

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

Informational Bulletin No. 253

December 2017



Kentucky Legislative Research Commission

SENATE

Robert Stivers
President, LRC Co-Chair

Jimmy Higdon
President Pro Tem Designate

Damon Thayer
Majority Floor Leader

Ray S. Jones II
Minority Floor Leader

Dan “Malano” Seum
Majority Caucus Chair

Dorsey Ridley
Minority Caucus Chair

Mike Wilson
Majority Whip

Dennis Parrett
Minority Whip

HOUSE

David W. Osborne
Speaker Pro Tem

Jonathan Shell
Majority Floor Leader

Rocky Adkins
Minority Floor Leader

David R. Meade
Majority Caucus Chair

Dennis Keene
Minority Caucus Chair

Kevin Bratcher
Majority Whip

Wilson Stone
Minority Whip

David A. Byerman, Director

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 pre-session orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

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

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

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

2017

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Informational Bulletin No. 253

Legislative Research Commission
Frankfort, Kentucky
lrc.ky.gov

December 2017

Foreword

Colleagues and Constituents of the Kentucky General Assembly:

2017 was a time of change in the Kentucky General Assembly, with a new majority taking the gavel in the House and both chambers pursuing active legislative agendas. But, far from the ornate chambers of the Capitol, it is in the humble committee room where the nuts-and-bolts work of the legislative process takes place. It is in the committee process where citizen participation helps improve legislation. This important role extends to the interim between legislative sessions, when the interim joint committees, as well as special and statutory committees, meet to discuss and receive testimony on a number of important issues that may come before the General Assembly. These committees provide important continuity between sessions.

During the 2017 Interim, 14 interim joint committees and nine statutory committees met to conduct business.

The Legislative Research Commission publishes this informational bulletin as a summary of committee activity since adjournment of the 2017 General Assembly. The reports were prepared separately by the committee staff.

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

A handwritten signature in black ink, appearing to read 'D. Byerman', with a long horizontal flourish extending to the right.

David Byerman
Director

Legislative Research Commission
Frankfort, Kentucky
December 2017

Contents

Reports of the 2017 Interim Joint Committees

Agriculture	1
Appropriations and Revenue.....	5
Banking and Insurance.....	21
Economic Development and Workforce Investment.....	27
Education	37
Health and Welfare and Family Services.....	45
Judiciary	53
Licensing, Occupations, and Administrative Regulations.....	61
Local Government	79
Natural Resources and Energy.....	101
State Government.....	107
Tourism, Small Business, and Information Technology	125
Transportation.....	143
Veterans, Military Affairs, and Public Protection	165

Reports of the Statutory Committees

Administrative Regulation Review Subcommittee.....	177
Capital Planning Advisory Board	185
Capital Projects and Bond Oversight Committee	191
Education Assessment and Accountability Review Subcommittee.....	203
Government Contract Review Committee.....	205
Medicaid Oversight and Advisory Committee	209
Program Review and Investigations Committee.....	215
Public Pension Oversight Board	219
Tobacco Settlement Agreement Fund Oversight Committee	223

**Report of the 2017
Interim Joint Committee on Agriculture**

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

Sen. Jared Carpenter
Sen. C.B. Embry Jr.
Sen. David Givens
Sen. Stan Humphries
Sen. Dennis Parrett
Sen. Dorsey Ridley
Sen. Damon Thayer
Sen. Robin Webb
Sen. Stephen West
Sen. Whitney Westerfield
Rep. Matt Castlen
Rep. Myron Dossett
Rep. Derrick Graham
Rep. David Hale
Rep. Mark Hart
Rep. Angie Hatton

Rep. James Kay
Rep. Kim King
Rep. Suzanne Miles
Rep. Sannie Overly
Rep. Jason Petrie
Rep. Phillip Pratt
Rep. Rick Rand
Rep. Brandon Reed
Rep. Rob Rothenburger
Rep. Steven Rudy
Rep. Dean Schamore
Rep. Wilson Stone
Rep. Walker Thomas
Rep. James Tipton
Rep. Tommy Turner
Rep. Susan Westrom

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

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Agriculture

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

Committee Activity

The Interim Joint Committee on Agriculture held six meetings during the 2017 Interim. There were no subcommittees. Several committee meetings were held outside of Frankfort to visit sites engaged in agricultural operations. A variety of topics were discussed, and several agencies and organizations provided updates on projects and proposed legislative suggestions for the 2018 Regular Session.

Renovation Projects at the Kentucky Exposition Center

The committee visited several venues outside Frankfort, including the Kentucky Exposition Center in Louisville. The president and CEO of Kentucky Venues testified about opportunities and obstacles facing the grounds and site facilities. Members toured the facilities to gain insight into the center's fiscal needs and potential renovation projects.

Kentucky State University Aquaculture Program

The committee met at Kentucky State University in Frankfort. University officials, including the newly hired provost, testified about land grant programs and the university's aquaculture program. Members were invited to tour the aquaculture facility to learn about research relating to aquaculture.

Grape and Wine Council

Rep. Chad McCoy, the state Department of Agriculture's grape and wine program coordinator, a representative of the Grape and Wine Council, and the chair of the council gave an overview of the grape and wine industry and discussed potential changes in funding received by the council.

Agricultural Industries

The committee met at Clark Farms in Mayfield, where the chair of the Kentucky Soybean Promotion Board testified on the effects of dicamba drift on the soybean industry. The commissioner of agriculture discussed proposed N-nitrosornicotine levels on the smokeless tobacco industry and cottage food laws.

Local Foods at State Entities

The dean of the University of Kentucky's College of Agriculture, Food, and Environment; the chair and the executive director of the Food Connection; the food service director of the

Department of Parks; the executive director of expositions for Kentucky Venues; a representative of Levy Concessions and Catering; the executive director of Kentucky Cattlemen’s Association; and a farmer from Shelbyville testified about the use of local foods at state entities, ways each state entity has incorporated local foods into its food service operation, and obstacles the entities face when purchasing local foods.

Tobacco Research

The director of the Kentucky Tobacco Research and Development Center testified about its research at the University of Kentucky. The committee was invited to tour the center.

University of Kentucky

The committee met at the E.S. Good Barn at the University of Kentucky. The dean of the university’s College of Agriculture, Food, and Environment discussed projects and programs. The director of the Grain and Forage Center of Excellence testified about construction plans for the Princeton site.

Administrative Regulations

The committee did not receive administrative regulations during the 2017 Interim.

Legislative Proposals/Policy Positions

The committee received legislative proposals and comments for the 2018 Regular Session from Rep. Melinda Gibbons Prunty and representatives of the logging industry, the Governor’s Office of Agricultural Policy, Kentucky Farm Bureau, the state Department of Agriculture, and the Kentucky Association of Food Banks.

Rep. Gibbons Prunty and Logging Industry Officials

- Support efforts to equalize use of county roads for all industries.

Governor’s Office of Agricultural Policy

- Support and continue 50 percent allocation of Master Settlement Agreement fund to Agricultural Development Board.

Kentucky Farm Bureau

- Continue allocating 50 percent of Master Settlement Agreement fund to Agricultural Development Board.
- Continue \$5 million allocation of Master Settlement Agreement fund to soil erosion and conservation program.
- Adequately fund Department of Agriculture.
- Address wildlife management issues relating to deer, turkey, and black bear and the harm being done to agriculture crops and Kentucky motorists.
- Support and assist in tax reform. Continue support for tax exemptions on agricultural products. Maintain current language of HB 44 relating to property taxes.

- Continue support for rural and secondary road fund.
- Support infrastructure initiatives for rural communications.

Kentucky Department of Agriculture

- Amend statutes to reflect reorganization of the department.
- Maintain partnership with Auburn University's veterinary school and Tuskegee University's veterinary school.
- Amend statutes relating to the Department of Agriculture's Office for Consumer and Environmental Protection and Office of the State Veterinarian.
- Allow the department to issue certificates of free sale.
- Amend statutes relating to electronic logging devices on semi-trucks.

Kentucky Association of Food Banks

- Continue support and \$600,000 in funding for the Kentucky Association of Food Banks.

Reports Received

The committee received the following reports:

- Auditor of Public Accounts: *FY 2016 Report of the Audit of the Kentucky Department of Agriculture Spay and Neuter Program*
- Kentucky Department of Agriculture: *2017 Kentucky Equine Health and Welfare Council Report*
- Kentucky Department of Agriculture: *FY17 Farms to Food Banks Annual Report*

**Report of the 2017
Interim Joint Committee on Appropriations and Revenue**

**Sen. Christian McDaniel, Co-Chair
Rep. Steven Rudy, Co-Chair**

Sen. Ralph Alvarado
Sen. Danny Carroll
Sen. Rick Girdler
Sen. David Givens
Sen. Stan Humphries
Sen. Morgan McGarvey
Sen. Gerald Neal
Sen. Dennis Parrett
Sen. Wil Schroder
Sen. Brandon Smith
Sen. Robin L. Webb
Sen. Stephen West
Sen. Max Wise
Rep. Rocky Adkins
Rep. Tim Couch
Rep. Myron Dossett
Rep. Ken Fleming
Rep. Kelly Flood
Rep. Jeff Greer

Rep. David Hale
Rep. Regina Huff
Rep. Brian Linder
Rep. Donna Mayfield
Rep. Suzanne Miles
Rep. Rick G. Nelson
Rep. Jason Nemes
Rep. Ruth Ann Palumbo
Rep. Phillip Pratt
Rep. Jody Richards
Rep. Sal Santoro
Rep. Arnold Simpson
Rep. Jim Stewart III
Rep. James Tipton
Rep. Ken Upchurch
Rep. Jim Wayne
Rep. Russell Webber
Rep. Susan Westrom
Rep. Jill York

LRC Staff: Jennifer Hays, Cynthia Brown, Amit Shanker, Charlotte Quarles, Hannah Walker,
and Jennifer Beeler

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Subcommittee Organization and Membership

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

Sen. Rick Girdler, Co-Chair
Rep. Jill York, Co-Chair

Sen. Perry Clark
Sen. Denise Harper Angel
Sen. Alice Forgy Kerr
Sen. Max Wise
Rep. Toby Herald

Rep. Ruth Ann Palumbo
Rep. Steve Riggs
Rep. Bart Rowland
Rep. Diane St. Onge
Rep. Ken Upchurch

Rep. Jim Gooch, ex officio
Rep. Tommy Turner, ex officio

LRC Staff: Seth Dawson, Sara Rome, Nick Peak, and Benjamin Thompson

**Budget Review Subcommittee
on Education**

Sen. Stephen West, Co-Chair
Rep. Regina Huff, Co-Chair
Rep. James Tipton, Co-Chair

Sen. Danny Carroll
Sen. C.B. Embry Jr.
Sen. Gerald Neal
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. Danny Bentley
Rep. George Brown Jr.
Rep. Matt Castlen

Rep. Jim DeCesare
Rep. Kelly Flood
Rep. David Hale
Rep. Tim Moore
Rep. Melinda Gibbons Prunty
Rep. Rick Rand
Rep. Jody Richards
Rep. Steve Riley

Rep. John Carney, ex officio

LRC Staff: Jonathan Eakin, Jennifer Krieger, Joe Lancaster, Chuck Truesdell,
and Amie Elam

**Budget Review Subcommittee
on General Government, Finance, Personnel, and Public Retirement**

Sen. Danny Carroll, Co-Chair
Rep. Myron Dossett, Co-Chair
Rep. Suzanne Miles, Co-Chair

Sen. Julie Raque Adams
Sen. Joe Bowen
Sen. Dennis Parrett
Sen. Johnny Ray Turner
Rep. Tim Couch
Rep. Will Coursey
Rep. Richard Heath
Rep. Kenny Imes

Rep. Kim King
Rep. Adam Koenig
Rep. Brian Linder
Rep. Michael Meredith
Rep. Russ Meyer
Rep. Phil Moffett
Rep. Rick Nelson
Rep. Jim Wayne

Rep. Jim Gooch Jr., ex officio
Rep. Jerry T. Miller, ex officio
Rep. Tim Moore, ex officio

LRC Staff: Liz Columbia, Jonathan Eakin, Katherine Halloran, Zach Ireland, Nick Peak, Chuck Truesdell, and Spring Emerson

**Budget Review Subcommittee
on Human Resources**

Sen. Ralph Alvarado, Co-Chair
Rep. Russell Webber, Co-Chair

Sen. Julie Raque Adams
Sen. Denise Harper Angel
Sen. Morgan McGarvey
Sen. Stephen Meredith
Rep. Larry Brown

Rep. Joni Jenkins
Rep. Donna Mayfield
Rep. Chad McCoy
Rep. Kimberly Poore Moser
Rep. Susan Westrom

Rep. Addia Wuchner, ex officio

LRC Staff: Miriam Fordham, Jake Fouts, and Benjamin Thompson

**Budget Review Subcommittee
on Justice and Judiciary**

Sen. Wil Schroder, Co-Chair
Rep. Jason Nemes, Co-Chair

Sen. Ray S. Jones II
Sen. John Schickel
Sen. Robin Webb
Sen. Whitney Westerfield
Rep. John Blanton
Rep. Daniel Elliott

Rep. Stan Lee
Rep. Jason Petrie
Rep. Phillip Pratt
Rep. Brandon Reed
Rep. Arnold Simpson
Rep. Kevin Sinnette

Rep. Joseph Fischer, ex officio

LRC Staff: Zach Ireland, Savannah Wiley, and Benjamin Thompson

**Budget Review Subcommittee
on Transportation**

Sen. Max Wise, Co-Chair
Rep. Sal Santoro, Co-Chair

Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Dennis Parrett
Sen. Robin Webb
Rep. Chris Fugate

Rep. Jeff Greer
Rep. Chris Harris
Rep. Kenny Imes
Rep. Robby Mills
Rep. Jim Stewart III

Rep. Ken Fleming, ex officio
Rep. Marie Rader, ex officio

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

Ex officio members for all subcommittees

Sen. Stan Humphries
Sen. Chris McDaniel
Rep. Steven Rudy

Interim Joint Committee on Appropriations and Revenue

Jurisdiction: Matters pertaining to the executive budget and other appropriations of state money; levying of state and local taxes, including school taxes; property tax rates and assessments; 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; and distribution and budgeting of state lottery proceeds.

Committee Activity

During the 2017 Interim, the Interim Joint Committee on Appropriations and Revenue held six meetings. The committee received testimony regarding a wide range of topics.

Work Ready Initiative

The deputy secretary of the Education and Workforce Development Cabinet discussed the Work Ready Skills Initiative. Approximately \$98.9 million has been awarded to 40 projects expected to provide top-of-the-line training to more than 47,000 Kentuckians annually in five core sectors. An additional \$146.2 million in matching funds has also been awarded. More than \$500 million in requests remain unfunded. In 2016 the legislature allocated approximately \$15 million for students to achieve up to two courses each in a postsecondary credit tuition free in the dual credit program. Before the dual credit scholarship, only 17,732 students were enrolled in the program, but after the scholarship 26,726 were enrolled. In 2016, approximately 50,000 students graduated from public high schools; of that total, approximately 60 percent, or 30,000, students elected to attend some sort of postsecondary education.

In December 2016, the Governor allocated \$16 million for the Work Ready Kentucky Scholarship Program to meet the increasing demand for skilled workers in five of Kentucky's fastest-growing workforce industries: advanced manufacturing; business and information technology; construction trades; health care; and transportation and logistics. The scholarship will pay up to 32 hours to reach the certification. This is a last-dollar scholarship, which means that the student would need to apply for the Free Application for Federal Student Aid and federal dollars first; the state would fund the remainder from this scholarship program. In January, the offices of the Office of Educational Technology were reorganized. There were originally 40 offices, but now there are 12 hubs and 8 satellite offices. The reason for the reorganization was twofold: from the need to address the budget (because the office was running a deficit of approximately \$5 million) and from the need to centralize staff for better service to the commonwealth.

In 2012, the commonwealth was approximately \$1 billion in debt to the federal government with the unemployment insurance trust fund. As of June 2017, the commonwealth has paid off the debt and has a balance of \$425.2 million in the trust fund.

Recent Economic Development Awards

The deputy commissioner for the Cabinet for Economic Development discussed the top three awarded economic development projects. The Governor has laid out the mission statement

for the commonwealth to become the hub of engineering and manufacturing excellence. The Governor and the cabinet secretary have traveled within the United States and internationally to build and solidify relationships with partners not located in Kentucky.

The deputy commissioner explained that the cabinet has set numerous goals to make the commonwealth a successful business hub. The goals are to surpass the highest level of announced capital investment (currently \$5.1 billion); to announce more than 17,000 new jobs; to move the commonwealth into the top quartile of business-friendly state rankings; to establish a more integrated workforce delivery system within the cabinet, including talent attraction and retention; and to promote entrepreneurial community.

The three top investments this fiscal year are

- Toyota—\$1.3 billion investment, which includes machines, equipment, and retooling; approximately 7,800 jobs solidified
- Amazon—\$1.5 billion investment, which includes a land lease and building construction; 2,700 jobs added
- Braidy Industries—\$1.3 billion investment for building construction, equipment, land, and construction operation; and 550 new jobs

Pediatric Cancer Research Trust Fund

The secretary of the Health and Family Services Cabinet made brief remarks regarding the pediatric cancer research trust fund as an active member of the Pediatric Cancer Trust Fund Board. The board had held four quarterly meetings in the past year, elected officers, hosted a pediatric cancer awareness event, and developed regulations to establish a competitive grant program.

A mother of a child who died of a brain tumor shared her story and described the critical importance of pediatric cancer research. Without pediatric cancer research, doctors will not have adequate knowledge of the many forms and differences of pediatric cancer as compared to cancers in adults.

A pediatric cancer doctor from the University of Louisville explained that cancer is the leading cause of child death due to disease in the United States. On average, 2,275 children die of childhood cancer each year. There has been extraordinary progress in survival rates for childhood cancer. In the 1960s, a 3- to 5-year-old child diagnosed with leukemia had no chance of survival, but in 2016 the survival rate was approximately 90 percent. The goal in precision cancer medicine is to improve cure rates and decrease toxicities by identifying genes, proteins, and pathways responsible for malignant transformations or progression of individual cancers; using therapies to target features that distinguish cancer cells from normal cells; and reducing the number of side effects that treatments could cause.

The goal is to build a strong and innovative program of pediatric hematology, oncology, stem cell transplant, and cellular therapy, through compassion and teamwork with the help of emerging technologies. The plan to reach that goal is to enhance clinical excellence in pediatric hematology, oncology, and stem cell transplant therapy; to expand participation in new clinical trials; to bring in innovative cellular therapies; to establish a cutting-edge cellular therapy

laboratory to support clinical mission; and to embrace emerging technologies to develop novel cellular therapies for tomorrow.

A representative from the University of Kentucky explained that in Kentucky brain tumors are the leading cause of childhood cancer death. Even patients who are successfully treated are at high risk for chronic life-affecting complications, such as academic, physical, and psychosocial limitations. Astrocytoma is the most common type of pediatric brain tumor. There has been an increase in Appalachia, where the incidence of astrocytoma is greater than in the rest of the state. After an investigation into the cause of the increased rate of pediatric astrocytomas, research has identified a zone of 40 contiguous counties where the incidence of pediatric brain tumors is far higher than what would be expected by chance. This finding will be investigated further by looking within individual counties for higher concentrations of tumors, and by looking at more specific subtypes of pediatric brain tumors. The University of Kentucky is conducting the work in conjunction with the Kentucky Cancer Registry.

Because of changes in chromosomes and genes that affect the development of tumors, it is logical to look at the genetic makeup of tumors that are occurring more frequently than expected. Identification of new mutations within tumors, or finding a higher rate of known mutations than expected, could provide important clues as to why children in Appalachian Kentucky are more likely to develop these tumors.

Fiscal Year 2016-2017 Closeout

The state budget director reviewed the budget and revenues for FY 2016-2017 and the financial outlook for FY 2017-2018. The actual general fund receipts for FY 2017 were less than the official estimate by 1.3 percent, with a revenue shortfall of \$138,526,126. The shortfall in receipts was driven primarily by the corporate income tax and sales tax. These taxes provide the most elastic sources of revenue. Many of the remaining general fund revenue sources fell during the year. The underproducing areas included individual income, coal severance, and cigarette taxes.

The overall general fund revenue growth rate for FY 2017, compared to the prior year, was 1.3 percent. Even with that overall growth, the general fund revenue sources, other than individual income, limited liability entity tax, and sales tax, fell a collective \$62.6 million. Sales tax growth in FY 2017 was 0.7 percent following 6 percent growth in FY 2016 and 4.4 percent growth in FY 2015. Kentucky's top two revenue sources, sales tax and individual income tax, generate 75 percent of general fund revenues. Those two taxes underperformed relative to the last 2 fiscal years. Of the total \$138.9 million in nominal general fund growth, individual income tax revenue contributed \$111.8 million and sales tax contributed \$22.5 million.

The state budget director explained that the FY 2017 general fund revenue shortfall totaled \$138.5 million. Some expenditures were greater than appropriated at a total of \$13.7 million, which created a general fund budget shortfall of \$152.2 million. Various accounts were adjusted to cover the shortfall and balance the budget. The beginning balance of the budget reserve trust fund was \$235.8 million; after paying FY 2017 necessary government expenses (NGEs) of \$85.3 million, the ending balance to carry over to FY 2018 is \$150.5 million. In FY 2017 the

Department of Corrections budget makes up approximately 50 percent of the total NGEs. In FY 2017, \$42.8 million was spent because of more inmates, higher medical and staffing costs, and local correctional design fees.

The state budget director discussed tobacco fund revenues for FY 2017. The budgeted amount totaled \$87 million; including the current-year appropriation and additional receipts, the FY 2017 total revenue was \$93,415,538. The budget bill sets forth how the additional receipts will be allocated, with 50 percent to the agricultural development fund, 36 percent to the early childhood development fund, and 14 percent to the health care improvement fund. FY 2017 road fund revenues showed a surplus of \$51.1 million, or 3.5 percent, above the revised estimate. The road fund increased over the projected estimate of \$1,456.9 million and totaled \$1,508,003,421. The motor vehicle usage tax receipts were up in FY 2017, with revenues totaling \$499.8 million. At \$760 million, motor fuels tax came in slightly higher than the estimate. Motor vehicle license revenues decreased, with actual revenues at \$111.9 million. The road fund surplus of \$51.1 million is statutorily required to be deposited into the state highway construction account.

The state budget director discussed the outlook for FY 2018. The consensus forecasting group in December called for growth of 2.4 percent, but because receipts did not meet revenue estimates in FY 2017, growth needed to hit the FY 2018 estimate rises to 3.8 percent. The Kentucky permanent pension fund had 50 percent of FY 2016 surplus amount totaling \$2.4 million and FY 2018 transfer from the public health insurance trust fund totaling \$125 million. The funds on the expenditure side are budgeted to be no more than \$3 million, and to date \$1 million has been spent.

Kentucky State Fair Board

The president and chief executive officer (CEO) of the Kentucky State Fair Board (KSFB) gave an overview of updates and requests from the board. Kentucky Venues is KSFB's public brand to promote all of its venues and events. Kentucky Venues is located at the Kentucky Exposition Center (KEC) and Kentucky International Convention Center. Large events at KEC include the National Farm Machinery Show, the All-In Hoopfest basketball tournament, the Kentucky State Fair, the World's Championship Horse Show, and the North American International Livestock Exposition. KEC has the sixth largest square footage among all convention centers in the United States. The Kentucky International Convention Center is undergoing a \$207 million renovation, which is on time and on budget. The convention center is due to reopen in July 2018 with the ability to attract 25 percent more convention, meeting, and tradeshow business. Fifty events are on the schedule for 2018 to 2022.

KEC hosts approximately 300 events each year, with approximately 2.3 million visitors. The tax revenue generated is \$36.4 million. After the University of Louisville moved its programs to the Yum! Center in 2010, KSFB annual revenues dropped by approximately \$20 million. The loss of revenue has prevented KSFB from properly maintaining the facilities. Almost a decade of deferred maintenance has resulted in immediate needs at KEC to maintain operations. KSFB has not had a maintenance pool funded since 2010.

KSFB had four priorities for capital funding:

- maintenance pool (\$6 million), which will cover safety for guests, aesthetics of facilities, mechanical failures, and functionality of space, signage, and wayfinding
- entrance gates and parking booths (\$3.5 million)
- Freedom Hall phase 1 renovation (\$5 million)
- South Wing interior renovation (\$7 million)

Without making some material and noticeable improvements to KEC, there is risk of losing conventions and trade shows that have been in Kentucky for 25 years. Several top events have searched in other cities for their events because of the state of KEC.

Tax Reform

A representative from George Washington University's Trachtenberg School of Public Policy and Public Administration discussed perspectives on tax reform. The first thing anyone contemplating tax policy should know is that businesses do not pay taxes but people pay taxes. In a mobile, global economy, it is usually consumers and labor who bear the burden. Exempting all business purchases from sales tax could aid in tax relief. When a business pays sales tax, it makes the initial purchase of everything more expensive; this expense then becomes part of the business's cost of goods sold and increases the price of what is being sold.

The second most important policy reform decision the commonwealth can make is to repeal the taxes on business personal property. The commonwealth taxes machinery, inventory, furniture, computers, supplies, and aircraft. Taxes on personal property discourage investment in all the things that are taxed.

State Trooper Salary Increases and Retention Rates

The commissioner of the Kentucky State Police (KSP) explained how 2016 Regular Session legislation, which implemented a progressive pay scale as well as raises for state troopers, has increased KSP's retention rate. Each year, an average of 46 troopers retire from KSP, but after the raise was enacted only 26 troopers retired in the first year. In the second year, there would have been fewer retirees if the pension crisis had not caused scares; 36 troopers retired from KSP in July 2017.

Consensus Forecasting Group Meeting; Administration's Response

The state budget director gave an update of developments since the July 2017 Appropriations and Revenue meeting. FY 2017 ended with a \$138.5 million general fund shortfall. After the Consensus Forecasting Group (CFG) met in August, there was an estimated \$206.2 million shortfall for FY 2018. The Governor put cabinets on alert that budget cuts were imminent and asked for reduction plans. The CFG met again in October for preliminary budget estimates and an official revision to FY 2018 General Fund enacted estimate. The state budget director reported that the shortfall would be \$155.6 million.

Aviation

Representatives from the Department of Aviation testified about the impact of general fund appropriation on general aviation airports. The department's commissioner reviewed several slides regarding the condition of public and private airports around the state.

Kinship Care

The commissioner of the Department for Community Based Services testified about the Kinship Care program and the most recent Supreme Court decision on *D.O. vs. Glisson*. She explained the ruling and gave an overview of the Kinship Care program as a whole.

2017 Interim Subcommittee Activity

The Interim Joint Committee on Appropriations and Revenue is organized into six Budget Review Subcommittees. Their purpose is to review revisions to the enacted budget, to monitor the budgetary operations and programs of state government, and to address agency budget needs for the 2018-2020 biennium.

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

The Budget Review Subcommittee on Economic Development, Tourism, and Environmental Protection held five meetings during the 2017 Interim.

The secretary, deputy secretary, and communications director presented an overview of the Public Protection Cabinet's programs and regulatory responsibilities. The presentation included a discussion on legislation from the 2017 Regular Session that affected agencies within the cabinet.

The commissioner, deputy commissioner, and director of facilities management presented an overview of the Department of Parks, including an update of the department's "Refreshing the Finest" initiative. This is the department's capital plan for safety and aesthetic upgrades to the state park system. The presenters discussed the return on investment that the department is experiencing from the upgrades to state parks.

The executive director, director, and assistant director of the Cabinet for Economic Development provided an overview of the cabinet, including the organizational structure, programs, and goals. The presenters discussed tax incentives and programs offered by the cabinet. Further discussion included the cabinet's growth of investment dollars over the 2017 investment goal.

The secretary and deputy secretary of the Labor Cabinet gave an overview of the cabinet and the apprenticeship program. The deputy secretary answered questions regarding Kentucky Educational Excellence Scholarship money relative to the apprenticeship program.

The executive director of the Waterfront Botanical Gardens testified about the economic development, tourism, and recreation program in Louisville. The presenter discussed the master plan for the gardens and addressed inquiries relative to raising funds for the organization.

The executive director of the Office of State Grants in the Department for Local Government, the technical assistance coordinator of the University of Kentucky Center for Applied Energy Research, and the program manager for the Department for Energy Development and Independence (DEDI) testified about energy savings performance contracting for local governments. The presenters reported that 21 local governments have entered into energy savings performance contracts (ESPCs) since 2012. ESPCs identify energy savings, help to reduce operational costs, and eliminate long-term capital expenses. An energy services company (ESCO) guarantees that energy savings meet or exceed contract payments, or the ESCO pays the difference.

The secretary and the program manager of the Energy and Environment Cabinet gave an overview of the programs within the Department for Energy Development and Independence. DEDI is the state's energy office, working with other state agencies, local governments, federal agencies, universities, and nonprofits that can deliver cost-effective and credible energy activities, as well as collecting energy-related data and publishing reports.

The secretary and deputy secretary of the Tourism, Arts, and Heritage Cabinet presented an overview of the cabinet's programs. The secretary stated that room nights and revenue were both up in fiscal year 2017 for the Department of Parks and that attendance at the Kentucky Horse Park was up 11 percent. He reported that the cabinet has 11 public-private partnerships (P3s) and stated that P3s represent a \$63 million potential for private money investment. Possible P3 projects include a sports complex at the Kentucky Exposition Center and concessionaire at the Kentucky Horse Park. The secretary reported on the Asian carp threat to Kentucky's lakes and streams. He said the cabinet is aggressively pursuing remedies to manage the problem. Solutions to the problem could create opportunities for private sector businesses.

The secretary and deputy secretary of the Energy and Environment Cabinet presented an overview of the cabinet's programs and responsibilities. The secretary reported that, on average, the cabinet processes 35,000 authorization requests and conducts 50,000 inspections and investigations each year. He stated that air quality has shown continual improvement and that sulfur dioxide emissions from power plants has decreased by 87 percent since 1995.

The deputy secretary reported that municipal wastewater treatment plants will need an estimated \$6.2 billion in infrastructure upgrades over the next 20 years. Needed infrastructure upgrades for public water suppliers are also projected to be \$6.2 billion over the same period. The cabinet reported that 85 percent of Kentucky households participate in municipal solid waste pickup. The recycling rate in Kentucky is 37 percent, compared to the national rate of 34 percent.

Representatives from the Cabinet for Economic Development provided an overview of the Department for Business Development.

Representatives from the Labor Cabinet provided an overview of the Department of Workplace Standards.

Budget Review Subcommittee on Education

The Budget Review Subcommittee on Education held four meetings during the 2017 Interim.

Representatives from the Education and Workforce Development Cabinet and the Kentucky Higher Education Assistance Authority spoke about the Work Ready Kentucky Scholarship Program. The presentation included information regarding eligibility requirements, statewide participation, and outreach among five industry sectors: advanced manufacturing; business and information technology; construction trades; health care; and transportation and logistics.

Representatives from the Department of Education (KDE) spoke about Preschool Partnership Grants, which were used to incentivize public-private partnerships between school districts and child care providers to develop full-day, high-quality early childhood programs for preschool children eligible for the Child Care Assistance Program. KDE representatives also spoke about the impact of the Governor's suggested budget reductions for fiscal year 2018 and the development and release of the Kentucky Facilities Inventory Classification System authorized and funded in the budget for fiscal biennium 2016-2018.

The executive director of AdvanceKentucky gave an overview of the program, which works to increase participation in the Advanced Placement testing program in districts across the state.

The president of the University of Louisville provided an update on the school's graduation rates, student success, community outreach, and prior issues that are being resolved.

The president of the Council on Postsecondary Education (CPE) gave a preview of the council's legislative agenda for the 2018 Regular Session, including its capital plan and recommendations for statutory changes to provide more financial flexibility to postsecondary institutions. CPE also gave a report on its adult education program.

Budget Review Subcommittee on General Government, Finance, Personnel, and Public Retirement

The Budget Review Subcommittee on General Government, Finance, Personnel, and Public Retirement held four meetings during the 2017 Interim.

The executive director of the Office of Facility Development and the manager of the Energy Management Program of the Division of Facility Efficiency within the Finance and Administration Cabinet (FAC) provided an overview of FAC's finance facilities management programs. They also addressed inquiries relating to the federal energy savings performance contract process and the contract status of the Kentucky International Convention Center.

The executive director for the Kentucky Communications Network Authority provided an update on the status of the Kentucky Wired Initiative and addressed inquiries concerning project

delays and associated expenses, E-rate subsidies, wholesale provider activity, and service ring construction and operation status.

The executive director of the Kentucky Property Valuation Administrators (PVA) Association and the Boone County PVA provided a budget overview and update.

The director of student aid of the Kentucky Higher Education Assistance Authority, the associate dean of the University of Louisville School of Medicine, a resident doctor at Baptist Health Madisonville, the associate provost for finance and operations and the chief budget officer of the University of Kentucky, the president/CEO of Operation UNITE, the executive director of Shaping Our Appalachian Region, the executive director of the Kentucky Infrastructure Authority, and the vice president of governmental, community, and legislative affairs and the chief medical officer of Owensboro Health's Family Medicine Residency Program provided overviews of the various off-the-top coal severance tax funded programs identified in HB 303 of the 2016 Regular Session.

The executive director and the deputy executive director of the state Office of Homeland Security provided a budget and operations overview. They addressed inquiries in relation to US Department of Homeland Security funding and grants distribution, the Law Enforcement Protection Program, and the Next Generation 911 program.

The commissioner and the executive director of the Department for Local Government's Office of State Grants provided an update on the agency's Coal Development Branch. They also explained the coal formula, in addition to explaining how HB 303 of the 2016 Regular Session was implemented.

Budget Review Subcommittee on Human Resources

The Budget Review Subcommittee on Human Resources held three meetings during the 2017 Interim.

The CEO of Hopebridge testified on pediatric therapy services for autism and provided an overview of the services that Hopebridge provides to children on the autism spectrum.

The commissioner, the division director, and the medical director of the Department for Behavioral Health, Intellectual and Developmental Disabilities (BHDID) of the Cabinet for Health and Family Services (CHFS) testified on the BHDID budget and costs to the state for mental health treatment. The executive director of Western State Hospital provided an overview of the services provided at the mental health facility.

The CEO of The Ridge Behavioral Health Systems testified on the issues for providers concerning Medicaid reimbursement for mental health treatment.

The executive director of the Kentucky Association of Private Providers (KAPP) testified on community alternatives for supported living and provided an overview of services provided by KAPP concerning community-assisted living.

The deputy secretary and chief of staff of CHFS and the acting executive director of CHFS's Office of Policy and Budget testified on the current CHFS budget.

The commissioner and the deputy commissioner of CHFS's Department for Medicaid Services testified on the current Medicaid budget.

The vice president of finance of the Owensboro Health Systems and the vice president of finance of the Kentucky Hospital Association testified about the Medicaid disproportionate share hospital payments.

A legislator and a Kinship Care Program participant testified about the Kinship Care Program payments provided by CHFS's Department for Community Based Services.

The deputy secretary of CHFS and the deputy commissioner of CHFS's Department for Aging and Independent Living testified on service for seniors.

The deputy secretary of CHFS testified about budget reductions for the cabinet.

The director of the Kentucky Alliance of Boys and Girls Clubs, the president of Boys and Girls Clubs of Kentuckiana, the vice president for advancement of the Kentucky United Methodist Homes for Children and Youth (KUMHCY), and the director of substance abuse disorder services of KUMHCY testified about substance abuse prevention and treatment services for youth.

Budget Review Subcommittee on Justice and Judiciary

The Budget Review Subcommittee on Justice and Judiciary held three meetings during the 2017 Interim.

The controller from the Office of the Controller, Finance and Administration Cabinet; the executive director of FAC's Office of Policy and Audit; the executive director of FAC's Office of Administrative Services; the director of the Office of Administrative Services in FAC's Division of Administrative Support; general counsel from the Administrative Office of the Courts (AOC), Kentucky Court of Justice (KCOJ); and a Kenton Circuit Court judge provided testimony regarding the duties, processes, and procedures for each branch regarding guardians ad litem.

The commissioner and a lieutenant colonel of the Administrative Division of the Kentucky State Police, Justice and Public Safety Cabinet (JPSC), provided testimony on the agency's budgetary needs moving into the next biennial budget period.

A representative from JPSC testified on the most recent Department of Corrections necessary governmental expense request and the state inmate population.

The budget director and a representative of AOC provided testimony regarding expenditure data from the local facilities fund, transfers made between the KCOJ appropriation units within the current budget period, and provided an update on the developing accounts receivable system.

Budget Review Subcommittee on Transportation

The Budget Review Subcommittee on Transportation held two meetings during the 2017 Interim.

The executive director of the Office of Budget and Fiscal Management for the Kentucky Transportation Cabinet (KYTC), and the KYTC director of program management presented information about the current and future status of the state's toll credits. Toll credits are credits awarded by the federal government, which can be used to match federal project funds. Typically a project that uses federal funds would require the state to match 10 percent to 20 percent of the total project cost. Toll credits allow the state to match those funds, thereby increasing the amount of state funds available for state projects. Kentucky earned approximately \$590 million in toll credits with the construction of the Louisville Bridges project in 2015, but these toll credits are expected to be fully used by FY 2020. With the exhaustion of those toll credits, the state will have to increase state funding by \$100 million to \$120 million per year to match the federal funds. While overall spending on transportation would remain the same, these funds would need to be spent on federally approved projects, decreasing transportation spending flexibility for smaller county and state roads.

The innovative finance manager for KYTC presented an update on RiverLink, the Louisville Bridges tolling system. The volume of traffic and level of tolls was slightly higher than anticipated, generating approximately \$110 million in tolls, half of which belongs to Kentucky and half to Indiana. Bi-state agreements are being sought so that out-of-state drivers with unpaid tolls will be subject to the same vehicle registration and title holds that Kentucky and Indiana residents currently face. A vendor collects and remits the tolls, with expenses of approximately \$12 million in FY 2018. Kentucky uses previously collected toll revenues to pay for tolling expenses.

**Report of the 2017
Interim Joint Committee on Banking and Insurance**

**Sen. Tom Buford, Co-Chair
Rep. Bart Rowland, Co-Chair**

Sen. Julie Raque Adams
Sen. Jared Carpenter
Sen. Rick Girdler
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dennis Parrett
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. John Schickel
Sen. Dan “Malano” Seum
Rep. Will Coursey
Rep. Jim DuPlessis

Rep. Joseph M. Fischer
Rep. Jim Gooch Jr.
Rep. Jeff Greer
Rep. Dennis Keene
Rep. Adam Koenig
Rep. Stan Lee
Rep. Chad McCoy
Rep. Michael Meredith
Rep. Steve Riggs
Rep. Wilson Stone
Rep. Scott Wells
Rep. Addia Wuchner

LRC Staff: Sean Donaldson, Jessica Sharpe, and Dawn Johnson

**Presented to the
Legislative Research Commission
and the
2018 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; and principal and income.

Committee Activity

The Interim Joint Committee on Banking and Insurance met five times during the 2017 Interim.

Surprise Billing

A representative of the National Association of Insurance Commissioners (NAIC) spoke on NAIC's Health Benefit Plan Network Access and Adequacy Model Act developed to address plan issues including surprise medical billing. The representative discussed the model's requirements for participating facilities with nonparticipating facility-base providers. NAIC concluded that the best way to insulate the consumer from the dispute was by requiring the insurer and the out-of-network provider to settle a payment issue through arbitration or other means. Dispute resolution approaches used by other states were discussed. Key issues that arose include defining an appropriate payment amount, whether to regulate provider rates, whether dispute resolution should be mandatory or voluntary and binding or nonbinding, and whether to have arbitration where the reviewer chooses one of the two parties' final offers.

An insurance agent from Bowling Green who is the former president of the Kentucky Association of Insurance and Financial Advisers testified about surprise billing issues his clients have recently experienced. The executive director of National Academy for State Health Policy submitted written testimony on the subject detailing a history of the issue and discussing how other state have addressed the issue. The testimony focused on enhanced disclosure and transparency requirements, prohibitions on balance billing by providers, requirements for insurers to hold consumers harmless for surprise charges, and regulations that ensure fair payment for billed services.

Credit Card Processing Fees Paid by Insureds

The executive vice president for Professional Insurance Agents of Kentucky and a representative from Greater Lexington Insurance discussed insurance agents' ability to pass credit card processing fees on to the consumer. The fees are typically about 3.5 percent, representing a loss of almost half of the agent's revenue in securing the policy. The agent testified that the Department of Insurance does not allow the fee to be built into the premium charge.

Department of Insurance

The commissioner, deputy commissioner of policy, and deputy commissioner of administration of the Department of Insurance appeared before the committee to introduce themselves and gave a brief overview of the reorganized department. They also presented an end-of-year report on the state of the insurance industry. It focused on the difficulty in managing the individual health insurance market this year with uncertainty surrounding any federal action on health care, and it discussed challenges moving forward. The department also discussed issues facing the property and casualty market including a recent worker's compensation case and insurtech. The department also noted that its Consumer Protection Division had received 4,547 new complaints from January 1 to November 7, 2017.

Banking and Financial Industry

The commissioner of the Kentucky Department of Financial Institutions presented an end-of-year report on issues relating to the financial industry. He gave an overview of the banking industry in Kentucky and reiterated his concern that on a national level there is a tremendous concentration of economic power in a relatively low number of banks. He discussed the number of smaller banks in the state has decreased along with the number of banking employees.

The commissioner also outlined the topics of discussion for the 2017 Community Bank Conference. The department has been advocating on a national level for right-sizing regulation, qualified mortgage status for portfolio lending, and simplified capital rules for community banks.

The commissioner also discussed several possible legislative agenda items the department would be pursuing during the 2018 Regular Session.

The president/chief executive officer of the Kentucky Bankers Association testified on the status of the independent banking industry. He stressed the need for tax reform, noting the proportionate tax being paid by community banks. He discussed reduced profit margins due to regulatory and compliance costs and reiterated that the tax structure for Kentucky's independent banks is less advantageous than that of nearly every other state.

Health Care Transparency in Kentucky

The commissioner of the Department of Employee Insurance testified about the Vitals SmartShopper program. Since 2013, the program has saved the state \$10 million. Employees have received \$1.5 million in incentives. The program does not make exceptions for out-of-network providers. The secretary of the Personnel Cabinet testified that communicating with participants and would-be participants is the single biggest challenge for the agency.

A senior fellow from the Foundation for Government Accountability (FGA), a Florida-based nonprofit think tank on health care and welfare reform initiatives, commended the state employee health plan. He testified that there are large variances in health care costs and consumers are increasingly paying a significant amount of health care expenditures out of pocket with much higher deductibles. This situation is most common for those who have health insurance

through small employers and the individual market. Provider consolidation is driving referral patterns. FGA concluded that three things are needed: actionable transparency at the consumer level, incentives for enrollees, and out-of-network patient choice. The senior fellow also discussed recent reforms that other states have instituted.

Pharmacy Issues

The executive director for the Epilepsy Foundation of Kentuckiana explained claw-back practices of pharmacy benefit managers (PBMs) that force patients to pay more for medications when using their insurance than if they had paid with cash. Patients are unaware they are paying more, because pharmacists are contractually prohibited from disclosing this information. Several states have passed legislation to prevent this practice. Several pharmacists testified to examples of this practice. A pharmacist from Save Rite Drugs states that three PBMs control 85 percent of the market and so independent pharmacists cannot negotiate contracts with PBMs.

Sen. Jimmy Higdon said control of outpatient pharmacy benefits should be given back to the Department of Medicaid. Sen. Max Wise prefiled a bill to move outpatient pharmacy benefits from managed care organizations back to the Department of Medicaid. If enacted, the legislation would not affect current contracts. The state is not experiencing problems with the PBM contracted with to administer the fee-for-service pharmacy benefit, since the Department Medicaid makes the decisions and improves the reimbursement structure. Sen. Higdon said the current system, put in place 7 years ago, is no longer cost effective. He noted that 1.4 million Kentuckians are covered by Medicaid at a significant cost to the commonwealth.

The deputy commissioner for policy at the Department of Insurance discussed implementation of SB 117 from the 2016 Regular Session, which addressed prescription coverage managed by PBMs. Specifically he discussed the issue of maximum allowable cost, including the appeals process. He discussed common appeal issues and discussed departmental actions. A pharmacist from Medica Pharmacy testified about reimbursement issues after the implementation of SB 177. Several independent pharmacists echoed the concerns with low reimbursement rates.

National Association of Insurance Commissioners

The commissioner of the Tennessee Department of Commerce and Insurance and president-elect of NAIC spoke on recent actions of the organization. These included adoption of a new cybersecurity model law and changes to several previously adopted models. The commissioner discussed issues that the national insurance market is facing and discussed the organization's efforts to urge congress to take action on some of these. She discussed the ongoing issue of state law preemption with regard to air ambulance regulation, due to the Airline Deregulation Act. Additionally, the commissioner testified to NAIC's desire to eliminate or limit the Federal Insurance Office to reinforce state-based regulation of the insurance industry.

National Conference of Insurance Legislators

Rep. Steve Riggs, the president of the National Conference of Insurance Legislators (NCOIL), testified about the organization's history and its upcoming priorities. Nationally NCOIL

continues to maintain the priority of state-based regulation of insurance. Rep. Riggs discussed recently adopted models acts and resolutions of the organization. He testified that the organization serves to educate legislators on insurance issues and to encourage dialogue and foster cooperation between states.

Fraud Prevention in Personal Injury Protection Coverage

The general counsel for Kentucky Farm Bureau Mutual Insurance Company testified that personal injury protection (PIP) insurance costs have been increasing and current law prevents meaningful oversight of costs within the PIP system. He said the system is ripe for abuse and fraud, noting that a significant driver of PIP coverage costs is abuse by unscrupulous providers, sometimes to the level of medical fraud. Recent years have seen the no-fault insurance cottage industry flock to Kentucky, with fraud being most prevalent in urban areas and the eastern part of the state. He recommended reforms that would curb costs, such as a fee schedule similar to worker's compensation.

The director of government affairs for the National Insurance Crime Bureau testified on the pervasive abuse of the PIP system. He discussed issues that the industry is facing, including organized crime; pain doctors, chiropractors, and attorneys converting PIP abuses into cash; and the path from PIP abuse to other crimes. Nationally, Louisville has ranked in or near the top 10 cities in organized crime involving questionable medical claims, organized group activity, and suspicious vehicle claims. Information obtained during fraud investigations describes the migration of organized criminals from south Florida and New York to Kentucky.

The Kentucky medical claims manager for the Progressive Group of Insurance Companies also testified that PIP has become a source of frequent abuse. He also discussed establishing a fee schedule to help control medical charges and provided examples of fees charged for an automobile accident versus what would be paid under the Kentucky worker's compensation fee schedule. Other areas suggested for possible reform include reduction of red tape that automobile insurance companies face as they investigate questionable and potentially fraudulent PIP claims. He also suggested clarifying existing law and consumer education, noting that PIP benefits are not primary insurance coverage over other private health insurance coverage.

Reports Received

The committee had received four reports as of November 15, 2017:

- *Long Term Care Partnership Program*, joint report from Department of Insurance and Department for Medicaid Services
- *Independent External Review Semiannual Report January-June 2017*
- *2016 Annual Early Warning Analyst Report*
- *2017 Bi-Annual Mental Health Parity Report*

**Report of the 2017
Interim Joint Committee on Economic Development
and Workforce Investment**

**Sen. Alice Forgy Kerr, Co-Chair
Rep. Phillip Pratt, Co-Chair**

Sen. Perry B. Clark
Sen. Rick Girdler
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Stephen Meredith
Sen. Wil Schroder
Sen. Reginald Thomas
Sen. Mike Wilson
Sen. Max Wise
Rep. Lynn Bechler
Rep. McKenzie Cantrell
Rep. Jim DeCesare
Rep. Daniel Elliott
Rep. Al Gentry
Rep. Toby Herald
Rep. Dennis Horlander
Rep. Joni L. Jenkins

Rep. James Kay
Rep. Kim King
Rep. Adam Koenig
Rep. Russ A. Meyer
Rep. Jerry T. Miller
Rep. C. Wesley Morgan
Rep. Jason Nemes
Rep. Jason Petrie
Rep. Steve Riley
Rep. Rob Rothenburger
Rep. Dean Schamore
Rep. Diane St. Onge
Rep. Wilson Stone
Rep. Gerald Watkins
Rep. Russell Webber
Rep. Scott Wells
Rep. Addia Wuchner

LRC Staff: Carla Montgomery, Andrew Manno, and Sasche Allen

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Economic Development and Workforce Investment

Jurisdiction: Matters pertaining to commerce, industry, economic and industrial development, the workforce and the workplace, and tourism not specifically assigned to another committee; economic development planning, international trade and investment; investment companies and industrial loan corporations as they relate to economic and industrial development; recruitment of business and industry; small business matters relative to economic and industrial development; financing of business and industrial development; business regulatory matters, including the Uniform Commercial Code, relative to economic and industrial development; worker training; technology development and application; chambers of commerce; convention centers and publicly owned exhibition and parking facilities; arts and arts exhibition facilities; state, interstate, and national parks and historic sites; travel promotion and advertising; labor unions; collective bargaining; liquefied petroleum gas and other flammable liquids; hotels; electricians; plumbers and plumbing; wages and hours; garnishments; safety and health of employees; child labor; employment agencies; apprenticeship; unemployment compensation; workers' compensation; consumer protection; and industrial weights and measures.

Committee Activity

The Interim Joint Committee on Economic Development and Workforce Investment held five meetings during the 2017 Interim. One meeting was conducted jointly with the Interim Joint Committee on Tourism, Small Business, and Information Technology.

Consideration of Referred Administrative Regulations

The committee considered the following referred administrative regulation:
787 KAR 2:040 & E. Local workforce development area governance.

Cabinet Updates

Cabinet for Economic Development. The cabinet's goals were laid out at the beginning of the year, and the first goal was met in May 2017 by reaching \$5.8 billion in investments and announcing 17,000 new jobs. Expectations still have to be met, however, by continuing to develop an aggressive and targeted marketing campaign, branding Kentucky as an engineering and manufacturing hub. Toyota has announced a \$1.3 billion investment to improve its Georgetown location and has solidified 7,800 jobs. Amazon announced a \$1.5 billion investment to locate its first global air hub in Northern Kentucky and an addition of 2,700 jobs. Braidy Industries has made a \$1.3 billion investment and will add 550 jobs.

Reaching the cabinet's second goal will entail convening CEO business forums, aligning staffing with current demands, and enhancing the use of technology for internal and external clients. In doing so, the cabinet has held its first business roundtable with executives from various industries. It is rebuilding staff in critical areas such as project management, research, financial incentives, graphic design, and legal. Attaining this goal will involve the governor's Red Tape Reduction Initiative, which helps in creating a more business-friendly environment by reviewing and eliminating certain administrative regulations.

The third goal may be the most difficult because of the challenges of developing, attracting, and retaining a skilled workforce. Efforts include developing comprehensive resource delivery plans based on state and regional markets, expanding registered apprenticeships into the Kentucky Federation for Advanced Manufacturing Education (KY FAME) chapters, and creating workforce services team to provide and coordinate workforce resources for business and industry clients. The cabinet has a strong objective of growing the KY FAME program, started in 2015, into programs in logistics, health care, and other regional demands.

The final goal of building the state's entrepreneurial community is a continuing focus. The cabinet will be reviewing all its programs and resources that focus on small businesses and entrepreneurship. To increase efficiency, programs will be streamlined and reduced in areas where they may overlap.

Labor Cabinet. Over the past year, the Division of Wages, Hours, and Mediation in the Department of Workplace Standards completed over 2,376 cases and collected \$2,150,000 in restitution for 2,128 employees. The cabinet has made efforts to improve the Occupational Safety and Health Program within the Department of Workplace Standards after receiving feedback from employers. In 2016, Kentucky had the lowest injury rate in its history.

The Department of Workers' Claims has developed the Litigation Management System (LMS), and it became mandatory for all claims on July 1, 2017. This program requires paperless online filings to initiate workers' compensation claims and to submit litigation-related documents. All parties to a claim can access LMS to view claim details and monitor activity. The system is also a way for the department to track data and compile statistics.

Since January 2014, 2,158 claims of coal worker's pneumoconiosis (CWP) have been resolved either by administrative law judge decision or by agreement. Approximately 530 claims are temporarily assigned to the chief administrative law judge, and 304 claims are assigned to one other administrative law judge. House Bill 377 (2017) mandated that the CWP Fund, which paid 50 percent of all income benefits for CWP claims, be transferred to Kentucky Employees' Mutual Insurance (KEMI). There has been an efficient transition of the fund to KEMI with no delay of benefits to CWP claimants.

Improvements have been made in the Department of Workplace Standards that addressed professionalism, training, accountability, and results. A specific business plan was developed for each division of the department, and monthly follow-up meetings ensure progress of those new procedures and strategies. Over the past year, approximately 1,000 new apprentices joined the Apprenticeship Program and approximately 300 graduated. There are over 500 youth apprentices and approximately 80 veteran apprentices. There are 179 sponsors of the program; 173 companies that provide on-the-job training; and 1,200 companies that use apprentices across various sectors in the state, covering 41 registered skills. The cabinet announced Norton Healthcare's Student Nursing Apprenticeship Program, which is the first health care apprenticeship program in the country.

Education and Workforce Development Cabinet. The cabinet has started to use a five-component 360-Degree Approach to continue to add jobs and face the challenge of building

a skilled workforce. The first component is the Dual Credit Program, which allows students to be engaged and guided toward a particular pathway while still in high school. Compared to the 2015-2016 school year, there was a 51 percent increase in students enrolled in dual-credit courses in the 2016-2017 school year. In the 2015-2016 school year, 42,384 dual-credit courses were taken, compared to 73,338 dual-credit courses during the 2016-2017 school year.

In 2016, the General Assembly approved a \$98.9 million bond pool for the Work Ready Skills Initiative to be invested in the infrastructure of the state's training facilities to provide top-of-the-line training to more than 47,000 Kentuckians annually in five core sectors. There were more than \$500 million in requests, and 40 projects were approved for funding. The awards leverage at least \$146.2 million in matching funds, for a total of just under a quarter of a billion dollars invested. Overall, there will be 29,372 additional individuals trained annually with an average expected wage of \$34,413 for an annual total of over \$1 billion.

The Work Ready Scholarship was approved in 2016 in the amount of \$15.9 million. The scholarship is administered by the Kentucky Higher Education Assistance Authority and offers tuition for up to 32 credit hours for a job certification in more than 60 careers in five high-demand industry sectors. It is unique in that it is for adults and is a skills training scholarship. Any Kentuckian with a high school diploma or GED, but without an associate's degree or higher, is eligible for the scholarship. The scholarship is a last-dollar scholarship, which means any student who applies for the scholarship must complete a Free Application for Federal Student Aid and use any Pell Grant funds, if eligible, before the Work Ready Scholarship can be used.

The last two components of the 360-Degree Approach of the cabinet were briefly discussed. The Kentucky Work Matters Task Force was established to develop policies and review practices that make the workforce more inclusive and accessible for people with disabilities, people who have been incarcerated, and citizens who have successfully battled substance abuse. The Medicaid Community Engagement is intended for adults without dependents, who are not pregnant or medically frail. The Medicaid waiver has been applied for and is awaiting approval. In order to qualify, a person must work, attend school, or study at least 20 hours a week. The initiative will be driven through career centers, which have recently been reorganized because of Workforce Innovation and Opportunity Act regulations. There are now 12 hub career center offices and 8 satellite career center offices.

An update was given on the Unemployment Insurance (UI) Trust Fund. In January 2012, the trust fund was at a \$948.7 million deficit, but as of July 2017 there was a balance of \$401.7 million. In previous years employers were responsible for paying a surcharge to address the deficit, but because of progress in recent years, that surcharge was removed this year. Employer tax rates have decreased, and benefits have increased. Job centers will no longer be split between handling UI claims and job assistance. UI claims will now be filed either by phone or online. Claimants will not have to come to the office to file a claim. This will free the staff at the One Stop offices to spend a majority of time assisting with reemployment services such as career coaching, training, assisting with résumés, and helping connect workers to open jobs. Claimants can come to the One Stop office and use the phone or computer to file a claim if necessary.

Tourism, Arts, and Heritage Cabinet. In Kentucky from 2009 to 2015, the film industry spent \$16 million, directly supporting 192 jobs. The total investment made by the industry from 2016 to the present is \$46 million, directly supporting 552 jobs. That figure includes jobs related directly to the production itself, but not jobs in ancillary industries that service the film communities.

The film industry in Kentucky will be successful only if it maintains three components: film incentives, crew, and studios. The Kentucky Film Incentive is a 30 percent to 35 percent refundable tax credit. There is a 35 percent refundable tax credit for filming in an enhanced-incentive county. Counties are certified or decertified every year based on factors such as unemployment rate and median income. From all the applications received by the Office of Film and Tourism Development, production companies have identified 60 out of 120 counties as potential film locations. The crew component is being fulfilled by developing the film industry workforce through the Kentucky Film Certification Program. The program, recently announced by Asbury University, consists of online training modules and hands-on training at a local university or production company. The third factor involves constructing studios in the commonwealth. Every \$1 million in studio construction will support 10 jobs, have an economic impact of \$1.6 million, and direct an additional \$600,000 in sales to other businesses. For every 100 jobs created by having studios, 80 additional jobs are supported in other businesses and there is a \$25 million economic impact. Some studios have had apprehension about locating in Kentucky because of the lack of crew base and the uncertainty of the stability of an incentive program. Benefits of a successfully developed film industry include positive changes to the perception of Kentucky, an increase in film tourism, and potential city revitalization of film communities across the state.

Kentucky Film and Digital Media Industry Efforts and Opportunities

The dean of Asbury University's School of Communication Arts and professor of media communication described the school, which has approximately 450 students majoring in programs such as journalism, theater and cinema production, worship arts, and media communication. Students majoring in media communication constitute nearly half of the School of Communication Arts. Media communication students have the opportunity to study areas of film, television, multimedia, media performance, media management, audio, and production design. Academic excellence of the program can be attributed to a combination of education, experience, and industry recognition of the faculty that includes production design, sitcom directing for various networks, national Emmy awards, and honors for work on the National Geographic Channels and Smithsonian Channel. The university also has a long-term contract with the Broadcast Division of the International Olympic Committee to provide broadcast training to students and personnel.

The Hart County judge-executive and Harlan County executive director of tourism provided local perspectives on the film industry and its effects on their local economies. Several projects have filmed in their areas, including the Hallmark Channel's *An Uncommon Grace*, which added about \$500,000 to the local economies, and *Above Suspicion*, which had a \$3 million economic impact. As a result of these and other successful projects, film commissions such as the Southern Kentucky Film Commission were formed to facilitate the relationship between production companies and Kentucky communities. The film industry has the potential to add jobs

that will be needed to supply materials and services to film production teams. To continue film industry development in the commonwealth, a new infrastructure and training are needed to provide a skilled film industry workforce.

Post Time Studios offered a film and digital media industry perspective. It is a full-service production company that was established in Lexington in 1993. In 2003, it was one of the first production studios in the region to have a high-definition editing system, which over the years led to an increased volume of clients and productions. Post Time Studios produces a wide variety of projects in areas such as long form, short form, documentary film, marketing, training, safety, health care, tourism, and athletics. Most of the staff who make these productions are Kentucky natives. In the last 2 years, the company has doubled its number of employees and moved into a larger facility. The new facility and increased staff have helped to attract productions with larger budgets. Studio representatives expressed optimism about the current climate of the film industry in the state, which will continue to develop, in part because of the film tax incentives. The incentives help with overall production plans, investments, and local spending; they lock productions into longer contracts, which in turn can provide employment opportunities; and they generate new tax revenue for the commonwealth.

The executive director of the Kentucky Film Association gave a detailed overview of Kentucky's Film Tax Incentives, statistics and growth projections of the film industry since the incentives were passed in 2015, and industry needs. The purpose of the provisions in KRS 148.544 was to encourage the film and entertainment industry to choose locations in Kentucky for filming and production, increase employment opportunities within the film and entertainment industry in the state, and develop a production and postproduction infrastructure in the commonwealth. Since the start of the program in 2009, there has been 900 percent growth in the number of productions coming to Kentucky. Additionally, after the modifications of the film tax incentives, 20 productions were completed in 2016 that generated \$32 million in new economic activity, created 384 jobs, and yielded approximately \$3.2 million in new tax revenue. Thus far in 2017, 111 productions have been approved and there has been a 169 percent increase in growth from the previous 12 months. Projections were provided by the Kentucky Film Association for 2017 and 2018 using actual data from 2016 and taking into account variables such as the percentage of productions approved, the percentage of productions completed, production periods, and cost of projects. It is projected that 33 projects will be completed in 2017 that could generate \$86 million in new economic activity, create 1,038 new jobs, and yield \$8.6 million in new tax revenue. It is projected that projects completed in 2018 could generate \$146 million in new economic activity, create 1,754 new jobs, and yield \$14.6 million in new tax revenue. For the film industry to continue to thrive in the state, the film workforce must be expanded to increase the crew base, dislocated workers must be retrained to maximize skills that can be used in the industry, and an infrastructure must be more fully developed, specifically with a studio locating in Kentucky.

Manufacturing Update

Big Ass Fans. In its early years, the company had clients predominantly in the agriculture industry, but now it has more than 350,000 fans and 167,000 lights installed in facilities worldwide. It is the only fan company to design, engineer, manufacture, test, and install all of its products, and it is a leader in innovation with over 230 patents. US-based operations include its headquarters in

Lexington, made up of locations dedicated to research and development, which are LEED Gold Certified, manufacturing, and administrative offices. There are also field offices in Texas, Florida, Georgia, and California. International operations include subsidiary offices in Australia, Canada, Malaysia, and Singapore. Its fans are sold in more than 160 countries. A factory-direct business model is used, which allows for direct access to customers to plan and problem-solve. In 2016 it generated \$240 million through Big Ass Fans, Big Ass Lights, and Haiku, which is the residential division. There are over 700 Kentucky-based employees, including over 60 engineers and 175 production employees and field service technicians. The starting salary of an employee is 33 percent higher than the state average, and Big Ass Fans is an eight-time recipient of the “Best Places to Work in Kentucky” designation.

Corning Inc. Corning is one of the world’s leaders in glass science, ceramics, and optical physics. It was founded in 1851 in Corning, New York, and now has approximately 45,000 employees worldwide. Corning’s core sales for 2016 were \$9.7 billion. A large portion of funds are invested in research and development that takes place in Corning’s Harrodsburg plant. The plant’s workforce has an average of 14 years of service with over 80 percent holding at least a bachelor’s degree and 26 percent holding at least a master’s degree. There is a need for a well-trained workforce; Corning faces difficulties in hiring trained mechanical and electrical journeymen.

Over the years the company has adapted its focus because of business needs, and it now concentrates on five core areas: display technologies, optical communications, environmental technologies, life sciences, and specialty materials. The Harrodsburg plant produced LCD glass for televisions and computers in the 1980s and 1990s but now mainly focuses on display technologies and specialty materials such as Gorilla Glass.

Gorilla Glass is a chemically strengthened cover glass that is virtually scratch- and break-resistant and was first produced in Harrodsburg in 2007 for the Apple iPhone. A majority of the Harrodsburg production is dedicated to Gorilla Glass, which is on 5 billion devices in over 40 major brands. Apple has awarded Corning an advanced manufacturing fund investment of \$200 million to support glass production methods.

Aluminum Industry Update. Aluminum is an important part of the automotive industry in Kentucky, which was noted by the executive director of the Kentucky Automotive Industry Association. The evidence of its importance is seen throughout the Transpark in Bowling Green. Many manufacturers have chosen to locate in this area, but efforts must continue to maintain the growth. The most critical issue facing the industry is workforce. Many skilled autoworkers are nearing retirement age. The one issue that can halt continued economic development is lack of a qualified workforce. Although some may view the industry as having undesirable or dangerous working conditions, manufacturing provides great jobs with competitive wages and health care. The committee was thanked for its work and was asked to continue to focus on issues such as energy, infrastructure, taxes, and workforce investment to assist manufacturing in Kentucky.

Economic Development Updates

Tennessee Valley Authority. The Tennessee Valley Authority (TVA) is not just a utility company but also an economic development agency. The sale of electricity allows the TVA to put money into economic development within its footprint, which covers seven states, with a main emphasis in Kentucky, Tennessee, Mississippi, Alabama, and Georgia. The mission of the TVA over its 84 years has been energy, environment, and economic development. The three parts of economic development are to attract new companies and investments, engage industries to retain previous investment, and serve the community through development and preparedness. In fiscal year 2017 the company created 5,500 jobs in the Kentucky TVA region, and there has been \$1.1 billion in capital investment. Product development has been a recent focus, helping communities with preparing for investment, obtaining funding, and having sites in a marketable position. Many Legacy Sites (TVA sites being repurposed) have been used to increase economic development.

Regarding encouragement, the TVA uses many incentive programs to retain existing businesses. Eighty-five percent of the participants in these programs are existing businesses; the remainder of the program are used as recruiting incentives. Investment credits, grants, and loan funds are made available to help local communities finalize deals with industries. Investment credits of \$26 million have been used in Kentucky companies in the TVA footprint, \$465,000 in grants have been provided, and over \$2 million in loans have been made. TVA provides about 10 percent to 20 percent of any final deal.

Kentucky Association for Economic Development. The president and CEO of the Kentucky Association for Economic Development (KAED) and board members discussed their organization, which is a professional economic development association that connects public sector and private industry professionals. It offers professional development, networking with economic development professionals from across the state, and solutions for cross-marketing in Kentucky. KAED works very closely with the Cabinet for Economic Development to assist with facilitating job retention, growth, and creation of new opportunities.

KAED's three main goals are to advocate, educate and connect. The organization holds weekly public policy conference calls with key legislators, lobbyists, and policy makers. It educates its members at annual conferences with top consultants from all over the country and offers webinars that provide hands-on experience on the how-to in economic development. KAED keeps its members connected so they have access to valuable resources that will assist in their day-to-day business needs by offering networking and marketing opportunities. Because of its education and professional development, KAED saw a 213 percent increase in fall conference attendance and a 54 percent increase in spring conference attendance from 2012 to 2016. The organization has 525 members from 307 companies.

Kentucky United is a public-private partnership that was developed in 2008 after KAED took a nationwide survey of about 500 consultants regarding marketing perceptions of Kentucky. The organization is devoted to promoting Kentucky's business climate. In 2016, Kentucky United secured a major project for the Owensboro area called Alorica, which is a \$200 million investment with a potential of 830 new jobs.

Employment-Based Visa Program. Representatives of the Bluegrass International Fund (BIF) spoke about their company, which uses global investors to fund developmental projects that in turn create local jobs. BIF uses the federal employment-based visa (EB-5) program to allocate individual wealth from foreign countries to large development projects within the United States. Since 2008 the EB-5 program has allowed for approximately \$19.8 billion of individual investments into projects across the country, which have been mostly through public-private partnership projects. Foreign investors are eager to invest and participate in the EB-5 program within Kentucky, but the state has not previously had a licensed regional center to act as liaison between the individual candidates for investor visa status and worthy construction projects in the state. The Bluegrass International Fund was created specifically for this purpose.

Congress created the EB-5 program in 1990, but it was not until the most recent recession around 2008 that the program began to grow, especially on the east and west coasts. However, states such as Texas, Florida, Michigan, and Arkansas have begun to establish licensed regional centers to take advantage of the EB-5 program. Kentucky does not have large banking centers, foundations, or private equity and mezzanine funds. Therefore, BIF believes the EB-5 program will bring much-needed low-cost capital to statewide projects, creating jobs in rural and distressed urban areas.

A foreign investor has the option to invest \$500,000 or \$1 million, but the \$500,000 must be in a targeted employment area. A targeted employment area is a location that reflects an unemployment rate of 150 percent of the national average. Another type of targeted employment area is a rural targeted employment area, which is a location outside of a major town with a population of 20,000 or more. Each investment must create 10 or more jobs. The program offers a lower cost of funds with an interest term of 5 to 6 years, which enables the project to stabilize and produce returns. In exchange for their investment, the foreign investors, who are evaluated by the Department of Homeland Security, may receive visas for themselves, their spouses, and children under the age of 21 after it has been proven that the project has produced at least 10 jobs. Despite the investment, the investor does not hold ownership on any completed project. The total project cost comprises the 30 percent EB-5 loan, the 20 percent sponsor equity, and the 50 percent senior loan. BIF receives the money from the investor and then loans it to the project developers.

SCK Launch. SCK Launch stands for South Central Kentucky Learning About Unique and New Careers Here and is part of efforts to create a talent pipeline to fill open positions across the state. The Bowling Green Chamber of Commerce looked at labor market data and discovered the top sectors in the local economy, which include hospitality, recreation, public sector (such as teachers and police), manufacturing, and health care. Posters were created for each sector detailing the knowledge and skills necessary, the salaries of various positions, the career pathway to obtain those positions, the education or certification required, and how to get certified. These posters are provided to schools and career centers in the Bowling Green area. The guiding principles of the initiative are to support student-driven leadership that builds self-awareness, empowerment, and a career-wise graduate; to provide students with meaningful opportunities to explore, experience, connect, and build their career skills and knowledge; and to support the attainment of nationally portable industry credentials and postsecondary courses to launch students' future career paths.

The initiative begins in middle school with the SCK Launch Experience, a hands-on trade show that introduces students to the many career opportunities available. Students can choose a career pathway in high school and can learn through job shadowing, internships, tours of businesses, and other exposures to careers. Students also learn how to act and dress at work, how to prepare a résumé and cover letter, and other necessary skills. Educators receive resources to help them better prepare students in career planning. SCK Launch started in 2016 with 1,800 participants in Warren County. In 2017, 3,200 participants were confirmed throughout the 10-county workforce area. Twenty-two educators have participated in externships in health care, professional service, manufacturing, and hospitality.

VisitLEX. The Lexington Convention Center expansion is progressing, due in part to 2015 legislation that lent \$60 million for its expansion. Construction will start in spring 2018 and is scheduled to be complete in about 45 months. The expansion will include an additional 100,000 square feet of contiguous exhibit space and a 25,000-square-foot ballroom. The old Fayette County Courthouse is being renovated, with an expected completion date in 2018, and will house administrative offices and a visitors' center for VisitLEX, offices for the Breeders' Cup, and a restaurant. Construction for Centerpointe in downtown Lexington is also under way; the project will include a Residence Inn, a full-service Marriott, restaurants, and retail space.

A planned park called Town Branch Commons is slated to have an event space, an amphitheater, several children's play areas, dining options, and a water feature. Town Branch Commons is privately funded. Near the park will be Town Branch Greenway, almost 3 miles of greenway that has been supported through public funds.

The hospitality industry uses occupancy, average daily rate, and revenue per average room for market analysis. For 2017 year to date, all three of these areas have increased from previous years' statistics. The revenue per average room is up 5.7 percent. Lexington has 7,790 hotel rooms in 70 properties. Seven new hotels are scheduled to open in Fayette County before 2023.

**Report of the 2017
Interim Joint Committee on Education**

**Sen. Max Wise, Co-Chair
Rep. John Carney, Co-Chair**

Sen. Julie Raque Adams
Sen. Danny Carroll
Sen. David P. Givens
Sen. Jimmy Higdon
Sen. Alice Forgy Kerr
Sen. Stephen Meredith
Sen. Gerald Neal
Sen. Reginald Thomas
Sen. Johnny Ray Turner
Sen. Stephen West
Sen. Mike Wilson
Rep. Danny Bentley
Rep. Jim DeCesare
Rep. Mark Hart
Rep. Regina Huff

Rep. Mary Lou Marzian
Rep. Reginald Meeks
Rep. Charles Miller
Rep. Phil Moffett
Rep. Tim Moore
Rep. Kimberly Poore Moser
Rep. Rick Nelson
Rep. Melinda Gibbons Prunty
Rep. Jody Richards
Rep. Steve Riley
Rep. Attica Scott
Rep. James Tipton
Rep. Gerald Watkins
Rep. Russell Webber
Rep. Jill York

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

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

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 Interim. Four of the meetings were at the Capitol Annex in Frankfort, and three meetings were held at the University of the Cumberlands in Williamsburg, Valley High School in Louisville, and Toyota Manufacturing in Georgetown. The committee heard reports relating to Family Resource and Youth Services Centers, reading intervention programs, the state's new accountability system, AdvanceKentucky, essential skills, school-based decision-making councils, the Jefferson County student assignment plan, teacher certification, recommendations from a dyslexia task force and proposed dyslexia legislation, and peer networks for students with special needs.

Family Resource and Youth Services Centers

Family Resource and Youth Services Centers (FRYSCs) were established as part of the 1990 Kentucky Education Reform Act (KERA), and there are 811 centers throughout the state. Many schools qualify to establish a center but do not have one, largely because of funding concerns, and many of the centers serve multiple schools. All the centers share common components based on statutory requirements, but each center also has unique components that better reflect the needs of the schools and communities that they serve.

FRYSCs had an operating budget of \$52.1 million in fiscal year 2018, compared to a \$57 million allocation in 2009. By statute, a maximum of 3 percent of that allocation pays for administrative costs, and the remainder is divided among the 811 centers based on the number of students receiving free or reduced-price lunch in the schools serviced by each center. The per-student allocation by year has declined while the number of students on free or reduced-price lunch has increased. As a result, many schools have requested waivers of the requirement to have a full-time center, rising from 47 schools in fiscal year 2012 to 114 in fiscal year 2018.

Each FRYSC is locally operated and forms community partnerships to provide programs, services, and referrals to students and their families. The goal of FRYSCs is to meet the needs of all children and their families to enhance student academic success. One of the goals of FRYSCs is to ensure that children have a stable, loving home life in the face of the dramatic social issues they face, largely those of drug abuse and addiction.

Reading Recovery and Read to Achieve

Reading Recovery is a one-on-one, early reading intervention for 1st-grade children that has been implemented in 45 states and five countries. The instruction is intensive and accelerated

so that children who are in the lowest levels of reading aptitude can catch up to their peers. Reading Recovery staff train teachers as teacher leaders in the theory and clinical procedures of Reading Recovery and provide leadership experiences to implement Reading Recovery in schools throughout the state. Teacher leaders provide the training to other teachers and become literacy leaders in their regions.

The Read to Achieve program, which supports Reading Recovery, began in 1998 with the passage of Senate Bill 186 and the creation of the Early Reading Incentive Grant program. The grants enabled schools to focus on implementation of research-based reading models to address the learning needs of primary students at low levels. During the 2005 Regular Session, Read to Achieve was formalized with the passage of Senate Bill 19.

In its evaluation of Read to Achieve, the University of Kentucky Center for Collaborative Literacy Development found that participants outscored nonparticipants. Results largely suggest that early, short-term intervention provides the best opportunity for struggling readers.

Over the last 5 years, at least 80 percent of students who participated in a full Reading Recovery program in 1st grade reached an average reading level. Reading Recovery also prevented the need for further, often costlier, interventions in subsequent grades and set the stage for those children to succeed in school.

Senate Bill 1 and Kentucky's New Accountability System

The focus of Kentucky's new school accountability design is to ensure that students have skills and knowledge necessary to go either directly to the workforce or into postsecondary education. The system addresses the achievement gap and is designed to hold schools and districts accountable for student achievement, without placing an undue burden on the districts or teachers. The proposed system keeps students at its center, and overall school/district classification is determined by performance in the categories of proficiency, growth, graduation rate, closing the achievement gap, transition readiness, and opportunity and access.

The overall accountability rating will be based on performance indicators in five levels from very low to very high, which are then combined for an overall rating. All schools will have a supplemental label of gap closure or gap issues. This supplemental designation is intended to close differences in achievement between students of historically low-performing or high-performing schools. A five-star rating in the gap closure category requires a very high rating in proficiency, growth, graduation rate, and opportunity and access, and significant progress in achievement gap closure. In the gap issue category, a one-star rating is very low, comprises the bottom 5 percent, and includes the comprehensive support schools.

A goal has been established to, by the year 2030, increase student proficiency rates significantly for all students, decrease the achievement gap of lower-performing student groups by 50 percent, increase the proportion of English language learner students making significant progress toward becoming proficient in the English language, and significantly increase the graduation rate for all students and each student group. Specific goals will be set for each student group and each academic area at each level.

School-Based Decision-Making Councils

KERA formalized the process by which school councils, also called site-based or school-based decision-making councils (SBDMs), would be formed, and it required them for a majority of Kentucky public schools. As of the 2016-2017 school year, there were 7,485 school council members, of whom 2,545 were parent representatives; 501 of the parent representatives were identified as minority parent representatives. School councils empower parents, teachers, and principals and provide the venue for each group to have a voice and effect change.

The executive director of the Kentucky Association of School Councils presented data illustrating the positive impact of school councils. Teachers and administrators report more favorable conditions for effective school leadership on the 2017 TELL Kentucky Survey in schools with school councils. According to data from the annual Comprehensive School Survey in Jefferson County, 84 percent of school-based certified staff agreed or strongly agreed with the statement “School-Based Decision Making has helped improve my school” and 90 percent of parents agreed or strongly agreed with the statement “The Site-Based Decision Making Council has helped to improve my child’s school.” Information was also presented to highlight the impact of SBDMs on addressing achievement gaps. While school councils are not the entire solution to achievement gaps, councils put decision-making capabilities in the hands of those most closely connected with students in terms of curriculum, staffing, and budgeting.

Sen. John Schickel provided testimony on his concerns regarding SBDMs, including a concern that the people making decisions about schools, particularly about the allocation of funds, do not always live in the relevant taxing district. He said the current structure of SBDMs holds superintendents, who are hired by school boards, responsible for situations without having the tools to effect real change. He said the system is dysfunctional at its core and is the result of an overcorrection to school board problems of the past.

The Boone County Schools superintendent said the statutes governing school councils need revision because of differing interpretations over the past 20 years. He cited the ruling in *Board of Education of Boone County v. Bushee*, in which the courts held that school boards do not have any authority over site-based councils. This ruling caused school boards across Kentucky to stop taking an interest in SBDMs because the boards were unsure of their authority over SBDM actions. This development has driven up costs, confuses taxpayers, and calls into question textbook and curriculum discrepancies among schools within the same district. Boards and superintendents are forced to spend limited funds on legal advice because they do not have clear rules on areas of responsibility.

The president and CEO of the Bluegrass Institute discussed the lack of research on SBDMs. He urged the committee to address the need for an external management audit, especially on SBDMs at priority schools. He said there is little evidence that the SBDM model is fulfilling its statutory mandate to improve student achievement. Although teachers control the councils, he questioned whether they are adequately trained for the complex and sophisticated decisions regarding the handling of local, state, and federal dollars. He questioned what the SBDM governance model had really accomplished in terms of improved school cultures and parental involvement across the state.

Teacher Certification

The Education Professional Standards Board (EPSB) sets standards and certifies educators who have met the standards in dispositions, ethics, skills, and knowledge. If a teacher violates any of the standards, EPSB has the authority to take action against the certification of a teacher up to and including revocation of the certificate. Certification begins with the accreditation of Educator Preparation Programs. There are also candidate assessments to ensure pedagogy and content knowledge—for example, the Praxis—and internship programs such as the Kentucky Teacher Internship Program and the Kentucky Principal Internship Program.

Traditional certification routes are through a university-based program, but KRS 161.048 outlines eight alternative routes to certification. There is a proposed proficiency-based certification, which would allow individuals to have their experiences evaluated by an accredited institution for comparison to an approved education program. If there is satisfactory similarity, the individuals can receive certification, with additional classwork as necessary.

There are 42,000 certified educators employed in Kentucky's public schools, and 144,000 individuals hold Kentucky certifications. Additionally, 35,000 certification applications are processed annually.

In the area of educator ethics, an average of 729 complaints are received annually. The vast majority of complaints come from superintendents, and all are reviewed by a Complaint Review Committee of three staff members. The committee determines whether there is credible evidence of a violation and whether it is within the jurisdiction and authority of EPSB. If these factors are met, the case is submitted to the EPSB board for review. Potential actions of the board in cases of violation include dismissal, deferral for training, admonishment, admonishment with training, attorney review and investigation, referral to hearing, and deferral for more information.

The mission of EPSB is to support the achievement, improved understanding, and performance of P-12 students in Kentucky. To achieve this result, EPSB's goal is to recruit and retain the most effective teachers and leaders, and this is the biggest investment in schools as well, with 85 percent of school budgets allocated to personnel. There is no shortage of qualified teachers in Kentucky, but there is a distribution problem. One of the immediate aims of EPSB is helping districts lacking teachers to promote their schools to better attract new teachers.

AdvanceKentucky

Through AdvanceKentucky and the National Math + Science Initiative, Advanced Placement (AP) math, science, and English programs aim to increase students' access to and success in challenging, college-level courses. The student-centered elements of the programs are student time-on-task, exam fee support, student recruitment and counseling, supplies, and equipment. There are incentives for teachers including stipends and bonuses, vertical teaming, teacher mentoring and content coordinators, and rigorous content-focused teacher training. The real driver for the program is the open enrollment aspect, which allows all students to take rigorous coursework and provides the proper support and tools for success.

AdvanceKentucky has served 119 high schools since 2008 and just started the next cohort of 10 schools. A variety of performance data was shared with the committee. The overwhelming increase in the first year by students in the cohort schools versus the state average was highlighted. The 3-year growth chart showed that cohorts one through six had a 154.2 percent increase in qualifying scores. Additionally, the increase in qualifying scores for free and reduced-price lunch students was 302.9 percent; for minority students, the increase was 202.4 percent.

In terms of postsecondary impact, students participating in AdvanceKentucky go to college at much higher rates. For the class of 2009, 94.2 percent of AdvanceKentucky participants went to college versus 64.3 percent of comparison groups. In 2015, 76 percent were going to college versus 49.7 percent of comparison groups. The same trend continues for low-income students, with 69.3 percent of AdvanceKentucky participants going to college versus 40 percent of comparison groups in the class of 2015. This data applies to all students who engage with the AP material, not just those with qualifying scores.

Jefferson County Public Schools Student Assignment Plan

The Jefferson County Public Schools (JCPS) acting superintendent said work is ongoing to develop a strategy for the JCPS student assignment plan to ensure that every child in JCPS has access to a top-notch education. Although the plan has been revised every 5 to 10 years since the early 1970s, the last significant adjustment was in 2007.

In 2007, the board approved a set of guiding principles to develop the student assignment plan to meet guidelines provided by the US Supreme Court. The three most critical areas of the student assignment plan are choice, diversity, and equity. Other guidelines include predictability, quality, and stability. JCPS uses a plan to achieve diversity without race being a factor, with focus on family income, geographic areas, and educational attainment of census blocks. Elementary students have choices from a cluster of five to eight schools. Middle and high school students are assigned to the school serving their home address but also have an opportunity to apply to a multitude of schools. All students can apply for a variety of magnet choices.

A success of the assignment plan is that families have options to fit the needs of their children, where 90 percent of kindergartners receive the first choice in their cluster. Challenges include balancing choice, diversity, and travel time. Other challenges include ensuring that all families have access to pertinent information to be able to make an educated choice in a timely manner. Balancing overcrowded and low-enrollment schools can also be difficult.

Regarding diversity successes, a 2011 survey concluded that 80 percent of high school students were in favor of keeping or strengthening desegregation efforts, and more than 90 percent of parents believe that diverse schools have important educational benefits. Most schools meet diversity guidelines and allow for more diversity than the neighborhood school plan. Challenges include elementary schools that do not fall within the guidelines, changes in demographic shift and cluster configurations, and allowing for racially and economically identifiable schools.

JCPS plans to review its current student assignment plan within the next 12 to 18 months to determine its effectiveness and the challenges to be addressed. Discussions will address

changing demographics of the community, population shifts, and researching other large districts for improvement ideas. JCPS plans to gather input from students, families, and community stakeholders and will develop a timeline for recommendations.

Essential Skills

Rep. Jonathan Shell provided an overview of his essential skills legislation from the 2017 Regular Session and discussed ways that it had been improved during the Interim. Employers have said that their second biggest concern was finding employees with soft skills or essential skills and drug-free lifestyles. His bill was an attempt to address this concern by providing a framework for schools to require students to develop these skills and be drug-free. Although students are graduating with the necessary technical knowledge, they are not employable because they are not trained in essential skills.

Some examples of essential skills targeted by his legislation are teamwork, communication, punctuality, problem resolution, and a drug-free lifestyle. The lack of these skills is a problem across the state and is a problem of the current society. Some school districts are doing exemplary work in these areas, but the efforts are not being taken into consideration in the current accountability model.

Information was provided on various essential skills programs developed across the state, including the Work Ready Seal program in Washington County, the Work Ethic Certification program in Hardin County, a regional program developed by Bullitt and Spencer County public schools, the Employability Operating System developed in Fayette County Public Schools, the Northern Kentucky Drug Free Clubs of America, the South Central Kentucky LAUNCH (Learning About Unique New Careers Here) program, and the Be the Change program implemented at the Warren County Area Technology Center.

Kentucky Peer Support Network Project

The Kentucky Peer Support Network Project is working to help schools and districts implement peer support networks. Peer support networks help build relationships between students with significant disabilities and their school peers by providing

- opportunities for students to learn together in general education classrooms,
- opportunities for the development of friendships that extend beyond the classroom, and
- opportunities for students to develop and expand their communication in authentic ways.

The two strategies that the project uses are peer networks and peer support arrangements. A peer network is a social-focused group established around a student with a significant disability that meets weekly to talk, participate in shared activities, and discuss interactions occurring outside the group. An adult facilitator provides the students with regular feedback and guidance. A peer support arrangement is a group of one or more peers without disabilities working together with classmates with disabilities as a community of learners. The group supports participation in class activities, provides feedback and encouragement, models communication and other skills, supports learning, and promotes interaction with other classmates.

Dyslexia Task Force and Proposed Legislation

The commissioner of education convened the Dyslexia Task Force in July 2016 to study dyslexia and develop recommendations on policy, personnel, and the instructional and fiscal resources needed to identify and support students with dyslexia. The task force made several recommendations including creating a dyslexia resource toolkit for instruction, enhancing teacher preparation programs, developing awareness training for all instructional staff, and developing protocols and procedures for screening.

Rep. Addia Wuchner provided information about her proposed dyslexia legislation for the 2018 Regular Session. The Kentucky Ready to Read Act 2018 will update the statutory definition of *dyslexia*; require the Kentucky Department of Education (KDE) to update all policies and guidance on dyslexia and gather resources into a toolkit for school districts and parents; establish “Dynamic Laboratories of Learning” as pilot projects to review, test, and identify effective policies for identifying and supporting students with dyslexia; require local boards of education to create and adopt policy specific to dyslexia; ensure that teacher preparation programs include dyslexia; and require KDE to annually survey districts on their dyslexia intervention efforts.

**Report of the 2017
Interim Joint Committee on Health and Welfare and Family Services**

**Sen. Julie Raque Adams, Co-Chair
Rep. Addia Wuchner, Co-Chair**

Sen. Ralph Alvarado
Sen. Tom Buford
Sen. Danny Carroll
Sen. Julian M. Carroll
Sen. David P. Givens
Sen. Denise Harper Angel
Sen. Alice Forgy Kerr
Sen. Stephen Meredith
Sen. Reginald Thomas
Sen. Max Wise
Rep. Danny Bentley
Rep. Robert Benvenuti III

Rep. George Brown Jr.
Rep. Larry Brown
Rep. Jim Gooch Jr.
Rep. Joni L. Jenkins
Rep. Mary Lou Marzian
Rep. Chad McCoy
Rep. Russ Meyer
Rep. Kimberly Poore Moser
Rep. Darryl T. Owens
Rep. Melinda Gibbons Prunty
Rep. Steve Riley
Rep. Russell Webber

LRC Staff: DeeAnn Wenk, Ben Payne, Chris Joffrion, Jonathan Scott, Gina Rigsby,
and Becky Lancaster

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Health and Welfare and Family Services

Jurisdiction: Matters pertaining to human development, health, and welfare; fire prevention and protection; delivery of health services; support of dependents; garbage and refuse disposal; public assistance; child welfare; adoptions; children's homes; disabled persons; family welfare; aid to the blind; commitment and care of children; mental health; substance abuse; health, medical, and dental scholarships; local health units and officers; vital statistics; communicable diseases; hospitals, clinics, and long-term care facilities; health professions; physicians, osteopaths, and podiatrists; chiropractors; dentists and dental specialists; nurses; pharmacists; embalmers and funeral directors; psychologists; optometrists, ophthalmic dispensers; physical therapists; senior citizens; eliminating age discrimination; non-public-sector retirement; problems of aging; and violent acts against the elderly.

Committee Activity

The Interim Joint Committee on Health and Welfare met seven times during the 2017 Interim.

Children's Issues

Adolescent Suicide Prevention. The committee heard testimony on the University of Kentucky's Stop Youth Suicide Campaign, which has helped 20,000 children at risk of committing suicide. The program costs \$50,000 per year and has never received state funds. The committee also heard testimony on the Advancing Wellness and Resilience in Education Grant awarded to Pulaski County Schools by the Substance Abuse and Mental Health Services Administration, Center for Mental Health Services. The grant supports the training of teachers, people who interact with youth through community programs, parents, law enforcement, faith-based leaders, and other adults in Mental Health First Aid (MHFA) or Youth Mental Health First Aid (YMHFA). The goal is to expand the MHFA and YMHFA programs to achieve a wider community impact by training a more diverse group of adults who will reach a broader spectrum of adolescents or transition-aged youth within the community. A representative from the Cabinet for Health and Family Services's Department for Behavioral Health, Developmental, and Intellectual Disabilities testified about trends in adolescent suicide deaths and the Kentucky Zero Suicide Initiative, which aims to create suicide-safer communities and suicide-safer care services for people 10 to 24 years of age who are at higher risk of suicide.

Child Care Assistance Program. The committee heard testimony on the transition of the services for the Child Care Assistance Program (CCAP) from the Child Care Council of Kentucky to the Cabinet for Health and Family Services under the Benefind system. The contract with the Child Care Council ends December 31, 2017. Benefind provides a single point of access to apply for benefits, recertify, or report changes for Medicaid, the Kentucky Transitional Assistance Program, the Supplemental Nutrition Assistance Program, and CCAP. In addition to cost savings, this move will bring the cabinet in compliance with the Child Care Development Block Grant Reauthorization Act of 2014, which requires applicants for a child care subsidy to be informed of other types of assistance for which they may be eligible.

Child Care Assistance Program Providers. Child care providers testified that CCAP helps provide assistance to low-income families. Even though there was a small increase to providers, it was not enough to keep some centers from closing. The reimbursement rate to centers is based on daily attendance, not enrollment. There is a staffing crisis because centers cannot recruit and maintain qualified workers. Kentucky's enrollment rate is much lower than that of Indiana and Tennessee.

Dyslexia Services. A representative from the Department of Education was expected to testify about services for children with dyslexia at the December meeting.

Pediatric Head Abuse Trauma. The committee heard testimony on pediatric head abuse trauma in Kentucky from Prevent Child Abuse Kentucky (PCAK). There needs to be an increase in education and awareness of child abuse. PCAK offers 14 trainings on topics such as recognizing and reporting, Internet safety, and working with families in substance abuse recovery. The top risk factors for fatal abusive injury include substance abuse, domestic violence, criminal history, and undiagnosed or untreated mental illness among adult caregivers in the home.

Visually Impaired Preschool Services. The executive director, Visually Impaired Preschool Services (VIPS) testified about its mission and services. Kentucky is one of only five states with a program for visually impaired babies. VIPS serves nearly 550 children in Indiana and in all 120 counties in Kentucky. The opioid crisis has increased new referrals. The Department of Education gives \$100,000 to VIPS. VIPS receives funding from grants, gifts, fundraisers, the First Steps program, some school systems that bus children to the day program, and tuition from the Jefferson County Public Schools for its 18 students who are enrolled in the program.

Sudden Unexpected Infant Death. The committee heard testimony by a representative from the Division of Maternal and Child Health in the Cabinet for Health and Family Services's Department for Public Health. In 2016, 103 Kentucky infants died suddenly and unexpectedly. A multidisciplinary local team or the state sudden unexpected infant death (SUID) case registry review team reviewed 95 of the 103 cases. SUID deaths include sudden infant death syndrome (SIDS), undetermined causes, and accidental suffocation and strangulation in bed. In October 2015, the Kentucky Department for Public Health launched Kentucky's branch of the National Institutes of Health's Safe Sleep Campaign, as a statewide effort to raise awareness of the importance of Safe Sleep for babies and lower the number of SIDS-related deaths in Kentucky.

Health Care

Accountable Care Organizations. A group was to testify on the advantages of accountable care organizations at the December meeting.

Amyotrophic Lateral Sclerosis. A representative from Mitsubishi Tanabe Pharma America testified that on progress made in treatments for amyotrophic lateral sclerosis (ALS, or Lou Gehrig's disease). ALS is a rapidly progressive neurodegenerative disease; the majority of people who receive a diagnosis die within 5 years. In 2015, edaravone was approved for use as a treatment for ALS in Japan and South Korea. In May 2017, the Food and Drug Administration approved

Radicava (edaravone) as a treatment option for ALS. The most common side effects are bruising (contusion), problems walking (gait disturbance), and headache.

Certified Professional Midwifery. A representative from the Kentucky Home Birth Coalition testified that requiring midwives to be state certified is not a matter of midwives trying to advance their profession but a matter of families asking for access to midwives who assist with home births. A representative from the Kentucky Board of Nursing stated that the board is willing to take the responsibility of regulating certified professional midwives. A representative from the Kentucky Coalition of Nurse Practitioners and Nurse Midwives stated that the coalition is appropriate for women to have alternatives to be able to choose how and when they want to give birth, but there are standards and criteria that must be met for the safety of the mother and baby.

Diabetes Prevention and Treatment. Rep. Donna Mayfield and Rep. Russ Meyer testified about the health and economic impact of diabetes in Kentucky. According to Centers for Disease Control and Prevention, 12 percent of adults in Kentucky had received a diagnosis of diabetes by 2014. The Institute for Alternative Futures (IAF) projects that over 14 percent of Kentuckians will have received a diagnosis of diabetes by 2030. IAF estimates that the economic impact in Kentucky in 2020 could cost \$6.5 billion. Emergency medical services first responders should carry quick-acting insulin, which could be the difference between life and death for someone.

End-of-Life Care. The committee heard testimony on 2017 legislation that would have amended KRS 218A.010 to define medically necessary marijuana; amend the definition of *marijuana* to allow physicians to recommend, transfer, dispense, or administer certain types of cannabidiol; and establish the Implementation Task Force on the Palliative and Hospice Use of Medical Marijuana. The legislation was an attempt not to provide marijuana to individuals without legitimate medical problems but to take a limited approach to help individuals with medical needs.

Hospital Peer Review. The committee heard testimony on legislation to prohibit the peer review process from discovery.

Testimony in favor of the legislation stated that the idea of the peer review process is to look back and evaluate the case and the clinical judgments made, and the skills used for the purpose of improving future care. In Kentucky, courts have generally ruled that a peer review has to be accessible to discovery. Peer review happens in a robust manner when it can be done confidentially. There is no statute or protection that prohibits a plaintiff from gaining access to the facts of a case; information and facts are always available through discovery. Peer review is about opinions on how to improve patient care in the future and not about the facts.

Testimony opposed to the legislation stated that it protects hospitals and nursing homes from telling the truth, shields the facts of what really occurred, and encourages and prolongs litigation because facts are unavailable.

Metastatic Breast Cancer. A representative from Hope Scarves stated that no one dies of cancer found in the breast, because it is treatable and survivable at this point. Metastatic breast cancer is a stage 4 cancer and is terminal. In approximately 30 percent of people with early-stage breast cancer, the cancer becomes metastatic and life expectancy is 2 to 3 years. Although it is

important to celebrate individuals who are in remission, it is just as important to raise awareness of individuals who are dying of cancer. There needs to be more research to understand why and how the cancer metastasizes. Questions must be raised about where research dollars are being spent.

Post-Acute-Care Facilities. A representative from Rapid Recovery Centers, Mainstreet Health, stated that Mainstreet wants to bring a new model of post-acute care to Kentucky that will allow for competition and better outcomes and is asking for changes to the current certificate of need (CON) criteria. Mainstreet accepts managed care, Medicare, and private pay insurance but does not accept Medicaid. A representative from the Kentucky Association of Health Care Facilities stated that it opposes the changes to the current CON criteria for short-term rehabilitation services in the State Health Plan because it will have a devastating effect on all nursing facilities in Kentucky and will raise the cost to Kentucky and create additional Medicaid problems.

Telehealth Care. The committee heard testimony on 2017 legislation that would have improved access to medical services via telehealth by providing payment for like-kind services from private insurance providers to Kentucky's health provider if they have an established and ongoing care relationship with a patient. The intent of the legislation was to provide a fair market for telemedicine technology. The benefits of telemedicine include saving money, time, and resources; opening access; leveling access to doctors; easing medical personnel shortages; and providing better health outcomes, quality, and lower costs by staying with the same physician.

Medicaid

Acquired Brain Injury Waivers. Acquired brain injury (ABI) service providers testified about substance abuse, residential eligibility, and high rates of denial of services under the waivers. The current process is inconsistent and arbitrary, and it delays the initiation of treatment. Over 260 Kentuckians are on the ABI long-term-care waiver waiting list while 160 ABI waiver slots are available.

Medicaid Waiver. The committee heard testimony on the changes made to the Section 1115 Medicaid waiver referred to as Helping to Engage and Achieve Long Term Health (HEALTH) that Kentucky submitted to the federal government. Representatives from the Cabinet for Health and Family Services said implementation of Kentucky HEALTH Phase 1 will begin January 1, 2018; Phase 2 on April 1, 2018, and Phase 3 on July 1, 2018. Kentucky HEALTH does not include traditional Medicaid recipients (aged, blind, and disabled people) or former foster youth up to age 26. Kentucky HEALTH covers nondisabled adults and children covered before the expansion, pregnant women, children, and the adult expansion population.

A representative from the Office of the Governor said proposed modifications to the original 1115 waiver application include static community engagement hours, lock-out period for failure to report a change in circumstances, and maintenance of current presumptive eligibility sites. Of the 440,000 Medicaid expansion recipients, approximately 200,000 are able-bodied individuals who are not medically fragile or unemployed.

Mental Health

Court-Ordered Assisted Outpatient Treatment for Mental Illness. The committee heard an update on Tim's Law (2017 RS SB 91). A District Court and drug court judge said the model that will work best for Kentucky is to operate the law within the confines of existing mental health courts, regular drug courts, or veterans' treatment courts. Court-ordered assisted outpatient treatment is needed only for a small number of individuals who have been continuously involved in the court system and who are not compliant with the treatment plan after being released from a facility. The Administrative Office of the Courts created the petition, application, and transfer order forms the day SB 91 went into effect.

Public Health

Animal Shelters. The committee heard testimony from the Kentucky state director of the Humane Society of the United States on 2017 legislation that would have established a Shelter Oversight and Pet Overpopulation Task Force. Current state law does not authorize any entity to oversee and correct the failure of certain Kentucky county shelters to meet the statutory minimum standards. A representative from the University of Kentucky Veterinary Diagnostic Laboratory stated that, in a 2016 study of current conditions of Kentucky county animal shelters and degrees of compliance with Kentucky animal shelter laws, only 12 percent of counties were in compliance with all parts of Kentucky's animal shelter laws, and over 50 percent of counties were in violation of three or more parts of the law. Proper animal care is a public health issue because, without proper care, animals can cause transmission of disease to humans.

Heroin and Opioid Crisis. The committee heard testimony on several aspects of the heroin and opioid crisis. The topics discussed include the current status of the crisis; the impact on health care providers and the state health care budget including Medicaid; the impact of the crisis on employment and the economy; addiction awareness and prevention initiatives; addiction treatment and recovery programs including outpatient, residential, and medication-assisted treatment; postrecovery programs; care for pregnant and parenting women and infants with substance abuse issues; safe drug disposal methods; strategies for reducing opioid prescription misuse; the pathophysiology of opioid use disorder; jail substance abuse programs; quick response teams for substance overdoses; and plans for additional strategies to combat substance abuse.

Livable Home Tax Credit Program. A representative from the National Multiple Sclerosis Society testified on the need for a tax credit for individuals needing home modifications because of disabilities caused by multiple sclerosis (MS). People with MS typically are subject to falls in their homes and neighborhoods, usually during basic activities such as bathing and preparing meals. Several states have home modification tax credit programs or are in the process of developing them. A tax credit incentive managed by the Kentucky Department of Revenue could be offered to help people who cannot afford these modifications. A limitation could be placed on the dollar amount that a person receives or on someone's income level.

State Dental Health Plan. A representative from Kentucky Youth Advocates (KYA) stated that approximately a year ago KYA partnered with Delta Dental of Kentucky to conduct an updated survey of children's oral health in Kentucky. One recommendation of the report was to

develop comprehensive goals and objectives for an updated state oral health plan. A representative from the Department for Public Health testified that some keys to prevention are to expand the department's dental hygiene program, to promote the use and training of silver diamine fluoride, to create consistent oral health education in health departments, and to review school preentry screening requirements.

State of Health in Kentucky. A representative from the Foundation for a Healthy Kentucky said its focus is to change policies in order to improve the health of Kentuckians. Ways to reduce obesity include healthy vending and school nutrition options, Complete Street policies, shared-use agreements, sidewalks and trails, and farmers' markets. Ways to help reduce smoking include enacting smoke-free laws and raising the tobacco tax by \$1 per pack.

Referred Block Grant Applications

Pursuant to KRS 45.353, the committee held legislative hearings on four block grant applications: State Fiscal Year 2018-19 Community Services Block Grant, the State Fiscal Year 2018 Social Services Block Grant, the Federal Fiscal Year 2018-19 Unified Community Mental Health and Substance Abuse Prevention and Treatment Block Grant Application, and the Federal Fiscal year 2018-2020 Temporary Assistance for Needy Families Block Grant.

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, as of November the committee had reviewed 74 administrative regulations upon referral from the Legislative Research Commission under the review process established in KRS Chapter 13A.

Referred Executive Orders

Pursuant to KRS 12.028, the committee held a legislative hearing on one executive order upon referral from the Legislative Research Commission: Executive Order 2017-269, relating to Establishment and Operation of the Kentucky Office of Health Benefit Exchange.

**Report of the 2017
Interim Joint Committee on Judiciary**

Sen. Whitney Westerfield, Co-Chair

Rep. Joseph M. Fischer, Co-Chair

Sen. Joe Bowen

Sen. Danny Carroll

Sen. Perry B. Clark

Sen. Ray S. Jones II

Sen. Alice Forgy Kerr

Sen. John Schickel

Sen. Wil Schroder

Sen. Dan “Malano” Seum

Sen. Robert Stivers II

Sen. Robin L. Webb

Rep. Robert Benvenuti III

Rep. John Blanton

Rep. Larry Brown

Rep. Tom Burch

Rep. McKenzie Cantrell

Rep. Daniel Elliott

Rep. Angie Hatton

Rep. Joni L. Jenkins

Rep. Stan Lee

Rep. Chad McCoy

Rep. C. Wesley Morgan

Rep. Kimberly Poore Moser

Rep. Jason Nemes

Rep. Darryl T. Owens

Rep. Jason Petrie

Rep. Brandon Reed

Rep. Kevin Sinnette

Rep. Ken Upchurch

Rep. Gerald Watkins

LRC Staff: Katie Comstock, Matt Trebelhorn, Chandani Kemper, Alice Lyon, Dale Hardy, Elisha Schweickart, Brian Lock, and Crystal Allen

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Judiciary

Jurisdiction: Matters pertaining to contracts; the Uniform Commercial Code; debtor-creditor relations; ownership and conveyance of property; private corporations and associations; competency proceedings; administration of trusts and estates of persons under disability; descent, wills, and administration of decedents' estates; domestic relations; support of dependents; statutory actions and limitations; eminent domain; arbitration; declaratory judgments; witnesses; evidence; legal notices; construction of statutes; civil procedure; the Supreme Court, the Court of Appeals, Circuit Courts, and District Courts; family courts; jurisdiction, rules, terms, judges, commissioners, selections, districts, qualifications, compensation, and retirement; clerks of courts; juries; attorneys; receivers; court reporters; habeas corpus; crimes and punishments; criminal procedure; probation and parole; correctional facilities; civil rights; and juvenile matters.

Committee Activity

During the 2017 Interim, the Interim Joint Committee on Judiciary held six meetings. The committee received testimony regarding a wide range of topics.

Child Abuse Offender Registry: 2017 RS HB 129

Rep. Addia Wuchner discussed the concept and goals of 2017 Regular Session House Bill 129, which did not pass. A staff attorney for the Kentucky State Police (KSP), a lieutenant from KSP's Criminal Identification and Records Branch, the senior director of Advocacy with Children Inc., and a victim advocate whose daughter was abused by a babysitter also spoke in support of the bill. Rep. Wuchner explained that HB 129 would require those who have been convicted of a crime against a child to register on a public registry. The registry would be maintained by KSP and would be accessed via a public website similar to the sex offender registry. HB 129 directed that \$25 of each misdemeanor expungement petition fee and \$250 of each felony expungement petition fee would fund the registry.

Pathway to Addiction Treatment in Jail

Rep. Kimberly Poore Moser discussed the Chemical Dependency Program (CDP) in the Campbell County Detention Center and stated that the program reduces relapse and recidivism while promoting sustainable recovery. The chief deputy of the Campbell County Detention Center, the director of clinical services at the Northern Kentucky Health Department, the program manager of the CDP, a judge with the Campbell Circuit Court, a Brighton Center employee, and a Greater Cincinnati Behavioral Health Services employee also spoke on the panel with Rep. Moser.

The CDP was created to address the heroin problem in northern Kentucky. The cost of the program per participant is \$8,800. Program criteria include being a female Campbell County resident who has immediate alcohol- or drug-related charges, a history of alcohol- or drug-related charges, a length of incarceration that exceeds the time necessary to participate in the program, and identification by the Women's Risk Needs Assessment as having a substance use disorder. Women voluntarily placed in the program will receive treatment for 6 months while incarcerated.

Once released, the women will be placed on probation and will receive one-on-one individualized attention.

Multiple agencies work with the CDP to provide support for the women once they leave the jail. One of these program partners is St. Elizabeth Medical Center, which provides parenting classes for the women. Participants interested in naltrexone (a treatment for opioid dependence, also known as Vivitrol) will be connected to St. Elizabeth Addiction Services on the day of release. The program is also partnered with the Northern Kentucky Community Action Commission, which helps participants with financial classes, continued education, and Medicaid enrollment (if needed). Greater Cincinnati Behavioral Health Services provides the women and their families with mental health services and substance abuse services once the women are released from the facility.

Department of Corrections: Substance Abuse Medication Assisted Treatment

The secretary of the Justice Cabinet, the deputy commissioner of Adult Institutions for the Department of Corrections (DOC), and the director of the DOC Division of Substance Abuse Services spoke about new substance abuse treatments used by DOC. In 2015, Senate Bill 192 provided funding for the use of naltrexone (Vivitrol), a medication used to treat opioid and alcohol addictions. This medication, combined with counseling, behavior therapies, and monitoring from social services clinicians, makes up DOC's Substance Abuse Medication Assisted Treatment program. Medication is started 60 days before an inmate is released, and the Affordable Care Act funds continuation of the medication after release. As of July 2017, 100 inmates had been released from prison on Vivitrol with an 80 percent success rate, and the program has become a national model.

Kentucky State Police: Rapid DNA Collection Upon Felony Arrest

The secretary of the Justice and Public Safety Cabinet, the KSP lab manager, a KSP lieutenant colonel, and the KSP DNA database supervisor discussed rapid DNA collection. Rapid DNA testing is a new technology that can result in receiving DNA results faster. Initially used by the military, it has now spread to state crime labs. The protocol for Rapid DNA testing includes taking a cheek swab upon arrest at booking stations, putting the sample into testing instruments at the jails, and having results within 2 hours. KSP stated that Rapid DNA testing would be faster and less expensive than the technology currently in use.

Putative Father Registry

An attorney with Goldberg Simpson testified in favor of enacting a putative father registry. A putative father registry allows an unwed man, in order to protect his parental rights, to document that he has fathered a child. Indiana's putative father registry was highlighted as clarifying the rights and responsibilities of putative fathers. If a man registers in Indiana, he is entitled to notice in the case of an adoption. If he does not register, he is not entitled to notice and is barred from contesting an adoption. The Indiana Supreme Court has upheld the constitutionality of the registry.

Foster Parent Standing

A family court judge testified that foster parents have no legal rights relating to the children in their care and advocated for providing standing for foster parents. Nineteen states have given at least some standing to foster parents.

Criminal Defense Issues and Concerns

The public advocate gave a presentation on issues and concerns of the Department of Public Advocacy (DPA). Last year, DPA was appointed to 162,485 new trial cases and provided counsel at the cost of \$276 per case. DPA also had 4,538 conflict cases that were contracted out to private attorneys at the cost of \$319 per case. The public advocate recommended additional funding to reduce DPA attorney workloads, to increase compensation to private attorneys for conflict cases, and to increase salaries for DPA staff.

The public advocate noted that, at 24,000 people, Kentucky's prison population is its largest ever. He recommended several policy changes to decrease Kentucky's imprisonment rate including realigning existing correctional resources toward scientifically informed treatment, decreasing penalties for crimes and classifications of crimes, incentivizing release of low- and moderate-risk persons, increasing reentry support, reforming the penal code, creating a financially unified statewide correctional system, increasing the threshold for thefts classified as Class D felonies, and modifying the mandatory minimum for persistent felony offenders. In addition, he expressed support for the creation of gross misdemeanors.

The legislative liaison for the Kentucky Association of Criminal Defense Lawyers expressed her association's support for juvenile justice reform, lower expungement fees, penal reform, the elimination of money bail, and amending the sex offender registry. She also expressed several concerns about Marsy's Law.

Constitutional Rights for Crime Victims

Sen. Whitney Westerfield, the Kentucky executive director for Marsy's Law, and a victim advocate presented Marsy's Law before the committee. Marsy's Law was originally filed in 2016 and proposes changing the Constitution of Kentucky to create constitutional rights for crime victims. It is named after Marsy Nicholas; her ex-boyfriend murdered her and then harassed her family. The Kentucky executive director for Marsy's Law stated that enacting Marsy's Law in Kentucky would help ensure that no other family experiences such retraumatization and would create a meaningful role in the criminal justice system for victims.

Amending Kentucky's Age of Consent

A commissioner of the Kentucky Multidisciplinary Commission on Child Abuse advocated amending Kentucky's consent laws to prohibit a 16- or 17-year old from being able to "consent" to sexual intercourse with a person who is at least 10 years older. Similar protections exist in 22 states.

Sanctuary Cities: 2017 RS HB 501

Rep. Lynn Bechler presented 2017 Regular Session House Bill 501. If passed, HB 501 would have precluded political subdivisions such as cities, counties, and universities from having sanctuary policies. As of August, 7 states ban sanctuary cities and 22 other states had introduced legislation to ban sanctuary cities.

Prosecutorial Issues and Concerns

The commonwealth's attorneys for the Eighth and 16th Judicial Circuits testified regarding the negative impact of a proposed 17.4 percent budget cut on all 57 commonwealth's attorney offices. As a commonwealth's attorney is a constitutional officer, they noted that the Constitution of Kentucky prohibits a change in compensation midterm. Consequently, commonwealth's attorneys would have to cut approximately 43 percent of their staff. They also noted the importance of rocket docket funding and estimated that savings from the program will approach \$50 million by the end of fiscal year 2018. They asked members to consider making rocket dockets a permanent part of the budget, as well as expanding them to all 57 circuits in Kentucky.

The county attorneys for Henderson, Kenton, and Christian Counties testified before the committee. They said that 120 county attorney offices exist in Kentucky, with 538 employees and 120 elected officials. County attorneys are involved in 100 percent of criminal cases and have increasingly received additional responsibilities from the legislature. The three county attorneys also spoke about the effects of a proposed \$7.4 million budget cut on county attorney offices, which would mean a 48 percent reduction in staff budgets.

Department of Juvenile Justice: Population Reductions, Facilities Closures, Youth Advocacy Programs, and Incentive Funds

The secretary of the Justice and Public Safety Cabinet, the commissioner of the Department of Juvenile Justice (DJJ), and the legislative director of DJJ made a presentation. As a result of the passage of SB 200 during the 2014 Regular Session, DJJ has seen a 60 percent reduction in total population from fall 2013 through May 2017. The population includes detained youth, probated, probated or suspended commitments, commitments, and sentenced cases. DJJ has also seen a 73 percent reduction in youth development center placements for low-level offenders. The current residential length of stay has also seen a reduction. Savings achieved by DJJ as a result of these reductions, such as a \$1 million transfer in July 2017, are then reinvested. However, DJJ still faces challenges, such as maintaining qualified and trained staff with 100 percent turnover of front-line youth workers, competing with higher minimum starting salaries at local jails, recruitment and retention of qualified licensed mental health staff, lack of applicants due to low pay and competition with the private sector, and addressing disproportionate minority contact within the juvenile justice system.

Overview of KASPER

Kentucky's inspector general, the director of the Division of Audits and Investigations within the Office of Inspector General, and the Kentucky All Schedule Prescription Electronic

Reporting (KASPER) administrator within the Office of Inspector General presented a KASPER overview. KASPER is Kentucky's prescription drug monitoring program. It tracks prescriptions for controlled substances (schedule one through schedule five) dispensed within the state as reported by pharmacies and other dispensers. It is a real-time web-accessed database that helps address the misuse, abuse, and diversion of controlled pharmaceutical substances. KASPER data is 1 to 3 days old, and dispensers have 1 business day to report. The presenters highlighted several changes coming to the KASPER program in 2018. These changes include allowing authorized practitioners and pharmacists to access available positive drug toxicity screen results related to a patient's suspected drug overdose, and allowing authorized users to access data on a patient's drug convictions as provided by the Administrative Office of the Courts (AOC).

State of the Judiciary

The Chief Justice of the Kentucky Supreme Court spoke before the committee about the state of the judicial branch. The Administrative Office of the Courts is facing several challenges. AOC is grappling to keep up with rapid technological and social developments, the opioid epidemic has expanded court caseloads and altered drug court treatment, and juvenile justice reform and pretrial justice reform are top priorities.

The Chief Justice highlighted the creation of a Dependency, Neglect, and Abuse Judicial Workgroup. This workgroup identifies policies that would reduce the adoption timeline, and it addresses inefficient policies and redundant paperwork. Also, a DNA Judicial Workgroup is collaborating with the Cabinet for Health and Family Services, the Justice and Public Safety Cabinet, the Finance and Administration Cabinet, and the Department of Education to resolve local court-community barriers, enhance support for various initiatives, and determine how to better serve children and families.

In addition, to help judges handle drug-related cases, and give judges a better understanding of addiction and treatment, AOC hosted the first statewide Opioid Summit in January 2017. In August 2017, AOC held a statewide conference for the Department of Specialty Courts. The sessions covered the latest trends in treatment for participants in drug court, veterans treatment court, DUI court, and mental health court. On the regional level, Kentucky participated in the first Regional Judicial Opioid Initiative in August 2016. This initiative was formed of teams from Kentucky, Illinois, Indiana, Michigan, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, along with critical public and private partners. The goal of the summit was to create a framework that would coordinate the state and federal policy makers who are confronting the opioid problem.

AOC is also working with the Justice and Public Safety Cabinet and the Department of Juvenile Justice to launch the financial incentive fund. The money AOC would have spent to detain youth will instead be used to provide resources and treatment services. AOC will support the incentive fund by acting as the fiscal agent, providing assistance for grant applications, and collecting and reporting the data required from judicial districts.

The Chief Justice also highlighted an Open Records Policy that was unanimously approved by the seven Supreme Court Justices. The policy took effect Aug. 15, 2017. This is the first Open

Records Policy for AOC. The policy is in the form of an administrative procedure of the Court of Justice, which carries the weight of law under the Constitution of Kentucky.

The Chief Justice spoke on judicial redistricting. As mandated by the legislature in the judicial branch budget bill in the 2014 Regular Session, the General Assembly received a comprehensive, statewide judicial redistricting plan. The last statewide redistricting took place in 1893. AOC's statewide plan responds to access to justice needs across the commonwealth. A representative of AOC stated that jurisdictions in urgent need of redistricting include Lincoln, Pulaski, and Rockcastle; Boone and Gallatin; Kenton; Floyd; Knott and Magoffin; Bourbon, Scott, and Woodford; and Daviess.

Unmanned Aircraft Systems: 2018 BR 2

Rep. Diane St. Onge presented 2018 BR 2, which is the same as House Bill 291 from the 2017 Regular Session. BR 2 attempts to balance privacy rights with drone usage, including the use of drones by law enforcement officers.

Overview of Child Advocacy Centers

The executive director for the Kentucky Association of Children's Advocacy Centers and the executive director for the Children's Advocacy Center of the Bluegrass made a presentation about children's advocacy centers (CACs). Before the implementation of CACs, many children were required to tell the stories of their abuse to several people and were often questioned by those not trained in posttraumatic investigation tactics. Since 1986, CACs have allowed children to come to a comfortable location and tell their story only once. Once an officer or caseworker receives a report, they can bring the child to a CAC. The child tells their story once to a trained interviewer who knows the questions to ask without retraumatizing the child. Then a team of professionals make a decision on how to proceed with the case. CACs also offer therapy, medical examinations, courtroom preparation, victim advocacy, case management, and other services. Kentucky's CACs adhere to state statutes and regulations, as well as to the National Children's Alliance standards for accreditation. Every child in Kentucky is represented by one of the state's 15 CACs.

SAFE Act Update

The laboratory director for Kentucky State Police presented a Sexual Assault Forensic Evidence (SAFE) Act update. Enacted in 2016, the SAFE Act addressed the sexual assault kit backlog and attempted to prevent a future backlog. In response, KSP's laboratory has created an online kit-tracking system. Although not all hospitals have access to the system, KSP's laboratory is rolling it out as quickly as possible. As of November, 3,173 kits have been sent for testing, KSP has reviewed 1,129 kits, 356 profiles have been added to the Combined DNA Index System, and 150 hits have resulted from the testing. In addition, KSP's laboratory has begun testing "boomerang" kits, those that were sent back to law enforcement without being tested.

The laboratory director also noted that the laboratory is getting outpaced in forensic biology assignments. With 46,000 cases in 2016 and more cases this year, the lab takes over a year to complete a DNA case. The slow turnaround is caused by a loss of employees due to low

salaries. However, KSP hopes to shorten the turnaround time in the near future. With the \$4.5 million appropriated to KSP's laboratory in the last budget, renovations were made in the lab and additional staff has been hired.

“I Am Evidence” Documentary

A victim advocate spoke briefly before the committee about the story of how she and many others have been sexually assaulted. A 20-minute clip from an HBO documentary called *I Am Evidence* was played for the committee. The documentary is about sexual assault in America.

**Report of the 2017
Interim Joint Committee on Licensing, Occupations,
and Administrative Regulations**

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

Sen. Joe Bowen
Sen. Tom Buford
Sen. Julian M. Carroll
Sen. Denise Harper Angel
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Ray S. Jones II
Sen. Christian McDaniel
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Al Gentry
Rep. Dennis Keene

Rep. Chad McCoy
Rep. Jerry T. Miller
Rep. C. Wesley Morgan
Rep. Kimberly Poore Moser
Rep. David Osborne
Rep. Ruth Ann Palumbo
Rep. Phillip Pratt
Rep. Sal Santoro
Rep. Arnold Simpson
Rep. Diane St. Onge
Rep. Walker Thomas
Rep. Susan Westrom

LRC Staff: Tom Hewlett, Bryce Amburgey, Melissa McQueen, Jasmine Williams,
and Susan Cunningham

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Licensing, Occupations, and Administrative Regulations

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

Committee Activity

North Carolina State Board of Dental Examiners v. Federal Trade Commission

The secretary of the Public Protection Cabinet said the makeup of state boards and commissions needs to be reorganized to improve the oversight structure for them. The general counsel of the cabinet discussed *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The North Carolina Dental Board had sent cease-and-desist letters to nondentists who were engaging in teeth-whitening practices. The board said this action constituted the practice of dentistry. The Supreme Court disagreed and found that the state must supervise boards composed of market participants that include board members who hold active licenses in the field that the board regulates. If the state does not actively supervise a board, the board could be held liable for anti-trust actions. Board members may also be subject to personal liability.

According to Federal Trade Commission guidance, the following conditions do not constitute active state oversight: the regulatory board is composed of active market participants in the occupation the board regulates; state officials monitor the actions of the regulatory board but lack the authority to disapprove anti-competitive acts; a state official serves as a member or ex officio member of the board but lacks the authority to disapprove anti-competitive acts; or the state's attorney general or another state official provides ongoing advice to the regulatory board but has nothing more than advisory powers.

The secretary said the cabinet is considering altering the structure of licensing boards. Similar boards will be grouped under an authority headed by an executive director, who will provide active state supervision to each group under the authority. Each board will continue to regulate and license its respective profession with oversight from the executive director and the commissioner of the cabinet's Department of Professional Licensing.

Welding Safety

Rep. Jill York—sponsor of 2017 RS HB 444, relating to welding safety—said accreditation of welders and inspectors is important. Construction contracts for projects involving steel erection often contain language requiring contractors to provide certification that all welders performing work on the project have been tested to meet standards. The standards define the required protocol for welder qualification, and they use nationally recognized AMS codes, which cover the bulk of

welding performed in the industry. For projects owned by public entities, contractors who perform welding must submit qualifications for any welder who will work on the project. Unfortunately, the criteria for certification and inspection are written into job specifications but not required by law. Some people have been breaking rules, causing some projects to fail during the construction process because of problems such as falsified welding certification and testing, mail-in welding test facilities, too few on-site inspections, structure collapse, and increased cost. Fake welding tests and facilities have become far too common.

The president of the Iron Workers District Council of Southern Ohio and Vicinity said all the welding-related faculties in Ohio have expressed great support for reforms. He discussed fake welding tests and facilities and showed the members examples of good and bad welding.

Rep. York said the risks of bad structural welding include public safety, worker safety, and confidence in Kentucky construction. She said legislation needs to be passed to enforce standards when they are included in job specs, and to change the enforcement of building codes to require contractors to use accredited testing facilities and accredited inspectors. The bill requires the use of accredited American Welding Society (AWS) testing facilities, provides oversight through third-party testing, and requires AWS qualified welders on structural steel construction. In response to a question by Rep. Jerry Miller, Rep. York said the bill does not affect the problem of too few on-site inspections.

Licensure for Electricians

The president of Townsley Electrical Contractors in northern Kentucky said that, when he started his business in 1970, there was no apprenticeship program or requirement for electrical licensure. There were a few areas that required master electricians to have a license, with all other employees working under that license. In the 1970s, in some areas of the state, the licensing board had an experience clause requiring the applicant to acquire three or more signatures stating that he or she had been working as an electrical contractor for 5 or more years before the board would issue a license. This clause no longer exists. Another issue during the 1970s was lack of required liability insurance. Now liability insurance in the amount of \$5 million is common.

Presently, each company is required to have an electrical contractor's license, obtained through a test relating to business, and an electrician master's license, obtained by passing a test related to the National Electric Code. Each company must have at least one licensed electrician on every job site. That license can be obtained only by passing a test related to the National Electric Code. The industry is safer today; however, requirements are more stringent than necessary, which is creating a crisis of too few workers in the electrical workforce.

The bill that will be proposed for the 2018 Regular Session basically keeps the same rules but will lessen training time, so a person is eligible to take the electricians test after working 4 years (or 2 years in a 2-year approved training program). Ohio is taking Kentucky's electricians across the river to work because Ohio law does not require a journeyman to have a license; only a master electrician must be licensed for a job.

A representative from Hopkinsville's Holland Electric Company said that, in 2003, 4,203 electricians were grandfathered a license for electrical work. Similarly, 17,183 master electricians were grandfathered. Current data shows 5,805 renewed electrician license applications, with only 2,220 active. Master electrician renewal applications totaled 19,561; today only 9,117 are active. With half of the workforce gone, the electrical industry needs help. The executive director of the Home Builders Association of Kentucky said there is a severe workforce shortage in the industry. If shortening the number of years required to become a journeyman electrician helps increase the workforce, his industry will support the idea.

The owner of Corrigan Electric, from Louisville, representing the Independent Electrical Contractors Association, said he was against changing the training to 2 years. The association does not believe the National Electric Code requirements can be learned in 2 years, and the 4-year training program meets guidelines of federal standards. He acknowledged that there is a shortage in the electrical workforce, but he said younger workers are put off by the amount of training required to become an electrician. To hold a state license for a journeyman, a person must have 4 years of experience; for a master license, the requirement is 6 years. Although it is possible to learn to wire a house in 2 years, it is not possible to also learn how to work in the industrial side at the same time.

The owner of United Industrial Services, in Louisville said that if the bill reduces the standards of training there will be no one who understands the large industrial electrical systems in her business. The reason for licensing was to regulate safety and efficiency. No one who was grandfathered was tested; they only had to prove they had been working as an electrician for 5 years. This situation dilutes the industry's skill set of requirements to be a master electrician. Current requirements for a journeyman license are 600 hours of education, 4 years of on-the-job training, and a proficiency test. Most states do not reciprocate with Kentucky because of the grandfather clause. Electricians who work for her in multiple states have commented that Kentucky's test is the easiest to pass. She said a person with extensive knowledge of the National Electrical Code could possibly pass the written test without working experience.

Licensure for Building Trades

HB 519, from the 2017 Regular Session, would have allowed people from out of state, with military experience equivalent to the master heating, ventilation, and air conditioning (HVAC) license experience requirement in Kentucky, to test for an HVAC license. This clause leaves out Kentucky residents who want to pass their business on to their children who have worked in the family business their entire life and have on-the-job training. Similarly, people who have run a company for multiple years, but have not worked in the field, cannot sit for a master's test because they do not have 5 years of working experience or a journeyman license. HB 519 would have allowed a parent to pass a business to a child by letting the child take the test.

Kentucky law provides that a master contractor is allowed to own only one business. Therefore, if an owner wanted to sell the business, a prospective buyer who is already in business would not be able to buy the second business and operate it as a separate business, retaining its old name that customers identify with. Instead, the buyer would be required to incorporate it into his or her existing business, potentially harming the business by reducing its name recognition. The

language proposed in the bill would allow a contractor to own more than one business with restrictions requiring residence in Kentucky and at least a 25 percent ownership in each firm.

Another component of this bill was establishing a 180-day grace period in the event of the death of a company license holder. Currently, if a license holder dies, that company must immediately cease operating. This grace period would also apply to licensed master plumbers and electricians. A small business owner from Paintsville said that if he died today, 18 employees would be out of work. Having 180 days would give his journeyman time to take the test and keep the business open.

A licensed HVAC contractor added that property management companies have been using unlicensed employees to transition from simple maintenance tasks to making major repairs to HVAC equipment and then bill property owners. He said the proposed bill would clarify the definition of routine maintenance and repair work and who performs this work. In response to a question from Sen. Jimmy Higdon, it was agreed that the definition of *major repair* could be improved to make it less vague.

Pawnbrokers

The president of the Kentucky Sheriff's Association said not all pawnshops operate the same way. New legislation would bring consistency by requiring all pawnshops to maintain a database of those who pawn and sell items. The drug epidemic is increasing the incidence of stolen items being pawned or sold. With a suspect's name and the description of an item, it is possible to quickly locate an item that has been stolen. Changing the hold period from 10 days to 12 days for items that are purchased, versus pawned, gives law enforcement time to investigate a stolen item. If an item is sold on the same day the pawnshop purchases it, it is gone before law enforcement can investigate. The sheriff said most pawnshops use a transaction-recording service that is accessible to law enforcement agencies. People who sell stolen items know which shops use the database, so they sell to other shops, making it harder to recover stolen property.

A representative of The Castle jewelry store and pawnshop said he agreed with the sheriff. Passage of the bill is important to the pawnbroking industry in Kentucky. It will enhance the pawnbrokers' reputation and level the playing field for pawnbrokers who care about helping law enforcement catch criminals.

A representative for the Kentucky Pawnbrokers Association said some details of the bill concerned her. Pawnshops fall under seven federal laws, like banks, because they lend money. To pawn an item in Kentucky, a person must provide a valid driver's license. A Social Security number, called for in the bill, is not necessary to track stolen merchandise. The association believes this is a privacy issue. Also, she said the number of days property is held is not relevant. Documentation from law enforcement that there is an investigation regarding a particular item would be preferable. The shop could then hold that item, but not other items not under investigation. The owner of Dixie Pawn Shop in Elizabethtown said there is a concern regarding the holding period. Pawnshops keep records of who purchases items; a 12-day holding period could interfere with some sales.

The representative for the Kentucky Pawnbrokers Association said the hold time is different in different areas. The association agrees that it should be the same statewide. She also said, in response to a question from Rep. Wesley Morgan, that there is no requirement to photograph customers making a pawn or a sale. Pictures must be taken of items only. With regard to looking for stolen property, she said a photo of the person making the pawn or sale is not useful.

Sen. Paul Hornback commented that he did not agree with taking Social Security numbers during a pawn transaction but that he agreed that a holding period and taking photos should be mandatory.

Rep. Kim King responded that the Social Security number is in the bill to cover times when a person has a revoked license or no license. Also, the holding period for guns and trailers—two of the most stolen items—is not negotiable. Regarding photos, not every item must be documented with a photo, but if law enforcement requests a photo, the shop must comply.

Enhanced Prescriptive Authority for APRNs

Sen. Hornback said he had met with all interested parties in May to discuss issues concerning changing prescriptive authority for advanced practice registered nurses (APRNs). While the opioid issue is serious and overprescribing is a big problem, there is a crucial need for nurse practitioners and nurse midwives in underserved areas of Kentucky.

The president of the Kentucky Coalition of Nurse Practitioners and Nurse Midwives (KCNPNM) said all APRNs must have a master's degree, and some hold doctoral degrees. They typically work in primary care, and they practice in all 120 counties. In 2014, legislation allowed APRNs to prescribe nonscheduled drugs without a collaborative agreement for prescriptive authority (CAPA) signed by a physician in the same specialty. This development has allowed APRNs to expand their practice in rural areas. Under Kentucky law, APRNs are not required to be supervised. The CAPA is for prescriptive authority only. There is 50 years of data demonstrating that APRNs are safe and effective prescribers providing high-quality care. They know there is a prescription abuse problem and want to take appropriate steps to solve the issue of addiction to pain pills.

The CAPA for controlled substances (CAPA-CS) will allow APRNs to prescribe controlled substances. This is not a new authority. APRNs have their own Drug Enforcement Administration numbers identifying the prescriptions they write, and statute limits the amount of controlled substances APRNs can prescribe. The coalition is asking to change the way the CAPA is administered. The CAPA is a challenge for APRNs because there is a lack of primary care and mental health care physicians in the state. It is often difficult for nurse practitioners to find a physician who will sign the CAPA-CS. Some insurance companies are requiring that the signing physician also be participating with that insurance company, which poses a problem for a nurse practitioner who is opening a practice.

The president of the Kentucky Medical Association (KMA) said the request to remove the collaborative agreement seems reckless. Although it is not a supervision, it is a collaboration. KMA is interested in seeing data from the Kentucky Board of Nursing to measure how the APRN

prescribing authority is working. KMA is committed to working with others to look at proactive ways to change the climate in Kentucky. KMA's opinion is that this legislation does not address the addiction crisis. If there are patients who are in need but cannot get prescriptions, KMA wants to be part of the solution. A family physician from northern Kentucky added that most believe that there are too many prescribers now, and that increasing prescription authority will mean additional drugs on the street.

The president of KCNPNM said APRNs practice in 87 counties that include health professional shortage areas. For example, she said, there is no full-time physician in Hancock County. One physician works 1 day a week, and she is the only prescribing mental health provider in the county.

In response to a question from Rep. Miller, the northern Kentucky physician said that, even with a downgrade of the requirement for schedule III and IV drugs, there is still the potential for abuse. An APRN representative said they are already limited to a 3-day supply of schedule II drugs and are not asking to change that language.

Sen. John Schickel said he disagrees with the sentiment that doctors have caused the addiction crisis. He feels that, rather than an addiction crisis, there is a crime wave because people will use the excuse that a doctor overprescribed, making them addicted to drugs.

Continuing Education for Funeral Directors and Embalmers

Sen. Stephen Meredith said 2017 RS SB 154 addresses increasing continuing education units (CEUs) for embalmers and funeral directors from 6 hours to 12. Original language in the statute says that "a minimum of six (6) hours shall be attained from programs attended in a live, interactive, in-person format." This language can have a substantial negative impact in a rural community where educational facilities are few and far between, and even more so for a sole proprietor. A stand-alone business would have to contract for coverage when someone attends these programs. Sen. Meredith stated that he was not aware of any other profession that required in-person continuing education credits. The landscape for education is changing, and college degrees and certification can be obtained online in an affordable, convenient manner while at one's home or business.

Sen. Meredith said it was his belief that the in-person language came from good intentions but is a classic example of government overreach and appears archaic in an age when continuing education hours can be obtained via the Internet.

The chairman of the Kentucky Board of Embalmers and Funeral Directors said that in the past, as a schoolteacher, he has seen students progress when they had interaction with an instructor and fellow students. Most disciplinary problems in the industry are due to lack of understanding of new rules, laws, and regulations. Kentucky has the lowest number of required CEUs and is one of a handful of states that do not require some in-person attendance. He said the Funeral Directors Association of Kentucky has done a good job of making sure that CEU programs are offered in all regions of the state. There are 512 funeral homes in the state, and programs are offered within a 30-mile range of them.

Sen. Schickel said that, if the votes to pass the bill to remove the in-person language are there, the bill will be heard in committee during the upcoming session. The chairman of the Board of Embalmers and Funeral Directors said the board reviews a minimum of 20 CEU programs throughout the country per month. Some funeral homes hire speakers to come to their funeral home to hold CEU classes that meet the requirements of the in-person language.

Licensing HVAC Professionals

Rep. Lynn Bechler said HVAC companies are having trouble hiring qualified workers. People living near the state's borders are willing to come to Kentucky to work; however, regulations for out-of-state workers limit businesses' ability to hire them. HB 519 from the 2017 Regular Session proposed allowing people coming into Kentucky to take the same master and journeyman tests as the Kentucky candidates, as long as they have the same experience.

The owner of Prudential Heating and Air Conditioning Company in Louisville said he supported Rep. Bechler's legislation. HB 519 better defines what routine service and major repairs are. A master HVAC license allows a person to operate a business. The journeyman license allows a person to repair equipment. Current law requires a master license holder to have been a technician for 2 years. Operating a business and repairing equipment require two different skill sets, and a journeyman HVAC technician would not have the knowledge required to operate a business. Additionally, there is a change in the licensing requirement when there is a death of the owner of a business. A business is given time to get a master license holder rather than closing the business immediately. All industry associations support this bill.

Hairdressers, Cosmetologists, and Barbers

Sen. Higdon said he had a bill, in the drafting stage, that combines issues confronting the Board of Hairdressers and Cosmetologists and the Board of Barbering, but does not combine the boards. One item common to both boards is fee structure. The boards and commissions are made up of state workers. Because of the pension crisis, pension contributions are going to be raised. In order to generate money, the boards are going to have to raise licensing fees. Rather than having the boards come to the legislature every time a board needs to raise a fee, putting a fee schedule in administrative regulations will allow a board to raise a fee as needed. Also, the boards were asking for individual accounts within the treasury to prevent the legislature from sweeping their accounts. The cosmetologists were also asking for subpoena power.

The administrator for the Kentucky Board of Barbering said the changes the barbers are asking for are housekeeping measures. During the last session a bill changed the term *apprentice* to *probationary*. This has caused confusion with new barbers who go to work in another state where the term *probationary* makes it sound as if the barber is being disciplined. The board asked to go back to the term *apprentice*, keeping all the measures, with one exception: Currently a probationary barber is required to take the barber exam within 6 months, but the board asked for an extension from 6 months to 9 months. The board had no current plan to raise any fees. The bill would remove fees from statute, but any fee raised will have a cap set in administrative regulation.

The administrator said the purpose of a wall between barbers and cosmetologists in the same building is that the skill sets are different. Barbers are trained in precision cutting and straight razor shaves, and cosmetologists learn more makeup and hair coloring. She said that, if hair color and chemical services were taken out of the equation, she would support removing the wall requirement.

The administrator for the Kentucky Board of Hairdressers and Cosmetologists said her board is streamlining their chapter by collapsing KRS Chapter 317B, regulating estheticians, and putting the language in Chapter 317A. The board is also in the process of repealing more than 20 administrative regulations. The board has increased fees only once in the last 35 years, so hairdressers pay only \$20 to renew their licenses. Compared to surrounding states, Kentucky has fees at the bottom in both licensing and testing.

The proposed bill would also remove restrictions for hairdressers and cosmetologists starting out in business. Removing the apprentice license—which requires taking an exam, 6 months of supervision, and then taking another exam—will allow new hairdressers and cosmetologists to become independent contractors and start a salon or rent a booth. Hairdressers and cosmetologists can test only in the Frankfort facility with a quorum of the board. The exam is proctored. The board is asking for an emergency clause that allows it to immediately go to a national testing model. This will allow the board to use regional testing centers across the state, which is easier for the students. The bill also allows a license-for-license exchange between states.

The board attorney said the main reason for requesting subpoena power is that the board is facing enforcement issues, and other boards that are in the compliance business and inspect establishment and enforce statutes have subpoena authority. The bill also gives the board the power to seek a preliminary injunction against unlicensed activity. With subpoena power the board could compel a business to allow inspection of its licensing documents and other records.

ABC Update on Implementation of 2017 RS HB 183

The distilled spirits administrator from the Alcoholic Beverage Commission (ABC) said 2017 RS HB 183 revised the statutory requirements for all licenses. Applications were shortened, and language was made consistent. Some were eliminated if deemed unnecessary. Instructions for applying for a license were standardized and put online. The malt beverage administrator said ABC was granted the same discretion as local governments in terms of setting Sunday sales hours for extended hours supplemental licenses. Regulations for license renewal were updated to reflect the reduced fee for the class B rectifiers license, and applications were updated and incorporated by reference. Regulations dictating requirements for signs on transporter vehicles and the information displayed were also revised. The appointment notification of local administrators was changed because it is no longer required for administrators to take out a bond. Finally, the equipment and supplies regulation has been filed, which was necessary because HB 183 took out the language allowing producers and distributors to give away refrigerated coolers.

The ABC commissioner said the department has held workshops across the state, working with the Kentucky Association of Counties in talking about alcohol-related issues. ABC also participated in the Kentucky League of Cities' biannual summit. The change in HB 183 to allow

retail drink licenses in a city of any size has changed the quota number for sale in each community. The department is working on a database to provide information on the quota and prohibitions by community. It has provided assistance on ordinances to communities that do not want to have sales by the drink. The legal division is working on a database of frequently asked questions that will be available on the ABC website.

Direct Shipment of Alcoholic Beverages

Rep. Phil Moffett discussed direct shipment of alcohol. He said that when Prohibition ended, in 1933, a three-tier system was put in place to protect the public and promote economic growth. This system prohibits one tier from owning an interest in another tier. In 1991, the Internet opened for commercial use, and then Amazon started in 1995. Internet e-commerce changes everything. People can buy from anywhere in the world and have it shipped to their house. The alcoholic beverage industry is booming, and it is changing quickly. Should Kentucky capitalize on e-commerce? If so, Kentucky needs to consider modifying the three-tier model to allow a more robust expansion of instant direct shipments of alcoholic beverages across the nation. Currently, more than 40 states allow instant direct shipment of wine, 26 allow instant direct shipment of beer, and 17 allow shipment of all spirits. Instant direct shipment is not a new concept. The Internet is just a modern incarnation of the mail order catalog from the 1800s.

Recent case law has changed the three-tier system. In *Granholm v. Heald* (2005), the US Supreme Court ruled in favor of consumer, saying that states have broad discretion to regulate production, transportation, and sale of alcoholic beverages, but that the Commerce Clause suggests that states cannot be anti-competitive against out-of-state interests without congressional approval. In *Huber Winery v. Wilcher* (2006), the US District Court sided with a winery, saying that an in-person sale requirement was anti-competitive. If direct shipping is extended to all producers, licensees should be required to submit periodic reporting to ABC, and fees should cover the costs of ABC's increased monitoring needs.

The southeast counsel for the Wine Institute said the institute is in favor of direct shipment of wines, and more than 40 states allow instant direct shipping of wine. Kentucky does not allow it to be direct shipped from out of state. He would like to see Kentucky pass model legislation to direct ship. Because of the consolidation in the wholesale tier, there are fewer wholesalers through which wine can be sold. Rep. David Osborne noted that attitudes have changed regarding direct shipment of wine and availability is continuing to increase; he thinks there will be additional support on the issue.

The owner of Chas Seligman Distributing Company said distributors feel that direct shipment is not a responsible approach. Changing to direct shipment will turn the entire state wet, make alcoholic beverages more easily accessible to minors, and cede Kentucky's authority to control the sale and distribution of alcoholic beverages within the state. Common carriers will be put in charge of distributing alcohol at any time, any day of the week. Allowing direct shipment of alcohol, most of which will occur from out-of-state businesses, also creates a loophole in the current tax scheme as it relates to alcoholic beverages. Kentucky has the fifth highest tax on alcohol products, and most of the taxes are collected and paid through distributors. Direct shipment

bypasses the distributor, making it difficult for the Department of Revenue to collect taxes. Distributors feel that the costs of the proposal to the industry outweigh its unproven benefits.

A consultant hired by the Kentucky Beer Wholesalers Association said the current tax structure for alcohol sales in Kentucky provides critical checks and balances that protect the industry and the safety of consumers. They extend to the tax collection process, allowing for an efficient and reliable system to collect a significant amount of annual tax revenue for the state. Wholesalers and distributors remit both a wholesale sales tax and a wholesale excise tax. The wholesale sales tax ranges from 10.25 percent for beer and wine to 11 percent for distilled spirits. This tax does not include the retail-level sales tax collected by retailers, or local taxes imposed in some areas. Distributors collect almost \$150 million in taxes from alcohol sales each year.

A representative for the Kentucky Association of Beverage Retailers said the courts have already ruled that doing business in a state does not create nexus, so if a Kentucky resident purchased alcohol online from another state and had it shipped, no sales tax would be collected. The executive director of the Kentucky Malt Beverage Council said members take public safety seriously. He noted that wholesale, excise, and retail taxes on sales for out-of-state shipments put Kentucky at a competitive disadvantage because of current high alcohol taxes. A representative of the Wine and Spirits Wholesalers of Kentucky said the current system provides safeguards for consumers. There have been problems with counterfeit products in other countries. Tainted products poisoned vacationers in a resort in Mexico. Tainted products are common in Europe as well. The United States does not have that problem. Alcohol is highly regulated for a good reason.

The executive director of the Kentucky League on Alcohol and Gambling Problems said Kentucky still has many dry areas. There are places where package sales are not allowed even though there are sales by the drink in restaurants. There are wet counties that have dry precincts. How will carriers know they are delivering to a wet area? Will the carrier be required to have a license? Is the driver required to be insured? Will the company making a delivery be required to confirm that the person receiving the delivery is over 21? Will the delivery be to a retailer or to a residence? FedEx and other carriers leave a package with no signature that the package was received. This could allow a minor to order wine, watch for the delivery at the house of a neighbor who is not home, and go pick it up. Cheap products encourage more drinkers. Cities are looking for more revenue, and direct shipment of alcohol will siphon more money out of Kentucky's economy.

Rep. Dennis Keene said that, in considering this change, care should be taken to avoid unintended consequences. The legislature's top responsibility is public protection.

The Seligman owner said there is not a study on the loss of revenue by wholesalers because there is no range or limit on direct shipment in the proposed bill. There is a major difference between getting a case of wine shipped to a home versus a brewer direct shipping to a large box store that demands direct shipping. She further stated that if there is a product that someone wants, a distributor can get that product and provide it to the customer. The president of the Kentucky Guild of Brewers said the guild supports direct shipment.

The Kentucky Association of Beverage Retailers representative said the national association has said it is having difficulty keeping track of direct shipping laws because every state is different; some requiring in-person receipt, and some limit the amount that can be direct shipped. Some states allow direct shipment only from a winery, and some allow it from a retailer.

Rep. Moffett said he did not believe there was tainted alcohol being direct shipped from state to state by licensed vineyards or brewers. The Seligman representative added that MSNBC had recently reported that a 13-year-old had answered the door to a direct shipper on five occasions. Twice she was allowed to receive the alcohol, with no ID required. Rep. Moffett said that, with regard to the verification procedures he is aware of, most of them work. He added that the subject is complex, and he is looking forward to working with all parties to work out a solution.

Rep. Chad McCoy said tourists visit his county every day, and there is an obstacle preventing them from shipping bourbon home. Sen. Damon Thayer said there is a relationship between tourism and the alcohol business. A reasonable way to move forward on direct shipping is to allow individuals visiting a tourist site such as a brewery, small farm winery, or distillery to purchase, under the limits established by the General Assembly, alcohol that they can ship to their home. This change will show immediate results for Kentucky's tourism business.

Universities Serving Alcoholic Beverages in Culinary Arts Programs

Rep. James Kay said Midway University has a culinary degree program that includes bourbon distilling, and it is considering adding craft brewing and local vinting. Under current statutes, this program is not allowed to serve alcohol. The university is asking for a special license that pertains to educational programs at accredited institutions. This would allow the program to have alcohol and serve it to students who are of legal drinking age. Kentucky has an opportunity to take a step in education to create a pipeline for the skilled workforce to fill these jobs.

The director of the distillation, wine, and brewing program at the University of Kentucky said UK had supported development of the wine industry through extension programs for the last 20 years. Since 2012 there has been a concerted effort in workforce development and training to help students enhance their knowledge and to help them get better local jobs. Classes have been developed such as a course that covers Kentucky bourbon tourism and directed classes on distillation, brewing, viticulture, and wine making. Approximately 300 students per year take these classes. Kentucky's universities have formed a coalition to ensure that all industries are represented.

A representative from Alltech Brewing and Distilling said it has partnered with Western Kentucky University to further the education of craft brewers and distillers that are coming into the state. A brewery is located on the WKU campus under the Alltech license. The students in the program use the brewery as a lab class, which allows for hands-on experience in the science of brewing and distilling. In the classroom, students learn how to run a small business.

The director of the UK program said the universities work through the three-tier system to source alcohol for the wine appreciation class. Rep. Kay said that having a license would make it

clear that the educational programs are allowed to have alcohol on the premises for use in classes and that they not required to discard the product after brewing or distilling.

Rep. Kay said Midway has a culinary arts program that includes specific alcohol-related degrees. The program requires students to taste products. However, none of the products produced in the classes are served to the public.

Microbrewery Industry in Kentucky

The president and the vice president of the Kentucky Guild of Brewers said the craft brewing industry is growing nationwide. The economics of craft brewing in Kentucky includes examples of small businesses creating jobs and expanding the tax base. The craft beer industry accounted for more than 424,000 jobs nationwide in 2016. Kentucky now has 53 licensed craft breweries and 19 additional brewery locations in the planning stage. Kentucky craft brewers directly employ more than 600 people. Brewers partner with the Kentucky Department of Agriculture; the Tourism, Arts, and Heritage Cabinet; and the Cabinet for Economic Development. Kentucky ranks 46th among the states in breweries per capita. The industry has a ripple effect across the state, benefiting manufacturing, construction, transportation, affiliated industries, and service industries supported by the craft beer industry.

The guild will have a legislative request for consideration during the 2018 Regular Session. Items it wishes to address are privileges or prohibitions among producers, changes to enhance craft brewers' ability to compete with craft brewers in bordering states, and aligning statutory provisions with modern business practices. The guild's priorities are to attract and grow business, broaden the tax base, and generate revenues. The president of the guild said neighboring states have higher production limits, modernized tax codes, growth incentive programs, greater contractual freedom, and fewer restrictions to market access. The guild would like to remove the limit of 288 ounces per day that a taproom can sell, which creates an unnecessary barrier to commerce. If customers walk into the Country Boy taproom to purchase a case of Cougar Bait, they are not allowed to buy a glass of the newest IPA while there. At Against the Grain's taproom, because the cans contain 16 ounces, cans have to be removed from a case before they can be sold.

Kentucky breweries pay federal and state excise tax, state wholesale tax, and state and local taxes. The guild is asking the legislature to make a change so that the breweries can send their wholesale tax payments directly to the Department of Revenue (DOR). Wholesale taxes are currently paid to distributors, who keep 1 percent and then forward the forms and payments to DOR. New brewers are required to sign a contract with a distributor, even though they are not distributing, so that they can pay their taxes. Essentially, distributors are acting as tax collectors and the state is giving up 1 percent of its beer wholesale tax revenue. Brewers submit all other taxes directly to DOR. In response to a question from Rep. Morgan, the guild president said the brewers fill out tax forms and write checks to their distributor for the wholesale tax. The distributor keeps 1 percent of that money and forwards the rest to DOR.

Sen. Schickel commented that the way the industry has transformed the urban core is amazing. Sen. Denise Harper Angel commented that she would like to see craft beer in Kentucky State Parks. Sen. Dan "Malano" Seum said that, in 1966 at his restaurant, he had home-grown

Louisville beer on tap, including Falls City, Wiedemann's, Sterling, and Hudepohl. One at a time, bigger companies bought these smaller ones, and people who worked in those breweries in the neighborhood lost their jobs. Now, the trend has reversed and there are 18 small breweries in Jefferson County because of this industry and the legislative changes.

Bourbon Industry

The president of the Kentucky Distillers' Association (KDA) said legislation passed in recent years has been a tremendous help to the bourbon industry's growth and success. Bourbon is an \$8.5 billion industry in Kentucky, and the state dominates bourbon production worldwide. Bourbon is also a tourism driver for the commonwealth, with the Kentucky Bourbon Trail tour, which started in 1999 and gives visitors an education in the art and science of creating bourbon. In 2012, KDA partnered with craft distillers to create the Kentucky Bourbon Craft Tour to showcase the state's microdistilleries.

The bad news is that there is competition from all 50 states. In fact, Kentucky ranks 11th in the country in the number of distilleries operating. Fortune magazine predicts that in 5 years there will be better bourbon produced in other states than in Kentucky. One reason for strong competition is the high tax structure in Kentucky. KDA is looking for legislative opportunities to make the industry stronger. Bourbon Without Borders is the concept of having visitor center shipping at each distillery. The top request from visitors is to be able to ship this product to their home. Visitor centers are retailers, so the product will go through the three-tier system, and taxes will be collected. KDA would also like to restructure the alcohol tax laws to enhance the growth of the industry.

Sen. Thayer said the job of government is not to create jobs but to help create an environment where business and industry can create jobs. The bourbon industry is a great example of this idea, as it blends the agriculture, manufacturing, and tourism economies. Legislation passed during the last 4 years has removed Prohibition-era laws and have eliminated artificial barriers to free enterprise.

Sen. Higdon commented that the bourbon industry provides good-paying jobs in areas where there are distilleries. However, the agriculture sector also benefits because of the demand for thousands of acres of corn. The timber industry benefits because of the oak barrels that are produced in Kentucky. Independent Stave in Lebanon produces 1 million barrels a year that stay in Kentucky. The economic impact runs across the state.

Proposed Changes to Alcohol Statutes; HB 136, HB 155, 2017 Regular Session

Rep. Morgan said he has been in the retail alcohol business for 36 years. He believes that his retail experience is beneficial to the state. 2017 RS HB 136 related to a law requiring all wholesalers to suspend sales to any retailers who are 30 days late on paying an invoice to a wholesaler unless the retailer pays with cash. Wholesalers maintain a list of all retailers and know which ones are over 30 days late in paying invoices. This law obstructs the free flow of commerce, in that one wholesaler can restrict a retailer from purchasing from other wholesalers. In response to a question from Sen. Higdon, Rep. Morgan said he objected to one wholesaler's having the right

to stop a retailer from purchasing from another wholesaler. Sen. Schickel said Rep. Morgan's legislation will get all due consideration in the Senate. He noted that Rep. Morgan presents a unique perspective on the retail alcohol business.

The general counsel of Wine and Spirits Wholesalers of Kentucky said such laws are not particular to Kentucky. Most states have credit or cash on delivery (COD) laws for wholesale sales to retailers of spirits and wine. Federal law prohibits extending credit beyond 30 days, ensuring that large retailers do not have an advantage over small retailers. Wholesalers would like to work with retailers to address the problems so that sufficient notice is given before putting retailers on a COD list. In most states, the ABC maintains this list, but in Kentucky the wholesalers association maintains it.

Rep. Morgan said there is a section in statute that allows a retailer to legally take a shipment of alcohol from a wholesaler in Louisville to Whitesburg. Additionally, a retailer that has a business on Jefferson/Bullitt County line and another business on the Jefferson/Shelby County line can transport alcohol from one end of Jefferson County to another with no problem. However, if a retailer takes a shipment of alcohol from one retail location to another across a county line he is in violation of the law. He said this policy is an overreach by the state.

HB 155 2017 RS would have created a requirement for a retailer with common ownership in multiple stores to purchase a new license giving the retailer authority to transport alcohol from one licensed store to another. Passage of HB 155 would have required the purchase of a special license to be displayed on the vehicle transporting the alcohol and retailers would have been required to keep an inventory list of all product being transferred. The license would apply to two stores together. In response to a question from Rep. Osborne, Rep. Morgan said the new license would have a size limit on the truck that would be making the delivery from one retail store to another.

Proposed Changes to Charitable Gaming Statutes

The executive director of the National Corvette Museum said that over 200,000 visitors tour the museum annually, including people from all 50 states and 60 foreign countries. The museum holds 25 raffles per year to generate revenue. The raffles have been a major factor in the museum's success in the past 20 years. The museum has recently reduced the number of raffles to comply with exemption guidelines for a 501(c)(3) organization, and the Office of Charitable Gaming has advised the museum that it needs to further reduce the number. Most raffles are limited raffles, at \$100 to \$500 per ticket with a limited number of tickets that are sold on the museum's website. Some states allow 501(c)(7) organizations to conduct this type of raffle. The museum is asking for this permission in Kentucky. A 501(c)(7) is primarily a social or recreational organization. By allowing 501(c)(7) organizations to hold raffles and the donate the majority of the net proceeds from these events to the National Corvette Museum, the museum could reduce the number of raffles it conducts, while still meeting its funding needs.

The director said that the museum pays sales tax on items sold at the gift shop and the café as well as employment tax. Adding a 501(c)(7) will not expand any tax exemptions. Sen. Higdon said the definition of a 501(c)(7) is broad and could allow other organizations to apply for that

status. The director said the Department of Charitable Gaming is in charge of approval of applications for all organizations and retains the right to deny an organization's request. Rep. Susan Westrom commented that advice from the Department of Charitable Gaming is in order.

The commissioner of the Department of Charitable Gaming said charitable gaming in Kentucky is a \$370 million industry, and while there are a lot of good things done by charities, there are also a lot of bad actors who would like to use the money for other purposes. Kentucky does not extend charitable gaming privileges to 501(c)(7) organizations. Typically a 501(c)(7) organization is a social or recreational club such as a country club, fraternity, sorority, dinner club, hunting-fishing club, or homeowners association. None of these organizations can conduct gaming. The agency is not against extending gaming status to 501(c)(7) organizations, but there are issues. Every charity that submits an application must have a charitable purpose related to relief of poverty; advancement of education; protection of health; relief of disease; relief of distress; protection of the environment; conservation of wildlife; or advancement of civic, governmental or municipal purposes. A 501(c)(7) exemption would allow a noncharitable recreational organization to engage in charitable gaming.

Regulating Daily Fantasy Sports Wagering

A representative of FanDuel and DraftKings said approximately 700,000 Kentuckians play fantasy sports every year. Players select individual players from different teams and pay an entry fee that contributes to a prize for the winner. This allows the "armchair quarterback" a chance to imagine being a general manager. Fantasy sports test the players' skill at putting together the best team in football, baseball, basketball, and other sports, based on statistics of players in real games. The outcome of the real-world game is not counted in fantasy sports; rather, the stats of the players are converted to points. The winner is the team with the best individual performances by the most players.

Fifteen states have passed laws defining and regulating fantasy sports, including four of Kentucky's border states. Each has the same three basic elements:

- Fantasy sports are tightly defined, with no expansion beyond fantasy sports, based on a federal law passed over 10 years ago that excludes it from internet gambling.
- Consumer protection is mandated, which means player funds must also be held differently from operating funds.
- Fantasy sports are not considered gambling.

The spokesman said each state regulates differently. Most states have a licensure or registration fee. A few states have an additional tax on the adjusted gross revenue of the companies that pay into the state. Rep. Arnold Simpson said regulation is a concern since collection of taxes and registration fees could be a burden to the small fantasy leagues that have existed for years. Rep. Adam Koenig said that the bill states there is a threshold of 100 players to be regulated; therefore, the small teams that have been playing for years will not be included in the current legislation. The spokesman said the bill is designed to regulate commercial operators only.

Administrative Regulation Process Revision

Rep. Jason Nemes said his bill takes a close look at occupational licensing regulations. Occupational licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines. Often policy makers do not carefully weigh costs and benefits when making decisions to regulate a profession through licensing. Licensing, when overdone, significantly affects lower-wage workers, minorities, and veterans. In a survey, veterans said it was hard for them to translate their military service into sufficient requirements to become licensed in Kentucky. This is a problem the General Assembly needs to address. Kentucky licenses more of its workforce than any of the surrounding states, with more onerous obligations.

This bill seeks to preserve the protection for consumers to make sure that legitimate professions are licensed and providing high-quality workers. There will be periodic reviews to recognize unnecessary licensing regulations. There will be a requirement for licensing boards to report to the Legislative Research Commission every 5 years. This report will explain the licensing process for that profession and document reason for change or repeal. Also, during those 5 years, citizens will have access to challenge particular licensing provisions. Professionals will have the opportunity to go directly to the board rather than to court, eliminating legal fees for the state.

Rep. Nemes said SB 120 removed the automatic removal requirement for convicted felons. However, the presumption is that a person would lose a professional license if convicted of a felony. Rep. Koenig said that Kentucky has been selected to be one of 11 states to participate in a study with the National Conference of State Legislatures to streamline licensing and certification regulations.

Organ Donation

Rep. Bechler said that HB 236, relating to organ donation, passed the House but not the Senate during the 2017 session. Organ donation is supported in Kentucky by asking applicants for driver's licenses if they wish to become donors. If they agree, the choice is designated on their license. Hospitals must contact Kentucky Organ Donor Affiliates (KODA) in cases where eligible patients have indicated they want to donate organs. Coroners and medical examiners are not held to this requirement. Time is of the essence in organ transplant, because there is only a 24-hour window. This bill would add coroners and medical examiners to the entities required to notify KODA. In response to a question from Sen. Seum, Rep. Bechler said penalties would be the same for coroners and medical examiners as for hospitals.

Administrative Regulations

- 201 KAR 34:020, 34:030, and 34:050.

An attorney for the Board of Licensure for Professional Art Therapists said that the board will offer continuing education to licensees and to art therapist supervisors. The board has created a fee to process the examination. The exam will be given on paper as well as online. The state will maintain the online exam, assessing a fee of \$10 per credit hour for each examination up to

3 credits. The chair of the board said there would be new training based on the creation of the continuing education exam.

**Report of the 2017
Interim Joint Committee on Local Government**

**Sen. Joe Bowen, Co-Chair
Rep. Rob Rothenburger, Co-Chair**

Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Stan Humphries
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. Wil Schroder
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Danny Bentley
Rep. George Brown Jr.
Rep. Ken Fleming
Rep. Kelly Flood
Rep. Toby Herald

Rep. DJ Johnson
Rep. Kim King
Rep. Adam Koenig
Rep. Stan Lee
Rep. Brian Linder
Rep. Michael Meredith
Rep. Jerry T. Miller
Rep. Robby Mills
Rep. Phil Moffett
Rep. Steve Riggs
Rep. Attica Scott
Rep. Arnold Simpson
Rep. John Sims Jr.
Rep. Kevin Sinnette

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

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Local Government

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

Committee Activity

Municipal Perspectives of Statutory Effects on Cities' Fiscal Resources: Larger-City Perspective

Transient Room Taxes. The mayor of Owensboro said that the county created a tourism and convention commission and solely operates it. The money that goes to the commission is generated by a transient room tax of only 1 percent, which he said unfair. Of the 12 hotels that pay the tax, 11 are within Owensboro, which provides fire protection, public safety, infrastructure, and all that is needed to make people comfortable when they come to Owensboro.

Road Fund Formula. Kentucky is still a rural state, but when the road fund was created, Kentucky was more rural. The formula for distribution needs to be revisited. HB 292 demonstrated how funding could be sent to communities. When the funding formula was started, the agriculture community needed to get products to the city—a legitimate function. Now Owensboro has 16.5 square miles within the city and 462 square miles in the county, but people within the city generally benefit the most.

Telecommunication Fees for Cities. The Owensboro city attorney and assistant city manager said that cities receive 83 percent of the telecommunication fees that they are entitled to, but the remaining 17 percent is not coming in, which is a huge hit for some cities. The state needs to collect the telecommunication tax on behalf of some cities that do not have the sophistication to do so. Some cities do not have franchise agreements. Two suggestions for changes to the tax are

- incentives better than sending 17 percent of the tax to the state for cities that need the state to collect the tax on their behalf; and

- giving communities more latitude in crafting franchise agreements, such as the ability to require the franchisee to have a local office, and having the ability (no longer allowed under current law) to gain funding from the franchisee for projects such as public access television.

Many cities of the former second class have the ability to collect the telecommunication tax and to write their own franchise agreements.

Local Option Taxes. The mayor of Owensboro said he would like any local government to be able to consider the imposition of a local option sales and use tax. The fact that some cities are allowed to collect certain taxes and others are not is a subject of concern. Owensboro has just undergone significant downtown development, spending up to \$150 million on the waterfront, a project that required generation of revenue. Owensboro has as much understanding of administering a local tax as anyone, in terms of how much the community would tolerate and what the citizens would be interested in. The community would like some control over this potential revenue stream.

Statutory Options for Merger of Local Governments. There is an opportunity for unification so as not to duplicate services of city and county governments. A city and a county should devise a document to address revenue sharing. A task force should be created to study unification.

Municipal Perspectives of Statutory Effects on Cities' Fiscal Resources: Smaller-City Perspective

The mayor of Sadieville, who was president of the Kentucky League of Cities (KLC), said that over 52 percent of Kentucky cities have populations of less than 1,000. Sadieville has 332.

KLC has a long history of involvement in tax reform discussions relating to local governments. There should be tax reform, but it should be deliberate and careful. There should be tax structure equity between cities, but the playing field is not level. That Sadieville cannot levy an occupational tax is unfair, in that it cannot have revenue from its businesses. Cities want to partner with the General Assembly to level the taxing structure. Taxes should be reasonable, intentional, clear, and fair.

KLC's board of directors adopted several principles of advocacy. At the heart of them lie the preservation and expansion of home rule. The board vehemently opposes centralized collection of taxes.

Small cities have many of the same issues as larger ones, such as maintenance of roads, buildings, land, and parks. Sadieville has fewer police officers than Lexington, but the Sadieville officers must be taken care of. For Sadieville, it is a choice of buying a cruiser or paving a mile of city streets. Sadieville receives \$5,300 a year from the road fund to help maintain 9 miles of city streets. The allotment does not come close to the actual costs—the city must always go to the general fund. Sadieville's total budget for this year is \$333,000, its largest budget ever. One-third of that amount must go to maintenance.

In summary, cities need trust in the General Assembly, stability, flexibility, tools that allow diverse approaches to problem solving, and room to work.

Local Publication Requirements

The deputy executive director of KLC said that KLC is interested in finding the most cost-efficient and effective way for local governments to publish required notices and that it appreciates working with the Kentucky Press Association (KPA). There must be an effective way to engage the public and find the right balance. The Program Review and Investigations Committee compiled a report on the costs and policy considerations for state-mandated local public notices. He encouraged members to read the report.

The president of the Kentucky Municipal Clerks Association (KMCA) said that the association feels strongly that KRS Chapter 424 should be updated to incorporate modernized strategies for informing the public. More individuals in Kentucky have access to the Internet than subscribe to a local newspaper. The newspaper in Hopkinsville, with a population of 32,000, has 6,500 subscribers, some of whom do not live in the city. In the first six months of 2017, the City of Hopkinsville's website has been accessed by over 53,000 users and has had almost 163,000 page views. Notifying the public via the governing body's website would be more economically feasible and would provide notification to a larger audience. The public is beginning to expect cities to use their websites, as well as other social media avenues, to inform the public.

Each 8.5- × 11-inch printed page of an ordinance costs Hopkinsville approximately \$200 to publish. Most ordinances are more than one page. Because of this cost, cities often elect to publish ordinances in summary, which gives a more narrow scope of the law to the public than publishing the full ordinance. Hopkinsville averages \$15,000 per year in required publication expenses; in smaller cities, such an amount can be a large slice of the overall budget.

For publication of public notices, KRS 424.150 requires newspapers to charge public agencies the lowest rate generally charged for advertising, and KRS 424.160 prohibits the rate from exceeding the lowest noncontract classified rate that advertisers pay. Public agencies must receive any volume discounts given to commercial customers. Newspapers' records are confidential, so there is no way to verify that newspapers are charging their lowest rates. Hopkinsville often receives publication proofs with price quotes that seem excessive compared to those for other publications of similar size. The city is offered a lower rate only after pointing out the high price.

The purpose of KRS Chapter 424 is to provide public notice of legislative activities. No cities oppose providing public notice. KMCA fully supports transparency and would like to achieve it in the most cost-efficient and effective way.

The director of government relations with the Kentucky Association of Counties (KACo) said that the subjects for which a county is mandated to provide notice in a newspaper include financial statements, budgets, bids, leases, nonprofessional contractual services, local administration regulations, taxes, election ballots, delinquent property tax lists, invitations to bid on bonds, ordinances, audits, and notice of public hearings. While the means by which counties

carry out their duties continue to evolve, statutes keep counties reliant on forms of communication that are not always timely for the people or the press. The explosion of social media options, including Facebook and Twitter accounts operated by newspapers, has changed the way the press and elected officials release information and has changed the way the public absorbs information.

Counties are not suggesting that they should turn solely to digital forms of public notice. A deeper look into the blending of published and digital content recognizes current and future trends and practices of public information consumption, while maintaining good stewardship of tax dollars entrusted to county governments. The last few legislative sessions have seen attempts to achieve that blending. In 2014, SB 101 would have allowed posting public notice online instead of purchasing newspaper space. SB 101 would have required one print ad detailing the subject matter, noting a website that displays the full document, and listing a phone number of the local government for any questions. The website would have been maintained by the local government or a third party under contract to provide electronic notices. The display on the website would have been available for a set amount of time, and the bill would have required proof of posting.

KACo is ready to work with stakeholders to continue to provide timely public notice in hopes of engaging its constituents at the local level.

The director of governmental relations with the Kentucky School Boards Association (KSBA) said that the cost of publishing notices in the newspaper is a concern for the association because it represents school boards, which are elected to manage the affairs of the communities' schools. Among the most important duties of school board members is to properly, effectively, and transparently use the state funds appropriated by the General Assembly and to provide educational opportunities to children. To supplement state support, school boards also have tax-levying authority to raise additional funding locally.

Since 2008, the split between local support and the Support Education Excellence in Kentucky (SEEK) formula has shifted significantly. While SEEK has been largely protected from budget reductions, school costs have increased, causing local school boards to increase local school taxes to generate necessary funds. Pension costs will increase in 2018, and absent comprehensive tax reform that brings in additional revenues, KSBA understands that all government programs—possibly even SEEK—will face budget cuts.

KSBA supports 2017 SB 118 and hopes this proposal will pass the next session of the General Assembly. SB 118 would have codified a practice that budget language has established for over a decade: allowing the annual financial statement to be posted on the school district website in lieu of newspaper publication. A survey of school district expenses (before and after the budget language was vetoed for last year) demonstrated that publishing the information in newspapers resulted in a cost to school districts statewide of almost \$600,000 more. In light of the “perfect storm” of financial stress that districts are experiencing, this money simply must be used in the classroom.

KSBA is asking the legislature to help as school district leaders find every efficiency that can free up every possible cent for educational services. KSBA has met with the Kentucky Press Association to find ways to make the cost of annual reports as low as possible. The KSBA is

grateful for KPA's help and has sent KPA's suggestions to all school districts for the reports that will soon appear in local newspapers.

At the same time, KSBA believes in transparency in the use of tax dollars. Providing public notice solely via the Internet can cause concerns, but those concerns are less crucial for schools than for government entities. Every school district in the state has a website that follows a standardized web address format and is subject to state and federal restrictions for accessibility. Many types of legal information must already be posted on the websites; in fact, the annual financial report is posted online, along with monthly detailed financial information. These online postings are in addition to newspaper publication. Allowing school districts to present information solely on the Internet will provide adequate and transparent public notice, just as that practice did during the many years that budget language permitted it.

SB 1, which passed unanimously during the 2017 Regular Session, contained a similar provision that was codified for the school report card, which until that time was also to be published in the newspaper but was subject to the budget provision that allowed Internet posting. School districts were required to publish the report card in the newspaper last year, but KSBA is grateful for SB 1's provision for subsequent full reports to be posted on the Internet. SB 1 will allow school districts to save money to be used for the students in the classroom, and KSBA hopes a similar change will be made for annual financial reports and other notices.

The associate commissioner of finance and operations with the Kentucky Department of Education said that the budget language was correct to afford flexibility in publishing schools' annual financial statements. The practice was efficient and satisfied local constituents. Vetoed budget language would have required returning to the previous standard of newspaper publication.

The finance officer for the Perry County School System noted a sharp decline in unmined minerals tax revenue. The Kentucky Association of School Business Officers conducted a survey of school districts to discern the cost of publication of financial statements in 2015 and 2016. In 2015, school districts paid a total of \$28,945.38 to advertise financial information—an average of \$174.37 per district. In 2016, school districts paid a total of \$267,284.22—an average of \$1,610.15 per district, not including Jefferson County. Publishing financial statements will cost the Jefferson County school district more than \$500,000 in 2017.

School districts are in no way advocating for a lack of transparency. Each school district has a website, uses social media, and has open board meetings, with availability for the public to speak on any matter of concern. The Program Review and Investigations Committee's report found that 85 percent of Kentucky households have a computer.

The commissioner of the Department for Local Government (DLG) said that the department provides guidance to local governments and special purpose government entities (SPGEs). DLG also serves as a conduit for federal money to local governments and oversees the state implementation of those federal programs which involves advertising. Sometimes in order to meet federal and state requirements, two advertisements must be submitted. DLG is committed to accountability and transparency.

The executive assistant to the DLG commissioner's office said that under the Office of State Grants, the advertising requirements of the Area Development Fund and Joint Funding Administration are limited to purchases of goods and services under the Model Procurement Code (MPC). The MPC likewise governs coal and mineral severance expenditures. The local government economic assistance fund requires a public hearing that must be advertised pursuant to KRS Chapter 424.

Regarding the Office of Federal Grants, the Community Development Block Grant Program guidelines require local governments to follow state and federal law on public advertisements. Public meetings for local governments applying for the Recreational Trails Program and the Land and Water Conservation Fund may be advertised online or in a local newspaper.

The Kentucky Infrastructure Authority's state revolving funds (SRF) meet the Environmental Protection Agency's public-awareness requirements by identifying approved projects on the website. SRF environmental reviews requiring public notice must comply with KRS Chapter 424. Public comments on environmental review are conducted on the Kentucky Division of Water's website. SRF borrowers must bid projects for no less than 7 days and no more than 21 days in the local newspaper of largest circulation.

Regarding special purpose government entities, failure to submit information or submission of noncompliant information results in a published notice subject to KRS Chapter 424. Dissolution of an SPGE must be published subject to KRS Chapter 424.

The commissioner of the Kentucky Department for Libraries and Archives (KDLA) said that KDLA does not publish the same types of notices as other entities but is interested in the issue from the perspective of archives and records management.

The branch manager of KDLA's Archives and Records Management Division said that new ways of distributing information have become legion with the advent of widespread computer networks. For example, newspapers appear online, and social media sites such as Facebook have become standard communication tools. Young people are increasingly going online for news, and neighborhood and local agency websites provide avenues to quickly reach citizens where they live, so local government agencies have opportunities to reach their constituents in a much more efficient and cost-effective manner than in the past.

This development presents many issues for archives and records management. Public notices distributed via digital media and maintained in digital formats are public records. Public records, such as legal notices, are subject to archives and records management requirements as established in KRS 171.410 to 171.740. One requirement is that these materials have a records retention period that is approved by the State Archives and Records Commission; the period applies to information in the record, regardless of its format. Local agencies must be able to make records accessible for the entire life of the record in order to meet obligations such as documenting agency business, protecting the rights of citizens, and responding to open records requests.

A legal notice is a permanently valuable record because it provides proof that local agencies have complied with KRS Chapter 424. If records are disseminated via digital media, it is reasonable to assume that local agencies have created them digitally and will want to retain them in a digital format as well. In the case of legal notices published by local government agencies, retention means preserving a digital record permanently. Preservation challenges occur because of changes in technology and the susceptibility of these records to be altered electronically. The Archives and Records Management Division cares deeply about proper management of local government records in a digital environment.

A representative of Gannett Company said newspapers offer an active readership, and the public is more likely to see the advertisement in print than on a website, as noted in the Program Review and Investigations study. Gannett stands ready to look into solutions to provide transparency in a more cost-efficient manner as it pertains to public notice advertising.

The executive director of the Kentucky Press Association said that discussing public notice advertising has been at the forefront of KPA's preparations during every legislative session since 2005, when talk about moving notices to government websites started.

In September 2005, KPA sat down with KLC, KACo, and representatives for county commissioners and magistrates to see what could be changed in KRS Chapter 424. KPA, on its side, knew that concessions had to be made to reduce the costs to governments. Over 2 months, groups discussed particular segments of KRS Chapter 424 and worked on language that was agreeable to all. The language was then presented to each respective board, got their support, and came in 2006 with a rewrite of the Public Notice Advertising Law. In the end, the concessions that KPA made resulted in a decrease of approximately 32 percent in the costs to public agencies. During the 2006 Regular Session, HB 171 passed, co-sponsored by Rep. Stan Lee and Rep. Steve Riggs.

Last year, KPA worked with the Program Review and Investigations Committee staff on the previously mentioned study. The study found that, generally, the expenses for public agencies to meet the requirements in KRS Chapter 424 and to publish their notices in local newspapers amounted to about 1 percent of a public agency's budget.

KPA talked with a representative of KSBA and provided suggestions about how school districts can decrease the cost of publishing financial statements. Under KRS 424.220, school districts must list only payments of \$1,000 or more to vendors. Each vendor is listed once with the total amount paid to that vendor for the year. However, KPA discovered that many school districts did not take advantage of the \$1,000 limit. Most listed all vendors and total payments, even those less than \$1,000, which are not required. KPA told KSBA to make sure its members do not list payments of less than \$1,000 total to any vendor. KPA supports increasing the minimum threshold to \$5,000.

KPA suggested that KSBA have its school districts provide the statement in a text or Word document format so that newspapers can easily remove extraneous white space and reduce the type size. Last year, unfortunately, several school districts provided uneditable images of their

financial statements, and it was impossible for newspapers to make adjustments that might have reduced costs.

Kentucky Post-Critical Incident Seminar

The branch manager of the Criminal Investigation Branch of the Department of Criminal Justice Training (DOCJT) discussed his experience with having to use his weapon on a call and the emotionally charged consequences that ensued. He discussed the Kentucky Post-Critical Incident Seminar, a 3-day seminar modeled after highly successful programs developed by the Federal Bureau of Investigation and South Carolina. Law enforcement professionals and their significant others are able to tell their stories, hold small-group discussions, meet one on one with mental health professionals, and learn to identify signs of stress and methods to cope. He asked for the General Assembly's support of the program.

Police Department Use of Body Cameras

Rep. Robert Benvenuti III—who sponsored 2017 HB 416, relating to the disclosure of body-worn camera recordings, which did not become law—said there is no law in Kentucky that requires law enforcement to use body cameras, nor should there be one. The choice should be left up to individual local governments. However, if they are used, there should be a legislative construct that allows officers to use them efficiently and effectively, or else body camera use will become less prevalent. Privacy rights should be protected for those involved—officers, victims, or children. Body cameras can be helpful for purposes of training, evidence, and accountability. Officers should not be required to spend hours editing and redacting footage, rather than engaging in law enforcement.

The deputy executive director of the Kentucky League of Cities said Kentucky is the last state to deal with a law for disclosure of recordings from open records. KLC surveyed other state laws. Florida exempts disclosure of recordings from open records if taken in a private residence, or in a health care or social services office. Florida law also exempts recordings from disclosure if a person has a reasonable expectation of privacy. Indiana permits limited class of requestors to inspect recordings without making copies. Louisiana exempts disclosure without a court order if the law enforcement agency determines that the recording violates a person's reasonable expectation of privacy. Kansas exempts all recordings from police body cameras as criminal investigation records. North Carolina exempts recordings from being disclosed to persons not depicted in them; the law requires a court order for other members of the public to gain access. South Carolina exempts recordings from disclosure under the state's Freedom of Information laws, but it specifies several types of individual who may obtain copies if they have a legal interest in doing so.

Representing the Kentucky Sheriff's Association, the Campbell County sheriff said that, for small law enforcement agencies, purchasing body-worn cameras would pose a financial hardship. Larger agencies would face possible cuts in budgets for other equipment. Also, storage space would have to be purchased for the videos, depending on how long they need to be stored (currently, 30 days). In any agency there must be at least one person to maintain, edit, and secure all video to preserve its integrity. The cost of training each officer to use body-worn cameras would

be addressed either at the DOCJT Law Enforcement Academy or in-house for each individual agency.

The Kentucky Sheriff's Association's position is not to use legislation to mandate that all agencies must have body-worn cameras. Such legislation would cause a serious unfunded mandate for the many agencies that do not have funds to implement it.

A representative of the Kentucky Fraternal Order of Police (FOP) said that great care must be taken when releasing footage from body-worn cameras to the news media and others. There must be restrictions against the releasing video that shows the death or serious injury of an officer or citizen, video shot in private homes or in health care facilities, and video that reveals law enforcement surveillance or other police tactics that could ultimately compromise the safety of law enforcement and the public. The use of videos on social media can serve to revictimize victims and traumatize first responders. The use of a disclaimer that would be posted on the video should be considered, reminding the public that body-worn camera video is one angle that typically fails to provide the full context of a situation. It is very easy, yet blatantly unfair, for the public, the news media, the courts, and outside groups to assume that what they are seeing on the news is the whole picture. That is rarely, if ever, the case, and without that knowledge, body-worn camera video can be misunderstood, misrepresented, and exploited.

The president of FOP Bluegrass Lodge 4 in Lexington said that, as for any new technology, practices, policies, and even laws must be formed, evaluated, and occasionally revised to ensure that the use of the new technology remains advantageous. Lexington's police department, over the last year, has implemented body-worn cameras with officers in uniformed operations. Since the implementation of the cameras, the Lexington police department has received over 124 open records request for footage. To attempt to keep up with the demand for footage, the department has hired two extra civilian personnel. Not only are the requests time consuming, but the department's personnel must rely on current open records laws that do not specifically account for the use of body-worn cameras. The application of the current laws remains vague when employees attempt to address concerns about the release of footage, some of which may be sensitive to law enforcement investigations or operations. To support law enforcement agencies around the state, the legislature must pass legislation that directly addresses the issue of public release of body-worn camera footage. To support those agencies as well as legislators, Bluegrass Lodge 4 endorses HB 416.

A representative of the Kentucky Association of Chiefs of Police said that over the years he has dealt with many open records requests. Recently all 30 police agencies in Boone, Kenton, and Campbell Counties received open records requests from a news agency for all body camera videos for the past 5 years. They are still figuring out how to best comply with the request, which was not specific. KDLA's guidance controls the retention of video for 30 days unless the video is part of a legal action. He asked that legislators, when crafting bills, consider the case of small departments with regard to the costs associated with open records requests.

A representative of the Kentucky Justice Association said that she had concerns about 2017 HB 416, which would require that any person receiving body camera footage could not disclose or duplicate the recording without first providing notice to each person whose image is

depicted. This requirement can be problematic. For example, attorneys frequently obtain body camera footage of an accident scene as part of investigating how a collision occurred. It would sometimes be impossible to locate all people in the footage and give them notice before sharing the footage with an accident reconstructionist or before using it in court.

Impact of “Under 40 Crowd” on Local Public Policy and Local Communities

The president and chief executive officer (CEO) of the Greater Owensboro Chamber of Commerce said that chamber board members and a core group of Owensboro’s young professionals will make a presentation about how they are creating infrastructure and opportunities for people younger than 40; about the shift, over a decade ago, of its economic development strategy; and about a bold place-making initiative that is paying off tenfold.

Owensboro has young business leaders in professional services such as law and accounting, leaders in manufacturing with international reach, and leaders in agriculture who are improving the way food is produced and the way food production is viewed in general. There are small business owners in their 20s and 30s, which was a rare circumstance in Owensboro just a short time ago. Many others in this demographic work in nonprofit fields, education, and community leadership.

The executive vice president of the Greater Owensboro Economic Development Corporation said that Owensboro realized that it must decide how it become a more attractive community. The resulting vision incorporated many elements, combining the discipline of town planning and urban design with new destinations that built on the history of regional entertainment and the connection of neighborhoods. Streets became more walkable, residential opportunities were diversified, and local retail rediscovered Main Street.

These efforts have resulted in over \$200 million in public and private investment in the Owensboro urban core since 2009. The infusion of private capital has far exceeded the initial public investment that seeded this initiative, and in 2016 Owensboro welcomed a significant jobs announcement: Alorica specifically cited downtown and workforce development efforts as the largest factor in its decision to locate in Owensboro.

The Owensboro place-making initiative was the product of years of careful, deliberate planning, and it involved countless hours of public forums, citizen input, and economic analysis. Owensboro recognized that simply adopting other communities’ effective policies would not be enough. It was far more important to capitalize on the assets that make Owensboro unique, such as the familial atmosphere, the appreciation for arts and culture, diversity and the welcoming of individuals from all walks of life, and the physical beauty of the Ohio River.

The chair of the Chamber Young Professionals (CYP)—a program of the Owensboro Chamber of Commerce—said that in February 2016 it became evident that a rebirth of a young professional group was warranted, which is a vital asset for the sustainability and growth of Owensboro. CYP focuses on talent within the age range of 21 to 40. This group is crucial for the local community and state, especially with regard to attraction, recruitment and retention of talent.

Since its beginnings in February 2016, CYP has attracted more than 150 members. It is proud that its membership base comes from various and diverse industries. CYP is autonomous, carries its own finances and fiscal responsibility, and offers its own social networking events while also providing professional development and philanthropic opportunities.

CYP has cultivated a program called CYP Talent. It allows local companies to promote their job opportunities by reaching CYP members. CYP has also developed a program for promoting board opportunities within the community, as there is a need for continued generational involvement.

This growth has occurred in a matter of 18 months. There is a vibrant leadership team and membership base. The lifeblood of the group is, of course, its members. There is significant and strong support from the chamber and from the business community of Owensboro.

The communications chair of CYP and an attorney with Thacker, Hodskins and Knight said that, in an effort to give back to the community, CYP has partnered with Independence Bank on an annual food backpack program, Businesses 4 Backpacks, which is CYP's main program. There are children in Owensboro whose only meal all day is the free meal provided at school. Knowing this fact was the genesis of the program at the bank. When first developing partners, the bank sent backpacks home with 78 children. CYP and the bank are able to assist 291 children, and no children remain on the waiting list. CYP volunteers on a regular basis for Habitat for Humanity, serves at homeless shelters, rings bells for the Salvation Army, and leads many community service projects, including a lunchbox program that provides items for donation to various causes.

A representative of CYP and the public information officer of Owensboro Public Schools noted CYP's professional diversity. To welcome newcomers, CYP holds community social mixers and events such as the dog-friendly Yappy Hour as well as a barrel-rolling event at a local distillery. There has been a food and wine pairing at the Western Kentucky Botanical Garden and an annual Christmas party at Kentucky Wesleyan College. CYP welcomes everyone from 21 to 40 who works in the region.

The talent programs manager/executive director of Leadership Owensboro, Greater Owensboro Chamber of Commerce, said Leadership Owensboro is a program rich in history and tradition. Leadership programs exist in almost every major US city, but Owensboro is unique because its program allows people to spend a day each month learning Owensboro from the inside out. The program inspires and empowers people with diverse talents to change the community. From a director of a homeless shelter to a national food supplies brand manager, common ground and passion for Owensboro and its neighbors are discovered through Leadership Owensboro.

The most notable parts of the program include Human Needs and Services Day and Education Day. Both experiences help participants understand what some of Owensboro's most vulnerable neighbors endure day to day. For several people, walking in someone else's shoes for the day has marked the first time they have identified ways to improve the quality of life for everyone in the community.

The challenges learned through Leadership Owensboro force its leaders to think creatively, to ask new questions, to stand up for neighbors whose voices have not been heard, and to advocate for the community in city hall and sometimes in Frankfort.

The regional alliance intentionally makes connections between Owensboro's educators and its workforce. Every city, including Owensboro, is struggling with finding a good workforce. The program works hard to fill some of these gaps. The alliance provides educators, several of whom have little experience outside the classroom, with personalized tours with some of the region's industry leaders. This opportunity allows the educators to connect real-life working experiences with what they are teaching in the classroom. In return, it inspires the teachers and reignites their passion to serve students in the community. Whether through speaking to students about employers' needs to fill certain jobs, or through working with colleges to help offer unique learning experiences to prepare students for the workforce, the alliance helps to connect people to jobs through education.

One of the chamber's and Owensboro's top goals is to keep, foster, and develop talent in Owensboro. The chamber's internship program illustrates its attention to keeping talent. The chamber is constantly working with local colleges and high schools to place interns at the chamber or to find another place that will give them the experience that will benefit them best. Mentoring an intern is not easy, but it can provide many benefits.

The chamber works closely with students in the Wendell H. Ford Statesmanship Academy. The academy helps students understand issues facing the community, state, and nation. The chamber provides these students hands-on experiences that align with the academy's mission. For example, it provides opportunities like getting involved in the chamber's Go Vote initiative.

The owner of Tanner+West Advertising and Design Agency discussed CYP's program to encourage young business owners. He noted the chamber's influences on his own businesses. Chamber awards can give businesses credibility that leads to success. The chamber and city reduce "brain drain" through their efforts at making Owensboro a viable place to live and work.

The food safety manager at Hollison discussed the innovation sector as a talent recruiter. Hollison developed a food quality sampling device that collects food samples that are ready for laboratory examination. It has also developed probiotics for adding into certain foods. Food safety is important because it affects people every day. Recruiting talent with a science and laboratory background in Owensboro, the company has built a solid team that will have a major impact in the food safety system.

The president of Kentucky Wesleyan College and the chair-elect of the chamber board discussed 4-year colleges and their role in talent recruitment. The facilities attract faculty and students. Kentucky Wesleyan has partnered with the University of Louisville's Law School for students' senior year in college in a way that will also satisfy requirements for the first year in law school. Kentucky Wesleyan has partnered with the University of Kentucky's College of Medicine, where it has located a satellite site and guarantees Wesleyan students a seat. Western Kentucky University and Kentucky Wesleyan are partnering so that Kentucky Wesleyan students can enter more easily into a master's degree program in business studies.

The chair of the chamber board, who is the president of Old National Bank, discussed the chamber board's leadership in fostering talent. He has lived in Owensboro for 5 years. When he was first considering moving there, he was told of the great educational opportunities for his children, which was a deciding factor for his move. He acknowledged several members of the board and said that they are already influencing local decisions in the community and will continue to do so.

Vacant, Blighted, and Abandoned Properties

The executive director/CEO of the Kentucky Housing Corporation (KHC) testified about KHC and its function. Since 1972, KHC has been Kentucky's state housing finance agency. KHC is a self-supporting, quasi-governmental agency that invests in affordable housing solutions for Kentucky. KHC receives no state general funds. Corporate expenses are paid through income from the tax-exempt mortgage bond program and fee income from the US Department of Housing and Urban Development.

KHC offers programs to create, preserve, and sustain affordable housing through many means including the single-family mortgage program and multifamily tax credit programs.

KHC has developed investment projects through community revitalization programs. One such project is Recovery Kentucky, a vital program created to help Kentuckians recover from substance abuse, which often leads to chronic homelessness. In a joint effort with the Department for Local Government (DLG) and the Department of Corrections (DOC), KHC allocated low-income housing tax credits and other resources for the construction of 14 Recovery Kentucky Centers. Operational funding included approximately \$3 million from DLG's Community Development Block Grant program and approximately \$5 million from DOC.

KHC supports programs that provide economic impacts for Kentucky, such as the Men's Addition Recovery Campus in Bowling Green (total economic impact, \$11 million); and Scholar Houses in Lexington, Louisville, Bowling Green, Paducah, Owensboro, Pikeville, Newport, and Richmond, and the newly opened Lincoln Grant Scholar House in Covington (total economic impact, \$13 million).

The deputy executive director of KHC's Housing Production and Programs discussed KHC's revitalization projects in Somerset, in conjunction with DLG (total economic impact, \$719,000); Robertson Apartments in Washington County (total economic impact, \$1.4 million); and Maple Lick and Milltown Subdivisions in Owsley County (total economic impact, \$655,000).

The director of vacant and public properties with Develop Louisville discussed the Louisville/Jefferson County Landbank Authority. The authority was established in 1989 and is a partnership of the Commonwealth of Kentucky, Jefferson County Public Schools, and Louisville Metro Government. The purpose of the authority is to return vacant and abandoned properties to productive use and place them back on the tax rolls. Acquisition of vacant and abandoned properties occurs through voluntary donations and foreclosures. Disposition is to residents, nonprofits, developers, and others. More than 300 properties have been converted to productive use since 1996.

The authority's recent legislative changes include the following.

- Elevating Louisville Metro lien priority, allowing Louisville Metro to initiate a foreclosure program. Since 2012, 563 foreclosures have been initiated, and 366 have been completed
- Reducing processing time for foreclosures. The average time to complete foreclosure was cut from 24 to 12 months
- Making condemnation of blighted properties more financially feasible
- Prohibiting the sale of delinquent tax certificates to third party purchasers in designated areas through the use of the Tax Delinquency Diversion Program
- Providing a funding mechanism by directing 50 percent of tax proceeds from sales to the landbank for 5 years

The authority's new disposition programs include Last Look, Cut It Keep It, and Flex Rate Policy.

The Vacant and Public Property Administration's approach includes supporting neighborhood redevelopment efforts, layering resources, and measuring results to optimize the outcomes for vacant and abandoned properties.

The Clear Boarding Pilot Project uses polycarbonate sheets instead of plywood for boarding up vacant and abandoned structures. Some of the funds are for a targeted neighborhood, and the remainder will be used throughout the Louisville Metro area. The time frame is November 2017 through February 2018.

Special Purpose Governmental Entity Compliance Reports

The DLG cities and special districts branch manager said that special purpose governmental entities (SPGEs) are independent, political subdivisions of the state; they are government entities that exercise less than statewide jurisdiction; and they are organized for the purpose of performing specific services within limited boundaries. DLG will continue to monitor the requirements under KRS Chapter 65A that SPGEs register and submit certain financial details online. The cities and special districts branch developed and implemented manual processes to assist in compliance. DLG plans to transition to a new automated system for SPGEs.

DLG's responsibility per KRS Chapter 65A is to create and maintain an online central registry, reporting portal, and public access portal, and to monitor compliance by tracking status changes, preparing statutorily required reports, and activating noncompliance procedures.

The SPGE compliance report submitted to LRC included data as of October 12, 2017. The compliance percentages will increase as the deadline approaches. There are approximately 7,600 individual records, plus four records for each SPGE, and compliance is by fiscal year. The compliance report percentage is 99 percent for FY 2015, 97 percent for FY 2016, 94 percent for FY 2017, and 93 percent for FY 2018.

The SPGE program for the future includes active communication with the Commonwealth Office of Technology to design software to allow the creation of a new SPGE report portal and

central registry, and a public portal for citizens to view current and historical submissions. The plan is to automate existing manual processes such as compliance administration, reporting and notifications, fire departments exiting and entering the system, and municipal utilities buying and selling components. DLG also plans to provide online tutorials for submitting and reviewing data, and continued annual SPGE training for financial disclosure and tax rate calculation, to be held at area development districts.

The legislative director for the Kentucky Fire Commission said that, as of October 17, 427 Chapter 273 volunteer fire departments with revenues or expenditures under \$100,000 had submitted their mandatory reports to the commission. Fifty-four were initially noncompliant in submitting SPGE reports, but at the time of the presentation that number had been reduced to 47; of those 47 departments, 33 were trying to update their expenditure numbers. The total revenue received was \$16,566,000—an average total per department of \$44,000. The commission makes great efforts in trying to contact the fire departments for the information.

The Kentucky Fire Commission's auditor exhibited and explained the forms the commission uses to collect the fire department fiscal and demographic data.

Kentucky Association of Counties' 2018 Legislative Agenda

The president of the Kentucky Association of Counties discussed KACo's role in coordinating policy for its constituents and provided an overview of some primary agenda items it plans to address in the 2018 Regular Session, including amendments to the County Employees Retirement System and related systems, tax reform efforts, and unfunded mandates. He noted KACo's willingness to engage in discussions of these issues, and expressed gratitude to the General Assembly members for their efforts.

Representatives of each of KACo's affiliate groups presented their particular priorities for the session.

A board member of the Kentucky Magistrates and Commissioners Association, who is a Scott County magistrate, indicated that jail funding is a priority. Housing drug offenders in jails and paying for their needs puts financial pressure on counties. The second priority is multimodal transportation infrastructure funding for city, county, and rural roads and airports. Counties are responsible for maintaining 40,000 miles of roads and 5,000 bridges. The economy depends on roads. The association has partnered with the Kentucky Infrastructure Coalition, which supports long-term, sustainable funding for all modes of transportation. The motor fuels fee is the fairest fee to provide funding for the roads.

The president of the Kentucky Association of Circuit Court Clerks, who is the Kenton Circuit Court clerk, said that salary levels of deputy clerks and attorneys, court-designated workers, and pretrial release staff were substantially below salaries for equivalent jobs in the executive branch. The association had concerns and preferences regarding elements of the then-current draft of pension legislation:

- Adding a 3 percent cost for health insurance and retirement, which would reduce take-home pay

- Excluding sick time from retirement service time calculations
- Allowing Tier 3 persons to remain in the plan without changes
- Allowing retired clerks and deputy clerks to return to service and maintain their present retirement; presently, when they do so, it is with a substantial pay cut and no participation in a retirement fund

The circuit clerks noted their collective monitoring of the implementation of the Real ID Act and how driver's licensing legislation affects their ability to support their charity, the Trust for Life.

The legislative chair of the Kentucky Commonwealth Attorneys Association, a Kenton County commonwealth's attorney, noted the functions of commonwealth's attorneys and indicated that further cuts to their budget will result in a reduction of personnel or a massive reduction in salaries, which would itself result in a loss of personnel. The tentatively proposed budget reduction of 17 percent would effectively shut the offices down on March 1. Maintaining an experienced staff promotes efficiency and can positively affect jail costs and other costs, when one considers incarcerations while people await the completion of their trials.

The executive director of the Kentucky County Clerks Association introduced the Leslie County clerk and chair of the Kentucky County Clerks Association Election Committee. The Leslie County clerk noted statutes for which changes are proposed:

- KRS 132.017, relating to timeframes for printing ballots for recall elections
- KRS 117.035, relating to allowing a county board of elections to meet only when needed
- KRS 117.343, relating to increasing actual voter reimbursements to the clerks
- KRS 117.075 and 117.085, relating to absentee voter application efficiency
- KRS 116.055, relating to closing a new voter registration loophole that allows a voter to cancel his or her registration and sign up as a new voter under another party affiliation.

The legislative chair of the Kentucky County Judge/Executive Association, who is the La Rue County judge/executive, noted his association's preference for maintaining the inviolable contract and the separation of the County Employees Retirement System (CERS) from other state-run retirement systems. He asked that any financial obligations resulting from pension reform be implementable by the counties over time, to help with budgeting. Additionally, he noted that transportation infrastructure needs are critical. Over the last 20 years, county costs have increased as much as 300 percent for certain items, especially materials, while the commensurate revenue has increased only 20 percent. The group advocates for sufficient funds for maintaining infrastructure. Jail funding will always be a priority with the association. The group asks that any elimination of a tax be replaced with a revenue source of similar growth potential. The association favors local optional sales taxes, legislation addressing the offset of local occupational license taxes for counties over 30,000 in population, returning a higher percentage of coal and mineral funding to counties found primarily in the East and West coal fields, and allowing Tennessee Valley Authority "in lieu of" revenue be distributed to allow economic development for local governments.

The president of the Kentucky Jailers Association, who is the Christian County jailer, noted that the bed allotment has decreased 22 percent in the past 10 years from approximately \$14 million to \$11 million. The fund helps jails cover the cost to house inmates. In per diems, jails receive \$29.50 a day per inmate and \$1.91 a day for medical expenses. Per diems have not been raised for a decade, and it is time to begin the conversation about raising them. There is an overpopulation in jails due to minor offenses, involving many drug-related crimes and many inmates who are repeat offenders. Programs designed to reduce recidivism cost money, and fiscal courts cannot pay for them alone. The state must help. Many inmates have a future, but it cannot be achieved without funding. Kentucky jailers want to be more than landlords; they want to help. The jailers ask for an increase in the per diem rate to continue their good work, expand programs, and help inmates successfully reenter society.

The chair of the Kentucky Property Valuation Administrators Association's budget committee, who is the Boone County property valuation administrator (PVA), and the executive director of the association testified that the General Assembly directly funds PVA offices in the budget, and when there is a reduction in budget, that reduction directly affects staffing. Cities and counties do serve as funding sources, but 51 percent of the money that they give to the PVAs goes back to the state to plug the budgetary hole. Other entities, such as school districts and special districts, that use PVA assessment data do not pay anything to the PVA; in that regard, the budget can be said to subsidize those entities. PVAs generate revenue at an 11-to-1 ratio on the investment to the state. Adding in the other revenues generated by using PVA assessments (including revenues received by cities, counties, schools and special districts), that ratio rises to 51 to 1.

During 2014 to 2017, assessments that the PVAs conduct have increased the valuation of real property in Kentucky by \$22 billion. This increase has come from reassessments and new growth. It translates to \$11 million to the state and \$51 million to local governments, schools, and special districts. Adding a 2.5 percent to the state property tax rate would allow taxes to pay for the taxation process and keep the PVA offices funded.

The Grant County sheriff, a member of the Kentucky Sheriffs Association board, said the office of the sheriff was a fee office. Sheriffs have no control over income brought into the office. The sheriffs' main responsibilities include tax collection, court security, auto inspections, security of justice centers, service of process, and prisoner transport. The state provides reimbursement for these statutorily required duties, but the sheriffs perform these functions almost at a loss, based on the money received. The primary issue the sheriffs wish to address is the rehiring of retired peace officers. Retired peace officers are already trained, and having to send them back through training is expensive and takes a long time.

Kentucky League of Cities' 2018 Legislative Agenda

The executive director of the Kentucky League of Cities, the KLC president (who is the mayor of Richmond), and the KLC first vice president (who is the mayor of Mayfield) presented KLC's 2018 legislative agenda.

The executive director discussed how the 2018 legislative agenda was formed. Cities need more flexible revenue sources and want more control over local pensions.

The president said that local government is the most efficient level of government and is held accountable by its citizens.

Separation of the County Employees Retirement System from the other retirement systems is the top priority. Employees are there to serve the citizens, but it takes money to keep the employees in service. Fifty percent of Richmond's budget goes to hazardous duty pay for retired personnel. Separating CERS will allow cities to manage their self-funded pension funds, and allowing the local governments to select board members will insulate the board from politics and provide consistency.

The road fund formula is another priority. County roads are vitally important and are arteries into the cities. City road maintenance entails more than the actual blacktop. The road must be milled, and curbs and gutters must be maintained. Milling is just as expensive as the blacktop. KLC urges letting cities keep 35 percent of the increase in revenues when road fund revenues exceed \$828 million.

Unfunded liabilities are unfair. An example of unfunded liabilities is newspaper publication requirements. KLC encourages the General Assembly to look at reducing unfunded mandates for cities.

Amid city residents' increased demands for services, cities want to be able to expand the permission to levy the restaurant tax to all cities, which—besides being able to bring in more revenue—is an issue of fairness. A restaurant tax in Richmond would bring in an additional \$2.5 million a year that could be spent on capital improvements.

The KLC first vice president noted additional KLC priorities:

- KLC has diverse proposals for increasing economic development opportunities.
- KLC wishes to see supplemental pay for fire and police personnel codified into law, and to have the additional costs to cities from that supplement be reimbursed from the fund to the cities.
- KLC advocates for changes in worker's compensation law as it pertains to employees on temporary total disability (TTD). KLC wants changes to the law to ensure that when someone on TTD returns to work—on modified duty, for instance—those wages are factored into his or her worker's compensation benefits. KLC also seeks to address the Kentucky Supreme Court ruling that invalidated the termination of worker's compensation benefits at Medicare-eligibility age.
- Current law requires cities to publish notices in newspapers for actions such as ordinances, budgets, notices of public hearings, and audits. That requirement costs the taxpayers money for a medium that is no longer the first form of communication for most people in Kentucky. KLC advocates for a bill to no longer require newspaper publication, using other methods of notice instead.
- KLC seeks to address the use of police body cameras and to clarify when a video should be released and who should be able to obtain a copy.
- KLC seeks to amend the state's alcohol regulatory license fees law to allow all cities the right to impose such a fee.

- KLC's agenda includes either eliminating the office of constable, or allowing the restriction of constables' use of police powers within city limits.

Division of Water Report on 2017 HJR 56 Relating to Package Sewer Treatment Plants

The deputy commissioner of the Department for Environmental Protection and the director of the Division of Water reported pursuant to the mandate in 2017 HJR 56, which directed them to study and provide recommendations for legislative and other solutions to the issue of package sewer treatment plants that are failing or at risk of failing.

The deputy commissioner remarked on privately owned package sewer treatment plants whose sustainability is at issue for a variety of reasons. In many instances, they are older than their design life, and there is insufficient capital to maintain them. Many of the collection systems that bring inflow to the plant have problems, too. The costs to maintain the systems have increased, while revenue streams have stayed the same or decreased. Some systems are not sustainable in the long term because of financial, administrative, and technical challenges.

The deputy commissioner noted the convention of stakeholders, which the resolution required, and the methods used to satisfy the resolution's other mandates.

The director noted there were 180 small, privately owned package sewer treatment plants, excluding business and school operations. The director discussed financial risks, technical indicator risks, and abandonment likelihood risk indicators. Identifying these risk factors allowed the division to rank these plants in terms of being at risk of failure.

The director noted the following legislative recommendations.

- Provide the cabinet certain authorities over financial issues related to management of the plant, such as ensuring funding for proper operations and maintenance, and facility contingency funds for failure, or catastrophic failure.
- Provide funding to facilitate regionalization, consolidation, replacement of a system, or continued operation by a third party.
- Provide cabinet authority to have court appoint a receiver, custodian, or fiduciary to assume management and operation of a system that presents a threat to continuity of service, a threat to public health, or a threat to the environment.
- Provide cabinet with the authority to require, during the permitting process, that structural analyses be conducted at designated times.

The director noted actions the cabinet is preparing to take:

- Use the report to educate officials about the locations and risk factors that jeopardize public health, continuity of service, and the environment.
- Continue to regularly inspect small systems and prioritize enforcement of violations.
- Explore the development of a pool of potential receivers, custodians, fiduciaries, and experienced operators to deal with failed or failing facilities.
- Identify nonfinancial incentives to facilitate regionalization or consolidation or management of small systems.

- Possibly develop a contingency plan for addressing environmental emergencies resulting from small systems' failure.

Consideration of Referred Kentucky Administrative Regulations

The committee considered referred administrative regulations:

- 815 KAR 7:120, promulgated by the Department of Housing, Buildings and Construction, which established the uniform Kentucky Building Code
- 739 KAR 2:050, promulgated by the Commission on Fire Protection Personnel Standards and Education, which deals with the distribution of volunteer fire department aid

**Report of the 2017
Interim Joint Committee on Natural Resources and Energy**

**Sen. Jared Carpenter, Co-Chair
Rep. Jim Gooch Jr., Co-Chair**

Sen. C.B. Embry Jr.
Sen. Ernie Harris
Sen. Paul Hornback
Sen. Ray S. Jones II
Sen. Christian McDaniel
Sen. John Schickel
Sen. Brandon Smith
Sen. Johnny Ray Turner
Sen. Robin L. Webb
Sen. Whitney Westerfield
Rep. John Blanton
Rep. Larry Brown
Rep. McKenzie Cantrell
Rep. Matt Castlen

Rep. Tim Couch
Rep. Jeffery Donohue
Rep. Jim DuPlessis
Rep. Daniel Elliott
Rep. Kelly Flood
Rep. Chris Fugate
Rep. Dennis Keene
Rep. Brian Linder
Rep. Reginald Meeks
Rep. Suzanne Miles
Rep. Marie Rader
Rep. Jim Stewart III
Rep. Jim Wayne
Rep. Jill York

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

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Natural Resources and Energy

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

Committee Activity

The Interim Joint Committee on Natural Resources and Energy held six meetings between June 1 and December 1 of the 2017 Interim, with plans to hold an additional meeting in December to discuss net metering. There were no subcommittees. The committee considered a wide range of topics, including air quality and reformulated fuel, developments in power plant efficiency gains, coal by-product uses, advantages to natural stream channel design, benefits to joint action plans for municipal utilities, and solar energy policy challenges. The committee approved the Low Income Home Energy Assistance Program Block Grant Application for FY 2018 and held out-of-town meetings at the University of Kentucky's Center for Applied Energy Research (CAER) to discuss uses for coal by-products and at Kentucky American Water to discuss water utility infrastructure challenges.

Coal-Fired Power Plants and Coal By-Product Uses

Developments in Power Plant Efficiency Gains. The executive director of CAER discussed improving power plant efficiency by two principal methods: deploying high-efficiency, low-emissions technologies and using advanced combustion technologies. Older, subcritical coal-fired plants could improve efficiency without having to install new boilers by making technical changes such as improving air ratio, stack gas temperature, and steam conditions. The technical improvements would help to increase the efficiency of existing subcritical coal-fired power plants from 36 percent to 40 percent, which means increasing the amount of electricity produced per ton of coal burned in an existing plant. With more extensive improvements, subcritical plants could be converted to supercritical plants and see reductions in fuel usage and emissions of up to 20 percent. It is foreseeable that with anticipated improvements in building materials, supercritical temperature and pressure cycles could be increased to achieve 60 percent more efficiency.

Coal By-Product Uses. The executive director of CAER and his staff testified regarding the research they were conducting on potential uses of coal by-products. Coal ash, a by-product of the coal combustion process, is widely used in paved concrete road construction. The Cementitious Materials Group at CAER has been developing a new ultra-high-performance fiber-reinforced concrete using coal ash; the new product is sprayable and can be used for critical infrastructure

repair and military purposes. CAER is also researching a method for creating high-value carbon fiber by removing the hydrocarbon from coal. Carbon fiber is a very lightweight and strong material with broad applications in the automotive and aerospace industries. CAER staff discussed methods they were researching to recover rare earth elements from coal and coal ash. Rare earth elements are currently primarily produced and exported by China and are very important components in magnetics, phosphors, metal alloys, catalysts, ceramics, glass, and defense applications. Developing a domestic source of rare earth elements would be very strategically beneficial to US national security interests.

Status of the National Coal-Fired Power Plant Fleet. The chief executive officer of the American Coalition for Clean Coal Electricity testified that the national coal-fired electric fleet produced 30 percent of the electricity in the United States through the first half of 2017 and is projected to remain at 30 percent for the next 15 years, which is down from producing approximately 50 percent of the nation's electricity in 2007. The Trump administration has not appointed half of the 15 key positions in the US Environmental Protection Agency (EPA), which has shown how quickly the change from Obama-era environmental policy can be accomplished.

Update on the Mine Reclamation Guaranty Fund. Energy and Environment Cabinet officials reported that the mine reclamation guaranty fund, which the General Assembly created in 2013 to address mine reclamation bonding inadequacies identified by the federal Office of Surface Mining, has grown from a beginning balance of \$23.5 million to a balance of \$43.8 million. Bond forfeiture cost estimates have been reduced significantly to reflect more accurate reclamation expenditures.

Water and Infrastructure Issues

Benefits to Natural Stream Channel Design. The president of Jackson Group discussed the advantages of using natural stream channel design to protect transportation infrastructure such as roads and bridges. Natural stream designs allow for better recreation and fishing opportunities, which generate tourism revenue and decrease maintenance costs. Ecological benefits include decreased bank erosion and increased aquatic habitat.

Water Utility Infrastructure Challenges. Representatives from Kentucky American Water discussed water utility infrastructure challenges in Kentucky. Kentucky American Water manages more than 370 individual water systems in the country, with 48,000 miles of distribution and collection mains. Maintaining water infrastructure is critical to the daily affairs of businesses and economic development in the commonwealth. The Kentucky Infrastructure Authority surveyed water districts for planned projects and identified 2,089 drinking water projects at a total cost of \$1,909,356,450. The American Society of Civil Engineers estimated that Kentucky has \$6.2 billion in drinking water infrastructure needs. The average age of water plants and water tanks is 37 years and 26 years, respectively. Many water pipes in the United States are nearing the end of their useful lives. The installed pipes were intended to last 65 to 95 years, but some are more than a century old. Kentucky has 62,200 miles of main distribution pipes. In 1980, 10 percent of all pipes were in poor shape. By 2010, this percentage had increased to 45 percent.

Energy and Transportation Fuel Issues

Municipal Utility Joint Action Plans. Kentucky Municipal Energy Agency and Kentucky Municipal Utilities Association officials discussed the benefits of proposed legislation that would more easily allow municipal utilities to join together to buy and sell electricity. Proponents believe that significant economies of scale can be created by banding together power generation and the wholesale market, which will translate into lower rates for municipal electric utility customers. Other benefits to joint action are power supply expertise, enhanced member services, wholesale market access, and revenue bonds that will not create liability to individual cities.

Air Quality and Reformulated Gas. Energy and Environment Cabinet officials testified that in 1993, then-Governor Brereton Jones signed an executive order to opt in to a reformulated fuels program for Louisville and northern Kentucky, each of which had been deemed moderate nonattainment areas under the Clean Air Act. The program was initially successful, but because of improved air quality and new formulations of conventional gas, the reformulated gas program is no longer necessary. In April 2017, the Energy and Environment Cabinet petitioned the EPA to opt out of the reformulated fuel program for northern Kentucky. The cabinet will submit a state implementation plan revision to the EPA under Section 110(l) of the Clean Air Act. The submission will demonstrate that removing reformulated fuel requirements will not interfere with any Clean Air Act requirements concerning attainment.

Solar Policy Challenges. Representatives from the Consumer Energy Alliance advocated for state solar policy changes. Electricity markets are changing: both in the generation fleet and from customers who are interested in distributed options, including private solar. However, many state incentive programs for private solar, including Kentucky's, were designed for a different era. Kentucky's net metering program provides private solar credits for residential solar installations not at the wholesale rate, but at the much higher retail rate, which is roughly 300 percent higher than competitive market rates. The Consumer Energy Alliance believes that these private solar credit incentives shift costs onto less affluent customers and that the General Assembly should reexamine the current incentive rate.

Reports Received

- Auditor of Public Accounts: *FY 2017 Report of the Audit of the Kentucky Reclamation Guaranty Fund*
- Kentucky Geological Survey: *2016-2017 Annual Report of the Kentucky Interagency Groundwater Monitoring Network*
- Kentucky Department of Fish and Wildlife Resources: *2017 Annual Report on the Status of Hunting Land Access in Kentucky*
- Kentucky Division of Water: *HJR 56 Report on Privately Owned and Operated Small Wastewater Treatment Plants in Kentucky* (expected in December 2017)

Referred Block Grant Applications

- Low Income Home Energy Assistance Program (LIHEAP) Block Grant Application – FY 18

Referred Administrative Regulations

In performing its statutory legislative oversight responsibility, as of November the committee had reviewed 28 administrative regulations upon referral from the Legislative Research Commission under the review process established in KRS Chapter 13A.

Referred Executive Orders

- Executive Order 2017-748 relating to the Reorganization of the Energy and Environment Cabinet (November 3, 2017).

**Report of the 2017
Interim Joint Committee on State Government**

**Sen. Joe Bowen, Co-Chair
Rep. Kenny Imes, Co-Chair
Rep. Jerry Miller, Co-Chair**

Sen. Ralph Alvarado
Sen. Denise Harper Angel
Sen. Stan Humphries
Sen. Christian McDaniel
Sen. Morgan McGarvey
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. Wil Schroder
Sen. Dan “Malano” Seum
Sen. Damon Thayer
Rep. Lynn Bechler
Rep. Kevin D. Bratcher
Rep. Tom Burch
Rep. John Carney
Rep. Will Coursey
Rep. Jim DeCesare
Rep. Joseph M. Fischer
Rep. Derrick Graham
Rep. Richard Heath
Rep. Dennis Horlander

Rep. Dan Johnson
Rep. DJ Johnson
Rep. Brian Linder
Rep. Mary Lou Marzian
Rep. Reginald Meeks
Rep. Phil Moffett
Rep. Tim Moore
Rep. C. Wesley Morgan
Rep. Jason Nemes
Rep. Sannie Overly
Rep. Jason Petrie
Rep. Rick Rand
Rep. Jody Richards
Rep. Bart Rowland
Rep. Attica Scott
Rep. Tommy Turner
Rep. Ken Upchurch
Rep. Jim Wayne
Rep. Scott Wells

LRC Staff: Judy Fritz, Michael Callan, Bo Cracraft, Kevin Devlin, Brad Gross, Jennifer Black-Hans, Roberta Kiser, Alisha Miller, Karen Powell, Terisa Roland, and Peggy Sciantarelli

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on State Government

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

Committee Activity

The Interim Joint Committee on State Government held six meetings during the 2017 Interim, focusing on redevelopment of Frankfort's Capital Plaza; police department use of body cameras; proposed amendments to the Constitution of Kentucky; the Kentucky Employees' Health Plan; and legislative priorities of the Kentucky County Clerk's Association, the Kentucky Registry of Election Finance, the State Treasury, the Department of Agriculture, and the Auditor of Public Accounts.

“Capitol Tower Footprint”—Capital Plaza Redevelopment

The secretary of the Finance and Administration Cabinet discussed plans for the redevelopment of Frankfort's Capital Plaza area. The Capital Plaza complex is a state-owned crumbling infrastructure with multiple building code violations. Structural integrity of the elevated plaza slab and the drainage system has deteriorated beyond repair.

In FY 2017, 53 events were scheduled at the convention center. Usage rate was approximately 14.5 percent, and venue revenue was \$266,644. Tenant revenue was \$374,634. Approximately 19,000 square feet was leased to state agencies, and approximately 8,000 square feet to the private sector. Most tenants have left. FY 2017 net revenue for the convention center and shops was -\$154,681, compared to \$54,900 in FY 2016. According to data provided by the Tourism, Arts, and Heritage Cabinet, the estimated direct and indirect economic impact of convention center events in Franklin County increased only 6 percent from 2009 (\$16.3 million) to 2016 (\$17.3 million), while total tourist spending increased 36 percent (from \$138 million to \$187.6 million).

There have been no upgrades to the Frankfort convention center since it opened in 1971. It was originally designed for sporting events and exhibitions, but the majority of bookings are not sports related. The space design is not well suited for meetings, and the finishes are worn and

dated. There are no sprinkler or smoke evacuation systems. Americans with Disabilities Act accessibility is deficient, and the fire alarm, data, voice, and heating/ventilation/air conditioning systems are outdated. Safety is a concern. State-owned buildings are not exempt from building codes, but building code requirements for the convention center have been grandfathered since 1971, which has been essential to keeping its doors open. Rerouting its utilities would require a complete upgrade of the building at a cost of \$3.3 million, plus \$18.9 million more to bring it into code compliance. It would cost an additional \$12.3 million to renovate and expand the center to meet current needs and market requirements.

SB 238 (2017 RS) provided authorization for renewal of the Capital Plaza. The proposed redevelopment includes demolition of the office tower, construction of a new state office building and parking garage, demolition of the convention center and shops, a façade upgrade for the hotel and relocation of its parking garage, a façade upgrade for the YMCA garage, and demolition of the Mero Street and Clinton Street overpasses. This plan would give the city the opportunity to open up Washington Street from Broadway to Mero Street if the YMCA property becomes available in the future.

The timeline for the project is subject to modification, with the last event at the convention center scheduled for October 31, 2017. Construction of the new state office building is scheduled to begin April 12, 2018. The project is estimated to be complete by March 2020.

The area occupied by the convention center and plaza shops has potential for a public-private partnership (P3) project, based on community vision and planning. If the YMCA relocates and the riverfront becomes available, the intention is that those properties would return to the city. The commonwealth has offered to partner with the city and the county to assist in the P3 process, and there has been ongoing community outreach with civic groups and other members of the community.

The secretary said he understands the emotional attachment to the Frankfort convention center, but it is unsafe by today's building code. The redevelopment is a new opportunity for the city and the state to come together, and for Frankfort to pursue its own vision for the plaza area and use the great potential of the river as a resource to increase tourism. By March 2020, plans are to convey the land to the developer for the purpose of executing the plan of the city, the county, and the people of Frankfort. This plan will put the property on the tax rolls, and the city will control the property. The deed of conveyance will provide co-ownership.

Rep. Derrick Graham said he learned from the city's finance director that the state had contributed \$1.5 million toward construction of Capital Plaza and that the county, including Kentucky State University, had contributed approximately \$800,000. The city and the county have contributed toward maintenance and the construction debt. Payments began in 1970 and continued until 2000.

The mayor of Frankfort said the city has been asked to develop a strategy for redevelopment of the Capital Plaza area, including the site of the existing convention center. The city is working to design a community engagement process for a multiphase redevelopment strategy that includes the Capital Plaza area, greater downtown, and adjacent corridors, including

the Kentucky River. The project team consists of representatives of the city, fiscal court, Downtown Frankfort Inc., Frankfort/Franklin County Tourism, and the Kentucky Capital Development Corporation. The goals are to have an executable vision designed by the citizens that will help transform Frankfort; to build on existing plans and market studies, including the 2012 Riverfront Development Plan, the 2014 Cultural Asset Inventory, and the 2017 Downtown Market Study; and, by December 2017, to deliver a public input plan to the Finance and Administration Cabinet. There will be public forums to allow citizen input in the process. The city will pay a substantial amount to a consultant for the redevelopment, hopefully in partnership with fiscal court. The city does not have the internal expertise to determine what the community would support if a new multiuse facility is built. The Franklin County judge/executive expressed appreciation for the cabinet's help in working with the community.

A local citizen who once served in the state legislature urged the committee, as it deliberates the needs of the commonwealth, to also consider the needs of the city and imagine the vision it would want projected to the visiting public. Another local citizen voiced concern about the planned demolition of the convention center and questioned the credibility of the cost estimates provided in the convention center analysis. He also questioned whether SB 238 authorized demolition of the convention center.

2018 Kentucky Employees' Health Plan

The secretary of the Personnel Cabinet and the commissioner of the cabinet's Department of Employee Insurance discussed the Kentucky Employees' Health Plan (KEHP) and highlights of the 2018 plan year. KEHP is the largest self-funded health insurance plan in the state, with 296,000 covered lives. School boards comprise 54 percent of the membership, early retirees 20 percent, state agencies 20 percent, and quasi-governmental agencies 6 percent. KEHP became self-funded in 2006. The annual amount spent is approximately \$1.7 billion.

In 2017, KEHP received the "health champion" designation from the American Diabetes Association. The state wellness director for the cabinet has been working with the statewide wellness champions, who now number more than 140. There is an increased focus on engagement and outreach. First-quarter data for 2017 show that approximately 5 schools and two state agencies—including the Personnel Cabinet—have reached platinum level; 10 or more schools have reached silver status, which means members averaged 4,000 points in the Go365 LivingWell initiative.

The LivingWell plans reported 94 percent completion of the LivingWell Promise in 2017, which allows those members a premium discount in plan year 2018. Since the Go365 (formerly named Humana Vitality) health initiative began in 2012, there has been a 702 percent increase in wellness activities. The "wellness age" has been reduced by half a year for members in the LivingWell plans who completed health assessments or biometric screening.

The LiveHealth Online Medical benefit is free to members and has saved KEHP approximately \$1.9 million. It provides access to a physician 24 hours a day, 7 days a week. The benefit, which is intended for general care, has been used by 9,545 people. LiveHealth Online Psychology was added in 2017 and has been used by 475 people. Nine percent of households take

advantage of Vitals SmartShopper, another cost-saving program in which members shop for cost-effective health care services and earn cash rewards.

The diabetes value benefit, which started in 2016, provides diabetes medications and supplies at low or no cost. Although pharmacy costs have increased 13.9 percent since then, KEHP costs stayed flat for those members because medical costs decreased 7 percent. The number of prescriptions per patient decreased 3.5 percent. There has also been 10.3 percent less use of emergency rooms and 6.5 percent fewer hospital acute admissions. KEHP has been working on diabetes prevention with Georgia, North Carolina, Oklahoma, and Tennessee. After KEHP experienced a negative cost trend in 2015, medical and pharmacy costs increased in 2016, and usage also increased. Anthem, which became the third-party administrator in 2015, has a large network of providers, and people are becoming more comfortable about seeing their doctors.

As part of engagement and outreach to explain programs and benefits, KEHP has committed to a “feet on the street” approach to meet with people. Programs need to be marketed to consumers and users in ways other than direct mail.

To ensure good benefits and lower costs, KEHP changed vendors in 2015. Anthem became the third-party administrator, CVS/Caremark the pharmacy benefits manager, and WageWorks the administrator of flexible spending account (FSAs) and health reimbursement accounts (HRAs). Go365 stayed as wellness program administrator, and Vitals SmartShopper remained as transparency vendor. Through the new contracts, KEHP was able to achieve an 11 percent negative cost trend in 2015. Since then, the costs have increased somewhat, which is typical of medical care costs. The level of allowed pharmacy and medical costs per member per month is now \$486, which is \$5 more than in 2014. KEHP is continuing to look at ways to lower costs—for example, through LiveHealth Online, the diabetes value benefit, and the wellness program.

The total allowed cost per member per year for KEHP is 6.8 percent higher than in the public sector and 3 percent higher than in the private sector. Based on claims data, KEHP has more members with chronic or crisis conditions than the benchmark. The goal is to transition them from at-risk status to a more sustainable condition.

For plan year 2018, the employer cost increase was 1 percent and the cost increase for employees was 3 percent. LivingWell PPO couple and family coverages had the highest premium increase. The monthly premium for single coverage in the Standard CDHP plan increased from \$13.10 to \$26.20. KEHP considers the rates good when compared to those in surrounding states. The last rate increase was in 2014, except for a 1 percent increase in 2016 in the two standard plans. For 2018, no changes were made to deductibles, coinsurance, or copayments. The health care FSA maximum annual contribution increased to \$2,600. The HRA maximum carryover is \$7,500, and the cabinet has been communicating with members who are approaching their maximum. A small number of members are affected by the carryover maximum.

As of October 23, enrollment in the LivingWell CDHP plan is 55 percent, LivingWell PPO 35 percent, Standard CDHP 7 percent, and Standard PPO 3 percent. Those numbers do not include all retirees and will change until open enrollment finalizes in December. Enrollment in health care FSAs increased 9 percent in 2017, and enrollment in dependent care FSAs increased 13 percent.

KEHP has issued a request for proposals for a dependent eligibility audit. The last audit was completed in 2010 and resulted in a savings of approximately \$5 million when dependents no longer eligible were removed from the plan. This type of audit should be done every 5 to 7 years.

Two new employee voluntary life insurance plans have been added for 2018, along with three new dependent life insurance plan options. All life insurance plans have lower monthly premiums.

The cabinet has combined some staff operations that resulted in a cost saving. Part of that money will be used to decrease premiums for optional coverage. The Department of Employee Insurance has 47 staff members, and its operating costs amount to less than 0.63 percent of the overall \$1.7 billion health plan budget.

Registry of Election Finance—Status Report and Priorities for the 2018 Regular Session

The executive director and the general counsel for the Registry of Election Finance discussed their agency's operations and a recent pending court case.

The executive director said that since the 2017 enactment of SB 75, relating to campaign finance, the registry has been updating its website, reporting forms, guidebooks, and informational and training materials. Forms and their online presentation are being remodeled to make them clearer to users. With funds budgeted to improve the information technology system, Kentucky Interactive LLC was contracted to do the work. The registry believes it now has a more reliable and secure system. The main focus is to upgrade and improve the operation. The software packages used by candidates are cumbersome and difficult to use. The goal is to replace those and have the registry, rather than an outside party, ultimately serve as provider.

The executive director agreed with a suggestion by Rep. Kenny Imes that the filing deadline for the annual report probably should be December 31 and that it would not be unreasonable for the candidate's 60-day post report to serve as the annual report. He also said that the registry now must receive the 15-day preelection report by 15 days before the election; before the changes related to SB 75, the deadline was for the report to be postmarked—not received—15 days before the election.

When asked by Sen. Dorsey Ridley, the executive director said that the registry's new system should be able to electronically send out reliable reminders for most reports—perhaps even the annual report. He said, too, that although money must be paid to a bank in order to open an account, candidates for office would be permitted to open a bank account before the registry assigns a campaign number to the letter of intent to file for office. The registry has worked on handbook language to address that question.

The general counsel discussed a federal lawsuit that the registry is defending. The case involves challenges to Kentucky's campaign finance laws and to the Legislative Code of Ethics. In June 2017, the court issued a memorandum opinion and order that found all of the claims of the plaintiffs against the registry moot except for one claim that involved the constitutionality of caucus campaign committees. The court's order upheld the contribution limit of caucus campaign

committees as defined in the statute but invalidated the definition of *caucus campaign committee* as violative of the Equal Protection Clause in the 14th Amendment to the US Constitution. The registry believes that the court applied an incorrect standard of review and made an erroneous finding of fact. In addition, the court's action may not have been authorized, because the plaintiff's complaint did not specifically challenge the definition of *caucus campaign committee*. The complaint was never amended to challenge the constitutionality of that provision. For this reason, the registry has filed a motion to reconsider and amend the order and to stay enforcement of the order. While confident that the order should be amended, the registry is also arguing that a stay is appropriate in order to give the legislature the opportunity to remedy the issue by amending the statute. Because the definition currently includes the words *Republican* and *Democrat*, the court found that the legislature was giving deference to those political parties and, in so doing, was violating the Equal Protection Clause. The necessary change to the definition is a simple one, and resolving the matter is important.

The general counsel said she has made a good-faith argument that the definition is constitutional as written. By alerting the Interim Joint Committee on State Government regarding the federal lawsuit, the registry is not waiving that argument, because the caucus campaign committees as they are constituted emanate from House and Senate rules. The registry was able to determine that Republican caucus groups had given to independent candidates in the past. Caucus groups are not bound to give to members of a certain political party, so this is not a concession that the provision is unconstitutional. The registry acknowledges that there is reason for concern.

The executive director and the general counsel asked that the General Assembly make amending the statutory definition of *caucus campaign committee* a priority in the 2018 Regular Session.

Kentucky County Clerk's Association—Legislative Priorities

The Leslie County clerk, representing the Kentucky County Clerk's Association, discussed legislative priorities for the 2018 Regular Session. County clerks propose the following statutory amendments.

- Amend KRS 132.017, which relates to recall elections, to accommodate the 45-day period for printing ballots, to address ballot wording, and to establish who can call the election. Revisions are necessary because of the frequency of these elections and the problems created in meeting the statutorily required time frames.
- KRS 117.035 requires county boards of elections to meet once a month to purge voter registration rolls. The State Board of Elections purges those rolls, so there is no need for a mandated monthly meeting of the county boards. The clerks ask that the General Assembly amend the statute to make the meetings discretionary, to be held upon the call of the clerk or a majority of board members. This change would save money for the counties. County clerks review voter registration rolls after elections and send the names of individuals who should be purged to the State Board of Elections.
- KRS 117.343 provides that county clerks shall receive "up to" 50 cents per registered voter for their election duties during the election cycle. In 2017, the clerks are receiving only 34 cents per registered voter. The recommendation is to amend the statute to give the clerks the full 50 cents per registered voter.

- Amend KRS 117.085 to allow clerks to e-mail an application for an absentee ballot to the requesting voter. The voter would still have to return the application to the clerk via traditional mail. Allowing clerks to e-mail applications would provide a quicker turnaround time and eliminate some problems relating to timely return of ballots. The clerks also request that the time frames in KRS 117.075 and 117.085 be changed from 7 days before the election to 14 days in order to allow sufficient time for mailing and return of ballots. Clerks verify the identity of an absentee voter through signature cards and verify the integrity of the ballot through official seals. The requested amendments would not change that verification. E-mailing an absentee ballot application would be an added option, not an exclusive provision.
- KRS 116.055 does not define *new registrations*. On occasion, people have their names removed from the voter registration roll and later reregister with a different political party. Current law provides that the political party registered on December 31 is the party in which a person may participate in a primary. The clerks ask that the statute be amended to tie the new voter registration to the December 31 date.

Proposed Constitutional Amendments Filed During the 2017 Regular Session

The committee discussed bills filed during the 2017 Regular Session to propose amendments to the Constitution of Kentucky.

SB 15 (Westerfield, et al.)—An Act proposing to create a new section of the Constitution of Kentucky relating to crime victims’ rights. Rep. Robert Benvenuti III presented 2017 SB 15, also known as Marsy’s Law, relating to crime victims’ rights. This proposed constitutional amendment would grant victims of crime the same level of constitutional protection as the accused. Kentucky is one of only 15 states that do not offer constitutional protection to victims of crime. The state provides only modest statutory protections for crime victims, and statutory protections do not provide the same level of protection as constitutional protections. The costs associated with this proposal should be minimal. Marsy’s Law was named after **Marsalee “Marsy” Nicholas**, a University of California Santa Barbara student who was stalked and killed by her ex-boyfriend in 1983. One week after her murder, the accused murderer confronted her family members in a grocery store; they were unaware that he had been released on bail.

The state director/legal counsel for Marsy’s Law for Kentucky stated that Marsy’s Law would ensure that victims have a meaningful role in the judicial process and standing to enforce their rights if they are violated. These rights given to victims would not infringe on defendants’ rights or impede the court’s ability to fairly adjudicate a case. The president/chief executive officer of Family and Children’s Place stated that her organization has served crime victims for many years. There has been an increase in child abuse, neglect, and violence across the state, and her organization fully supports Marsy’s Law. A crime victim testified in support of Marsy’s Law.

HB 353 (Moffett)—An Act relating to the taking of the sense of the people of the Commonwealth as to the necessity and expediency of calling a convention to revise or amend the Constitution of Kentucky, and the amendments that may have been made to it, as provided by Section 258 of the Constitution of Kentucky. Rep. Phil Moffett, sponsor of 2017 HB 353, said many items addressed in the current Constitution of Kentucky are no longer relevant, and there is

a need to modernize governmental structures and processes. The current constitution does not limit the number of topics that can be brought up or acted upon at a convention. HB 353 would exclude changes to the Kentucky Bill of Rights. There is no mention of partisanship in the current constitution with regard to convention delegates.

SB 52 (McDaniel, Embry)—An Act proposing to amend Section 95 of the Constitution of Kentucky relating to the election of state officers. Sen. Chris McDaniel stated that SB 52 would move the election of statewide constitutional officers to even-numbered years beginning in 2024. Initially, the estimated cost savings over a 4-year election cycle would be approximately \$3.5 million for state government and a total of approximately \$15 million for local governments. Eliminating elections from all odd-numbered years would result in savings simply by reducing the number of elections. The proposal would also increase voter participation. Preferably, this proposed constitutional amendment should be on the 2018 ballot; state officials elected in 2019 would serve a 5-year term. County clerks have supported this proposal in the past, and support from other organizations is anticipated.

The original intention was to place statewide constitutional elections in even-numbered years that did not contain a presidential election, but the date was changed in SB 52 in order to increase voter participation by offsetting delays in implementation.

HB 34 (King et al.)—An Act proposing an amendment to Section 42 of the Constitution of Kentucky relating to compensation for members of the General Assembly. Rep. Kim King said that HB 34 proposes to amend section 42 of the constitution to prohibit members of the General Assembly from receiving legislative pay for a special session if the Governor calls it because the General Assembly adjourned without passing a state budget during the Regular Session. The proposal is a nonpartisan matter that is supported by her constituents, regardless of political party. It is her intent that the nonpayment of compensation would apply to legislators but not to LRC staff. The bill includes language that the prohibition on compensation would apply only when the General Assembly had “not passed an appropriations bill.” The proposal prompted concern that, in order to avoid participating in an unpaid special session, some legislators might sign off on a budget bill they did not endorse.

HB 160 (Koenig et al.)—An Act proposing to create a new section of the Constitution of Kentucky and to amend Section 99 of the Constitution of Kentucky relating to the office of Constable. Rep. Adam Koenig stated that HB 160 would amend section 99 of the constitution to permit counties and cities to enact local ordinances to eliminate the use of constables. While constables may serve a useful purpose in some areas of the state, they may be viewed as a potential liability in others. This proposal respects home rule. A 2012 study conducted by the previous gubernatorial administration found that constables perform 0.25 percent of law enforcement activities, yet there are approximately 500 constables in Kentucky. Constables may have been important in 1892, but they are not necessary now. HB 160 is bipartisan in nature and has broad support.

Rep. John Carney stated that some counties, particularly in rural areas, use the services of constables and that some constables have indicated they would like to receive certified training.

The commissioner of Kentucky State Police, the director of governmental relations for the Kentucky Association of Counties, the governmental affairs manager for the Kentucky League of Cities (KLC), and the commissioner of the Kentucky Department of Criminal Justice Training (DOCJT) testified in support of HB 160.

SB 251 (McGarvey)—An Act proposing to amend Sections 32, 95, 145, and 148 of the Constitution of Kentucky relating to elections. Sen. Morgan McGarvey said he views SB 251 as an election reform bill. It would limit terms for members of the General Assembly to not more than 12 years; extend the term of office by 1 year for statewide constitutionally elected officers elected in 2019 and require those statewide constitutionally elected officers, beginning in 2024, to be elected in even-numbered years; automatically restore civil rights to convicted felons after they have served their sentence, completed parole or probation, and paid restitution; require polling places to be open for voters on the Saturday before the first Tuesday after the first Monday in November; and require polling places to be open until 8 p.m. on the first Tuesday after the first Monday in November.

SB 204 (McGarvey) **and HB 373** (J. Miller)—An Act proposing an amendment to Section 226 of the Constitution of Kentucky relating to casino gaming. Sen. McGarvey and Rep. Jerry Miller presented SB 204 and HB 373. Both bills would authorize the General Assembly to define and permit casino gaming and mandate that 100 percent of the proceeds go to the pension funds of the Kentucky Employees Retirement System and the Teachers' Retirement System. SB 204 provides for the General Assembly to allocate the proceeds after July 1, 2028. The amount directed to the pension systems would be the amount remaining after deduction of administrative costs. The Kentucky County Judge/Executive Association supports the proposal. Revenue generated from casino gaming is anticipated to be a minimum of \$250 million per year.

Discussion of 2018 RS Prefiled Bills to Amend the Constitution of Kentucky

18 RS BR 28 (Nemes)—An Act proposing to amend Sections 117, 118, 119, and 122 of the Constitution of Kentucky relating to the election of appellate judges. This prefiled bill proposes to amend the Constitution of Kentucky to fill terms of justices of the Supreme Court and judges of the Court of Appeals by appointment by the governor from a list of three nominees provided by the judicial nominating commission, provide for appointed justices and judges who seek additional terms to stand for elections in their districts, and limit individuals to two full terms of office.

Rep. Jason Nemes, sponsor, stated that his intention in presenting this legislation is to start a conversation about how to implement the best judicial system in Kentucky. He cited issues related to the election of judges as reason to support appointment of appellate judges by the governor. These issues include the amount of money spent in judicial elections, the time required for a campaign, and the negative impact on attracting candidates. The judicial nominating commission process established in section 118 of the state constitution would be retained with regard to judicial appointments by the governor.

Possible arguments against the proposal might include fear of partisanship, fear of centralized power, and lack of electoral accountability relating to judges. Rep. Nemes referred to the Missouri Plan and said that, to insure electoral accountability, BR 28 would provide for a

retention election by the voters of any appellate judge or justice after an initial 8-year appointment. It contains a 16-year term limit for judges on the Court of Appeals and an additional and separate 16-year term limit for justices on the Supreme Court.

2018 RS BR 40 (Imes)—An Act proposing to amend Section 29 of the Constitution of Kentucky relating to administrative regulations. This prefiled bill proposes to amend Section 29 of the Constitution of Kentucky to permit the General Assembly or an agency or committee it creates to review, approve, or disapprove any administrative regulation of the executive branch during or between regular sessions of the General Assembly.

Rep. Imes, sponsor, stated that the members of the General Assembly have a responsibility to the people of Kentucky to be able to override administrative regulations, although the Constitution of Kentucky does not currently provide for that. The number of proposed administrative regulations found deficient is small, but during the past 6 years 81 percent of those found deficient became effective.

Kentucky Post-Critical Incident Seminar

The branch manager of the Criminal Investigation Branch of the Department of Criminal Justice Training discussed his experience with having to use his weapon on a call, and the emotionally charged consequences that ensued. He discussed the Kentucky Post-Critical Incident Seminar, a 3-day seminar modeled after successful programs developed by the Federal Bureau of Investigation and South Carolina. Law enforcement professionals and their significant others are able to tell their stories, hold small-group discussions, meet one on one with mental health professionals, and learn to identify signs of stress and methods to cope. He asked for the General Assembly's support of the program.

Police Department Use of Body Cameras

Rep. Robert Benvenuti III—who sponsored 2017 HB 416, relating to the disclosure of body-worn camera recordings, which did not become law—said there is no law in Kentucky that requires law enforcement to use body cameras, nor should there be one. The choice should be left up to individual local governments. However, if they are used, there should be a legislative construct that allows officers to use them efficiently and effectively, or else body camera use will become less prevalent. Privacy rights should be protected for those involved—officers, victims, or children. Body cameras can be helpful for purposes of training, evidence, and accountability. Officers should not be required to spend hours editing and redacting footage, rather than engaging in law enforcement.

The deputy executive director of the Kentucky League of Cities said Kentucky is the last state to deal with a law for disclosure of recordings from open records. KLC surveyed other state laws. Florida exempts disclosure of recordings from open records if taken in a private residence, or in a health care or social services office. Florida law also exempts recordings from disclosure if a person has a reasonable expectation of privacy. Indiana permits limited class of requestors to inspect recordings without making copies. Louisiana exempts disclosure without a court order if the law enforcement agency determines that the recording violates a person's reasonable

expectation of privacy. Kansas exempts all recordings from police body cameras as criminal investigation records. North Carolina exempts recordings from being disclosed to persons not depicted in them; the law requires a court order for other members of the public to gain access. South Carolina exempts recordings from disclosure under the state's Freedom of Information laws, but it specifies several types of individual who may obtain copies if they have a legal interest in doing so.

Representing the Kentucky Sheriff's Association, the Campbell County sheriff said that, for small law enforcement agencies, purchasing body-worn cameras would pose a financial hardship. Larger agencies would face possible cuts in budgets for other equipment. Also, storage space would have to be purchased for the videos, depending on how long they need to be stored (currently, 30 days). In any agency there must be at least one person to maintain, edit, and secure all video to preserve its integrity. The cost of training each officer to use body-worn cameras would be addressed either at the DOJT Law Enforcement Academy or in-house for each individual agency.

A representative of the Kentucky Fraternal Order of Police (FOP) said that great care must be taken when releasing footage from body-worn cameras to the news media and others. There must be restrictions against the releasing video that shows the death or serious injury of an officer or citizen, video shot in private homes or in health care facilities, and video that reveals law enforcement surveillance or other police tactics that could ultimately compromise the safety of law enforcement and the public. The use of videos on social media can serve to revictimize victims and traumatize first responders. The use of a disclaimer that would be posted on the video should be considered, reminding the public that body-worn camera video is one angle that typically fails to provide the full context of a situation. It is very easy, yet blatantly unfair, for the public, the news media, the courts, and outside groups to assume that what they are seeing on the news is the whole picture. That is rarely, if ever, the case, and without that knowledge, body-worn camera video can be misunderstood, misrepresented, and exploited.

The president of FOP Bluegrass Lodge 4 in Lexington said that, as for any new technology, practices, policies, and even laws must be formed, evaluated, and occasionally revised to ensure that the use of the new technology remains advantageous. Lexington's police department, over the last year, has implemented body-worn cameras with officers in uniformed operations. Since the implementation of the cameras, the Lexington police department has received over 124 open records request for footage. To attempt to keep up with the demand for footage, the department has hired two extra civilian personnel. Not only are the requests time consuming, but the department's personnel must rely on current open records laws that do not specifically account for the use of body-worn cameras. The application of the current laws remains vague when employees attempt to address concerns about the release of footage, some of which may be sensitive to law enforcement investigations or operations. To support law enforcement agencies around the state, the legislature must pass legislation that directly addresses the issue of public release of body-worn camera footage. To support those agencies as well as legislators, Bluegrass Lodge 4 endorses HB 416.

A representative of the Kentucky Association of Chiefs of Police said that over the years he has dealt with many open records requests. Recently all 30 police agencies in Boone, Kenton,

and Campbell Counties received open records requests from a news agency for all body camera videos for the past 5 years. They are still figuring out how to best comply with the request, which was not specific. The Kentucky Department for Libraries and Archives' guidance controls the retention of video for 30 days unless the video is part of a legal action. He asked that legislators, when crafting bills, consider the case of small departments with regard to the costs associated with open records requests.

A representative of the Kentucky Justice Association said that she had concerns about 2017 HB 416, which would require that any person receiving body camera footage could not disclose or duplicate the recording without first providing notice to each person whose image is depicted. This requirement can be problematic. For example, attorneys frequently obtain body camera footage of an accident scene as part of investigating how a collision occurred. It would sometimes be impossible to locate all people in the footage and give them notice before sharing the footage with an accident reconstructionist or before using it in court.

State Treasury—Status Report and Legislative Priorities

The state treasurer discussed activities at the Treasury and initiatives that she hopes will be accomplished in the coming year. She said her office was able to resolve issues related to the federal Internal Revenue Service, which could have cost the state \$1 million. The treasurer worked with the Alabama state treasurer's office to prevent an occurrence of wire fraud involving both Kentucky and Alabama. As a watchdog on spending, she is committed to using the Treasury's budgeted funds in the best way. She cut the budget 4.5 percent when she assumed office, and in 2017 she cut it an additional 1 percent. For FY 2017-2018, the Treasury so far has processed \$227 billion in payments and receipts for the commonwealth, 10 million automatic clearing house transactions, and 5,000 or more wire transfers to the federal government totaling \$37 billion. During last year's snowstorm when state offices were closed the Treasury remained open in order to process 50,000 checks to retired teachers. In connection with the watchdog role, there have been instances when the Treasury has stopped checks, some of which are involved in pending lawsuits.

Transparency has been a major focus. She worked with the Finance and Administration Cabinet to launch the commonwealth's transparency website, transparency.ky.gov. Ohio spent over \$1 million to create a transparency website that is viewed as the gold standard. By using existing relationships, contracts, and resources, Kentucky's website was launched without additional spending.

STABLE Kentucky is a savings and investment program available to Kentuckians with disabilities. Kentucky is one of the first states to have this type of program, and it was established without spending additional taxpayer dollars. It offers a tax-free savings plan for disability-related expenses. Account holders can save and invest without losing needs-based benefits, and family members and friends can contribute to the accounts.

The priority for the 2018 legislative session is the Revised Uniform Unclaimed Property Act (RUUPA), an initiative to reform the Treasury's unclaimed property division. RUUPA is a uniform code that is being developed by stakeholders and experts nationwide. Last year the Treasury returned \$25 million in unclaimed property. The unclaimed property function has not

had significant updates since the 1980s. Current law is unclear relating to unclaimed property in some respects. RUUPA includes ideas to save money and cut red tape to make it easier for businesses and individuals to make claims. The legislation is intended to clarify and update unclaimed property law. When the statute was written, Bitcoin and other online currency were not anticipated. One example of proposed revisions is to no longer require businesses to send annual reports to the Treasury if they have nothing to report.

Improvements relating to 529 ABLE and STABLE accounts at both the state and federal level is another major interest. There are efforts at the federal level that would allow traditional 529 education accounts to roll over to Kentucky STABLE accounts if a child becomes disabled and college is no longer possible.

Department of Agriculture—Status Report and Legislative Priorities

The general counsel for the Department of Agriculture (KDA) spoke on behalf of the commissioner of agriculture, who had a commitment out of town. He said the first meeting of the Industrial Hemp Advisory Board (created by 2017 SB 218) would be held on December 13. The application window was closed for the 2018 hemp-growing season, and the number of applications received had increased slightly.

The US attorney for the Western District of Kentucky at a recent press conference praised federal and state law enforcement agencies for their role in preventing theft of credit card information at gas station skimmers. As a result of KDA gas pump inspections, eight or nine people have either pleaded guilty or been convicted of credit card theft, with projected savings of thousands of dollars.

The commissioner traveled to China, where he met with the US ambassador to China, representatives of the Kentucky thoroughbred industry, and Chinese government officials. After a yearlong effort by the commissioner, the US Department of Agriculture, and the thoroughbred industry, China lifted the ban on importation of live horses from the United States, including quarter horses and saddlebreds. This action has created economic opportunity for the Kentucky horse industry.

KDA has three legislative priorities for 2018. An executive reorganization was finalized to update the organizational structure and office names, and KDA will propose a bill to codify the changes. KDA will also likely ask the General Assembly to consider other modernization efforts. Unlike most states, Kentucky does not have legislative authorization to issue certificates of free sale, which are sometimes required for export of agricultural commodities. KDA believes it would be in the best interest of Kentucky industry to have that authorization clearly stated in statute. KDA may also propose revisions or updates to statutes relating to livestock safety and disease control and regulation of motor fuels.

The second priority for 2018 relates to a transportation issue with significant influence on Kentucky agriculture. New federal regulations take effect in December 2017 relating to the electronic logging devices (ELDs) that are required for long-distance truck operations. The devices track the number of hours that a vehicle/driver has been in service. The goal of the regulations is

to ensure that companies and their employees are respecting hours-of-service limitations, as regulated by the federal Motor Carrier Safety Administration. Many agricultural producers in Kentucky cannot afford to install ELDs on their trucks. Agricultural producers are now exempt from the ELD requirement when carrying commodities and farm supplies up to 150 miles. The applicable Kentucky statute, which links to existing federal law, needs to be updated because it specifies 100 miles instead of 150. KDA has been working with Rep. James Tipton to draft an expansion of the Kentucky statute. KDA is working with him on a joint resolution asking Congress to expand the distance parameter to 200 miles, a change that would be helpful to agricultural producers in the state.

KDA's third legislative priority is a resolution relating to the Kentucky Hunger Initiative, launched by the commissioner in 2016. The resolution would ask state agencies to perform a self-assessment of their food waste practices. Forty percent of food in the country is thrown away, often after large events, including some that are sponsored by state agencies. The self-assessment was Sen. Rick Girdler's idea, and KDA hopes to work with him on drafting the resolution.

Rep. Attica Scott expressed interest in the Hunger Initiative and the proposed self-assessment for state agencies. The general counsel said the questions have not been determined, but the self-assessment will probably consist of a list of 6 to 10 comments and questions. Because of the nature of the business, the greatest waste of food often happens after events at large hotels. State agencies are sometimes involved in planning dinners for those events. There is opportunity for state government to consider best practices and set an example for the private sector.

Rep. Jim DeCesare said he has heard from his constituents that regulations relating to zip lines and conversion of agricultural structures into event venues have become more stringent. He is interested in helping farm owners open event facilities without compromising safety. The general counsel said KDA worked with Rep. Suzanne Miles on agritourism legislation enacted in 2017 (HB 360) that excused landowners from complying with some of the more stringent provisions of the building and housing codes. KDA would welcome the opportunity to discuss whether further changes may be needed. Regarding zip lines, in 2016 the General Assembly enacted a law requiring the Department of Agriculture to promulgate administrative regulations relating to aerial recreational devices and zip lines. In response to concerns raised at three open public meetings that were well attended in the summer of 2017, KDA made significant changes to the initial draft regulation. KDA received quite a few comments since the regulation was promulgated and considered by the Administrative Regulation Review Subcommittee in early November. However, additional comments are welcome.

Rep. Jim Wayne said representatives of amusement parks in the state—the largest being Kentucky Kingdom—have expressed concern that some of the regulations and statutes relating to county fairs should not apply to amusement parks. The general counsel said KDA heard from representatives of Kentucky Kingdom about their desire to revisit the statutes to determine whether there should be different standards for county fairs and permanent structures like Kentucky Kingdom; however, KDA has not submitted any recommended changes. Rep. Wayne commended KDA for its work on the Purchase of Agricultural Conservation Easements program.

Auditor of Public Accounts—Status Report and Legislative Priorities

The auditor of public accounts discussed past enacted legislation in which his office was involved: SB 63, “Sexual Assault Forensic Evidence (SAFE) Act of 2016”; SB 168 (2016 RS), which clarified the auditor’s role in audits of city governments; and HB 189 (2017 RS), a transparency bill relating to area development districts. Going forward into 2018, he said, the auditor’s office wants to ensure that its budget is sufficient to continue its work and address concerns and questions that may be brought to its attention. His office tries to serve as a resource for county officials and has been looking at ways to help county governments save money.

The office will be recommending legislation to close a loophole in certain statutes. Cities that file a uniform financial report (UFR) are allowed to receive state money from the road fund and other funds even if they have not been audited. Without an audit, it is unclear whether data in a UFR is accurate. The Kentucky League of Cities agrees with the auditor’s recommendation to tighten up the governing statute. Some of the cities currently being examined have not been audited since 2009, and plans are under way to do those audits.

The office performs approximately 600 audits annually, including the confidential annual financial report and the statewide single audit of Kentucky. It audits county and circuit clerks, sheriffs, fiscal courts, property valuation administrators and others. A recent audit of the Jackson County Fiscal Court for both FY 2015 and FY 2016 resulted in 40 findings in the first year and 3 additional ones the second year. That audit also resulted in a referral to law enforcement relating to theft by the former Jackson County treasurer.

The auditor’s office, after an examination of the University of Louisville and the University of Louisville Foundation, proceeded with the audit opened by the previous state auditor. There were a number of findings, including a major lack of transparency and questionable use and management of endowment funds. The audit was done at minimal cost to the taxpayer and should provide a good future direction for the university.

A financial statement audit of the Louisville Arena Authority was done at the request of the Capital Projects and Bond Oversight Committee. The audit found that 75 percent of revenue for the authority came from taxpayers and only 25 percent came from arena operations. It also found that the authority received 3 percent of suite licensing fees, while 97 percent went to the University of Louisville Athletic Association. After completion of the audit, the authority’s bond rating rose from junk to investment grade, which can help save millions of dollars for the authority and the taxpayers. The auditor’s office also did a special examination of the Kentucky Horse Park, at the request of Sen. Damon Thayer and the secretaries of the Tourism, Arts, and Heritage Cabinet and the Finance and Administration Cabinet.

Some of the current work focuses on the Kentucky Fire Commission, the Administrative Office of the Courts, and two city audits. At the beginning of 2018, the office will be assisting the Commercial Mobile Radio Service Emergency Telecommunications Board to complete its audits for fiscal years 2014 to 2017.

The auditor stated that last year his office received the highest possible rating from its peers in the National Association of State Auditors, Comptrollers and Treasurers.

Rep. Nemes said he hoped that the auditor's office might be able to follow up on the University of Louisville audit to determine whether the new administration has taken proper steps. The auditor's chief of staff said the office receives a 60-day corrective action plan as a follow-up on special examinations but, without doing additional work, they cannot assure compliance with all recommendations and potential corrective actions.

Rep. Moffett expressed concern about the fiscal health of some counties and cities and asked whether the auditor's office does any financial tracking that might predict potential bankruptcy of those entities. The auditor said that financial statement audits can sometimes indicate concerns. Counties must pay for their audits, and his office tries to work with counties that are struggling to make their payments. The chief of staff said that the office works closely with the Department for Local Government (DLG), the regulatory oversight body for counties. DLG staff work with the county treasurers and fiscal courts on budgetary problems. When an audit reveals serious financial concerns, those are brought to the attention of DLG so that they can be addressed on an ongoing basis.

When Rep. Scott inquired about the auditor's involvement with the rape kit issue, the auditor said that, when he served in the General Assembly, he supported SJR 20 (2015 RS), which directed the auditor of public accounts to report on the number of untested sexual assault examination kits in the possession of Kentucky law enforcement and prosecutorial agencies. During his campaign for auditor, his predecessor asked him to continue work on that issue if he won the election, and he said he would. Along with legislators and stakeholders, the auditor's office has continued to lend its support. The chief of staff said that Sen. Denise Harper Angel and Sen. Whitney Westerfield deserve credit also for clearing the way on pertinent legislation.

Rep. Wayne said that the audit of the Louisville Arena Authority, which oversees the financial process of the KFC Yum! Center, revealed that the Yum! Center does not follow the state procurement code and is not subject to the Executive Branch Ethics Code. He asked whether the auditor's office plans to follow up with the legislature to remedy problems that were exposed. The chief of staff said the items mentioned were incorporated in the original budget bill that approved creation of the authority. For some reason, that budget language was not included in subsequent budget bills and is not codified in statute. It is a "murky" legal question whether noncodified budget language continues to be binding on an entity in the future. The auditor's office has pointed out that the transparency measures originally put in place may have been allowed to lapse. It was important to bring this to the attention of policy makers because it could happen again. Whether those provisions have legal effect would have to be determined by the courts. It would be the legislature's prerogative to address the issue, but the appropriate window of time is uncertain. The auditor's office is willing to contribute to discussions regarding potential corrective legislation.

Secretary of State—Legislative Priorities

The secretary of state was invited to discuss her legislative agenda but declined due to a prior commitment. Some members expressed disappointment that she did not accept the invitation.

It was noted for the record that she sent a letter to the committee chairs outlining her office's legislative agenda, which includes recommending legislation to legalize medical marijuana in the commonwealth. Sen. Wil Schroder said he is not aware of any constitutional or statutory authority that would include that issue within the secretary's purview.

**Report of the 2017
Interim Joint Committee on Tourism,
Small Business, and Information Technology**

**Sen. Alice Forgy Kerr, Co-Chair
Rep. Diane St. Onge, Co-Chair
Rep. Tommy Turner, Co-Chair**

Sen. Perry B. Clark
Sen. Rick Girdler
Sen. Denise Harper Angel
Sen. Ernie Harris
Sen. Jimmy Higdon
Sen. Stephen Meredith
Sen. Wil Schroder
Sen. Reginald Thomas
Sen. Mike Wilson
Sen. Max Wise
Rep. John Blanton
Rep. Larry Brown
Rep. George Brown Jr.
Rep. John Carney
Rep. Matt Castlen
Rep. Jeffery Donohue
Rep. Chris Fugate
Rep. David Hale
Rep. Chris Harris

Rep. Angie Hatton
Rep. Richard Heath
Rep. Toby Herald
Rep. Dan Johnson
Rep. Kim King
Rep. Michael Meredith
Rep. Russ A. Meyer
Rep. Charles Miller
Rep. Robby Mills
Rep. Rick G. Nelson
Rep. Sannie Overly
Rep. Melinda Gibbons Prunty
Rep. Bart Rowland
Rep. Steven Rudy
Rep. John Sims Jr.
Rep. Kevin Sinnette
Rep. Ken Upchurch
Rep. Jill York

LRC Staff: John Buckner, Chip Smith, and Emma Mills

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Interim Joint Committee on Tourism, Small Business, and Information Technology

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

Committee Activity

The Interim Joint Committee on Tourism, Small Business, and Information Technology held six meetings during the 2017 interim, three of which were at locations outside of Frankfort.

Kentucky's Angel Investor Tax Credit Program

The committee met at the Northern Kentucky Convention Center to hear presentations concerning capital investment for nascent companies, aviation opportunities, and the Riverfront Commons development in northern Kentucky and its impact on tourism and business development.

The director of the Kentucky Innovation Network at Northern Kentucky presented "Kentucky's Angel Investor Tax Credit Program: An Economic Development Success" with a focus on the entrepreneurship benefits of the Angel Investor Tax Credit Program. To foster a successful entrepreneurship ecosystem, it is important to develop and integrate key components: policy, finance, culture, supports, human capital, and markets. The Angel Investor Tax Credit focuses on cultivating investment capital in the state. Prior to the enactment of the Angel Investor Tax Credit, Kentucky-based businesses and start-ups tended to leave the state in search of

investment capital. By stimulating local investment possibilities, the passage of the Angel Investor Tax Credit program in 2014 was a game changer for investment in Kentucky businesses.

Since 2014, Kentucky has developed a vibrant and robust entrepreneurship ecosystem. The purpose of the Kentucky Angel Investment Tax Credit program is to encourage qualified individual investors to make capital investments in small businesses, create jobs, and promote the development of new products and technologies. Qualified individual investors making qualified investments in qualified small businesses may be eligible for incentives in this program. The commonwealth, through the *Kentucky Economic Development Finance Authority (KEDFA)*, allocates the income tax credits to qualified investors.

As evidence of the popularity of the program, it was noted that there has been a rapid increase in pace of approved tax credits by KEDFA. In 2015, \$3 million in annual allocated tax credits were approved over a span of 8 months, but in 2017, all \$3 million in tax credits were approved in 1 month. When the program started, there were only a few registered investing “angels,” mostly in the Lexington area, but as of 2017 there are 380 registered angels investing in 85 companies, with a total of 384 investments made. Some companies benefiting from the program are Wyzerr Inc., an online survey building company; Paper Water Bottle, an eco-friendly packaging company; and Bexion Pharmaceuticals, a pharmaceutical company focusing on cancer research.

Aviation Is Rockin’ Kentucky!: General Aviation’s Impact on Economic Development

The commissioner and deputy commissioner of the Department of Aviation, Transportation Cabinet, and an unmanned aircraft systems (UAS) engineer presented “Aviation Is Rockin’ Kentucky!: General Aviation’s Impact on Economic Development” to highlight Kentucky’s importance to the nation in aviation innovation and expansion.

The commissioner discussed the expansions taking place at Cincinnati/Northern Kentucky International Airport (CVG). DHL’s recent \$108 million expansion of its cargo hub at CVG has resulted in 900 additional employees. Amazon, as well, recently announced a \$1.4 billion investment to build its primary hub with CVG, which will support more than 100 Prime Air cargo planes. Southwest Airlines began offering 55 weekly flights from CVG in early June. These expansions will be an economic boon for the greater northern Kentucky area, similar to what happened in Louisville after the UPS expansion. It was noted that the number 1 export from Kentucky is aerospace aviation parts and components.

The commissioner also highlighted aerospace initiatives being developed through state university education programs. For example, Morehead State University’s Space Science Center has become an important center for research in nanosatellite technologies. In partnership with NASA, Morehead has developed a nanosatellite with a research mission to find ice on the moon.

The General Assembly and Governor helped tremendously by allocating \$10 million from the general fund for fiscal year 2017-2018. By doing that, they have changed the face of general aviation in Kentucky for a decade. The \$10 million helped catch up deferred maintenance on the

general aviation airports across the state. The Department of Aviation will also be requesting an additional \$10 million per year until FY 2019-2020.

The Department of Aviation is responsible for 59 airports in Kentucky, 53 of which are general aviation airports. The department is also responsible for 250 private airfields and heliports. In relation to unmanned aircraft systems (drones), the department has also been designated the state government clearinghouse for all drone-related activity. In practical terms, the department meets with a multicabinet working group that reviews aviation issues around the state, builds drones in-house to provide assistance to other state departments, and actively recruits UAS/drone-related businesses to Kentucky. The department is also responsible for training state employees to fly drones safely and successfully according to Federal Aviation Administration (FAA) rules. The department's goal is to have five to seven drone pilots and enough equipment in the department to provide drone aerial coverage to state entities in need of assistance. One example of new UAS/drone-related opportunities coming to Kentucky is the new USA Drone Port in the Hazard area, where companies can test and make drones. The port will also be used as a training facility to learn how to fly drones according to FAA rules.

Riverfront Commons Story Map

The president of Southbank Partners, a principal with Strategic Advisers LLC, and the president/CEO of the MeetNKY/Northern Kentucky CVB gave an update on the Northern Kentucky Riverfront Commons Story Map. The president of Southbank Partners said that the group is a nonprofit organization that does economic development for six cities along the Ohio River—Fort Thomas, Dayton, Bellevue, Newport, Covington, and Ludlow—with an interlocal agreement to develop the riverfront in all of these communities. Riverfront Commons is intended to be an 11-mile walking and biking trail along the riverfront lined with businesses and shops to attract tourism to northern Kentucky. A video presented a thorough explanation of the project to the committee. The trail system will connect with the Northern Kentucky Convention Center and will help attract tourism and conventions to the area. A convention involving 300 to 400 people for 3 to 4 days could bring in \$500,000 in visitor expenditures. The website will also be updated as construction is completed.

Tourism, Arts, and Heritage Cabinet FY 2016-2017 Performance Highlights

The secretary of the Tourism, Arts, and Heritage Cabinet spoke about the cabinet, its agencies, and its challenges. All of the state-funded agencies within the cabinet did better than budgeted and will give back a total of \$3.5 million to the state general fund, primarily because of improvement in parks. The cabinet met the goal of a 9 percent overhead cut and has improved customer satisfaction scores. The secretary introduced members of his staff and highlighted the accomplishments and hard work of the employees of the cabinet's agencies.

The secretary discussed public-private partnerships (P-3), which enable the state and cities to secure capital to get projects completed. Kentucky was the last state in the region to have P-3 legislation. There are 11 active projects, including two private requests for proposals that would enable private partners to use and maintain state property, generating income for the state.

In regard to development in Jefferson County, the secretary mentioned the approved name change of the Kentucky State Fair Board to Kentucky Venues to help solicit new business from around the country. An update was given on the Louisville International Convention Center's \$207 million renovation and expansion; the center will reopen in July 2018. This project has spurred the development of many hotels in Jefferson County.

The secretary spoke about the Kentucky Horse Park. Revenue is up 5.6 percent at the park and \$450,000 ahead of budget. In the future, the park is looking to own events in addition to renting facilities for outside events such as the Rolex Kentucky Three-Day Event. The United States Equestrian Federation signed a 40-year ground lease on 3 acres of land. The lease allows the federation to construct a two-story office building of approximately 35,000 square feet; construction will begin in late 2017.

The secretary spoke about the Department of Fish and Wildlife. The emphasis of the department is not only hunting and fishing but also conservation. An example of the department's conservation work is the elk herd expansion in eastern Kentucky. The department began 20 years ago with a small herd that is up to 10,000 elk now, which will be a big draw for eastern Kentucky. Besides elk, the Department of Fish and Wildlife stocks 6 million fish per year in ponds, rivers, and lakes around the state. The department is entirely self-funded through fishing and hunting licenses. Among the challenges facing the department is Asian carp, an invasive species of fish increasingly found in Kentucky waterways.

The deputy secretary of the Tourism, Arts, and Heritage Cabinet discussed the Kentucky Travel and Tourism Agency, which is the marketing arm of the state. Tourism is the 3rd largest revenue-producing industry in Kentucky, with a \$14.5 billion economic impact in 2016. Tourism provides 193,000 jobs, generates \$3.1 billion in wages, and supplies \$1.4 billion in tax revenue. Kentucky has many diverse tourism options, from outdoor recreation to horses to faith-based tourism destinations such as Ark Encounter. The fastest-growing segment of Kentucky tourism is international tourism, which the cabinet has aggressively sought.

The deputy secretary reviewed the Heritage Council, emphasizing the impact of the Historic Preservation Tax Credit. Since instituting the tax credit 10 years ago, Kentucky has seen \$900 million in private investment in historic properties around the state. The deputy secretary pointed out that 2015 saw \$300 million in investments due to the Enhanced Tax Credit, which applied to Jefferson and Fayette Counties only. The Heritage Council recently moved to the Barstow House, adjacent to the Thomas D. Clark Center for Kentucky History. The move provides income for the Kentucky Historical Society and better preservation and security for historic documents from across the state. In addition, the cabinet will be looking for funding to digitize documents that the Heritage Council oversees.

The Historical Society has seen a 28 percent increase in revenue, mostly due to facility rentals, proactive marketing, the Local History Trust Fund, and revenue from historical markers. The society has a new exhibit called "The People of Kentucky" to celebrate Kentucky's 225th anniversary. The society is embarking on a statewide listening tour to hear stories about what residents think about Kentucky. The tour will also visit Governor's Scholars at Murray State

University, Northern Kentucky University, and Morehead State University to speak with students in the program.

The secretary discussed the Kentucky Tourism Development Finance Authority, which focuses on economic development. In the last year, the authority has worked on 10 projects. The authority has helped with financing of visitor centers at breweries and distilleries around the state, as well as the Ark Encounter facility. It is active in developing the film industry.

Some of the most substantial improvements this year have been to the park system. For FY 2017, the state sold over 9,000 more hotel rooms than in 2016 and increased revenue by \$2.1 million over 2016, for a total economic impact of \$889 million, even though two of the largest lodges were closed for renovations.

Kentucky State Parks' \$18 Million "Refreshing the Finest" Update

The commissioner of the Department of Parks testified about state parks. There are 49 state parks, 17 resort parks, 14 golf courses, 785 full-time staff, and \$93.1 million generated in tax revenue. There is \$240 million in deferred maintenance costs. The state granted the park system \$18 million to help with safety and aesthetic upgrades, of which 69 percent has been used. Examples are upgrades to Barren River Lake State Resort Park (electrical repairs, lodge upgrades, pool upgrades), Blue Licks Battlefield State Resort Park (pool upgrades, new museum roof), and Buckhorn Lake State Resort Park (upgrade to convention center interior, support beams and roof work, cottage repairs). Jenny Wiley State Resort Park and Greenbo Lake State Resort Park were shut down to upgrade facilities.

The Department of Parks is trying to work with foundations and advocacy groups to improve parks. In the last year and a half, friends' groups have raised and invested \$1.4 million for park and marina upgrades. For example, Lake Malone's marina needed to be condemned because of lack of state funding to maintain the marina. A local group raised enough money to build a new marina without state funding.

The department also partnered with Expedia.com to improve lodge room sales this year. Room sales improved roughly 8 percent almost immediately with this partnership. There are plans to expand the department's presence on the Internet in the near future. The department has hired hotel management professionals who provide up-to-date management ideas and practice.

Although needed repairs have been made to park structures, there are still problems to address. The cost of deferred maintenance for state parks is \$234 million. For example, the conference center at Old Fort Harrod State Park has been shut down because of rotted wood, mold, and leaks, and the My Old Kentucky Home amphitheater is in bad shape as well. The state holds \$391 million in insured assets in the park system. It is recommended that an amount at an annual rate of 2.20 percent be put aside for annual maintenance costs in the future.

Looking at FY 2017, the department was upbeat about trends and events affecting the state park system. In August 2017, thousands of tourists were expected in western Kentucky to

experience the full solar eclipse. The parks expected strong bookings and high occupancy rates at lodges around the state.

“Rails to Trails”

In August, the committee met at Knott County Central High School to hear presentations concerning Rails to Trails.

Rep. Chris Fugate and representatives from WMTH Corporation and the Kentucky River Area Development District spoke on behalf of the “Rails to Trails” project in eastern Kentucky. The Rails to Trails project was created by 2017 House Bill 156 in order to invest state dollars in eastern Kentucky with the creation of the Kentucky Mountain Regional Recreation Authority (KMRRA). To make the project viable, 16 counties were needed to pass resolutions agreeing to take part in KMRRA, and 18 counties have already passed resolutions to participate.

The KMRRA board rotate members annually, because of the number of interested parties. KMRRA wants willing landowners to participate and stated that the authority “shall not acquire property through the exercise of power of eminent domain.”

There are similar authorities in neighboring states. West Virginia’s authority has seven public off-highway vehicle (OHV) trails totaling nearly 600 miles, and it sold over \$1.7 million in permits in 2016. Over 96 percent of the permit sales were to riders from outside the region. Since 2013, Virginia has opened five public OHV trails totaling just over 300 miles with over \$18 million in private investment, creating nearly 300 new jobs. Last year, West Virginia and Virginia received funding for their trails from the Appalachian Regional Commission (ARC). In order to be fully funded, the KMRRA will need to push for both ARC grants and abandoned mine land grants. Grant applications, however, cannot be submitted until the KMRRA board meets. A KMRRA board meeting is called by the local governments involved.

Once grant money has been secured, a detailed business plan will be developed to include an inventory of all existing and potential trails in all participating counties to identify priority projects for greatest initial gain. Kentucky has nearly 300 miles in public trails that could be integrated into KMRRA. If grant money is secured and a comprehensive plan is put forward, KMRRA could be self-sustaining in 2 to 4 years based on projected earnings from trail permits sold in Virginia and West Virginia. Projected expenses of starting the trails, again based on expenses incurred by Virginia, would cost approximately \$740,000. If the applications for federal grants are approved, KMRRA will not be asking for any state money to fund the project.

In Perry County, officials have received positive feedback from landowners about the trails. The project is an opportunity for Eastern Kentucky to see economic growth.

Hunting

The commissioner and deputy commissioner of the Kentucky Fish and Wildlife Commission spoke about hunting and fishing at the August meeting at Knott County Central High School. They began with statistics regarding hunting- and fishing-related tourism. There are more

than 700,000 hunting and fishing license holders in the state. Recently, the Outdoor Industry Association announced that the economic impact of outdoor recreation in Kentucky totaled \$8.8 billion in 2016. The outdoor recreation industry also supports 120,000 jobs and generates \$756 million in state revenue. Fish and Wildlife, as a department, receives no general fund revenue; all operations are supported by hunting and fishing license sales, federal match money, and boating registration fees.

Elk. From 1998 to 2002, the first elk herd was reintroduced to Kentucky, numbering 1,540 elk. The current elk herd is officially the largest herd east of the Rocky Mountains, at nearly 10,000 animals. Kentucky has also become a donor state, meaning elk originating in Kentucky have migrated or have been intentionally moved into Virginia, Wisconsin, Missouri, Arkansas, Tennessee, and West Virginia. The permit lottery system, otherwise known as the Elk Draw, averages about 700 hunting permits per year. In addition, to the draw, the department provides for 10 youth permits, 10 commission permits, and 44 landowner permits.

Commission permits are provided to 501(c)(3) nonprofits specializing in outdoor education and youth outdoor education. Such permits have been raffled off at fundraisers to benefit the nonprofits.

Landowner permits are awarded in two ways. If a landowner of 5,000 acres or more enrolls in the department's Hunter Access Program, making his or her land publicly available for elk hunting, the landowner will be rewarded with one "either sex" elk tag. For small landowners, there is a voucher program in which hunters are allowed on the land to hunt and harvest a bull (2 points) and a cow (1 point). Once the landowner reaches 20 points, the landowner will also receive a tag. In addition, there is a trapping program for small landowners. This program allows Fish and Wildlife to trap elk on land provided by the owner. The objective is to evaluate and possibly relocate elk to parts of eastern Kentucky that could support elk herds.

A "preference point" permit system is preferred in the western United States but, because Kentucky's herd is relatively small, this system would not distribute the permits as fairly as Kentucky's current lottery system. Fish and Wildlife is looking into options to make the lottery draw more transparent. The Commonwealth Office of Technology performs and certifies the Elk Draw, but Fish and Wildlife is looking into having an outside organization perform and certify the draw at a public venue.

Deer. In 1927, Kentucky had a deer population of approximately 10,000. From 1945 to 1999, the state actively tried to restore the numbers of the deer herds. Now there are deer-hunting opportunities in all 120 counties. Kentucky has one of the best-quality deer herds in the United States and has been recognized as one of the top five locations for deer hunting in the country. The deer herd has an economic impact of \$553 million in the state, and the industry provides 13,000 jobs.

The current deer herd in the state runs from 800,000 to 1 million animals. This number fluctuates based on the amount of natural food on the ground. Kentucky has four zones with different limits on how many antlerless deer a hunter may take. Regardless of zone, a hunter is permitted only one antlered buck per season.

With improved numbers in the deer population comes the increased likelihood of disease and deer collisions. Because of the increase in deer-related accidents, the department is considering liberalizing the numbers of permitted deer kills on a county-by-county basis. To that end, a deer working group has been established to evaluate events affecting the deer population. For example, the working group has been following an outbreak of epizootic hemorrhagic disease affecting the deer herd. This working group is made from a wide variety of interested parties, including legislators, hunters, citizens, Farm Bureau personnel, and urban constituents to provide feedback on herd management. The working group has discussed items such as deer permit modifications, expansion of hunting methods, and liberalization of zone intakes.

Bears. Historically, logging in the US and Kentucky negatively affected bear habitat and bear numbers. There are sections of Kentucky that have a relatively high population of bears or core bear range. These areas have established practices that people follow in order not to attract bears, such as using special containers for food and trash and not leaving pet food readily available. Bears do appear in other parts of Kentucky, though not as frequently. Most bear sightings outside the core bear range involve 2-year-old males that have been kicked out of their family group.

For the 2017 bear hunting season, the department has established three zones. Zone 1 is the core bear area. The quota is 50 bears per season. Kentucky's bear population is increasing, so the harvest quota has increased. Female bears are being collared to count how many cubs are born during the winter.

Asian Carp. One of the greatest challenges facing the Tourism, Arts, and Heritage Cabinet in 2017 is Asian carp, an invasive species of fish threatening the food chain of native species such as bass and crappie. Asian carp can grow to 80 pounds. The Department of Fish and Wildlife is focusing on Kentucky Lake and Lake Barkley because of the level of infestation there; they are the only reservoirs known to have Asian carp. The carp also live in every tributary of the Mississippi and Ohio Rivers.

The department's plan is to control the population by mass harvesting. Three processing centers exist in Kentucky, and they are looking to expand. In 2016, 2 million pounds of Asian carp were harvested in the state. The department would like for the annual harvest to be approximately 5 million pounds from the lakes alone to keep the fish under control. The department is looking at a public-private partnership solution by recruiting a new fish harvesting and distribution company to help reach the goal of processing more than 5 million pounds per year. An additional processing facility would ensure that commercial fishing boats will be able to offload the fish, which is not always the case right now. Another incentive to fishing Asian carp is that the state is offering 5 cents per pound in addition to the 15 cents per pound that the processing centers are paying for carp. The Department of Fish and Wildlife hopes these incentives will help kick-start a commercial fishing industry in western Kentucky focusing on Asian carp. The department would like to use minimal state incentives in the beginning stages of establishing the industry, but it plans to reduce the state's role quickly, phasing out incentives. The incentives budget is \$4.25 million over 6 years, including a first-year loan of up to \$1 million, grants available if harvesting targets are met, and interest forgiveness on the loan if harvest targets are met.

During the committee's November meeting, the commissioner of the Department of Fish and Wildlife emphasized that carp are a concern not only because they are a danger to boaters but also because of their severe effects on the ecosystems of lakes and rivers. Carp are an aggressively prolific species that competes with low-level food chain species such as shad, the major forage fish for sport fish such as bass and crappie.

Fish and Wildlife is looking at this threat as an opportunity as well. Carp, luckily, are in demand as a food item across the country. Carp meat has health-promoting oils similar to those in tuna and salmon, but without the mercury often found in those fish. Carp meat is also especially in demand in China, where river fish are laced with chemicals from polluted water. The fish is also used in fertilizers. The markets for Asian carp are currently receiving less than half of the supply of fish that they could use. The department feels there is a demand for up to 30 million pounds of carp to meet the demand of carp-based industries in Kentucky.

Fish and Wildlife has established a permanent six-person research unit to track the fish; the department will maintain research staff on Asian carp as long as the fish are a problem. In addition, commercial fishermen are training other fishermen who want to get into the market, and the department has purchased a 10-ton commercial ice machine to meet the need of commercial fishermen to ice the fish down for transportation to a processor

High Technology

The committee met in Frankfort and received testimony regarding the application of high technology by businesses.

Representatives from Ocular Data Systems Inc. spoke about new technologies available to police officers and employers to allow them to better evaluate impairment by observing ocular responses. Statistics were presented about the number of people killed across the country as a result of impaired driving. In many states, prescription pain medication and illicit drugs have overtaken alcohol as the main cause of impaired driving. Considering this change, the Standardized Field Sobriety Tests (SFSTs) may not be adequate to testing for all substances causing the impairment of drivers. The most reliable SFST is the Horizontal Gaze Nystagmus eye test, where an officer uses a light source to look for nystagmus, an eye jerk that indicates a neurological deficit that could indicate impairment. In response to the prevalence of drugs on highways, the National Highway Traffic Safety Administration has prepared the Drug Evaluation Classification Program, another protocol to determine whether someone is impaired by drugs. Drug recognition experts in this program are qualified to administer this evaluation to determine what classification of drugs a person may be using. The most reliable indication of impairment for drug recognition experts is ocular testing.

Several indicators can determine whether someone is impaired, such as rebound dilation of the pupil, eyelid tremors, and enlarged pupils. Impairment under drugs affects the ability to see clearly, cognitive function, and coordination. Ocular Data Systems' DAX camera technology allows the user to get detailed images of pupillary reactions of someone suspected of being impaired by drugs or alcohol. The advantage of these images of pupillary reactions is that judges or juries could see the physical response in a person, instead of relying only on police testimony.

DAX technology allows police and lawyers to preserve film evidence in cases involving impairment.

The CEO of Ocular Data Systems discussed use of the DAX camera in a workplace environment and how the technology could be an enhanced tool in real time, alongside more traditional ways of testing for drugs or alcohol, for evaluating fitness for duty in the workplace. The committee then viewed a video showing examples of pupillary responses to a variety of drugs. Unlike tests for blood or other body fluids, the camera is noninvasive. The technology detects impairment from drugs and impairment from fatigue.

Kentucky Travel Industry Association

Presenters from the Kentucky Travel Industry Association (KTIA) discussed the importance of Kentucky's tourism economy and the benefits it provides the state.

A presentation regarding the importance of convention and visitors bureaus (CVBs) focused on their role in recruiting tourists to local communities. Committee members received an overview of how CVBs were established in the state and the kind of funding they receive. CVBs are special-purpose governmental entities authorized by state statute and established by local city and/or county ordinances. The marketing budget for tourism is funded by a statewide room tax; CVBs are funded by local room taxes and a small portion of a 1 percent matching fund from the state. Continuous funding is key to selling Kentucky as a product. Kentucky ranks in the bottom third in the nation for funding tourism, and the state struggles to be competitive with other state destinations.

The purpose of local CVBs is to attract visitors to communities. Their work includes paid advertising, origination of messaging through websites and social media, and proactive generation of coverage through magazines and digital channels. CVB staff attend trade shows and conventions, conduct tours, and provide services to the community.

The owner of Mint Julep Tours, Louisville, provided some context about how a local tourism business cooperates with CVBs. He highlighted Mint Julep Tours' expansion plans, its tax responsibilities to the state, and its use of Internet-based technology to enhance business and make tourism easily accessible to visitors. In 2014, Google recognized Mint Julep Tours for the company's use of technology to benefit local economic development. Tourism builds brands, and the brands are the pinnacles of what makes Kentucky's economic engine grow. These Kentucky brands help build social capital, generating interest in Kentucky as a tourist and convention destination. The industry is changing rapidly, because of information technology.

The executive director of the Newport Aquarium spoke about northern Kentucky tourism and how local CVBs affect local business. The Newport Aquarium, which is owned by Herschend Family Entertainment, is consistently rated as one of the top five aquariums in the United States. Family travel, meeting and convention travel, and organized group travel have all seen strong increases. Out-of-state visitors represent two out of every three visitors to the Newport Aquarium. The partnership of Herschend Family Entertainment, the Northern Kentucky CVB, the Cincinnati

Area Regional Tourism Network, the Kentucky Department of Tourism, and KTIA multiplies the business efforts to drive tourism to northern Kentucky.

The executive director of the Paducah CVB discussed additional points about CVBs. CVBs work to create identities based on the culture of a town or specific destination to drive marketing, as is the case in Paducah. Based on Paducah's history with quilting, the city applied for and received the designation as a Creative City of Craft and Folk Arts from the United Nations Educational, Scientific and Cultural Organization (UNESCO), an arm of the United Nations. There are only six of these cities in the United States. As an international recognized city for creative arts, Paducah has a unique platform to promote tourism in Kentucky. Paducah is hosting the first UNESCO Creative Cities Conference to be held in the United States. There are registrants from countries including South Korea, Italy, Saudi Arabia, China, and Mexico as well as media from across the country to participate in this conference. For every dollar invested in advertising, \$151 is generated in visitor expenditures and nearly \$16 in local and state tax revenue. These taxes are vital to the local economies, and the state has been urged not to redirect or reduce the funds generated by the state and local transient room taxes and by the local restaurant taxes.

USA Drone Port

The president of Hazard Community and Technical College introduced a group from USA Drone Port and thanked the committee for allowing them to speak. She voiced appreciation to the senators and representatives from eastern Kentucky who have been supportive of the drone port project. The president spoke about the economic challenges facing eastern Kentucky and what Hazard Community and Technical College has done to address those challenges for the community. Some of the assets of eastern Kentucky are the terrain, the remote location, and the amount of unregulated Class G airspace. The group began talks with businesses in the drone industry, the federal Department of Defense, and Oak Ridge National Laboratory about how eastern Kentucky could become a hub for drone research and development.

The drone port project in Perry County is a \$15 million project that has been split into phases. The first phase will require \$5 million to build an indoor drone facility. The finished project will include a runway, a training and development center, an area for research and development, aquatic drone space, and space for manufacturing and repair. The drone port activity mostly involves training with drone technology, including FAA Part 107 regulations for commercial drone pilot licensees, drone races, videography classes, and search and rescue training missions.

The director of the National Unmanned Robotic Research and Development Center at Hazard Community and Technical College discussed the drone port project. He described the conception of the project and how the group made the idea possible with partners in higher education and within the industry. Other facilities have one or two amenities for drone users but, unlike any other facility in the nation, the Perry County drone port project would have all of the amenities that organizations or individuals using the technology could need. Thanks to local interest, enough land has been donated to the facility to make the project possible.

Drone technology is rapidly advancing. The drone port project group would like to be able to expand in the future in order to accommodate such advances. Recently the Federal Aviation

Administration released the pilot certificate to allow people to achieve their commercial pilot's license and to fly in regular airspace. China holds 82 percent of the consumer market for drones. The United States military is now looking for American-made drones, and some of the manufacturers are interested in using the drone port in Hazard. USA Drone Port has also recently started looking for programmers and engineers to work with international clients.

The Perry County judge/executive spoke about community involvement with the project. He said that this is an opportunity for eastern Kentucky to lead in a global industry. Features of eastern Kentucky that were once considered drawbacks (terrain, remote location, and lack of major airports) are now desirable features for drone technology. The project group is also partnering with Perry County Schools for usage of older school gyms to be converted into temporary indoor drone facilities. The group is seeking funding through grants, but it also hopes to see some investment of state funds into the project.

New York has begun investing \$1.5 billion in renewable energy and infrastructure. Of that amount, the state has set aside \$30 million for a 50-mile drone corridor between Griffiths Air Force Base and Syracuse. An additional \$30 million has been set aside to establish a "world leading unmanned aircraft systems traffic management system" in central New York. The industry is quickly expanding. For example, in Kentucky there were 233 licensed pilots as of January 2017. By April 2017, the number had increased to 390 licensed pilots. Tennessee had 405 licensed pilots as of January 2017, increasing to 618 by April 2017; Indiana had 302 licensed pilots in January 2017, increasing to 532; and Ohio had 608 licensed pilots in January 2017, increasing to 978 during the same period. With this rapid expansion and advanced technologies, the FAA is loosening some federal regulations, opening up opportunities for innovation in the industry.

Movies and Television

The committee met at Asbury University to tour its media center and hear testimony about the economic benefits of television and film production in the state. The president of Asbury University gave a brief overview of the university and thanked members for continuing to invest in the progress and development of the commonwealth.

Asbury University was founded in 1890 and at the time was one of few institutions that admitted women. In the early 1900s, it began offering business and commerce courses, which were uncommon during that period. Presently, half of the students come from out of state, and 16 percent of those students become Kentucky residents upon graduating. The president commented on the recent partnership with the Kentucky Film Commission, which has led to the creation of a certification program that will increase the labor force in the film industry. An invitation was extended to return to the university to explore other programs, such as the equine program, the Howard Dayton School of Business, and the School of Education.

The dean of the School of Communication Arts and professor of media communication stated that the school has approximately 450 students majoring in programs such as journalism, theater and cinema production, worship arts, and media communication. Students majoring in media communication constitute nearly half of the School of Communication Arts. Media communication students have the opportunity to study areas of film, television, multimedia, media

performance, media management, audio, and production design. The academic excellence of the program can be attributed to a combination of education, experience, and industry recognition of the faculty that includes production design, sitcom directing for various networks, national Emmy awards, and honors for work on the National Geographic Channel and Smithsonian Channel.

Kentucky Film and Digital Media Industry Efforts and Opportunities

The judge/executive of Hart County gave a local perspective of the economic impact seen in his area from the film tax incentives that the General Assembly approved in 2015. Several projects have been filmed in Hart County and surrounding counties, including one for the Hallmark Channel called *An Uncommon Grace*, which added approximately \$500,000 to the local economies. Producers selected the area because of the beautiful scenery, the hospitality of the residents, and the level playing field that was created by the tax incentives for film production. As a result of the completion of projects such as *Mail Order Monster* and *Runaway Romance*, Hart, Barren, Warren, and Edmonson Counties created the Southern Kentucky Film Commission to assist in attracting film producers to southern Kentucky. Although the introduction of the film industry as a new form of revenue for southern Kentucky is nontraditional economic development, it has the potential to add jobs in businesses that will be needed to supply materials and services to film production teams. In an effort to continue film industry development in the commonwealth, a new infrastructure is needed, as well as the training of Kentuckians in order to provide a skilled film industry workforce. He suggested production studio being located in southern Kentucky, internships and co-ops being offered to high school students, and training being done throughout the Kentucky Community and Technical College System.

The director of Harlan County Tourism gave a local perspective about the possibility for film production to become a viable industry in the state. *Above Suspicion*, with a budget of \$13.5 million, was the largest-budgeted film to come to Kentucky since *Secretariat*, and it was recently filmed in Harlan County. After learning that the movie would be filmed in Harlan County, tourism officials and the community focused on ensuring that the county would be equipped with the proper resources, tools, and skills to become a film host. The positive economic impact of being a film host can benefit local restaurants, hotels, law enforcement, laundry facilities, rental car companies, and even construction businesses. Residents also rented out their homes and were compensated for being extras in the film. Harlan County saw a \$3 million economic impact during the filming of *Above Suspicion*. Displaced coal mine workers can also be funneled into the film industry by using them as electricians, carpenters, and painters.

The chief operating officer of Post Time Studios offered a film industry viewpoint by giving an overview of the company and its involvement in film production. Post Time Studios is a full-service production company that was established in Lexington in 1993. In 2003, it was one of the first production studios in the region to have a high-definition editing system, which over the years led to an increased volume of clients and productions.

There are two primary reasons that Post Time Studios has been successful. First, the studio considers its clients as partners, which allows for returning and continued business. Second, Post Time Studios is not industry specific, and its productions include a wide variety of projects in areas such as long form, short form, documentary film, marketing, training, safety, health care, tourism,

and athletics. Most of the staff who make these productions possible are Kentucky residents, and several are Asbury University graduates. In the last 2 years, the company has doubled its number of employees and moved into a larger facility. The new facility and increased staff have helped to attract productions with larger budgets. Studio representatives expressed optimism about the current climate of the film industry in the state, which will continue to develop, in part because of the film tax incentives. The incentives help with overall production plans, investments, and local spending; they lock productions into longer contracts, which in turn can provide employment opportunities; and they generate new tax revenue for the commonwealth.

The executive director of the Kentucky Film Association gave a detailed overview of Kentucky's Film Tax Incentives program, statistics and growth projections about the film industry since the incentives were passed in 2015, and industry needs. The purpose of the provisions in KRS 148.544 was to encourage the film and entertainment industry to choose locations in Kentucky for filming and production, increase employment opportunities within the film and entertainment industry in the state, and develop a production and postproduction infrastructure in the commonwealth. Since the start of the program in 2009 there has been 900 percent growth in the number of productions coming to Kentucky. Additionally, after the modifications of the film tax incentives, 20 productions were completed in 2016 that generated \$32 million in new economic activity, created 384 new jobs, and yielded approximately \$3.2 million in new tax revenue. Thus far in 2017, there are 111 productions currently approved and there has been a 169 percent increase in growth from previous 12 months. Projections were completed by the Kentucky Film Association for 2017 and 2018 using actual data from 2016 and taking into account variables such as percentage of productions approved, percentage of productions completed, production periods, and cost of projects. It is projected that 33 projects will be completed in 2017 that could generate \$86 million in new economic activity, create 1,038 jobs, and yield \$8.6 million in new tax revenue. It is projected that projects completed in 2018 could generate \$146 million in new economic activity, create 1,754 jobs, and yield \$14.6 million in new tax revenue. The executive director said that, in order for the film industry to continue to thrive in the state, the film workforce must be expanded to increase the crew base, dislocated workers must be retrained to maximize skills that can be used in the industry, and an infrastructure must be more fully developed, specifically with a studio locating in Kentucky.

Tourism, Arts and Heritage Cabinet

The deputy secretary of the Tourism, Arts, and Heritage Cabinet expressed her thoughts on the film industry and the opportunities it affords to dislocated workers and others. In 2016, 455 original scripted shows and 718 films were released nationwide. The film industry employs 2 million people, with wages of approximately \$51 billion. Between 2011 and 2016 the industry saw an annual growth rate of 2.7 percent, and there is a projected growth from 2016 to 2021 of 3.1 percent. In Kentucky from 2009 to 2015, the film industry spent \$16 million, directly supporting 192 jobs. The total investment made by the industry since 2016 is \$46 million, directly supporting 552 jobs. That figure includes jobs related directly to the production itself, but not jobs in ancillary industries that service the film communities.

The film industry in Kentucky will be successful only if it maintains three components: film incentives, crew, and studios. The Kentucky Film Incentive is a 30 percent to 35 percent

refundable tax credit. There is a 35 percent refundable tax credit for filming in an enhanced-incentive county. Counties are certified or decertified every year based on factors such as unemployment rate and median income. From all the applications received by the Office of Film and Tourism Development, production companies have identified 60 out of 120 counties as potential film locations. The crew component is being fulfilled by developing the film industry workforce through the Kentucky Film Certification Program. The program, recently announced by Asbury University, consists of online training modules and hands-on training at a local university or production company. The third factor involves constructing studios in the commonwealth. Every \$1 million in studio construction will support 10 jobs, have an economic impact of \$1.6 million, and direct an additional \$600,000 in sales to other businesses. For every 100 jobs created by having studios, 80 additional jobs are supported in other businesses and there is a \$25 million economic impact. Some studios have had apprehension about locating in Kentucky because of the lack of crew base and the uncertainty of the stability of an incentive program. Benefits of a successfully developed film industry include positive changes to the perception of Kentucky, an increase in film tourism, and potential city revitalization of film communities across the state.

VisitLEX

The president of VisitLEX discussed the status of the tourism industry in the Lexington area and several Lexington and Fayette County projects and expansions. The Lexington area employs approximately 26,000 people in the hospitality industry, and that number is expected to increase.

The Lexington Convention Center expansion is progressing, due in part to 2015 legislation that loaned \$60 million for its expansion. Construction will start in spring 2018 and is scheduled to be complete in about 45 months. The expansion will include an additional 100,000 square feet of contiguous exhibit space and a 25,000 square foot ballroom. The old Fayette County Courthouse is being renovated, with an expected completion date in 2018, and will house administrative offices and a visitors' center for VisitLEX, offices for the Breeders' Cup, and a restaurant. Construction for Centerpointe in downtown Lexington is also under way; the project will include a Residence Inn, a full-service Marriott, restaurants, and retail space.

The hospitality industry uses occupancy, average daily rate, and revue per average room for market analysis. For 2017, all three of these areas have increased from previous years' statistics. The revenue per hotel room is up 5.7 percent, and Lexington has 7,790 hotel rooms in 70 properties.

Agreements by Fish and Wildlife, Wildlife Management Areas, and Ducks Unlimited

The commissioner of the Department of Fish and Wildlife Resources reviewed a new departmental initiative to improve waterfowl and wetlands facilities. The goal is to attract bird watchers and duck hunters to western Kentucky wetlands. The department will initially invest over \$2 million into the project. Some of the objectives of the project include coordinated leadership to achieve the vision of making western Kentucky the Duck Hunting Capital of the World, involvement of the public in planning and implementation, coordinated land management on a

multistate level, a total remake of the Ballard, Boatwright and Doug Travis Wildlife Management Areas, provision of more hunting and recreational opportunities, and enhancement of waterfowl use.

The area of concentration for the project includes the Ballard, McCracken, Carlisle, Hickman and Graves County wetland areas in conjunction with areas in southern Illinois and eastern Missouri. People come from all over the United States to hunt in this area. Many old water control structures (levees, stopgap log structures, and water pumps) need to be renovated or replaced as part of the project.

Ducks Unlimited, a prominent waterfowl organization, is one of the partners in the project. Ducks Unlimited is investing approximately \$500,000 in the project, on which the state can leverage an additional \$1.5 million in federal grants to fund the initiative. Ducks Unlimited has managed to conserve about 12,816 acres of land for waterfowl. It has had a presence in Kentucky since the 1980s and has funded a variety of projects.

The commissioner emphasized that a coordinated regional planning team will establish the best plan for implementation. Four implementation teams in the area will conduct and participate in wetland reviews—holistic reviews of water management with scientists and engineers from across the country. The implementation teams then create a plan to present to local residents for feedback based on their experience living in the wetland areas. This same organizational plan is also being used for mirror wetland projects in southern Illinois and eastern Missouri.

**Report of the 2017
Interim Joint Committee on Transportation**

**Sen. Ernie Harris, Co-Chair
Rep. Marie Rader, Co-Chair**

Sen. Joe Bowen
Sen. Jared Carpenter
Sen. C.B. Embry Jr.
Sen. Jimmy Higdon
Sen. Paul Hornback
Sen. Gerald A. Neal
Sen. Dorsey Ridley
Sen. Albert Robinson
Sen. Brandon Smith
Sen. Johnny Ray Turner
Sen. Mike Wilson
Rep. Lynn Bechler
Rep. Tim Couch
Rep. Ken Fleming
Rep. Chris Fugate
Rep. Al Gentry
Rep. David Hale
Rep. Chris Harris

Rep. Toby Herald
Rep. Dennis Horlander
Rep. Kenny Imes
Rep. Dan Johnson
Rep. James Kay
Rep. Donna Mayfield
Rep. Suzanne Miles
Rep. Charles Miller
Rep. Robby Mills
Rep. Tim Moore
Rep. Darryl T. Owens
Rep. Rick Rand
Rep. Steve Riggs
Rep. Sal Santoro
Rep. John Sims Jr.
Rep. Jim Stewart III
Rep. Walker Thomas
Rep. Scott Wells

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

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

Interim Joint Committee on Transportation

Jurisdiction: Matters relating to airports and aviation; boats and boating; licensing of motor vehicles; operators and trailers; financial responsibility law; nonresident motorists; motor vehicle sales; railroad rates, service, and operating regulations; motor carriers; construction and maintenance of the state highway system; the Department of Transportation; state aid for local roads and streets; the State Police; the Federal Highway Safety law; turnpike authority; state and federal highways; limited-access facilities; use of road bond money; automobile recyclers; highway beautification; bridges, tunnels, and ferries; traffic regulations; vehicle equipment and storage; and driver training schools.

Committee Activity

The Interim Joint Committee on Transportation met six times during the 2017 Interim.

Implementation of Legislation From the 2017 Session

The deputy commissioner of the Department of Vehicle Regulation and the director of the Division of Driver Licensing, Kentucky Transportation Cabinet (KYTC), testified about implementing legislation from the 2017 Regular Session. HB 192 encompasses how a foster child may be able to obtain a driver's license or a personal ID card. A hurdle that was once an issue was getting a court order that would make the foster parents fiscally responsible. HB 192 provided two paths to help with this process. In one path, a foster child is evaluated with a nine-page form through the Cabinet for Health and Family Services (CHFS) to ensure eligibility to further pursue the process. Then, a letter is issued that the foster parent will fill out in conjunction with the parent/guardian form, which allows a child to proceed with the process of obtaining a license. In the second path, CHFS gets an insurance policy so that a child who is in state custody but not under a foster parent can legally sign for and be protected under that policy. The cabinet is developing a request for proposals (RFP) to obtain this coverage. Until that path becomes viable, the foster parent form path is the only option.

With regard to HB 174 and HB 265, no KYTC action was needed other than communication with commercial vehicle enforcement to inform them of the changes in weight tolerance and the definition of nondivisible loads for state-maintained routes from an 8-hour dismount and disassemble to a 4-hour dismount and disassemble. Under HB 184, the metal commodity permit bill, a permit will benefit the growing aluminum and steel industries. It will be available online via the Drive.Ky.Gov website. A map of approved routes is being developed.

HB 27, a speed title bill, moves the timeframe for review of a title from 24 hours to 48 hours, giving staff adequate time to review those title applications before they are approved. HB 163, involving salvage titles for insurance companies, has been put into place with no foreseen issues. HB 270 involves the process that allows manufactured homes that have been converted to real property to receive a title through the filing of an affidavit of severance with the county clerk. The Kentucky County Clerks' Association is creating the affidavit of severance, the key piece needed for implementation of this legislation. HB 350 address eligibility for National Guard and Reserve

members who want to obtain veteran license plates; the bill reduces the active duty requirement from 2 years to 180 days. No issue has been anticipated on this legislation.

HB 404 allows golf carts and low-speed utility vehicles to make commercial parcel deliveries. KYTC is to title and register such vehicles and ensure that they have commercial insurance on file. After KYTC addressed some programming issues, a commercial low-speed vehicle license plate was to be available. The timing should be acceptable because delivery services estimate that peak use of these vehicles occurs during the Christmas season.

SB 73 allows for titling and registering autocycles as motorcycles. KYTC is creating a new category for statistical and tracking purposes in the state registration system. The cabinet has contacted the Kentucky State Police to discuss either updating accident report forms to add an “autocycle” category or marking autocycles in the “other” category.

SB 122 involves allowing sons and daughters of veterans to obtain Gold Star license plates. The effective date is January 1, 2018, and no issues are anticipated.

SB 176 allows for titling and registering high-mobility multipurpose military vehicles. KYTC reviewed inspection forms from other states and obtained feedback from military surplus owners. The cabinet anticipated being ready to title and register these vehicles by July 1, 2017. KYTC planned to work toward developing a necessary regulation.

SB 189 involves placing a “deaf or hard of hearing” indicator in the Automated Vehicle Information System to notify law enforcement officers when they have stopped a motor vehicle operator who may be deaf or hard of hearing. The anticipated date of implementation of SB 189 was August 2017.

Implementation of Changes to Driver’s Licenses (HB 410)

KYTC gave an update on HB 410, which addresses enhancement of driver’s licenses. KYTC received a response from the US Department of Homeland Security, which had allowed a grace period for states that were under an extension set to expire June 4, 2017, so that it could continue to review extension requests. The grace period lasted until July 10, 2017. Circuit Court clerks continued to communicate with citizens on the issue, and KYTC continued to meet with the clerks as the process continued. The cabinet met with stakeholders such as the Transportation Security Administration (TSA), the Social Security Administration, Fort Knox, Fort Campbell, the Kentucky State Police, the Kentucky Board of Elections, and all Kentucky airports that have commercial flights. All of the stakeholders received an overview of the legislation, and communication was established for the continuation of the process.

The next deadline in the process was July 10, 2017, when the grace period ended. The cabinet developed an RFP work team; the deadline to issue the RFP was September 1, 2017. The cabinet’s goal is to select a provider by January 1, 2018, which will give the provider 12 to 15 months to fully implement the program. The next deadline for TSA and air travel is January 22, 2018. The final deadline will relate to gathering information on state-to-state verification; that issue will be addressed after the new system is rolled out.

At the September meeting, an overview was given of the guiding principles and details of HB 410. There will be no changes until January 1, 2019, and HB 410 will bring Kentucky into compliance with federal law. The creation of a voluntary travel ID (as an alternative to a driver's license) will entail stricter requirements and more documentation, but the travel ID will be valid as federal identification for domestic air travel and admission to military bases. HB 410 greatly improves security and reduces fraud by going from 120 issuance authorities to a sole legal point of issuance, the Kentucky Transportation Cabinet. KYTC will ensure that personal identity information is stored only in state databases that are not shared with other states or the federal government, except for the strictly limited purpose of driver's license fraud detection. The 4-year license renewal schedule will change to an 8-year schedule. Circuit Court clerks will photograph applicants, scan documents, and transmit data to a single issuance point that meets the highest security standards. Customers will receive temporary licenses that will be good for 30 days or until the permanent license comes in the mail, usually after 5 to 10 days.

An update was given on the status of the new extension request submitted to the US Department of Homeland Security, which will allow Kentucky to continue using current licenses for 12 months. The extension will allow the state to get almost all the way through the implementation process. A driver's license vendor proposal was issued, and KYTC hoped to have a contract by December. There has been ongoing and extensive communication with many organizations that have an interest in the driver's license system. KYTC is partnering with all circuit clerks to provide in-person public presentations in all counties by the end of 2018. A cost-effective comprehensive public information campaign will be developed to ensure that all Kentucky drivers are aware of the document requirements and the date of license renewals. At the November meeting, the Department of Homeland Security was reported to have granted Kentucky an extension until October 10, 2018.

The assistant director of KYTC's Customer Services Division addressed the cabinet's communication efforts concerning the implementation of new legislation. There are three approaches to informing the traveling public about new legislation: a call center, a website, and social media. The department's support call center assists customers, businesses, clerks, and other agencies. Agents at the call center use scripted knowledge articles (KAs) to provide approved information to the public. KAs reflect new or revised laws and regulations related to the Department of Vehicle Regulation. The website Drive.ky.gov is also used. Website hits have increased 44 percent since the date it became available. The website has been the best source for informing and educating the public. Social media platforms such as Facebook and Twitter are used, and more social media platforms are being launched.

Update on Status of PAUSE 50 Initiative

KYTC's state highway engineer and deputy state highway engineer testified on the status of the PAUSE 50 initiative, which was put in place to help the road fund after the loss of 6.5 cents from the motor fuels tax, as well as spending on projects over the previous few years. KYTC had planned to allot approximately \$50 million of state funds for projects for all phases, including design, right-of-way, utility, and construction, for the second year in the biennium (FY 2018). The cash balance of the cabinet will allow for that \$50 million allotment. The road fund balance has also been positive; therefore, additional funds may be available. The cabinet will continue to

communicate with each district to discuss which projects can advance into the design, utility, and right-of-way phases. Chairman Harris reiterated that the cabinet's purpose in implementing the PAUSE 50 plan is to protect cash flow. August and September are two critical months for large payments, dictating what is being done within PAUSE 50.

Strategic Highway Investment Formula for Tomorrow

The state highway engineer stated that, for many years, Kentucky's highway plan has been overpromised. There are more than 1,400 projects in the highway plan. Only half of them are even partially funded, and they are funded mostly with federal dollars. This situation undermines the confidence of citizens, who cannot count on projects in the plan. State projects vastly exceed available funding. More than 90 percent of state-funded projects in the highway plan do not have state dollars to pay for them. The highway plan lists projects requiring \$7.165 billion in state funding, but the anticipated available funds total only \$690 million. Therefore, a plan such as the Strategic Highway Investment Formula for Tomorrow (SHIFT) is needed.

The goal of SHIFT is a data-driven approach to guide transportation spending, establish clear priorities, invite input at the district and local levels, provide transparency, deliver a reliable and dependable plan for businesses and citizens, and create confidence for future federal and state infrastructure investments. The top priorities of SHIFT are to improve safety, preserve existing infrastructure, reduce congestion, fuel economic growth, and spend tax dollars wisely.

The cabinet plans to measure the first priority, safety, by measuring the number and frequency of roadway crashes and by investigating how roadway design affects the number and frequency of crashes. The cabinet will consider asset management—infrastructure—by monitoring the cost of pavement repair and replacement, and the condition of bridges and overpasses. When considering congestion, KYTC will observe how many vehicles are on the road daily, and how that volume affects service levels. With regard to economic growth, the cabinet will consider potential job growth, daily traffic volume, and daily freight volume. In making sure tax dollars are spent wisely, formulas will account for travel time that could be saved, financial value of time savings, savings from reducing crashes, and project costs.

The proposed statewide funding formula weights five components as follows: improve safety, 25 percent; reduce congestion, 20 percent; fuel economic growth, 20 percent; spend tax dollars wisely, 20 percent; and preserve infrastructure, 15 percent. The proposed regional funding formula weights seven components as follows: improve safety, 20 percent; reduce congestion, 10 percent; fuel economic growth, 15 percent; spend tax dollars wisely, 15 percent; preserve infrastructure, 10 percent; district priorities, 15 percent; and local priorities, 15 percent.

In developing the highway plan, KYTC creates an initial project list and then each district and local leaders identify needed changes. The cabinet then calculates scores for statewide and regional projects. District and local leaders provide input on regional projects. KYTC then develops a draft highway plan for the governor. The governor finalizes and presents the plan to the General Assembly. The final step is when the General Assembly and the governor enact a highway plan.

Chairman Harris stated that the gasoline tax dropped from approximately 32 cents per gallon to 26 cents per gallon, of which approximately 1.4 cents is for underground storage. Every penny in fuel tax results in approximately \$30 million in revenue. The state highway engineer added that fuel tax revenues are shared at approximately a 50/50 split with cities, counties, and the rural secondary road program. Chairman Harris said that, to return to prior revenue levels, the gas tax should be raised approximately 5 to 7 cents per gallon. Chairman Harris testified on the upcoming loss of toll credits. The state has been fortunate enough to use toll credits for the state match on federal projects in the past. Those toll credits will run out, probably in 2020 or 2021. When that happens, more state dollars will need to be transferred to the state match in order to receive federal funding. Kentucky receives approximately \$700 million in state funds. Starting in 2019, the state will be adding \$40 million in state funds to match, and by 2020 and 2021 there will be an approximate match of \$100 million to \$150 million per year. As a result, “state priority” (SP) projects will be shorted by approximately \$100 million.

Autonomous Vehicles

National Overview of State Action. An overview was given of state actions concerning autonomous vehicles (AVs). Nineteen states and the District of Columbia have enacted legislation on autonomous vehicles. The governors of four states that have not passed AV legislation (Arizona, Massachusetts, Washington, and Wisconsin) have issued executive orders concerning the study, testing, and operation of AVs. Companies across the United States are testing AVs, including in states where the legislatures have not passed AV laws.

A review of Nevada, California, and Michigan was presented. In 2011, Nevada became the first state to adopt AV legislation. In 2017, after a subsidiary of Uber was cited for illegally testing AVs, the law was modified to allow testing. California must change its AV law, which initially required the vehicle to have a steering wheel.

Other states are now taking legislative action. Many are passing laws addressing the testing process of AVs, whether on public roads or in limited facilities. At least seven states and the District of Columbia have developed laws that address testing of AVs. In order to provide clarity, states are defining significant terms such as *autonomous vehicle*, *automated driving system*, and *operator*. In most states that have enacted AV legislation, *operator* is defined as the person who causes the automated driving system to engage, whether or not the person is physically in the vehicle.

The industry has expressed the need for insurance to cover testing of autonomous vehicles. The typical minimum insurance requirement is \$5 million for testing in California, Florida, Nevada, and New York. Michigan requires a minimum of \$10 million of coverage. Some states specify that a manufacturer is not liable for damages resulting from a third party’s modification of a vehicle to make it autonomous.

Automated technology is also being applied to freight transportation. This technology can allow platoons of multiple trucks traveling close together at coordinated speeds. Most states have laws that require a certain following distance for heavy vehicles, but at least eight states have modified those laws to allow for truck platooning.

At the time of the July meeting, 33 states were considering a total of 96 AV-related bills. Since 2012, 41 states have considered AV legislation. The National Conference of State Legislatures now includes AVs in its 50-state bill-tracking database.

In September 2016, the National Highway Traffic Safety Administration (NHTSA) released a Federal Automated Vehicle Policy (FAVP). The policy is the first edition, and the administration indicated that it expects frequent updates. The FAVP provides a road map for states, the federal government, and manufacturers; one section attempts to define state and federal roles in AV policy. The federal functions specified by the policy include continued development and enforcement of motor vehicle safety standards, determination of the need for vehicle recalls, and regulation of vehicle performance. The FAVP includes a model state policy that enumerates areas where states traditionally have regulatory authority over conventional motor vehicles, such as driver training and education, traffic laws and regulations, vehicle registration and driver licensing, insurance and liability, law enforcement and emergency response, and safety inspections.

One area of discussion surrounding AVs on various levels is preemption and determining the appropriate roles for federal, state, and local governments. Some states preempt localities from regulating AVs and their boundaries. Some entities have argued that regulations should be focused at the federal level. The FAVP recognizes that there are areas where the authority for regulation is vested strictly at state and local levels.

KYTC's AVs Working Group. The assistant state highway engineer of KYTC's Department of Highways testified on opportunities and challenges for AV implementation at the state level. The term *self-driving vehicle* is used frequently in conjunction with autonomous vehicles. He explained the levels of automation for an AV. Level zero entails no automation, and the driver controls the vehicle at all times. In level one automation, a vehicle can assist the driver with some functions, such as adaptive cruise control. Level two is partial automation: A vehicle conducts some elements of driving, such as speed and lane position, while the driver continues to be engaged. Level three automation is conditional automation, in which a vehicle can perform all aspects of driving in limited situations but provides an alert when the driver must take control. At level four, a vehicle performs all aspects of driving under certain conditions. Level five is full automation: A vehicle performs all aspects of driving under any conditions and can operate with or without a driver or occupants.

Numerous benefits can be realized from the adoption of AVs, including crash reductions, route planning, increased capacity of current infrastructure, reduced congestion, improved transportation access for underserved populations such as the elderly and disabled, reduced freight transport costs (through related technologies such as truck platooning, which can improve fuel efficiency by 5 percent to 10 percent), and increased productivity by allowing people to perform other activities instead of driving. According to NHTSA, human factors contribute to 94 percent of crashes on US highways. If use of AVs led to a 90 percent reduction of crashes in Kentucky, there would be 753 fewer lives lost and \$16 billion less in vehicle accident costs annually.

Kentucky is a major junction for the nation's freight network. US freight volumes are expected to increase 40 percent by 2040. Businesses and citizens are taking notice of Kentucky's freight and logistics leadership. It is possible that AVs will be a big portion of the future of the

freight industry. In April 2017, the Lane Report recognized Amazon's investment by stating that Amazon fulfills Kentucky's goal to be the world's logistics leader.

There are policy issues surrounding the use of AVs. Some states and transportation agencies regulate drivers through means such as driver licensing, driver training, and conditions of operation. Vehicle manufacture is also subject to regulation, which is handled by the US Department of Transportation, NHTSA, and the Federal Motor Carrier Safety Administration. The Federal Highway Administration handles roadway regulations and works with states to create policy regarding roadways. Key concerns about AVs relate to striping and signage and how the vehicles will interpret them. Cybersecurity and data are also policy issues.

The states will generally continue regulating the same aspects of vehicle transportation that they currently regulate. The FAVP recommends that states develop clear processes and regulations for testing AVs, resolve ambiguities or problems related to liability and insurance issues, address crash investigation procedures and safety inspections, establish a system to identify AVs through registration and titling requirements, and direct law enforcement to limit driver distractions in vehicles that are not fully automated.

Other AV-related state legislation topics include a definition for autonomous vehicles, licensing responsibilities, authorized training, testing facilities, weather restrictions, use restrictions (both for testing and in general), crash and malfunction reporting, event recording (such as the use of a device like a "black box"), requirements for operators, and liability insurance requirements. KYTC's Autonomous Vehicle Working Group reviewed Kentucky's legislation and regulations, in partnership with the Kentucky Transportation Center. The review focused on driver definitions and requirements, equipment and vehicle regulations, licensing definitions and requirements, operational limitations, and safety equipment. A potential topic for consideration is license oversight.

Items under consideration by KYTC include defining *autonomous vehicle*, defining *operator* in the context of AVs, how to specifically enable AV testing in statute, driver licensing and registration issues, driver behaviors, and law enforcement issues. The cabinet plans to continue to gather information and learn from other states' experiences in legislating the use of autonomous vehicles. KYTC plans to reach out to Kentucky industries and partners to provide information to the General Assembly.

Insurance Considerations and Long-Term Effects. The senior director of knowledge resources, The Institutes, The Griffith Foundation, testified about insurance considerations relating to autonomous vehicles. The chief designer at McLaren Automotive anticipates a future in which human operators of vehicles are outlawed, in urban areas at the very least. In contrast, Warren Buffett is still investing in traditional models of car distribution and sales. The future of AVs, and of vehicles in general, is still guesswork. The McLaren Automotive designer presented a four-stage level of automation, noting that the 0-5 scale described above is perfectly valid, just calibrated differently. The high end of both scales is a fully autonomous vehicle.

Most traditional car manufacturers are incrementally adding semi-autonomous features to vehicles such as self-parking, adaptive cruise control, and lane centering. In 2012, Google was

incrementally adding self-driving features to vehicles and testing them. The test drivers for these vehicles promised to stay engaged, but it was discovered that no matter the promise, some of the drivers did not stay engaged. When Google recognized that people were not following through on promises to stay engaged, it realized that this was not the way to introduce AVs, and it halted incremental addition of autonomous features, choosing instead to produce fully autonomous AVs.

Zipcar is a pay-as-needed vehicle rental service. Zipcar requires a monthly membership fee plus an hourly fee for use of a vehicle. The concept of Zipcar has become useful for people who reside in big cities or cannot afford to own, garage, fuel, insure, or maintain a vehicle. There are also government-sponsored car-sharing companies such as Blueindy, which provides electric cars that users pay for according to the level of use. As the move toward AVs occurs, companies such as Zipcar, Blueindy, Uber, and Lyft may make modern vehicles ownerless, meaning more people will choose these types of transportation rather than owning their own vehicles. The Institutes uses the phrase *streaming transportation services* to describe these modes of transportation, analogously to streaming video and music services.

If AVs become common, several entities will be affected, including police, government units relying on local taxes, car makers and insurers, car repair shops, parking garages, lawyers, home builders and remodelers, urban planners, highway engineers, doctors, hospitals, oil companies, coal companies, the electric grid, the economy, and criminals. There will also be a significant impact on the annual revenue collected in traffic fines, which currently stands at \$6.2 billion. If human operators of vehicles are removed, perhaps human error will also be removed, and violations of traffic laws will become nearly extinct. In that case, how would municipalities and police departments replace that lost revenue, and what would happen to highway patrol officers? The use of autonomous vehicles will greatly affect car insurance, which is fundamentally protection against human error. Liability will shift from vehicle operators to vehicle manufacturers. The frequency of automobile accidents will be significantly reduced. The use of ownerless vehicles will greatly affect parking. If car sharing decreases the total number of vehicles in use, 6 billion square meters of parking space might be reclaimed by 2050. Medical care should also change dramatically, as automobile accidents are the second largest cause of fatal accidents in the United States; they should drop to the ninth largest cause by 2050, according to some experts. Car accidents should become as rare as subway accidents. Automobile accidents cost over \$200 billion per year, so billions of dollars could be saved, and health and productivity losses from people injured in automobile accidents will decrease.

Regulatory concerns accompany the rise of autonomous vehicles. A hacked car could be used as a getaway car with no driver, or as a weapon. Regulatory concerns might occur as autonomous features are incrementally added. For instance, if a driver overestimates a vehicle's level of autonomous features, the driver might not pay sufficient attention—the equivalent of distracted driving.

If one state requires a driver for an AV and a neighboring state does not, the disparity in laws will impede travel from state to state. Within the realm of insurance, the possibility of a traditional insurance model will be in place and a drop in claims should occur with the use of AVs. Over time, a drop in the premium base should occur, and insurers might find it more difficult to remain solvent. Urban planning will also be affected: Road striping and signage will still be

needed, but if congestion and accidents are reduced and personal auto driving is safer, easier, and cheaper, Congress will need to reevaluate the funding of passenger rail projects. Urban planners have to understand that today's technology and capabilities may be obsolete in a few years. State, local, and federal governments, as well as interstate entities, will ideally facilitate travel across regions by finding standards for road marking, signal signs, and lane widths. A reduction in traffic congestion could promote a revival of inner cities where congestion is an issue; it could also lead to a tremendous development of suburbs because commuting would no longer be as undesirable if commute time could become productive.

Streaming transportation could become more of a reality. Much as Polaroid and Kodak were threatened when digital photography was introduced, AVs will threaten many entrenched companies and even industries. However, many new opportunities will be created.

KYTC's Office of Highway Safety

The executive director, the assistant director, and the communications grants administrator of KYTC's Kentucky Office of Highway Safety (KOHS) discussed the office's operations. The mission of KOHS is to reduce Kentucky's highway crashes, serious injuries, and fatalities through a data-driven, outcomes-based approach that seeks to reduce traffic safety problems through innovative program delivery, high-visibility law enforcement, traffic safety marketing, and robust incident management initiatives. Several divisions within KOHS provide safety education, enforcement, incident management, and response. The Division of Incident Management includes the 24/7 Transportation Operations Center and the Roadway Assistance Branch. The Division of Highway Safety Programs includes the Safety Education Branch and the Grants Management Branch. The executive director stated that KOHS runs on strong partnerships with over a dozen law enforcement and safety agencies and organizations. The cabinet is guided by the strategic highway safety plan, a consensus driven sustainable plan which outlines measurable strategic opportunities to reduce traffic fatalities and serious injuries. The most recent federal highway funding bill (the Fixing America's Surface Transportation Act, or FAST Act) requires states to align core safety measures in the highway safety improvement plan and the highway safety plan in cooperation with metropolitan planning organizations.

In the KOHS budget, the Education and Grants Funding division is funded with \$5,561,000 from the National Highway Traffic and Safety Administration, \$1,470,450 from the Federal Highway Administration, and \$492,000 from the state. The Division of Incident Management, which includes incident management and Safety Assistance for Freeway Emergencies (SAFE) Patrol, is fully funded by the state at \$4,305,000. Within the Grants Branch of the Division of Highway Safety Programs, NHTSA administers the US Department of Transportation (DOT) Section 402 and 405 program funds. KOHS uses these funds to enhance traffic enforcement statewide through traffic enforcement programs such as Click It or Ticket, Drive Sober or Get Pulled Over, and Speed Week. Section 402 addresses planning and administration, motorcycle safety, occupant protection, police traffic services, impaired driving, high-visibility advertising, and community traffic safety. Section 405 covers occupant protection, traffic records, impaired driving, distracted driving, and motorcycle safety.

The Education Branch within the Division of Highway Safety provides education on occupant protection through means such as rollover simulators and presentations on child passenger safety. The branch uses a 3-D simulator to show the effects of drunk and drugged driving. It also uses a Ghost Out Program, mock crashes, and other presentations. Between 2015 and 2017, the branch presented 147 programs for schools and 50 programs for corporate offices and government agencies. The Education Branch uses a data collection analysis to assess public attitudes on driving safety and promote changes in driver behavior. The Education Branch also monitors and guides ignition interlock device (IID) installations and inspections, and it certifies IID vendors and educates judges and law enforcement on IID requirements.

The Division of Incident Management, Roadway Assistance Branch, has 21 operators, 3 secretarial support staff, 2 other support staff, and 5 vacant slots. The Traffic Operations Center (TOC) consists of four staff members for the first shift, four staff members for the second shift, three staff members for the third shift, and three support staff. The budget for the Division of Incident Management consists of \$902,222 for personnel costs for TOC; \$1,997,778 for personnel for Incident Management and SAFE Patrol; \$1,314,000 for trucks and equipment; and \$35,900 for supplies.

The Transportation Operations Center is a 24/7 point of contact for KYTC. The center coordinates and disseminates information on traffic issues, road closures, and weather events. The center dispatches coordinators for SAFE Patrol and incident management, and it supports KYTC district incident management teams. TOC has three shifts with 11 operators. SAFE patrol consists of 26 highway safety patrol officers with 13 crews in three sections. The average yearly activity consists of 37,000 stops, which averages to approximately 1,400 stops per operator per year. There are three section supervisors for the east, west, and central regions. The safety administrators for the three regions cultivate federal, state, and local responder partnerships, and respond to major incidents. SAFE Patrol assists with special events such as the Kentucky Derby, Kentucky Oaks, and Thunder Over Louisville. The Division of Incident Management put an incident action plan in place for the 2017 solar eclipse, including a mobile operations center and partnerships with KYTC, Kentucky Emergency Management, the Kentucky Fire Commission, and the Department of Aviation.

More than \$1.16 million in funding supports national campaigns developed by the National Highway Traffic Safety Administration, such as Click It or Ticket, Drive Sober or Get Pulled Over, Motorcycle Safety Awareness Month, and Distracted Driving Awareness Month. There are statewide sponsors such as the University of Kentucky, the University of Louisville, Morehead State University, Kentucky Speedway, and local radio shows that target the demographics most at risk. The department is shifting the communication strategies away from a statewide approach to combat message fatigue and to personalize these local and life-saving safety messages, particularly on seatbelt use. Local Heroes is one example of the shifting strategy, along with complementing the local Click It or Ticket campaign with local imagery, public service announcements, cable television spots, and print ads that send the message from law enforcement.

The executive director said the programs are a move toward reversing the trend of traffic fatalities and serious injuries. To do so effectively, the programs must rely on data that effectively illustrates the realities of highway safety. The data collected indicates an increase in fatalities. The

department has moved away from the linear model because it artificially lowered the expected fatalities and injuries over the next 5 years. Instead, the department adopted a polynomial approach that does indicate an upward trend in crash fatalities, which the department's activities will ultimately reverse. The department is working with the Kentucky Injury Prevention and Research Center to observe the problems differently, such as through heat maps of unbelted collisions. The hope is that each county will be observed through such maps to see where changes need to be made individually and collectively. Motor vehicle deaths can be sorted by county of occurrence, home county of the patient, inpatient hospitalization, and emergency room visits. These data points allow for cross-referencing internal county ranking systems with traffic records data, and feedback and experience in the field to holistically address traffic safety problems. The annual cost of traffic collisions in Kentucky is approximately \$17.7 billion, with fatalities costing almost \$6.9 billion, nonfatal injuries costing almost \$10 billion, and property damage costing almost \$1 billion.

Lifesaver App for Mobile Electronic Devices

The vice president of marketing and sales for LifeSaver App and the Jessamine County sheriff (who is president of the Kentucky Sheriff's Association) testified about the Lifesaver app for mobile electronic devices. Lifesaver prohibits phone use while driving, sends a notification when the driver has arrived safely at a destination, and sends notifications if a driver attempts to override the use of the app. Parents and fleet management often use Lifesaver. The Kentucky Sheriff's Association voted to support the app. State Farm reported a \$7 billion operating loss on auto insurance in 2016, an increase of 63 percent from a \$4.4 billion loss in 2015. Allstate Insurance reported a net income decline of 25.8 percent, and Kentucky Farm Bureau reported a loss ratio increase of 4 percent in 2016. Just as Mothers Against Drunk Driving led the charge to reduce drunk driving fatalities by more than 50 percent since 1980, it is Lifesaver's goal to reduce distracted driving by 50 percent within 5 years. The Oregon Department of Transportation has paired with Lifesaver to combat distracted driving.

Road Fund: FY 2017 Report and Budget Reduction Update

The executive director of KYTC's Office of Budget and Fiscal Management testified about the road fund and the FY 2017 report and budget reduction. The official enacted revenue estimate for FY 2017 was \$1,456.9 million, but the actual revenues collected were \$1,508.0 million; therefore, KYTC exceeded the estimate by \$51.1 million, or approximately 3.5 percent. The official enacted revenue estimate for the motor fuels component of the road fund was \$747.3 million, but the actual received revenue was \$760.5 million—a surplus of \$13.2 million. The motor vehicle usage tax was estimated at \$469.5 million, but the amount received was a record \$499.8 million, leaving a surplus of \$30.3 million.

In total, \$1,508 million was received in FY 2017, an increase of 1.7 percent over the \$1,482.5 million received in FY 2016. The motor fuels tax received in FY 2017 totaled \$760.5 million, an increase of 1.4 percent over FY 2016's \$750 million. The motor vehicle usage tax received in FY 2017 was \$499.8 million, an increase of 3.2 percent over the \$484.4 million received in FY 2016.

In total, \$1,478.2 million is estimated to be received in FY 2018 compared to the actual revenues received in FY 2017 of \$1,508 million, resulting in a shortfall of \$29.7 million and a change of -2 percent. The estimated motor fuels tax to be received for FY 2018 is \$749.8 million, a reduction of 1.4 percent compared to the actual received motor fuels tax of \$760.5 million in FY 2017. The motor vehicle usage tax estimated to be received in FY 2018 is \$485.7 million, a reduction of 2.8 percent compared to the actual revenues received of \$499.8 million in FY 2017.

Historically, motor fuels tax revenues have gone from \$563.5 million in FY 2007 to \$760.5 million in FY 2017, with a peak at \$886.2 million in FY 2014. The road fund daily cash balance has dramatically decreased from January 2013 to the projection for April 2019.

General Fund Reduction Order 17-02 was filed on July 19, 2017, resulting in \$62,300 being cut from KYTC's budget for FY 2017. Those funds were from the Office of Transportation Delivery and are used for state match on federal public transit grants for public transportation. Additionally, the excess and unappropriated amount of \$900,000 cash in three restricted fund accounts was transferred to the general fund for the shortfall from the following accounts: \$100,000 from the motor boat titling fund, \$200,000 from the AVIS replacement account, and \$600,000 from the county clerk information technology improvement account.

Plans for Changes in License Plate Production

The commissioner of KYTC's Department of Vehicle Regulation gave an overview of the department and introduced his leadership team. He stated that license plates have not been replaced in Kentucky since 2005. At each license plate renewal, a \$0.50 fee is assessed, which goes to the reflectorized plate fund, a restricted fund designated for paying for the periodic issuance of new license plates, normally every 5 to 7 years. Most manufacturers of license plates warrant their reflectivity and physical strength for 5 years. However, that restricted fund has been routinely swept during budgeting processes, hindering the ability to replat. The results of not replating are very serious, compromising public safety, law enforcement, bridge tolling, and Kentucky's image. The production system for license plates is a relic of the 1960s. Special and personalized license plates are excessively expensive, and the standard issue plates are outdated. The commonwealth issues 136 kinds of license plates. This means road fund dollars are subsidizing fundraising efforts by the nonprofits that have 39 special organization plates. Every dollar spent on such plates takes away from the road fund and is not applied toward the construction and maintenance of roads and bridges.

An overview was given of the current process, which starts in the county clerk's office with orders placed manually into the mainframe system. The Division of Motor Vehicles licensing staff receives the orders, and then an order is placed with Kentucky Correctional Industries (KCI). KCI produces the plates, and the orders are picked up from the Kentucky State Reformatory via a truck that KYTC rents from the Finance and Administration Cabinet. KYTC mails the plates to the county clerk's offices at an annual cost of approximately \$135,000. In short, the plates are bought at retail and sold at wholesale, with freight fees in both directions. County clerks have daily challenges in managing an auditable transaction and managing, storing, and securing plate inventory. The plates are made with outdated technology and obsolete equipment. The production and distribution model has been reviewed in detail, and the costs have been analyzed.

Alternative technology can greatly reduce inventory and storage requirements while automating the plate-ordering process. A print-on-demand solution will completely automate license plate ordering and inventory management for county clerks, putting them and the citizens of the commonwealth directly in contact with the license plate vendor. The new model requires no capital investment, and vendors would be paid on a transactional model. The benefits of the new plates will be improved visibility for law enforcement, enhanced public safety, more reliable bridge tolling, elimination of the costs of physical inventory and inventory handling, saving of road fund dollars, saving of money for decals, and reduction of inventory to manage and order. Automated inventory management software will keep inventory stocked with no need to place an order. The new flat plate has a thermally applied decal on aluminum sheeting and can be sent via first-class mail.

The new state-of-the-art process reduces costs of specialized and personalized plates, and its plates look better, have greater visibility, and enhance Kentucky's image. There will be a hybrid distribution model for county clerks, who will stock and issue two standard-issue plates in their offices; all other plates will be ordered on demand and sent directly to the taxpayer. This process potentially expedites development and reduces the cost of the Kentucky Automated Vehicle Information System (KAVIS). This solution presents the opportunity of developing more marketable, enhanced job skills for inmates at the Kentucky State Reformatory. Any vendor selected would be required to work as a subcontractor.

The Anderson County clerk gave an overview of a visit to Indiana's Bureau of Motor Vehicles and the production of plates by that state's vendor. He said the new model will address some of the biggest issues that clerks face.

The commissioner stated that moving to this new model will increase online renewals, ensure that all Kentucky plates will look great all the time with a 5-year issuance cycle, position KYTC to develop fleet plates, ensure that plate production and fulfillment stays based in Kentucky, and combine with improvements to the driver's license system to modernize the essential government systems and provide a higher level of customer service. The uniformity of costs on all plates will result in savings.

The commissioner said that infrared technology is what allows law enforcement to scan license plates and that the technology will work with the new plates. Comparable technology is used for bridge tolling, and there are problems with readability of Kentucky's current license plates, which have been on the road for up to 12 years. Someone walking into a county clerk's office on the day that a plate expires would have to take a standard issue plate until the plate could be ordered. This new model is a step toward keeping the tag with the customer and not with the vehicle. Plates will not be printed in each county clerk's office; they will be printed by a vendor that will subcontract with KCI.

Technology Upgrades

The executive director of KYTC's Office of Information Technology gave an update about technology improvements throughout the cabinet. The Kentucky Automated Vehicle Information System implemented the first module (disabled placards) in 2016, and bar code readers have been

deployed in all counties. Point-of-sale and boat modules are scheduled for implementation in 2018. Some modules will be combined to speed up the project. KAVIS is operated on an obsolete, labor-intensive mainframe system. Moving to a .NET system will enable broader functionality, better customer service, and modernization of all vehicle registration tasks. There is a 10-day deadline to review and process commercial driver's license (CDL) documents. Failure to comply with these deadlines results in loss of federal highway funding, starting at a reduction of 5 percent, or approximately \$35 million. Staff in the CDL section has been reduced from 17 employees to 7 employees. Ensuring that all documents are promptly reviewed makes the CDL process a labor-intensive one. The MyCDL online portal is mobile friendly for phones and tablets. Pictures of documents can be uploaded directly to the portal. Using this system, staff do not have to reenter data that the system has entered automatically. The challenge is to get customers to use the system to reduce staff time. An overview of the metal commodities permit implementation was also provided. The implementation was quick because staff modified the permitting solution that was already in place. Ways of maximizing online vehicle renewals are being explored.

Disabled Parking Placards

The number of disabled parking placards issued has exploded since 2008. There are some obvious fraud and abuse issues: Multiple placards are often distributed to the same family, and some doctors may not use appropriate discretion in authorizing disabled placards. There are also a few county clerks who have issued a large number of placards by attesting to a disability without a medical form. The results of these problems are real, and Kentuckians with genuine disabilities often find themselves without access to disabled parking spaces. In 2008, the commonwealth issued 32,000 placards; in 2017 there will be over 300,000. The director of advocacy for the Center for Accessible Living said he has daily struggles finding a vacant accessible parking spot for his side-loading van. He often must wait or give up. Fraud definitely occurs; he looks forward to legislation that will alleviate the problem with finding accessible spots. The commissioner of the Department of Vehicle Regulation referred to SB 61, which passed the Senate unanimously last session but never received a hearing in the House; he said the administration is committed to seeking its passage, which would greatly protect the interests of genuinely disabled Kentuckians. The Bullitt County clerk stated that the County Clerks' Association is aware of the difficulty of finding accessible parking spaces. This is a multifaceted problem in that health care is not equally accessible in every county; the statutes are the authority on what a county clerk is allowed to do in attesting to a disability.

Kentucky Petroleum Marketers Association

The Kentucky Petroleum Marketers Association (KPMA) was founded in 1926 and represents one of the state's oldest industries. KPMA has representatives of all segments of the petroleum industry that are engaged in the marketing and distribution of petroleum products in the commonwealth. KPMA members are affiliated with gas stations, convenience stores, heating oil businesses, truck stops, petroleum trucking companies, bulk storage facilities, and lubricant warehouses, among other entities.

Some items of interest to KPMA members include collection and evaporation allowance, the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), motor fuels tax,

infrastructure funding priorities, alternative fuels, tolling, vehicle miles traveled, electric and fuel-efficient vehicles, tax reform, federal Environmental Protection Agency changes, new tank regulations, and amendments to Kentucky regulations. The petroleum industry employs almost 42,000 people in the commonwealth. There are 2,944 fuel retailers and convenience stores, 104 wholesalers, two refineries, and many companies that provide support to these businesses with a payroll of over \$831 million and over \$40 million in state income tax revenue. There have been several supply challenges in the past year, including two Colonial Pipeline disruptions in the fall of 2016 and hurricanes in the fall of 2017. Still, petroleum demand seems to be constant in 2017. Members of KPMA have an interest in some federal items, such renewable fuels standard reform, ozone standards (pertaining to reformulated gasoline and amendments to state regulations), interstate rest area commercialization, the highway trust fund and motor fuels excise taxes, menu labeling, e-vapor regulation and predication date, credit card swipe fees, and tax reform.

Kentucky petroleum marketers function as the state tax collector of motor fuels tax. Adjustments to the motor fuels tax have direct impacts on KPMA members. Marketers incur direct costs, such as having to provide a form of security to the state to ensure payment (bond requirements by the state.) Marketers play a critical role in the collection of revenues for state infrastructure.

The existing collection evaporation allowance is 2.25 percent, which exists to offset the costs incurred by marketers while acting as tax collectors for the state. State law requires gasoline marketers to remit the gasoline fuel tax based on the volume of gasoline purchased from the supplier and to collect the tax from the consumer later, when the fuel is sold. The collection and evaporation allowance exists for the offset of costs (collection costs, unaccountable losses, and costs of handling and reporting the tax) related to the collection of the gas tax on behalf of the state, and the allowance addresses product fuel volume lost naturally after the petroleum marketers purchase the fuel from the refiners/suppliers due to the evaporation and shrinkage of gasoline before it is sold to the consumer. Wholesalers pay the tax when the product is purchased from refineries and suppliers. A percentage of the product is lost through evaporation and transport because of liquid gasoline's physical properties related to natural evaporation and reduction in temperature.

The 2.25 percent allowance is a deduction that compensates Kentucky marketers for their overpayment of tax before the product is sold to consumers. Because of many factors beyond the control of marketers (which are all itemized in the statute), it is impossible to recoup from retail customers the entire amount of taxes paid by the marketers. The allowance attempts to bridge this gap so that marketers are paying taxes only on product that is actually sold. Marketers are unable to fully recoup the tax because it is not collected at the actual point of sale, even though it is supposed to be a tax on fuel sold to consumers and used on the roadways. KPMA estimates that the average actual cost of collecting the gasoline tax is 2.84 percent. The rate saves the commonwealth the 0.59 percent discrepancy between the allowance rate and the expenses borne by the marketers.

The PSTEAF program was created to help owners and operators of underground storage tanks to comply with federal law, which requires them to maintain \$1 million of coverage for corrective action and for third-party liability. This program assures Kentucky's compliance with

federally mandated financial responsibility rules for cleanup of releases. Tanks store petroleum fuel underground, and even with compliance and proper maintenance these tanks can leak, especially as they age. When leaks occur, the PSTEAF program cleans up the environmental impact through remediation or removal. This program protects communities, citizens, cities, and counties should an environmental impact occur. Within PSTEAF, there is the Petroleum Storage Tank Account, the Financial Responsibility Account (FRA), and the Small Owner's Tank Removal Account. These accounts function as one program. The FRA is the account that allows eligible owners and operators to meet the \$1 million federal financial responsibility requirements. Approximately 1,550 small and rural businesses that operate underground storage tanks are those that rely most heavily on PSTEAF. These small or rural tank owners are twice as likely as others to need PSTEAF funds for active tank remediation. The PSTEAF program exists to ensure that more than 3,000 petroleum businesses in Kentucky have access to funds necessary for active tank remediation, environmental cleanup demands, and tank removals for small business owners when qualifying issues arise. The PSTEAF is a \$0.014 (penny and four-tenths) fee assessed on each gallon of fuel sold. The \$0.014 is collected by fuel retailers on every gallon of gasoline and special fuels in the state, similar to the gas tax. The fee is collected specifically for the PSTEAF program. It is not part of the road fund.

PSTEAF covers two types of underground storage tanks: abandoned tanks that were outlined during PSTEAF's creation, and active tanks. Kentucky has more than 10,500 active tanks in the ground. These are not the abandoned tanks that were on the cabinet's list for remediation when PSTEAF was created. PSTEAF helps meet federally mandated financial responsibility assurance, should one of the 10,500 active tanks have a release. When the program was created in the early 1990s because of federal regulations, many of the covered tanks were new. Now, 80 percent of covered tanks are more than 15 years old. Leaks from underground storage tanks negatively affect the quality of groundwater. Kentucky's unique geology is particularly susceptible to adverse impacts from leaks. Leaks can also affect soil and may create brownfield properties.

Small business owners own 48 percent of underground storage tanks. Without PSTEAF, these businesses (and their 42,000 Kentucky employees) would sustain negative impacts resulting in business closure. Kentucky communities would suffer harmful environmental impacts, and the state, counties, and cities could face financial liability. KPMA requested that the General Assembly maintain the existing 2.25 percent gasoline evaporation collection allowance and preserve program funding to assure that PSTEAF requirements are maintained.

Federal Inmate Identification Cards and Driver's Licenses

The Ashland reentry affairs coordinator and the Lexington reentry affairs coordinator for the US Federal Bureau of Prisons asked that the 2018 General Assembly amend KRS 186.412 to allow consideration for federal and state prisons to meet the residency requirements that allow the Transportation Cabinet, the Department of Vehicle Regulation, and circuit clerks to issue driver's licenses or regular state IDs to current and eligible inmates. They added that work details used by the prison systems include food service, commissary, orderly, and other jobs inside facilities. Work details at federal camps that require road access include landscaping and grounds work, outside facilities operations, safety and recycling, and town drivers.

States in which inmates can obtain identification in the form of driver's licenses include Florida, Pennsylvania, Texas, and Virginia. An inmate would have to meet all of the following criteria to be eligible for a driver's license:

- The inmate's custody score must be at least "community" or "out" (the two least restrictive levels).
- The instant offense must not be of "greater" or "high" severity.
- Inmates with public safety factors are not eligible.
- The inmate must have had clear conduct for 1 year.
- The inmate must not have any 100- or 200-level incident reports.
- The inmate must not have any history of escape or violence.
- The inmate must not have any detainers or unresolved pending charges.
- An inmate with an unpaid fine must be participating in the financial responsibility program.
- The inmate must be no more than 2 years from release.
- The inmate must demonstrate good responsibility in regard to general demeanor and attitude.
- It is management's decision that allows an inmate to participate.

Inmates who fit the eligibility criteria for a regular state ID would have to produce the same documentation as any citizen obtaining an ID. The deputy commissioner of the Department of Vehicle Regulation and the director of the Division of Drivers Licensing support allowing inmates to receive IDs or driver's licenses that meet the specified criteria.

Louisville Southern Indiana Ohio River Bridges Tolling System

KYTC's innovative finance manager gave an update on the RiverLink tolling system used on the Louisville Southern Indiana Ohio River Bridges. The average daily traffic count for September is 80,533, and those numbers continue to increase. The percentage of vehicles that use transponders when crossing the bridge is approximately 60 percent to 65 percent on weekdays and 45 percent to 50 percent on weekends. The revenue collected is in line with projections, and the total revenue collected to date is approximately \$50.2 million, with \$25.1 million of that being the Kentucky Public Transportation Infrastructure Authority's share. There has not been an entire completed billing cycle, so collection rates will continue to increase as enforcement measures are put into place. Of the bills that have been sent, the collection rate is a little above 50 percent before the enforcement process begins.

Customer service continues to improve: Call wait times decreased from over an hour in January to just over 1 minute in August. Self-service features have been added so that customers can manage their accounts via telephone without talking to customer service representatives. Text message alerts for accounts are also now available for customers. Tutorials and a help section have been added to the website.

A breakdown was given of the process of invoicing and collecting toll payments. The first invoice that the customer receives is for the amount of the toll only. No fees are attached, and the customer has 30 days to pay. If payment is not received then, a second invoice sent for the amount of the toll and a \$5 fee, and the customer has 20 days to pay. If the toll and fee are not paid then, a violation notice is sent with a balance due of the toll, the \$5 fee, and a \$25 fine that the customer

will have 30 days to pay. If those tolls and fines are not paid then, a collection notice is sent with a balance due of the toll, the \$5 fee, the \$25 fine, and a \$30 fee, due on receipt. If the customer still does not pay, a registration hold is placed on the vehicle 10 days after the collection notice is mailed. Registration holds were to begin in October 2017.

Kentucky Locks and Dams

The Louisville District colonel from the US Army Corps of Engineers testified on Kentucky's locks and dams. The Louisville District is one of seven districts within the Great Lakes and Ohio River Division commanded by Brig. Gen. R. Mark Toy with headquarters in Cincinnati, Ohio. The Huntington, Nashville, and Louisville districts provide planning, design, and construction management support to communities and to the commonwealth for water resource projects under the Civil Works program. The Memphis District, which is part of the Mississippi Valley Division, also works in southwestern Kentucky on the Mississippi River. Established in 1886, the Louisville District has a total workforce of approximately 1,250 people in Kentucky, Indiana, Illinois, Ohio, and Michigan. In addition to the headquarters in Louisville, the Louisville District has 60 field offices. The workforce, which is over 95 percent civilian, is made up of professional engineers, architects, planners, biologists, and other specialist and support staff. The Louisville District is one of the Corps of Engineers' most diverse districts, with military construction, environmental, and civil works missions. The Louisville District's military mission is in support of 12 Army installations; five Air Force installations; several other Department of Defense facilities; and a program of project, design, and construction management in support of the Army and Air Force Reserve military construction program for the entire United States and its territories. The environmental mission is focused on cleanup of Department of Defense site contamination to protect the environment and public health and safety. The civil works mission covers flood risk management; navigation; regulatory activities; water supply; water quality; hydropower; environmental conservation; and restoration, recreation, and emergency response. The Louisville Districts civil works boundary includes 20 multipurpose flood reduction and recreation reservoirs and 10 locks and dams (2 along the Green River and 8 along the Ohio River.) From this general navigation profile of the mainstream of the Ohio River from Pennsylvania to Southern Kentucky, 9 of the 20 locks and dams (including locks and dams 52 and 53, which will be replaced by Olmsted) are within the Louisville footprint. Many of the aging locks and dams on the upper Ohio are at risk of failure after decades of underinvestment, potentially causing significant adverse impacts to the national economy.

Specific to Louisville, the average age of the navigation infrastructure along the river is approximately 46 years, nearing the 50-year design life. Many commodities are moved throughout the basin via the locks and dams. An average of over \$22 billion worth of commodities are shipped through the highest-traffic area of the Ohio River. Barges on the Ohio River can move a ton of commodities 550 miles on one gallon of fuel (compared to 400 miles per gallon on railroads and 150 miles per gallon on trucks), an efficiency that results in reduced fuel emissions. Waterway transportation alleviates highway congestion. A 15-barge tow, common on the Ohio River, has the same capacity as over 800 trucks or over 200 railcars. This reduction in transportation cost translates to lower end-user prices for goods transported on the waterway, including decreased energy costs from coal.

The top five Ohio River commodities by tonnage are coal, grains, aggregates, chemicals, and petroleum. When most people discuss the Ohio River in the navigation industry, one stretch of the river is always mentioned: locks and dams 52 and 53. This strategic reach of the Ohio River provides a connection between the Mississippi River, the Tennessee River, and the Cumberland River. More tonnage passes this point than any other place in America's inland navigation system. The antiquated design and age of these structures, completed in 1928 and 1929, make it impossible to meet current traffic demands without delays. The structures have deteriorated and are overstressed during normal operating conditions. In FY 2017 alone, the Corps of Engineers has invested \$13.2 million to repair, operate, and maintain lock and dam 52 (normally \$2.5 million would be spent for high-lift facilities). A contractor is on site 24 hours a day, seven days a week to assist lock and dam 52 employees and to make repairs when conditions allow. The third rock installation contract is under way. The rock dikes will allow for the fixing of four holes in the navigable pass section, and there have been multiple miscellaneous contracts for hydraulic repair. During a recent 14-day closure, ship carriers identified an \$8 million impact. Total river closures in 2017 have had an estimated impact of over \$35 million to the nation.

The Olmsted project is near completion. Once Olmsted is operational, locks and dams 52 and 53 will be demolished. The Olmsted project is ahead of schedule and under budget. All precast concrete on the project is complete. Remaining critical low-water-season activities include tainter gates bay number 5 dewatering (side seals and sill installation), completion of left boat abutment cast-in-place concrete, removal of Illinois side of left boat abutment cofferdam, and set/tremie of navigable pass 12A. Key elements that allowed progress have been efficient funding; advantageous river conditions that have allowed the work to expand beyond the contractual low-water season; and partnerships with the navigation industry, which contribute through a fuel tax.

While excitement surrounds the completion of Olmsted, issues remain throughout the basin, outside of navigation. Along with other sister river districts and the division, the Louisville District is seeking to address the issues with a basinwide approach. The Louisville District just concluded its first Ohio River Basin Tour in Pittsburgh to replicate the Great Lake Restoration Initiative for the Ohio River. This initiative will continue with the Huntington and Louisville Districts over the next 2 years. They are excited to announce The Ohio River Basin Climate Change Adaptation/Mitigation Strategies Pilot Study, sponsored by the Institute for Water Resources, featuring climate modeling for anticipated precipitation and temperature changes through 2099 and adaptation strategies for infrastructure and ecosystems that may be affected by these anticipated changes. These efforts help establish a baseline of conditions that will advance all future planning activities and provide a common basinwide operating picture.

Kentucky Riverports

The executive director of KYTC's Division of Planning, the Transportation Engineering Branch manager of KYTC's Multi-Modal Programs Branch, and the Henderson Riverport Authority port director gave a presentation on Kentucky riverports. Kentucky has eight operating public riverports, four that are developing, and two that are in question. In FY 2016, there was a return on investment of 422 percent for the project list. In FY 2017, the unfunded amount significantly increased, yet there was a still an excellent estimated return on investment of

212 percent for the project list. In FY 2018, fewer projects were able to be funded, yet there is an estimated 225 percent return on investment on those projects.

A total of \$500,000 per year goes to the public riverports for maintenance of access and dredging, and charts showed how much of it has been allocated to activities such as pavement projects, rail projects, cranes, conveyors, scales, dredging, barge access, dock improvements, and security from FY 2013 to FY 2018. Because of the way the funds were distributed as a line item in the transportation budget, some of those funds were lost. A project in FY 2013 was canceled late in the process because the railroad decided not to participate; consequently, the riverports lost \$50,000, which went back to the general fund. The Riverport Financial Assistance Trust Fund was created in FY 2010, and the riverports propose that this is where such funds need to go. KYTC will administer the Riverport Financial Assistance Trust Fund, which may receive appropriations, federal funds, contributions, gifts, and donations. The purpose of the trust fund is to improve riverport facilities and infrastructure, as well as capturing economic and trade potential, but it will cover routine operations and maintenance. Money remaining in the fund will not lapse but will carry forward with interest. There is a minimum of a 20 percent match, but the match can be set at 50 percent match, if funds are available. The Cabinet for Economic Development is to administer the Riverport Marketing Assistance Trust Fund, which may also receive appropriations, federal funds, contributions, gifts and donations. Its purpose is to attract economic development by promoting and marketing Kentucky's riverport to industrial, business, and commercial prospects. Remaining money will be carried forward into the succeeding fiscal year. Grants will not exceed \$15,000 per project or \$30,000 per port per year, the project will be completed within 1 year of the funding, and the applicant will have at least a 50 percent match.

Kentucky is trying to bring Fortune 500 companies into the state, but the Constitution of Kentucky presents an obstacle: "No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding twenty years" (Ky. Const., sec. 164). This portion of the constitution has not been revised since September 28, 1891. The problem with a franchise limit of 20 years is that businesses want and need long-term agreements in order to make their private investments lucrative.

An overview was given of the projects that KYTC has dealt with over the past few years, including the FY 2016 and FY 2017 Eddyville-Lyon County Riverport and Industrial Development Authority with expanded truck queuing and improved grain pit access and technology. An overview was also given of the FY 2016 Greenup-Boyd County Riverport Authority, which improved four railroad crossings and replaced 176 cross ties. In FY 2017, the Henderson County Riverport Authority had a dock crane restoration project. In fiscal years 2014, 2016, and 2017, the Hickman-Fulton County Riverport Authority funded dredging for a slack-water harbor. Hickman and Fulton County increased capacity by 150 percent by replacing a 40-year-old crane and conveyors from 1974. The Louisville Jefferson County Riverport Authority, from FY 2013 through FY 2018, completed rail rehabilitation and replaced 1,770 cross ties with new plates, spikes, anchors, and ballast. The rail rehabilitation was particularly important because of the approximately 225,000 tons of throughput of material such as petroleum coke, clay, coal, and steel coils. The Owensboro Riverport Authority in FY 2017 performed a project for security on an inner-loop road that provides single-access points for external traffic, securing the entrance

gate at all times. This project also included a detour to the guard building and safe parking for truckers. Other projects that Owensboro has done has include a 40,000-square-foot tolling and storage facility for Solvay Chemical, and a 100,000-bushel storage and conveyor upgrade for Bunge North America. Kentucky invested approximately \$150,000 to \$160,000 in the Solvay and Bunge projects, but Solvay and Bunge invested over \$25 million. In FY 2017, the Paducah-McCracken County Riverport Authority completed dock dredging, obtained new truck scales, and refurbished conveyors.

Kentucky's public riverports need allotments to be put in the Riverport Financial Assistance Trust Fund per KRS 174.210, need the state to eliminate the time limits on contracts that the state constitution establishes in section 164, and need an increase in funding to improve Kentucky's economy.

Kentucky Waterways Industry and Local Impact

The senior vice president of operations and the manager for risk and administration of Crouse Corporation gave a presentation on the Kentucky Waterways industry and its local impact. Crouse is a Paducah-based barge line founded by George Crouse in 1948. Crouse has approximately 300 employees. It chose Paducah for its headquarters because of the proximity to the Ohio, Tennessee, Cumberland, and Mississippi Rivers. Crouse operates approximately 34 towboats and 1,150 barges. Seven or eight employees operate each boat; they work for 21 days and then are off for 21 days. These jobs have a career path orientation, possibly leading to positions as an engineer, in the wheelhouse/pilothouse, or as captain on a boat that requires Coast Guard credentials to operate. Crouse moves 30 million tons of material a year, most of which is coal and aggregate. When other service providers and barge lines and terminal people are added to Crouse's workforce, Kentucky's First Congressional District has approximately 7,000 jobs in the river transport industry. Kentucky has the nation's fifth highest number of maritime industry employees.

One barge can hold 16 rail cars, and the biggest gondola cars are 100-ton cars. Fifteen 150-car trains will fill only nine or ten barges, and 15-barge units are common. To further elaborate the amount of materials being moved, the senior vice president added that 1,000 tractor trailers on the road would fill one barge. Under a new regulation, the vessels must be inspected, which makes this mode of transportation even safer. There are over 20,000 miles of navigable waterways in the United States, so water transportation has an important part to play in the well-being of the country.

Prefiled Bills

The committee took no action on prefiled bills.

**Report of the 2017
Interim Joint Committee on Veterans, Military Affairs, and Public Protection**

**Sen. Albert Robinson, Co-Chair
Rep. Tim Moore, Co-Chair**

Sen. Julian M. Carroll	Rep. Jeffery Donohue
Sen. Perry Clark	Rep. Myron Dossett
Sen. C.B. Embry Jr.	Rep. Jim DuPlessis
Sen. Denise Harper Angel	Rep. Chris Fugate
Sen. Ernie Harris	Rep. Jeff Greer
Sen. Jimmy Higdon	Rep. Chris Harris
Sen. Stan Humphries	Rep. Mark Hart
Sen. Dennis Parrett	Rep. Regina Huff
Sen. Wil Schroder	Rep. Dan Johnson
Sen. Dan “Malano” Seum	Rep. DJ Johnson
Sen. Whitney Westerfield	Rep. Donna Mayfield
Sen. Mike Wilson	Rep. Ruth Ann Palumbo
Sen. Max Wise	Rep. Brandon Reed
Rep. Robert Benvenuti III	Rep. Rob Rothenburger
Rep. Tom Burch	Rep. Dean Schamore
Rep. Will Coursey	Rep. Walker Thomas

LRC Staff: Erica Warren, Jessica Zeh, Jonathan Philpot, and Rhonda Schierer

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

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

Jurisdiction: Matters pertaining to military affairs and civil defense; the 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

Distinguished Veterans

During the course of the Interim, the committee honored the following people as distinguished veterans: Chief Jeff Pohlman from the Alexandria Fire Department; the adjutant general, Maj. Gen. Stephen R. Hogan; Sr. Master Sgt. Keary J. Miller; Col. (Ret.) Mike Jones; Staff Sgt. Michael Tester; and Cpl. (Ret.) Matthew Bradford.

Committee Resolution

The committee approved a resolution honoring Brig. Gen. Steven P. Bullard upon the occasion of his military retirement and thanked him for his years of service as a liaison and resource to the committee and the General Assembly.

World War I Centennial Events Update

The deputy commissioner of the Department of Veterans Affairs (KDVA) testified on the World War I Centennial Committee, which comprises representatives from 27 local, state, and national organizations. The committee has embarked on a 3-year commemorative effort to remember and honor Kentucky's role in "The Great War." The commemoration began April 6, 2017, and will conclude in the summer of 2019 with dates being highlighted throughout.

The deputy commissioner told of three important historical dates:

- April 6, 1917—US entrance into World War I
- November 3, 1917—Opening of Camp Zachary Taylor in Louisville
- November 11, 1918—Armistice Day

The deputy commissioner discussed the statewide proclamations and World War I opinion editorials.

To add an interactive component to this commemoration, KDVA has developed the Kentucky World War I Poppy Project. Poppies have been the symbol of remembrance dating back to World War I in 1915, when Lt. Col. John McCrae was inspired by the sight of poppies growing in fields, which led him to write the famous poem "In Flanders Fields." The Poppy Project's goals are to collect as many paper poppies as possible, to add the "Poppy Wall" at the 2017 State Fair, and to line the Capitol steps with thousands of poppies to close out Kentucky's World War I

commemoration in 2019. All of these projects and exhibits have been made possible with donations and help from many agencies, corporations, and individuals, without state funding.

Department of Veterans Affairs

The commissioner of KDVA explained that 11,123 veterans and their dependents are buried in veterans cemeteries across Kentucky. He described the cemetery expansion projects for the Veterans Cemetery West in Hopkinsville.

Radcliff Veterans Center and the Veterans Center Program

The KDVA commissioner testified about the Radcliff Veterans Center (RVC). On May 9, 2017, the first veteran was admitted to the RVC; on May 25, the facility was licensed and certified for Medicare and Medicaid participation; and as of August 24, there were 22 veterans living there. The commissioner invited all members of the committee to the November 9, 2017, dedication of the RVC, when it will be officially named the Carl M. Brashear Radcliff Veterans Center.

The RVC is designed not like a traditional nursing facility, but in the community living center (CLC) model. Oregon has shared its comparative data after 1 year of full operations, and the CLC model is still financially feasible.

The executive director of the Office of Kentucky Veterans Centers discussed funding issues for the state veterans' home construction program. FY 2018 has \$90 million budgeted. Only 10 projects on the current list will be funded. The VA will not provide extra funding to decrease the backlog in the foreseeable future, according to the secretary of Veterans Affairs. The executive director explained the project-specific budget concerns and the Bowling Green project timeline and recommendations. SB 13 was enacted in March 2017, and the August 1, 2017, deadline could not be met. August 1, 2018, is most likely the first opportunity for priority one consideration, and August 1, 2019, is the most realistic timeline for priority one consideration.

Kentucky Veterans Employment, Training, and Support Program

Kentucky Veterans Employment, Training, and Support (KyVETS) is KDVA's newest program. It provides resources and support to assist veterans in gainful employment and training services. The executive adviser of the KyVETS program has extensive experience with veteran employment and a thorough understanding of the barriers that veterans face in finding employment. KyVETS' services include workforce training, résumé assistance, guidance for job searches, networking, help with interviewing skills, and apprenticeship opportunities. Employer services include education on why hiring veterans is good business, matching veterans' skills to their employment needs, free advertisement of positions, and top talent referrals. KyVETS focuses on three areas: education, training, and retention. The number of employers and veterans joining the program increases weekly, and the program has more job postings from employers than veterans to fill them. This situation creates choice and opportunity for veterans. KDVA joined the Kentucky Chamber of Commerce to network with employers and to create a new platform to share KyVETS' story. The program hopes to develop a tool to identify job seekers by partnering with the Kentucky National Guard.

Incorporating Telehealth in Veterans' Medical Care

Rep. Marie Rader shared information about an event at the Jackson County Public Library to introduce a new public service called Veterans Telehealth. Several local agencies, representatives from the US Department of Veterans Affairs, and local leaders in the county and surrounding communities participated in unveiling the opportunity to use telehealth for direct communication between VA doctors and veterans. Rural broadband has a future in rural communities, but it has to be affordable and is necessary if telehealth is to be available for veterans and others. Jackson County and surrounding communities have no veterans' hospital or health care facility, and the nearest veterans hospital is approximately 70 miles away.

The chief of staff of virtual care (telehealth) at the Lexington VA stated that he participated in a summit last year to talk about the possibilities of bringing health care into rural areas through broadband. The Veterans Health Administration is the largest integrated health care system in the US. The VA in Lexington serves approximately 35,000 veterans and is a five-star facility.

The chief of staff described telemedicine as traditional clinical diagnosis and monitoring delivered by technology. Telehealth, also known as Connected Care, is a collection of modalities to enhance delivery of care and education. Telehealth makes it easier for veterans to take care of simple health-related tasks online and on their mobile devices. Information sharing makes it easier for patients to see their health care records, gives them control of their health data, and allows them to share health-related data with others. For the provider, it makes it easier to deliver care virtually and with seamless integration of electronic health records.

VA Connected Care products and services include VA mobile, which has apps for veterans and VA staff. These capabilities provide live "real-time" video, two-way interaction between a patient and provider using audiovisual telecommunications technology, and may serve as a substitute for an in-person encounter. There is the capability to transmit the recorded health history to a specialist who evaluates or renders service outside of a real-time or live interaction. It also allows for the personal health and medical data collected from an individual to be stored electronically in one location and then transmitted for use by a provider in a different location. Applications include targeted text messages that promote healthy behavior and wide-scale alerts regarding disease outbreaks. Nationally, 12 percent of veterans enrolled in VA care are accessed through telehealth. The Lexington VA Medical Center telehealth program has enrolled 5,011 veterans.

The barriers to adoption of telehealth include cost for and access to high-quality broadband Internet, privacy and data security, health system bureaucracy, training for patients to use new systems and technologies, attitude of patients to adopt new systems and technologies, trust in accuracy of data collected by monitoring devices, government health-related regulations and policy, and training for health care professionals.

Kentucky Veteran and Transitional Military Resource Team

A special assistant with the Public Protection Cabinet spoke on the Veteran and Transitional Military Resource Team, a collaboration of many state agencies to assist veterans and

transitioning military service members. The resource team is split into two subcommittees: the Bridge Subcommittee and the Accelerated Licensing Subcommittee. The Bridge Subcommittee looks into veterans' employment and education.

As the chair of the Accelerated Licensing Subcommittee, the special assistant focused his remarks on its work. HB 113 (2017 RS) asks licensing boards to find ways to help veterans and military personnel receive professional licensing more quickly. The subcommittee came up with the objectives to bridge military and civilian requirements for professional licensing. The goal is to provide fast and fair professional licenses to veterans, transitioning service personnel, active service personnel, and their spouses.

Several studies have been performed throughout the country, and the subcommittee hopes to see what other states are doing and adopt best practices. The subcommittee has designed a gap analysis to find out what separates the current requirements for licensing from the background and the education that the military may provide. There are three areas where gaps can exist: education, regulations, and legislation. Another issue is terminology, or being lost in translation between military language and industry/employer language. An overall military medic could transition to become an emergency medical technician; other jobs for which there is a critical need include paramedic, licensed practical nurse, nurse aide, licensed social worker, certified social worker, HVAC technician, plumber, physical therapist, and respiratory therapist. The goal is to have a course of action arranged by the end of the year.

Academic Credit for Military Experience

The president of the Council on Postsecondary Education (CPE) testified on the importance of military students to higher education and the state's educational attainment goals. The traditional enrollment age is declining, and there is a need to focus on adult learners. Military students benefit from taking college courses in order to have increased earning power and enhanced employment opportunities.

By 2020, 65 percent of all US jobs and 63 percent of all Kentucky jobs will require some college coursework or degree. Approximately 98 percent of all jobs created since the recession require postsecondary education.

Kentucky joined the Multi-State Collaborative on Military Credit (MCMC) in 2014. The group focuses on developing course equivalencies using the American Council on Education (ACE) credit recommendations, which helps universities create outreach strategies and increase support services and resources for military members. MCMC created a set of guiding principles related to translating military training into college credit and is working with the Kentucky Community and Technical College System (KCTCS) to create a crosswalk between military occupations training and KCTCS-appropriate courses. MCMC is working with universities to accept certain common ACE college credit recommendations for general education college credit.

The president of CPE explained how military-related credit is awarded and future plans for publicly creating an accessible website where veterans can input their military experience and compare the academic credits earned to different programs at state schools. The website might be

modeled on one created in Minnesota. The Kentucky system would cost \$2 million to create, and the ongoing annual operating costs would be approximately \$100,000.

Kentucky Commission on Military Affairs Briefing

The executive director of the Commission on Military Affairs (KCMA) described the commission's vision, mission, strategic goals, and desired outcomes. To ensure that Kentucky achieves its full potential in supporting and partnering with the military while creating enduring economic opportunity, KCMA advises and nests efforts with key stakeholders, protects and develops military installations and activities, expands its defense-related industry, and improves the quality of life for service members, veterans, and their families in order to fulfill an obligation of never-ending support to the military population and citizens. The goal is to develop installations and National Guard missions, functions, and personnel and to increase the impact of Kentucky's \$12 billion defense economy by \$2 billion.

The executive director discussed the model for transitioning service members, veterans, and spouses. To achieve successful transitioning, it is important to synchronize effort and cooperation by all stakeholders, determine state cabinet responsibilities and gain buy-in and ownership, develop a comprehensive national recruitment strategy focused on Kentucky, emphasize and execute a strategic communication plan, use existing best-practice accelerated programs, tap into the transitioning service member markets across the state and the nation, make Kentucky the most military-friendly state in the nation, and target and promote employment of military spouses.

The commission is working on creating the Service Members/Veterans Career Transition Centers to partner with service members transitioning out of the military service to build upon increasing military residency population and a qualified workforce. The Fort Knox Career Skills Program will focus on mid- to senior-level management for a fellowship program, Lean Six Sigma certification, project manager program certification, and entrepreneurial training. The Fort Campbell Career Skills Program will focus on veterans who are 20 to 26 years old, and it will include veterans in piping; mechatronics; the Hiring Our Heroes Corporate Fellowship program; the Hiller Transition to Trades program for HVAC, plumbing, and electrical work; and Microsoft. The executive director added that Phase I is career skills synchronization, Phase II is establishment of career transition centers, and Phase III is incorporation of civilians.

Kentucky National Guard and Department of Military Affairs

The adjutant general testified on the vision, mission, lines of effort, and mobilizations of the Kentucky National Guard (KYNG). KYNG delivers a sense of purpose, worth, and well-being to members of the National Guard, their families, and employers. The mission of KYNG is to provide relevant, ready forces prepared to respond to federal and state missions, and the adjutant general updated the committee on the number of service members deployed.

The adjutant general announced that the Derby City National Guard Association of the United States' 139th Conference and Expo was scheduled for September 7-10 in Louisville. Approximately 3,200 National Guard officers from all 54 states and territories were to attend,

along with over 300 defense industry representatives. The event's economic impact was estimated at \$9 million.

Fort Knox Briefing

The garrison commander at Fort Knox gave an overview of Fort Knox and the US Army Garrison-Fort Knox. Fort Knox has an estimated workforce and other supported population of 90,981 within 40 miles. The estimated transient student and support cadre population is 28,325 students and 6,000 cadre in FY 2017. The estimated total annual economic impact of Fort Knox is \$2.6 billion.

The garrison commander shared the investments that Fort Knox has made for soldiers and their families' well-being. Over \$1.6 billion has been invested since 2005 to improve the infrastructure and facilities. Forty-five percent of the garrison's annual operations budget is used to provide soldier and family well-being services and programs on Fort Knox. Some of the investments have been in family housing, schools, a tactical unit complex, gym and pool renovations and expansions, commissary enhancements, a tactical unit complex with a dining facility, company operations facilities, motor pool enhancements, consolidated barracks, a warrior transition battalion with a dedicated soldier and family assistance center, and 112 Americans with Disability Act-compliant suites for 224 soldiers.

Fort Knox is known for its energy efficiency program. The program's objectives are to decrease consumption, increase use of renewables, and have secure energy sources. Fort Knox invested \$400 million in energy efficiency from FY 1996 to FY 2017. The results have reduced energy consumption. There are over 50 Energy Star-certified buildings, improving comfort and indoor air quality.

Fort Knox has 55,846 acres of range and impact areas as well as specialized capabilities including a bridge site, obstacle course, and aerial drop zones. Fort Knox is the third most utilized live range with specialized capabilities in the US.

Planning for Major Events: Solar Eclipse

The director of Kentucky Emergency Management shared a video of the path of the August 21 total eclipse of the sun across the United States, including 96 miles across southern Kentucky. The Hopkinsville area was the global "ground zero" for the eclipse, which could be observed longer there than anywhere else in the world: more than 2 minutes and 40 seconds.

There were expectations of an influx of over 100,000 people into the area, prompting a year's worth of preparation for state services. The division polled all 21 counties in the path of the total eclipse to see what they would need to keep safety a top priority. Counties that were not in the zone for the eclipse volunteered to have their aircraft in the area to help. The Federal Emergency Management Agency's exercises for preparation of an event as large as the eclipse typically take 6 months. It was anticipated that one significant issue would be transportation when all of the people begin leaving Hopkinsville. All of the main roads were to be watched for safety issues.

The director said that, to help make the eclipse a successful and safe event, the agency would have crowd control, towing services, portable signage, communications, public works, a water system, firefighting, a mobile command center, shelter locations, cooling centers, bottled water, emergency pods, hand sanitation, portable toilets, emergency bus transportation, hospital centers, emergency medical services, medevac assets, first aid stations, food vending trucks or tents, permit inspections, hazardous-materials teams, and social messaging.

The director explained that the large number of visitors would require patience from local residents. At the time of the director's visit, no threat had been identified relating to the event. The eclipse was foreseen to have a large benefit to the community's economy. No issues with satellite or cell phones were predicted.

Reorganization of the 911 Services Board, Executive Reorganization Order 2017-298

The director of Public Affairs and Community Outreach from the Kentucky Office of Homeland Security (KOHS) described the contents of Executive Reorganization Order 2017-298. The administrator of the Kentucky 911 Services Board was at the meeting to help answer questions. The executive reorganization order is administrative and does not change any funding structure.

A representative of the Kentucky League of Cities (KLC) spoke in opposition of the executive reorganization order because a reorganization of the board via legislation had just gone into effect last year for the purpose of adding more local elected officials. KLC's hope is that, when codification of this executive orders occurs, local officials will have a voting role. The KLC representative expressed disappointment that more local officials are not members of the 911 Services Board but said that the organization will continue to work with KOHS to come to a resolution.

The committee chose to take no action on the executive reorganization.

Office of Homeland Security Briefing

The director of KOHS welcomed members to its offices and showed members the Intelligence Fusion Center, where state and federal agencies monitor a plethora of interests to the security of the nation.

The director reminded members of the mission of KOHS and reiterated that its fundamental objectives are to increase the state's capabilities to maximize public safety and security; to provide constant, strategic, and more precise engagement with public- and private-sector partners to improve crisis planning, mitigation, and recovery; and to provide resources to the state's communities and first responders.

He summarized the activities and outcomes of the Intelligence Fusion Center, grants allocated by KOHS to local communities and first responders, the setup of the 911 Services Board, KOHS's input in first responder training, and public outreach. Using three situational case studies, the director gave insight into the myriad responsibilities of the office.

Staff demonstrated the geographic information systems databases to track grant allocations over time and the plan to drill further down to a community level from the county-level information the program currently supports. Staff discussed current funding sources from the general fund, road fund, and federal dollars, and the office's budget request. Federal sources provide 69 percent of KOHS's funding, but those amounts grow smaller every year.

Marijuana and Public Safety

The director of the National Marijuana Initiative discussed how recreational marijuana has evolved since 2012, when Colorado first legalized marijuana. Colorado is the only state to have enough data over time to analyze. The peer-reviewed studies being used to justify legalizing marijuana are based on lower levels of THC in marijuana than are found in the strains currently being cultivated and sold. Scientific studies have not caught up to the botany of the plants.

The director said that the main issue that legislators should consider as they make policy decisions is whether legalizing marijuana creates additional quality-of-life issues including arrests, fatalities, and hospitalizations versus tax revenue and how generated revenue is being applied to other public policy concerns. In Colorado, fatalities from driving under the influence of drugs are up 101 percent even though overall deaths have decreased. Hospitalizations and drug violations due to marijuana usage have increased.

On the revenue side, Colorado reported that 2016's taxes from the sale of marijuana constituted 0.5 percent of its general fund revenue. All revenue generated from marijuana sales has been spent on regulating the industry and harm reduction, based on the Substance Abuse and Mental Health Services Administration survey results.

The executive director of the Kentucky Office of Drug Control Policy discussed the tobacco industry's testimony in Congress years ago indicating that tobacco was not harmful to health. He equated that message to what advocates of decriminalizing marijuana claim about using marijuana. Ten to 15 percent of marijuana users will develop an addiction and stop acting as functioning members of society. Increasing the availability of another addictive substance is not good public policy.

The director of state and local affairs for Smart Approaches to Marijuana explained that marijuana is a federally listed Schedule I drug, but 29 states and Washington, DC, have legalized the use of medical marijuana in some form. This disparity sets up several potential conflicts, including the effect of state-legalized medical marijuana usage in conjunction with ensuring safety in transportation, commerce, and workplaces. An employer can dismiss employees because of marijuana usage, but in states where medical marijuana or marijuana usage has been legalized, industries and labor are having trouble finding workers who can pass drug tests. The conflicts in laws also create the possibility of lawsuits for businesses.

Legal decisions around the country have had varied outcomes. The Colorado Supreme Court has held that federal laws preempt state laws. New England states claim that the Americans with Disabilities Act covers the use of marijuana for medical reasons. The legal viability of that claim is still undetermined, as different federal administrations and agencies have changed their

positions over the years, even in the midst of prosecuting cases or submitting amicus briefs in legal challenges.

The costs of legalization also show up in the increased number of arrests and the racial disparity of those arrests in states where marijuana usage has been legalized. Businesses selling marijuana can be found predominantly in poorer and minority communities.

The commissioner of the Kentucky State Police (KSP) said that it is a myth that legalizing marijuana would benefit law enforcement and allow officers to focus on bigger issues by eliminating the black market. Legalizing marijuana increases black market sales. The public policy debate needs to consider both the benefits and the risks. Nationwide, 88,000 people die each year because of alcohol use. More people than that die of tobacco use, and still more die of opioid use. Increased marijuana use will lead to more deaths.

Rep. Tim Moore offered to draft a letter from the committee to the Federal Drug Administration and VA encouraging continued medical study of the chemical components of cannabis for controlled medical use. He promised that all members of the committee would have an opportunity to review the letter before it was sent. The committee approved this action.

School and Campus Safety

A retired principal testified that everyone is aware that there have been lots of changes in schools over the years in response to school shootings. The challenge is to maintain a safe and secure environment to foster learning while also being ready to defuse any problems. When he was a principal at an elementary school in La Rue County, there were times when it would take 15 to 25 minutes for police to arrive at the school because of its location on the edge of the county. He wished he had had personal protection to help keep the school safe and able to react effectively. His school did not have secure doors or buzzers at the entrance to restrict outsiders from entering. Because of firearms restrictions, he could not even keep a gun in his car to retrieve in an emergency, and he felt restricted in his duty to care for students.

A deputy commissioner of KSP explained that he and the commissioner of the Department of Criminal Justice have spent a great deal of time studying school shootings and coming up with recommendations to prevent them. Over the years they have come to agree that schools should have an early warning system to enable prevention through detection, controlled access to a school, and school resource officers in schools to handle dangerous situations. These components are particularly important at elementary schools, where young children do not yet know how to make safety decisions quickly. College students immediately know ways to protect themselves when there is a threat, but 6-year-olds do not. Schools that take actions to implement these procedures are in a much better position to keep their students safe.

The commissioner explained that the topic of school safety is important and emotional for him. He and the KSP deputy commissioner were integral in helping the legislature pass school safety legislation 5 years ago. The concern today is that most of the recommendations in that legislation are not being followed—often because of a lack of funding. The commissioner reiterated that a layered approach is critical. For example, Sandy Hook Elementary School in

Newtown, Connecticut, had many of these protections, but the perpetrator there in 2012 was able to access the building by shooting through the glass door. The recommendations enacted 5 years ago in Kentucky were a starting point. Administrators, educators, and law enforcement must continually consider additional measures.

Representatives of Students for Concealed Carry from the University of Kentucky and the University of Louisville expressed their concerns for safety on and off campus. The UK representative stated that more than 200 public universities allow and have a great deal of data and experience with allowing concealed carry on college campuses. The data indicate that there has not been one violent incident by a student who has a concealed carry license on those campuses. He believes that concealed carry offers the best tool for students to defend themselves if an incident occurs on campus, and more important, it allows them to defend themselves as they travel onto and off campus.

The UofL representative discussed how prohibiting concealed carry on campus puts students at greater risk of being victims of crimes just off campus. The 2012 *Mitchell v. University of Kentucky* decision has helped by confirming that students are allowed to keep their weapons secured in their cars, but that decision does not protect those who walk and bike to campus or those who use public transportation.

**Report of the 2017
Administrative Regulation Review Subcommittee**

**Sen. Ernie Harris, Co-Chair
Rep. Ken Upchurch, Co-Chair**

Sen. Perry Clark
Sen. Alice Forgy Kerr
Sen. Julie Raque Adams

Rep. Mary Lou Marzian
Rep. Jason Petrie
Rep. Tommy Turner

LRC Staff: Sarah Amburgey, Karen Howard, Emily Harkenrider, Carrie Klaber, Stacy Auterson, Emily Caudill, Ange Darnell, and Betsy Cupp

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Administrative Regulation Review Subcommittee

Jurisdiction: Review and comment on administrative regulations submitted by the Legislative Research Commission; make nonbinding determinations concerning the statutory authority to promulgate administrative regulations filed with the Legislative Research Commission; review existing administrative regulations; recommend the amendment, repeal, or enactment of statutes relating to administrative regulations; conduct a continuous study of the administrative regulations procedure and the needs of administrative bodies; study statutes relating to administrative hearings; and make legislative recommendations.

Subcommittee Activity

The Administrative Regulation Review Subcommittee (ARRS) is a statutory committee of the Legislative Research Commission and is required to meet monthly. This report covers committee activity from December 2016 through November 2017.

Committee Statistics

The subcommittee reviews an average of 455 regulations each year. This year the number of regulations ARRS reviewed was slightly above average at 500. The subcommittee did not find any regulations deficient during this time. The number of additional amendments made at an ARRS meeting was lower than average because of LRC staff pre-reviews.

Baseline Yearly Averages of Regulations Reviewed by ARRS

	Additional Amendments Made at ARRS Meeting	No Additional Amendments Made at ARRS Meeting	Companion Emergencies to Ordinary Regulations	Withdrawn Prior to ARRS Review	Total Reviewed
Baseline averages	321	102	60	28	455

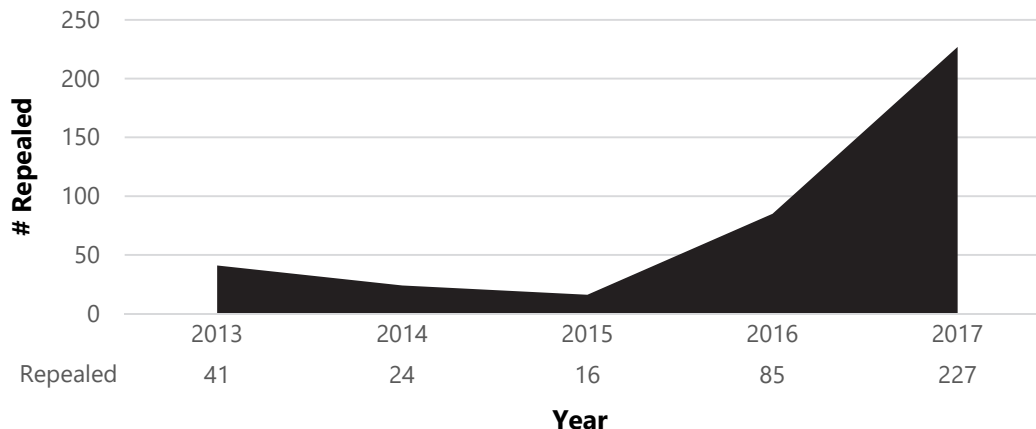
Regulations Reviewed by ARRS December 2016 to November 2017

Month	Additional Amendments Made at ARRS Meeting	No Additional Amendments Made at ARRS meeting	Companion Emergencies to Ordinary Regulations	Withdrawn Prior to ARRS Review	Total Reviewed
Dec 2016	13	7	5	0	25
January 2017	10	18	4	0	32
February	38	23	3	1	63
March	24	17	4	2	43
April	23	13	6	0	42
May	8	5	0	2	11
June	46	11	0	1	56
July	12	6	3	1	20
August	19	22	1	2	40
September	10	11	3	0	24
October	30	8	2	0	40
November	60	40	5	1	104
Total	293	181	36	10	500

Red Tape Reduction

Red Tape Reduction is an initiative created by the Governor in 2016 for the executive branch to review every regulation currently in effect and repeal those regulations that are duplicative, overly complex, obsolete, or conflicting with current law. During 2017, the subcommittee reviewed 67 repealer regulations that repealed 227 regulations.

**Number of Regulations Repealed by Year
2013-2017**



2017 RS HB 50

Signed into law on March 21, 2017, 2017 RS HB 50 established a review and expiration process for administrative regulations. Without action by the promulgating agency, older regulations effective prior to July 1, 2012, will expire on July 1, 2019. Regulations with an effective date on or after July 1, 2012, will expire on a 7-year cycle. HB 50 requires an agency to review its regulations for compliance with KRS Chapter 13A and other law. The agency may then file a certification letter with the Regulations Compiler at LRC, stating whether the agency wishes to keep the regulation in effect as is, or whether the agency intends to amend the regulation. The regulation will expire without the certification letter.

Review Topics

The following are some of the topics that ARRS reviewed during 2017:

Prison Overcrowding. The subcommittee reviewed 501 KAR 1:030, “Determining parole eligibility,” which was amended to allow expedited release for prisoners who have been granted parole but remain in custody solely to meet time service requirements. To qualify, the expedited release must be needed to relieve overcrowding, requested by the commissioner, and approved by the Kentucky Parole Board.

A representative for the Department of Corrections testified that time-served requirements are established as percentages based on when each crime was committed, and the most current percentage is 20 percent. The change in this administrative regulation was in response to Louisville’s incarceration overcrowding problem, necessitating an emergency regulation.

Controlled Substances. The subcommittee reviewed 902 KAR 55:095, “Prescription for Schedule II controlled substance – authorization of oral prescriptions for immediate administration, facsimile transmission, or partial filling,” which was amended to allow pharmacists to dispense Schedule II controlled substances based on oral authorization of the prescribing health care provider, if they are needed for immediate administration to a hospice patient or long-term care facility resident.

Zip Lines. The subcommittee reviewed 302 KAR 17:010, “Requirements for operating and inspecting aerial recreational devices and facilities,” which established standards for the operation of zip lines and other aerial recreational devices and facilities, including requirements for licensure, fees, insurance, annual inspections, recordkeeping, employee training, stop orders, and civil penalties.

A representative for the Department of Agriculture testified that the licensure requirements apply to zip lines used for commercial or educational purposes, but do not apply to zip lines that are for private use only. Also, the department estimated that the state has about 100 existing zip lines that would fall under this new program.

Childhood Immunization. The subcommittee reviewed 902 KAR 2:060, “Immunization schedules for attending child day care centers, certified family child care homes, other licensed

facilities which care for children, preschool programs, and public and private primary and secondary schools,” which made several amendments to the immunization requirements. There was significant opposing testimony concerning the form used for declining the immunizations on religious grounds.

The representative for the Department for Public Health testified that the proposed amendment removed the requirement for a medical provider’s signature of approval on the declination form, allowing a parent or guardian to sign instead. The department formed a workgroup and, over a 2- to 3-year period, collaborated with individuals from the Kentucky Immunization Program, the Division of Maternal and Child Health, the Kentucky Department of Education, and school nurses to assist with developing amendments to address complaints related to the religious exemption to immunization. In response to comments received during the comment period, the department revised the declination form again to include a list of each immunization, so that a parent or guardian had the option of declining only certain vaccines. The department also included language on informed consent.

Several stakeholders testified in favor of and against the regulation. After a request by the subcommittee, the cabinet agreed to remove language on the declination form that some individuals might find objectionable.

Medical Review Panels. The subcommittee reviewed 900 KAR 11:010, “Medical Review Panels,” which established requirements and procedures for medical review panels, in accordance with KRS Chapter 216C. There is ongoing litigation relating to this administrative regulation.

A representative for the Cabinet for Health and Family Services testified that numerous public comments were received, but that most of them addressed noncontroversial technical concerns. The filing fee was established to offset costs. The amount of the fee is high enough to discourage frivolous filing, but lower than the filing fee for Circuit Court. The fee may be waived in cases of indigence. The panel would need a half-time attorney, a full-time attorney, and a full-time clerk, at an annual cost of approximately \$330,000. The start-up cost for electronic filing would be approximately \$200,000. Regular maintenance for an electronic filing system was expected, but it was not possible to determine what the cost would be.

Pharmacy Benefit Managers. The subcommittee reviewed 806 KAR 17:575, “Pharmacy benefit managers,” which established the appeals process for complaints to pharmacy benefit managers regarding maximum allowable costs for drug reimbursements.

A representative for the Department of Insurance testified that this regulation was initiated because of significant complaints from stakeholders, primarily pharmacists. The regulation was necessary to implement 2016 RS SB 117. The proposed amendment clarified and expanded substantive provisions and also increased transparency by requiring greater detail from benefit managers.

Abortion. The subcommittee reviewed 902 KAR 20:360, “Abortion Facilities,” which was amended to require an obstetric ultrasound, procedures for informed consent, emergency transfer agreements with an acute-care hospital, transport agreements with an ambulance service, and new

employee orientation on patient confidentiality. There is ongoing litigation related to this administrative regulation.

A representative for the Department for Public Health testified that it was unnecessary to defer subcommittee review until there is a court decision in the lawsuit because that decision might be many months away. In addition to abortion facilities, certain ambulatory care centers were required to have patient transfer agreements to obtain a license under the State Health Plan and Certificate of Need Process.

TENORM. The subcommittee reviewed a package of regulations under 401 KAR Chapters 45 and 48, 805 KAR Chapter 1, and 902 KAR Chapter 100, which clarified terms relating to technologically enhanced naturally occurring radioactive material (TENORM) and established requirements for the disposal of TENORM waste generated from oil and gas development activities containing combined radium-226 and radium-228 at concentrations exceeding certain limits. Three agencies worked with environmental groups to create this comprehensive package to implement 2016 RS HB 563 and 2017 RS SB 248: Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management; Energy And Environment Cabinet, Department for Natural Resources, Division of Oil and Gas; and Cabinet for Health And Family Services, Department for Public Health, Division of Public Health Protection and Safety.

Asian Carp. The subcommittee reviewed 301 KAR 1:152, “Asian Carp and Scaled Rough Fish Harvest Program,” which amended requirements to waive the commercial fishing license fees for fishermen who intended to harvest only Asian carp in restricted water.

A representative for the Department of Fish and Wildlife testified that there were not enough commercial fishermen to combat the Asian carp encroachment, which has exploded over the last 5 to 10 years. The fish jump and impede the recreational use of state waterways, damaging boats, and causing injuries. This problem is having a negative effect on tourism and could have a devastating effect because the problem is expected to increase exponentially over the next 5 years.

There are three businesses that harvest and process Asian carp, but the state needs more. Approximately 2 million pounds are harvested annually, but the state’s goal is 5 million pounds.

Radon. The subcommittee reviewed 902 KAR 95:040, “Radon Contractor Certification Program,” which made various amendments.

A representative for the Department for Public Health testified that the Division of Public Health Protection and Safety was in litigation regarding this regulation, and the proposed amendments were an attempt to resolve the litigation so that the program could resume enforcement. The division reduced requirements that were more stringent than the authorizing statutes to the extent that public health and safety were still maintained. Individual Radon Program Advisory Committee members were sent copies of the proposed amendments because the advisory committee had not met in recent months, and it experienced difficulty maintaining a quorum when it did meet.

Members of the advisory committee testified that there were concerns that radon testing would be less accurate and radon mitigation would be less effective under the proposed amendment. Most bordering states have more stringent radon requirements. Additionally, KRS 211.9105 requires the advisory committee to review and comment on relevant regulations by the division, but it had not been able to do so. Although the advisory committee had unfilled appointments and difficulty maintaining a quorum, it was confident that a better, consensus-based regulatory outcome was achievable.

The division deferred the regulation on the subcommittee's request, met with the advisory committee, and agreed on a satisfactory amendment.

Coal Combustion Residuals. The subcommittee reviewed 401 KAR 4:070, "Coal combustion residuals surface impoundments," which established standards for coal combustion residuals (CCR) surface impoundments in conjunction with the permit-by-rule standards established in 401 KAR Chapter 46.

A representative for the Department for Environmental Protection testified that the proposed regulation adopted the federal CCR rules for coal ash ponds and CCR landfills. Going forward, CCRs would be disposed of in landfills, rather than being held in coal ash ponds, which would close under protective closure requirements. The proposed regulation contained requirements that were self-implementing, which meant that utilities would be responsible for regulating themselves to ensure compliance. There are approximately 46 coal ash ponds and 12 CCR landfills in the state.

A representative of the Kentucky Resources Council testified that CCRs were known to cause environmental damage, as they commonly contain 17 potentially toxic elements. Leachates from CCR facilities typically exceeded drinking water standards, and communities near CCR landfills often used groundwater as a source of drinking water. Studies showed that, in some cases, heavy metal leachate from CCRs was higher than hazardous waste standards. Monitoring wells recently constructed without cabinet oversight were shown to be out of compliance with standards, and some were constructed in the wrong place for detecting potential contamination. The proposal to allow utilities to self-regulate was objectionable.

State citizens testified that they lived near a proposed CCR landfill and were very concerned about several notices of deficiency that had been issued to the utility company for the current landfill permit. The groundwater was at significant risk of contamination because of the porous nature of the underlying dolomite layer. The proposed permit-by-rule, or self-implementation, was unacceptable.

The cabinet representative testified that these concerns demonstrate the need for these new requirements because the problems described occurred pursuant to the existing administrative regulations. The cabinet would continue to inspect and monitor CCR disposal.

Electioneering. The subcommittee reviewed 31 KAR 4:170, "Exceptions to prohibition on electioneering," which amended the regulation to allow a voter to use a personal telecommunications device, computer, or other information technology system to electronically

record or transmit an image of his or her own personal likeness and ballot if it is not used to solicit signatures to a petition or to solicit votes for or against a candidate or ballot question, and it is not used within 100 feet of an unlocked entrance to a polling place.

Tentative ARRS Agenda for December 2017

Although December's meeting agenda has not been finalized, the ARRS could review as many as 52 regulations. There are several reasons that a regulation might be removed, including needing time to complete the public comment process, or an agency request to defer to the next ARRS meeting. Potential topics include election finance statements; income taxes; sales and use taxes; hunting and fishing license, tag, and permit fees; charter schools; malt beverage equipment and supplies; mine safety; Medicaid-related physicians' services; family support; and child care.

**Report of the 2017
Capital Planning Advisory Board**

**Sen. Stan Humphries, Co-Chair
Rep. Daniel Elliott, Co-Chair**

Sen. Whitney Westerfield
Rep. DJ Johnson
Scott Brinkman
Charles Byers
John Chilton
Jane Driskell
Laurie Dudgeon

Carole Henderson
Stephen Knipper
William M. Landrum
Dan Markwell
Mark Overstreet
Kaelin Reed
Katie Shepherd

LRC Staff: Shawn Bowen, Julia Wang, and Jennifer Luttrell

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Capital Planning Advisory Board

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

Board Activity

Since adjournment of the 2017 Regular Session, the Capital Planning Advisory Board has held four meetings. The meetings focused primarily on the review of agency capital plans in preparation of the *2018–2024 Statewide Capital Improvements Plan*. At these meetings, the board received testimony from executive branch agencies, postsecondary institutions, and the judicial branch. The testimony included discussion of each agency’s capital construction, information technology, and equipment needs. Several agencies discussed potential funding needs for the grant and loan programs they administer. The agency capital plans reported the need for 1,460 projects totaling approximately \$22 billion from all fund sources over the next 6 years. General fund dollars represent approximately \$7.1 billion of the total need. For the 6-year period, there is a need for approximately \$5 billion for construction projects such as new facilities and expansions; \$13 billion for maintenance and renovation of existing facilities; \$141 million for equipment; \$2 billion for information technology projects; and \$824 million for the grant and loan programs that provide assistance to nonstate entities for water and sewer infrastructure, schools, and economic development.

In addition to the review of agency capital plans, the meetings also included special reports provided by the Commonwealth Office of Technology (COT) and the Council on Postsecondary Education (CPE). As part of the capital planning process, these agencies are responsible for the review and evaluation of capital construction and information technology projects.

At the June meeting, the deputy secretary of the Finance and Administration Cabinet presented his report regarding COT’s review of executive branch information technology projects. The COT review panel evaluated 25 qualifying projects for the 2018-2020 biennium with a value of \$385 million. Included within the 25 projects were two mega-projects: Finance and Administration Cabinet, Department of Revenue Integrated Tax System project, \$93 million; and Justice Cabinet, Kentucky State Police Emergency Radio System Replacement project, \$142 million. Nine of the projects, totaling \$222 million, were identified as high in value, meaning they had the best return on investment for the commonwealth.

The August meeting included a report from CPE staff regarding its review and evaluation of general fund capital construction and information technology projects submitted by the postsecondary institutions. CPE reviewed 41 asset preservation projects valued at \$1.3 billion; 12 new construction projects valued at \$501 million; and 17 information technology projects valued at \$68 million.

The board gave final approval to the *2018–2024 Statewide Capital Improvements Plan* at its October meeting. The plan included policy and project recommendations developed and approved by board members.

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

- **Budget Reserve Trust Fund:** The board recommended that the Governor and the General Assembly place a high priority on maintaining Budget Reserve Trust Fund balances and consider linkage of deposits directly to revenues and statutory withdrawal provisions.
- **Council on Postsecondary Education – Focus on Asset Preservation – Postsecondary Capital Projects:** The board endorsed the Council on Postsecondary Education’s multi-biennium strategy for financing the capital needs of the postsecondary institutions. The board also recommended that the Governor and the General Assembly endorse CPE’s proposed asset preservation investment framework and provide funding in the 2018-2020 and subsequent state budgets.
- **State Agency Maintenance Pools:** The board recommended that, in each biennium, sufficient funding be appropriated for agency miscellaneous maintenance pools to address maintenance projects that would protect the state’s significant investment in its physical plant.

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

State Agency Maintenance Pools for Construction Needs

The board recommended that maintenance pool appropriations for all agencies be significantly increased in the 2018-2020 biennium. In a separate policy recommendation, the board reiterated its belief in the importance of the state agency maintenance pools to finance minor planned and unanticipated construction project needs. In their 2018-2024 capital plans, the agencies identified the need for approximately \$274 million for maintenance pools over the 6-year period. This figure represents an increase of approximately 6 percent over the \$259 million identified in the 2016-2022 agency capital plans. In the first biennium alone, the request for maintenance pool funding totaled \$102 million—significantly more than has been appropriated for this purpose in past biennia.

State Agency Equipment Maintenance Pools and Replacement Schedules

The board also recommended that funds be provided for equipment and systems maintenance pools. Similar to the need to protect the state’s investment in facilities, agencies that are responsible for major equipment assets of the state, such as aircraft and communications equipment, need the ability to address ongoing maintenance needs of those items. The board further recommended that funding be appropriated on a regular basis to allow agencies to establish and adhere to equipment replacement schedules so that replacement and upgrade needs can be addressed on a periodic basis, rather than accumulating until a major infusion of funds is required.

Long-Range Plan for Housing State Agencies in the Frankfort Area

The Department for Facilities and Support Services was commended on its continuing progress toward reducing the amount of space leased to house state agencies in Franklin County. The board requested that the department continue to address reducing the amount of space leased by state government in other locations around the state. This action is consistent with KRS 42.425(2)(b)2, which directs the development of long-range plans for housing state agencies in metropolitan areas.

Grant and Loan Programs

Various agencies proposed significant funding in 2018-2020 for programs that would provide assistance, through a competitive application process, to nonstate entities. Included are programs of the Cabinet for Economic Development, the Department for Local Government, the Kentucky Infrastructure Authority, and the School Facilities Construction Commission. Because of the limited resources available and the significant needs in other areas of government, the board urged that decision makers carefully analyze existing fund balances and carry forwards prior to authorizing additional appropriations for these programs.

Relative to projects proposed to be financed from state general funds in the 2018-2020 executive budget, the board recommended a total of 51 projects in three areas: construction (maintenance/renovation), construction (new), and information technology. The following projects were recommended:

Construction (maintenance/renovation)

- Brady Hall Renovation–Kentucky School for the Deaf
- Building Roof/Wall/Window Repair and Replacement Phase 1–Department of Parks
- Capital Renewal and Deferred Maintenance Pool–Kentucky Community and Technical College System
- Capital Renewal and Maintenance Pool, Education and General Buildings–Morehead State University
- Capital Renewal Pool 2018-2020–Western Kentucky University
- Capital Renewal Replace and Upgrade Pool–University of Louisville
- Complete Capital Renewal Pool, Education and General Buildings–Murray State University
- Complete Life Safety Pool, Education and General Buildings–Murray State University
- Electrical and Telecommunications Upgrade–Western State Hospital–Cabinet for Health and Family Services
- Facilities Renewal and Modernization–University of Kentucky
- Halon System Replacement–Finance and Administration Cabinet
- Modernization Pool for the Kentucky National Guard Armories–Department of Military Affairs
- Renovate and Upgrade Heat Plant–Eastern Kentucky University
- Renovate Combs Classroom Building–Morehead State University
- Repair Boilers and Aging Distribution Lines Phase II–Kentucky State University

- Repair Structural Heaving in Landrum/Fine Arts–Northern Kentucky University
- Replace Housing Units Roofs, Eastern Kentucky Correctional Complex–Department of Corrections
- Replace Underground Infrastructure–Western Kentucky University
- State Schools HVAC Pool–Department of Education

Construction (new)

- Construct 400-man Dorm Blackburn Correctional Complex–Department of Corrections
- Construct Bath County Court Facility–Court of Justice
- Construct Bowling Green Veterans Center–Department of Veterans Affairs
- Construct Butler County Court Facility–Court of Justice
- Construct Capital City Airport Terminal Building–Transportation Cabinet
- Construct Health Sciences Center–Kentucky State University
- Construct Vet Tech Clinical Sciences Center–Morehead State University
- Construct Vital Statistics Service Center and Vault–Department of Public Health
- Expand Elliott County Phase II, Medium Security Little Sandy Correctional Facility–Department of Corrections
- Facilities Renewal and Modernization–Murray State University
- FCC Transmitter Repack–Kentucky Educational Television
- Renovate Jefferson County Hall of Justice–Court of Justice
- Renovation/Addition to Crittenden County Court Facility–Court of Justice
- Renovation/Addition to Jessamine County Court Facility–Court of Justice
- State-Owned Dam Repair Pool–Department of Environmental Protection
- Statewide Microwave Network (KEWS) Shelter Upgrade–Commonwealth Office of Technology

Information Technology

- Campus Telecommunications Upgrade–Northern Kentucky University
- Child Support System (KASES III)–Cabinet for Health and Family Services
- Commonwealth College (HB265) Technology System–Council on Postsecondary Education
- DAIL System Modernization–Cabinet for Health and Family Services
- Emergency Radio System Replacement–Kentucky State Police
- Enhance Library Automation Resources–Morehead State University
- Enterprise Document Management–Commonwealth Office of Technology
- Information Technology Infrastructure Upgrade–Kentucky Community and Technical College System
- Inspection and Licensing Project–Department of Agriculture
- Integrated Tax System–Department of Revenue
- Military Student Initiative–Council on Postsecondary Education
- Nurse Call System–Department of Veterans Affairs
- Online Permitting and Submittal (eForms)–Department of Environmental Protection
- Records Digitization–Kentucky Heritage Council

- Upgrade Information Technology Infrastructure–Western Kentucky University
- Upgrade Instructional Technology–Northern Kentucky University

The complete *2018–2024 Statewide Capital Improvements Plan*, as approved by the board, was transmitted to the heads of the three branches of government by the statutory due date of November 1.

**Report of the 2017
Capital Projects and Bond Oversight Committee**

**Sen. Stan Humphries, Co-Chair
Rep. Phil Moffett, Co-Chair**

Sen. Julian Carroll
Sen. Rick Girdler
Sen. Christian McDaniel

Rep. Larry Brown
Rep. Will Coursey
Rep. Steven Rudy

LRC Staff: Katherine Halloran, Julia Wang, and Jenny Wells Lathrem

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Capital Projects and Bond Oversight Committee

Jurisdiction: The committee is a permanent subcommittee of the Legislative Research Commission and is charged with overseeing the expenditure of funds for state capital projects; the allotment of funds from the Emergency Repair, Maintenance, and Replacement Account and the Capital Construction and Equipment Purchase Contingency Account; the state's acquisition of capital assets, including the lease of real property; the issuance of bonds by the commonwealth and related statutory entities; and the issuance of bonds by local school districts.

Committee Activity

As a statutory committee, the Capital Projects and Bond Oversight Committee meets monthly, even when the General Assembly is in session. This report covers committee activity between November 1, 2016, and November 30, 2017. The committee met 12 times in Frankfort in the Capitol Annex. The committee did not meet in January 2017 and did not take action on items submitted for the May 2017 meeting. Entities either deferred proceeding with the items until committee approval the following month or, pursuant to KRS 45.800 or KRS 45.810, proceeded with the items due to time constraints. All items for which the committee took action were either approved, or tabled and approved.

General Oversight and Review

Louisville Arena Authority. Following the November 2016 request by the committee, the auditor of public accounts conducted a financial statement audit of the Louisville Arena Authority and released the results in May 2017. The auditor and his staff presented additional observations from the audit to the committee in June 2017.

Unexpended Debt Service to Support Availability Payments. The biennial budget bill requires the secretary of the Finance and Administration Cabinet to certify the amount of debt service appropriations not needed to satisfy debt service obligations and report that amount to the committee before funds can be expended for availability payments required by the Kentucky Communications Network Authority's public-private partnership contract for the KentuckyWired network. \$14,965,000 was reported for FY 2017, of which \$11,794,200 was designated for the availability payments.

Appropriations for Projects Not Line-Itemized. Part II(4) of 2016 RS HB 303, the 2016-2018 biennial appropriations act, allows allocations for projects from specific areas and requires reporting of capital projects to the committee. The committee reviewed aggregate allocations of \$3,462,100 from bond-funded maintenance pools; \$4,900,000 from a postsecondary education pool; \$10,315,200 from wetland and stream mitigation projects; and \$37,786,300 from the workforce development construction pool. In addition, the Cabinet for Economic Development (CED) reported a \$15 million transfer from the high-tech investment pool to the Kentucky Economic Development Partnership, a board governing CED, for a capital contribution to Commonwealth Seed Capital (CSC). The partnership is the sole member of CSC, an independent private funding source for debt or equity investments in early-stage Kentucky business entities. CSC used the \$15 million to invest in Braidy Industries, resulting in at least 20 percent ownership

of the company. Braidy Industries plans to build a \$1.3 billion aluminum rolling mill in Greenup County.

Notification of Plans to Use Alternative Construction Delivery Methods. The committee received notification of plans to use alternative construction project delivery methods, pursuant to KRS 45A.180(2), from the University of Kentucky (UK). UK reported the design-build method for Replace Greek Housing – Alpha Gamma Rho Fraternity and the construction management (CM) at-risk method for its Facilities, Renewal, Modernization and Deferred Maintenance – Chemistry/Physics 3rd Floor capital project. The traditional construction delivery method is the design-bid-build procurement process, whereby the commonwealth bids out the design first, as the basis for soliciting construction bids from a general contractor. The design-build method involves a team hired under one procurement to design and construct a facility, and the CM at-risk method involves a construction manager rather than a general contractor. With the CM at-risk method, the construction manager is typically brought in early during the design phase to assist with cost estimates and scheduling and will, at some point in the process, take the risk typically assumed by the general contractor for delivering the project on time and within budget.

Quarterly Status Reports. The committee received statutorily mandated status reports from the Administrative Office of the Courts, the Finance and Administration Cabinet (with the Commonwealth Office of Technology reporting independently), and postsecondary institutions managing their own capital construction programs (Eastern Kentucky University, Morehead State University, Murray State University, Northern Kentucky University, University of Kentucky, University of Louisville, and Western Kentucky University).

The committee reviewed numerous agency requests concerning capital projects, bond issues, and state leases:

Unbudgeted Capital Projects

The committee approved seven unbudgeted capital projects pursuant to KRS 45.760(7), which permits a capital construction project to be authorized even though it is not listed in an enacted budget, if at least 50 percent of the costs are from private or federal sources and the project is presented to the committee for review. One of the seven projects was the Construct Pikeville Technology Center project as the secretary of the Finance and Administration Cabinet amended his prior 2015 approval to increase the restricted funds portion by \$1 million.

The secretary of the Finance and Administration Cabinet communicated the decision to proceed with the \$946,500 (federal) Office of Employment and Training Workforce Development Integration FY 16-18 submitted for the January 2017 meeting and the \$727,800 (federal/restricted funds) Department of Military Affairs Install Solar Panels at Paducah National Guard Armory project submitted for the May 2017 meeting.

Unbudgeted Capital Projects Approved

Agency	Project Title	Scope/Fund Source
Kentucky Transportation Cabinet	Rowan County Weigh Station	\$1,528,700 Federal
Education and Workforce Development Cabinet, Kentucky Educational Television	Federal Communications Commission Repacking	\$2,750,000 Federal
Department of Military Affairs	Boone National Guard Center – Fitness Center	\$1,267,040 Federal/restricted
Department of Military Affairs	Wendell H. Ford Regional Training Center (WHFRTC) – Range Operations Expansion	\$1,273,737 Federal
Department of Military Affairs	Boone National Guard Center Record Holding Facility	\$1,056,245 Federal/restricted
Department of Military Affairs	Boone National Guard Center – Interior Renovation Wellman Armory	\$1,378,097 Federal/restricted
Kentucky Community and Technical College System	Big Sandy Community and Technical College – Construct Pikeville Technology Center	\$3,500,200 Federal/restricted

Budgeted Capital Projects

Requests for Appropriation Increases. The committee approved seven agency requests to increase the appropriation of authorized capital projects, using private, federal, or restricted (agency) funds. Pursuant to KRS 45.760(6), to be eligible for Interim approval, any increase in excess of 15 percent of a project’s authorized appropriation must be funded by federal or private funds. The initial allocations for the Kentucky Community and Technical College System projects were funded from the workforce development construction pool, and the appropriation increases are the matching funds, exclusive of in-kind matches.

UK’s executive vice president for finance and administration communicated the decision to proceed with the \$1.5 million increase (private funds) for the Renovate/Upgrade Athletics Playing Fields 2, and the secretary of the Finance and Administration Cabinet communicated the decision to proceed with the \$5.1 million increase (federal funds) for the Eligibility Systems Integration Service KAMES Replacement submitted for the May 2017 meeting.

Emergency Repair, Maintenance, or Replacement Project. Projects were reported from the Department of Education (electrical system on Kentucky School for the Deaf’s campus), Justice and Public Safety Cabinet (heating, ventilation, and air conditioning system in the Correctional Psychiatric Treatment Unit at the Kentucky State Reformatory); Tourism, Arts, and Heritage Cabinet (fire restoration at lodge in Jenny Wiley State Resort Park); Transportation Cabinet (fire restoration at Hart County Rest Area/KingAir airplane engine). These projects were funded from a variety of sources, including proceeds from the commonwealth’s self-insurance program; agency maintenance pools; and the emergency repair, maintenance, and replacement account.

Appropriation Increases Approved

Agency	Project Title	Initial Appropriation/ Allocation	Increase	Revised Project Appropriation
Department of Military Affairs	Renovate Bay A in Building 3 at Bluegrass Station	\$2,300,000	\$127,900	\$2,427,900
Kentucky Community and Technical College System	Construct Community Intergenerational Center – Hazard CTC, Lees Campus	2,888,100	2,220,000	5,108,000
Kentucky Community and Technical College System	Construct Advanced Manufacturing Center – Jefferson CTC, Downtown Campus	15,200,000	5,041,400	20,241,400
Kentucky Community and Technical College System	Renovate and Equip Manufacturing Laboratories – Owensboro CTC, Downtown Campus	2,858,200	425,000	3,283,200
Kentucky Community and Technical College System	Renovate and Equip Manufacturing Laboratories – Somerset CC, South Campus	3,800,000	656,500	4,456,500
Kentucky Community and Technical College System	Renovate and Equip Manufacturing Laboratories – West Kentucky CTC	3,040,000	0	3,040,000
University of Louisville	Expand – Papa John’s Stadium/Football Complex	55,000,000	8,250,000	63,250,000

Bond-Funded Loan/Grant Programs

Cabinet for Economic Development Economic Development Bond Projects. The committee reviewed and approved one economic development bond (EDB) grant during the reporting period. The EDB program is funded from State Property and Buildings Commission (SPBC) bond proceeds and makes grants to local governments to leverage against private investments for economic development in the commonwealth. In return for assistance, companies must make commitments regarding job creation and/or job maintenance. As companies often had to provide collateral up front, CED evolved from structuring grants as forgivable loans (all or a portion to be paid back only if out of compliance with certain areas of the grant agreement) to allocating funds after CED verifies that annual compliance benchmarks are met.

The City of Midway received a grant for \$1,350,000 for the benefit of Lakeshore Learning Materials. Lakeshore’s second distribution center will be located in Midway Station industrial park, and the grant money will be used for gas service to the company and any other tenants of the industrial park, including Brown-Forman Corporation and American Howa Kentucky.

The committee also received reports of EDB job creation and job maintenance requirements for previously approved projects from CED. The most recent showed the status of

the 13 grants made in the last 5 fiscal years. Of those 13 projects, 7 entities have not yet reached a reporting date, 4 entities are in compliance, 1 entity is in the process of having its agreement amended, and 1 entity withdrew from the program.

Kentucky Infrastructure Authority Projects. The committee approved Kentucky Infrastructure Authority loans to local government entities for public infrastructure projects.

Fund A (Federally Assisted Wastewater Revolving Loan Fund). The committee approved 16 loans totaling \$33,159,348. The secretary of the Finance and Administration Cabinet communicated the decision to proceed with a \$1,780,000 Fund A loan for the City of Benton (Marshall County) submitted for the May 2017 meeting.

Fund A Loans Approved

Borrower	County	Amount
City of Winchester	Clark	\$1,404,000
City of Maysville	Mason	4,000,000
City of Jackson	Breathitt	593,000
City of Butler	Pendleton	987,243
Daviess County Fiscal Court	Daviess	1,169,634
City of Louisa	Lawrence	356,060
City of Frankfort	Franklin	2,041,000
City of Frankfort	Franklin	1,853,750
City of Frankfort	Franklin	1,954,500
City of Frankfort	Franklin	1,202,660
City of Frankfort	Franklin	2,175,965
City of Frankfort	Franklin	1,600,000
Mountain Water District	Pike	300,000
Lexington-Fayette Urban County Government (LFUCG)	Fayette	9,969,585
City of Stanton	Powell	1,095,462
City of Williamsburg	Whitley	2,456,489

Fund A Loan Increases. The committee approved five loan increases totaling \$2,375,989.

Fund A Loan Increases Approved

Borrower	County	Amount
Mountain Water District	Pike	\$370,000
City of Liberty	Casey	504,000
Regional Water Resource Agency (RWRA)	Daviess	269,050
City of Catlettsburg	Boyd	470,000
City of Elkhorn	Pike	37,939
Regional Water Resource Agency (RWRA)	Daviess	725,000

Fund A Loan Assumptions. The committee approved two loan assumptions for the City of Prestonsburg (Floyd County) totaling \$691,113.

Fund B (Infrastructure Revolving Fund). The committee approved six loans totaling \$6,789,000. The secretary of the Finance and Administration Cabinet communicated the decision to proceed with a \$1 million Fund B loan for the City of Bardstown (Nelson County) submitted for the May 2017 meeting.

Fund B Loans Approved

Borrower	County	Amount
Northeast Woodford County Water District	Woodford	\$400,000
City of New Castle	Henry	445,000
City of Bardstown	Nelson	1,129,000
City of Bowling Green	Warren	2,000,000
South Hopkins Water District	Hopkins	765,000
City of Lawrenceburg	Anderson	1,200,000
Elkhorn Water District	Franklin	850,000

Fund B Loan Increases. The committee approved a \$267,500 loan increase for the City of Lewisport (Hancock County). The secretary of the Finance and Administration Cabinet communicated the decision to proceed with a \$152,000 Fund B loan increase for the City of Bardstown (Nelson County) submitted for the May 2017 meeting.

Fund C (Governmental Agencies Program Loan Fund). The committee approved three loans totaling \$8,900,000.

Fund C Loans Approved

Borrower	County	Amount
City of Bowling Green	Warren	\$4,800,000
City of Worthington	Greenup	\$300,000
City of Bowling Green	Warren	\$3,800,000

Fund F (Federally Assisted Drinking Water Revolving Loan Fund). The committee approved seven loans totaling \$16,332,000.

Fund F Loans Approved

Borrower	County	Amount
City of Prestonsburg	Floyd	\$3,624,000
City of Nicholasville	Jessamine	\$553,000
City of Fleming-Neon	Letcher	\$1,500,000
Southern Water and Sewer District	Floyd	\$1,350,000
City of Irvine	Estill	\$5,732,000
City of Olive Hill	Carter	\$883,000
City of Stanford	Lincoln	\$2,690,000

Review of Bond Issues and Financing Agreements

In addition to the individual bond-funded projects, the committee approved or reviewed the following bond issues and financing agreements.

State Property and Buildings Commission. The committee approved two SPBC issues. SPBC Revenue and Revenue Refunding Bonds Project No. 115 provided \$250 million in permanent financing for general fund-supported projects authorized from 2005 to 2016. SPBC Revenue and Revenue Refunding Bonds Project No. 117 provided \$115 million in permanent financing for general fund-supported projects authorized from 2005 to 2017 and refunded outstanding debt for a net present value savings of 6.31 percent. The secretary of the Finance and Administration Cabinet communicated the decision to proceed with SPBC Agency Fund Revenue Bonds Project No. 116 submitted for the January 2017 meeting, providing \$65 million in permanent financing for a portion of Kentucky Community and Technical College System's BuildSmart Investment for Kentucky Competitiveness authorized projects.

Turnpike Authority of Kentucky. The committee reviewed one Turnpike Authority of Kentucky (TAK) issue. The TAK Economic Development Road Revenue and Revenue Refunding Bonds (Revitalization Projects) 2017 Series A and B provided permanent financing for approximately \$30 million of road fund-supported projects authorized by the 2010 RS HB 3 and refunded outstanding debt for a 5.17 percent net present value savings.

Gallatin County, Kentucky. The committee reviewed the Gallatin County, Kentucky, Industrial Building Revenue Bonds, Series 2017 bond issue in the amount of \$4,925,000, to finance the purchase of 433 acres of land to construct a new airport. The Department of Aviation within the Department of Transportation will be making the lease payments, derived from aviation fuel tax revenues deposited into the Aviation Economic Development Fund, used to pay debt service. As these funds are essentially a grant to the county, the county will own the land and the local airport board will operate the facility.

Postsecondary Institutions. The committee approved four bond issues for postsecondary institutions. The committee approved two bond issues for Eastern Kentucky to provide \$69.4 million for the "Construct Student Life Facilities" project authorized in 2016 (second bond issue also is anticipated to refinance \$5.7 million of outstanding debt issued in 2009); one bond issue for Murray State University to refinance \$3.9 million of outstanding debt issued in 2009; one bond issue for the University of Kentucky to refinance \$39 million of Asset Liability Commission notes and taxable Build America Bonds; and one bond issue for the University of Louisville to provide \$55 million for the "Expand Papa John's Stadium/Football Complex" authorized in 2016 and refinance \$31 million of outstanding debt.

Kentucky Economic Development Finance Authority. With Kentucky Economic Development Finance Authority (KEDFA) bond issues, the commonwealth, as a conduit issuer, has no legal or moral obligation for the repayment of the debt, with the exception of the transaction to finance the KentuckyWired project. The bonds are issued on behalf of a third party, such as a private, for-profit business or a 501(c)(3) organization, which has full responsibility for the repayment of the bonds. The committee approved four KEDFA conduit bond issues during the

reporting period: \$217.9 million for Baptist Healthcare Systems; \$122.9 million for Masonic Homes; \$472.6 million for Owensboro Health; and \$450 million for the Louisville Arena Authority. The transaction for Owensboro Health was the southeast nominee for the Bond Buyer's 2017 Deal of the Year award for its use of bond insurance and a surety bond, the first for a health care financing since the financial crisis, rather than a debt service reserve fund.

Kentucky Housing Corporation. The committee approved the issuance of a \$41.1 million non-appropriation-supported bond issue to refinance single-family revenue bonds. In addition, the committee approved seven conduit bond issues totaling \$109,970,000. The issue for the Allied Paducah Portfolio Project was the first in which the bond proceeds were used by a 501(c)(3) organization and a payment in lieu of taxes was negotiated with localities, as the properties to be acquired will be exempt from property taxes.

Conduit Bond Issues Approved

Bond	County	Amount
KHC Tax-Exempt Multifamily Housing Revenue Bonds, Series 2016 (The Healing Place-Louisville)	Jefferson	\$17,500,000
KHC Tax-Exempt Conduit Multifamily Housing Revenue Notes, Series 2017 (Guardian Court Apartments-Louisville)	Jefferson	12,670,000
KHC Tax-Exempt Conduit Multifamily Housing Revenue Notes, Series 2017 (Lincolnshire Portfolio)	Daviess	13,000,000
KHC Tax-Exempt Conduit Multifamily Housing Revenue Bonds (Allied Paducah Portfolio)	Calloway/McCracken	34,000,000
KHC Tax-Exempt Conduit Multifamily Housing Revenue Bonds, Series 2017 (Henry Green Apartments-Louisville)	Jefferson	10,500,000
Kentucky Housing Corporation Tax-Exempt Conduit Multifamily Housing Revenue Bonds, Series 2018 (Winterwood HPW Portfolio)	Various	9,300,000
Kentucky Housing Corporation Tax-Exempt Conduit Multifamily Housing Revenue Notes Series 2017 (SOCAYR Portfolio)	Various	13,000,000

Kentucky Higher Education Student Loan Corporation. The committee approved a \$40 million bond issue to purchase an existing portfolio of supplemental loans and originate approximately \$19.6 million of supplemental loans for the 2017-2018 academic year.

School Bond Issues

School Facilities Construction Commission. During the reporting period, the committee approved 71 school bond issues with School Facilities Construction Commission (SFCC) debt service participation for new facilities, improvements at existing schools, and refunding outstanding debt. The secretary of the Finance and Administration Cabinet communicated the decision to proceed with seven additional bond issues submitted for the January and May 2017 meetings.

Local School District Bond Issues. During the reporting period, the committee reviewed 32 local school district bond issues, as well as a Kentucky Interlocal School Transportation

Association agreement with 54 districts for 195 school buses, with 100 percent local debt service support and no SFCC debt service participation. These bonds were used for new facilities, improvements at existing schools, matching funds for Workforce Development Construction Pool allocations for area technology centers, and refunding outstanding debt.

Review of State Leases

The 300 Building. The Department of Education, the Education and Workforce Development Cabinet, and the Energy and Environment Cabinet relocated to the 300 Building (300 Sower Boulevard) in Frankfort from July through September 2016. SB 238 of the 2017 Regular Session amended KRS 56.813(2)(d), allowing the Finance and Administration Cabinet to use funds from these agencies to improve, renovate, or refit the facility, as well as future facilities, that the state will own upon termination of the lease or expiration of the lease term and for which no modification of the lease may be made to amortize improvements to the property. In this case, the commonwealth is making base rental payments (debt service for the 35-year certificates of participation (COPs) issued to finance construction of the facility and additional rental payments for operations and maintenance). Final payment will be in FY 2051, unless the commonwealth decides to purchase the property earlier, and the indenture does not allow alternation of rental payments pursuant to the lease agreement, which is the security for payment of the COPs, unless the majority of the certificate holders agree.

SB 238 amended KRS 56.823(12)(d) to require reporting of funds provided by state agencies to improve, renovate, or retrofit a leased building under the provisions of KRS 56.813(2)(d) before commencement of the work, regardless of amount. SB 238, which also authorized the built-to-suit process for the new Frankfort state office building and parking structure, had an emergency clause. Therefore, the reporting requirement was effective March 21, 2017.

The Division of Real Properties, in the Finance and Administration Cabinet's Department for Facilities and Support Services, had been submitting improvements for the 300 Building to the committee prior to the passage of SB 238. With the exception of the \$449,900 (\$420,500 plus the 7 percent supervisory fee of \$29,400) for the fit-up of the food services area, for which the Finance and Administration Cabinet provided matching funds for a grant through the Office for the Blind, the tenants provide funds for improvements prior to commencement of work. For those improvements, the Division of Real Properties submitted 17 improvements totaling \$204,300 (\$190,900 plus the 7 percent supervisory fee of \$13,400). The committee approved all submitted improvements.

Annual Rental Exceeding \$100,000. The committee approved nine new leases for a total annual cost of \$1,872,300. These leases were for the University of Kentucky (five), the Energy and Environment Cabinet (two), and the Department of Corrections (two). The committee also approved the University of Louisville's Master Lease/Sublease Agreement for student housing space in the University Pointe and Cardinal Towne buildings. The executive vice president for Finance and Administration of the University of Kentucky communicated the decision to proceed with an additional lease submitted for the May 2017 meeting.

The committee approved 20 lease renewals under the same terms and conditions totaling \$5,271,900 for the Cabinet for Health and Family Services (CHFS) (11), Kentucky Community and Technical College System (2), Department for Juvenile Justice, Department for Local Government, Labor Cabinet, Office of the Attorney General, Council on Postsecondary Education, Kentucky State Police, and Unified Prosecutorial System.

The committee approved three lease renewals totaling \$1,035,300 with rate increases for the Auditor of Public Accounts, Department of Workers' Claims, and Department of Insurance.

Lease Modifications Over \$50,000. The committee approved one lease modification for amortization of improvements requested by CHFS. The cost of the improvements totaling \$85,300 will be amortized over the remaining lease term. The secretary of the Finance and Administration Cabinet communicated the decision to proceed with improvements totaling \$92,400 requested by the Department of Agriculture submitted for the January 2017 meeting.

The committee approved three lease modifications for increased square footage totaling \$34,000 requested by the University of Kentucky, the Transportation Cabinet, and CHFS. Although the overall square footage and total annual rent changed, the rental rate per square foot remained the same. The increase in rental payments totaled \$120,000.

Lease Modifications Under \$50,000. The committee reviewed two lease modifications for amortization of improvements requested by the Department of Workers' Claims and the Department of Corrections. The cost of the improvements totaling \$53,500 will be amortized over the remaining lease terms.

**Report of the 2017
Education Assessment and Accountability Review Subcommittee**

**Sen. Max Wise, Co-Chair
Rep. Daniel Elliott, Co-Chair**

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

Rep. Derrick Graham
Rep. Regina Huff
Rep. Steve Riley

LRC Staff: Joshua A.J. Collins, Chris White, and Maurya Allen.

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Education Assessment and Accountability Review Subcommittee

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

Subcommittee Activity

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

As part of its duties to provide oversight and direction to the OEA, the subcommittee received and accepted OEA's *2016 Annual Report* required by KRS 7.410(2)(c)8. The report is a summary of the status and results of the current year's annual research agenda and a summary of completed investigative activity conducted during 2016.

In 2016, OEA received 533 written complaints. Of these, 298 were submitted anonymously. From 533 complaints, 97 cases were opened, of which 69 were investigative cases and 28 were school-based decision-making council cases. OEA closed 56 cases in 2016. In 15 cases, no violation of school law was found. In the other 41 cases, OEA found 75 violations of school law. Fifty-seven cases remain pending.

The subcommittee received and accepted four OEA study reports. The first report, *School Attendance In Kentucky*, discusses attendance trends at the state and district levels and includes comparisons to other states. The study provides an overview of attendance in Kentucky, including national, state, school, and district data for specific student groups. It also explores educational outcomes associated with chronic absenteeism. The report reviews challenges, such as student mobility, homelessness, and health issues, that affect districts' abilities to ensure that students attend school regularly.

Preschool Program Review And Full-Day Kindergarten analyzes revenues, expenditures, enrollment, characteristics, and outcomes of preschool and includes an analysis of full-day kindergarten at the state and district levels.

The third report, *Kentucky District Data Profiles School Year 2016*, is an annual compilation of data on all school districts with an individual profile for the entire state. It includes student demographics and performance data, staffing data and related information, and district expenditure and revenue data.

The fourth report, *High School Indicators Of Postsecondary Success*, takes advantage of a unique, nationally recognized data set from the Kentucky Center for Education and Workforce Statistics to track outcomes of students who were members of the graduating class of 2010 as they pursued postsecondary education and entered the workforce. The study also reports preliminary postsecondary and workforce outcomes for the graduating class of 2015.

The subcommittee approved the proposed 2018 OEA study agenda.

**Report of the 2017
Government Contract Review Committee**

**Sen. Max Wise, Co-Chair
Rep. Stan Lee, Co-Chair**

Sen. Julie Raque Adams
Sen. Julian Carroll
Sen. Paul Hornback

Rep. Chris Fugate
Rep. Dennis Horlander
Rep. Diane St. Onge

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

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Government Contract Review Committee

Jurisdiction: Review of all nonexempt memoranda of agreement by and between state agencies, and review of all nonexempt personal service contracts by state agencies and by off-budget agencies, 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, the Kentucky Student Loan Corporation, and the Kentucky Retirement Systems, to examine the stated need for the service, whether the service could or should be performed by state personnel, the amount and duration of the contract or agreement, and the appropriateness of any exchange of resources or responsibilities; and review of all qualifying motion picture or entertainment production tax incentives.

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

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

Committee Activity

The Government Contract Review Committee is a statutory committee of the Legislative Research Commission and is required to meet monthly. During fiscal year 2017 beginning July 1, 2016, and ending June 30, 2017, the committee reviewed 1,274 personal service contracts and 564 amendments to personal service contracts. The committee also reviewed 251 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

During FY 2017, the committee reviewed 1,376 memoranda of agreement and 464 memoranda of agreement amendments. The committee also reviewed 829 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only.

During FY 2017, the committee reviewed 2,089 personal service contract items, 2,669 memoranda of agreement items, and 51 film tax incentive agreements and 9 film tax incentive amendments for a total of 4,818 items.

Since the start of FY 2018 through November 14, 2017, the committee has reviewed 345 personal service contracts and 295 amendments to personal service contracts. The committee has also reviewed 147 personal service contracts for \$10,000 and less, which are submitted to the committee for informational purposes only.

Since the start of FY 2018 through November 14, 2017, the committee reviewed 596 memoranda of agreement and 217 memoranda of agreement amendments. The committee also reviewed 573 memoranda of agreement for \$50,000 and less, which are submitted to the committee for informational purposes only. In addition, the committee reviewed 48 film tax incentive agreements and 3 film tax incentive amendments.

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

**Report of the 2017
Medicaid Oversight and Advisory Committee**

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

Sen. Julie Raque Adams
Sen. Danny Carroll
Sen. Morgan McGarvey
Sen. Stephen Meredith

Rep. Robert Benvenuti III
Rep. Jim Gooch Jr.
Rep. Joni L. Jenkins
Rep. Melinda Gibbons Prunty

LRC Staff: Jonathan Scott, Ben Payne, Heather Scott, Chris Joffrion, and Becky Lancaster

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Medicaid Oversight and Advisory Committee

Jurisdiction: The Medicaid Oversight and Advisory Committee is required to meet annually and provide oversight on the implementation of Medicaid within the commonwealth, including access to services, utilization of services, quality of services, and cost containment.

Committee Activity

The Medicaid Oversight and Advisory Committee met five times during the Interim through November 2017. It heard testimony on a wide variety of issues relating to the Medicaid program.

MCO Contracts

Representatives from the Cabinet for Health and Family Services (CHFS) presented an overview of new Medicaid managed care organization (MCO) contracts. The contracts are updated in contemplation of the approval of the 1115 Kentucky Helping to Engage and Achieve Long Term Health (HEALTH) Waiver, as well as recent changes to federal law. Additional noteworthy changes include that the new contracts also allow for a streamlined credentialing process, and for appeals to an external third party for certain uses of emergency departments. The new contracts also contain a 90 percent medical loss ratio, which requires that at least 90 percent of the contracts be spent directly on medical services.

MCO Billing Practices

Billing and reimbursement practices employed by MCOs were another topic of discussion. Representatives from MD Consulting stated that since the advent of statewide Medicaid managed care, getting claims paid for providers has become extremely difficult. The representatives further stated that MCOs should be required to properly staff the provider enrollment teams so that applications are processed within 30 days. The representatives further discussed the incorrect loading of taxonomy codes and provider specialty codes. The representatives discussed how many people they had assisted in connection with the closure of many practices that served Medicaid patients in underserved areas, due to MCOs' failure to promptly process claims. They also discussed how many practices are not seeing MCO patients because of the difficulty of working with MCOs.

Representatives from the Kentucky Association of Health Plans presented an overview of the MCO claim process. They said they are unaware of any MCOs currently under corrective action by the Department of Insurance for problems in claims processing.

Representatives from RSVP Homecare discussed difficulties with reimbursement for durable medical equipment. It was noted that coverage guidelines are not consistent across MCOs, some of which do not even post guidelines.

Representatives from KentuckyOne Health stated that 25 percent of their business is Medicaid, but that approximately 75 percent of their administrative costs go to pursuing payment

from MCOs. They further stated that payers, and not providers, are the ones making profits in health care.

Status of 1915(c) Medicaid Waiver Programs

Representatives of the Cabinet for Health and Family Services discussed 1915(c) waiver programs. They testified that managed care covers approximately 90 percent of Kentucky's Medicaid recipients, but that the waiver population is part of the 10 percent that is still in the fee-for-service program, representing approximately \$3 billion annually. Representatives stated that several options to reform the waiver programs are being evaluated.

Representatives reviewed the historical pressures that caused the waiver programs to be created, and they discussed each of Kentucky's six waiver types. They discussed an ongoing project to evaluate and potentially rewrite and reform the waivers. Representatives from Navigant Healthcare discussed their process for evaluating Kentucky's waiver programs and a timetable for establishing recommendations for waiver changes.

Opioids in Kentucky

Awareness, Prevention, and Treatment of Opioid Use, Misuse, and Abuse

An all-day meeting was held with the Interim Joint Committee on Health, Welfare, and Family Services to discuss the impact of opioids and the opioid epidemic in Kentucky. Representatives from the Office for Drug Control Policy stated that four Kentuckians die every day of preventable drug overdoses. Drug overdose deaths are rising in part because of the introduction of fentanyl into the illegal drug supply. Kentucky has seen a marked reduction in the amount of opioids prescribed—in 2011, over 371 million units were sold, but the number for 2016 was only 301 million units. Providers and protocols are changing to help individuals avoid opioid use disorder. In addition, there are plans to bring treatment on demand closer to reality.

Representatives from the Department for Medicaid Services testified that Medicaid covers 1.4 million Kentuckians, but that Kentucky spends a lower percentage on behavioral health than its peer states spend. From 2014 to 2016, Kentucky doubled its spending on behavioral health; during the same period, spending on substance use disorder has quadrupled.

Representatives discussed hepatitis C, stating that 10,491 Kentuckians have received a diagnosis of hepatitis C, with a cluster in southeastern Kentucky. The treatment rate nationwide is 10.1 percent, and Kentucky's treatment rate is 3.2 percent.

Representatives from the Kentucky Chamber of Commerce discussed opioid abuse as an activity that affects the current low workforce participation rate. Approximately 165,000 more workers would participate in the economy if Kentucky's participation rate matched the national average.

Representatives from the Cabinet for Health and Family Services discussed the Adverse Childhood Experiences (ACE) Study. This study indicates that ACEs predict an individual's adult

health. Kentucky has a significantly higher prevalence of children with multiple ACEs. Such identification helps to indicate individuals with higher risk of substance use disorder.

Representatives from CHFS discussed neonatal abstinence syndrome (NAS) and how it affects children, infants, and newborns. In Kentucky, NAS mothers are predominantly white, 54 percent are from rural or semirural counties, 48 percent have received late or no prenatal care, 83 percent are covered by Medicaid, 80 percent are smokers, and 1 in 4 has hepatitis C. Approximately half of the mothers in treatment during pregnancy do not continue treatment after delivery. The incidence of NAS was approximately 24 per 1,000 live births in 2015, a 25-fold increase since 2001.

Representatives from the American Society of Addiction Medicine, the Kentucky Society of Addiction Medicine, and CHFS discussed medication-assisted treatment (MAT). Representatives stated that the number of national overdose deaths in 2017 is exceeding projections by approximately 22 percent. Representatives stated that, for opioid use disorder, MAT works best. Representatives recommended that opioid use disorder be recognized as a chronic disease. Representatives discussed three MAT medications: buprenorphine, methadone, and naltrexone.

Representatives from Our Lady of Peace Pharmacy and St. Matthews Pharmacy testified about long-acting injections. A clinic operated by a retail pharmacist at a behavioral health center—the first such clinic in the United States—has been helping patients receive injections at discharge with the hope that they attend initial counseling sessions sober. Representatives further discussed barriers stemming from MCO regulations that prevent implementation of this program through Kentucky Medicaid.

Representatives from Isaiah House and Addiction Recovery Care discussed residential treatment. They discussed types of treatment, payers, and funding. In addition, they discussed the jobs created, and additional services that they offer such as job training.

Regulation and Oversight of Pharmacy Benefit Managers

Representatives for the Cabinet for Health and Family Services stated that Kentucky's annual Medicaid budget is \$11 billion, of which \$1.6 billion goes for pharmacy costs. It is estimated that using MCOs to manage these costs may result in a cost savings of 10 percent to 12 percent, or approximately \$150 million to \$180 million each year. Representatives stated that the MCO capitation rates are developed by an actuarial firm, that pharmacy benefit managers (PBMs) are subcontractors of MCOs, and that MCOs oversee those contracts.

Representatives also reviewed the history of PBMs and the current methods of determining drug pricing. They pointed out that CHFS contracts only with the MCOs within the pharmaceutical drug chain, and they noted that CHFS can withhold contractual money to the MCOs if PBMs fail to meet adequacy requirements.

Reimbursement Challenges for Independent Pharmacy

Representatives of independent pharmacies and the Kentucky Independent Pharmacist Alliance testified about reimbursement issues between independent pharmacies and PBMs. Representatives stated that Kentucky Medicaid does not have sufficient oversight authority over PBMs. They stated that PBMs determine prices for reimbursement without oversight from the Department for Medicaid Services and with minimal oversight from MCOs. Representatives also pointed out that some PBMs are alliance members' direct competitors, with the ability to determine what the independent pharmacists and their mail-order pharmacies are paid.

Representatives discussed SB 117, passed during the 2017 Regular Session. They discussed the recent reduction of dispensing fees by PBMs, and the fact that these reductions have led 50 to 60 independent pharmacies to close and have put many more on the brink of closure. Representatives discussed the ways that PBMs are the direct competitors of independent pharmacists in addition to determining their reimbursements. Representatives requested transparency in generic drug pricing, a professional dispensing fee, and an audit of PBMs by the Department for Medicaid Services to determine whether the PBMs are actually saving money.

PBMs, Health Plans, and Legislative Initiatives

Representatives from the Pharmaceutical Care Management Association further discussed PBMs and reimbursement. They stated that PBMs save an average of 35 percent for sponsors and consumers and that the total number of independent pharmacies has increased. They pointed out that independent pharmacies can use a pharmacy services administrative organization to negotiate costs and reimbursement.

Representatives from the Department of Insurance stated that they expect thousands of appeals relating to PBMs and MCOs, and that the main issue in these appeals is reimbursement by PBMs.

Representatives from the Kentucky Association of Health Plans discussed PBMs' general responsibilities. The representatives stated that the United States generally does not regulate drug prices and that some studies show savings for states whose Medicaid managed care contracts include pharmacy benefits.

Update on the 1115 Kentucky HEALTH Waiver

Representatives from the Cabinet for Health and Family Services testified that approval of the 1115 Kentucky HEALTH waiver is close. The federal Centers for Medicare and Medicaid Services (CMS) recently indicated that it will approve 1115 waivers with community engagement. The representatives stated that CMS is not asking for additional or clarifying information at this time. The tentative time frame identified in the waiver is still in effect, and Kentucky Medicaid members may begin to earn MyRewards dollars for preventive services in January 2018, with community engagement courses available in April 2018. Penalties and suspensions will begin to be tracked in July 2018. The representatives from CHFS stated that approximately \$300 million in savings may be achieved if the waiver is approved.

Long-Term Care Costs, Enrollment, and Trends

Representatives from the Cabinet for Health and Family Services presented an update on long-term care (LTC) costs, enrollment, and trends. They stated that \$1 billion of federal and state money is spent annually on nursing facility services in the commonwealth and that an additional \$100 million of combined state and federal money is spent on intermediate care facilities for individuals with intellectual disabilities. Representatives stated that in the most recent fiscal year there were 5,950,698 paid Medicaid days for nursing facility services, averaging to 16,303 residents per day. The agency says the occupancy rate is declining, but LTC facilities are seeing sicker patients who create greater costs.

Benefind Update

Representatives from the Cabinet for Health and Family Services presented an update on the Benefind program. They stated that the Integrated Eligibility and Enrollment System facilitates Medicaid benefits to over 1.4 million residents of Kentucky. The system now delivers over \$1 billion in Supplemental Nutrition Assistance Program and Kentucky Transitional Assistance Program benefits each year. The system also now administers the child care assistance program. The full implementation of the program has resulted in over \$9 million in productivity savings each year.

**Report of the 2017
Program Review and Investigations Committee**

**Sen. Danny Carroll, Co-Chair
Rep. Lynn Bechler, Co-Chair**

Sen. Tom Buford
Sen. Perry B. Clark
Sen. Wil Schroder
Sen. Dan “Malano” Seum
Sen. Reginald Thomas
Sen. Stephen West
Sen. Whitney Westerfield

Rep. Chris Fugate
Rep. Brian Linder
Rep. Donna Mayfield
Rep. Ruth Ann Palumbo
Rep. Rob Rothenburger
Rep. Arnold Simpson
Rep. Walker Thomas

LRC Staff: Greg Hager, Christopher T. Hall, Colleen Kennedy, Van Knowles, Jean Ann Myatt, Brandi Norton, William Spears, Shane Stevens, Joel Thomas, and Kate Talley

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Program Review and Investigations

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

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

Committee Activity

The committee held eight meetings in 2017. It elected Senate and House co-chairs and selected study topics. Committee staff presented one report. The committee was briefed on the status of the implementation of recommendations from a previously adopted report. The committee heard testimony on eight topics unrelated to staff reports.

Committee staff presented the report *Kentucky's Foster Care System*. The Department for Community Based Services administers the system, which provides out-of-home care to children who have been removed from home because of dependency, neglect, or abuse. More than 11,000 children were in the Kentucky out-of-home care system at some time during 2016, an increase of more than 15 percent since 2012. The number of children in out-of-home care who are available for adoption has increased by more than 17 percent since 2012. Over the past 5 years, an average of 44 percent of the children in out-of-home care who are available for adoption each year were adopted. Statute provides a time frame in which required court proceedings must occur in out-of-home care and adoption cases, but the department and the Administrative Office of the Courts do not collect sufficient information to determine whether cases are handled in a timely manner. Caseloads for Kentucky child welfare workers exceed national standards and are a major obstacle to providing effective services. High caseloads are worsened by turnover, which occurs because of uncompetitive salaries, a high-stress work environment, limited career opportunities, and lack of recognition. The report has 10 recommendations related to out-of-home care court proceedings, the accuracy and reporting of child welfare workers' caseloads, and the hiring and retention of child welfare caseworkers. The commissioner and executive adviser of the Department for Community Based Services, the manager of court services for the Administrative Office of the Courts, and a retired Jefferson County Family Court judge responded to the report.

Committee staff presented a summary of the report *Information Technology In Kentucky State Government*, which was adopted in 2014. The secretary of the Personnel Cabinet and the deputy secretary of the Finance and Administration Cabinet testified on the status of the report's recommendations that were directed to their cabinets.

The secretary of the Transportation Cabinet briefed the committee on the Strategic Highway Investment Formula for Tomorrow, the new system for creating a plan to fund transportation projects.

The deputy secretary and budget director of the Justice and Public Safety Cabinet; the chief of staff of the Tourism, Arts, and Heritage Cabinet; and the deputy commissioner and a resource officer of the Department of Fish and Wildlife Resources testified on whether to include the department's resource officers in the Kentucky Law Enforcement Foundation Program Fund.

The commissioner of the Department of Alcoholic Beverage Control and two administrators of the Alcoholic Beverage Control Board presented an overview of the department and the board.

The special assistant, executive director of infrastructure services, and executive director of security of the Commonwealth Office of Technology testified about the office's initiatives to reduce costs and increase security.

A professor from the University of Kentucky's Department of Veterinary Science presented a study of conditions of county animal shelters and compliance with animal shelter laws.

The executive director of the Office of Financial Services of the Cabinet for Economic Development gave an overview of the cabinet's mission, organizational structure, staff, budget, and incentive programs.

The founder of Freedom Forever Ministries, the commissioner and administrator of the Health Services Division of the Department of Corrections, the warden of the Kentucky Correctional Institution for Women, the regional medical director of Correct Care Solutions, and the executive director of the Office of Drug Control Policy testified about the prescribing of drugs to female inmates.

The attorney general and a former Kentucky Supreme Court justice testified on the opioid crisis in Kentucky and potential legal action against opioid manufacturers, wholesalers, and distributors. The attorney general and deputy attorney general addressed questions from committee members about the Purdue Pharma settlement. The attorney general and the head of Administrative Services in the Office of the Attorney General addressed questions about the contract with the law firm representing Kentucky in the Purdue Pharma settlement.

**Report of the 2017
Public Pension Oversight Board**

**Sen. Joe Bowen, Co-Chair
Rep. Jerry Miller, Co-Chair**

Sen. Jimmy Higdon
Sen. Christian McDaniel
Sen. Gerald A. Neal
Sen. Dennis Parrett
Sen. Wil Schroder
Rep. Ken Fleming
Rep. James Kay
Rep. Brian Linder

Rep. Arnold Simpson
Rep. Russell Webber
J. Michael Brown
John Chilton
Timothy Fyffe
Mike Harmon
James M. “Mac” Jefferson
Sharon Mattingly

LRC Staff: Brad Gross, Jennifer Black Hans, Bo Cracraft, and Angela Rhodes

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Public Pension Oversight Board

Jurisdiction: Assists the General Assembly with its review, analysis, and oversight of the administration, benefits, investments, funding, laws and administrative regulations, and legislation pertaining to the state-administered retirement systems.

Committee Activity

The board held nine meetings from February through November 2017 and heard testimony on a wide range of topics relating to the public pension systems.

Quarterly/Annual Investment Updates

The Public Pension Oversight Board (PPOB) conducted meetings in February, April, and September to discuss and review quarterly and annual investment performance, cash flows, and budgetary needs of each of the retirement systems.

Interest Groups

The PPOB invited several interest groups to give testimony on observations and recommendations regarding pension issues and pension reform. Groups that presented included Kentucky Public Retirees, Kentucky Association of Transportation Engineers, Kentucky Transportation Employees' Association, Kentucky Professional Firefighters, Kentucky Fraternal Order of Police, Kentucky Education Association, Kentucky Retired Teachers Association, Kentucky Association of School Superintendents, Kentucky Association of Counties, Kentucky League of Cities, university employers, the Bluegrass Institute, and the Kentucky Chamber of Commerce.

Pension Performance Audit/Proposals

The state budget director and representatives from PFM consulting group testified several times throughout the year and discussed the pension performance audit conducted by the executive branch. In May, PFM provided a historical and current assessment of Kentucky's public pension systems. At the August meeting, PFM provided a report and recommendations for addressing the financial issues facing the systems. The state budget director provided testimony in November regarding a proposed pension bill based in part on these recommendations. Information regarding the reports and proposals can be found on the state budget director's website, www.osbd.ky.gov.

Other Research Topics

Legislative Research Commission staff provided research and testimony on various occasions, including a review of pension system administrative expenses, investment return assumptions, board structures, payroll growth assumptions, and legislative proposals.

See the PPOB annual report at www.lrc.ky.gov/lrcpubs/lrc_research_memoranda.htm for more detail regarding research topics, discussions, and recommendations from the 2017 PPOB meetings.

**Report of the 2017
Tobacco Settlement Agreement Fund Oversight Committee**

**Sen. C.B. Embry Jr., Co-Chair
Rep. Myron Dossett, Co-Chair**

Sen. Paul Hornback
Sen. Stephen Meredith
Sen. Dennis Parrett
Sen. Robin Webb
Sen. Whitney Westerfield

Rep. Kim King
Rep. Phillip Pratt
Rep. Rick Rand
Rep. Brandon Reed
Rep. Dean Schamore

LRC Staff: Tanya Monsanto, Kelly Ludwig, Nathan Smith, and Rachel Hartley

**Presented to the
Legislative Research Commission
and the
2018 Regular Session of the
Kentucky General Assembly**

Tobacco Settlement Agreement Fund Oversight Committee

Jurisdiction: Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans; planning by the board to establish short-term and long-term goals, to devise strategies, and to make investments that will assist farmers, and the administrative, financial, and programmatic activities of the board; expenditures under the Early Childhood Development Fund and the Kentucky Health Care Improvement Fund; efforts of agencies and educational institutions to assist in the revitalization and diversification of tobacco farms; efforts of institutions of public postsecondary research in conducting alternative crop development research; review of county agricultural development council plans; and review of the use of Tobacco Master Settlement Agreement (MSA) money.

Committee Activity

The Tobacco Settlement Agreement Fund Oversight Committee met nine times during the 2017 calendar year. A tenth meeting is scheduled for December, when the committee will receive a report on the use of MSA funds by the Division of Conservation.

A representative from the Governor's Office of Agricultural Policy (GOAP) testified regarding Agricultural Development Board (ADB) funding decisions on project applications at each monthly meeting. Representatives from executive branch agencies receiving tobacco settlement appropriations and organizations that benefited from tobacco settlement funds also testified at the meetings.

During the 2017 calendar year, the committee examined several issues within its jurisdiction, including taking a more in-depth look at agricultural diversification projects paid out of MSA funds. Of particular interest to the committee was the money spent on substance abuse and addiction disorders. The money spent on these issues has grown in relation to the growth of the opioid crisis in Kentucky. Committee members asked questions about and commented on the spending decisions made by the ADB during its monthly meetings where projects are reviewed. Committee members also questioned and discussed loans made to farmers by the Agricultural Finance Corporation. During several meetings, testimony on MSA fund spending and the value of those dollars to program objectives came from officials from the state agencies that administer tobacco cessation programs, drug control programs, and early child development, and from representatives of medical facilities involved in lung cancer research. Smoking rates in Kentucky continue to decline, and youth smoking rates have declined. However, concerns were raised that the opioid crisis would cause a reallocation in funding away from smoking cessation.

Review of Agricultural Development Fund Projects

During each monthly committee meeting, GOAP officials testified on the projects that the ADB considered. The committee thus performed its responsibility of reviewing the allocation of tobacco settlement funds for rural development, and monitoring the pattern of MSA fund use in accordance with statutes. GOAP staff reported on a scam that claimed that Kentuckians could receive tax-free monthly payments from the MSA. Individuals who had received calls or advertisements are to contact the Attorney General's Office.

Staff from the GOAP reviewed projects for single counties, regions, and the state as a whole. They provided monthly lists of funding decisions made within three types of county-level programs: the County Agricultural Improvement Program, the Deceased Farm Animal Disposal Assistance Program, and the Shared-use Equipment Program. GOAP staff also discussed allocations to newer programs, such as the On-Farm Energy Efficiency and Production Program.

At each meeting, committee members asked for additional information on projects and sought clarification on funding decisions made and the rationale for reaching those decisions. Committee members posed questions about the board's grant procedures; how funding applications were reviewed and prepared by GOAP staff for the board's consideration; the reasons why some project applicants received particular amounts of funding or were denied funding; and project monitoring, compliance, and reporting.

The committee continued to focus on hemp as a farm commodity that could potentially replace tobacco as a cash crop opportunity. Representatives from Atalo Holdings Inc. and Sunstrand LLC discussed hemp processing and marketing. The hemp industry is hindered by its being a threshold industry that lacks conventional farming tools and practices. Research on how to grow the crop under different weather and soil conditions is just now being developed. The legal framework also hinders the hemp industry.

A representative from the Kentucky Cattlemen's Association testified that its goal has been to increase the value of Kentucky beef in markets nationwide and to work with grocers to place Kentucky beef on shelves.

Beef cattle, stockyards, and the significance of a grain elevator project in far western Kentucky were the focal issues from July throughout the remainder of the calendar year. The Lexington stockyard project, which will feature a classroom and educational activities, is an important development for the agricultural industry in Kentucky. Acquainting the public with how food is procured is important to supporting these industries.

Agency Reports Received, Other Actions

Among the health-related agencies reporting, the committee heard from officials with the Office of Early Childhood Development, the Kentucky Agency for Substance Abuse Policy, the Markey Cancer Center, and the Brown Cancer Research Center.

