood
Rep. Bob DeWeese
Rep. Tim Moore
Rep. Darryl Owens
Rep. Ruth Ann Palumbo
Rep. Ben Waide
Rep. David Watkins
Rep. Addia Wuchner

LRC Staff: 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 five times during the 2011 Interim.

### Children's Issues

The committee met in Lexington in during the 15th annual Kids Are Worth It! Conference. The executive director and a board member of Prevent Child Abuse Kentucky (PCAK), which sponsored the conference, spoke about the goals of PCAK and the conference. PCAK is the only statewide nonpartisan, nonprofit child abuse and neglect network whose mission is to prevent the abuse and neglect of Kentucky's children through its outreach. Board members consist of social services professionals, doctors, lawyers, business leaders, law enforcement officials, and high-level government officials.

The commissioner, Department for Community Based Services, Cabinet for Health and Family Services, spoke about child protection investigations for Lexington-Fayette County that were undertaken by the Ombudsman's Office in accordance with 2007 House Joint Resolution 137 and 2008 House Joint Resolution 17. Lexington-Fayette County had 10 complaints justified by the Ombudsman's Office where action was needed involving 14 actual items between January and June 2010. The investigation by the Ombudsman's Office found that case plans had not been completed in a timely manner, and families receiving services had not been consistently seen on a monthly basis. Documentation on case plans and periodic assessments had been completed in a timely manner, but quarterly contact with service providers had not been consistently documented.

The commissioner stated that one of the challenges for Fayette County has been hiring new front-line workers. To address this problem, Lexington-Fayette County was directed to rebalance the workload of family service workers. New hires not ready to manage high-risk cases were assigned to work on presentation summaries in adoption cases, providing a coaching and mentoring opportunity as well as providing relief to caseworkers. As a result, 96 percent of the approximately 600 Fayette County case plans for children in out-of-home care were completed in a timely manner in July 2011, up from 66 percent in July 2010. Monthly home visits to families receiving services improved from 79.6 percent in July 2010 to 90 percent in July 2011.

The commissioner spoke about the child protective case investigations statewide and the steps taken after there has been a substantiated case of abuse or neglect of a child. Approximately 42,000 to 43,000 investigations of child protective cases were conducted in 2010 statewide. In FY 2011, 29 percent of the cases were substantiated; the national average is 26 percent. Approximately 75 percent of children are reunited with a parent. Approximately 24 percent of children placed in foster care are reunited with family within 60 days. There are approximately 700 adoptions of foster children annually, and approximately 85 percent of adoptions are by foster parents.

The president of the Kentucky Foster Parent Association presented legislative proposals to assist foster parents. Kentucky law permits a biological parent or stepparent to transfer ownership of a vehicle to his or her child without paying sales tax. The association recommends that the statute be amended to exempt children in out-of-home care from paying sales tax on vehicles. The association recommends that resource homes be allowed to participate in the state medical insurance plan with no cost to the state. The per diem rate for foster parents ranges from $19 to $27 per day for food, shelter, personal hygiene products, children’s allowance, haircuts, diapers, school supplies, clothing allowance, nonmedical mileage, extracurricular activities, over-the-counter medical supplies, field trip expenses, and 1 day of respite care per month. With the increase in the cost of living expenses, the association recommends that the per diem rate be raised. Because of the hardship on foster parents to have an annual physical, it is recommended that the physical be required every 2 years instead of annually.

The new executive director of the Governor’s Office of Early Childhood spoke about the reestablishment of the office. The original office was established by Governor Patton, and its duties were transferred to the Department of Education by Governor Fletcher. In 2009, Governor Beshear created the Governor’s Task Force on Early Childhood Development and Education. In response to the task force’s recommendations, the Governor issued an executive order on July 12, 2011, reestablishing the office and the Early Childhood Advisory Council. The duties and responsibilities of the office include promoting the vision of Kentucky’s early childhood system, advocating for improved quality of early childhood services, and reducing barriers to coordination among existing programs.

**Disability Issues**

The president of Kaleidoscope, Inc., the only younger adult day health center in Kentucky, spoke about the needs of individuals eligible for Supports for Community Living (SCL) waiver funds. There are 156 participants at Kaleidoscope with an average age of 35 years. They attend during the day and live at home. They are cared for by spouses, parents, grandparents, extended family, family home providers, staffed residence providers, or Hazelwood community home providers. It costs $168 per day for an individual to stay in an institution. The money used in SCL program is used to help individuals stay in the community. There are approximately 1,800 individuals on a waiting list for the SCL waiver who live at home and receive Home and Community Based Waiver (HCBW) services. The state funds 50 HCBW slots per year, and there has been no movement on the list for a long time.

A representative from Necco, Inc. said that Necco is a private, statewide, not-for-profit agency started in 1997 that provides therapeutic foster care, independent living, alternatives to secure detention, and other community-based services to children. Necco serves children aged birth to 21 years in both the child welfare and juvenile justice systems and families in need. Serving more than 600 children and nearly 300 foster families in 68 of Kentucky's 120 counties, it is the largest provider of therapeutic foster care in the state. The annual budget is $16 million, with approximately 85 percent coming from government funding. Some of the contracts are with the Cabinet for Health and Family Services, the Department for Juvenile Services, and Prevent Child Abuse Kentucky.

Representatives from Lighthouse Counseling Services and Phoenix Preferred Care discussed concerns about changes in administrative regulations related to the Impact Plus program. The purpose of Impact Plus is to provide intensive outpatient therapy to avoid placement in out-of-home or foster care, detention, hospitalization, or residential treatment. The cost to the state of providing Impact Plus services is lower than other alternatives and allows children to stay in their families and communities. A new Impact Plus user's manual was incorporated into 907 KAR 3:030 in September 2010. The manual reduced the caseload limitations for case managers from 25 to 15. Case managers do not provide treatment but make sure families have services that are needed and perform administrative tasks to continue to request continuation of services for the families. Because agencies are paid per case by the Department for Medicaid Services for Impact Plus services, the department cannot pay case managers the same amount to serve 15 clients as it has for 25 clients. There was concern that experienced case managers clients will not remain in these positions due to the drastic reduction in their income, and that there will be more hospitalizations, out-of-home placements, and detentions.

## Health Care

The president of the University of Louisville and representatives of Jewish Hospital & St. Mary's HealthCare, Saint Joseph Health System, and University Medical Center discussed their pending merger. The merged entity would be a 501(c)(3) not-for-profit organization governed by an 18-member community board. All institutions that are part of the merger will continue to provide care and expand access to everyone regardless of ability to pay. All hospitals will continue to provide inpatient care as they do today, consistent with their missions and nonprofit status. Physicians will continue to inform patients and families of all options available, including palliative care, terminal sedation, and hospice care. With rare exceptions, advance directives and organ donations can be honored consistent with the Catholic Ethical and Religious Directives. Agreements among entities will protect academic freedom of the University of Louisville School of Medicine and its faculty and will not limit content curriculum, location of university classes, or the fields of research the faculty can pursue. Elective abortion is not currently performed at University Hospital, and this will not change after the merger. Family planning, vasectomies, and in vitro fertilization will continue as office procedures. Tubal ligation as a sole procedure or a vaginal delivery and tubal ligation will be performed in a hospital setting outside of the merged entity. A cesarean delivery and tubal ligation performed at one time under anesthesia will be performed in a hospital setting outside of the merged entity. The bishop will not be involved in governance or management of the organization. A Catholic health system has a responsibility to work with the bishop to seek his approval when entering into partnerships.

When the consolidation agreement was signed, the expectation was that there would be a 9- to 12-month process for both the Federal Trade Commission to review the merger and for the Internal Revenue Service to approve the nonprofit tax status of the merged entity. Administrative regulations would be filed with the Cabinet for Health and Family Services (CHFS). The definitive agreement was signed in June 2011. Discussions are in progress with the Governor's Office, CHFS, and the Attorney General's Office, all of which must approve the transaction. Without the financial viability afforded by the merger, care to the indigent population will not be able to continue.

Imaging and radiation therapy professionals from Northern Kentucky, University of Kentucky Medical Center, and Bluegrass Community and Technical College discussed proposed legislation for independent regulation of imaging and radiation therapy professionals. There are more than 8,000 licensees, including radiographers, nuclear medicine technologists, radiation therapists, limited operators, and temporary licensees, making it the third largest group of health professionals in Kentucky. Due to growth and the complexity in medical imaging and radiation therapy, radiation imaging and therapy professionals wish to create a professional board that would allow self governance in regulatory and professional disciplinary issues. The board would represent all major geographical areas of Kentucky. The advantages of a board would be the ability to better oversee the quality of the profession, to respond to changes in the professions more quickly, to increase staff to support the growing number of licensees, and provide licensees with a voice through broader representation. Establishing the board would move oversight of radiation professionals out of the cabinet and into an independent, self-governing peer board of professional representatives.

The president of MD2U, Louisville, stated that MD2U was founded in July 2004. Its mission is to offer high-quality primary health care to the homebound and home limited and to provide convenient, detailed, and service-oriented medical care. It makes more than 180 house calls per day. MD2U helps decrease hospital readmissions and length of stay, trips to the emergency room, and medical transportation costs. MD2U's objectives are to partner with the Commonwealth to expand health care access to Medicaid patients that need them the most; to identify the sickest patients who overuse Medicaid resources by obtaining care in high-cost settings such as the emergency room; and to establish a cost savings-share program.

The vice president for business and government relations, and the dean of the College of Pharmacy, Sullivan University, stated that the Sullivan University College of Pharmacy (SUCOP) received full accreditation from the Accreditation Council for Pharmacy Education and that the first class graduated in 2011. The SUCOP has pharmacists practicing at Jewish Hospital, Baptist East Hospital, the University of Louisville Hospital, Kosair Children's Hospital, and Floyd Memorial Hospital.

Independent pharmacists and representatives from Kentucky Spirit, CoventryCares, and WellCare — the state's three Medicaid managed care organizations (MCOs) — discussed issues relating to pharmacy reimbursement under the contracts that took effect November 1, 2011. There are 550 independent pharmacies in Kentucky. Major issues include reimbursement to pharmacists for pharmaceuticals that have been dispensed, rates of reimbursement, dispensing fees, and changes in reimbursement rates. These issues are making it increasingly difficult for independent pharmacies to compete with major pharmaceutical companies. At the same time, the MCOs are trying to reduce the costs of pharmaceuticals to the Medicaid program.

**Public Health**

A prevention specialist II and Kidsnow Plus and Reel Action Coordinator, Seven Counties Services, Inc., presented the results of the 2010 Prevention of Underage Drinking video competition. In this competition, youth create 28-second public service announcements about the risks of underage drinking. This regional project began in 2008 and involves youth directly in prevention of underage drinking. The primary goal is designed to provide counteradvertising and increase awareness of the consequences of underage drinking. The secondary goal is an awareness effort geared towards parents and care providers, creating written articles focusing on underage drinking information, preventive tips, and resources. The committee viewed several of the videos, including the winning video for 2010.

Representative Westrom discussed legislation that she plans to file for the 2012 Regular Session relating to a smoking ban in all enclosed public places and places of employment. The president and CEO of the Kentucky Chamber of Commerce, the public health director of the Clark County Health Department, the president of the Kentucky Public Health Association, a Vietnam War veteran, and a cardiology and internal medicine physician spoke in favor of the legislation. According to the Centers for Disease Control and Prevention (CDC), Kentucky is second in the country in the number of adult smokers with 24.8 percent. Kentucky is first in the nation in smoking prevalence among both middle and high school students. The CDC estimated smoking-attributable health expenditures to be more than $1.7 billion annually in Kentucky, and the smoking-attributable economic productivity loss in Kentucky at more than $2.6 billion annually. Kentucky also ranks 48$^{th}$ among the states for workplace exposure to cigarette smoke.

Representative Glenn discussed legislation that he and Representative DeWeese intend to co-sponsor for the 2012 Regular Session to fund colon cancer screenings for uninsured individuals between the ages of 50 and 64. The legislation requests $3 million in FY 2012 and $5 million in FY 2013. A clinical professor at the University of Louisville and the president of the Colon Cancer Prevention Project stated that colon cancer is the number one cause of cancer deaths in nonsmokers in the United States and Kentucky. Approximately 2,700 Kentuckians will be diagnosed with colon cancer in 2011, and 800 will die from the disease. Louisville is the fourth worst large metropolitan city for colon cancer nationally. Colon cancer deaths are 90 percent preventable with appropriate screening and removal of polyps. A colon cancer patient from Owensboro stated that in 2009 he was diagnosed with colon cancer and that his insurance company has spent over $1 million in health care costs since his diagnosis.

## Referred Block Grant Applications

Pursuant to KRS 45.353, the committee held legislative hearings on five block grant applications: the state FY 2012 Social Services Block Grant; the federal FY 2012-2013 Child Care and Development Plan Block Grant; the federal FY 2012-2013 Community Services Block Grant; the federal FY 2012-13 Temporary Assistance for Needy Families Block Grant; and the federal FY 2012-13 Unified Mental Health and Substance Abuse Prevention and Treatment Block Grant.

## Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, the committee reviewed 38 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 the Executive Order 2011-353, relating to Reorganization of the Cabinet for Health and Family Services.

## Subcommittee Activity

## Subcommittee on Health Issues and Aging

The Subcommittee on Health Issues and Aging met two times during the 2011 Interim.

### Acquired Brain Injury Medicaid Waiver Program

Family members of individuals participating in the Acquired Brain Injury (ABI) Medicaid waiver program provided testimony about difficulties in receiving waiver services. The family members experienced numerous problems finding placements and trying to access the appropriate services. Among the problems encountered were inappropriate plans of care, confusing administrative regulations, inconsistent administration of the waivers, a lack of knowledge among case managers about the availability of ABI services, and a lack of clinical expertise among the case managers. The advocacy director of the Brain Injury Alliance of Kentucky suggested the formation of an Acquired Brain Injury Department, not placed within the Department for Medicaid Services, to bring together all ABI services under one umbrella. There is a new waiver in process with medical enhancements for ABI individuals. The number of individuals with brain injuries is growing, and already-scarce services will be in even greater demand as the number of military veterans returning from service duty with brain injuries increases.

### Home and Community-Based Services for the Elderly and Disabled

The assistant director of the Bluegrass Area Agency on Aging, the contracts and budget planner with the Kentuckiana Regional Planning and Development Agency, a volunteer with the Tri-County Community Action Agency, and the executive director of the Center for Accessible Living testified on home and community-based services for the elderly and disabled. Kentucky, like the rest of the US, is facing an increasing number of seniors. More than 419,000 older adults, grandparents, and persons with disabilities received services including meals, transportation, and in-home care in fiscal year 2010-2011. Total spending, including federal, state, and local funds, was about $61.3 million. The number of individuals on the wait list for meals, transportation, and in-home care has increased while program funding has decreased. The services have an economic impact in the local communities and help to maintain the health and safety of older adults and the disabled by reducing the costs associated with providing additional care for falls, poor health, and malnutrition. The Personal Care Attendant Program, one of the first of its kind to be established in the US, continues to provide valuable services to individuals with disabilities and also faces a decrease in funding.

### IMPACT Plus Program

The committee heard testimony from an IMPACT Plus service provider, the children's branch manager of the Division of Behavioral Health, and the commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID), and the deputy secretary of the Cabinet for Health and Family Services regarding provider concerns with procedural matters. The program provides services to children with severe emotional disabilities who need intensive services to stay in their homes. The DBHDID is the Title V contracted agency for the delivery of IMPACT Plus services. Some providers have expressed concerns about the procedure for obtaining due process when providers are terminated from the program. DBHDID maintains agreements with subcontracted behavioral health agencies and private behavioral health professionals throughout the state to provide the various IMPACT Plus behavioral health services. The provisions of the contracts are binding on the cabinet and the contractor when a provider signs a contract. The contracts contain provisions about what rights and remedies are available to the contractor. When it is determined that a provider should be terminated from the program, the cabinet conducts internal audits to ensure that the best interests of the program and the clients are being served. For any changes in the terms of a contract entered into between the cabinet and a provider, the contract would have to be amended.

## Subcommittee on Families and Children

The Subcommittee on Families and Children met one time during the 2011 Interim.

### Child Health

An annual update of the First Steps Program was presented by the director of the Division of Maternal and Child Health and by the First Steps coordinator of the Division of Maternal and Child Health with the Cabinet for Health and Family Services. The program is a statewide early intervention system that provides services to children from birth to age 3 who have developmental disabilities and their families, and the program serves more than 14,000 individuals annually.

The Coordinated School Health Project director with the Kentucky Department of Education reported on the Coordinated School Health Project programs. The programs are organized sets of projects, policies, and activities that individual schools may voluntarily choose to implement. Officials of Tates Creek Middle School in Fayette County, Shannon Johnson Elementary School in Madison County, and Campbell Ridge Elementary School in Campbell County testified on the specific physical education activities implemented in their schools and the successes experienced.

**Family Assistance**

The director of the Division of Maternal and Child Health, Cabinet for Health and Family Services, reported on the Special Supplemental Nutrition Program for Women, Infants, and Children that serves 136,000 Kentuckians monthly. The division director, Division of Family Support, discussed the eligibility requirements and access ability for the programs of Temporary Assistance to Needy Families, Kentucky Transitional Assistance Program, Supplemental Nutrition Assistance Program, Kentucky Children's Health Insurance Program, Child Care Assistance Program, and the Low Income Home Energy Assistance Program.

# Report of the 2011
# Interim Joint Committee on Judiciary

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

Sen. Perry Clark
Sen. Carroll Gibson
Sen. Ray S. Jones II
Sen. Jerry Rhoads
Sen. John Schickel
Sen. Dan Seum
Sen. Katie Stine
Sen. Robert Stivers
Sen. Robin Webb
Sen. Jack Westwood
Rep. Johnny Bell
Rep. Jesse Crenshaw
Rep. Joseph Fischer
Rep. Kelly Flood
Rep. Sara Beth Gregory
Rep. Jeff Hoover
Rep. Joni Jenkins
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Rep. Mike Nemes
Rep. Darryl Owens
Rep. Tom Riner
Rep. Steve Rudy
Rep. Brent Yonts

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 decedents’ estates; domestic relations; adoption; abortion; support of dependents; statutory actions and limitations; eminent domain; arbitration; summary proceedings; declaratory judgments; witnesses evidence; legal notices; construction of statutes; civil procedure; the Supreme Court, the Court of Appeals, Circuit Courts, and District Courts; jurisdiction, rule, terms, judges, commissioners, selections, districts, qualifications, compensations, and retirement; clerk of court; juries; 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; and juvenile matters.

## Committee Activity

The Interim Joint Committee on Judiciary held seven meetings.

### Problems relating to jailing of status offenders in Kentucky

Kentucky Youth Advocates urged curtailing the detention of status offenders because detention is the least effective and most expensive means of dealing with them. A status offense is one that can be committed only by a minor and would not be an offense if committed by an adult, such as truancy and being beyond parental or school control. Detention increases the risk of poor education, work, and health outcomes while greatly increasing the chance of future incarceration both as a youth and as an adult, without addressing the problems the child is facing that may cause the inappropriate behavior. There were suggestions to limit detention while expanding treatment programs.

School officials indicated that they were concerned about attendance of students at school and urged courts to force parents to have children attend school. They said that secure detention is sometimes necessary when children are acting beyond control.

### Juvenile law matters

A representative from the Department of Juvenile Justice testified about the department’s handling of status offenders and gave statistics on the number of children sent to the department. Ordinarily, a status offender is not sent to the department until he or she has violated a valid court order, and then only for detention purposes. The Department of Community Based Services within the Cabinet for Health and Family Services is charged with the treatment of status offenders. The Department for Juvenile Justice deals with juvenile public offenders, who are children who commit offenses that are crimes whether committed by an adult or a child.

District judges testified about how the courts deal with children who are status offenders. Children frequently have problems at home, and poor parenting is sometimes an issue. The judges praised the Administrative Office of the Courts' truancy diversion program, which has been highly successful in the school districts which use it in decreasing truancy rates. A district judge commented that schools are too ready to allow parents to withdraw children from school in order to home school them even though the parents may not be qualified to conduct the program.

Other speakers addressed the difficulty of obtaining alternatives to detention, the unavailability of counseling and treatment programs, problems with Global Positioning System monitors, the problem of the Department for Community Based Services being overwhelmed with clients while having few resources, and a general lack of funding for alternative counseling and treatment programs. A parent spoke of problems with inappropriate and ineffective programs to address bullying in the schools through inappropriate identification of suspects and inappropriate use of referral to the courts.

A representative from the Kentucky Educational Collaborative for State Agency Children described its funding and oversight of services which are provided by school districts to children in detention in facilities operated by the Department of Juvenile Justice. The agency indicated that the programs for incarcerated juveniles are successful with 75 percent improving in reading and math.

**Programs for Status Offenders and Suggestions for Statutory Change**

The commissioner of the Department for Community Based Services indicated that the department handles cases of child abuse, child neglect, runaways, truancy, and children being out of control. The commissioner attributed the number of truancy cases partially to strict truancy laws. More than 1,000 youths are being served, and more than 900 children are in foster care, with the average stay in foster care more than 21 months. Foster care costs $37 million per year. Detention and removal from the home are not the answer to the child's problems.

**Community-Based Programs for Assisting Juvenile Status Offenders and Public Offenders, Suggestions for Statutory Changes**

Representatives of Community Action Kentucky described their programs, which include in-home programs, family preservation, counseling for abuse and neglect, mentoring, fatherhood services, carpentry training, and working with the Department for Community Based Services. Because of a lack of funding, there may be significant delays in placing children and families in programs and having programs available at all locations. More funding is needed because, for every dollar invested, there is a savings of $2.70 to $2.80 in other costs.

**Court Programs for Juvenile Status and Public Offenders, Suggestions for Statutory Changes**

The executive officer of Family and Juvenile Services of the Administrative Office of the Courts described the workload of the courts and the programs available for juvenile public and status offenders through the court system. In the past year, 40,000 new cases were filed against juveniles, with 10,590 being status offenses. The number one status complaint was truancy, followed by children being out of control. Truancy diversion programs have achieved a 90 percent success rate.

The courts begin with using an evidence-based assessment tool to ascertain the child's problems and determine the child's needs and the best course of treatment and intervention programs. One of the most successful programs has been a court-designated worker diversion program where the court-designated worker monitors the child and supervises the provision of counseling and treatment programs as well as monitoring the child's progress.

**Juvenile Law Changes**

Representative Flood indicated that she intends to reintroduce 2011 HB 123, which would follow the model of providing rehabilitation and treatment rather than punishment for children charged with status offenses, and which would place limits on the duration of court orders relating to children, while protecting judicial discretion.

The Kenton County jailer spoke of the expense to counties when police take juveniles to detention prior to trial and the court's regularly ordering status offenders to detention as a punishment, which cost his county more than $100,000 per year. He supported community treatment and diversion programs that lessen the chance of children becoming adult criminals.

**Arrest, Prosecution, and Treatment of Juveniles Who Are 10 Years of Age or Under**

The executive officer of Family and Juvenile Services of the Administrative Office of the Courts reported that, from 2005 to 2010, 2,705 children aged 10 and under were charged with status or public offenses. These children were 4 to 5 times more likely to continue in the juvenile justice system. Multiple studies have indicated that children 10 and younger are best served by social service agencies and not the court system. Kentucky does not have an age of criminal responsibility as do some other states. The Administrative Office of the Courts is ready to expand the court-designated worker program to handle the needs of children against whom charges are brought, provided that additional funding is made available to hire more personnel and implement programs.

The deputy commissioner of the Department of Juvenile Justice reported that the courts have referred very few children aged 10 and under to the department. These children would be better served in the social services system than in the criminal justice system. The public advocate indicated that his department must represent most children charged with public or status offenses because the parents are indigent. The department is unable to effectively deal with children, who are more likely to continue in the criminal justice system. The General Assembly should adopt the age of 10 as the age of criminal responsibility. Many recent psychological studies indicate that actual responsibility may come several years later.

### 2011 Senate Bill 22 Relating to Crimes and Punishments

Senator Schickel, doctors, and nurses spoke about the need for the senator’s 2011 SB 22, which would add emergency room personnel to KRS 508.025 (assault in the third degree), making a simple assault of such personnel a Class D felony. Speakers indicated that assaults against emergency room personnel are increasing and that making the offense a felony would allow for arrests by police for those crimes not committed in their presence and would have a deterrent effect.

### Cost-Effective Adjustments of Kentucky’s Persistent Felony Offender and Violent-Offender Laws

The public advocate testified that Kentucky has 7,792 persistent felony offenders and violent offenders who cost the state more than $169 million per year. He urged the committee to reduce the number of persistent felony offenses and violent felony offenses. Also suggested was that the requirement of 85 percent service of sentence prior to eligibility for parole be restricted to intentional conduct resulting in death, serious physical injury, or substantial sexual conduct; and that all other violent offense parole eligibility be reduced to inmates who have served 50 percent of their sentence prior to being eligible for parole.

With regard to the persistent felony offender statute, it was suggested to return the statute to the version originally enacted with the Penal Code, which required two prior actual incarcerations. The public advocate recommended eliminating all double enhancements where the criminal is given both an enhanced sentence for violating the underlying offense and a persistent felony offender sentence as well. The public advocate also urged the decriminalization of the nonsupport and flagrant nonsupport statutes because they do not provide any additional support for the person entitled to the support and cost nearly $22,000 per year per person. He recommended additional funding for the department’s social worker program so that persons who are nonviolent offenders and persons who violate child support orders can retain their employment while receiving counseling and training.

### Criminal Gang Legislation

The Christian County Commonwealth’s attorney, several other Commonwealth’s attorneys, and law enforcement officers gave a presentation on the extent of criminal gangs in Kentucky. Gangs are recruiting schoolchildren to commit crimes and continue as adult criminals. Criminal gangs are responsible for drug trafficking, violence, home invasions, and intimidation and murder of witnesses. Current gang laws are insufficient and encourage gangs to commit offenses in Kentucky. Thirty-two states have criminal gang legislation that enhance penalties for gang-related crimes, prohibit gang members from receiving credit for pretrial incarceration, create a criminal gang and gang member database available for sharing with police, require 50 percent service of sentence prior to eligibility for parole for gang-related offenses that are not violent offenses, permit forfeiture of gang property, and allow courts to receive evidence of gang membership.

### Unfair Competition in Kentucky Business

Counsel for computer companies and a computer specialist said that an increasing number of Kentucky businesses rely on technology as the difference between success and failure. More companies are relying on stolen computer technology that was legally developed in the United States but has been stolen and is being marketed from China, India, and Mexico. These practices have cost 100,000 US jobs and $50 billion in annual losses. Kentucky should pass legislation to ban companies from using stolen computer technology.

### Illegal Methamphetamine Laboratories

The Laurel County Commonwealth's attorney and representatives of law enforcement testified on the hazards of methamphetamine laboratories to the makers of methamphetamine, their families and children, law enforcement officers, and the public. They described the problems with methamphetamine use and detailed many instances where methamphetamine users were hospitalized or died. The primary ingredient necessary for production of methamphetamine is the over-the-counter drug pseudoephedrine. They estimated that more than 1,400 methamphetamine laboratories will be discovered this year, and urged that pseudoephedrine be made a prescription drug because current restrictions on the quantities purchased and identification requirements have not deterred methamphetamine makers from hiring others to purchase pseudoephedrine for them. They indicated that making pseudoephedrine a prescription drug has reduced methamphetamine production in Oregon and Mississippi.

A speaker from a corporation that provides the current "Meth Check" program and other similar programs that block pseudoephedrine purchases in other states testified that the Oregon and Mississippi legislation has not reduced methamphetamine use in those states but merely altered the source of the methamphetamine. A representative from the Consumer Health Products Association said that there is no public outcry for making pseudoephedrine a prescription drug and that doing so would increase health care costs, deny the most effective cold remedy to those who could not afford to see a physician, and not allow persons to seek the immediate cold relief provided by pseudoephedrine.

### Pill Mills

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

The director of the Kentucky Office of Drug Control Policy testified on the prescription drug abuse problem throughout Kentucky and the number of accidental overdose deaths. Drugs of abuse include Xanax, hydrocodone, and oxycodone. Florida and Ohio have been successful in reducing prescription drug abuse through stringent limitations on pain clinics, physician ownership, and improved oversight. Recommendations included using the Florida and Ohio models for legislation and requiring physicians to use the current Kentucky All Schedule Prescription Electronic Reporting (KASPER) drug monitoring system prior to prescribing controlled substances to ascertain if the person is already receiving medication elsewhere. The Kentucky Board of Medical Licensure indicated that there are 44 active investigations of physicians, 22 of which involve overprescribing. The Kentucky Board of Medical Licensure and the Kentucky Medical Association expressed support for legislation.

The deputy secretary of the Cabinet for Health and Family Services described the KASPER prescription monitoring program and how it can aid in detecting overprescribing and potential drug diversion in cooperation with licensing boards and law enforcement. Pharmacists testified that they are concerned about prescription drug diversion and are taking their own steps to limit purchases by persons who are not regular clients. Representatives of the Kentucky League of Cities and the Kentucky Association of County Officials spoke of problems cities and counties incurred when they attempted to regulate pain clinics through local ordinances because of an attorney general opinion that the matter was under the exclusive jurisdiction of the General Assembly.

**Executive Order 2011-350 Reorganizing the Justice and Public Safety Cabinet Programs**

The committee approved Executive Order 2011-350, which reorganized cabinet agencies and programs, by voice vote.

**Executive Order 2011-772 Relating to the Membership of the Kentucky Law Enforcement Council**

The committee approved Executive Order 2011-772, which added representation from Lexington and Louisville to the Kentucky Law Enforcement Council and permitted sending alternative delegates to meetings.

**State of the Court of Justice and Needs of the Court System**

The Chief Justice and representatives of the Court of Appeals, circuit judges, family court judges, district court judges, and the Administrative Office of the Courts reported on their respective duties, caseloads, programs, and their needs. Recent budget cuts have hampered the courts' ability to properly provide needed services due to cutbacks in personnel, elimination of court programs, and curtailing the expansion of other needed programs. Representatives described the actions taken by the courts to implement 2011 HB 463's reforms and changes that could alleviate problems encountered in implementing the legislation. It is hoped that savings on incarceration can be redirected to assist the court system in developing required assessments, programs, and alternatives to incarceration.

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

The Interim Joint Committee on Judiciary is scheduled to have a meeting in December 2011 for the purpose of receiving and acting upon recommendations and legislative proposals from the Task Force on the Penal Code and Controlled Substances Act. These recommendations and proposals relate to problems encountered during the implementation of 2011 HB 463 and the alternatives to incarceration, bail and pretrial release, and other programs.

# Report of the 2011 Interim Joint Committee on Labor and Industry

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

Sen. Jared Carpenter
Sen. Julian M. Carroll
Sen. Julie Denton
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jerry P. Rhoades
Sen. Tim Shaughnessy
Sen. Kathy Stein
Sen. Katie Kratz Stine
Sen. Jack Westwood
Sen. Ken Winters
Rep. John A. Arnold
Rep. Dewayne Bunch
Rep. Will Coursey
Rep. C.B. Embry, Jr.
Rep. Bill Farmer
Rep. Richard Henderson
Rep. Dennis Horlander
Rep. Wade Hurt
Rep. Joni L. Jenkins
Rep. Thomas Kerr
Rep. Adam Koenig
Rep. Mary Lou Marizan
Rep. Charles Miller
Rep. Terry Mills
Rep. Mike Nemes
Rep. Tanya Pullin
Rep. Tom Riner
Rep. Jim Steward
Rep. Brent Yonts

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 five meetings during the 2011 Interim. The topics discussed included the manufacturing industry, workers' compensation, unemployment insurance, and employee misclassification in the construction industry.

The president of the Northern Kentucky Chamber of Commerce stated that the economic recovery of Northern Kentucky was better than indicated by the unemployment rate for the area. He stated there have been increases in job postings in the manufacturing industry.

Local manufacturing companies have transformed into high-tech companies, and skilled workers are needed for that industry. Representatives from Gateway Community and Technical College shared that the college is providing students with the appropriate training and skills for today's high-paying manufacturing careers. Projections indicate that by 2018, 62 percent of all jobs will require some postsecondary education or training. The college has 45 to 50 apprenticeships with five manufacturing companies.

The commissioner of the Department of Workers' Claims testified about two significant court cases pending before the Kentucky Supreme Court. The cases relate to the black lung provisions in Kentucky's workers' compensation law. The Kentucky Court of Appeals found that the black lung provision violated the equal protection clause of the US Constitution because the disability determination process was different for black lung claims than for other work-related occupational disease claims.

Based on the rulings by the Kentucky Court of Appeals, the Department of Workers' Claims determined that it was fruitless to process black lung claims during the interim until there is a decision from the Supreme Court. As of September 9, 2011, the department had placed 282 claims in abeyance. The department is anticipating a decision from the Supreme Court after the first of the year.

If the Supreme Court reverses the Court of Appeals, black lung claims will be processed as they were before the Court of Appeals ruling by using the consensus procedure for determining black lung disability that was enacted in 2002. If the Supreme Court affirms the Court of Appeals and finds the process unconstitutional, the department may be required to adjudicate black lung claims under the statutory procedure that was in place prior to 2002 and is the same adjudicatory procedure that applies to other occupational disease claims.

The secretary of the Education and Workforce Development Cabinet stated that, as of June 30, 2011, the unemployment insurance trust fund balance was $145,493,972. Kentucky has borrowed and owes to the federal government $948,700,000 for funding the unemployment insurance trust fund. The federal unemployment loans are interest-bearing loans, and annual interest payment are required by federal law. Federal law prohibits the use of funds in the unemployment insurance trust fund to pay the interest owed; another source of funding is required to the pay the interest on the federal unemployment loans. The Penalty and Interest Account in the unemployment insurance law is the only statutory mechanism in place that is designated to pay interest on federal unemployment loans, and that account does not accrue sufficient funds annually to pay the interest due. The General Assembly will be asked to address this issue in the 2012 legislative session.

The secretary said the long-term solution for paying the interest on federal unemployment loans would be a statutory assessment mechanism by which the cabinet could annually assess employers an amount sufficient to pay the interest. The cabinet has been working with the business associations on an appropriate assessment methodology. After the 1982 unemployment insurance reforms, assessment authority was granted to the cabinet in 1984 by the General Assembly. That authority was repealed around 1998.

The secretary gave an update on the implementation of unemployment insurance reforms that were enacted in the 2010 Special Session. The secretary outlined a series of procedural changes implemented in the unemployment insurance program, noting that improvements have been made in the area of fraud detection and increased public awareness. A training program for employers was established to help employers understand the benefit appeals process. The secretary said that changes to the taxable wage base, waiting week, and wage replacement rate, pursuant to HB 5 (2010 SS), will take effect January 1, 2012.

Lexington business owners presented unemployment insurance concerns regarding small business owners' ability to terminate employees for work-related misconduct but still be charged for the employees' unemployment benefits. The secretary of the Education and Workplace Development Cabinet explained that the standard for misconduct for termination purposes is different from the eligibility standard for unemployment insurance benefits. If an employer appeals an award benefit, the burden is on the employer to show by a preponderance of evidence that the misconduct is sufficient to overturn the initial award. In 2010, approximately 70 percent of employers who appealed award benefits won their appeals.

The secretary said that in an attempt to improve employers' understanding of the unemployment law and procedures, the cabinet conducted eight employer training sessions around the state, and additional sessions are scheduled.

The director for the Kentucky State Building and Construction Trades Council testified about a recent report on the economic costs of employee misclassification in the construction industry. The report was based on unemployment insurance audit data and state and federal government databases, and it showed that misclassification of employees as independent contractors in the construction industry is a growing problem in Kentucky. For the years 2007-2010, state unemployment insurance audits found that, on average, 26.4 percent of construction employers—or approximately 2,816 construction employers—had misclassified workers as independent contractors.

Misclassification can give employers an unfair competitive advantage over employers properly classifying their employees. The practice of misclassification affects state revenues by reduced unemployment insurance contributions and workers' compensation premiums paid by employers. Also, income tax revenues are reduced at the state and federal level as well as taxes collected for Social Security and Medicare. The report suggests establishing meaningful penalties for repeat or flagrant contractor offenders, additional resources to the appropriate agencies that monitor for misclassification, and statutory authority for cooperation between the appropriate monitoring and auditing agencies.

Proponents to classify interpreters and translators as independent contractors testified about the language service business. Language service business owners stated that they consider interpreters to be independent contractors rather than employees. Individual interpreters perform translations for multiple language service agencies and are not associated with a single agency.

The language service business owners said enforcement actions relating to unemployment insurance and workers' compensation are taking place among individual language service companies nationwide. The business owners requested that the legislature address the issue statutorily with provisions that define interpreters and translators to be independent contractors.

# Report of the 2011
# Interim Joint Committee on Licensing and Occupations

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

Sen. Tom Buford
Sen. Julian M. Carroll
Sen. Julie Denton
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Dan "Malano" Seum
Sen. Kathy W. Stein
Sen. Damon Thayer
Sen. Robin L. Webb
Rep. Tom Burch
Rep. Larry Clark
Rep. David Floyd
Rep. Dennis Horlander
Rep. Wade Hurt
Rep. Joni L. Jenkins
Rep. Adam Koenig
Rep. Reginald Meeks
Rep. Charles Miller
Rep. Mike Nemes
Rep. David Osborne
Rep. Darryl T. Owens
Rep. Ruth Ann Palumbo
Rep. Carl Rollins II
Rep. Sal Santoro
Rep. Arnold Simpson
Rep. Susan Westrom

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 six times during the 2011 Interim. The committee held one out-of-town meeting at the Chas Seligman Distributing Company in Walton.

### Proprietary Education

The Auditor of Public Accounts briefed the committee on the findings of an audit report issued by her office on the oversight role of the State Board of Proprietary Education. The audit found the board has not been adequately monitoring the proprietary schools that it oversees. The report also noted numerous weaknesses in the Office of Occupations and Professions, which provides administrative support to the board. The Auditor stated that the report contains 39 recommendations to improve board oversight and governance.

The executive director of the Office of Occupations and Professions stated that her office and the board have been working with the auditors, and a number of the recommendations are already being implemented. She viewed the audit report as a road map to make the operations of her office more efficient and effective. The board is statutorily established with 11 members: 5 members representing the public at large, 3 members representing proprietary schools, and 3 members representing proprietary trade schools. The board is responsible for oversight of proprietary schools and has the authority to audit member schools.

The Attorney General told the committee his office has an investigation under way looking into proprietary schools as part of the consumer protection role his office is assigned. A large part of the investigation involves looking into deceptive recruiting tactics schools are using. There are a number of proprietary schools that are doing good work, and the Attorney General has an obligation to protect the students and to protect those schools that are acting properly from unfair competition by other schools. His office has intervened to block collections by bankruptcy trustees on approximately $4 million in student loans that were impacted by the failure of Decker College, a proprietary school that closed, leaving many students without degrees and without transferable credits. This is similar to the collapse of the proprietary American Justice School of Law after it failed to achieve accreditation.

The Attorney General stated that his office has joined with a multistate group of attorneys general working collaboratively to investigate proprietary schools using deceptive tactics to enroll students. Proprietary education is a big-dollar industry, in which 90 percent of the revenue comes from federal and state student loans. The dramatic growth in the industry, as well as the greater cost in proprietary education as opposed to not-for-profit schools, means that a large amount of money is involved. The Attorney General noted that proprietary schools are very profitable, generating a nearly 52 percent profit margin. Some proprietary schools in Kentucky do an outstanding job. There are currently 141 programs covering barbering, cosmetology, and other trades, and there are two- and four-year degree programs.

Representatives for proprietary education schools noted that proprietary schools serve more than 26,000 students in Kentucky. They said they largely agree with the findings of the auditor and want to work with the General Assembly to fix any problems so that the schools may operate at the highest standards. They support reducing the number of proprietary school representatives on the board so that a majority of the board would come from non-school sources. Proprietary schools serve students who are underserved by traditional two- and four-year institutions. Research shows that more than half of proprietary college students are older than age 25, come from low- to middle-income households, and are minorities. Proprietary schools are significant economic drivers for the Commonwealth, employing more than 3,000 workers and generating an economic impact of more than $454 million and more than $10 million in tax revenue.

Representative Meeks spoke about HB 125, which he had filed in the 2011 Session in response to concerns raised by students who felt they had been harmed by the proprietary school industry. HB 125 attempted to address concerns brought forward by the report of the Auditor of Public Accounts. The bill would have required the Board of Proprietary Education and the Council on Postsecondary Education to explore reasonable financial protections for students rather than mandating specific fees. The bill would have given proprietary schools a voice in the deliberations by CPE that would impact the operations of proprietary schools, and would have allowed national accreditation to be accepted in lieu of regional accreditation.

Students who attended proprietary schools spoke about their varied experiences. One former student indicated she had enrolled in a nursing program, but after enrolling found that the nursing program was on probation. The lectures were substandard, and the teacher appeared to be uninterested in teaching. A student stated that she enrolled in a proprietary school with a goal of eventually attending law school. After enrolling she found that many of her credits would not transfer to another college, and a representative from a law school told her a degree from the proprietary school she was attending would not be recognized by the law school. Another student told the committee she completed a medical coding program at a proprietary school after dropping out of a traditional college. The education she received at the proprietary school was invaluable to her career and subsequent advancement. A student told the committee she became a paralegal after earning an associate degree from a proprietary school. She said she had been a nontraditional student, and the proprietary school met her needs. Her instructors were knowledgeable, and they prepared her very well for the field she entered, even coordinating an internship that became a full-time job.

### Three-Tier System of Alcoholic Beverage Sales

Representatives of alcohol wholesalers presented an informational briefing on Kentucky's three-tier system for alcohol sales. Kentucky is one of 31 states that statutorily mandate three tiers in the alcohol sales system; producers, suppliers, and retailers all have distinct roles within the system. Tax dollars are collected at all three levels. A federal excise tax is levied on producers, while the state charges an 11 percent excise tax on wholesalers and a 6 percent sales tax at the retail level. The tax rate on wholesalers increased from 9 to 11 percent in 2009. Representatives said this increase was associated with a drop in sales of about $2 million per year.

Kentucky has some exemptions to the three-tier system, such as small farm wineries and brew pubs that produce alcoholic beverages and sell them directly to customers. Other states have seen efforts to circumvent the three-tier system. One of the representatives noted that a large retailer in Washington had attempted to get a referendum passed that would have allowed it to purchase directly from providers without going through a wholesaler, but the referendum failed. The representatives stressed that the three-tier system provides a number of benefits, including efficient tax collection and increased consumer choice.

### Wine Industry

Representatives of the Kentucky wine industry said that the industry is thriving, in large part because of support from the General Assembly. There has been dramatic growth in both the quantity and quality of wine produced. The agriculture development fund and the wholesale cost share reimbursement program have been helpful, although budget cuts have reduced the programs. Wine industry representatives explained that other mechanisms are being examined. One option is a winery cost share check-off system similar to those for soybean or beef cattle producers. Another concern was the definition of "a place of entertainment" in KRS 231.010. Limitations in the definition could inhibit tourism at small farm wineries, one of the most successful aspects of the Kentucky wine industry.

### Alcoholic Beverages at Restaurants

KRS 241.010(37) specifies that a restaurant must receive 50 percent of its "gross receipts" from the sale of food to qualify for a restaurant drink license. Restaurant industry representatives told the committee that the industry has changed since the statute was written. Restaurants such as the Hard Rock Café and Jimmy Buffett's Margaritaville derive a large amount of revenue from their gift shop sales. Under the current statute, all gift shop sales and other revenue would be grouped with alcohol sales and could total no more than 50 percent of gross receipts, while food would constitute the other 50 percent. Under 2012 BR 175, the calculation would change so that 50 percent of "food and beverage receipts" would have to come from food. The receipts from gift shop sales or other revenue would not be included in the calculation.

### Musical Performances

Representative Palumbo told the committee that 2011 HB 263 would have allowed performers under the age of 21 to perform in bars and other venues serving alcohol. The bill was about jobs and would promote young, talented musical entrepreneurs. Often these local acts are together only during the time the performers are in college, and they need jobs. A representative from the Lexington Area Music Alliance said young people learn valuable business skills from working in a band, and this bill would help build entrepreneurial skills.

### Overview of the Horse Racing Industry in Kentucky

The executive director of the Kentucky Horse Racing Commission provided an overview of the horse racing industry in Kentucky to the committee. The Racing Compact, passed during the last session, would help states promote consistency and avoid federal government intervention. Virginia and Colorado have also adopted the compact, and other states are reviewing the legislation.

The executive director reported that the commission adopted administrative regulations effective July 1, 2011, relating to historical horse racing. Kentucky Downs received approval to offer historical racing and began offering it on September 1. Litigation concerning the issue is pending.

The commission’s chief veterinarian said a regulation on out-of-competition drug testing was pending. It would allow for more effective testing of specific drugs and promote a fairer racing opportunity. The chief veterinarian discussed race day medications, noting that the United States and Canada are the only countries that permit race day medication. The Breeders Cup championship race for 2-year-olds will prohibit race day medications, and in 2013 all championship races will prohibit race day medications. The commission has formed a committee to study the issue.

The director of the Division of Incentive and Development reported on the Thoroughbred Breeder Incentive Fund. The fund is financed from the 6 percent sales tax on stud fees and pays individual breeders when horses bred and foaled in Kentucky win races. Since approximately 80 percent of horses foaled in Kentucky are exported, the commission recommended consistent breeder awards for wins in Kentucky or in other states, and in select foreign races. Other recommended changes included reducing the breeder awards for the Kentucky Derby and Oaks from $100,000 to $50,000, lowering nominating fees, and easing filing requirements. Senator Damon Thayer said Kentucky is an exporter of Thoroughbred bloodstock, and breeders have no control over where a horse goes after it is sold. The proposed changes to the Breeder Incentive Fund would encourage horse breeders to bring their mares to Kentucky and board them year-round in order to be eligible for the fund.

### Licensing of Pain Management Clinics

The executive director of the Kentucky Office of Drug Control Policy discussed pain management clinics. Prescription drug abuse is a significant problem, with 16.1 percent of 18- to

25-year-olds having used prescription drugs for nonmedical purposes. There has also been an increase in deaths related to drug overdose. The executive director said that the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system is one of the most effective tools the General Assembly has provided to curtail prescription drug abuse. KASPER allows physicians to identify opiate addiction in their patients and allows law enforcement to identify people diverting drugs. Fears of privacy abuse have been unfounded, since 93 percent of reports run on KASPER are by prescribers while only 4 percent are by law enforcement.

The executive director said Florida has placed tighter restriction on who can own and operate a pain management clinic. This has caused a reduction in pain clinics in Florida. Strategies that have worked there and in other states could also be adopted in Kentucky. Pain clinics should be defined by statute and licensed so that the state knows who owns them and where they are. There should be a certain level of expertise required to operate a pain clinic, and regulations should require that they be owned by board-certified physicians. Additionally, if a physician's license has been suspended or revoked for abuse or neglect in another state, then the physician should be denied a license to operate a pain clinic in Kentucky.

The inspector general for the Cabinet for Health and Family Services praised the KASPER system, stating that it allows her cabinet to team with the Board of Medical Licensure to share information when complaints are received about suspected abuse. This has led to the closing of pain clinics that do not follow evidence-based practices in prescribing pain control medication. Her office encourages citizens to report illegal pain clinics, or what are perceived as being illegal prescribing habits. The hotline for reporting is 1-800-372-2973.

**Fireworks**

The state fire marshal told the committee that significant changes were made to fireworks statutes in 2011 House Bill 333. The biggest change was in allowing the sale of all consumer fireworks. This saw an increase in the number of vendors from 400 to 674. A representative from the Lexington-Fayette Urban County police and fire departments said that nuisance calls were up significantly during the July Fourth period this year, but that there was not a significant increase in fires and that injuries were typically minor. It remains illegal to set off fireworks within 200 feet of a house or car. Representatives from a fireworks retailer said their sales had increased significantly, and the sales tax revenue they remitted to the state increased from $2,000 the year before to the effective date of the Act to $6,000 since the Act took effect.

**Electrical Inspectors**

Representative Santoro briefed the committee on HB 487, a bill relating to electrical inspections and licensure that he filed in the 2011 Regular Session. The bill did not pass, but it remains necessary to bring uniformity to electrical inspections. Currently, inspections may be done by state inspectors, county inspectors, or private businesses that have a contract to do inspections with local governments. Representative Santoro said there have been complaints about excessive fees and other abuses by inspectors. A Boone County business owner testified that an Ohio company has the contract to do inspections in Boone County, and the criteria it uses are different from those used by past inspectors.

### Qualifications for Military Service

Representative Crimm spoke to the committee about BR 120, a bill he has prefiled for the 2012 Regular Session, which relates to tattoos and military service. The bill would require tattoo parlors to post a sign warning individuals who aspire to military service that visible tattoos might disqualify them from service. A division director from the Department of Military Affairs also spoke in favor of the bill request. He said different services have different criteria, but generally tattoos on the head are prohibited, and tattoos on other areas are disallowed by different services. Representative Crimm said young people need to be aware of this requirement before they decide on getting tattoos.

# Report of the 2011
# Interim Joint Committee on Local Government

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

Sen. Walter Blevins, Jr.
Sen. Jimmy Higdon
Sen. Tom Jensen
Sen. Alice Kerr
Sen. Gerald A. Neal
Sen. R.J. Palmer II
Sen. John Schickel
Sen. Dan “Malano” Seum
Sen. Robert Stivers
Sen. Johnny Ray Turner
Rep. Julie Raque Adams
Rep. Ron Crimm
Rep. Mike Denham
Rep. Ted “Teddy” Edmonds
Rep. Richard Henderson
Rep. Brent Housman
Rep. Adam Koenig
Rep. Stan Lee
Rep. Thomas M. McKee
Rep. Michael Meredith
Rep. David Osborne
Rep. Jody Richards
Rep. Arnold Simpson
Rep. Kevin Sinnette
Rep. Rita Smart
Rep. Jim Wayne

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 Interim Joint Committee on Local Government met five times in 2011.

### Cincinnati/Northern Kentucky International Airport

The director of public and governmental affairs for the Cincinnati/Northern Kentucky International Airport testified about upcoming renovations to the airport and expressed support for legislation similar to 2011 SB 48 to be reintroduced in the 2012 session. The director also expressed support for legislation modeled after the Tourism and Development Act.

### Northern Kentucky Regional Issues

The Kenton County judge/executive discussed the importance of the airport to the Northern Kentucky area and noted changes made to the airport in reaction to the economy. The judge/executive also discussed the renovations to the airport.

The Boone County judge/executive discussed regionalism as it pertained to the Northern Kentucky area and the efficiencies that have been achieved through breaking down county and city boundaries. Noting positive changes to pension laws, the judge asked that the committee not pass unfunded mandates to the locals.

The Campbell County judge/executive noted that even with good multijurisdictional cooperation, there were still issues, some legislative, that prevented total cooperation. The judge/executive urged removing impediments to cooperation in terms of drug laws that may prevent local governments from having the best tools to cope with the drug issue.

**Calculation of Property Tax Rates Relating to the Provisions of HB 44**

The Boone County property valuation administrator (PVA) explained the provisions of state law which led to the calculations of the property tax rates for local governments. The PVA argued that the statutes allow for a calculation to occur that produces revenue in excess of a 4 percent increase without activating the possibility of recall. It happens when a local government taxes real property and personal property at different rates. 2011 HB 137 provided an alternate method of calculating the tax rates. It did not become law.

Concern was expressed that legislation may harm local governments' revenue streams, but the PVA indicated that local revenues would not be reduced, but the higher tax rate may be more difficult to collect.

**Northern Kentucky Area Planning Commission**

KRS Chapter 147 is used by only one area planning commission—that in Northern Kentucky. The Northern Kentucky Area Planning Commission (NKAPC) began as a two-county entity between Kenton County and Campbell County, until Campbell County later withdrew. The question arose as to whether or not a multicounty entity can exist with only one county and be in compliance with state law. The Crestview Hills mayor noted that NKAPC serves 20 governments and provides efficiencies. He noted that a 1983 lawsuit challenged NKAPC's legal status, and the courts supported NKAPC. In a 2008 lawsuit involving NKAPC, its legal status was not considered an issue.

The director of NKAPC explained the organizational structure of the commission and cited its efficiencies. The police chief of Erlanger noted NKAPC's help in creating information systems that the city police force uses relating to 911 service. The city engineer for Covington testified about the enVista Infrastructure Management Software System that allows municipal organizations to communicate and coordinate efficiently. This is another cost-saving measure that NKAPC helped facilitate. The mayor of Erlanger noted that if NKAPC ceased to exist, costs and taxes for Erlanger would increase.

The executive vice president of the Northern Kentucky Home Builders Association indicated that there were effectively two planning commissions in Kenton County: the county's planning commission and NKAPC. He called this an inefficient use of resources. He noted that the statutes contemplate a multicounty system, but currently there is only one county in the system. The Northern Kentucky Homebuilders Board unanimously supported efforts to dissolve NKAPC. Planning and zoning should be done under the Kenton County commission's auspices. In addition, he noted that NKAPC is the only planning entity that can levy a tax.

A representative of the Northern Kentucky Tea Party noted that NKAPC's operations violate the Tea Party principles of limited government, fiscal responsibility, and the use of free markets. It charges a tax to do what is already being done at the local level, and it does so inefficiently. Another representative of the Tea Party said private entities were treated differently under the law than were public entities. He noted that the road designs that NKAPC set out for subdivisions were inadequate.

**County Attorney Challenges and Duties**

The Mason County attorney and president of the Kentucky County Attorneys Association noted the history and qualifications for the office of county attorney. The county attorney serves with the Unified Prosecutorial System, and the duties therein include prosecution of all violations of criminal law within the jurisdiction of the district court, including misdemeanors and felonies, and prosecutorial jurisdiction over juvenile issues, which include criminal acts, transfer of certain cases to adult status, truancy, dependency, neglect, abuse, and emergency custody orders. Additional duties include working with the court and victims in emergency protection order cases pursuant to Amanda's Law. Enforcement of Amanda's Law has been difficult because of a lack of funding. The county attorney also handles extraditions; assists in disability/guardianship cases; and assists in mental health commitments.

County attorneys perform the following functions for local governments: attending legislative body meetings; conducting county business; instituting, defending, and conducting all civil actions in which the county is interested; giving of legal advice to fiscal courts and county officers; and opposing all unjust or illegally presented claims.

The county attorneys provide nonprosecutorial duties. They include: representing special districts; election duties; filing suits for autopsy or participating in inquests; investigating entertainment permits; and assisting the Transportation Cabinet.

Some county attorneys also collect bad checks, recover delinquent taxes, and collect child support payments.

County attorneys face financial challenges in counties that are growing.

**Sanitation District 1**

A recent audit of Sanitation District 1 (SD1) by the Kentucky State Auditor's Office revealed issues of concern. The director of the Office of Technology and Special Audits with the Auditor's office noted that SD1 was the second largest public sewer utility in Kentucky, serving approximately 100,000 customers. The audit was requested by the Kenton County judge/executive to address questions about the financial management of the district and its rate-setting process. The audit reviewed SD1 policies and procedures, records retention, rate increases, construction in progress projects, and accounts of financial transactions.

The audit found that policies of SD1 generally provide an effective structure of the oversight of the organization. With that in mind, the Auditor's office provided 14 findings and 72 recommendations to strengthen accounting controls, procurement, and board governance. During the course of the examination, auditors noted several instances of accounting errors and apparent lax accounting controls and oversight. Auditors recommended that the board strengthen its oversight policies, including a whistleblower policy as well as policies or procedures regarding the use of credit cards, reimbursements to employees, electronic backup of financial information, and fixed-asset inventory. The auditors recommended the establishing of a comprehensive code of ethics applicable to board members and staff and the filing of financial disclosure statements from board members and executive staff.

The Kenton County judge/executive noted his office's duties relative to the appointment of board members, noting that the current judge has not yet made any appointments. He further explained the judges' duties in approving rate changes. The district passed two rate increases of 15 percent, one becoming effective this year and the next in 2012.

The president of SD1 noted that SD1 was the first public utility to be required to provide financial information online by the passage of legislation from the 2011 Regular Session. SD1 used the state's open door website as a model for meeting the requirements. SD1 wants to provide information relating to payrolls, operations and maintenance payees, capital projects budgets, the approved budget, and the annual audit. SD1 will add meeting agendas, approved meeting minutes, and board member meeting materials. SD1 has implemented or addressed 13 recommendations, is in the process of integrating 36, and is reviewing 23. The president stated that it will cost SD1 $100,000 to implement the recommendations from the audit.

The president noted that Environmental Protection Agency (EPA) regulations relating to the consent decree called for $1.2 billion in investments to the system.

The SD1 director of governmental affairs noted that SD1 has been working extensively with the US Conference of Mayors regarding rates. He noted the successful passage of Kentucky legislation relating to wet-weather discharges from sanitary sewers.

A representative from the Tea Party said EPA decisions should be challenged.

**Solar Energy**

The project manager of Kentucky Solar Partnership said that active solar energy systems come in two main categories: thermal and electric. He discussed the basic principles behind each. Any return on investment of a solar energy system is going to depend on many factors, such as the cost of producing nonsolar electricity in the area. The cost of producing solar electricity is decreasing, while most other sources' costs are increasing.

He noted that, as of August 2011, an estimated 100,237 people across the US were considered solar workers—an increase of 10.8 percent from the previous year.

Local governments are using solar power for streetlights, schools, affordable housing, municipal utilities, prisons, and transportation.

The director of Kentucky Solar Partnership noted that Richardsville Elementary School in Bowling Green is America's first net-zero energy school.

The costs for photovoltaic power production, when factored out over 20 years, are approaching being as low as the costs for conventional power.

**Kentucky League of Cities' 2012 Legislative Platform**

The Kentucky League of Cities' (KLC) first vice president said that the number one issue for the upcoming session is retirement. The city contribution rates, currently at 18.96 percent for nonhazardous-duty retirement and 35.76 percent for hazardous-duty retirement, have doubled since 2004. KLC estimates the total contribution at $17.5 million in FY 2013. Without change, the rates are projected to increase each year by similar amounts at least through 2030. KLC's recommendations include the following:

- Adopt a defined-contribution or hybrid plan for new employees, leaving existing employees in a defined-benefit plan;
- Establish a funding standard of 80 to 85 percent;
- Make adjustments to automatic cost-of-living increases to retirees; and
- Implement changes to the health insurance benefit structure.

KLC's second priority is drug abuse. City officials see the impact on the community's citizens and resources. KLC recommendations include:

- Establish strict state oversight of pain management facilities;
- Require medical providers providing narcotics to participate in the Kentucky All Schedule Prescription Electronic Reporting system;
- Create an interstate compact for prescription drug monitoring; and
- Require a prescription for the purchase of pseudoephedrine.

Another priority for KLC is city reclassification to include revenue issues. KLC will seek legislation to comprehensively reform the reclassification law. With this it plans to allow the expansion of the restaurant tax and to allow cities to charge the tax in lieu of collection of net profits or gross receipts taxes on restaurants, with certain conditions.

The last item KLC will pursue is the 911 funding shortfall precipitated by the reduction in use of landlines, which is a primary source of funding. KLC will:

- Oppose any proposal to remove the ability of local governments to impose fees for the option of 911 services;
- Oppose any proposal that would reduce the amount of state-generated revenue from the wireless fees; and
- Support an increase in the current statewide wireless fee.

**Lexington/Fayette Urban-County Government Mayor's Project Plans**

The mayor of Lexington discussed the joint project between Jefferson County, Fayette County, and 20 additional counties. The Bluegrass Economic Advancement Movement is designed to increase jobs in the area. The initiative recognizes some challenges, including training midlevel workers and research and design workers; combating drug abuse; and making improvements in the "innovation ecosystem."

The mayor also noted that Lexington is facing challenges related to its pension system. The pension system is under statutory control by the state but run by the local government.

The mayor further noted that the city is considering changes to Rupp Arena and will have a decision at the end of January from the task force assisting with that process.

**Kentucky Association of Counties' 2012 Legislative Platform**

The Kentucky Association of Counties (KACo) president and president-elect informed the committee about the 2012 legislative platform advocated by KACo.

KACo and its affiliate members:

- Advocate the strengthening of laws dealing with pain clinics to ensure that those practicing only for illegal financial gain are not permitted to operate;
- Advocate allowing the provisions of 2008 HB 1 more time to operate before making significant changes to the retirement system;
- Advocate a funding stream update for the E-911 system;
- Advocate a removal of all statutory powers and duties of the office of constable;
- Advocate for local and state tax reform, noting limited local tax options and an outdated state tax code, while recognizing that any such revision should simultaneously include state and local tax reform; and
- Advocate for increased state funding of jails.

## Administrative Regulations Review

The committee reviewed the following administrative regulations:

- 815 KAR 4:010 & E relating to annual inspection requirements and fees for elevators;
- 815 KAR 4:025 & E relating to the permitting and inspection fees for newly constructed, installed, or altered passenger and freight elevators;
- 815 KAR 4:030 & E relating to licensure requirements for elevator contractors;
- 815 KAR 4:040 & E relating to licensure requirements and fees for elevator mechanics;
- 815 KAR 4:050 & E relating to continuing education requirements for renewal, reinstatement, and reactivation of elevator licenses for elevator contractors and mechanics;
- 815 KAR 4:060 & E relating to the approval of continuing education courses and the procedures for becoming approved elevator continuing education providers;
- 815 KAR 4:070 & E relating to fee payments and refunds under the Kentucky Elevator Safety Act;
- 815 KAR 7:120 relating to the Kentucky Building Code;
- 815 KAR 8:007 relating to the Board of Heating, Ventilation, and Air Conditional Contractors budget review and responsibility;
- 815 KAR 8:030 relating to apprentice heating, ventilation and air conditioning mechanic licenses; and
- 815 KAR 10:070 & E relating to consumer fireworks.

# Report of the 2011
# Interim Joint Committee on Natural Resources and Environment

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

Sen. Joe Bowen
Sen. Ernie Harris
Sen. Tom Jensen
Sen. Ray S. Jones
Sen. Robert J. Leeper
Sen. Dorsey Ridley
Sen. Katie Kratz Stine
Sen. Robert Stivers
Sen. Johnny Ray Turner
Sen. Robin Webb
Rep. Hubert Collins
Rep. Tim Couch
Rep. Keith Hall
Rep. Stan Lee
Rep. Reginald Meeks
Rep. Tim Moore
Rep. Marie Rader
Rep. John Short
Rep. Kevin Sinnette
Rep. Fitz Steele
Rep. Jim Stewart
Rep. Jill York

LRC Staff: Tanya Monsanto, Lowell Atchley, Biff Baker, Stefan Kasacavage, and Kelly Blevins.

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
**Kentucky General Assembly**

## Interim Joint Committee on Natural Resources and Environment

Jurisdiction: Matters pertaining to forestry; mining; fish and wildlife resources; soil and water conservation; flood control and water usage; drainage and irrigation; geology and water resources; waterways and dams; oil, gas, and saltwater 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 seven meetings between June and December during the 2011 Interim. No subcommittees were authorized. Several concerns were expressed during the interim including how changes in federal rules will affect Kentucky's future energy costs and coal use. Several of those meetings focused specifically on coal mine permitting. However, the central theme is that the federal government, specifically the United States Environmental Protection Agency, is damaging Kentucky's coal industry. The committee held two out-of-Frankfort meetings, traveling to the Rio Tinto Alcan aluminum plant in Sebree, Kentucky, and to Buckhorn State Lodge near Hazard, Kentucky.

**Increased Prices and Changes in Federal Rules for Electricity**

For a number of years, the committee has reacted to changes in federal law. This year was the same, and the committee heard from several state agencies that related how changes in federal rules would affect the state and specific industries. The Division of Air Quality provided an update on federal rules that will result in several areas of the state being in nonattainment with federal standards for clean air. The new federal rules will make the standards stricter for sulfur dioxide ($SO_2$), nitrogen dioxide ($NO_2$), and particulate matter and will have very short time frames for implementation. Some pollutants — like mercury and acid gases — will be new and will have a significant impact on Kentucky as a coal-producing state.

One of the more controversial federal rules deals with utility maximum achievable control technologies that can curb emissions of criteria pollutants. The utility industry and the Kentucky Public Service Commission both conveyed concern. New federal rules will increase electric utility rates and cause utilities to switch to cleaner-burning fuels. Those cleaner-burning fuels could be switches from coal to natural gas or from Kentucky coal to Powder River Basin coal, which has lower sulfur content. Another consequence will be the decommissioning of existing power plants, such as the shutdown of Cane Run, which is owned and operated by Louisville Gas and Electric.

The committee toured Rio Tinto Alcan and received testimony from the director of the Kentucky Aluminum Network. The central message from the aluminum industry was that it thrives as a result of low energy rates. The cost of alumina, operating costs of the smelter, and the cost of electricity dictate the company's international competitiveness. Federal actions that will raise the cost of energy in Kentucky threaten the industry. Inexpensive electricity produced from coal is a vital component of Kentucky's economic competitiveness.

Aside from federal air rules, new clean water rules will also affect utilities. The Division of Water reported that there will be new rules on water withdrawals and water discharges. A laboratory certification program was authorized by the Kentucky General Assembly in 2011, which the Division of Water is implementing. These laboratories perform analyses of wastewater for Clean Water Act (CWA) 402 permits and the nonpoint discharge permits. Federal water quality standards are being revised and will include antidegradation permits, but the methodology for measuring the effluent and pollutant limitation will remain unchanged.

The Kentucky Division of Waste management described new federal solid waste rules that impose more restrictions on the disposal of coal combustion residuals (CCRs). Coal combustion residuals can be used to create wallboard, replacement fill for concrete, mine fill, and stabilization for highways and bridges.

New federal rules on the proper disposal of CCRs could result in its being treated as a hazardous waste rather than a special waste. Currently Kentucky treats CCRs as a special waste, which means its disposal is deemed nonhazardous. Disposal in wet ponds is conducted under a permit-by-rule, and dry disposal occurs in lined landfills much like other municipal wastes. If new federal rules deem CCRs as hazardous waste, then Kentucky statutes will need to be amended to require that all disposal and landfills limit beneficial reuse of the material. Companies that recycle coal combustion materials and handle them for utilities have noted a reduction in the market for final products including high-performance cement and are concerned that treating CCRs as hazardous waste will collapse the market.

**Actions Pertaining to Coal Mining**

Permitting actions by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (ACE) have effectively halted mountaintop mining. However, since mountaintop mining is specific forms of surface mining, other surface mining permits in the Appalachian region have also been affected. In June 2010, ACE suspended use of all CWA Nationwide 21 permits in six Appalachian states, including Kentucky. The CWA Nationwide 21 is required for a surface mining operation to permit discharges of surface mining soil and debris into the waters of the United States. The action to suspend the Nationwide 21 permit along with issuance of an EPA interim 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 provided an update on the lawsuits filed against the EPA challenging use of the Memorandum of Agreement between the EPA and ACE for permitting procedures. A second lawsuit contests use of the interim guidance document for reviewing permits, but the lawsuit has been delayed because the EPA filed a final guidance document in July 2011. Both lawsuits are currently in federal district court for the District of Columbia.

The central conflict in both the interim and final guidance document is the conductivity standard that the EPA uses to determine the degree of degradation to waters of the United States. The EPA again changed conductivity standard from a numeric threshold for criteria pollutants to effluent limitation that could be offset by lower pollutant levels in other criteria pollutants. The concept of offsets has been used in most clean air trading schemes and the idea forms the basis of the final guidance document.

The committee received testimony on coal company mergers, which are the result of regulatory actions undertaken by the EPA and by the Mine Safety and Health Administration (MSHA). Alpha Natural Resources merged with Massey Coal Company in 2011, forming one of the largest coal companies in the United States. Massey had been under increased scrutiny by federal regulators for workplace safety, and Alpha introduced a new training program that focuses on accidents caused by at-risk behaviors. At-risk behaviors are those caused by the miner as opposed to the equipment.

Alpha has provided safety training to 1,400 employees to increase greater transparency and improve workplace safety. However, an additional concern for mining companies is the culture of the regulatory environment, which coal companies purport to be quota based and focused exclusively on writing violations. A common complaint was the lack of responsiveness from federal agencies toward those companies that they regulate. Like the concerns expressed about the EPA refusing to hold hearings in response to state objections on mine permits, coal companies contend that MSHA continues to stop mining without any accountability for its actions.

The committee is expected to receive a mine safety update in December from the Kentucky Department of Natural Resources. The committee will receive testimony from the University of Kentucky's Department of Mine Engineering. Mine safety legislation mandates the creation of a panel to review emerging mine safety technologies. Presentations will be received on measuring dust and mine ventilation and on safe-haven rooms.

**Other Natural Resource Concerns**

The Kentucky Department of Fish and Wildlife has jurisdiction over hunting and fishing. The commissioner discussed a state proposal to hunt sandhill cranes. Kentucky submitted a plan to the United States Fish and Wildlife Service, which was approved. The administrative regulation was approved, and Kentucky will allow the first-ever hunt of sandhill cranes.

Kentucky has various invasive exotic plant, animal, and fish species. The Kentucky Department of Fish and Wildlife discussed how Asian carp, introduced to control plankton, have disrupted local ecosystems and crowded indigenous species. The department has implemented a program to reduce the numbers of Asian carp and championed a proposal to develop commercial fish processing plant that would take the fish into Chinese markets. The plant would require a $1 million investment from the Kentucky General Assembly but is believed to be viable and would create jobs and support the commercial fishing industry.

## Administrative Regulations

As of November 11, 2011, the committee had received and approved 27 administrative regulations pertaining to programs in the Department of Fish and Wildlife Resources and the Energy and Environment Cabinet.

## Prefiled Bills Referred to the Committee

The committee received no prefiled bills for the 2012 Regular Session.

## Reports Received

The committee received three reports as of November 11, 2011.

- Kentucky Department of Fish and Wildlife Resources: FY 2011 Hunger Relief Program Report
- Auditor of Public Accounts: Examination of Certain Policies, Procedures, Controls, and Financial Activity of Sanitation District 1
- Kentucky Department of Fish and Wildlife Resources: Wildlife Disease Status Report

# Report of the 2011
# Interim Joint Committee on State Government

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

Sen. Walter Blevins, Jr.
Sen. Jimmy Higdon
Sen. Tom Jensen
Sen. Alice Forgy Kerr
Sen. Gerald A. Neal
Sen. R.J. Palmer II
Sen. John Schickel
Sen. Dan "Malano" Seum
Sen. Robert Stivers II
Sen. Johnny Ray Turner
Rep. Linda Belcher
Rep. Johnny Bell
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Rep. Dwight D. Butler
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Rep. Leslie Combs
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Rep. Will Coursey
Rep. Joseph M. Fischer
Rep. Danny Ford
Rep. Jim Glenn
Rep. Derrick Graham
Rep. Mike Harmon
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**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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. | Rep. Kevin D. Bratcher |
| Sen. Jimmy Higdon | Rep. Larry Clark |
| Sen. Tom Jensen | Rep. James R. Comer, Jr. |
| Sen. Alice Forgy Kerr | Rep. Joseph M. Fischer |
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| Sen. John Schickel | Rep. Melvin B. Henley |
| Sen. Dan “Malano” Seum | Rep. Mary Lou Marzian |
| Sen. Robert Stivers | Rep. John Will Stacy |
| Sen. Johnny Ray Turner | |

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 six meetings during the 2011 Interim, focusing on the Auditor of Public Accounts' examination of Kentucky Retirement Systems; technological aspects, data, and other topics related to legislative and congressional redistricting; state and local government transparency in Kentucky; proposed changes to the Kentucky Code of Legislative Ethics; Kentucky Employees Health Plan; status report from the Kentucky Lottery Corporation; overview of Kentucky's state-administered retirement systems; advance deposit wagering; requested changes to the retirement plan for employees of Kentucky's community mental health/mental retardation centers; and administrative regulation review.

### Kentucky Retirement Systems

The Auditor of Public Accounts testified about the June 28, 2011, audit report of Kentucky Retirement Systems (KRS). The audit focused on the use of placement agents, the internal audit process, and a review of the KRS board policies and governance. Auditors saw no evidence of a "pay-to-play" scheme involving placement agents, no evidence of conflicts of interest that benefited KRS officials, and no evidence that KRS incurred any additional cost through the use of placement agents. However, there were several troubling aspects regarding the use of placement agents, and those concerns have been referred to the United States Securities and Exchange Commission. The audit did not substantiate any specific evidence of wrongdoing, but it pointed out a number of areas where the KRS board could improve communications, accountability, and transparency. The audit recommended strengthening policies governing budget, conflict of interest, travel, spending, anonymous reporting of concerns, and bringing consistency to the board member selection process. It included a detailed background section on the history and financial viability of KRS, which can be a valuable tool for policy makers when addressing issues relating to the long-term viability and financial status of the funds.

The interim executive director and the chief investment officer of KRS explained to the committee why losses to the state employee pension fund as a result of stock market volatility were not as severe as first reported in the media. The decline in the KRS financial portfolio had initially been reported to be $1.7 billion—or 15 percent—when it was in fact only $500 million, or 5.4 percent. This inaccurate information was reported because KRS staff released a pre-reconciled asset total for pension plan assets. KRS later issued corrected information and has put in place new reporting procedures to prevent unreconciled information from being released.

The chief investment officer provided a pension fund investment update and discussed actuarial assumption rates, risk/return analysis, and asset allocation. Total return for the pension fund for FY 2011 was 18.96 percent, or 1.38 percent below the benchmark. The underperformance was due mostly to a currency hedging program, which has reduced volatility during the 2 years it has been in place. Without the currency hedging in place, return would have reached the benchmark 20.3 percent. The Investment Committee will reevaluate the program in view of its cost and the potential drag on performance. Since the inception of accounting records in 1984, total return was 9.72 percent, slightly below the long-term benchmark but outperforming the current 7.75 percent assumed rate of return. KRS is making appropriate portfolio adjustments to attain 7.75 percent going forward. The assumed rate of 7.75 percent ranks about in the middle compared to other public pension funds. The real rate of assumed investment return—4.3 percent—ranks slightly below the public fund universe, reflecting a portfolio that is somewhat more conservatively aligned. The assumed rate is reached when inflation expectations in actuarial assumptions are added to the real assumed rate of 4.3 percent. The asset/liability modeling study completed in 2010 concluded that 7.75 percent was a credible, reasonable assumed rate of return over the long term. Relative to asset allocation, KRS is slightly underweight in US Equity. In May 2011, KRS adopted appropriate publicly available benchmarks for each asset class, which will enable the public to track performance. No major changes in asset allocation are expected, other than a possible increase in liquidity in February or May 2012. KRS is working on in-state investing and has hired a Kentucky-based asset manager.

**Kentucky Teachers' Retirement System**

The Kentucky Teachers' Retirement System (KTRS) deputy executive secretary of operations, its chief investment officer, its director of investment management, and an investment consultant from Hewitt EnnisKnupp provided an overview of the system's actuarial status, funding, asset allocation, and investment performance. As of June 30, 2010, the pre-funded retirement benefit fund was 61 percent funded, with assets of $14,850,000. The medical benefit fund was 7.5 percent funded, with assets of $241 million. House Bill 540, enacted in 2010, adopted a shared responsibility approach to pay for KTRS retiree health care and increased the amount which retired and active teachers, school districts, and other employers began contributing to the medical benefit fund as of July 2010. As a result, assets and the percent of funding will grow in coming years. The fund is on an actuarially sound basis. The medical benefit fund, originally established as a "pay as you go" plan, is transitioning to a prefunded plan. The KTRS actuary, Cavanaugh Macdonald, estimates that fund assets could reach $1 billion in 10 years. As of July 1, 1985, the retirement fund had a balance of $1.8 billion. Investment income of $16.3 billion was generated over the succeeding 26 years, and $16.4

billion was paid out in benefits. As of June 30, 2011, the ending fund balance had grown to $15.2 billion. The beginning balance of the medical fund on July 1, 1985, was zero; in the 26 years that followed, there were member contributions of $1 billion, employer contributions of $1.6 billion, and investment income of $200 million. Benefits paid out totaled $2.5 billion, leaving an ending fund balance of $300 million on June 30, 2011.

Significant changes have been made to the KTRS portfolio in response to the downturn in the financial and economic environment. In late 2004, a program was started to increase diversification and exposure to international stocks, and as of June 30, 2011, about 15 percent of the KTRS asset portfolio was in international stocks. The percentage of assets in fixed income has been gradually decreased to 25.6 percent, and the expectation is to lower it further. There is also a downward trend in cash assets. For the period ending June 30, 2011, 1-year investment return on assets valued at $15.2 billion was 21.6 percent, whereas 10-year investment return was 4.8 percent.

For FY 2010, return was 13.1 percent on assets valued at $12.7 billion. KTRS' assumed actuarial rate of return is 7.5 percent. KTRS has experienced above-average investment return, with below-average risk, when compared with the large public fund universe for the 3- and 5-year periods preceding June 30, 2011. There is an effort to make significant in-state investments. As of June 30, 2011, in-state investments totaled about $330 million, primarily in real estate and fixed income, as well as alternative private equity and venture capital. The investment consultant stated it is realistic to expect an investment return of 7.5 percent over the next 10 years and that capital markets are favorable for a long-term investor like a pension plan. Investments in asset classes such as alternatives, private and international equities, and opportunistic credit were identified as good choices.

**Judicial Form Retirement System**

The executive director and the investment consultant to the board of directors gave an overview of funding and investment return for the system, which administers both the Legislators Retirement Plan and the Judicial Retirement Plan. The system has a very conservative approach to investing that has been adopted not only by the investment manager but also by the board over many years. Total return in the Judicial Retirement Fund for FY 2011 was 18.07 percent, outperforming the benchmark by 0.4 percent. The Legislators Retirement Fund outperformed the benchmark by 0.2 percent in FY 2011. Both funds outperformed the benchmark for the 3-, 5-, and 10-year periods ending June 30, 2011. Both funds invest primarily in equity. The judicial fund is 57 percent funded, with assets of approximately $200 million, and the legislators fund is 58.5 percent funded, with assets of about $50 million. The 7 percent assumed actuarial rate of return for both plans has been exceeded for the past 20 years. With respect to in-state investment, there are no specific Kentucky investments in equity, although all are large-cap major companies that most likely operate in Kentucky even though not domiciled in the Commonwealth. One fixed-income fund owns a relatively small Kentucky liability bond that was issued as part of the Build America program. From a direct investment standpoint, it is the only Kentucky position owned by either fund.

## Legislative and Congressional Redistricting

The chief of the US Census Bureau's Census Redistricting Data Office in Suitland, Maryland, testified about 2010 census data, which serves as a basis for apportionment of congressional seats; reapportionment of state legislatures; federal and state funding; and the redrawing of county, city, and school district boundaries. Subjects discussed included Public Law 94-171 support products and summary files; the process for P. L. 94-171 data delivery; the American Community Survey (ACS); voting rights tabulations; Phase 4 collection of post-2010 census redistricting plans; and Phase 5 evaluation and recommendations for the 2020 census. Based on the numbers, Kentucky will retain six congressional districts. Public Law 94-171 requires the Census Bureau to work closely with state legislatures, and delivery of summary files to the states was completed in March. By law, data is delivered in a nonpartisan manner to governors, majority and minority leaders of both parties, and also to commission directors and redistricting committees. Data delivered to Kentucky reflects population growth of about 7.5 percent.

In addition to maps, shapefiles, and data, the bureau agreed to release the Advanced Group Quarters File, which is a table on group quarters that will facilitate redistricting and the Count Question Resolution Program. Group quarters include school dormitories, nursing homes, and prisons. Prison-based gerrymandering has become a national issue, and a number of states have passed laws reallocating prison populations to the communities where the prisoners lived before incarceration. After new congressional and legislative boundaries are drawn, the bureau will retabulate 2010 census data and deliver new products for the newly defined boundaries based on the 2010 census numbers. These data will be rolled into the ACS. Starting in December 2012 or in 2013, legislators will be able to look at census data for newly drawn districts on an annual basis.

A senior fellow in the Legislative Management Program, National Conference of State Legislatures, Denver, Colorado, testified about the basic elements of redistricting. In all 50 states, redistricting must be finalized prior to 2012 elections; thus far, 17 states have completed either legislative or congressional redistricting. Sixteen states are covered by Section 5 of the Voting Rights Act; those states are required to submit their redistricting plans to either the Department of Justice or the district court in Washington, D.C. for approval before they can become law. In 37 states, the legislature draws legislative lines, and 13 states use a board or commission for redistricting. US House districts are drawn by the legislature in 38 states and by a board or commission in seven states. Arkansas is the only state in which a three-person board redistricts for the legislative branch. California adopted a new commission system this decade, and Iowa has a unique model in which the nonpartisan staff of the legislature draws the plans.

After the 2000 census, redistricting brought litigation in more than 40 states, and the courts drew or revised plans in about a dozen states. There are different population equality standards for congressional and legislative districts. Congressional districts must be as nearly equal in population as "is practicable." The courts generally allow a 10 percent deviation from ideal district size for legislative plans. The 2010 census revealed that Kentucky congressional districts 2, 4, and 6 were overpopulated and that districts 1, 3, and 5 were underpopulated, based on the ideal district size of 723,228.

Litigation in redistricting cases primarily involves the Voting Rights Act but also the issues of population equality and partisan gerrymandering. There have been efforts in 2010 to adjust census data prior to redistricting in five states—Hawaii, Kansas, Delaware, Maryland, and New York. If a state wants to adjust the data, it must be willing to defend the adjustment in court to show that it is as accurate as or better than the census count. Other topics covered were Tennessee, Georgia, North Carolina, and Pennsylvania court cases relating to redistricting; general guidelines for compliance with the federal Voting Rights Act; and the ACS, which is an ongoing survey that provides data every year to help determine how more than $400 billion in federal and state funds are distributed each year. It was also noted that there has been a dramatic shift toward public participation in the redistricting process.

LRC State Government Committee and Geographic Information Systems staff gave an overview of the technological aspects of redistricting. They discussed the process for submission of redistricting proposals and preparation of proposed plans as bill requests or amendments; the process and requirements for establishment of election precincts by each county board of elections; redistricting data preparation and the five-phase 2010 Census Redistricting Data Program; time line for redistricting data preparation; storage and sharing of redistricting plan files; security procedures to protect the confidentiality of plan proposals and bill requests; and LRC's "Redistricting 2010" Web page. They also gave an on-screen demonstration of the Maptitude software used in redistricting.

**Transparency in State Government**

The executive director of the Finance and Administration Cabinet's Office of Policy and Audit gave an update about Kentucky's e-transparency website, Open Door, which is serving as a model both nationally and internationally. Kentucky is the only state that has online expenditure records for all three branches of government and all independently elected offices. Much of the global interest involves the International Visitor Leadership Program, a premier professional exchange program that brings visitors selected by US embassies around the world to the United States for a 3-week exchange program. Since the Open Door's inception in 2009, leaders from 20 countries have come to Kentucky to learn about the website.

**Legislative Ethics**

The executive director and the general counsel for the Kentucky Legislative Ethics Commission presented the commission's recommended changes to the Kentucky Code of Legislative Ethics. The recommendations were reported to the LRC on August 16 but were first submitted to the LRC in October 2009. They also discussed cases involving ethics violations in five other states.

**Kentucky Employees Health Plan**

The commissioner of the Department of Employee Insurance and the general counsel for the Personnel Cabinet gave an overview of the Kentucky Employees Health Plan (KEHP) for the 2012 plan year. The employer contribution for plan year 2012 increased by 2 percent, while actual health care costs for employers are forecast to increase 8.5 percent. Employee contributions will increase by 2 percent; however the Standard PPO single plan remains at a zero-dollar contribution. Two-thirds of members are currently enrolled in Optimum PPO, the most expensive plan. Copays will not increase, but there will be relatively modest changes in deductibles and maximum out-of-pocket limits in three of the plans. A new benefit offering is the waiver Dental/Vision-Only HRA (health reimbursement account). Open enrollment will be passive, and the benefits analyzer for 2012 will be in paper format and sent to KEHP members by mail. Plan design was limited in order to maintain grandfathered status. The plan includes state-mandated coverage for autism, which will have a continuing cost impact. Goals for 2012 include setting premiums competitive with other states; preventive care at little or no cost; health and wellness options; benefits comparable to those for 2011; and maintaining medical benefits and contribution increases within grandfathered limits.

KEHP will make use of money received in 2011 from the federal government's Early Retiree Reinsurance Program. The program was authorized by the Affordable Care Act and establishes a $5 billion reinsurance fund to help employers with the cost of certain early retiree medical claims. KEHP has $63.4 million that will be used to the extent necessary in 2012, and all excess funds received will be used in plan year 2013. Approximately $2 billion remains in the program fund, and the Personnel Cabinet is applying for additional funds.

The Virgin HealthMiles program will end on December 31, 2011. Aon Hewitt has replaced PricewaterhouseCoopers as KEHP's actuary-consultant.

**Kentucky Lottery Corporation**

The president/CEO of the Kentucky Lottery Corporation (KLC) provided an overview of lottery sales, dividends history, distribution of proceeds to the Commonwealth, operating results, FY 2009-FY 2011 restructuring, cost-cutting measures, and future challenges for continuing growth. Since the inception of the lottery in 1989, through September 2011, total sales equal $13.28 billion; $8 billion has been paid in prizes; and total profit distribution to the Commonwealth was $3.55 billion. From inception through June 30, 2011, $1.75 billion has gone into the general fund, including $214 million to the Support Education Excellence in Kentucky fund. Since 1998, $1.66 billion has been directed to grants and scholarships, with more than $1.2 million going to individual Kentuckians pursuing education beyond high school. In the same period, approximately $3 million per year has been distributed to literacy development programs, primarily early childhood. From FY 1999 to FY 2003, $20.8 million was directed to the Affordable Housing Trust Fund. In FY 2012, the first $3 million in proceeds will go toward literacy development. Unclaimed prize money, which is budgeted at $9 million annually, will be directed to the Kentucky Educational Excellence Scholarships Reserve Fund.

In both FY 2010 and FY 2011, dividend transfers to the Commonwealth exceeded the 28 percent mandated in the 2008 enacted budget. As a result of that legislation, KLC was required to make significant changes in operation of the lottery and is currently analyzing the effect of those changes in preparation for the 2012 legislative session. Total operating expenses—exclusive of ticket costs—have been cut 25.8 percent during the last 5 years. Advertising expense was reduced by about $2 million, and elimination of 28 staff positions resulted in a $1.6 million reduction in salaries, wages, and benefits expense in FY 2009.

As of June 30, 2011, a total of 32 positions have been eliminated. Retailer incentive compensation was reduced by $1.6 million, and KLC has achieved other savings through the rebidding of instant and online gaming contracts. Dividends distributed in FY 2011 totaled $212.3 million and are budgeted at $219.8 million for FY 2012. Future challenges to KLC include increasing instant ticket and online number game sales, the impact of current economic conditions and high unemployment, and increased competition for gaming sales. The US lottery industry last year grew 2.1 percent, although some lotteries are suffering a decline. The CEO stated that proposed federal legislation to control Internet wagering could potentially threaten the lottery industry.

**Regional Mental Health Programs—Retirement Issue**

The executive director of the Kentucky Association of Regional Mental Health and Mental Retardation Programs spoke about the association's request for statutory change to allow the Commonwealth's Community Mental Health/Mental Retardation Centers (CMHCs) to establish an alternative 401(k)-type retirement plan for new employees hired after July 1, 2012. Through executive order, 13 of the 14 CMHCs participate in the Kentucky Employees Retirement System (KERS). The CMHCs will spend approximately $104 million for retirement cost in the FY 2011-2012 biennium—equivalent to the annual budget of four centers. The additional expense due to the increase in the mandated employer contribution rate was approximately $12 million in FY 2011 and is projected at $18 million for FY 2012. Each 1 percent increase equates to approximately $2.8 million for the 13 participating CMHCs. Additional increases are anticipated in FY 2013 and FY 2014. The executive director stated that this escalating mandate poses a risk to the CMHCs and the individuals served and supported by them in the following ways: The ability to secure competitive grant funding has been hampered and has resulted in the loss of grants; the ability to competitively negotiate with the three Medicaid managed care organizations has become a concern; and the ability to hire new staff at competitive levels with other employee benefits, such as tuition reimbursement, has been weakened.

The state budget included additional funding to assist CMHCs—$2.5 million in FY 2011 and $3.8 million in FY 2012. The budget also included language that the funding expansion could be used as a state match to draw down federal dollars through the Kentucky Medicaid program. To date, CMHCs have not received any of the additional funding or an increased match rate in the Medicaid program. The executive director stated that receipt of the expanded funding would be preferable, but in the absence of those additional dollars, the proposed statutory solution would not require a general fund appropriation, would not harm current employees or KERS, and would provide both short-term and long-term relief to CMHCs. CMHCs find it necessary to hire employees at less than 100 hours per month or into temporary status, making them ineligible to participate in KERS. The centers might hire through an employment agency.

## Advance Deposit Wagering

The growth in pari-mutuel wagering is coming primarily from advance deposit wagering (ADW), by which customers set up accounts and place wagers by telephone, text message, or the Internet. ADW operators based in Kentucky include Keeneland Select, AmWest Entertainment, and TwinSpires.com, which is owned by Churchill Downs. The Kentucky Thoroughbred Development Fund (KTDF) was established by the General Assembly in 1978 to stimulate the demand for Kentucky-bred horses and to keep them racing in Kentucky. KTDF is funded through the state pari-mutuel tax on wagers made in Kentucky and is used to supplement purses for Kentucky-bred horses in certain races at Kentucky tracks. ADW wagers are not subject to the state's pari-mutuel tax.

The General Assembly attempted to address taxing of ADWs in 2010 House Bill 368, which did not pass. In the 2011 regular session, House Bill 387 was enacted to require that any ADW that offers its services to Kentucky residents must be licensed by the Kentucky Horse Racing Commission (KHRC). Administrative regulation 811 KAR 1:285, effective November 4, 2011, establishes the license application procedures and requirements. The general counsel and the supervisor of pari-mutuel wagering for KHRC testified that ADWs operating in Kentucky prior to the effective date of the administrative regulation must apply for a license by January 3, 2012. Once licensed, the ADW must provide quarterly reports to KHRC of the amount of money wagered by Kentucky residents and the amount wagered on Kentucky races.

The executive director of the Kentucky Thoroughbred Association (KTA)/Kentucky Thoroughbred Owners and Breeders said that, in addition to KTDF, pari-mutuel tax revenue supports the general fund, equine drug research, the Kentucky Standardbred Development Fund, the University of Louisville Equine School, and the Higher Education Equine Fund. Since Kentucky has no pari-mutuel tax on ADW wagers, the amount of money going to KTDF has declined by more than 36 percent since 2005, and KTA purses have also declined.

The chief executive officer of AmWest Entertainment, headquartered in Prospect, Kentucky, said he would welcome legislation to establish a multi-jurisdictional hub in Kentucky similar to Oregon's, where AmWest and most ADWs are hubbed. He supports KTDF and the growth and viability of the horse racing industry. AmWest feels that the ADW model has merit when applied to horse racing. The company is interested in making the industry more competitive but has concern about imposition of additional taxes. AmWest would also support taking advantage of the large source of revenue derived from casino racing that is enjoyed by other major racing states.

The vice president/chief operating officer of Keeneland Association, Inc. said that Keeneland is supportive of KTDF and wishes to cooperate in efforts to garner more information on the ADW network and find a solution to the pari-mutuel taxing issue. Keeneland's ADW program, Keeneland Select, was launched in August 2011 and offers wagering in five states. It partners with TwinSpires.com to share technology and operates a call center in Lexington.

The national manager of the Jockeys' Guild spoke in support of Kentucky's racing industry. During discussion, it was pointed out that the baseline handle for ADW wagering in

Kentucky has not been determined. KHRC expects to begin receiving data in the summer of 2012 from ADWs that apply for a license in Kentucky.

### Administrative Regulation Review

The committee reviewed two Personnel Board regulations, seven Personnel Cabinet regulations, two Finance and Administration Cabinet regulations, and two Kentucky Retirement Systems regulations.

### Subcommittee Activity

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

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held six meetings during the 2011 Interim, with a broad agenda including discussions on the May 2011 primary; potential campaign finance regulation changes; primary voting by registered independents; voter registration for homeless citizens; allocation of prison populations for redistricting; voter identification; polling place accessibility; local option elections; a Brennan Center report on voting law changes for 2012; and local referenda petition requirements.

The Secretary of State reviewed the May 2011 primary and reported that there was a relatively low 10.35 percent turnout, but that this was not the lowest turnout in Kentucky election history. There were only a few minor issues across the state, with the biggest being major flooding in Livingston County that brought to light the question of how to deal with an election during an emergency. The Secretary of State also discussed several elections issues for the members to consider for the 2012 Regular Session, including changes to information required on nominating papers and clarification of statutes applicable to exit polling and challengers.

The executive director, assistant executive director, and general counsel of the Registry of Election Finance presented several campaign finance issues to consider for the 2012 Regular Session. The executive director discussed the possibility of modifying the current three-tiered report filing threshold structure to a single filing threshold that would be easier for candidates to understand and the Register to administer. The assistant executive director presented a summary of electronic filing of campaign finance reports and testified that changes to the law could increase the rate of electronic filing and would make the Registry more efficient in processing reports and presenting data to candidates and the public. The general counsel summarized campaign finance laws that need to be amended to conform to past court decisions, including making the regulatory framework more understandable for candidates.

Senator Higdon and two guests from Independent Kentucky testified on primary voting for registered independents. Senator Higdon and the guests testified that Kentucky had a large number of independent voters who have a desire to participate in the primary process, and they noted that 32 states have some version of an open primary. Senator Higdon reviewed his SB 41 from the 2011 Regular Session that would have allowed registered independents to vote in one party primary and asked the members for input on how the bill could be improved.

The Secretary of State discussed the process used to register homeless voters, and noted that the process has been in place since at least 1995, and possibly since the mid-1980s. She testified that the term "residence" is at the center of the issue but that the term is not defined and a traditional dwelling is not required by the applicable Kentucky statutes. The Boone County clerk testified on his concerns about the process, with his major concern being that the policy could lead to voter fraud and inadvertent violations of the law by county clerks registering homeless voters.

The assistant counsel of the NAACP Legal Defense and Educational Fund discussed how and where prison populations are counted for redistricting. He described model legislation on reallocating prison populations from the facilities where they are housed to the prisoners' last known residential addresses. He also offered demographic examples of several of Kentucky's counties and testified as to how the prison population in those counties can affect relative representation in a redistricting plan. The commissioner and IT branch manager of the Kentucky Department of Corrections testified on the ability of the department to report the last known residential address to the General Assembly if a process of prisoner reallocation were adopted as part of future redistricting processes.

A senior fellow with the National Association of State Legislatures discussed laws requiring voters to show identification when they arrive at the polls. She described the voter identification requirements imposed by various states and traced the recent changes in state laws, with the general trend being a movement by more states to require voters to show some form of photo identification. She discussed the cost of enforcing these laws and the legal standards that the courts have established. The Secretary of State, the executive director, and the general counsel of the State Board of Elections responded to the members' questions about voter identification laws.

The Secretary of State testified about polling place accessibility. The process of evaluating accessibility is a continuous process, and new polling places are surveyed before being approved by the Kentucky Disabilities Coalition. As many as 151 polling places out of approximately 2,500 were listed as inaccessible in the early part of 2011, but this number has been reduced to 12 by October 2011, with an additional 16 needing surveys and final approval.

The Secretary of State, the Hardin County clerk, and the Oldham County clerk discussed local option elections. The Secretary of State stated that local option elections are required to be held not earlier than 60 days or not later than 90 days from the filing of the petition and that local option elections cannot be held on the same day as a primary or regular election. Both county clerks expressed concern at the cost of holding local option elections on days other than primaries or regular elections and suggested changes that would allow those elections to be held on regularly scheduled election days to save election-related costs to the counties.

Counsel to the Democracy Program of the Brennan Center for Justice presented a national study and report on voting law changes in 2012. Many states enacted new registration and voter identification laws in the 2011 legislative sessions. The Brennan Center's research indicated these new laws could have an adverse impact on voter participation in the 2012 elections. Several states have enacted new voter identification requirements and found these efforts to be costly due to litigation, free identification card requirements, and necessary public information campaigns during implementation. As an example, she cited a fiscal note attached to a Missouri voter identification bill that estimated the costs at $6 million to implement and as much as $4 million in ongoing annual costs.

The general counsel of the State Board of Elections, the Leslie County clerk and chair of the elections committee of the Kentucky County Clerk's Association, and the executive vice president of the Northern Kentucky Home Builders Association discussed the issue of local referenda. The general counsel of the State Board of Elections provided a summary of the wide variety of permissible local referenda and gave an overview of local referenda categories and some of the differing petition requirements. She also discussed the specific requirements in KRS 147.620, which concerns the dissolution of an area planning commission. The executive vice president of the Northern Kentucky Home Builders Association testified as to his organization's petition under KRS 147.620 that was rejected by the Kenton County clerk and that led to litigation, and he suggested that the number of required signatures be reduced and that clear guidelines be provided to county clerks on how signatures should be verified. The Leslie County clerk and chair of the elections committee of the Kentucky County Clerk's Association testified that his organization supports efforts to amend the referenda statutes to require more information in petitions so that county clerks can more easily identify valid petition signatures.

# Report of the 2011
# Interim Joint Committee on Transportation

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

Sen. David Givens
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Ray Jones
Sen. Bob Leeper
Sen. R.J. Palmer
Sen. John Schickel
Sen. Tim Shaughnessy
Sen. Brandon Smith
Sen. Damon Thayer
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. John Arnold
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. Donna Mayfield
Rep. Charles Miller
Rep. Terry Mills
Rep. Lonnie Napier
Rep. Rick Nelson
Rep. Tanya Pullin
Rep. Marie Rader
Rep. Steve Riggs
Rep. Steven Rudy
Rep. John Short
Rep. Arnold Simpson
Rep. Fitz Steele
Rep. Jim Stewart
Rep. Tommy Turner
Rep. David Watkins
Rep. Alecia Webb-Edgington
Rep. Addia Wuchner

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 | Rep. Tanya Pullin |
| Sen. R.J. Palmer | Rep. Steven Rudy |
| Sen. John Schickel | Rep. Alecia Webb-Edgington |
| Rep. Charlie Miller | |

LRC Staff: Brandon White, Dana Fugazzi, John Snyder, 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 four times during the 2011 Interim.

### Implementation of 2011 Senate Bill 79

The committee heard a brief overview of the implementation of 2011 Senate Bill 79. This bill was originally introduced because some neighboring jurisdictions, most notably Illinois, do not exempt farm registered vehicles from the International Fuel Tax Agreement (IFTA) requirements. Prior to the passage of SB 79, Kentucky’s lowest registration weight level for farm vehicles was 38,000 pounds. Because of their farm registration, these vehicles were exempt from the IFTA requirements while operating in Kentucky. The IFTA articles of agreement permit each state to determine to exempt farm trucks. Under IFTA rules, vehicles with a registered gross vehicle weight exceeding 26,000 pounds are subject to IFTA requirements. Because the weight printed on the registration receipt for Kentucky farm trucks was 38,000 pounds, all farm trucks, even pickups, were subject to IFTA requirements if another state did not exempt farm vehicles like Kentucky.

The result was that Illinois enforcement officers engaged in an enforcement campaign on the road that farmers used to travel from Kentucky to Missouri. Violators were cited for not being compliant with IFTA and assessed a $1,000 fine. With the implementation of SB 79, a third registration level for farm trucks has been added. The Automated Vehicle Information System changes necessary to implement this change were finalized on April 25, 2011. County clerks were notified of the change on April 25, 2011, and there is no state fee required to update the registration receipt. The Transportation Cabinet partnered with Kentucky Farm Bureau for a statewide publicity campaign to inform farmers of the change.

Another major change in SB 79 was the exemption to three parts of the Federal Motor Carrier Safety Regulations for intrastate vehicles engaged in farming or agricultural activities with a gross combined weight of 26,000 pounds or less. Since the enactment of the legislation, the Kentucky State Police and the Department of Commercial Vehicle Enforcement have provided training to all field personnel explaining the effect of SB 79.

Other changes associated with implementation of SB 79 included expanding the planting and harvesting season to encompass the entire year. The season was previously dated from March 1 through November 23 of each year. The change provides for an hours-of-service exemption for farm vehicle drivers within a 100-air-mile radius of the source of the commodities or distribution point permanent. SB 79 also allows transportation of farm equipment on an annual permit from dealership to dealership and aligns the definition of interstate commerce and intrastate commerce with federal regulations.

**Kentucky Airports**

Department of Aviation officials stated that two of the state's six aircraft have been sold to raise more than $230,000 in revenue. The department was part of a National Level Exercise including other states and the federal government to assess the state's preparedness for a major earthquake. Also, the department is part of fire support for the Department of Fish and Wildlife and drug enforcement with the Kentucky State Police. An ongoing project Automated Weather Announcement System (AWAS) will be expanded to place 12 such systems within the state. AWAS is designed for pilots to check weather in a certain area to decide whether they are qualified to fly in those conditions.

The department's funding comes from the road fund, the jet fuel sales tax, and bond sales. For 2011, the department's budget was approximately $10 million.

Paducah, Owensboro, Lexington, Louisville, and Cincinnati have aircraft that carry passengers. An airport must obtain federal approval and meet certain guidelines prior to providing passenger services.

**Road Maintenance**

The goal of the Transportation Cabinet when deciding on pavement type is to pick the most cost-effective choice. The primary engineering factors in choosing a pavement type are traffic volume, traffic loading, subsurface conditions, initial cost, and long-term cost.

The life cycle for each type of pavement is different. To determine the maintenance needed for each pavement type, the cabinet looks at the 10-, 20-, and 30-year predicted wear and what maintenance would be needed. Concrete costs more initially, but it is a rigid pavement that will last longer. Therefore, the engineers look over a 40-year life cycle and try to compare the pavement types and decide which type will have the lowest cost in design and maintenance.

Representatives from the Transportation Cabinet discussed the pavement conditions on interstates, parkways, state primary and secondary roads, and rural secondary roads. In the last 20 years, the condition of each type of road has decreased slightly. The cabinet is trying to correct that.

The Transportation Cabinet's goal is to maintain all of its roadways at a condition of 92 percent or better. The current pavement preservation need of all state roadways is $918 million. After the Kentucky Transportation Center issued a customer survey, 87 percent of people surveyed stated that maintenance spending on pavement surfaces should be a moderately high to high priority within the state.

Representatives from the cabinet discussed how many roads were damaged by the 2010-2011 winter. There are 20 proposed projects for resurfacing due to the storm damage. Thirteen of the projects are a priority 1, and seven are a priority 2.

Representatives from the cabinet also discussed procedures for highway construction contracts and stated that before a project is awarded the cabinet puts together an engineer's estimate for each project to determine the fair market value for construction of the project. The estimate establishes a baseline cost for project construction and is used to determine whether to award a project or reject all the bid received. The four engineers prepare an estimate on each of the 750-800 projects the state lets each year.

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

**Road Fund Updates**

Representatives from the Transportation Cabinet gave a brief overview of the motor fuel tax. The current tax is 9 percent of the average wholesale price of a gallon of gasoline plus a flat rate of either 5 cents per gallon on gasoline or 2 cents per gallon on special fuels levied on each gallon of fuel received in Kentucky. Additionally, an underground storage tank fee of 1.4 cents per gallon is also assessed. The 9 percent gas tax is variable, adjusted quarterly, and capped at 10 percent growth from the last quarter of a fiscal year. For FY 2012, the total gas tax is 27.8 cents per gallon. 48.2 percent of fuel tax revenues are statutorily dedicated to the Revenue Sharing Program to be used on rural secondary roads, county roads, and city streets. There is currently no risk of losing gas tax revenue due to falling prices, unless the average pump price of gasoline falls below $3.00 per gallon.

**Procedures and Statistics for Taxicab and Limousine Licenses**

Several types of motor carrier passenger vehicles, including taxicabs, limousines, disabled persons' vehicles, airport shuttle vehicles, and charter and other buses, require Certificates of Convenience and Necessity before they may operate in Kentucky. KRS Chapter 281 governs the process for obtaining a certificate of authority to operate as a motor carrier.

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

Statewide, there are 888 taxicabs, 364 disabled persons' vehicles, and 141 limousines. In 2009 and 2010 combined, of the 104 taxi applications that have been resolved, only 8 were denied on merit, meaning the carriers could not demonstrate sufficient capability or need in the areas for which the application was filed. Over the same period, 2 of 65 disabled persons' vehicle applications and 2 of 42 limousine applications were denied on merit. Another reason applicants may not be approved is a failure to proceed, in which applicants may not have filed proper paperwork in time or met certain guidelines in time, and therefore the applications are considered null.

**Inspection Programs for Heliports**

In 2009 the state had 52 licensed private heliports. The Department of Aviation received numerous requests during that time for data on heliports for which the department had no record. After the requests were made, the department looked into finding all the heliports and temporary landing zones, and found that 86 had never been inspected for safety or licensed. Of the 154 heliports that the department found, approximately 16 known landing areas had yet to be inspected, which include new construction.

There are several federal and state statutes that require heliports to be licensed. In order to ensure safety of flight crews, patients, people on the ground, and other aircraft, heliports need to be inspected and licensed by the state.

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

A heliport is a site that has been used or is intended for use for more than 1 year, with flight operations on at least 3 days in any 1 week or more than 10 in any 1 day. A medical emergency site, which is an unprepared site at or near the scene of an accident or similar medical emergency on which a helicopter may land to pick up a patient in order to provide emergency medical transport, would not be considered a heliport.

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

### Status of the Sherman Minton Bridge in Louisville

The Sherman Minton Bridge, which carries I-64 across the Ohio River between Louisville and New Albany, Indiana, was built in 1962 and, at that time, represented an innovative lightweight, double-deck, tied-arch bridge design that used high-strength steel and welded joints to carry the four-lane traffic load. The bridge, for which Indiana has maintenance responsibilities, has been routinely inspected for many years. Since 1981, non-destructive, visual tests have been repeatedly conducted to monitor the bridge for cracks or other signs of deterioration.

On September 8, 2011, during a rigorous inspection, a 2.5-inch crack was discovered when the contractor removed plates on a tie near the Kentucky shore. Based on advice from the contractor and Indiana Department of Transportation engineers, Indiana Governor Mitch Daniels ordered the bridge closed the following day.

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

Indiana and Kentucky agreed to a repair plan that would call for shoring up the ties by bolting steel plates to them. The bridge will remain closed until the repair is complete.

The bid process for the Sherman Minton Bridge repair was an “A+B” bid, which places a monetary value on the estimated time of completion. Part A of the bid encompasses the material and labor for the project, and is essentially a traditional project bid. Part B of the bid requires the contractor to bid a number of days to complete the project, up to a maximum of 210 days for this project. The number of days bid is multiplied by $100,000 per day to determine the value of Part B of the bid. Part A and Part B are then added to establish a total bid amount for bid letting purposes.

The bid awarded for this project was $13.9 million in project costs with a time frame of 135 days. The contract contains a completion bonus/penalty of $100,000 a day. For early completion the contractor will receive that amount per day, up to $5 million. Conversely, there is a penalty of $100,000 a day for every day beyond 135 days with no maximum in penalties. Hall Contracting of Louisville submitted the winning bid.

The federal government provided $5 million towards the project, and Kentucky will be responsible for 50 percent of the remaining balance. Kentucky’s share of the cost will come from authorized bridge maintenance funds. The project should be completed the first week in March.

### Final Report of the NTSB Investigation Into a Fatal Crash on I-65 near Munfordville

Motor vehicle crashes are responsible for more deaths than accidents in all other transportation modes combined. They account for more than 90 percent of all transportation-related deaths each year. Distractions from cellular telephones contribute to these accidents, and the failure to use seat belts contributes to the injuries and deaths that result.

The accident that occurred on Friday, March 26, 2010, at approximately 5:14 a.m. involved a truck-trailer semitrailer combination being driven by a 45-year-old male. The vehicle was being driven south on I-65 near Munfordville. The truck departed the left lane of southbound I-65, entered the median, and struck a 15-passenger van occupied by 12 people. As a result of the accident, the truck driver, the van driver, and nine van passengers died. Two child passengers in the van, who were using child restraints, sustained minor injuries.

The investigation by the National Transportation Safety Board (NTSB) found two primary safety shortcomings that were identified during this tragic accident: the use of a cellular phone by the truck driver and the lack of proper seat belt use. All 15 seat positions in the Munfordville accident van were equipped with either lap belts or lap/shoulder belts. Of the 12 van occupants, only 4 were using safety restraints.

In evaluating the possible role of cellular telephone distraction in the accident, the NTSB examined the cellular telephone records of the driver, as indicated by the records, the truck driver repeatedly used his cellular telephone while driving and after mapping the use of his phone the NTSB found that the driver made an outgoing phone call just seconds before the accident occurred. It was concluded that because the driver was distracted from the driving task by the use of his cellular telephone at the time of the accident, the truck driver did not maintain control of his vehicle.

In addition to the two issues of direct interest to Kentucky, the NTSB investigation also identified concerns with respect to federal standards for the design of median barriers on divided highways and to the federal oversight of interstate motor carriers.

Kentucky’s seat belt law currently applies to vehicles designed to carry 10 or fewer passengers, which means passengers in 12- to 15-passenger vehicles are not required to wear seat belts. Kentuckians for Better Transportation researched the statutes of other states and found that many other states do not have a primary seat belt law and many other states do not require seat belts in the back seat.

Since September 2005, federal law has required that automakers equip 12- to 15-passenger vehicles with type 2 seat belts, which are the standard lap belt and shoulder harness belts.

## Prefiled Bills

The committee had three prefiled bills referred during the interim: BR 18, an Act relating to safety inspections for official vehicles; BR 122, an Act relating to traffic control devices; and BR 135, an Act relating to special license plates. No formal action was taken on any of these bills.

## Senate Members' Committee Activity

The Senate members of the Interim Joint Committee on Transportation met one time during the 2011 Interim on September 6, 2011, and discussed several issues.

### Traffic Issues Surrounding the Inaugural NASCAR Race at Kentucky Speedway

A representative from Kentucky Speedway stated that the main contributor to the problems at the July 9, 2011, race was a bad traffic plan. The speedway had hired individuals who had experience with Sprint Cup races to develop a traffic plan and assist with traffic management.

After the race, there were major customer relations issues for those customers who either missed most of the race due to the traffic or did not make it at all. There have been several updates to the speedway in preparation for the 2012 Sprint Cup race, involving the purchase of a 143-acre lot for parking and a tunnel under KY 35 for patrons who park in the new lot to walk safely to the track without slowing traffic on the road. The tunnel project will cost approximately $1.2 million.

### Road Fund Updates

Motor fuels tax revenue grew 11.8 percent from 2010 to 2011, motor vehicle usage tax receipts grew 14.7 percent, and other tax revenue grew 2.8 percent. The total revenue of all the state taxes that go into the road fund in FY 2010 was $1,206.6 million and in FY 2011 was $1,338.8 million, which is an increase of 11 percent.

### Proposed I-69 Project Through Western Kentucky

In 1991 federal legislation established corridor 18 as a high-priority corridor on the highway system. Corridor 18 was named a route between Indianapolis and Memphis via Evansville. Since then subsequent legislation has extended corridor 18 to Canada and to the Texas/Mexico border and designated corridor 18 as Interstate 69.

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

An agreement was reached between the Kentucky Transportation Cabinet and the Federal Highway Administration to maximize the use of the Western Kentucky Parkway and existing I-24. The section from Dawson Springs to Calvert City will be signed as I-69 before January 1, 2012. The agreement consists of the improvements such as ramp tapers, a new interchange, bridge clearance, guardrails, and safety improvements on bridge rails. There will be some cost to convert the existing facilities to full federally approved facilities. The cabinet expects to spend approximately $200 million over time to bring all of I-69 in Kentucky (except the bridge at Henderson) to federal standards.

## House Members' Committee Activity

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### Road Fund Updates

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## Subcommittee Activity

## Subcommittee on Waterways

Jurisdiction: Facilitate consideration of economic development, growth of the Commonwealth's commercial and industrial base, and the promotion of tourism and recreation through optimal use of Kentucky's waterways.

The Subcommittee on Waterways met three times during the 2011 Interim.

### Discussion of the 2011 Spring Flood

On April 12, 2011, Kentucky experienced high winds, tornadoes, hail, and heavy rains. The heavy rains continued for several days as weather systems moved through the state. Some areas of the Commonwealth received more than 20 inches of rain. The rain amounts caused lakes and rivers to crest at unprecedented levels, resulting in historic flooding. Due to the series of events, 76 counties were designated for public assistance, and 22 counties were designated for individual assistance.

The Federal Emergency Management Agency (FEMA) opened disaster recovery centers in 11 counties, which received a total of 946 visits. The centers give citizens a chance to meet in person with FEMA representatives and discuss how to receive benefits.

Within FEMA's individual and household assistance programs, there were 1,992 registrations and $7,852,060 in approved assistance. There were 954 home applications issued, 176 received, 58 approved, and $2,831,300 approved in assistance. There were 249 business applications issued, 6 received, 2 approved, and $284,600 in approved assistance.

The US Army Corps of Engineers said that total precipitation accumulation from January 1 through May 24, 2011, was more than 30 inches in Louisville, which was the largest amount on record in Louisville since record keeping started in 1872. The Louisville District flood risk management projects provided substantial reduction to the risk of human life and economic damages in Kentucky. The corps estimated that from January to July of 2011, the total economic damages prevented by the 14 Louisville District urban local protection projects was $225,142,000. These estimates are generated by applying real rainfall, stream, and gage data to established depth-damage curves for each project. Economic damage prevented by the eight Louisville district multipurpose reservoir projects in the state is estimated at $59,277,000.

**Memorandum of Agreement between the Kentucky Transportation Center and the US Army Corps of Engineers**

The University of Kentucky's Kentucky Transportation Center and the US Army Corps of Engineers have entered into a partnership agreement that requires shared data, knowledge, and technology. They will engage business and community stakeholders to identify relevant waterways issues and provide high-value innovations and services to address them, and they will identify economic development and environmental stewardship opportunities.

**2011 Midwest Regional Panama Canal Conference**

Paducah is an industry hub and home to 24 towing companies. Several of the major companies in the industry have headquarters in Paducah. These towing companies employ more than 8,000 employees.

Paducah and other ports in Kentucky share a vision to become the distribution center for the midwestern United States. Kentucky has the potential to be a major distribution center with the I-24 and the I-69 projects, as well as the future I-66 corridor. The river system is the most economical way to move freight and the most environmentally conscious way to move cargo. The Paducah river port is profitable and is not subsidized by the city or county.

## Water Transportation Advisory Board

2010 House Bill 28 established a seven-member Water Transportation Advisory Board. Freight carriers are engaged in planning to provide freight solutions to different population centers. Manufacturers look for good transportation connections to serve markets. If projected population growth patterns and freight transportation plans of others are realized, Kentucky could face significant economic challenges.

The Water Transportation Advisory Board was established with the understanding that Kentucky should consider how to use its natural water highways to provide freight lanes for existing manufacturers and recruit new industries.

Kentucky has a grant program to support short line railroads' maintenance needs. While the state provides this program to short line railroads, funds are not available to community industrial or public river ports with rail needs. The Kentucky Infrastructure Authority has no ability to lend money to communities or public river ports for the purpose of developing rail and water transportation infrastructure.

The barge and commercial vessel companies pay approximately $10 million to $11 million annually in the combined county and state property assessment. Approximately $6 million to $7 million is returned to the county governments bordering the Ohio River, while between $3 million and $4 million is deposited into the general fund.

If $3 million each year were infused into waterways investments, it could have a profound impact on waterways commerce in Kentucky. The funds could be used for regional and national marketing efforts, and for modest capital improvements, such as dredging.

## Sunken and Abandoned Water Vessels

Submerged vessels that can create obstruction to navigation must be removed, and the cost of removal is typically borne by the vessels' owner. Submerged vessels not obstructing navigation are left in place.

If a vessel is obstructing navigation, the United States Coast Guard (USCG) tries to contact the owner of the vessel. If no owner is present, the USCG will pursue federal funding to remove the vessel. If an owner is present, the owner will apply for the applicable permits to remove the vessel. If a vessel is not obstructing navigation, it must be determined whether the vessel is leaking fuel or chemicals or is posing a water safety hazard. If the vessel poses an environmental threat, the United States Environmental Protection Agency is contacted to handle the fuel or chemicals. If the vessel is posing a water safety hazard and the owner cannot be contacted or there is no owner, the USCG will remove the vessel. If the vessel poses no safety hazard and does not contain any chemicals or fuel, it will be left in place, marked, and monitored.

The Army Corps of Engineers uses its best judgment to decide whether a vessel is obstructing navigation. If the vessel is infringing on navigable channel or blocking a lock chamber or dam opening, it will be removed.

# Report of the 2011
# Interim Joint Committee on Veterans, Military Affairs, and Public Protection

**Sen. Jack Westwood, Co-Chair**
**Rep. Tanya Pullin, Co-Chair**

Sen. Perry Clark
Sen. Carroll Gibson
Sen. Vernie McGaha
Sen. Dennis Parrett
Sen. Joey Pendleton
Sen. Dan "Malano" Seum
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Rep. Myron Dossett
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Rep. Jim Glenn
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Rep. Alecia Webb-Edgington

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**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 four fallen soldiers.

**Kentucky Department of Veterans Affairs.** The commissioner, a cemeteries manager, and an internal policy analyst for the Kentucky Department of Veterans Affairs (KDVA) updated the committee on the department's activities.

The commissioner stated that because of increased use, the KDVA would request additional funding for the Veterans Burial Stipend, which is currently funded at $100,000. There is about $500,000 in the veterans trust fund, and there is a new veterans license plate that anyone can buy to support the fund.

The internal policy analyst discussed the new veterans nursing home being built in Hardin County. He also discussed the project's increased costs due to new VA building requirements.

**11/11/11 Initiative to Honor Veterans.** The KDVA commissioner and the deputy chief of staff of the governor's office updated the committee on the details of the 11/11/11 Initiative to Honor Veterans. The commissioner discussed a job fair to be held with the Chambers of Commerce in Louisville and Lexington, a USO concert being put together in Louisville for veterans, and the opening of the Kentucky Military History Museum. The deputy chief of staff discussed the job openings at the Ford Motor Company in Louisville and how veterans will be given priority for those jobs.

**Joint Executive Council of Veterans Organizations: Update and Legislative Priorities.** The chairman of the Joint Executive Council of Veterans Organizations (JEVCO) updated the committee on JEVCO's activities and its legislative agenda. The priorities are full funding for KDVA, charitable gaming and electronic video gaming at veterans service organization (VSO) halls, state identification cards for veterans, the prevention of protesters disrupting funerals, and a reduction in state property tax paid by VSOs.

**Veterans Services Offices of Kentucky's State Universities.** Representatives from Northern Kentucky University, University of Kentucky, University of Louisville, Eastern Kentucky University, Western Kentucky University, Morehead State University, Murray State University, and Kentucky State University gave PowerPoint presentations on veterans services at each university.

**National Association of Black Veterans.** The commander of the Kentucky chapter of the National Association of Black Veterans (NABVETS) updated the committee on its activities. The commander gave handouts to committee members detailing the current 5-year plan, the "Vets First" Job Program, and a proposal for a Veteran's Enrichment Center in Louisville. The commander stated that Fort Campbell would be the next location that would form a NABVETS chapter. The organization has active duty members and female members. The commander planned to meet with a company that develops products known as finger sports, which are designed to assist veterans in rehabilitation from injuries sustained in combat.

**Pretrial Services and Veterans.** A pretrial services officer updated the committee on pretrial service for veterans. He detailed the number of arrests in each county, how many of those arrests were veterans, and how many of the veterans had combat experience. The information helps identify veterans who may have issues such as post-traumatic stress disorder that could be exacerbating their problems. Approximately 90 percent of arrested veterans were arrested for misdemeanors such as minor theft, minor drug possession, and alcohol-related offenses.

**Employment Issues for National Guard and Veterans.** A program support specialist with Employer Support of the Guard and Reserve testified on employment issues for veterans. The current unemployment rate among the Kentucky National Guard (KYNG) is 15.7 percent, but this figure would be around 25 percent if not for the deployment of the 149th Maneuver Enhancement Brigade. There is a comprehensive four-phase plan focused on assisting veterans with obtaining civilian employment to combat high unemployment among the KYNG.

## Military Affairs

**Kentucky National Guard Deployments Since 9/11.** The deputy adjutant general for the Kentucky National Guard gave a PowerPoint presentation on KYNG deployments since 9/11. Since September 11, 2001, there have been 14,200 KYNG soldiers and airmen deployed in support of the global war on terror. As of September 8, 2011, the KYNG had 1,547 troops deployed worldwide. Some members of the Kentucky Air National Guard, who typically serve shorter deployments, have been deployed more than a dozen times. Deployments may decrease as the missions in Iraq and Afghanistan change, but they will not go away completely. Since September 11, 2001, the KYNG has lost 20 members.

**Kentucky Department of Military Affairs Update.** The adjutant general, the director of operations, and the deputy commander of the Kentucky National Guard each gave a PowerPoint presentation updating the committee on the department's activities. The adjutant general described the various services that guardsmen are called upon to provide to citizens, including transportation, truck assets, medical assets, engineering, and military police. He said that 85 percent of guardsmen are not full-time soldiers. He described Kentucky-specific operations, which include Emergency Management, Bluegrass Station, and the Kentucky Logistics Center. The 201st Engineer Battalion received the Valorous Unit Award, the first time in Kentucky history that a guard unit has received this award.

The adjutant general discussed the Kentucky National Guard Memorial. The memorial will be constructed at the entrance of the Boone National Guard Center. The memorial is estimated to cost $928,000 with an unmet need of $508,000.

The adjutant general discussed ongoing projects at the Wendell H. Ford Regional Training Center and at the Harold L. Disney Training Center. The Owensboro Readiness Center has broken ground, and the Burlington Readiness Center will be operational within 18 months. The Youth ChalleNGe Program in Harlan County will open in July 2012. About 98 percent of National Guard funding is from the federal government, but this funding is in jeopardy. He gave an update on the Kentucky Military Family Assistance Trust Fund, which has good funding and has been used extensively in the last 6 months.

The director of operations testified on the Kentucky National Guard Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) operations and the 41st Weapons of Mass Destruction-Civil Support Team (WMD-CST). The mission of the WMD-CST is to support civil authorities with the identification of CBRNE substances, projected consequences, and response measures. WMD-CST supports the governor and incident commander. It is used in the US only, uses non-military equipment, has 22 full-time personnel, and is interoperable with civil responders.

The deputy director gave a presentation to the committee on the National Level Exercise (NLE). The NLE was a 5-day exercise hosted in Western Kentucky involving a simulated earthquake on the New Madrid fault coordinated by the Department of Homeland Security. The scenario involved a magnitude 7.8 earthquake. The New Madrid fault area includes four Federal Emergency Management Agency regions with 15 federal emergency support functions spanning eight states. The Governor and all cabinet members participated at the Boone Center. Bringing the private sector back online during an emergency is key for meeting the needs of the citizens of Kentucky.

### Public Protection

**Hospital-Borne Infections.** A retired medical doctor testified on hospital-borne infections. In Kentucky, there are 23,000 hospital-acquired infections with almost 1,400 deaths at a cost of approximately $400 million yearly. The doctor discussed the four pillars of controlling hospital-borne infections: data for action, aligned incentives, adherence to evidence-based prevention practices, and innovation research. Hospitals are not adequately reporting hospital acquired infections. VA hospitals have lower rates of methicillin-resistant *Staphylococcus aureus* (MRSA) than nonmilitary hospitals. All facilities in Kentucky should give the public the same protection from MRSA.

**KY NFB-NEWSLINE Demonstration.** The president of the Lexington chapter of the Kentuckiana Regional Group of the Blind Veterans Association, its board treasurer, and a member spoke to the committee about the KY NFB-NEWSLINE, which provides news stories from a variety of sources in audio format. Newsline could be used by the blind and severely disabled, including veterans. There are 3,000 known blind veterans in Kentucky and approximately 41,000 in the country. A member of the organization gave a demonstration of the newsline with a phone in the committee room. The board treasurer gave a demonstration of a Victor Reader device that reads written material in audio format. The board treasurer discussed how the device is used and mentioned that it costs about $4,500.

**Firefighters in Kentucky.** The division director for the Kentucky Fire Commission (KFC) gave a PowerPoint presentation on fire and rescue training. The director discussed certification and funding opportunities for Kentucky's fire service and stated that the KFC's mission is to improve fire service through standardized education, training, certification, communication, and distribution of funds.

The director discussed KFC services, which include incentive programs, aid to volunteer fire departments; workers compensation insurance; hepatitis B shots for all firefighters; low-interest loan programs; and training and certification records keeping for more than 800 fire departments, as well as funding to firefighter and fire departments for a variety of purposes. The leading cause of death among firefighters is heart-related conditions. A physical fitness aptitude test has been given to more than 3,200 firefighters in Kentucky. The test will be mandatory after 2013.

The director gave an update on the 14 regional offices located throughout Kentucky. The director discussed the mobile training facilities that the KFC provides for firefighters. He also discussed an associate degree in fire rescue science technology through the Kentucky Community and Technical College System (KCTCS). Through KCTCS, the KFC is also assisting the Kentucky Office of Homeland Security with multiple projects including the Citizen Emergency Response Teams Programs, the National Incident Management System, and the Homeland Security Training and Exercise program.

The director stated that the most sophisticated and responsible first responders in the world are in the military. Many military responders train at the Wendell H. Ford Regional Training Center, which is advantageous to civilian firefighters. KFC has four mobile command units strategically placed throughout the state that were recently used during flooding to operate as emergency operation centers.

**Kentucky Office of Homeland Security Update and Legislative Priorities.** The acting executive director for the Kentucky Office of Homeland Security (KOHS) briefed the committee on the KOHS activities and legislative priorities. KOHS consists of 15 staff members, one of whom is a state merit employee and the rest of whom are federally funded time-limited employees. The acting executive director discussed the four components of the KOHS. They include the Kentucky Intelligence Fusion Center, a neighborhood watch program known as Eyes and Ears on Kentucky, the Active Intelligence Officer Liaison Program, and an exercise and evaluation program.

The acting executive director said that the only KOHS legislative initiative is the executive order that gave it administration of the fusion center. He also discussed several KOHS programs and a partnership with area development districts to implement a citizen awareness program. He discussed the KOHS Grant Program and stated that the program has 155 active projects which cost more than $42 million. For fiscal year 2011, the KOHS Grant Program received 103 applications requesting a total of $28.78 million but due to reduced funding KOHS has only $4.1 million to distribute. He described the eWarrants Electronic System, which is administered along with the Kentucky State Police, the Administrative Office of the Courts, and the Attorney General's office. He also discussed the State Law Enforcement Program, which is a state-funded program that provides body armor, duty weapons, patrol rifles, Tasers, and ammunition to law enforcement officers.

**Golden Alert System.** The executive director of the Kentucky Division of Emergency Management gave an update on the Golden Alert System. The Golden Alert system was created by the General Assembly in 2008 and attempts to aid in the rescue of impaired adults and individuals with organic brain syndromes. The most crucial acts are the reporting of the missing adult and a subsequent timely search. Individuals with these types of impairments are identified, pictures are made available, and the process to find them starts as soon as they are known to be missing. Five recommendations for improving system include: making sure employees of long-term care facilities know requirements of the Golden Alert law; improving the screening and identification of patients; removing exemptions to long-term care providers under KRS 39F.180 for speedy reporting of individuals missing from their facilities; placing video cameras at all entrances and exits of health care facilities; and offering regular training regarding the requirement for early notification of the County Emergency Management Director and County Search and Rescue Coordinator.

**Kentucky State Police Training Center Update.** The commissioner of the Kentucky State Police (KSP) updated the committee on the organization's new training center in Frankfort. The Department of Corrections transferred the former Frankfort Career Development Center to the KSP to use as a State Police Training Center. KSP had never had a dedicated training facility until it acquired this property. Use of this complex was helpful because of insufficient size and space available at the current facility. KSP will save between $25,000 and $30,000 because it will no longer have to rent additional training space. KSP has spent $76,000 on the new training facility. He estimated the cost of all needed upgrades to be between $5 million and $7 million.

# Report of the 2011
# 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: Joanna Decker, Raymond DeBolt, Jonathan Grate, Norman Lawson, Jr., and Rebecca Crawley

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

Jurisdiction: Monitor the implementation of the provisions of the Public Safety and Offender Accountability Act (11 RS HB 463), report findings, and make recommendations for the further revision of the Penal Code, the Controlled Substances Act, and other criminal justice policies.

### 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. The task force's recommendations were enacted in 2011 in the Public Safety and Offender Accountability Act, HB 463, which also reauthorized the Task Force through the end of 2011. The task force retained all of its original members. During the 2011 Interim, the Task Force on the Penal Code and Controlled Substances Act held five meetings. The committee received updates from various agencies regarding the implementation of HB 463 and heard testimony and recommendations from agencies and stakeholders on a wide range of criminal justice topics.

#### Status of HB 463 Implementation

The executive director of the Administrative Office of the Courts (AOC) described efforts to update case management systems and forms. AOC has provided training to judges and circuit clerks on the provisions in the bill. During the first few months following implementation, pretrial releases have increased, arrests are down, "released on recognizance" has increased, and a new pretrial release risk assessment tool has been implemented. The use of deferred prosecution has been minimal but may increase. The director of pretrial services testified that, based on her statistics, public safety has not decreased, the offense rate is the same, and compliance rates are unchanged, even with the increase in pretrial release. The number of persons who fail to appear for court has decreased. The executive director stated that AOC needs additional pretrial release officers to handle the increased workload. Initial problems with implementation included inconsistencies in the application of bail credits and jail credits and determining what portion of credits apply to bail or fines.

The commissioner of the Department of Corrections reported on the status of training for corrections staff and other criminal justice stakeholders regarding the validated risk and needs assessment instrument, as well as staff training on the broader implications of the bill's provisions. New policies and new or amended administrative regulations have been implemented. New practices include compliance credit for parolees, a violation matrix for probationers, parole board hearings prior to an inmate's parole eligibility date, and expanded placement of Class D felons in county jails. Fifty new parole officers have been hired for the increased caseload that will occur when the mandatory reentry supervision provision becomes effective in 2012. Community Corrections staff members are being trained on performance incentive funding. AOC and the Department of Corrections have cooperated on data sharing and other issues of mutual interest.

The commissioner reported on additional reentry grants and potential future resources. The department is working with AOC through the Vera Institute of Justice to secure additional grant funding from the Bureau of Justice Assistance for Phase II assistance with the implementation of HB 463. The department is working toward mandatory reentry supervision for 2012 and the use of the risk and needs assessment tool at the time of the presentence investigation required in 2013. Challenges faced by the department include insufficient program availability in facilities; lack of resources in communities; and creation of a website to provide more information to victims, judges, and prosecutors, to be implemented in 2013.

A program associate from the Vera Institute of Justice's Center on Sentencing and Corrections reported that the institute is providing technical assistance to the Department of Corrections and the AOC in applying for and qualifying for pass-through funding from the Bureau of Justice Assistance (BJA). She explained the BJA's checklist of requirements for funding and the current status of the Vera Institute's role and described implementation in other Phase II states, how the pass-through funding works, what it can be used for, and the next steps to be taken. A Justice Reinvestment Initiative Working Group is being established to develop policy options, reinvestment strategies, and developing an implementation plan.

Two Commonwealth's attorneys testified regarding the status of the prosecutors' implementation of HB 463. The Commonwealth's attorney from Warren County described training and discussions about implementation at the recent annual meeting of the Commonwealth's Attorneys Association. The biggest problem with implementation that he has seen is widespread misinformation about the bill's provisions.

**Recommendations from Criminal Justice Stakeholders**

The task force created and distributed a survey to interested stakeholders to solicit suggestions for changes to the Penal Code and other criminal statutes.

The Warren County Commonwealth's attorney discussed prosecutors' predominant concerns with the current Penal Code's felony classification system, sentencing structure, and parole eligibility provisions. He described their long-term goal as truth in sentencing, which will provide a more determinate sentencing structure and little or no parole board discretion. He cited the difficulty that prosecutors, victims, and judges have when trying to determine how much time a person will actually serve. Prosecutors recommended a new classification of parole eligibility for certain felonies that would increase the length of time served before an inmate is eligible for parole for certain offenses and would prohibit the inmate from earning any credits before that time. He testified about the need in drug trafficking cases for law enforcement to be able to aggregate the amounts of controlled substances over a period of time when someone is trafficking multiple pills from multiple schedules. He also suggested the creation of a new felony classification for minor felony offenses, an overhaul of the state's DUI sentencing structure and enactment of a vehicular homicide law, and creation of a uniform statute that would apply to all synthetic drugs. He stated that prosecutors would be amenable to persistent felony offender modifications only if a determinate sentencing or hybrid model is adopted.

Prosecutors are also concerned about the increase in methamphetamine laboratories and recommend making pseudoephedrine a legend drug. The Laurel County Commonwealth's attorney described statewide public awareness meetings to explain the dangers of meth labs. The meetings will explain the need for making pseudoephedrine a prescription drug and will inform participants that there are safe alternatives to pseudoephedrine that do not require a prescription.

The Christian County Commonwealth's attorney stated that gang activity is increasing and is a statewide problem and suggested revamping Kentucky's gang statutes to include a uniform statewide database to allow law enforcement to identify, track, and validate gang membership and gang-related activities. She also suggested provisions that would allow forfeiture of gang assets and provide sentence enhancements for gang-related crimes.

Representatives from the attorneys who typically represent criminal defendants also gave their recommendations. The legislative agent for Kentucky Association of Criminal Defense Lawyers (KACDL) discussed his organization's priorities, which included reform of persistent felony offender statutes, full implementation of and support for HB 463 and evidence-based practices, creation of a Class E felony, and reclassification and decriminalization of certain offenses. KACDL is opposed to proposed gang legislation and unnecessary additional parole restrictions. He detailed the increased numbers of persistent felony offenders over the years due to the expanded applicability of the statute and explained the increased costs to the state with no resulting increase in public safety. He urged the task force to stress adequate funding for treatment and alternatives to incarceration.

The KACDL's legislative agent testified that pushback to HB 463 includes little use of deferred prosecution, citations rather than arrests, and pretrial release. KACDL recommended expanding the statute relating to citation and arrest for misdemeanors, clarifying the deferred prosecution statute, and strengthening the pretrial release statute. KACDL also supports the creation of a lower felony classification but cautioned against moving some misdemeanor crimes into the new felony classification. He urged the expansion of expungement, restoration of voting rights, and elimination of job restrictions for those persons reentering society after incarceration. He urged consideration of the reclassification of offenses. KACDL supports the proposed database for gangs and gang-related activities and offenses but has concerns about other changes proposed by prosecutors.

The public advocate described the caseloads of the attorneys in his agency and expressed concern that high caseloads hamper their ability to provide a proper defense. He discussed how reclassifying certain offenses would help lower caseloads and allow the Department of Public Advocacy (DPA) to provide its clients with a vigorous defense. He urged the General Assembly to provide DPA with additional resources to reduce caseloads, improve service, and fully implement the bill's provisions. The public advocate stated that DPA supports the creation of a new lower felony classification. He made recommendations regarding which offenses to include in the new felony classification and proposed probation and sentencing parameters. He suggested examples of several misdemeanors that should be reduced to violations and advocated reform of the persistent felony offender and violent offender laws to narrow their application and modify their parole eligibility standards.

The deputy public advocate discussed the results of a DPA survey of its public defenders regarding the implementation of HB 463. Successes included increased use of pretrial release, fewer misdemeanor arrests, and lower sentences for low-level traffickers. Areas needing modification included deferred prosecution, pretrial release, and clarification of bail credit. He indicated that pretrial release works, but some judges are not following the intent of the legislation. He recommended requiring deferred prosecution, presuming the risk assessment is valid by law, defining what constitutes a high-risk defendant, increasing the number of offenses for which citations are issued instead of arrest, requiring records expungement in more cases, and expanding the DPA's social worker program.

Several task force members recommended that the prosecutors meet with the Department for Public Advocacy and KACDL to negotiate compromise proposals for consideration by the task force.

A lieutenant with the Lexington-Fayette Urban County Government Division of Police recommended repealing the provisions in HB 463 that decreased the right of police to arrest for misdemeanors and required the use of citations. The lieutenant said that the provisions are confusing and contradictory, that they hamper law enforcement's ability to investigate after an arrest, and that they allow repeat offenders to continue to commit crimes while awaiting their court dates. Some of the specific problems created when an officer is required to cite rather than arrest include the inability to conduct a search or fingerprint and photograph the individual, and the inability to have the person questioned by a detective. He testified that since Lexington police began issuing citations, failures to appear in court for misdemeanors have increased significantly. He also recommended clarification of the arrest language regarding being a danger to self or others and failure to follow reasonable orders and advocated for an expansion of the data elements for lying to police about name and address to include date of birth, Social Security number, and other items. He suggested permitting a peace officer to issue a citation for any misdemeanor when the officer has reasonable cause to believe the defendant committed the misdemeanor.

A lieutenant colonel with the Kentucky State Police made several recommendations, including clarification of citation and arrest language; applying aggregate drug amounts over a 90-day period for offenses other that trafficking in the first degree; expanding Internet child exploitation legislation; criminalizing sexual chatting; and prohibiting sex offenders from owning a photography studio and photographing children.

A member of the parole board and a staff attorney for the board presented suggestions for modifications to HB 463, including increasing the term of Parole Board members from 4 to 6 years, correcting an apparent conflict relating to the inmate risk/needs assessment, clarifying that supervision of parolees is within the jurisdiction of the Department of Corrections, clarifying the Parole Board's authority to hold hearings relating to violation of prerelease supervision conditions, limiting prerelease supervision to those sentenced to more than 5 years, and permitting final release from supervision even though restitution has not been paid.

### Human Trafficking

The training coordinator for the Kentucky Association of Sexual Assault Programs and the project manager for Kentucky Rescue and Restore, Catholic Charities, and a detective from the Lexington-Fayette Urban County Government Division of Police discussed human trafficking in the United States. They testified that human trafficking victims are exploited for commercial sex or labor purposes and reported the numbers of adults and minors trafficked into the country each year. Human trafficking is the second largest and fastest-growing criminal industry in the world.

The training coordinator for the Kentucky Association of Sexual Assault Programs described how human traffickers use force, fraud, and coercion to support their efforts and described typical cases. There have been confirmed cases of human trafficking in Kentucky and no prosecutions, despite a human trafficking law enacted in 2007.

Kentucky Rescue and Restore, Catholic Charities, is a national effort to combat human trafficking. The project manager for Kentucky Rescue and Restore stated that police generally prosecute the victims instead of the traffickers, particularly in sex cases. She recommended enacting several reforms, including a safe harbor act for child victims to provide social services for them instead of prosecution, an asset forfeiture provision for human traffickers, and mandatory training for law enforcement, prosecutors, and judges. Other recommendations included a wage theft statute, mandatory restitution to victims, and fines dedicated to provide victim services.

### Results First Cost-Benefit Analysis Model

The director of the Results First program of the Pew Center on the States testified about a cost-benefit analysis model that his group is developing to help guide criminal justice policy. The model aggregates the best national research to identify evidence-based programs that work and applies the research findings to a specific state's population to estimate the policy impact of program options. The model would use Kentucky data to predict the costs and benefits of program options if the state should decide to use the model. The result is an estimated return on investment for each program examined. He described the state's role and key implementation steps in using the model and testified that the cost-benefit model could be a significant resource as Kentucky considers investments in criminal justice programs resulting from the task force's work. He also indicated that an expanded version of the system would be available covering additional policy areas. The model was first developed by the Washington State Institute for Public Policy and is being offered to up to 10 states, including Kentucky.

The LRC economist also testified about the Results First model. The LRC has authorized his office to conduct a pilot project for the task force to evaluate program options for the upcoming session of the General Assembly. He will be making a presentation to the task force to discuss outcomes of various program options and the strengths and limitations of the model.

**Global Positioning System Electronic Monitoring**

Staff from the Lexington-Fayette Urban County Government Division of Community Corrections testified about the urban county government's electronic monitoring program, which tracks offenders' movements in real time. Offenders being tracked by the electronic monitoring program include high-risk offenders, certain sex offenders, gang members, and persons who may present a flight risk; however, most of the people being monitored are on court-ordered pretrial release.

The Kenton County jailer testified about his county's electronic monitoring program. He explained how the technology works to track participants and allows the monitoring center to communicate with participants through their ankle cuffs. A supervisor is notified if a cuff is tampered with or removed. Kenton County uses the program to track participants who are misdemeanor and traffic offenders, probationers, pretrial detainees, and juvenile offenders. The jailer explained the costs of the program, its effectiveness, the number of participants, and its ability to help solve crimes. He added that offenders can be monitored while in other states. However, he noted that there is an occasional monitoring failure caused by signal loss when there is poor cellular coverage.

The Department of Corrections' deputy commissioner for local facilities described electronic monitoring as a tool to decrease overcrowding and a tool for judges to use in lieu of incarceration. He testified about several issues relating to responding to alerts.

The Greenup County judge-executive and the Greenup County alternative sentencing coordinator described the operation and benefits of two alternative sentencing programs in their county: GPS monitoring and a work farm. The monitoring system provides increased safety for citizens, cost-effective supervision, and due process for participants. Fees for the program are based on the ability of the participant to pay. They testified about savings the program has brought to the county in terms of reduced jail stays. The work farm produces thousands of pounds of vegetables.

Several jailers described concerns they have about electronic monitoring programs in their counties. The Kenton County jailer explained that many counties do not have jails to administer a program. The Anderson County jailer testified that judges in her county use a private for-profit monitoring program that charges offenders a large fee while also requiring separate monitors and drug tests, each with additional charges. She stated that many prisoners cannot pay the fees and remain in jail at a significant cost to the county.

The Laurel County jailer described his county's home incarceration program as providing outside monitoring at reduced cost because the county does not bear the costs of incarceration or medical care. This allows the county to offer its jail space to lower-level state inmates and federal prisoners, creating a profit for the county.

## DUI Courts

The vice president of public affairs and corporate social responsibility from Beam Inc., and the director of the National Center for DWI Courts discussed the benefits of implementing specialized DUI courts in Kentucky. The courts are based on the drug court model and are reserved for the most dangerous drunk drivers: hard-core abusers of alcohol or drugs. They asserted that Kentucky's current alcohol education programs coupled with incarceration do not address or correct the person's drinking problem or change the person's behavior. They advocated for an evidence-based long-term intensive treatment program with supervision and short, immediate sanctions for violation of the terms of participation in the program. These programs have been proven to reduce recidivism and allow participants to continue working and maintain family contact. They discussed the criteria that would qualify someone for this type of program and methods for funding.

## Future Task Force Action: Recommendations and Findings

The Task Force on the Penal Code and Controlled Substances Act is scheduled to meet in December 2011 for the purposes of hearing testimony on the Results First pilot project, receiving updates on Phase II implementation assistance for HB 463, and taking final action on its recommendations. The Task Force will make its final recommendations to the Interim Joint Committee on Judiciary during a separate December meeting, and legislation based on those recommendations will be introduced to the 2012 General Assembly shortly thereafter.

# Report of the 2011 Administrative Regulation Review Subcommittee

**Sen. Joe Bowen, Co-Chair**
**Rep. Johnny Bell, Co-Chair**

| | |
|---|---|
| Sen. David Givens | Rep. Robert R. Damron |
| Sen. Alice Kerr | Rep. Danny Ford |
| Sen. Joey Pendleton | Rep. Jimmie Lee |

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

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 50 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 2011 through November 15, 2011, executive branch agencies filed 49 emergency administrative regulations (a decrease of 38 percent over the prior year) and 495 ordinary administrative regulations (an increase of 10 percent over the prior year). Of the ordinary administrative regulations filed, 91 were new, 342 were amendments to existing administrative regulations, and 62 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, 351 were amended to conform with KRS Chapter 13A and other appropriate statutes, and 201 were approved as submitted by the agency. Additionally, 7 administrative regulations expired due to failure to meet statutory deadlines, and 32 administrative regulations were withdrawn by the agency during this period. These totals do not include 72 administrative regulations scheduled for review during the subcommittee's December 2011 or January 2012 meetings.

The subcommittee staff and the regulations compiler conducted informal training sessions with executive and judicial branch agencies as requested by the agencies. The training sessions focused on the administrative regulations process and the requirements for drafting and formatting administrative regulations.

In July, LRC published the Kentucky Administrative Regulations Service, which contains all administrative regulations in effect as of June 15, 2011.

# Report of the 2011 Capital Planning Advisory Board

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

Sen. Paul Hornback
Rep. Ron Crimm
David Buchta
Charles Byers
Laurie Dudgeon
Ben S. Fletcher III
Carole Henderson
John Hicks
William H. Hintze, Jr.
F. Ryan Keith
Mary Lassiter
Mark R. Overstreet
Carol Palmore
Katie Shepherd

LRC Staff: Shawn Bowen and Jennifer Luttrell

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
**Kentucky General Assembly**

## Capital Planning Advisory Board

Jurisdiction: The 1990 General Assembly established the Capital Planning Advisory Board (board) of the Kentucky General Assembly, composed of members representing the executive, judicial, and legislative branches of government. Pursuant to KRS Chapter 7A.120, the board is charged with creating a 6-year comprehensive statewide capital improvements plan encompassing state agencies and universities. The plan is to be submitted to the heads of the three branches of government by November 1 of each odd-numbered year. This schedule enables the comprehensive capital plan to be used in the subsequent budget process and legislative session.

### Board Activity

On May 13, 2011, the board convened the first of five meeting at the Capitol Annex Building. That meeting, and the subsequent monthly meetings, focused primarily on the review of agency capital plans in preparation of the *2012-2018 Statewide Capital Improvements Plan.*

At its July meeting, the board received information technology project recommendations, which it had requested from the Commonwealth Office of Technology. Recommendations were also received from the Council on Postsecondary Education regarding postsecondary construction and information technology projects. Preliminary discussions of recommendations for the statewide plan also began at this meeting.

At the board's August meeting, in addition to the review of state agency capital plans, members received a staff report on the debt position of the Commonwealth. The report was presented by staff of the Capital Projects and Bond Oversight Committee. The board also completed its work on recommendations for the statewide plan.

On September 23, 2011, the board gave final approval to the *2012-2018 Statewide Capital Improvements Plan*. The recommendations included in the statewide plan address two categories of capital projects: those proposed to be financed from state funds (i.e., general fund, bond funds, investment income, and capital construction surplus), and those proposed to be financed from other funds.

Relative to projects proposed to be financed from state funds in the 2012-2014 capital budget, the board recommends that :

- maintenance of existing state facilities be considered as the highest priority;
- various specific capital construction and information technology projects be considered as the highest priorities after maintenance; and
- programs providing assistance through grants or loans to nonstate entities be recognized as high priorities.

Relative to capital projects proposed to be financed from funds other than state funds, the board recommends that the 2012-2014 budget authorize all projects proposed by state agencies and universities to be financed 100 percent from federal funds, restricted funds, other funds, or road funds, with the following exceptions:

- projects that will require the expenditure of significant additional state funds for their operation and maintenance;
- projects that will commit the state to fund significant costs to complete the project after the available federal funds/restricted funds/other funds/road funds have been expended; and
- top priority for the use of restricted funds of the postsecondary education institutions should be projects to address life/safety and deferred maintenance needs for which state funds are not provided.

In addition to the capital projects recommendations, policy recommendations were adopted by the board in conjunction with the 2012-2018 capital planning process:

- Postsecondary Education – Balanced Capital Investment Approach. The board recommends that the governor and the General Assembly use a balanced funding approach between new construction and capital renewal when deciding on capital project funding for postsecondary education institutions.
- Capital Planning for Information Technology Systems. The board recommends that the planning and funding decisions for capital information technology systems fully incorporate all elements of the total cost of ownership, including the operating costs needed to implement and support the system.
- State Agency Maintenance Pools. The board recommends that, in each biennium, sufficient funding be appropriated for agencies' miscellaneous maintenance pools to allow agencies to address maintenance projects in order to protect taxpayer investment in the state's physical plant.
- Budget Reserve Trust Fund. The board recommends that the governor and the General Assembly place a high priority on fully funding the Budget Reserve Trust Fund at a level that represents 5 percent of general fund revenues.
- Study of Kentucky's Debt Policies and Practices. The board recommends that the 2012 General Assembly establish a task force composed of representatives of the executive and legislative branches to review Kentucky's debt issuance processes and approaches to debt capacity. The subjects to be addressed by the task force should include the approach used to determine the amount of debt that should be issued by the Commonwealth, the type of projects for which debt is the appropriate funding mechanism, the structuring of guidelines for debt, including appropriate terms and covenants, and the alternatives to address the capital needs of the postsecondary institutions.

The complete *2012-2018 Statewide Capital Improvements Plan*, as approved by the board, was transmitted to the heads of the three branches of government by the statutory due date of November 1.

# Report of the 2011
# Capital Projects and Bond Oversight Committee

**Sen. Robert Leeper, Co-Chair**
**Rep. Jim Glenn, Co-Chair**

Sen. Tom Buford
Sen. Jared Carpenter
Sen. Julian Carroll
Rep. Robert Damron
Rep. Steven Rudy
Rep. Jim Wayne

LRC Staff: Kristi Culpepper and Christine Robertson

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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, 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, 2010, and October 31, 2011. The committee met 10 times in Frankfort in the Capitol Annex. A summary of those meetings follows.

The committee's December 2010 and February 2011 meetings were canceled due to lack of quorum. The committee was not able to take action on the projects agencies submitted for those meetings. 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.

### 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/Fund Source |
|---|---|---|
| Education and Workforce Development | KET Trans Lines/Upgrades | Federal and restricted $1,224,000 |
| Education and Workforce Development | Unemployment Insurance System Upgrade | Federal $8,519,300 |
| Kentucky State University | Purchase Research Vessel | Federal $320,000 |
| University of Kentucky | Renovate Schmidt Vocal Arts Center | Private and restricted $1,500,000 |
| University of Kentucky | Purchase Electronic Medical Records Systems | Federal, lease-purchase, restricted $51,767,000 |
| University of Kentucky | Renovate Shively Sports Center | Private $950,000 |
| Transportation Cabinet, Department of Aviation | Construct Private Hangar | Private $700,000 |

| Agency | Title of Project | Scope/Fund Source |
|---|---|---|
| Department of Military Affairs | Construct Asphalt Team Facility | Federal $749,000 |
| Department of Military Affairs | Install Additional Solar Array | Federal $720,000 |
| Department of Military Affairs | Weapons of Mass Destruction Parking Area Expansion | Federal $750,000 |
| Department of Military Affairs | Modular Expansion | Federal $750,000 |
| Department of Military Affairs | Construct CERF-P Facility | Federal $750,000 |
| Department of Military Affairs | Construct New Medical Command Building | Federal and restricted $1,000,000 |
| Department of Military Affairs | Renovate Latrines and Cold Storage Building to FMS5 Building | Federal $673,000 |

The committee approved five scope increases for unbudgeted capital projects during the period, which are summarized in the table below. These scope increases were required because of unforeseen issues that arose during project design or construction.

**Scope Increases for Unbudgeted Projects Approved**

| Agency | Project | Increase | Revised Project Scope |
|---|---|---|---|
| University of Kentucky | Replace Wildcat Lodge Student Housing | $1,050,000 | $8,050,000 |
| University of Kentucky | Construct Center for Applied Energy Building #2 | $1,206,392 | $20,983,305 |
| Department of Military Affairs | Renovate Latrines and Cold Storage Building to FMS5 Building | $214,800 | $887,800 |
| Department of Military Affairs | Modular Expansion | $216,000 | $966,600 |
| University of Kentucky | Renovate Shively Sports Center | $142,500 | $1,092,500 |

## 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 seven agency requests to increase the scope of authorized capital projects, using private, federal, or restricted (agency) funds. Pursuant to KRS 45.760(6), to be eligible for interim approval, any increase in excess of 15 percent of a project's authorized scope must be funded by federal or private funds.

**Scope Increases for Budgeted Projects Approved**

| Agency | Project Title | Increase | New Scope |
|---|---|---|---|
| University of Kentucky | Renovate 4-H Camps | $200,000 | $2,200,000 |
| University of Kentucky | Renovate/Expand Center for Applied Energy Research | $403,003 | $4,115,584 |
| Department of Veterans Affairs | Alzheimer's General Care Unit | $900,000 | $9,900,000 |
| Department of Education | Enhance Kentucky Statewide Longitudinal Data System | $291,000 | $3,169,400 |
| Eastern Kentucky University | Construct Stratton Building Addition | $825,000 | $6,325,000 |
| Kentucky Community and Technical College System | Construct Cosmetology Building | $70,000 | $1,050,000 |
| Department of Fish and Wildlife | Pfeiffer Hatchery Renovation | $3,300,000 | $5,800,000 |

**General Oversight and Review Topics**

**Allocation From Various Pool Programs.** 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.

**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.

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 the general contractor for delivering the project on time and within budget. The University of Kentucky reported the use of this delivery method for the

Renovate Track and Field Facility, Upgrade Student Center Infrastructure, and Construct Second New Housing North Campus projects.

**Energy Savings Performance Contracts (ESPC).** The committee reviewed four ESPCs. 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 |
|---|---|---|
| Kentucky Community and Technical College System (Owensboro, Bluegrass, Elizabethtown campuses) | $3,679,522 | $3,723,144 |
| Kentucky Community and Technical College System (Henderson, Hopkinsville, Bowling Green, West Kentucky campuses) | $4,357,825 | $6,512,883 |
| Kentucky Community and Technical College System (Somerset, Hazard, and Southeast Kentucky campuses) | $6,466,624 | $9,235,136 |
| Finance Cabinet (various Frankfort buildings) | $2,603,682 | $3,258,696 |

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

**Economic Development Bond (EDB) Projects.** The committee reviewed and approved nine 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.

**Economic Development Bond Grants Approved**

| Grantee | Company/Project | Amount |
|---|---|---|
| City of Henderson | North American Lighting Inc. | $90,000 |
| Scottsville-Allen County Industrial Authority | J.M. Smucker Company | $250,000 |
| City of Morgantown | Casco Products Corporation d/b/a Sequa Automotive Group | $500,000 |
| City of Harrodsburg | Corning Inc. | $500,000 |

| Grantee | Company/Project | Amount |
|---|---|---|
| City of Harrodsburg | Hitachi Automotive Systems Americas, Inc. | $500,000 |
| City of Harrodsburg | Wausau Paper Towel and Tissue LLC | $500,000 |
| City of Berea | Hitachi Automotive Systems Americas, Inc. | $500,000 |
| City of Augusta | Clopay Plastics Products Company, Inc. | $500,000 |
| Louisville/Jefferson County Metro Government | AAF-McQuay Inc. d/b/a AAF International | $550,000 |

The committee also received a report of EDB job creation and job maintenance requirements for previously approved projects from the Cabinet for Economic Development. Of the 19 grants made in prior fiscal years, 4 projects are in compliance with the terms of their agreements; 3 projects are still in the process of executing agreements or grant funds have not yet been fully disbursed; 2 projects are not in compliance with the terms of their agreements and repayments have either been requested or received; and 10 projects have not yet reached a reporting date.

**Allocations from the New Economy High-Tech Investment/Construction Pool.** The committee received two reports from the Department of Commercialization and Innovation within the Cabinet for Economic Development regarding allocations from this pool. The first report was that $6 million had been transferred from the pool to the Kentucky Economic Development Partnership, which will make a contribution to Commonwealth Seed Capital, LLC to support high-tech companies locating or expanding their operations within the state.

The second report was that $3 million of pool funds had been reallocated to the Nucleus Innovation Park in Louisville (which is also a Signature Tax Increment Financing Development Area) to support the Long-Term Health Business Incubator and Simulator Lab and start-up health sciences companies located in the park.

**Kentucky Infrastructure Authority (KIA) Projects.** The committee reviewed and approved various KIA loans and grants to local government entities for public infrastructure projects.

**Fund A (Federally Assisted Wastewater Revolving Loan Fund).** The committee approved 18 loans totaling $100,141,172.

**Fund A Loans Approved**

| Borrower | County | Amount |
|---|---|---|
| City of Livermore | McLean | $1,105,000 |
| Regional Water Resource Agency | Daviess | $4,005,000 |
| City of Bardstown | Nelson | $1,800,000 |
| City of LaCenter | Ballard | $895,000 |

| Borrower | County | Amount |
|---|---|---|
| City of Morehead f/b/o Morehead Utility Plant Board | Rowan | $3,000,000 |
| City of Campton | Wolfe | $1,400,000 |
| Louisville and Jefferson County Metropolitan Sewer District | Jefferson | $3,400,000 |
| City of Pineville | Bell | $500,000 |
| City of Vanceburg | Lewis | $2,000,000 |
| Sanitation District No. 1 | Boone, Kenton, Campbell | $15,487,500 |
| Sanitation District No. 1 | Boone, Kenton, Campbell | $14,188,155 |
| Sanitation District No. 1 | Boone, Kenton, Campbell | $7,778,000 |
| City of Flemingsburg | Fleming | $8,906,000 |
| City of Hopkinsville f/b/o Hopkinsville Water Environment Authority | Christian | $500,000 |
| City of Hopkinsville f/b/o Hopkinsville Water Environment Authority | Christian | $7,100,000 |
| City of Hopkinsville f/b/o Hopkinsville Water Environment Authority | Christian | $26,641,000 |
| City of Williamsburg | Whitley | $1,035,517 |
| Oldham County Environmental Authority | Oldham | $400,000 |

**Fund A Loan Increases.** The committee also approved five Fund A loan increases totaling $4,478,377.

**Fund A Loan Increases**

| Borrower | County | Amount |
|---|---|---|
| Ohio County Regional Wastewater Commission | Ohio | $451,077 |
| City of Bardstown | Nelson | $180,000 |
| Sanitation District No. 1 | Boone, Kenton, Campbell | $447,300 |
| City of Bowling Green f/b/o Bowling Green Municipal Utilities | Warren | $2,500,000 |
| Oldham County Environmental Authority | Oldham | $900,000 |

The committee also approved two loan assumptions for the City of Hopkinsville for the benefit of the Hopkinsville Water Environment Authority. The city is assuming $298,190 of debt from the City of Crofton Water and Sewer System and the City of Pembroke Water and Sewer System. The Hopkinsville Water and Environment Authority has acquired both systems.

**Fund B (Infrastructure Revolving Fund).** The committee approved 12 loans totaling $7,046,647.

**Fund B Loans Approved**

| Borrower | County | Amount |
|---|---|---|
| City of Princeton | Caldwell | $394,000 |
| City of Greenville | Muhlenberg | $1,150,000 |
| City of Caneyville | Grayson | $110,000 |
| City of Crab Orchard | Lincoln | $810,000 |
| Bracken County Water District | Bracken | $475,000 |
| Nicholas County Sanitation District No. 2 | Nicholas | $550,000 |
| City of Beattyville | Lee | $175,000 |
| North McLean County Water District | McLean | $250,000 |
| City of Elkton | Todd | $141,700 |
| MuniNet Fiber Agency | McCracken | $2,033,947 |
| Crittenden-Livingston County Water District | Livingston | $300,000 |
| City of White Plains | Hopkins | $657,000 |

The committee also approved two Fund B loan increases, including a $36,645 increase for the City of Princeton (Caldwell County) and an $84,800 increase for the Whitley County Water District (Whitley County).

**2020 Program (Sub-account of Fund B).** The committee reviewed one 2020 grant of $52,500 for the Garrard County Fiscal Court for an independent cost-of-service study for the City of Lancaster and City of Danville. The committee also reviewed a 2020 Grant for $689,392 and Fund B grant of $400,000 for the City of Cumberland/Tri-City Utilities Authority, Inc. Harlan County) to connect the Cumberland, Benham, and Lynch systems to the City of Cumberland’s Water Treatment Plant.

**Fund C (Governmental Agencies Program Loan Fund).** The committee approved one Fund C loan of $823,900 for the Warren County Water District. The committee also approved a Fund C loan assumption for the City of Hopkinsville, which is assuming $406,250 of the Hopkinsville Water Environment Authority’s outstanding debt.

**Fund F (Federally Assisted Drinking Water Revolving Loan Fund).** The committee approved six loans totaling $12,693,000.

**Fund F Loans Approved**

| Borrower | County | Amount |
|---|---|---|
| City of Williamstown | Grant | $2,250,000 |
| City of Brandenburg | Meade | $2,080,000 |
| Bullock Pen Water District | Grant | $1,633,000 |

| Borrower | County | Amount |
|---|---|---|
| Breathitt County Water District | Breathitt | $2,500,000 |
| City of Barlow | Ballard | $230,000 |
| City of Barbourville f/b/o Barbourville Utility Commission | Knox | $4,000,000 |

**Fund F Loan Increase.** The committee approved an $8,000,000 loan increase to an existing loan for the Northern Kentucky Water District (Kenton County).

**Coal/Non-Coal Projects.** Pursuant to KRS Chapter 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 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 three grants for coal counties totaling $1,055,000 and five grants for tobacco counties totaling $2,173,000.

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 $120,250,000. In this reporting period, the committee reviewed one grant for a coal county of $16,530 and two grants for tobacco counties totaling $219,000.

The 2006 General Assembly authorized 210 line-item projects for coal counties totaling $100,955,072 and 349 line-item projects for non-coal counties totaling $151,250,000. In this reporting period, the committee reviewed one grant for a coal county of $65,962 and eight grants for non-coal counties totaling $1,642,135.

The 2008 General Assembly authorized 163 line-item projects for coal counties totaling $79,240,000 and 435 line-item projects for non-coal counties totaling $160,584,650. In this reporting period, the committee reviewed one grant for a coal county of $250,000 and 25 grants for non-coal counties totaling $4,812,398.

**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 new SPBC bond issues. SPBC Revenue and Revenue Refunding Bonds, Project No. 100, Series A and B, provided permanent, General Fund-supported financing for authorized projects, current refunded specific outstanding SPBC bonds for a net present value savings, and restructured approximately $130 million of fiscal year 2012 debt service for budgetary relief. This was the sixth transaction that the Commonwealth has undertaken since October 2008 that has involved a debt restructuring component.

SPBC Revenue Refunding Bonds, Project No. 101 refunded approximately $91.6 million of outstanding General Fund-supported debt to produce a net present value savings. SPBC Taxable Road Fund Revenue Refunding Bonds, Project No. 73 (Fourth Series), refunded approximately $41.27 million of outstanding Road Fund-supported bonds to produce a net present value savings.

**Postsecondary Institutions.** The committee approved seven new bond issues for postsecondary institutions.

The committee approved $9,460,000 Northern Kentucky University General Receipts Bonds, 2011 Series A, which will finance the acquisition of land in single-family parcels and two radio licenses and equipment to allow WNKU (the university's public radio station) to extend its broadcast area.

The committee approved $5,060,000 Morehead State University General Receipts Bonds, 2011 Series A, to finance the renovation of East Mignon Hall.

The committee approved $28,740,000 Murray State University General Receipts Bonds, 2011 Series A, General Receipts Refunding Bonds 2011 Series B (Bank-Qualified), and General Receipts Refunding Bonds, 2011 Series C (Non-Bank Qualified) to finance improvements for Elizabeth Hall.

The committee approved $38,430,000 University of Louisville General Receipts Bonds, 2011 Series A, to finance the construction of a student recreation center.

The committee approved $21,535,000 Eastern Kentucky University General Receipts Bonds, 2011 Series A, to construct new student housing on campus.

The committee approved $8,273,714 Western Kentucky University General Receipts Refunding Bonds, 2011 Series A (Bank-Qualified), to refund outstanding debt for a net present value savings.

The committee approved $18,180,000 University of Kentucky General Receipts Bonds, 2011 Series A, to finance improvements to the university's student center.

**Kentucky Economic Development Finance Authority (KEDFA).** With KEDFA bond issues, the state is a conduit issuer and has no legal or moral obligation for the repayment of the debt. With the state 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 three KEDFA conduit bond issues during the reporting period: $50 million for Masonic Homes Independent Living II, $161 million for Baptist Healthcare Obligated Group, and $336 million for Catholic Health Initiatives.

**Kentucky Housing Corporation (KHC).** The committee approved a $1,540,000 conduit multi-family bond issue for KHC. The bonds will finance improvements to the Garden Apartments complex in Bowling Green.

### School Bond Issues

**School Facilities Construction Commission (SFCC).** During the reporting period, the committee approved 73 school bond issues with SFCC debt service participation. Of these new bond issues, 11 were for new schools, 30 financed improvements at existing schools, and 32 refunded outstanding debt.

**Local School District Bond Issues.** During the reporting period, the committee reviewed 31 local school district bond issues with 100 percent local debt service support and no SFCC debt service participation. Of these bond issues, 4 were for new schools, 18 financed improvements at existing schools, and 9 refunded outstanding debt.

### Review of State Leases

During the reporting period, the committee reviewed 11 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, 10 increased annual rental payments by a total of $126,578, and 1 decreased annual rental payments by $8,855.

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 $49,675.

The committee reviewed one lease modification with square footage increase for the Department of Public Advocacy (Fayette County). The square footage increase was 6,373 with an annual rental increase of $88,964.

The committee approved one new lease for the Kentucky State Police with an annual cost of $110,880 and 12 lease renewals. The committee also approved three emergency leases for the Department of Agriculture (Jefferson County), Cabinet for Health and Family Services (Harlan County), and the Kentucky Transportation Cabinet (Marshall County).

# Report of the 2011 Education Assessment and Accountability Review Subcommittee

**Sen. Jack Westwood, Co-Chair**
**Rep. Ted Edmonds, Co-Chair**

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|---|---|
| Sen. Vernie McGaha | Rep. Linda Belcher |
| Sen. Gerald Neal | Rep. Bill Farmer |
| Sen. Ken Winters | Rep. Mary Lou Marzian |

LRC Staff: Sandra Deaton, Ben Boggs, and Lisa Moore

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 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 2011 Interim.

The subcommittee heard testimony about the development of the new assessment and accountability system, a status report on the development of end-of-course assessments, reports of studies conducted by the Office of Education Accountability (OEA), and various other education reports including the results of 2011 test scores.

Senate Bill 1 (2009) requires a new public school assessment program beginning in the 2011-2012 school year. The legislation allowed, with approval by the Kentucky Board of Education, an end-of-course (EOC) program at the high school level. Kentucky Department of Education staff reported on the development of EOC assessments for English II, Algebra II, Biology, and US History. The EOC assessments establish a common rigor for core courses and will link performance of Kentucky students to national results. They allow students to be assessed immediately after completing course work and to receive feedback quickly. The assessments may be used for a percentage of a student's final grade in the course, as outlined in local policy.

The new assessment and accountability system is being developed by the Kentucky Board of Education and the Department of Education with advice and input from the National Technical Advisory Panel on Assessment and Accountability (NTAPAA) and various other education related groups. A member of the NTAPAA discussed the work the panel has accomplished with the Department of Education staff. Department staff discussed the three administrative regulations being developed to outline the provisions of the new system, which will grade schools on a variety of items and not just a single test score. Next-Generation Learners, Next-Generation Instructional Programs and Support, and Next-Generation Professionals are the three areas that will make up the overall accountability score. The Next-Generation Professionals, which includes the percent of effective teachers and leaders, will take time to develop.

The Commissioner of Education and the Kentucky Department of Education staff presented the 2011 test scores for the Kentucky Core Content Test (KCCT), No Child Left Behind (NCLB), and the ACT. The commissioner reported that the KCCT results show little improvement in grades 3-8. Significant improvement was made in Kentucky's high schools, which was attributed to HB 176 (2009) defining "persistently low achieving" high schools and challenging them to improve.

All students are required to take the ACT in grade 11. The number of students tested in 2011 increased substantially from 2008. Students tested in 2011 scored higher in English, mathematics, reading, and science. The overall student composite score for the ACT increased from 18.3 in 2008 to 18.8 in 2011.

The Office of Education Accountability presented its report, *Kentucky State Testing for Education Accountability: An Examination of Security-related Threats to Valid Inference Making and Suggested Best Practices.* The study found that Kentucky maintains adequate test security as it moves into the new accountability model, with no widespread problems identified. NTAPAA is viewed as being a benefit with recommendations on test security.

*The Kentucky Educational Excellence Scholarship (KEES) Study* examined the KEES trends relating to goals, specifically college access and achievement, and keeping students in-state for college. Since 2000, KEES program growth has been steady, with $100 million disbursed to about 70,000 recipients in 2010. It was recommended that representatives of the Kentucky Higher Education Assistance Authority, the Department of Education, and local school districts review grade point average and grading scale issues.

*Appropriate Identification and Service of Students with Disabilities in Kentucky: Issues Associated with Special Education Eligibility, Funding, and Personnel Training* identifies issues associated with the methods used to fund special education through the Support Education Excellence in Kentucky system and the state preschool program. These include lack of alignment between funding weights and costs of educating some students and possible fiscal incentives to identify students for special education. At the preschool level, the funding method may lead to inequities in the distribution of funds among districts, uncertainty in funding from year to year, and unwieldy processes required for district staff, parents, and children in the determination of preschool funding systems.

OEA's *Compendium of State Education Rankings 2011* was presented. This is the fourth annual compendium of state rankings intended as a convenient reference tool regarding how Kentucky's education indicators compare to those of the nation, Southern Regional Education Board states, and other contiguous states.

OEA presented the 2009-2010 *District Data Profiles,* a compilation of data collected from various sources on the 174 school districts with an individual profile for the state. The publication includes student demographics and performance data, staffing data and related information, and district expenditure and revenue data.

OEA presented reports on *College and Career Readiness; On-Behalf Payments;* and *Funding Equity*.

# Report of the 2011
# Government Contract Review Committee

**Sen. Vernie McGaha, Co-Chair**
**Rep. Dennis Horlander, Co-Chair**

| | |
|---|---|
| Sen. Julian Carroll | Rep. Jesse Crenshaw |
| Sen. Carol Gibson | Rep. Brent Housman |
| Sen. Paul Hornback | Rep. Brent Yonts |

LRC Staff: Kim M. Eisner, Matthew T. Ross, and Rebecca A. Brooker

**Presented to the**
**Legislative Research Commission**
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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 of all qualifying motion picture or entertainment production tax incentives.

Memoranda of agreement review exemptions include agreements between the Transportation Cabinet and political subdivisions of the Commonwealth for road and road-related projects; agreements between the Auditor of Public Accounts and other government agencies for auditing services; agreements between a state agency as required by federal or state law; agreements between state agencies and state universities or colleges, and agreements between state universities and colleges and employers of students in the Commonwealth Work Study Program; agreements involving child support collections and enforcement; agreements with public utilities, providers of certain direct Medicaid health care to individuals, and transit authorities; nonfinancial agreements; any obligation or payment for reimbursement of the cost of corrective action made pursuant to the Petroleum Storage Tank Environmental Assurance Fund; exchanges of confidential personal information between agencies; agreements between state agencies and rural concentrated employment programs; or any other agreement that the committee deems inappropriate for consideration.

Personal service contract review exemptions include agreements between the Department of Parks and a performing artist or artists for less than $5,000 per fiscal year, per artist or artists; agreements with public utilities, foster care parents, providers of certain direct Medicaid health care to individuals, individuals performing homemaker services, and transit authorities; agreements between state universities or colleges and employers of students in the Commonwealth Work Study Program; agreements between state agencies and rural concentrated employment programs; agreements between the State Fair Board and judges, officials, or entertainers contracted for events promoted by the State Fair Board; or 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 2011 beginning July 1, 2010, and ending June 30, 2011, the committee reviewed 1,335 personal service contracts and 633 amendments to personal service contracts. The committee also reviewed 377 personal service contracts for $10,000 and under, which are submitted to the committee for informational purposes only.

During FY 2011, the committee reviewed 1,221 memoranda of agreement and 1,355 memoranda of agreement amendments. The committee also reviewed 968 memoranda of agreement for $50,000 and under, which are submitted to the committee for informational purposes only.

During FY 2011, the committee reviewed 2,345 personal service contract items, 3,544 memoranda of agreement items, one film tax incentive agreement, and one film tax incentive agreement amendment, for a total of 5,891 items.

Since the start of FY 2012 through November 9, 2011, the committee has reviewed 272 personal service contracts and 280 amendments to personal service contracts. The committee has also reviewed 145 personal service contracts for $10,000 and under, which are submitted to the committee for informational purposes only.

Since the start of FY 2012 through November 9, 2011, the committee has reviewed 627 memoranda of agreement and 544 memoranda of agreement amendments. The committee also reviewed 436 memoranda of agreement for $50,000 and under, which are submitted to the committee for informational purposes only.

Additionally, as a result of House Bill 3 of the 2009 Special Session, the committee reviewed one film tax incentive agreement at the July 12, 2011, meeting.

Since the start of FY 2012 through November 9, 2011, the committee has reviewed 697 personal service contract items, 1,607 memoranda of agreement items, and one film tax incentive agreement for a total of 2,305 items.

***Note:*** These totals reflect all personal service contracts and memoranda of agreements entered into the e-mars procurement system and captured by the LRC Contract Reporting Database.

# Report of the 2011
# Medicaid Oversight and Advisory Committee

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

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|---|---|
| Sen. Walter Blevins | Rep. Bob M. DeWeese |
| Sen. Tom Buford | Rep. Jim Glenn |
| Sen. Julie Denton | Rep. Joni L. Jenkins |
| Sen. Dan "Malano" Seum | Rep. David Watkins |

LRC Staff: Miriam Fordham, Jonathan Scott, and Cindy Smith

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
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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 one time during the 2011 Interim.

### Medicaid Managed Care

The secretary of the Cabinet for Health and Family Services (CHFS) and the Commissioner of the Department for Medicaid Services (DMS) reported on implementation of the Medicaid managed care expansion. Contracts were signed with three managed-care organizations (MCOs) — CoventryCares of Kentucky, Kentucky Spirit Health Plan, and WellCare of Kentucky — to provide Medicaid-covered benefits to recipients for a fixed rate per member per month. The contracts are for a 3-year term effective July 6, 2011. The MCOs began providing services November 1, 2011.

The recipient categories included in the Medicaid managed care expansion are families and children; pregnant women; aged, blind, and disabled individuals with and without Supplemental Security Income benefits; foster care children; and participants in the Kentucky Children's Health Insurance Program. Approximately 560,000 Medicaid recipients throughout the state will be covered by the MCOs. The Passport Health Plan will continue to provide services to Medicaid recipients in Jefferson County and 15 surrounding counties. Medicaid recipients participating in the long-term care waiver programs and recipients in nursing homes are excluded from the managed care expansion and will continue to be covered under the traditional Medicaid fee-for-service program.

The managed care contracts contain provisions to monitor health plan performance and patient access to care and to ensure accountability. The estimated cost savings of the Medicaid managed care contracts for fiscal year 2012 is $289.3 million. Total funds savings is estimated at $1.3 billion over 3 years. It is expected that the implementation of the Medicaid managed care expansion will provide better quality of data on health plan performance, improved quality initiatives, and more effective reimbursement strategies.

### Medicaid Budget Management

The secretary of the Cabinet for Health and Family Services reported on the management of the Medicaid benefits budget. The Medicaid budget plan had to address $80.2 million in program management savings and the remaining budgeted shortfall of $97.3 million. Through a combination of expenditure reductions and carryforward funds, the Medicaid budget was balanced with an overage of $0.2 million in state funds and an overage of $0.7 million in all funds. The Passport contract was extended for 1 year with a rate reduction of 1.6 percent.

# Program Review and Investigations Committee

**Sen. Jimmy Higdon, Co-chair**
**Rep. Fitz Steele, Co-chair**

Sen. Perry Clark
Sen. Vernie McGaha
Sen. Joey Pendleton
Sen. John Schickel
Sen. Dan "Malano" 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, Kris Harmon, Sarah Harp, Colleen Kennedy, Van Knowles, Lora Littleton, Jean Ann Myatt, 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 Legislative Program Review and Investigations Committee held eight meetings through November. The committee elected Senate and House co-chairs and selected four new topics for study by committee staff: expenditures by the Kentucky Community and Technical College System (KCTCS) for marketing, lobbying, and administrative costs; 911 services and funding; the economic impact of the horse breeding industry; and the effect on employment of school construction.

The committee adopted three reports that had been presented at meetings in 2010: *Air Service at Kentucky's Commercial Airports*, *Transparency and Accountability of Quasi-governmental Entities*, and *The Impact of Industrial Revenue Bonds on Property Taxes and School Funding*.

The committee adopted three reports that were first presented in 2011.

According to the report *Kentucky Community and Technical College System: Marketing, Lobbying, and Administration Expenses*, the system's statewide governing system with a president is rare. From fiscal year 2006 to fiscal year 2010, KCTCS spent more than $12 million on marketing using state general funds, tuition revenue, and private donations. KCTCS used state general funds to pay $636,000 to a professional lobbying firm over this period. KCTCS's cost of administration is high in relation to Kentucky's other public postsecondary education institutions and two of the three comparable systems in other states. The cost of administration over the 5 years was $352.5 million, or 13.7 percent of operating expenses. Marketing and lobbying costs are less than 1 percent of operating expenses. The report has two recommendations directed to the General Assembly. The respondents to the report were KCTCS's vice president of advancement, vice president of finance and facilities, and director of marketing.

The report *Medicaid Management and Program Integrity: Update on Recommendations From Three Program Review Reports* provides current findings and describes the status of recommendations from three previous committee reports. The Cabinet for Health and Family Services has made progress in some areas; some areas continue to need improvement. The Medicaid fraud control unit in the Office of the Attorney General has carried out its recommendations. Statutory changes have implemented some recommendations, and the General Assembly may still wish to consider others. There are lessons learned on the broad issues of program management; planning; measurement; and fraud, abuse, and waste. The report includes a brief summary and analysis of the 2011-2012 Medicaid managed care expansion plan. Four officials from the Cabinet for Health and Family Services responded to the report: the acting commissioner of the Department for Medicaid Services, a deputy secretary, the executive director of the Office of Policy and Budget, and the director of the Office of Inspector General's Division of Audits and Investigations. The assistant deputy attorney general and assistant attorney general from the Office of the Attorney General's Medicaid Fraud and Abuse Control Unit also responded.

As school construction occurs, it increases employment in Kentucky, according to the report *How School Construction Could Affect Employment in Kentucky*. The additional jobs are at least partially offset by decreases in employment as financial resources are taken from other purposes to fund the construction through increases in taxes, reductions in funding for other programs, or both. Assuming that the construction is funded by issuing bonds, the annual reductions in Kentucky jobs would be smaller than the increase from construction, and would occur as the bonds are being paid. The number of new construction apprentices who are registered with the Labor Cabinet each year has declined from nearly 900 in 2007 to fewer than 400 in 2010. Contractors working on school construction projects may pay below the prevailing wage for workers who are enrolled in registered apprenticeship programs.

Staff presented three reports that have not been voted on by the committee:

The report *Controlling Access to Methamphetamine Precursors in Kentucky* says that methamphetamine labs and dump sites of waste materials are dangerous to the families of those making methamphetamine, the community, law enforcement personnel, and workers who clean up the contaminated properties. Pseudoephedrine and ephedrine, which are ingredients in over-the-counter drugs that treat cold and allergy symptoms, are methamphetamine precursors; at least one of them is required to manufacture the most common form of illegal methamphetamine. Federal and state laws limit the amounts of methamphetamine precursors that individuals can buy. Kentucky's electronic tracking system is mandatory for all pharmacies and can be used to block sales of precursor drugs to those who are attempting to purchase more than the legal amount. Reported labs and dump sites in Kentucky declined after controls on the availability of methamphetamine precursors were implemented beginning in 2005. The decrease was temporary; reported labs and dump sites in 2009 were the highest ever and the total for 2010 is expected to be even higher. It is unknown how many reported labs and dump sites there might have been without the controls on access to precursor drugs. Approaches used by other states to control illegal methamphetamine labs include further limiting the amounts of precursor drugs that individuals can purchase and blocking sales to those who have been convicted of offenses related to controlled substances. Oregon (2006) and Mississippi (2010) have made the precursor drugs prescription only. Although these are not the only states with decreases, reported labs and dump sites are down significantly in Oregon and have declined so far in Mississippi. Responding to the report were the executive director of the Kentucky Office of Drug Control Policy, a major from the State Police's Special Enforcement Troop, and the director of state government relations of the Consumer Healthcare Products Association.

The report *Kentucky's Community Mental Health System Is Expanding and Would Benefit From Better Planning and Reporting: An Update* covers 5 fiscal years more than the report adopted by the committee in 2007. Over the last decade, the community mental health centers have provided 45 percent more services to 27 percent more people, with an increase in revenue of less than 19 percent. The centers are required to provide services regardless of a person's ability to pay. The regional boards' financial health varies greatly. The system statewide appears to be stable in terms of providing current services to current populations. The system's capacity to expand services or serve larger populations is questionable, particularly in some regions. The potential impact on the regions of implementing Medicaid managed care for some behavioral health services is unknown. The executive director of the Kentucky Association of Regional Mental Health/Mental Retardation Programs responded to the report. Also responding were the deputy commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities in the Cabinet for Health and Family Services and the director of the department's Division of Administration and Financial Management.

According to the report *The Kentucky Thoroughbred Breeding Industry and State Programs That Assist the Equine Industry*, the number of Thoroughbred mares bred decreased nationally over the past two decades. Thoroughbred breeding in Kentucky grew for most of this period but has decreased in recent years. Despite the recent declines, Kentucky has gained market share and remains the dominant state in the Thoroughbred breeding industry. In 2010, Kentucky accounted for 43 percent of the Thoroughbred mares bred in the US. Kentucky assists the horse industry by allocating the sales tax from stud fees to fund awards to breeders based on their foals' performances in races, shows, or contests. The state also allocates a portion of pari-mutuel tax revenue to supplement horse racing purses. Recent declines in Thoroughbred breeding and pari-mutuel wagering have led to less funding for these assistance programs. In 2010, Kentucky's Thoroughbred breeding industry created an estimated 17,600 Kentucky jobs within the industry and in other sectors that provide goods and services to the industry. The total earnings for all jobs created were estimated to be more than $350 million. The director of Incentives and Development of the Kentucky Racing Commission and the executive director of the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders responded to the report.

The committee heard testimony on four topics unrelated to the presentation of new reports.

The executive director of the Kentucky Office of Drug Control Policy testified about diversion of prescription drugs. The executive director, general counsel, and assistant executive director of the Kentucky Board of Medical Licensure addressed questions from committee members and other legislators on the board's use of data from the Kentucky All Schedule Prescription Electronic Reporting system.

The state auditor and executive director of the Office of Technology and Special Audits briefed the committee on the Auditor of Public Accounts' 2011 report *Examination of Certain Policies, Procedures, Controls, and Financial Activities of Kentucky Retirement Systems.*

The commissioner of the Kentucky High School Athletic Association testified about the implementation of recommendations from the committee's 2009 report on the association.

The chief executive officer of Dataseam testified about the company's role in the Coal County Computing Program.

For the December meeting, staff will present a report on 911 services and funding. Officials from the Kentucky Board of Medical Licensure will update the committee on the board's efforts and plans related to use of data from the Kentucky All Schedule Prescription Electronic Reporting system.

# Report of the 2011
# Tobacco Settlement Agreement Fund Oversight Committee

**Sen. Paul Hornback, Co-Chair**
**Rep. Wilson Stone, Co-Chair**

| | |
|---|---|
| Sen. Carroll Gibson | Rep. Royce Adams |
| Sen. David Givens | Rep. James Comer, Jr. |
| Sen. Vernie McGaha | Rep. Tom McKee |
| Sen. Dennis Parrett | Rep. Fred Nesler |
| Sen. Joey Pendleton | Rep. Tommy Turner |

LRC Staff: Tanya Monsanto, Lowell Atchley, and Kelly Blevins

**Presented to the**
**Legislative Research Commission**
**and the**
**2012 Regular Session of the**
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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 10 times during the 2011 calendar year.

Each month, as required by statute, the committee received regular activity reports from the Governor's Office of Agricultural Policy (GOAP) and from the Agricultural Development Board (ADB) regarding funding decisions on project applications. Also, the committee received reports and testimony from executive branch agencies and other entities that receive a portion of the tobacco settlement funds.

The committee dealt with a variety of issues under the oversight purview of the legislative panel, including continuing Master Settlement Agreement (MSA) funding and budgetary matters. Committee members often asked questions and commented on the spending decisions made by the ADB and by other executive branch agencies receiving the funds.

#### Agricultural Development Fund Projects

During each monthly committee meeting, the panel received a report on the projects that the ADB acted on in its previous meeting. In doing so, the committee performed its responsibility of monitoring the expenditure of funds received under the Tobacco MSA, receiving reports of the ADB through the GOAP, and overseeing the pattern of MSA fund usage in accordance with the requirements of the agreement.

GOAP representatives reviewed projects affecting single counties, regions, or the state as a whole. They also presented a monthly listing of funding decisions made within three types of county-level programs: the County Agricultural Improvement Program, the Deceased Farm Animal Disposal Assistance Program, and the Shared-use Equipment Program.

At each meeting, committee members sought additional information on decisions made and the rationale for making those decisions. Committee members asked questions about the board's grant procedures; how funding applications were reviewed and prepared by GOAP staff for the board's consideration; the reasons why some projects received particular amounts of funding or were denied funding; and project monitoring, compliance, and reporting.

Some of the ADB projects or issues the committee reviewed included discussions in multiple meetings about the need for continued funding for the dead livestock removal program, efforts to foster the propagation of plants for use as biofuels, the continued assistance to various livestock-related production and processing endeavors with the use of Agricultural Development Fund moneys, safeguarding the tobacco settlement funds through various contractual requirements, continued assistance for county and regional farmers' markets, funding in general for agriculture producers, and the propriety of making some funding decisions.

## Agency Reports Received

Along with the monthly project reports from representatives of the GOAP, the committee received status reports from administrators of programs obtaining tobacco settlement funds through the state budget or directly from the ADB.

Among the health-related agencies reporting, the committee heard from officials with the Division of Early Childhood Development, which receives 25 percent of the state's tobacco settlement funds, who outlined progress made by the many programs operating under the division's administrative umbrella. Officials with the Department of Insurance and Kentucky Access Program reported on the status of the Health Care Improvement Authority, as well as the level of participation in the Kentucky Access high-risk health insurance pool.

Those involved with the Tobacco Prevention and Cessation Program and with the Kentucky Agency for Substance Abuse Policy (KY-ASAP) reported to the committee efforts undertaken to reduce tobacco use in the state. KY-ASAP officials covered outcomes resulting from their grants to county-level anti-substance abuse programs. The directors of the University of Kentucky Markey Cancer Center and the Brown Cancer Center at the University of Louisville discussed research and other work being done under the Kentucky Lung Cancer Research Program.

Of the other agencies using the funds, the committee heard an update from officials with the Kentucky Agricultural Finance Corporation, who reported on the variety of loan programs operated by the agency with the use of tobacco settlement funds. The committee received a report from officials with the Kentucky Infrastructure Authority, who updated the panel on their use of tobacco settlement funds to fund local rural water and wastewater projects. The director of the Division of Conservation reported on the soil and water quality cost share and soil stewardship programs.

## Other Reports and Actions

The committee received other reports as well. The committee heard a presentation by University of Kentucky county extension agents who serve on an advisory group that provides input and advice to the ADB and GOAP regarding issues and concerns in various regions of the state. In addition, late in the year, the committee was anticipated to receive an update from the

Office of Attorney General on that office's work in assuring tobacco companies' compliance with requirements of the MSA.