

Final Reports Of The Interim Joint, Statutory, And Special Committees 2021

Informational Bulletin No. 261

December 2021



Kentucky Legislative Research Commission

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The Kentucky Legislative Research Commission is a 16-member committee that comprises the majority and minority leadership of the Kentucky Senate and House of Representatives. Under Chapter 7 of the Kentucky Revised Statutes, the Commission constitutes the administrative office for the Kentucky General Assembly. Its director serves as chief administrative officer of the legislature when it is not in session. The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical, and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting a pre-session orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

The Commission also is responsible for statute revision; publication and distribution of the *Acts* and *Journals* following sessions of the General Assembly; and maintenance of furnishings, equipment, and supplies for the legislature.

The Commission functions as Kentucky's Commission on Interstate Cooperation in carrying out the program of The Council of State Governments as it relates to Kentucky.

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

2021

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

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Legislative Research Commission
Frankfort, Kentucky
legislature.ky.gov

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Foreword

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

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

During the 2021 Interim, all 14 interim joint committees, 11 statutory committees, and 6 special committees held meetings.

LRC provides this informational booklet as a summary of the activity of the interim joint, statutory, and special committees since adjournment of the 2021 General Assembly. The reports were prepared separately by the committee staff.

Jay D. Hartz
Director

Legislative Research Commission
Frankfort, Kentucky
December 2021

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Report Of The 2021 Interim Joint Committee On Agriculture

Sen. Paul Hornback, Co-Chair
Rep. Richard Heath, Co-Chair

Sen. Jared Carpenter
Sen. Matt Castlen
Sen. David P. Givens
Sen. Jason Howell
Sen. Dennis Parrett
Sen. Damon Thayer
Sen. Robin Webb
Sen. Stephen West
Sen. Whitney Westerfield
Sen. Max Wise
Rep. Josh Calloway
Rep. Jonathan Dixon
Rep. Myron Dossett
Rep. Daniel Fister
Rep. Kelly Flood
Rep. Derrick Graham

Rep. Mark Hart
Rep. Mary Beth Imes
Rep. Kim King
Rep. Matthew Koch
Rep. Nima Kulkarni
Rep. Shawn McPherson
Rep. Reginald Meeks
Rep. Phillip Pratt
Rep. Felicia Rabourn
Rep. Josie Raymond
Rep. Brandon Reed
Rep. Cherlynn Stevenson
Rep. Nancy Tate
Rep. Walker Thomas
Rep. James Tipton

LRC Staff: Stefan Kasacavage, Kelly Ludwig, Nathan Smith, and Susan Spoonamore

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Agriculture

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

Committee Activity

The Interim Joint Committee on Agriculture held five meetings during the 2021 Interim. A variety of topics were discussed, and several agencies and organizations updated committee members on projects and proposed legislative suggestions for the 2022 Regular Session.

AppHarvest

The committee received testimony from the director for state and local government affairs and the vice president of development for AppHarvest. The panel discussed AppHarvest's mission to build a resilient food system for America while helping to solve some of agriculture's biggest environmental and social issues. The panel explained that Kentucky has the ability to serve as a leader in ensuring that America's food supply is secure and that further access to fresh, affordable nutrition is possible for all.

Motor Fuels

The Kentucky Department of Agriculture's executive director of the Office of Consumer and Environmental Protection, the office's deputy executive director, and the director of the office's Division of Regulation and Inspection provided an overview of the motor fuel quality program. The panel explained that, in 1994, the General Assembly mandated the establishment of a retail motor fuel inspection and testing program. Committee members received testimony that administrative regulations are in need of an update and were told to anticipate proposed legislation to modernize motor fuel statutes.

Kentucky State Fair Board

At the Kentucky State Fair in Louisville, the president and chief executive officer of Kentucky Venues provided an update on fair activities and potential projects relating to the Kentucky Exposition Center and the Kentucky International Convention Center. The president explained that revenues continue to be down because of the COVID-19 pandemic and that critical infrastructure and security issues need to be addressed. The mayor of Louisville/Jefferson County welcomed committee members.

Solar Farms

The secretary of the Energy and Environment Cabinet and the executive director of the cabinet's Office of Energy Policy testified on the development of solar projects in the commonwealth. They explained that declining costs of solar installation and favorable wholesale market

conditions have made solar an attractive resource option. The chair of the Public Service Commission testified to explain the Kentucky Electric Generation and Transmission Siting Board's process for reviewing independent solar projects that meet the definition of a merchant generating facility. A professor from the University of Kentucky's Department of Agricultural Economics testified on considerations for the development of solar farms in the commonwealth. The professor explained that prime agricultural farmlands are often the most suitable lands for utility-scale solar farms. Farmers should have contracts reviewed by an attorney, and local communities may want to consider adopting policies on solar farms in their local planning and zoning ordinances. The executive director of the Kentucky Resources Council and the legislative director of the Kentucky Association of Counties guided committee members through a list of recommendations being developed for model solar zoning ordinances and considerations for communities when adopting solar zoning ordinances. The executive director of Clark Coalition and the vice president of Citizens Voice of Mason County testified that control of siting decisions should be at the local level and that the desire to preserve high-value farmland was strong within communities throughout Kentucky. The panel requested that committee members regulate decommissioning and ensure adequate bonding requirements. The director of legislative and regulatory affairs for Savion LLC, the director of development for Kentucky for Geenex Solar, and the vice president of policy and strategy for National Grid Renewables testified on individual approaches to developing solar facilities. The director from Savion gave an overview of decommissioning standards used by the provider and referred to language in Texas legislation that addressed the development of those standards. The director from Geenex explained how certain sites are more suitable building sites because of proximity to transmission assets and capacity availability. The vice president from National Grid Renewables explained that many developments in the renewable industry actually assist farmers in preserving agricultural land.

Kentucky's Food Supply Chain

The vice president of merchandising of the Louisville branch of the Kroger Company explained that local partnerships and local food suppliers were a vital part of the supply chain, especially during the COVID-19 pandemic when large suppliers were shut down. Kroger looks forward to increasing its number of Kentucky Proud partners and supports efforts to educate consumers on local product sources and availability. The executive vice president of the Kentucky Cattlemen's Association explained that the beef processing industry is monopolized by four large processors and that weather, a global pandemic, and transportation and labor issues contribute to disruptions in the supply chain.

Cattle Insurance Program

The membership coordinator of the Kentucky Cattlemen's Association provided an overview of the Livestock Risk Protection Feeder Cattle program offered by the US Department of Agriculture and explained that the program is designed to prevent declining market prices.

Chronic Wasting Disease

The commissioner of the Department of Fish and Wildlife Resources and the department's acting information and education division director and chronic wasting disease (CWD) response

coordinator provided an update on CWD in the commonwealth. The panel described the department's efforts to activate a CWD Response Plan, which includes new regulations designed to monitor the presence and spread of CWD.

Food Insecurity

The executive director and the policy campaign coordinator of the Community Farm Alliance provided an overview of the Double Dollars program, the Healthy Farm and Food Fund, and the Fresh Rx for MOMs initiative. These programs assist in addressing Kentucky's food insecurity issues by offering those in need additional resources to access nutritious foods.

Kentucky State University

The dean and professor of Kentucky State University's College of Agriculture, Community and the Sciences provided an update on the college's agricultural programs, as well as details on the college's current funding sources.

Administrative Regulations

The Kentucky Department of Agriculture referred two administrative regulations to the committee during the 2021 Interim. The regulations related to motor fuel testing and quality standards.

Legislative Proposals/Policy Positions Received

The committee received legislative proposals and comments for the 2022 Regular Session from representatives of the Kentucky Farm Bureau, Kentucky Department of Agriculture, and Kentucky Dairy Development Council. Committee members received testimony related to the Kentucky Rural Jobs and Opportunity Fund, 2022 Bill Request 490 relating to labeling requirements for fresh produce, and agricultural economic development projects.

The following legislative proposals were received in the full committee.

Kentucky Farm Bureau

- Continue funding and support to expand availability of broadband and high-speed internet service.
- Consider legislation relating to solar farms, and require oversight of entity-to-entity transfers, decommissioning plans, and bonding.
- Continue 50 percent allocation of the Master Settlement Agreement fund to the Agricultural Development Board for the purpose of improving net farm income of individual farmers in production agriculture.
- Reform the tax code and maintain agricultural sales tax exemptions for production agriculture.

- Support the provisions of House Bill 44 (KRS 132.010), limiting revenue from property taxes to 4 percent plus new growth.
- Support adequate funding for rural secondary and county roads.
- Support adequate funding of the Kentucky Department of Agriculture.

Kentucky Department Of Agriculture

- Support adequate funding of the department’s operating budget to include staff salary increases.
- Direct American Rescue Plan Act of 2021 funds to include the following: food bank purchases of proteins for distribution; establishment of a grant program for food banks to purchase shelving, storage, etc.; updating of Kentucky FFA facilities; and allocation of funding to renovate county fair facilities.
- Modernize motor fuel statutes.
- Modernize amusement ride statutes.
- Encourage Congress to consider research and farm practices in drone technology legislation.

Kentucky Dairy Development Council

- Encourage partnerships with the Department of Agriculture, Cabinet for Economic Development, Agricultural Development Board, and industry representatives to recruit dairy operations to Kentucky.

Kentucky Rural Jobs And Opportunity Fund

- Support the Kentucky Rural Jobs and Opportunity Fund, incentivizing investors and rural businesses’ access to capital.
- Consider model language from the federal New Markets Program and Opportunity Zone legislation.

Agricultural Economic Development Projects

- Support the inclusion of the commissioner of agriculture or the Kentucky Farm Bureau in economic development projects relating to agriculture.

2022 Regular Session Bill Request 490

- Support 2022 BR 490 requiring retail food stores to include the season, year, and state in which produce is harvested.

Reports Received

The committee received the following reports:

- Kentucky Tobacco Research And Development Center, Quarterly Report, January 1 to March 31, 2021

- Kentucky Tobacco Research And Development Center, Quarterly Report, April 1 to June 30, 2021
- Kentucky Tobacco Research And Development Center, Quarterly Report, July 1 to September 1, 2021

**Report Of The 2021
Interim Joint Committee On Appropriations And Revenue**

**Sen. Christian McDaniel, Co-Chair
Rep. Jason Petrie, Co-Chair**

Sen. Tom Buford
Sen. Danny Carroll
Sen. Matt Castlen
Sen. Donald Douglas
Sen. David P. Givens
Sen. Alice Forgy Kerr
Sen. Morgan McGarvey
Sen. Stephen Meredith
Sen. Michael J. Nemes
Sen. Robin L. Webb
Sen. Stephen West
Rep. Lynn Bechler
Rep. Danny Bentley
Rep. John Blanton
Rep. Randy Bridges
Rep. Myron Dossett
Rep. Joseph M. Fischer

Rep. Ken Fleming
Rep. Kelly Flood
Rep. Chris Fugate
Rep. Al Gentry
Rep. Robert Goforth
Rep. David Hale
Rep. Mark Hart
Rep. Angie Hatton
Rep. Jason Nemes
Rep. Ruth Ann Palumbo
Rep. Melinda Gibbons Prunty
Rep. Josie Raymond
Rep. Brandon Reed
Rep. Steve Riley
Rep. Sal Santoro
Rep. James Tipton
Rep. Lisa Willner

LRC Staff: Jennifer Hays, Kevin Branscum, Cynthia Brown, Katy Jenkins, Grant Minix,
Sarah Watts, and Chase O'Dell

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Subcommittee Organization And Membership

**Budget Review Subcommittee On Economic Development,
Tourism, And Environmental Protection**

Sen. Matt Castlen, Co-Chair
Rep. Lynn Bechler, Co-Chair

Sen. Morgan McGarvey
Sen. Wil Schroder
Sen. Brandon Smith
Rep. Al Gentry

Rep. David Hale
Rep. Nima Kulkarni
Rep. Savannah Maddox
Rep. Bart Rowland

Rep. Russell Webber, ex officio

LRC Staff: Joey Holt, Kevin Newton, Sara Rome, and Amie Elam

Budget Review Subcommittee On Education

Sen. Steve West, Co-Chair
Rep. Steve Riley, Co-Chair
Rep. James Tipton, Co-Chair

Sen. Alice Forgy Kerr
Sen. Dennis Parrett
Sen. Max Wise
Rep. Kim Banta
Rep. Tina Bojanowski
Rep. Randy Bridges

Rep. Ken Fleming
Rep. Kelly Flood
Rep. Derrick Graham
Rep. Bobby McCool
Rep. Charlie Miller
Rep. Ruth Ann Palumbo

Rep. Regina Huff, ex officio

LRC Staff: Liz Columbia, Seth Dawson, Jennifer Krieger, Savannah Wiley, and Amie Elam

**Budget Review Subcommittee On General Government,
Finance, Personnel, And Public Retirement**

Sen. Mike Nemes, Co-Chair
Rep. John Blanton, Co-Chair
Rep. Myron Dossett, Co-Chair

Sen. Robby Mills
Sen. Adrienne Southworth
Sen. Reginald Thomas
Sen. Stephen West
Rep. Kevin Bratcher
Rep. Jeffery Donohue
Rep. Robert Goforth
Rep. Derrick Graham

Rep. Mark Hart
Rep. Adam Koenig
Rep. Michael Meredith
Rep. Suzanne Miles
Rep. Josie Raymond
Rep. Phillip Pratt
Rep. Nancy Tate
Rep. Buddy Wheatley

Rep. Jim Gooch, ex officio
Rep. Jerry Miller, ex officio

LRC Staff: Seth Dawson, Joey Holt, Zach Ireland, Emma Mills, Perry Papka, Justin Perry,
David Talley, Savannah Wiley, and Spring Emerson

Budget Review Subcommittee On Human Resources

Sen. Stephen Meredith, Co-Chair
Rep. Danny Bentley, Co-Chair

Sen. Julie Raque Adams
Sen. Ralph Alvarado
Sen. Karen Berg
Sen. Danny Carroll
Rep. Adam Bowling
Rep. Deanna Frazier Gordon

Rep. Melinda Gibbons Prunty
Rep. Steve Sheldon
Rep. Russell Webber
Rep. Susan Westrom
Rep. Lisa Willner

Rep. Kimberly P. Moser, ex officio

LRC Staff: Miriam Fordham, Kevin Newton, and Benjamin Thompson

Budget Review Subcommittee On Justice And Judiciary

Sen. Danny Carroll, Co-Chair

Rep. Joseph Fischer, Co-Chair

Sen. John Schickel

Sen. Robin Webb

Sen. Whitney Westerfield

Rep. McKenzie Cantrell

Rep. Jennifer Decker

Rep. Daniel Elliott

Rep. Angie Hatton

Rep. Jason Nemes

Rep. Ed Massey, ex officio

LRC Staff: Zach Ireland, Perry Papka, and Benjamin Thompson

Budget Review Subcommittee On Transportation

Sen. Jimmy Higdon, Co-Chair

Rep. Sal Santoro, Co-Chair

Sen. Brandon Storm

Sen. Johnnie Turner

Sen. Robin Webb

Sen. Mike Wilson

Rep. Chris Fugate

Rep. Samara Heavrin

Rep. Thomas Huff

Rep. Shawn McPherson

Rep. Phillip Pratt

Rep. Rachel Roberts

Rep. Cherlynn Stevenson

Rep. Ken Upchurch, ex officio

LRC Staff: Justin Perry, David Talley, and Spring Emerson

Ex Officio Members For All Budget Review Subcommittees

Sen. Chris McDaniel

Rep. Jason Petrie

Rep. Brandon Reed

Interim Joint Committee On Appropriations And Revenue

Jurisdiction: Matters pertaining to the executive budget and other appropriations of state monies; the levying of state and local taxes, including school taxes; property tax rates and assessments; the state debt; revenue bond projects; claims upon the treasury; accounting of state funds by local officers; audits for state purposes; budget and financial administration; payment, collection, and refund of taxes.

Committee Activity

During the 2021 Interim, the Interim Joint Committee on Appropriations and Revenue held six meetings. The committee received testimony regarding a wide range of topics.

Braidy Industries And Successors

Representatives from Unity Aluminum appeared before the committee to discuss the company. The representatives testified that the situation for the company looked much better than it did when the company last appeared before the legislature. Unity Aluminum played a video for the committee and then submitted to questions.

Current Economic Climate In Kentucky

The director of the Center for Business and Economic Research discussed the economic climate in Kentucky. Labor force participation is lower in Kentucky than at the national level. More people are getting jobs, and some are coming back into the labor force.

The rate of claims for unemployment insurance has continued to fall and has been close to levels seen before the pandemic. Even though nonfarm employment increased in August 2021, total nonfarm employment is still down 3.8 percent from before the pandemic. Approximately 75 percent of nonfarm jobs lost during the pandemic have been recovered. A large part of the recent job growth has come from the manufacturing sector. Job openings in the United States increased substantially. Hires have been up, but not as much as job openings. Wage growth has accelerated in the United States. Sectors seeing particularly high wage growth include retail and leisure and hospitality.

Current Status Of Broadband Deployment

The state budget director and the deputy executive director of the Kentucky Infrastructure Authority (KIA) discussed the status of broadband deployment in Kentucky. In the 2021 Regular Session, the General Assembly appropriated \$300 million from the American Rescue Plan Act's State Fiscal Recovery Fund to broadband deployment and infrastructure development. Of that appropriation, \$250 million is dedicated to unserved and underserved broadband areas. The remaining \$50 million is for economic development and commercial industry customers. Stage 1 of the broadband deployment process was to begin with the release of a RFP for notice of intent to apply and an initial map of unserved areas. Stage 2 of the process was to begin with the

release of the RFP for long application and an updated eligible unserved areas map. The federal government requires that federal funds be obligated by December 31, 2024. Expenditures must be completed by December 31, 2026.

Discussion Of The State Property Tax Rate

The executive director of the Office of Property Valuation in the Department of Revenue discussed the state property tax rate. KRS 132.020(1)(a) establishes the state ad valorem tax rate at 31.5 cents per \$100 of valuation. KRS 132.020(1)(b) provides for the state tax rate on real property to be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than 4 percent. In 1978, the state real property tax rate was set at 31.5 cents per \$100 of assessed valuation. There has been a steady decrease of the state rate since then, due to the increase of the aggregate assessed value of real property. In 2021, the state rate was set at 11.9 cents per \$100 of assessed valuation. In 2021, residential, farm, and commercial real property assessments totaled \$297.5 billion. Oil and gas property and public service company real estate assessments totaled \$6.8 billion. The total estimate of real property assessments in Kentucky in 2021 was \$305 billion.

Economic Impacts On The Agriculture Industry

The commissioner of agriculture, a member of the Kentucky Agriculture Development Board, the executive vice president of the Kentucky Cattlemen's Association, and the director of the Kentucky Beef Network discussed economic impacts of the COVID-19 pandemic on the agriculture industry. Over \$170 billion in agricultural goods was exported from the United States in 2020. Input costs are increasing—most notably, for fertilizer and parts. Labor shortages are occurring across agriculture. For farmers, the last 2 to 3 years have been the best they have ever had, but shipping container prices have increased substantially, and the price of employment has increased. There are issues with transportation and labor. Inflation is a big worry.

Economic Impacts On The Wholesale Industry

The executive director of the Kentucky Wholesale Distributors Association discussed the economic impacts of the COVID-19 pandemic on the wholesale industry as it brings products to retailers. A record number of shipping containers have been lost at sea due to maximal loading on cargo ships. Longshoremen in ports have been worked to exhaustion. Almost every major harbor in the United States is backed up with ships offshore. Shipping containers are in short supply, and warehouse space is running out. Among wholesalers, 97 percent are short on labor and 98 percent reported having employees working overtime and extra shifts. The industry is dealing with an increase in product and overhead costs. Wages and benefits have increased. The cost of energy has gone up 24.4 percent.

Emergency Rental Assistance Program

The secretary of the Finance and Administration Cabinet and the deputy executive director of housing programs at the Kentucky Housing Corporation (KHC) discussed the emergency rental

assistance program. KHC, a quasi-state agency, is the state's housing finance agency. Its mission is to invest in high-quality housing solutions that are affordable for families and communities. The Emergency Rental Assistance program is funded by the US Treasury. The program is intended to assist tenants, thereby also assisting landlords and utilities. KHC is the primary subrecipient and administrator of this program for the Finance and Administration Cabinet. KHC received just over \$264 million and must expend the first set of funds by September 2022. Louisville received an individual grant of almost \$23 million, and Lexington received \$9.6 million. As of November 12, 2021, KHC has paid out \$80.2 million in assistance. Over 22,300 individual payments have been provided to help over 16,000 renters or households.

Kentucky State University

Executive Order Requiring CPE To Review Kentucky State University. The president of the Council on Postsecondary Education (CPE) discussed the executive order requiring CPE to review Kentucky State University (KSU). The executive order does not supersede the board of regents; rather, it grants CPE equal powers to look at the finances, structure, and culture of KSU. CPE is taking the lead in finding a new president for KSU. CPE is working to ensure that KSU is organizationally stable and that its finances are accurately reported. CPE will also be hiring consultants to assist building academic structures for a 21st-century historically black college and university.

Kentucky State University Leadership Transition Update. KSU's vice president for finance and administration presented an update on leadership transition at the university. KSU is focused on getting students back on campus and rebuilding trust and transparency. Employee separations have resulted in \$700,000 in payroll deduction. The university has also implemented a suspension of purchasing, a hiring freeze, and restrictions on travel. KSU faces a budget shortfall in 2022 due to prior-year issues. The university holds a \$5.2 million deficit in construction accounts with the state. Additionally, \$4.3 million in prior-year invoices will be paid in FY 2022. The university also had to repay a prior-year revenue anticipation note totaling \$5 million.

Fiscal Year 2021 Year-End Closeout

The state budget director presented an overview of the FY 2021 year-end closeout. FY 2021 actual general fund receipts totaled \$12.8 billion. Actual receipts for the year were \$1.1 billion in surplus of the enacted estimate, more than triple the highest surplus ever recorded. FY 2021 receipts grew 10.9 percent from FY 2020, the highest annual growth rate in 26 years. This growth in receipts was led by sales and use taxes, the individual income tax, the corporate income tax, and limited liability entity taxes. These taxes accounted for 87 percent of the revenue surplus. The total general fund surplus for FY 2021 totaled almost \$1.2 billion. Of this surplus, \$1.162 billion has been deposited into the budget reserve trust fund—the largest deposit ever—bringing the budget reserve trust fund balance up to \$1.9 billion, which is equivalent to 16 percent of FY 2022 general fund appropriations. FY 2021 road fund receipts totaled \$1.642 billion, with a surplus of \$64.6 million over the enacted estimate. The bulk of this surplus consisted of an increase in motor vehicle usage tax receipts, which grew 24 percent over the prior year.

Inflation And Impacts On The Future Of Our Economy

The chief economist and a staff economist of the Legislative Research Commission testified on inflation and its impacts on the future of the economy. Variables that impact inflation are the amount of dollars in the economy, the velocity of money, and the amount of goods to purchase in the economy. Inflation is measured through the Consumer Price Index (CPI), which reflects changes in the prices paid for various consumer goods. The core CPI does not consider food and energy prices.

The International Monetary Fund has referred to the period beginning in 2020 in response to the COVID-19 pandemic as the “Great Lockdown.” The money supply has increased 74 percent compared to levels before the pandemic. The velocity of money dropped almost 77 percent at its lowest point. Velocity has begun to recover. There have also been changes in output in the economy, particularly with supply chain issues. One recent projection is for inflation to reach 3.4 percent in 2021 and 2.1 percent in 2022. The governors of the Federal Reserve voted unanimously to keep the current monetary policies in place as of June 16, 2021.

Kentucky’s Current Economy And Inflation Compared To Those Of The Nation

The director of the Center for Business and Economic Research testified on Kentucky’s economy and inflation compared to those of the rest of the nation. In the United States and in Kentucky, economic output has continued to improve over the past year. Employment has rebounded substantially but still remained below levels before the pandemic. Economic recovery has been uneven across sectors. Labor force participation rates remain low. Inflation has also increased. Gross domestic product (GDP) declined 10 percent from the first quarter to the second quarter of 2020. Kentucky’s GDP declined at an annual rate of 35 percent during this time. Each quarter since then, economic output has increased substantially.

Initial claims for unemployment insurance have dropped significantly since the height of the pandemic but remain higher than before the pandemic. As of June 2021, Kentucky employment was still down 4.6 percent relative to the level of employment in January 2020, which is very similar to the national situation.

Math Nation

Representatives from Math Nation discussed the program before the committee. Math Nation is an online learning tool to help students who are behind on arithmetic. Many Kentucky schools have less than 50 percent of students scoring at proficient or distinguished levels in math. ACT scores were declining before the pandemic. Math Nation makes math more fun for students and is proven to increase test scores. Teachers want videos for students to watch after school, a workbook that students can use to follow along, tutoring for every student, a district-by-district approach, and parental involvement.

Pandemic Relief: Update On Federal Funding

The state budget director provided an update on federal funding for pandemic relief. Seven federal acts related to COVID-19 appropriated \$16.9 billion to and through Kentucky state government. The \$867 million award to Kentucky from the Families First Coronavirus Response Act was primarily for Medicaid. Kentucky was awarded \$7 billion through the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, of which \$4.7 billion was for unemployment insurance. Kentucky received over \$2 billion through the Coronavirus Response and Relief Supplemental Appropriations Act. The American Rescue Plan Act awarded \$6.7 billion to the state. The state budget director detailed the funds that flowed through each cabinet of state government. The bulk of funds flowing through the Labor Cabinet was for unemployment insurance. A significant amount of funding flowed through the Department of Education via the American Rescue Plan Act and the Coronavirus Response and Relief Supplemental Act. A large amount of funds passed through the Health and Family Services Cabinet, via the Department of Public Health and the Department for Community Based Services.

Public Pension Report: Financial Status And Future Needs

The executive director of the Kentucky Public Pensions Authority (KPPA) and other KPPA staff discussed the financial status and future needs of the pension systems. Through May 31, 2021, all pension year-to-date performance was up 23 percent, resulting in a net increase of \$2.9 billion in assets. Fund performance totaled \$176.8 million above the benchmark. The KERS nonhazardous plan had a net cash flow of \$234 million with investment income. The County Employees Retirement System (CERS) had net cash flow of negative \$100 million with investment income. There will be \$628 million less in unfunded liability by 2027 as a result of investment returns in FY 2021. The funded ratio is now projected to reach 26 percent by 2027, up 3 percent from previous projections. In FY 2018, the funded ratio was 12.9 percent. For the CERS nonhazardous plan, the 2027 unfunded liability is now projected to total \$6.16 billion, \$1.4 billion less than initial projections. The CERS nonhazardous plan is now projected to be 63 percent funded by 2027, up from earlier projections of 55 percent. As a result of the recent changes, total Teachers' Retirement System (TRS) annuity trust liabilities have increased \$2.95 billion from \$35.58 billion. TRS will request an additional \$629.4 million from the budget for FY 2023. The FY 2024 request will be based on the 2021 annual valuation.

Recap Of The August Consensus Forecasting Group Meeting

The deputy executive director of the Governor's Office for Economic Analysis within the Office of State Budget Director provided a recap of the August Consensus Forecasting Group (CFG) meeting. The CFG estimated that total general fund revenues will grow 0.9 percent in FY 2022, 2.3 percent in FY 2023, 3.9 percent in FY 2024, 2.7 percent in FY 2025, and 2.8 percent in FY 2026. CFG's August planning estimate projected actual general fund revenues totaling \$12.9 billion, which would imply revenues totaling \$1.09 billion in excess of what was budgeted. Road fund revenues grew 10.1 percent in FY 2021, and CFG expects them to grow 3.9 percent in FY 2022 and 1.7 percent in FY 2023. In FY 2024, revenues are expected to decline 0.5 percent. Fiscal years 2025 and 2026 are expected to see growth of 1.4 percent in road fund revenues.

Status Update On Kentucky's Michelle P. And Supports For Community Living Medicaid Waiver Programs

The commissioner of the Department of Medicaid Services, the director of the department's Division of Community Alternatives, and the executive director of the Kentucky Association of Private Providers (KAPP) presented an update on Kentucky's Michelle P. and Supports for Community Living (SCL) Medicaid Waiver Programs. A survey of KAPP members in May 2021 revealed that providers have been significantly impacted in revenue and workforce as a result of the COVID-19 pandemic. Only 2.8 percent of providers were fully staffed, and 50 percent were critically understaffed. Private provider wages are tied to the reimbursement rate. In 2019, the direct support professional turnover rate was 47 percent for private providers. This high turnover is due to low wages and the emotionally and physically demanding nature of the work. At the end of April 2021, the Michelle P. waiver had 7,441 individuals on its waitlist and the SCL waiver had 2,886 individuals on its waitlist. DMS is in the process of allocating an additional 175 slots for the Michelle P. waiver. An average of 78 individuals per month are added to the Michelle P. waiver waitlist. In 2021, 350 individuals have been allocated slots.

Sunrise Children's Services Scope And History Of Services

The president, board chair, and attorney for Sunrise Children's Services discussed the scope and history of the services it provides. In the 1970s, the commonwealth partnered with the institution to begin caring for children in the state's custody. Sunrise Children's Services cares for wards of the state, abused and neglected children, and children removed from their homes by child protective services and placed with the Department of Community Based Services. The organization offers programs including therapeutic foster care, residential treatment, psychiatric residential treatment facilities, family services, and foster-to-adopt. More than 500 foster children with Sunrise have been adopted. The organization also provides an independent living program for children aging out of the foster care system. Sunrise has always been a faith-based organization. Sunrise Children's Services has had a contract with the Cabinet for Health and Family Services (CHFS) for almost 50 years. Efforts began to renew the most recent contract in the spring of 2020, but Sunrise was unsuccessful in getting it renewed and, at the time of the discussion, had been operating without a contract for nearly a year. The cabinet has continued to work with and reimburse Sunrise. In March 2021, the cabinet advised Sunrise that it would discontinue its relationship with the organization and stop referring children beginning July 1, 2021, unless the contract was signed. Sunrise was being asked to comply with a regulation that was repealed in November 2019. Sunrise Children's Services was asking that its First Amendment rights be respected going forward.

Technology Upgrades For Virtual Hearing Equipment

Representatives of the Administrative Office of the Courts (AOC) discussed technology upgrades for virtual hearing equipment. AOC faces several challenges in these upgrades, including project resources (particularly staffing); equipment availability; geographic technology limitations such as bandwidth; and funding for ongoing costs for maintenance or support of software equipment. Research and development for the video arraignment and conferencing project is under way. A team for the project and stakeholders are in place. Many people

throughout the state are using various solutions such as Zoom or Microsoft Office. In December 2021, AOC was to move into the proof-of-concept stage.

Update On Water Projects

The secretary of the Kentucky Transportation Cabinet and the executive director of the Kentucky Infrastructure Authority provided an update on water projects in the state. The drinking water and wastewater grant program, funded by the American Rescue Plan Act of 2021, is responsible for water projects. In the 2021 Regular Session, \$250 million was appropriated for water and wastewater projects. Of that, a \$150 million pool is allocated by county population. Another \$50 million pool is dedicated for unserved drinking water customers in rural areas and federal consent decree projects. Finally, a pool of \$49.9 million is dedicated to supplement a project grant where the cost is greater than the county's allocation, as well as for cost escalations and changed conditions. There are more than 350 potential projects, and there may be as many as 269 unserved drinking water projects. Four federal consent decree utilities will be eligible. Across the state, 713 utilities were to be eligible for project funding. The obligation of funds must occur by December 31, 2024. Funds must be spent by December 31, 2026. Grant awards were to be distributed June 20 through December 31, 2021.

Subcommittee Activity

The Interim Joint Committee on Appropriations and Revenue is organized into six 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 2022–2024 biennium.

Budget Review Subcommittee On Economic Development, Tourism, And Environmental Protection

The Budget Review Subcommittee on Economic Development, Tourism, and Environmental Protection held five meetings during the 2021 Interim.

The Tourism, Arts, and Heritage Cabinet provided an update on the impact of COVID-19 on Kentucky tourism and state parks and reported on the receipt of CARES Act funding and expenditures. Kentucky travel and tourism agencies detailed marketing plans to increase visits to local attractions. The president and chief executive officer of the Kentucky Travel Industry Association provided a presentation on the recovery and investment of Kentucky tourism during the pandemic.

Representative Pratt discussed data centers, and Senator McDaniel discussed the remote worker bill, focusing on changes that will address issues brought up during the 2020 Session.

Leadership from the Energy and Environment Cabinet, Kentucky Department of Education (KDE), and Transportation Cabinet provided updates on Volkswagen Settlement Fund expenditures and the progress of received and forthcoming purchases.

The president and chief executive officer of Waterfront Botanical Gardens in Louisville presented updates on the progress of the gardens and relayed funding needs and requests.

The executive director and chief executive officer of the Kentucky Communications Network Authority delivered information on KyWired, with updates on the percentage of completion of the fiber construction. The deputy executive director of the Kentucky Infrastructure Authority provided updates on broadband deployment funds. The chief executive officer of Open Fiber gave a presentation showing the economic development benefits of providing Kentucky with statewide broadband, especially in eastern and western Kentucky.

Leadership from the Cabinet for Economic Development provided updates on Kentucky's workforce training needs, and KDE leadership provided a presentation on Student Career Pathways in an effort to update the committee on various career training and educational opportunities. The chancellor of the Kentucky Community and Technical College System along with the presidents of Southcentral Kentucky Community and Technical College and Owensboro Community and Technical College updated the committee on advertising campaigns to meet current workforce needs.

Budget Review Subcommittee On Education

The Budget Review Subcommittee on Education held six meetings during the 2021 Interim.

Presidents of state-funded postsecondary institutions provided an update on recent legislation (HB 8 from the 2021 Regular Session), pension challenges, budgetary constraints, and ongoing contract and calculated liability concerns. Testimony also addressed tuition rates, growth in certain educational sectors, and regulatory relief measures that the legislature can make that would be beneficial to postsecondary institutions.

Representatives of the Council on Postsecondary Education provided testimony on federal coronavirus relief funds allocated to postsecondary institutions, asset preservation needs, and performance funding, including recommended adjustments.

Representatives of the Kentucky Department of Education and local school districts discussed federal pandemic relief funding and full-day kindergarten. KDE's presentation included an overview of the allowable uses of pandemic relief funds. Representatives from various districts discussed programs that have been implemented as a result of additional funding received.

Representatives of the Kentucky Lottery Corporation and the Kentucky Higher Education Assistance Authority provided an overview of lottery revenues, projected receipts, transfers, and distribution of lottery funds to various scholarship programs related to higher education.

Testimony also included concerns regarding the early exhaustion of the Work Ready Scholarship program in FY 2022 and the impact of COVID-19 on enrollment.

Representatives of the Collaborative Center for Literacy Development discussed the literacy training program, including an overview of the center's budget.

The College Board provided testimony about additional funds received to support ACT testing costs for students.

KDE provided an overview of state-funded preschool and Head Start programs. The presentation included preschool enrollment data and a description of how funds are allocated to the state-funded preschool program.

Representatives of Teach for America spoke about the program and its impact on students in eastern Kentucky. They also discussed its request for additional funds to expand the program.

The School Facilities Construction Commission provided a presentation about the facilities funding received in the 2021 Regular Session, with a list of districts that received funding.

Representatives of Kentucky State University and CPE provided testimony on recent leadership transitions, program offerings, graduation rates, student balances, and the changing role of CPE in oversight at the university. A financial review included discussion of pandemic relief funds. Testimony also included the projected shortfall in the current fiscal year and anticipated budgetary needs.

Budget Review Subcommittee On General Government, Finance, Personnel, And Public Retirement

The Budget Review Subcommittee on General Government, Finance, Personnel, and Public Retirement held six meetings during the 2021 Interim.

The Transportation Cabinet secretary and the deputy executive director of the Kentucky Infrastructure Authority provided an update on the increased grant funding of \$250 million appropriated by the General Assembly as part of SB 36 of the 2021 Regular Session. The KIA-administered funding will aid in the planning, design, and construction costs for water- or sewer-related projects in every county.

Representatives of the Personnel Cabinet provided an overview of the existing personnel classification and compensation system, challenges facing the executive branch (such as increased employee turnover rates), and recruitment and retention incentives the cabinet has put into place. Testimony also included a discussion of the necessity of an increase in the minimum salary schedule and providing annual increments.

The director of the Legislative Research Commission provided a personnel update addressing staffing and compensation issues, including competitive benefits such as teleworking, turnover

rates, historical and current compensation comparisons, and the ongoing compensation study and personnel plan.

The director of the Kentucky Chamber Workforce Center, an organization focused on promoting business retention and recruitment in Kentucky, provided information on postpandemic workforce training needs. Highlighted programs included expanding hiring for ex-felons, as well as exposing more school-age children to in-demand careers.

The director of the Kentucky Public Pensions Authority and the executive director of KPPA's Office of Benefits provided an update on the implementation of HB 8 of the 2021 Regular Session. The update included highlights and features of the legislation, including compliance with reporting requirements for quasi-state agencies, and an explanation and status of the appeals process.

The state budget director and the deputy executive director of the Kentucky Infrastructure Authority discussed the implementation of the broadband deployment fund. The new grant program, administered through KIA, will assist governmental agencies and private sector entities in constructing infrastructure for the deployment of broadband service to underserved or unserved areas of the commonwealth.

The executive director of the Kentucky Commission on Human Rights discussed functions of the agency and its budget challenges. Funding reductions in recent years have resulted in a failure to meet statutory timelines for case resolutions. The agency requested an increase in funding to meet the minimum staffing levels required for continued operations.

The commissioner of the Department for Local Government, along with staff, updated the subcommittee on the distribution of COVID-19 federal funds to local governments. The commissioner encouraged cities and counties to seek guidance and use all available funding, because unspent funds would eventually lapse to the US Treasury.

The judges/executive of Harlan, Pendleton, and Webster Counties provided an overview of the importance of coal and mineral severance tax dollars to local governments in more than 100 counties. They discussed the historic role of coal in Kentucky's economy and the need for coal-producing counties to attract new and diverse businesses.

The auditor of public accounts (APA) provided an overview of the agency budget. This year the APA office exercised its first right of refusal to perform two area development district audits in an effort to provide more transparency. The office also instituted a pilot program to begin routine audits of county attorney offices. Personnel costs have increased in recent years, mostly because of an increase in pension costs that have been passed on to other state agencies and local governments. In fiscal years 2021 and 2022, the General Assembly provided an additional \$2 million from the general fund to the APA, which allowed a return to 50 percent billing for fiscal court audits and avoided the need to increase rates. The APA requested to maintain this funding in the next biennium to continue holding down the costs that are passed on to local governments and other state agencies.

The secretary of state discussed the budget outlook for FY 2022 and requested an additional appropriation of \$1 million in restricted funds in each of the next 2 fiscal years for upgrades to the office's information technology system for business filers and additional personnel for system maintenance. New business filings have doubled in the last 4 years.

The director of the Division of Information Technology, Kentucky State Police (KSP), provided details regarding the entity responsible for enforcement of overweight vehicles traveling on state roads, as well as the person or entity responsible for paying any citations issued to them. There were also details on who can file overweight vehicle complaints, to whom, and how.

Budget Review Subcommittee On Human Resources

The Budget Review Subcommittee on Human Resources held six meetings during the 2021 Interim.

The secretary of the Cabinet for Health and Family Services and the executive director of the cabinet's Office of Finance and Budget provided an overview of federal funding received by CHFS under the American Rescue Plan Act. With regard to services related to COVID-19, there was an update on the federal funding received and the expenditures by CHFS. The commissioner of the Department for Medicaid Services (DMS) provided an update on the implementation of 2021 Regular Session HB 183. The DMS commissioner, the director of DMS's Division of Community Alternatives, and the executive director of the Kentucky Association of Private Providers discussed the Michelle P. and Supports for Community Living waiver programs.

The commissioner and the deputy commissioner of the Department for Community Based Services (DCBS) and the executive director of CHFS's Office of Legislative and Regulatory Affairs provided an update on the number of children in state custody, social worker caseloads, and ongoing funding needs for social worker positions. The commissioner, deputy commissioner, and assistant director of the Department for Aging and Independent Living and the executive director of CHFS's Office of Legislative and Regulatory Affairs provided an update on guardianship caseloads, Medicaid funding received to help address needs related both to staffing and to ongoing funding of additional staff to address guardianship caseloads. The trauma coordinator of the Kentucky Hospital Association, the director of the Division of Administration and Financial Management of the Department for Public Health (DPH), and the executive director of CHFS's Office of Legislative and Regulatory Affairs provided an overview of the Kentucky Trauma Care System, current funding status, and ongoing funding needs for administration of the program.

The director of DCBS's Division of Child Care provided an overview of the amount and distribution of the funding awarded to Kentucky for child care services through the American Rescue Plan Act. The commissioner of the Department for Public Health, the director of DPH's Division of Women's Health, and the president of the Kentucky Health Department Association provided an update on the implementation of 2020 Regular Session HB 129 and current and ongoing funding needs for foundational public health programs.

The commissioner and the chief financial officer of DMS provided an update on FY 2021 year-end Medicaid expenditures, as well as the FY 2022 projection for Medicaid expenditures. The legislative chair of the Kentucky Association of Adult Day Centers discussed the current Medicaid reimbursement rates for adult day centers and proposed increases in those rates.

The manager of population health of the Norton Infectious Diseases Institute of Norton Healthcare, a nurse practitioner of the Hepatitis C Treatment Center, and the medical director of the Primary Care Centers of Eastern Kentucky discussed funding for hepatitis C treatment and services for individuals with substance use disorder. The inspector general of CHFS, the deputy commissioner for clinical services of DPH, the director of Travis Neurological Consulting, and the executive director of the Office of Drug Control Policy of the Justice and Public Safety Cabinet provided an overview and update on the Kentucky All Schedule Prescription Electronic Reporting system.

The director of public policy of the Greater Kentucky and Southern Indiana Chapter of the Alzheimer's Association provided a presentation about the availability of dementia services in Kentucky and about ongoing funding needs. A representative of the Cabinet for Economic Development and a representative of the University of Louisville provided an update on the University of Louisville hospital loan as authorized during the 2019 Regular Session. The clinical director of the Suzanne Vitale Clinical Education Complex of Western Kentucky University provided a presentation on services for young adults with autism spectrum disorder and ongoing funding needs. The executive director and the policy campaign director of the Community Farm Alliance and the Food Justice Fellow of the Kentucky Equal Justice Center discussed proposed funding for food access programs.

Budget Review Subcommittee On Justice And Judiciary

The Budget Review Subcommittee on Justice and Judiciary held six meetings during the 2021 Interim.

Representatives of the Kentucky State Police provided an overview of KSP's budgetary needs, with a specific focus on personnel trends within state trooper ranks, including details on salary, recruitment and retention, and retirement. KSP also provided an update on the progress of and next steps for the Emergency Radio Replacement System capital project, Phase II of which was funded in the 2020–2022 biennial budget.

Representatives of the Department of Criminal Justice Training provided information regarding the condition of its firing range and the necessity of constructing a replacement facility to adequately meet training needs and safety protocols.

Representatives of the Finance and Administration Cabinet and the Administrative Office of the Courts provided an overview of the guardian ad litem (GAL) program. Information presented included details on budgeted amounts to support GAL payments and improvements to the payment process, as well as the appointment, training, and standards of conduct for anyone appointed as a GAL.

AOC representatives provided a status update on courthouse facility construction and renovation projects previously approved by the General Assembly, as well as an update on facility assessments for projects that will likely be included in the upcoming judicial branch budget request.

Representatives of the Department of Public Advocacy provided an overview of personnel issues regarding salary and staff turnover, including a proposed plan for the department's attorney classifications and salary increases.

Representatives of the Department of Corrections provided an overview of conditional commutations granted for offenders because of the COVID-19 pandemic, including screening criteria for release, services provided to those granted a commutation, and fiscal impacts. Additional information was provided on the impact of delays in classifying convicted felons and programs in which unclassified inmates can participate.

Representatives of the Association of Circuit Court Clerks provided an overview of upcoming budget priorities for circuit clerks, including the need to raise salary and wages for deputy circuit clerks to maintain services in a competitive labor market.

Representatives of Volunteers of America provided a progress update on the Restorative Justice project, including a new youth diversion program in seven southeast Kentucky counties and an existing program in Jefferson County. The Restorative Justice project received support from the General Assembly in the current biennial budget.

Representatives of the Department of Criminal Justice Training provided an overview of the Kentucky Law Enforcement Foundation Program (KLEFP) fund. The information included a review of revenues and expenditures of the fund, those eligible to receive annual supplements, other programs and functions funded through KLEFP, and prospective plans to use any excess receipts accrued in the fund.

Budget Review Subcommittee On Transportation

The Budget Review Subcommittee on Transportation held five meetings during the 2021 Interim.

The secretary and the deputy secretary of the Transportation Cabinet discussed how projects are chosen to be included in the Road Plan as well as how decisions are made on how to display those projects. They also explained how federal funds come to the state and then flow to local metropolitan planning organizations, and how state funds flow to local governments. They further explained the composition and use of the various projects in the Road Plan.

The commissioner of the Department of Rural and Municipal Aid explained how money flows from the road fund to projects that are not included in the 6-year road plan. The commissioner detailed several methods by which a local government can access road funds for projects.

The executive director of the Office of Budget and Fiscal Management discussed the state agencies outside of the Transportation Cabinet that receive money from the road fund. The executive director explained that there are appropriated funds that go to other agencies, but there are also payments to other agencies for services rendered that also come from the road fund; this amount has decreased dramatically in the last two budgets.

The assistant state highway engineer testified that approximately \$2 billion, spread throughout the state, is needed to bring all of the poor-condition assets in the state up to good condition. The engineer explained that addressing the heavy snowfall earlier in the year cost 20 percent of the total maintenance budget, and further detailed the metrics the cabinet uses to decide what gets priorities for maintenance. For maintenance, \$500 million a year would be needed to maintain the current conditions and \$750 million a year would be needed to begin improving conditions for roads and bridges. The director of government affairs for the Kentucky Association of Counties testified that counties commonly use County Road Aid to maintain their roads, and since only motor fuel usage money is shared with local governments, their purchasing power has decreased by 15 percent in recent years. This reduced the abilities of counties to maintain county roads and has exacerbated the problem.

The assistant state highway engineer addressed the Strategic Highway Investment Formula for Tomorrow (SHIFT) process, explaining how the metrics of safety, asset management, cost/benefit, congestion, and economic growth are used to objectively determine which projects are chosen to move forward. The engineer further explained that there are components that take into account which projects local citizens would like advanced, not only to add weight to a project's SHIFT score, but to also choose which projects are advanced in the Road Plan.

The executive director of the Office of Budget and Fiscal Management testified about how the road fund revenues compared to the estimation by the Consensus Forecasting Group, explaining that overall the road fund did very well comparatively and generated \$65 million more than estimated, mainly because of an increase in motor vehicle usage taxes. The executive director anticipated that further opening of the economy would facilitate more gasoline usage, both private and commercial, which would in turn increase revenues to the road fund.

The Transportation Cabinet secretary testified on the status of three mega-projects: the Brent Spence Bridge, the I-69 Ohio River Crossing, and the Mountain Parkway Expansion. The secretary explained that a 2012 study on the Brent Spence Bridge suggested that a companion bridge should be built at a cost of \$2.8 billion, and then explained that the cabinet is conducting another study to reduce the footprint and cost of the project if possible. The I-69 Ohio River Crossing is being upgraded in phases, and the cabinet is upgrading 126 miles of parkway between Mayfield and Henderson to be interstate ready, with another 20 miles expected in the next biennium. The secretary expected that the contract for the new crossing would be awarded by the end of the year, with final construction of this phase anticipated by 2025. The secretary explained that widening 30 miles of the Mountain Parkway from Salyersville to Prestonsburg was the last completed step, with plans to extend the Mountain Parkway 14 miles in the next biennium.

**Report Of The 2021
Interim Joint Committee On Banking And Insurance**

**Sen. Jared Carpenter, Co-Chair
Rep. Bart Rowland, Co-Chair**

Sen. Julie Raque Adams
Sen. Ralph Alvarado
Sen. Tom Buford
Sen. Donald Douglas
Sen. Rick Girdler
Sen. Jason Howell
Sen. Morgan McGarvey
Sen. Dennis Parrett
Sen. John Schickel
Sen. Brandon Smith
Sen. Brandon J. Storm
Rep. Danny Bentley
Rep. Joseph M. Fischer
Rep. Patrick Flannery
Rep. Deanna Frazier Gordon

Rep. Jim Gooch Jr.
Rep. Angie Hatton
Rep. Norma Kirk-McCormick
Rep. Adam Koenig
Rep. Nima Kulkarni
Rep. Derek Lewis
Rep. Matt Lockett
Rep. Shawn McPherson
Rep. Michael Meredith
Rep. Rachel Roberts
Rep. Sal Santoro
Rep. Tom Smith
Rep. Cherlynn Stevenson
Rep. Ken Upchurch
Rep. Susan Westrom

LRC Staff: Jessica Sharpe, Breanna Patterson, and Liz Hardy

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Banking and Insurance

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

Committee Activity

The Interim Joint Committee on Banking and Insurance met four times during the 2021 Interim. After the publication of this report, the committee anticipated meeting for a fifth time in December 2021, to receive testimony on potential federal legislation and other potential legislation to be filed for the 2022 legislative session.

The committee adopted a resolution adjourning the Interim Joint Committee on Banking and Insurance in honor and loving memory of Senator Tom Buford.

Financial Institutions Update

The commissioner of the Department of Financial Institutions (DFI) provided updates on DFI operations through the pandemic, on the depository, nondepository, and securities divisions of the department, and on the paycheck protection program (PPP). During the pandemic, DFI issued four industry-specific guidance documents and conducted examinations of financial institutions predominantly offsite. The commissioner reported that bank deposits increased during the pandemic following the stimulus funds provided by the US Congress. Securities and money transmitter registrations remained stable or increased, and demand for securities services remained high, but payday loan volume decreased. For outstanding PPP loans in Kentucky as of March 31, 2021, the total number of loans was 32,000, net dollars was \$2.5 billion, and the average loan size was \$78,000.

The president and CEO of the Kentucky Credit Union League discussed the structure and history of credit unions. Kentucky credit unions employ approximately 2,300 people and have roughly 915,000 members. They are well capitalized, their total assets are increasing, and they focus on the financial well-being of their members. Credit unions face issues relating to artificial growth, preventing fraud through cybersecurity, and talent recruitment and retention.

The president-elect of the Bluegrass Community Bankers Association discussed the struggles community banks are facing today. These struggles include uncertainty due to shortages of materials and workers, competition with nonbank lenders, pressure to pay more interest on deposits, challenges in attracting and retaining millennials, keeping employees healthy and safe, cybersecurity, and the cost of technology and compliance.

The president and CEO of the Kentucky Bankers Association discussed the lack of filing technology in county clerk offices. The combined efforts of many stakeholders have resulted in some progress, but there continues to be a lack of necessary funding. During the pandemic, there were record high levels of refinancing coupled with limited access to county clerk services. This stress test for county clerk offices demonstrated that electronic filing should be mandatory, and county clerks need supplemental funding for necessary technology upgrades. He stated that three things were required to ensure that county clerks become a benchmark for other states: e-recorded documents, electronic access to title history, and completion of the transition from the Automated Vehicle Information System to the Kentucky Automated Vehicle Information System. He also discussed potential funding sources.

Update On Increases In Long-Term Care Insurance Rates

The commissioner of the Department of Insurance (DOI) stated that long-term care insurance has been on the market for approximately 40 years and has been challenging economically and actuarially. It is crucial for insurance regulators to balance consumer protection while preserving solvency for these companies. The major challenge facing the industry is pricing, which involves longer life spans, increases in care costs, underpriced legacy policies, and inaccurate actuarial assumptions.

Insurers failed to correctly estimate investment returns and how many people would make claims on their policies. Several variations for rate stabilization are being considered in states, which involve different alternatives, margins, and protections for consumers. The DOI actuary stated that the average rate increase request submitted in Kentucky was almost 50 percent and that the average approved increase was approximately half of what was requested. DOI approved a 40 percent rate increase for the Kentucky Retired Teachers Association coverage, which included a 10-year rate guarantee.

Kentucky Association Of Health Plans—Industry Update

The executive director of the Kentucky Association of Health Plans (KAHP) provided information regarding the average employer contribution for single coverage, the percentage of single-coverage premiums paid by employers, and the industry's contributions in terms of taxes and employees. He also discussed KAHP's four pillars—advocacy, education, innovation, and collaboration—and issues related to those pillars. Mandates that require specific coverage are well intended but typically result in higher premiums and can reduce access to care.

PIP Reform

The Insurance Institute of Kentucky provided general information about personal injury protection (PIP) laws in the United States. PIP laws require no-fault medical and lost income coverage as part of a person's automobile liability insurance policy. In Kentucky, PIP can be rejected and is optional for motorcycles. PIP insureds generally cannot sue an at-fault party until a threshold is met. Most states—including all states that border Kentucky—do not have PIP laws. Two Kentucky attorneys explained that PIP was a well-intentioned law when it was passed

in 1975, but the law was modified to comply with state constitutional requirements, which led to some irregularities and conflicting purposes.

A representative of Progressive Insurance discussed whether PIP has outlived its usefulness. PIP can be useful to insureds because it provides coverage for medical bills and lost income, and it can be useful to providers because they get paid the most for PIP claims and the payments are made promptly. On the other hand, PIP coverage does not go very far due to high medical bills, and PIP claims are difficult to manage. PIP laws have resulted in insurance rates that are a little more expensive in Kentucky than in other states.

Mental Health Parity

The commissioner of the DOI discussed the federal Mental Health Parity and Addiction Equity Act of 2008, which generally requires insurance parity for mental health services, and the DOI's implementation of 2021 RS House Bill 50, which adopted the requirements of the federal law for nonquantitative treatment limitations and for submitting annual reports to the DOI.

Representatives of the Kentucky Eating Disorder Council reported on statistics relating to Kentuckians who have eating disorders, and on insurance barriers for treatment of eating disorders. These barriers include lack of provider participation with insurance plans, the limited number of eating disorder professionals, ineffective review criteria for eating disorder treatment, additional costs for in-network out-of-state treatment, and the lack of options for step-down care. Kentucky is lacking acute care programs, residential programs, and partial hospitalization programs for necessary treatment. Some patients are forced to travel out of state to receive care, and many out-of-state providers refuse to work with Kentucky Medicaid. Kentucky needs to improve reimbursement rates for existing providers, create incentives for mental health practitioners to want to practice in the state, change the review criteria for eating disorder care, and ease state licensing laws for telehealth access to care.

Regulation Of Air Ambulance Membership Subscriptions

Representative Frazier Gordon discussed legislation to regulate air ambulance membership subscriptions and said she believes states have a right to regulate these products as insurance. Memberships are products that transfer an unknown amount of risk from the policyholder to an air ambulance company in exchange for a premium payment, even though the need for air ambulance services is rare and most people are covered by traditional insurance policies. Representative Frazier Gordon does not want to ban memberships but instead wants to provide Kentuckians with consumer protection from predatory marketing tactics as well as providing rate transparency, which is required for all other insurance products.

The senior vice president and general counsel at Air Methods explained that the federal No Surprises Act (which will go into effect on January 1, 2022) virtually eliminates financial risk for air ambulance services received by insureds, because it prohibits balance billing. Despite the federal act and the importance of state regulatory oversight, Kentucky citizens are still being sold products to protect them from a problem that will no longer exist without any actuarial adjustment to premium pricing to ensure policyholders are charged a fair premium. These

products lack appropriate disclosures, and Medicare beneficiaries are being sold millions of subscriptions that have only limited coinsurance costs.

The national director of membership at AirMedCare Network, representing Global Medical Response Inc. (GMR), opposed legislation that would regulate air ambulance membership subscriptions. GMR's membership program is not an insurance product; rather, it is a prepaid plan that covers an insured's cost sharing for air ambulance services provided by GMR. Air ambulance membership products are consumer friendly and do not constitute the business of insurance under the federal McCarran-Ferguson Act. GMR has won lawsuits in North Dakota and West Virginia, substantiating that states cannot regulate air ambulance memberships as insurance.

**Report Of The 2021
Interim Joint Committee On Economic Development
And Workforce Investment**

**Sen. Wil Schroder, Co-Chair
Rep. Russell Webber, Co-Chair**

Sen. Rick Girdler
Sen. Alice Forgy Kerr
Sen. Christian McDaniel
Sen. Robby Mills
Sen. Adrienne Southworth
Sen. Brandon J. Storm
Sen. Reginald Thomas
Sen. Phillip Wheeler
Sen. Mike Wilson
Sen. David Yates
Rep. Shane Baker
Rep. Kim Banta
Rep. Lynn Bechler
Rep. Tina Bojanowski
Rep. Josh Bray
Rep. George Brown Jr.

Rep. Josh Calloway
Rep. McKenzie Cantrell
Rep. Daniel Elliott
Rep. Chris Freeland
Rep. Al Gentry
Rep. Mark Hart
Rep. Thomas Huff
Rep. DJ Johnson
Rep. Kim King
Rep. Nima Kulkarni
Rep. William Lawrence
Rep. Matt Lockett
Rep. Bart Rowland
Rep. Scott Sharp
Rep. Steve Sheldon
Rep. Ashley Tackett Laferty

LRC Staff: Janine Coy, Drew Baldwin, Audrey Ernstberger, Andrew Manno, Kirk Smith, and Sasche Allen

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Economic Development And Workforce Investment

Jurisdiction: Matters pertaining to commerce, industry, economic and industrial development, the workforce and the workplace, and tourism 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; labor unions; collective bargaining; liquefied petroleum gas and other flammable liquids; hotels; electricians; plumbers and plumbing; wages and hours; garnishments; safety and health of employees; child labor; employment agencies; apprenticeship; unemployment compensation; workers' compensation; consumer protection; industrial weights and measures.

Committee Activity

The Interim Joint Committee on Economic Development and Workforce Investment held six meetings during the 2021 Interim.

Cabinet Updates

Cabinet For Economic Development. The interim cabinet secretary and other cabinet leadership gave an overview of the state's economic recovery and future opportunities in the unprecedented times of the COVID-19 pandemic. Challenges and trends include workforce shortages, a lack of industrial build-ready sites and mega sites, and difficulties in marketing the commonwealth. There was discussion of the Kentucky Enterprise Fund, Commonwealth Seed Capital, the return of the Angel Tax Credit/Fund Tax Credit, and the Small Business Credit Initiative.

Tourism, Arts, And Heritage Cabinet. The cabinet secretary and department commissioners described the cabinet's dedication to promoting and marketing the state as a premier travel destination, partnerships with local tourism offices, the response and recovery from the COVID-19 pandemic, and the tourism industry's economic impact in the commonwealth. Despite the effects of the pandemic, the tourism industry had an \$8.9 billion direct economic impact in 2020, generating \$625 million in state and local taxes and supporting over 75,000 jobs.

Education And Workforce Development Cabinet. The cabinet deputy secretary and other cabinet leadership discussed the cabinet's goals, which include expanding opportunities for early childhood education, providing exposure to career opportunities to middle school students, helping high school students gain experience in workforce training opportunities, and assisting Kentuckians in obtaining experience in their chosen career fields following postsecondary education or training. Initiatives and programs of the cabinet include Work Opportunity Tax

Credit Certifications, the Kentucky Transformational Employment Program, commercial driver's license training, fair chance hiring, the free GED campaign, the Governor's School for Entrepreneurs, and the Summer Enrichment Program Camp.

Effects Of COVID-19 On The Manufacturing Industry

The executive director and member relations director of the Kentucky Association of Manufacturers updated members about the economic impact of the manufacturing industry and the effects of COVID-19 on the industry. Throughout the manufacturing industry, there is an outdated supply chain that includes legacy technology, manual processes, and other inefficiencies that impair competitiveness in new digital markets. In addition, the COVID-19 pandemic created transportation issues within the supply chain, a chip shortage for automotive manufacturers, and low rates of workforce participation.

The legislative agenda for the 2022 Regular Session:

- Policies allowing for advanced recycling
- Reexamination of the state's gasoline tax
- Modernization of the state's tax structure
- Policies promoting workplace safety, employee engagement, and second chances for those reentering the workforce

The State's Economic Performance

A visiting fellow with the Bluegrass Institute for Public Policy Solutions compared the commonwealth's tax burden to that of other comparable states with benchmarks such as quality of life and standards of living with per capita income and per capita disposable personal income. Spending trends that categorize the state as a "blue state" in comparison to similar states include an increased rate of government spending as a percentage of state personal income, higher per capita spending, increased debt levels over time, and a higher tax burden. Achieving economic freedom for the state should include limiting government reliance on markets, lowering government spending, lowering tax burdens, and having more responsible debt levels.

Recommendations for the 2022 Regular Session:

- Strengthening the "rainy day" fund
- Beginning the process of reining in the state's debt
- Continuing responsible budgets
- Using a principled tax policy

Workforce Issues

The Kentucky Chamber of Commerce conducted labor force research to identify long-term trends and issues within the state's workforce. The chamber's final report, *20 Years In The Making: Kentucky's Workforce Crisis*, shows that workforce challenges are worse in the commonwealth than in almost any other state in the nation. Most issues existed prior to 2020 but were heightened by the COVID-19 pandemic, and multiple interrelated factors contribute to low rates of workforce participation. Root causes of challenges within the workforce include the

retirement boom; employer demand and skills gaps; lack of access to child care; health and substance use disorders; infrastructure, transportation, and broadband hurdles; incarceration, reentry, and criminal records; benefit cliffs and social safety net programs; and slow population growth.

The following solutions for workforce issues were recommended:

- Analyzing workforce programming and spending
- Making the Free Application for Federal Student Aid a requirement for high school graduation
- Removing barriers to education and employment for individuals with criminal records
- Improving the competitiveness of the tax code
- Optimizing the unemployment insurance system for rapid reemployment
- Expanding the Child Care Assistance Program
- Reducing smoking rates

Registered Apprenticeship Program

The executive director of the Kentucky Career Center Office of Employer and Apprenticeship Services and the commissioner of the Department of Workforce Investment discussed the state's Registered Apprenticeship Program, which combines both on-the-job training and job-related instruction, results in industry-recognized national credentials, and develops skill-specific career employees. State money and two federal grant programs fund the program. One grant is scheduled to end in June 2022, and the other will end in June 2023. Approximately 347 employers in the state participate through 590 programs and 585 occupations.

Kentucky Venues

Kentucky Venues works with the Kentucky General Assembly and area boards and commissions to host exhibitions, conventions, trade shows, public gatherings, cultural events, and other functions to advance the state's agriculture and tourism industries and economy while serving the entertainment, cultural, and educational interests of the public. Expansions and updates have been completed at both Kentucky Venues properties, but improvements such as security modernization, infrastructure enhancements, and parking lot repairs are still needed.

Craft Breweries

Craft breweries in the commonwealth have both a direct and an indirect economic impact, with industry sales generating federal, state, and local revenue. Breweries across the state generate \$872 million in annual economic activity. Throughout the COVID-19 pandemic, brewers saw decreases in product volume, sales, and revenues. Disruptions in supply chains, increased costs of supplies and materials, and costs to businesses to comply with COVID-19 requirements have been obstacles for breweries. Despite setbacks across the industry, there are 93 craft breweries in the commonwealth, 10 new breweries in the planning stage, and 27 that have expanded or will expand.

Waterfront Botanical Gardens

The Waterfront Botanical Gardens, on a 23-acre site in downtown Louisville, began construction under a three-phase plan in 2017. It has raised approximately \$20 million of funding, mostly private, but other funding options through grants and foundations are being considered. Construction has concluded on the Graeser Family Education Center and the Ellen T. Leslie Botanical Classrooms. Future phases include a visitor center, a children's garden, a conservatory, and a Japanese garden. Once fully constructed, it is estimated that the Waterfront Botanical Gardens could receive up to 400,000 visitors per year.

Kentucky Travel Industry Association

The president and CEO of the Kentucky Travel Industry Association gave a presentation on the labor shortage throughout the travel industry, state tourism recovery, and an investment proposal. Although the cause for low workforce participation is multifaceted, the travel industry is greatly impacted by the issue of child care because the industry has a large number of female employees. The state tourism recovery and investment proposal presented included \$75 million of American Rescue Plan Act funds to be distributed for marketing the state as a whole, marketing communities throughout the state, and attracting meetings and conventions. There was discussion of another legislative priority: shared economy industry platforms such as Airbnb paying the transient room tax throughout the entire state instead of only in particular cities.

Cryptocurrency Mining

Affordable power rates and recent legislation that abated the sales and utility gross receipt tax on electric bills created new opportunities for data centers and data mining in the western part of the state. Western Kentucky is in the center of the Midcontinent Independent System Operator Grid and intersecting transmission lines, which makes the area particularly attractive to cryptocurrency mining companies and large consumers of electricity. Greater Paducah Economic Development secured two cryptocurrency projects that will have a major impact on the area's economy and will create jobs. Expansion of the industry in the area can lead to new opportunities for both consumers and power companies and can generate funds for future improvements to utility infrastructure.

Economic Freedom And Kentucky's Workforce

The Pegasus Institute provided a presentation about the effect of macroeconomic conditions on workforce participation, state workforce participation trends, and the positive correlation between economic freedom and workforce participation. There was discussion of *Economic Freedom In North America*, a Fraser Institute report that ranks the 50 states with regard to overall economic freedom, government spending, taxes, and regulation. The commonwealth has consistently ranked in the bottom quartile, but the most recent report uses 2019 data and ranks the state at 37th in the nation.

Proposed Programs And Legislation

Workforce As A Competitive Advantage. The president and CEO of the Bowling Green Chamber of Commerce proposed two economic and workforce-related programs for the state to implement. The first recommended program would be housed in the Cabinet for Economic Development and managed by economic development professionals. It would target either new or existing companies and offer the incentive of recruiting, screening, and training skilled employees while providing a single point of contact for state officials to communicate with regarding workforce shortages. The second recommended program involves creating a partnership between the state and the business community to build a dashboard of workforce data that would allow for the first suggested program to adequately meet the supply and demand across the state for employers and employees.

Unemployment Insurance For Victims Of Domestic Violence And Abuse. Proposed legislation was presented regarding unemployment insurance benefits for victims of domestic violence and abuse, dating violence and abuse, sexual assault, or stalking who have left work, are unable to work, or are separated from employment due to circumstances resulting directly from domestic violence. Provisions include evidentiary requirements, training of Office of Unemployment Insurance staff, and reporting requirements for the secretary of the Labor Cabinet of the number of unemployment insurance claims filed that are related to domestic violence.

Kentucky Affordable Housing Act. The legislation would create workforce housing tax credits in an effort to increase the availability of affordable housing options. Prior to the COVID-19 pandemic, Kentucky was approximately 75,000 housing units short of sufficient affordable housing options. Because of obstacles created by the pandemic, housing and construction costs have increased. It has been estimated that if the state added 65,000 units, then it would generate approximately \$178 million in tax revenue for state and local governments and add 3,500 jobs.

**Report Of The 2021
Interim Joint Committee On Education**

**Sen. Max Wise, Co-Chair
Rep. Regina Huff, Co-Chair**

Sen. Danny Carroll
Sen. David P. Givens
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Alice Forgy Kerr
Sen. Stephen Meredith
Sen. Gerald A. Neal
Sen. Adrienne Southworth
Sen. Robert Stivers II
Sen. Reginald Thomas
Sen. Stephen West
Sen. Mike Wilson
Rep. Shane Baker
Rep. Kim Banta
Rep. Tina Bojanowski
Rep. Bam Carney
Rep. Jennifer Decker

Rep. Jeffery Donohue
Rep. Myron Dossett
Rep. Mark Hart
Rep. Adam Koenig
Rep. Scott Lewis
Rep. C. Ed Massey
Rep. Bobby McCool
Rep. Charles Miller
Rep. Melinda Gibbons Prunty
Rep. Felicia Rabourn
Rep. Steve Riley
Rep. Attica Scott
Rep. Killian Timoney
Rep. James Tipton
Rep. Russell Webber
Rep. Richard White
Rep. Lisa Willner

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Chris White

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Education

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

Committee Activity

The Interim Joint Committee on Education met six times during the Interim. All meetings were held at the Capitol Annex in Frankfort. The committee heard presentations regarding the impact of the ongoing COVID-19 pandemic from superintendents, educators, mental health professionals, and the Kentucky Department of Education (KDE). Other reports concerned perspectives on critical race theory (CRT), revising the Kentucky Educational Excellence Scholarship (KEES) program, implementation of 2020 House Bill 419, the Kentucky Science Center, the Leadership Institute for School Principals, youth entrepreneurship in Appalachia, and the Save the Children program. The committee also had discussions on proposed legislation to address name, image, and likeness (NIL) compensation for college athletes and site-based decision-making councils (SBDMs).

Student Participation During The COVID-19 Pandemic

Representatives from KDE discussed the impact of COVID-19 on student participation in schools during the initial school closures at the end of the 2019–2020 school year and during the 2020–2021 school year. Senate Bill 177 of the 2020 Regular Session allowed school districts to engage students through participation rather than daily attendance.

The participation report available on the KDE website shows aggregate data at the district level for three reporting periods: October 2020, January 2021, and July 2021. A final report will also be made to reflect the whole year and will be posted to the website.

School district representatives discussed efforts made to keep students engaged with school during the pandemic and ways to strengthen staff supports for mental and emotional health. Schools took many proactive measures during the summer before the start of the 2020–2021 school year to ensure that the technology supports were in place for all students. They focused on creating relationships with parents. Teachers struggled to prepare classwork for mixed in-person/virtual classrooms. Some schools changed to a different format to allow teachers the most flexibility and the best return on investment of time. All administrators agreed that teacher presence is key, as is making sure of the right fit between student and program or platform.

School Issues And Needs Resulting From COVID-19

Members discussed some of the issues that schools are facing regarding mitigation of COVID-19, as well as legislative proposals to address those needs. Members wanted legislation that could outline localized metrics for local control and decision making. Shortages of teachers and substitutes are concerns for school districts. Members discussed the need to create temporary waivers using current statutory language to increase the number of individuals available for substitute teaching. There was discussion of proposals to allow superintendents to hire probationary candidates and to incentivize vaccination among teachers, staff, and eligible students.

The executive director of the Kentucky Association of School Superintendents spoke regarding the needs of schools as they relate to funding stabilization. Members were asked to consider allowing increased flexibility in the use of nontraditional instruction days due to winter weather concerns.

The Green County superintendent presented on the “Test and Stay” program that the district implemented to address COVID-19 outbreaks. The program identifies students who may have been exposed to the virus in school, and it allows those students to test daily for 6 days. More than 100 students had exposure events at school, and this program allowed them to remain for in-person instruction if their tests were negative. Most families chose to participate in the program. It is critically necessary for any school wishing to implement “Test and Stay” to develop a partnership with a local health care agency to read the test results.

Impact Of COVID-19 On Student Mental Health

The crisis response teams formed in response to school safety legislation for short-term critical events are now being used to help students with increased anxiety, depression, and suicidal ideation related to the pandemic. A report from the Centers for Disease Control and Prevention indicated that approximately 25 percent of student respondents had contemplated suicide in the last school year. The impact is felt from high school students to children as young as 8 years old, who are also seeing a dramatic increase in severe mental health concerns. The switch to remote learning made it impossible to meet the mental health needs of students. Changes are also affecting staff, creating a sense of grief among adults, which can impact the student population. Each student and staffer needs the skills and support not just to survive this school year but to thrive and have the resiliency to rebound.

Suicide attempts increased by approximately 57 percent in the last year, with children as young as 11 years old taking their own lives. The actual number of students needing help with suicidal ideation is likely much higher. Teachers can be equipped to teach Tier 1 Social/Emotional Learning curriculum as a means to address these concerns. Grant funds exist to assist districts in paying for mental health professional development courses for teachers, and all districts were encouraged to consider incorporating the training.

Perspectives On Critical Race Theory

The commissioner of the Kentucky Department of Education testified that he was not an expert or legal authority on critical race theory but explained that CRT is a decades-old legal and academic theory providing a framework for the study of potential causes and effects for racism in society and how they might be mitigated. It is typically a graduate-level academic concept. Discussion of some topics related to CRT might appear in high school elective courses considering historical, political, and sociological aspects of racism, but it would not be developmentally appropriate in elementary or middle school classrooms. In Kentucky, curricular decisions are left to the local school-based decision-making councils. KDE was not aware of any schools or teachers specifically teaching CRT in Kentucky's public schools, and it does not appear in any of the state academic standards.

KDE provides schools with a toolkit that includes an equity dashboard to analyze differences in outcomes for different demographics and an equity playbook with five strategies that schools can adopt to improve equity. KDE viewed prefiled bills prohibiting CRT as educator gags and student censorship bills that seek to define what can and cannot be taught or discussed, either formally or informally, in Kentucky schools. These censorship bills circumvent the decisions of school-based councils and replace local decision making with a mandate from the state legislature. As an alternative path to action on this issue, the commissioner recommended encouraging schools to set curriculum that fosters student dialogue and the critique of concepts such as CRT and other controversies.

The superintendent of Jefferson County Public Schools (JCPS) discussed the focus on CRT. He testified that separating CRT from racial equity is critical, and improving racial equity in JCPS is a real focus of the district at this time. To address this, the district has focused on student achievement and improving outcomes for all students. These efforts can reduce achievement gaps as well as improve career opportunities for students of color.

A representative of the Kentucky Association of School Councils spoke on development of curriculum. Once a school council sets curriculum, it is the school principal who ensures that the policy is implemented. The framework of all school curriculum in the state is the Kentucky Academic Standards (KAS). The KAS can be found on the KDE website, along with the essential questions that teachers and parents use in school council meetings to develop learning targets. Local school boards are responsible for setting how the standards are assessed throughout the school year, and principals report progress toward mastery to the local school boards. All of this process is intended to ensure that students can answer the essential questions that will form the end-of-year assessments used to determine student mastery of academic standards.

The sponsors of prefiled legislation—2022 BR 69, an act relating to prohibited instruction and declaring an emergency—spoke in favor of the bill. Representative Lockett said this was vital legislation to ban teaching and promotion of CRT in public K-12 and postsecondary education institutions. Representative Decker said CRT holds that the only remedy to racial discrimination of the past is anti-racist discrimination in the present.

A schoolteacher said it is detrimental to focus on equity versus equality. CRT-adjacent dogma, such as culturally responsive teaching, suggests that students of color should not be punished for misbehavior or disruptive behavior in the classroom because of racism. Since teachers are trained to use evidence-based approaches, he asked where the evidence was to show anyone was made less racist from anti-racism training.

The chairman of the Center for Opportunity Now, America First Policy Institute, said CRT is being taught in many schools, is racist at its core, and indoctrinates students.

Curriculum: Public Engagement, Authority, And Decision Making

An American Enterprise Institute resident fellow said the achievement gap for Black and Hispanic students has remained the same for nearly 2 decades and the obsession in education with closing gaps has not substantially improved overall achievement levels. There is not just one cause for low proficiency rates for Black and Hispanic students. Focus on topics such as CRT has become a distraction from focus on the genuine literacy crisis faced by all students. Instead of race-based approaches, he introduced a “Distance to 100” approach that emphasizes the gap between 100 percent proficiency and current performance for all students. Focus on literacy will prepare all students to aim high and will set ambitious goals for the country.

Parent representatives from JCPS presented their perspectives on student assignments and public input on curriculum. They reported significant classroom discussion spent on topics that did not appear to meet standards, including social justice topics that do not prepare students for their future. They also expressed concern about not knowing who approved classroom topics and not having easy access to information about curriculum. Parents should be notified before assignments are given and should have complete control over discussions regarding certain current events. Lack of communication from the district may cause parents to move away from the schools.

The acting LRC deputy director, Office of Education Accountability, discussed the statutory authority granted to different parties regarding curriculum decision making. The 1990 Kentucky Education Reform Act (KERA) was a significant overhaul to education in the state, and curriculum decision-making was designated to the local level. The KAS contain the minimum requirements of what students should know at the end of each grade level. There are approximately 800 SBDMs, each of which consists of two parents elected by parents in the school, three teachers elected by the teachers, and the principal or another administrator who sits as chair of the council. Beginning in the 2017–2018 school year, KDE is required to implement the process for review of standards and perform the review every 6 years thereafter. This process ensures that the assessments align with the KAS.

Legislation On School-Based Decision-Making Councils

Legislation to restructure school-based decision-making councils has passed the Senate in three sessions, but there is extra urgency this year to see legislation through both chambers. Senator Schickel proposed legislation that would address the need for more local accountability and correct problems with SBDMs. Proposed legislation would give superintendents the hiring

authority for principals after consulting with the school council and would give superintendents authority for curriculum planning and alignment. Curriculum should be more aligned across schools and districts as well as with the state standards. This would require more collaboration between all stakeholders, including parents, teachers, students, and staff. The highest-performing school districts and schools use a collaborative approach between SBDMs and school boards, and those districts should be evaluated to create a standard across the state. There should also be more collaboration with local business communities, which are not represented on SBDMs.

Issues To Consider When Revising KEES

The Kentucky Educational Excellence Scholarship program is a statewide program established in 1998 with three main policy goals: to incentivize students to work harder in high school, to encourage students to stay in Kentucky for postsecondary education, and to incentivize students to work hard in college. The most recent legislative changes to KEES expanded the program to allow students in registered apprenticeships and qualified workforce training programs to use KEES funds. The fiscal impact of both of these changes is just starting to be realized.

KEES is funded like Social Security, based on historical trends and forecasting. Any increase in student participation or institution eligibility also increases the costs and pulls funds from the College Access Program and the Kentucky Tuition Grant, which are both need based, or from the Dual Credit Scholarship, the Work Ready Scholarship, or the Teacher Scholarship.

Name, Image, And Likeness Legislation

Until a federal standard is established for name, image, and likeness compensation for college athletes, Kentucky universities have been operating under an executive order. Universities have proposed legislative language that would include some basic definitions; give the right to compensation for use of students' name, image, and likeness; place reasonable restrictions on NIL contracts; protect eligibility of student athletes; and provide universities with immunity from lawsuits. The universities suggested a nondiscrimination provision and a mandate for some level of financial literacy among the students prior to allowing them to sign NIL contracts. Immunity was requested as the universities want to be insulated from breach of contract regarding grants and scholarships, should conflicts arise.

Implementation Of 2020 House Bill 419

Currently, 50.5 percent of graduating high school seniors go to college, which is not sufficient to support the economy and fill the jobs market. The Council on Postsecondary Education (CPE) and the General Assembly recognize the need to build a better way for students to get into and out of the postsecondary education system. The Student Rights Bill (HB 419 of the 2020 Regular Session) focused on that with an emphasis on transparency and led to the creation of an interactive web tool demonstrated during a meeting. The web tool was designed to answer questions for students in a comprehensive manner and to enhance other advising tools such as the KY STATS Career Explorer and KnowHow2GoKY.

The report can be accessed at kystats.ky.gov. The tool tells students which institutions provide a preparation program, as well as the cost of attendance, program duration, and graduation rate. Average debt is presented to give students a more informed understanding of what level of debt they will be taking on to pursue that degree, compared to the average salary expected upon employment. Members were encouraged to familiarize themselves with the tool and to be prepared to promote it to schools, families, and others in their communities.

Kentucky Science Center

The Kentucky Science Center has grown to be the largest hands-on science center in the state. In 2002, the General Assembly named it the state's science center, and the name was changed in 2012 to honor its statewide focus. During 2020, the science center created Science Youth Summits for high school students to expand and enrich their at-home learning with content created by science industry professionals. The science center continues to leverage partnerships with other organizations to extend programming, such as its work with the Kentucky Department of Libraries and Archives to bring "Science and Play To-Go" programs to local libraries.

Leadership Institute For School Principals

The goal of the Leadership Institute for School Principals is to make principals the chief executive officers of their schools, with leadership skills similar to those used by successful business CEOs. The program consists of a 3-day training retreat at the Truist Leadership Institute, followed by several 1-day sessions in Kentucky. The program is sponsored by the Kentucky Chamber of Commerce Foundation, which has raised over \$3 million to allow principals to participate in this training opportunity. Applicants are considered based on years of service, percentage of students receiving free or reduced-price lunch, achievement gaps, and recommendations from superintendents. A graduate of the program spoke about the benefits of the program. The program helped him determine what kind of leader he was, identify his own strengths as well as those of his staff, and learn how to use those strengths to benefit the school as a whole, using skills not always highlighted in standard principal training.

Youth Entrepreneurship In Appalachia

The CEO of Boom Beans testified on an innovative approach to teaching entrepreneurship to students in Appalachia. He provides seed funding for start-ups led by high school students and teaches about start-up creation and management through involvement with his brand, Boom Beans, a coffee start-up launched by a high school student. By helping to run Boom Beans, students learn how to run an established brand, and through his courses on entrepreneurship, students brainstorm ideas for their own start-up companies. In collaboration with Awesome Inc., the CEO has also launched a proprietary social platform to provide students with networking opportunities and provide investors with a way to view start-ups to contribute seed money. Awesome Inc. brings technology assistance to the start-ups in addition to offering courses and camps to students and adults as a way to increase the number of individuals with expertise in coding and software development needed in today's technology-driven markets. The CEO asked members to consider providing state funding for the project, with a projected need of \$400,000 for educator training, coding training, and an entrepreneur showcase.

Save The Children

Representatives of the Save the Children program spoke about its history of education intervention in Eastern Kentucky. For every dollar contributed by the state to the efforts of Save the Children, the program matches with \$14 from fundraising and private donations. The program's focus is early childhood literacy and providing nutritional assistance to students in the program. Students are selected for the program based on their performance below grade level on assessments and their inability to qualify for other intervention programs. Data has shown the program to have a profoundly positive impact on students, with those participating during the pandemic seeing an average of 2 months of growth in reading as opposed to learning loss. Employees are district employees, trained by Save the Children, and trainings are open to all teachers in the district. This program has bipartisan support from governors and the legislature, united in the effort to get kids up to grade level and create a foundation for future success.

**Report Of The 2021
Interim Joint Committee On Health, Welfare, And Family Services**

**Sen. Ralph Alvarado, Co-Chair
Rep. Kimberly Poore Moser, Co-Chair**

Sen. Julie Raque Adams
Sen. Karen Berg
Sen. Danny Carroll
Sen. David P. Givens
Sen. Denise Harper Angel
Sen. Jason Howell
Sen. Alice Forgy Kerr
Sen. Stephen Meredith
Sen. Michael J. Nemes
Sen. Max Wise
Rep. Danny Bentley
Rep. Adam Bowling
Rep. Josh Bray
Rep. Tom Burch
Rep. Ryan Dotson

Rep. Daniel Elliott
Rep. Ken Fleming
Rep. Deanna Frazier Gordon
Rep. Mary Lou Marzian
Rep. Melinda Gibbons Prunty
Rep. Felicia Rabourn
Rep. Josie Raymond
Rep. Steve Riley
Rep. Scott Sharp
Rep. Steve Sheldon
Rep. Nancy Tate
Rep. Russell Webber
Rep. Susan Westrom
Rep. Lisa Willner

LRC Staff: DeeAnn Wenk, Ben Payne, Chris Joffrion, Samir Nasir, Becky Lancaster, and
Hillary McGoodwin

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Health, Welfare, And Family Services

Jurisdiction: Matters pertaining to human development, health, and welfare; fire prevention and protection; delivery of health services; support of dependents; garbage and refuse disposal; 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 eight times during the 2021 Interim.

Child And Maternal Health

Childhood Diseases

An overview was provided about pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections (PANDAS) syndrome, pediatric acute-onset neuropsychiatric syndrome (PANS), and the request for a PANDAS and PANS task force. A physician from the Department of Neurology, Columbia University Irving Medical Center, presented information on genetic studies of PANDAS and PANS in humans and animals. Parents of children with PANDAS testified about their experiences obtaining diagnoses, treatments, and health insurance coverage.

The parent of a child with cytomegalovirus (CMV) testified that CMV is not included in state-mandated universal screenings for newborns, but some other states are doing targeted screening of newborns based on potential risk for the disease. A mother can be tested for CMV infection through a cervical swab, and transmission to the child can be limited. CMV may cause hearing loss, vision loss, and developmental delays.

Infant And Maternal Mortality

A representative from the American College of Obstetricians and Gynecologists presented information on the main causes and yearly rates of maternal and infant mortality in the United States, the reasoning for formal mortality reviews, a summary regarding the Kentucky Mortality Review Committee, and recommendations to improve maternal and perinatal infant outcomes. A representative from Norton Healthcare presented information on the impact of the opioid epidemic and substance use disorders on maternal and perinatal infant death rates.

The deputy commissioner, Department for Public Health (DPH), Cabinet for Health and Family Services (CHFS), presented preliminary data from the Maternal Mortality Review Committee regarding 2017 maternal deaths and the contributing factors. The Kentucky Perinatal Quality Collaborative (KyPQC) and the Alliance for Innovation on Maternal Health (AIM) aim to improve maternal and perinatal infant health. The KyPQC is developing a maternal mortality review subcommittee to analyze the efficacy of preventive programs. AIM is beginning pilot projects using evidence-based interventions that hospitals can use.

COVID-19 Pandemic

Child Care Centers

Testimony was heard about child care center challenges and actions during the COVID-19 pandemic. A child care center owner discussed her program's success in implementing health and safety practices to fight the virus that causes COVID-19. She testified that the costs of implementing all precautions and rising child care program expenses could prove to be a financial hardship for many families.

The director of the Department for Community Based Services (DCBS), CHFS, explained that the majority of funds awarded to DCBS by the American Rescue Plan Act were specifically dedicated to child care for sustainability payments supporting child care programs; increasing provider payments; improving payment policies; increasing wages for early childhood educators; and building the supply of child care for underserved populations.

Health Care Facilities

The president of the Kentucky Hospital Association testified about issues hospitals are facing from the increase in COVID-19 patient admissions, including the nursing shortage, the growing need for access to ambulance services, and the impact of COVID-19 on behavioral health and substance use disorder issues.

A pulmonologist and critical care medicine specialist discussed the increase in the severity of COVID-19 cases driven by unvaccinated individuals. He discussed the difficulty of transferring patients for tertiary-level care services.

The president of the Kentucky Association of Health Care Facilities and Kentucky Center for Assisted Living testified about the number of skilled nursing facility residents testing positive for COVID-19 and the long-term care workforce shortage crisis. The president and chief executive officer of LeadingAge Kentucky discussed potential policies and uses for American Rescue Plan Act funds to ensure continuity of care.

Treatments

The senior vice president of laboratory science, Aditxt, discussed technology to monitor immune status in order to identify individuals who may be vulnerable to COVID-19. The chief

administrative officer, Norton Medical Group, and the physician-in-chief, Norton Cancer Institute, testified regarding COVID-19 vaccinations, monoclonal antibody treatments, and identifying patients at risk.

Family And Child Services

Federal Funding

The director of the Children and Families Program, National Conference of State Legislatures, discussed the funding and structural changes that the Family First Prevention Services Act (FFPSA) will provide to prevent child maltreatment; federal funds for foster homes and Qualified Residential Treatment Programs; and state activity related to the FFPSA.

The executive adviser, DCBS, CHFS, reviewed how implementation of the FFPSA affected all areas of service such as prevention, family preservation, kinship care, foster care, congregate care, and youth aging out of the foster care system.

A representative of DCBS discussed several programs that were funded by the American Rescue Plan Act.

Child Support

The commissioner of the Department for Income Support, CHFS, testified that 2021 Regular Session House Bill 404 updated child support guidelines. The division director of the Department for Income Support, CHFS, discussed the changes to 921 KAR 001:400 as a result of the amendments to KRS 403.212.

Behavioral Health Treatment

The chief executive officer of Home of the Innocents testified about the private grant it received to implement the multisystemic therapy (MST) pilot program. The chief strategy officer discussed how the MST model works to empower families and youth by working intensively to teach skills and change behaviors. She shared lessons learned from the first year of implementation of the program and described plans to expand services in new areas such as northern Kentucky.

Representatives of the Suzanne Vitale Clinical Education Complex, Western Kentucky University (WKU), discussed its support of individuals and families with autism. LifeWorks at WKU is the state's only living and learning transition program for young adults with autism.

Health Care Providers And Facilities

Provider Shortages

The deputy executive vice president and director of advocacy of the Kentucky Medical Association (KMA) testified about the long-term, chronic problem of physician shortages and the barriers to recruiting new physicians. He reviewed ideas to recruit new physicians and other health care staff.

The president of the board of directors of the Kentucky Nurses Association testified about the ongoing nursing workforce shortage. She gave recommendations to the committee from nurse leaders to train, retain, and recruit nurses.

Representatives of the Kentucky Community and Technical College System (KCTCS) reviewed health care training funds and the list of associate degree, diploma, and certificate programs available in the health care field. They discussed KCTCS collaborations with other education partners that work to meet health care pipeline needs, and they identified workforce barriers for students and faculty.

The chief policy officer of the Kentucky Primary Care Association reviewed the services its members offer. Representatives of the HealthFirst Bluegrass Community Health Center reviewed the common issues that community health workers (CHWs) deal with and the supports that CHWs provide to community members. The director of strategic planning and development of the Big Sandy Community Health Center discussed how CHWs assist clients with coordinating care, home visits, clinic visits, telehealth visits, phone calls, health education, navigation services, and links to community resources to help alleviate barriers to better health outcomes.

Assisted Living And Dementia Programs

Representatives of providers of assisted living services discussed legislation to improve the delivery of basic health services, merge private pay personal care with private pay assisted living, and allow resident care in apartments to meet the resident's needs without necessitating a move to a licensed area. It was clarified that an assisted living community with memory units would have a different license with standards specific to dementia care. Assisted living would remain a private pay, consumer-driven, and noninstitutionalized model.

The public policy director of the Greater Kentucky Chapter of the Alzheimer's Association discussed concerns about proposed legislation, particularly relating to dementia training requirements.

Scope Of Practice Physicians

Representatives of the KMA and the American Medical Association discussed the prescriptive authority of physicians and other health care providers.

Tort Reform

Representatives of the Partnership for Commonsense Justice discussed the importance of legal liability changes necessary to improve the delivery of care and help retain and recruit health care providers.

All Payers Claims Database

Representatives of the Foundation for a Healthy Kentucky and the Kentucky Primary Care Association discussed the possibility of a state database that includes medical claims, pharmacy claims, dental claims, and eligibility and provider files collected from private and public payers.

Public Health

Chronic Diseases

The deputy commissioner for clinical services, DPH, CHFS, discussed chronic disease status per America's health rankings in 2020 and the use of community health workers to improve health outcomes.

The newly appointed chair of the Rare Disease Advisory Council provided a brief overview of the council and its membership.

Public Health Transformation

The commissioner of the Department of Public Health, CHFS, testified that the legislature collaborated with local health departments, constituents, and DPH to bring about needed reforms in public health.

Food Security

The chief of staff to the chief executive officer and president, AppHarvest, discussed AppHarvest's mission to build a resilient food system for America in Appalachia and reasons why the need for such a system is growing. The director of outreach discussed the rural and urban connection regarding economic and food insecurities and health outcomes.

2022 Proposed Legislation

The committee heard testimony on several proposed bills for the 2022 Regular Session.

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, the committee reviewed 111 ordinary and 21 emergency administrative regulations upon referral from the Legislative Research Commission under the review process established in KRS Chapter 13A.

Referred Executive Orders

There were no executive orders referred to the committee for a legislative hearing.

**Report Of The 2021
Interim Joint Committee On Judiciary**

**Sen. Whitney Westerfield, Co-Chair
Rep. C. Ed Massey, Co-Chair**

Sen. Karen Berg
Sen. Danny Carroll
Sen. Alice Forgy Kerr
Sen. Gerald A. Neal
Sen. John Schickel
Sen. Wil Schroder
Sen. Robert Stivers
Sen. Johnnie Turner
Sen. Stephen West
Sen. Phillip Wheeler
Rep. Kim Banta
Rep. John Blanton
Rep. Kevin D. Bratcher
Rep. McKenzie Cantrell

Rep. Jennifer Decker
Rep. Daniel Elliott
Rep. Joseph M. Fischer
Rep. Samara Heavrin
Rep. Nima Kulkarni
Rep. Derek Lewis
Rep. Savannah Maddox
Rep. Chad McCoy
Rep. Patti Minter
Rep. Kimberly Poore Moser
Rep. Jason Nemes
Rep. Jason Petrie
Rep. Attica Scott
Rep. Pamela Stevenson

LRC Staff: Roberta Kiser, Stacy Byrns Taulbee, Randall Roof, Lexington Souers, Michelle Spears, Matt Trebelhorn, and Chelsea Fallis

**Presented to the
Legislative Research Commission
and the
2022 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; support of dependents; statutory actions and limitations; eminent domain; arbitration; declaratory judgments; witnesses; evidence; legal notices; construction of statutes; civil procedure; the Supreme Court, the Court of Appeals, circuit courts, and district courts; family courts; jurisdiction, rules, terms, judges, commissioners, selections, districts, qualifications, compensation, and retirement; clerks of courts; juries; attorneys; receivers; court reporters; habeas corpus; crimes and punishments; criminal procedure; probation and parole; correctional facilities; civil rights; juvenile matters.

Committee Activity

The Interim Joint Committee on Judiciary held six meetings during the 2021 Interim.

Judiciary Branch Funding

The Chief Justice provided an overview of the budget of the Court of Justice, including funding of the Administrative Office of the Courts and payment of the debt service on judicial centers or courthouses. He discussed court proceedings during the COVID-19 pandemic, noting that courts did remain open, primarily through the use of remote video conferencing, and a portion of the 2022 budget will be allocated to provide technology upgrades for virtual hearing equipment to continue appropriate remote proceedings. Funding provided by the General Assembly for a statewide electronic filing system played a critical role as well. The Chief Justice also reported the number of court filings and an expansion of the Felony Mediation Program.

Virtual Judicial Proceedings

Several judges in the Court of Justice discussed the benefits and challenges presented by virtual judicial proceedings. Many judges and attorneys desire the continued use of virtual proceedings for certain cases. The director of the Administrative Office of the Courts discussed the funding for continued virtual proceedings. The Chief Justice discussed creating a Supreme Court task force with representatives of all stakeholders to address issues related to remote proceedings.

Education Good Time Sentencing Program

The secretary and general counsel of the Justice and Public Safety Cabinet presented a status update on the 2012 class action lawsuit regarding the tracking and reporting of good time credits. The litigation had not yet been resolved. An audit and negotiations resulted in the awarding of 2,400 additional credits. Implementing corrections to the system could result in an estimated savings of \$28 million to \$70 million for the commonwealth. A Compliance Division is being created to assure proper credit is applied.

Cost Of Jails

The project director of the Vera Institute of Justice stated that the rise in incarcerations has increased the cost of jails. A research associate with the institute noted that this increase rose most significantly in suburban counties and rural communities. Most counties house inmates for the Department of Corrections, and many counties house inmates for other counties. Some counties also house federal inmates. Several suggestions for reducing the inmate population were presented.

Inmate Classification And Transfer

The director of the Division of Population Management in the Department of Corrections provided an overview of inmate classification, beginning at sentencing. She reported delays in transfers due to COVID-19 protocols and steps taken by the department to address this issue. The commissioner of the department noted that the complexity of classifying inmates does not allow for the current statutory deadline for transfer to be met.

Juvenile Detention Centers

The secretary of the Justice and Public Safety Cabinet and the commissioner of the Department of Juvenile Justice provided a report on the adolescents entrusted to the department, including a review of training of personnel and personnel disciplinary action.

Group Violence Intervention

The Pegasus Institute provided information regarding the increase in homicides in Jefferson County. Family members impacted by violence provided their personal stories. The executive director of Christopher 2X Game Changers discussed children who deal with secondary trauma from violence in their neighborhoods. Group Violence Intervention has been shown to reduce homicides and gun violence in cities through fostering stronger relationships between law enforcement and the people they serve.

Law Enforcement Reciprocity

Representatives from the Kentucky Law Enforcement Council and the Pulaski County Sheriff's Office discussed the certification process of law enforcement officers, particularly those who come from out-of-state departments. Recognizing the importance of securing high-quality officers, law enforcement organizations agreed that changes were needed to current regulations regarding reciprocity requirements. These changes have been incorporated, pending final completion of the regulation process.

CROWN Act

The Real Young Prodigys from Louisville provided a video they had created in support of the Creating a Respectful and Open World for Natural Hair (CROWN) Act and discussed the need

for statutory protection of hair texture and hair styles in the workplace, K-12 public schools, and charter schools.

Louisville Metro Government Civilian Review And Accountability Board

The chair and the newly appointed inspector general of the Louisville Metro Government Civilian Review And Accountability Board presented an overview of the formation of the board and its diverse membership. The first meeting was held on April 15, 2021. The required training of the individual members was discussed, as well as the function and advisory role of the board.

Supporting Heroes

The executive director of Supporting Heroes provided information on the history and work of the organization, specifically the actions and benefits provided to families of individuals killed in the line of duty. He reported that the mission of the organization is to care for the loved ones left behind by offering emergency funds, monthly support based on need, and ongoing recognition of birthdays and holidays for minor surviving children. Honor guards are also often provided.

Legislative Discussions

Several legislators and representatives of interested groups discussed possible statutory changes. Topics included

- enhanced penalties for fentanyl offenses,
- anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation,
- anti-swatting legislation (transmission of false or inaccurate caller information with the intent to trigger an emergency response),
- animal cruelty, addressing the cost of care,
- legalization of medical cannabis,
- evidence collection and use relating to proceedings on driving under the influence, and
- Casey's Law, regarding the standard of proof.

**Report Of The 2021
Interim Joint Committee On Licensing,
Occupations, And Administrative Regulations**

**Sen. John Schickel, Co-Chair
Rep. Adam Koenig, Co-Chair**

Sen. Julie Raque Adams
Sen. Tom Buford
Sen. Donald Douglas
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Jason Howell
Sen. Christian McDaniel
Sen. Gerald Neal
Sen. Michael J. Nemes
Sen. Damon Thayer
Sen. Reginald Thomas
Rep. Kim Banta
Rep. Kevin D. Bratcher
Rep. Tom Burch
Rep. Patrick Flannery

Rep. Al Gentry
Rep. Thomas Huff
Rep. Matthew Koch
Rep. C. Ed Massey
Rep. Chad McCoy
Rep. Reginald Meeks
Rep. Michael Meredith
Rep. Jerry T. Miller
Rep. Kimberly Poore Moser
Rep. Ruth Ann Palumbo
Rep. Phillip Pratt
Rep. Sal Santoro
Rep. Killian Timoney
Rep. Susan Westrom

LRC Staff: Tom Hewlett, Bryce Amburgey, Melissa McQueen, Jasmine Williams, and Lisa Moore

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Licensing, Occupations, And Administrative Regulations

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

Building And Construction Industry

Overview Of Residential Construction In Kentucky

The chief executive officer of the Home Builders Association of Kentucky provided an overview on the status of residential construction in Kentucky, reporting that when 100 new homes are built,

- \$28.7 million in income is generated, including \$3.6 million in taxes and fees for local and state governments, and
- 394 local jobs are created.

For every \$1 million spent on residential remodeling,

- an estimated \$841,000 is generated in income,
- local and state governments receive \$71,000 in taxes and fees, and
- 12 jobs are created.

Total new home building permits in Kentucky in 2021 show a 25 percent increase, an increase of 1,300 homes over the same time the previous year. The lumber prices that spiked during the COVID-19 pandemic are coming down. Workforce and labor shortages continue to be a problem. Privately funded schools are assisting in addressing the workforce shortages by offering certifications in plumbing, electrical, carpentry, welding, and heating/ventilation/air conditioning (HVAC). There is interest in assembling an industry group of real estate agents, bankers, builders, and city officials that will look into the issue of affordable housing to find ideas to appeal to investors, while driving down overall costs to building a new home.

Radon Safety

Representative Bratcher said 22,000 cases of lung cancer in the United States each year are attributable to radon. Legislation he sponsored in the last session, which he will reintroduce in the upcoming session, raises awareness of the issue, would repeal the Radon Program Advisory Committee, and would create a Board of Radon Safety. The board would include seven members, with four radon professionals and one public health professional. A spokesperson

for the Kentucky Association of Radon Professionals said the number of licensees and the amount of certification fees will generate enough funds to make the program self-sufficient. A representative of MML&K Government Solutions said the program is being moved from the Department of Public Health to the Public Protection Cabinet. Language that would grant the board subpoena power is similar to language for 20 other boards.

Department Of Housing, Buildings, And Construction: Update

The commissioner of the Department of Housing, Buildings, and Construction is proposing to reinstate industry-specific advisory committees that provide a targeted perspective to advise the department on industry-specific issues regulatory matters. The department would propose a reorganization to establish the following: the Plumbing Advisory Committee; the Electrical Advisory Committee; the Heating, Ventilation, and Air Conditioning Advisory Committee; the Elevator Advisory Committee; the Manufactured Housing Advisory Committee; and the Uniform State Building Code Advisory Committee. The department will introduce a reorganization bill in the 2022 Session.

Each committee would meet quarterly and would review and comment on administrative regulations, except for emergency regulations. With the creation of the new board structure, there will be an additional cost of \$6,000 to \$7,000, but the cost will be sustained through the regular budget.

Proposed Legislation On Welding Safety

Representative McCool discussed proposed legislation on welding safety, which would level the playing field for contractors. It applies only to buildings and bridges when recommended by the engineers, and it does not apply to all welding applications. This bill would keep welding standards systematic across the board and would increase safety.

The president of the Ironworkers Southern Ohio and Vicinity District Council testified about welding inspectors. This is a safety issue, not a union issue. He discussed the collapse of a Paducah school due to poor welding, and he noted that taxpayer money would not be wasted with this legislation in place, as it ensures that projects are completed responsibly and efficiently.

The vice president of the Stupp Bridge Company said that the bill's requirements already exist in code and in engineering documents, so the bill will not reduce safety accidents. He said the bill is well-intentioned but redundant and unnecessary. The executive vice president of the Building Industry Association of Northern Kentucky said his organization opposes the bill. He said the bill does not address welding safety and will not prevent the false certifications of welders.

School Facilities

Representative Branscum said 2021 RS HB 279, relating to school facilities, passed the House of Representatives 97-0 during the last session but then ran out of time to get through the Senate. The director of government relations, Kentucky Department of Education (KDE), said most of the complaints from local school districts involve school facilities. KDE is looking at making

internal improvements to streamline the school facilities process and remove bureaucratic obstacles.

Licensing

Fair Chance Licensing

Senator Westerfield said second-chance licensing improves access to good-paying jobs for Kentuckians with criminal records. A representative of the Council of State Governments Justice Center said a key practice is to provide determinations to prospective applicants before they apply, so they know whether their record is disqualifying before they invest in the training and education for a license. He said Kentucky should also consider barring nonconvicting dispositions and closed records—including arrests not followed by conviction; juvenile adjudications; and pardoned, sealed, or expunged records. Another option is limiting consideration of older convictions after a period of conviction-free years, and limiting consideration of less serious offenses, such as nonviolent misdemeanors. The state may charge the applicant a fee for the preapplication process, which is common in other states.

Military Spouse Licensure Portability

Representatives Kirk-McCormick, Hart, and Johnson will sponsor upcoming licensing compact legislation for different professions. A Department of Defense spokesperson said many military spouse professionals must relicense each time they move to a new state with their active-duty spouses. This problem can be alleviated by enacting occupational licensure interstate compacts. An increasing number of occupations are establishing interstate compacts to support

- common understanding of standards;
- states sharing authority and responsibility over occupational-based practices;
- “privilege to practice” policies that allow members to work in other compact states;
- allowing endorsements for a license transfer, based primarily upon changing legal residence; and
- telepractice opportunities using technology to work across state boundaries.

Audiologists And Specialists In Hearing Instruments

Representative Thomas testified in support of audiologists. Hearing loss affects approximately 916,000 Kentuckians—20.5 percent of the population. However, regulations impose significant barriers for audiologists seeking to practice in Kentucky. Kentucky is one of only six states that require licensed audiologists to hold separate licenses for hearing loss treatment and for rehabilitative services. The Kentucky Academy of Audiologists recognizes the importance of licensure for professionals, but requiring audiologists to hold two licenses for the same services offers no additional protection to the consumer.

The past chair of the Licensing Board for Specialists in Hearing Instruments said that KRS Chapter 334 was created in 1972 to govern the sale and fitting of hearing aids. The need for more hearing aid specialists is significant, considering the number of baby boomers who are

developing the need for their services. Audiologists are required to take the dispensing exam and abide by the consumer protection provisions of KRS Chapter 334; legislation from the past two sessions would delete those two requirements and insert the consumer protection provisions into the audiology statute, KRS Chapter 334A.

Emergency Medical Personnel

Senator Berg said that under SB 195, a bill she sponsored in the 2021 Regular Session, inmates who were trained as emergency medical technicians (EMTs) and received a limited certification while incarcerated would be allowed to apply to the Board of Emergency Medical Services to retain their certification upon release from prison. The deputy director of the board said that, although a bill to put incarcerated felons to work upon release is noble and more bills should be dedicated to work-related programs for incarcerated individuals, emergency medical services is not an appropriate technical program for former felons. The incarcerated EMTs are certified with a Department of Corrections EMT certification that is authorized under KRS 311A.200. EMTs and paramedics take a national standardized examination called the National Register Examination. Felons are not eligible for testing through the national registry. Senator Berg said this bill would allow specifically designated parolees the option to apply for licensure, but they would have to be selected. It would not guarantee the right to keep a temporary license once released.

CPA Licensure

Representative Banta proposed 21 RS HB 224, relating to licensure of certified public accountants (CPAs), which passed 85-1 in the House of Representatives but, due to the short session, did not make it through the Senate. This bill

- would allow the State Board of Accountancy to grant scholarships using its own money at no cost to the state,
- would grant immunity from lawsuits for board members as long as they are acting in good faith in performance of normal duties, and
- would eliminate the requirement that out-of-state CPAs seeking a Kentucky license via reciprocity must have obtained 1 year of accounting or test experience within 5 years of passing the CPA exam in their home state.

The current system puts an unintended burden on CPAs attempting to locate in Kentucky, where there is a shortage.

Fees For Dietitians And Nutritionists

Representative Blanton said inflation has overcome the fees for dietitians and nutritionists. Representatives of the Board of Licensing and Certification for Dietitians and Nutritionists explained that the board is just breaking even each year, not including travel expenditures. A fee increase from \$50 to \$75 would solve the problem. The fees have not been increased in 33 years. Co-Chair Koenig recommended putting fee increases in administrative regulations instead of statute.

Unregulated Medical Spas

The administrator of the Board of Cosmetology and the general counsel of the Board of Medical Licensure testified that Kentucky has no oversight on dangerous procedures in the ever-changing world of cosmetic medicine. There is no regulatory framework for training in laser work, Botox, fillers, and other injectables. This situation is extremely dangerous for safety and infection control. To provide protection and oversight for the public, medical training is needed for personnel of unregulated medical spas.

Liquid Cremation

Representative Wheatley said alkaline hydrolysis is a sophisticated cremation technique that has become more available. Financial and environmental costs of flame cremation and traditional burial have prompted the search for other options. Alkaline hydrolysis is used in a number of other states, but Kentucky has no statutes that define the practice. States that have approved alkaline hydrolysis have not had issues with licensing or a financial burden. There are no emissions from alkaline hydrolysis into the environment. Family options for services and memorialization are unchanged. The average costs and related funeral home charges for processing a body via alkaline hydrolysis are very similar to those for flame cremation.

HVAC License Exemption For Duct Cleaning

Representative Dixon discussed his bill, 22 RS BR 492, relating to heating, ventilation, and air conditioning. Currently, in order to clean air ducts, a person who owns a cleaning business must have an HVAC license. The owner of Monster Cleaning Inc. in Henderson testified that the demand for air duct cleaning is vast and that surrounding states such as Indiana do not require HVAC licenses for simple cleaning of air ducts. The HVAC requirement is hindering his ability to hire people and run his cleaning business effectively. Reducing unneeded requirements for workers will also lower the cost of the service.

Massage Therapy Licensing

Representative Koch said the Federal Bureau of Investigations (FBI) has requested a correction to the language requesting a criminal background check proposed by the American Massage Therapy Association. The executive director of the Office of the Attorney General said Public Law 92-544 authorizes the FBI to exchange criminal history record information (CHRI) with officials of state and local government agencies for licensing and employment purposes. This exchange can be authorized only by a state statute that has been approved by the US attorney general. The FBI has determined the following criteria for approval: The requirement must exist as a result of a legislation, it must require the fingerprinting of applicants who are to be subjected to a national criminal history background check, it must expressly authorize the use of FBI records for the screening of applicants, it must identify the specific categories of licensees and employees falling within its purview, it must not be against public policy, and it may not authorize receipt of the CHRI by a private entity.

Electrical Inspections Of Transportation Cabinet Projects

Representative Santoro discussed a proposal for electrical contractors to have the option of using local electrical inspectors or Transportation Cabinet inspectors to inspect electrical work on transportation projects not related to buildings for human occupancy, performed beyond the service disconnect, by or on behalf of the Transportation Cabinet by prequalified electrical contractors within the public right-of-way. He said this change would save time and money on large transportation projects.

Licensure Of Psychologists

Representatives Moser and Willner introduced a proposal to address the shortage of substance abuse health professionals. The legislation will make it easier for students who have advanced course hours, but who do not necessarily have postbaccalaureate academic degrees, to move to the state to get certification, thus increasing the number of mental health professionals. The changes will be similar to those for training of psychologists in Tennessee.

Sterile Water

The president of the Kentucky Board of Durable Medical Equipment Suppliers asked for changes to allow licensees to purchase and use sterile water, which currently requires a prescription.

Gaming And Horse Industry Issues

Charitable Gaming

Representative Jenkins said charities and nonprofits have told her that the charitable gaming law is in need of updating. Eliminating the 40 percent rule would help, as most businesses do not turn a profit for at least 2 years. Allowing digital raffles online and picking the winners using a random number generator would also help. The emergency COVID-19 regulation needs to be made permanent. The following changes would be helpful:

- Allowing some charities to run raffles for other organizations for a donation from the money they make
- Allowing bigger and better gaming machines with displays, graphics, and sound
- Allowing pull-tab vending machines in bars, and allowing the bar staff to give the payouts
- Adjusting the gaming tax to money actually gamed, not money replayed

The commissioner of the Department for Charitable Gaming said all net receipts from charitable gaming must go toward the organization's charitable purpose. The rule does not mean that 40 percent of a charity's proceeds from charitable gaming must go toward a charitable purpose. Instead, a charity cannot spend more than 60 percent of the money it has left over after paying out the gaming winners on the expenses of operating gaming (such as supplies, rent, and utilities). Penalties for violations were explained, and benefits of the 40 percent requirement were discussed.

Reasons charities often fail to meet the 40 percent retention rule include paying too much for expenses, conducting gaming with variable profit margins such as bingo, high-payout games with low attendance, and low bingo paper sales. If not for the passage of 2021 RS HB 226, which gave charities a 1-year reprieve from the 40 percent rule, the number of charities that would have been placed on probation or suspended would have increased significantly.

The Lottery And “Gray Machines”

The president and chief executive officer of the Kentucky Lottery Corporation said more than \$4 billion in proceeds has provided over 2.43 million scholarships and grants since 1999. In 2019, over 138,660 Kentucky students received a grant or scholarship paid for by Kentucky Lottery proceeds, and 98 percent of student financial aid awarded by the commonwealth comes directly from the sale of Kentucky Lottery tickets. However, unregulated gaming machines—also called “skill” or “gray” machines—are harming lottery proceeds. Retailers can earn 40 percent of profits from gray machines, but they get only 6.25 percent of lottery profits. Lottery sales are down 3 percent in places where gray machines are located, and up 4 percent in places that do not have gray machines. The president of the Kentucky Sheriff’s Association said it is requesting clarity on the law because of the confusion about the machines’ legality. The outside counsel for the Lottery Corporation said he has sent a request for an opinion to the Kentucky attorney general and is waiting for a response.

The vice president of Lancaster Bingo said these unregulated gaming machines also hurt charitable gaming. The gray machines are not required to be audited or submit reporting.

A representative of Wildcat Games testified in support of the gray machines, saying they comply with the law and are games that require skill, which is why there have been no lawsuits to date. He asked the committee not to rush to judgment and create a law until the product is completely researched and explained. The president and chief executive officer of Pace-O-Matic said his company specializes in games of skill. Terminals are placed for free with operators across the state, and the machines provide vital supplemental income to small businesses.

Other Aspects Of The Horse Industry

The executive director of Horse Country Tours said her hope is to share the story of the horses, land, and the people with guests, ultimately developing fans through tourism experiences. Her organization was created in 2014 as a nonprofit. Seventy-five percent of its customers are from outside of Kentucky and their average stay in the commonwealth is 4 days, bringing tourism dollars to hotels, restaurants, and other businesses.

The horse industry has a \$6.5 billion impact on the economy, with a \$1.5 billion tourism impact. Keeping sales tax parity, retaining local control, and maintaining Historical Horse Racing rates are very important. Out-of-state investment in the horse industry has increased with tourism and tours. Over \$1 million was invested in the first 3 years of the tours, especially with partnership opportunities. Microshares are a concept growing in popularity, allowing regular customers to own small shares of racehorses.

Alcohol

Server Age Limits For Alcohol

Representative White said allowing adults 18 years of age and older to serve alcohol provides an opportunity for businesses to expand their number of employees. A restaurant owner from Representative White's district said West Virginia has incorporated the lower age limit and has had no problems. This does not allow people under 20 to bartend.

Private Selection Distilled Spirits

A representative of the Kentucky Distillers Association (KDA) said bourbon is an \$8.6 billion industry, providing 20,100 jobs for Kentucky. Alcohol tax revenue in Kentucky increased from \$125 million in 2010 to more than \$300 million in 2020, a 140 percent increase. Bourbon is more popular than ever and is fueling incredible growth to benefit all of Kentucky. However, with bourbon booming, barriers to entry decreasing, and craft distillers thriving, Kentucky is falling behind as the number of distilleries in other states increases. Other states have adapted quickly by changing laws, adding privileges, and reducing fees to attract the next generation of distillers, jobs, and investment. Kentucky must continually adapt to stay at the forefront; otherwise it would cost jobs, capital investment, tourism dollars, and tax revenue. The KDA strongly urges the elimination of the barrel tax, with the state keeping local community revenue whole. An alternative is to make the tax credit refundable or transferable.

Other needs include reducing distilling's overall tax burden to keep Kentucky competitive with other states, and allowing Kentucky to compete with other states by removing regulatory obstacles that restrict growth. The KDA would also like parity with beer and wine by allowing distillers to have off-site tasting rooms with full retail privileges; to sell bottles at fairs, festivals, and farmers markets; and to offer free samples up to 1.75 ounces. Beer and wine producers already have these privileges.

Finally, private-barrel selections are the future of the industry because every individual barrel, no matter the mash bill or location in a warehouse, is unique in flavor. Consumer demand is driving the popularity of private barrels, and these distillery programs are growing tremendously. The Alcoholic Beverage Control Board has reviewed the practice and indicated that statutory authority is needed to continue these events because they could be viewed as violating tied-house rules. The legislature must codify this practice in statute if the private barrel selection programs are to continue after April 2022.

22 RS BR 104 includes the private barrel and parity issues but leaves the tax issue out. This bill's objective is attracting new distilleries to Kentucky, as well as retaining current ones. There will be a tax and revenue bill that will need to be vetted with leadership and the Appropriations and Revenue Committee.

Malt Beverage Educational Fund

The Malt Beverage Educational Corporation (MBEC) was established with two purposes in mind: producing programs aimed at prevention and elimination of underage drinking, and providing education about the dangers associated with underage drinking. For every dollar MBEC raises privately, the state matches with an annual contribution from the tax collected on the sale of malt beverages. This private-public partnership has enabled many organizations to promote and produce programs aimed at preventing and eliminating underage drinking in Kentucky, including Project Prom and Project Graduation events throughout the state. Since MBEC's inception, it has donated nearly \$2 million to high schools to help fund Project Prom and Project Graduation programs.

The Kentucky Beer Wholesalers Association is asking the legislature to give the MBEC Board more flexibility in how to use funds. The new legislative proposal would allow some of the funds to be spent on scholarships for college and technical school students who have demonstrated an interest in working for a licensed distributor. These young people would be allowed to receive a stipend to further their education while getting an opportunity to expand their interest in “real time” and “real job” opportunities that have the potential of a career path.

**Report Of The 2021
Interim Joint Committee On Local Government**

**Sen. Robby Mills, Co-Chair
Rep. Michael Meredith, Co-Chair**

Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Michael J. Nemes
Sen. Wil Schroder
Sen. Adrienne Southworth
Sen. Brandon J. Storm
Sen. Damon Thayer
Sen. Phillip Wheeler
Rep. Danny Bentley
Rep. Josh Bray
Rep. George Brown Jr.
Rep. Bam Carney
Rep. Jonathan Dixon

Rep Jeffery Donohue
Rep. Ken Fleming
Rep. Deanna Frazier Gordon
Rep. Regina Huff
Rep. Mary Beth Imes
Rep. DJ Johnson
Rep. Adam Koenig
Rep. Matt Lockett
Rep. Mary Lou Marzian
Rep. Reginald Meeks
Rep. Jerry T. Miller
Rep. Brandon Reed
Rep. Rachel Roberts
Rep. Walker Thomas

LRC Staff: Mark Mitchell, Christopher Jacovitch, Joe Pinczewski-Lee, and Cheryl Walters

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Kentucky General Assembly**

Interim Joint Committee On Local Government

Jurisdiction: Matters pertaining to the officers, organization, government, and financing of county and city governments; city- and county-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 and special district 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; manufactured housing; 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; and special districts not assigned to another committee.

Committee Activity

The Interim Joint Committee on Local Government held seven meetings, including one joint meeting with the Interim Joint Committee on State Government, during the 2021 Interim.

Local Administration Of The American Rescue Plan Act Of 2021

The chief of the Buechel Fire Protection District expressed concern that fire protection districts were not directly eligible for Coronavirus Aid, Relief, and Economic Security Act assistance but did appear to be eligible for American Rescue Plan Act (ARPA) funding with legislative action.

The executive director and chief executive officer of the Kentucky League of Cities and the executive director of the Kentucky Association of Counties provided an overview of the communities that were to directly receive ARPA funding, and funding through the Department for Local Government, and how the counties would receive funding. They provided an overview of the eligible uses of the funds and outlined best practices to receive the most benefit from the funds.

The secretary of the Transportation Cabinet discussed ARPA's implications for the Drinking Water and Wastewater Grant Program, outlined several projects using those funds, and discussed the application procedures.

The director of the Office of State Budget Director discussed available money from ARPA relative to the broadband deployment fund to increase internet access.

Police Officer Recruiting And Retention

The chief of the Henderson Police Department, the executive director of the Kentucky Associations of Chiefs of Police, and the chief of the Covington Police Department discussed the difficulties of staffing local police departments. They suggested several solutions:

- Implementing differential shift pay
- Increasing promotions through additional rank specifications
- Accounting for work experience when hiring
- Rehiring retired officers
- Providing equipment and vehicles that are attractive to recruits
- Increasing public safety officer usage
- Increasing accessibility to training
- Providing fringe benefits that attract new recruits and retain present officers
- Changing the law relating to paying back training expenses when leaving the department under which training occurred to increase the pay-back period

Peace Officer Professional Standards Training

The commissioner of the Department of Criminal Justice Training outlined the training the department conducts for police officer recruits and discussed how the department adjusted training to compensate for the impacts of COVID-19.

Firefighter Retiree Health Insurance Costs

The legislative director of the Kentucky Professional Firefighters and the assistant fire chief of the St. Matthews Fire Department outlined how retirement insurance costs are calculated for firefighter retirees and noted that, for firefighters hired after 2003, the costs of insurance would outpace the allowances made by the law, eventually consuming a significant portion of the retired firefighter's pay if changes were not made to increase the insurance allowances for retirees. They noted that local and state employees would experience this pattern as well.

EMS Recruitment And Retention

The director of the Edmonson County Ambulance Service, the director of public affairs of the Kentucky League of Cities, the deputy chief of Anchorage Middletown Fire and EMS, the mayor of Prestonsburg, and the deputy director of administration of the Kentucky Board of Emergency Medical Services (KBEMS) discussed ambulance and emergency medical services (EMS) staffing issues revolving around training costs and efficiencies in achieving advanced degrees of certification. Changes in the certificate of need process to accommodate emergency applications are sought. The deputy director of KBEMS cited a survey from 2016 that identified the top five reasons for allowing an EMS license or certification expire: retirement; low salary or poor benefits package; relocation of residence; external factors, such as leaving EMS involuntarily; and poor management or hostile workplace.

KBEMS suggested several solutions:

- Earmarking additional dollars bolstered from 2018 House Bill 8 dealing with Medicaid reimbursement by local governments to enhance EMS salaries, benefits, and student loan forgiveness programs
- Consideration of nontraditional work schedules
- Evaluation of upward mobility options for EMS staff, especially in rural agencies, but also in suburban ones
- Support for federal and state student loan forgiveness programs for EMS personnel as well as provision of childcare assistance
- Provision of EMS mental health services
- Provision of wellness initiatives
- Consideration of alternative retirement plans
- Evaluation of alternative accreditation programs for EMS educational programs
- Provision of educational and financial incentives for continued work in the ground ambulance sector

Kentucky Supreme Court Ruling

The attorney general of Kentucky briefed the Interim Joint Committees on State and Local Government regarding the Kentucky Supreme Court decision regarding SB 1, SB 2, HB 1, and HJR 77, passed during the 2021 Regular Session, which placed certain controls on the governor's emergency powers. The Supreme Court ordered dissolution of an injunction that the Franklin Circuit Court had placed upon the legislation.

COVID-19 In Kentucky Correctional Facilities

The president of the Kentucky Jailers Association discussed the lack of control over admissions to his jail and the ability of the jail to quarantine. Staffing was also adversely affected by the pandemic. Virtual court appearances increased in response to pressures relating to transportation difficulties. State funding did not change to accommodate the extra expenses incurred, and the reduction of housing of state prisoners also affected his jail's income.

The commissioner of the Department of Corrections outlined vaccination statistics for Kentucky's inmates and prison staff as well as protocols that were enacted for preventing the spread of COVID-19, which included testing and masking.

Health Department And Health District Implementation Of Legislation From The 2021 Special Session

The executive director of the Kentucky Health Departments Association (KHDA), the director of the Lincoln Trail District Health Department, the director of the Three Rivers District Health Department, and the director of the Kentucky River District Health Department outlined the role of the KHDA in general, and discussed the varied roles health departments play in the commonwealth from the basic tiers of foundational health and core public health services. The health departments are assisting in the COVID-19 monoclonal antibody administration centers as required by 2021 SB 1 and SB 2.

Continuing Impact Of COVID-19 On Local Utilities

The executive director of the Kentucky Rural Water Association (KRWA) said that some difficulties either arose from the pandemic or were exacerbated by it, such as

- declining revenues,
- staffing issues stemming from COVID-19 exposure and subsequent isolation and child-care situations, and
- supply chain issues for physical components used to provide services, such as pipes, vehicles, and meters.

The president of the Kentucky Municipal Utilities Association (KMUA) and the general manager of the Hopkinsville Electric System and EnergyNet noted issues stemming from the disconnection moratorium, as bills went unpaid without consequences. KMUA membership utilities are reporting supply chain issues. Employees are using substantial portions of leave time to be at home with exposed family members. Hiring new employees is difficult as well.

The general manager of the Georgetown Municipal Water and Sewer Service noted an uptick in past-due accounts, as other utilities also noted, in addition to supply chain issues.

Kentucky League Of Cities' And Kentucky Association Of Counties' Legislative Platforms For The 2022 Regular Session

The executive director and chief executive officer, and the president and the first vice president of the Kentucky League of Cities outlined the league's legislative platform for the 2022 Regular Session of the General Assembly. Some of the priorities mentioned include:

- Diversifying revenue sources including a constitutional amendment and restaurant tax availability to all cities
- Modernizing the road fund formula
- Enhancing economic development
- Providing law enforcement training and paramedic training
- Taking a proactive stance on treatment, rehabilitation, training and workforce reentry relative to substance abuse
- Allowing more localities to satisfy publishing requirements using the internet
- Improving timeliness of reports of property ownership from property valuation administrators
- Simplifying the process used for setting taxes when the proposed tax rate realizes 4 percent or more revenue above the compensating tax rate
- Expanding numbers of retired and rehired police and firefighters
- Giving the Kentucky Law Enforcement Council expanded authority to terminate officers whose behavior has been problematic
- Affording cities the same protections for proprietary information as afforded the state for open meetings purposes
- Expanding eligibility for alcohol regulatory license fees
- Removing the peace officer powers of constables
- Increasing the municipal audit exemption cutoff amount

The executive director and chief executive officer, and the director of government affairs, of the Kentucky Association of Counties outlined its 2022 legislative platform. Priorities include:

- Educating the members of the General Assembly and others about the roles county government plays
- Seeking increases in the per diem reimbursement rate for county-housed state inmates, as well as seeking reimbursements for “time served” credits for state inmates in county jails
- Modernizing the road fund formula and incorporating electric vehicles into the fee structure
- Supporting efforts for continuing video arraignment, as well as other technology-driven solutions toward county-administered criminal justice operations
- Supporting efforts at criminal justice reform that improve outcomes for inmates and reduce costs to government
- Pursuing revenue flexibility and diversification
- Working to maintain financial transparency and efficiencies of the audit processes, while reducing costs to counties
- Increasing the hourly rate reimbursement for court security officers as paid by the Administrative Office of the Courts

Special Purpose Governmental Entity Reports

The cities and special districts branch manager of the Department for Local Government and the deputy director and training records and compliance specialist of the Kentucky Fire Commission presented their statutorily mandated reports on special purpose government entity compliance within KRS Chapter 65A and Chapter 95A.

Constitutional Amendment Relating To Local Taxation

Representative Meredith, the executive director of the Kentucky Association of Counties, the executive director of the South Western Kentucky Economic Development Council, the chief policy officer of Commerce Lexington, and the vice president of government affairs and communications of Greater Louisville Inc. discussed the necessity of amending Section 181 of the Constitution of Kentucky to allow the possibility for local governments to levy a sales tax, as would be outlined by legislation. They provided a historical context to the section; mentions of greater growth in similar demographic regions in Tennessee, which allows local sales taxes; and discussion that local governments need the ability to work collaboratively with state government and the business community to respond to changes in Kentucky’s economy, and to build a competitive local tax structure that will support economic growth, promote business development, and attract and retain workers.

Consideration Of Administrative Regulations

The committee heard 815 KAR 020:150, promulgated by the Department of Housing, Buildings, and Construction, which related to the Division of Plumbing’s inspections and tests.

**Report Of The 2021
Interim Joint Committee On Natural Resources And Energy**

**Sen. Brandon Smith, Co-Chair
Rep. Jim Gooch Jr., Co-Chair**

Sen. Jared Carpenter
Sen. Matt Castlen
Sen. C.B. Embry Jr.
Sen. Denise Harper Angel
Sen. John Schickel
Sen. Adrienne Southworth
Sen. Johnnie Turner
Sen. Robin L. Webb
Sen. Whitney Westerfield
Sen. Phillip Wheeler
Rep. John Blanton
Rep. Adam Bowling
Rep. Randy Bridges
Rep. Tom Burch
Rep. McKenzie Cantrell

Rep. Myron Dossett
Rep. Ryan Dotson
Rep. Jim DuPlessis
Rep. Patrick Flannery
Rep. Chris Fugate
Rep. DJ Johnson
Rep. Norma Kirk-McCormick
Rep. Mary Lou Marzian
Rep. Suzanne Miles
Rep. Melinda Gibbons Prunty
Rep. Attica Scott
Rep. Pamela Stevenson
Rep. Bill Wesley
Rep. Richard White

LRC Staff: Stefan Kasacavage, Janine Coy, Tanya Monsanto, and Rachel Hartley

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Natural Resources And Energy

Jurisdiction: Matters pertaining to forestry; mining; fish and wildlife resources; soil and water conservation; flood control and water usage; drainage and irrigation; geology and water resources; waterways and dams; oil, gas, and salt water wells; state and national parks; drainage districts; water pollution; noise pollution; air pollution; management of waste; protection of the environment; Energy and Environment Cabinet; privately owned public utilities; rates, permits, and certifications of convenience and necessity; water district rates; utilities in cities; public utility cooperatives; electric and gas utilities and cooperatives; oil and gas transmission companies; telephone companies and cooperatives; municipal utilities and water works; energy and fuel development; energy waste disposal; the Public Service Commission; solar and other renewable energy; hydroelectric and thermonuclear energy; gasohol and other alternative fuels.

Committee Activity

The Interim Joint Committee on Natural Resources and Energy held six meetings between June 1 and December 1 of the 2021 Interim. No subcommittees were authorized. The committee considered a wide range of topics during the 2021 Interim, including challenges facing Kentucky's electric utility infrastructure, regulatory program updates from the Energy and Environment Cabinet, proposed updates to dam safety laws, the administration of the Department of Fish and Wildlife Resources' fee-in-lieu-of program, the siting of solar merchant utilities on agricultural land, and proposed legislation relating to natural gas transmission pipeline location notification. The committee approved the Low Income Home Energy Assistance Program (LIHEAP) block grant application for FY 2022.

Kentucky's Electric Utility Infrastructure

Grid Reliability And Resilience. The chief executive officer of Big Rivers Electric Corp. stressed the importance of maintaining grid reliability and resiliency as electric utilities plan for changes to their generation portfolios. Grid reliability is the ability of the electricity system to supply aggregate electric power to meet the requirements of consumers at all times; grid resiliency refers to the ability of the electric grid to withstand and recover rapidly from disruptions. An electric utility's generation portfolio must include enough dispatchable, nonintermittent energy sources (such as coal-fired and natural gas-fired generating facilities) to ensure grid reliability and resilience as more intermittent generation sources (such as wind and solar) are used.

Resource Adequacy. The chair of the Public Service Commission stated that resource adequacy is a component of grid reliability that focuses on whether there are sufficient operational generation sources to supply electricity to the grid to meet demand at any given time. A key tool for ensuring future resource adequacy is the integrated resource plan (IRP), which regulated utilities in Kentucky are required to file every 3 years with the Public Service Commission. IRPs contain forecasts of energy demand, economic and demographic changes, resource acquisitions, and new generation sources over a 15-year planning horizon. They are used by the Public Service Commission to ensure that the utilities under its jurisdiction will have adequate

generation and distribution resources. The increased prevalence of intermittent, renewable generation sources complicates the planning for future resource adequacy, but energy regulators are adapting to the new planning challenges in numerous ways. By more accurately calculating the generation capacity credited to renewable sources and improving modeling for future electricity supply and demand, regulators can better predict capacity needs and set appropriate reserve margins for electric utilities.

Cybersecurity. Representatives from the investor-owned utilities American Electric Power, Duke Energy, and LG&E-KU discussed policies they had implemented to protect themselves from cyberattacks that could impact their ability to reliably provide electric service. Protection can be the result of deployment of internal penetration testing teams, as well as external “white hat” hackers, who attempt to hack into their systems to expose and correct any security vulnerabilities. Utilities also collaborate with the federal Cybersecurity and Infrastructure Security Agency, the Federal Bureau of Investigation, and the Department of Homeland Security to maintain and enhance their awareness of and preparedness for ransomware attacks.

Energy And Environment Cabinet Regulatory Updates

Division Of Mine Safety. The commissioner of the Department for Natural Resources stated that, since 2014, Kentucky has experienced a significant decline in the number of mines licensed but that there is currently an increase in the number of new mines opening or idled mines reopening. The Division of Mine Safety emphasizes behavior-based safety analysis and assessments when conducting its six annual inspections of underground mines. In its capacity as a rescue and mine safety training agency, the division conducted 8,875 trainings and certified 546 miners in 2020.

Dam Safety. The director of the Division of Water stated that there are 970 regulated dams in 115 counties in Kentucky and that approximately 45,000 Kentuckians are located in potential dam inundation zones. The cabinet proposes to update Kentucky’s dam safety statutes by updating the terminology to reflect current technologies, programs, and practices; by repealing statutes made obsolete by federal laws and regulations; and by requiring emergency action plans for dams posing high or significant hazard. An emergency action plan identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life.

Department Of Fish And Wildlife Resources’ Fee-In-Lieu-Of Program For Wetland And Stream Mitigation

Program Administration. Officials from the Department of Fish and Wildlife Resources and representatives of various stakeholder groups discussed the department’s fee-in-lieu-of (FILO) program, which allows Clean Water Act Section 404 permit holders to pay money into a fund to be used for stream mitigation to compensate for stream disturbances that cannot be adequately avoided or minimized. The commissioner of the department stated that Kentucky’s FILO program operates within a mitigation framework under the control of the US Army Corps of Engineers. To date, the FILO program has restored more than 130 miles of streams and added 6,300 acres of wildlife management areas. Since September 2020, the FILO program has

purchased over 4,300 acres of projects, and there are currently 49 pending mitigation projects with more than 2,900 acres under contract. The FILO program's current balance is \$166 million, and 85 percent of the fund is already obligated to projects.

Proposed Program Changes. To address the backlog in project approvals and reduce the time between when fees are paid into the FILO program and when expenditures can be made on approved projects, representatives from private stream and wetland mitigation firms suggested making several changes to the FILO program, including issuing "full delivery" requests for proposals, allowing contractors to purchase the necessary land rights at free market prices, and placing the risk of compensatory mitigation credit delivery and all the unanticipated issues that arise at environmental restoration projects on the private sector rather than on the FILO program.

Solar Merchant Utility Siting On Agricultural Land

Increased Demand For Solar Energy In Kentucky. Officials from the Energy and Environment Cabinet stated that Kentucky is well suited for solar energy because of its access to two wholesale electricity markets and its proximity to robust and reliable transmission infrastructure. The increased interest in solar energy production due to corporate demand has resulted in 28 merchant solar projects currently pending with the Kentucky Electric Generation and Transmission Siting Board. These projects represent 3,267 megawatts of proposed capacity and will use approximately 30,000 acres of land. In general, 1 megawatt of installed solar generation requires 10 acres. Out of 25 million total acres in Kentucky, approximately 12 million acres are used for agriculture. The proposed 30,000 acres represent 0.23 percent of the agricultural land. The cabinet projects that, by 2040, solar generating facilities could occupy approximately 1 percent of Kentucky's agricultural land.

Merchant Utility Siting Practices. The chair of the Public Service Commission stated that "merchant generation" refers to electricity generated by a facility that is not owned by a commission-regulated utility. The Kentucky Electric Generation and Transmission Siting Board is the entity responsible for deciding on construction certificate applications for proposed merchant generating facilities. The board comprises five state officials who are permanent members and two additional local members from the county or counties where a project is proposed. The siting board review focuses on such factors as noise, visual impact, economic effects, influence on grid reliability, and potential effect on transmission lines. Any local planning and zoning ordinances in place where the project is being proposed take precedence over the decisions of the siting board.

Proposed Changes To Solar Merchant Utility Siting Policy. Representatives of several stakeholder groups expressed concern over the recent increase in solar merchant utilities' interest in locating facilities on agricultural land. Proposed changes to the solar merchant utility siting process included requiring decommissioning plans for proposed facilities to ensure that they are responsibly removed from agricultural land at the end of their useful lives, requiring decommissioning bonds to pay for facility removal if the responsible party does not complete the decommissioning itself, establishing setback requirements for solar merchant facilities from adjoining properties and dwellings, and expanding siting board jurisdiction to include proposed

projects that will occupy a large area of agricultural land but do not meet the current generation threshold for siting board oversight.

Natural Gas Transmission Pipeline Location Notification

The committee discussed legislation to require coordination between land developers and operators of natural gas transmission pipeline to provide notification and location information for natural gas transmission pipelines that are within certain proximities of proposed developments.

Reports Received

- Low Income Home Energy Assistance Program Block Grant Program Status Report, January-June 2021
- Report Of The Audit Of The Kentucky Heritage Land Conservation Nature License Plate Fund, FY 2021
- Kentucky Department Of Fish And Wildlife Resources No Net Loss Of Hunting Land Report, FY 2021
- Telecommunications Access Program Annual Report, FY 2020-2021
- Use Of Energy Efficiency Measures In State Government Report, Fiscal Year 2021

Referred Block Grant Applications

- Low Income Home Energy Assistance Program Block Grant Application, Fiscal Year 2021

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, the committee, as of November, had reviewed 31 administrative regulations upon referral from the Legislative Research Commission under the review process established in KRS Chapter 13A.

Report Of The 2021 Interim Joint Committee On State Government

Sen. Robby Mills, Co-Chair
Rep. Jerry Miller, Co-Chair
Rep. Kevin Bratcher, Co-Chair

Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Michael Nemes
Sen. Wil Schroder
Sen. Adrienne Southworth
Sen. Brandon Storm
Sen. Damon Thayer
Sen. Phillip Wheeler
Rep. John Blanton
Rep. Adam Bowling
Rep. McKenzie Cantrell
Rep. Jennifer Decker
Rep. Jim DuPlessis
Rep. Joseph M. Fischer
Rep. Kelly Flood
Rep. Jim Gooch Jr.
Rep. Derrick Graham
Rep. Richard Heath

Rep. Samara Heavrin
Rep. Mary Beth Imes
Rep. DJ Johnson
Rep. Matthew Koch
Rep. Derek Lewis
Rep. Scott Lewis
Rep. Savannah Maddox
Rep. Reginald Meeks
Rep. Patti Minter
Rep. Kimberly Poore Moser
Rep. Jason Nemes
Rep. Attica Scott
Rep. Tom Smith
Rep. Pamela Stevenson
Rep. Nancy Tate
Rep. James Tipton
Rep. Ken Upchurch
Rep. Russell Webber
Rep. Buddy Wheatley

LRC Staff: Alisha Miller, Michael Callan, Daniel Carter, Kevin Devlin, Brad Gross, Jennifer Black-Hans, Karen Powell, Angela Rhodes, Andrew Salman, Shannon Tubbs, and Peggy Sciantarelli

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

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; constitutional offices; 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; conduct of primary and regular 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 seven meetings during the 2021 Interim, focusing on legislative and judicial redistricting; the Teachers' Retirement System (TRS) experience study; legislation relating to elections (21 RS HB 574); the Convention of States project; "Zuckerbucks"; the Kentucky Supreme Court ruling in *Cameron v. Beshear*; COVID-19 in Kentucky correctional facilities; legislative immunity and legislative privilege; the future of remote working in state government; the Kentucky Employees' Health Plan; prefiled 22 RS BR 430; and Federal American Rescue Plan Act (ARPA) Guidance Disqualifying Expenditures of the FY 2021–2022 Kentucky Budget.

Legal Environment For Redistricting

The National Conference of State Legislatures elections and redistricting staff discussed the role of the Census in relation to funding, apportionment in Congress, redistricting, and the crafting of policies for the people of Kentucky. They also reviewed federal and state laws and principles relating to redistricting.

Judicial Redistricting

The Chief Justice of the Kentucky Supreme Court discussed the possibility of statewide judicial redistricting, which was last done in 1893. Population shifts have resulted in disparate population distribution among the current seven appellate districts. Judicial circuits and districts have remained largely untouched since the passage of the Judicial Article in 1976. The Judicial Article put the burden of initiating judicial redistricting and changes in the number of judges on the Supreme Court. Although the principle of "one person, one vote" does not apply to the judiciary, redistricting of appellate courts—the Supreme Court and Court of Appeals—is governed by

Section 110 of the Constitution of Kentucky, and redistricting of trial courts—Circuit and District Courts—is governed by Sections 112 and 113. The Chief Justice stated that 2030 would be an important year for judicial redistricting, since District judges, Circuit judges, most of the Supreme Court justices, and the commonwealth’s attorneys will be elected.

League Of Women Voters’ Redistricting Initiative

The vice president/redistricting chair of the League of Women Voters of Kentucky testified on the league’s redistricting initiative. In December 2020, the league sent legislators possible maps drawn on the basis of 2010 census data. The league was to draw new maps based on the 2020 Census once it was delivered. People throughout the state will also be able to draw possible maps.

The league’s redistricting initiative includes following the basic redistricting principles; citizen involvement; and having an open and transparent process. When drawing maps, the league follows the legal rules: one person, one vote; providing racial districts of opportunity; and dividing counties only when needed to meet population requirements. The league also bases its maps on simple, more compact boundaries; maintaining the integrity of county seats; and the league’s long-standing policy of indifference to incumbents.

Teachers’ Retirement System Experience Study Results

The executive secretary and the deputy executive secretary of the Teachers’ Retirement System and the chief executive officer for Cavanaugh Macdonald Consulting LLC discussed the TRS experience study covering the 5-year period from July 1, 2015, to June 30, 2020. The study was presented to the TRS board in June 2021. The deputy executive secretary stated that TRS is a top-tier investment performer compared to other state pension plans. A past study by the LRC Legislative Oversight and Investigations Committee revealed that TRS investment fees are among the lowest in the nation. From 2008 to March 2021, TRS investment return totaled a net \$19.3 billion, compared to \$14 billion for an average pension plan. The biggest issue TRS has is its legacy unfunded liability; the original 30-year funding plan to pay off the legacy unfunded liability is down to 24 years.

Update: 21 RS HB 574 – AN ACT relating to elections and making an appropriation therefor

Representative Decker, primary sponsor, and co-sponsors Representatives Tipton and Branscum discussed HB 574, enacted during the 2021 Regular Session. They intend to offer a bill to prohibit Kentucky’s voting system from connecting to the internet or any other external network, but they confirmed that no voting system in the commonwealth is now capable of that type of connection. Those closely involved in development of HB 574 have met to discuss its implementation and to consider possible refinements.

Convention Of States Project

Representative Lockett and the president and the Kentucky state director of the Convention of States discussed the Convention of States Project. The project calls for an Article V convention to propose amendments to the US Constitution in order to impose fiscal restraints on the federal government, limit its power and jurisdiction, and limit the terms of office for its officials and members of Congress. Calling a convention requires action by 34 states; proposed amendments must be ratified by 38 states.

The president of the Louisville Tea Party spoke in opposition, stating that problems could result from an Article V convention. It would be a total unknown and could risk the loss of people's First Amendment, Second Amendment, and other rights.

Zuckerbucks

Representative Flannery, the legal affairs director and the state government affairs director of the Foundation for Government Accountability (FGA), and the executive director of the State Board of Elections discussed grants from Facebook chief executive officer Mark Zuckerberg called Zuckerbucks. The FGA speakers stated that in 2020, Zuckerberg and his wife spent nearly \$400 million to fund election activity across the country through grants to local election officers. In Kentucky, 43 counties applied for and received the grant funding. Several states in 2021 have banned private funding of elections, and four more states are considering a ban. FGA's position is that public elections should be funded with public dollars.

The executive director of the State Board of Elections testified that the grant money in Kentucky was used primarily to advertise changes in the manner of election during the pandemic and how voters could vote safely. A bipartisan group of board members and stakeholders decided how the funds were to be spent.

Supreme Court Ruling In *Cameron v. Beshear*

The Kentucky attorney general discussed the August 21, 2021, ruling of the Kentucky Supreme Court in the case of *Cameron v. Beshear*. The Governor initiated *Cameron v. Beshear* in February 2021 when he filed suit in Franklin Circuit Court, seeking to invalidate SB 1, SB 2, and HB 1, enacted in the 2021 Regular Session to place checks and balances on his emergency power. The Governor asked the Franklin Circuit Court to enjoin the legislation, and it did so. After the General Assembly enacted HJR 77, the Franklin Circuit Court expanded the temporary injunction to include HJR 77. The attorney general asked the Court of Appeals for relief from the injunction. The Court of Appeals recommended transfer of the matter to the Supreme Court. The Supreme Court granted transfer of the case and heard oral arguments on June 10, 2021. On August 21, the Supreme Court issued its decision, holding that the Franklin Circuit Court "abused its discretion in issuing the temporary injunction." It reversed the Franklin Circuit Court and remanded the case with instruction to the Circuit Court to dissolve that injunction.

COVID-19 In Kentucky Correctional Facilities

The Campbell County jailer, who is president of the Kentucky Jailers Association, discussed issues related to COVID-19 in correctional facilities. Elected jailers do not control their budgets, and jail revenue has taken a drastic hit due to the pandemic. Even prior to COVID-19, it was difficult to hire people for jail work, and now staff shortages and overtime are big issues. Passage of 2021 RS HB 556 was supposed to provide jail staff an extra \$2 per diem for the duration of COVID-19, but no county facility has received that funding.

The commissioner of the Department of Corrections and the general counsel for the Justice and Public Safety Cabinet testified that dealing with COVID-19 has been extremely hard for staff of the correctional facilities. During 2020, 48 inmates and five staff members were lost to COVID-19. Around April 2020, the prisons began vaccinating inmates age 60 to 80 and later began to vaccinate staff and the general inmate population. The current vaccination rate for the inmate population has increased to 83.02 percent, but the rate at individual institutions can be as low as 35 percent. There are efforts to test unvaccinated staff twice a week, and the prisons continue to implement mask wearing and testing. The Department of Corrections has sometimes had to temporarily remove state inmates from jails that request help due to overcrowding and inability to quarantine inmates effectively.

Overview Of Legislative Immunity/Legislative Privilege

The general counsel for Mississippi’s Joint Legislative Committee on Performance Evaluation and Expenditure Review explained legislative privilege and legislative immunity. Legislative privilege is an evidentiary rule that protects legislators from being required to testify in a civil action or to render documents when sought through discovery or subpoena. Legislative immunity shields legislators from being parties to litigation. Immunity protects legislators from liability arising from acts occurring within the course and scope of carrying out legislative duties.

In Kentucky, the source of legislative privilege and immunity is the state constitution’s “Speech or Debate” clause (Section 43), which is modeled on the US Constitution. The privilege must be invoked by the legislator—not by someone else on behalf of the legislator. Generally, testimony and records that relate to the drafting, consideration, and passage of legislation are protected. Staff may also be able to claim privilege in litigation arising from a legislative act. When legislative privilege deals with important public policy issues, such as redistricting, expect the privilege to be subject to balancing.

The Future Of Remote Working In State Government

The commissioner of the Personnel Cabinet’s Department of Human Resources Administration discussed the current staffing model for employees of executive branch agencies. As of July 6, 2021, 50 percent of executive branch employees worked at a state government building or office. This category includes employees in positions that are public facing and who, therefore, are not eligible to telecommute; employees whose job duties cannot be performed remotely; employees with flexible work schedules; and employees who request not to telecommute. Those who scored in the lowest two categories on their previous performance evaluation, or who are on a

performance improvement plan, are not eligible to telecommute. Under the hybrid telecommuting plan, an employee may work remotely 1 to 4 days each week; this plan is in use for 37 percent of executive branch employees. The option of telecommuting 100 percent of the time applies to 13 percent of the executive branch; this option requires approval of the Personnel Cabinet.

2022 Kentucky Employees' Health Plan

The commissioner of the Department of Employee Insurance, Personnel Cabinet, provided an update on the Kentucky Employees' Health Plan for the 2022 plan year. For 2022, employer and employee premiums will increase 3 percent. Deductibles and out-of-pocket maximums will not change. The PPO plan will provide a PrudentRx program for certain specialty drugs. Member in-network co-insurance will increase by 5 percent in the LivingWell PPO and LivingWell CDHP plans. The 30-day generic prescription copay in the LivingWell PPO plan will increase by \$5.

22 RS BR 430 – AN ACT relating to death benefits for first responders, making an appropriation therefor, and declaring an emergency

Representative Huff, primary sponsor, testified regarding 22 RS BR 430, which would amend KRS 61.315 to create a presumption that first responders who die of COVID-19 do so while in the line of duty and thus qualify for death benefits. BR 430 adds COVID-19 to the list of reasons for the family of a first responder to draw a death benefit. The benefit would be retroactive to March 2020, when the first COVID-19 death was recorded in Kentucky.

The chief of the Zoneton Fire Protection District in Bullitt County testified that in December 2020, the previous Zoneton fire chief died after contracting COVID-19, and the battalion chief died the following February. When he submitted the claim to the Fire Commission, it was denied, and he began his effort to have COVID-19 included in the statutes as a qualifying event.

Impact Of Federal ARPA Guidance Disqualifying Expenditures Of The FY 2021–2022 Kentucky Budget

The state budget director and the secretary of the Justice and Public Safety Cabinet discussed the November 19, 2021, letter from the Governor's Office to President Stivers and Speaker Osborne in order to provide clarity regarding use of the \$127 million ARPA Coronavirus Capital Projects Fund appropriation contained in 2021 RS HB 556. When the American Rescue Plan Act was passed in March 2021, it included two new programs: the Coronavirus State Fiscal Recovery Fund and the Coronavirus Capital Projects Fund. The Governor and the General Assembly agreed on a recommendation to appropriate \$127 million from the Coronavirus Capital Projects Fund for urgent-need schools through the School Facilities Construction Commission (SFCC) and \$58 million for projects in the next phase of the Capitol building renovation.

HB 556 mandated that offers of assistance were to be made to fund projects that were ranked the highest on the Kentucky Facilities Inventory and Classification report as of February 27, 2020. The SFCC voted to extend additional offers of assistance to 13 school districts; 12 districts

accepted. Analysis of the final guidance issued by the US Treasury Department in September 2021 concluded that the 12 school projects would not likely meet the criteria for funding from the Coronavirus Capital Projects Fund. Throughout the process, it was communicated that the offers of assistance were conditioned upon actual availability of the federal funding and that it would be unwise to begin spending money on those projects until the situation was clarified.

One eligible use of the State Fiscal Recovery Fund is “revenue losses,” with the funds being directed to eligible government services. One example of government services in the federal guidance is “pay-go” or cash funding of capital projects, which fits with the planned \$127 million for school construction projects. Alternatively, the use of the \$127 million for broadband deployment projects from the Coronavirus Capital Projects Fund also fits with that fund’s eligible uses. The Governor’s recommendation is to subtract the \$127 million from the Coronavirus Capital Projects Fund and shift it to the Coronavirus State Fiscal Recovery Fund for school projects, and do the reverse for the broadband projects. The amount of money appropriated by the General Assembly would remain the same. However, switching the two sources of funding will require action by the General Assembly.

**Report Of The 2021
Interim Joint Committee On Tourism,
Small Business, And Information Technology**

**Sen. Wil Schroder, Co-Chair
Rep. Kim King, Co-Chair
Rep. Phillip Pratt, Co-Chair**

Sen. Rick Girdler	Rep. Robert Goforth
Sen. Alice Forgy Kerr	Rep. Jim Gooch Jr.
Sen. Christian McDaniel	Rep. David Hale
Sen. Robby Mills	Rep. Richard Heath
Sen. Adrienne Southworth	Rep. Thomas Huff
Sen. Brandon J. Storm	Rep. Norma Kirk-McCormick
Sen. Reginald Thomas	Rep. Adam Koenig
Sen. Phillip Wheeler	Rep. William Lawrence
Sen. Mike Wilson	Rep. Charles Miller
Sen. David Yates	Rep. Ruth Ann Palumbo
Rep. Shane Baker	Rep. Josie Raymond
Rep. Lynn Bechler	Rep. Brandon Reed
Rep. Tina Bojanowski	Rep. Rachel Roberts
Rep. Josh Branscum	Rep. Bart Rowland
Rep. George Brown Jr.	Rep. Steve Sheldon
Rep. Josh Calloway	Rep. Cherlynn Stevenson
Rep. Jeffery Donohue	Rep. Ashley Tackett Laferty
Rep. Ryan Dotson	Rep. Nancy Tate
Rep. Daniel Fister	Rep. Killian Timoney
Rep. Deanna Frazier Gordon	Rep. Bill Wesley
Rep. Chris Freeland	Rep. Richard White
Rep. Chris Fugate	

LRC Staff: Andrew Manno, Drew Baldwin, Janine Coy, Audrey Ernstberger, Kirk Smith, and Sasche Allen

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Tourism, Small Business, And Information Technology

Jurisdiction: Matters pertaining to commerce, industry, economic and industrial development, the workforce and the workplace, and tourism 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; labor unions; collective bargaining; liquefied petroleum gas and other flammable liquids; hotels, electricians; plumbers and plumbing; wages and hours; garnishments; safety and health of employees; child labor; employment agencies; apprenticeship; unemployment compensation; workers' compensation; consumer protection; industrial weights and measures; development and support of small businesses; job creation and job-training programs; federal, state and local regulations that impact small businesses and their employees; all other matters not specifically assigned to another committee relating to administrative, regulatory, or operating issues that, because of their smaller size, uniquely impact small business; information technology planning; statewide standards related to information technology; broadband internet; Internet Service Providers; tourism and travel promotion and development; state, interstate, and national parks and historic sites; fish and wildlife; small business matters relative to tourism development; hotels and motels generally; hotel and restaurant regulations; billboards; advertising related to tourism development; entertainment establishments; campgrounds; the Tourism, Arts, and Heritage Cabinet; hunting and fishing; boating; horseback riding; hiking; bird watching; rock climbing; recreational use of all-terrain vehicles; mountain biking; cycling; kayaking; recreational land use.

Committee Activity

The Interim Joint Committee on Tourism, Small Business, and Information Technology held six meetings during the 2021 Interim.

Tourism, Arts, And Heritage Cabinet Update

The secretary of the Tourism, Arts, and Heritage Cabinet and department commissioners described the cabinet's dedication to promoting and marketing the state as a premier travel destination, partnerships with local tourism offices, the response and recovery from the COVID-19 pandemic, and the tourism industry's economic impact in the commonwealth. Despite the effects of the pandemic, the tourism industry had an \$8.9 billion direct economic impact in 2020, generating \$625 million in state and local taxes and supporting over 75,000 jobs.

Department Of Fish And Wildlife Resources Update

The Department of Fish and Wildlife Resources conserves, protects, and enhances the state's fish and wildlife resources and provides opportunities for fishing, hunting, trapping, boating, shooting sports, wildlife viewing, and related activities. Fishing, hunting, wildlife watching, and boating account for a total of approximately \$344 million yearly in local and state tax revenue. Within the tourism industry, fish and wildlife recreation has an economic impact of \$5.9 billion and supports 70,000 jobs. The department is funded primarily through sales of hunting and fishing licenses and through federal grants such as wildlife restoration grants and sport fish restoration grants. Some other topics covered by the department's commissioner included the Fish Habitat Improvement Program, Fishing in Neighborhoods, the Kentucky Wetland and Stream Mitigation Fund, Kentucky Wild, Kentucky Afield, conservation camps, and hunter education.

Kentucky Venues

Kentucky Venues works with the General Assembly and various boards and commissions to host exhibitions, conventions, trade shows, public gatherings, cultural events, and other functions to advance the state's agriculture and tourism industries and economy while serving the entertainment, cultural, and educational interests of the public. Expansions and updates have been completed at both Kentucky Venues properties, but improvements such as security modernization, infrastructure enhancements, and parking lot repairs are still needed.

Airbnb And VRBO

Airbnb and VRBO have proved to be major economic drivers in the state and generated \$157 million worth of transactions in the first 9 months of 2021. However, there are some inequalities with these platforms and the obligation to pay the transient occupancy tax to the commonwealth. Airbnb and VRBO have agreements to pay this tax with some destinations across the state (such as northern Kentucky, Lexington, Louisville, and Bowling Green) but not with the rest of the state. The Department of Tourism receives 1 percent of the tax through these agreements, and these funds are used for marketing. However, a large portion of taxes are not being paid by these platforms from the remainder of the state, and tourism organizations across the state are not receiving their fair share of revenue generated by these platforms that contribute to the tourism industry's marketing budgets and recovery from the COVID-19 pandemic.

Convention And Visitors Bureaus

Kentucky Association Of Convention and Visitors Bureaus. Members of the Kentucky Association of Convention and Visitors Bureaus (KACVB) across the state are continuing to struggle with funding, staffing, and ways to recover from the COVID-19 pandemic. Even though some tourism marketing organizations have seen a rise in the number of visitors to their regions in 2021, most do not have the funds for necessary marketing and infrastructure due to lost revenue during 2020. There are many projects and expansions planned for various regions throughout the commonwealth, and tourism organizations are in need of funding to promote these future ventures that will have a major impact on the tourism industry and the state's

economy. KACVB is requesting \$75 million that would be divided among the meetings and conventions area, the Department of Tourism, and tourism marketing organizations.

Central Bank Center And Recovery Of Convention Business. The Central Bank Center in Lexington has entered into a facility management agreement with Oak View Group, which provides property, consulting, and client services. The Oak View Group has partnerships with 29 other arenas across the country. Phase one of the ongoing expansion project of the Central Bank Center is complete, and phase two is expected to be completed in March 2022. Despite the ongoing expansion project, the facility lost numerous event bookings and was forced to decrease staff as a result of the pandemic. Overall, VisitLEX, the Lexington tourism marketing organization, canceled 270 meetings and conventions due to COVID-19, representing over 100,000 room nights that never materialized. The overall economic impact loss to Lexington from meetings and convention attendees is over \$42 million. The statewide tourism industry was collectively requesting \$75 million in American Rescue Plan Act funds, which would help the recovery of the meeting and convention business across the state.

Historic Marker Sites

After changes over the years, the Historical Marker Program is community driven, and program costs are the responsibility of the marker sponsor or applicant. There is an average of 40 marker applications each year. As of 2019, refurbishment needs for markers totaled \$11,000; refurbishments with the addition of a new post totaled \$57,000; and the cost for complete replacements needed totaled \$242,360. From July 2020 to July 2021, 82 markers were serviced, 58 were replaced, and 24 were refurbished. The executive director of the Kentucky Historical Society requested that a maintenance fund be established for the repair and replacement of damaged markers.

First Frontier Appalachian Trails

The Kentucky Mountain Regional Recreation Authority was authorized in 2017 and approved for a \$1 million 2-year budget by the General Assembly in 2019 for FY 2020 and FY 2021. The authority is in the process of hiring additional staff, fully mapping the trail system, and establishing agreements with private land owners. Once established, the trail systems have the potential to support other businesses such as recreational vehicle parks, cabin rental facilities, and other adventure tourism attractions that would have a major economic impact on the eastern region of the state. The system is being patterned after the Hatfield-McCoy Trail System in West Virginia, which sold \$3.9 million in permits in 2020, with a total economic impact of \$38 million.

COVID-19 Recovery Of Retailers And Restaurants

Representatives of the Kentucky Retail Federation and Kentucky Restaurant Association detailed the response of retailers and restaurants to the COVID-19 pandemic, with many being forced to adopt new business models. The labor shortage has led retail and restaurant employers of different sizes to begin offering signing bonuses, pay increases, and additional benefits, which makes it difficult for some to balance increased labor costs with operating budgets. In addition,

retailers and restaurants are facing supply delays and shortages, increased food costs, decreases in profits, and issues related to future COVID-19 variants. In response to retail labor shortages, the Kentucky Retail Federation formed a nationally recognized apprenticeship and training program, which was approved by the US Department of Labor. The Kentucky Restaurant Association requested consideration of legislation that would allow employees 18 and older to serve or handle alcohol in a restaurant setting. Additionally, the organization would benefit from a restaurant recovery fund from American Rescue Plan Act funds as has been done in 38 other states. According to the Kentucky Retail Federation, several legislative proposals could harm the recovery of the retail and restaurant industries, such as legislation relating to local option sales tax, property tax assessments, restaurant taxes, fees related to retail and restaurant industry businesses, alcohol sales, and soda taxes.

Workforce Trends And Challenges

The Kentucky Chamber of Commerce conducted labor force research to identify long-term trends and issues within the state's workforce. The chamber's final report, *20 Years In The Making: Kentucky's Workforce Crisis*, shows that workforce challenges are worse in the commonwealth than in almost any other state. Most issues existed prior to 2020 but were heightened by the COVID-19 pandemic, and multiple interrelated factors contribute to low rates of workforce participation. Root causes of challenges within the workforce include the retirement boom; employer demand and skills gaps; lack of access to child care; health and substance use disorders; infrastructure, transportation, and broadband hurdles; incarceration, reentry, and criminal records; benefit cliffs and social safety net programs; and slow population growth. The chamber also pointed out that federal pandemic unemployment assistance payments affected workforce participation before those benefits ended in September 2021.

Century Aluminum

Century Aluminum has two smelter factories in the commonwealth, in Hawesville and Sebree. The factories produce aluminum for the military defense and aviation industries. Representatives of Century Aluminum said that, despite its high wages, the company has difficulty hiring new employees. One major challenge is finding applicants who can pass a drug screening. Another problem has been finding employees who can fill positions involving more technical, mechanical, and electrical skill. In addition to the federal pandemic unemployment assistance payments that ended in September 2021, federal stimulus funds and additional food supplement funds create an incentive for individuals to remove themselves from the workforce.

Seizure Safe Workplaces

The Seizure Safe Schools Act, known as the Lyndsey Crunk Act, passed during the 2018 Regular Session, requires teachers to be trained in seizure first aid. The bill prompted proposed legislation regarding seizure safety in the workplace as well. The proposed bill would require that signage be posted in workplaces illustrating how to administer first aid to a person having a seizure, until a first responder or medical professional arrives.

Foundation For Government Accountability

The Foundation for Government Accountability (FGA) is a nonpartisan nonprofit 501(c)(3) organization that promotes policy reform in many states. Representatives of FGA have traveled the US to assess how states manage unemployment insurance, COVID-19 responses, fraud-related responses, and reopening processes. It was highlighted that the continuation of federal pandemic unemployment assistance payments was an issue that Kentucky, as well as other states, struggled with. Twenty-six states opted out of the federal pandemic unemployment assistance payments after deciding that these funds were exacerbating problems with workforce participation.

Broadband Issues

Representatives of the Kentucky Telecom Association (KTA) and the Kentucky Municipal Utilities Association (KMUA) voiced concerns about allowing KentuckyWired and Accelecom (formerly OpenFiber Kentucky) to use a state-owned and -constructed network to directly compete with KTA and KMUA companies by bidding on providing last-mile broadband services to customers who do not fall in areas that have been deemed unserved or underserved. Excess capacity was built into the KentuckyWired network, but a contractual agreement was made for Accelecom to have exclusive rights to use the excess capacity. In addition, KentuckyWired's network routing almost directly aligns with network routing of KMUA member companies.

**Report Of The 2021
Interim Joint Committee On Transportation**

**Sen. Jimmy Higdon, Co-Chair
Rep. Ken Upchurch, Co-Chair**

Sen. Karen Berg
Sen. C.B. Embry Jr.
Sen. Paul Hornback
Sen. Brandon Smith
Sen. Brandon Storm
Sen. Johnnie Turner
Sen. Phillip Wheeler
Sen. Mike Wilson
Sen. Max Wise
Sen. David Yates
Rep. Tina Bojanowski
Rep. Josh Branscum
Rep. Kevin Bratcher
Rep. Randy Bridges
Rep. John “Bam” Carney
Rep. Jonathan Dixon
Rep. Ken Fleming

Rep. Robert Goforth
Rep. David Hale
Rep. Samara Heavrin
Rep. Regina Huff
Rep. Thomas Huff
Rep. Derek Lewis
Rep. Savannah Maddox
Rep. Bobby McCool
Rep. Shawn McPherson
Rep. Charles Miller
Rep. Sal Santoro
Rep. Tom Smith
Rep. Cherlynn Stevenson
Rep. Ashley Tackett Laferty
Rep. Walker Thomas
Rep. Susan Westrom
Rep. Buddy Wheatley

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

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Transportation

Jurisdiction: Matters relating to airports and aviation; boats and boating; licensing of motor vehicles; operators and trailers; financial responsibility law; nonresident motorists; motor vehicle sales; railroad rates, service, and operating regulations; motor carriers; construction and maintenance of the state highway system; the Department of Transportation; state aid for local roads and streets; the State Police; the Federal Highway Safety law; turnpike authority; state and federal highways; limited access facilities; use of road bond 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 six times during the 2021 Interim.

Transition To Regional Driver's License Issuance Offices

The REAL ID project manager, Kentucky Transportation Cabinet (KYTC), gave a brief overview of driver's license issuance and the establishment of KYTC regional offices. The Division of Driver Licensing had two major projects simultaneously; the REAL ID implementation and transitioning driver's license issuance from the Circuit Court Clerks to KYTC regional offices.

Because of the COVID-19 pandemic, the US Department of Homeland Security moved the REAL ID enforcement deadline for air travel from October 1, 2021, to May 3, 2023. The extra time will help in the setting up of additional regional offices, acquiring staffing for those offices, and further education of the public on REAL ID.

The commissioner, Department of Vehicle Regulation, KYTC, gave a brief overview of the Circuit Court Clerk transition to the regional model. The deadline for this transition is June 30, 2022. Indiana, which is similar in geographical size to Kentucky and has a population of 6.8 million, has only 18 regional offices. Kentucky, at 4.4 million in population, will have at least 25 regional offices; the number may eventually be closer to 30 offices.

The committee was also briefed on the online and mail renewal programs, which allow remote license renewal by anyone in the 6 months prior to license expiration as long as there are no material changes to their license, such as a name or address change. The cabinet is also continuing to work on pop-up portable driver's licensing units in counties that do not have regional offices, which allow citizens to make appointments to obtain credentials.

Update On Transportation-Related CARES Act Funding

At the June meeting, the KYTC secretary and deputy secretary provided an update on transportation-related Coronavirus Aid, Relief, and Economic Security (CARES) Act funding.

The CARES Act provided emergency appropriations to support executive branch agency operations during the pandemic in the areas of transit, aviation, and highway construction.

Kentucky received \$60.5 million earmarked exclusively for the section 5311 rural transit funding program. Rural transit operators serve a nonurbanized region with a population of 50,000 or less. The big three transit agencies—Lextran, Transit Authority of River City (TARC), and Transit Authority of Northern Kentucky (TANK)—and small urban transit systems were eligible to apply directly to the Federal Transit Administration to draw from a different pot of CARES funding.

Kentucky received approximately \$77 million in CARES Act funds in April 2020 to provide relief to the aviation industry. The Federal Aviation Administration appropriated approximately 95 percent of the amount for commercial airports, leaving roughly \$2 million for general aviation and state airports.

KYTC was able to award \$632.6 million in highway construction contracts in 2020. The Coronavirus Response and Relief Supplemental Appropriations Act of late December 2020 provided \$164,749,950 in highway funding to KYTC. Of that amount, \$14,647,075 had to be allocated to Kentucky's metropolitan planning organizations (MPOs), leaving \$150,102,875 available for KYTC's statewide use.

Update On Driver Testing And Establishment Of Regional Testing Sites

The commander, Driver Testing Branch, Kentucky State Police (KSP) and the director, Division of Commercial Vehicle Enforcement, KSP, provided an update on driver testing and the establishment of regional testing sites. The establishment of regional driver testing sites is a product of the transition to regional license issuance. Driver testing—including vision screening, road testing, and permit testing—will remain the responsibility of KSP. It is the goal of KSP to have a driver testing presence at each of the KYTC regional sites, resulting in greater efficiency and expanded availability of testing appointments.

Peer-To-Peer Vehicle Rental

Consultants from MML&K Government Solutions, counsel on behalf of Turo, and the head of government relations of Avail, an Allstate Company, spoke on peer-to-peer (P2P) vehicle rental. P2P car sharing is similar to Airbnb but for vehicles. P2P platforms allow vehicle owners to put them on a platform so that they can be borrowed by neighbors, travelers, or businessmen for a temporary period of time, while the vehicle owners earn income for sharing their vehicles.

The proper regulatory structure for P2P car sharing has been discussed. In 2020, the General Assembly considered House Bill 494, which would have established an insurance and consumer protection framework for P2P rentals. The proposal, which is based on the National Council of Insurance Legislators model, was developed by a consensus among P2P car sharing companies, insurance companies and their trade associations, the car rental industry, and insurance regulators.

Representatives of P2P companies and traditional rental car companies are engaged in a debate about taxation of P2P vehicles, specifically through the motor vehicle usage (MVU) tax. P2P companies argue that owners have paid their MVU tax at the time of vehicle purchase. Rental car companies claim that because these vehicles are now being used for commercial purposes, a 6 percent MVU tax should be placed on each P2P transaction.

The director of communications and government Affairs, Cincinnati/Northern Kentucky International Airport (CVG), spoke on behalf of the commonwealth's three largest commercial service airports—CVG, Louisville Muhammad Ali International Airport (SDF), and Lexington's Blue Grass Airport—and urged that the General Assembly pursue legislation and elect to include provisions related to P2P car rental companies at airports.

Implementation Of The New Motor Vehicle Information System

The executive director of information technology, KYTC, and the Kentucky Automated Vehicle Information System (KAVIS) project manager, Office of Information Technology, KYTC, provided an update on the KAVIS program. It will provide the commonwealth with a statewide, automated system for vehicle and boat titling, registration, taxation, and related functions. The target date for all vehicle models to be completed is December 2022.

Final Report Of Road Fund Revenues, FY 2021

The executive director, Office of Budget and Fiscal Management, KYTC, provided an update on the final report of road fund revenues for FY 2021. In total in FY 2021, the official revenue estimate was \$1.577 billion. The actual revenue received was \$1.642 billion, for a surplus of \$64.6 million. The road fund was helped by strong MVU tax collection, which increased almost 25 percent from FY 2020. The official enacted road fund revenue estimate for FY 2022 is \$1.609 billion.

Federal Infrastructure Bill

The KYTC secretary provided an update on federal infrastructure legislation, passed in October 2021, that includes the reauthorization of dedicated federal highway funds that Kentucky and other states rely on every year to deliver federal projects. Under the current federal highway bill, known as the FAST ACT, Kentucky has received a total of \$3.7 billion. Under the new law, Kentucky would receive an estimated \$4.6 billion in federal highway funding over the course of 5 years.

In addition to the increased base appropriation, Kentucky could receive more federal dollars in grant funding. The law offers billions of dollars in competitive grants for significant bridges and major projects of substantial economic benefit to communities. The cabinet will try to obtain every available federal dollar to tackle some of the greatest transportation priorities in Kentucky.

Highway Safety

An assistant state highway engineer, KYTC, provided an update on highway safety. The engineer reported on highway fatalities and how many involved commercial motor vehicles and motorcycles. Total highway fatalities were 516 in 2019 and 527 in 2020. As of September, there had been 512 fatalities in 2021. The Strategic Highway Safety Plan of the Kentucky Office of Highway Safety (KOHS) for 2020 through 2024 was presented. KOHS's goal is for there to be fewer than 500 highway deaths per year by 2024.

Six areas are emphasized as causes of fatalities and serious injuries on the highway: aggressive driving, distracted driving, impaired driving, occupant protection (failure to use seatbelts or child restraints while driving or riding), roadway departure, and vulnerable road users (crashes involving pedestrians, bicycles, motorcycles, electric scooters, or other vehicles besides cars and trucks.)

School Bus Safety

The transportation branch manager, Kentucky Department of Education, discussed school bus safety. Four major aspects of school bus safety are the Federal Motor Vehicle Safety Standards, school bus driver selection, the driver training program, and technology.

School Bus Stop Arm Cameras

Representative Hale and the vice president of sales, marketing, and government relations and the CEO of Bus Patrol discussed the use of stop arm cameras on school buses.

Representative Hale filed 2021 HB 189 to add stop arm cameras to school buses, and he planned to refile the bill for the 2022 Regular Session. This bill would allow an agreed-upon vendor to come into Kentucky to install stop arm cameras on school buses at no cost to a district. Drivers who did not obey the stop arm would either have the cases forwarded to law enforcement for issuance of a traffic citation or be issued notice of a civil fine.

Overview Of The Department Of Aviation And General Aviation In Kentucky

The commissioner, Kentucky Department of Aviation (KDA), introduced the department's deputy commissioner, who spoke about KDA and general aviation in Kentucky. KDA is the commonwealth's resource for all aviation issues including airport planning, airport project oversight, federal and state airport inspections, fleet services, economic development, unmanned aircraft systems development, and airport zoning.

The Kentucky aviation economic development fund, also known as the jet fuel tax fund, was established within the State Treasury in KRS 183.525. Jet fuel is taxed at 6 percent, but the tax is capped at \$1 million annually for each carrier. Some carriers hit this cap before the end of January each year. Funds are to be used for the development, rehabilitation, and maintenance of publicly owned or operated aviation facilities, and for other aviation programs within the commonwealth that will benefit publicly owned or operated facilities. The jet fuel tax brought

in just \$9.28 million in FY 2021 and was expected to bring in \$14.5 million a year in the future. Meanwhile, forecasted repair and maintenance needs easily exceed \$20 million per year.

Kentucky's Major Commercial Airports

The director of communications and government affairs, Cincinnati/Northern Kentucky International Airport, shared an update on the collective economic impact, general airport updates, project highlights, and financial updates of Kentucky's three largest commercial airports: CVG, Lexington's Blue Grass Airport, and Louisville Muhammad Ali International. Airports across the commonwealth are job generators and a front door to Kentucky for businesses and visitors. The airports also support more than 134,000 jobs and have an economic impact of more than \$18 billion per year. For the most recent years available, CVG and SDF alone have generated \$480 million in tax revenues per year. An economic breakdown per airport was provided.

An update was given on passenger enplanements at Kentucky's three major commercial airports, which all followed the same pattern. As the COVID-19 pandemic hit in March 2020, it severely impacted passenger enplanements. That impact bottomed out in April 2020 and has proceeded into a tepid recovery each month since then. Numbers still trail historical averages. Most of the recovered travel demand since the spring of 2020 has been in leisure travel, as reflected by the airlines' decisions to add or suspend routes.

Postsecondary Aviation Career Training

The assistant vice president, government and community relations, Eastern Kentucky University (EKU) and the executive director of the university's Aviation Department provided an update on aviation career training at EKU. In 1983, the first aviation-related course was offered at EKU, and by 1991 the first BS in aviation there was awarded. In 2010, the aviation program was brought under direct control of EKU.

The Aviation Career Training Program at EKU offers a BS degree in aviation with concentrations in professional flight, aerospace management, aerospace technology, and unmanned aircraft systems (starting in fall 2022). Also offered are dual-credit courses for secondary aviation pathways, in which 49 Kentucky high schools participate. The courses offered are Introduction to Aviation, Introduction to Unmanned Aircraft, Private Pilot Ground, Private Pilot Flight I, and Private Pilot Flight II. This program offers up to 12 hours of aviation credits and provides advanced standing in the EKU aviation program.

EKU partners with the Central Kentucky Regional Airport; the university president chooses two members of the airport board.

The president and CEO, Somerset Community College (SCC), and the college's Career and Technical Department chair and the program coordinator for aviation maintenance technology provided an update on aviation career training at SCC.

There are currently 4,160 people employed in aviation maintenance technology in Kentucky, as well as 86 job postings in this field. Employment trends for this field have included 1.9 percent growth from 2018 to 2021, and there is currently a projected growth rate of 3.8 percent from 2021 to 2025. The top related occupations by income include aircraft structure, surfaces, rigging, and systems assemblers at an average annual income of \$74,194, and aircraft mechanics and service technicians at an average annual income of \$55,656.

Boating Safety

Senator Alvarado spoke on 2022 Bill Request 351, which would require boating safety training for all adult boaters in the commonwealth. The bill would recognize safety certifications from other states or the Coast Guard, would allow for out-of-state boaters to get temporary certification, and would exempt people who have owned boats for 5 or more years. A victim advocate shared her story of a loved one who was killed in the summer of 2021 when his Jet Ski collided with a boat on Cave Run Lake. Boating fatality rates rose 25 percent in recreational vessels in 2020, compared to 2019, and accidents rose by 26 percent. A total of 77 percent of recreational boating fatalities occurred on vessels where the operator did not receive boating safety instruction. Current Kentucky law requires a safe boating certification only for children ages 12 to 17.

Kentucky would be the first landlocked state to require a boater education course for all boaters. Seven coastal states require all boaters to take an approved boater safety education course.

Hands-Free Driving

Representative Tipton, sponsor of 2022 BR 828, explained his proposed hands-free legislation, which would prohibit the use of a handheld electronic device while operating a motor vehicle. A victim advocate testified that her brother was killed in a distracted driving incident involving a semi-tractor trailer. She advocated for the passage of BR 828 in honor of her brother.

The state and local liaison, National Transportation Safety Board, spoke in favor of the measure. The boards' accident investigations have clearly shown that distraction is a growing and life-threatening problem in all modes of transportation. The CEO and co-founder of Stopdistractions.org spoke in favor of BR 828 and noted that Stopdistractions.org is a nonprofit organization dedicated to eliminating the devastation that results when a loved one is killed or injured in a crash caused by distracted driving. The organization brings together victims, victim survivors, foundations, and the general public to build awareness and recognition of distracted driving.

Hands-free laws exist in Washington, D.C., and 24 states, including Kentucky's surrounding states of Illinois, Indiana, Tennessee, Virginia, and West Virginia. Data from states that have adopted hands-free laws, such as Georgia and Tennessee, show a reduction in accidents and fatalities after the laws go into effect.

Transportation Needs

The executive director, Kentuckians for Better Transportation (KBT), gave an overview of Kentucky's transportation needs. KBT, established in 1977, is one of the oldest membership associations of its kind in the United States. KBT members represent a broad and diverse network of professionals focused on improving transportation, including airports, highways, public transit, rail, and waterways. Members include transportation professionals, local governments, economic development advocates and manufacturing and logistics companies.

KBT has five major objectives to achieve its stated goal: Build support for revenue increases over the next 2 years; build resilient and modern transportation systems that include wise investment; continue effective planning and well-built safe communities; focus on the connection between transit and economic vitality; and focus on its internal operations for staff and board members. KBT strives to be an unbiased, nonpartisan voice that provides facts and data to educate and advocate for transportation issues statewide.

KYTC Contracting

A visiting fellow, Bluegrass Institute for Public Policy Solutions, spoke concerning single-bid contracts, giving the perspective that a lack of competition on the bidding of road contracts for Kentucky's construction projects within KYTC requires examination and reform. Since the beginning of 2021, KYTC engineers' estimates have been exceeded in 151 single-bid contracts awarded in 62 counties to 18 companies. The total value of these contracts was \$173.8 million.

The recommendation of the visiting fellow was that the General Assembly direct the auditor of public accounts to audit KYTC's bidding practices. He said competition maximizes the value of every dollar dedicated to road construction and maintenance.

Administrative Regulations

The committee considered the following administrative regulations without objection:

- 601 KAR 001:005
- 601 KAR 001:113
- 601 KAR 023:030
- 605 KAR 001:030
- 605 KAR 001:035
- 605 KAR 001:215
- 605 KAR 001:215 Emergency

Committee staff provided an update on the progress of billboard regulations (603 KAR 10:0402 and E) which were filed by KYTC as directed by 2021 HB 328. The regulations will be sent to the House and Senate standing committees for review during the 2022 Regular Session.

**Report Of The 2021
Interim Joint Committee On Veterans,
Military Affairs, And Public Protection**

**Sen. C.B. Embry Jr., Co-Chair
Rep. Walker Thomas, Co-Chair**

Sen. Jimmy Higdon
Sen. Alice Forgy Kerr
Sen. Stephen Meredith
Sen. Robby Mills
Sen. Dennis Parrett
Sen. Wil Schroder
Sen. Brandon Smith
Sen. Whitney Westerfield
Sen. Mike Wilson
Sen. David Yates
Rep. John Blanton
Rep. Kevin D. Bratcher
Rep. Myron Dossett
Rep. Jim DuPlessis
Rep. Chris Freeland

Rep. Chris Fugate
Rep. Al Gentry
Rep. Robert Goforth
Rep. Jim Gooch Jr.
Rep. Mark Hart
Rep. Matthew Koch
Rep. Scott Lewis
Rep. Savannah Maddox
Rep. Bobby McCool
Rep. Patti Minter
Rep. Scott Sharp
Rep. Pamela Stevenson
Rep. Ashley Tackett Laferty
Rep. Bill Wesley
Rep. Buddy Wheatley

LRC Staff: Jessica Zeh, Logan Schaaf, and Maurya Allen

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee On Veterans, Military Affairs, and Public Protection

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

Committee Activity

Distinguished Military Personnel

During the Interim, the committee honored John Dodd and James Edward "Ted" Bassett for their military service.

Issues Facing Veterans

The chairman and legislative chairman of the Joint Executive Council on Veterans Organizations highlighted legislative priorities for the 2022 Regular Session, including funding for the Kentucky Department of Veterans Affairs (KDVA), exempting property owned by Veterans Service Organizations from state and local taxes, exempting military retiree pensions from state taxes, and educating veterans on the potential benefits of hyperbaric oxygen treatment for brain injuries.

The president and CEO of C&P Garage, a veteran community outreach organization, was joined by the public relations officer and two other staff members to speak to the committee about the organization's work.

Issues Facing Military Spouses

The president of the Military Spouse J.D. Network (MSJDN) spoke to the committee about the difficulties faced by military spouses in finding employment while moving frequently. The MSJDN supports 2021 House Bill 251, which would require administrative bodies to renew occupational licenses for spouses of active duty members of the Armed Forces without payment of fees or dues.

The southeast regional liaison of the Department of Defense State Liaison Office detailed the office's legislative priorities, including spousal employment and interstate compacts regarding licensing reciprocity for cosmetologists, barbers, massage therapists, teachers, social workers, dentists, dental hygienists, and others.

The executive director of the Kentucky Commission on Military Affairs also emphasized the importance of interstate compacts and HB 251.

The chairman and CEO of Connected Nation spoke about the Digital Works Program, which trains and places people in telework jobs. These jobs are particularly convenient for military spouses. The vice president of Connected Nation provided more details on the program and discussed its implementation at Fort Campbell. The president of Government Solutions and Services said that the Digital Works Program placed over 1,000 information technology employees during the COVID-19 pandemic.

Issues Facing First Responders

The president of the Kentucky Firefighters Association (KFA) provided an overview of the challenges faced by firefighters during the pandemic, including increased stress, posttraumatic stress disorder (PTSD), and suicide. Fire departments also faced significant financial hurdles, and many volunteers left their departments. The vice president of the KFA said that most fire departments stopped their public education and fire prevention programs during the pandemic. The deputy chief of W.R. Castle Fire-Rescue, representatives of the KFA, the sheriff of Morgan County, the mayor of Prestonsburg, and volunteer firefighters spoke about the state of volunteer firefighting. Departments are struggling to find and retain volunteers. Tax incentives were discussed as a method to improve the state of volunteer firefighting.

The commissioner of the Kentucky State Police (KSP) spoke about fixing retention issues and recommended significant pay raises to make KSP salaries competitive with those of local police departments.

An executive board member of the Kentucky Association of Chiefs of Police spoke about challenges facing police officers, including inadequate protection equipment during the pandemic, lack of adequate resources to deal with calls involving homeless people or people with a mental illness, an increase in calls regarding domestic violence, and negative perceptions from the public.

The government affairs liaison of the Kentucky Fraternal Order of Police (FOP) spoke about COVID-19 vaccination efforts among law enforcement and the need for more personal protective equipment, as well as the need for conversations surrounding social justice and policing to make space for FOP to participate.

The executive director of the Kentucky Board of Emergency Medical Services spoke about challenges of the pandemic, including labor shortages from sick and quarantined employees, lowered call volume and loss of revenue, increased costs of personal protective equipment, and inadequate reimbursement from insurance companies. The executive director advocated that the federal government should provide reimbursements for treatment-in-place, transportation to alternate locations, facilitation of telemedicine, and community paramedicine.

A research psychologist with the University of Kentucky Department of Criminal Justice Training and a former dispatcher spoke about mental health issues faced by telecommunicators, including PTSD and the stigma attached to coming forward with mental health concerns.

Kentucky Commission On Military Affairs

The executive director of the Kentucky Commission on Military Affairs (KCMA) emphasized the importance of partnerships within the commonwealth's defense community and outlined KCMA's five strategic goals: to protect and grow Department of Defense installations; to expand the economic impact of Kentucky's defense-related industry; to develop and implement the model for transitioning service members, veterans, and spouses; to establish Kentucky as the most military-friendly state; and to communicate strategically to gain interagency, intergovernmental, and public-private support for strong military advocacy.

The grant program manager for KCMA discussed the Cybersecurity, Certification, Career and Communities Training Program (C4 Program) and the Department of Defense grant that funds it. An aim of the C4 Program is to work with the Education and Workforce Development Cabinet to train and equip military veterans and their families with occupational opportunities.

Kentucky Department Of Military Affairs

The adjutant general provided an update on the recent activities of the Kentucky National Guard. These included deployments to Iraq, Kosovo, Poland, the Horn of Africa, and the southwest border of the United States, as well as to Washington, D.C., after January 6, 2021. The National Guard also provided hospital security, supported drive-through COVID-19 testing, and staffed food pantries. The adjutant general addressed the ongoing vaccination efforts within the National Guard and spoke about assistance with evacuating refugees from Afghanistan.

Kentucky Department Of Veterans Affairs

The commissioner of the Kentucky Department of Veterans Affairs spoke about KDVA's assistance with processing unemployment insurance claims during the pandemic. The commissioner praised the professionalism of the KDVA staff.

Defense Communities Within The Commonwealth

The committee received presentations from Fort Knox, Fort Campbell, the US Army Corps of Engineers, the Bluegrass Army Depot, the Kentucky Environmental Foundation, and the US Coast Guard Sector Ohio Valley.

The garrison commander for Fort Knox and the president and CEO of the Knox Regional Development Alliance (KRDA) spoke about the unique features of Fort Knox, including its home for the US Army Recruiting Command, Human Resources Command, and Command Assessment Program. It is also home to a 360-degree live-fire range on the Salt River and a digital air ground integration range, which should be ready for use by late 2023. They noted Fort Knox's regional impact, including \$2.6 billion in economic activity, a \$750 million annual payroll, 22,000 jobs on the installation, and 13,000 jobs supported in relation to the installation.

The garrison commander for Fort Campbell and the president and CEO of the Campbell Strong Defense Alliance spoke about the unique features of Fort Campbell, including its home for the

101st Airborne Division, its role as the largest employer in Kentucky, its large airfields, and its Future Vertical Lift helicopter program. Fort Campbell has an economic impact of \$10.1 billion and an active duty population of 27,000.

The Louisville outreach coordinator of the US Army Corps of Engineers detailed the activities of the organization, including civil works projects, support to military customers and other federal agencies, environmental missions, and emergency management. In August 2021, the Department of Veterans Affairs and the Army Corps of Engineers awarded an \$840 million contract to build a new VA medical center in Louisville.

The commanding officer of the Blue Grass Army Depot (BGAD) emphasized the close relationship BGAD maintains with Fort Knox and Fort Campbell and the benefits of its location, including its proximity to major interstate highways, access to rail, and safety from most extreme weather events. BGAD also runs a chemical agent destruction program.

The program director of the Kentucky Environmental Foundation presented on chemical weapons destruction at BGAD and prospects for BGAD's future after the completion of the chemical weapons destruction.

The commanding officer of the US Coast Guard Sector Ohio Valley provided an overview of activities in Kentucky, including disruption of terrorist activity and seizing of illegal drugs. The unit operates a vessel traffic service in Louisville during periods of high water, participates in exercises and boat drills with state and local partners, trains with search and rescue agencies, and provides safe oversight and regulation of the maritime transportation system and 44 waterside facilities.

Public Protection

The committee discussed a prefiled bill related to swimming pool operational standards, specifically concerning barriers and main drains, and heard from the parents of a child who drowned in a neighbor's pool that was not secured by a barrier.

The committee also discussed a prefiled bill that would prohibit use of state funds to restrict firearm ownership.

The attorney general and the founder and director of Women of Alabaster spoke about addressing human trafficking. The attorney general noted that Kentucky ranked ninth in the US for new federal human trafficking cases in 2019. He highlighted Operation United Front, a multistate sting operation that resulted in the rescue of 21 victims and the arrest of 46 perpetrators, and the Your Eyes Save Lives campaign, funded by a grant from the US Department of Justice. The campaign runs ads to educate people about the signs of trafficking and to encourage people to report suspected trafficking.

The founder and director of Women of Alabaster praised the work of the attorney general's office and said that it is important to find ways to help victims of trafficking with mental health care, drug treatment, and trauma therapy.

The committee discussed the Humanity in Healthcare Act, a pro-life omnibus bill dealing with issues relating to parental consent, judicial bypass, verification and compliance of abortion providers, medical conscience, physician requirements, reporting requirements, fetal remains protocol, and public funding. The executive director of the Kentucky Right to Life Association and the state policy director of the Susan B. Anthony List spoke in favor of the bill; the Kentucky state director of Planned Parenthood Alliance Advocates and a representative of the American Civil Liberties Union of Kentucky spoke in opposition to the bill.

**Report Of The 2021
Administrative Regulation Review Subcommittee**

**Sen. Stephen West, Co-Chair
Rep. David Hale, Co-Chair**

Sen. Julie Raque Adams
Sen. Ralph Alvarado
Sen. David Yates

Rep. Randy Bridges
Rep. Deanna Frazier Gordon
Rep. Mary Lou Marzian

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Harkenrider, Karen Howard, Carrie Nichols, Emily Caudill, Ange Darnell, and Christy Young

**Presented to the
Legislative Research Commission
and the
2022 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.

Administrative Register Update

Issues of the *Administrative Register Of Kentucky* were placed online at LRC's website in 2019, beginning with the July 1995 edition. In November 2021, the remaining back issues of the *Register* were added. PDFs of the entire series of the *Register*, beginning with the August 1974 publication, are now available to the public online, with new issues added monthly.

Subcommittee Activity

The Administrative Regulation Review Subcommittee (ARRS) is a statutory committee of the Legislative Research Commission and is required to meet monthly. This report covers subcommittee activity between January 2021 and December 2021.

Subcommittee Statistics

Within the last year, ARRS reviewed 613 regulations, of which 6 were found deficient:

- 702 KAR 1:195E – Face Coverings in School Facilities
- 803 KAR 25:190 – Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions
- 810 KAR 3:020 – Licensing of Racing Participants
- 902 KAR 2:211E – Covering the Face in Response to Declared National or State Public Health Emergency
- 902 KAR 2:212E – Covering the Face in Response to Declared National or State Public Health Emergency
- 902 KAR 2:213E – Childcare Standards for Covering the Face in Response to Declared National or State Public Health Emergency

**Baseline 10-Year Average Number Of Regulations Reviewed By ARRS
2011 To 2021**

	Additional Amendments Made At An ARRS Meeting	No Additional Amendments Made At An ARRS Meeting	Companion Emergencies To Ordinary Regulations	Withdrawn Prior To ARRS Review	Total Reviewed
Baseline average	307	136	45	21	488

Note: ARRS = Administrative Regulation Review Subcommittee.

**Regulations Reviewed By ARRS
December 2020 To November 2021**

Month*	Additional Amendments Made At An ARRS Meeting	No Additional Amendments Made At An ARRS meeting	Pre-SB 2 Companion Emergencies To Ordinary Regulations	Withdrawn Prior To ARRS Review	Total Reviewed
2020: December	48	12	9	0	69
2021: January	45	6	0	4	51
March	28	18	6	0	52
April	43	3	4	4	50
May	23	10	2	0	35
June	18	23	19	0	60
July	41	9	0	1	50
August	34	17	0	0	51
September	45	16	0	4	61
October	47	23	0	2	70
November	30	34	0	2	64
Total	402	171	40	17	613**

Note: ARRS = Administrative Regulation Review Subcommittee.

* The subcommittee did not meet in February 2021.

** As of November 29, 2021, 230 regulations were projected to be reviewed at the December ARRS meeting. If there are no changes to the agenda, these would increase the total number of regulations reviewed between January 2021 and December 2021 to 774.

Certifications

Out of 49 certification letters filed between January 1 and November 1, 2021, agencies indicated that 9 regulations will be amended and 40 will remain in effect without amendment. During this period, eight regulations expired as a result of the sunset legislation established in HB 4 from the 2019 Regular Session of the General Assembly.

Legislation Impacting Administrative Regulations, 2021 Regular Session

SB 1 amended KRS 39A.090 to require regulations that were promulgated under a declared emergency to be in effect no longer than 30 days, unless the General Assembly approves an

extension, modification, or termination. This requirement applies to regulations that place restrictions on in-person meetings; schools; businesses; political, religious, or social gatherings; places of worship; or local governments. The 30-day provision also applies to regulations that impose mandatory quarantine or isolation requirements.

SB 2 contained several new provisions that affected the regulations process under KRS Chapter 13A. These changes included expediting the public hearing and comment process for emergency regulations, allowing amendment of emergency regulations with subcommittee and agency agreement, requiring an agency to document the basis for an emergency regulation, allowing an emergency regulation to be found deficient if the emergency basis is not warranted, and requiring that an agency post on its website both a notice that a regulation has been filed and any material incorporated by reference. The bill also established a 30-day expiration period for certain regulations that place restrictions on in-person meetings; schools; businesses; political, religious, or social gatherings; places of worship; or local governments. The 30-day provision also applies to regulations that impose mandatory quarantine or isolation requirements.

SB 65 nullified regulations that became effective after being found deficient by ARRS or another legislative committee in 2020:

- 803 KAR 2:180 – Labor Cabinet, Department of Workplace Standards: Recordkeeping, Reporting, Statistics
- 921 KAR 3:025 – Cabinet for Health and Family Services, Department of Community Based Services: Technical Requirements
- 921 KAR 3:025E – Cabinet for Health and Family Services, Department of Community Based Services: Technical Requirements, Emergency.

HB 429 created a new section of KRS Chapter 13A to allow an agency to use an administrative regulation management application developed and maintained by the Legislative Research Commission, if available, to satisfy paper-based filing requirements and notifications to the regulations compiler that are required under KRS Chapter 13A. HB 429 also amended provisions to clarify certification process requirements; establish that the Education Assessment and Accountability Review Subcommittee shall have the same powers and use the same process as the ARRS, with some exceptions; and specify technical correction requirements.

HJR 77 mandated that all COVID-19 related executive orders, regulations, or other directives from the governor or executive branch that were not specifically extended would be of no further force or effect as of the effective date of the resolution. Certain regulations etc. were extended for either 30 or 90 days.

Legislation Impacting Administrative Regulations, September 2021 Extraordinary Session

HJR 1 mandated that all COVID-19 related executive orders, regulations, or other executive actions that were not specifically extended would be of no further force or effect as of the effective date of the resolution. Certain regulations were extended until January 15, 2022.

Review Topics

The following are some of the topics that ARRS reviewed during 2021.

Agriculture

Cervids (302 KAR 22:150). The subcommittee reviewed a regulation from the Department of Agriculture relating to cervids. The department stated that the amendments were designed to address situations in which a cervid escaped captivity, which were managed based on the amount of time of escape and a determination by the state veterinarian. The department further testified that a deceased cervid would be tested for chronic wasting disease (CWD), and that cervid herds were certified, routine surveillance was conducted for CWD and other diseases, and biosecurity management practices were used. Indiana was the primary state from which Kentucky received cervids, but states that complied with Kentucky standards could apply to send cervids under very stringent requirements. The movement of cervids into Kentucky was under seal so that they could not commingle.

Boards

Naloxone Dispensing (201 KAR 2:360). The subcommittee reviewed a regulation from the Board of Pharmacy that authorized pharmacists, as part of a harm reduction program, to dispense naloxone to any person or agency for administration to the public. The regulation also removed the educational requirement for pharmacist certification to dispense naloxone. Concerns were expressed regarding the removal of the educational requirement because naloxone could cause pulmonary edema and because the person acquiring the naloxone was not the same person to whom it would be administered. The board explained that it was proposing to delete the safety information requirements because pharmacies always give patients the option for more information at dispensing.

Pharmacy Prescriber-Approved Protocols (201 KAR 2:380). The subcommittee reviewed a regulation from the Board of Pharmacy that expanded the scope of prescriber-approved protocols to include alcohol use disorder; colorectal cancer prevention and screening; hepatitis C virus infection screening; human immunodeficiency virus (HIV) infection prophylaxis; and HIV infection screening. After public comments, the board amended the regulation to limit the protocol for alcohol use disorder to naltrexone-based therapy treatment. The board stated that cancer screening had decreased by as much as 90 percent due to the COVID-19 pandemic. Approximately 30 percent of Kentucky's applicable population remained unscreened for colorectal cancer.

Administration Of COVID-19 Immunizations (201 KAR 8:505E). The subcommittee reviewed an emergency regulation from the Board of Dentistry that authorized a licensed dentist to administer COVID-19 immunizations within the guidelines established by the Centers for Disease Control and Prevention (CDC) and the Cabinet for Health and Family Services. The Statement of Emergency indicated that this regulation was necessary given that the COVID-19 pandemic had created a state of emergency in the commonwealth and posed a risk to the health

and well-being of Kentucky citizens. HJR 1 (2021 SS) extended the effectiveness of this regulation until January 15, 2022.

Emergency Medical Responders, Emergency Medical Technicians, And Advanced Emergency Medical Technicians (202 KAR 7:201, 202 KAR 7:301, And 202 KAR 7:330).

The subcommittee reviewed regulations promulgated by the Kentucky Board of Emergency Medical Services that streamlined requirements and provided additional guidance for certification application processes. The regulations also established requirements for the positions of emergency medical responders, emergency medical technicians, and advanced emergency medical technicians.

After public comments, the board amended the regulations to include training related to HIV and acquired immunodeficiency syndrome, require proof of completion of specific medical training and certification courses for the purpose of reciprocity, remove the provision denying renewal eligibility for individuals subject to pending administrative action, and require proof of successful completion of the National Registry of Emergency Medical Technicians' Advanced Emergency Medical Technician National Continued Competency Program for Continuing Education within 12 months preceding an application for reinstatement.

Education

Private College Licensing (13 KAR 1:020). The subcommittee reviewed a regulation from the Council on Postsecondary Education that increased initial licensure fees for new in-state colleges from \$1,000 to \$10,000; increased initial licensure fees for new out-of-state colleges from \$5,000 to \$15,000; and increased annual licensure fees by 50 percent of the current rate starting in 2022, 75 percent in 2023, and 100 percent from 2024 forward.

According to the council, and prior to this version of the regulation, fees brought in approximately \$263,000 per year, which was not sufficient to provide for three full-time staff position salaries and benefits. These overall expenses did not include technology and other types of costs. The council stated that its goals were to provide oversight, prevent bad actors, maintain a high quality of education, and assist with student transfers when an institution closes, which had occurred with at least two private, for-profit institutions in Kentucky.

Face Masks in Schools (702 KAR 1:195E) – DEFICIENT. The subcommittee reviewed an emergency regulation from the Kentucky Department of Education relating to face masks in school facilities. The Statement of Emergency indicated that the regulation was necessary to mitigate the spread of COVID-19 in Kentucky public schools and prevent public school closures during the 2021–2022 school year. The position of the Kentucky Board of Education was that the spread of the Delta variant and the fast-approaching academic year created a serious situation, and that schools did not have adequate space for social distancing. However, social distancing could be relaxed if face coverings were worn.

There was both significant support and significant opposition to the face-covering regulation. Supporters expressed concerns about the quality of virtual education, the mental and emotional health of students when isolated, anxiety among students about returning to in-person instruction,

vulnerability of medically fragile students and family members, children who were too young to be vaccinated, school staffing shortages, and increasing COVID-19 cases among children. Opponents expressed concerns about personal liberty and choice, the efficacy of face masks, potential negative impacts for children who are forced to wear face masks, and local control principles.

The board's position was that individual rights ended where the rights of others became affected. It was operating pursuant to the authority established by KRS 156.160, which directed the board to promulgate regulations that were necessary or advisable for the protection of the physical welfare and safety of children in public schools. The board cited studies demonstrating the effectiveness of face coverings and the importance of using them in combination with other virus-mitigation strategies. If many students became quarantined or ill due to noncompliance, funding based on attendance data would be affected, among other repercussions. The department and the board declined a request to withdraw the regulation. The subcommittee voted to find this regulation deficient.

Energy And Environment

Bluegrass Army Depot – Hazardous Waste (401 KAR 39:060). The subcommittee reviewed a regulation from the Energy and Environment Cabinet related to the Bluegrass Army Depot. In response to questions from the subcommittee, a representative of the cabinet stated that chemical munitions stored at Bluegrass Army Depot included approximately 2 percent of the nation's stockpile of mustard nerve agents. The US Army had specific requirements for the treatment, storage, and disposal of these nerve agents, and it was moving away from neutralization because of the risk of exposing personnel to hazardous waste. The regulation simplified the process of dealing with such waste, and most of the waste would be addressed by 2023.

Broadband – Access And Attachments To Utility Poles And Facilities (807 KAR 5:015). The subcommittee reviewed a regulation from the Public Service Commission (PSC) that related to expanding broadband in Kentucky and establishing procedures for the PSC to regulate rates, terms, and conditions for utility pole attachments and access to other utility facilities. Supporters testified that pole attachment provisions were vital in efforts to expand broadband access in Kentucky, and that uniform provisions would help to expand broadband in a more timely and efficient manner. Others objected, stating that the regulation was discriminatory against incumbent local exchange carriers (ILECs), such as AT&T, and represented a disincentive for the expansion of broadband. A provider with a joint use agreement with a utility would not be considered a "broadband internet provider" under the regulation and would be governed by less advantageous requirements.

The commission's response was that it had historically treated parties of joint use agreements differently with regard to pole attachments because terms varied significantly, and other types of providers might be put at a disadvantage (for instance, time frames for joint use agreements varied and were often valid for 1 to 5 years with automatic renewal options). ILECs had been successfully established in Kentucky for many years.

Fuel Adjustment Clause (807 KAR 5:056). The subcommittee reviewed a regulation from the Public Service Commission relating to the implementation of an automatic fuel adjustment clause. The clause allowed electricity-generating utilities to consider cost recovery on a monthly basis. If fuel costs were above a certain limit, then the electric utility could issue a charge on customers' bills. If fuel costs were below a certain limit, then the electric utility could issue a credit on customers' bills. In evaluating the reasonableness of a utility's fuel cost, the commission was required to deduct any coal severance tax from the cost of fuel. This affected procurement contracts and competing bids from coal producers.

Finance

State Property (200 KAR 3:020). The subcommittee reviewed a regulation from the Finance and Administration Cabinet that updated health and safety requirements for state-owned facilities and grounds. The amendments authorized, but did not require, the wearing of face masks to prevent disease. Additionally, the amendments prohibited livestock at state facilities that were not specifically designed for them and established firearm safety provisions, which included requirements that long guns be carried with the muzzle point up and that handguns be holstered with at least two steps of safety, a policy already followed by law enforcement. The regulation also prohibited having a finger on the trigger of a firearm.

Drinking Water And Wastewater Grant Program (200 KAR 17:110E). The subcommittee reviewed an emergency regulation from the Kentucky Infrastructure Authority. The Statement of Emergency indicated that this regulation used federal funding to invest in water and wastewater infrastructure to mitigate the fiscal impact of the COVID-19 pandemic. According to the authority, the administrative fee established by the regulation was intended to finance the program for 6 years, as authorized by the American Rescue Plan Act of 2021. The grant program had already received 400 applications to participate.

Fish And Wildlife

Harvest And Sale Of Asian Carp (301 KAR 1:152). The subcommittee reviewed a regulation from the Department of Fish and Wildlife relating to Asian carp. The department stated that commercial fishing of Asian carp in Kentucky was substantial. Approximately 9 million pounds had been harvested in 2021, most of which was used to make fish meal. Processors were available to store fish harvested for human consumption or bait.

Health And Family Services

Certificate Of Need (900 KAR 6:055 And 900 KAR 6:110). The subcommittee reviewed regulations from the Cabinet for Health and Family Services that were amended to update procedures used to notify the cabinet when a hospital redistributed beds among its existing licensure categories. According to the cabinet, the changes were intended to align the State Health Plan levels of care. The amendment would also allow acute care beds to be moved from a university hospital to an existing outpatient care center.

Face Masks – Generally (902 KAR 2:211E) – DEFICIENT. The subcommittee reviewed an emergency regulation from the Cabinet for Health and Family Services concerning the required use of face masks. The Statement of Emergency indicated that the regulation was necessary to establish actions that the Department for Public Health may take in response to a declared national or state emergency. This regulation was filed to update regulatory compliance with a new Executive Order issued May 13, 2021. The cabinet indicated that the Executive Order was consistent with the CDC’s revisions to face covering requirements for members of the public who were vaccinated. The cabinet stated this regulation would be withdrawn on June 11, 2021, the expiration date of the executive order.

Concerns were expressed regarding the lawfulness of the regulation, the effectiveness of face masks, and religious conflicts. The subcommittee voted to find this regulation deficient. The regulation was withdrawn when the May 13 Executive Order expired, and a new face mask regulation was promulgated (902 KAR 2:212E).

Face Masks (902 KAR 2:212E) – DEFICIENT. The subcommittee reviewed an emergency regulation from the Cabinet for Health and Family Services relating to face masks that was promulgated immediately after the withdrawal of 902 KAR 2:211E (above). The Statement of Emergency indicated that the regulation was necessary to establish actions that the Department for Public Health may take in response to a declared national or state emergency. It differed from the previous regulation by amending the groups of individuals required to wear face masks and removing the penalties for noncompliance. Face masks were required on public transportation, in a health care setting, or in a long-term care setting. Examples of health care settings included hospitals, medical clinics, and pharmacies that were within a medical setting such as a hospital or clinic. Retail pharmacies that were not in a medical setting were not included. Businesses and other establishments had the ability to mandate their own face covering policies that would be more stringent than this regulation, which established minimum requirements. CDC guidelines were not incorporated because those guidelines changed frequently, even daily, which was not a situation conducive to incorporation.

Concerns were expressed that the emergency regulation seemed vague, confusing, and unnecessary, and there were questions as to whether it created a situation that would allow a subjective response to noncompliance. The cabinet stated that the COVID-19 pandemic featured continually changing circumstances and new information, making dynamic standards necessary. Most health care facilities and long-term care facilities were cooperating. The subcommittee voted to find this regulation deficient.

Face Masks – Child Care Centers (902 KAR 2:213E) – DEFICIENT. The subcommittee reviewed an emergency regulation from the Cabinet for Health and Family Services relating to face masks in child care centers. The Statement of Emergency indicated that this regulation was needed to address the increase in COVID-19 infections and hospitalizations resulting from the Delta variant. The testimony of the cabinet, supporters, and opponents to this regulation was very similar to that provided for 702 KAR 1:195E, which related to face masks in the school setting. Additional concerns were expressed that enforcing the use of face masks by 2- and 3-year-olds was impractical; that face mask parts could create a dangerous choking hazard to young children; and that the penalties, due process provisions, and legality were questionable. The cabinet’s

response was that its goal was health and safety and that it intended to work closely with child care facilities to assist with compliance, answer questions, and alleviate fears of overbearing enforcement. The subcommittee voted to find this regulation deficient.

Food And Cosmetics (902 KAR 45:180). The subcommittee reviewed a regulation from the Department of Public Health that was amended to revise the permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale. The department provided testimony that, in response to stakeholder concerns regarding the fee changes, it was proposing an agency amendment to restore the previous fee structure. It would be tiered and based on a facility's square footage and product risk level. The subcommittee approved the amendment.

Supplemental Nutrition And Assistance Program (921 KAR 3:025 & E And 921 KAR 3:035 & E). The subcommittee reviewed regulations from the Cabinet for Health and Family Services concerning the Supplemental Nutrition Assistance Program (SNAP). The cabinet stated that the regulations lengthened the certification period for SNAP benefits, especially during the COVID-19 pandemic. Certification errors might have caused SNAP benefits to be terminated inappropriately during a time of food scarcity.

One of these regulations, 921 KAR 3:025, had been found deficient by the Interim Joint Committee on Health, Welfare, and Family Services on September 23, 2020. In 2021, an agency amendment was proposed to address the deficiency and other concerns, which would reinstate the provisions establishing that a noncustodial parent with outstanding child support due shall not be eligible to participate in SNAP. The agency amendment also established exceptions, including situations where children under the age of 18 resided with the noncustodial parent and certain exceptions related to incarceration. The subcommittee approved the agency amendment. This regulation was later repealed and replaced with 921 KAR 3:027 in response to SB 65 (2021 RS), which deemed 921 KAR 3:025 & E null, void, and unenforceable.

Horse Racing

Licensing (810 KAR 3:020) – DEFICIENT. The subcommittee reviewed a regulation from the Kentucky Horse Racing Commission that was amended to revise financial responsibility requirements. The proposed amendments clarified that the financial responsibility provisions apply to both licensed and nonlicensed entities related to horse racing. According to the commission, the proposed changes resulted from a prior court determination and would protect the horse-racing industry from insolvent or recalcitrant debtors. Opposing testimony asserted that the revisions expanded the commission's scope of enforcement beyond what was statutorily authorized, and that the commission could regulate financial disputes only between the commission's licensees. The subcommittee voted to find this regulation deficient. The commission later withdrew it in response to the deficiency finding.

Riding Crops (810 KAR 4:040). The subcommittee reviewed a regulation from the Kentucky Horse Racing Commission relating to use of a riding crop during a race. A representative of the commission stated that this regulation represented a compromise between the Jockeys' Guild and legislators regarding the use of riding crops. It established specific requirements for how and

when a riding crop could be used, as well as fines and suspension provisions. According to the commission, riding crops would be allowed in the event of an emergency.

Labor

Unemployment Overpayment (787 KAR 1:360E). The subcommittee reviewed an emergency regulation from the Labor Cabinet’s Office of Unemployment Insurance relating to unemployment insurance overpayments. The Statement of Emergency indicated that the regulation was necessary to implement the requirements in SB 7 (2021 RS), which had an emergency clause. The cabinet stated that if someone received an overpayment of unemployment insurance between January 27 and December 1, 2020, the recipient could submit a waiver request. At the meeting, the cabinet stated that it had sent out almost 14,000 waiver requests. The waiver requests in total could amount to approximately \$17 million.

Workplace Illness And Injury – Recordkeeping, Reporting, And Statistics (803 KAR 2:180E). The subcommittee reviewed an emergency regulation from the Labor Cabinet’s Division of Occupational Safety and Health Education and Training that amended the requirements relating to a report of a workplace illness or injury by an employer. The Statement of Emergency indicated that the regulation was necessary to ensure Kentucky’s compliance with federal mandates, maintain Kentucky’s primacy, and retain federal funding. The amendments clarified requirements pertaining to work-related deaths, including death from a heart attack, and aligned provisions with federal requirements. These proposed amendments were in response to SB 65 (2021 RS) and were intended to address the subcommittee’s finding of deficiency, which occurred at the June 9, 2020, meeting. Subcommittee members expressed concerns regarding procedural issues in light of SB 65, and the cabinet agreed to repeal this regulation and repromulgate these provisions with a different regulation number (803 KAR 2:181) to resolve these concerns.

Workers’ Claims – Mediation Program (803 KAR 025:300). The subcommittee reviewed a regulation from the Labor Cabinet’s Department of Workers’ Claims that established the procedures for a program to mediate disputes regarding the entitlement to workers’ compensation benefits. The department stated that the changes were being made in accordance with KRS 342.276, which authorizes a formal process for parties involved in workers’ compensation litigation to request that claims be referred to mediation. Parties could opt for mediation to attempt a resolution of the claim.

Workers’ Compensation – Utilization Review (803 KAR 25:190) – DEFICIENT. The subcommittee reviewed a regulation from the Labor Cabinet relating to the workers’ compensation utilization review process for medical claims. The cabinet stated that the most important change proposed in this regulation was the establishment of a medical director position. The medical director was intended to streamline and expedite treatment for injured workers as a substitute for appeals and reconsideration processes that can delay treatment by 3 to 6 months. A medical director could also proactively contact injured workers who did not have representation to assist them with further petition of cases. Injured workers who worked with the medical director would be able to continue the appeal of decisions to the Workers’ Compensation Board and then to the Court of Appeals. After a meeting with stakeholders, the

cabinet proposed an agency amendment that would add specificity to the medical director's qualifications, along with other compromise changes. The subcommittee approved the agency amendment.

Objections to this regulation included potential statutory conflicts, the creation of a case backlog, increased employer costs, an increase in claim cases, the constitutionality of the medical director because of a possible similarity to medical review panels, the consolidation of decision-making into one person who might be swayed by political matters, the fiscal impact, and the possibility that this was an attempt to change a statutorily established process. The cabinet's response was that KRS 342.260 authorizes speedy delivery of treatment for injured workers and KRS 342.035 does not prohibit a medical director. The subcommittee voted to find this regulation deficient.

Tentative December ARRS Agenda Topics

Although December's meeting agenda had not been finalized at the time of this report, the ARRS could review as many as 230 regulations. There are several reasons that a regulation might be removed from consideration, including the time needed to complete the public comment process or an agency request to defer the regulation to the next ARRS meeting.

Potential topics include the Early Childhood Development Scholarship Program; the GED program; teaching certificates; trademarks; the Address Confidentiality Program; ballot standards and election security; precincts; voter lists; election procedures; personnel procedures; the Public Employee Health Insurance Program; retirement disability procedures and service credit; the Board of Pharmacy; the Board of Cosmetology; the Board of Embalmers and Funeral Directors; the Board of Nursing; the Board of Licensure for Massage Therapy; exotic wildlife; Wildlife Management Areas; the Interstate Wildlife Violator Compact; administration of drugs to wildlife; the Kentucky State Fairgrounds and Exhibition Center; driver training; concealed deadly weapons; medical examination of sexual abuse victims; the Law Enforcement Officer Safety Act; the Criminal History Record Information System; the automated fingerprint identification system; traffic collisions and abandoned vehicles; polygraph examiners; the Missing Child Information Center; Kentucky State Police candidate selection; methamphetamine; criminal justice training; the Law Enforcement Foundation Program Fund; maintenance of highways; billboards; Libraries and Archives; Kentucky State University procurement procedures; vocational rehabilitation; labor standards; workers' compensation; alcohol licensing; insurance; Standardbred racing; telehealth; reportable disease surveillance; COVID-19 antibody administration centers; COVID-19 test distribution; COVID-19 vaccine storage; public swimming facilities, bathing facilities, and splash pads; home health agencies; visitation for long-term care facilities; Medicaid services; Alzheimer's and dementia services; and fictive kin caregivers.

**Report Of The 2021
Capital Planning Advisory Board**

**Sen. Adrienne Southworth, Co-Chair
Rep. Bobby McCool, Co-Chair**

Sen. Phillip Wheeler
Rep. Derek Lewis
Pat Abell
Rocky Adkins
J. Michael Brown
Charles Byers
Jacqueline Coleman

Laurie Dudgeon
Carole Henderson
Patsy Jackson
Holly McCoy Johnson
Ryan Neff
Mark Overstreet
Katie Shepherd

LRC Staff: Shawn Bowen, Korey Sallee, and Jennifer Luttrell

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Capital Planning Advisory Board

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

Review Of Agency Capital Plans

Since adjournment of the 2021 Regular Session, the Capital Planning Advisory Board has held six meetings from May to October. The meetings focused primarily on the review of agency capital plans in preparation of the 2022–2028 Statewide Capital Improvements Plan. At these meetings, the board received testimony from executive branch agencies, the Court of Justice, and postsecondary institutions. The testimony included discussion of each agency’s capital construction, information technology, and equipment needs. Several agencies discussed potential funding needs for the grant and/or loan programs they administer. The September meeting included a staff presentation on the proposed content and organization of the 2022–2028 Statewide Capital Improvements Plan, and a discussion among members of the general fund project recommendations.

The 2022–2028 capital plans submitted by executive branch state agencies, the judicial branch, and postsecondary institutions reported the need for 1,348 projects totaling approximately \$25 billion from all fund sources over the next 6 years. General fund dollars represent approximately \$7 billion of the total need. Other funding sources include restricted, federal, and road funds; agency bonds; and cash or third-party financing arrangements. For the 6 year period, \$10 billion is needed for new construction and expansion of existing facilities; plus \$11 billion for maintenance and renovation of existing facilities; \$242 million for equipment; \$1.6 billion for information technology projects; and \$995 million for the grant and loan programs that provide assistance to nonstate entities for water and sewer infrastructure, schools, and economic development.

Special Reports

In addition to the review of agency capital plans, the meetings also included special reports provided by the Commonwealth Office of Technology (COT) and the Council on Postsecondary Education (CPE). As part of the capital planning process, these agencies are responsible for the review and evaluation of capital construction and information technology projects. The COT chief information officer presented a report regarding its review of executive branch information technology projects at the board’s June meeting. The COT review panel evaluated 22 qualifying projects for the 2022–2024 biennium with a value of \$197 million. Three reports were generated based on the projects reviewed: All Funds Capital IT Projects (22 projects valued at \$197 million), General Fund High-Value IT Projects (12 projects valued at \$120 million), and the chief information officer’s Additional Priority Projects (3 projects valued at \$13 million).

The CPE president presented a report at the August meeting regarding its review of postsecondary construction and information technology projects. CPE staff reviewed postsecondary asset preservation projects valued at \$1.6 billion and postsecondary information technology projects valued at \$175 million. Twenty-four information technology projects were identified as high value.

2022–2028 Statewide Capital Improvements Plan—Final Approval

The board gave final approval to the 2022–2028 Statewide Capital Improvements Plan at its last meeting in October, and the plan was transmitted to the heads of the three branches of government by the statutory due date of November 1. The capital plan contained policy and project recommendations developed and approved by board members. The project recommendations encompassed state general fund projects for the first biennium sorted into three categories: construction (maintenance/renovation), construction (new), and information technology.

Relative to the policy recommendations, the following were adopted in conjunction with the capital plan:

- **Budget Reserve Trust Fund:** The board recommended that the governor and the General Assembly place a high priority on maintaining budget reserve trust fund balances and consider linking deposits directly to revenues and statutory withdrawal provisions.
- **Council on Postsecondary Education, Focus on Asset Preservation, Postsecondary Capital Projects:** The board endorsed CPE’s multibiennium strategy for financing the capital needs of postsecondary institutions. The board also recommended that the governor and the General Assembly endorse CPE’s proposed asset preservation investment framework and provide funding in the 2022–2024 and subsequent state budgets.
- **State Agency Maintenance Pools:** The board recommended that, in each biennium, sufficient funding be appropriated for agency miscellaneous maintenance pools to address maintenance projects that would protect the state’s significant investment in its physical plant. The board noted that the appropriation of bond funds for agency maintenance pools has had the positive effect of allowing agencies to undertake needed maintenance projects that otherwise would have required line-item budget authorization. However, this funding reduces the flexibility of agencies to undertake small projects that do not meet the 20-year useful life requirement for bond funding. As such, despite its benefits, the board recommended that bond funding should not be used to the exclusion of the traditional cash funding.

Relative to the authorization of capital projects funded with state funds, the following recommendations were included:

State Agency Maintenance Pools For Construction Needs. The board recommended that maintenance pool appropriations for all agencies be significantly increased in the 2022–2024 biennium. In their 2022–2028 capital plans, the agencies identified the need for approximately \$294 million for maintenance pools over the 6-year period. In the first biennium alone, the request for maintenance pool funding totaled \$130 million.

State Agency Equipment Maintenance Pools And Replacement Schedules. The board recommended that funds be provided, as appropriate, for equipment and systems maintenance pools. Similar to the need to protect the state’s investment in facilities, agencies that are responsible for major equipment assets of the state need the ability to address ongoing maintenance of those items, including aircraft, communications equipment, and wildland fire equipment. The board recommended that funding be regularly appropriated to allow agencies to establish and adhere to equipment replacement schedules so that replacement and upgrade needs can be addressed periodically, rather than accumulating until a major infusion of funds is required.

Long-Range Plan For Housing State Agencies In The Frankfort Area. The board commended the Department for Facilities and Support Services on its continuing progress toward implementing the plan developed in response to KRS 42.425 to reduce the amount of space leased to house state agencies in Franklin County. This progress has been accomplished through a combination of approaches, including state-funded new construction, state-funded renovations, and long-term financing arrangements. The board requested that the department continue to address reducing the amount of space leased by state government in other locations around the state. This action is consistent with KRS 42.425(2)(b)2, which directs the development of long-range plans for housing state agencies in metropolitan areas.

Grant And Loan Programs. Various agencies proposed significant funding in 2022–2024 for programs that would provide assistance, through a competitive application process, to nonstate entities. Included are programs of the Cabinet for Economic Development, the Department for Local Government, the Kentucky Infrastructure Authority, and the School Facilities Construction Commission. Because of the limited resources available and the significant needs in other areas of government, the board recommended that decision makers carefully analyze existing fund balances/carryforwards prior to authorizing additional appropriations for these programs.

Relative to projects proposed to be financed from state general funds in the 2022–2024 executive budget, board members recommended a total of 49 projects in three areas: construction (maintenance/renovation), construction (new), and information technology. The following projects were recommended:

Construction (Maintenance/Renovation)

Building Structural Safety Repairs-Department of Parks	\$3,009,000
Capital Renewal and Deferred Maintenance Pool-Kentucky Community and Technical College System	\$40,000,000
Capital Renewal and Maintenance Pool for Education and General Buildings-Morehead State University	\$17,813,000
Capital Renewal Replacement and Upgrade Pool-University of Louisville	\$100,000,000
Capitol Campus Upgrade, Phase Two-Finance and Administration Cabinet	\$84,800,000
Facilities Renewal and Modernization-University of Kentucky	\$250,000,000
HVAC Replacement and Rebuild-Various Buildings-Finance and Administration Cabinet	\$7,400,000
Kentucky State Penitentiary Infrastructure Upgrades-Department of Corrections	\$3,827,000

Modernization Pool KY National Guard-Department of Military Affairs	\$8,000,000
Renovation and Renewal Projects Pool-Kentucky State University	\$5,967,000
Replace Campus Communications Infrastructure Fiber Ring-Murray State University	\$4,640,000
Replace Underground Infrastructure-Western Kentucky University	\$25,000,000
Replace Underground Utility Infrastructure-Northern Kentucky University	\$4,400,000
State Schools HVAC Pool-Department of Education	\$33,016,000
State Schools Safety and Security Pool-Department of Education	\$3,100,000
Upgrade Welding Shop-Big Sandy Community and Technical College, Mayo Campus-Kentucky Community and Technical College System	\$2,000,000
Western Kentucky Veterans Center Heating and Cooling Systems-Department of Veterans Affairs	\$2,100,000

Construction (New)

Capital Renewal and Building Modernization-Murray State University	\$25,662,000
Construct Academic Complex-Eastern Kentucky University	\$100,000,000
Construct Armed Forces Readiness Center Somerset-Department of Military Affairs	\$23,539,000
Construct Health Education Building-University of Kentucky	\$380,000,000
Construct Health Sciences Center-Kentucky State University	\$18,406,000
Construct Leslie County Court Facility-Court of Justice	\$15,005,000
Construct New Gordon Ford College of Business-Western Kentucky University	\$74,400,000
Construct Science and Engineering Building-Morehead State University	\$98,000,000
Construct Student/Classroom Building Bluegrass Community and Technical College, Newtown, Kentucky Community and Technical College System	\$58,000,000
Expand Campground-Kentucky Horse Park	\$7,750,000
Expand Herrmann Science Center-Northern Kentucky University	\$82,900,000
Kentucky State Penitentiary Security Fence Addition-Department of Corrections	\$1,517,000
New Posts Construction-Harlan and Richmond-Kentucky State Police	\$8,456,000
New Skills Pad at Kentucky State Police Training Academy-Kentucky State Police	\$2,200,800
State-Owned Dam Repair Pool-Department for Environmental Protection	\$8,000,000
Thomas D. Clark Center for Kentucky History Museum Renovation-Kentucky Historical Society	\$1,586,000
Various Buildings HVAC Replacements and Repairs-Kentucky State Police	\$3,594,500

Information Technology

Adult Education System Modernization-Education and Workforce Development Cabinet	\$1,914,000
AR Inspection Forms-Energy and Environment Cabinet	\$1,785,000
ATSC 3.0k Conversion Phase 2-Kentucky Educational Television (KET)	\$1,500,000
Child Support Child Support System (KASES III)-Cabinet for Health and Family Services	\$33,000,000
eMARS Upgrade and Systems Enhancements-Finance and Administration Cabinet	\$14,000,000
Emergency Radio System Replacement-Kentucky State Police	\$55,440,000

Enhance Network and Infrastructure Resources-Additional-Morehead State University	\$3,219,000
Information Technology Pool-Kentucky Community and Technical College System	\$9,500,000
Integrated Tax System-Finance and Administration Cabinet	\$8,634,000
KentuckyWired Equipment Refresh-Kentucky Communications Network Authority	\$7,508,000
KEWS Hardware Modernization-Commonwealth Office of Technology	\$25,226,000
Social Assistance Management System Modernization (SAMS)-Cabinet for Health and Family Services	\$1,008,000
Student Portal College to Career Pathways-Council on Postsecondary Education	\$2,000,000
Upgrade Information Technology Infrastructure-Kentucky State University	\$12,263,000
Upgrade Information Technology Infrastructure-Western Kentucky University	\$6,000,000

**Report Of The 2021
Capital Projects And Bond Oversight Committee**

**Sen. Rick Girdler, Co-Chair
Rep. Chris Freeland, Co-Chair**

Sen. Jason Howell
Sen. Christian McDaniel
Sen. Robin Webb

Rep. Reginald Meeks
Rep. Jason Petrie
Rep. Walker Thomas

LRC Staff: Katherine Halloran, Korey Sallee, and Ashton Thompson

**Presented to the
Legislative Research Commission
and the
2022 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 and the capital construction and equipment purchase contingency account; 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 local school districts.

Committee Activity

As a statutory committee, the Capital Projects and Bond Oversight Committee meets monthly. This report covers committee activity between January 1 and November 30, 2021, as well as transactions that were projected to be submitted in December 2021. The committee met every month and did not object to any transactions.

In addition to the committee's oversight of the commonwealth's capital construction (including KRS 45A.077 public-private partnership [P3] agreements), debt issuance, and real property leases, the committee approves Kentucky Infrastructure Authority loans and Kentucky Economic Development Finance Authority (KEDFA) economic development fund (EDF) program grants under the Cabinet for Economic Development (CED) pursuant to KRS 224A.100 and 154.12-100(5). For this reporting period, only executive branch agencies (primarily through the Finance and Administration Cabinet) and postsecondary institutions submitted transactions requiring committee approval.

Approval Items Submitted From January 2021 To December 2021

Projects And Associated Agreements

Month	P3 Project Auth., KRS 45.763(3)	P3 Contracts, KRS 45A.077(6), 45A.077(10)(a)	Interim Project Auth., KRS 45.760(7), 164A.575(15)	Interim Project Appropriations Increases, KRS 45.760(6)	Transfers Capital Const. And Equip. Purchase Contingency Fund, KRS 45.770(7) And 164A.600(1)/Park Capital Maint./ Renovation Fund, KRS 148.810	Total
Jan	0	0	0	0	0	0
Feb	0	0	0	0	0	0
Mar	0	0	1	0	0	1
Apr	0	1	1	0	0	2
May	0	0	0	0	0	0
Jun	0	0	0	0	0	0
Jul	0	0	2	1	0	3
Aug	0	0	3	0	0	3
Sep	0	0	1	1	0	2
Oct	0	0	0	0	0	0
Nov	0	0	0	1	0	1
Dec*	0	0	0	0	0	0
Total	0	1	8	3	0	12

Note: P3 = Public-Private Partnership; Auth. = Authorizations; Const. = Construction; Maint. = Maintenance; Equip. = Equipment.

* Projected numbers.

Lease Arrangements

Month	Tenant Imp. Fund Reqs., 300 And M-U Buildings, KRS 56.823(12)(d)	Lease Auth., KRS 48.111(6)(e) And 56.832(7)	New Leases And Renewals, KRS 56.823(2)(4) And 164A.575(7)(c)	Lease- Purchases, KRS 56.823(3), 56.823(7), 56.823(9)	Built-To- Suit Leases, KRS 56.823(6)	Lease Modifications Of At Least \$50,000, KRS 56.823(11)(a)	Total
Jan	0	0	0	0	0	0	0
Feb	0	0	1	0	0	0	1
Mar	0	0	0	0	0	0	0
Apr	0	0	0	0	0	0	0
May	0	0	6	0	0	0	6
Jun	0	0	1	0	0	0	1
Jul	0	0	0	0	0	0	0
Aug	0	0	2	0	0	2	4
Sep	0	0	0	0	0	0	0
Oct	0	0	1	0	0	0	1
Nov	0	0	9	0	0	2	11
Dec*	0	0	2	0	0	1	3
Total	0	0	22	0	0	5	27

Note: Imp. = Improvement; M-U = Mayo-Underwood; Auth. = Authorizations; Reqs. = Requests.

* Projected numbers.

Transactions Submitted Through The Office Of Financial Management

Month	KIA Assistance Agr.*, KRS 224A.100	EDF Projects, KRS 154.12- 100(5)	Appr.- Supported Debt Issues, Excludes SFCC, KRS 45.810(1)	Non-Appr.- Supported Debt Issues, KRS 45.810(1)	Conduit Debt Issues, KRS 45.810(1)	School District Debt Issues With SFCC Debt Service Participation, KRS 45.810(1)	Bond Counsel Or UIA, KRS 45A.870(5)	Total
Jan	2	0	1	0	0	5	0	8
Feb	7	0	0	0	0	13	0	20
Mar	5	0	1	0	2	6	0	14
Apr	10	1	1	0	0	4	0	16
May	6	0	0	0	1	7	0	14
Jun	8	0	0	0	0	2	0	10
Jul	5	1	0	2	0	6	0	14
Aug	5	0	0	0	3	8	0	16
Sep	8	0	1	1	0	5	0	15
Oct	2	1	1	0	3	6	0	13
Nov	1	0	0	0	0	13	0	14
Dec**	0	2	0	0	0	8	0	10
Total	59	5	5	3	9	83	0	164

Note: KIA = Kentucky Infrastructure Authority; Agr. = Agreements; EDF = economic development fund; Appr. = Appropriation; SFCC = School Facilities Construction Commission; UIA = Underwriter Innovation Agreement.

* Loans, loan assumptions, and loan increases.

** Projected numbers.

Projects And Associated Agreements

The Finance and Administration Cabinet, through the Office of State Budget Director, submits and reports projects and associated agreements for executive branch agencies, the Kentucky

Community and Technical College System, and Kentucky State University. The other postsecondary institutions submit and report individually.

The committee approved the third KRS 45A.077(6) public-private partnership development agreement: Kentucky State University's Construct New Residence Hall project, an on-campus student housing facility (400+ beds) and dining hall. The Finance and Administration Cabinet submitted eight interim project authorizations, all of which were entirely federally funded. Three were for the Department of Military Affairs; two were for the Transportation Cabinet, one of which used Coronavirus Response and Relief Supplemental Appropriations Act funds for facilities technology modernization; one was for Kentucky Educational Television, using American Rescue Plan Act (ARPA) Elementary and Secondary Schools Emergency Relief Funds for Next Gen Conversion; one was for the Office of Vocational Rehabilitation; and one was for Kentucky State University, using National Institute of Food and Agriculture funds to renovate Hunter Hall, adding laboratory and office space primarily for the STEM/Environmental Science and Family and Consumer Science Program areas of KSU's College of Agriculture, Community, and the Sciences. The cabinet also submitted two appropriation increases, one from the KRS 45.247 highway contingency account and one federally funded. The University of Louisville submitted one athletics appropriation increase, funded with cash.

In addition to the above, the committee reviewed the following, reported for informational purposes only: KRS 26A.168(1), 45.793, and 45.818 quarterly and KRS 45.760(9) annual capital projects status reports; capital project allocations from specific program areas as allowed by Part II (4) of the executive branch appropriations bill, with postsecondary institutions reporting those allocations through the quarterly capital projects status reports; three KRS 45.780 Emergency Repair, Maintenance, or Replacement projects; KRS 45.760(5) postsecondary medical, scientific, and research equipment purchases, mostly for UK HealthCare; three KRS 45.760(6) postsecondary funding source revisions; two postsecondary authorization consolidations; and KRS 45A.077(6) and 45A.180(2) notices of intent to use public-private partnership and alternative construction project delivery methods. The majority of the capital project allocations were fees-in-lieu-of stream mitigation projects. One of the University of Kentucky's equipment purchases used National Science Foundation Mid-Scale Research Infrastructure-1 program grant funds for the EduceLab: Infrastructure for Next-Generation Heritage Science laboratory in the William S. Webb Museum for Anthropology.

Lease Arrangements

The Finance and Administration Cabinet, through the Department for Facilities and Support Services, Division of Real Properties (DRP), submits and reports lease arrangements for executive branch agencies. All postsecondary institutions submit and report lease arrangements individually. Of the 11 leases submitted by DRP, all were lease renewals under the same terms and conditions except one in which the landlord sold the property and the Department of Corrections had to relocate one of its Probation and Parole district offices in Jefferson County. UofL submitted leases to house student athletes. UK submitted nine leases for facilities with existing UK leases, all but three for UK HealthCare. Two of UK's leases were UK HealthCare renewals, and the remaining seven leases were new. Of those, some resulted from UK HealthCare relocations from the Kentucky Clinic to Turfland, UK HealthCare's increased

collaboration with Cardinal Hill, UK's work with the Federal Bureau of Investigations and Secret Service in regional threat analysis, and expansion of UK's Equine Analytical Laboratory.

DRP submitted two KRS 56.823(11)(a) modifications over \$50,000: One, for the Division of Probation and Parole, amortized leasehold improvements in Campbell County, resulting in a consolidation of the District 7 offices; the other, for the Department for Libraries and Archives, provided an increase in warehouse space. DRP is planning a third for one of the Department of Public Advocacy offices. UofL and UK also submitted KRS 56.823(11)(a) modifications over \$50,000—UofL for space reduction, resulting in a \$315K annual reduced rent at the MedCenter One Building, and UK for amortized improvements at its Specialty Pharmacy.

In addition to the above, the committee reviewed the following, reported for informational purposes only: KRS 43.050(2)(e) and Auditor of Public Accounts Model Audit Program Checklist for Postsecondary Institutions lease law compliance reports; three KRS 48.111(6)(a) notices of advertisement for leased space; quarterly KRS 56.813(2)(a)3.b and 56.823(11)(a) leasehold improvements under \$10,000 and square footage lease modifications under \$50,000; seven KRS 56.823(5) Transportation Cabinet (KYTC) Department of Highways emergency leases; and two KRS 56.823(11)(a) KYTC Department of Vehicle Regulation amortized leasehold improvements under \$50,000. The emergency leases were for vegetative debris storage from the February 2021 ice storms at \$500 per acre. The emergency leases ranged from 2 to nearly 7 acres, and costs were reimbursable by the Federal Emergency Management Agency.

Transactions Submitted Through The Office Of Financial Management

KIA Loans, Loan Assumptions, And Loan Increases. The committee approved Kentucky Infrastructure Authority (KIA) loans, loan assumptions, and loan increases to utilities for sewer and water projects (or planning and design loans for such projects) from the Fund A (federally assisted wastewater/clean water state revolving fund [CWSRF]), Fund B (infrastructure revolving fund), and Fund F (federally assisted drinking water/drinking water state revolving fund [DWSRF]) programs. KIA did not submit any Fund C (governmental agencies program loan fund) loans this year. Over a third of the submittals were for loan increases, due either to project modifications or to increased bids primarily from unavailability of contractors and higher materials costs.

KIA funds the state match for the CWSRF and DWSRF loan programs from general fund-supported State Properties and Buildings Commission bond proceeds, and KIA offers those loans based on the utility's ranking in the Intended Use Plans, developed with the Division of Water. Many of the CWSRF and DWSRF program loans incorporated a percentage—up to 50 percent—of principal forgiveness based on the utility service population's median household income and affordability index, the utility's rate increase history, and KIA's funding availability. Fund B and Fund C loans are allocated on a first-come, first-served basis. Projects may also receive supplemental funds from localities, from the state (via prior appropriations bills), or from other sources such as Abandoned Mine Land grants, Community Development Block Grants, Environmental Protection Agency (EPA) Section 319 (Clean Water Act) nonpoint source grants, US Department of Agriculture Rural Development grants/loans, and grants from the Appalachian Regional Commission, Delta Regional Authority, and Economic Development Administration.

In addition to standard projects involving sewer and water plants, collection (including decommissioning of pump stations) and distribution systems, and tanks, the loans included financing of sewer and water projects addressing federal and/or state enforcement action, creating redundancy, and/or extending service to unserved customers. Loans also involved elimination of package sewer treatment plants, addressing water loss, sewer extension to the Madison Airport, and payment of Kentucky Rural Water Finance Corporation notes. One Fund A loan covered a portion of Phase II of the West Hickman Wastewater Treatment Plant Wet Weather Storage project in Lexington. Phase I received an honorable mention in EPA's 2019 Performance and Innovation in the SRF Creating Environmental Success program.

In 2021, the General Assembly appropriated ARPA Coronavirus State Fiscal Recovery Funds to two KIA programs: \$300 million to the existing KRS 224A.112 Broadband Deployment Fund through House Bills 320 and 382 and \$250 million to a newly established Drinking Water and Wastewater Grant Program (Cleaner Water Program) through Senate Bill 36. Cleaner Water grants must be submitted to the committee, under 200 KAR 17:110, sec. 6(2). The executive branch is announcing grant awards, contingent on committee approval, and the committee will receive grant submittals in early 2022. The administrative regulations involving the Broadband Deployment Account are in process; however, KRS 224A.100 requires submittal to the committee of any assistance agreements with public-sector, but not private-sector, entities.

The Infrastructure Investment and Jobs Act includes additional appropriations to the CWSRF and DWSRF funds over 5 years. Most of the money is for loans to utilities with projects in the Intended Use Plans, but some funds will be allocated to remediation of emerging contaminants and to remediation of lead in drinking water. The allocation for remediation of emerging contaminants will have a 100 percent maximum principal forgiveness component versus the typical maximum of 49 percent to 50 percent.

KEDFA EDF Program. KEDFA's EDF Program, along with its High-Tech Construction/Investment and Loan Pools, is funded as needed from general-fund-supported State Property and Buildings Commission (SPBC) bond proceeds. CED may allocate EDF grant funds either up front (all or a portion to be repaid to the grantee if the beneficiary does not meet annual job and wage compliance benchmarks) or as the beneficiary meets annual job and wage compliance benchmarks. To avoid providing collateral, most beneficiaries opt for the latter. This year, in addition to two standard EDF grants—for the benefit of Ball Metal Beverage Container in Bowling Green and Nucor in Brandenburg—CED submitted three for industrial site upgrades under the Kentucky Product Development Initiative program, administered in conjunction with the Kentucky Association for Economic Development. Disbursements of those grant funds will occur on a reimbursement basis after CED reviews the required supporting documentation. The industrial site upgrades will be in the Eddyville Industrial Park, Southwest One Industrial Park (Marshall County), and West Industrial Park (Logan County).

Debt Issues. KRS 45.810 requires submittal of the commonwealth's debt-issuing entities' proposed debt issues. The commonwealth's debt-issuing entities are SPBC, the Kentucky Asset/Liability Commission (ALCo), the Turnpike Authority of Kentucky (TAK), the School Facilities Construction Commission (SFCC) (local school districts issue the debt, and SFCC pays a portion of the debt service), public postsecondary institutions, KIA, the Kentucky Higher

Education Student Loan Corporation (KHESLC), the Kentucky Public Transportation Infrastructure Authority (KPTIA), the Kentucky Housing Corporation (KHC), and KEDFA.

Appropriation-Supported And Non-Appropriation-Supported Debt Issues. SPBC, ALCo, TAK, SFCC, and postsecondary institutions issue appropriation-supported debt. (Postsecondary revenues and debt, irrespective of KRS 164A.608 state intercept provisions, are excluded from rating agencies' net tax-supported debt statistics.) KIA, KHC (in addition to acting as a conduit issuer), KHESLC, and KPTIA issue non-appropriation-supported debt. Debt issued by KIA, leveraging Fund-A and Fund F loan repayments, requires General Assembly authorization even though it does not count against the state's debt capacity because the pledged loans were funded partially with SPBC bond proceeds used for the state match. KHC's nonappropriation/nonconduit debt is moral obligation debt. However, KHC redirected its bond volume under the annual private activity bond volume cap from tax-exempt debt for single-family loan originations toward tax-exempt conduit multifamily housing debt. Therefore, KHC no longer issues new nonappropriation/nonconduit debt, although it did refinance \$58.995 million of nonappropriation/non-conduit debt this year for a net present value savings of \$5.083 million (8.62 percent).

KRS 45.810(1) and 56.866(3) are the statutes that exempt TAK debt and ALCo tax and revenue anticipation notes, respectively, from committee approval. KRS 175B.020(3) has separate provisions for KPTIA debt, which also does not require committee approval.

SPBC executed one transaction to refinance \$139.550 million of debt for a net present value savings of \$11.903 million (8.53 percent). In April 2021, the committee approved an ALCo issuance to retire all of its general fund floating rate project notes issued in 2007, allowing termination of the state's three outstanding swap agreements. The transaction, which retired \$117.495 million in debt with a \$10.1 million termination fee, was executed in 2021 and generated \$1.118 million in net present value savings. TAK refinanced \$95.845 million in debt for a net present value savings of \$19.021 million (19.85 percent). Under the same transaction, TAK executed a forward delivery, in which it waits (often by paying a premium) until within 90 days of the prior debt's earliest redemption date to close, to refinance and additional \$71.1 million of debt for a projected net present value savings of \$17.8 million (over 25 percent).

Northern Kentucky University financed its \$204 million soft-freeze (allowing employees prior to January 1, 2014, to remain in KERS) lump-sum cessation payment. NKU also refinanced \$5.025 million in debt for a net present value savings of \$654,200 (12.27 percent). Murray State University planned to finance \$12 million in Historic Building Preservation Pool projects. UK refinanced \$27.52 million in debt, and savings will be finalized on closing in January 2022.

SFCC's debt issuance was a combination of new projects and refinancings. Pursuant to KRS 157.622(6) and 750 KAR 1:010(10), school districts realize the savings from refinancing of debt with SFCC debt service participation. Because of historically low rates and a lower tax-exempt to taxable interest rate differential, it is advantageous for many school districts to issue taxable advance (more than 90 days before the prior debt's earliest redemption date) refundings. SFCC has a 5 percent net present value savings threshold and, for advance refundings, at least a 70 percent efficiency ratio requirement. The efficiency ratio is the gross undiscounted savings

less negative arbitrage (the loss on the debt proceeds escrowed until the prior debt is callable), then divided by gross undiscounted savings. The efficiency ratio is set to minimize losses on escrow accounts, which would not be needed if school districts waited, involving the risk that interest rates could increase, to do a current refunding.

KHESLC executed two non-appropriation-supported debt issues. In March 2021, KHESLC issued \$135.305 million to restructure additional Federal Family Education Loan Program (FFELP) debt, Series 2015-1 and Series 2016-1, along with some interim financing. This follows KHESLC's \$422.64 million FFELP issue last year, primarily to purchase/restructure the KHESLC 2010-1, 2013-1, and 2013-2 FFELP floating rate notes and the FFELP loans under the PNC trust. At its July 15, 2021 meeting, KHESLC's Executive Committee authorized debt issuance of up to \$455 million; \$370 million to finance, or refinance, FFELP loans; and \$85 million to finance, or refinance, Advantage loan originations.

FFELP was eliminated in 2010 for new originations, and most acquired federally guaranteed FFELP loans are rehabilitation loans. KHESLC routinely acquires Kentucky Higher Education Assistance Authority and Vermont Student Assistance Corporation FFELP loans. In addition to the routine acquisitions and permanent financing of interim credit, the \$370 million includes \$188.213 million to restructure additional debt and \$100 million in the event of FFELP portfolio purchase opportunities. KHESLC's interest in purchasing additional portfolios is due to loan returns less the cost of funds as well as service and administration fees. There may not be an overall profit from service and administration fees, as they are structured into the financing, but the incoming cash would provide liquidity to KHESLC's operating fund. The committee approved the \$455 million. To date, KHESLC has issued \$58.450 million under that approval for Advantage loans.

KPTIA refinanced \$183.104 million in debt for a net present value savings of \$58.532 million (over 31 percent). Of the \$183.104 million, \$37.274 million (approximately 20 percent) was retired through a tender offer, through which bondholders can exchange the new tax-exempt bonds for the prior bonds, sell the prior bonds back to the commonwealth, or hold the prior debt. Approximately 19 percent of the bondholders exchanged the prior debt, most likely for call protection as the new debt is not callable for 10 years, unless under a "make-whole" redemption, at which the issuer makes a formula-based lump-sum payment based on the net present value of future interest payments to protect the investor from losses.

Conduit Debt Issues (KEDFA And KHC). KEDFA acts as a conduit for hospital and industrial revenue debt issuance, as well as debt for approved companies and economic development projects. It has no legal or moral obligation for the repayment of the debt. There are two debt issues outstanding in which the debt is supported by appropriated contractual payments from the commonwealth and/or the borrower is an entity to which the governor appoints a majority of the members of the governing body. The Office of Financial Management (OFM) did not submit any such debt issues, or any other KEDFA conduit debt issues, in this reporting period.

KHC issues multifamily tax-exempt conduit debt, with no legal or moral obligation for the repayment of the debt, on behalf of housing developers who will then receive a 4 percent credit, which does not count against the state's annual oversubscribed low-income housing tax credit

allocation, under certain thresholds. Multifamily tax-exempt conduit debt is best for projects of at least 100 units; some projects will have up to 500 units. In rural areas, developers often combine small projects to make the debt issuance financially feasible. OFM submitted nine KHC conduit debt issues in this reporting period.

The committee reviewed Lexington-Fayette Urban County Government's refinancing of \$98.790 million of debt initially issued for construction of Eastern State Hospital for a net present value savings of \$14.734 million (14.914 percent), which the state will realize; the \$49.190 million certificates of participation for KSU's P3; and KEDFA's conduit issue approved by the committee last year for Christian Care Communities Obligated Group, the refunding of its 2016 variable rate debt and financing of its Nicholasville Ashgrove Woods facility acquisition, which it currently leases and operates.

In addition, the committee reviewed the following, submitted for informational purposes only: KRS 26A.168(2) judicial facility use allowance contingency fund report; KRS 45.810(6) annual report of debt principal outstanding transmitted on behalf of the commonwealth's debt-issuing entities; KRS 45.812(1) school district debt issues (submitted through the districts' financial advisers); KRS 45.816 previous debt issue reports; quarterly previous school district debt issues with SFCC debt service participation; the Office of the Auditor of Public Accounts' KRS 45A.860(3) reports certifying procedural compliance with KRS 45A.840 to 45A.879 in the procurement of underwriter and bond counsel services (KRS 45A.840(7) includes financial advisers in its definition of *underwriter*); ALCo's KRS 56.863(11) semiannual reports; and the KRS 65.4931(3) annual Louisville Arena Authority (LAA) report (also required by section 8.22 of the Loan Agreement for the Series 2017 bond issue) detailing operations, financial condition, and compliance with KRS 65.4931(2), which requires LAA either to apply all excess revenues to redeem a portion of its outstanding bonds or to present an alternative payment plan. LAA is currently under a 5-year redemption test period.

**Report Of The 2021
Child Welfare Oversight And Advisory Committee**

**Sen. Julie Raque Adams, Co-Chair
Rep. David Meade, Co-Chair**

Sen. Karen Berg
Sen. Denise Harper Angel
Sen. Brandon J. Storm
Sen. Whitney Westerfield

Rep. Kim Banta
Rep. Josie Raymond
Rep. Pamela Stevenson
Rep. Nancy Tate

Rep. Lynn Bechler, nonvoting ex officio

LRC Staff: Ben Payne, Samir Nasir, and Becky Lancaster

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Child Welfare Oversight And Advisory Committee

Jurisdiction: The Child Welfare Oversight and Advisory Committee was created to review, analyze, and provide oversight on child welfare, including but not limited to foster care, adoption, and child abuse, neglect, and dependency.

Committee Activity

The Child Welfare Oversight and Advisory Committee met three times during 2021. The committee heard testimony on a wide range of topics related to child welfare in the commonwealth.

Kentucky Social Worker Workforce

The commissioner and the deputy commissioner of the Department for Community Based Services (DCBS) in the Cabinet for Health and Family Services (CHFS) made a presentation about the mission of DCBS to prevent disruption of family units and to reduce maltreatment of children and adults. The committee learned of the rising average number of child protective services caseloads for frontline social workers from April to September 2021, and the committee was told about statewide and regional DCBS social worker turnover data and the top reasons for separation from DCBS. The commissioner told the committee that in response to worker turnover, DCBS is working to put items into the budget to work on capacity, create an alternative response expertise team, establish a pay increase, and research pay equity. DCBS will be requesting to add a Division of Primary and Secondary Prevention to the department. DCBS reviewed the wages and bonuses that nonprofit competitors are paying employees. Depending on the county, the average living wage is between \$15 per hour and \$19 per hour.

The DCBS commissioner testified about a plan to infuse primary and secondary prevention initiatives, the three phases of the plan, and the challenges in building a 21st-century DCBS. The commissioner reviewed the positive and negative effects of COVID-19 on the DCBS workforce and presented information about the vision to review, revise, and modernize all the features and physical conditions in which DCBS work is performed.

The director of the Western Kentucky University LifeSkills Center for Child Welfare Education and Research made a presentation related to the center's mission to support the development of child welfare professionals to serve Kentucky's families and children. The director discussed ways the center is directly supporting the DCBS workforce to reduce unreasonable expectations and reviewed the Kentucky Child Welfare Workforce Wellness Initiative and its partnerships that are working together to create a healthier workforce and community.

The committee also received a report from the dean of the University of Kentucky College of Social Work, which discussed the concept of the self-care lab to address burnout among professionals, the difference between caseloads and case weight, and how resource restrictions may disproportionately affect child welfare professionals. There was a discussion about partnership work completed with DCBS and the College of Social Work to assist social

workers, how worker wellness was measured in Kentucky, the difference shown in each area, and then the impact of COVID-19. The dean discussed the conceptual intervention to address the burnout problems and the information that was gathered and how the College of Social Work continues to work on strategies for worker wellness and retention.

Personnel from the Training Resource Center (TRC) at Eastern Kentucky University (EKU) made a presentation and discussed the ECU contract with DCBS to provide training and to house the training records system for workers and foster parents. The training needs for new social workers were reviewed during the Stabilization Phase with DCBS, and the committee learned that the TRC is involved in administrative, evaluation, and technological support for DCBS initiatives.

Prevention Services For Kentucky Families And Adoption Processes, Cost, And Timelines For Related Family Members And Foster Parents

Representatives of DCBS reported on prevention opportunities and initiatives supported by the Family First Prevention Services Act and other funding sources. There was discussion of DCBS's prevention, out-of-home care, and adoption expenditures, touching on the relation between each of the categories for state fiscal years 2019, 2020, and 2021. The committee learned about differences among primary, secondary, and tertiary prevention efforts. The cabinet officials discussed details regarding Family Preservation Program (FPP) services, the Kentucky Strengthening Ties and Empowering Parents program, multisystemic therapy pilot programs, and the partnership with Medicaid and three providers. The committee learned that DCBS wants to expand primary and secondary prevention efforts with a portion of the FPP funds and Community Based Child Abuse Prevention federal funds.

The Crittenden County judge/executive testified in detail about a family's journey to gain custody of and adopt a biological granddaughter. The judge discussed the process of working with DCBS, how the adoption took longer than expected, and the legal and financial barriers the family faced during the adoption process. The judge submitted recommendations to CHFS to help families seeking permanency for children who have been placed with relatives or foster parents in out-of-home care.

The director of the DCBS Division of Protection and Permanency reviewed the responsibilities of DCBS Adoption Services Branch. Data was presented regarding the length of time a child may be in out-of-home care until involuntary or voluntary termination of parental rights (TPR), and regulation information regarding the requirement of presentation summaries for adoption was presented. There was discussion of the criteria necessary for a foster family to receive an adoption subsidy. The committee learned about the number of finalized adoptions from 2014 to 2021 and post-adoptive placement stabilization services that focus on families who may be at risk of an adoption disruption. Information was provided on the Kentucky Adoption Profile Exchange, DCBS successes related to presentation summary packets, e-filing of TPR petitions, and collaboration with the Administrative Office of the Courts.

Child Sexual Abuse And Exploitation Prevention Board And The Children’s Advocacy Centers Of Kentucky

The executive director of the Office of Trafficking and Abuse Prevention and Prosecution in the Kentucky Office of the Attorney General testified about the Child Sexual Abuse and Exploitation Prevention (CSAEP) board, its missing members, and the scheduled meeting dates for 2021. The committee learned about the five goals within the strategic plan of the CSAEP board: to increase public and professional awareness and understanding of the nature and scope of child abuse and exploitation; to fund quality services and innovative programs; to have a greater influence on public policy relating to child sexual abuse and exploitation; to increase the effectiveness of the CSAEP board; and to ensure continued growth and viability of the Child Victims’ Trust Fund.

The assistant deputy attorney general in the Criminal Division of the Office of the Attorney General discussed aspects of trauma-informed sexual assault investigations such as sexual assault report writing, survivor statement and community engagement, the Prosecutor’s Roundtable, the Sexual Assault Nurse Examiner (SANE) approach to sex trafficking, and the overview of changes to human trafficking laws and signs of human trafficking. The assistant deputy attorney general told the committee that the CSAEP board partnered with the Zero Abuse Project to bring training to the state on behalf of state and county prosecutors. The committee also learned about the Child Abuse Prosecution Toolkit available on the website of the Office of the Attorney General.

The committee heard testimony from the director of strategic initiatives and programming at the Children’s Advocacy Centers of Kentucky (CACs of Kentucky). CACs of Kentucky was established to promote, assist, and support the development, growth, and continuation of Children’s Advocacy Centers in the commonwealth. The director told the committee about trends in the number of children served in Kentucky, with a comparison of the first three quarters of fiscal years 2020 and 2021, and listed how several factors that increased in 2020 correlate to an increase in child abuse. The director also detailed a request for funding by the General Assembly in the next biennial budget.

The medical director of the Children’s Advocacy Center of the Bluegrass and CACs of Kentucky detailed the differences between hospital emergency departments and the child-friendly CACs of Kentucky to aid in the process of disclosing and treating child abuse. A goal of CACs of Kentucky is to have experienced, qualified examiners provide comprehensive, child-focused, developmentally appropriate, and trauma-informed medical exams.

**Report Of The 2021
Commission On Race And Access To Opportunity**

**Sen. David P. Givens, Co-Chair
Rep. Samara Heavrin, Co-Chair**

Sen. Karen Berg
Sen. Gerald A. Neal
Sen. Whitney Westerfield
Rep. George Brown Jr.
Rep. Nima Kulkarni
Rep. Killian Timoney

Jamir Davis
Hannah Drake
Ricky Jones
OJ Oleka
Erwin Roberts

LRC Staff: Alisha Miller and Elishea Schweickart

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Commission On Race And Access To Opportunity

Jurisdiction: The commission shall conduct studies and research issues where disparities may exist across the sectors of education equity, child welfare, health, economic opportunity, juvenile justice, criminal justice, and any other sectors that are deemed relevant in an effort to identify areas of improvement in providing services and opportunities for minority communities.

2021 Regular Session Senate Bill 10 established the Commission on Race and Access to Opportunity, which is created as part of the Legislative Department of State Government to research issues where racial disparities may exist. These issues include educational inequity, child welfare, economic opportunity, health, criminal justice, and any other sectors found relevant in an effort to improve opportunities and services for minority communities.

Committee Activity

The Commission on Race and Access to Opportunity met five times during the 2021 Interim, focusing on parole, minority sentencing, minority postsecondary graduation rates, Western Academy, health care disparities, the Chamber of Commerce's report from the Task Force on Racial Inequality, racial equity in education, and the Kids Count program.

Parole

The chair of the Kentucky Parole Board presented on racial disparity in the state's parole system. In 2020, there were approximately 10,243 parolees, of whom 1,886 were Black and 8,124 were white. Also in 2020, 2,790 Black inmates were released, of whom 304 were recidivated with a new commitment and 483 were returned on a technical violation; in the same year, 14,356 white inmates were released, of whom 1,669 were recidivated with a new commitment and 3,659 were returned on a technical violation. The board plans to increase future trainings that confront implicit bias and fight racial disparities in the parole system.

Minority Sentencing

The Administrative Office of the Courts (AOC) provided a presentation on minority juvenile sentencing. Since the passage of 2014 Regular Session Senate Bill 200, which reformed juvenile justice, AOC has found that the reforms have been successful. Children in the system have had an increase in opportunity and more diversion. The reforms were particularly effective for white children but were less effective for Black children. Once the data were released after the reforms in 2014, AOC began to meet regularly with the Juvenile Justice Oversight Committee. Also in 2014, the *Disproportionate Minority Contact In Kentucky: Statewide Assessment* report was released.

AOC follows a Diversity, Equity, and Inclusion Statement, which lets employees know that equal treatment and respect is important and puts them in the best possible position to serve diverse populations. In 2019, the Kentucky Court of Justice (KCOJ) partnered with the Jefferson County Racial and Fairness Commission in a series of community engagement sessions called

Court Talks. In 2020, the KCOJ created the William E. McAnulty award that recognizes African American leaders within the organization.

AOC has used data it receives to improve its organization. One improvement includes training on implicit bias, cultural collisions, racial trauma dialogues, and antiracism. AOC also created a Racial and Ethnic Disparities Tool Guide that is a four-step model for employees to follow.

Minority Postsecondary Graduation Rates

The president of the Council on Postsecondary Education (CPE) testified on minority postsecondary graduation rates. Kentucky has set a goal of having 60 percent of the workforce with a postsecondary credential or higher by 2030 and continues to surpass the growth rate necessary to reach 60 percent. To achieve this goal, CPE has set up a framework that includes a strategic agenda, a diversity policy, and performance funding. Performance funding is calculated by using a performance formula of 35 percent for student success, 35 percent for course completion, 10 percent for academic support, 10 percent for institutional support, and 10 percent for maintenance/operations.

Currently, approximately 50 percent of Kentucky high school graduates attend college. Overall enrollment is down almost 16 percent, but it is up 6.4 percent in underrepresented minorities. CPE is working on facilitating change by taking a more holistic look at student success, using recruiting practices aimed at low-income and underrepresented minority students, increasing outreach, increasing focus on advising, and training faculty and staff.

Western Academy

Western Academy, at the Neblett Community Center in Owensboro, was launched in October 2019 and focuses on Black and biracial boys. Traditionally, Black boys are more likely to be placed in special education, to attend school without proper resources, and to be given harsher punishments. The goal of Western Academy is to support scholars and their parents. The Academy, held on Saturdays twice a month, uses a project-based curriculum and teaches life skills. To address the academic gap, Western Academy is using a blueprint of the Black Male Working program in Lexington, which reaches out to boys of color with an Afrocentric lens. Scholars are also expected to follow Well Principles, which include being well-behaved, well-mannered, well-dressed, well-spoken, well-read, and well-traveled.

Western Academy currently works with children in Owensboro and Daviess Counties but has a goal of being an A5 Title school. Western Academy is a nonprofit, 501(c)(3) and receives funding from Owensboro public schools, private donors, and grants.

Health Care Disparities

The Alzheimer's Association provided a presentation on health care disparities. Alzheimer's disease is the sixth leading cause of death in Kentucky. An estimated 75,000 individuals currently live with Alzheimer's in Kentucky. In 2017, nine potential risk factors for Alzheimer's were identified: less education, hypertension, hearing impairment, smoking, obesity, depression,

physical inactivity, diabetes, and low social contact. In 2020, three more risk factors were added: excessive alcohol consumption, traumatic brain injury, and air pollution.

The 2021 special report *Race, Ethnicity And Alzheimer's In America* found that older Blacks, Hispanic Americans, and women are more likely to have Alzheimer's. These groups are also more likely to receive late diagnosis and to experience barriers to high-quality care. The report also studied discrimination and found that more than one-third of Blacks and nearly one-fifth of Hispanic Americans and Asian Americans stated that they felt discriminated against. Advocating for the Equity in Neuroscience and Alzheimer's Clinical Trials Act—which increases outreach to underrepresented populations, increases diversity among clinical trial staff, and reduces the participation burden—is a way that the Alzheimer's Association is pursuing equity.

Report From The Task Force On Racial Inequality

The president and chief executive officer of the Kentucky Chamber of Commerce and the president and chief executive officer of Equity Solutions Group presented their report from the Task Force on Racial Inequality, established in 2020 by the Kentucky Chamber of Commerce. The task force focused on education, criminal justice, and economic empowerment, and it released a report, *Achieving Equity To Build A Stronger Kentucky*, in January 2021.

Achieving Equity To Build A Stronger Kentucky contained data on the education system, criminal justice system, and economic development in Kentucky. In 2019, just over 31.1 percent of Black students scored proficient on elementary school reading tests. Also, Black and Hispanic students were found to be below 30 percent in postsecondary education attainment. Not only are educational gaps noticeable, but disciplinary measures are also often disproportionate. The task force suggested policy changes to fix these issues, such as

- collecting and tracking data,
- providing more financial assistance to families who need it,
- adding diversity in the teaching workforce, and
- developing detailed reforms and implicit bias training requirements for School Resource Officers.

The task force found that Black Kentuckians make up more than 20 percent of the state's prison population but represent only approximately 8.5 percent of Kentucky's overall population. Policy suggestions from the task force include

- reforming Kentucky's bail system,
- reclassifying minor drug possession charges as misdemeanors, and
- expanding access to expungement.

Racial Equity In Education: A PC Primary Goal

The Prichard Committee presented data to measure Kentucky's educational progress. It uses 12 key indicators to measure educational progress, which include babies with healthy birth weight, children above 200 percent of the poverty threshold, preschool participation, 4th-grade reading proficiency, 8th-grade math proficiency, high school graduation, postsecondary enrollment, graduation from 2-year institutions, graduation from 4-year institutions, associate

degree or higher, voter turnout, and median household income. The Prichard Committee added equity rankings to each of the 12 key indicators in 2020.

Data from the Kentucky Department of Education show that, by 3rd grade, only Black students experience a drop in reading proficiency. Data from the National Assessment of Educational Progress (NAEP) show that the reading proficiency gap between white and Black students grew from 19 points in 2002 to 25 points in 2019. NAEP data also show an 8th-grade math gap between white and Black students growing from 20 points in 2002 to 21 points in 2019. Data also show that Black students have experienced an 8 percent drop continuing to higher education.

The Prichard Committee shared several solutions to raising educational progress in Kentucky, including

- availability of high-quality early childhood education,
- an increase in the number of National Board certified teachers,
- increased family engagement in students' learning,
- support for performance-based funding for higher education,
- higher participation by district in the Free Application for Federal Student Aid, and
- increased postsecondary opportunities.

Kids Count

Kentucky Youth Advocates provided a presentation on its nationally recognized Kids Count program, which covers health, economic well-being, education, and family/community. This year the report examined racial disparities in Kentucky.

Currently, 96 percent of children in Kentucky have health insurance through the Kentucky Children's Health Insurance Program and Medicaid, but Latinx children are only 91 percent insured. Black children ages 7 to 12 make up 20 percent of criminal complaints that are filed, despite making up only 11 percent of the population, and Latinx children make up 5 percent of complaints filed, despite making up only 7 percent of the total population.

Policy suggestions to help improve these issues included:

- collecting accurate and timely data, and including the collection requirement in statute;
- focusing on economic well-being and considering a state-level earned income tax credit or joining the Federal Relief Package Child Tax Credit;
- considering a boundary-spanning policy that focuses on upcoming trends;
- expanding outreach;
- promoting culturally competent care;
- establishing a minimum age of jurisdiction for children age 12 or younger; and
- implementing and expanding school-based interventions.

Discussion And Wrap-Up Of The 2021 Interim

The commission wrapped up the 2021 Interim by discussing goals for the 2022 Interim. Commission goals for the 2022 Interim include

- providing better guidance to presenters,
- looking deeper into policy-related solutions; and
- taking more opportunities within the community.

**Report Of The 2021
Education Assessment And Accountability Review Subcommittee**

**Sen. Max Wise, Co-Chair
Rep. Brandon Reed, Co-Chair**

Sen. Alice Forgy Kerr
Sen. Gerald Neal
Sen. Mike Wilson

Rep. Tina Bojanowski
Rep. Regina Huff
Rep. Steve Riley

LRC Staff: Lauren Busch, Chris White, and Maurya Allen

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Education Assessment And Accountability Review Subcommittee

Jurisdiction: To review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability and to provide oversight and direction to the Office of Education Accountability (OEA).

Subcommittee Activity

The Education Assessment and Accountability Review Subcommittee met five times during the Interim.

Review Of Administrative Regulations

The committee is charged with reviewing all referred administrative regulations related to Kentucky's assessment and accountability system. The following administrative regulations were referred to the subcommittee during the interim period and were presented by Kentucky Department of Education staff:

- 703 KAR 5:280, School improvement procedures
- 703 KAR 5:270, Kentucky's accountability system
- 703 KAR 5:070, Procedures for the inclusion of special populations in the state-required assessment and accountability programs
- 703 KAR 5:225, Continuous improvement planning for schools and districts
- 703 KAR 5:240, Accountability administrative procedures and guidelines

Oversight Of The Office Of Education Accountability

As part of its duties to provide oversight and direction to OEA, the subcommittee received and accepted OEA's *2020 Annual Report*, required by KRS 7.410(2)(c)8. The report is a summary of the status and results of the current year's research agenda and a summary of completed investigative activity conducted during 2020.

In 2020, OEA received 236 written complaints. From these complaints, 10 cases were opened: 7 investigative cases and 3 school-based decision-making council cases. OEA closed 31 cases in 2020, and 24 cases remain pending. These numbers and the complaint subjects involved reflect the impact of the novel coronavirus pandemic.

The subcommittee received and accepted three OEA study reports. The first report, *Kentucky District Data Profiles School Year 2020*, is an annual compilation of data collected from various sources on all school districts with an individual profile for the entire state. It includes student demographics and performance data, staffing data and related information, and district expenditure and revenue data. Because of the COVID-19 pandemic, some data typically contained in this report were delayed or not collected.

Funding Kentucky Public Education: An Analysis Of Education Funding Through The SEEK Formula includes a review of how SEEK funding and SEEK transportation funding are distributed to districts. The report describes 44 hypothetical changes to the SEEK funding formula and the changes' resulting effects on equity between districts. A thorough description of how other states fund education is also included, focusing primarily on the seven states that surround the commonwealth. Finally, this report also includes longitudinal comparisons of district characteristics from school year 1990 to school year 2020.

From Snow-Bound Pilot To Statewide Implementation: Lessons Learned From Kentucky's Nontraditional (Remote) Instruction Program, 2012-2021 contains a thorough examination of the efficacy of the commonwealth's nontraditional instructional (NTI) program. Using a variety of district-, school-, and student-level data from the Kentucky Department of Education, this report analyzes the implementation of and outcomes associated with the NTI program as originally enacted and as it was modified during the COVID-19 crisis. The report focuses on issues relevant to both phases of program implementation, especially student attendance and participation; student academic outcomes; the role of technology; and oversight. A thorough description of similar programs in neighboring states' programs and approval processes is also included.

The subcommittee approved the proposed 2022 OEA study agenda, which includes three OEA reports: the 2021 *District Data Profiles*, a review of school funding adequacy studies, and a review of the use of credit recovery in Kentucky schools and districts.

**Report Of The 2021
Government Contract Review Committee**

**Sen. Stephen Meredith, Co-Chair
Rep. Matthew Koch, Co-Chair**

Sen. Paul Hornback
Sen. Adrienne Southworth
Sen. David Yates

Rep. Adam Bowling
Rep. Mark Hart
Rep. Patti Mint

LRC Staff: Kim Eisner, Jarrod Schmidt, and Kim Smith

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Government Contract Review Committee

Jurisdiction: Review of all nonexempt memoranda of agreement by and between state agencies, and review of all nonexempt personal service contracts by state agencies and by off-budget agencies, that include, but are not limited to, the Kentucky Lottery Corporation, the Kentucky Housing Corporation, state universities within the commonwealth, the Kentucky Employers' Mutual Insurance Corporation, the Kentucky Higher Education Assistance Authority, the Kentucky Student Loan Corporation, and the Kentucky Retirement Systems to examine the stated need for the service, whether the service could or should be performed by state personnel, the amount and duration of the contract or agreement, and the appropriateness of any exchange of resources or responsibilities; review of all qualifying motion picture or entertainment production tax incentives.

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

Personal service contract review exemptions include agreements between the Department of Parks and a performing artist or artists for less than \$5,000 per fiscal year, per artist or artists; agreements with public utilities, foster care parents, providers of certain direct Medicaid health care to individuals, individuals performing homemaker services, and transit authorities; agreements between state universities or colleges and employers of students in the Commonwealth Work Study Program; agreements between state agencies and rural concentrated employment programs; agreements between the State Fair Board and judges, officials, or entertainers contracted for events promoted by the State Fair Board; and any other contract that the committee deems inappropriate for consideration.

Committee Activity

The Government Contract Review Committee is a statutory committee of the Legislative Research Commission and is required to meet monthly. During FY 2021 beginning July 1, 2020, and ending June 30, 2021, the committee reviewed 1,275 personal service contracts and 580 amendments to personal service contracts. The committee also reviewed 185 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

During FY 2021, the committee reviewed 1,981 memoranda of agreement and 614 memoranda of agreement amendments. The committee also reviewed 981 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only.

During FY 2021, the committee reviewed 2,040 personal service contract items, 3,576 memoranda of agreement items, and 1 film tax incentive agreement for a total of 5,617 items.

Since the start of FY 2022 through November 9, 2021, the committee has reviewed 312 personal service contracts and 264 amendments to personal service contracts. The committee has also reviewed 108 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

Since the start of FY 2022 through November 9, 2021, the committee has reviewed 830 memoranda of agreement and 284 memoranda of agreement amendments. The committee also reviewed 567 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only.

Note: The totals reflect all personal service contracts, memoranda of agreements, and film tax incentive agreements entered into the eMars procurement system, by Government Contract Review Committee staff or by other agencies, and captured by the LRC Contract Reporting Database.

**Report Of The 2021
Legislative Oversight And Investigations Committee**

Sen. Danny Carroll, Co-Chair
Rep. Jason Nemes, Co-Chair
Sen. Jason Howell, Vice-Chair
Rep. Lynn Bechler, Vice-Chair

Sen. Morgan McGarvey
Sen. Michael J. Nemes
Sen. Wil Schroder
Sen. Brandon J. Storm
Sen. Reginald Thomas
Sen. Max Wise

Rep. John Blanton
Rep. Ken Fleming
Rep. Angie Hatton
Rep. Joni L. Jenkins
Rep. Steve Riley
Rep. Scott Sharp

LRC Staff: Gerald W. Hoppmann, McKenzie Ballard, Jacob Blevins, Ryan Brown,
Christopher T. Hall, Taylor Johnston, Jeremy Skinner, William Spears, Shane
Stevens, Joel Thomas, and Ashley Taylor

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Legislative Oversight And Investigations Committee

Jurisdiction: The Legislative Oversight and Investigations Committee is a 16-member bipartisan committee authorized under KRS Chapter 6. The purpose of the committee is to serve as the main investigative committee in the General Assembly. It is empowered to review the operations of state agencies and programs, determine whether funds are being spent for the purposes for which they were appropriated, evaluate the efficiency of program operations, and 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.

Committee Activity

Through passage of 2021 House Bill 6, the Program Review and Investigations Committee was renamed the Legislative Oversight and Investigations Committee. The committee held seven meetings in 2021, adopted three staff reports, heard two staff memoranda, heard one agency follow-up, and heard testimony from one agency. The committee structure now includes two vice-chairs.

State-Owned Vehicles

The committee adopted the staff report *State-Owned Vehicles*, which included six major finding areas and 10 recommendations. The report stressed the importance of the Finance and Administration Cabinet's properly managing and measuring the cost effectiveness of the central fleet in order to determine whether the independent fleets are justified. The report's recommendations suggested improving central operations, tracking fleet costs, addressing underutilized vehicles, and implementing policies and procedures. The cabinet is committed to addressing the concerns reflected in the report and to implementing the report's recommendations. It will provide an update to the committee in 2022.

Supports For Community Living

Committee staff presented a summary of completed work on Supports for Community Living, including the results of an analysis of rates and spending trends from 2004 to 2017, as well as a review of the Navigant study, a \$6 million Department for Medicaid Services (DMS) contract to study Home and Community-Based Services waiver redesign. The commissioner of DMS described the Home and Community-Based Services waivers and actions related to their redesign. The commissioner explained that the Navigant study addressed all six waivers and looked at program administration and reimbursement rates. However, DMS did not move forward with the redesign as recommended by the Navigant study.

Postsecondary Education Administrator Compensation (2015–2019)

Committee staff presented a summary of completed work on compensation of postsecondary education administrators. Staff reviewed the results of the analysis of compensation over time

and compared it to a standardized national median average. Cash payments to executives or administrators, referred to as direct compensation, did not universally increase from 2015 to 2019, but increases were most common at the University of Kentucky, Eastern Kentucky University, and Northern Kentucky University. Decreases were most common at the University of Louisville, Morehead State University, and Murray State University. Direct compensation was highest at the University of Kentucky and the University of Louisville, with top positions there often earning more than twice the compensation of similar positions at other institutions. The president of the Council on Postsecondary Education indicated that the analysis will assist with ensuring that Kentucky institutions remain competitive.

Addressing Nonacademic Barriers To Student Success

Committee staff provided a summary of Research Report No. 462, *Nonacademic Barriers Facing Kentucky Community And Technical College Students*. The report identified nonacademic barriers, including inability to navigate college, financial instability, competing time constraints, personal health issues, and disengagement or disconnection from the college experience. Staff also summarized a May 7, 2021, update to the report's recommendations, provided by the Kentucky Community and Technical College System (KCTCS).

The KCTCS president and chancellor provided examples of what the system is doing to address nonacademic barriers related to student success. KCTCS plans to implement recommendations from the report such as leveraging existing technology, using a new software package called Starfish to develop and collect accurate measures of nonacademic program success.

Child Fatality And Near Fatality External Review Panel

The committee adopted the annual evaluation of the Child Fatality and Near Fatality External Review Panel. Recommendations identified how the panel's annual reports could be more effective, how the panel's data tool could be improved for more consistent data collection, and how the panel's budgetary structure and processes could be made more effective by establishing a separate appropriation allotment for the panel.

County Attorney Traffic Safety Programs

The committee adopted the report *County Attorney Traffic Safety Programs*. Staff discussed the report's findings and recommendations related to the lack of an internal control structure to ensure that four statutory objectives are met in the areas of program reporting, eligibility, use of fee revenue, and fee revenue distribution. The report's 10 recommendations discussed suggestions to improve internal controls related to county attorney offices and traffic safety programs.

Louisville Community Bail Fund

In testimony related to the Louisville Community Bail Fund, a Mothers Against Drunk Drivers representative stated that violent offenders are involved in 50 percent to 60 percent of cases

where bail money is paid. The committee discussed the need to pass legislation that will establish criteria related to offenses, bond amounts, and public transparency.

COVID-19 Testing And Vaccination Contracts

The commission of the Department for Public Health testified and answered committee questions related to COVID-19 testing, vaccination contracts, and processes to become a contractor. Discussion also addressed contract provisions, procurement processes, and effectiveness of various COVID-19 treatments.

**Report Of The 2021
Medicaid Oversight And Advisory Committee**

**Sen. Stephen Meredith, Co-Chair
Rep. Daniel Elliott, Co-Chair**

Sen. Ralph Alvarado
Sen. Danny Carroll
Sen. Jimmy Higdon
Sen. Morgan McGarvey

Rep. Jim Gooch
Rep. Melinda Gibbons Prunty
Rep. Steve Sheldon
Rep. Lisa Willner

LRC Staff: Chris Joffrion and Hillary Abbott

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Medicaid Oversight And Advisory Committee

Jurisdiction: The Medicaid Oversight and Advisory Committee is required to meet at least four times annually and provide oversight on the implementation of Medicaid within the commonwealth, including access to services, utilization of services, quality of services, and cost containment.

Committee Activity

The Medicaid Oversight and Advisory Committee met seven times during the 2021 Interim.

The Impact Of COVID-19 On The Medicaid Program

The commissioner of the Department for Medicaid Services (DMS) provided an update on the impact of COVID-19 on the Medicaid program, with information on increased enrollment, increased expenditures in the fee-for-service Medicaid population, decreased expenditures in the managed care Medicaid population, decreased use of emergency departments, increased use of telehealth, increased reimbursement rates, and changes to administrative regulation.

The chief financial officer of DMS provided an update on the budgetary impact of COVID-19 related to Medicaid, with information on presumptive eligibility, Medicaid expenditures for presumptive eligibility enrollees, changes in per member per month expenditures, and the overall status of the Medicaid budget for the remainder of the fiscal year.

Enhanced Federal Medical Assistance Percentage

The DMS commissioner provided an update on the 10 percent increase in the federal medical assistance percentage (FMAP) included in the American Rescue Plan Act. The commissioner briefed the committee on the state's application and spending plan for the 1-year enhanced FMAP and limitations and restrictions on the use of these funds.

Updates On The Implementation Of Recently Enacted Legislation

The DMS commissioner provided an update on the implementation of several recently enacted pieces of legislation. The commissioner testified that Senate Bill 50 (RS 20) required DMS to establish a single preferred drug list for use by all Medicaid managed care organizations (MCOs) and to contract with a single pharmacy benefit manager (PBM) for all MCOs. The commissioner reported that DMS had established the single preferred drug list and had awarded a contract for the single PBM to MedImpact; as of July 1, 2021, all six MCOs had transitioned to the single PBM.

The DMS commissioner and the president of the Kentucky Ambulance Providers Association (KAPA) provided an update on the implementation of House Bill 8 (RS 20). The commissioner reported that on March 31, 2021, DMS received approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement an ambulance service provider assessment. The

commissioner testified that under the new ambulance service provider assessment program, providers will owe an estimated \$7.7 million in taxes and will receive increased reimbursements totaling approximately \$47.4 million in calendar year 2021. The president of KAPA said the enhanced reimbursement rates made possible by HB 8 had already led to an increase in wages for emergency medical technicians and paramedics across the state, which would improve recruitment and retention efforts for such personnel.

The DMS commissioner said that on January 14, 2021, CMS approved a revision to the Hospital Rate Improvement Program (HRIP) as required by HB 183 (RS 21). The commissioner testified that under the revised HRIP, Medicaid reimbursement for hospitals would use an average commercial rate methodology instead of the Medicare upper payment limit methodology, and that this would lead to a significant increase in funds for hospitals.

The DMS commissioner provided an update on implementation of HB 276 (RS 21), which requires the department to accept employment of temporary COVID-19 personal care attendants as meeting necessary training for state registered nurse aides. The commissioner reported that HB 276 would require approval of a waiver from CMS and that the department was preparing that waiver application.

The DMS commissioner provided an update on the formation of a work group to assess the feasibility of implementing a bridge insurance program, review current Temporary Assistance for Needy Families expenditures, and consider opportunities for public-private partnerships to better meet the needs of public assistance beneficiaries as required by House Joint Resolution 57 (RS 21). The commissioner said that the work group membership had been established, that the group would begin meeting in July 2021, and that it would report to the Governor; the Legislative Research Commission; the Interim Joint Committee on Health, Welfare, and Family Services; and the Interim Joint Committee on Banking and Insurance by December 31, 2021.

The president and chief executive officer (CEO) of the Kentucky Hospital Association (KHA) provided an update on implementation of HB 438 (RS 21), which required the creation of a Medicaid provider credentialing alliance. The president and CEO said that KHA had partnered with a Kentucky-based firm, Aperture, to be their credentialing organization and that three of the state's six MCOs had agreed to join the credentialing alliance.

Update On Outstanding Waiver And State Plan Amendment Applications

The DMS commissioner provided an update on outstanding waiver and State Plan amendment applications submitted to CMS. The commissioner testified that HB 352 (RS 20) required the department to prepare and submit an 1115 demonstration waiver under 42 USC sec. 1315 to provide Medicaid coverage for substance use disorder treatment to eligible incarcerated individuals. The commissioner reported that the waiver application had been prepared, submitted, and reviewed by CMS and that the department was awaiting final approval of the 1115 demonstration waiver application from CMS.

The commissioner also testified that the department was awaiting approval from CMS on eight pending State Plan amendments. The amendments included changes to reimbursement

for school-based services, coverage for medication-assisted treatment for individuals with a substance use disorder, an add-on payment for nursing home facilities, a Program for All Inclusive Care for the Elderly, Kentucky Children’s Health Insurance Program coverage for pregnant women between 185 percent and 200 percent of the federal poverty level, and several State Plan amendments related to the implementation of SB 50 (RS 20).

Update From The Advisory Council On Medical Assistance

The chair of the Advisory Council on Medical Assistance (MAC) provided an update on the work of the council over the past year. The chair reviewed MAC’s end-of-the-year reports, discussed potential legislation related to COVID-19 and emergency regulations, and shared information on MAC’s collaboration with DMS on issues related to infant mortality and maternal morbidity.

Medicaid Works Program

The DMS commissioner provided an overview of the Medicaid Works Program, which was implemented in 2007 and was designed to provide Medicaid eligibility to blind and disabled individuals who were able to maintain employment and whose income exceeded traditional Medicaid income eligibility guidelines. The commissioner told the committee that since the program was implemented in 2007, 15 individuals had participated in the program; 5 individuals are currently enrolled.

The Kentucky Trauma Network

The chair of the Kentucky Trauma Advisory Council and the trauma coordinator of the Kentucky Hospital Association provided an update on the Kentucky Trauma Network. The chair of the advisory council said that Kentucky has a higher burden of traumatic brain injury than the national average, that adequate trauma systems reduce death and disability from traumatic injuries, and that the Medicaid system benefits from the trauma system through better patient outcomes and the elimination of unnecessary costs. The trauma coordinator explained that many states have developed sustainable funding models for their trauma systems, but the Kentucky Trauma Network lacks sustainable funding. The trauma coordinator also said that with additional funding, Kentucky could add hospitals to the trauma care network.

Serious Mental Illness Medicaid Waiver

The committee heard testimony from the executive director of the Kentucky Association of Regional Programs (KARP) and the executive director of the Kentucky Mental Health Coalition (KMHC) about the need to establish a serious mental illness (SMI) Medicaid waiver. KMHC’s executive director explained what constitutes an SMI and what services might be provided to beneficiaries through an SMI waiver. KARP’s executive director discussed how other states, including Colorado, Florida, Hawaii, and Montana, have established 1115 demonstration waivers, 1915(c) waivers, and 1915(i) waivers to better meet the needs of individuals with an SMI. KARP’s executive director also discussed the budgetary impact of an SMI waiver and

explained that establishing an SMI waiver to serve 100 individuals with an SMI would require an appropriation of approximately \$4.5 million in the 2022–2024 state budget.

Medical Respite Care For Individuals Experiencing Homelessness

The executive director of the Homeless and Housing Coalition of Kentucky (HHCK) and an executive in residence at the University of Louisville School of Public Health and Information Sciences discussed medical respite care for individuals experiencing homelessness. HHCK's executive director explained what medical respite care is and how it can significantly reduce the cost of health care of individuals experiencing homelessness. According to HHCK's executive director, medical respite care can reduce Medicaid costs by 25 percent per enrollee, reduce hospital admissions by 30 percent, reduce emergency department visits by 38 percent, and increase attendance to follow-up appointments by 92 percent. The executive in residence provided an overview of medical respite care sites in North Carolina, Louisville, and Bowling Green. The executive in residence also asked the committee to consider supporting funding for medical respite care in a possible SMI waiver and requested that funding from the American Rescue Plan Act be allocated for the creation of whole person care pilot programs in both urban and rural parts of the state.

Medicaid Managed Care Organization Request For Proposal Process And Contracts

The DMS commissioner testified that, because of ongoing legal disputes over MCO contracts, she was unable to provide an update on the request for proposal process or MCO contracts.

Suspension Of Prior Authorization Requirements For Behavioral Health Services

KMHC's executive director provided an overview of Medicaid's MCO prior authorization process, how prior authorization requirements affect the delivery of behavioral health services, and the positive effect of the suspension of prior authorization requirements during the COVID-19 emergency. The executive director explained that under prior authorization requirements, only 1 percent of claims are denied, and recommended that DMS eliminate prior authorization requirements.

The DMS deputy commissioner and chief behavioral health officer provided an overview of behavioral health utilization rates with and without prior authorization requirements, and stated that during the suspension of prior authorization requirements for behavioral health services, DMS observed a decrease in the number of individuals accessing behavioral health services, an increase in behavioral health claims, and an increase in total behavioral health costs. The deputy commissioner stated that DMS believes the data support the need for a suspension of prior authorization requirements during the COVID-19 public health emergency and that the data have also shown that prior authorization requirements serve an important purpose when there is not a state of emergency.

Humana's director of behavioral health discussed the impact of the suspension of prior authorization requirements for behavioral health services in response to the COVID-19 public health emergency. The director testified that the suspension has limited MCOs' ability to ensure

the quality and appropriateness of services; has hindered MCOs' ability to combat fraud, waste, and abuse; and has decreased access to services. Humana's regional vice president for Medicaid testified that the suspension of prior authorization benefits has led to an increase in the cost of behavioral health services and that this increase in cost has been driven by increased use among enrollees already receiving services, not by newly identified mental health needs. Humana's director of behavioral health recommended reinstating prior authorization requirements for behavioral health and suggested that possible strategies for reinstatement might include reinstating prior authorization requirements for inpatient services before outpatient services, seeking prior authorization for inpatient and residential services concurrently with the start of services instead of prior to starting services, selecting services including residential substance use disorder to resume prior authorization based on demonstrated misuse or abuse, and establishing an advisory committee to determine where lack of authorizations and coordination are having the most negative impact on member outcomes and program integrity.

The Medicaid Provider Network Adequacy

KMHC's executive director provided an overview of the statutory obligations for MCOs to establish a robust and accessible provider network. The executive director of Kentucky Voices for Health discussed the experiences of Medicaid participants in navigating an inaccessible provider network and barriers to care that participants face, such as long wait times for appointments and a lack of up-to-date provider lists. KMHC's executive director provided recommendations for improving the Medicaid provider network. These recommendations included mandating that all licensure boards collect necessary information to establish up-to-date provider lists, requiring that MCO provider directories include more accurate information including information on specific services provided, requiring MCOs to provide their full provider directory to enrollees at their first request, and establishing a permanent secret shopper program to conduct annual surveys of published provider directories.

The vice chair of the Kentucky Association of Health Plans discussed MCO provider network adequacy and testified that all MCOs meet contractual and statutory obligations for network adequacy as well as requirements established by the National Committee for Quality Assurance.

Medicaid Coverage For Substance Use Disorder Treatment

KARP's executive director discussed the adequacy and effectiveness of Medicaid-covered treatment options for substance use disorder, and provided information on the number of individuals with a primary diagnosis of substance use disorder treated by Community Mental Health Centers, the number of licensed behavioral health organizations, and the number of licensed alcohol and other drug treatment entities. The executive director testified that treatment is effective but that managed care business practices impair the effectiveness of treatment.

School-Based Medicaid Services

The DMS commissioner and the associate commissioner of the Office of Finance and Operations at the Department for Education discussed school-based Medicaid services. The commissioner provided information on school-based Medicaid services, including administration of the

program, covered services, and funding for services. The associate commissioner provided information on the number of school districts that offer Medicaid services, types of services offered, the cost of services, and the number of children served. The associate commissioner responded to a 2019 audit of the state's school-based Medicaid services program by the federal Department for Health and Human Services' Office of the Inspector General, and the commissioner testified that changes have been made since the period of time covered by the audit and that many issues highlighted in the audit have been addressed.

Alternative Approaches To The Delivery Of Medicaid Services

The assistant director of the Washington State Health Care Authority provided information on the administration of Washington's Medicaid program. The manager of the Behavioral Health and Managed Care Section and the special projects supervisor of the Colorado Department of Health Care Policy and Financing discussed Colorado's use of accountable care collaboratives and regional accountable entities.

University Of Louisville, Commonwealth Institute Of Kentucky

The director of the Commonwealth Institute of Kentucky discussed its research and how it could partner with the state to address challenges facing the Medicaid program.

Lifework At Western Kentucky University

The executive director of the Suzanne Vitale Clinical Education Complex at Western Kentucky University provided an overview of the recently opened Lifeworks at Western Kentucky University program, which serves adults with an autism spectrum disorder. The executive director asked that the General Assembly appropriate \$2.8 million over the next three budget cycles to assist the program in achieving financial sustainability.

Medicaid Claims Processing And Population Health Management

An account manager with Gainwell Technologies discussed how its software products can help streamline Medicaid claims processing and improve population health management.

Medicaid Pharmacy Benefit Integrity

The chief clinical officer and the senior vice president for government affairs of HealthPlan Data Solutions provided an overview of the company's continuous pharmacy benefit auditing software. The senior vice president explained that the company's software could provide accountability and oversight for Medicaid pharmacy benefits and testified that the software has produced savings for states that use the product.

**Report Of The 2021
Public Pension Oversight Board**

**Sen. Jimmy Higdon, Co-Chair
Rep. Jim DuPlessis, Co-Chair**

Sen. Christian McDaniel
Sen. Robby Mills
Sen. Gerald A. Neal
Sen. Dennis Parrett
Sen. Mike Wilson
Rep. Derrick Graham
Rep. Jason Petrie

Rep. James Tipton
Rep. Russell Webber
Rep. Buddy Wheatley
Joseph Fawns
Mike Harmon
John Hicks
Sharon Mattingly

Representative Jerry T. Miller, non-voting ex officio

LRC Staff: Brad Gross, Jennifer Black Hans, and Angela Rhodes

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Public Pension Oversight Board

Jurisdiction: Assists the General Assembly with its review, analysis, and oversight of the administration, benefits, investments, funding, laws and administrative regulations, and legislation pertaining to the state-administered retirement systems.

Committee Activity

The Public Pension Oversight Board (PPOB) held nine meetings from January through November 2021 and heard testimony on a wide range of topics relating to Kentucky's public pension systems.

Quarterly/Annual Investment And Actuarial Updates

The PPOB conducted meetings in February, May, September, and November for discussion and review of quarterly and annual investment performance, quarterly and annual plan asset and cash flow statistics, annual actuarial valuation results, and budgetary needs of each of the retirement systems.

2021 Enacted Legislation Updates

The PPOB conducted meetings throughout the Interim with discussion of implementation of legislation enacted during the 2021 Regular Session including: HB 484, which transferred administration of the County Employees Retirement System (CERS) from the Kentucky Retirement Systems while retaining a shared administrative staffing unit through the Kentucky Public Pensions Authority (KPPA); HB 258, which established a new benefit tier for members of the Teachers' Retirement System (TRS) who enter the system on or after January 1, 2022; and HB 8, which created a new method for allocating unfunded liability costs to each participating Kentucky Employees Retirement System (KERS) employer based upon actual liabilities. Testimony and discussion on HB 8 also included an update on the appeals process included in the bill relative to the assigned liability for KERS employers and discussion of the calculation methods and disclosure of each individual employer's costs.

Actuarial Experience Studies/Audits

TRS provided periodic updates and final results in June on its 5-year actuarial experience study, which reviews and provides recommended changes or adjustments to economic and demographic assumptions used in the TRS actuarial valuations.

The PPOB also periodically discussed, and ultimately requested in August and October, that the Legislative Research Commission (LRC) hire a secondary actuary to perform an actuarial audit of the state-administered retirement systems as required by KRS 7A.250(8) to evaluate the reliability of each system's actuarial assumptions and methods.

Retiree Cost Of Living Adjustments

The PPOB invited a representative of Kentucky Government Retirees to discuss a plan for a cost of living adjustment (COLA) increase for Kentucky Retirement Systems and CERS retirees in September. KPPA was invited to send staff for a follow-up discussion of COLA increases and potential costs to the system in October.

Sick Leave Programs And Impact Of Bonuses On Pension

KPPA and TRS, at the request of the PPOB, provided overviews in July on the impact of sick leave programs and bonuses on retirement benefits in each system.

See the Public Pension Oversight Board's annual report at legislature.ky.gov/LRC/Publications/Pages/Research-Memoranda.aspx for more details on research topics, discussions, and recommendations from the 2021 PPOB meetings.

**Report Of The 2021
Tobacco Settlement Agreement Fund Oversight Committee**

**Sen. C.B. Embry Jr., Co-Chair
Rep. Myron Dossett, Co-Chair**

Sen. Julie Raque Adams
Sen. Paul Hornback
Sen. Dennis Parrett
Sen. Robin Webb
Sen. Whitney Westerfield

Rep. George Brown Jr.
Rep. Kim King
Rep. Phillip Pratt
Rep. Brandon Reed
Rep. Rachel Roberts

LRC Staff: Stefan Kasacavage, Kelly Ludwig, Tanya Monsanto, Nathan Smith, and Rachel Hartley

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Tobacco Settlement Agreement Fund Oversight Committee

Jurisdiction: Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans; planning by the board to establish short-term and long-term goals, to devise strategies, and to make investments that will assist farmers, and the administrative, financial, and programmatic activities of the board; expenditures under the Early Childhood Development Fund and the Kentucky Health Care Improvement Fund; efforts of agencies and educational institutions to assist in the revitalization and diversification of tobacco farms; efforts of institutions of public postsecondary research in conducting alternative crop development research; review of county agricultural development council plans; review of the use of Tobacco Master Settlement Agreement funds.

Committee Activity

The Tobacco Settlement Agreement Fund Oversight Committee met nine times during the 2021 calendar year. A tenth meeting was scheduled for December.

In accordance with statutory requirements, the committee members received regular updates from the Kentucky Office of Agricultural Policy (KOAP) regarding Kentucky Agricultural Development Board (KADB) funding decisions on project applications. The committee received reports and testimony from executive branch agencies receiving tobacco settlement appropriations and from various organizations that benefited from the availability of tobacco settlement funds.

Kentucky Office Of Agricultural Policy

At each meeting, committee members asked the executive director and deputy executive director of KOAP for additional information on projects, sought clarification on funding decisions made, and probed the rationale for reaching those decisions. Committee members asked why some project applicants received particular amounts of funding or were denied funding, and asked about project monitoring, compliance, and reporting.

Staff from KOAP reviewed projects for single counties, regions, and the commonwealth as a whole. KADB programs for which applicants receive funding include the County Agriculture Investment Program, the Next Generation Farmer Program, the Shared-Use Equipment Program, the Youth Agriculture Incentive Program, and the Deceased Farm Animal Program. In addition to these longstanding programs, KOAP reviewed projects funded through the new Meat Processing Investment Program, which provides financial incentives for Kentucky meat processors to expand operations to process more Kentucky beef, dairy, pork, lamb, sheep, goat, and poultry products.

The committee received testimony from the commissioner of agriculture, who introduced a new executive director for KOAP, which was previously known as the Governor's Office of Agricultural Policy (GOAP). The commissioner provided an overview of 2021 Regular Session Senate Bill 3, which moved GOAP from the Governor's Office to the Department of Agriculture,

renamed it the Kentucky Office of Agricultural Policy, and transferred appointment authority for both the Agricultural Development Board and the Agricultural Finance Corporation from the governor to the commissioner of agriculture.

Impacts Of COVID-19

The most frequent topic of discussion during the interim was the ongoing COVID-19 pandemic and its effects on the programs funded by the Master Settlement Agreement (MSA). Representatives of Farms to Food Banks and the Double Dollars program reported surges in demand, as Kentuckians faced unemployment, inflation, and other pandemic-related difficulties that exacerbated already high levels of hunger and malnutrition. Additionally, representatives of the Governor's Office of Early Childhood and the Cabinet for Health and Family Services detailed programs intended to further early childhood development, some of which experienced changes in demand due to the pandemic. KOAP staff testified that pandemic-related food shortages and national supply chain disruptions can be alleviated by an increased reliance on local farm production. The Meat Processing Investment Program is one such key to ensuring that Kentuckians have a reliable source of nutritious animal proteins when food supply chain disruptions arise.

Tobacco Use, Drug Use, And The Master Settlement Agreement

The Office of the Attorney General provided testimony on the past, present, and future of the Master Settlement Agreement. Kentucky has received a relatively stable amount of MSA funds in recent years (over \$110 million each year) and will receive these funds in perpetuity as long as cigarettes are sold in the United States, but revenues will likely decline as smokers increasingly abandon traditional cigarettes in favor of e-cigarettes and other vaping products. Representatives of the Office of Drug Control Policy expressed concern over the rise in e-cigarettes and vaping, particularly among youths, and testified that overdoses increased in 2020 and were anticipated to continue rising through 2021. The manager of the Tobacco Prevention and Cessation Program notified the committee of the rise of nontraditional tobacco products, as well as the program's numerous initiatives to curb tobacco use among both teenagers and adults.

Conservation Projects

The director of the Division of Conservation testified on its cost share program for farm conservation projects. The funds provide financial assistance to farmers at a 75 percent reimbursement rate with the assistance of local conservation districts. The director stated that while livestock- and manure-related projects should be prioritized, the most commonly funded projects include fencing, water pipelines and tanks, and heavy-use area improvement.

New MSA Funding Recipients

One program that received MSA funding for the first time in FY 2021 is the Rural Mental Health and Suicide Prevention Pilot Program. Representatives of the Department of Agriculture and the University of Louisville testified that MSA funds are being used to fund public marketing

campaigns raising awareness for mental health, small grants for farmer appreciation efforts, peer-to-peer phone support programs, and initiatives to show support for young farmers.

In December, the committee was to receive its first report from the spinal cord and brain injury research programs at the University of Kentucky and University of Louisville, as these programs received MSA funding for the first time in FY 2021. Also, the committee was to receive its annual update from the cancer centers at the University of Kentucky and University of Louisville on new and ongoing initiatives aimed at improving treatments for patients with cancer.

Reports Received

- 2021 Kentucky Office Of Agricultural Policy Annual Report

**Report Of The 2021
1915(c) Home And Community Based Services Waiver Redesign Task Force**

**Sen. Julie Raque Adams, Co-Chair
Rep. Steve Riley, Co-Chair**

Sen. Danny Carroll
Sen. Stephen Meredith
Sen. Dennis Parrett

Rep. Daniel Elliott
Rep. Norma Kirk-McCormick
Rep. Pamela Stevenson

LRC Staff: Chris Joffrion and Hillary Abbott

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

1915(c) Home And Community Based Services Waiver Redesign Task Force

Jurisdiction: The Legislative Research Commission established the 1915(c) Home and Community Based Services Waiver Redesign Task Force in a memorandum dated May 26, 2021. The task force was established to review previous waiver redesign efforts undertaken by the Cabinet for Health and Family Services (CHFS) and to develop recommendations to ensure the quality and stability of 1915(c) waiver services in Kentucky.

Task Force Activity

The 1915(c) Home and Community Based Services Waiver Redesign Task Force met six times during the 2021 Interim.

Importance Of Waiver Services; Barriers To Care

A participant in the Acquired Brain Injury Long-Term Care (ABI LTC) waiver program and his speech-language therapist appeared before the task force to emphasize the importance of access to waiver services and to discuss barriers to care. The therapist identified barriers to care including staffing shortages, lack of transportation, and the limited and arbitrary number of service hours allowed under the waiver. The therapist recommended that waiver redesign efforts should be person-centered and ensure provider flexibility.

The mother of a 1915(c) waiver participant explained the challenges that waiver participants face in accessing services and discussed barriers to around-the-clock skilled care. She also advocated that 1915(c) waivers be made more flexible so as to better meet the unique individual needs of waiver participants in a more equitable manner.

The mother of another 1915(c) waiver participant testified about her son's medically complex needs and the difficulty in hiring caregivers due to low waiver reimbursement rates.

The mother of a child on the autism spectrum who does not qualify for waiver services testified about the need for waiver reform to include individuals like her daughter who have complex behavioral issues.

Appendix K Waiver Amendments

The director of the Division of Community Alternatives and the director of the Division of Developmental and Intellectual Disabilities provided an update on Appendix K waiver amendments, which provide states with flexibility in the delivery of 1915(c) waiver services during a declared state of emergency such as the COVID-19 pandemic. The director of the Division of Community Alternatives provided background on the process for applying for Appendix K amendments during a state of emergency. The director of the Division of Developmental and Intellectual Disabilities provided an update on Kentucky's specific amendments approved by the federal Centers for Medicare and Medicaid Services, including increasing limits on certain services, adding home-delivered meals to all waivers, allowing for

telehealth services, allowing additional units of case management, and allowing waiver services to be provided in a hospital setting.

Waiver Waiting List Management Options

The policy director and a policy analyst from the Medicaid and CHIP Payment and Access Commission (MACPAC) discussed waiver waiting list management options including first-come, first-served approaches; priority of need approaches; and tiered approaches. The policy analyst provided national statistics on waiver waiting lists and explained that wait times can range from 291 days to more than 14 years. The policy director stated that state funding for waiver services and slots is the most important determinant of waiting list size and length.

The director of the Division of Community Alternatives provided an update on the status of waiting lists. The director said that there are currently over 7,500 individuals on the waiting list for the Michelle P. waiver, that nearly 3,000 individuals are on the waiting list for the Supports for Community Living (SCL) waiver, that both wait lists grow in number each month, that wait times for the Michelle P. waiver can exceed 6 years, and that time on waiting lists for the SCL waiver can exceed 20 years. The director also explained that the Department for Medicaid Services (DMS) is considering implementing a tiered approach to waiting list management with two categories: emergency and nonemergency.

Waiver Service Workforce

The executive director of the Kentucky Association for Private Providers (KAPP) and two state directors from Dungarvin, a waiver service provider, provided an update on the waiver service provider workforce shortage and the impact on provider agencies, which are facing dire situations, including closure, due to lack of staffing. KAPP's executive director discussed how rate increases for providers and higher hourly wages for service providers are vital for many providers in the state to continue to provide care to waiver participants.

The legislative chair of the Kentucky Association of Adult Day Centers discussed adult day center workforce challenges and said that a number of adult day centers have already closed due to workforce challenges and other challenges resulting from the COVID-19 pandemic.

Waiver Service Reimbursement Rates

The director of the Division for Community Alternatives, DMS, Cabinet for Health and Family Services, discussed waiver service reimbursement rates, the rate-setting process, and recommendations for rate modifications. Recommendations discussed by the director included an update to the current rate-setting methodology, a review of the state's full 1915(c) waiver services menu, an increase in training for case managers, consideration of a tiered payment methodology, and the need for a new rate study.

The executive director of NeuroRestorative Kentucky, a provider of rehabilitative services for individuals with acquired brain injury, discussed the relationship between waiver reimbursement rates and labor shortages faced by many waiver service providers. The executive director

described current reimbursement rates as unsustainable and testified that reimbursement rates must be increased.

The legislative chair of the Kentucky Association of Adult Day Centers advocated for an increase of at least 10 percent in waiver service reimbursement rates and testified that without such an increase, more adult day centers will be forced to close.

The executive director of the Kentucky Association for Private Providers testified that increasing reimbursement rates is necessary not only to address service provider labor shortages but also to meaningfully address waiver waiting list challenges. According to the executive director, reimbursement rates are so low that there are not enough providers to serve the participants who are currently on waivers, let alone those on waiver waiting lists. The executive director requested that the task force recommend a blanket 25 percent increase in reimbursement rates for all waiver services across all six 1915(c) waivers and that the 50 percent increase in reimbursement rates for residential services included in Appendix K changes be made permanent.

The executive director of the Kentucky Association of Regional Programs (KARP) stated that if reimbursement rates are not significantly increased in the near future, service providers will no longer be able to meet the needs of waiver participants. The executive director asked the task force to recommend that the General Assembly use enhanced federal medical assistance percentage funds included in the American Rescue Plan Act to fund a 25 percent increase in reimbursement rates for all waiver services across all six 1915(c) waiver programs.

Enhanced Federal Medical Assistance Percentage

The director of the Division for Community Alternatives, DMS, Cabinet for Health and Family Services, presented an update on the enhanced federal medical assistance percentage (FMAP) spending plan, the timeline for implementation, and how DMS plans to use enhanced FMAP funds.

Impact Of Regulatory Burdens

A waiver services program director with LifeSkills Inc. presented an overview of how the relaxed regulations under Appendix K have helped the program better serve waiver participants and discussed the need for a long-term review of the barriers that regulations create for providers. The executive director and the program director of NeuroRestorative Kentucky discussed specific challenges facing providers and how strict regulations make it very difficult to provide the level of care that waiver participants deserve. The executive director stated that flexibility in regulations is a necessity when serving medically complex individuals and needs to be a focus of waiver redesign.

Role Of Area Development Districts In Delivery Of Waiver Services

The executive director of the Pennyriple Area Development District and the director of social services for the Kentuckiana Regional Planning and Development Agency presented an

overview of the role of area development districts (ADDs) in the delivery of waiver services and discussed barriers to service delivery experienced by ADDs.

Response To The 2018 Navigant Consulting Assessment Report And Waiver Redesign Recommendations

The commissioner of the Department for Medicaid Services and the director of the Division of Community Alternatives discussed the 2018 Navigant Consulting report titled *1915(c) Home And Community-Based Services Waiver Redesign Assessment*. The commissioner provided an overview of Kentucky's six 1915(c) Home and Community Based Services waivers and discussed key takeaways from the 2018 Navigant assessment. The division director recommended updating provider reimbursement rates, adopting new waiver waiting list management policies, strengthening participant-directed services design and operations, implementing individualized budgeting, and using an independent and universal assessment tool across all waivers.

The executive director of the Kentucky Association of Private Providers explained why many of the recommendations in the Navigant report are outdated and expressed concern that the assessment process undertaken by Navigant was incomplete and lacked transparency. The executive director also provided waiver redesign recommendations including prioritizing investment in workforce development, adopting a standardized assessment tool for all 1915(c) waivers, and easing overly burdensome administrative regulations that hinder providers' ability to provide continuity of care and effectively address crises.

The chair of the Brain Injury Association of America, Kentucky Chapter, and an advocate with the association provided an overview of the Acquired Brain Injury and Acquired Brain Injury Long-Term Care waiver programs. The chair also highlighted concerns about the Navigant report and provided waiver redesign recommendations including prioritizing investment in workforce development, addressing gaps in care for neurobehaviorally challenged waiver service recipients and those with medically complex needs, and making certain COVID-19 emergency Appendix K amendments permanent.

Findings And Recommendations

In a memorandum dated December 15, 2021, the 1915(c) Home and Community Based Services Waiver Redesign Task Force submitted the following findings and recommendations to the Legislative Research Commission:

Findings

- Kentucky currently operates six 1915(c) Home and Community-Based Services waivers to provide care, services, and supports to approximately 26,000 individuals with disabilities. The alternative to providing these services in the home or community is institutionalized care.

- Providing needed services in a home or community-based setting is more cost effective than providing similar care in an institutionalized setting, but Kentucky spends significantly less than the national average on home and community-based services. A 10 percent increase in the federal medical assistance percentage for home and community-based services through March 2022 will result in approximately \$499 million in additional federal funding for Kentucky's waiver services.
- More than 10,000 eligible Kentuckians with an intellectual or developmental disability are waiting for waiver services. Two of Kentucky's six 1915(c) waivers—the Michelle P. waiver and the Supports for Community Living waiver—have multiyear waiting lists.
- There is a well-documented crisis in the supply of direct support professionals and the 1915(c) waiver workforce. Low funding for wages, combined with the emotionally demanding nature of supporting and caring for individuals with a disability, has made recruitment and retention of a qualified workforce nearly impossible for waiver service providers.
- Overly burdensome administrative regulations impair the efficiency of service delivery and often create unfunded mandates for service providers.
- The policy recommendations put forth by the 2020 Exceptional Support Waiver Services Task Force have not been implemented. The findings and recommendations of this previous task force are still valid and have been reaffirmed by the work of this task force.

Recommendations

The task force recommends that the Kentucky General Assembly take the following actions during the 2022 Regular Session:

- Prioritize implementation of the recommendations of the 2020 Exceptional Support Waiver Services Task Force as presented to LRC in a memorandum dated November 23, 2020.
- In the 2022–2024 Biennial Budget bill, appropriate sufficient funds to
 - maintain current funding levels for SCL Residential Level 1 and ABI Residential services by making permanent the 50 percent rate increase authorized under Kentucky's Appendix K emergency preparedness and response amendments, without day service attendance exclusions, after the expiration of Appendix K;
 - implement a 25 percent increase to reimbursement rates for all 1915(c) waiver services with the exception of SCL Residential Level 1 and ABI Residential services; and
 - increase wages of direct support professionals.

This appropriation may be appropriated either from general fund dollars or from the nearly \$500 million in enhanced FMAP funds that Kentucky expects to receive from the federal government, and it should use a phased-in approach with \$41,550,465.50 being appropriated in the first year of the budget and an additional \$83,100,931 being appropriated in the second year.

- Enact legislation similar to House Bill 564, which was vetoed by the Governor during the 2020 Regular Session, to establish a definition of *attendant care* and to require that attendant care be an available service in all 1915(c) waivers.
- Enact legislation to establish crisis residential services within the SCL waiver, and appropriate sufficient funds for these services.

- Enact legislation to establish an SCL waiver service for participants with long-term support needs while also retaining an overhauled exceptional support system. Such legislation should, at a minimum,
 - establish criteria for individuals whose support needs are greater than what can be provided in SCL Residential Levels 1 and 2;
 - establish long-term crisis services for SCL waiver participants; and
 - retain the current exceptional supports system, to be used exclusively for short-term crisis stabilization and transition.
- Enact legislation directing CHFS to assist waiver service providers with the costs associated with onboarding employees, including required background checks and drug screenings.
- Include language in the 2022–2024 Biennial Budget bill directing CHFS to coordinate with relevant stakeholders to implement
 - regular cost-of-living adjustments for all waiver service reimbursement rates,
 - regular wage analysis, and
 - funding to support a robust and qualified workforce and true person-centered care.
- Direct CHFS to prepare and submit a Medicaid waiver application to establish a Serious Mental Illness waiver that includes at least the following services:
 - Supported housing
 - Medical respite care
 - Supported employment
- Direct CHFS to study SCL exceptional supports and the potential impacts of long-term crisis transition services, and require the cabinet to provide its results to the Interim Joint Committee on Health, Welfare, and Family Services no later than November 30, 2022.
- Direct CHFS to offer a training program for individuals and families who use self-directed services. Such a training program should include training on
 - the duties and responsibilities of self-directed services,
 - relevant employment laws, and
 - proper documentation.
- Direct CHFS to study the impact and effectiveness of the Family Home Provider service in the ABI and ABI LTC waivers and require the cabinet to provide its results to the Interim Joint Committee on Health, Welfare, and Family Services no later than November 30, 2022.
- Direct CHFS to ensure continued access to cognitive rehabilitative services and continuity of care for those living with brain and spinal cord injuries and to expand the ABI and ABI LTC waivers to include
 - medically complex and neurobehaviorally challenged individuals,
 - specialized behavioral health services, and
 - risk-adjusted rates for services.
- Direct CHFS to seek federal approval to maintain all Appendix K amendments and flexibilities provided throughout the COVID-19 pandemic to ensure that waiver services providers have the ability to adequately address individuals’ evolving needs in a post-pandemic environment.
- Direct CHFS to develop a strategy to significantly reduce or eliminate the waiting lists for the Michelle P. and SCL waivers, and require the cabinet to present this strategy to the Interim Joint Committee on Health, Welfare, and Family Services no later than November 30, 2022.

- Direct CHFS to develop a plan for transitional services and to maintain continuity of care as individuals move from one waiver to another, particularly when waivers have waiting lists for new enrollees.

**Report Of The 2021
County Clerk Office Modernization Task Force**

**Sen. Jason Howell, Co-Chair
Rep. Michael Meredith, Co-Chair**

Sen. Robby Mills
Sen. Robin Webb
Sen. Phillip Wheeler

Rep. Randy Bridges
Rep. Patrick Flannery
Rep. Ashley Tackett Laferty

LRC Staff: Randall Roof and Chelsea Fallis

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

County Clerk Office Modernization Task Force

Jurisdiction: Examine issues regarding the implementation of electronic recordings; fees or functions of the county clerk involved in the recording of documents; and closure of county clerk offices due to an emergency order, natural disaster, or pandemic.

Task Force Activity

The County Clerk Office Modernization Task Force met six times during the 2021 Interim. The task force received testimony from many of the groups who are affected by electronic modernization in county clerk offices.

Business Community And Electronic Access To Recorded Documents

Representatives from the Kentucky Bankers Association, Kentucky Land Title Association, Kentucky Association of Realtors, and Kentucky Automobile Dealers Association described the need for each of their industries to have better electronic access to recorded instruments and other documents held by state or local entities. The COVID-19 pandemic presented many issues for the business community and slowed down economic activity. The COVID-19 pandemic showed the business community the importance of accessing and processing documents electronically. In addition, they presented their belief that funds from the American Rescue Plan Act could be allocated to help county clerks modernize their offices and make records available online.

The members also heard from several electronic recording and storage vendors located in Kentucky and the surrounding region. These vendors showcased their products and explained how they already work with several county clerks. Some members worried that electronic systems would be burdensome and subject to cybersecurity attacks. The vendors expressed that they also provide information technology support and can help protect county clerks from cybersecurity attacks.

Kentucky Department For Libraries And Archives Local Records Program

The state librarian and commissioner of the Department for Libraries and Archives provided an overview of the Local Records Program, which was established after the passage of 1984 HB 26. Funds for the program are collected from taxes on certain legal process forms that are filed with county clerks. The county clerk collects \$1 from each eligible legal process and sends it to the Department of Revenue. The Department of Revenue then distributes those funds to the Department for Libraries and Archives for the Local Records Program. These funds are to be distributed to local agencies for the preservation of local records.

Representatives of the Kentucky County Clerk's Association outlined their concerns about the funds granted by the Local Records Program. They noted that even though the county clerks are the only entity that collects the legal process tax, grants awarded to the county clerks have decreased over the last several years. Instead, the grants have been awarded to nonpermanent

recording entities. Some members worried about the resources available to county clerks to help them apply for the Local Records Program grants. The department assured the members that they provide resources on their website and regional coordinators to assist county clerks.

Funding The County Clerk Office

Members of the Kentucky County Judge/Executive Association and Kentucky Magistrates and Commissioners Association expressed support for the modernization of county clerk offices but expressed concern over how county clerks would fund the transition to electronic searching of records. Smaller counties do not see the same volume of filings that other counties do. Smaller volumes could limit a county clerk's ability to cover all of the necessary expenses.

Another issue is the retention of the \$10 storage fee that was established in 2019 SB 114. The members learned that this fee is being returned to county fiscal courts at the end of the year with the excess fees. Some members expressed concern over that practice. Those members explained that the storage fee was intended to be retained by the county clerk to make the necessary changes to allow for electronic access to recorded documents.

The Kentucky County Clerk's Association provided testimony that county clerks operate based on fees generated by that office. Each year, a majority of county clerks begin with a zero-dollar bank balance because excess fees are returned to the fiscal courts at the end of each year. However, clerks in counties that have a population over 70,000 do not have to return excess fees until the end of their 4-year term. Counties with a population under 20,000 may receive a short-term loan. Some county clerks have had to obtain personal loans or write personal checks to make payroll at the beginning of the year.

Electronic Motor Vehicle Information System

The Transportation Cabinet provided an update on the development and implementation of the Kentucky Automated Vehicle Information System (KAVIS). The cabinet relayed that the project is still on track and does not require any additional funding. The development of KAVIS is set to be completed in December 2022. KAVIS would allow county clerks to streamline motor vehicle processing, and the cabinet is working with county clerks to ensure that KAVIS will include all necessary functions. Members requested that the cabinet develop a timeline and budget for implementing electronic titling and registration into KAVIS.

Representatives of the Kentucky Auto Dealers Association explained how electronic processing could make their industry more efficient. It would allow dealers to easily submit documents to the county clerk and allow the county clerk to quickly accept or reject documents. In addition, lenders would be able to ensure that their security interest in a vehicle is properly placed on a motor vehicle title.

Members of the Kentucky County Clerk's Association reported their findings from a trip to Ohio to examine how the electronic motor vehicle system functions there. They expressed both appreciation for and concern about the Ohio model. Task force members were urged to keep all motor vehicle functions with the county clerk office as opposed to the separate offices that are

used in Ohio. However, the ability to print titles in each office would enable the county clerk to quickly resolve issues.

Legal Malpractice Issues

A representative of the legal community explained possible malpractice concerns related to modernization of county clerk offices. The opportunity to electronically file documents and search records brings the risk of fraud and forged signatures, issues that are also present in the current model. Members were told that attorneys who prepare title opinions must exercise reasonable care, and county clerk staff should remain diligent in verifying the identity of those filing documents in their office.

**Report Of The 2021
Pari-Mutuel Wagering Taxation Task Force**

**Sen. Damon Thayer, Co-Chair
Rep. Adam Koenig, Co-Chair**

Sen. Julie Raque Adams
Sen. Denise Harper Angel
Sen. Christian McDaniel
Sen. Stephen West

Rep. Jonathan Dixon
Rep. Al Gentry
Rep. Matthew Koch
Rep. Jason Petrie

LRC Staff: Jennifer Hays, Kevin Branscum, Katy Jenkins, Grant Minix, Tom Hewlett , and
Chase O'Dell

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Pari-Mutuel Wagering Taxation Task Force

Jurisdiction: Study the taxes and rates related to horse racing, the impact that changing the rates would have, and the funds relating to the horse industry that receive Historical Horse Racing tax receipts. Determine if any changes should be made.

Task Force Activity

During the 2021 Interim, the Pari-Mutuel Wagering Taxation Task Force held five meetings. The committee received testimony regarding a wide range of topics.

Breakage

A representative of the Thoroughbred Idea Foundation discussed breakage. The foundation recommends modernizing the way pari-mutuel winning dividends are calculated. Breakage is the difference between what winning racing bettors should be paid on winning bets and what they are paid; it is the rounding down of the return from winning pari-mutuel racing wagers. Kentucky statute requires that all pari-mutuel winnings be rounded down to the nearest 10-cent unit. The bet-taker retains the breaks to the nearest lowest 10-cent unit.

Kentucky tracks held more than \$310,000 in breakage from winning dividends paid on-track in FY 2021. If the on-track breakage rate were extrapolated across all betting on races in Kentucky, the total dollars in breakage held by bet-takers would be estimated to total more than \$9.3 million. The estimated off-track breakage retained in the last 5 years totals almost \$33 million. Bet-takers retained an estimated 93 percent of all breakage on Kentucky racing from the last 5 fiscal years.

The Thoroughbred Idea Foundation suggests amending statutes that apply to breakage, shifting breaks from every 10 cents to every penny. Most professional betting syndicates are rebated breakage.

Current And Future Capital Investments At Kentucky's Tracks

The president of Churchill Downs Racetrack and the vice president of strategic initiatives and legislative affairs at Keeneland Association Inc. discussed current and future capital investments at Kentucky's racetracks. In the last 3 years, there has been significant investment at Kentucky Downs. Every market and facility is experiencing growth. Significant investment has translated to permanent jobs as well as construction jobs and occupational and local taxes. The demand for stalls in Kentucky is at an all-time high. The actions of the General Assembly have helped drive this demand.

The purse structure in Kentucky is unique because tracks fund the bulk of it. Purses since 2018 have grown significantly, especially for those who are breeding and racing horses in the commonwealth.

Effective Tax Rate For Historical Horse Racing

The executive director of the Kentucky Center for Economic Policy and the president of Churchill Downs Racetrack discussed the effective tax rate for Historical Horse Racing (HHR). Kentucky has a tax on HHR of 1.5 percent of the handle. In the most recent year, 91 percent of total handles returned to the public. Net commission of handles totaled 7.2 percent in the same year. A majority of HHR tax revenues goes to industry funds. The remainder goes to the general fund.

Handles on HHR have grown dramatically, from \$373 million in FY 2015 to \$4.6 billion in FY 2021. In Kentucky, revenues from the handle tax totaled 17.3 percent of gross commissions that operators earned in FY 2021, making the effective tax rate on HHR 17.3 percent of gross commissions. When considering only revenues that go to the general fund, the effective tax rate on HHR as a share of gross commission is 7.7 percent. When factoring the excise tax and contractual purse obligation, the combined effective tax rate becomes 32.3 percent of revenue for the racetrack.

Kentucky's borders are surrounded by direct casino or video lottery competition. These states hold competitive gaming advantages over Kentucky due to their slot machines, card and table games, and sports wagering. Kentucky's effective tax rate is already on the high end of rates compared to bordering states.

Importance Of The Kentucky Thoroughbred Development Fund To Kentucky Racing

The president of the Kentucky Horsemen's Benevolent and Protective Association discussed the importance of the Kentucky Thoroughbred Development Fund (KTDF) to Kentucky racing. The KTDF was established in 1978 to incentivize Kentucky-bred Thoroughbreds to stay and race in Kentucky. The association wants to change statute regarding KTDF to allow claiming horses to be eligible for KTDF funds. This change will help owners, as they will be running for more purse money. These changes will also help the state.

Overview Of The Pari-Mutuel Tax

The director of pari-mutuel wagering and compliance at the Kentucky Horse Racing Commission, the chief economist of legislative economic analysis at the Legislative Research Commission, and the committee staff administrator of the Appropriations and Revenue Committee at the Legislative Research Commission provided an overview of the pari-mutuel tax. In addition to paying income tax on net earned income, property tax on real or tangible property, and sales tax on the consumption of tangible personal property, the horse racing industry pays three further fees and taxes: the license fee, the admissions tax, and the pari-mutuel tax.

Wagers can be placed on live racing, HHR, intertrack and simulcast racing, or advance deposit account wagering. The rate of taxation varies among the types of wagering. The tax on live racing wagers can range from 3.5 percent to 1.5 percent. HHR wagers are taxed at 1.5 percent. Intertrack and simulcast wagers are taxed at 3 percent. Advance deposit wagering is taxed at 0.5 percent. Pari-mutuel tax receipts in FY 2021 through May totaled \$27.7 million. The money

wagered in FY 2021 through May totaled \$46.1 million for live racing and \$4.1 billion for HHR. As of FY 2019, HHR made up 81.6 percent of pari-mutuel tax revenue.

Postsecondary Institutions Not Receiving Funding From The Pari-Mutuel Tax

Representatives of the University of Kentucky and Bluegrass Community and Technical College (BCTC) discussed not receiving funding from the pari-mutuel tax. The mission of the equine program includes work-ready graduates, world-renowned research, and service to the industry and state. The program is dedicated to addressing industry issues such as conducting an equine survey, responding to a new virus, researching medication, and researching track surfaces. UK's equine program also has several outreach and engagement programs for the horse community.

Even though the Equine Science and Management bachelor's degree was approved only 12 years ago, the program has over 500 alumni in a variety of jobs across the equine industry. The current operating budget for the equine program totals \$500,000 annually. Support from pari-mutuel tax revenue would allow BCTC to continue to provide equine education at a community college cost.

Postsecondary Institutions Receiving Funding From The Pari-Mutuel Tax

The director of the equine industry program at the University of Louisville and a trainer discussed the university's receipt of funding from the pari-mutuel tax. The Equine Industry Program is funded through pari-mutuel tax on live racing, simulcast racing, and HHR. There is a \$650,000 cap on the amount of funding the program can receive from HHR. In FY 2021, there was a 15.25 percent decrease in funding due to a decline in on-track attendance and simulcast wagering. The HHR tax provided approximately 83.79 percent of the revenue for the program in FY 2021, an increase since FY 2019. HHR is the primary source of funding for the Equine Industry Program (EIP) and funds are allocated to operations, faculty, student recruitment and retention, marketing, and research. The EIP has another source of funding in the capital expenditure funding available to other equine programs in Kentucky; however, over the past 18 months, EIP has not accepted any money from this funding.

The Racing Officials Accreditation Program, which educates stewards, judges, and other racing officials, is one way the University of Louisville educates the industry as well as the staff who support the industry. The education includes information about the track, the backstretch, and the pari-mutuel industry.

Problem Gambling

A representative of the Kentucky Council on Problem Gambling discussed problem gambling. The council is not against gambling. Its mission is to increase awareness of problem gambling, promote prevention and research, and advocate for the availability of treatment. The council urges the General Assembly to authorize a publicly funded program for problem-gambling education, prevention, and treatment in Kentucky, and to establish a recurring funding mechanism from legal gambling revenues.

A survey conducted by the University of Kentucky Survey Research Center showed 9,000 addicted gamblers and 51,000 problem gamblers in Kentucky, as well as 190,000 Kentuckians at risk of developing a gambling problem.

State Of The Horse Industry

The executive vice president of the Kentucky Equine Education Project discussed the state of the horse industry in Kentucky. 2021 SB 120 paved the way for continued significant investment in Kentucky's horse industry, which will lead to new jobs and economic growth throughout the commonwealth. The direct value of Kentucky's horse industry totals \$832 million. There are nearly 80,000 direct and indirect jobs provided by the industry and industry-related tourism. The horse competition sector provides an additional \$209 million in direct impact to the state. Overall, the horse industry's total economic impact in Kentucky totals \$6.5 billion in annual direct and indirect economic activity. Despite recent setbacks from the Kentucky Supreme Court and the pandemic, the industry has continued to invest and grow in communities across the state. Because of HHR, more jobs and economic benefits will follow. Additionally, greater revenues will flow into the industry incentive programs, educational programs, and the state's general fund.

State Of The Thoroughbred Industry

The executive director of the Kentucky Thoroughbred Association discussed the state of the Thoroughbred industry in the commonwealth. Thanks to Kentucky's competitive business environment, the Thoroughbred industry has thrived through major reinvestment in infrastructure for horses and fans, safety and integrity initiatives, marketing, and hard work. Kentucky is the largest producer of Thoroughbred horses in the United States. The commonwealth is a net exporter of horses to buyers around the world. Thanks to public-private coordination since the onset of COVID-19, Kentucky racing has eclipsed New York racing on purses for the first time. Kentucky has used HHR revenue wisely by attracting better horses, making better fields, and increasing wagering on live racing products. Since 2012, Kentucky is the only state other than New York to increase its level of grade one and grade two graded races. In Kentucky, field size and purses have grown as a result of HHR and the live racing product.

Taxation Elasticity

A professor at the University of Louisville discussed taxation elasticity as it relates to the taxation of pari-mutuel wagering. Research shows that as taxes on gambling increase, there may be a proportional decrease in revenue. The decrease in revenue follows the decrease in payout to the patron after the tax increase. With a decrease in payout, direct competition, and substitutions, generally the establishment loses patrons. If the tax increase is placed on the gross revenue, then the effective rate of the tax is much higher than the tax increase because the establishment pays out approximately 90 percent to 95 percent of gross revenue to its patrons.

**Report Of The 2021
School Funding Task Force**

**Sen. Max Wise, Co-Chair
Rep. James Tipton, Co-Chair**

Sen. David P. Givens
Sen. Reginald Thomas
Sen. Mike Wilson

Rep. Kim Banta
Rep. Tina Bojanowski
Rep. DJ Johnson

LRC Staff: Joshua Collins, Cynthia Brown, and Chris White

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

School Funding Task Force

Jurisdiction: Leadership of the Senate and House created the School Funding Task Force to review the entirety of the current K-12 funding mechanism; review publications, reports, and analyses of the current funding mechanism; review a report from the Kentucky Department of Education (KDE) relating to funding for nonresident students; review how Kentucky's school funding mechanism compares with mechanisms developed by other states; and develop and submit any recommendations and changes the task force may adopt relating to the Support Education Excellence in Kentucky (SEEK) fund to ensure the equitable and efficient funding of Kentucky's common schools to the Legislative Research Commission.

Task Force Activity

The School Funding Task Force met six times during the interim. The task force invited representatives of Kentucky school superintendents, representatives from the Kentucky School Boards Association, and representatives from KDE. The committee heard testimony from experts and stakeholders on school funding who outlined the current state of school funding and potential changes that may improve equity and efficiency in funding public schools.

Current Funding Model

KDE staff gave overviews of the current funding system that included the funding mechanisms and calculations in the SEEK funding model. KDE presented on non-SEEK funding areas such as Family Resource and Youth Services Centers, health insurance, retirement, and vocational funds that flow to public schools. Staff gave a presentation on the complex transportation funding calculation and how it affects school districts. Staff from the School Facilities Construction Commission gave a presentation on how state funds flow through the commission to provide facilities funds to districts.

School District Perspectives On Funding

Superintendents of the Breckinridge County, Lawrence County, Logan County, Ludlow Independent, Madison County, and Somerset Independent school districts discussed the costs of educating different student groups and the weights those groups are given in allocating SEEK funding. Discussions on issues affecting school funding included inflation, lower state funding of transportation, property assessment and local tax revenue, full funding of kindergarten programs, underfunding of districts with lower attendance, population change, and funding for facilities improvements.

School Funding In Other States

The president of the Southern Regional Education Board explained how various states within the board's region fund public schools, including a discussion of student-based, resource-based, and hybrid models of funding. The presentation identified different student groups and criteria that

receive additional weight in the states' funding systems. The presentation shared recent changes that states in the region have made in school funding systems.

Unfunded Mandates

Representatives of the Kentucky School Boards Association and the Kentucky Association of School Superintendents led a discussion on the impact of unfunded mandates on school districts' finances. These mandates can include salary supplements for National Board certified teachers, librarian requirements, and mandates to use a specific financial accounting system and provide specific professional development. The total cost of these requirements can be difficult to calculate, because they are spread throughout statutes and regulations. The representatives recommended instituting a school financial impact statement to review any mandate and ensuring funding is available for the life of the mandate.

Office Of Education Accountability Report On School Funding

The Office of Education Accountability (OEA) conducted a study on the state's system of school funding and submitted a report titled *Funding Kentucky Public Education: An Analysis Of Kentucky Funding Through The SEEK Formula*. The report included comparisons with other states on the role of local revenue, funding add-ons for specific student groups, and add-ons for specific district types. The report also detailed how the funding system has changed over time with analysis for rural, micropolitan, and metropolitan districts. Analysis was provided for school districts, classified according to property wealth.

The report outlined possible changes to the SEEK model. It analyzed how those changes would impact equity among districts and calculated how much each change would reduce per-pupil funding if implemented. Alternatively, the report provided the total cost of changes if per-pupil funding were maintained at current levels. These hypotheticals included modifications to current weights, the creation of new weighted groups, modification of local revenue requirements, and the use of average daily membership (ADM) instead of average daily attendance (ADA) as the means of counting students.

While conducting the research and review, OEA staff found issues and errors in KDE's process for distributing state funds to school districts. For transportation funding, square mileage was incorrectly calculated for some districts, incorrect data was used, the process outlined in statute was not used, and the proper weight for funding handicapped student transportation was not used. Additionally, some district-level financial data is not being recorded in financial data systems, and districts are receiving exceptional child add-on funding for preschool students who are not included in the SEEK calculation.

Nonresident Student Funding

During the 2021 Regular Session, House Bill 563 allowed nonresident students to be included in a district's average daily attendance for purposes of receiving state SEEK funding. KDE was required to submit a report outlining possible options for allowing local funds to follow from a student's district of residence to the student's district of enrollment. KDE submitted a written

report and presented four options: allow no transfer of local funds, require resident districts to transfer local funds, adjust the SEEK appropriation to districts to provide additional funding for nonresident students, or provide a separate appropriation with additional funding for nonresident students. KDE staff indicated that the last three options raised possible legal questions.

Average Daily Attendance Versus Average Daily Membership

KDE staff outlined how average daily attendance is calculated and how it affects the current SEEK funding model. ADA is lower than the total number of students and is used in funding districts based on a per-pupil amount. Low attendance, inclement weather, and illness can influence ADA, which also tends to be lower in districts with higher levels of poverty, at-risk students, and chronic health issues. ADA counts motivate districts to encourage attendance.

Average daily membership considers enrollment counts instead and can be implemented in different ways. KDE staff emphasized that if a transition were made from ADA to ADM, policy would need to address accuracy in student counts, predictability for districts in budget planning, stability in funding over the transition period, and adequate time to prepare and conduct the transition.

Recommendations

Upon considering the testimony and information provided, and after consultation with the task force members and the invited experts, the co-chairs recommended

- that the General Assembly permanently authorize the full funding of kindergarten in statute and ensure districts receive the appropriate equalization funding as a result of the change;
- that the General Assembly consider transitioning from using average daily attendance in the funding calculation to using average daily membership in a manner that minimizes extreme funding changes for school districts while also maintaining incentives for student attendance and accountability for school districts;
- that the General Assembly develop a plan to return to full state funding of district transportation;
- that the General Assembly develop a plan to achieve full funding of the School Safety and Resiliency Act of 2019;
- that the General Assembly provide funding to expand use of the state's Family Resource and Youth Services Centers;
- that the General Assembly, in consultation with the Legislative Research Commission, explore the development of a School District Impact Statement to inform legislators about a bill's potential cost to school districts;
- that the Education Assessment and Accountability Review Subcommittee include in its 2022 Office of Education Accountability research agenda a review of the most recent studies measuring the cost of an adequate public education in Kentucky and similar states with a focus on the methods used in those studies, the outcomes, and the costs associated with educating special student populations;
- that the Legislative Research Commission refer the report submitted by the Kentucky Department of Education pursuant to 2021 HB 405 to the Standing Senate and House

Committees on Appropriations and Revenue for additional consideration during the 2022 Regular Session due to the late deadline for receiving the report; and

- that the Legislative Research Commission continue to study and review the issues of school funding and the updating of the school funding system through referral of the issue to an interim joint committee during the 2022 Interim.

**Report Of The 2021
Severe Mental Illness Task Force**

**Sen. Alice Forgy Kerr, Co-Chair
Rep. Danny Bentley, Co-Chair**

Sen. Ralph Alvarado
Sen. Karen Berg
Sen. Stephen Meredith

Rep. Ken Fleming
Rep. Melinda Gibbons Prunty
Rep. Lisa Willner

LRC Staff: DeeAnn Wenk, Samir Nasir, Liz Hardy, and Amanda DuFour

**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Severe Mental Illness Task Force

Jurisdiction: Study the provision of mental health services to adults diagnosed with a severe mental illness (SMI) in Kentucky.

Task Force Activity

The Severe Mental Illness Task Force met six times during the 2021 Interim. The task force heard testimony on a wide range of topics related to severe mental illness (SMI) in the commonwealth.

Tim's Law

The commissioner of the Department of Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) discussed Tim's Law, which provides a mechanism for involuntary outpatient treatment known as assisted outpatient treatment (AOT). The commissioner gave an overview of the treatment services, provided client-specific data of the pilot rollout, and discussed future implementations of the AOT program.

A judge of the Jefferson District Court testified about Tim's Law. The judge recommended that the eligibility requirements in Tim's Law be expanded so more individuals can have access to AOT and that an amendment to the statute be created to address issues related to due process.

An assistant professor at the University of Kentucky discussed the need to fund Tim's Law. It is funded to only four areas, and the grant is set to expire in 2025.

Housing For Individuals With Severe Mental Illness

The executive director of New Beginnings, Bluegrass, Inc. stated that its mission is to help improve the lives of adults with SMI through high-quality housing and recovery-based services. Permanent supportive housing is an evidence-based practice that is used to help adults with SMI obtain and maintain housing. Supportive housing reduces emergency room visits, inpatient hospitalizations, and arrests, and it saves money for states. Affordable housing and voluntary support services are the two main components that make permanent supportive housing successful.

The chief executive officer of Wellspring discussed supportive housing and explained that supportive housing is important because individuals who are diagnosed with SMI often rely on supplemental security income, which is less than \$10,000 annually, so rental assistance is necessary. Some services provided by Wellspring are not reimbursable through Medicaid, so funding from DBHDID is needed. The director of housing and grants for Mountain Comprehensive Care Center stated that there are not enough affordable housing units in the state to house the homeless SMI population. Lack of transportation creates a barrier to housing.

The chief information officer at MSHN Enterprises discussed the housing model it provides in Tennessee. MSHN Enterprises' goal is to establish a therapeutic environment where individuals are provided care that fosters their independence, supports long-term recovery, and encourages integration into the community. The executive director of the Kentucky Mental Health Coalition discussed the need for a medical waiver that would include a residential option to provide housing and medical respite care.

Community Mental Health Centers

The executive director of the Kentucky Association of Regional Programs provided information on community mental health centers (CMHCs) and the services they provide. The Centers for Medicare and Medicaid Services provided a grant to Kentucky in 2020 to transition CMHCs to certified community behavioral health centers, which would require additional staffing and an understanding of how to provide primary care to individuals with SMI.

The executive director of the Pennyroyal Center stated that individuals who have SMI can be supported by services provided by CMHCs but may still experience significant barriers with regard to transportation, affordable housing, stable income, employment opportunities, and access to reasonable resources within the community.

An integrated care nurse at Seven Counties Services discussed integrated physical and mental health care for individuals with SMI. Services offered encompass health prevention strategies, screenings and assessments, and diagnosis and treatment of acute and chronic health problems.

The director of housing and grants for Mountain Comprehensive Care Center testified that concessions are in place with Medicaid regarding prior authorizations, so the organization has been able to provide high-quality and intensive services to members. However, once prior authorizations are no longer suspended, it will be harder to get services such as target case management and therapeutic rehabilitation for clients.

Mental Health Court

A judge of the Fayette District Court discussed the Fayette Mental Health Court, which was founded on the concept of criminal justice reform to promote human dignity and decriminalize mental illness. Mental health court programs reduce and stop victimization, repeated criminal activity, homelessness, drug abuse, and alcohol abuse for individuals with SMI. There are four phases in the Fayette Mental Health Court: stabilization, treatment, self-motivation, and wellness.

The executive director for the National Alliance on Mental Illness stated that funding for the mental health court should come from other programs that do not work when the mental health court has proven to have success with participants and save money. Research shows that program graduates of mental health courts save law enforcement an average of \$22,865 annually.

Severe Mental Illness Populations And Hospitalizations

The clinical director of DBHDID recommended investing in identifying ultra-high-risk individuals and early prevention, enforcing mental health parity, funding to create recovery focused system of care, and new payment models to make CMHCs viable. Other recommendations include diverting people from the justice system, making sure individuals are maintaining jobs and schooling, and ensuring people have stable housing.

The community resource communications director at Pathways, Inc., discussed barriers in rural areas, which include a shortage of mental health professionals, issues related to acceptability, and stigma. Within and outside of the mental health community, an increasing number of providers no longer take Medicaid.

Severe Mental Illness Waiver And Development

The chief behavioral health officer of the Department of Medicaid Services (DMS) recommended that an SMI and serious emotional disturbance waiver be added under the same authority as the approved substance use disorder 1115 waiver. DMS had been participating in a housing collaborative on a federal level over the previous 9 months.

Train New Trainers Primary Care Psychiatry

The professor and vice chair of psychiatry and human behavior at the University of California, Irvine, discussed a program that was developed in 2016 called the Train New Trainers Primary Care Psychiatry Fellowship. The program encompasses 1 year and provides a targeted overview of the mental health issues that primary care physicians see most.

Severe Mental Illness Issues With Prison And Jail Inmates

The jailer of the Muhlenberg County Detention Center testified about issues that individuals with SMI face in the criminal justice system. Officials who work in the detention center are not trained to deal with the SMI population. The chief deputy of the Muhlenberg County Sheriff's Department stated that he is unsure whether law enforcement should be dealing with individuals who struggle with SMI because sometimes it may escalate a situation.

A judge of the Jefferson District Court testified that Kentucky has a high number of incarcerated individuals with SMI who spend months in jail with no alternative recourse, waiting for a psychiatric evaluation to be completed. AOT has been successful in reducing the number of incarcerated individuals.

The executive director of the Kentucky Mental Health Coalition discussed Kentucky laws that preclude individuals with intellectual disabilities from being sentenced to the death penalty. No Kentucky law precludes individuals with SMI from being sentenced to the death penalty.

Challenges Establishing New Behavioral Health Clinics

The chief executive officer of the Muhlenberg Opportunity Center discussed 907 KAR 15:020, which allowed the center to become a Medicaid multispecialty group. Hurdles with managed care organizations—such as credentialing, contracting, and prior authorizations—caused issues. The CEO is in the process of opening a behavioral health agency in the area.

Mobile Mental Health Clinics

The chief business development officer with Pathways, Inc., discussed using mobile mental health clinics to reach three targeted populations: people of color, rural underserved individuals, and the disenfranchised. A mobile mental health clinic costs approximately \$200,000 to equip.

Treatments And Medication Nonadherence For Individuals With Severe Mental Illness

An assistant professor at the University of Kentucky listed common medications used to treat SMI, described medication nonadherence, and reported barriers to medication for individuals with SMI. Some practices to improve medication adherence and ways to improve access to medications were provided.

A physician discussed long-acting injectable (LAI) antipsychotics. Aggressive early substance use screening and treatment improves the chance of reducing the number of relapses in individuals. It is estimated that a person loses an average of 1 percent of brain functioning after each psychotic episode or relapse.

Severe Mental Illness And Recovery

An assistant professor at the University of Kentucky discussed four essential components of recovery services: management of one's mental and physical health, stable housing, participation in purposeful daily activities, and a sense of community. It is important to increase funding on a long-term basis to expand recovery based services to help the SMI community.

The chief executive officer of Wellspring testified that recovery is measured by whether clients are satisfied in their lives; whether they are competitively employed; and whether they are engaged in work, work programs, volunteer jobs, or school.

The chief operating officer of Bridgehaven Mental Health Services testified that recovery is person-centered and individualized. Bridgehaven uses a multidisciplinary, multimodel approach that provides a range of services to help with recovery. Many former clients of Bridgehaven are able to maintain stability and do not require the use of more expensive or more restrictive services after leaving.

Severe Mental Illness In Kentucky: A Review Of Legislation And Policy

The executive director of the Kentucky Mental Health Coalition discussed federal and state legislation related to CMHCs, including KRS Chapter 210, which authorized the care of not

only individuals with mental illness but also those with developmental and intellectual disabilities. House Bill 69, passed in 2018, centralized credentialing. Senate Bill 55, passed in 2021, eliminated co-pays for Medicaid and inpatient psychiatric hospital care. KRS Chapter 202A, enacted in 1982, provides for the involuntary commitment of an individual to inpatient psychiatric evaluation.

Task Force Findings And Recommendations

Findings

- Individuals with severe mental illness are the only population in Kentucky with a disability that does not have a Medicaid waiver. Two important services—supported housing and supported employment—are not currently reimbursable by Medicaid. An SMI waiver would target services much needed to provide comprehensive care to individuals with SMI.
- Housing is central to recovery for individuals with SMI, but they experience higher rates of housing insecurity and homelessness than the general population.
- Tim’s Law, outlined in KRS Chapter 202A, addresses the practice of delivering assisted outpatient treatment pursuant to a court order to adults with SMI who meet specific criteria. AOT uses a team that consists of a judge, community health providers, and the patient. Individuals who need AOT are those with a history of repeated hospitalizations, a history of noncompliance with outpatient treatment, and a history of noncompliance with medication. It has taken a while to obtain funding for Tim’s Law. As of July 2020, the Substance Abuse and Mental Health Services Administration awarded to the Department of Behavioral Health, Developmental and Intellectual Disabilities a total of \$4 million (\$1 million per year for 4 years). AOT is funded only until 2025 and is limited to four regions of Kentucky. The AOT statute needs to expand the population of individuals who would qualify for it, and improvements related to due process and clarity are needed.
- Community mental health centers are nonprofit organizations established by KRS Chapter 210 to provide community services for Kentuckians who experience issues with mental health, developmental and intellectual disabilities, and substance use disorders. CMHCs are the safety net providers for individuals with SMI. CMHCs have not received an increase in funding in 22 years but, during that same period, the population of Kentucky increased by over 500,000. In addition to a lack of funding, CMHCs face issues with prior authorizations with managed care organizations that can lead to a delay in service delivery. CMHCs also have low reimbursement rates, which can lead to staff limitations. A lack of regional service providers has created additional issues with continuity of care for CMHCs because any provider can enter a CMHC’s region and provide services.
- Medication nonadherence rates among individuals with SMI range from 30 percent to 65 percent. The most common causes of relapse in those who have schizophrenia and bipolar disorder are nonadherence to oral medications, substance use, and stress. Consequences of medication nonadherence include relapse, rehospitalization, impairment in functioning, and suicide. One way to improve medication adherence is through the use of long-acting injectable antipsychotics that reduce the need to maintain medication schedules, provide for stable drug levels, and decrease hospitalizations. Oral antipsychotics are cheaper, more likely to be covered under Medicaid, and easier to administer. Some medications must be taken

daily or weekly, but some long-acting injectable antipsychotics require administration only twice a year.

- Mental health courts are designed to help stop the criminalization of individuals with SMI and intervene to reduce victimization, repeated criminal activity, homelessness, drug abuse, and alcohol abuse. Each program graduate of mental health courts saves law enforcement an average of \$22,865 annually. Upon entry into Fayette County Mental Health Court, 33 percent of participants had experienced homelessness, but after 12 months, 96 percent of participants were housed. Upon entry, 75 percent of participants were unemployed, but after 12 months, approximately 71 percent of graduates were employed. Upon entry, 84 percent of participants had experienced previous arrests; after 12 months, 74 percent were arrest free. Additional mental health courts can be established, but more funding is needed.
- Some individuals with SMI spend months in jail with no alternative recourse. An attorney may file a motion of competency that stays the proceedings. The court cannot make a determination of whether the individual is competent, and the individual may spend months in jail waiting for a psychiatric evaluation to be completed.
- Many individuals living with SMI in rural areas do not have reliable transportation. Lack of transportation is a barrier to housing and employment. It hinders individuals from following up after being discharged from a hospital, and it hinders them from seeking help in general. Pathways Inc. started a mobile mental health project that has served 220 individuals in rural areas since May 2021.
- Four CMHCs are in the process of becoming certified community behavioral health centers (CCBHCs) by January 2022. CCBHCs are funded to provide care regardless of an individual's ability to pay, including individuals who are uninsured, covered by Medicaid, and active-duty military or veterans.
- There are only 350 actively practicing psychiatrists in Kentucky—approximately 8 per 100,000 residents. To adequately serve individuals with severe mental illness, there should be at least 50 actively practicing psychiatrists per 100,000 residents. Due to this chronic shortage of psychiatrists, primary care providers are providing up to 74 percent of all psychiatric care in the United States. However, primary care providers may not have the training or experience to accurately diagnose or treat individuals with SMI or other mental health conditions.

Recommendations

- Direct the Cabinet for Health and Family Services to apply for a Medicaid waiver targeting individuals with SMI to provide for supported housing, including medical respite care and supported employment.
- Fund and expand the use of Tim's Law and assisted outpatient treatment to all community mental health center regions across the state.
- Amend KRS 202A.0815 to expand the class of individuals who can have access to assisted outpatient treatment pursuant to Tim's Law.
- Direct the Department for Medicaid Services to make suspension of prior authorizations for behavioral health services, particularly targeted case management, permanent and to require managed care organizations to cover the cost of long-acting injectable medications when appropriately prescribed.

- Establish and fund mental health courts across Kentucky to expand the court’s mission and to allow more courts to participate.
- Amend KRS 202A.0811 for clarity and issues related to due process.
 - It is recommended that the language be changed to state that the respondent shall be “evaluated” and not “examined.”
 - It is recommended to amend the language to state that the qualified mental health professional shall certify findings to the court within 72 hours of receipt of the order, excluding weekends and holidays.
 - It is recommended that that time limit be changed so that a date for a hearing shall be set within 6 days of the date of the filing of the petition, a time frame that is in line with current court procedures.
- Fund mobile health clinics to eliminate the barriers of stigma and lack of transportation and to provide both physical and mental health services to disenfranchised individuals and to those in underserved areas of the state.
- Direct the Cabinet for Health and Family Services to expand certified community behavioral health clinic designation to all 14 CMHCs to provide integrated mental health, substance use, and physical health services to any individual in need of care, including individuals with SMI, children with severe emotional disturbance, and individuals with addictions and other chronic health problems.
- Direct the Cabinet for Health and Family Services to assess whether in-state programs currently providing psychiatric primary care physician training are sufficient to meet the state’s needs. If they are not sufficient, direct CHFS to contract with another university or medical association of its choosing to provide additional training programs for psychiatric primary care physicians.
- Require all mental health professional licensure boards either to enter into an interstate compact or to ease or establish reciprocity procedures so as to increase the workforce of mental health professionals in Kentucky.

**Report Of The 2021
Unemployment Insurance Reform Task Force**

**Sen. Michael J. Nemes, Co-Chair
Rep. Russell Webber, Co-Chair**

Sen. Ralph Alvarado
Sen. Brandon Storm
Sen. Mike Wilson
Sen. David Yates

Rep. Josh Branscum
Rep. McKenzie Cantrell
Rep. Phillip Pratt
Rep. Scott Sharp

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**Presented to the
Legislative Research Commission
and the
2022 Regular Session of the
Kentucky General Assembly**

Unemployment Insurance Reform Task Force

Jurisdiction: Review the current unemployment system; evaluate and discuss possible long-term changes; solicit recommendations; develop a list of recommendations for the General Assembly to consider related to reform of the unemployment insurance system.

Task Force Activity

The Unemployment Insurance Reform Task Force held six meetings during the 2021 Interim.

Overview

The duties of the task force included, without limitation, the following:

- Review the current unemployment insurance (UI) system.
- Evaluate and discuss possible long-term changes to the unemployment insurance system that address the system's fiscal well-being and stability.
- Solicit recommendations from stakeholders and interested parties.
- Develop a list of recommendations for the General Assembly to consider related to reform of the unemployment insurance system.

Administration Of The Unemployment Insurance Program

Staffing for the Office of Unemployment Insurance is regulated by the federal government, and guidelines are outlined in unemployment insurance program letters. In April 2021, the office received approval for flexible staffing, which allowed employees from other state agencies and cabinets to assist with unemployment insurance claims. The approval expired on September 6, 2021, and was not extended by the federal government. From March 2020 to September 19, 2021, a total of 2,426,605 unemployment insurance claims were received and a total of \$6,640,473,258 was paid through all unemployment insurance benefit programs. During the 2021 Regular Session, legislation was passed creating a waiver for overpayment of unemployment insurance benefits. Unemployment insurance claimants began receiving letters in June 2021 regarding overpayments of unemployment insurance benefits. As of September 2021, there had been 5,780 overpayment claims processed and \$8,333,203.78 in benefits waived.

Unemployment Insurance Fraud

The US Department of Labor estimated that over \$63 billion was paid out across the country in improper or fraudulent unemployment insurance claims in the first 12 months of the COVID-19 pandemic. The Kentucky Chamber of Commerce expressed concerns that employers ultimately bear the cost of these paid fraudulent claims since employers pay into the unemployment insurance trust fund. The Labor Cabinet pointed out that, due to 2021 Regular Session HB 413, claims were not paid out of the employers' unemployment insurance account. Therefore, there was no negative impact on employers due to payment of fraudulent claims.

Benefits

The Foundation for Government Accountability recommended instituting a smart benefit design through a benefit indexing policy, adopting policies that prioritize reemployment, and improving system security. The Labor Cabinet recommended the implementation of a short time compensation program that would allow for work sharing between employees in order to avoid layoffs. The Kentucky Chamber of Commerce recommended several changes originally suggested during the 2019 Regular Session in House Bill 317, including changes to benefit levels and duration of benefits.

Workforce Concerns

The Kentucky Association for Private Providers noted that obstacles for providers include the workforce shortage, expanded federal pandemic unemployment assistance payments, and employees being approved for unemployment insurance benefits that had been terminated based on allegations of abuse. The National Federation of Independent Business Kentucky urged the halt of expanded federal pandemic unemployment assistance payments and found that approximately 90 percent of its members had job openings. The Kentucky Chamber of Commerce addressed the duration of paid unemployment insurance benefits, the definition of suitable work, work search activities, a job referral program, and the work search audit process with the Labor Cabinet.

Technology Concerns

The task force meetings prompted discussions about technology in Kentucky's unemployment insurance system. Topics included the launch timeline for the upgraded unemployment insurance system, the data breaches of the current system, the efficacy of the existing digital unemployment insurance platform, and the technology-based fraud protection mechanisms. The request for proposals for a new unemployment insurance system was in the later stages; once a vendor is selected and finalized, it will take 18 to 24 months to implement the modernized unemployment insurance system.

Audit

The auditor of public accounts (APA) does an annual audit of Kentucky's Comprehensive Annual Financial Report in accordance with generally accepted accounting principles. In December 2020, the APA issued a qualified audit opinion on the Unemployment Insurance Fund. Volume I, which was released in February 2021, reports the financial and internal control findings from the audit. More than half of the 25 findings for FY 2020 involved the Office of Unemployment Insurance and the Unemployment Insurance Fund. Volume II, which was released in April 2021, reports on compliance with federal requirements for federal awards. Eight of the 21 findings for FY 2020 involved the Office of Unemployment Insurance and the Unemployment Insurance Fund. The findings identified \$670.7 million in questioned costs, including the \$655 million in unemployment insurance benefits paid during FY 2020.

The Office of Unemployment Insurance implemented an auto-pay policy in an attempt to more quickly distribute benefit payments to unemployed individuals. The implementation of the auto-pay feature eliminated the control that required claimants to report the weekly wage information needed to determine whether they were eligible for benefits. Longtime employees of the Office of Unemployment Insurance and Commonwealth Office of Technology staff expressed concerns about the policy. Auto-pay was in effect 2 weeks for traditional unemployment insurance and 8 weeks for Pandemic Unemployment Assistance. During this time, \$17.8 million was paid in traditional unemployment benefits, \$129.9 million was paid in Pandemic Unemployment Assistance benefits, and \$507.7 million was paid in Federal Pandemic Unemployment Compensation benefits. Although not all of these payments were improper, they were all paid in an environment conducive to improper or fraudulent payments, which may have allowed some full-time state employees to receive unemployment insurance payments.

Burdens On Employers

The Kentucky Chamber of Commerce noted that it is working on suggestions for reforming the unemployment insurance tax framework in an effort to lessen the burden on employers. The chamber also noted that the unemployment insurance trust fund must be replenished. It proposed that federal funds could be used for this purpose in order to relieve the burden on employers.

Recommendations

The task force recommends that the General Assembly explore the following actions:

- Index the number of weeks that benefits are payable to the state unemployment rate.
- Increase the number of job contacts a claimant must make in a week.
- Cap the amount of benefits that can be received if a worker's regular weekly benefit rate is temporarily increased or supplemented by federal, state, or local funds during a state of emergency.
- Change the charging method for employers to a "proportion to base-period wages" method.
- Reform the UI tax system.
- Implement a comprehensive job referral program into the unemployment insurance system.
- Decrease from 3 years to 1 year the period of time for an employer to qualify for an experience rating.
- Develop ways to improve workforce participation.
- Switch the emphasis of the system from unemployment to reemployment.
- Strengthen internal policies of the Labor Cabinet to insure that employees of the Cabinet cannot access their own UI claim information.
- Improve transparency and access to information at the Labor Cabinet.
- Combat UI fraud by locking known fraudsters out of the system.
- Implement the recommendations made in the APA report.
- Increase funding of the UI system to implement reforms.
- Continue monitoring the production of a UI system technology upgrade.
- Consider the reforms recommended in HB 317 from the 2019 Regular Session.
- Consider the training needed for LRC staff to assist the Office of Unemployment Insurance.