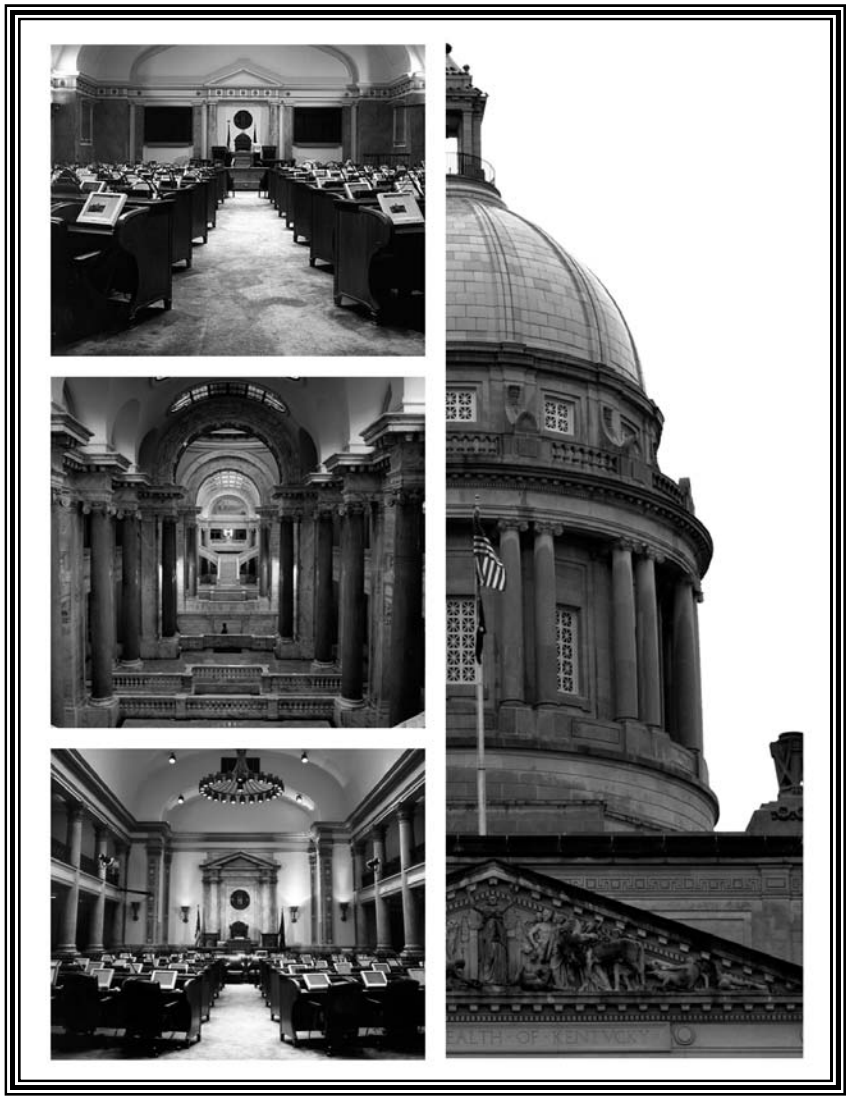
FINAL REPORTS OF THE INTERIM JOINT, SPECIAL, AND STATUTORY COMMITTEES
2003



Informational Bulletin No. 213

Legislative Research Commission
Frankfort, Kentucky
December 2003

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The Kentucky Legislative Research Commission is a 16-member committee comprised of 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 presession 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, SPECIAL, AND STATUTORY COMMITTEES

2003

Presented to the
Legislative Research Commission
and the
2004 Kentucky General Assembly

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Legislative Research Commission
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FOREWORD

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

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

During the 2003 Interim, all 14 interim joint committees held meetings, and five special committees were authorized by LRC. All eight statutory committees met during the 2003 Interim.

LRC provides this informational booklet as a summary of the activity of the interim joint, special, and statutory committees since adjournment of the 2003 General Assembly. The reports were prepared separately by the committee staff.

Robert Sherman
Director

The Capitol
Frankfort, Kentucky
December 2003

CONTENTS

Page

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES

Sen. Ernie Harris, Co-Chair
Rep. Roger Thomas, Co-Chair
Rep. James Gooch, Co-Chair

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AND THE
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Rep. Fred Nesler
Rep. Marie Rader
Rep. Rick Rand
Rep. Dottie Sims
Rep. Tommy Turner

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

JURISDICTION: Matters pertaining to crops, livestock, poultry, and their marketing, disease control, and warehousing; tobacco; stockyards; agricultural cooperatives and marketing associations; agriculture weights and measures; veterinarians; State Fair; county fairs; water pollution; air pollution; management of waste; protection of the environment; noise pollution; 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; Natural Resources and Environmental Protection Cabinet; and all matters not specifically assigned to another committee relating to administrative, regulatory, or operating issues that, because of their smaller size, uniquely impact small business.

COMMITTEE ACTIVITY

The Interim Joint Committee on Agriculture and Natural Resources met seven times during the 2003 Interim. Three subcommittees were formed to study issues facing rural communities and the state's horse industry, and to review the programs regulating the state's natural resources.

A significant portion of the committee's meeting time was dedicated to reviewing the implementation of recently enacted laws. First, the committee looked at the implementation of a Voluntary Environmental Remediation Program, which was established by 2002 legislation. Commonly referred to as a "brownfields" program, the thrust of the legislation is to encourage private businesses to undertake the cleanup of real estate suspected of or known to be contaminated by hazardous wastes or pollutants. The committee learned that the implementing agency, the Natural Resources and Environmental Protection Cabinet, in the face of criticism that the regulations were not true to the intent of the legislation, withdrew the proposed administrative regulations that would have begun the program. Obstacles to implementation appear to revolve around a continuing disagreement over how clean the land should be after the contamination is remediated, and whether a party that has been responsible for the contamination should be allowed to take advantage of the program.

A second enactment from 2002 was HB 174. This law substantially revised the state's programs to manage solid waste, deter littering and open dumping, clean up abandoned landfills, and create a dedicated source of funds to carry out the programs. A few of the highlights of HB 174's implementation reported to the committee include that \$4.9 million has been disbursed to counties and cities for litter control, 55 abandoned landfills have been prioritized for cleanup, and 1,173 illegal solid waste dumpsites have been marked for removal.

The committee also received from the petroleum industry a report required by other 2002 legislation (02 SB 13). This report stated that methyl tertiary butyl ether (MTBE), a suspected cancer-causing chemical compound, has been replaced by ethanol in all reformulated gasoline (RFG) sold in Kentucky. Also, all companies were reported to be well on the way to phasing out the use of MTBE for non-RFG uses. The report also stated that refineries are still in the process of retrofitting their facilities for production of fuels to comply with federally mandated low-sulfur requirements. Finally, it was pointed out that in most of the projects designed to test the use of biodiesel as a sulfur replacement, the additional costs attributable to biodiesel are paid for by a government agency or a non-governmental organization.

Also, representatives of the Department of Fish and Wildlife Resources reported on implementation of HB 465. This 2002 legislation allowed the department to hire federally funded employees. As authorized by the legislation, the department has hired 12 employees to administer a variety of programs that enlist land owners to establish land management practices that further department goals of improving wildlife conservation. The point was made to the Committee that the new employees understand that when the federal money is spent that the jobs will be eliminated so that there will be no increase to the department's budget base.

The related topics of federal standards for controlling fine particulates in the air (PM2.5) and tightening emission controls on nonroad diesel engines and equipment were also taken up by the committee. Also representatives of the Natural Resources and Environmental Protection Cabinet demonstrated the Empower Kentucky initiative by which the cabinet is moving toward electronic permit filing and tracking.

In addition, the committee sought to stay current on efforts in Congress to draft an approach to ending the nation's price support system for tobacco farmers. Referred to as "tobacco buyout" proposals, the committee heard testimony on the proposals' impact on Kentucky's tobacco growers, quota owners, and lease holders. In a similar vein, staff provided a report on civil litigation involving cigarette manufacturers. In that litigation, a tentative court settlement had been reached under which tobacco growers and quota owners would receive direct payments from tobacco companies. Cigarette manufacturers would additionally commit to fixed annual purchases of domestically grown burley tobacco.

As it does each year, the committee met in conjunction with the State Fair Board during the 2003 State Fair. The meeting allowed the members to participate in Farm Day fair activities and to visit agricultural community leaders from around the state. In addition, the committee received a report from the State Fair Board. Board representatives said the economic impact to the state from State Fair Board facilities at the fairgrounds and the International Convention Center is $400 million annually. Also, they explained the connection between Kentucky maintaining and improving its Class A exhibit space and retaining and attracting exhibitors and conventions to Kentucky.

The committee also traveled to Covington to receive a report on the development of the Northern Kentucky Farmers Market. The committee learned that the market would assist a minimum of 104 farm families from 10 northern Kentucky counties to directly market their farm produce to the public.

Similarly, while visiting Western Kentucky, the committee viewed a poultry farm and a poultry processing plant and learned that Kentucky’s poultry industry now provides jobs for 7,000 people and generates $134 million in wages. Poultry workers are drawn from 40 counties, and a significant proportion of the jobs are higher paid technical and managerial positions. Also, while at the poultry farm the committee learned that the industry directly supports 615 farms, many of which have financially suffered from lost tobacco production.

Lastly, committee members viewed an active surface coal mine and a reclaimed surface coal mine site, and toured an underground coal mine, also in Western Kentucky. The visit to an underground coal mine was undertaken to gain an understanding of the use of electricity in coal mines. In 2003, the General Assembly had considered legislation to revise the state’s laws on electricity use in mines and committee members wished to know more about the topic with the expectation that the issue would be revisited in 2004.

Administrative Regulations

The committee has jurisdiction over state agencies that have promulgated approximately 28 percent of all executive branch administrative regulations.

During the year the committee reviewed 13 administrative regulations. These regulations related to programs of the Department of Fish and Wildlife Resources, the Department for Surface Mining Reclamation and Enforcement, the Division of Air Quality, the Underground Storage Tank Branch in the Natural Resources and Environmental Protection Cabinet, and the Department of Agriculture.

The committee found that the reviewed regulations of the Division of Air Quality and the Department of Agriculture complied with statutory requirements. The committee found that the Department for Surface Mining Reclamation and Enforcement administrative regulations relating to non-coal mining requirements were deficient.

Prefiled Bills Referred to the Committee

The following bills prefiled for the 2004 Regular Session were referred to the committee for review.

04 RS BR 11 AN ACT relating to blasting operations.

04 RS BR 29 AN ACT relating to mines and minerals.

04 RS BR 65	AN ACT relating to tax credits for biodiesel.
04 RS BR 119	A CONCURRENT RESOLUTION confirming the appointment of Stephan C. Cawood to the Mine Safety Review Commission.
04 RS BR 275	AN ACT relating to anhydrous ammonia.
04 RS BR 305	A JOINT RESOLUTION relating to vehicle emission control testing.
04 RS BR 332	AN ACT relating to the tobacco master settlement agreement.
04 RS BR 384	A JOINT RESOLUTION relating to vehicle emission control testing.

Legislative Proposals Received from State Agencies

Representatives of the Office of the Petroleum Storage Tank Environmental Assurance Fund recommended to the committee that the General Assembly establish a study group to, at a minimum:

- Identify improvements to procedures and functions of the program to enhance effectiveness and efficiency;
- Seek approaches to a better working relationship between the office and the Underground Storage Tank Branch within the Natural Resources and Environmental Protection Cabinet;
- Suggest improved means to control contractor abuse and to reduce cleanup costs;
- Evaluate authorizing the office to directly contract with remediation businesses and to directly oversee cleanup work;
- Provide guidance on accomplishing timely cleanups and to bring to completion stalled remediations; and
- Review the standing of the state program with the U.S. Environmental Protection Agency.

Reports Received

The Tobacco Settlement Agreement Fund Oversight Committee reported on it's first year of operation. The report is available elsewhere in this publication.

The various other reports received by the committee include:

- "Inventory of Facilities Eligible for Reimbursement from the Office of Petroleum Storage Tank Environmental Assurance Fund."

- "University of Kentucky Tobacco Research and Development Center: Quarterly Report, April 1- June 30, 2003."
- "Kentucky Interagency Groundwater Monitoring Network – Annual Report 2002-2003."
- "2002 Status of Kentucky's Forest Biennial Report."

Subcommittee on Natural Resources

The subcommittee held five meetings. Over the past several months, the subcommittee looked at a variety of topics including merchant power plants, the future of coalbed methane, implementation of brownfields legislation, mine safety, and wild game shooting preserves.

In June, the subcommittee heard from representatives of the Kentucky Board on Electric Generation and Transmission Siting. Implementation of SB 257, which created a process governed by the board for determining site suitability for electric power plants, was discussed. A few of the key points from the meeting include:

- Applications for site approval have dwindled because energy supplies are adequate for present needs, and capital markets that would finance new power generation are more restrictive; and
- Most projects going forward are coal-fired, which underscores the importance of coal for Kentucky's economy in the future;

Board representatives requested that the General Assembly entertain legislation that will require an applicant for a siting certificate to file a notice of intent to file an application 30 days prior to the filing, clarify the right of administrative appeal of board decisions, and give the board power to enforce the provisions of SB 257.

In July, the subcommittee looked at the importance of developing coalbed methane (CBM) as a viable natural gas resource. The commissioner of the Department of Mines and Minerals, who serves as chair of the Coalbed Methane Initiatives Working Group, gave testimony on the obstacles to developing CBM in Kentucky and some of the ways that the legislature could help. The commissioner pointed out that the state must deal with key questions of:

(1) Who owns the CBM when there are different owners of the same real property, for example a gas company and a coal company;
(2) Should the state seek to obtain from the federal government primacy over the regulation of CBM; and
(3) Whether to develop incentives to encourage testing for CBM.

All three questions will require legislative action for CBM resources to be developed in Kentucky.

Brownfield legislation was on the agenda for the September meeting. The subcommittee invited the Natural Resources and Environmental Protection Cabinet and representatives of the Brownfields Task Force to provide an update on implementation of SB 2, the brownfields bill from the 2002 Session. The subcommittee learned that two important issues remain unresolved: (1) the definition of "brownfield"; and (2) the standards for cleaning up the contamination on a brownfield site. It was thought that SB 2 addressed these questions, but differences in interpretation of the bill appear to have held up the development of administrative regulations that would implement the law. Also, the subcommittee heard testimony about the need for financial incentives to encourage cleanup of nonproductive, contaminated sites.

Two topics were on the October agenda—mine safety and shooting preserves. The subcommittee received an update on mine accidents and mine safety concerns from representatives from the Department of Mines and Minerals. Two key points were made.

- First, fatalities are down from previous years, and most of the fatalities are due to willful disregard of safety rules and procedures.
- Second, electrical hazards need to be addressed because electrical-related mine accidents are the second leading cause of mine fatalities.

The Department of Mines and Minerals may seek legislation to update the mine safety statutes.

Regarding shooting preserves, the commissioner of the Department of Fish and Wildlife Resources clarified that a moratorium on establishing new shooting preserves remains in effect. The moratorium had been put into effect to help control the spread of chronic wasting disease (CWD), which is an untreatable disease that can decimate deer and elk herds. Department scientists are concerned that shooting preserves could inadvertently spread CWD in Kentucky by importing elk and deer from states with known CWD infestations. However, the subcommittee learned that the moratorium on shooting preserves and the ban on importation of cervids may be financially hurting cervid farmers.

In its final meeting, the subcommittee received an update from the Natural Resources and Environmental Protection Cabinet on new air quality standards for ozone and particulate matter and a mandated report on the solid waste management in the state.

Subcommittee on Rural Issues

The subcommittee held five meetings through October, with two more planned for November. Topics that were discussed included an overview of the importance of rural development in Kentucky, as well as overviews of rural health care, transportation, education, economic development, and agriculture.

In June, the subcommittee met in Covington and heard presentations by consultants with the Rural Policy Research Institute and the Council on State Governments.

At that meeting, several points were brought up for the subcommittee to consider, including creating a rural legislative caucus and developing staff with expertise in rural affairs, creating a state rural development program, and entering into regional agreements with other states to address rural problems.

The July subcommittee meeting focused on rural health care. Presentations were made by representatives from the Center of Excellence in Rural Health, the University of Kentucky College of Agriculture, Area Health Education Center, the University of Louisville School of Medicine, the Kentucky Department for Public Health, the Kentucky Hospital Association, and the Appalachian Regional Healthcare System.

Suggestions made at the meeting included requiring full reimbursement for acute care telemedicine services by third-party payers, including Medicaid, and continuing to fund optional services offered by Medicaid, including adult dentistry and oral health care, pharmacy, and long-term care. It was also suggested that the General Assembly strengthen the Kentucky All Schedule Prescription Electronic Reporting program to avoid misuse of schedule drugs, spend more resources training health care staff on how to prevent illness, spend more resources encouraging health education and healthy behaviors in the population, and require funded agencies to be more accountable for their funding.

The August meeting was held in Louisville and focused on rural transportation. Presentations were made by representatives from the Transportation Cabinet, the Tourism Development Cabinet, and the Department of Agriculture.

It was suggested that brokers who provide transportation services be required to be bonded and that the disparity between rural and urban areas regarding reimbursement rates for transportation services be reviewed.

The September subcommittee meeting focused on rural education. Presentations were made by representatives from the Kentucky Department of Education, the Kentucky Community and Technical College System, and the Council on Postsecondary Education.

The October meeting looked at agriculture and rural economic development. Presentations were made by representatives from the Economic Development Cabinet, the U.S. Department of Agriculture (USDA) Rural Development Office, the West Kentucky Corporation, and the Department of Agriculture.

Suggestions that were brought up at the meeting included utilizing sales tax credits or other credits in addition to corporate income tax credits for economic development projects, reviewing the process involved in locating enterprise zones, and creating economic development programs designed for entrepreneurs and smaller businesses. It was also suggested that better communications between the USDA and the Economic Development Cabinet regarding each other's economic development programs be established and that the USDA be requested to consider offering incentives to communities that enter into multi-county agreements on projects. Finally, it was suggested that agritourism be included in the definition of agriculture.

Subcommittee on Horse Farming

The subcommittee met five times. Each meeting focused on a specific equine sector, with presenters representing the various segments within each sector. Testimony covered issues such as competitive position, organizational history, operational structure, service capacity, and fiscal condition. The goal of the subcommittee was to educate the public and subcommittee members about the status of Kentucky's equine industry.

The June meeting focused on the state breed sector. The subcommittee heard testimony from the Kentucky Thoroughbred Association, Inc., the Kentucky Harness Horsemen's Racing Association, the Kentucky Quarter Horse Association, and the Kentucky Horse Council. Each organization gave an introduction to the organization, explained the type of services it provides and described its clients' demographic make up. Each also reported on its competitive position nationally and internationally, and detailed how Mare Reproductive Loss Syndrome, West Nile virus, and the recent ice storm had affected their business. Lastly, each organization presented a future outlook of the industry, discussing the challenges and opportunities that each may face in the coming year and within the next five years.

The second meeting was held in August at the State Fair in Louisville. At this meeting the subcommittee focused on the national breed sector. Testimony was given by the American Hackney Horse Association, the American Saddlebred Horse Association, and the American Road Horse and Road Pony Association. The committee then heard testimony from representatives of Valkyre Stud, Crestfield Farm, and WinStar Farm who represented small, medium, and large horse farming operations, respectively.

The third meeting focused on business segments that provide service support to the equine industry. The subcommittee heard testimony from legal, accounting and tax, real estate, and banking services as well as a feed supplier and a publishing firm specializing in news coverage of the horse industry.

In October the subcommittee met in Western Kentucky and focused on research, equine incentive packages, and market development activities. The subcommittee heard testimony from the Livestock Disease Diagnostic Center, the University of Kentucky Gluck Center, the University of Louisville Equine Industry Program, the Kentucky Department of Agriculture, and the Kentucky Tourism Development Cabinet.

The final meeting was held in November. During this meeting, the subcommittee heard testimony from various marketing segments including racing stables, sales firms, and blood stock agents. Testimony was received from McPeek Stables, Fasig-Tipton Sales, a Blood Stock agent, and the Kentucky Horse Park.

There was a discussion on how the removal of sales tax on all equine-related purchases would result in an revenue neutral fiscal impact and whether or not the tax issue was an issue of equity. It was also suggested that the tax on the sale of horses is a disincentive for residents to purchase and keep their horses in Kentucky.

It was stated that Kentucky has been successfully competing in the market place with regard to sales, noting that in 2002, approximately 70 percent of the dollars spent at thoroughbred auctions in North America were spent in Kentucky.

However, several presenters observed that Kentucky's market position is slipping as it relates to purses. It was stated that the owners and trainers will move where the best racing conditions exist, noting that Kentucky has lost market share to Indiana, West Virginia, and Iowa because they offer better purse structures.

Finally it was recommend that the committee support efforts to help the Kentucky Horse Park maintain its market position in the tourism, show, and exhibition market segments.

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INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

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

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Appropriations and Revenue held five meetings.

The committee held its first meeting on June 19 in Covington. The committee heard from regional educators and community leaders about regional education needs, growth, and progress in Northern Kentucky. The committee also heard reports on General Fund revenue receipts for FY 2003, federal grant funds provided by Congress, Kentucky's credit status with rating agencies, and an update on spend-down reserves in the Road Fund. At its second meeting, held on July 31 the committee received year-end revenue and expenditure account close-outs for the 2003 fiscal year, and an update on Kentucky's economy, the national economy, and other states' economic situations. The committee received reports from subcommittee chairs on three appropriations increases for the Justice Cabinet, six increases for the Natural Resources and Environmental Protection Cabinet, three increases for the Tourism Development Cabinet, two increases for the Cabinet for Families and Children, four increases for the Cabinet for Health Services, two increases for the Education, Arts and Humanities Cabinet, one increase for postsecondary education, three increases for the Workforce Development Cabinet, nine increases for Government Operations, one increase for the Finance and Administration Cabinet, and three increases for the Public Protection and Regulation Cabinet. The committee agreed with the requests for increases.

The committee heard a legal opinion on budget bill language relative to HB 162/SCS and took no action on the interpretation.

Finally, the committee heard explanations of Executive Order 2003-652 relating to reorganization of the Commonwealth postsecondary education prepaid tuition trust fund, and Executive Order 2003-758 relating to transfer of funds within the Transportation Cabinet for closing toll-road booths. No committee action was taken on the executive orders.

The committee traveled to Scottsville on August 28 for its third meeting. At this meeting, the committee received an update on the Streamlined Sales Tax Project and heard reports on July revenue receipts, steps economists take to make forecasts, the national economy, and projected revenue growth for the upcoming fiscal year. The committee also heard testimony from three Allen County High School students about their concerns and received an update on water projects that were appropriated in the 2000 General Assembly through the tobacco program.

At its fourth meeting, held in Louisville, the committee heard from community educators and leaders and received an update on state employees' health insurance.

The committee held its final meeting on November 25 at Kentucky State University in Frankfort. The committee heard testimony on consensus revenue estimates made by the Consensus Forecasting Group in October 2003, the economic outlook for the nation and the state in the current fiscal year, current year revenue receipts for the General Fund and Road Fund, and an update on the pre-financing program for highway road projects and the Road Fund's cash management spending plan. The committee also heard a legal opinion relating to Kentucky State Fair Board Bonding Authorization but did not take action on the interpretation. Two administrative regulations from the Revenue Cabinet and five administrative regulations from the Cabinet for Health Services Regulations were referred to the committee for review, but no committee action was taken.

The committee did not take action on any prefiled bills.

SUBCOMMITTEE ACTIVITY

Budget Review Subcommittees

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 and to monitor the budgetary operations and programs of state government, as well as, address agency budget needs for the 2004-2006 biennium.

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

The Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection met twice during the 2003 Interim: August 28 and November 25.

At its first meeting, the subcommittee met in Franklin and heard remarks from local leaders. The subcommittee then heard a presentation from the Cabinet for Economic Development on the status of economic development activities throughout the state and specifically in the south central Kentucky region.

At its second meeting, the subcommittee heard testimony from the Tourism Development Cabinet, the Natural Resources and Environmental Protection Cabinet, and the Cabinet for Economic Development on the status of their fiscal year 2003-04 budgets and highlights of their budget requests for FY 2004-2006.

Budget Review Subcommittee on Education

The Budget Review Subcommittee on Education did not meeting during the 2003 Interim.

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

The Budget Review Subcommittee on General Government, Finance, and Public Protection of the Interim Joint Committee on Appropriations and Revenue met on July 31.

The subcommittee heard testimony given by the Department of Agriculture relative to an appropriation increase request for federal funds totaling $2,115,000. The subcommittee received, reviewed, and approved 13 interim appropriation actions totaling $5,235,600, of which $2,647,800 was for federal funds, and $2,587,800 was for restricted funds support.

Budget Review Subcommittee on Human Resources

The Budget Review Subcommittee on Human Resources met two times during the 2003 Interim: July 31 and August 28.

At the July meeting, six requests for interim appropriations increases were reviewed and recommended for approval to the Interim Joint Committee on Appropriations and Revenue.

For FY 2003-04, interim appropriations increases were processed for the Cabinet for Families and Children, totaling $67,595,800 ($51,780,300 in additional General Fund dollars, $15,604,300 in additional Restricted Funds, and $211,200 in additional Federal Funds). The $51,780,300 General Fund interim appropriation increase in Families and Children represents the Family Resource and Youth Service Centers funding. For FY 2003-04, interim appropriations increases were processed for the Cabinet for Health Services (CHS) totaling $918,344,800 ($207,309,100 in additional Restricted Funds and $711,035,700 in additional Federal Funds). Included in the CHS increases was a Medicaid benefits increase totaling $881,200,000 that consisted of Federal Fiscal Relief Funds, intergovernmental transfers, University of Kentucky and University of Louisville Disproportionate Share Hospital payments, increases for the Health Access Nurturing Development Services and targeted case management programs, rate increases for Oakwood and Hazelwood Intermediate Care Facilities for the Mentally Retarded/Developmentally Disabled, and an increase to cover the projected Medicaid benefits deficit.

In addition, the subcommittee heard testimony from the Cabinet for Families and Children and CHS related to FY 2002-03 year-end closeout, projected FY 2003-04 budget shortfalls and savings initiatives, child care services, T.J. Samson Community Hospital, Family Practice Residency Program, bioterrorism, and CHS early childhood issues.

Budget Review Subcommittee on Justice, Corrections, and Judiciary

The Budget Review Subcommittee on Justice, Corrections, and Judiciary met one time during the 2003 Interim on July 31. The meeting agenda included budget presentations by the judicial branch and the Department of Corrections. In addition, the subcommittee reviewed requests for interim appropriations increases from the Department of Corrections and an emergency increase for the Department of Corrections. The interim appropriations increase requests from the Department of Corrections totaled $760,000 in Federal Funds. The emergency appropriation increase provided General Fund support totaling $3.7 million to meet the cost of housing state inmates in county jails pursuant to 2003 HB 269.

Budget Review Subcommittee on Transportation

The Budget Subcommittee on Transportation held two meetings during the 2003 Interim: July 31 and August 28. The subcommittee did not approve any routine requests for interim appropriations increases. The subcommittee received one emergency appropriation increase in the amount of $23,619,400 for the transfer and expenditure of all moneys in the Road Fund Surplus Account. This required no action by the subcommittee.

During the 2003 Interim, the primary focus of the subcommittee was the status of Road Fund revenues. In addition, the Transportation Cabinet presented the subcommittee with updates on the status of the spend-down plan and the direct impact to the Six-Year Highway Plan. The cabinet stressed that Road Fund construction would soon (December 2003) be relegated to a cash flow operation and all excess cash reserves will be exhausted.

The subcommittee received a status report on state highway projects and the state's Six-Year Road Plan projections from the State Highway Engineer. The cabinet presented the status of the new Transportation Cabinet building and provided an update on the food service component.

**REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
BANKING AND INSURANCE**

**Sen. Tom Buford, Co-Chair
Rep. James Bruce, Co-Chair**

Sen. Lindy Casebier	Sen. Julie Denton
Sen. Ernie Harris	Sen. Daniel Mongiardo
Sen. R. J. Palmer	Sen. Albert Robinson
Sen. Richard Sanders, Jr.	Sen. Larry Saunders
Sen. Dan Seum	Sen. Tim Shaughnessy
Rep. John Adams	Rep. Paul Bather
Rep. Sheldon Baugh	Rep. James Comer
Rep. Brian Crall	Rep. Ron Crimm
Rep. Robert Damron	Rep. Mike Denham
Rep. Teddy Edmonds	Rep. Joseph Fischer
Rep. Danny Ford	Rep. James Gooch
Rep. J. R. Gray	Rep. Dennis Horlander
Rep. D. Pasley	Rep. Frank Rasche
Rep. Steve Riggs	Rep. Arnold Simpson
Rep. Brandon Smith	Rep. Roger Thomas
Rep. Tommy Thompson	Rep. Ken Upchurch
Rep. Susan Westrom	Rep. Rob Wilkey

LRC Staff: Greg Freedman, Rhonda Franklin, and Jamie Griffin

**PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 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 six times during the 2003 Interim.

At its meeting in June, the committee discussed factors that impact the cost of health care with representatives of the Kentucky Association of Health Plans (KAHP) and a representative of the Kentucky Employers Health Benefits Coalition. The KAHP attributed rising health insurance premiums to litigation and risk management, increased consumer demand, legislation, rising provider expenses, drugs, medical devices and other medical advances, and general inflation. KAHP representatives said medical malpractice lawsuits cause physicians to practice defensive medicine, which adds $50 billion to health care costs each year. Legislation that mandates health insurance benefits has been increasing, according to KAHP, and each mandate adds to health insurance costs. Mandated coverage for chemical dependency treatment increased costs by 9 percent in affected states. According to KAHP, new requirements imposed by Health Insurance Portability and Accountability Act pertaining to standardization of administrative and financial transactions and new security and privacy rules will add $40 billion in costs over a five-year period. Benefit designs insulate consumers from health care costs while consumers continue to demand more services. A representative of the Kentucky Employers Health Benefits Coalition said the employer-based health benefit system is at risk as the annual increases in employer health care costs have risen from 2.1 percent in 1995 to 17.2 percent in 2002. The committee was told that employers must be part of any legislative discussions on health care.

The committee held its second meeting in July and discussed 2003 House Resolution 163, which required the committee to review the feasibility of mandating insurance coverage for treatment of infertility. Rep. Barrows sponsored the resolution and addressed the committee. He said he wants coverage that will be fair and felt such legislation would be good public policy if it helps couples who want children and cannot afford infertility treatments. Representatives of KAHP said it is inappropriate to enact such legislation at this time when health care costs are rising and presented findings of a study that show infertility legislation would increase health insurance costs 3 to 5 percent. KAHP staff said infertility treatments increase multiple births and low birth weight babies. A representative of the Kentucky Employers Health Benefit Coalition opposed such legislation because such mandates take away choices, have a high cost potential, and increase the number of uninsured persons due to higher health care costs.

The committee's third meeting was held in August in Louisville at the Stockyards Bank. The Kentucky Bankers Association (KBA) discussed with the Committee the Franklin Circuit Court decision in *Illinois Tool Works, Inc, v. Revenue Cabinet*. The *Illinois Tool Works* case and the line item veto of a provision in 2003 HB 390 has left Kentucky banks with an increased tax burden, according to the KBA. When the bank shares tax was repealed in 1996 and replaced with the franchise tax, the franchise tax was intended to apply in lieu of other taxes on banks. The franchise tax applies to all banking activity in Kentucky regardless of bank holding company location. As a result of the *Illinois Tool Works* ruling, bank hold companies in Kentucky would be subject to the corporate license tax while out-of-state bank holding companies operating banks in Kentucky would not. The KBA said unless banks in Kentucky are taxed equally, some banks may move their headquarters outside Kentucky or there could be an elimination of bank holding companies in Kentucky.

On September 30 the committee met for the fourth time. The secretary of the Personnel Cabinet discussed the 2004 state employee health insurance plan with members. The secretary said the state's flexible spending account contribution will be $93 million, or 15.6 percent of total health insurance expenditures. Only four other states provided an alternative benefit to waivers. Health Maintenance Organization enrollment has dropped since 1996 while Preferred Provider Organization enrollment is up 20 percent. The average number of prescriptions per person increased 6.13 percent from 2001 to 2002. The committee also discussed with the Kentucky Hospital Association the 1997 merger of the Compensation Hospital Association Trust (CHAT) and the Virginia Reciprocal, which resulted in the creation of Reciprocal of America (ROA). ROA is now in receivership in Virginia. The Kentucky Group Self-Insurance Guaranty Fund has denied coverage, and the Kentucky Insurance Guaranty Association (KIGA) has stopped making payments to the claimants covered by the CHAT policy arguing that the claimants were not "policyholders" of ROA. There are 191 claimants affected by this action whose projected loss is $11,745,252. If KIGA refuses to pay claimants while the matter is in litigation, 80 claimants will not receive expected indemnity payments and 177 claimants will not have medical expenses paid. The Interim Joint Committee on Banking and Insurance adopted a resolution requesting the KIGA to treat as "covered claims" and continue to pay all workers' compensation claims of Kentucky claimants assumed by Reciprocal of America.

The committee held its fifth meeting on October 28 and discussed the homeowners insurance market with representatives of State Farm and Kentucky Farm Bureau insurance companies and with a representative of ChoicePoint. Two hailstorms in Kentucky during the past two years caused Farm Bureau more than $200 million in losses at a time when investment income declined. Over the past 10 years, the average claim filed with State Farm in Kentucky has risen from $1,800 to $4,500. In 2002, nearly 4 percent of catastrophic claims nationwide were paid in Kentucky. The homeowners market has been hurt by the economic downturn, catastrophic losses, and the rise in claims. Although State Farm stopped writing new homeowners insurance in Kentucky in the fall of 2002, it resumed in January 2003. Kentucky's rates are the 37th highest in the nation, according to State Farm. A representative of ChoicePoint explained that the Atlanta-based company provides insurers with electronic access to underwriting tools. Ninety percent of insurance companies contribute data to the Comprehensive Loss Underwriting Exchange (CLUE) each month and they tap into CLUE each time a new customer applies. Not only do insurers have access to claims history of individuals, but they also access elements of credit history of individuals. By reviewing how a person has handled financial obligations, an insurance score is produced that is used to predict whether a person will file insurance claims and the severity of the claims. Kentucky has a statute that prohibits an auto insurer from refusing to issue, failing to renew, or canceling a policy solely because of a person's credit history (KRS 304.20-020) and another statute that applies the same prohibition to all property and casualty insurance policies (KRS 304.20-042).

The committee's final meeting of the 2003 Interim was held on November 25. The commissioner of the Department of Insurance discussed legislation that the department may propose at the 2004 Session. The commissioner noted that the gubernatorial election will result in the appointment of a new commissioner, which will affect the department's proposed legislative agenda. At this time, the department's legislative proposals will cover codification of national accounting practices and procedures, interstate compact for product regulation, rate standards for property and casualty insurance, health insurance, and other matters.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
ECONOMIC DEVELOPMENT AND TOURISM

Sen. Katie Stine, Co-Chair
Rep. Eddie Ballard, Co-Chair

Sen. David Boswell
Seen Julie Denton
Seen Brett Guthrie
Seen Alice Kerr
Seen Vernie McGaha
Seen Daniel Mongiardo
Seen Joey Pendleton
Seen Jerry Rhoads
Seen Richard Roeding
Seen Damon Thayer
Rep Royce Adams
Rep Rocky Adkins
Rep Carolyn Belcher
Rep Kevin Bratcher
Rep Buddy Buckingham
Rep Perry Clark
Rep Howard Cornett
Rep Tim Couch
Rep Jesse Crenshaw
Rep Bob DeWeese
Rep Ted “Teddy” Edmonds
Rep C. B. Embry, Jr.
Rep Bill Farmer
Rep Charles Geveden
Rep Keith Hall
Rep Mike Harmon
Rep Mary Harper
Rep Jodie Haydon
Rep Jeffrey Hoover
Rep Dennis Horlander
Rep Thomas Kerr
Rep Stan Lee
Rep Gross Lindsay
Rep Thomas McKee
Rep Brad Montell
Rep Ruth Ann Palumbo
Rep Tanya Pullin
Rep Dottie Sims
Rep Ancel Smith
Rep Brandon Smith
Rep John Will Stacy
Rep Tommy Thompson
Rep Charles Walton
Rep Mike Weaver
Rep Robin L. Webb

LRC Staff: John Buckner, Laura Taylor, Karen Armstrong-Cummings, and Cecilia Perry

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP

TASK FORCE ON ECONOMIC DEVELOPMENT

Rep. Ruth Ann Palumbo, Chair

Rep. Rocky Adkins
Rep. Kevin Bratcher
Rep. Buddy Buckingham
Rep. Perry Clark
Rep. Tim Couch
Rep. Jesse Crenshaw
Rep. Bob DeWeese
Rep. Ted “Teddy” Edmonds
Rep. C. B. Embry, Jr.
Rep. Bill Farmer
Rep. Charles Geveden
Rep. Jeffrey Hoover
Rep. Dennis Horlander
Rep. Thomas Kerr
Rep. Stan Lee
Rep. Gross Lindsay
Rep. Brad Montell
Rep. John Will Stacy
Rep. Tommy Thompson
Rep. Charles Walton
Rep. Mike Weaver

Sen. Katie Stine, Ex Officio

INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

JURISDICTION: Matters pertaining to commerce, industry, economic and industrial development not specifically assigned to another committee; economic development planning and 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; and travel promotion and advertising.

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Economic Development and Tourism met four times. The Task Force on Economic Development did not meet during the course of the 2003 Interim.

The first meeting was held on June 19 at Northern Kentucky University (NKU). The secretary of the Tourism Development Cabinet addressed the committee regarding the Commonwealth's tourism industry and the various programs administered by the cabinet to promote tourism statewide. In 2002, the economic impact of tourism in Kentucky was $9.1 billion, a 5.2 percent increase from the previous year, despite the weak economy. One of the cabinet's newer tourism promotion programs, Tourism Trails, takes a regional, themed approach and encourages longer tourist visits in the Commonwealth. Examples of tourism trails are the Kentucky State Parks Golf Trail and the Civil War Trail. A related program is the motorcoach trail initiative, funded by $2 million in coal severance monies. Aimed at capturing the tour bus market, this initiative began in 2002 with the Kentucky Country Music Trail and is expanding to include the Daniel Boone Country Trail and the Barbecue and Bluegrass Trail.

Programs working to promote tourism development in Kentucky include the Tourism Development Act, a sales tax rebate program for new and expanding major tourism destinations. The secretary reported that 12 tourism projects had received at least preliminary approval under the Act since its inception in 1996, with total private investment of $472.9 million and a predicted positive economic impact of $1.4 to $1.7 billion over the next 10 years. Additionally, four projects had received fixed asset financing through the Tourism Development Loan Program's $1.5 million pool, which provides low-interest loans for smaller-scale tourism ventures. Finally, the Tax Increment Financing program now includes a tourism component, but as of June the cabinet had not received any applications for incentives at the state level.

Members raised questions regarding marketing efforts at Big Bone Lick State Park in conjunction with the Lewis and Clark Expedition, as well as the promotion of the museums at Fort Knox and Fort Campbell. Additional concerns were raised on policies surrounding handicapped parking at state parks, the dress code at state golf courses, and the inadequacy of the irrigation system at General Burnside State Park.

The Campbell County judge/executive spoke to the committee regarding the apparent economic development success Northern Kentucky, and he attributed much of the region's growth to the cooperation among local government, the business community, and NKU. The judge/executive noted specific economic development tools that area leaders have used such as the Northern Kentucky Technology Commercialization Triangle, a program designed to attract successful technology-oriented businesses to the area by leveraging the assets of NKU; as well as Tri-ED, a regional economic development agency that serves as liaison between businesses and the appropriate state and local government agencies regarding incentives. In conjunction with the presentation, developers of Northern Kentucky tourism attractions Newport on the Levee, Northern Kentucky Aquarium, and Hofbrauhaus testified to the committee on the success of their projects and the essential role of the Tourism Development Act in their decision to locate and develop these attractions in the Commonwealth.

The June meeting concluded with a presentation from the commissioner of the Office of the New Economy, who reported approximately $230 million in total investment for New Economy projects over the last two biennia. Included in this investment is a statewide system of Innovation and Commercialization Centers (ICCs) to help connect scientists, entrepreneurs, and investors in order to encourage high-quality technology business in the Commonwealth. The executive director of Northern Kentucky's ICC, the Madison E-Zone, testified that the collaboration between government and private investors has served as catalyst for the ICC's success. Supporting the system of ICCs are satellite offices throughout the state, many situated in confluence with universities and colleges. Members of the committee expressed concern that Morehead State University had not been chosen as a satellite location. Additional concern was expressed about the lack of research space available for the University of Kentucky Pharmacy School, which is ranked third nationally. The commissioner noted that he would soon be meeting with university representatives to discuss the need for the UK facility's expansion.

At the committee's second meeting on September 18, the secretary of the Cabinet for Economic Development and Tourism presented a progress report on the cabinet's economic development incentive programs from 1992, the year in which the Economic Development Partnership was created. The secretary reported that the wage assessment portion of the tax credit programs has demonstrated the greatest benefit for new and expanding companies, and that much of the approved corporate income tax credits have not been taken because companies are not always as profitable as they anticipate. Although the tax credit programs have been more popular than the cash-based programs, the secretary reported that 73 bond projects have been completed in the last 11 years.

Additionally, the Kentucky Economic Development Finance Authority loan program, a low-interest, fixed asset lending program, reported a loss ratio of less than 2 percent.

Members raised questions regarding the method by which the cabinet recruits companies to the Commonwealth as well as the status of the Glendale property following the loss of the Hyundai plant to Alabama. In regard to company recruitment, the secretary explained that the cabinet's policy is to showcase all available sites in Kentucky to prospective employers. After the company has expressed interest in a particular site, the cabinet works with the local economic development agency to develop an appropriate incentive package. The secretary stated that the cabinet is constantly marketing the Glendale property both domestically and internationally, and that its sale must be approved by the General Assembly. He added that Alabama's incentive package for Hyundai, unlike Kentucky's, did not include any "money-back guarantees" or clawback provisions to secure the state's return on its investment.

Representatives from the Tri-county Economic Development Corporation (Tri-ED), Northern Kentucky's regional economic development agency, spoke to the committee on the benefits of the current tax incentive programs and requested that the committee consider lifting program restrictions that Tri-ED believes limit more advanced manufacturing opportunities. Questions were raised as to the effectiveness of the worker training programs provided by the Kentucky Community and Technical College System (KCTCS) and by Bluegrass State Skills Corporation (BSSC). Tri-ED has found that many businesses prefer using their own training venues, and as a result, the more flexible BSSC has proved more popular than the program offered by KCTCS.

The committee's third meeting was held on October 16 at Natural Bridge State Park. After a welcome address by the park superintendent, the committee heard from the Commissioner of Tennessee's Department of Tourism Development, who spoke on creative approaches to tourism development in rural areas, specifically related to her experiences in Branson, Missouri, as well as various tourism projects in Tennessee such as Dollywood. The commissioner recommended capitalizing on the state's natural resources, and supporting that effort by target marketing and continual quality control.

Members raised questions regarding the level of state involvement in Tennessee's private tourism attractions. The commissioner stated that because these attractions rely on repeat business and because Tennessee is a state driven by sales tax, it believes that building infrastructure to support its tourism attractions, both private and public, is in the state's best interest. Additional questions concerned the partnership between Tennessee state government and the federal government in preserving the beauty of Smokey Mountain National Park. According to the commissioner, the relationship is a good one, and the two governments are currently working on multiple projects relating to the Clean Air Act. Finally, members inquired about challenges Tennessee has faced and what programs have not been successful. One of the biggest problems has been excessive and unnecessary personnel. In terms of advertising, the commissioner has found that standard ad campaigns without a focused marketing effort are generally unsuccessful. She believes that a better strategy is co-op advertising, whereby a business's funding is tied to the successful implementation of its marketing plan.

Representatives from the Tourism Development Cabinet spoke to the committee concerning the potential benefits of the Tourism Development Act for private investors. Members raised questions regarding the size, scope, and location of projects that have been approved under the Act. The ensuing discussion revealed that although in the past the Act was less friendly to tourism development in rural areas, language was added in recent years to encourage the private development of lodging and other facilities within state parks. One private development within a state park has been approved under the Act—a lodge at Green River State Park. Cabinet representatives added that while the cabinet is willing to go to great lengths to facilitate the application and approval process, it does not recruit businesses to take advantage of the Act.

During the final segment of the October meeting, the committee heard three perspectives on the potential benefits and costs of rock climbing in Kentucky state parks. Current Department of Parks policy bans rock climbing on state park land. The Secretary of the Tourism Development Cabinet stated that the ban exists due to potential environmental degradation from rock climbing. She added that Natural Bridge is the only state park that would appeal to climbers.

Representatives from the United States Forest Service explained the archeological and plant life concerns associated with rock climbing and added that while larger groups of climbers often pose environmental concerns, smaller groups usually leave no damage to cliff walls. Rock climbing is currently permitted on U.S. Forest Service land, including Red River Gorge land that does not fall within Natural Bridge State Park. The U.S. Forest Service is in the process of updating the plan that outlines recreational activities surrounding cliff walls.

Finally, the executive director of the Red River Gorge Climbing Coalition gave a visual presentation on rock climbing techniques, experiences, and opportunities throughout the Commonwealth. She argued that the potential for rock climbing exists at several Kentucky state parks, and she spoke on rock climbing's potential positive economic impact on the state, based on two studies conducted on the topic. She added that rock climbers are, in general, supporters of environmental conservation and have worked with the U.S. Forest Service to provide access to climbers while protecting the natural environment. She asserted that climbers are unnecessarily restricted from state parks.

The final meeting of the committee was held at the Kentucky History Center in Frankfort on November 20. The meeting opened with welcoming remarks by the Executive Director of the History Center and an invitation to members to tour the facility at the close of the meeting.

The committee heard a presentation by representatives of Associated Industries of Kentucky (AIK) concerning state tax burdens faced by Kentucky businesses. A variety of charts were presented that demonstrated that Kentucky businesses face eight types of tax while those in other states, by comparison, face far fewer. In Kentucky, business taxes include real estate, sales/use, corporate income, corporate franchise, tangible property, intangible property, inventory, and severance. AIK officials said that Kentucky was the only state that imposed all eight of these taxes; at the other extreme, New Hampshire, Delaware, Hawaii, Iowa, and South Dakota impose three of these taxes on businesses. It is AIK's position that Kentucky businesses are fully paying their share of the tax burden and that the General Assembly should look for ways to cut government spending and streamline programs before asking for additional tax revenue. Also, to make Kentucky more business friendly, AIK recommended that the corporate license tax should be repealed, phased out, or capped.

The committee then heard from the commissioner of the Office for the New Economy who presented an update on money spent on current projects. The commissioner discussed technology clusters and infrastructure that involve research, development, commercialization, and workforce needs. In addition, the commissioner discussed projects that have a high potential for growth, which include cardiovascular research, natural products development, and advanced manufacturing technology. Committee members raised questions concerning the jobs potential associated with these projects and the contract terms or grant conditions that were in place to ensure that new jobs go to Kentucky residents. The commissioner said that many of the jobs created in targeted industries would be high-paying jobs. One of the committee co-chairs asked about the mechanisms in place to sustain the high-tech incubators and "Special Opportunity" areas. The commissioner said that the infrastructures being developed are there to help people and not to make a profit, and he said that once his office has completed its mission, that the office should be abolished.

Next on the agenda were representatives from Sports Clinics USA who gave a presentation on "extreme sports" opportunities in Kentucky, particularly at Carter Caves State Park. The presentation centered on the demographics of adventure race participants and how Kentucky's unique physical environment is appealing to those interested in the sport. Representatives from Sports Clinics USA said that last year's event at Carter Caves State Park was nationally televised and also was broadcast in Mexico. It is the goal of Sports Clinics USA to put together another adventure race that will be broadcast on one of the national networks.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON EDUCATION

Sen. Lindy Casebier, Co-Chair
Rep. Frank Rasche, Co-Chair

Sen. Walter Blevins
Rep. Buddy Buckingham
Rep. Mike Cherry
Rep. Jack Coleman
Rep. Hubert Collins
Rep. Jon Draud
Rep. Ted “Teddy” Edmonds
Rep. C. B. Embry
Rep. Bill Farmer
Rep. Tim Feeley
Rep. Derrick Graham
Sen. Brett Guthrie
Rep. Mary Harper
Sen. David K. Karem
Sen. Alice Forgy Kerr
Rep. Mary Lou Marzian
Sen. Vernie McGaha
Rep. Reginald Meeks
Rep. Charles Miller
Rep. Harry Moberly
Rep. Russ Mobley
Sen. Gerald Neal
Rep. Rick Nelson
Sen. R.J. Palmer II
Sen. Jerry Rhoads
Rep. Tom Riner
Sen. Dan Seum
Rep. Charles Siler
Rep. Arnold Simpson
Rep. Dottie Sims
Rep. Kathy Stein
Sen. Gary Tapp
Rep. Jim Thompson
Rep. Charles Walton
Sen. Jack Westwood
Sen. David L. Williams

LRC Staff: Audrey Carr, Jonathan Lowe, Janet Stevens, Sandy Deaton, Kelley McQuerry, and Lisa Moore

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP

SUBCOMMITTEE ON ELEMENTARY AND SECONDARY EDUCATION

Sen. Lindy Casebier, Co-Chair
Rep. Jim Thompson, Co-Chair

Rep. Jack Coleman
Rep. Jon Draud
Rep. Tim Feeley
Rep. Derrick Graham
Sen. Brett Guthrie
Sen. David Karem
Sen. Alice Forgy Kerr
Rep. Reginald Meeks
Rep. Harry Moberly
Rep. Rick Nelson
Rep. Arnold Simpson
Rep. Charlie Walton

Rep. Frank Rasche, Ex Officio

SUBCOMMITTEE ON POSTSECONDARY EDUCATION

Sen. Jack Westwood, Co-Chair
Rep. Mary Lou Marzian, Co-Chair

Rep. Hubert Collins
Rep. Bill Farmer
Rep. Mary Harper
Rep. Charles Miller
Rep. Russ Mobley
Sen. Gerald Neal
Sen. R. J. Palmer II
Rep. Tom Riner
Rep. Charles Siler
Rep. Dottie Sims
Rep. Kathy Stein
Sen. David Williams

Sen. Lindy Casebier, Ex Officio
Rep. Frank Rasche, Ex Officio

SUBCOMMITTEE ON VOCATIONAL EDUCATION

Sen. Vernie McGaha, Co-Chair
Rep. Buddy Buckingham, Co-Chair

Sen. Walter Blevins
Rep. Mike Cherry
Rep. Ted Edmonds
Rep. C. B. Embry
Rep. Mike Cherry
Sen. Jerry Rhoads
Sen. Dan Seum
Sen. Gary Tapp

Sen. Lindy Casebier, Ex Officio
Rep. Frank Rasche, Ex Officio

INTERIM JOINT COMMITTEE ON EDUCATION

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

COMMITTEE ACTIVITY

The Interim Joint Committee on Education met seven times during the 2003 Interim.

The committee was organized into three subcommittees: Elementary and Secondary Education, Postsecondary Education, and Vocational Education.

Major topics before the Interim Joint Committee on Education included a discussion of Kentucky's assessment and accountability system and its progress since 1989 and other issues related to the Commonwealth Accountability Testing System (CATS), including the 2003 Midpoint Report of CATS Results; and the implementation of the federal law No Child Left Behind. Other topics included a report relating to postsecondary education accessibility and affordability; initiatives to support postsecondary education; the statewide administrative data system; the Support Education Excellence in Kentucky (SEEK) program; the study of career and technical education, the study of the Kentucky Education Excellence Scholarship Program; and the study of the teacher and principal internship programs.

The committee also made site visits. These visits included a tour of a comprehensive school-based health services center at Newport Middle School in Campbell County; Northern Elementary School in Fayette County to learn about schoolwide initiatives to address student achievement gaps among various school subpopulations; and a tour of selected research and development programs in engineering, plant sciences, and medical sciences at the University of Kentucky.

In performing its statutory legislative oversight responsibilities, the committee reviewed 39 administrative regulations under the review process established in KRS Chapter 13A. All of the regulations were approved. The committee also reviewed two executive orders: 2003-600 and 2003-712.

Subcommittee on Postsecondary Education

The Subcommittee on Postsecondary Education was charged with conducting a study and making recommendations to the 2004 General Assembly regarding the Kentucky Educational Excellence Scholarship (KEES) program. The subcommittee met five times. Four of the meetings dealt with the KEES study, while at the fourth meeting the subcommittee heard testimony regarding the Kentucky Education Savings Plan Trust and the Kentucky Affordable Prepaid Tuition program.

Regarding the KEES program and related issues, the subcommittee heard testimony from a variety of education agencies and professionals, including the Council on Postsecondary Education, postsecondary education institutions, the Kentucky Higher Education Assistance Authority, the Southern Regional Education Board, and the Kentucky Lottery Corporation. The subcommittee was also provided with the results of research conducted by LRC staff.

After a review of information relating to college access and affordability, student financial aid and the cost of college, the administrative structure of the KEES program, and funding projections from Kentucky Lottery revenues, the subcommittee developed recommendations for changes to the KEES program. The final study and recommendations were forwarded to the Interim Joint Committee on Education for review at the December 1, 2003, meeting.

Subcommittee on Elementary and Secondary Education

The Subcommittee on Elementary and Secondary Education met five times during the Interim and heard testimony from staff of the Education Professional Standards Board, local school districts, the Collaborative Center for Literacy Development, the Kentucky Department of Education, and the LRC Program Review and Investigations Committee. Topics of discussion included the state's preschool program, literacy performance and literacy improvement, the state assessment and accountability system, and school attendance issues. The subcommittee agreed to request that co-chairs of the Interim Joint Committee on Education request that LRC extend the time for completing the study of teacher and principal internship programs due to new information.

Subcommittee on Vocational Education

The Subcommittee on Vocational Education met five times and considered a variety of reports and recommendations from agencies including the Kentucky Department of Education, the Department for Technical Education, the Education Professional Standards Board, and the Kentucky Community and Technical College System in order to complete its study of career and technical education as required by HB 185 (2001). The subcommittee adopted a report that was presented to the Interim Joint Committee on Education on September 8, 2003.

The subcommittee was briefed on the suggested changes in the reauthorization of the Carl D. Perkins Act of 1998. Education agencies discussed the potential effects on Kentucky and expressed concern about current proposals.

The subcommittee also discussed secondary students' access to career and technical education preparation programs and heard testimony from selected school district superintendents. The subcommittee also heard testimony from the Kentucky Community and Technical College System regarding this issue.

REPORT OF THE 2003
SPECIAL SUBCOMMITTEE ON ENERGY

Sen. Robert Stivers, Co-Chair
Rep. Tanya Pullin, Co-Chair

Sen. Charlie Borders
Sen. David Boswell
Sen. Ernie Harris
Sen. Paul Herron
Sen. Alice Forgy Kerr
Sen. Vernie McGaha
Sen. Joey Pendleton
Rep. Royce Adams
Rep. Rocky Adkins
Rep. Eddie Ballard
Rep. Carolyn Belcher
Rep. Jim Bruce
Rep. Buddy Buckingham
Rep. Dwight Butler
Rep. Bob DeWeese
Rep. J. R. Gray
Rep. Thomas Kerr
Rep. Lonnie Napier
Rep. Fred Nesler
Rep. Tom Riner
Rep. Charles Walton
Rep. Brent Yonts

LRC Staff: D. Todd Littlefield, Tanya Monsanto, and Sheri Mahan

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SPECIAL SUBCOMMITTEE ON ENERGY

JURISDICTION: Matters pertaining to privately owned public utilities, rates, permits, and certification of convenience and necessity; water district rates; utilities in cities; public utility cooperatives; oil and gas transmission companies; telephone companies and cooperatives; municipal utilities and water works; energy and fuel development, including synfuels; energy waste disposal; the Public Service Commission; solar and other renewable energy; hydroelectric and thermonuclear energy; and gasohol.

COMMITTEE ACTIVITY

The subcommittee received a report on the progress and product of the Kentucky Energy Policy Advisory Board (KEPAB), which was created by the Governor with representatives of the energy industries, legislators, and environmental advocates. It was attached administratively to and staffed by the Public Service Commission (PSC). The subcommittee heard from PSC staff and from members of KEPAB on the uncompleted work of the board and whether a need exists for a continued executive branch body devoted to energy policy.

Representatives of Grayson Rural Electric Co-op and East Kentucky Power gave a presentation on utilization of methane produced by landfills for the generation of electric power.

Coal advocates expressed concern over the displacement of their product by petroleum coke, a byproduct of oil refining that can be burned in the place of coal. A representative of LGE Energy Corp. countered that petcoke is used by a few generating facilities to cope with fuel needs and that it has cost, waste, and emission benefits.

The director for the University of Kentucky Center for Applied Energy Research reviewed ongoing energy research efforts at Kentucky universities. Concern was expressed over the relatively small percentage of research dollars captured by Kentucky institutions. The director also appeared at a later meeting to make a presentation on coal gasification and coal incentives from other states. In the latter presentation, the director pointed out that, although Ohio and Illinois have much less coal than Kentucky, they are putting significantly more resources into promoting coal and into clean coal technology research.

The senior vice president for American Electric Power, discussed current electric transmission issues. He discussed the pros and cons of the interconnection of electricity transmission systems and listed the transmission-owning companies in Kentucky. He described the regional and national interconnection grid and provided a basic overview of how the transmission of electricity through several transmission grids works. He provided a history of the changes in transmission regulation and the consequences of these changes to electricity generating companies. He provided general information on the flow path of electricity through Kentucky, mapped out the major and lower-voltage transmission systems, and discussed the adequacy of the transmission system in the state. He stated that the system was not designed to handle interstate transmission and that upgrades are needed. The major question is who should pay for these upgrades.

The president of the Western Region for PJM Interconnection discussed the role of the regional transmission organization (RTO) in transmission reliability and security. He outlined PJM's history and corporate structure. He discussed the regional scope of PJM, outlining its generation resources, territorial jurisdiction, miles of transmission lines, and number of regional energy transactions per year. He stated that PJM's function is to protect the energy reliability in the region that it serves.

The vice president of Regulatory Affairs and Chief Economist of the Midwest Independent System Operator (MISO) discussed the background of this RTO. He provided a history of the formation of RTOs and the history of MISO. He discussed the scope of MISO, outlining its generation capacity, transmission system, assets, and customers served. He stated that MISO is the only RTO currently operating in Kentucky, with Louisville Gas and Electric as a founding member. MISO has 23 transmission-owning utility members and was the nation's first approved RTO by the Federal Energy Regulatory Commission (FERC), beginning operation on December 15, 2001. He outlined MISO's member services, which include evaluating and scheduling of wholesale transmission, billing and settlement via FERC-approved tariffs, coordinating regional reliability, standardizing generation interconnection agreements, and planning long-term regional transmission.

The director of the Kentucky Division of Energy made a presentation on energy efficiency, pointing out how advances in the wise use of energy is equivalent to adding new generating capacity. He drew a distinction between conservation (implying going without), and efficiency (doing more with less). Kentuckians rank second in the nation for per capita energy consumption, leaving a great deal of room for energy savings through efficiency.

The subcommittee then heard testimony on the causes and impact of projected higher natural gas prices in the months to come. Appearing were the senior vice president for policy and analysis of the American Gas Association and staff from the financial analysis division of the Public Service Commission. While supplies in storage for this winter are close to normal, a combination of higher demand (some of it fueled by electric generation) and reduced supply (blamed on low prices) has suppressed drilling and exploration effort. These factors will combine to push natural gas prices higher. Factors such as harsh winter weather could drive prices above predicted levels.

Representatives from EnviRes LLC, a Lexington-based firm engaged in a new coal gasification process, made a presentation. According to the chief technology officer, the process holds considerable promise for making coal energy more usable, easier to transport, and cleaner to burn.

Also reporting to the subcommittee was the executive vice president for corporate development for Peabody Energy. Peabody is seeking support for the growth of merchant generation in Kentucky, or “coal-by-wire.” Major hurdles yet remaining include the need for considerable investment in upgraded transmission capability, the question of who should pay for these upgrades, and environmental concerns. Coal’s low cost and ready availability, coupled with technology boasting higher efficiency and lower emissions make Kentucky a logical choice for merchant power development.

The subcommittee heard a report on net metering, an important topic for the future of decentralized power production. Thirty-one states have enacted legislation to make it easier for consumers who produce part of their own energy to remain connected to the power grid for supplemental and backup applications.

Reports Received

- FY ‘02-’03 telecommunication device for the deaf Distribution Annual Report from the Kentucky Commission on the Deaf and Hard of Hearing.
- FY 2003 Semi-annual Low Income Home Energy Assistance Program block grant status report

Block Grant Application Reviewed
Public Hearing Held

The Low Income Home Energy Assistance Program (LIHEAP) is a federal program granting funds to states to provide help to low-income households with home heating and cooling costs and with weatherization of their homes. State law requires that a jurisdictional committee review all block grant applications. Federal law requires that a public hearing be held, soliciting comments on the block grant application for the coming year. The special subcommittee held a review and public hearing on the federal fiscal year 2004 LIHEAP block grant application on June 20, 2003. Testimony was taken from representatives with the Division of Family Support of the Cabinet for Families and Children, and the Kentucky Association for Community Action that administers the program. The subcommittee voted unanimously to approve the application.

Resolution Passed

By voice vote, the subcommittee unanimously passed a resolution urging the new gubernatorial administration to create a cabinet-level agency to craft energy policy and oversee energy matters.

Executive Order Reviewed

Executive Order 2003-513, dealing with a reorganization of the Public Service Commission, was referred to the subcommittee for review. The plan involved consolidating administrative functions and re-assigning existing personnel. Some positions were eliminated. The subcommittee voted unanimously to approve the executive order.

Prefiled Bills Referred

- BR 273-relating to telephone rates paid by churches
- BR 87-relating to telephone solicitation

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
HEALTH AND WELFARE

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

Rep. John Arnold
Rep. Paul Bather
Sen. Charlie Borders
Sen. Tom Buford
Rep. Crall
Rep. Robert Damron
Rep. Bob DeWeese
Rep. Mike Harmon
Rep. Jimmy Higdon
Sen. Bob Jackson
Rep. Joni Jenkins
Sen. David Karem
Rep. Mary Lou Marzian
Rep. Steve Nunn
Rep. Rep. Ruth Ann Palumbo
Rep. Jon David Reinhardt
Sen. Richard "Dick" Roeding
Sen. Ernesto Scorsone
Rep. Ancel Smith
Rep. Kathy Stein
Sen. Katie Stine
Sen. Elizabeth Tori
Sen. Damon Thayer
Sen. Johnny Ray Turner
Rep. Susan Westrom

LRC Staff: Robert Jenkins, Barbara Baker, Eric Clark, DeeAnn Mansfield, Murray Wood, Gina Rigsby, and Cindy Smith

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP

SUBCOMMITTEE ON HEALTH CARE

Sen. Julie Denton, Co-Chair
Rep. Joni Jenkins, Co-Chair

Rep. John Arnold
Rep. Paul Bather
Sen. Charlie Borders
Sen. Tom Buford
Rep. Brian Crall
Rep. Bob Damron
Rep. Mike Harmon
Rep. Jimmy Higdon
Sen. Bob Jackson
Rep. Ruth Ann Palumbo
Sen. Dick Roeding
Sen. Ernesto Scorsone

Rep. Tom Burch, Ex Officio

SUBCOMMITTEE ON FAMILIES AND CHILDREN

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

Rep. Bob DeWeese
Sen. David Karem
Rep. Mary Lou Marzian
Rep. Steve Nunn
Rep. Jon David Reinhardt
Rep. Ancel Smith
Rep. Kathy Stein
Sen. Damon Thayer
Sen. Elizabeth Tori
Sen. Johnny Ray Turner
Rep. Susan Westrom

Sen. Julie Denton, Ex Officio

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE

JURISDICTION: Matters pertaining to health and welfare in cities; fire prevention and protection; support of dependents; probation and parole; garbage and refuse disposal; public assistance; correctional penitentiaries; child welfare; adoptions; mothers' aid and assistance to children; children's homes; incompetents; poor persons and poorhouses; confederate pensions; aid to needy blind; commitment and care of children; mental health; health, medical, and dental scholarships; local health units and officers; vital statistics; communicable diseases; tuberculosis hospitals; restaurants and trailer park regulations; sanitation plants; sanitation districts; frozen food locker plants; alcoholism; physicians, osteopaths, and podiatrists; embalmers and funeral directors; clinical psychologists; optometrists; ophthalmic dispensers; and physical therapists.

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Health and Welfare held six meetings, including out-of-town meetings in Erlanger, Lexington, and Louisville. The committee was organized into two subcommittees: Families and Children, and Health Care.

Major Issues Considered by the Committee

Children Issues

Child Care/Day Care

A representative of The Business Roundtable spoke of the importance of child care as a benefit option for businesses. The committee toured the Erlanger day care facility for Toyota Motor Manufacturing/North America Headquarters.

Early Childhood Development/Home Visitation

The Director of the Adult and Child Health Division of the Department for Public Health within the Cabinet for Health Services stated that eight state universities are involved with distributing folic acid tablets and counseling. The Early Childhood Development initiatives mandated by 2000 House Bill 706 have expanded beyond the initial focal points in all 120 local health departments. Kentucky has enjoyed a 60 percent reduction in the number of children born with neural defects. Approximately 350 pregnant women have engaged in treatment-related substance abuse services, and 1,840 pregnant women have received substance abuse prevention services.

Many other successes in the Early Childhood Development program were noted. More than 37,500 children have had a hearing screening, and over 3,500 were found to be at risk of hearing deficits. Nearly 98 percent of newborns have been screened at birth, and more than 5,000 children have received vaccinations. Forty-six children received public funds for vision examinations, and an oral health pilot program was initiated in December 2002.

All 120 counties participated in the voluntary home visitation programs HANDS, and 10,900 families have received visits. Fourteen early childhood mental health specialists have been hired by regional community mental health centers, and 390 families have received services.

There are 525 Star-rated child care centers, and 86 Star-rated family child care homes. More than $275,000 has been disbursed to centers and homes through Quality Incentive Awards, and $168,000 has been disbursed through Achievement Awards.

More than 700 scholarships for child care providers were awarded for the fall 2002 term, and 1,150 scholarships for child care providers were awarded for the 2003 spring and summer terms. Commonwealth Child Care Credentials were awarded to 250 persons, and 550 non-college credit awards were made.

The Healthy Start in Childcare program provided 2,664 phone consultations, 1,450 on-site consultations, and 147 playground inspections. Over 1,370 classes on health, safety, and nutrition were presented to nearly 25,000 child care providers, parents, and children, in collaboration with the Child Care Resource and Referral Agencies.

The president of Northern Kentucky University emphasized that implementation of child care programs is important and must begin in early childhood.

First Steps

The committee reviewed proposed changes to the First Steps program and heard testimony from concerned parents and health care providers. The issue was whether eligibility criteria for the program would allow for a child's continued progress beyond minimum standards, or whether the child's participation would be discontinued after achieving improvement to the minimum standards. An administrative regulation was amended after considerable discussion to allow for continued involvement.

Homelessness/Home of the Innocents

The Home of the Innocents provides a broad array of services for children who are abandoned, abused, and neglected, and offers care for children who are medically fragile to receive care at home. Providing care for 120 children, the home is a private, nonprofit agency located in Louisville.

Families

Family Court and Grandparent Visitation

The branch manager of the Out-of-Home Care Branch of the Cabinet for Families and Children testified that the cabinet investigates allegations of abuse and obtains protective court orders to remove a child from family members if the child's safety is in jeopardy. The cabinet assists families to find resolutions through a network of regional service administrators.

Concerned family members and grandparents shared their concerns about a particular case involving a child who had allegedly been prevented from visiting with family. The cabinet refused to comment on the specifics of the case because the file is confidential.

Kinship Care and Grandparent Adoptions

The deputy secretary of the Cabinet for Families and Children testified that the 1997 federal Adoption and Safe Families Act charged each state with implementing a law that stresses the importance of kinship care and relative placements for children. Kentucky piloted the program in 1999 and it became statewide in 2000. The program has kept the growth of the foster care program at a moderate level.

Health Care

Community Health Centers/Health Care Safety Net

The director of HealthPoint Family Care testified that his organization serves 24,000 patients with an $8 million budget. Community health centers serve as a safety net for special-needs populations (Medicaid, Medicare, Hispanic, homeless, low-income individuals with oral health needs, and children), contribute to the overall wellness of the community, and offer a low-cost alternative to persons with lower incomes. HealthPoint serves 8,000 Medicaid recipients, 650 homeless individuals, and 1,200 persons of Hispanic decent. Approximately 80 percent of low-income children in Northern Kentucky do not receive dental care; 1,600 mothers do not receive early prenatal care; and 15,000 school children qualify for free or reduced lunches.

Community health centers have lower costs than both hospital outpatient units and private providers and save the state up to $10.5 million annually in Medicaid expenditures. It was recommended that Kentucky community health centers in each district be combined, with legislative efforts to control health care costs and secure additional funding.

Durable Medical Equipment/Used Assistive Devices

The owner of a nonprofit organization that distributes used assistive devices such as wheelchairs and crutches testified that Kentucky should further explore a program that would collect these items in a centralized fashion and distribute them to needy persons around the Commonwealth.

Emergency Rooms and Trauma Certification

The trauma director of Kosair's Children's Hospital at the University of Louisville testified that Kentucky should develop a trauma certification program that would improve emergency room capabilities to treat serious injuries. A trauma system would coordinate trauma care by directing emergency medical services personnel to hospitals that provide the appropriate level of care necessary for each situation. Most states have such systems.

It was suggested that the General Assembly provide sufficient funds to allow health care providers to upgrade education and services for trauma care. Hospital emergency rooms could use funding to seek trauma verification by the American College of Surgeons. The state could retain a full-time trauma coordinator and trauma registrar along with a trauma system advisory committee.

Family Care Homes

Owners of several family care homes testified that Kentucky should increase its reimbursement to family care homes to ensure the continued viability of the industry. Family care homes are similar to nursing homes, except they can house only up to three persons. For each elderly person in the home, the home receives the person's Social Security check and a state supplement for a maximum of $724 per person, out of which the person receives $40 each month for personal expenses.

Family care homes provide 24-hour care, with three meals and snacks. Services include assistance with medication administration, bathing and grooming, laundry, recordkeeping, and medical transportation.

Physicians/Medical Malpractice

An advocate for the Kentucky Medical Association testified that a medical malpractice insurance crisis exists. Some doctors have left the state due to exorbitant increases in premiums. He also provided a history of prior legislative efforts to affect malpractice premium increases, but stressed that an amendment to several sections of the Kentucky Constitution would be necessary.

The committee heard testimony from a victim of medical negligence who stated that his experience with insurance companies, hospitals, and doctors convinced him that he had not been treated fairly. He had lost his vision as a result of negligence during eye surgery. Most of his damages were noneconomic, but the medical malpractice impacted his life significantly.

Medicaid

Autism

The secretary of the Cabinet for Health Services testified that many families seeking services for autistic children found that their child was not categorically eligible for Medicaid or the Kentucky Children's Health Insurance Program eligible. Many children with pervasive developmental disorders (PDD) were erroneously certified by the Peer Review Organization as meeting eligibility criteria for the Home and Community Based Waiver (HCBW). The decertification of children with PDD from the HCBW is unrelated to any regulatory change, but instead is a result of correcting the erroneous certifications. There have been no changes to the IMPACT Plus program relating to children with PDD. Colorado, Connecticut, Hawaii, and New Hampshire have mandated health benefit provisions for autism.

A parent of a child with autism and the president of Families for Effective Autism Treatment of Louisville, Inc. both stated that Medicaid regulations were not written so that they could be easily implemented or followed. Appeals of service denials have proceeded too slowly. Kentucky should fund more autism services and treat the condition as fully reimbursable under all health insurance, as is the case in other states.

Budget Shortfall

The secretary of the Cabinet for Health Services testified that every state has encountered Medicaid budget shortfalls, having either implemented or considered cost containment actions in fiscal year 2004. Seventeen states have implemented cost containment related to long-term care, either by way of reductions or freezes on provider rates, implementation of pharmacy management initiatives, revisions to eligibility criteria, elimination or limitations of services to recipients, or implementation or increased cost sharing.

In fiscal year 2003, the cabinet has balanced the Medicaid budget with limited reductions in eligible participants and without the elimination of services. On January 16, 2003, the Governor announced changes in nursing facility level of care as part of $250 million in cost containment actions to address the Medicaid shortfall. The emergency administrative regulation to implement this change became effective April 4, 2003. The regulation provides that nursing facility level of care is required not only for eligibility into a nursing facility but also for eligibility into the HCBW program. It will ensure that the most acutely ill or medically fragile individuals qualify for care in a nursing facility with the waiver program. In FY 2003, 25,657 recipients were served in nursing facilities and 15,214 received HCBW services.

The secretary explained the nine medical care parameters used to determine nursing facility level of care. Since the regulation went into effect, 198 residents have failed to meet level of care standards during the recertification process, and 50 individuals were denied admission. About 30 percent of the individuals who were de-certified were eligible for Social Security income and would retain Medicaid coverage. Approximately 70 percent of the denied residents will lose Medicaid coverage unless monthly medical costs exceed their monthly income. If medical costs do not exceed monthly income, the individual would be eligible under the quarterly spend-down program.

The HCBW program is approved for 17,050 participants, and entry into the waiver requires an individual to meet nursing facility level of care. This waiver is Kentucky's community-based option to nursing facility placement. During FY 2003, there were 15,214 unduplicated recipients in the HCBW with $75.2 million of expenditures. About 3,900 individuals were approved for the HCBW and 1,209 individuals were denied recertification because they did not meet nursing facility level of care. There are 87 providers who serve about 15,200 unduplicated clients. The range of clients who were lost due to denials is from 1 percent to 33 percent for each provider. Nearly 2,000 individuals receive adult day services from 118 providers. Presently, 46 counties have no Medicaid adult day providers. Adult day expenditures have grown from $2.4 million in FY 1997 to $22.1 million in FY 2003.

Durable Medical Equipment/Bulk Purchasing

The owner of a durable medical equipment company testified that the Medicaid program could generate significant savings by allowing volume purchasing and, where appropriate, the purchase of equipment instead of rental. Upon implementing a preferred vendor program, Medicaid could save $4.6 million to $19.5 million annually for diapers, and $635,700 for pulse oximeters, with significant additional savings for suction machines, nebulizers, infusion pumps, and feeding pumps. The Department for Medicaid Services had advised her that Kentucky's "any willing provider" law is a barrier to this type of purchasing arrangement.

The commissioner of the Department for Medicaid Services testified that Medicaid may decide to implement a similar program and that the department has examined its feasibility.

Kentucky Children's Health Insurance Program (KCHIP)

The secretary of the Cabinet for Health Services and a pediatrician from a family care center testified about a $20 premium assessed on families involved in KCHIP. The cabinet explained that this initiative, effective November 1, 2003, will save money within the program.

The pediatrician stated that premium cost containment actions within KCHIP would not affect Medicaid. KCHIP premiums would generate very little revenue for the state. Other states that have imposed or raised premiums have seen enrollment declines of 16 percent or more. Based on these experiences, approximately 3,200 Kentucky children would lose health care coverage due to disenrollment. Cost containment through premiums can only be achieved when eligible children lose their KCHIP coverage. When children lose coverage, access to necessary health care service suffers.

Person-Centered Funding

National experts on person-centered funding of community services testified about this experimental approach to the provision of services as an alternative to nursing facility care. The national program director of the Cash and Counseling Demonstration and Evaluation Project, the president of the Center for Outcome Analysis, and the director of the Center for Self Determination testified about the experiences of other states and the possible application in Kentucky. The Cash and Counseling Demonstration and Evaluation Project is a consumer-direction program in which consumers are given the choice between receiving personal care from agencies or managing a budget with an equivalent amount of money. Approximately 6,700 people in Arkansas, New Jersey, and Florida are currently involved in this project. Counseling assures that the person develops a plan suitable for that person's needs.

The Cash and Counseling Demonstration and Evaluation Project has been funded by the Robert Wood Johnson Foundation. In addition, Medicaid waivers were provided by the Centers for Medicare and Medicaid Services (CMS) to make the demonstrations possible in the three identified states. Both qualitative and quantitative evaluations have been positive, leading CMS to issue model waivers to make it easier for other states interested in taking this type of approach.

Other person-centered funding programs are ongoing in several states. In New Hampshire, where 45 people were studied and compared, costs decreased by 12 percent to 15 percent over the costs of institutional care. In Michigan, costs decreased by 6 percent to 9 percent. Person-centered funding ultimately provides for enhanced quality of life for recipients.

Mental Health

Regional Funding

The president and CEO of NorthKey Community Care and a consumer advocate discussed the regional needs for Northern Kentucky, focusing on increased state and general fund dollars to more adequately support mental health and substance abuse services, appropriate Medicaid funding that is not less than other areas of the Commonwealth, and flexibility to match usage of dollars for local needs.

Public Health

Bioterrorism

The commissioner of the Department for Public Health in the Cabinet for Health Services testified that the department has received a bioterrorism grant from the Centers for Disease Control and Prevention to strengthen the state's public health infrastructure and preparedness for bioterrorism events. The goals is to better coordinate local and state resources to fight bioterrorism and identify outbreaks of infectious disease. The state received $14,272,495 for August 2002 through August 2003, and $15,549,583 for August 2003 through August 2004. Additional funding from the Health Resources and Services Administration, totaling $7,092,198 for August 2003 through August 2004, will support hospital and other health care providers' response to bioterrorism and mass casualty situations.

Cigarette Tax/Funding Issues

The director of the James Graham Brown Cancer Center at the University of Louisville and the dean of the University of Kentucky College of Medicine reported on the problems associated with cigarette smoking the possible use of additional cigarette tax revenues. In Kentucky, 32.6 percent of adults and 34.6 percent of high schools students smoke. Fifteen percent of middle school students smoke. It is estimated that 13,400 children become new daily smokers each year. About 7,700 adults die each year from their own smoking, and 114,000 children today will eventually die prematurely from smoking. Between 730 to 1,300 adults, children, and infants die each year from secondhand smoke. Teens who smoke are 14 times more likely to have binged on alcohol, 32 times more likely to have repeatedly used cocaine, and 100 times more likely to have repeatedly used marijuana.

The annual health care costs in Kentucky related to smoking total $1.17 billion, and $380 million of that total is paid by Medicaid. Smoking-caused productivity losses in Kentucky equal $1.84 billion. Increasing the price of cigarettes is the single most effective way to reduce youth smoking. For every 10 percent increase in the price of cigarettes, there is a seven percent decrease in smoking among youth and pregnant women and in adult smoking rates. An increase in Kentucky's cigarette tax of 75 cents per pack would result in a 17 percent decline in youth smoking, prevent nearly 30,000 future smoking-related deaths; result in more than 60,000 fewer future youth smokers; save $30 million over the next five years in health costs from heart attack, stroke, and low-birth weight babies; and produce overall long-term health savings of more than $1.1 billion.

A youth advocate testified that, according to the most recent Kentucky Youth Tobacco Survey, three out of four high school smokers in the state have purchased cigarettes from a store. She said that since youth who use tobacco products are more likely to smoke marijuana, drink alcohol, and use other drugs, raising the excise tax on tobacco products would lower rates of other drug usage.

HIV/AIDS

The executive director of the HIV/AIDS Advisory Council and the president of the HIV/AIDS Advocacy Group spoke to the committee about recommendations of their organizations to prevent the transmission of HIV and to treat persons with HIV and AIDS. Both organizations recommended adopting the standards of the Centers for Disease Control and Prevention (CDC) that require the reporting by name of persons testing positive for HIV, enabling the state to collect accurate and verifiable information about the incidence of HIV. Future federal HIV funding will be tied to the incidence of persons with HIV, rather than the incidence of persons with AIDS.

Currently, Kentucky, as well as all other states, collects AIDS information by name in a disease reporting system that is the same for all infectious and sexually transmitted diseases. Kentucky collects HIV data through the use of a unique identifier, but state investigators have expressed concern that this data is not easily verifiable because the numerical coding system is prone to error. Because current federal funds are used to purchase medications to treat persons with HIV before their conditions deteriorate into the AIDS diagnoses, the CDC recommends the collection of better data on HIV.

The advisory council further recommends a harm reduction that would remove barriers to the purchase of sterile needles.

Kentucky Lung Cancer Research Program

The director and CEO of the Lucille P. Markey Cancer Center at the University of Kentucky and the director of the James Graham Brown Cancer Center at the University of Louisville explained that the Kentucky Lung Cancer Research Program was established by the General Assembly in July 2000. The program allows both cancer centers to build strong, collaborative relationships involving local physicians with the goals of reducing morbidity and mortality from lung cancer, supporting efforts to achieve

National Cancer Institute Cancer Center Designation, creating a statewide clinical trials network, supporting research in prevention and early detection, and expanding expertise in lung cancer research.

Obesity/Diabetes/Cardiovascular Disease

A professor of Medicine and Clinical Nutrition at UK, the health promotion coordinator of the Lexington-Fayette County Health Department, and the commissioner of the Department for Public Health at the Cabinet for Health Services testified that incidents of Type II diabetes and obesity have doubled in Kentucky since 1985. Obesity leads to diabetes, heart disease, arthritis, some cancers, and kidney failure. The cost to society of these diseases involve the costs related to hospital care, health insurance, prescription medications, nursing homes, disability payments, loss of taxable income, and earlier entry into economic dependency. The financial burden is shifting to the individual by increasing the employee's share of health insurance, increasing co-pays for services, increasing difficulty finding Medicaid providers, reducing Medicaid services, declining in purchasing power of federal grants, declining state funds and staff, and increasing the numbers of uninsured.

Prevention strategies for both obesity and diabetes must start in childhood, and treatment strategies must be appropriately rigorous. Currently, Kentucky has excellent treatment programs for obesity, research for diabetes and obesity, and education programs for diabetes. External support is needed to deliver services to the community and to train physicians in diabetes management. Kentucky is in the bottom five states for health problems related to diabetes and obesity.

SARS

A panel discussion involving emergency medical services providers from the Cincinnati/Northern Kentucky International Airport and representatives of the Department for Public Health said that any outbreak of SARS at the airport would be treated similarly with protocols for other infectious diseases. The CDC would be contacted and would contact local public health officials with recommended procedures.

Committee Study: Electronic Health Initiative Grants and Private Funding

The acting chair of Health Management and Systems Sciences in the School of Public Health and Information Sciences at U of L, the chief medical information officer at UK, and a representative of a consulting company testified about funding opportunities for an electronic health initiative.

It was stated that an e-health network would improve patient safety, improve health care quality, help detect bioterrorism, better inform and empower health care consumers regarding their own personal health information, provide more understanding about health care costs, establish the foundation for population-based health improvement, and reduce health transaction costs. National health care costs approximate $1.6 trillion, and Kentucky's share is $20.8 billion. State administrative costs are estimated at $6.24 billion, which an e-health network could reduce by 50 percent.

The initial cost of implementing an e-health network ranges from $5 million to $30 million, depending on the complexity of the program. Approximately 10 months ago, representatives from the University of Kentucky, the University of Louisville, and the consulting company formed a working group to outline a potential e-health network for Kentucky. Health care providers, payers, and the government looked at several of the better known regional e-health network initiatives, became familiar with the National Health Information Infrastructure (NHII) agenda, and tracked potential funding from the federal government. The NHII is a comprehensive knowledge-based network of interoperable systems of clinical, public health, and personal health information that would improve decision-making by making health information available when and where it is needed. NHII is the framework, vision, and national standard that other local, state, and e-health networks should follow. NHII is voluntary and is not meant to be a centralized database of medical records or a mandated government regulation.

The Agency for Healthcare Research and Quality has a $50 million grant to award to multiple, local e-health network initiatives, and Kentucky has the potential to be awarded a portion of the grant funds. Another grant opportunity involves $4 million in funding from the E-Health Institute. Additional funding may be found in homeland security initiatives, state funding, and private-sector funding.

A stakeholder group has been formed that consists of employers and government (consumers); physicians and professionals (practitioners); managed care, Medicare, and Medicaid (payers); and health care organizations (providers). This group is expanding to represent both private and public sectors. It is important that Medicaid and state government be stakeholders for the e-health network to be successful.

A $50 million grant is available to states for start-up funding of an e-health initiative, along with $4 million in funding from Health Resources and Services Administration.

Referred Block Grant Applications

Pursuant to KRS 45.353, the committee held legislative hearings on two block grant applications: FFY 2004 Community Mental Health Services Block Grant, and FFY 2004 and 2005 Community Services Block Grant.

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, the committee reviewed 65 administrative regulations upon referral from the Administrative Regulations Review Subcommittee under the review process established in KRS Chapter 13A. Fifty-six of the regulations were approved without change, and nine were approved as amended following agreement with the promulgating agency.

SUBCOMMITTEE ACTIVITY

Families and Children Subcommittee

The Families and Children Subcommittee met five times.

Guardianship

The Cabinet for Families and Children testified about the administrative transfer of the guardianship section to service area regions. The cabinet indicated that the transfer will improve the quality of service received by wards of the state.

Child Care Assistance

The subcommittee received testimony on this issue at two meetings. In July, the director of the Division of Child Care testified about the current status of the child care assistance program. Due to cost containment measures implemented in May 2003, there was a waiting list for the child care subsidy program. In October, the division indicated that the waiting list was continuing to grow. The subcommittee members approved a motion to send a letter to the Kentucky congressional delegation and United States Senate leadership urging Congress to restore cuts and increase funding for the child care subsidy program.

Kinship Care

The subcommittee heard an update on the Kinship Care program from the Cabinet for Families and Children. Cabinet officials indicated that the eligibility criteria for the program are being refined and that new enrollment in the program has leveled off.

Child and Family Services Review

Representatives of the United States Department of Health and Human Services and the Cabinet for Families and Children testified about the federal Child and Family Services review, which evaluates child welfare services in the states. Kentucky failed in six of seven categories, as did 14 other states. The cabinet reported more detail on the program improvement plan, at the November meeting, and the Administrative Office of the Courts discussed the Court Improvement Plan for child welfare services.

Long-Term Care Facility Staffing

The subcommittee heard about staffing issues within long-term care facilities. Consumer advocates testified that more attention should be given to increasing the number and quality of direct caregivers in nursing homes and other long-term care facilities.

Elder Abuse

The subcommittee heard testimony regarding law enforcement training, coordination of local agencies, and federal legislation related to elder abuse.

Temporary Assistance for Needy Families and Food Stamp Programs

Representatives of the Cabinet for Families and Children provided an update about the current status of claims collection for the Temporary Assistance for Needy Families (TANF) and Food Stamp Programs, and the cabinet responded with updated information about the State Auditor's report on the collection of claims. The cabinet is making efforts to improve the error rate for both programs but continues to have difficulties collecting established claims and preventing errors in the issuance of benefits.

The cabinet also provided an update on reauthorization of federal TANF funds.

Autism

Parents and a health care expert testified about the prevalence of autism in Kentucky and the possible relationship between autism and mercury contained in childhood vaccines. The health care experts disagreed over the extent of any relationship. The Kentucky Autism Training Center presented an overview of training activities in the state.

Child Poverty

A representative from Kentucky Youth Advocates provided a report on the incidence and affects of child poverty.

Health Care Subcommittee

The Subcommittee on Health Care met three times and focused on five major issues: public health concerns related to West Nile Virus and SARS; compliance with the Health Insurance Portability and Accountability Act of 1996; long-term care staffing issues; Medicaid cost-containment strategies; and person-centered funding.

West Nile Virus and SARS

The director of epidemiology with the Department for Public Health within the Cabinet for Health Services provided an update on the West Nile Virus and Severe Acute Respiratory Syndrome (SARS). To contain and prevent the West Nile Virus, the department is testing dead birds, monitoring equine diseases, and collecting mosquitoes. The department has developed a Website linking its West Nile Virus site with the site maintained by the Department for Agriculture, the Department of Fish and Wildlife, and the Department of Natural Resources. Combined, these agencies form the Strategic Mosquito Attack Campaign. There have not been any deaths related to SARS in Kentucky, and the last reported chain of transmission of SARS ended June 15, 2003, in Taiwan.

HIPAA Compliance

The subcommittee received updates from the Kentucky Hospital Association (KHA), the Kentucky Medical Association (KMA), and the Cabinet for Health Services on compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which requires all health care providers, health insurers, and health clearinghouses to communicate with each other by using standardized code sets.

States must meet certain deadlines to fully implement the provisions of HIPAA. Kentucky met deadlines to implement the Electronic Health Care Transaction Standards and Code Sets and the Privacy Rule.

The KHA and KMA identified state statutes (KRS 218A.230 and 218A.280) to be amended to avoid conflicts between state and federal law. Specifically, these groups proposed changes to clarify the disclosure of protected health information to local law enforcement agencies and to permit the reporting of insurance fraud by hospitals.

Long-Term Care Staffing

The president of the Kentucky Association of Health Care Facilities (KAHCF) and an advocate for nursing home reform discussed staffing issues within long-term care facilities. For many years, some organizations for nursing home reform have argued for increased staffing ratios in these facilities, claiming that inadequate care in nursing homes is a direct result of insufficient staffing. The advocate urged the subcommittee to support legislation that would tie future increases in Medicaid reimbursement, above inflationary adjustments, to the quality of staffing in long-term care facilities.

The president of the KAHCF emphasized that staffing standards should be established by individual facilities and not by a mandate imposed by state government. Each long-term care facility has its own specific needs that are best resolved by the individual facility.

Medicaid Cost-Containment Strategies

The subcommittee dedicated a majority of its time hearing from the secretary of the Cabinet for Health Services on the impact of Medicaid’s level of care criteria for nursing facility and Home and Community Based Waiver (HCBW) services and future cost-containment strategies. The cost-containment strategies implemented by Medicaid addressed an estimated $250 million budget shortfall. An administrative regulation (907 KAR 1:022E) was amended, effective April 4, 2003, to require individuals to meet stricter nursing facility level of care to become eligible for nursing facility care and HCBW services. The secretary emphasized that the regulation ensures that the most acutely ill or medically fragile individuals would qualify for care in the programs.

In fiscal year 2003, 25,657 recipients were served in nursing facilities, and 15,214 recipients received HCBW program services. Since April 4, 2003, 198 residents failed to meet the new level of care standards for continued enrollment, and another 50 individuals have been denied admission into the program.

Other cost-containment strategies implemented by Medicaid include (a) elimination of eligibility for individuals with incomes greater than certain special income requirement standards, unless a recipient has a Qualified Income Trust; (b) elimination of the homestead exemption for estate recovery; (c) consideration of the addition of a name to a deed as a transfer of assets; and (d) consideration of the home as an asset after six months of institutionalization.

The subcommittee also received testimony from recipients and family members affected by Medicaid's cost-containment strategies. These individuals noted the following concerns: (a) the hearing process for appeals takes too long; (b) individuals who have received services for more than 12 years are now being denied services; (c) individuals with mental retardation who have a secondary diagnosis related to physical needs are being denied services based on the primary diagnosis of mental retardation; (d) children with autism are being denied services, which has led to a decrease in the number of providers of services for these children; and (e) there is general confusion about the requirements of the homestead exemption and the required qualified income trusts.

Person-Centered Funding and Community Services

The secretary of the Cabinet for Health Services provided information on person-centered funding and community services. House Bill 501 from the 2003 Regular Session directed the cabinet to form an ad hoc committee to evaluate the possibility of implementing patient-centered or self-determination funding. This committee was established in July 2003 and directed to submit a final report in December to the General Assembly and the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Developmental Disabilities. The secretary said a self-determination pilot program would require an 1115 Medicaid Waiver, but noted that the cabinet would wait for recommendations from the General Assembly before submitting the waiver application.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON JUDICIARY

Sen. Robert Stivers, Co-Chair
Rep. Gross Lindsay, Co-Chair

Rep. Paul Bather	Rep. Kevin Bratcher
Sen. Tom Buford	Sen. Lindy Casebier
Rep. Perry Clark	Rep. Jesse Crenshaw
Rep. Tim Feeley	Rep. Joseph Fischer
Rep. Charles Geveden	Rep. Jeffrey Hoover
Sen. Ray Jones II	Rep. Stan Lee
Sen. Gerald Neal	Rep. Frank Rasche
Sen. Jerry Rhoads	Sen. Richard Roeding
Sen. Ernesto Scorsone	Sen. Dan Seum
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Sen. Katie Stine	Rep. John Vincent
Rep. Robin L. Webb	Rep. Rob Wilkey
Sen. David L. Williams	Rep. Brent Yonts

LRC Staff: Norman Lawson, Jonathan Grate, Peter Cassidy, Stephanie Martin, and Lisa Fenner

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

INTERIM JOINT COMMITTEE ON JUDICIARY

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

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Judiciary held four meetings.

The first meeting was held at the Henderson Community College on August 20. The purpose of meeting in Henderson was to bring the deliberations of the committee closer to the people in Western Kentucky and to provide an opportunity for their input. Attention was called to the recent Supreme Court of Kentucky case of *Barnett v. White*, relating to emergency protective orders. The committee then approved a resolution honoring the retiring general counsel of the Justice Cabinet.

The next group of speakers were Circuit Judges, District Judges, Commonwealth's attorneys, and county attorneys who detailed various needs and problems in the criminal justice system, which included new uses for court costs; continuing the jurisdiction of the juvenile session of juvenile court after the child turns 18 for the purpose of assuring the collection of restitution; reducing the number of ingredients necessary for the manufacture of methamphetamine from "all" ingredients as required by a recent Supreme Court of Kentucky decision to two ingredients; failure of the Department of Juvenile Justice workers to notify the county attorney when juveniles violate probation; problems in finding available drug treatment programs; problems with delays in the processing of evidence by the Kentucky State Police forensic laboratories; and driving without insurance.

The Chief Justice of the Supreme Court of Kentucky described recent developments in the implementation of the family court division of the Circuit Court and the abolition of District Judge positions when the District Judge became a Circuit Court family court division judge. He also answered questions about the appeal process from a family court division decision.

Speakers from various groups opposing the death penalty presented their views relating to abolition of the death penalty, and urged the members of the committee to favorably report anti-death penalty legislation to the floor for action by the General Assembly at the 2004 Session. Another speaker spoke in favor of the death penalty.

Another speaker, citing the growing number of same-sex couples in Western Kentucky, asked that the committee pass statewide legislation protecting same-sex couples from discrimination and providing the same benefits for same-sex couples as are provided to traditional married couples.

The second meeting of the committee was held at Union College in Barbourville. The purpose of the meeting was to bring the deliberations of the committee closer to the people in Eastern Kentucky and to provide opportunity for their input.

The first speaker was the Chief Justice of the Supreme Court of Kentucky who described the history of the family court project, the passage of the family court amendment, and the implementation of the family court division of the Circuit Court. The Chief Justice indicated that the recent family court judgeships had been created through the voluntary cooperation of District Judges and Circuit Judges and that there had been no increase in the total number of judges when the family court was implemented. The judicial districts of District Judges who became family court division Circuit Judges were abolished by the General Assembly upon their becoming Circuit Judges.

The next speakers were the secretary of Justice, commissioner of State Police, and director of the Kentucky State Police forensic laboratories who described how the present caseload backlog has grown at the laboratories because of increased drug enforcement and the need to identify drugs, blood samples, chemicals used in drug manufacture, and the retirements and high turnover of laboratory personnel. They described measures that have been taken to reduce the backlog by hiring and training additional personnel and contracting some forensic sampling and evaluation to private laboratories out of state. Various members of the committee questioned the costs and legal problems in securing testimony from persons out of Kentucky.

The State Police requested additional funding for more competitive salaries, changes in the personnel laws to permit hiring of new persons prior to the retirement of existing persons, and requiring newly hired persons to repay their training costs if they leave within a certain number of years after being hired.

Speakers representing the Kentucky Retail Federation discussed their general approval for legislation lowering the number of required ingredients and chemicals necessary for conviction of the crime of manufacture of methamphetamine if the legislation contained protection for merchants selling those items in the legitimate course of business.

Speakers representing the Kentucky Retail Federation requested that the jurisdiction of the small claims division of the District Court be increased from $1,500 to $2,500 and for an increase in the number of claims that could be filed by a merchant within a year. The president of the District Judges Association indicated that the members of the association had unanimously agreed that the limits not be changed because to do so would harm the average citizen who stood to lose even larger sums of money or not be able to prove claims because the citizen was unfamiliar with rules of evidence and legal procedures.

Speakers representing the Department for Public Advocacy urged the committee to forgive law school loans for prosecutors and public advocates, expand the use of drug court programs, and improve the numbers of and salaries for public advocates.

The final speakers favored abolition of the death penalty and its replacement with life without parole in these cases. These speakers indicated that elimination of the death penalty would involve less cost to the state and not increase the number of death-penalty eligible offenses committed in the state.

The third meeting of the committee was held in the Capitol Annex in Frankfort. The committee heard a short description of the holding in the Kotila case in which the Supreme Court of Kentucky held that for a person to be convicted of the manufacture of methamphetamine he or she had to possess all of the ingredients for its manufacture plus the intent to manufacture methamphetamine.

Representatives of the Pennyrile Narcotics Task Force and the law enforcement community detailed the spread of methamphetamine manufacture from Western Kentucky to Central Kentucky and then to Eastern Kentucky, changes in the manufacturing methods and chemicals necessary for manufacture, and the explosion in the number of methamphetamine laboratories that have been seized. The speakers indicated that they favored being able to convict a person for possession of one of the ingredients with the requisite intent, or if that was not possible, the lowest number of ingredients.

The next speakers were Rep. Brent Yonts and Rep. Jack Coleman who described legislation that they both have prefiled to reduce the number of ingredients for the manufacture of methamphetamine to two ingredients and a bill prefiled by Rep. Yonts to scale the penalties for manufacture of methamphetamine to the number of ingredients possessed with requisite intent to manufacture. Several members of the committee observed that the lower the number of ingredients or chemicals necessary the greater the chance for law enforcement and prosecutors to charge otherwise innocent persons since the ingredients and materials for the manufacture of methamphetamine include salt, anhydrous ammonia, glass jars, batteries, coffee filters, and other items that many people would ordinarily possess for innocent uses.

The next speakers represented the defense bar and the Department for Public Advocacy who indicated that the Kotila decision has had no appreciable impact upon methamphetamine law enforcement since possession of large quantities of pseudo ephedrine remains illegal. Theft of anhydrous ammonia and possession of anhydrous ammonia in an unauthorized container and various other statutes remain in effect and are being utilized on a daily basis. These speakers suggested that an “any ingredients” standard might be void for vagueness, permit “stacking” of offenses, would ensnare the innocent, and might be unconstitutional because of double jeopardy arguments with regard to conviction for more than one methamphetamine-related offense.

The next speakers were Rep. Greg Stumbo and Sen. Richard Roeding who presented the recommendations of the Prescription Drug Task Force that included providing KASPER prescription drug information to out-of-state law enforcement agencies; providing that the Board of Medical Licensure can request KASPER reports not only from specific geographic areas but for partners of a physician who is under investigation; developing of prescribing standards by the Board of Medical Licensure; requiring the Board of Medical Licensure to report violations to law enforcement; permitting law enforcement agencies to share KASPER information with each other; and permitting the Cabinet for Health Services to send KASPER reports to law enforcement agencies. Questions were raised about privacy issues in providing personal information to a large number of agencies.

The next speaker represented the Corporate Law Section of the Kentucky Bar Association who urged adoption of proposed amendments to the Limited Liability Corporation law, which the speaker described as technical in nature, and necessary to address not-for-profit limited liability corporations that were not permitted in the original statute. The same speaker also spoke in favor of the Limited Liability Partnership Act, which filled a “gap in existing law.”

The dean of the University of Kentucky College of Law spoke in favor of adoption of the most recent version of the Uniform Partnership Act. He stated that the Act has been enacted in 34 other states and changes the theory of partnership from an “entity theory” of partnership to an “aggregate theory” of partnership. He also stated that the Act allows the survival of the partnership in certain circumstances when a partner withdraws from the partnership or dies.

The fourth meeting of the committee was held in the new Capitol Annex building in Frankfort. Representatives of the Probate Committee of the Kentucky Bar Association spoke in favor of adopting the most recent version of the Uniform Principal and Income Act and the Uniform Prudent Investor Act. The Uniform Principal and Income Act was presented as providing a means of determining how a trustee allocates money from investments and other income between principal and income and to whom the moneys are disbursed when the trust instrument is silent about the divisions. Under present law, according to the speakers, if changes are to be made, it is necessary to go back to court to have the court amend the provisions of the trust. This would no longer be necessary under the proposal. Various members of the committee felt that the provisions would not materially change the law and that court appearances would still be necessary.

The Uniform Prudent Investor Act was described as changing the principle of investment supervision from each individual investment to a principle where the prudence of the investment was judged from the totality of the investments rather than a single investment. The Act also provided that if the trustee hired an outside financial consultant that the outside consultant and not the trustee would be liable for the decisions. Various members of the committee questioned the wisdom of changing the investment theory since it would allow investment in poorly performing stocks that would have to be sold before the investor made much money, might encourage much stock and investment trading to increase broker fees, and would result in lawsuits. Other members questioned the transfer of liability to outside consultants who may or may not have insurance or who may require arbitration of the claims by out-of-state arbitration boards thus depriving the Kentucky plaintiff the right to go to a Kentucky court for a resolution of their problem.

The secretary of the Revenue Cabinet spoke in response to a request from the committee as to whether previous limited liability corporation legislation has resulted in a revenue loss to Kentucky. The secretary explained that limited liability corporations do not pay the corporate income tax but are taxed as partnerships. The secretary indicated that the two proposed pieces of legislation by themselves did not have adverse revenue impacts. In response to a question from a co-chair of the committee, the secretary responded that if limited liability corporations were to be taxed as corporations that the increase of revenue to the state would be approximately $30 million.

Representatives from the Parole Board spoke in favor of legislation to delete the statutory requirements relating to number of board members necessary to hold a parole hearing and the requirements for actual parole hearings in favor of legislation permitting the Parole Board to determine these matters by administrative regulation. The speakers indicated that the present legislation is unworkable because of the large numbers of parole hearings and parole revocation hearings currently being conducted and the diverse locations at which hearings must be held because prisoners are now held in private prisons, county jails, and other facilities as well as state facilities. It is anticipated by the board that face-to-face parole hearings are not necessary in most cases, and in cases where a face-to-face hearing is necessary there will be a hearing by two members of the Parole Board. The speakers indicated that these changes would mean that adding three or more members to the board would not be necessary.

The general counsel for the Department of Corrections spoke in favor of an adjustment to KRS 17.500 relating to the definition of a sexual offender. The speaker proposed to restrict a reference to a person guilty of violating KRS 530.064 relating to unlawful transaction with a minor in the first degree to only those persons convicted of causing a minor to engage in sexual activity and eliminating reference to those persons convicted of drug offenses. The second proposal was to change laws relating to escape and use of deadly force to prevent an escape to include escaping while in transit to or from locations other than a jail or penitentiary and to permit the use of deadly force in preventing an escape. Several members of the committee questioned the necessity of using deadly force on nonviolent offenders and expressed concern about the danger of using deadly force in a courtroom, on a city street, or other location.

The representative from the Kentucky State Police indicated that legislation was needed to change the licensing requirements for detection of deception (lie detector) examiners. Under the new requirements, applicants would no longer have to be fingerprinted but would have to submit to an FBI records check. Members of the committee observed that the fingerprints might be used for other purposes by law enforcement agencies and the federal government.

Speakers from the Justice Cabinet and the Kentucky State Police updated the committee on efforts to reduce the backlog of cases at the Kentucky State Police Forensic Laboratories. The speakers indicated that 949 drug cases had been shipped to out-of-state laboratories for processing but that there was a remaining backlog of approximately 7,300 cases. Members of the committee questioned the costs of and difficulty in securing testimony from out-of-state lab technicians and asked who would pay the bills for securing the testimony. Further questioning related to long-range planning and efforts to reduce the backlog of cases. Members asked if the jurisdiction over the laboratory should be transferred to the Justice Cabinet or to some other agency. The State Police representative opposed such a move.

The executive director of the Criminal Justice Council and the deputy secretary of the Justice Cabinet updated the committee on the costs of the penal code study. They reported that the penal code study had been approved by the Criminal Justice Council a week before the Judiciary Committee meeting. They responded to questions about information that prosecutors and some judges left the penal code study group prior to its approval because of objections to the provisions of the code. Members of the committee questioned the approval process, asked how much money had been spent by the council since its creation, and questioned the necessity for retaining the council as an agency. Justice Cabinet representatives stated that the council had been useful in determining criminal justice programs, court costs legislation, the Uniform Criminal Justice Information System, and the penal code study. The Justice Cabinet's representatives indicated that the council should be retained.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
LABOR AND INDUSTRY

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Rep. J. R. Gray, Co-Chair

Rep. John Arnold
Sen. David Boswell
Rep. Denver Butler
Sen. Julie Denton
Rep. C. B. Embry
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Rep. Charlie Hoffman
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Rep. Joni Jenkins
Sen. Alice Kerr
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Sen. Jerry Rhoads
Sen. Dick Roeding
Rep. Jimmy Stewart
Sen. Damon Thayer
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LRC Staff: Linda Bussell, Adanna Hydes, Melvin LeCompte, Betty Davis, and Reni Krey

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

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

COMMITTEE ACTIVITY

The committee held two meetings during the 2003 Interim. The first meeting was held in August to discuss a proposed increase in workers' compensation rates for employers in Kentucky. The second meeting was held in November to discuss a report of the Auditor of Public Accounts on a major technology initiative for the unemployment insurance program.

At the August meeting, the committee heard testimony from officials from the Department of Insurance, Department of Workers' Claims, and representatives from the National Council on Compensation Insurance (NCCI), regarding an advisory loss cost filing submitted by NCCI in July. The NCCI is a national workers' compensation rating organization. Its filing recommended an average increase of 20.1 percent in workers' compensation rates for employers in Kentucky. The NCCI filing also included an average increase of 3.3 percent for employers in the coal industry.

The commissioner of the Department of Insurance explained that the NCCI is a licensed advisory organization in Kentucky that develops advisory workers' compensation rates for its member workers' compensation insurance carriers in Kentucky. The commissioner said KRS Chapter 304 requires the department to approve or disapprove the filing within 30 days from the date the filing was submitted to the department.

The commissioner further informed the committee that because of the significant increase proposed in the NCCI filing, the department hired an independent actuarial firm to assist the department in its review and evaluation of the filing. In addition, the commissioner said the department requested a 30-day extension before making a decision, and scheduled a public hearing to obtain public input and gather additional information from other agencies such as the Department of Workers' Claims. The commissioner said a decision by the department would ultimately have to be made by September 12.

Officials from the NCCI presented an overview of the deteriorating workers' compensation insurance marketplace in Kentucky and explained the components of the loss cost filing and the reasons for the recommended rate increases. According to NCCI, 14 percent of the recommended 20.1 percent increase resulted from increased medical costs primarily for prescription drugs and hospital charges. Income benefits accounted for approximately 6 percent.

Officials from the Department of Workers' Claims (DOWC) presented an analysis of costs of the workers' compensation system in Kentucky. The officials stated that before enactment of major reforms by the General Assembly in an Extraordinary Session on Workers' Compensation in October 1996, workers' compensation costs averaged $2.52 per $100 of an employer's payroll. Subsequent to the 1996 workers' compensation reforms and additional reforms made in 2000 and 2001, DOWC officials provided statistics and testimony that total workers' compensation system costs in Kentucky are still lower than they were prior to the 1996 reforms.

The commissioner of the Department of Workers' Claims stated that based on data collected by the department, and the fact that the NCCI filing did not take into account current information that indicated a tremendous downward trend in workers' compensation costs in Kentucky, the NCCI did not justify a 20.1 percent in workers' compensation rates.

The committee approved a motion that requested disapproval or rejection of the NCCI filing. On September 12, the commissioner of the Department of Insurance approved an average workers' compensation rate increase of 13.1 percent.

The second meeting of the committee was held in November to discuss findings of the Auditor of Public Accounts (APA) on the Kentucky Electronic Workplace for Employment Services (KEWES) project. KEWES is a major technology upgrade initiative for the Department for Employment Service's unemployment insurance program. KEWES was authorized by Senate Bill 296 in the 1996 General Assembly. Its major objective was to permit unemployed workers to file for income benefits electronically and to permit employers to pay unemployment taxes and file reports electronically. When fully implemented, KEWES was envisioned to create an almost paperless unemployment insurance system, reduce the number of personnel required to administer the program, and to eliminate long employment lines at local offices throughout the Commonwealth.

Officials from the APA's office informed the committee that the KEWES project became an item of interest following a series of financial, information technology, and performance audits of the unemployment insurance program. During the course of the routine audits, the APA learned that an independent quality assessment of the KEWES project conducted in March 2003 by an outside consultant noted several significant problems areas. The APA's office requested progress reports on how the Department for Employment Services (DES) was addressing the problem areas identified in the assessment, but stated that information provided by DES was insufficient to alleviate the APA's concerns. Consequently, the APA communicated its concerns regarding the KEWES project directly to the committee. The APA said that more than six years and $15 million dollars later, KEWES is still not operational and suffers from serious problems including inadequate planning, unexplained costs, and obsolete software and hardware.

Officials from DES disputed the APA's findings and informed the committee that KEWES was designed to be implemented in five increments and that three of those increments have been functioning since 2001. The commissioner of DES said the final two increments involving electronic filing for benefits by unemployed workers were currently functional, and that negotiations were underway for reimbursement of a portion of expenditures made to the contractor employed to assist in implementation of KEWES. The commissioner further stated that the APA was invited to a demonstration of the KEWES project but declined the request. The commissioner concluded by stating that KEWES was extremely successful and achieving its objectives.

In addition to the two interim joint committee meetings, the House members of the Interim Joint Committee on Labor and Industry met in September and heard an update on the status of the unemployment insurance trust fund that pays benefits to unemployed workers in Kentucky. Officials from the Department of Employment Services including the director of the Division of Unemployment Insurance informed the committee that the trust fund is paying out more in benefits than it is taking in from employers' unemployment insurance tax collections. If the balance of the trust fund drops below $350 million dollars by the end of this year, employers will pay higher unemployment insurance taxes in calendar year 2004. The director said during the past two years, the trust fund has paid out approximately $200 million dollars more in benefit payments than it has collected in unemployment insurance taxes from employers. If this trend continues, projections indicate employers will likely face another tax increase in calendar year 2005, and the trust fund will be completely bankrupt in 2006.

The director said reductions in unemployment insurance taxes and increases in benefits to unemployed workers made by legislative changes in 1998 and 2000, and the unanticipated downturn in the economy during the past three years are the major reasons for the financial problems with the trust fund. The director said legislative action would be necessary to correct the financial problems plaguing the trust fund. The director suggested that legislative action might include amending the unemployment insurance law to impose a one-week waiting period as a condition of eligibility for receipt of benefits; increase taxable wage base from $8,000 to a higher amount; and repeal benefit enhancements made in 1998 and 2000. The director said most states are experiencing financial difficulties with their unemployment insurance programs, and many other states have more serious problems than those being experienced in Kentucky.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
LICENSING AND OCCUPATIONS

Sen. Gary Tapp, Co-Chair
Rep. Denver Butler, Co-Chair

Sen. Charlie Borders	Rep. Tom Burch
Sen. David Boswell	Rep. Larry Clark
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PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
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2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

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

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Licensing and Occupations met four times. The following executive orders were referred to the committee:

- Executive Order 2003-858 relating to Abolishment of the Backside Improvement Commission.
- Executive Order 2003-935 relating to Reorganization of the Kentucky Athletic Commission.

No action was taken on either executive order.

The following prefiled bills were referred to the committee:

- BR 20-AN ACT relating to electronic gaming at racetracks as a part of the state lottery.
- BR 21-AN ACT relating to electronic gaming at racetracks as a part of the state lottery, and making an appropriation therefor.
- BR 81-AN ACT relating to tongue splitting.

At the August meeting, a recovering gambler testified on the financial and familial problems he had experienced because of his gambling addiction. The problems he attributed to his gambling addiction were multiple divorces, a suicide attempt by his son, several job losses, embezzlement, and time spent in prison. The recovering gambler indicated that state funding for in-patient and out-patient treatment centers for gambling addiction was needed.

The committee discussed draft legislation establishing electronic gaming at racetracks and proposing a constitutional amendment to permit video lottery terminals at racetracks. The two drafts establishing electronic gaming at racetracks place oversight for the gaming under the Lottery Corporation and charge the Lottery Corporation with establishing standards for operating the games and licensing gaming device manufacturers, distributors, operations employees, security personnel, and others. Questions and comments from committee members focused on the pros and cons of providing gaming exclusively at the racetracks, using gaming revenues to address the state's budget shortfall, and providing a referendum on expanded gaming. The drafts establishing electronic gaming at racetracks have subsequently been prefiled as BR 20 and BR 21.

At the committee's September meeting, representatives of the Kentucky Higher Education Assistance Authority and the Lottery Corporation spoke on the Kentucky Educational Excellence Scholarship (KEES) program. The program, established in 1998 by the General Assembly, provides merit-based scholarships to eligible high school students. Kentucky is one of 23 states with merit-based scholarship programs. Kentucky's program differs from other states' programs because eligible students need not apply to receive an award; the amount of the award is based on a student's year-to-year rather than cumulative high school performance; students obtaining a high school grade point average of 2.5 in one or more years of high school education are eligible; receipt of need-based financial aid does not reduce the KEES award; and a college student may regain eligibility if the award is lost due to low grades.

In 2004, 40 percent of the lottery proceeds will go to merit-based scholarships, 40 percent to need-based scholarships, and $3 million to the literacy program. In 2006, all of the lottery proceeds except for $3 million earmarked to the literacy program will go to merit-based and need-based scholarship programs. Representatives of the Lottery Corporation cited increasing gaming opportunities in the surrounding states as one of the problems affecting lottery revenues. Specifically, the representatives noted that the onset of the lottery in Tennessee may affect approximately 11 percent of Kentucky's lottery sales. Citing the results of a 2002 marketing survey, the lottery representatives opined that sales would be boosted if the prohibition on advertising how lottery revenues are spent was repealed. The survey indicated that 63 percent of the lottery's former players would play again if they knew the proceeds were going to education.

Next was an update on the implementation of electrical workers' licensing. During the 2003 General Assembly, House Bill 115 licensing electricians, master electricians, and electrical contractors was enacted. Representatives of the Department of Housing, Building, and Construction reported that the department had established an online application process, established a pending license, and promulgated administrative regulations. The department's representatives reported that they had worked with the advisory board to accommodate the concerns of local governments with existing licensing programs, establish continuing education guidelines, and draft a code of ethics. Other issues to be addressed include determining the extent of supervision for unlicensed workers; selecting an examination; and establishing policies addressing the interconnectedness between electrical work and other fields such as heating, ventilation, and air conditioning.

The next item on the agenda was a response from the Kentucky Racing Commission on the recent auditor's report. In response to the report, the Racing Commission representatives reported that the commission had abolished the Backside Improvement Commission and that the positions of its staff and has assumed the Backside Commission's duties. Other issues raised in the auditor's report concerning the Racing Commission were the purchase and distribution of racing pins and courtesy passes, the establishment of a special account to purchase commission pins, the maintenance of the special account by state employees, the procedures used for claiming horses, and a personal service contract for the Equine Drug Council. The report recommended that the use of passes expire at the end of 2003; pins be issued only to the commissioners and staff for official business; the special account be privately maintained and solely used for private purchases, the procurement of the services of a private consultant be handled like any other state expenditure; and the claiming form be revised to lessen the possibility of voids due to inadvertent spelling errors.

The last item on the meeting's agenda was a report from the executive director of the Division of Licensing and Occupations on the implementation of the bills licensing private investigators and massage therapists. She reported that an application and fee schedule have been developed and that an examination is being developed for private investigators. The executive director reported that she had met once with the massage therapy board and had familiarized its members with the administrative regulation process. She said that the division did not have the staff or money available to oversee new boards, and the problem was especially difficult for boards that were too small to be self-sustaining. She indicated that in the past several legislative sessions, new boards had been placed under the oversight of the division, although no funding had been allocated.

At the committee's October meeting, an LRC staff economist reported on a Legislative Research Commission study of compulsive gambling. The study, authorized by HCR 126 in the 2003 General Assembly, was designed to identify the number of current compulsive gamblers, describe the effects of compulsive gambling, and examine current awareness and treatment programs for compulsive gamblers. The economist indicated that the results from the statewide telephone poll and the survey of Gamblers Anonymous meeting attendees, although conservative, were consistent with national findings. The statewide telephone survey found that there were approximately 20,000 problem gamblers in the state in the past year and that an estimated 24,000 adult Kentuckians sought treatment for gambling problems in the past year. From the 56 responses to the Gamblers Anonymous meeting attendees' survey, over one-half of the respondents indicated that they had other disorders such as alcohol and drug problems. The results from a survey of substance abuse counselors indicated that an estimated 20 percent of them had some training in gambling addictions and that half of the counselors with training had received it in the past year. Although there is no direct state funding for awareness and treatment programs, the study found that awareness programs operated by private groups, the Lottery Corporation, the Charitable Gaming Commission, and the racetracks are in place. Treatment programs are provided by Gamblers Anonymous, private providers, and Community Mental Health Centers if treated in conjunction with some other mental health problem.

The committee discussed the prefiled bill, 2004 BR 81, AN ACT relating to tongue splitting. The bill would prohibit tongue splitting unless performed by a physician or dentist for therapeutic reasons. The bill's sponsor indicated that tongue splitting most often occurs in the backrooms of tattoo parlors. Illinois has recently passed legislation prohibiting the practice, and similar bills have been considered in Texas, Michigan, and Iowa. Approximately 3,000 people nationwide have had their tongues split according to an industry publication.

The third item on the agenda was a discussion of a proposal to provide immunity to current and former employers who give truthful but defamatory information on a current or former employee's job performance. A representative of the Kentucky Staffing Association testified to the committee that similar legislation has been adopted in 35 states and opined that such legislation would encourage employers to be forthcoming with information on former employees. The representative noted that fear of lawsuits has a chilling effect on such disclosure. Moreover, she noted that providing immunity to employers will assist in alleviating problems with workplace violence. Members responding to the proposal commented that the legislation was unnecessary because under existing law, an employer would prevail in a suit for defamation if the disclosure is truthful.

Representatives of the Commission on the Deaf and Hard of Hearing reported on its efforts in assisting persons obtain licensing who serve as interpreters of the deaf and hard of hearing for kindergarten through 12th grade. House Bill 462 was introduced in the past session to grandfather persons serving as interpreters in elementary and secondary schools. Under existing law, persons serving as interpreters in the public elementary and secondary schools must meet minimum licensing requirements by July 1, 2003. Persons must obtain national certification to be licensed. Persons testifying at that time, indicated that obtaining certification was difficult because of time and travel constraints. They noted that if requirements were not eased, deaf students in some areas of Eastern Kentucky would not be served. Representatives of the commission testified that there are 178 persons in the state with national certification compared to 30 certified interpreters in the state in 1995. Fifty-nine persons have been tested and are awaiting certification. The commission's representatives also reported that additional workshops and training opportunities had been established for those needing to be licensed and that the eastern region of the state has a significant percentage of educational interpreters yet to achieve minimum standards.

The Commissioner of the Department of Alcoholic Beverages reported that the department had formed an industry and a community advisory council and had sought its input in proposed legislative changes. Two substantive changes proposed would revise current caterer's laws and require mandatory training for servers and sellers in lieu of license suspension. At present, there is a disparity in how the laws affecting caterers work. Under existing law, a caterer's license may be issued only to those holding a retail package or drink license. In some localities, a restaurant license is the only license that is issued; therefore, a person engaged in catering in those localities may not be issued an alcoholic beverage caterer's license. However, a person from a neighboring city or county where retail package and drink licenses are issued, may obtain a department-issued caterer's license and provide alcoholic beverages in the localities where only the restaurant license is issued and not be subject to the lower food sales requirements. A second revision would permit a licensee and his or her employees to participate in mandatory training in lieu of buying out the licensee's suspension. Existing law allows a retail licensee who is suspended to pay a fine in lieu of closing his premises.

At the committee's fourth meeting, the commissioner of the Department of Alcoholic Beverage Control addressed the curriculum for the department's training program for servers. The program provides licensees and their employee instruction on identifying fake identification, reducing illegal alcohol sales to minors, identifying the effects of alcohol on the body and behavior, Kentucky laws relating to alcoholic beverages, and the legal liabilities of those serving alcoholic beverages. The commissioner indicated that training in lieu of suspension would apply to first-time violators only.

Other items on the agenda included reports from the commissioner of the Department of Charitable Gaming and the counsel for the Board of the Kentucky Health and Welfare Fund, Inc. It was reported that in 2002, $608 million was generated from charitable gaming, 790 charitable organizations were licensed, and 87 licensed organizations failed to meet the retention threshold. Legislative changes were proposed for the 2004 General Assembly. The changes include making the fee increase permanent; allowing the playing of electronic games; adjusting the 40 percent rule to allow deductions for an organization's expenses such as advertisement, promotion, and association dues; expanding enforcement efforts for persons possessing unauthorized pulltabs; and authorizing license revocation for those submitting false information on their applications. The representative of the Kentucky Racing Health and Welfare Fund, Inc. discussed the board's progress in implementing the recommendations generated from the state auditor's 2003 report, "Examination of Selected Activities of the Kentucky Racing Health and Welfare Fund, Inc." Other issues discussed were the value of the Heywood Property and the eligibility requirements for and the benefits awarded by the Kentucky Racing Retirement Plan.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
LOCAL GOVERNMENT

Sen. Albert Robinson, Co-Chair
Rep. Steve Riggs, Co-Chair

Sen. Walter Blevins	Sen. Charlie Borders
Sen. Tom Buford	Sen. Julie Denton
Sen. Ernest Harris	Sen. David Karem
Sen. Alice Kerr	Sen. Elizabeth Tori
Sen. Johnny Ray Turner	Sen. Ed Worley
Rep. John Adams	Rep. Adrian Arnold
Rep. Scott Brinkman	Rep. Jim Callahan
Rep. James Comer	Rep. Ron Crimm
Rep. Mike Denham	Rep. Ted Edmonds
Rep. Derrick Graham	Rep. Jimmy Higdon
Rep. Charlie Hoffman	Rep. Stan Lee
Rep. Reginald Meeks	Rep. Marie Rader
Rep. Arnold Simpson	Rep. Roger Thomas
Rep. Ken Upchurch	Rep. Jim Wayne

LRC Staff: Jamie Franklin, Donna Gaines, Mark Mitchell, Joe Pinczewski-Lee, Alice Carter, and Cheryl Walters

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
GENERAL ASSEMBLY

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

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

COMMITTEE ACTIVITY

The Interim Joint Committee on Local Government met three times during the 2003 Interim. The committee discussed the need to continue or restructure the Kentucky Enterprise Zone program. Members also heard a report and discussed the status of the state's retirement systems for public employees. The committee met with various local government interest groups to determine their concerns and legislative needs for the 2004 legislative session.

The initial meeting of the committee was held in Northern Kentucky in conjunction with a series of other legislative committee meetings that were being held in that area. At this meeting, the committee discussed the Kentucky Enterprise Zone Program. This 20-year program, created in 1982 to stimulate economic development in blighted and economically depressed areas in a community, was not extended by the 2003 General Assembly. The 10 individual programs that were created as a result of the 1982 enterprise prize zone legislation are slated to be phased out beginning with the Louisville Enterprise Zone in December 2003. The committee heard from representatives of some of the state's largest enterprise zone programs: Louisville, Campbell County, and Newport. The representative of the Louisville Enterprise Zone said more than 2,400 businesses have participated in that zone since its creation. In 2002, there was a business investment of $282.9 million in that zone as a result of the program. Representatives of the Campbell County Enterprise Zone told the members that their zone program would not expire until 2006. They said that at least 187 jobs in their community are a result of the program. They emphasized that the enterprise zone program has been a major component in the successful efforts for redevelopment of the inner city and riverfront areas of Newport. It was also noted that the enterprise zone had contributed greatly to the renovation and upgrading of the housing stock within the zone. Representatives of the Covington Enterprise Zone stated that their zone comprised two-thirds of the territory of the city. She said that 25 percent of the employees in the zone were local residents. The tax benefits available for businesses locating in the zone were also identified as major incentives to developers that resulted in the renovation of several historic buildings into affordable housing for local residents. The Covington representatives told the committee there could and should be increased monitoring but the program should be extended. The committee also received an update on the status and phase out of the state operation of the program from the state director of the Kentucky Enterprise Zone Authority.

During the meeting, questions were asked and issues raised relating to many of the criticisms that had been leveled at the program. These included the lack of monitoring of qualified businesses within the enterprise zone; the need to monitor the proper usage of tax exemptions and credits by enterprise zone businesses; the possibility of the extension of the use of the enterprise zone concept to other communities instead of only the current 10 participants; the need for more specific reporting on the program that could justify it's existence; the need to have available to the public the names and qualifying tax purchases made by enterprise zone businesses; and ways to measure and provide more substantive proof that the original intent of the enterprise zone program is being met.

In September, the Committee held its second meeting jointly with the Interim Committee on State Government at Estill County High School in Irvine. The committee heard opening comments from the Estill County judge/executive who expressed his county's concerns regarding several issues. They included how the increasing costs of maintaining a county jail is destroying his and other counties' budgets, especially those in rural communities; the abuse of drugs and drug trafficking is running rampant in Eastern Kentucky and destroying the lives of the residents and their communities; how the Red River Gorge area is underused and how it has great potential for tourism and industrial development; how a local Army ordinance makes their area potentially vulnerable for terrorist activities; and how there needs to be further work done on state laws that deal with litter abatement.

At this meeting, the members of the joint committees were given an overview of the services and activities of the Department for Local Government by the commissioner of that executive branch agency. During the presentation, members also asked the commissioner for further information including the names of recent recipients of program funds that are managed by the department, the commissioner's assessment of the performance of the area development districts over the past few years and their role with his agency, and his speculation on the future of the Renaissance Kentucky Program.

The committee heard a report on the state's retirement system from the executive director of the Kentucky Retirement Systems. The director addressed funding issues affecting the system. He told the members that like the national economy, recent investment losses created by under performance in the stock market had created increased actuarial liability for the state in its retirement systems. He also told the members that the actuary had reported that the costs of Kentucky's medical insurance benefits to its retirees is running ahead of market returns and ahead of the national trend for similar benefits being paid by other states. He also noted that the requirement for an annual cost of living adjustment (COLA) for retirees is also creating serious funding problems for the system. He said that in all likelihood the state is going to have to continually increase its contributions to the retirement systems over the next few years in order to meet the actuarial assessments. He also reminded members that any action they take now will only affect newly hired employees because the rights and benefits of current employees are protected by law and cannot be rescinded. He also told members that the COLA provision is really an optional thing, costing approximately $43 million for a 3 percent increase this year alone. He noted that this provision could be repealed unlike some other benefits that are "locked in." He closed by noting that the benefits offered to members of the Kentucky retirement systems is far more generous than many other states.

The last order of business at this meeting was a report on the activities of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs. The co-chair of the task force reported on the implementation in Kentucky of the Help America Vote Act that provided federal funding for the provision of voting machine access to all persons. It was reported that Kentucky has received $5 million, which is being distributed by the state Board of Elections and that $41 million more could possibly be available if the state can provide a 5 percent match. The co-chairs also discussed other issues in the elections area which included slowness by some state agencies in reporting essential information to the board, the need for an increase in the pay of election workers, and the lack of voter education in the use of voting machine usage.

For its final meeting in October, the committee met in Frankfort. At this meeting, representatives of the Department for Local Government (DLG), the Kentucky League of Cities (KLC), and the Kentucky Council of Area Development Districts (KCADD) discussed their legislative needs for the 2004 General Assembly.

The Kentucky League of Cities officials discussed issues of concern that included the need for all local governments to have the flexibility they need to generate the revenues necessary to operate in the face of increasing operational costs, and the importance of fairness for local governments as the state develops programs for the provision of health care insurance for active and retired governmental workers. On these topics the members were told how unfunded mandates on local governments such as the "homestead exemption" or compliance with the Americans with Disabilities Act were creating serious financial problems for many cities.

KLC officials told the committee they would be supportive of any statewide tax reform effort if all local governments were included. But they also told the committee that they could not wait for tax reform and were instead prepared to request an expansion of the authority for all cities to levy a restaurant tax. They explained that currently cities of the fourth and fifth classes are permitted to levy such a tax but that it can only now be used for tourism promotion and a limited amount of recreational activities. Their proposal would extend the authority to levy the tax to an additional 36 cities, but the decision to levy the tax would be made at the local level. They noted that of the 218 cities that are currently eligible to levy the tax, only 17 do so. KLC officials said their proposal would include the expansion of the authority to levy the tax as well as an expansion of the types of activities for which these funds could be used. Several committee members asked questions and voiced concern over this proposal, which included whether other types of taxing tools such as development impact fees are available that could help cities; whether the restaurant and tourism industry supported such a proposal; whether it be possible for cities and counties to work together on the sharing of tax revenues on these types of taxes; what effect such a proposal would have on busy families who are having to utilize restaurants on a regular basis; whether this will be too much of a financial and administrative burden on small businesses; what effect would increases in the tax burden of our citizens at the local level have on the possible overall financial needs at the state level; and whether local governments are actually using all of the financial tools that are already available to them.

The last topics discussed by the KLC representatives were the need to add a $20 court fee to help replace funding that had been lost by cities as a result of the loss of base court revenue funding and the need for the creation of a historic reinvestment program. The mayor of Newport told members how a historic reinvestment program could reduce a property owner’s tax liability while at the same time assist the community in rehabilitating some of their historic treasures and bring many of these homes back on the tax rolls.

The Department for Local Government then presented its legislative recommendations for the 2004 Session: the need to include special districts in the statutes relating to the use of interlocal agreements; a request for newly incorporating cities to send reporting information to DLG similar to information sent to the Secretary of State’s office; the need to amend the statutes relating to the drafting of local ordinances; and the need to permit DLG to hold county budget workshops in election years. The department officials also voiced their support for the recommendations of the Task Force on Inter-County Cooperation.

The Kentucky Council of Area Development Districts representatives told the committee they were appreciative of past support from the General Assembly and the executive branch through the funding for the Joint Funding Administration and Area Development Fund programs. They also noted their concern over recent reductions of funding in both of these programs and the outlook for the state’s General Fund budget. They encouraged the committee to continue its support for these programs and to consider increases in the funding of both programs if money should become available.

The last action by the committee was the review of the final report of the Task Force on Inter-County Cooperation. A co-chair of the task force told the members that the task force had been charged to find ways to encourage local governments to enter into more interlocal agreements. She told members the recommendations of the task force included transferring review responsibilities of special district and consolidated local government interlocal agreements from the Attorney General's office to DLG; modifying KRS 65.260 to clarify that DLG has initial jurisdiction of review when any party of an interlocal agreement is any type of local government, including a special district; requiring DLG to create a log of interlocal agreements that includes the parties to the agreement and standardized agreement topics, and requiring notification to DLG of the termination of existing agreements; creating, through DLG, a publication for local governments to use when forming interlocal agreements; encouraging DLG to conduct a single financial study of interlocal agreements that examines the benefits of such agreements; encouraging KLC, KCADD, DLG, and the Kentucky Association of Counties to expand the promotion of interlocal agreements; providing, by statute, a simple way for a local government to dissolve an existing special district when it is determined that its services can be better provided through an interlocal agreement; and establishing a state program of financial incentives for local governments that enter into interlocal agreements.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON SENIORS, VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION

Sen. Dan Seum, Co-Chair
Rep. Mike Weaver, Co-Chair

Sen. Walter Blevins	Rep. Sheldon Baugh
Sen. Tom Buford	Rep. Carolyn Belcher
Sen. Paul Herron, Jr.	Rep. Tom Burch
Sen. Bob Jackson	Rep. Bill Farmer
Sen. Virgil Moore	Rep. Danny Ford
Sen. Joey Pendleton	Rep. Mary Harper
Sen. Albert Robinson	Rep Jodie Haydon
Sen. Richard Roeding	Rep. Fred Nesler
Sen. Katie Stine	Rep. Tanya Pullin
Sen. Elizabeth Tori	Rep. Steve Riggs
Sen. Jack Westwood	Rep Tom Riner
Sen. Ed Worley	Rep. Charles Siler
	Rep. Dottie Sims
	Rep. Jim Thompson

LRC Staff: Scott Varland, Clint Newman, Mike Bennett, Todd Stephens, and Wanda Gay-Hollon

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP

SUBCOMMITTEE ON
SENIORS AND VETERANS

Sen. Elizabeth Tori, Co-Chair
Rep. Dottie Sims, Co-Chair

Sen. Paul Herron
Sen. Bob Jackson
Sen. Virgil Moore
Sen. Richard Roeding
Sen. Jack Westwood

Rep. Carolyn Belcher
Rep. Tom Burch
Rep. Mary Harper
Rep. Fred Nesler
Rep. Tanya Pullin
Rep. Steven Riggs

Sen. Dan Seum, Ex Officio
Rep. Mike Weaver, Ex Officio

SUBCOMMITTEE ON MILITARY AFFAIRS
AND PUBLIC PROTECTION

Sen. Albert Robinson, Co-Chair
Rep. Jodie Haydon, Co-Chair

Sen. Walter Blevins
Sen. Tom Buford
Sen. Joey Pendleton
Sen. Katie Stine
Sen. Ed Worley

Rep. Sheldon Baugh
Rep. Bill Farmer
Rep. Danny Ford
Rep. Tom Riner
Rep. Charles Siler
Rep. Jim Thompson

Sen. Dan Seum, Ex Officio
Rep. Mike Weaver, Ex Officio

INTERIM JOINT COMMITTEE ON SENIORS, VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION

JURISDICTION: Matters pertaining to senior citizens; eliminating age discrimination; nonpublic-sector retirement; problems of aging; violent acts against the elderly; military affairs and civil defense; national guard; veterans; retention of military bases; veterans' rights, benefits, and education; veterans' nursing homes; military memorials and cemeteries; safety of citizens and security of public buildings and property; fire prevention and protection; foods, drugs, and poisons; pure foods and drugs; trailer park regulations; hotel and restaurant regulations as they pertain to public health; sanitation plants; and garbage and refuse disposal.

COMMITTEE ACTIVITY

During the 2003 Interim, the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection held five meetings. The committee was organized into two subcommittees: the Subcommittee on Seniors and Veterans and the Subcommittee on Military Affairs and Public Protection. Each subcommittee met twice.

The June 2003 committee meeting began with a discussion of the current federal military Base Realignment and Closure procedure that will conclude in 2005 (BRAC 2005). The executive director of the Kentucky Commission on Military Affairs provided an overview of base closure and its importance to the Commonwealth and asked for legislative assistance to protect the state's military assets. He suggested that the committee facilitate the hiring of a BRAC 2005 lobbyist in Washington, DC. The state director, office of Sen. Mitch McConnell, testified in favor of hiring a Washington, DC, lobbyist. The co-chairs said they would draft a letter to request that the Legislative Research Commission authorize the funding for a lobbyist.

The commissioner of the Kentucky Department of Veterans' Affairs (KDVA) spoke on veterans issues. He thanked the General Assembly for fully staffing veterans' nursing homes and said that the KDVA will not request an increase in General Fund appropriations during the upcoming budget cycle. He outlined capital projects currently underway, including the completion of three veterans' cemeteries. The commissioner concluded his presentation by praising the KDVA's Benefits Branch that brings millions of dollars worth of federal veterans' benefits into Kentucky.

The legislative director for the Joint Executive Council of Veterans Organizations (JECVO) outlined its legislative program for the 2004 Session. JECVO wants the General Assembly to establish independent funding mechanisms that will generate money for KDVA so that KDVA will be less dependent on the General Fund.

In July, the committee met at Fort Knox and adopted a resolution honoring Martin Andrew Tori II. The co-chairs had written a letter urging the hiring of a BRAC 2005 lobbyist. Following receipt of the letter, the Legislative Research Commission had authorized the hiring of such a lobbyist to protect Kentucky's military bases during the BRAC 2005 process. A United States Army Major said that the United States Army Recruiting Command is located at Fort Knox. She described Army recruiting efforts and said legislators can help Army recruiting in two ways. First, they can promote Army enlistment in general while referring potential enlistees to the United States Army Recruiting Command. Second, legislators can encourage school districts to consider free Army aptitude testing in high schools. The committee toured the United States Army Recruiting Command Cyber Recruiting Station and viewed a Combined Arms Live Fire Exercise.

The third meeting occurred during September. The commissioner of the KDVA spoke on veterans' health care, which the federal government is restructuring through Capital Asset Realignment for Enhanced Services (CARES). The CARES Commission is considering three issues that will impact Kentucky. First, the CARES Commission may recommend closure of the Leestown Road health care facility in Lexington. Second, the CARES Commission is considering three options for the Louisville VA Hospital: construct a new hospital, renovate the existing facility, or create a hospital within the University of Louisville hospital in downtown Louisville near the federal veterans' benefits office. Third, the CARES Commission might not recommend enough outpatient care for Kentucky veterans. The secretary of the federal Department of Veterans Affairs will act on the recommendations.

The meeting continued with a presentation by the executive director of the Kentucky Office for Security Coordination who spoke on homeland security vulnerability assessments mandated by the federal Department of Homeland Security. He also listed several community based homeland security vulnerability assessments.

The fourth committee meeting took place in October. The committee adopted two resolutions: one honoring Sergeant Darrin K. Potter and the other honoring Major General John R. Groves, Jr.

Kentucky's chief information officer spoke on wireless interoperability among public safety agencies. With wireless interoperability, police, firefighters, and EMS personnel can communicate with each other during an emergency. First responders lacked wireless interoperability when they responded to the terrorist attack on the World Trade Center. The chief information officer said that with the implementation of 98 HB 45 and 03 HB 309, Kentucky has taken strides toward achieving wireless interoperability. She requested support for four legislative proposals:

- Permit the Kentucky Wireless Interoperability Executive Committee (KWIEC) to establish interoperability standards.
- Require that KWIEC review all public agency plans for installing or upgrading communications systems.
- Require that KWIEC review public agency spending on installing or upgrading communications systems.

- Support funding requests for maintenance and technology upgrades for the Kentucky Emergency Wireless System.

The secretary of the Louisville Metro Cabinet for Public Protection spoke on the interoperability problems posed by the merger of Louisville and Jefferson County. The Louisville Metro mayor wants to create the MetroSafe Emergency Communications Network to create interoperability among police, firefighters, EMS, public health, and hospitals. Louisville Metro has had some success in obtaining federal grants to promote interoperability. The deputy director of Daviess County Emergency Management spoke on the efforts in Daviess County to expand Computer Aided Dispatch throughout the county and to add cross band radio capability and upgraded mobile data systems. The executive director of the Center for Rural Development said that the center serves 42 counties in southeastern Kentucky. With federal funding, the Center for Rural Development has improved the computers and wireless interoperability of law enforcement agencies located in the 42 counties.

At the committee's fifth meeting, held in November, the adjutant general and the executive director of the Office for Security Coordination presented the statutorily mandated annual report on the readiness of the Commonwealth to respond to acts of war or terrorism. The adjutant general began by congratulating the committee on creating the Office for Security Coordination. He went on to say that the office is located within the Department of Military Affairs, headed by the adjutant general, and lacks a separate budget. Under this arrangement, the executive director of the office has been limited to persuading public agencies to talk and work together to promote Kentucky homeland security. It was suggested that legislation should be drafted to take the Office for Security Coordination out of the Department of Military Affairs and place it in the Office of the Governor. Then the Office for Security Coordination would have a separate budget and the authority to run Kentucky's homeland security efforts.

The executive director of the Office for Security Coordination said that the office has numerous working issues. The top three are protection of sensitive homeland security information through amending the Kentucky Open Records Law; continuation of threat assessments and the development of strategies based on those assessments; and establishment of interoperability of public safety wireless communications. He said the State Police has improved in three areas of anti-terrorism: prevention, crisis response, and consequence management. The Department of Criminal Justice Training has begun to offer anti-terrorism courses to peace officers with regard to biological incidents, weapons of mass destruction, what patrol officers need to know, and other areas. In addition, the department is conducting community vulnerability assessments throughout Kentucky. The Department of Public Health has developed bio-terrorism response plans for 14 Kentucky regions. Implementation of the plans has begun through the acquisition of equipment and training.

The Department of Agriculture is working with public agencies such as the Division of Emergency Management throughout Kentucky and with contiguous states to improve emergency response. The Kentucky National Guard has improved security in several ways, including increasing protection of key National Guard installations, staffing the Emergency Operations Center, enhancing anti-terrorism measures, and conducting physical security inspections. The Governor's Office for Technology has been working to increase the security of state computers, computer networks, and the Internet and to promote interoperability of public safety wireless communications.

The Division of Emergency Management has created and equipped 14 Hazardous Material/Weapons of Mass Destruction Regional Response Teams. In addition, the division has administered grants totaling $30 million awarded by the federal Department of Homeland Security. The Transportation Cabinet has trained more than 1,000 field personnel on hazardous materials, weapons of mass destruction, incident management, and first responder actions. The cabinet hopes to continue to improve drivers' licensing. Kentucky Vehicle Enforcement escorts an increasing number of vehicles containing radioactive materials. More funding may be needed to provide these escorts. The Finance and Administration Cabinet is behind schedule in carrying out its homeland security responsibilities such as vulnerability assessments of public buildings.

Lastly, by implementing 03 SB 46, several state agencies have cooperated to keep track of the tens of millions of dollars in federal homeland security grant money flowing into Kentucky through the awarding of dozens of grants. By tracking this federal money, the Office for Security Coordination and the Kentucky General Assembly will be able to monitor how effectively the money is being spent and why some public agencies are receiving the money and others are not. The ultimate goal will be to assist all public agencies in their attempts to obtain federal homeland security grant money.

Subcommittee on Seniors and Veterans

At the first subcommittee meeting, held in October, the commissioner of the KDVA elaborated on his remarks to the full committee in September. He provided a CARES timeline. The last CARES Commission meeting was held October 7. However, due to unresolved issues, the secretary of the federal Department of Veterans Affairs has decided to personally visit some veterans' health care sites, and Congress is becoming more deeply involved in the process. The secretary will make his final CARES decision no later than December 30, 2003. The commissioner said that the most important issue is whether veterans' health care will continue to be funded with discretionary funding as opposed to mandatory funding. The commander of the Kentucky Veterans of Foreign Wars said that the CARES Commission's proposed changes for Northern Kentucky would not enhance service to veterans. Furthermore, closing the Leestown facility in Lexington would mean poor nursing home care, poor mental health care, and poor primary care for Kentucky veterans. The past commander of the Kentucky American Legion said that the Leestown facility was renovated five years ago and should not be shut down. He expressed the concern that Kentucky patients are being sent to Tennessee for treatment when they should be kept in Kentucky. The assistant supervisor of the Disabled American Veterans said that there is no room for expansion of the Louisville VA Hospital. He recommended that the VA Hospital become a hospital within the

University of Louisville hospital in downtown Louisville near the federal veterans' benefits office.

In November, the subcommittee met a second time to discuss elder abuse and services for Kentucky seniors. The deputy secretary of the Cabinet for Families and Children said that more and more Kentuckians are concerned about elder abuse. However, elder abuse remains underreported. Even so, there are 6,000 reported cases each year. At present, no coherent and comprehensive structure exists to protect Kentucky seniors from abuse. State agencies need to cooperate more to promote adult protection. The deputy secretary recommended that the General Assembly pass a bill to clarify the roles of all state agencies in protecting adults. The president of the Kentucky Association of Homes and Services for the Aging testified that Kentucky's elderly population is growing rapidly. The association supported 03 HB 242, an anti-elder abuse piece of legislation. At the same time, the president argued against criminalizing good-faith mistakes made during elder care. The aging coordinator of the Barren River Area Development District described Area Agencies on Aging operated by the area development districts. Congress created the agencies, which are now the Kentucky leaders in providing aging information and services. The aging coordinator of the Lincoln Trail Area Development District described the many other aging programs run by the area development districts.

Subcommittee on Military Affairs and Public Protection

The subcommittee met for the first time in September. The adjutant general gave an overview of the Kentucky National Guard and then proceeded to discuss specific issues. He said that the federal government might reduce the size of the Kentucky Air National Guard. Such a reduction would cause a negative economic impact of $10 million to the Louisville Metro area. He described the many missions taken on by the Kentucky Army and Air National Guard since the terrorist attacks on September 11, 2001. Due to all of the mobilizations, there will be a surge in the number of National Guard members who will be returning to Kentucky and wanting to take advantage of the Tuition Assistance Program. Under these circumstances, there may not be enough money to fully fund the Tuition Assistance Program. He also noted the $16 million maintenance backlog for Department of Military Affairs buildings.

The director of the Division of Emergency Management listed five homeland security issues. First, he recommended amending the Kentucky Open Records Law to protect sensitive homeland security information. Second, public safety agencies should continue to pursue wireless interoperability throughout Kentucky. Third, public safety agencies should continue to prepare for acts of bioterrorism. Fourth, he urged that all levels of government throughout each Kentucky region collaborate on anti-terrorist efforts. Fifth, more Kentuckians need to obtain federal top secret security clearance to make possible timely dissemination of actionable intelligence information. The director finished his remarks with an overview of the federal homeland security grants that have come into Kentucky.

At the subcommittee's second meeting held in November, it took up the economic importance of military activity in Kentucky. A University of Louisville economics professor said that the military is Kentucky's second largest industry with a total economic impact of $4.75 billion. Kentucky firms received $2.3 billion in defense contracts in 2002. The Armed Forces payroll in Kentucky is approximately $1.2 billion. Veterans' benefits payments account for nearly $500 million. Retirees receive $370 million. The civilian payroll amounts to $350 million. The Reserve and National Guard payrolls come to $120 million. The professor suggested that Kentucky pursue regional military economic development efforts. He went on to say that Kentucky firms obtained just $7 million in research and development contracts during fiscal year 2002. With regard to these contracts, Kentucky is not doing well in comparison with states of similar size and military presence. The commissioner of the Department of Community Development described the Kentucky Procurement Assistance Program (KPAP) established in 1991. With the support of state and federal funding, KPAP assists small- and medium-sized businesses in preparing to bid for government contracts at all levels of government. In 2002, KPAP clients reported receiving 268 contracts worth $85 million. The Defense Department awarded $38 million of the $85 million.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
STATE GOVERNMENT

Sen. Albert Robinson, Co-Chair
Rep. Charles Geveden, Co-Chair

Rep. John Adams	Rep. J. R. Gray
Rep. Adrian Arnold	Rep. Mike Harmon
Rep. Eddie Ballard	Sen. Ernie Harris
Rep. Joe Barrows	Rep. Charlie Hoffman
Rep. Carolyn Belcher	Sen. David Karem
Sen. Walter Blevins	Sen. Alice Kerr
Sen. Charlie Borders	Rep. Jimmie Lee
Rep. Kevin Bratcher	Rep. Gross Lindsay
Rep. Jim Bruce	Rep. Paul Marcotte
Rep. Buddy Buckingham	Rep. Mary Lou Marzian
Sen. Tom Buford	Rep. Lonnie Napier
Rep. Dwight Butler	Rep. Steve Nunn
Rep. Jim Callahan	Rep. Tanya Pullin
Rep. Larry Clark	Rep. Jon David Reinhardt
Rep. Perry Clark	Rep. Tom Riner
Rep. Tim Couch	Rep. John Will Stacy
Rep. Brian Crall	Rep. Tommy Thompson
Sen. Julie Denton	Sen. Elizabeth Tori
Rep. Tim Feeley	Sen. Johnny Ray Turner
Rep. Joe Fischer	Rep. Jim Wayne
Rep. Derrick Graham	Sen. Ed Worley

LRC Staff: Joyce Crofts, Karen Armstrong-Cummings, Laura Hendrix, Jim Roberts, Mark Roberts, Kathryn Walton, Stewart Willis, Peggy Sciantarelli, and Terisa Roland

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP

TASK FORCE ON ELECTIONS, CONSTITUTIONAL AMENDMENTS, & INTERGOVERNMENTAL AFFAIRS

Sen. Alice Kerr, Co-Chair
Rep. Adrian Arnold, Co-Chair

Rep. Joe Barrows
Rep. Kevin Bratcher
Rep. Jim Bruce
Sen. Tom Buford
Rep. Perry Clark
Rep. Joe Fischer
Rep. J. R. Gray
Rep. Mike Harmon
Sen. Ernie Harris
Rep. Charlie Hoffman
Sen. David Karem
Rep. Gross Lindsay
Rep. Mary Lou Marzian
Rep. Jon David Reinhardt
Sen. Elizabeth Tori

Sen. Albert Robinson, Ex Officio
Rep. Charles Geveden, Ex Officio

SUBCOMMITTEE ON PUBLIC EMPLOYEE BENEFITS

Sen. Albert Robinson, Co-Chair
Rep. Charles Geveden, Co-Chair

Sen. Charlie Borders
Rep. Buddy Buckingham
Rep. Larry Clark
Rep. Tim Feeley
Sen. David Karem
Rep. Jon David Reinhardt
Sen. Elizabeth Tori
Sen. Ed Worley

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

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

COMMITTEE ACTIVITY

The Interim Joint Committee on State Government held six meetings during the 2003 Interim. The committee focused on funding issues related to the state-administered retirement systems, the Commonwealth's group health insurance program, "unescorted retirees," and issues related to medical malpractice.

In June, the secretary of the Personnel Cabinet discussed three executive branch state employee reductions required by the 2003 budget bill, HB 269. Regarding the requirement that, effective September 16, 2003, the number of principal assistants should be reduced to the number employed on December 1, 1995 (106), the secretary reported that there were 178 as of December 3, 2002, and 123 as of June 23, 2003. Regarding the reduction, effective December 1, 2003, of unclassified employees to 250 fewer than the number employed on the effective date of the budget act, the secretary reported that there were 941 unclassified employees on December 3, 2002; 914 on March 25, 2003; and 855 in June 2003. Regarding the targeted reduction of 1,000 employees from the state workforce by December 13, 2003, the secretary reported that after the departure of summer seasonal employees, the total number of employees will be reduced by 548, half of the required reduction. The other half is expected to be accomplished through retirements, persons leaving state government for employment in the private sector, and vacancies not filled.

At the June meeting, various local government associations, the Kentucky Department of Education, and the Kentucky Education Association discussed 2003 HB 103 and "unescorted retirees"—retirees in the state health insurance group whose employers do not participate in the state health insurance group. Including active employees contributes to lower premiums overall, since the younger employees generally have lower costs than the older retirees. The Kentucky Group Health Insurance Board estimated that retirees and dependents of employers not participating in the group ("unescorted retirees") added $9.9 million to the total cost of health insurance for the state group in calendar year 2000 and more than $15 million in 2001. The board recommended that employers who do not participate in the group either be required to include their more than 57,000 employees in the state group or be required to pay for the added cost of their retirees.

At the August meeting, the committee discussed the issue of medical malpractice with representatives of the Kentucky Medical Association (KMA), the Kentucky Academy of Trial Attorneys, the Kentucky Department of Insurance, and Sen. Daniel Mongiardo.

Generally, the KMA testified in favor of tort reform as a solution to the increase in medical liability insurance premiums. KMA testimony noted that, according to PricewaterhouseCoopers, 7 percent of the increase in health care costs is due to litigation that has resulted in large awards and skyrocketing insurance premiums over the past 20 years. The testimony included discussion of physicians relocating in other states or retiring early; counties that are without an obstetrician or general surgeon; doctors' restriction of their practices; shortage of physicians in the state; shortage of access to anesthesiology coverage; and hospitals that close or restrict services. KMA stated that it supported unlimited compensation for economic damages but that a reasonable, balanced limit is needed on awards for noneconomic damages. KMA further stated that, since two earlier tort reform packages passed by the legislature were ruled unconstitutional by the Kentucky Supreme Court, liability reform in Kentucky will require a constitutional amendment.

The KATA said that caps on noneconomic damages do not have a significant relationship to medical malpractice insurance premiums. The June 2003 Weiss Ratings reported that, from 1991-2002 in 19 states that implemented caps, physicians experienced a 48.2 percent increase in median premiums; and that in 32 states without caps, the pace of increase was somewhat slower. Furthermore, KATA stated that according to the *Kentucky Trial Court Review*, in 2002 there were only two medical negligence cases in Kentucky in which the award exceeded $250,000 for noneconomic damages—one in Jefferson County and one in the Pennyrile area. The KATA noted that the poor economy had spurred the problem. When the stock and bond markets declined, the insurance companies, that had been relying on investment income, did not have adequate reserves and, as a result, increased premiums.

The KATA proposed other solutions to the problem: repeal the anti-trust exemption for the insurance industry; require prior approval of rate changes; form new medical malpractice insurers with start-up loans from the state; and prohibit recoupment of investment losses through rate increase.

Sen. Daniel Mongiardo, a practicing physician, presented a written statement to the committee in which he defined the issue as not about “caps versus no caps” but about medical errors of the current antiquated health care delivery system. He stated that most errors are not individual doctor or nurse errors; they are errors of the system. He proposed that the answer lies in eliminating medical errors that result in malpractice cases as well as injury and death for patients.

Sen. Mongiardo proposed six recommendations: (1) Focus on preventable errors by increasing the use of technology and establishing a Health Information System or E-Health Network; (2) Establish independent, fair medical review panels to reduce nonmeritorious malpractice cases; (3) Establish a medical review board that conducts root cause analysis when medical errors occur and suggests changes to reduce errors, improve safety, and reduce costs; (4) Work with federal officials to establish a publicly funded research center for patient safety, health care quality improvement, and cost reduction in partnership with the University of Louisville and University of Kentucky Centers for Health Informatics; (5) Create a system for doctors to report medical errors without fear that the information will be used against them in court; and (6) Offer doctors and medical providers a voluntary medical malpractice plan that limits total provider liability to $500,000, with a newly created Patient Compensation Fund that covers any award exceeding the provider’s initial $500,000 policy. Providers would be required to report errors and comply with safety improvement and cost reduction programs.

The commissioner of the Department of Insurance reported that their rate filings regulation has had some positive effect in reducing increases in rates. The commissioner provided additional information on market alternatives such as the captive insurer and the reciprocal insurer and discussed the status of the medical malpractice insurance market, federal law as it pertains to the purview of the state to regulate insurance, and the effect on insurance companies of the September 11, 2001, terrorist attacks. Committee members expressed interest in meeting with the commissioner again.

The committee’s September 23 meeting was held at Natural Bridge State Park. The secretary of the Personnel Cabinet presented a PowerPoint presentation (copy on file with committee staff) titled, “Health Insurance Trends and Public Employees” that covered physician and hospital network strength; comparison of the 2003 Commonwealth group with data from the Mercer 2002 national survey; health care flexible spending accounts; Commonwealth group trends; enrollment by tier, plan/option, carrier, and employee group for 1999-2003; group health care costs, by age; and prescription drug utilization in 2000, 2001, and 2002.

The deputy state budget director summarized an overview of the budget (full-length overview on file with committee staff). He noted that the shortfall for FY 2001 was $185.4 million, with no cuts to education. The total shortfall for FY 2002 was $687.1 million, with no education cuts to grades K-12, but a two percent cut in postsecondary education. The FY 2003 budget protects education, human services, and public safety but includes 2.6 percent cuts to most state agencies. Agency budgets are “flat-lined” for FY 2004.

The September 24 meeting was a joint meeting with the Interim Joint Committee on Local Government in Estill County. The committees heard a presentation from the commissioner of the Department for Local Government (DLG) who described DLG as a one-stop shop for local governments to access information and to obtain assistance. The commissioner discussed DLG's programs and services for local governments. The committees also heard a report from the executive director of the Kentucky Retirement Systems (KRS) regarding funding issues. In recent years, the systems have experienced investment losses in the billions of dollars. These losses, in combination with increasing funding needs for retiree health insurance benefits, are expected to drive employer contribution rates up over the next decade. Because of the contractual nature of pension benefits, the General Assembly may reduce costs only by changing benefits for new members.

In its October meeting, the committee heard a report from its Subcommittee on Public Employee Benefits and a discussion of proposals to address retirement funding issues. The executive director of KRS presented proposals that the KRS Board is considering, and he discussed the recommendations of the KRS actuary, The Segal Company. The committee also discussed prefiled 2004 BR 62, which addressed the issue of "unescorted retirees," and heard a staff review of changes proposed in 2003 SB 205 and how they compare with current provisions.

In its final meeting on November 24, the committee heard a report from the departing chief information officer (CIO) of the Commonwealth on the status of technology in Kentucky. Asked for advice on what direction the General Assembly should take regarding the future of technology in Kentucky, the CIO suggested preserving the advances of the past six years, especially noting the ability for policy decisions to be made across the enterprise rather than by individual agencies "doing their own thing"; emphasizing self-service by individual citizens and businesses through the Internet; retaining the structure of the Governor's Office of Technology as a stand-alone office, primarily because it allows for a horizontal view across all of state government; developing policies to promote private sector development of connectivity to the Internet for rural areas in Kentucky; and educating Kentuckians on the benefits of connectivity.

The committee also heard from the president and CEO of the Kentucky Lottery Corporation (KLC) concerning the KLC Board's action to implement an online keno game. He announced that, as of the previous weekend, he had been directed by the chair and vice-chair of the board to cease all efforts toward implementation of a keno game. The board would not meet until January, but he believed the issue of keno is moot.

Regarding the ongoing issue of retirement funding issues, the executive director of the Long-Term Policy Research Center reported on their study of the expected cost of pension benefits. He said that in 10 years the state's contributions to the largest pension systems would at least double, and by 2014 could require nearly 8 percent of total General Fund and Road Fund revenues (4 percent today).

The Subcommittee on Public Employee Benefits reported that it was not prepared to issue recommendations at that time, although possible solutions to the retirement funding issues would continue to be explored during the session.

SUBCOMMITTEE ACTIVITY

Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs

During the 2003 Interim, the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held three meetings.

At its first meeting, in June, the task force heard presentations on the draft state plan for the implementation of the federal Help America Vote Act. The state plan's acceptance by the federal government will make Kentucky eligible for federal funds to implement the provisions of the federal Act. The State Board of Elections and Secretary of State's office have developed a state plan that is intended to be flexible while also meeting the federal requirements. The most significant aspect of the federal law is that it will require disabled-accessible voting machines in each polling location in the state by 2006. The federal law also requires provisional voting—a method by which a voter who is not on the voting rolls or whose eligibility to vote has been challenged may fill out a ballot that is then placed aside until the voter's registration information may be confirmed. The State Board of Elections stated that this makes correct voting rolls particularly important. The board also said it has seen significant delays in the receipt of death information, which is received from the Vital Statistics Office in the Department for Public Health within the Cabinet for Health Services. This information is used to update the voter registration rolls. The task force voted to send a letter requesting that this information be expedited.

At its second meeting, in August, the task force heard a report on information related to the updating of voter registration records. The task force heard information compiled by LRC staff that the Office of Vital Statistics had been from four to six months late in giving death information to the State Board of Elections, which may have resulted in up to 50,000 deceased voters being left on the voting rolls for elections, from the period from December 1997 to June 2003. The State Board of Elections gave a presentation on the processes involved in updating voter registration information. The commissioner of Public Health informed the task force that there had been delays in getting the death information to the State Board of Elections in a timely fashion, and that the commissioner had been unaware of the delays until contacted by the task force. The commissioner stated that the information had been brought up to date, and that the office would continue to work with the State Board of Elections to ensure that the information is sent in a timely fashion.

At its third meeting, in October, the task force heard a presentation from offices of the Kentucky Attorney General, Commonwealths' attorneys, county clerks, and the State Board of Elections on issues relating to vote fraud. Each office presented information regarding its responsibilities in dealing with vote fraud. Additionally, the State Board of Elections gave an update on implementation of the Help America Vote Act and stated that the board would be issuing a regulation to create provisional voting in Kentucky, which would only apply to federal elections. The task force also heard a presentation regarding federal political action committees that are domiciled in Kentucky.

Subcommittee on Public Employee Benefits

The Subcommittee on Public Employee Benefits held four meetings during the 2003 Interim. In addition, the co-chairs met privately with groups representing employees and employers to discuss benefit issues and to seek recommendations to reduce benefit costs.

At the first meeting held October 13, the subcommittee reviewed the status of the state health insurance group and the Kentucky Retirement Systems. The secretary of the Personnel Cabinet testified that while state law guaranteed health insurance would be provided to retirees, it did not guarantee health insurance or a specific level of coverage to state employees. The executive director of the Kentucky Retirement Systems presented an overview of the retirement funding situation. The systems have experienced investment losses in the billions of dollars in recent years. Those losses in combination with funding needs for retiree health insurance benefits are expected to drive employer contribution rates up over the next decade. Because of the contractual nature of pension benefits, the General Assembly may reduce costs only by changing benefits for new members.

The subcommittee held its second meeting October 21 to review the provisions of 2003 Senate Bill 205 relating to benefits for new employees and to hear testimony from groups representing employees and employers that participate in the Kentucky Retirement Systems. The Kentucky League of Cities reported that its members were aware of the rising cost of retirement benefits and recommended a number of changes in benefits for new employees, which included increasing the length of service for retirement and full medical insurance benefits. Representatives of the Kentucky Professional Firefighters, the Kentucky Public Retirees, and the Kentucky Firefighters Association stated that their organizations believed that the focus for any changes should be with the retiree health insurance benefits.

The executive director of the Kentucky Long-Term Policy Research Center addressed the subcommittee at its November 17 meeting to report that based on the expected cost of pension benefits, contributions to the state's largest pension systems would at least double in 10 years and could require nearly 8 percent of total General Fund and Road Fund revenues by 2014, compared to just 4 percent of those revenues today. Following that presentation, the executive director of the Kentucky Retirement Systems presented changes in retirement benefits for new employees developed by the retirement board with assistance from an actuary. The retirement board proposed that the post-retirement health insurance benefit for new employees be a fixed-dollar accrual not tied to the premium.

At the final meeting held November 24, the subcommittee reviewed a proposal to set the benefit factor for all nonhazardous groups at the permanent Kentucky Employees Retirement System rate, establish a minimum retirement age, and create a fixed-dollar accrual amount for post-retirement health insurance.

REPORT OF THE 2003
INTERIM JOINT COMMITTEE ON
TRANSPORTATION

Rep. Hubert Collins, Co-Chair
Sen. Virgil Moore, Co-Chair

Rep. John Arnold
Rep. Carolyn Belcher
Rep. Denver Butler
Rep. Mike Denham
Rep. Jodie Haydon
Sen. Ray Jones
Rep. Jimmie Lee
Rep. Paul Marcotte
Rep. Russ Mobley
Rep. Rick Nelson
Rep. Marie Rader
Sen. Albert Robinson
Sen. Ernesto Scorsone
Rep. Jimmy Stewart
Rep. Jim Thompson
Rep. Tommy Turner
Rep. Mike Weaver

Rep. Eddie Ballard
Sen. Charlie Borders
Rep. Howard Cornett
Rep. Keith Hall
Sen. Paul Herron
Sen. Dan Kelly
Sen. Bob Leeper
Rep. Charles Miller
Rep. Lonnie Napier
Rep. Don Pasley
Rep. Rick Rand
Sen. Richard Sanders
Rep. Ancel Smith
Sen. Gary Tapp
Sen. Johnny Ray Turner
Rep. John Vincent

LRC Staff: Kathy A. Jones, John Snyder, and Linda Hughes

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 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; matters pertaining to the construction and maintenance of the state highway system; the Transportation Cabinet; 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; and driver training schools.

COMMITTEE ACTIVITY

The Interim Joint Committee on Transportation met six times during the 2003 Interim.

During the first meeting on June 3, the committee received a Road Fund status report, an update on the motor vehicle titling process, a review of highway work zone practices, discussed the implementation of the 2003 enacted transportation legislation, and took action on two Transportation Cabinet administrative regulations.

The Transportation Cabinet said it was presently on target with Road Fund revenues. The state's revenue forecasting group estimated that there would be a nominal gain (0.2 percent) in the fund's top two tax areas, motor fuels and motor vehicle usage, over FY 2002 and FY 2003. The group also reported that 10 months into fiscal year 2003, the state's Road Fund revenues in these two areas were at a gain of 0.3 percent. That 0.3 percent computes to $919.1 million in FY 2003, as compared to $916.7 million in FY 2002.

The members were told that the state's six-year highway plan was approximately $1 billion dollars underfunded and that the dilemma occurred with the adoption of 2000 House Bill 502. House Bill 502 allowed the Transportation Cabinet to incur highway project obligations above the enacted appropriation limit, while keeping the expenditures associated with a particular project from exceeding its enacted appropriation. This "pre-financing system" allowed the cabinet to begin spending down its then reserve fund of approximately $650 million, coupled with an investment income of around $40 million.

Cabinet officials also stated that because of the declining Road Fund revenues, the state now has a clause in all of its highway contracts specifying that if Road Fund money goes below a certain level, the project(s) could be stopped. Of the cabinet's average yearly budget of $1.7 billion, $885 million is already accounted for in fixed expenditures that must go to the Kentucky State Police and other agencies, revenue sharing of funds for city and county road programs, debt service, maintenance, resurfacing, vehicle regulation, and capital construction costs.

The committee members were told that Transportation Cabinet is still in the process of identifying the best way to handle the flow of title requests, which come to the cabinet in two different ways, via walk-in traffic or mail in requests. The cabinet had tried a process whereby walk-in traffic was restricted to two days a week and five title requests per person per visit. This process resulted in long lines and people having to wait several hours to have their titles processed. The cabinet soon recognized that this process was not the most efficient way to handle the work flow and has since gone to four-days a week for walk-in traffic, with a 10-title request restriction and a one-day turn-around allowance. The committee was told that the one-day turn-around time did not cause undue hardships on the majority of individuals since most of these individuals brought title requests in daily for auto dealers.

With regard to highway work zone practices, a Transportation Cabinet official reported that their motor vehicle enforcement officers were instructed not to issue double-fine tickets if the double sign was posted, but no one was working. However an officer would still be issuing restricted zone tickets, which are different from the double-fine tickets or regular speeding traffic tickets.

The committee was given an overview of how the Transportation Cabinet was implementing 2003 House Bills 124, 234, and 293, all enacted during the previous legislative session. According to the cabinet, implementation of the above legislation was going well and on schedule.

The last item on the committee's June agenda was a review of two administrative regulations promulgated by the Transportation Cabinet: 600 KAR 6:070 – Contracting for professional engineering or related services; and 600 KAR 6:080 – Financial records and audits of firms. The committee approved both regulations.

At the committee's July 1 meeting, members were given a demonstration on the use of the Transportation Cabinet's Web page, a review of motor vehicle titling procedures, and an overview of all-terrain vehicle accidents.

The committee was told that persons waiting for an automobile title were no longer restricted to a specific waiting room, but rather now have the opportunity to walk around using a mechanism similar to the ones restaurants use when a person is waiting for a table. The cabinet also noted that there didn't seem to be any problem with its new two-day turn-around policy, and that many of the people who do not travel daily to Frankfort have their titles mailed to them.

The Kentucky State Police discussed all-terrain vehicle (ATV) accidents. Prior to 2000 the state did not collect data on ATV accidents; however, for the first six-and-a-half months in fiscal year 2000, there were 109 accidents involving ATVs, which included 8 fatality accidents, 88 injuries, and 9 deaths. Seven of the 109 were wearing helmets. In

2001 there were 84 collisions, 2 fatality accidents, 72 injuries, and 2 deaths. Fourteen of the 84 were wearing helmets. In 2002 there were 97 collisions, 9 fatality accidents, 68 injuries, and 10 deaths. Eighteen of the 97 were wearing helmets. And from January 1, 2003, to present, there were 53 collisions, 7 fatality accidents, 35 injuries, and 7 deaths. Four of the 53 were wearing helmets. It was noted that 17 is the average age for persons having injuries due to ATV accidents on the state's highways, and that property damage due to ATV collisions increased by 375 percent from 2000 to 2001.

The August 5 meeting was held at the Center on the Main in Leitchfield. During the meeting, the Kentucky Transportation Cabinet discussed a "spend down plan" for highway projects subject to delay or termination due to dwindling Road Funds. The committee was told that the state construction account's fiscal year 2003 expenditure balance was $325.4 million, compared to $157.2 million for fiscal year 2000. The unspent 2003 fiscal year balance was $103.8 million. Projecting into fiscal year 2004, the expenditure balance would be around $237.4 million. That figure represented a new appropriation of $110.0 million for FY 2004, plus the $103.8 million balance from the state construction account and the $23.6 million from the Road Fund balance. The members were cautioned that the state construction account would be a minus $99.3 million if the cabinet preceded with the $336.7 million in contracts that had been issued as of June 30, 2003.

The Transportation Cabinet also stated that at the end of fiscal year 2003, the Road Fund balance was approximately $357.5 million, and of that amount, $333.9 million was unspent FY 2003 appropriations obligated for various projects. The remaining $23.6 million was made up, in part, from Road Fund receipts of $4.8 million and $18.8 million in FY 2003 unspent and uncommitted appropriations.

Also discussed was the state's bonding capacity as a source of revenue to prohibit delays in highway projects. The committee was told that the state's future highway construction debt service was estimated at $160 million for fiscal year 2004, $119 million for FY 2005, $125 million in 2006, $115 million in 2007, and by the year 2014 it is estimated at approximately $25 million. The debt service does not include the new Transportation Cabinet building under construction in Frankfort. That debt service is included in the cabinet's General Administration and Support funding and is $7.34 million for FY 2004, $7.32 million for FY 2005, $7.33 million for FY 2006, $7.30 million for FY 2007, and $7.27 million for FY 2014.

The Transportation Cabinet said that the state currently employs a 6 percent rule of thumb, which means that the state's total revenues divided by debt service does not exceed 6 percent. The committee was informed that rating agencies were comfortable with that calculation. The total revenue is defined as all General Fund, Road Fund, Agency Fund revenues, as well as the tobacco settlement proceeds. Debt service is defined as both the principal and interest payments on the state's debt. If Road Fund revenues were to be dedicated, the state's debt service is 15 percent of the annual revenues, which drops to 11 percent in fiscal year 2006.

The Kentucky State Police gave an overview of its operations at the committee's September 2 meeting and reported that there are approximately 1,701 employees in the State Police. Thirty (17 sworn and 12 civilians) worked in the Commissioner's Office; 1,252 (843 sworn and 409 civilians) in police services; 183 (10 sworn and 173 civilians) in technical support; 113 (90 sworn and 23 civilians) in executive services; and 123 (9 sworn and 114 civilians) in forensic services. As for officer breakdown, there are 31 (22 in enforcement and 9 in support) captains; 47 (38 in enforcement and 9 in support) lieutenants; 113 (100 in enforcement and 13 in support) sergeants; and 701 (675 sworn and 26 civilians) troopers. The State Police clarified that 58 of the 90 sworn officers in executive services are the current troopers in the training academy class of 2003.

The committee learned that Kentucky ranked fourth or fifth with surrounding states in beginning pay for troopers. Kentucky's pays $29,500 to its new troopers. When asked what Kentucky's State Police officers would need to stop them from going to other law enforcement jobs, the state police official said around $34,00 to $35,000 a year. But he cautioned the committee that pay was not the only incentive. He said that recently a female trooper had left the State Police for the Boone County police force because as a single parent, Boone County's health insurance plan only cost her $300 a year as opposed to the state's plan that costs over $600 year.

Additional statistics offered to the committee were that (1) there are no automobiles in the State Police Fleet older than 5 years and none with an odometer reading of more than 100,000 miles; (2) the package price for a Crown Victoria was approximately $22,000 and when sold at auction brought around $2,500; (3) the State Police spends around $500,000 annually for training troopers; (4) officers were required to purchase their own automobile insurance and there are very few companies that will underwrite insurance policies for police officers; and (5) not all police cruisers have laptop computers and of the ones that do, not all of them have the special device that allows an officer to read the barcode on the back of an individual's driver's license.

During the committee's October 7, meeting a representative from the National Transportation Safety Board in Washington, DC, discussed several safety issues. The safety issues discussed were the alcohol-highway safety problem, the teen driving problem, and the safety of 15-passenger vans.

The representative said that impaired driving is one of the most often-committed crimes and that someone in America is killed every 30 minutes from such driving. Almost 41 percent of the country's highway deaths are alcohol-related and that alcohol-related fatalities, nationwide, has increased in each of the past three years, costing society over $17 billion per year. The worst alcohol-related highway collision, nationwide, occurred in Carrolton in 1988, killing 27 and injuring 34.

Offenders with high blood alcohol content (BAC) are likely to be repeat offenders and are substantially more likely to be involved in fatal crashes. The Insurance Institute for Highway Safety has estimated that the relative fatality risk for drivers in single-vehicle crashes with a high BAC is 385 times that of a zero-BAC driver. For male drivers, the risk is 607 times that of a sober driver. Kentucky's law provides enhanced penalties for drivers having a BAC of 0.18 percent or greater, and the National Transportation Safety Board (NTSB) would like to see Kentucky lower that level to 0.15 percent.

NTSB promotes Administrative License Revocation (ALR), which gives law enforcement officers the authority, on behalf of the state licensing agency, to confiscate the license of any driver who either fails or refuses to take a chemical breath test. Once a driver's license has been confiscated, the driver is issued a temporary license that is valid for a short, specified period of time. During that time he or she may seek an administrative hearing to determine if the driver failed or refused to take a breath test. The driver may still face criminal proceedings, but the important thing is that that driver is off the road sooner. The opponents of ALR argue that it is unconstitutional–that it denies the impaired driver due process. However, ALR has not been declared unconstitutional in any state. To the contrary, the U.S. Supreme Court ruled that revocation of a license prior to an administrative hearing is not a violation of due process as long as there are provisions for a swift post-suspension hearing.

The following statistics were given for vehicle sanctions:

- License plate impoundment reduces recidivism by 50 percent;
- Vehicle immobilization reduces recidivism by 36 percent;
- Vehicle impoundment reduces subsequent convictions by 18 to 34 percent and subsequent crashes by 25 to 34 percent;
- Vehicle forfeiture reduces crashes by 14 percent and alcohol-related fatalities by 32 percent; and
- Ignition interlocks are especially effective while they are on the vehicle and reduce recidivism by 62 to 75 percent.

Another major highway safety issue is teen driving. Crash rates for teen drivers are significantly higher than crash rates for other drivers. Nationally, teen drivers represent about 6.6 percent of the driving population, but comprise about 14 percent of the fatal crashes. And, 22 percent of all highway fatalities occur in crashes involving teen drivers. In 2001, Kentucky teens made up a little more than 5 percent of the state's driving population, while almost 23 percent of the deaths occurred in crashes involving teen drivers.

The members were told that almost 50 percent of teen fatalities occurred at night. Traffic crashes account for 40 percent of all deaths among 15-20-year-olds, making traffic crashes the leading cause of death for this age group. NTSB believes that once young people learn the mechanics of driving, they should receive additional on-the-job training without unnecessary distractions and with the assistance of a more mature and experienced driver. As the teens' skills and maturity develop, teen drivers can proceed to full licensure.

NTSB recommends a three-stage teen driving system: a learner's permit, intermediate or provisional license, and a full license. The graduated driver license (GDL) program should also include driver education, parent participation, restricted night driving, and rapid corrective action following at fault crashes and violations. The basic elements for a GDL program should include:

- A minimum six-month holding period for the learner's permit, during which time the permit holder is supervised by a licensed driver who is at least 21 years old.
- At least 50 hours of supervised driving practice with a licensed driver who is at least 21 years old.
- A minimum six-months without at-fault crashes or traffic violations before proceeding to the intermediate or provisional license.
- An intermediate phase that includes a nighttime driving restriction, a limitation on the number of passengers, and a prohibition on cell phone use by the young novice driver.
- A minimum six-month holding period for the intermediate or provisional license.
- A nighttime restriction that would prohibit the intermediate or provisional license holder from driving unsupervised at night, particularly between the hours of midnight and 6 a.m.
- A passenger restriction that would allow not more than one passenger in the vehicle, unless the driver is accompanied by a supervising adult.
- Mandatory seatbelt use and zero tolerance of alcohol use at each stage.
- Accelerated penalties for at-fault crashes or traffic violations at each stage.

A 1977 study of North Carolina's crash data since it implemented a 9 p.m. to 5 a.m. nighttime driving restriction for teens found at least a 25 percent reduction in injuries and deaths involving 16-year-old drivers. Iowa realized a 20 percent reduction in teen traffic crashes a year after it restricted teen nighttime driving, and 16-year-old drivers received 38 percent fewer traffic citations in that year. Forty-three percent of teen motor vehicle deaths in 2001 occurred between 9 p.m. and 6 a.m. A 1984 study of nighttime driving restrictions in four states found that among 16-year-old drivers, crashes were reduced by 69 percent in Pennsylvania, 62 percent in New York, 40 percent in Maryland, and 25 percent in Louisiana.

With regard to passenger restrictions for teen drivers, NTSB believes that teen drivers generally have more passengers than older drivers, and these passengers are usually the drivers' peers, which results in a deadly combination of inexperience and immaturity. The risk of death among 16- and 17-year-old drivers who have at least one passenger in the car is significantly greater compared to driving alone. The risk increases with additional passengers.

Statistics show that two-thirds of teenage vehicle deaths occur in vehicles driven by teenagers. More teenagers die in vehicles driven by 16-year-olds than in vehicles driven by 17, 18, or 19 year olds. NTSB found that teen drivers were involved in 6,796 single vehicle fatal crashes from 1997 through 2001. Sixty-seven percent of the passengers killed in crashes involving teen drivers were teenagers themselves between the ages of 15 and 19, and 17 percent were younger than 14 years of age. NTSB believes Kentucky should restrict young drivers from carrying more than one passenger under the age of 20 until they receive an unrestricted license, or for at least six months, whichever is longer.

The last safety issue discussed by the NTSB official was the use of 15-passenger vans. In the last three years NTSB has investigated 11 crashes involving 15-passenger vans. The accidents involved a daycare center transporting children, church vans, a college sports team, farm workers, and a family. A total of 60 people were killed and 77 injured in these 11 accidents.

NTSB identified several factors that contribute to the dangers posed by 15-passenger vans: (1) Passenger vans are not required to meet the same federal motor vehicle safety standards as passenger vehicles, even though vans are used in a similar manner; (2) Vans also have a higher center of gravity and different handling characteristics than traditional passenger vehicles, making passenger vans more prone to rollovers; and (3) Drivers of these vehicles do not have special licensing or training requirements.

NTSB believed that more efforts need to be made to impress upon drivers the inherent danger of operating 15-passenger vans, particularly when fully loaded. Further, drivers should be educated about proper handling and control, particularly during emergency situations. Drivers operating vehicles carrying more than 15 passengers are required to have commercial drivers licenses that come with specialized training, and the same should hold true for drivers of 15-passenger vans. The NTSB official said that Kentucky should pursue statutory changes to require a special endorsement for operating 15-passenger vans.

In conclusion, the representative said that in 2002, 915 people lost their lives in traffic crashes on Kentucky roads. This fact alone should cause the state to make improving highway safety a top priority in the next legislative session.

Also during the October meeting, the commissioner of the Department of Vehicle Regulation in the Kentucky Transportation Cabinet informed the committee that Kentucky law does not provide for an unrebuildable designation on a motor vehicle title. When presented with an unrebuildable title from another state, KRS 186.530 simply requires a picture of the front and one of the back of the automobile, a list of the parts used to rebuild the car, and two estimates showing the vehicle was rebuilt for less than 75 percent of the N.A.D.A. value. Once this information is provided, an unrebuildable title will be converted to a rebuilt Kentucky title. There were 1,500 unrebuildable titles converted in 2001, and 2,200 in 2002. The cabinet official noted that unrebuildable titles could become a problem in Kentucky.

Potential for problems come with Kentucky "cleaning" the title of a vehicle permanently branded in another state as unrebuildable. The vehicle can be licensed in Kentucky but not relicensed in several other states such as Florida, Tennessee, Indiana, and Missouri. The commissioner cautioned that a person who buys a car in Kentucky that has a rebuilt Kentucky title and then moves to Florida, may find that the car cannot be licensed because it was previously declared to be unrebuildable in that state.

The last item on the committee's October agenda was a report of CSX Transportation's sale of the railroad line from Winchester to Anchorage to R.J. Corman.

A representative for CSX Transportation stated that on September 30, 2003, CSX completed the transaction to sell the railroad infrastructure and lease the property corridor constituting the Old Road (Winchester to Anchorage) to R.J. Corman. He said the sale/lease of the Old Road is indicative of CSX Transportation's approach to delivering value to their shareholders and quality service to their customers by working with short-line companies to optimize previously underutilized segments of CSX's network. Twenty percent of CSX's annual revenue is derived from freight that originates or terminates on a short line. The short lines are able to realize lower operating costs and provide small shippers with added flexibility. He noted that every customer affected by the transaction received advanced notice of the pending changes to operations on the Old Road.

The committee's last meeting was held on November 17. During that meeting the committee members were briefed on gasoline pricing and gasoline price gouging, commercial drivers license (CDL) testing procedures, and a review of Executive Reorganization Order 2003-1076 (Transportation Cabinet reorganization).

The chief economist and director for Policy Analysis and Statistics of the American Petroleum Institute said that the institute represented more than 400 companies from all sectors of the U.S. oil and natural gas industry. He said gasoline prices rose dramatically starting in March and later in August of this year because of supply and demand. World crude oil supplies tightened because of problems in Venezuela, labor unrest in Nigeria, the war in Iraq, and the pipeline problems in Phoenix. Refiners had to pay substantially more for crude oil and that affected gasoline and all product prices.

He said there were lower-than-usual inventories of gasoline in the spring due to a previous colder winter. When refineries are producing larger amounts of heating fuel, then they produce less gasoline. The refinery system has both produced and imported more gasoline and distillate fuel this year than in any other year.

The chief economist said that the industry's improved efficiency has been good for consumers, but still has a petroleum supply straining to meet consumer needs. Since 1985, demand for petroleum products has exceeded the refinery capacity, even though refineries are bigger and more efficient than ever. Storage facilities for crude oil and refined products continue to shrink due to government regulations. He said America now imports about 2.5 million barrels of refined petroleum products each day, which represents 12 percent of the demand. According to the Department of Energy Information Administration, these imports are predicted to grow by 140 percent over the next 20 years.

The committee was told that other countries require different gasoline recipes than America, and different U.S. jurisdictions—federal, state, and local—require different kinds of fuels to meet their own environmental needs. The existing refinery, pipeline, and terminal systems must supply 20 different types of gasoline. These fuels have hamstrung the delivery system, increasing the possibility that any small change in demand or interruption in supply will set off another explosion of price increases, like those America experienced over the last four years. In other words, when one part of the system suffers a glitch, it's harder to redirect supplies from other places, which may have different fuel specifications.

He said that America has reached an important crossroad in its ability to supply consumers with the required fuel. Two decades of regulation has put a tremendous strain on the system. The price spikes for heating oil and gasoline over the last four years are manifestations of the underlying problems that America faces. America is now lurching from season to season, unable to build up sufficient inventories to provide a comfortable supply buffer.

The representative also noted that the big oil companies represent about 12 percent of the industry. Each barrel of crude oil represents 42 gallons of gasoline, and the profit margin for a business averages only around 5.3 to 6.5 cents on the dollar.

A representative from the Kentucky Petroleum Marketers Association said that the gasoline industry is a competitive market. He stated that he has seen where some vendors will actually mark their fuel several cents below the current market price. This is done to draw customers into their establishment who they hope would also buy other commodities that have a higher profit markup. He commented that $1.069 of gasoline represents about 93.9 cents for the crude oil and 34.8 cents for state and federal taxes, which leaves a 15-cent profit margin. The 15 cents of profit is barely enough for the establishment's overhead.

He stated that after September 11, 2001, several stations did sell their gasoline for a little over $2. a gallon; however, that price dropped within two days when others did not follow suit. He said the situation was unfortunate.

A representative from an oil company and immediate past-president of Kentucky Petroleum Marketers Association, who is considered a jobber, said he buys gasoline from a refinery and then sells the product to service stations. He noted that in the Covington area gasoline is currently sold at the refinery for $1.069, added to that price is 13 cents for state tax, 16.4 cents for federal tax, and 2 cents for delivery charges, which leaves the gasoline costing $1.386 before the profit markup.

A representative from the Consumer Protection Division of the Office of the Attorney General said that the Attorney General's Office believes there are two types of price gouging: raising prices due to a disaster and price fixing or collusion. He said Kentucky does not have a specific law that prohibits price gouging. Prosecutors must prove a violation of the Kentucky Consumer Protection Act or state or federal anti-trust laws. The standard that must be met is “what is an unfair trade practice?”

He said it is a very broad standard and very difficult to define. Federal courts have generally held that if consumers have another source for a product or commodity at a reasonable price, then there is no violation and no unfair trade practice. And it is even harder to prove collusion among a group of individuals to regulate prices. He said a person would almost have to find written evidence to prove a violation had occurred.

After September 11, 2001, the Attorney General’s office received 447 complaints involving 147 gas stations across the state. Collusion could not be proved in a single complaint. He said collusion is very hard to prove; for instance, if another supplier is selling the gasoline for the same price as the one being investigated, it tends to lead to a market price increase rather than a concerted effort to fix prices.

The committee was told that several of the Louisville gas stations that charged over $2 a gallon right after the September 11, 2001, disaster offered refunds to their customers. He said some of the stations required customers to produce a receipt, while others did not.

A director of Public Affairs of AAA of Kentucky said that gasoline is a commodity, and the public understands that price increases are based on production problems or crude oil cuts announced by OPEC. However, it is widely recognized that motorists are discontent with gasoline price fluctuations.

He said that he has monitored gasoline prices for AAA in Kentucky for the past 10 years, and throughout 2003, motorists have had to tolerate an unprecedented frequency of severity in price increases and suddenness of price changes. Historically, he said the dramatic 20- and 30-cent spikes in prices only occurred during holidays; now they occur regularly. And he commented that these dramatic spikes do not seem to have been associated with market conditions that would warrant such increases.

He informed the committee that several gas station managers have told him that they keep an eye on nearby stations or they are given routes to drive and stations to identify as a means to set their prices. He said that if this is true, it is distressing because it is not price fixing, but it verifies that price increases have little or no relation to the expense of the fuel in the pumps. The committee was given a chart that showed while Kentucky was below the national average in their price for gasoline, its price fluctuated on a daily basis, while the national average remained somewhat constant. He noted that he has yet to find a local industry representative who could justify a particular increase.

The next agenda item discussed was testing procedures for CDLs. Owners of a private, for-profit truck driving school testified before the committee. One of the owners stated that KRS 281A.160 (4) requires that procedures be established that “…*ensure an arms-length relationship is maintained between a third-part tester and any owner, officer, or employee of any program offering commercial truck driving under KCTCS or* *a proprietary school licensed under KRS Chapter 165A…*" He questioned how the Kentucky Community and Technical College System (KCTCS) was awarded the contract to be the state's third-party examiner and still maintain an "arms-length" approach. He stated that while he was not indicating there is collusion, there is that appearance, nonetheless. He said he just wanted to see an even playing field.

The owner questioned why the various truck schools throughout the state were not involved in the drafting of legislation relating to CDL truck schools. He questioned why KCTCS is the only entity involved in the decision when new curriculum is established for CDL schools. He further questioned what the guidelines were for becoming a third-party licensed examiner and wondered who established those guidelines.

The chancellor for KCTCS testified that last year his agency tested approximately 866 students and of that number 267 students had to be retested. He also commented that of the 866 students tested, only 129 had come from the KCTCS schools.

The executive director for the State Board for Proprietary Education noted that KCTCS had only one school in its entire system that offers its own truck driving program and does not contract with a proprietary school to perform the service. She said that given those circumstances, she could not understand how the truck driving school felt that KCTCS was unfairly competing with proprietary truck driving schools. After a brief discussion, committee members asked the respective parties to meet and try and resolve any misconceptions or misunderstandings and to report back to the committee in January.

A Transportation Cabinet representative explained Executive Reorganization Order 2003-1076. He said the reorganization plan would eliminate the duplicity between the Division of Traffic and the Division of Operations by combining functions relating to traffic under the new Division of Traffic Operations and highway preservation and maintenance functions under the new Division of Maintenance. He also said there is no money involved is this reorganization. The committee voted to accept Executive Reorganization Order 2003-107.

REPORT OF THE 2003
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Rep. John A. Arnold, Jr., Co-Chair
Sen. Damon Thayer, Co-Chair

Sen. Joey Pendleton	Rep. James Bruce
Sen. Richard L. Roeding	Rep. Jimmie Lee
Sen. Gary Tapp	Rep. Jon David Reinhardt

LRC Staff: Donna Kemper, Dave Nicholas, Donna Little, Sarah Amburgey, Karen Howard, Laura Milam, Emily Caudill, Jennifer Harrison, and Ellen Steinberg

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

JURISDICTION: review and comment on 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; and make legislative recommendations.

SUBCOMMITTEE ACTIVITY

KRS Chapter 13A established the subcommittee as a permanent subcommittee of the Legislative Research Commission (LRC). The subcommittee meets monthly and reviews approximately 50 administrative regulations each month. The subcommittee also reviews issues relating to the intent and implementation of KRS Chapter 13A and issues raised concerning existing administrative regulations. Pursuant to KRS Chapter 13A, the subcommittee assists administrative bodies in the drafting of administrative regulations. After an administrative regulation has been reviewed by the subcommittee, it is assigned by LRC for a second review by the legislative subcommittee with jurisdiction over the subject matter.

During the period January 2003 through November 2003, executive branch agencies filed 96 emergency administrative regulations and 569 ordinary administrative regulations. Of the ordinary administrative regulations filed, 130 were new, 391 were amendments to existing administrative regulations, and 48 were amended after comments. The Administrative Regulation Review Subcommittee reviewed all of the ordinary administrative regulations. Of those administrative regulations reviewed, 9 were found deficient, 347 were amended to conform with KRS Chapter 13A and other appropriate statutes, and 98 were approved as submitted by the agency. Additionally, 7 emergency administrative regulations expired and a total of 40 administrative regulations were withdrawn by the agency during this period.

In June, LRC published an updated version of Informational Bulletin 118, which provides the executive branch agencies and the public with information about the process of drafting, filing, and reviewing administrative regulations. This version of IB 118 contained the changes to the administrative regulations process enacted by the 2003 Session of the General Assembly. These changes included the removal of the notice of intent process and the implementation of a mandatory 30-day comment period on administrative regulations.

Also in June, the subcommittee staff and the regulations compiler conducted two training sessions for representatives of executive branch agencies on the changes in the administrative regulations process that were enacted by the 2003 Session of the General Assembly. The training also included information on the drafting of administrative regulations. More than 200 representatives of executive branch agencies participated in this training.

In August, LRC published the Administrative Regulations Service of Kentucky, which contains administrative regulations in effect as of August 15 of each year.

REPORT OF THE 2003
CAPITAL PLANNING ADVISORY BOARD

Sen. Albert Robinson, Co-Chair
Rep. Perry Clark, Co-Chair

Rep. Ron Crimm	Ms. Cicely Jaracz Lambert
Mr. James Deckard	Mr. William H. May III
Mr. Ben S. Fletcher III	Mr. Glenn Mitchell
Sen. Paul Herron	Ms. Norma Northern
Mr. William H. Hintze, Jr.	Mr. Laurel True
Mr. Sherron Jackson	Mr. Garlan Vanhook
Mr. Lou Karibo	Judge William Wehr

LRC Staff: Pat Ingram, Mary Lynn Collins, Nancy Osborne, and Dawn Groves

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

CAPITAL PLANNING ADVISORY BOARD

BOARD JURISDICTION: The 1990 General Assembly established the Capital Planning Advisory Board of the Kentucky General Assembly, comprised of members representing all three branches of government. Pursuant to statute, the board is to create a six-year comprehensive statewide capital improvements plan, encompassing all state agencies and universities, to be submitted to the heads of the three branches—the Governor, the Chief Justice, and the Legislative Research Commission—by November 1 of each odd-numbered year. This schedule enables the comprehensive capital plan to be used in the subsequent budget process and legislative session.

BOARD ACTIVITY

The Capital Planning Advisory Board (CPAB) held six meetings during the 2003 Interim. On June 16, the CPAB received staff reports on actions of the 2003 General Assembly and on the 2004-2010 capital planning process. Representatives of the Finance and Administration Cabinet also provided an update on the executive branch statewide real properties/facilities management database being implemented pursuant to KRS 42.027.

On July 31 and August 1, the CPAB convened at the Council on Postsecondary Education in Frankfort to review the agency capital plans that had been submitted on April 15. Instructions for the agencies to use in submitting their plans had been approved by the CPAB at a December 2002 meeting. Presentations on the plans were made by representatives of the various state agencies and postsecondary institutions.

The agenda also included the presentation of reports from the Council on Postsecondary Education regarding projects and capital issues related to the postsecondary institutions and from the state's chief information officer regarding information technology projects submitted in the agency plans and related issues.

On August 18 and September 26, the CPAB continued its review of the agency capital plans. The August meeting focused on the plans submitted by agencies that administer grant and loan programs authorized in the capital budgets, and the September meeting included a review of the plan submitted by the judicial branch. Additionally in September, the CPAB received a report from the state's chief information officer concerning alternative approaches to addressing the state's information technology needs and a staff report on the status of Kentucky's bonded indebtedness. At this meeting, the CPAB also began developing recommendations to be included in the *2004-2010 Statewide Capital Improvements Plan*.

On October 9, the CPAB continued its work on recommendations for the *2004-2010 Statewide Capital Improvements Plan*. Additionally, the deputy state budget director presented an update on state budget and revenue issues, and CPAB staff reported on amendments to the agency capital plans.

The CPAB gave final approval on October 24 to the *2004-2010 Statewide Capital Improvements Plan* for submission to the heads of the three branches of government. That report included both policy recommendations on various capital-related issues and specific project recommendations. The policy recommendations address the following:

- Financing Major Capital Renewal and Maintenance;
- Funding Agency Maintenance Pools;
- Implementing the Real Properties/Facilities Management Database;
- Replenishing the Budget Reserve Trust Fund;
- Using the Contingency Fund for Moving Expenses;
- Continuing Development of Long-Range Plans for Housing State Agencies;
- Studying the Operations and Administrative Placement of Bluegrass Station;
- Studying Alternatives to Incarceration; and
- Allocating “New Economy” Project Funds.

The project recommendations address the following three categories of capital projects:

- Projects To Be Financed from State Funds;
- Projects To Reduce State Leasing of Space and Facilitate Agency Consolidations; and
- Projects To Be Financed from Other than State Funds.

REPORT OF THE 2003
CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

Sen. Bob Leeper, Co-Chair
Rep. Jodie Haydon, Co-Chair

Sen. Tom Buford	Sen. Virgil Moore
Rep. Robert Damron	Sen. Jerry Rhoads
Rep. Paul Marcotte	Rep. Jim Wayne

LRC Staff: Mary Lynn Collins, Pat Ingram, Nancy Osborne, Kevin Mason, Bart Hardin, and Shawn Bowen

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 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, charged with overseeing (1) the expenditure of funds budgeted for capital projects; (2) the allotment of funds from the Emergency Repair, Maintenance, and Replacement Account and the Capital Construction and the Equipment Purchase Contingency Account; (3) the state's acquisition of capital assets, including the lease of real property; (4) the issuance of bonds by the Commonwealth and related individual projects; and (5) the issuance of bonds by or on behalf of local school districts.

COMMITTEE ACTIVITY

As a statutory committee, the Capital Projects and Bond Oversight Committee meets monthly, even when the General Assembly is in session. This report covers committee activity between November 1, 2002, and October 31, 2003. During this period, the committee met 12 times. Ten of the committee's meetings were held in Frankfort in the Capitol Annex. In December 2002, the committee held its meeting in Frankfort at the new Kentucky Higher Education Assistance Authority Building, a recently completed capital project. In September 2003, the committee met at the Wendell H. Ford Regional Training Center (Department of Military Affairs) in Greenville. A tour of the complex followed that meeting.

One of the first actions taken by the committee during the reporting period was to adopt a policy statement regarding the review of projects not authorized specifically by the General Assembly. This action was taken in response to the committee's concern that a major renovation of the University of Kentucky baseball stadium, undertaken by the Wildcat Foundation, was not approved by the General Assembly nor reviewed by the committee. The policy states that it is the committee's expectation that all construction projects estimated to cost $400,000 or more, which are not already authorized in an enacted budget, are to be submitted to the committee for its review prior to final design and construction if the construction is to be on state-owned property, regardless of the source of funds for the project.

The committee continued to closely follow developments related to alternative methods of project delivery. At the committee's request, the commissioner for the Department for Facilities Management (DFM) provided an update on the state's use of the design-build method to complete capital projects. Under this delivery method, a team is hired under a single procurement for design and construction rather than the traditional method where a construction contract is not awarded until design is completed. DFM has used the design-build method for four projects: the Kentucky Higher Education Assistance Authority office building, the Northern Kentucky University dormitory project, the Elliott County prison project, and the Morehead State University family housing complex. Based on DFM's experience, the commissioner outlined the advantages of using the design-build method: construction can start before design is completed; the design-build team is a single source of responsibility during the design; the proposals allow for innovation in design; and there are no errors and omissions change orders. However, the commissioner noted that the Request for Proposals for design-build projects must be very detailed to avoid having to later accept lower-quality products or multiple change orders, and the procurement time is longer, requiring more staff effort. The commissioner said the department did not find that the design-build method brought projects in quicker or cheaper than its traditional delivery method. At the same time, he said that the method does have its place and appears to be best suited for simple facilities or specialty facilities such as prisons.

The committee also received a report from the University of Kentucky that it had decided to use the design-build method for its recently authorized dormitory project. House Bill 296, enacted by the 2003 General Assembly, requires a report to the committee whenever an alternative project delivery system is planned to be used for an authorized project.

After reviewing several proposals to purchase new technology systems, the committee asked the state's chief information officer (CIO) and the executive director of administrative services for the Governor's Office for Technology (GOT) to address the issues of technology procurement, support, and financing. The CIO reported that computer hardware today has a useful life of three to four years; the useful life of utility software and application software is similar. The GOT reported that it is moving to a desktop computer management model over the next three years in which all of their desktop units will be leased rather than purchased. This will avoid the need for a large capital expenditure to refresh desktops. In addition, GOT has established a group called Enterprise Contracting to assist the state in getting the best deal possible for certain technology-related items that all state agencies need such as voice equipment and work stations.

The committee reviewed numerous agency requests concerning capital projects and bond issues, and a summary of those reviews follow.

Review of Unbudgeted Capital Projects

The committee approved 17 unbudgeted capital projects with a total scope of approximately $26.3 million. KRS 45.760(14) permits a capital construction project to be authorized even though it is not specifically listed in an enacted budget if at least 50 percent of the costs are from private or federal sources, and if the project is presented to the committee for review. The unbudgeted projects approved by the committee were funded through a mixture of federal grants, state funds (mostly restricted funds), and private donations as follows:

Department of Military Affairs – Construct Operations Maintenance Shop at Benton Armory ($1,365,000 federal funds); ($5,274,620 federal funds); Construct an Addition/Alteration to Armory at Richmond ($826,410 federal funds); Aircraft Paint Building at Bluegrass Station

($2,971,320 federal funds); Roof Replacement at Bluegrass Station ($686,319 federal funds and $313,681 restricted funds); Engineer Fire Team Center at Wendell H. Ford Regional Training Center ($2,390,000 federal funds); and Extend Minuteman Parkway at Boone National Guard Center ($750,000 federal funds).

University of Kentucky – Renovation of Pediatrics/Oncology Clinic ($850,000 private funds); Renovation of Urology Clinic ($550,000 private funds); and Renovation of Five Laboratories and Adjacent Offices ($1,767,000 federal funds).

Northern Kentucky University – Lake Improvement Project ($1,500,000 private funds).

Kentucky State University (KSU) – IBM Mainframe Computer Upgrade ($421,363.50 federal funds and $421,363.50 restricted funds). It should be noted that originally KSU reported its plan to enter into a lease-purchase arrangement for this acquisition, using vendor financing. The committee asked KSU to first analyze other financing options. As a result, KSU later reported that it had determined that a more economical financing option was offered through the state's master-lease agreement with GE Capital, and the university would finance under that arrangement.

Kentucky State Police – New Commercial Drivers Testing System ($1,153,000 federal funds).

Governor's Office for Technology – NASA Grant for Geographic Information Systems ($1,391,900 federal funds, $171,000 restricted funds, and $256,000 in-kind contributions from other agencies.)

Cabinet for Workforce Development – Computer Server Purchase/Replacement ($1,245,000 federal funds).

Tourism Development Cabinet, Department of Fish and Wildlife Resources – Living Stream Exhibit ($10,750 federal funds, $300,000 private funds, $189,250 Fish and Wildlife Foundation funds.)

Tourism Development Cabinet, Kentucky Horse Park – Sheila Johnson Ring Seating ($1,500,000 private funds). The committee also reviewed three private developments at the Kentucky Horse Park: Central Kentucky Riding for the Handicapped, United States Dressage Federation Headquarters, and the Thoroughbred Retirement Foundation Center. In all three cases, the Horse Park is entering into long-term land leases with the organizations. These projects do not involve any state funds for financing or for operation. The Kentucky State Fair Board reported a similar arrangement regarding construction of a hotel and restaurant at the Kentucky Fair and Exposition Center through a land lease.

Also, the committee reviewed reports by the University of Kentucky and Western Kentucky University concerning various scientific/medical research equipment, totaling $3,699,200.

In September, Western Kentucky University (WKU) reported that it had entered into a five-year lease-purchase agreement to purchase two shuttle buses at a total cost of $380,000 without appropriate authorization. KRS 45.750 and KRS 45.760 require that all major items of equipment costing more than $100,000 are to be authorized by the General Assembly. When the university realized its mistake (an unauthorized acquisition), it notified the committee. The committee requested that WKU seek authorization for the buses from the 2004 General Assembly.

Review of Budgeted Capital Projects

The committee received quarterly status reports on authorized projects and several times asked for additional information on specific projects. During the reporting period, contractors on three projects went bankrupt and bond companies had to take over at the construction sites: Journalism and Media Technology Building at WKU, the Student Services Building at Eastern Kentucky University, and the Boyd County Juvenile Detention Center. Progress was stalled for a brief time on the Big Bone Lick State Park Visitors Center when problems developed with the excavation subcontractor, and the general contractor had to pick up the subcontract. The committee was told that the wiring installed in the new Transportation Cabinet Office Building did not meet contract specifications, and the contractor had been ordered to replace it. The committee expressed concern at its October meeting that the Winchester State Office Building, authorized by the 1998 General Assembly, was still in the preliminary design phase, with no building site selected. When a quarterly construction reported submitted by the Finance and Administration Cabinet indicated that the Department of Corrections planned to use $1.3 million in funds remaining from a dormitory project for a new visiting center, the committee asked for further explanation. The deputy state budget director indicated that the Department of Corrections had been advised that General Assembly authorization would have to be obtained before that project could move forward.

Requests for scope increases. The committee reviewed agency requests to increase the scope of 13 previously authorized capital projects, using private, federal, or restricted (agency) funds. Requests were made primarily to permit the awarding of contracts when bids exceeded budget. In several cases, requests were made to increase the project scope because of the availability of private or federal funds. Pursuant to KRS 45.760(13), to be eligible for interim approval, any increase in excess of 15 percent of a project's authorized scope must be funded by federal or private funds.

Scope increases approved by the committee were as follows:

Department of Military Affairs – Helicopter Repair Hangar at Bluegrass Station ($482,000 federal funds and $482,000 restricted funds increase for revised scope of $2,000,000).

Department of Veterans' Affairs – Renovate/Relocate Special Care Unit at Thomson-Hood Veterans Center ($188,500 federal funds and $101,500 restricted funds for revised scope of $2,850,000).

Finance and Administration Cabinet – Install Building Security Systems Various Buildings ($120,000 restricted funds increase and consolidation of this project with $560,000 federal funds from the Biological Testing Laboratory Renovation Project for a revised scope of $143,000).

Natural Resources and Environmental Protection Cabinet, Nature Preserves Commission – Blanton Forest Acquisition Project ($100,000 Kentucky Heritage Land Conservation Fund allocation for a revised scope of $1,700,000).

Tourism Development Cabinet, Department of Fish and Wildlife – Land Acquisition Pool ($1,000,000 federal funds increase for revised scope of $2,000,000.)

Tourism Development Cabinet, Department of Parks – Horton Camp Infrastructure at Green River State Park ($25,800 Maintenance Pool funds increase for revised scope of $675,800.)

Eastern Kentucky University – Student Services Building ($56,400 restricted funds increase for revised scope of $20,056,400).

Kentucky State University – Aquaculture Classroom and Lab Facility ($1,500,000 federal funds increase for a revised scope of $2,300,000).

Northern Kentucky University – Natural Science Building/Planetarium ($1,200,000 private funds increase for a revised scope of $39,200,000).

Northern Kentucky University – Digital Telecommunications System ($231,000 restricted funds increase for a revised scope of $2,131,000).

University of Kentucky – Biomedical Biological Sciences Research Building and Building Connectors II (6,390,175 restricted funds increase for a revised scope of $73,590,175).

Murray State University – Western Regional Center for Emerging Technologies ($1,500,000 federal funds increase for a revised scope of $3,000,000).

Western Kentucky University – Journalism and Media Technology Building ($113,000 private funds increase for a revised scope of $18,613,000).

The committee also reviewed various proposals to modify authorized projects. Modifications included:

(1) Altering the authorized University of Louisville project Field Turf-Practice Field Facility by installing artificial turf at Papa John's Cardinal Stadium instead of the practice field;

(2) Moving the University of Kentucky's Swine Development and Training Center project from Princeton to the Woodford County Agricultural Research Center; and

(3) Altering a project to repair a cottage in one of the state's Intermediate Care Facilities for the Mentally Retarded, Structural Repair/Renovation-Oakwood, to instead purchase and install modular homes at the Oakwood facility.

Review of Allocations from the Statutory Capital Accounts

Capital Construction and Equipment Purchase Contingency Account. In November 2002, the Finance and Administration Cabinet submitted two proposed allocations from the Contingency Account that the committee did not approve. The first allocation was $3,735,000 for cost overrun on the Eastern Kentucky Exposition Center in Pike County. This project was authorized by the 1998 General Assembly at a scope of $12,300,000 and reauthorized with additional funds of $10,400,000 from the 2002-02 budget and $2,000,000 from the Governor's FY 2003 spending plan. Funding sources included both state funds and coal severance funds. During review, it was noted that if approved, the $3,735,000 allocation would be the single largest allocation ever made from the account. The allocation had been requested in order to award the low core construction bid, and two add alternates for meeting rooms. The second proposed allocation was for $601,400 for a cost overrun involving the Lieutenant Governor's Mansion Renovation. The allocation was requested to award a contract as well.

The committee voted to defer action on both of these allocations until its December meeting. Shortly after the meeting, the Finance and Administration secretary notified the committee that since his office was holding construction bids for both projects, he was giving his final authorization for the allocations to be made immediately pursuant to KRS 45.800 rather than wait for the committee's consideration. However, he also noted that the contingency allocation for the Eastern Kentucky Exposition Center was being reduced from $3,735,000 to $1,700,000, and indicated that the additional funds needed ($2,035,000) would be made up from local sources available to the center's board. When the committee reviewed the Finance and Administration secretary's action at its December 2002 meeting, there was discussion concerning the need for a constitutional amendment that would restrict the administration's ability to override a committee vote in such a manner.

Three allocations were approved by the committee from the Capital Construction and Equipment Purchase Contingency Account during the reporting period totaling $315,500. In February, the committee approved two allocations for the **Department of Parks:** an allocation of $60,500 to repair minor concrete spalls and seal the exterior of the Jefferson Davis Monument Repair project (originally authorized by the 1998 General Assembly at a scope of $450,000 bond funds and subsequently authorized at a scope of $2,775,500); and an allocation of $60,000 for the construction of a visitors' center as part of the Boone County/Big Bone Lick State Park Land Acquisition and Park Improvements project (originally authorized as a Community Development Project by the 2000 General Assembly at a scope of $1,000,000). In addition, the Boone County Fiscal Court contributed $127,000 to this project.

The final contingency allocation for this reporting period was approved in August. An allocation of $195,000 was approved for the **East Kentucky Center for Science, Math, and Technology** (originally authorized by the 1998 General Assembly at a scope of $2,640,000 bond funds) to purchase equipment and furnishings for the East Kentucky Science Center.

Emergency Repair, Maintenance, and Replacement Account. The committee reviewed 10 allocations from the account totaling $5,727,000. Two allocations were reviewed in November 2002, the first being an allocation of $120,000 to the **Department of Corrections** to prepare designs for the Green River Correctional Complex Roof Repair/Replacement. The committee also reviewed an allocation of $86,000 for the **Cabinet for Health Services** for the Pikeville Senior Citizens Center Structural Study and Repair. Funds were to be used to address a settlement problem occurring at the center.

In December 2002, an allocation of $404,000 was made to the **Cabinet for Health Services** for the Western State Hospital Chiller Replacement with the proviso that those funds would be reimbursed if the 2003 General Assembly authorized a statewide chiller replacement pool for 2002-04.

During budget deliberations, the committee received testimony from the state deputy budget director and the commissioner for the Department for Facilities Management concerning funding of the Emergency Repair, Maintenance, and Replacement Account. The budget, as enacted by the General Assembly, included a transfer of Emergency Account funds that would have reduced the account by $5 million, leaving approximately $4.3 million for the remainder of the biennium. The committee was told that reducing the account to that level was problematic because emergency needs totaling nearly $4 million were already known. The provision to transfer $5 million from the Emergency Account was vetoed by the Governor and sustained by the General Assembly.

In April, shortly after the budget deliberations were completed, the committee reviewed three allocations from the Emergency Account for projects administered by the **Department for Facilities Management:** $500,000 for the Libraries and Archives Building Roof Repair; $1,200,000 to the Health Services Building Roof Replacement & Parapet Wall Repair; and $1,000,000 for the Council of State Governments Building Exterior Facade Repair and Replacement. In April, the committee also reviewed an allocation of $650,000 to the **Department of Parks** for the Dale Hollow Golf Course Earth Slide Repair.

In July, the **Department of Veterans' Affairs** received an allocation of $567,000 to correct a moisture problem and a problem relating to federal reimbursement on the original funding for the Western Kentucky Veterans' Center at Hanson (Hopkins County). This project was authorized by the 1998 General Assembly at a scope of $13,500,800 ($4,725,000 bond funds and $8,775,800 federal funds). In 2000, the project received additional appropriations of $229,000 (bond funds) and $502,000 (federal funds), for a total project scope of $14,231,800.

One allocation of $400,000 was made from the Emergency Account in August to replace part of the Fire Alarm/Life Safety Notification System at the **Kentucky Center**. In September, the committee reviewed a second allocation of $800,000 for the Health Services Building Roof Replacement and Parapet Wall Repair. This second allocation was required in order to award a contract.

Review of Bond-Funded Loan/Grant Programs

Economic Development Bond projects. The committee reviewed and approved four grants, representing $368,500 from the **Economic Development Bond (EDB) Pool.** This bond-funded program makes grants (forgivable loans) to local governments to leverage against private investment for economic development in the Commonwealth. In return for the assistance, companies are required to make commitments regarding job creation and/or job maintenance. The five projects funded and the amount of EDB assistance awarded were: City of Franklin (Simpson County), Harman/Becker Automotive Systems, Inc. ($71,500); Henderson County, Columbia Sportswear Company ($87,000); and City of Murray (Calloway County), Briggs and Stratton Corporation ($210,000).

The committee also reviewed an EDB grant in the amount of $5 million allocated by the Economic Development Cabinet pursuant to the 2002-04 budget bill to the Purchase Area Regional Industrial Authority and the Graves County Fiscal Court on behalf of eight counties to develop a regional industrial park. EDB funds are to be used for a master plan and to buy some of the 2,500 acres in Graves County that the industry authority has an option to purchase.

The committee also reviewed a report of EDB job creation and job maintenance requirements for projects previously approved. Of the 19 projects currently being monitored by the Cabinet for Economic Development, 13 (68 percent) are in compliance with job creation and maintenance requirements, three (16 percent) have been granted time extensions, and three (16 percent) are in noncompliance and have made an annual payment to the county in which they are located for those jobs not created or maintained.

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

1. **Fund A (Federally Assisted Wastewater Revolving Loan Fund)** - Seven loans, including two planning and design loans, totaling $9,781,824 for the cities of Marion, Junction City, Hopkinsville, and Salyersville; the Paducah McCracken Joint Sewer Agency; the Boyd and Greenup Counties Sanitation District; and the Mountain Water District.

2. **Fund C (Government Agencies Program, user-supported)** - Three new loans, totaling $1,953,081, for the Southern Water and Sewer District in Floyd County, the Meade County Water District, and the Knott County Water and Sewer District. Two loan restructurings were also approved: South Graves Water District for $839,073 ($160,000 in arrears – initial loan was in July 1991) and Jonathan Creek Water District in Marshall County for $2,282,980 ($120,000 in arrears – initial loan was in October 1993). In each instance, the accrued penalties were conditionally waived (50 percent of the amount waived upon execution of the Supplemental Assistance Agreement, and 50 percent upon loan maturity if all conditions are met). These are the first restructuring of KIA loans in several years.

3. **Fund E (Solid Waste Revolving Loan Program/Certified Clean Counties Program)** - Two grants under the Kentucky Certified Clean Counties Program totaling $221,958 for the counties of Warren and Meade. These funds were used to clean up illegal dumps.

4. **Fund F (Federally Assisted Drinking Water Revolving Loan Fund)** - Five loans, including one planning and design loan, totaling $7,634,006 for the Cities of Paintsville, Grayson, and Ashland; the Bullock Pen Water District (Boone and Grant Counties); and the Carroll County Water District.

5. **$50 million Water Resources Development Bond, known as 2020 Grants -** The 2000 General Assembly authorized a bond issue with debt service payments from the Phase I Tobacco Settlement Funds to

be used for drinking water infrastructure projects. In December 2001, the KIA board conditionally committed all available funds as grants, to be matched 50 percent with other funds, for 155 projects totaling $49,475,284. Repayments from the Fund B, Infrastructure Pool, were also conditionally committed to 31 projects totaling $18,632,146. The projects are located in 90 counties. As each project verifies its matching funds and completes other program requirements, but prior to final execution of the assistance agreement between KIA and the grantee, the project is reported to the committee. Between November 2002 and October 2003, 87 projects were reported to the committee as ready for execution of the state assistance grant totaling $17,466,328 in 2020 grants and $1,120,782 in Fund B repayments.

6. **Water and Sewer Resources Development Fund for Coal Producing Counties and for Tobacco Producing Counties -** The 2003 General Assembly authorized water and sewer resources development bond projects in coal- and tobacco-producing counties. There are 103 specified projects in coal-producing counties totaling $54,861,998, and 164 specified projects in tobacco-producing counties totaling $59,071,343. Prior to final execution of the assistance agreement between KIA and the grantee, the project is reported to the committee. In September, the first projects under this new program were reported. To date, 17 projects totaling $9,450,977 in grants to coal-producing counties and 11 projects totaling 3,502,000 in grants to tobacco-producing counties have been reported.

Review of Bond Issues and Financing Agreements

In addition to the individual bond-funded projects, the committee reviewed, and approved unless otherwise noted, the following bond issues and financing agreements:

1. **Kentucky Economic Development Finance Authority (KEDFA) -** In these particular issues, the state is only a conduit for the sale of the bonds and has no liability for repayment of the debt. Five KEDFA bond issues were approved during the reporting period: a $40 million issue on behalf of the Catholic Healthcare Partners to fund improvements to hospitals and assistive living facilities in Paducah, Louisville, and Irvine; a $12.3 million issue submitted on behalf of Republic Services, Inc., to fund various waste management projects; a $125 million issue fund improvements to health care facilities associated with Saint Elizabeth Medical Center, Inc. and refund outstanding Hospital Facilities Refunding and Improvement Bonds; and a $29.4 million issue on behalf of the Ashland Hospital Corporation to finance improvements to King’s Daughters Medical Center and refund outstanding KEDFA Medical Center Revenue Refunding and

Improvement Bonds. The final issue for the period was for $10 million on behalf of Goodwill Industries of Kentucky, Inc. to refund outstanding KEDFA Adjustable Rate Industrial Building Revenue Bonds and finance a portion of the cost of improving eight new Goodwill Donation Centers in seven Kentucky locations.

2. **Postsecondary Institutions** - Nineteen bond issues totaling $300,555,000 were issued by various universities during the period. Eight of the issues funded authorized projects while the remainder of the issues included the refinancing of existing debt to generate debt service savings.

3. **Kentucky Higher Education Student Loan Corporation –** One new issue for $121,250,000 to provide new money for student loans.

4. **Kentucky Housing Corporation –** Five new issues totaling $931,175,000 to fund the purchase of low-income multi-family and single-family housing mortgages and to refund existing financing.

5. **School district bond issues with School Facilities Construction Commission participation –** One hundred-eleven issues totaling $431,731,000.

6. **School district bond issues 100 percent locally funded –** Forty-nine issues totaling $159,990,000. Included in the total was $5,100,000 in Qualified Zone Academy Bonds (QZAB). A QZAB is a debt instrument available to school districts where the federal government participates and where there are no interest costs. In lieu of receiving interest payments, bond holders receive federal tax credits.

7. **Kentucky Asset/Liability Commission –** One project note issue totaling $167,745,000. Proceeds from a General Fund issue were used to refund select maturities of the State Property and Buildings Commission Project No. 55 and all outstanding maturities of the Kentucky Asset/Liability Commission Project Notes, 1999 General Fund Series. Since the establishment of the Kentucky Asset/Liability Commission in 1997, it has annually issued Tax and Revenue Anticipation Notes (TRANs). TRANs are issued to manage the cash flow of the General Fund by using tax-exempt sources of funds to meet payment obligations of the state. In the past, the use of tax-exempt funds rather than selling investments that were earning taxable returns to meet obligations also allowed savings to be realized. In addition, funds raised from TRANs not

immediately required to meet obligations realized an investment return for the General Fund. The 2002 TRAN approved by the committee in May 2002 generated only $350,000 in earnings, about one-third less than originally projected. At the committee's July meeting, the Office of Financial Management (OFM) said it would be difficult for the Asset/Liability Commission to pursue a 2003 TRAN due to the compression of tax-exempt and taxable interest rates coupled with the rise in the cost of borrowing. OFM further stated that the cost to borrow from internal sources for FY 2004 was currently less than the cost to issue a TRAN.

8. **State Property and Buildings Commission –** Four issues totaling $577,539,731 to provide long-term financing for projects authorized by the 2003 General Assembly. The issues also provided proceeds to refund existing bonds to gain a savings in debt service expense.

Review of State Leases

Most of the leases and lease improvements reviewed by the committee during the reporting period were initiated prior to the March 2003 enactment of the 2002-04 budget bill. The enacted budget prohibited any new state leases unless a lower annual cost could be documented. It also prohibited lease improvements.

During the reporting period, the committee reviewed 22 state agency lease modifications. Eight of these lease modifications increased annual rental payments by a total of $39,842 to cover the cost of state agency-requested improvements. Another 10 increased the amount of space leased, and four decreased the amount of leased space.

The committee approved the award by the Finance and Administration Cabinet of one renewal lease for office space in Franklin County. This renewal represents $53,915 in increased annual rental costs.

In addition, the committee reviewed three temporary emergency leases for state agencies in Laurel, Lewis, and Christian Counties. In Laurel County, the Unified Prosecutorial System obtained emergency replacement space for the Commonwealth's attorney's office due to a fire on January 24, 2003, at the facility the agency leased in London. The annual cost of the lease is $21,645.

In Lewis County, the Cabinet for Families and Children's Division of Protection and Permanency and Family Support executed an emergency lease with a new lessor due to health and safety hazards in its current building. Unacceptable conditions in the building included possible asbestos, lead paint peeling from the walls and ceilings, mold as a result of faulty plumbing flowing onto carpeted areas, and electrical hazards. The annual cost of the lease is $12,000.

In Christian County, the Commonwealth's attorney's office obtained emergency replacement space due to unsanitary conditions and environmental problems at its current location. Serious moisture/mold problems were reported, and the attic area had bird droppings in the staircase and over the entire floor. The basement ceiling had dropped and created an uneven floor in one of the offices on the first floor to the extent that chairs rolled "downhill." The annual cost of the lease is $9,400.

In December 2002, the committee approved a lease-purchase agreement for the Kentucky Community and Technical College System (KCTCS). KCTCS entered into a lease-purchase agreement with the City of Versailles for a 20-year period. At the end of the 20-year period, KCTCS will own the facility. The owner of the facility, Texas Instruments, Inc., donated the vacant building to the City of Versailles. The city agreed to secure funding to renovate the facility at an estimated cost of $6,330,000, and KCTCS agreed to pay rent sufficient to cover the city's annual payments for the improvements as well as maintenance and operation costs. The annual cost of the lease is $715,008.

In March, the committee approved one postsecondary education lease for the University of Kentucky. Due to a shortage of on-campus student housing, the university leased 84 four-bedroom apartments and 24 two-bedroom apartments off campus to accommodate students' housing needs. University Commons, owned by Capstone Properties, was selected based on its proximity to the campus, price, condition of the facility, number of students presently residing at the facility, and access to Lex-Tran bus service. The lease, which was authorized in the 2002-04 budget, will accommodate 300 students and has a cost of $1,546,560 for a nine-month term.

In October, the committee approved the renewal of two postsecondary education leases (office and warehouse space) for the University of Louisville. The annual cost for the two leases combined was the same as the cost prior to renewal.

Review of Court Projects

The committee reviewed and approved two requests by the Administrative Office of the Courts (AOC) to increase the use allowance for two court facility projects authorized by the 2002 General Assembly. The use allowance is a payment AOC makes to a county for court space and is structured to cover a county's debt service payments related to the financing of a court project. AOC asked for approval to increase the scope of the Breathitt County Judicial Center to accommodate changes needed when Breathitt County canceled plans to build a new jail next to the facility. AOC determined that the new court facility would require a vehicle sallyport and holding cells since the jail would no longer be located next door. AOC also asked for approval to increase the scope of the Clay County Judicial Center to permit the purchase of property for construction of a parking lot adjacent to the new court facility. In both cases, the committee approved an increase in the maximum use allowance up to 15 percent for the projects.

REPORT OF THE 2003
EDUCATION ASSESSMENT AND ACCOUNTABILITY
REVIEW SUBCOMMITTEE

Sen. David Williams, Co-Chair
Rep. Harry Moberly, Co-Chair

Sen. Lindy Casebier	Rep. Mary Lou Marzian
Rep. Jon Draud	Rep. Frank Rasche
Sen. Dan Kelly	Sen. Ed Worley

LRC Staff: Sandra Deaton and Kelley McQuerry

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE

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

SUBCOMMITTEE ACTIVITY

The subcommittee met five times during the 2003 Interim.

In June, the subcommittee heard reports from representatives of two school districts on strategies they are using to implement SB 168 (2002) that directs school districts to reduce the achievement gaps among various subpopulations of students. Both representatives described the value of having disaggregated data that can be assessed to distinguish the achievement gaps and locate students who need additional instruction and support. The requirements of SB 168 are causing the districts to find better ways to align the curriculum with the academic expectations.

The subcommittee also received a report from the chair of the Kentucky Board of Education, the commissioner of Education, and the deputy commissioner of the Department of Education on the implementation of the federal No Child Left Behind (NCLB) Act. They reported that the goals of NCLB mirror Kentucky's goals, though there are different requirements for meeting the goals. Kentucky will need to add additional testing in reading and mathematics to comply with the federal requirement of annual assessment in grades three through eight. Kentucky will also need to make adjustments to determine "annual yearly progress" since the current system determines progress based on a two-year schedule. Also, Kentucky evaluates several content areas, whereas NCLB requires that only reading and mathematics be tested. Though several issues had not been settled, Kentucky had received conditional approval of its plan, allowing school districts to receive federal funds for the 2003-2004 school year.

At the August meeting, the chair of the Kentucky Board of Education (KBE); the commissioner of Education; and the deputy commissioner of the Department of Education; the chair of the School Accountability, Assessment and Curriculum Council; and the chair of the National Technical Advisory Panel on Assessment and Accountability (via phone) provided an update on the policies that the Kentucky Board of Education was considering to implement NCLB. The KBE chair reported that the board has tried to make all decisions with reference to four guiding principles:

- to comply with the NCLB goals, including proficiency by 2014 and progress for every child, which are the same as Kentucky's goals;

- to ensure that Kentucky continues to make progress toward the learning goals that are outlined in Kentucky law;
- to build on the assessment system that has been developed in Kentucky by making changes that enhance the process; and
- to ensure the continued validity and reliability of the assessment and accountability system.

The deputy commissioner discussed a variety of issues that the KBE was still considering, including adding additional reading and mathematics tests in grades three through eight, determining adequate yearly progress, defining "academic year," and determining an annual measurable objective in reading and mathematics. The final decisions will be incorporated in administrative regulations to be adopted by the KBE in December 2003 and then reviewed by the subcommittee.

In September, the commissioner of Education came before the subcommittee to discuss the work that has been done in the Department of Education related to the subcommittee's earlier recommendations resulting from a study required by 2000 House Concurrent Resolution 88. The subcommittee was directed by HCR 88 to study the issues of the adequate preparation of elementary and secondary school students for promotion to higher grades, the establishment of appropriate educational criteria for entrance into higher grades, and the remediation rates of students entering postsecondary educational institutions.

The commissioner said the department is putting more energy in developing tools to help teachers by developing curriculum units, assessments, and student work that can be used as a part of the instructional process. He said that the effort on literacy and literacy development at the early years and at the middle school level is being continued and reinforced. He said that the assessment instruments that are being used by the local districts are being strengthened.

The commissioner said that in the future there may be some value in looking at end-of-course examinations at the high school level. He said there could be benefits in requiring a statewide intervention for the students who are identified as underperforming by the state test. He said that the assessment could be tied to intervention strategies and could also apply to schools that are not achieving or to subpopulations within a school that are not achieving.

At the October meeting, the commissioner of Education reported the 2003 Commonwealth Accountability Testing System (CATS) results. He reported that there were gains in state academic indices from 2002 to 2003 at all levels, and the elementary and middle schools showed progress within each content area. High schools showed progress in all areas except science and social studies. He also reported that each grade level registered yearly gains over the five years of CATS.

The commissioner discussed his views on future adjustments that need to be made to the assessment and accountability system. The suggested areas for adjustment include continuous assessment tools at the local level; shortening the turn-around time for assessments, including a longitudinal assessment component; using CATS as a trigger to find students who need more support; renorming the CATS normed reference test; and considering end-of-course examinations at the high school level.

At the November meeting, the chair of the KBE, the commissioner of Education, and the deputy commissioner of the Department of Education discussed the proposed administrative regulations that include changes needed to implement the federal No Child Left Behind Act. The KBE will take action on the administrative regulations at its December meeting.

The subcommittee determined that it would not meet in December 2003.

REPORT OF THE 2002 - 2003
GOVERNMENT CONTRACT REVIEW COMMITTEE

Rep. Brent Yonts, Co-Chair
Sen. Jack Westwood, Co-Chair

Rep. Jesse Crenshaw
Rep. Jeff Hoover
Sen. Ernesto Scorsone
Rep. Kathy W. Stein
Sen. Gary Tapp
Sen. Elizabeth Tori

LRC Staff: Michael L. Meeks, Kim M. Eisner, Lisa L. Whittaker, Joseph Hood, and Jennifer A. Wilson

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

GOVERNMENT CONTRACT REVIEW COMMITTEE

JURISDICTION: Review all nonexempt memoranda of agreement by and between state agencies; review all nonexempt personal service contracts by state agencies and by off-budget agencies, which 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, Kentucky Student Loan Corporation, the Kentucky Retirement Systems, and other municipal corporations; and 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.

Memoranda of agreement review exemptions include 1) agreements between the Transportation Cabinet and political subdivisions of the Commonwealth for road and road-related projects; 2) agreements between the Auditor of Public Accounts and other government agencies for auditing services; 3) agreements between a state agency as required by federal or state law; 4) agreements between state agencies and state universities or colleges, and agreements between state universities and colleges and employers of students in the Commonwealth work study program; 5) agreements involving child support collections and enforcement; 6) agreements with public utilities, providers of certain direct Medicaid health care to individuals, and transit authorities; 7) nonfinancial agreements; 8) any obligation or payment for reimbursement of the cost of corrective action made pursuant to the Petroleum Storage Tank Environmental Assurance Fund; 9) exchanges of confidential personal information between agencies; 10) agreements between state agencies and rural concentrated employment programs; or 11) any other agreement that the committee deems inappropriate for consideration.

Personal service contract review exemptions include 1) agreements between the Department of Parks and a performing artist or artists for less than $5,000 per fiscal year, per artist or artists; 2) agreements with public utilities, foster care parents, providers of certain direct Medicaid heath care to individuals, individuals performing homemaker services, and transit authorities; 3) agreements between state universities or colleges and employers of students in the Commonwealth work study program; 4) agreements between state agencies and rural concentrated employment programs; 5) agreements between the State Fair Board and judges, officials, or entertainers contracted for events promoted by the State Fair Board; or 6) any other contract that the committee deems inappropriate for consideration.

COMMITTEE ACTIVITY

The Government Contract Review Committee is a statutory committee of the Legislative Research Commission and is required to meet monthly.

During fiscal year 2003, the committee reviewed 1,336 personal service contracts and 550 amendments to personal service contracts. The committee also reviewed 694 personal service contracts for $10,000 and less, which are submitted to the committee for informational purposes only.

Since the start of fiscal year 2004, the committee has reviewed 574 personal service contracts and 256 amendments to personal service contracts. The committee has also reviewed 247 personal service contracts for $10,000 and less, which are submitted to the committee for informational purposes only.

During fiscal year 2003, the committee reviewed 1,490 memoranda of agreement and 1,193 memoranda of agreement amendments. The committee also reviewed 1,256 memoranda of agreement for $50,000 and less, which are submitted to the committee for informational purposes only.

Since the start of fiscal year 2004, the committee has reviewed 883 memoranda of agreement and 896 memoranda of agreement amendments. The committee also reviewed 389 memoranda of agreement for $50,000 and less, which are submitted to the committee for informational purposes only.

During fiscal year 2003, the committee reviewed a total of 2,580 personal service contract items and a total of 3,939 memoranda of agreement items, for a total of 6,519 items.

Since the start of fiscal year 2004, the committee has reviewed a total of 1,077 personal service contract items and a total of 2,168 memoranda of agreement items, for a total of 3,245 items.

REPORT OF THE 2003
MEDICAID MANAGED CARE OVERSIGHT ADVISORY COMMITTEE

Sen. Richard Roeding, Co-Chair
Rep. Paul Bather, Co-Chair

Sen. Walter Blevins	Rep. James Bruce
Sen. Tom Buford	Rep. Jack Coleman
Sen. Julie Denton	Rep. Steve Nunn
Sen. Dan Seum	Rep. Dottie Sims

LRC Staff: Barbara Baker, Robert Jenkins, Eric Clark, Perry Nutt, Murray Wood, and Cindy Smith

PRESENTED TO THE
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AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

MEDICAID MANAGED CARE OVERSIGHT ADVISORY COMMITTEE

JURISDICTION: The Medicaid Managed Care Oversight Advisory Committee is required to meet at least four times annually and provide oversight on the implementation of Medicaid managed care within the Commonwealth, including access to services, utilization of services, quality of services, and cost containment.

COMMITTEE ACTIVITY

As of October 31, the Medicaid Managed Care Oversight Advisory Committee had met four times during the 2003 Interim. Topics heard by the committee included Medicaid updates, President Bush's new Medicaid proposal, person-centered funding, update on the Passport Health Plan, and obstetrical risk management.

Medicaid

The secretary of the Cabinet for Health Services provided testimony regarding the cost-containment strategies implemented to address the budget shortfall. Strategies implemented included initiatives to support program integrity, manage the pharmacy program, manage utilization, initiate cost sharing, restructure reimbursement, and implement post-payment recovery. The impact of cost-containment strategies were also discussed. With the initiatives designed to cut the Medicaid budget by $250 million for fiscal year 2004, the Kentucky Medicaid program originally projected a Medicaid budget shortfall of $169 million in fiscal year 2004. Subsequent to the $47.7 million additional funds added to the Medicaid benefits in the 2004 budget and the federal relief funds, this projection was amended to $4.4 million. The projection for fiscal year 2005 was not available at the time of testimony, but it was noted that one-time money available in the current fiscal year would not be available in fiscal year 2005.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 provided $20 billion in state fiscal relief. Kentucky's share included $137,441 million in flexible grants for fiscal years 2003 and 2004 and a $138.8 million increase related to an increase in the federal medical percentage rate.

The secretary briefed the committee on Supports for Community Living (SCL) issues. Since fiscal year 2000, more than 250 SCL slots have been added each fiscal year. In fiscal year 2004, an additional 500 slots will be added. The cabinet implemented a new flat reimbursement rate in lieu of the previous reimbursement rate for new providers, which was set at 120 percent of the median rate as an initiative to attract additional providers. Currently, there are more than 100 SCL providers. Providers testified that the flat rate would result in a 20 percent cut in revenue for some agencies, and 70 percent of Kentucky providers would receive a significant loss of SCL revenue. It was noted that the Finance Subcommittee of the Kentucky Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disorders recommended that Medicaid implement the rate change slowly.

Other cost-containment initiatives presented by the cabinet included the following changes in resource limitations and estate recovery: (1) require the establishment of a qualified income trust for eligibility for individuals with a income over the Medicaid guidelines; (2) eliminate of the homestead deduction from estate recovery; (3) recognize the homestead as a resource after six months of institutionalization; and (4) consider the addition of a name to a deed as a transfer of resources. It was reported that these initiatives would save $16, 695,840.

The secretary explained that a medically needy individual, whose income exceeds the Medicaid allowable amount but has medical expenses that are greater than income, may continue Medicaid eligibility by placing that income into an irrevocable qualified income trust. The trust is restricted to income from pensions, Social Security, and other income. Upon the death of the individual, the state would recover Medicaid expenditures for the individual from the trust. The cabinet projected that this initiative would save the state approximately $15,687,887 during fiscal years 2003 and 2004. This policy change would affect 1,025 individuals currently residing in nursing facilities. In other states, approximately 42 percent of individuals who are potentially eligible decided not to establish a trust. Advocates for Medicaid recipients voiced concern that attorneys and banks were not familiar with setting up qualified trusts. They stated that the savings would be derived from the hassle factor, which will discourage individuals from establishing trusts. It was also noted that after deductions from the trust, there would not be any funds left for Medicaid to recover.

The commissioner of the Department for Medicaid Services provided an overview of the care coordination pilot projects aimed at managing high utilization of the emergency room and prescription drugs. The cabinet identified the top 100 individuals with the highest pharmacy expenditures and the top 100 individuals with the highest emergency room utilization. KenPAC nurses serve as care coordinators for the pilot projects. The care coordinators work with the recipient’s primary care provider to establish an action plan to optimize quality health care. Members of the committee recommended that the department also consider the number and type of prescriptions and the patient’s diagnosis in selecting recipients for the pilot.

Level of Care Criteria - 907 KAR 1:022 and E

At the August 18 meeting, the secretary of the Cabinet for Health Services provided testimony regarding the implementation of amendments to 907 KAR 1:022E, which went into effect on April 4. This administrative regulation tightened the criteria for meeting nursing facility level of care, which must be met in order to qualify for nursing facility care or Home and Community Based Waiver services (HCBW). The Department for Medicaid Services contracts with a Peer Review Organization (PRO) to make level-of-care determinations. Between April and September, 345 individuals were denied nursing facility care, and 2,488 individuals were denied HCBW program services based on the new level-of-care criteria.

The secretary noted that families seeking services for autistic children were denied HCBW program services. She explained that these children are not categorically eligible, and that the PRO had erroneously certified children with pervasive developmental disorders for HCBW services. Their subsequent decertification is not related to the change in the level-of-care criteria. Between January and September, 1,848 individuals who were determined ineligible for nursing facility care or HCBW program services based on the level-of-care criteria, filed appeals. Of these appeals, 301 have been adjudicated.

Discharge planning for individuals who were denied services was discussed. The secretary stated that the Cabinet for Health Services does not provide discharge planning; however, nursing facilities provide this service. The secretary identified after-school services, rehabilitation workshops, personal care homes, adult day care, and family care homes among alternatives for individuals not meeting level-of-care criteria. Several members of the committee recommended that the cabinet establish a plan to provide continuing care upon decertification. Some individuals discharged from nursing home are eligible for personal care and state supplementation. State supplementation pays for residential costs, which are about $4,027 compared to an average cost of $35,000 for nursing facility care. However, many clients are not eligible for any services or would have to pay for the services.

The quality of services provided by the PRO was discussed. The secretary noted that the Cabinet for Health Services started monitoring the PRO in October 2002. She reported that the PRO was not following its own checklist. Individuals who did not meet the level of care under the criteria prior to April 4, 2003, were certified as meeting nursing facility level of care. However, there were no penalties levied against the PRO since their contract in effect prior to July 2003 did not include any provision to permit assessment of penalties. The president of Health Care Review Corporation, the PRO, testified regarding the process used for the review. He reported that a registered nurse makes the determination using the criteria in Section 4 of 907 KAR 1:022E. If the nurse determines that the criteria are not met, the case is referred to a physician. He noted that the Cabinet for Health Services asked the PRO to apply the level-of-care criteria in a uniform and consistent manner. He indicated that the PRO did not always have a complete picture with which to make determinations. In 25 percent of the cases, the PRO received inadequate or incomplete information from the health care provider. This has been improved. The cabinet is reviewing each case; and if there was a lack of documentation, the case will be re-evaluated.

The committee heard testimony from providers and consumer advocacy groups regarding the impact of the amendments to 907 KAR 1:022E. The chair of the Board of the Kentucky Association of Health Care Facilities (KAHCF) testified that the cabinet allowed KAHCF input into the language of the administrative regulation. KAHCF educated their provider community about the changes and encouraged appropriate documentation of the residents' care needs.

The impact on adult day health care centers was discussed. The executive director of the Kentucky Association of Adult Day Centers explained that the adult day health care providers serve as a safety net for patients. He reported that since 907 KAR 1:022E was implemented, 32 percent of adult day health care patients have been denied services. He stated that the cost of HCBW program was $17 million as compared to $80 million to care for the same group of individuals in a nursing facility. Furthermore, he noted that several adult day health programs closed since the implementation of the new level-of-care criteria.

Testimony was also received from the state president of the American Association for Retired Persons, the executive director of the Kentucky Home Health Association, the director of the Office of Kentucky Legal Services Program, and the director of the Office of Protection and Advocacy. These advocates encouraged the Cabinet for Health Services to restore Medicaid services. The director of the Office of Protection and Advocacy reported that the office received many calls regarding terminations from the HCBW program beginning in January 2003. Information regarding appeal rights was provided and individuals were encouraged to contact their legislators.

At the August 18 meeting, consumer advocates testified that Medicaid recipients who received letters of denial did not receive notice in compliance with federal law. Notices did not include information regarding the reason for the denial that was specific enough to allow the individual to prepare a defense. At the September 15 meeting, the secretary indicated concern regarding the notices that individuals had received. She indicated that the cabinet would review every case that had been denied. The cabinet worked with the PRO and approved five new notices to send out. In some cases, some individuals will receive a new notice and the appeals process will start over.

President Bush's New Medicaid Proposal

The committee heard testimony from the regional representative of the secretary of the Department of Health and Human Services regarding President Bush's proposal to improve Medicaid. The representative explained that the proposed program was being built on the success of the Children's Health Insurance Program. The current Medicaid program is governed by complex federal rules, has an "all or nothing" benefit package, and lacks flexibility. He reported that if the program continues under the current rules, beneficiaries are at risk because of the financial pressure that states are experiencing. Thirty-eight states have reduced their programs; and most states are considering further cutbacks to benefits or eligibility, increases in cost sharing, and reductions to provider payment. The new programs would provide predictable funding, simplify eligibility and the administration of the Medicaid program, enable states to tailor benefit packages, strengthen public and private partnerships, and encourage consumer control and independence. It would facilitate coverage of families and special needs populations, including HIV/AIDS, mentally ill, and chronically ill.

The representative explained that there would be no caps on the amount of expenditures for mandatory services. Funding would be based on the state's baseline trending forward. States would be required to maintain their current level of funding. Under one model, Kentucky would receive $3.065 billion in 2004, which would be an increase of $152 million. Under the second model, Kentucky's share would be $3.045 billion, which would be an increase of $132 million. Money that is not spent in one year would roll over to the following year. Another major point of the proposal is the ability to separate preventative and acute care programs from community and long-term care programs.

Person-Centered Funding

House Bill 501 of the 2003 General Assembly directed the Cabinet for Health Services to establish an ad hoc committee to explore the possibility of implementing a self-determination, or cash and counseling, model for individuals in the SCL program. The secretary of the Cabinet for Health Services indicated that the ad hoc committee convened and would submit recommendations in December 2003 to the General Assembly and the Commission on Services and Supports for Individuals with Mental Retardation and Other Developmental Disorders. It was noted that the cash and counseling demonstrations implemented covered personal care services, but did not include residential or rehabilitative services. Should Kentucky implement this type of program under SCL, it would the first in the country.

Passport Health Plan

Officials representing Passport Health Plan provided an update on their status. They reported a total of $92.4 million in cost avoidance between fiscal years 1999 and 2002. Eight percent of expenditures were identified as administrative. The pharmacy management program was presented. The cost per member per month decreased in 2003 as compared to 2002 expenditures. The plan has the highest level of accreditation from the National Committee for Quality Assurance. Passport Health Plan consistently achieved higher percentages in prenatal care, postpartum care, immunizations, well-child visits, and consumer satisfaction as compared to national means.

Obstetrical Risk Management

A physician with a background in obstetrical risk management encouraged the Medicaid program to implement a comprehensive risk assessment and obstetrical mentoring program. He proposed that the program would reduce the number of preterm deliveries in Kentucky. He estimated that there is a 15 percent preterm delivery rate among Medicaid recipients. There are about 3,750 preterm deliveries in Kentucky each year. The cost for neonatal intensive care was reported as being between $112 and $114 million per year. He predicted that the reduction in preterm deliveries in Kentucky within 18 months of implementing the risk assessment and mentoring program would save Kentucky approximately $12 million.

REPORT OF THE 2003
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Sen. Katie Stine, Co-Chair
Rep. Charlie Hoffman, Co-Chair

Rep. Adrian Arnold	Rep. Sheldon Baugh
Sen. Charlie Borders	Rep. Dwight Butler
Rep. Jack Coleman	Sen. Brett Guthrie
Sen. Ernie Harris	Sen. Paul Herron, Jr.
Sen. David Karem	Sen. Vernie McGaha
Rep. Ruth Ann Palumbo	Rep. Tanya Pullin
Sen. Dan Seum Rep. Dottie Sims	Rep. Dottie Sims

LRC Staff: Greg Hager, Lowell Atchley, Lynn Aubrey, Kara Daniel, Tom Hewlett, Joseph Hood, Margaret Hurst, Dan Jacovitch, Erin McNees, Stacie Otto, Cindy Upton, and Susan Spoonamore

PRESENTED TO THE
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AND THE
2004 SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

JURISDICTION: The Program Review and Investigations Committee is a 16-member bipartisan committee authorized under KRS Chapter 6. The committee is empowered to review the operations of state agencies and programs, to determine whether funds are being spent for the purposes for which they were appropriated, to evaluate the efficiency of program operations, and to evaluate the impact of state government reorganizations. State agencies are obligated to correct operational problems identified by the committee and must implement the committee's recommendations or propose suitable alternatives.

Any official in the executive, judicial, or legislative branches of government may request a study. A majority vote of the committee is required to initiate research studies and approve final reports. Reports are based on staff research but represent the official opinion of the majority of the committee once approved. The committee issues a final report for a study after public deliberations that include the responses of officials of relevant state agencies.

COMMITTEE ACTIVITY

During the 2003 Interim, the Program Review and Investigations Committee held seven meetings through November 2003.

The committee began the 2003 Interim with five active studies: Public Funding of Kentucky Gubernatorial Campaigns; the Kentucky Enterprise Zone Program; an Analysis of Medical Malpractice Insurance Premium Costs; the Council on Postsecondary Education's Oversight of State Universities, With Special Attention to Kentucky State University; and the Commonwealth Accountability and Testing System, With Special Attention to Writing Portfolios. Staff had surveyed the members of the General Assembly during the 2003 Regular Session to solicit suggestions for topics for review by the committee. Staff prepared background papers on these and subsequent topics that could be used by members of the committee as they decided which research studies they would approve.

At the May meeting, the first of the Interim, members of the committee elected House and Senate co-chairs, heard a staff overview of SB 221's provisions related to the committee, reviewed a list of study topics suggested by members of the General Assembly, and solicited additional suggestions for study topics from members of the committee. There was also a status report on studies assigned to staff by the committee but that had not been reported to or approved by the committee yet.

At the June meeting, the LRC chief economist presented the report "The Cost of Medical Malpractice Insurance and Its Effect on Health Care." An administrator of Knox County Hospital, representatives of the American Medical Association and the Kentucky

Medical Association, and a member of the general public testified about the report or the topic of medical malpractice. A motion to approve the report did not pass.

The report "Postsecondary Education in Kentucky: Systemwide Improvement but Accountability Is Insufficient" was presented at the July meeting of the committee. The president of the Council on Postsecondary Education and the interim president of Kentucky State University testified in response to the report. The committee discussed the report and approved it and its recommendations.

At the August meeting, staff presented the report "The Commonwealth Accountability Testing System." The commissioner of the Kentucky Department of Education and a member of the general public provided responses to the report. After discussion, the committee adopted the report and its recommendations. The committee also initiated three new studies at the August meeting: Medicaid's Brokerage System for Nonemergency Transportation, Improved Coordination of Adult Protective Services, and Improper Use of State Computers. With amendments by committee members, the committee approved study proposals for the nonemergency transportation and adult protective services studies.

At the September meeting, the committee also heard and discussed updates of the "Enterprise Zone" and "Public Funding of Gubernatorial Campaigns" studies. The executive director of the Commission for Children With Special Health Care Needs (Cabinet for Health Services) gave a follow-up on the implementation of the recommendations of the "First Steps" report, which was approved by the committee in December 1999. The commissioner of the Kentucky Department of Education testified on the department's implementation of recommendations of the "Support Education Excellence in Kentucky" report, which was approved by the committee in November 2002.

At the October meeting, the committee heard and discussed two more agency responses to previously adopted reports. Two officials from the Finance and Administration Cabinet briefed the committee on implementation of recommendations in the "Executive Branch Contracting for Services" report, which was adopted in October 2001. The Labor Cabinet's director of Employment Standards, Apprenticeship, and Training updated the committee on the status of the state's prevailing wage program and implementation of recommendations contained in the committee's December 2001 report on the subject.

At the November meeting, staff presented a report on phase one of the study Improved Coordination of Adult Protective Services. Officials from the Cabinet for Families and Children and the Cabinet for Health Services' inspector general testified in response to the report.

Also at the November meeting, the committee approved two additional study topics: the status of Kentucky state agencies' accounts receivable and the Kentucky Transitional Assistance Program incentive bonuses.

The report on Medicaid nonemergency transportation is scheduled for presentation at the December 2003 meeting.

REPORT OF THE 2003
TOBACCO SETTLEMENT AGREEMENT FUND
OVERSIGHT COMMITTEE

Sen. Vernie McGaha, Co-Chair
Rep. Roger Thomas, Co-Chair

Rep. Adrian Arnold	Sen. Dan Kelly
Rep. Carolyn Belcher	Rep. Thomas McKee
Sen. Charlie Borders	Sen. Joey Pendleton
Sen. David Boswell	Sen. Richie Sanders
Rep. James Comer	Rep. Tommy Turner

LRC Staff: Dan Risch, DeVon Hankins, and Kelly Blevins

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TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE

JURISDICTION: Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans, planning by the board to establish short-term and long-term goals, strategies, and 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 public postsecondary institutions in conducting alternative crop development research; review of county agricultural development council plans; and use of Tobacco Master Settlement Agreement money.

COMMITTEE ACTIVITY

Established for the first time, the Tobacco Settlement Agreement Fund Oversight Committee took up its responsibilities during the 2003 Interim. KRS 248.723 creates the committee and KRS 248.701 to 248.727 lay out the general state policy regarding the Tobacco Master Settlement Agreement and the role played by the committee in overseeing the expenditure of money received under the agreement. A few additional statutes within KRS Chapters 248, 194A, and 200 round out the committee's statutory underpinnings.

The committee moved quickly to gain an understanding of the Agricultural Development Board and the process used by the board to award grants and loans from the two major financial accounts that receive money under the Tobacco Master Settlement Agreement. Approximately $39,000,000 was budgeted for the state account and $22,000,000 for individual county accounts for the 2003 Interim. To place the board's decisionmaking process for making grants and loans in context, the committee received detailed testimony on the plan "Cultivating Rural Prosperity: Kentucky's Long-Term Plan for Agricultural Development." This plan guides board actions to achieve the preservation and enhancement of rural Kentucky in the face of structural changes wrought by declining tobacco sales.

Having gained a basic understanding of the board, the committee set up its own process to carry out its oversight functions. First, the committee received reports on a monthly basis from representatives of the board. The reports consisted of an accounting of the monthly applications to the board seeking funding for agricultural diversification projects. The details of each project were given, how much money was requested from the state account or a county account, and the decision made by the board.

Concurrent with the monthly flow of information about project applications, the committee also received reports from the administrators of programs that had received tobacco settlement funds directly via the state budget or that had received substantial grants from the board. The administrator of the Kentucky Infrastructure Authority gave a status report on the use of tobacco settlement money for developing drinking-water services in rural communities. The Early Childhood Development Authority was appropriated tobacco settlement funds to enhance childcare and childhood education programs and reported to the committee. The programs of the Kentucky Health Care Improvement Fund relating to affordable health insurance, lung cancer research, local substance abuse prevention programs, and smoking cessation were also explained to the committee.

In addition, the administrator of the state Environmental Stewardship program explained how budgeted tobacco settlement money is used to make grants to farmers who employ farm practices that enhance rural water quality. The Purchase of Agricultural Conservation Easements and the Fayette County Purchase of Development Rights programs were explained to the committee. These two programs use the tobacco settlement funds allocated to them to keep the state's most productive farmland from being sold for nonfarm use.

Over the course of the year, the committee carried out its oversight role in a variety of ways. For example, on a regular basis the committee requested the Agricultural Development Board to explain how approved projects would assist tobacco farmers and tobacco-dependent communities, which is a key element of the legislative guidance for spending tobacco settlement money. In addition, the committee reviewed the deference given by the board to county council decisions to fund projects with county funds. As a result of what the committee learned, it sought to encourage the board to be consistent in making decisions about county-funded projects and to give proper consideration to local planning efforts. Finally, the committee urged the board to continue the effort to involve all farmers in the state's drive to shore up Kentucky agriculture by educating farmers of new farming opportunities.

Committee members also observed that board initiatives must avoid duplicating other state programs aimed at assisting farmers and farming communities; that the board should avoid delays in getting money to applicants after project approval; that the board should strive to award state-funded grants equitably between counties and regions across the state as warranted by the quality of the projects; that an effort must be made to educate tobacco farmers of new farming opportunities while money continues to be available to assist them in making changes; and that care must be made in granting awards for projects that may need ongoing funding such as for continuing personnel expenses.

In addition, the committee requested the board to reconsider certain funding decisions. For instance, the board was requested to review its policy of funding greenhouses solely from county account funds. The board responded to the committee's input and revised its approach. Also, after the committee set out a rationale about how the funding could improve farm income in a significant way, the board reconsidered its decisions denying funding for certain purchases of heavy equipment.

The committee expressed its appreciation of the difficult task performed by the board and commended the board members for their dedication and the good work they have done. The committee noted that some of the difficulties faced by the board included:

1. A recognition that identifying tobacco growers can be challenging. Should the farmer be presently growing tobacco? How should the state respond to a farmer who only recently quit growing tobacco?
2. Justifying state-funded projects that provide a positive economic impact across a region when the project is located in a county that isn't dependent on tobacco.

Review of Projects

The committee is authorized to provide a forum for project applicants to explain projects that have been denied funding by the board. One project applicant was given time to explain the project. Representatives of the board said that the project was turned down because the project would not directly affect farm income, a shortcoming that was particularly troublesome because of the large amount of state funds being requested. The committee learned from the discussion that the project may qualify for federal money under the federal farm bill. As a consequence, the committee requested the board to reconsider the project should federal money become available.

Reports Received

The committee received a report from researchers at the University of Louisville who, under contract with the board, had analyzed the effectiveness of the projects funded by the board. Among the report's conclusions were that the farm income shortfall from lost tobacco production is predicted to be $366 million that can be recovered if state funding continues at approximately $50 million per year; and that county account spending has been fairly distributed across county extension service districts.

The committee received a report from the Subcommittee on Rural Issues of the Interim Joint Committee on Agriculture and Natural Resources. The report resulted from a request for assistance from the committee to improve rural economic development, to review impediments to the most effective use of tobacco settlement money, and recommend the means to remove those impediments.

REPORT OF THE 2003
TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

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

Bruce Crump
David Hanna
Scott Furkin
Heidi Flemming
Mary Hass
Carol Lunney
Joanna G. Thomas
Sandra Mlinarcik
Judy Mallory
Kevin Lightle
Margaret Pennington
Richard Puvis
Bruce Scott
Sharon Marsh
Colleen Whitehouse
Colleen Ryall
Michael Townsend
William Kraft
James Woodrum

LRC Staff: Murray Wood, Eric Clark, and Gina Rigsby

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TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

JURISDICTION: The 2003 General Assembly enacted Senate Concurrent Resolution 17 establishing an 18-member Task Force on Services and Supports for Individuals with Acquired Brain Injuries (ABI). The task force was required to develop recommendations regarding accurate assessment of the number of adults and children with ABI who receive publicly funded services; reducing barriers to existing services; and developing strategies for specialized services that include evaluation and treatment, employment, education, case management, and strategies for decriminalization and diversion from the criminal justice system.

The Task Force on Services and Supports for Individuals with Acquired Brain Injuries met monthly between August and December. This task force is a continuation of the 2001 legislative task force (01 HCR 67) and was reauthorized in the 2003 Session by Senate Concurrent Resolution 17 to continue the work of the original task force and to develop specific recommendations for needed services and supports.

TASK FORCE ACTIVITY

Because the 2003 task force was a continuation of an earlier task force, little time was spent on background information about ABI such as incidence, definitions, and currently available service systems. This information is contained in the final report of the 2001 task force (Legislative Research Commission Research Memorandum No. 496).

A prevalence study was conducted by Traumatic Brain Injury Trust Fund (TBITF) through the University of Kentucky's Center on Drug and Alcohol Research. This was the first lifetime prevalence study of head injuries among Kentuckians. The survey revealed that almost 20 percent of Kentucky households have at least one person with a brain injury. The study also indicated that approximately 190,000 Kentuckians have "head injuries with clinically significant problems that could require health, mental health, rehabilitation and ongoing supportive services." The Kentucky Injury Prevention and Research Center at UK reported that each year 1,300 persons are newly disabled because of brain injuries, and that Kentucky's incidence rate of 96 per 100,000 and annual fatality rate of 24.5 per 100,000 are higher than the national averages. More than one-half of traumatic brain injuries in Kentucky are caused by falls and motor vehicle crashes.

Other data collection efforts included the TBITF Surveillance Project conducted by the Kentucky Injury Prevention and Research Center and the Behavioral Risk Factor Surveillance Survey conducted by the Department for Public Health in cooperation with the Centers for Disease Control and Prevention (CDC). The risk factor survey will include questions specific to brain injury for the 2004 survey. Additional data and information are needed regarding the number of individuals with ABI who are receiving other publicly funded services, effective service delivery models, and consumer satisfaction and outcome studies.

Attempts were made to estimate the cost of traumatic brain injury in Kentucky. Precise estimates are difficult and understated because national and state data from the CDC focus on "traumatic" injury only, and Kentucky programs serve persons with "acquired" injuries; there is no marker or screen for brain injuries in other social, justice, or corrections systems, and reported medical diagnosis codes may understate brain injury; and "mild" brain injury is often misdiagnosed and underreported. The Kentucky Injury Prevention and Research Center estimated that the total costs of traumatic brain injury in Kentucky are $803 million, which include $273 million in income loss from premature death; and $434 million in work losses, disability, and vocational rehabilitation. Medical and related care is estimated at $96 million. A 1999 survey of brain-injured individuals and their families indicated that 37 percent had commercial health insurance, 39 percent were Medicaid participants, 32 percent were Medicare participants, and 5 percent were self-pay, no insurance, or other. The Medicaid burden of traumatic brain injury, estimated to be over $30 million annually, is greater for survivors in community-based programs than in acute care.

The study "Motorcycle Helmets and Head Injuries in Kentucky 1995-2000," published in the January 2003 edition of the *Journal of the Kentucky Medical Association*, found that unhelmeted motorcycle drivers treated at the University of Louisville Hospital trauma center are over four times more likely to suffer severe traumatic brain injuries, that they incur on average $26,000 more in medical costs, and that 48 percent of unhelmeted drivers were uninsured or had only government-subsidized insurance. It was estimated that indigent, unhelmeted drivers accrued more than $1.97 million in acute hospital care alone between 1995 and 2000.

The task force heard that the ABI Medicaid Waiver Program and the Traumatic Brain Injury Trust Fund implemented waiting lists in 2003. Both of these publicly funded programs are limited by capped expenditures or rehabilitative progress. Task force members and presenters indicated that there are very few existing programs for long-term support, and service providers in those programs often are not familiar with the effects of brain injuries. Task force recommendations include legislation to provide funding for long-term supportive services.

Two state agencies have been awarded federal funds focusing on ABI. The Brain Injury Services Unit of the Department for Mental Health and Mental Retardation Services received an implementation grant from the Health Resources Services Administration to develop training programs for other state agencies on the causes of brain injury and how to work effectively with brain-injured persons. The Department of Public Advocacy receives federal funding from the 2000 Child Health Act for protection and advocacy services on behalf of individuals with traumatic brain injuries.

The task force organized into three workgroups to address the requirements of 03 SCR 17: Access to Existing Services, Specialized Services and Decriminalization, and

Long-term Supports. Each workgroup presented the following recommendations that were adopted by the task force.

Recommendations

Access to Existing Services

- Use a "wrap-around" model of service delivery that allows for the use of multiple funding streams;
- Enhance assessment for brain injury in all service programs with instruments for screening and assessing acuity;
- Provide cross system case management to prevent duplication and provide incentives for credentialing; and
- Develop a panel of clinicians and consultants to support service providers.

Specialized Services and Decriminalization

- Encourage the establishment of an in-patient neurobehavioral unit with a medical facility; and
- Endorse existing efforts to decriminalize persons with disabilities currently in process with the 843 Commission on Mental Health and ensure efforts specifically include the population of brain-injured individuals.

Long-term Supports

- Establish a long-term supports model program of non-Medicaid services, including life-long case management;
- Secure funding for long-term supports program from General fund appropriations, a portion of increased taxes on cigarettes, and other fees that may be available;
- Increase the number of persons served through the ABI Medicaid Waiver from 110 to 250; and
- Continue work of this task force by establishment of an advisory committee composed of state agency representatives and consumers to the TBI Trust Fund Board.

The task force also approved drafts of five bills to be filed in the 2004 Session of the General Assembly. The legislative drafts seek to:

(1) Increase the fine for not using a seat belt or not using a child restraint system from $50 to $75, with $25 of the fine deposited into the Traumatic Brain Injury Trust Fund;
(2) Prohibit persons under age 16 from operating an all-terrain vehicle (ATV) and require helmets for persons operating ATVs;
(3) Increase the service fees associated with the mandatory DUI education and treatment classes from $250 to $325 and designate a portion of the fee to the Traumatic Brain Injury Trust Fund;

(4) Increase the limits to the TBITF from $2.75 million to $3.25 million; and
(5) Reinstate the motorcycle helmet law.

REPORT OF THE 2003
TASK FORCE ON INTER-COUNTY COOPERATION

Sen. Alice Kerr, Co-Chair
Rep. Steve Riggs, Co-Chair

Sen. Dan Kelly
Rep. Reginald Meeks
Commissioner F.J. “Bear” Finn
Debra Gabbard
Mayor Tom Holocher
Judge David Jenkins
Commissioner Adam Koenig
Commissioner Jody A. Lassiter
James R. Schrand
Judge Larry Tincher
Judge Jerry Vaughan
Mayor Shirlee Yassney

LRC Staff: Mark Mitchell, Joe Pinczewski-Lee, Kevin Mason, and Cheryl Walters

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
GENERAL ASSEMBLY

TASK FORCE ON INTER-COUNTY COOPERATION

JURISDICTION: SB 133 of the 2003 Regular Session of the General Assembly directed the creation of the Task Force on Inter-County Cooperation. The task force was charged with the responsibility of exploring the possibilities available for counties to create interlocal agreements that allow economies of scale and cost savings to the local governments for the provision of services. The task force was to also examine ways for Kentucky to provide incentives to the counties to enter into these interlocal agreements.

TASK FORCE ACTIVITY

The Task Force on Inter-County Cooperation met three times between July and September. The task force heard comments from representatives of the Kentucky Association of Counties, the Department for Local Government, the Office of the Attorney General, the Kentucky League of Cities, the Office of the Secretary of State, firefighter associations, the Kentucky Infrastructure Authority, and the Kentucky Council for Area Development Districts.

The task force focussed on the interlocal agreement process allowed under the provisions of KRS 65.210 to 65.300. Representatives from the Department for Local Government and the Office of the Attorney General outlined the process. Local governments must submit their requests to either the Department for Local Government or the Attorney General for review and approval. Representatives of the Department for Local Government indicated that routing interlocal agreements involving consolidated local governments as well as special districts to them rather than the Attorney General would improve the review process.

Although changes in the process might be warranted, savings can be realized through interlocal agreements. A representative of the Kentucky League of Cities cited two examples of the savings that interlocal agreements can provide. In one case, the city saved a total of $186,000 by restructuring its fire provision services with the county. In another case cited by the same individual, by restructuring its payroll tax through an agreement with the county, the city gained more than $100,000 in additional payroll tax revenue.

Even though savings can be realized, sometimes various situations make entering into interlocal agreements difficult. An example of these difficulties is demonstrated when dissolving special districts. When the agreement involves a special district service, and leaders wish to dissolve the special district in favor of providing the service through an agreement, the current state of the law requires many steps, as representatives of the Kentucky Association of Counties told the task force. These steps can impede the process. Another difficulty can occur when local leaders or populations do not want to local control over a service. Other impediments include a perception of a threat to a community’s identity and potential unequal representation in the joint venture.

While some disincentives do exist, the state has encouraged local governments to enter into interlocal agreements. There is a Joint Local Projects Funding Program within the Transportation Cabinet that provided a 50 percent match to local governments entering into interlocal agreements for various road projects. The state budgeted a total of $2.4 million in the two biennia when funds were appropriated.

In addition to the state's financial incentives, the Department for Local Government, the Kentucky Association of Counties, the Kentucky Council for Area Development Districts, and the Kentucky League of Cities indicated that they offer various forms of assistance to local governments wanting to enter into interlocal agreements.

Recommendations

Based on the information gained during the meetings, the task force made the following recommendations:

- **Transfer the review responsibilities of special district and consolidated local government interlocal agreements from the Attorney General's office to the Department for Local Government.** By transferring these responsibilities to the Department for Local Government, local governments will submit all their agreements to one entity, decreasing confusion and administrative delay by not having some agreements rerouted to another office for review.

- **Modify KRS 65.260 to clarify that the Department for Local Government has *initial* jurisdiction of review when any party of an interlocal agreement is a city, county, charter county government, urban-county government, consolidated local government, or special district.** There is no clear statutory authority establishing jurisdiction of review when an interlocal agreement has only one party that is a local government under the purview of the Department for Local Government. Establishing clear direction may reduce confusion and administrative delay. If an agreement involves an entity outside the Commonwealth, additional legal review may be necessary to endorse the agreement.

- **Require the Department for Local Government to create a log of interlocal agreements that includes the parties to the agreement and standardized agreement topics; and require notification to the Department of the termination of existing agreements.** By having a registry, local governments interested in forming interlocal agreements can access the text of the agreements for reference. Interested parties will also be able to track the numbers, types, and locations of agreements for statistical purposes.

- **Create, through the Department for Local Government, a publication for local governments to use when forming interlocal agreements.** Local governments will be able to access the expertise of the department, and the process itself will be set out in a concise manner allowing easier drafting, review, and passage of interlocal agreements.

- **Encourage the Department for Local Government to conduct a single financial study of interlocal agreements that examines the benefits of agreements between cities and counties, counties and counties, and cities and cities, after which studies would be performed by the department as requested by the General Assembly.** A formal, statistical analysis, while not required, might empirically demonstrate the financial and service benefits to be gained from entering into these agreements.

- **Encourage the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Council for Area Development Districts, and the Department for Local Government to expand the promotion of interlocal agreements through educating local elected officials and publishing literature.** While the number of local governments that are unaware of interlocal agreements is unknown, such efforts at promotion and education could improve utilization of interlocal agreements.

- **Provide, through statute, a simple way for a local government to dissolve an existing special district when it is determined that its services can be better provided through an interlocal agreement.** When it is determined that the service of an existing special district could be provided more efficiently on a larger, multi-county scale, and dissolving the district would be preferable to creating a multi-county special district, a simple way of dissolving the special district could facilitate the use of interlocal agreements.

- **Establish a state program of financial incentives for local governments that enter into interlocal agreements. Specifically, the Transportation Cabinet's inter-county local agreement fund should be continued.** The Commonwealth can play a role in encouraging local governments to enter into interlocal agreements that will ultimately provide financial savings to the local governments as well as enhance the services provided to the citizens. Local governments took advantage of a Transportation Cabinet matching fund for road improvements that required interlocal agreements, which demonstrates that such incentives can be successful.

REPORT OF THE 2003
PRESCRIPTION DRUG ABUSE TASK FORCE

Sen. Richard "Dick" Roeding, Co-Chair
Rep. Greg Stumbo, Co-Chair

Mitch Bailey	Steve O'Connor
Ishmon Burks	Gary Oetjen
Mark Caverly	Mike Reichenbach
Danny Clark, M.D.	Dave Sallengs
Jerry Cox	Randa Simpson
Kay Dingan	Mike Townsend
Donna Herndon	John West
Georgina Kindall-Jones	Brian Wright
Dave Matthews	

LRC Staff: Pam Thomas, Mike Clark, Robert Jenkins, Peter Cassidy, and Katie Carney

PRESENTED TO THE
INTERIM COMMITTEE ON JUDICIARY
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

PRESCRIPTION DRUG ABUSE TASK FORCE

JURISDICTION: 2003 HB 303 directed the President of the Senate and the Speaker of the House to establish a 19-member task force to examine prescription drug abuse and the illegal diversion of prescription drugs in Kentucky. The specific charge to the task force is below:

> The task force shall review the Kentucky All Schedule Prescription Electronic Reporting (KASPER) program and propose legislation to the General Assembly on:
>
> 1. Improving the KASPER program's efficiency in recording information and responding to requests for information;
> 2. Increasing the enforcement of reporting requirements of dispensers and prosecution for violations thereof;
> 3. The use of data compiled by KASPER to isolate illegal drug diversion trends and to identify patterns of illegal drug diversion; and
> 4. Enhancing the overall utility of KASPER for law enforcement and drug prevention purposes.

The legislation directed the task force to report its recommendations as proposed legislation to the Interim Joint Committee on Judiciary no later than October 1, 2003.

TASK FORCE ACTIVITY

The task force met five times over a three-month period. The first three meetings were devoted to gathering information about the KASPER system and how it might be improved. The task force heard testimony from the Drug Control Branch of the Cabinet for Health Services about the current operation of the KASPER system and how additional funding provided by the General Assembly in 2003 will be used to improve KASPER. The task force also heard testimony and recommendations from individuals representing state and local law enforcement, the Medicaid program, the Kentucky Board of Medical Licensure, the Kentucky Board of Pharmacy, practicing physicians and pharmacists, treatment providers, and legislators who were involved in past legislative efforts to address prescription drug abuse. In addition, the task force learned about the following:

- The UNITE initiative;
- Privacy rules under the Health Insurance Portability and Accountability Act of 1996;
- Prescription drug monitoring programs in other states;
- The investigative process used by the federal Drug Enforcement Administration;
- Investigations undertaken by the Office of the Inspector General in Medicaid fraud and abuse cases; and

- National initiatives being implemented by Purdue Pharma L.P. to address prescription drug abuse.

During its fourth and fifth meetings, the task force reviewed the testimony and information from the initial three meetings and developed recommendations and proposed legislation to be presented to the Interim Joint Committee on Judiciary. The 16 task force recommendations related to improving the quality of KASPER data; improving response times; expanding and enhancing access to KASPER data; and using KASPER data for research, analysis, and education. The task force also recommended that additional resources be devoted to the treatment of prescription drug abuse. The final report of the task force, including the draft legislation, has been published as LRC Research Report No. 313.

REPORT OF THE 2003
TASK FORCE ON FUNDING FOR WILDLIFE CONSERVATION

Sen. Charlie Borders, Co-Chair
Rep. Royce Adams, Co-Chair

Sen. Joey Pendleton	Frank Elsen
Rep. Dennis Horlander	Allen Holt
Rep. Charles Siler	Stephanie Robey
Rep. Rob Wilkey	Marcheta Sparrow
Joe Bland	Jim Thompson
Mike Boatwright	Steve Woodring
Taylor Davidson	

LRC Staff: D. Todd Littlefield and Sheri Mahan

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

TASK FORCE ON FUNDING FOR WILDLIFE CONSERVATION

JURISDICTION: The Department of Fish and Wildlife Resources does not receive General Fund dollars but has historically been supported by license fees and a portion of federal taxes on some sporting goods. A steady decline in license revenue first led to the establishment of the task force by the 1996 General Assembly. It has been reauthorized by the General Assembly in 1998, 2000, and 2002.

TASK FORCE ACTIVITY

At the task force's 2003 meeting, the commissioner of the Department of Fish and Wildlife Resources reviewed the task force's 1997 report, the recommendations that have been met, and the work that remains to be done.

Considerable discussion centered on the department's fight to keep Chronic Wasting Disease out of the state's deer and elk populations. The primary threat is thought to be cervids imported from infected states by those who keep captive herds. Strict prohibitions on the importation of animals and limitations on the transportation of cervids within the state have created friction between ranchers and the department.

Concern was raised over the safety of vital federal funds. Following an audit from the U.S. Department of the Interior, the Commonwealth of Massachusetts has been informed that it must correct statutory deficiencies that would allow the state to "raid" the state wildlife agency's budget or risk the loss of $4.7 million dollars in federal funds. Kentucky's audit contains a similar finding. Although the process has not come to the point where federal aid to Kentucky's department has been threatened, legislative action will likely be required to prevent such an occurrence.

Also discussed was the coming gubernatorial election and the possibility of broad-scale tax reform. Members felt strongly that policymakers should be made aware of the difficulties faced by the department so that its needs can be considered in the negotiations that would lead to any tax reform legislation.

REPORT OF THE 2003
SUBCOMMITTEE ON 2004-06 BUDGET
PREPARATION AND SUBMISSION

Sen. Richie Sanders, Co-Chair
Rep. Harry Moberly, Co-Chair

Sen. Dan Kelly	Rep. Larry Clark
Sen. Bob Leeper	Rep. Jimmie Lee
Sen. Gerald Neal	Rep. Lonnie Napier
Sen. Robert Stivers	Rep. Joe Barrows

LRC Staff: John Cubine and Bettina Abshire

PRESENTED TO THE
LEGISLATIVE RESEARCH COMMISSION
AND THE
2004 REGULAR SESSION OF THE
KENTUCKY GENERAL ASSEMBLY

SUBCOMMITTEE ON 2004-06 BUDGET PREPARATION AND SUBMISSION

JURISDICTION: The Subcommittee on 2004-06 Budget Preparation and Submission was established by the Legislative Research Commission (LRC) pursuant to KRS 48.040 to prescribe uniform forms, records, and instructions to be used by each branch for budget submission.

SUBCOMMITTEE ACTIVITY

The subcommittee met on May 29 and heard testimony from the state budget director and her staff on recommendations for the FB 2004-06 Budget Instructions.

The subcommittee then directed the staff of the LRC Budget Review Office to prepare proposed budget instructions

The subcommittee adopted the five motions at the end of this report and determined to contact specific state agencies for financial information necessary for agencies to prepare the budget requests.

On June 26 the subcommittee met and reviewed the staff report on proposed FB 2004-06 budget instructions and heard testimony from the deputy director of budget review for LRC and the state budget director.

The main difference in the budget instructions from prior sessions was the definitions of “baseline,” “defined calculation,” “growth,” and “new/expanded,” to provide the General Assembly with more detailed information on program performance, cost drivers, and possible budget options.

The subcommittee submitted a report to the Legislative Research Commission, which was adopted at the meeting on July 2.

Motion #1- Approve draft Budget Request Manual as modified by staff report and actions of the subcommittee.

Motion #2- Direct staff to prepare the subcommittee report transmitting the FB 2004-06 Branch Budget Request Manual from the co-chairs to LRC for its consideration and approval.

Motion #3- Authorize technical corrections and nonsubstantive editing in the manual by the staff with the consent of the co-chairs.

Motion #4- Authorize the co-chairs to approve deferred calculation guidelines that are presented by appropriate officials for inclusion in the final Budget Request Manual.

Motion #5- Notify LRC that the subcommittee has completed its work.