



## 2011 Regular Session adjourns; 100 bills to become law

by Chuck Truesdell  
*LRC Public Information*

The Kentucky General Assembly's 2011 regular session came to a close March 9 as the 30th and final day permitted by the state constitution expired.

More than 650 bills were filed during the session, ranging from comprehensive criminal code reform to government transparency. In all, 100 bills, including a constitutional amendment for the November 2012 ballot, and a handful of substantive resolutions were approved.

Bills that do not contain specific dates or otherwise declare emergencies will take effect on June 8. Among the issues addressed by legislation this session were the following:

**African-American Heritage.** Senate Bill 64

creates the Kentucky Center for African-American Heritage and outlines its board membership.

**Businesses.** SB 8 creates a one-stop online portal for businesses to conduct their transactions with state agencies and gather information on potential economic development incentives. An advisory committee will issue recommendations on the portal's operations by the end of the year.

**Carbon dioxide.** SB 50 includes pipelines for captured carbon dioxide in the eminent domain process, allowing such a pipeline to be constructed through Western Kentucky.

**Consumer protection.** House Bill 382 prohibits businesses and attorneys from soliciting car accident victims as clients until 30 days following the accident.

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State Reps. Martha Jane King, D-Lewisburg, left, Rita Smart, D-Richmond, center, and Linda Belcher, D-Shepherdsville, talk over a bill on the floor of the Kentucky House.

## New penal code law to cut corrections costs, crime rate

by Rebecca Mullins Hanchett  
*LRC Public Information*

The first major overhaul of the state's penal code in over 35 years could save the state more than \$420 million over the next decade, with more than half those savings reinvested in programs to reduce the number of repeat drug offenders statewide.

House Bill 463, sponsored by House Judiciary Chairman Rep. John Tilley, D-Hopkinsville, and enacted during the 2011 Regular Session, will direct the bulk of the savings into drug treatment and services for prisoners. About 40 percent of the state's approximately 20,000 inmates are serving time for drug crimes, state officials report.

The bill was signed into law by Gov. Beshear on March 3.

Savings not reinvested in drug treatment will

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## Special session ends with passage of Medicaid bill

by Chuck Truesdell  
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State lawmakers closed out the 2011 Extraordinary Session of the Kentucky General Assembly after sending a bill to the governor dealing with the state Medicaid shortfall.

The final version of House Bill 1 — the result of 19 gubernatorial vetoes to the legislation passed by the General Assembly — largely resembles the proposal first advocated by the governor. In that plan, General Fund appropriations to the Medicaid budget for the current fiscal year will increase by \$163 million. Next fiscal year, the General Fund portion of the Medicaid budget is reduced by \$97 million, savings the governor says can be achieved through managed care.

The bill sent to the governor was the Senate Committee Substitute, which instead envisioned 0.355 percent cuts to most state government agencies this fiscal year and 1.74 percent cuts next year. Education was spared until FY 2012, with the provision that if Medicaid savings reached 82 percent of the governor's expectations, the General Assembly could fully restore per-pupil funding in January.

The Senate plan included mandates on state spending reductions in the areas of contracts and non-merit hiring. Furloughs of state employees were also prohibited in the measure that went to the governor's desk.

General Fund appropriations to the Medicaid budget for the current fiscal year will increase by \$163 million.

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**Courts.** SB 108 increases the jurisdiction of district courts in civil cases from \$4,000 to \$5,000 and the jurisdiction of small claims courts from \$1,500 to \$2,500.

**Criminal code.** HB 463 alters the state's drug laws, putting an emphasis on treatment, community supervision, and other diversion programs for those convicted of simple possession and eliminating harsher penalties for repeat offenders of those crimes. The bill also requires treatment and other anti-recidivism programs to show evidence they work before being adopted by the state.

**Diabetes.** SB 63 creates a collaborative group to identify goals and plans to reduce incidences of diabetes and improve diabetes care. SB 71 creates a licensing process for diabetes educators.

**Doctoral programs.** SB 130 allows the state's six comprehensive universities to offer certain advanced practice doctoral programs within limits.

**Drugs.** HB 121 bans possession and sale of a new class of street drug sold over the counter and marketed as bath salts, plant food, and other everyday items.

**Economic development.** House Joint Resolution 5 creates a study of the state's economic development programs and their effectiveness.

**Education.** HB 425 allows out-of-state veterans to qualify for in-state tuition at public colleges and universities.

**Elder abuse.** HB 52 prohibits anyone convicted of abusing, neglecting, or exploiting an elderly or vulnerable adult from being placed in a position of trust such as guardian or power of attorney. The bill also prohibits such people from inheriting or otherwise benefiting from the person they abused.

**Eye care.** SB 110 allows optometrists to perform certain types of laser surgery, including treatments for glaucoma and cataracts.

**Firearms.** HB 308 establishes a program for people who have been banned from purchasing a firearm due to mental illness to recover that right. HB 302 allows military reenactments to include swords and firearms.

**Fireworks.** HB 333 expands the types of fireworks that can be sold in the state, including bottle rockets and

Roman candles.

**Flu shots.** SB 40 allows pharmacists to give flu shots to children ages 9-13.

**Government publications.** HB 33 bans state agencies from mailing most publications to the public unless they are requested by the recipient.

**Government transparency.** SB 7 requires the three branches of state government to put all available spending records in a searchable online database with public access.

**Homelessness.** SB 26 reduces the fee for ID cards for the homeless from \$12 to \$4.

**Homestead exemption.** HB 244 allows certain disabled people to document their disability when they apply for a homestead exemption on their property taxes and not have to re-file for the exemption annually.

**Horse racing.** SB 24 makes Kentucky the first state to join an interstate horse racing compact that would develop joint rules for horse racing and wagering. State officials would reserve the right to opt out of any rules adopted by the compact. Kentucky will become the first state to join the compact, which takes effect once six states sign on. HB 387 allows the state to track out-of-state wagering on Kentucky races so incentive funds can get their proper share.

**Hunting and fishing.** HB 1 places a constitutional amendment on the November 2012 ballot to place protections on hunting and fishing. HB 173 exempts active-duty military from having to obtain a license to hunt or fish on state-owned military property.

**License plates.** HB 187 creates an "I Support Veterans" license plate.

**Occupational and physical therapy.** SB 112 limits health insurance co-pays on occupational and physical therapy sessions to no higher than that of regular doctor's visits.

**Prescriptions.** HB 311 allows Schedule II prescriptions, including oxycodone and hydrocodone, to be transmitted electronically or by fax. The bill also allows Schedule III-V drugs to be transmitted by fax; those can already be transmitted electronically.

**Principals.** SB 12 authorized local school superintendents to appoint principals after consultation with the school-based decision making council,

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## Corrections, from page 1

be spent on probation and parole services, additional pretrial services and drug court case specialists. Twenty five percent of savings unrelated to changes in drug laws will be placed in a newly created local corrections assistance fund.

Those who commit low-level non-violent drug crimes, like possession of small amounts of controlled

substances, are the primary targets for reduced sentencing under HB 463. Simple possession of marijuana, for example, will carry up to 45 days in jail instead of the current maximum of one year under the law, which also reduces the sentences for simple possession of salvia and synthetic marijuana. In fact, all possession offenses—except first-degree felony possession—are misdemeanors under the law.

The penalty for possession in the first degree will be a Class D felony with a maximum three-year prison term, rather than the current five-year maximum, with deferred prosecution or probation likely for many first and second offenses.

Serious drug trafficking will still carry severe penalties, but the law creates graduated penalties so trafficking of larger amounts of drugs carries greater punishment than peddling of small amounts for personal use.

Community supervision will also be stepped up under the new law through the use of deferred prosecution or probationary programs allowing offenders to seek community-based drug treatment at a fraction of the estimated \$21,700 current annual cost to incarcerate someone in Kentucky. More prisoners will also earn credit for time served, many will finish the end of their sentence outside of state prisons, and home incarceration and GPS monitoring will likely be used more often.

Offenders who violate probation or parole in small ways will have a chance to stay out of prison through "intermediate sanctions" that would replace mandatory time behind bars.

The sanctions, which the state must have in place by Jan. 1, 2012, would address common violations such as failure to complete community service and failure to refrain from using alcohol or controlled substances. Sanctions would be scaled based on severity of the violation, criminal record, risk level and other factors.

The law maintains the state task force that worked with the Pew Center on the States to create the reforms that went into HB 463. It was that task force—the Task Force on the Penal Code and Controlled Substances Act—that devised the recommended changes to the most recent penal code, last revised in 1974.

The outdated code was believed to be a primary reason for a 45 percent jump in the state's prison population since 2000. Comparably, the national rate of incarceration has risen 13 percent over the same period.

The new law maintains the existence of the Task Force on the Penal Code and Controlled Substances Act to continue its work on the penal code.

Another purpose of HB 463 is the creation of risk and needs assessments to determine which offenders are high risk, which are low risk, and tailor treatment and other programs to the individual. Lawmakers say the assessments will produce better outcomes, reduce recidivism and ensure better use of tax dollars.

Rep. Tilley, the primary sponsor of HB 463, said the new law will improve public safety while lowering costs and the state's crime rate.

"Our drug convictions have skyrocketed," Tilley said in February. By replacing prison or jail time with supervised treatment for many offenders, Tilley said HB 463 will be "leaving (jail or prison) beds for serious offenders."

Tilley and Senate Judiciary Committee Chair Sen. Tom Jensen, R-London, worked together for passage of the reform law.

Jensen introduced an identical bill in the Senate during the 2011 Regular Session to ensure the success of penal code reform during the session.

"It is the most significant and meaningful piece of legislation that I have had the privilege to work on since being elected to the state legislature," Jensen said.



State Rep. Brad Montell, R-Shelbyville, left, speaks with Sen. Ernie Harris, R-Crestwood, during a break on the floor of the Kentucky Senate during the 2011 First Extraordinary Session.



Senate Minority Whip Jerry Rhoads, D-Madisonville, (left), Minority Caucus Chair Johnny Ray Turner, D-Prestonsburg, (middle) and Minority Floor Leader R.J. Palmer, D-Winchester, hear testimony during the First Extraordinary Session.



House Judiciary Committee Chair John Tilley, D-Hopkinsville, explains reforms to the state's penal code and controlled substances laws on the House floor before the final vote on House Bill 463 during the 2011 Regular Session.

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The governor vetoed each of those provisions as well as every spending cut that wasn't included in the House version.

The House passed the Senate plan with the expectation that proposed

spending cuts would be vetoed by the governor.

Gov. Beshear had warned of steep cuts in Medicaid reimbursements beginning April 1 unless legislation addressing the issue was enacted.

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a reversal of the current procedure.

**School board elections.** HB 228 increases the contribution limits for school board candidates to \$200 for individuals and \$1,000 for organizations.

**Traffic laws.** HB 289 adds fines for driving over the 70 miles-per-hour speed limit and clarifies that vehicle-integrated GPS units are exempt from the state's ban on texting or using

other communications devices while driving.

**Voter registration.** HB 192 requires high schools to provide seniors information on how to register to vote and related information.

**Wellness programs.** SB 114 allows private health insurance plans to offer incentives and awards for wellness programs.

## Hunting, fishing rights proposal to be on 2012 ballot

Hunting, fishing and wildlife harvesting would be guaranteed in the state constitution under a proposed constitutional amendment approved by the General Assembly.

The proposed amendment, which received final passage by a vote of 94-1 in the House on March 4, will be placed on the Nov. 2012 statewide ballot for voter approval. If at least 50 percent of voters approve the amendment, Kentucky would become the 16th state to make hunting and fishing a constitutional right.

Supporters of HB 1 say making hunting, fishing and harvesting a right instead of a privilege will ensure that wildlife herds and fish populations in the state are healthy, and boost tourism.

HB 1 was sent to the Office of the Secretary of State for placement on next year's General Election ballot.

## Transparency legislation passes during Regular Session

Details of all government spending would be available online under legislation signed into law on March 17.

Senate Bill 7, sponsored by Sen. Damon Thayer, R-Georgetown, requires all three branches of government to update the online database monthly with links to actual bills, purchase orders, and other documentation when possible. Information in the state's online accounting system would be updated weekly.

Most state offices already post the information online, Thayer said, but SB 7 will be binding on future officials rather than relying on their goodwill.

The Senate unanimously concurred in slight House changes to the bill in early March, which sent the bill to the governor's desk.



2011  
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# Committee Meetings

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### INTERIM JOINT COMMITTEE ON AGRICULTURE

#### Minutes of the 6th Meeting of the 2010 Interim

December 8, 2010

##### Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Agriculture was held on Wednesday, December 8, 2010, at 10:00 AM, at the Kentucky State University Research Farm in Frankfort. Senator David Givens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator David Givens, Co-Chair; Representative Tom McKee, Co-Chair; Senators Ernie Harris, Bob Leeper, Vernie McGaha, Joey Pendleton, Kathy W. Stein, Damon Thayer, and Ken Winters; Representatives Royce W. Adams, John "Bam" Carney, Mike Cherry, James R. Comer Jr., Mike Denham, C. B. Embry Jr., Richard Henderson, Charlie Hoffman, Terry Mills, Brad Montell, Fred Nesler, David Osborne, Sannie Overly, Don Pasley, Tom Riner, Steven Rudy, Dottie Sims, Kent Stevens, Wilson Stone, Tommy Turner, Ken Upchurch, and Susan Westrom.

**Guests:** Mr. Todd Leatherman, Office of the Attorney General; Dr. Robert Stout, State Veterinarian; Dr. Mary Evans Sias, Dr. Kimberly Holmes, Dr. James Tidwell, Dr. Harold Benson, Dr. James Chapman, Dr. Michael Bomford, and Dr. Ken Adries, Kentucky State University.

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

##### Update on the status of Eastern Livestock Company

Mr. Todd Leatherman of the Office of the Attorney General stated that his office is working with the USDA, the US Attorney's Office, the Kentucky Department of Agriculture, and other agencies regarding the Eastern Livestock Company situation. His office is trying to identify farmers, stockyards, and others that may have received bad checks or no checks at all for their cattle or services.

Mr. Leatherman gave a chronological overview of the legal actions that have taken place against Eastern since early November. It is estimated that over \$80 million in bad checks were written and that total debts will exceed \$130 million to over 700 producers.

Dr. Robert Stout, Kentucky Department of Agriculture, gave an overview of the department's role in overseeing stockyards. Kentucky law

addresses the licensing and bonding requirements for stockyards, dealers, and others in the industry. Stockyards and dealers are required to be licensed through the department, but their bonding requirements are set by the USDA Packers and Stockyards Administration (PSA). PSA has a formula that determines the amount of bonding; the department only requires that proof of bonding be verified. Eastern's bond was set at \$875,000, a fraction of the amount that Eastern has defaulted on.

Dr. Stout explained that the current bonding requirements by PSA are inadequate, as evidenced by the recent situation regarding Eastern Livestock. He suggested that the bonds of stockyards and dealers in Kentucky are probably all too low.

There was discussion regarding when change of ownership takes place at a sale, which has ownership as cattle go through the stockyards, and how monetary transactions are managed between buyers, sellers, agents, and stockyards. One factor that has made the Eastern Livestock situation complicated is the complex nature of the company. Eastern conducted live sales, contract sales, internet sales, hedge sales, and private farm transactions. This makes accounting for the livestock very difficult.

An overview of farm programs was offered by representatives of Kentucky State University. Dr. Mary Evans Sias, President, began by welcoming the members to the newly-constructed Center for Sustainability of Farms and Family. Dr. Sias gave a brief overview of the KSU Land Grant Program and the different agricultural programs it administers. Dr. James Chapman, Provost, discussed some of the other programs offered by the university, including the creation of a College of Agriculture, Food Science and Sustainable Systems, which will begin in the fall of 2011. Dr. Harold Benson also discussed the Land Grant Program and some of the accomplishments it has achieved. Other KSU representatives that gave program updates were Dr. Kirk Pomper (paw-paws), Dr. Michael Bomford (biofuels), Dr. Jim Tidwell (aquaculture), and Dr. Ken Adries (aquaculture).

Dr. Kimberly Holmes gave a detailed overview of the KSU Land Grant Program and its four divisions: Aquaculture, Community Research, Cooperative Extension, and Educational Outreach.

Mr. Eddie Reed, KSU farm manager, gave a brief description of the

new Center for Sustainability of Farms and Family.

There being no further business, the meeting was adjourned.

### INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

#### Minutes of the 4th Meeting of the 2010 Interim

December 2, 2010

##### Call to Order and Roll Call

The fourth meeting of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, December 2, 2010, at 1:00 PM, in Room 154 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Bob Leeper, Co-Chair; Representative Rick Rand, Co-Chair; Senators David E. Boswell, Denise Harper Angel, Jimmy Higdon, Ray S. Jones II, Vernie McGaha, R.J. Palmer II, Joey Pendleton, Tim Shaughnessy, Brandon Smith, Robert Stivers II, Gary Tapp, Elizabeth Tori, and Jack Westwood; Representatives Royce W. Adams, Dwight D. Butler, Jesse Crenshaw, Mike Denham, Bob M. DeWeese, Danny Ford, Derrick Graham, Jimmie Lee, Reginald Meeks, Harry Moberly Jr., Lonnie Napier, Fred Nesler, Don Pasley, Marie Rader, Jody Richards, Charles Siler, Arnold Simpson, Tommy Thompson, Tommy Turner, Jim Wayne, and Brent Yonts.

**Guests:** Dr. Barbara Veazey, President, West Kentucky Community and Technical College; Ms. Donna Wear, Principal, Commonwealth Middle College; Cole Riley and Alex Clark, senior students at Commonwealth Middle College; Stewart Owen, Dept. for Medicaid Services, Cabinet for Health and Family Services; Neville Wise, Acting Commissioner, Dept. for Medicaid Services, Cabinet for Health and Family Services; Bill Riggs, Chief of Staff, Office of the Secretary, Finance and Administration Cabinet; Don Speer, Executive Director, Office of Procurement Services, Finance and Administration Cabinet; Tammy Branham, Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet; Jennifer Chandler, Deputy Executive Director, Office of Budget and Fiscal Management, Transportation Cabinet; Pete Galloway, Superintendent, Graves County Schools; Greg Butler, son of Representative Dwight D. Butler; and Tammy Nesler, wife of Representative Fred Nesler.

LRC Staff: Pam Thomas, John Scott, Charlotte Quarles, Eric Kennedy, Jennifer Hays, Bart Hardin, and Spring Emerson.

Chair Leeper mentioned those committee members who would be leaving the General Assembly at the end of December. They were: Senators David Boswell, Gary Tapp, and Elizabeth Tori; Representatives Scott Brinkman, Harry Moberly, Don Pasley, Charlie Siler, and Ron Weston. Chair Leeper and Co-Chair Rand presented them with resolutions in honor of their years of service to the General Assembly.

Chair Leeper asked the members with guests in the audience to introduce them. Representative Nesler introduced Pete Galloway, Superintendent of Graves County Schools. He also introduced his wife, Tammy Nesler. Representative Dwight Butler introduced his son, Greg Butler.

Consideration of 907 KAR 1:479 as Amended November 9, 2010

Chair Leeper asked Stewart Owen, Dept. of Medicaid Services, Cabinet for Health and Family Services, to provide an explanation of Administrative Regulation 907 KAR 1:479 as amended November 9, 2010 regarding durable medical equipment covered benefits and reimbursement. A motion to amend the regulation was made by Senator Boswell, seconded by Senator Pendleton, and the motion carried without objection.

#### **Commonwealth Middle College**

Chair Leeper invited Dr. Barbara Veazey and Ms. Donna Wear to provide a brief overview of the Commonwealth Middle College (CMC). Dr. Veazey, President of West Kentucky Community and Technical College, explained that there are four middle colleges across the Commonwealth, all connected to the Kentucky Community and Technical College System. The CMC allows students to take core high school courses and receive their high school diploma while taking college classes. CMC students remain enrolled at their high school but take all classes (high school and college) on the campus of West Kentucky Community and Technical College. The college courses are tuition free. When students complete Middle College, they will have received their high school diploma as well as had an opportunity to earn a minimum of 36 college credit hours.

Dr. Veazey noted that the CMC has been very successful. The first 50 students earned between 18 and 33 credit hours during the first year of the program. Several students are scheduled to receive their associate's degree (60 hours) when they graduate from high school in May 2011. The first class posted a 3.6 grade-point average in their college classes in

2009-10 and earned an average high school GPA of 3.4. Members of the current senior class scored a composite of 22.2 on the ACT in March 2010, besting the national, state, and regional averages.

Cole Riley and Alex Clark, both seniors in the CMC program, provided a brief overview of student life at the CMC and stated how the program has helped them.

In response to a question from Representative Graham, Dr. Veazey stated that transportation for CMC students is provided by the high schools in the participating districts. Representative Graham said he is very impressed with the CMC program and the great opportunity it provides to its students.

In response to a question from Senator Pendleton, Dr. Veazey stated that additional funding would be required to expand the program. There are other similar programs in Kentucky, such as the Discover College in Owensboro, the Opportunity Middle College of Bluegrass Community College in Fayette County, and Western High School in Jefferson County.

In response to an inquiry from Representative Meeks, Mr. Clark explained that before entering the CMC program, he did not have a love for high school and only attended because it was a requirement. He was not challenged, even though he made good grades. Mr. Riley explained that before entering the CMC program, his grades were not as high as they could have been. He said he received counseling and tutoring with the CMC, and as a result his grades have improved greatly. Ms. Wear stated that both seniors had above a 3.0 grade point average. She said that many high school students were not engaged, not really interested, and may not pursue more education. In response to a question from Representative Meeks, both Mr. Riley and Mr. Clark stated they had not considered dropping out of high school before enrolling in CMC.

In response to a question from Representative Moberly, Dr. Veazey said the new criteria for admission will be more heavily weighted toward first generation college students and students identified by their principals as being at a greater risk for dropping out. Ms. Wear added that 32 percent of CMC students are participating in the free or reduced lunch program. She said three of her students did not live with their parents and one student was pregnant, indicating that those typical things that happen at the high school level happen with CMC students as well. Representative Moberly commended them for their good works and stated that Eastern Kentucky University plans to start a middle college in conjunction with the Madison County Schools in the fall

of 2011. He said alternatives to the traditional high schools are becoming more and more necessary.

In response to a question from Representative Yonts, Dr. Veazey stated that House Bill 160 addresses the issue of transferability for general education classes, but will not necessarily cover more technical courses such as the culinary arts or physical therapy.

In response to a question from Chair Leeper, Dr. Veazey stated that the junior students they accepted this year will complete next year under current grants, which will then expire. Since the students were not high school graduates, they are not eligible for KEES money. KEES money could be a possibility for gap funding.

#### **Cabinet for Health and Family Services**

Chair Leeper next invited representatives from the Cabinet for Health and Family Services to address reports mandated by House Bill 1.

Mr. Neville Wise, Acting Commissioner, Department for Medicaid Services, provided an overview of the report mandated by House Bill 1 concerning Medicaid security measures, and evaluation of benefits and efficiencies. As part of the efficiency measures, the Cabinet has placed additional limitations on prescriptions by providing Medicaid reimbursement only for prescriptions written by active Medicaid-enrolled providers. The Cabinet has also refined the over-the-counter drug list, requiring that some over-the-counter drugs be provided as a less-expensive alternative to certain prescription medications. Prescription medications will also be dispensed at the least expensive generic option available. The requirements for early refills of medications were also strengthened. Ninety percent of the medication must be used before refills will be allowed, to prevent a surplus of medications being built up. The lock-in program was enhanced through utilization monitoring of recipients and assignment of physician case managers and other providers. Mr. Wise also mentioned the health insurance payment program which would allow the Cabinet to buy group insurance that Medicaid recipients have access to, if it will be less costly than Medicaid-provided services through the normal program. He stated that the Cabinet has followed the Medicare program's lead in eliminating reimbursement for hospital-acquired conditions. In addition, the Cabinet has enhanced its funding activities for preventive health services, and has implemented a revenue intercept program. The Cabinet has entered into a new contract with a program integrity vendor to analyze utilization patterns and look for potential fraud.

In response to a question from

Representative Wayne, Mr. Wise replied that pharmacy audits are conducted on a quarterly basis. The audits are based on a set of criteria used to determine which providers to audit each quarter. He said there are some selective audits conducted as well. In response to another question from Representative Wayne, Mr. Wise replied that the program integrity vendor is an outside contract, adding that the company is Ingenix. Representative Wayne inquired about their rate of recovery. Mr. Wise said he would provide that information at a later date. He added that Ingenix operates on a contingency fee basis and will not get paid until the discrepancy is identified and recovered. Representative Wayne said he thought their recovery rate was between one and one-half percent, with the national average being between five and seven percent. He asked how the bid was let. Mr. Wise replied it was a competitive bidding process. Representative Wayne asked why the contract had not been reviewed by the Government Contract Review Committee. Mr. Wise stated that he would investigate and reply back to the committee.

In response to a question from Representative Napier, Mr. Wise noted that the only case where benefits would be reduced would be if the patient is in a nursing home or on a waiver program as an alternative to being in a nursing home.

In response to a question from Senator McGaha, Mr. Wise explained what hospital-acquired conditions are. These conditions occur due to poor hospital care, and include acquired infections, and sponges or instruments being left in the patient after surgery, as examples. Senator McGaha asked if there was a state reporting system in place for hospitals regarding hospital-acquired infections. Mr. Wise said hospitals are required to document the condition of the patient upon admission.

In response to a question from Representative Yonts, Mr. Wise responded there is no mechanism in place for tracking prisoner dumping.

Chair Leeper inquired about a report provided to the General Assembly from the Cabinet for Health and Family Services which had been mentioned by the Cabinet Secretary in a previous meeting. Mr. Wise said the report had been provided in February of 2010, and included a comparison of costs for recipients of services provided by Passport to that of services provided in other parts of the state.

Senator Shaughnessy commented that roughly 52 percent of Passport is owned by University Physicians Associates, which is comprised of the medical staff of the medical school at the University of Louisville. Mr. Wise said their faculty has a medical

practice which is part of the medical school. In response to a question from Senator Shaughnessy, Mr. Wise said that the remaining ownership of Passport is comprised of 12 percent Norton Hospital, 12 percent Jewish Hospital, 12 percent University of Louisville Hospital, and the remaining percentage was owned by Jefferson Primary Care Association. Senator Shaughnessy stated that with Passport being affiliated with the university, it seems to be part of the university and certainly would be controlled by the university, not the medical school. He stated that the University of Louisville contributed nearly \$5.3 million to fund the capital contribution to Passport. He commented that it should be acknowledged that the appropriate people should be held responsible, and accountability comes with responsibility.

In response to a question from Chair Leeper, Mr. Wise said that the Passport board was formed by various provider groups and associations nominating people to represent them on the board. He added Passport is required by contract to have broad representation of provider groups and geographical areas in order to understand the needs and efficiencies involved.

Representative Wayne requested more information regarding the Ingenix contract. Mr. Wise stated he would provide that information at a later date.

Chair Leeper thanked Mr. Wise for appearing before the committee.

#### **Finance and Administration Cabinet**

Mr. Bill Riggs, Chief of Staff, Office of the Secretary, introduced Mr. Don Speer, Executive Director, Office of Procurement Services. They gave a brief explanation of the Contract Reductions for FY 2011 report, which was mandated by House Bill 1.

In response to a question from Representative Wayne, Mr. Speer replied that all contracts go through the Finance and Administration Cabinet, adding that bids for personal service contracts and memoranda of agreement were issued and procured by the individual agency seeking those services, and they were reviewed by the Government Contract Review Committee. Bids for all other commodities and non-professional services were issued by the Finance and Administration Cabinet.

Representative Wayne asked why the Ingenix contract was not considered a personal service contract and did not go before the Government Contract Review Committee. Mr. Speer replied that it had been considered by the Cabinet for Health and Family Services as a non-professional contract, which was an administrative

contract.

Senator McGaha commented that the Government Contract Review Committee should review more contracts. Representative Yonts agreed.

Chair Leeper asked if personal service contracts were reviewed to determine if those services could be performed in-house in order to save money. Mr. Speer replied that the Finance and Administration Cabinet and other agencies were doing that as part of their reviews.

Chair Leeper pointed out the option for fast-pay in the Workers Compensation Program in the Personnel Cabinet, and asked if that option had been considered by other departments. Mr. Riggs said every cabinet and every department were being challenged daily to reduce contracts. He said reductions would continue to be made in order to reduce spending.

Chair Leeper thanked them for appearing before the committee.

#### **Transportation Cabinet**

Tammy Branham, Executive Director, Office of Budget and Fiscal Management, introduced Jennifer Chandler, Deputy Executive Director. They provided a brief overview of the report mandated by House Bill 3 concerning the review of contract expenditures.

Chair Leeper requested a detailed list of contracts with precise numbers and a list of those contracts that would be rebid. Ms. Branham stated the information would be provided to the committee at a later date. Chair Leeper asked for clarification regarding maximization of the use of \$11.4 million in total funds. Ms. Branham replied that those funds would be utilized in other areas rather than putting them away for a rainy day.

Chair Leeper thanked them for the information provided to the committee. There being no further questions, he asked for a motion to adjourn. A motion was made by Representative Nesler and seconded by Representative Pasley, and the meeting was adjourned at 3:25 PM.

#### **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

##### **Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection Minutes of the 2nd Meeting of the 2010 Interim**

December 2, 2010

#### **Call to Order and Roll Call**

The 2nd meeting of the Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, December 2, 2010,

at 10:00 AM, in Room 129 of the Capitol Annex. Representative John A. Arnold Jr., Chair, called the meeting to order. The roll was called later in the meeting.

Present were:

Members: Representative John A. Arnold Jr., Co-Chair; Representatives Dennis Horlander, Dennis Keene, Marie Rader, Fitz Steele, Jim Stewart III, and Susan Westrom.

Guests: Marcheta Sparrow, Secretary of the Tourism, Arts, and Heritage Cabinet; John Nicholson, Executive Director of the Kentucky Horse Park; Mike Cooper, Commissioner of the Department of Travel and Tourism; and Representative Rocky Adkins.

LRC Staff: Kelly Dudley, Melissa Lueker, Perry Papka, and Marlene Rutherford.

Chair Arnold acknowledged that this meeting was the last meeting for Representative Firkins and Senator Boswell and thanked and applauded them for their service on the committee.

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

Marcheta Sparrow, Secretary of the Tourism, Arts, and Heritage Cabinet, John Nicholson, Executive Director of the Kentucky Horse Park, and Mike Cooper, Commissioner of the Department of Travel and Tourism, updated the committee on the World Equestrian Games. Secretary Sparrow publicly acknowledged her staff and how proud she is for everything that was accomplished with the 2010 Alltech FEI World Equestrian Games. In all her experience in the tourism industry, she has never been involved in an event that she has been more proud of or that she believes has accomplished more for economic development and tourism in Kentucky. The outreach of this event was enormous.

Mr. Nicholson stated that from the Horse Park's standpoint the World Equestrian Games went very well. He thanked the General Assembly for its support. The Games were a real source of pride for the Horse Park because the idea of bringing the Games to the park was conceived at the park several years ago. All Kentuckians should be proud of this event. He said it is difficult to measure the legacy effect of the games. Because of the Games, new events and an enhanced worldwide reputation were gained. Competitors praised the indoor arena for equestrian competition. There are currently thirty-four events booked for the indoor arena for 2011, nineteen of which are new and only there because of the new facilities and that those events have been expanded. International level competition will be performed at the Horse Park every year from now forward which will have a tremendous economic impact. These

Games would not have been in Kentucky had it not been for Kentucky's reputation for the "Horse Capital of the World" which is a reminder that this industry must be preserved. The 2010 Alltech FEI World Equestrian Games is a reflection of the success of the Horse Park. The success of the Horse Park is because of the investment made over the years.

Mike Cooper indicated that the challenge of the Department of Travel and Tourism during the World Equestrian Games was to showcase Kentucky, its tourism attractions, products, and entertainment. To accomplish this, a 25,000 square foot area was designated as the Kentucky Experience made up of three pavilions. A courtyard was designed by Kentucky native Jon Carloftis and the state Welcome Center staff greeted visitors from around the world. The total project budget for the Kentucky Experience was \$2 million dollars and of that amount \$1.7 million dollars were sponsorships through partnerships across the state, and \$300,000 was from the Department of Travel and Tourism marketing budget over a period of two years. The average attendance at the Kentucky Experience was about 4,000 guests per day or a total of 65,000 during the games; over 400 volunteers from across the state; and the department worked with fourteen museums from across the state bringing in approximately fifty artifacts and worked with all the agencies in the Tourism, Arts, and Heritage Cabinet to support the Kentucky Experience.

There were sixty-eight musical groups that performed from 85 countries. A satellite artisan center was also set up inside the Kentucky Experience which took in over \$100,000 in revenue during the games in addition to what business was generated at the Berea Artisan Center. There was a tasting area and working with the Alltech and Kentucky Proud products groups served about 9,000 flights of bourbon, beer, and wine. The Kentucky Experience project has united the tourism industry throughout the state. The tourism area for the Games had 180 four by eight panels that covered all nine tourism regions and those panels will be part of a display at the Kentucky History Center, possibly the State Fair, and an event called Travel South USA, a group travel showcase, in 2012 in Louisville.

In response to a question from Representative Keene regarding the bourbon tasting, Secretary Sparrow stated that this was accomplished by using the food concessionaire and that it was successful, but it was limited to the official liquor of the Games and not representative of all the distilleries of Kentucky. The tasting bill has its merit and would allow a showcase of

the bourbon industry.

Representative Steele commended Secretary Sparrow and other state employees who worked at the Games especially the park rangers and state troopers.

Representative Westrom also acknowledged the hard work of the cabinet and volunteers, and the many long hours worked. She also thanked the members of the committee and General Assembly because of the many sacrifices that had to be made in the state parks.

Representative Stewart asked if the yellow striping on park roads could be updated, especially for patrons and visitors. Mr. Cooper indicated that his job is marketing and selling the state, that he works closely with both Secretary Sparrow and Commissioner van der Meer of the Department of Parks, and that he would discuss this issue with them.

Majority Floor Leader, Representative Adkins complimented the cabinet and said that the state needs to maintain its reputation of having the best state parks system in the country. He understood in these tough economic times the cutback in work hours of park employees was having a tremendous affect on morale and that as there is continued growth in the economy that the cabinet look at restoring those hours back to the employees. Secretary Sparrow said that both she and Commissioner van de Meer understand the sacrifices that employees have made and are concerned on a daily basis for their well being.

Chair Arnold indicated that one comment made to him concerning the Games related to the limited food concessions. Secretary Sparrow indicated that this would be brought to the attention of the World Games 2010 Foundation who was responsible for this and that since this was the first of this type event for the state that much was learned throughout the process.

In response to a question by Chair Arnold concerning how the World Equestrian Games did financially, Mr. Nicholson pointed out that the Games were funded privately through the World Games 2010 Foundation which was established for the purpose of operating the 2010 Games. Dr. Lyons, Jamie Link, and others have indicated that they expect everyone to be paid. From the Horse Park's point of view, the park had a much larger September and October than it has ever had, and from an operational standpoint it was a wash but because of the exposure for the park and state financially that cannot be measured. Mr. Cooper said that the state will continue to reap benefits and that the Kentucky Experience broke even.

In response to a question by

Chair Arnold as to whether the state was out money in helping to promote the Games, Secretary Sparrow indicated that the \$300,000 as the state's share of the partnership for the Kentucky Experience came out of the cabinet's budget but there were no funds turned over to the Foundation for the payment of bills.

Representative Rader complimented the Transportation Cabinet for the traffic control around the Lexington area and Games as well as the cabinet's staff for all the planning and hard work to make the event such a success.

#### **Discussion on Health Insurance Reform**

William Nold, Director of the Health and Life Division of the Department of Insurance, and D. J. Wasson of the Commissioner's Office who have been involved in the effect of the healthcare reform bill, began the department's presentation in the absence of Sharon Clark, Commissioner of Insurance.

Ms. Wasson noted that the bill passed by Congress is a lengthy bill and only a small portion deals with insurance. Several decisions had to be made early on about a transitional program to lead into the main reforms that go into effect in 2014. The first issue dealt with a temporary high risk pool that the federal government established. Kentucky has a high risk pool, Kentucky Access, which will continue, but there will be a federal risk pool to help individuals with pre-existing conditions and who are uninsured to obtain insurance now until 2014 when the other reforms become effective. States had the option to run the federal high risk pool or allow the federal government to run it and Kentucky chose to allow the federal government to operate the temporary high risk pool to protect the state from unknown liabilities. It is currently running and increasing in membership.

Mr. Nold discussed grandfathered plans. The state waited for the federal Department of Health and Human Services to implement regulations to explain more fully what the bill was intended to do as it relates to grandfathering of health plans. The federal government's regulatory process includes the ability to expand on the law that was enacted as long as the expansion fits into the overall statutory purposes of the law. Implementing this new healthcare law is a very fluid process and that all the regulations have not been developed yet. The department meets weekly via phone with the Department of Health and Human Services to discuss various issues and keep apprised when the regulations will be implemented. The federal government set up standards that insurance companies had

to meet with respect to policies or any changes in their policies that would result in those policies becoming non-grandfathered. One of the rules was that if an employer changed insurance companies they would lose their grandfathered status but that this was corrected recently by allowing a company to retain grandfather status so long as the other rules were met with respect to increasing the amount of deductibles or other changes.

Ms. Wasson indicated that the reason the grandfathered status is important is because of market reforms that went into effect September 23, 2010, and will impact existing policies as they come up for renewal but not all market reforms impact all the policies. She said that some will apply to all plans and some to new plans (not grandfathered plans). Most of the reforms are already addressed in Kentucky's Insurance Code, although several are different, for example, the extension of dependent coverage until age 26. In Kentucky, dependents are covered until age 25.

Commissioner Sharon Clark indicated the department had many responsibilities as a result of the federal healthcare law and one of those responsibilities was the rate review process. Kentucky is one of twenty-five states that already conducts a review of rates, but it has been expanded by the new federal law. This rate review will be expanded to the large group market, which was not done previously, and that the department will have to determine when there is an unreasonable premium increase. The department is still waiting on the federal government to let the states know what the definition will be for an unreasonable premium increase.

Commissioner Clark indicated that the medical loss ratio has been one of the most controversial issues. This is where the provisions of the federal law indicate that 80 percent or 80 cents of every dollar has to be spent on the delivery of healthcare in small group and individual markets and 85 percent or 85 cents of every dollar in large group markets. Kentucky currently has these ratios in the statutes but not to that extent. There has also been a lot of discussion as to what should be included such as the prevention of fraud being considered pertinent to the delivery of service; are the aging commissions or wellness prevention programs to be considered in the delivery of service. This medical loss ratio was a charge given to the National Association of Insurance Commissioners (NAIC) and has been provided to the federal government. Another responsibility given to NAIC was the uniform explanation of coverage documents which means that from now forward there will be one

set of definitions used by all health insurers. The whole premise is to make it easier and more consumer friendly in the purchase of insurance.

Commissioner Clark said that Kentucky received a \$1 million premium review grant in August in order to assist the department in facilitating the reporting requirements that will be needed. Kentucky is fortunate because it already has the expertise in reviewing rates. The federal law also provided for a consumer assistance program and Kentucky was awarded a \$215,784 grant in October and was just notified this morning received an additional \$270,000 grant. This grant money will be used for consumer outreach and assisting consumers in understanding their rights, by educating them on the different possibilities of coverage. The grant will also be used to enhance existing databases to allow staff to capture additional information about the affordability and access of insurance. Another grant is the exchange planning grant. Kentucky has not made the decision whether it will operate the health exchange established on January 1, 2014, or whether it will be operated by the federal government. This administration will be diligent in determining the best way to proceed. One of the responsibilities of the planning grant is to determine information from the insurance market place on a county level. There are 600,000 people in Kentucky who do not have health insurance and that it will be the responsibility of the department to determine where these people are located and why they do not have insurance. The department is doing a lot of outreach to consumers with webpage links, implementing meetings, conducting speaking engagements, and offering continuing education courses, and has worked with LRC staff to educate them on health insurance reform.

Commissioner Clark indicated that an exchange was an organized marketplace for the purchase of health insurance. One of the first rules will be to determine if an individual is eligible for Medicaid, or if family members are eligible for KCHIP, or eligible for private insurance purchase. The primary responsibilities of the Department of Insurance with the exchange will be certifying plans offered; publishing an on-line accounting of administrative costs, which goes back to the medical loss ratio; providing a toll-free number for consumer assistance hotline; rating each qualified health benefit plan based on quality and price as well as other requirements. She said understanding and implementing the new law has been an overwhelming task and staff has done a good job in getting the filings and other documentation in place that was required by the September 23 deadline.



Mr. Nold noted that during this process the insurers are making a really good attempt at conforming to the new requirements.

In response to a question of Chair Arnold about the \$2.5 million grant monies, Commissioner Clark indicated that some of the funds would be used to hire six federally funded time limited positions to help in regulating the grandfathered plans which are regulated differently than the new plans issued after September 23, 2010 as well as the data reporting requirements. Mr. Nold also noted that part of the grant is intended to increase the transparency to the public as to what goes into the process of a rate review.

Replying to a question raised by Representative Stewart concerning state employees, Commissioner Clark indicated that the Department of Personnel administered the state employees' health benefits plan and did not come under the Department of Insurance's jurisdiction but if it was in the private marketplace it would come under the department's jurisdiction.

Also in response to a question and scenario presented by Representative Stewart concerning automobile insurance and how it relates to a state employee's health insurance plan, Commissioner Clark stated that if an individual was in an automobile accident the state would subrogate the claim by recovering the money from the automobile insurance company and this would be accomplished through a questionnaire from the insurance company. Representative Stewart indicated he felt there is a lot of waste and the state could save money on automobile accidents when the costs are charged to a state employee's benefit plan rather than the private insurance company and the same with the filling of prescriptions when a state employee is involved in an automobile accident.

Commissioner Clark indicated that she would talk with Commissioner Nelson, with the Department of Employee Insurance in the Personnel Cabinet, to determine if the state has regular questionnaires to determine coverage in response to his concern. She also indicated that if a local pharmacy is having issues with payment by a health insurance company she would like to talk with the pharmacy to address the issue.

Responding to a question by Chair Arnold as to what impact the new healthcare law would have on small businesses, Mr. Nold stated a tax credit available to small businesses went into effect in January 2010 depending upon the amount of premium paid to cover their employees and that there are many implications from the new healthcare bill that does not directly relate to insurance

and the full impact is not known at this time.

The meeting adjourned at about 11:20 a.m.

**INTERIM JOINT COMMITTEE  
ON APPROPRIATIONS AND  
REVENUE  
Budget Review Subcommittee on  
General Government,  
Finance, and Public Protection  
Minutes of the 2nd Meeting  
of the 2010 Interim**

December 2, 2010

**Call to Order and Roll Call**

The second meeting of the Budget Review Subcommittee on General Government, Finance, and Public Protection of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, December 2, 2010, at 10:00 AM, in Room 131 of the Capitol Annex. Representative Royce W. Adams, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jack Westwood, Co-Chair; Representative Royce W. Adams, Co-Chair; Senator Joey Pendleton; Representatives Leslie Combs, Mike Denham, Charlie Hoffman, Adam Koenig, Brad Montell, Steve Riggs, and Wilson Stone.

Guests: Greg Haskamp, Executive Director, Office of Policy and Audit, Finance and Administration Cabinet; Bill Riggs, Chief of Staff, Office of the Secretary, Finance and Administration Cabinet; Beth Jurek, Executive Director, Office of Policy and Budget, Cabinet for Health and Family Services; Mark Offerman, Office of Community Action Agencies, Kentucky Housing Corporation; Thelma Hawkins, Grants Branch Manager, Kentucky Department of Education; and John Hicks, Deputy State Budget Director.

LRC Staff: Debra Gabbard, Tom Willis, and Spring Emerson.

Chair Adams requested a motion to approve the minutes of the October 28, 2010 meeting. A motion was made by Senator Westwood, seconded by Representative Combs, and the minutes were approved without objection. Chair Adams then asked representatives from the Finance and Administration Cabinet to continue the discussion from the last meeting regarding the American Recovery and Reinvestment Act of 2009 (ARRA) funding.

**Finance and Administration Cabinet**

Mr. Greg Haskamp, Executive Director, Office of Policy and Audit, provided a brief overview and update of ARRA funding. The amount of relief to Kentucky had been just under \$3.5 billion, which was comprised of over 2,000 individual grants. Once Congress appropriated the funds, it would go to the 28 federal agencies, which

would make the awards. The unifying factor was that all recipients were required to make quarterly reports. Included in the reporting would be descriptions of how the funds were being used and amount of expenditures to date.

Representative Riggs inquired about job training assistance and asked if it would end and the career centers close down when the ARRA funds were exhausted. Mr. Haskamp replied that job training assistance would end, but the career centers would remain open, albeit without the enhanced training that had been available through ARRA funding.

Representative Montell inquired about the amount of tax relief that had been provided by ARRA funds. Mr. Haskamp replied those were national numbers that had been estimated by the Congressional Budget Office, and he added that the Kentucky At Work website would provide a breakdown of tax incentives in Kentucky. In response to a question from Representative Montell regarding most of Kentucky's created jobs being government jobs, Mr. Haskamp said that a large number of the jobs reported were government jobs, but that does not necessarily reflect the jobs throughout the state because so much of the stimulus jobs were not being reported on. That made it nearly impossible to separate public from private with other types, such as outsourcing.

Representative Denham inquired about infrastructure moneys and asked if some areas of Kentucky had been left out of grant applications. Mr. Haskamp replied that many of the ARRA funds were based on formulas for existing programs. Mr. Bill Riggs said that one-third of the stimulus dollars went toward augmenting the state budget.

Senator Westwood inquired about the number of states used a significant amount of their ARRA funds as a budget balancing measure. Mr. Riggs said that 49 states had used ARRA funds to augment or supplement their budgets in some way.

Representative Koenig asked if there was an amount of money that could be directly attributed to retaining positions in child support services. Ms. Beth Jurek, Executive Director, Office of Policy and Budget, Cabinet for Health and Family Services, explained that one of the provisions of the stimulus act enabled states to use incentive dollars that they earned for meeting performance standards as state match, which enabled Kentucky to free up some dollars to do some improvements to the child support enforcement system. Additional electronic tools had been created and operations streamlined, which was an infrastructure improvement that would live beyond ARRA. Representa-

tive Koenig asked how many employees had been retained and how much child support money would not have been collected otherwise. Ms. Jurek stated that she would provide that information at a later date.

Chair Adams inquired about the Low Income Home Energy Assistance Program (LIHEAP) and asked how it would be affected by ARRA funds. Mr. Mark Offerman, Kentucky Housing Corporation, said the Community Action Agencies take applications for multiple services, one of which is LIHEAP. Those families get assistance in weatherizing their homes as a means to reduce their energy expenditures. He said that no LIHEAP funds were being used for fuel purchases. Chair Adams asked if they were using ARRA funds instead of LIHEAP funds for fuel. Mr. Riggs replied in the affirmative.

Chair Adams inquired about the use of hybrid bus funds. Ms. Thelma Hawkins, Grants Branch Manager, Kentucky Department of Education, stated that those funds had been allocated through a competitive process using the Request for Proposal for Phase I. Phase II was just completed, and Phase III will begin in the spring of 2011 until the funds are expended.

Chair Adams asked about the \$940 million that had been used for Medicaid and wondered how that would affect the future for Medicaid recipients. Mr. John Hicks, Deputy State Budget Director, said that there are no stimulus funds available in 2012, and the issue had been addressed in the biennial budget.

Chair Adams inquired about state relief for clean drinking water and asked how that would affect current projects. Mr. Hicks replied that those projects were separate and explained that the clean drinking water projects had been shovel-ready, and as a result, projects had been added that were not previously funded.

Chair Adams commented that the committee would be losing long-standing members Representatives Hoffman and Siler and thanked them for their diligence and hard work.

There being no further questions, he requested a motion to adjourn. A motion was made by Representative Denham, seconded by Representative Koenig, and the meeting was adjourned at 11:12 AM.

**INTERIM JOINT COMMITTEE  
ON APPROPRIATIONS AND  
REVENUE  
Budget Review Subcommittee on  
Justice and Judiciary  
Minutes of the 1st Meeting  
of the 2010 Interim**

December 2, 2010

**Call to Order and Roll Call**

The 1st meeting of the Budget Review Subcommittee on Justice and Judiciary of the Interim Joint Commit-

tee on Appropriations and Revenue was held on Thursday, December 2, 2010, at 10:30 AM, in Room 169 of the Capitol Annex. Representative Jesse Crenshaw, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Tom Jensen, Co-Chair; Representative Jesse Crenshaw, Co-Chair; Senator Dan "Malano" Seum; Representatives Martha Jane King, John Tilley, and Brent Yonts.

**Guests:** Carol Henderson, Budget Director, Administrative Office of the Courts, Vance Mitchell, Manager of Capital Construction within the Judicial Branch and Representative Rocky Adkins.

**LRC Staff:** Mike Mullins, Jennifer Anglin, and Christina Williams.

Chairman Crenshaw thanked members and guests for attending the meeting. He then acknowledged Representative Scott Brinkman's retirement and recognized his accomplishments and the contributions he has made to the committee and General Assembly.

#### **Discussion of Activity of the Penal Code and Controlled Substances Act Task Force and of PEW Center on the States Study**

Representative John Tilley and Senator Tom Jensen updated the committee on the Penal Code and Controlled Substances Act Task Force.

In response to a question asked by Chairman Crenshaw, Senator Jensen stated the majority of prosecutors have been involved with the process and are in agreement with the philosophy behind the Penal Code and Controlled Substances Act Task Force recommendations; however, there are some items that the Task Force is considering that they do not agree with. He believed not everyone is going to agree with every recommendation that is considered.

Representative Tilley added that he is a former prosecutor and has spoken with some of his former colleagues about the recommendations. He reiterated what Senator Jensen had previously stated. The Task Force had spoken as a panel at the prosecutor's convention and had reached out to several communities for input. Some of the disagreements from prosecutors lie in how to achieve the overall goal. Prosecutors want more definitive sentencing of offenders.

Representative Tilley stated he would like to see improvement on recidivism rates to ensure the offenders do not reoffend.

#### **Update on Court Facility Construction**

Carol Henderson, Budget Director of Administrative Office of the Courts (AOC) and Vance Mitchell, Manager of Capital Construction within the

Judicial Branch updated the committee on the court facility construction projects. Ms. Henderson provided the committee with a handout that included a list of the court facilities that are currently under construction, what county those facilities are in, what year the project was authorized, and the expected date of occupancy.

In response to a question asked by Representative Yonts, Ms. Henderson stated one company received the vast majority of construction management contracts. The construction companies are hired by the local boards through a competitive process, not by the AOC.

Representative Yonts asked to what extent the financial stress on the Judicial Branch budget will be lessened because the General Assembly is no longer authorizing additional construction at this time. Ms. Henderson stated the bond payments for the 40 authorized projects are currently being paid. In FY 2012 and FY 2013, the facilities budget will increase because of the increased cost of the annualized use allowance payments.

Representative Yonts asked if the increase will slow due to the fact that no more construction projects were authorized during the last session. Ms. Henderson stated that was correct with the exception of FY 2012 and FY 2013. She stated in FY 2012 and FY 2013 the Judicial Branch will be asking for additional funds over the current appropriation because they have not been fully funded for the debt services of the previously authorized projects.

Representative Yonts asked if there was any effort from the Judicial Branch to monitor the extent to which a local government can build overly excessive buildings and ask the state to fund the construction. Ms. Henderson stated the Judicial Branch is revising the administrative procedures that govern the capital construction process and financial limits will be placed upon the construction of the facility based on the population and caseload of the county the project is in.

Representative Yonts asked how many counties have to add to their court costs to help pay for debt service because of a statute that was previously passed in the General Assembly.

Ms. Henderson stated the counties receive the money mandated by statute and the court facility fee is intended to help offset that money. Representative Yonts stated a \$25 local ordinance fee has to be enacted to receive that money. Ms. Henderson stated that was correct. Representative Yonts asked if all of the counties enact the local ordinance fee. Ms. Henderson responded the state is fully paying the debt service and operating

on the buildings that are 100 percent occupied.

Representative Yonts gave an example that in Warren County, the General Assembly authorized the local government to increase court costs by \$25 to offset part of the payment as rent to the local government. He asked if more counties have had to do that or if that process has been stopped. Ms. Henderson stated more counties have not had to do that; however, the problem with the statute is there is no oversight. She added that if a building needs a new roof, AOC cannot demand the county to use that money to pay for the roof because AOC does not have the oversight of that court facility fee that is collected.

Representative Yonts asked if it would be helpful for a statute to be enacted to specify what the money is to be used for. Ms. Henderson stated the statute currently states the money is dedicated for debt or operating costs. Ms. Henderson reiterated the problem is there is no oversight of that statute.

Representative Yonts asked if she is indicating that the money is being used for other purposes in violation of the law. Ms. Henderson stated the State Auditor's office would have to determine that.

Chairman Crenshaw asked if the use allowance ends after the debt service is retired and the facility is paid for in full. Ms. Henderson stated the debt service ends after that, but according to the statute it depends when the building was built as to what percentage of rent is paid. She stated if the building was authorized prior to FY 2000, AOC either pays 8 percent rent or 4 percent rent, and 8 percent or 4 percent of the capital construction costs technically as rent to the county after the debt is retired. She further stated as of FY 2000 the statute does not specify what is paid to the county after the debt is retired.

In response to a question asked by Senator Jensen, Ms. Henderson stated since 1996 approximately 75 courthouses have been constructed.

In response to a question asked by Senator Jensen, Ms. Henderson stated there is a tremendous need for more court facilities and currently the capital construction staff is assessing the counties that have not received new facilities prior to 1996. Those counties will be ranked in order of need and presented to the Chief Justice.

In response to a question asked by Senator Jensen, Ms. Henderson indicated the new buildings will all age at approximately the same time because they are being built at approximately the same time.

Senator Jensen asked if some thought has been put into spreading

the building of the facilities out over time so not all of the buildings will need repairs at approximately the same time. Ms. Henderson stated they typically start approximately 17 or 18 facilities around the same time, then 17 or 18 facilities again in the next construction cycle, instead of all of them at once. Ms. Henderson stated through the years the facilities are maintained and repairs/replacements are made if needed. Ms. Henderson stated the facilities are being built to be used for the purpose of court facilities for approximately 50 years.

Senator Jensen asked if the increase that is going to be required in the Judicial Branch budget because of rent and maintenance has been projected yet. Ms. Henderson stated there is a line item in the facilities budget titled Non-Recurring for Maintenance Issues; therefore, money has been allocated for that.

Senator Jensen asked if Ms. Henderson foresees any need for the Judiciary Branch budget to increase substantially because of the new amount of rent that will be paid. She stated she has not analyzed the percentage increase, but has looked at the dollar amount that the budget will need to increase. She further stated the budget will increase in FY 2012 and FY 2013 as mentioned earlier. Ms. Henderson stated that determining an increase in the Judicial Branch budget for maintenance once the debt is retired will have to be done years down the road.

Representative Yonts asked if he was correct in understanding the multimillion dollar court facilities are only projected to last 50 years. Ms. Henderson stated that was correct. She stated the physical buildings will last, but the caseloads and population of the counties are expected to increase, therefore outgrowing the facility. Representative Yonts stated most of the rural counties are not growing. Ms. Henderson responded that was indeed correct and that is one cause for the revision of the administrative procedures.

Representative Yonts asked if rent paid to the counties is a factor of debt service and maintenance. Ms. Henderson stated for the projects that are 100 percent occupied by the courts, AOC pays the trustee at the bank the debt service payment; they do not pay it to the county. She also stated AOC pays operating and janitorial maintenance to the county on a quarterly basis.

Representative Yonts asked if the roof leaks on a facility or an air conditioner fails, if the money is given to the facility to make those repairs. Ms. Henderson stated the money is given to the facility as needed on a reimbursement basis.

Chairman Crenshaw thanked

everyone for attending and adjourned the meeting at 11:30 A.M.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

### **Budget Review Subcommittee on Postsecondary Education Minutes of the 4th Meeting of the 2010 Interim**

December 2, 2010

#### **Call to Order and Roll Call**

The 4th meeting of the Budget Review Subcommittee on Postsecondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, December 2, 2010, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Tommy Thompson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Tommy Thompson, Co-Chair; Representative Arnold Simpson, Co-Chair; Representatives James R. Comer Jr., Derrick Graham, Charles Miller, Rick G. Nelson, Jim DeCesare, Kelly Flood, Reginald Meeks, Jody Richards, Kevin Sinnette, Carl Rollins II, Dottie Sims, and Kent Stevens.

Guests: Dr. Terry Holliday, Commissioner, Department of Education; Hiren Desai, Associate Commissioner of Administration and Support, Department of Education; and Dr. George Hruby, Executive Director, Collaborative Center for Literacy Development.

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

Chairman Thompson asked for a motion to approve the minutes of the October 28, 2010 meeting. A motion was made by Representative Meeks, seconded by Representative Flood, and the minutes were approved without discussion.

#### **Update on the Implementation of Senate Bill 1 (2008 GA)**

Commissioner Holliday provided an update on the Implementation of Senate Bill 1 (SBI). Dr. Holliday addressed the standards, assessments, and accountability as required by SBI.

In response to a question by Representative Flood, Commissioner Holliday explained that the Department will need flexibility on how flow through dollars, in FLEX focus and grants, are spent. The line items that are related to English and Language Arts will need to be looked at and possibly refocused on SB 1.

In response to a question by Senator McGaha, Commissioner Holliday explained that there are two components to acceleration; one is Advance KY, getting students college ready, helping students to obtain col-

lege credits while still in high school; the other is Project Lead the Way, senior level interventions that assist students in passing bench mark college assessments. Senator McGaha asked if the money being shifted from Flex Focus is the bulk of the money for the remainder of 2010. Commissioner Holliday answered that the KDE was short nearly 2.6 million dollars and the EduJobs money came in after the budget year had begun and school districts got on average \$200 per pupil and these dollars can be used for Professional Development. KDE took the \$2.6 million, which is roughly \$4 per student, to provide Professional Development.

In response to a question by Representative Rollins, Commissioner Holliday explained that in 2011 KDE will be going through line items in their budget to come up with \$11 million to fill a gap. KDE has weekly updates on their website to show the progress schools are making in reading, math, ACT, and college readiness.

In response to a question by Representative Miller, Commissioner Holliday indicated that the school report card will be revised statewide. The new model will report college and career readiness and student longitudinal growth. There will be a new accountability model on the revised report card. High schools in addition to the new model will also have an end of course assessment.

Representative Richards thanked Commissioner Holliday, the General Assembly, and the Education Committee in Kentucky for the progress in the National Assessment of Education Progress (NAEP) scores. He stated that Kentucky had made great improvements in reading at the fourth and eighth grade levels.

In response to a question from Senator McGaha, Mr. Desai stated that the \$11 million in 2012 reflects the overall amount of redirections of funds that could be used for Professional Development. Senator McGaha asked what the timeline was for spending the EduJobs money. Mr. Desai answered that the districts have until September 30<sup>th</sup>, 2012 to spend the money and requests for reimbursements can be made through December 2012.

Chairman Thompson applauded Kentucky for being the first state to adopt the National Core Standards. In response to a question by Chairman Thompson, Commissioner Holliday stated he felt comfortable with the new standards and felt they would help to make students career and college ready. However, the standards will have no impact unless teachers receive the support to implement the standards. KDE is strongly engaging 1,000 teachers every month

to prepare them for implementation of the new standards. Kentucky is one of the few states that had a focus on making students career ready as well as college ready. Only 30 percent of students are prepared for algebra at the postsecondary level.

In response to a question by Representative Rollins, Commissioner Holliday answered that the list of grants for which the department is seeking flexibility was provided at an earlier meeting and the number one focus is Flex Focus professional development. KDE is working with outside agencies to provide services and working on foundation funding to reduce the need for funds. Representative Rollins reminded the Commissioner of the importance of letting the General Assembly know what they need flexibility on before it can be provided.

Chairman Thompson thanked Commissioner Holliday for his presentation and stated that he was excited about the dividends of SB 1.

#### **Classification of Primary and Secondary School Buildings**

In response to a question by Representative DeCesare, Mr. Desai stated that different wage scales will not be taken into account during the selection process, but will be a part of the contract negotiations. Representative DeCesare asked if a Category 5 school was implementing all their nickels, doing appropriate tax hikes, and doing all they can otherwise and they still come up short to fund a facility what other options are available to them to make up for that lack of funding. Mr. Desai answered that currently the extent of districts options are levy a nickel and/or raise tax rates at the local level in terms of General Fund dollars.

Chairman Thompson inquired about the composition of the steering committee created to help produce the RFP. Mr. Desai stated that there is a five member evaluation team. There is one individual from SFCC, two individuals from KDE facilities area, one current superintendent, and one individual from the university level. The steering committee must come to a consensus on the RFP selection. Chairman Thompson asked if there had been any additional schools moved into the Category 5 classification since the beginning of the 2010 school year. Mr. Desai agreed to get an updated list to the committee of current Category 5 schools, a copy of the RFP, and the timeline for the selection process.

In response to a question by Senator McGaha, Mr. Desai stated that with the RFP, KDE attached a list of all facilities that were currently graded as a category three, four, or five. If there was a reclassification during the RFP process, then the facility would be added to the list.

In response to a question by Representative DeCesare, Mr. Desai explained that the five members of the RFP evaluation team will have real life experience with education facilities.

Representative Simpson asked if the department automatically adjusts a facilities' category rating once that facility has been modified. Mr. Desai stated that he was unsure of an answer but he would find out.

#### **Collaborative Center for Literacy Development (CCLD)**

Representative Richards stated that he was excited about the progress Kentucky Schools are making. He asked Dr. Hruby for his suggestion on how Kentucky can do a better job of reaching the large number of adults in Kentucky that do not read above a fifth grade level. Dr. Hruby stated that CCLD is collaborating with Kentucky Adult Education (KYAE) to provide professional development to literacy tutors. KYAE is currently brainstorming on how to move from a tutoring based approach to a classroom based approach, relying more on distance education technology. Adult non-literates are a highly diverse group, and addressing their literacy needs is much more challenging. Representative Richards asked if the Family Resource Youth Service Centers (FRYSCs) could be used to find these adults and get them involved. Dr. Hruby said that FRYSCs would be a facilitative option.

In response to a question by Senator McGaha, Dr. Hruby stated that in order for Kentucky to keep improving reading scores coaching was important but would be insufficient by itself. Teachers are not likely to read instructional material and therefore do not fully appreciate the value of cognitive strategy instruction for learning with text. Senator McGaha asked Dr. Hruby to expound on the inducements that could be used to encourage teachers to participate in content area literacy instruction. Dr. Hruby stated that one inducement is the possibility for a higher order of credentials through university course work or professional development work that would earn teachers the equivalent of course work credit.

Representative DeCesare asked for suggestions in dealing with the literacy problem created by Warren County's large immigrant population. Dr. Hruby stated that a person that is literate in their first language will have a much easier time learning to read a second language versus someone who is learning to read a second language

for the first time. The English Language is the hardest to learn because of the irregular spelling system and so many different pronunciation rules. Dr. Hruby explained that the CCLD has not historically been involved with foreign language instruction or second language instruction, but there are offices throughout the state that do focus on these needs.

Representative Richards stated that through the housing authority in Bowling Green there are people located who do not have developed reading skills. He introduced and thanked George Peterson, who has been very involved in literacy in the Bowling Green area. Dr. Hruby stated that adult literacy should not be separated from adolescent literacy. One way to increase adult literacy is to increase the literacy of high school graduates. Students who are college ready are leaving the state and often not coming back to Kentucky, and the resources spent to prepare these students for a postsecondary education are being used to profit other states. He suggested focusing on having challenging and competitive programs that would make students more likely to attend universities in Kentucky.

Representative Simpson inquired about CCLD's experience in raising literacy among African-American males as a subgroup. Dr. Hruby stated that in conjunction with expectations of SBI and earlier legislation, closing achievement gaps is very important. The manifestation of gaps in literacy and development is a result of inequitable environments. CCLD does not have a program dedicated to particular subgroups.

Chairman Thompson applauded the efforts of the CCLD and thanked Dr. Hruby for his presentation.

There being no further business before the Committee, the meeting was adjourned at 11:45 a.m.

## **INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE**

### **Budget Review Subcommittee on Primary and Secondary Education Minutes of the 4th Meeting of the 2010 Interim**

December 2, 2010

#### **Call to Order and Roll Call**

The 4th meeting of the Budget Review Subcommittee on Primary and Secondary Education of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, December 2, 2010, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Tommy Thompson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Tommy Thompson, Co-Chair; Representa-

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Representative Richards stated that he was excited about the progress Kentucky Schools are making. He asked Dr. Hruby for his suggestion on how Kentucky can do a better job of reaching the large number of adults in Kentucky that do not read above a fifth grade level. Dr. Hruby stated that CCLD is collaborating with Kentucky Adult Education (KYAE) to provide professional development to literacy tutors. KYAE is currently brainstorming on how to move from a tutoring

based approach to a classroom based approach, relying more on distance education technology. Adult non-literates are a highly diverse group, and addressing their literacy needs is much more challenging. Representative Richards asked if the Family Resource Youth Service Centers (FRYSCs) could be used to find these adults and get them involved. Dr. Hruby said that FRYSCs would be a facilitative option.

In response to a question by Senator McGaha, Dr. Hruby stated that in order for Kentucky to keep improving reading scores coaching was important but would be insufficient by itself. Teachers are not likely to read instructional material and therefore do not fully appreciate the value of cognitive strategy instruction for learning with text. Senator McGaha asked Dr. Hruby to expound on the inducements that could be used to encourage teachers to participate in content area literacy instruction. Dr. Hruby stated that one inducement is the possibility for a higher order of credentials through university course work or professional development work that would earn teachers the equivalent of course work credit.

Representative DeCesare asked for suggestions in dealing with the literacy problem created by Warren County's large immigrant population. Dr. Hruby stated that a person that is literate in their first language will have a much easier time learning to read a second language versus someone who is learning to read a second language for the first time. The English Language is the hardest to learn because of the irregular spelling system and so many different pronunciation rules. Dr. Hruby explained that the CCLD has not historically been involved with foreign language instruction or second language instruction, but there are offices throughout the state that do focus on these needs.

Representative Richards stated that through the housing authority in Bowling Green there are people located who do not have developed reading skills. He introduced and thanked George Peterson, who has been very involved in literacy in the Bowling Green area. Dr. Hruby stated that adult literacy should not be separated from adolescent literacy. One way to increase adult literacy is to increase the literacy of high school graduates. Students who are college ready are leaving the state and often not coming back to Kentucky, and the resources spent to prepare these students for a postsecondary education are being used to profit other states. He suggested focusing on having challenging and competitive programs that would make students more likely to attend universities in Kentucky.

Representative Simpson inquired

about CCLD's experience in raising literacy among African-American males as a subgroup. Dr. Hruby stated that in conjunction with expectations of SBI and earlier legislation, closing achievement gaps is very important. The manifestation of gaps in literacy and development is a result of inequitable environments. CCLD does not have a program dedicated to particular subgroups.

Chairman Thompson applauded the efforts of the CCLD and thanked Dr. Hruby for his presentation.

There being no further business before the Committee, the meeting was adjourned at 11:45 a.m.

## **INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE**

### **Minutes of the 4th Meeting of the 2010 Interim**

November 12, 2010

#### **Call to Order and Roll Call**

The 4th meeting of the Interim Joint Committee on Banking and Insurance was held in conjunction with the 114<sup>th</sup> Annual Convention of the Independent Insurance Agents of Kentucky, on Friday, November 12, 2010, at 10:00 AM, at the Brown Hotel, Louisville, Kentucky. Representative Jeff Greer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Jeff Greer, Co-Chair; Senators Julian M. Carroll, Julie Denton, John Schickel, Dan "Malano" Seum, and Tim Shaughnessy; Representatives Dwight D. Butler, James R. Comer Jr., Will Coursey, Ron Crimm, Robert R. Damron, Ted Edmonds, Tim Firkins, Mike Harmon, Dennis Horlander, Brent Housman, Dennis Keene, Brad Montell, Sannie Overly, Jody Richards, Steve Riggs, Arnold Simpson, Kevin Sinnette, Wilson Stone, John Tilley, and Ken Upchurch.

Guests: Sharon Clark, Commissioner, and D.J. Wasson, Legislative Liaison, Kentucky Department of Insurance.

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

There was a motion made by Representative Richards, seconded by Senator Shaughnessy to approve the minutes of the October 26, 2010, meeting.

Chairman Greer recognized Senator Shaughnessy to make a statement regarding the recent findings of the State Auditor relating to the Passport Medicaid Health Plan. He asked that committee members read the State Auditor's report and requested for the committee discuss the findings at a future meeting. He stated that the executive leadership at Passport must answer and be held accountable

for the outrageous abuses.

Chairman Greer recognized leadership of the Independent Insurance Agents Association: Peggy Porter, President and CEO; Phillip Hunt, President-Elect; and Mike Miley, National Chairman. Mr. Hunt stated that there are 3,000 licensed insurance agents in Kentucky and 300,000 agents nationwide. The association was established in 1896, and Kentucky agents were among the original founders of the association.

#### **Update on Federal Health Care Reform Implementation**

Sharon Clark, Commissioner, Kentucky Department of Insurance, stated that over the past three months progress has been made, but, there are still many issues that are undecided. The rate review process requires the United States Department of Health and Human Services, in conjunction with the states, to develop a process for annual review of unreasonable premium increases for health insurance coverage. Insurers will be required to submit to states and Health and Human Services a justification for an unreasonable premium increase and post it online. Guidance on "unreasonable" is being developed by Health and Human Services and the timeline for receiving guidance is unclear, but Health and Human Services has acknowledged the need to provide guidance before the end of the year. In regard to medical loss ratios, insurers must report to Health and Human Services the ratio of incurred losses plus loss adjustment expense to earned premiums. Reports must include percentage of premium revenue expended on the following: reimbursement for clinical services, activities that improve health care quality, all other non-claims expenses excluding taxes and licensing and regulatory fees. Insurers must issue a refund to enrollees if the percentage of premium expended for medical claims and health care quality improvement is less than 85 percent in the large group market and 80 percent in the small group and individual market. She stated that the National Association of Insurance Commissioners approved recommendations to Health and Human Services on October 21, 2010.

The National Association of Insurance Commissioners worked through committees "E" and "B". The "E" committee worked on the "blanks." Blanks are the forms submitted by insurance companies to report financial information to state regulators. Regulators will then review this data to calculate medical loss ratio and any rebate required under the new federal law. The "B" committee worked on the medical loss ratio and rebate calculations. She stated that credibility remained at 50 percent, aggregation will be

maintained at state level by entity, and that an executive committee was formed to address the issue of agent commissions with Health and Human Services. The issues outside the scope of the National Association of Insurance Commissioners include: agent commissions, transitional rules, payment rebates, and expatriate policies. These will be determined by Health and Human Services. The association is developing a glossary of health insurance and medical terms, coverage facts, explanations of coverage, and standard definitions.

Commissioner Clark stated that Kentucky was awarded a premium review grant of \$1 million dollars on August 16, 2010, which will be used to increase the categories of data required to be filed by large groups and expand the Department of Insurance's review of large group filings to include analysis of rate factors, modify the review process to include consideration of plan years, underwriting issues, and policy forms. The department will also be developing a publication to explain the rate review process, including the information submitted by insurers and reviewed by the department, and will be conducting surveys and holding open meetings for consumers to determine what information would be useful for them in understanding the rare review process.

The department was awarded a \$1 million dollar exchange planning grant on September 30, 2010. It will be used in a collaborative effort between the department and the Cabinet for Health and Family Services to do county level market research (demographics, income, and insured status). The department also was awarded a grant for a consumer assistance program in the amount of \$215,784, on October 19, 2010. It will be used to assist consumers with health insurance access issues and coverage denials. The Department has been notified of a supplemental grant for the consumer assistance program in the amount of \$270,280. That money will be used for advertising, ombudsman travel, webinar technology, and an interactive classroom responder system. Commissioner Clark gave a brief summary of issues that might be addressed in the 2011 Regular Session.

In response to a question from Representative Damron asking if the National Association of Insurance Commissioners expects the federal government to sign off on the recommendations for the medical loss ratio and, if Kentucky does not make the necessary changes for the exchange program, whether the state follow the national exchange rules, Commissioner Clark stated that the federal government is expected to sign off on the medical loss ratio recommenda-

tions by the end of the year. If the state does not address the exchange program, it will default to the national exchange. She stated it would be very beneficial for Kentucky to address the exchange program.

In response to a question for Senator Seum asking if an exchange is the same as a pool, Commissioner Clark stated that it is more like a marketplace for insurance, and will provide more consumer protection, choice, and make it easier to obtain information.

Representative Greer thanked Commissioner Clark for the presentation and guidance on this issue.

With no further business, the meeting adjourned at 11:20 a.m.

## **SPECIAL SUBCOMMITTEE ON ENERGY**

### **Minutes of the 6th Meeting of the 2010 Interim**

November 19, 2010

#### **Call to Order and Roll Call**

The 6th meeting of the Special Subcommittee on Energy was held on Friday, November 19, 2010, at 11:00 AM, at Kentucky Power's Matthews Service Center, Cannonsburg, Kentucky. Senator Bob Leeper called the meeting to order, and the secretary called the roll.

Present were:

Members: Senators Ray S. Jones II, Bob Leeper, Gary Tapp, and Johnny Ray Turner; Representatives Rocky Adkins, Eddie Ballard, Dwight D. Butler, Leslie Combs, Tim Couch, Harry Moberly Jr., Rick G. Nelson, Fred Nesler, Tanya Pullin, Tom Riner, Fitz Steele, and Brent Yonts.

Guests: Representative John Will Stacy; Jimmy Keeton, Kentucky Power Governmental and Environmental Affairs Manager; Greg Pauley, Kentucky Power President and Chief Operating Officer; Gary Spitznogle, AEP Director, New Technology Development and Policy Support; Mike Williams, Kentucky Power Distribution Dispatch Supervisor, and Everett Phillips, Kentucky Power, Director, Distribution Region Operations.

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

The October 22, 2010 minutes, were approved, without objection, upon motion made by Representative Steele and second by Representative Ballard.

#### **Coal Combustion Residual/Transport Rule Presentation:**

Mr. Greg Pauley, President and COO, Kentucky Power, stated that the actions of the U.S. Environmental Protection Agency (EPA) will dramatically impact the future viability of coal generation. He explained the impacts of EPA's proposed Transport Rule and Coal Combustion Residuals rule on Kentucky and its ratepayers.

The Transport Rule will cause rate increases, and will result in plant closings and loss of jobs. Coal-fueled power plants will either be retired or run on a limited basis. When this happens, affected communities will face a significant negative economic impact. The Coal Combustion Residuals rule (CCRs), which includes designating coal ash as a hazardous waste, will have far-reaching and significant financial consequences. Customers served by coal-fired plants will pay billions of dollars more to handle and dispose of coal ash, in addition to already increasing energy costs. The estimated cost to AEP customers will be \$3.9 billion by 2020.

Mr. Pauley said that the best option for Kentucky would be the Subtitle "D" prime, which would give the EPA the authority to address individual sites that are out of compliance. It would also be more cost-effective for customers.

When the economy rebounds, another concern will be an inadequate electric grid. He said that investments in the electricity system will require at least \$1.5 trillion between 2020 and 2030, assuming no changes in carbon policy or long-term prices. Investments in electric infrastructure will enhance reliability and power quality as well as increase customer choice and control over energy use.

In response to questions from Representative Adkins, Mr. Pauley stated that the Big Sandy Plant is an efficient coal operating plant, and upgrades are estimated to cost approximately \$300,000.

In response to Representative Moberly, Mr. Pauley stated that the EPA estimated the costs of implementing the environmental regulations. Mr. Pauley stated that the battle with EPA has to be fought in Washington, not Kentucky.

In response to Senator Jones, Mr. Pauley stated that one must build for the future, including nuclear plants.

#### **AEP Mountaineer Power Plant CCS Project:**

Mr. Gary Spitznogle, Director, New Technology Development and Policy Support discussed the Carbon Capture and Storage pilot project. He described the organization's process and new technologies for storing CO<sup>2</sup>.

In response to Representative Moberly, Mr. Spitznogle stated that there is so much clean CO<sup>2</sup> that it has to be stored rather than released into the atmosphere.

In response to Representative Stacy, Mr. Spitznogle stated that CO<sup>2</sup> can be captured as a gas and compressed into liquid form. It can be converted into a solid but is not stable in solid form. It is easier to pump underground as a liquid.

In response to Representative

Moberly, Mr. Spitznogle stated that the organization is working with the Center for Applied Energy Research. It has not received any money from the U.S. Department of Energy.

Mr. Everett Phillips, Director, Distribution Region Operations, Kentucky Power, took committee members to see a live demonstration of hazards to customers, workers, and the system from accidents involving power lines.

Mr. Mike Williams, Kentucky Power Distribution Dispatch Supervisor, discussed the problems associated with copper theft, which is dangerous, expensive, and becoming more common.

The meeting adjourned.

## **INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**

### **Minutes of the 7th Meeting of the 2010 Interim**

December 15, 2010

#### **Call to Order and Roll Call**

The 7th meeting of the Interim Joint Committee on Health and Welfare was held on Wednesday, December 15, 2010, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Julie Denton, Chair, called the meeting to order at 10:00 AM, and the secretary called the roll.

Present were:

Members: Senator Julie Denton, Co-Chair; Representative Tom Burch, Co-Chair; Senators Tom Buford, Julian M. Carroll, Perry B. Clark, Denise Harper Angel, Alice Forgy Kerr, Joey Pendleton, Katie Kratz Stine, and Jack Westwood; Representatives Bob M. DeWeese, Jim Glenn, Brent Housman, Joni L. Jenkins, Mary Lou Marzian, Darryl T. Owens, Susan Westrom, and Addia Wuchner.

Guests: Marsha Hockensmith, Executive Director, Protection and Advocacy; April DuVal, Executive Director, The Council on Developmental Disabilities; Carol Mueller, President, Bingham ICF/MR Family Group; Mark Hogg, Executive Director, and Jeff Klingeman, Board of Directors, Edge Outreach; Terry Bunn, Ph.D., Assistant Professor and Director, Kentucky Injury Prevention and Research Center; Dr. Stephen Hall, Commissioner, and Dr. Allen Brenzel, Clinical Director, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services; Charlotte Beason and Nathan Goldman, Kentucky Board of Nursing; Patty Dempsey, The Arc of Kentucky; Eric T. Clark, Greg Wells, Janet Justice, Kentucky Association of Health Care Facilities; Marty White and Bill Doll, Kentucky Medical Association; Jodi Mitchell, Kentucky Voices for Health; Sarah S. Nicholson, Kentucky Hospital Association, and Anne Joseph, Kentucky Task Force on Hunger.

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

Approval of Minutes

A motion to approve the minutes of the November 17, 2010 was made by Senator Pendleton, seconded by Representative Carroll, and approved by voice vote.

#### **Mortality Review System**

Marsha Hockensmith, Executive Director, Protection and Advocacy, stated that the need for mortality reviews, including autopsies, is important, particularly for persons with disabilities. The Kentucky Protection and Advocacy Death Investigation Group (DIG) review the records of 55 deaths that occurred at state-owned and operated facilities during a two-year period from October 1998 through October 2000. The following results were found: 1) if circumstances of an individual's death involved dramatic facts, such as being scalded in a bathtub of water or overdosing with medication, the death was scrutinized; 2) conditions such as poly-pharmacy, overuse or improper use of seclusion or restraints, lack of staff familiarity with an individual's history or risk factors and poorly trained or inattentive staff frequently did not trigger increased scrutiny of facility deaths; 3) there was no central registry of deaths at the state level; 4) there was no uniform instrument used for reporting deaths; 5) reporting to any authority outside the facility was sporadic and not required by the Department for Behavioral Health, Developmental and Intellectual Disabilities, the department responsible for the operation of the facilities; 6) facilities were left to their own devices in conducting such reviews and in some facilities nothing more than a chart entry was made. In many facilities, an in-house committee convened to review the circumstances of an individual's death, but the results were not collected at the state level; 7) state guardianship rarely, if ever, requested an autopsy. Coroners are hesitant to request an autopsy and often coroners' offices are not involved as the facility doctors may sign the death certificate. As the result of DIG and subsequent monitoring of other deaths, Protection and Advocacy concluded that a formal review system of deaths in state-owned and operated facilities needed to be created, and autopsies of state wards needed to be re-examined.

The State Mortality Review Committee within the Department for Behavioral Health, Developmental and Intellectual Disabilities, is charged with reviewing all deaths in state-owned and operated facilities. State owned and operated facilities include Western State Nursing Facility, Glasgow State Nursing Facility, Oakwood, Outwood, Hazelwood,

Central State, Appalachian Regional Hospital, Eastern State Hospital, Central State Hospital, and Western State Hospital. The Mortality Advisory Committee within the Department for Behavioral Health, Developmental and Intellectual Disabilities was created and charged to meet quarterly to review summary findings of the Mortality Review Committee including cause of death and indications for systemic change, and present the findings to the Kentucky Commission on Services and Support for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses (HB 843) and the Commission on Services and Supports for Individuals with Mental Retardation and Developmental Disabilities (HB 144) for system and legislative change recommendations.

When an out-of-hospital death occurs, there are certain types of cases where an autopsy is required. However, for many cases, it is up to family members to request an autopsy. Autopsies are performed by medical examiners, and the cost to the referring county is the transport of the body to and from the autopsy site. Autopsies are important for persons with disabilities because premature death due to aspiration pneumonia and other respiratory illnesses are much higher; and they allow the healthcare system to learn and become more efficient in delivering appropriate, better quality of care. Persons with mental illness have a shorter life span and receive less medical care and supports. Often, there is no family involvement and or no one to request an autopsy of persons with disabilities or for clients of state guardianship.

Deaths in state-owned and operated Personal Care Homes need to be reviewed by the Mortality Review Committee. The committee needs to submit regular reports to the Mortality Advisory Committee and at the HB 843 and HB 144 Commission meetings. There are no specific timelines in place for state-owned and operated facilities and publically-funded community programs to notify the cabinet of deaths which causes significant delays before the Mortality Review Committee conducts its review. While an autopsy may not be needed in many cases, there are clearly circumstances when completion of one is necessary. Autopsies should be required for all unexpected or unexplained deaths, for persons with disabilities, for clients of state guardianship, and for anyone who receives publicly-funded supports and services.

In response to a question by Senator Denton and Representative Owens, Ms. Hockensmith stated that KRS 72.460 states "The cost of autopsies shall be paid for by the fiscal court; provided, however, that

the Justice and Public Safety Cabinet, Office of the Kentucky State Medical Examiner, may contract with pathologists and toxicologists and chemists and pay for such autopsies within the budgetary limitations of funds appropriated by the General Assembly for this purpose." KRS 72.435 states "In the event it is necessary for the coroner to order a body to be transported or exhumed, payment shall be made by the fiscal court, consolidated local government, or urban-county government, whichever is appropriate, upon certification by the coroner that the services were rendered."

Dr. Stephen Hall, Commissioner, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Service, stated that an autopsy is not asked for in every case, because medical science is at a place now that before a person dies, the cause is known. If something unusual or unexpected happens, the information an autopsy would provide is needed to make or change policy decisions.

In response to questions by Representative Burch, Dr. Allen Brenzel, Clinical Director, Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services, stated that each of the state-owned facilities has its own incident investigation team who notifies the Office of Inspector General, the coroner, and the department. The department obtains the records from internal and external reviews, any autopsy that has been performed, and conducts an external review with a consulting physician. The department oversees the Supports for Community Living (SLC) program and certifies and investigates the SLC providers. In 2007, the Mortality Review Committee started to review deaths of individuals with developmental and intellectual disabilities who receive SLC services, state general fund services, Michelle P. waiver services, or Money Follows the Person services. There is a five percent autopsy rate in state facilities and lower in community deaths. The decrease in autopsies follows the national trend. One reason for the decline is the expense. If the death is considered a natural progression of a known illness, an autopsy is not usually performed. Most autopsies performed today are for forensic purposes. An autopsy is not performed unless there are extenuating reasons. Commissioner Hall stated people with significant disabilities should have the same access to autopsies as is ordinary or customary for people without disabilities

#### **Transparency in the Mortality Review System and Adult Abuse Registry/Background Check**

April DuVal, Executive Director,

The Council on Developmental Disabilities, stated that in response to the growing concern over protection and transparency, the Task Force on Protection and Transparency was established in early 2010 by the Board of Trustees of the Council on Developmental Disabilities. The Task Force met over a period of five months to review, discuss, and discern recommendations that are intended to protect persons with intellectual and developmental disabilities living in state-funded residential programs within the Commonwealth of Kentucky. The recommendations require an increased level of governmental transparency in order to insure the safety and well being of its citizens with disabilities. The recommendations are: 1) the Governor must implement policies and practices that reflect a culture of transparency within state government, intellectual and developmental disability programs in particular; 2) establish an adult abuse registry to assure that individuals with intellectual and developmental disabilities served with the state-funded adult service system are protected from neglect and abuse by persons already identified as abusers; 3) enact Deron's Law which protects residents of ICF/MR/DD residential facilities from abuse and neglect by their caregivers; 4) reactivate the HB 144 Commission mandated Mortality Review Committee within the Department for Behavioral Health and Developmental and Intellectual Disabilities that would review individually all deaths occurring in state-funded residential settings for persons with intellectual and developmental disabilities; 5) enact legislation to require selective autopsies based on key indicators for persons with intellectual and developmental disabilities that die in state-funded residential placements; 6) establish a robust family and client-based monitoring system of state-funded residential services which reflects national best practice standards and guidelines and report to an independent entity; 7) enact legislation to establish an independent Ombudsman Office to represent the needs of consumers with intellectual and developmental disabilities who are served in state-funded residential settings and their families and guardians; and 8) establish an Independent Fatality Review Committee to evaluate causes and factors contributing to deaths, identifying patterns and systemic problems, ensure consistency of review process, and make recommendations to the Governor to prevent avoidable deaths and improve the quality of care for individuals with intellectual and developmental disabilities living in state-funded residential programs.

There is federal support within the Patient Protection and Affordable

Care Act in Section 6201, nationwide program for national and state background checks on direct patient access employees of long-term care facilities and providers. The cabinet has applied for a federal grant for participation in the national project. A 3 to 1 match rate, Kentucky would receive approximately \$3 million. Specified long-term care providers would be required to obtain state and national criminal history and other background checks on prospective employees. To conduct the checks, states will utilize a search of state-based abuse and neglect registries and specified state and federal databases and records, including fingerprint checks. A vital key element in the system is the state-based abuse and neglect registry. Although Kentucky has a registry for children, there is not one for adults.

Carol Mueller, President, Bingham ICF/MR Family Group, told about situations where her sister, Donna, had suffered abuse at the hands of her caregivers. People with no family advocates are especially vulnerable. The law prioritizes the system not the people involved. Abusers are moving from place to place and continuing to abuse. The system is allowing the abuse of people who cannot talk, who function as infants and children, who cannot move, are hurt or killed to be covered up. The most vulnerable adults are being placed in the middle of danger with little or no monitoring. They are as disrespected in death as in life, with little likelihood of autopsies, inquiries, or investigations regardless of circumstances when their lives end. After 30 years, a culture that will no longer tolerate child abuse is tolerating abuse for adults with developmental disabilities. The question that needs to be asked is do the lives of adults with developmental disabilities have value or not.

#### **Neglect and Abuse of Children: Trends**

Pat Wilson, Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, stated that Federal legislation provides a foundation for States by identifying a minimum set of acts or behaviors that define child abuse and neglect. The Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. §5106g), as amended by the Keeping Children and Families Safe Act of 2003, defines child abuse and neglect as, at minimum: Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm. This definition of child abuse and neglect refers specifically to parents and other caregivers. A "child" under this definition generally means a person who is

under the age of 18 or who is not an emancipated minor. With respect to what constitutes abuse and neglect as well as who is considered a caregiver, Kentucky's definitions are more inclusive than most other states. On June 15, 2001, the cabinet began a Multiple Response System of child abuse and neglect. In Kentucky, 75 percent of the substantiated investigations are because of neglect; 58 percent for substance abuse; 42.7 percent for mental health issues; 65.1 percent for domestic violence; 75.7 percent for income issues; and 75.2 percent for two or more risk factors. A poor state has a higher rate of neglect. Drug treatment needs more funding and changes to public policy. The cabinet has found there are not enough affordable drug treatment programs for parents.

Any child who dies as a result of abuse and neglect is a horrendous tragedy. Changes in the cabinet's protocol will take effect in January. One of the changes includes talking to more people, besides family members, who have knowledge and pertinent information about the child. Another change is to ensure that social workers are not spending time on duplicate meetings or paperwork. In child fatality cases, 71 percent were 4 years or younger; 60 percent were male; 40 percent were female; and 80 percent were Caucasian. In 2007, Kentucky ranked first in the country in the number of child fatalities, and nineteenth in 2008.

In response to a question by Representative Wuchner, Commissioner Wilson stated that the reviews of fatalities are for all children where there is suspected of abuse or neglect. A routine review is conducted on children that are involved in open cases that the department maintains, whether in their own home or in foster care. If children are in a relative placement that the cabinet supervises, they are seen monthly. If a relative obtains permanent custody of the child and there are no reports of abuse or neglect, the department will close the family's case.

In response to a question by Senator Stine, Commissioner Wilson stated that a review process has been instituted of cases of children who are in the cabinet's care where everyone involved in the case talks about what preceded that child coming into care, why that child is in care, what is going on with the family, what permanent plans are being made for the child, and where to go from there. A structure is being built that promotes these discussions at the local level, between the worker and supervisor.

In response to questions by Senator Denton, Representative Owens, and Representative Jenkins, Commissioner Wilson stated that currently

there are over 1,500 frontline workers and 260 frontline supervisors. Kentucky's caseloads are higher than the national average, partly in due to the bad economy. The department tries not to impose additional requirements on frontline workers, but some have come directly from the federal government. Suggestions from frontline workers are needed to streamline the process and there are no duplicative requirements. The department has been accredited by the Council on Accreditation. The standards put forth by the Child Welfare League of America talk about an average of 12 investigations per worker, and an average caseload of 15 to 17 on-going cases. Each social worker has 18 to 19 investigations and on-going cases combined. Statutory language sets the threshold at 25 caseloads for DCBS frontline staff. Resources in the community are not as readily available that provide supportive services to families and in turn support the staff. There are not as many opportunities to refer families to in-home services, to counseling, to help with supervised visits. The amount of available resources does affect progress. The department tries to maintain a ratio of one supervisor to every eight workers. Normally, frontline supervisors do not routinely take cases. The department tries to maintain the one to eight ratio of frontline supervisors to frontline social workers for its accreditation.

#### **Clean Water Strategies**

Mark Hogg, Executive Director, EDGE Outreach, stated that EDGE Outreach is a dynamic non-profit organization whose mission is to provide safe, reliable water to improve the health and welfare of communities in developing countries. EDGE promotes a unique approach to generating clean and sustainable supplies of clean water for small communities. The tools and training developed offer dramatic, life-saving improvements under difficult circumstances, whether working in communities struggling to satisfy their day-to-day needs or working in acute disaster relief situations. EDGE seeks to empower local partners, not just serve clients. Portable, inexpensive, highly efficient water purification systems are installed based on simple chlorine generators that run on a 12-volt battery and salt. The by-products manufactured in the water purification process can be used to disinfect medical equipment and kill mosquito larvae, reducing the risk of death from unsanitary conditions and malaria. Volunteers are sent all over the world, including post-disaster first responders. Local people are trained in proper health and hygiene so they can protect their new source of water with proper sanitation practices. Volunteers are trained to install purifiers, fix pumps, disseminate crucial health

and hygiene information, and train others to do the same. The United States Southern Command invited EDGE to provide training to their disaster-relief personnel and to supply EDGE trainers to join its personnel on the USS Iowa Jima on missions. The latest project involves the design of an efficient mini-water treatment plant coupled with a unique conversion kit that enables a hand-pump to force water above its own level through one of the treatment systems and directly into storage. A new product for transporting water is under development. Operations and product development are financed through private contributions and the support of generous benefactors.

In response to questions by Representative Glenn, Mr. Hogg stated that EDGE Outreach that is a non-profit organization whose mission is to provide safe, reliable water to improve the health and welfare of communities in developing countries. It does not receive any state or federal funds.

In response to a question by Senator Westwood, Mr. Hogg stated that he is open to discussions with any legislator on legislative suggestions that would help EDGE.

#### **Consideration of Referred Administrative Regulations**

The following administrative regulations were referred to the committee for consideration: **201 KAR 7:075** – establishes a continuing education program for licensed hearing instrument specialists, setting forth the basic requirements, methods of accreditation, and manner of report; **201 KAR 17:030** – establishes the required fees and the requirements for inactive status of a speech-language pathologist, speech-language pathology assistant, or audiologist; **201 KAR 20:056** – establishes advanced practice registered nurse (APRN) licensure, program requirements, and recognition of a national certifying organization; **201 KAR 20:061** – establishes standards for the doctor of nursing (DNP) degree; **201 KAR 20:062** – establishes advanced practice registered nurse (ARNP) programs of nursing standards; **201 KAR 22:070** – establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky; **201 KAR 28:010** – sets forth the definition of terms and phrases which will be used by the Board of Licensure for Occupation Therapy in enforcing and interpreting the provisions of Chapter 319A and the administrative regulations; **201 KAR 28:130** – establishes the requirements of appropriate supervision for persons who are delivering occupational therapy services, the documentation required in supervision, and the process for

reviewing the supervision process; **201 KAR 36:060** – establishes the requirements relating to supervision and the requirements for experience under supervision of a student intern or trainee in professional counseling; **900 KAR 7:030** – establishes the required data elements, forms, and timetables for submission of data to the Cabinet for Health and Family Services and fines for noncompliance from specified health care providers; and **902 KAR 2:060** - establishes the mandatory immunization schedule for attendance at 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.

#### **Adjournment**

There being no further business, the meeting was adjourned at 12:12 p.m.

## **INTERIM JOINT COMMITTEE ON JUDICIARY**

### **Minutes of the 1st Meeting of the 2011 Session Break**

January 19, 2011

#### **Call to Order and Roll Call**

The 1st meeting of the Interim Joint Committee on Judiciary was held on Wednesday, January 19, 2011, at 1:00 PM, in Room 171 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; Senators Perry B. Clark, Ray S. Jones II, Jerry P. Rhoads, Dan "Malano" Seum, Katie Kratz Stine, Robin L. Webb, and Jack Westwood; Representatives Johnny Bell, Jesse Crenshaw, Joseph M. Fischer, Sara Beth Gregory, Joni L. Jenkins, Thomas Kerr, Stan Lee, Mary Lou Marzian, Mike Nemes, Darryl T. Owens, Tom Riner, Steven Rudy, and Brent Yonts.

Guests: Charles Zoeller.

LRC Staff: Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., and Kathy Miller.

#### **Roll Call and Minutes**

Representative Tilley called the meeting to order, the roll was called, a quorum was present, and the minutes of the November meeting were approved.

#### **Discussion of Penal Code and Controlled Substances Act Policy Task Force Recommendations**

Copies of a revised version of the Task Force on the Penal Code and Controlled Substances Act Policy Recommendations, dated January 19, 2011, were distributed with a revised copy of the Task Force bill draft.

Representative Tilley introduced the first speaker, Texas Representative Jerry Madden, who described a



situation where Texas faced a choice of building more prisons or making improvements in its sentencing structure. Working with the PEW Center on the States Public Safety Performance Project, Texas revised its criminal penalty structure, emphasized alternatives to incarceration, and over the years has reduced recidivism, reduced crime, halted construction of new prisons, and closed prisons. The result was that Texas avoided spending millions of dollars and was able to reinvest its savings in effective treatment and supervision programs, and other programs as well.

The next speakers were Jason Newman and Richard Jerome, Pew Center on the States, accompanied by Peter Ozanne and Kristy Danford, Crime and Justice Institute, and James Austin, JFA Institute. Mr. Newman and Mr. Jerome presented the results of a national research poll of public attitudes on crime and punishment that indicated that the public strongly favors programs that will reduce the commission of new crimes by offenders, and favors less prison time and more accountability for nonviolent offenders.

Mr. Newman and Mr. Jerome summarized the situation Kentucky faced with a growing prison population, an increased number of arrests, an increase in drug crimes, and the methods used to support the work of the Task Force by analyzing the state prison population and cost drivers, engaging criminal justice stakeholders including victims groups, law enforcement, prosecution, defense, jailers, treatment providers, judges, and others involved in the criminal justice system. This was followed by developing tailored policy options based on Kentucky's needs and building consensus and support for legislative and executive agency support efforts.

Specific prison population drivers in Kentucky included an increase in arrests and court cases, the high use of prison rather than probation by the courts, increases in the number of technical probation and parole violators who were returned to prison, and a high number of non-violent offenders, particularly drug offenders and offenders with drug problems. The report stressed that changes were not being sought to shorten the sentences of violent offenders and sex offenders but that the recommendations did include a period of post-incarceration supervision for these offenders who were not likely to be released on parole.

Discussion then turned to the policy recommendations which had been adopted by the Task Force on the Penal Code and Controlled Substances Act. These recommendations included strengthening probation and

parole by using a validated risk/needs assessment, providing an emphasis on supervision of high and medium risk offenders with lesser supervision low risk offenders, use of intermediate sanctions which can be immediately employed administratively, placing limits on long parole deferments, providing mandatory prerelease supervision for persons scheduled for release, and the use of evidence-based programs for offenders.

Sentencing reforms focused on changes to the controlled substances act to reduce sentences for possession of drugs, together with presumptive probation with treatment programs where necessary. Setting quantities by weight and dosage units for possession and trafficking offenses, and decreasing the size of the drug free school zone from 1,000 yards to 1,000 feet. Medical parole was recommended for terminally ill felony offenders upon recommendation of the medical director of the Department of Corrections. Success in corrections was defined as recidivism reduction and reduction in overall crime.

Other correctional recommendations included using a validated risk/needs assessment (which the Department of Corrections has already implemented), evidence-based programs which have been shown to have positive results, and regular examination of institutional and community programs to ensure that they are delivering positive results. Other recommendations involved revising the corrections impact statement so that legislators would better understand the impact of their bills along with a requirement to identify where funds for lengthened sentences would be obtained. Recommendations included the increased use of Global Positioning System monitoring at all stages in the criminal justice system from pre-trial release, through probation, and parole, and the use of a "certificate of need" system for the construction or expansion of local jails.

The Interim Joint Committee accepted the report and recommended submitting the report to the Legislative Research Commission. The co-chairs explained to the members that the accompanying bill draft was a preliminary draft that would be revised by the co-chairs and submitted to the General Assembly following the resumption of the Regular Session in February. The meeting adjourned at 2:45 p.m.

## **INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS**

### **Minutes of the 5th Meeting of the 2010 Interim**

November 23, 2010

#### **Call to Order and Roll Call**

The 5th meeting of the Interim

Joint Committee on Licensing and Occupations was held on Tuesday, November 23, 2010, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Gary Tapp, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Gary Tapp, Co-Chair; Representative Dennis Keene, Co-Chair; Senators Julian M. Carroll, Perry B. Clark, Julie Denton, Carroll Gibson, Denise Harper Angel, John Schickel, Dan "Malano" Seum, Kathy W. Stein, Damon Thayer, and Robin L. Webb; Representatives Tom Burch, Larry Clark, Ron Crimm, Tim Firkins, David Floyd, Dennis Horlander, Joni L. Jenkins, Adam Koenig, Charles Miller, Darryl T. Owens, Carl Rollins II, and Arnold Simpson.

**Guests:** Lisa Underwood, Executive Director, Jamie Eads, Director of Incentives and Development, Kentucky Horse Racing Commission.

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

Approval of minutes from October 8, 2010, meeting.

There was a motion from Representative Keene followed by a second from Representative Owens and the minutes were adopted.

#### **A presentation by the Kentucky Horse Racing Commission.**

Lisa Underwood, Executive Director said Kentucky is the horse capital of the world and with that responsibility the Kentucky Horse Racing Commission plays a leadership role not just in the state, but in the entire industry. The bi-annual report has been posted on the commission's website; however, if any member wanted a copy her staff would print and deliver one to them. The commission was charged with protecting the integrity of the sport as well as the safety and welfare of the human and equine athletes. There was also a statutory obligation to encourage the horse breeding industry within the Commonwealth. In addition, Ms. Underwood said the Governor's Task Force on the Future of Horse racing had made several recommendations to the commission.

Regarding the integrity of the sport, Ms. Underwood said the task force has recommended drug and medication testing for the commission should be performed at a laboratory located in Kentucky. On February 1, 2011, the equine drug and medication testing will be handled through a laboratory located in Lexington that is owned and operated by HFL Sports Science, which was formerly only located in the United Kingdom. The commission has researched the HFL laboratory and was impressed with the company both as a business and a laboratory. HFL will not only perform

drug tests on horses but will test horse feed and human sports supplements for banned substances and is developing screening tests for human growth hormone. HFL will employ as many as 25 technicians by the end of 2011.

In response to a question from Senator Tapp, Ms. Underwood said that HFL was collaborating with the University of Kentucky on several projects and presumed that the testing of feed was included.

Ms. Underwood said the HFL lab director will be Rick Sams, who is currently working at the University of Florida. To further the commitment to medication integrity, the Equine Drug Research Council recommended and the commission approved a regulation for out of competition testing. The testing is necessary to detect certain prohibited substances that may be administered to a horse weeks, sometimes months, in advance of a race. These drugs are not detectable in post race sampling. As an example of these substances she said the regulation prohibits the presence and or the administration to a horse, at any time, of a blood doping agent, natural and synthetic venoms or their derivatives, and growth hormones. Ms. Underwood said that the commission conducted extensive meetings prior to the adoption of the regulation to give everyone an opportunity for input. The regulation was filed as an emergency regulation as well as an ordinary regulation. The commission has conducted out-of-competition testing at the Red Mile and at the Breeder's Cup this year. All testing was reported as negative. The tracks are cooperating by adding notice with the stall applications and nomination forms.

Ms. Underwood said the commission has approved five research projects this year and will be sending out proposals for next year in the near future. She said working with the drug research council the commission has developed a good working relationship with the University of Kentucky Equine Center and the Gluck Center.

Ms. Underwood said the commission has hired Greg Lamb as Supervisor of Pari-Mutuel wagering, which was one of the recommendations from the Governor's task force. Mr. Lamb brought over 20 years of experience in the pari-mutuel industry to the commission and has established a process for the commission to audit the pricing calculations performed by the tote system on a regular basis. Wagering data previously came from the track. Now the commission has a contract with a company to receive information from the tote companies. For the first time, all tracks will perform a pre-meet test to ensure the tote is properly functioning before the

meet starts. Mr. Lamb is also working on a regulation to license Advance Deposit Wagering (ADW) providers. The commission is meeting with the wagering integrity committee and with ADWs who will be licensed to get their input on the regulation. Mr. Lamb is also working on a pricing regulation to calculate consistent payouts from the development funds to all breeds. The General Assembly had also authorized the commission to license tote companies and a regulation is currently being written. Another recommendation from the Governor's task force was to put an integrity hot line in place. People are now able to call anonymously with a tip or any information they feel the commission should investigate.

Jamie Eads, Director for the Kentucky Breeders Incentive Fund, told members that the fund was implemented in 2005 to ensure the strength and growth of the horse industry in Kentucky. The money for the fund comes from the six percent sales tax received from stud fees in Kentucky. Funds are allocated to Thoroughbreds, Standardbreds, and 11 non-race breeds. The thoroughbred fund receives eighty-percent of the monies collected from stud fees. Money from the fund is awarded back to qualified winners of eligible races. In 2010, \$13.9 million was paid out to eligible races in 2009 with the average award being \$3,525. Because the last five Kentucky Derbies and Oaks were won by Kentucky-bred thoroughbreds, the winners will receive \$100,000 each in 2011.

Ms. Eads said in 2010 there were 17,303 mares bred in Kentucky according to the Jockey Club, of which 8,868 registered with the Breeder Incentive Program. In order to be eligible to receive funds the mare must reside in Kentucky the entire gestation period, from cover until foaling. One thousand ten mares have been verified in Kentucky, representing 901 breeders at 241 boarding farms in Kentucky. Ms. Eads said that the anticipated allocation for the first quarter of 2011 is approximately \$10 million for races that were won.

Ms. Eads said that the Standardbreds are financed through 13 percent of receipts collected from stallion stud fees. Incentives are awarded as purse money on the Kentucky Sire Stakes. Kentucky has one of the richest finals in North America with \$2.4 million allotted in purse money, which includes eight finals paying \$300,000 each. Finals are hosted at the Red Mile. These races are promoted by the commission through in-house resources to reduce administrative costs.

Ms. Eads said that the non-race breeds are awarded seven percent of the money collected from stallion stud fees. There are 11 non-race breeds

participating in the program 2010, including the Kentucky Arabian and half-Arabian as well as Kentucky Miniatures which were added to the program this year. The commission distributed brochures highlighting the non-race program during the World Equestrian Games.

In response to a question from Senator Tapp, Ms. Eads said the quarter horse breed has seen the largest growth since the inception of the fund. Ms. Underwood added for clarification that the development fund is a different program than the Breeders Incentive Fund. The development fund for quarter horses is not actually Breeders Incentive Fund money. There is a quarter horse, appaloosa, and Arabian development fund established under KRS 230.445 consisting of money allocated from pari-mutuel tax receipts generated when money is bet on a quarter horse race. The commission is working with the Kentucky Quarter Horse Association on a regulation to deal with that fund.

Concerning the status of instant racing, Ms. Underwood said an administrative regulation was filed in July, 2010, and a law suit is pending in Franklin Circuit Court concerning the legality of the regulation. The Family Foundation has intervened. Briefs have been submitted and the court has not set a date for oral arguments. In response to a question from Senator Stein Ms. Underwood deferred to Tim West, Assistant General Counsel for the KHRC. Mr. West said that the Family Foundation moved to intervene in the lawsuit as an interested party. The standing of Family Foundation in the lawsuit has not been challenged by any other parties to the suit. Mr. West added that there was a permissive intervention under Civil Rule 24. Mr. West told Senator Stein he would forward the briefs of the suit to her.

Ms. Underwood said Breeders Cup attendance on Friday, November 5 was 41,614 and on Saturday, November 6, attendance was 72,739. The handle for Friday was \$53,010,624 and for Saturday was almost \$110 million. An incident related to the Ladies Classic is currently under investigation. The commission will submit a report with recommendations. In response to Senator Tapp's question, Ms. Underwood said that there is no timeframe set for the investigation to end due to the thoroughness of the investigation. Senator Thayer commented that he was interested in the final report and, in particular, why the jockey did not inform the veterinarian's that his horse was not warming up well.

Ms. Underwood said, regarding search and seizure, the Attorney General has issued an opinion responding to a request from Commissioner Burr Travis to clarify the scope of the commission's power to search areas and

seize materials when a commission agent determines that it is relevant to a commission investigation. The Attorney General confirmed that the commission may make a warrantless search of any property in its jurisdiction, including the vehicle of licensees, with the exception of living quarters or sleeping quarters. The commission also may search for any item reasonably believed to constitute evidence of a violation of one of the commission's regulations. She said that language in the current license application gives valid voluntary consent to a warrantless administrative search and seizure, as long as the search does not go into living quarters or dormitories.

In response to a question from Representative Keene Ms. Underwood said the search does not include a search of the license holder's other business entities.

Ms. Underwood told committee members that one of the main initiatives for the 2011 legislative session will be working on the National Racing Compact. The Public Protection Cabinet's strategic plan for 2010-2014 was filed with the LRC in 2009, and one of the items listed was an interest in either joining or starting a national racing compact. She is serving on a national steering committee to gather consensus with various interested parties to form the multi-state racing compact.

In response to a question from Representative Floyd, Jamie Eads said the Kentucky Sire Stakes money was a combination of horseman fees and entry fees, the pari-mutuel tax (Standardbred Development Fund), and the 13 percent collected for the Standardbred Breeders Incentive Fund.

In response to a question from Representative Keene, Ms. Underwood said that it is hard to project the economic impact of a full casino opening in Cincinnati on Turfway Race Course. She commented that race dates, purses, and handle have been declining.

#### **Recognition of Departing Members**

Senator Tapp read a resolution honoring the Representative Tim Firkins' service to the committee. With a motion from Senator Carroll, seconded by Senator Tapp, the resolution was adopted by voice vote and presented to Representative Firkins.

Representative Keene told Senator Tapp that he wanted to publicly thank him for the help, fairness, and consideration he had shown in teaching him to be an effective committee chairman. He said, "It was never a Republican thing, never a Democratic thing, it was always the right thing." As a token of the committee's appreciation, Senator Tapp was presented with a statue of an American eagle. Representative Keene read the plaque

on the statue, "For outstanding leadership, 2003 – 2010, Licensing and Occupations Co-Chair, Senator Gary Tapp."

Senator Tapp thanked the committee members saying that it had been an honor to serve on the committee. He said he appreciated the cooperation of all the committee members and thanked the staff for their work. Senator Tapp also thanked his wife for her support.

The committee adjourned.

### **INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT Minutes of the 5th Meeting of the 2010 Interim**

November 17, 2010

#### **Call to Order and Roll Call**

The fifth meeting of the Interim Joint Committee on Local Government was held on Wednesday, November 17, 2010, at 10:00 AM, in Room 149 of the Capitol Annex. Representative Steve Riggs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Steve Riggs, Co-Chair; Senators Walter Blevins Jr., Julian M. Carroll, Mike Reynolds, and John Schickel, Representatives Mike Denham, Ted Edmonds, Derrick Graham, Charlie Hoffman, Brent Housman, Adam Koenig, Stan Lee, Tom McKee, Ken Upchurch, and Jim Wayne.

Guests: Greg Haskamp and Bill Riggs, Finance Cabinet; Jon Steiner, J. D. Chaney, Bert May, and Tony Goetz, Kentucky League of Cities; Richard Moloney and Dawn Bellis, Department of Housing, Buildings, and Construction; Lynn Littrell and Andrew Hartley, Department for Local Government; Judy Taylor, Lexington-Fayette Urban-County Government; Jim Thompson, Education and Workforce Development Cabinet; Charlie Harman, Department of Education; Russell Romine and Gail Mayeux, Department of Transportation; Mark Mangeot and Tanya Dickinson, Justice Cabinet; Rick McQuady, Kentucky Housing Corporation; Beth Jurek, Cabinet for Health and Family Services; Lona Brewer, Energy and Environment Cabinet; Ron Wolf, Associated General Contractors of Kentucky; and Teena Halbig, Floyd's Fork Environmental Association.

LRC Staff: Mark Mitchell, John Ryan, Joe Pinczewski-Lee, Matt Niehaus, Tom Dorman, Bryanna Carroll, Tom Willis, and Cheryl Walters.

#### **Introduction of New Kentucky League of Cities Executive Director**

Representative Riggs introduced Mr. Jonathan Steiner, the new Executive Director/CEO of the Kentucky League of Cities (KLC). In response to a question from Representative

Riggs, Mr. Steiner said his personal challenges will be to travel across the state to meet all of the local elected officials and to be the voice of KLC. He looks forward to working with the committee.

### **Discussion of the Aspects of the American Reinvestment and Recovery Act as it relates to Local Governments**

Representative Riggs introduced Mr. Greg Haskamp, Executive Director of the Office of Policy and Audit, Finance Cabinet, to discuss the American Recovery and Reinvestment Act (ARRA). The ARRA was passed by Congress on February 13, 2009, and provides fiscal relief to states; ensures continuity of community services; preserves or creates jobs and job training; invests in infrastructure improvement; fosters long-term research for growth; and gives tax relief to individuals and businesses.

Mr. Haskamp stated that the ARRA total national investment is \$787 billion. Kentucky has been awarded \$3,456,900.00. The total is comprised of 2,645 individual grants, 47 loans, and 916 federal contracts. Approximately \$3 billion of the total is channeled through state government by formula, match, or competitive award. Sixty-eight percent of the funds have been expended, which includes grants made in the past 120 days. There is roughly \$800 per capita in awards, grants, and contracts. Kentucky is 25<sup>th</sup> among states for overall ARRA awards.

Mr. Haskamp explained how the ARRA money comes in. Congress appropriates funds to 28 federal agencies. Federal agencies make funds available to state and local governments or directly to academia, business, and organizations. Federal agencies also provide entitlements and tax credits covered by the ARRA. State and local governments make funds available for contracts and grants to academia, business, and organizations. State agencies also administer funds for unemployment compensation.

Mr. Haskamp next explained where the ARRA money is going: \$990 million for Medicaid; \$924 million for education; \$421 million for roads and bridges; \$272 million for health and welfare; \$120 million for the general fund; \$71 million for water and sewer lines; \$66 million for job training and public safety; \$63 million for energy projects; \$50 million for transit; and \$12 million for community development.

Mr. Haskamp described the ARRA award process. Pre-award—agency establishes conditions, dates, forms, and reviews submissions; award—recipient is notified, funds are awarded, and Congress and public are notified; post-award—both grantee and awarding federal agency complete sta-

tus report; and closeout—archive all records and conduct final reviews.

Mr. Haskamp said Section 1512 of the ARRA, which is the primary vehicle, specifically requires all recipients of awards to file reports that include, among other information: the total amount of fund received from a particular Federal agency; a description of the projects the funds are being used for; and the status of the projects and the amount of funds spent to date.

Regarding transparency, Mr. Haskamp noted that Kentucky is rated number two nationally by an independent watchdog group. The website provides programmatic descriptions and details; “dashboard” facts; downloadable reports; report search functions; job breakouts; interactive maps and charts; and contract searches for all eligible state contracts.

Mr. Haskamp next discussed the ARRA’s local impact in Kentucky. The Federal Health and Human services total in Kentucky was over \$1.3 billion, which included over \$940 million for Medicaid. Total infrastructure investments were over \$822 million, including: over 200 individual transportation projects; over 50 clean and drinking water projects; and 12 competitively awarded broadband projects, serving 71 Kentucky counties, for a total investment of over \$300 million. State Relief and Stabilization funds totaled over \$650 million, including: over \$532 million in Education assistance to over 176 Local Education Agencies (LEAs) and state universities; and more than \$118 million to assist corrections and public safety. Energy and weatherization projects totaled over \$259.6 million, which served 34 projects and provided weatherization assistance to a goal of over 9,000 Kentucky homes. Hundreds of thousands of hours were worked, which funded 10,000 jobs, estimated as of October 30. This number of jobs was calculated at a 40 hour full time equivalency.

Lastly, Mr. Haskamp showed members Kentucky’s informational website on the distribution of ARRA funds in Kentucky.

In response to a question from Representative Wayne relating to the creation of 10,000 jobs, Mr. Haskamp stated that the number includes those jobs that would have been lost had ARRA money not come to the state.

In response to a question from Representative Lee regarding whether or not Kentucky gained 10,000 jobs because of the stimulus bill, Mr. Haskamp explained that the jobs-reporting that takes place with the Stimulus Act is that those hours were worked with stimulus funds and they would not have been worked without the funds. What is reported is the number of hours that were actually

worked utilizing stimulus money; that is what the jobs calculation basically reflects.

In response to a question from Representative Lee, Mr. Haskamp said that the 10,000 number includes some employees of such agencies as fire and police departments and local and state governments, among others, but the exact breakout would have to be compiled separately.

Bill Riggs with the Finance Cabinet told Representative Lee that the data is taken from stimulus payroll. That payroll would not have been there had it not been for stimulus dollars. If that payroll went to an individual who would have otherwise been laid off, then yes, a job was created because that person would have been drawing unemployment and receiving other government assistance. There was a mixture of new jobs that did not exist before and jobs that are supported because the stimulus dollars were there. But the absolute payroll came from stimulus money so that can be counted as a current worker that would have been laid off, who, because of stimulus funds, had a job and continued to receive money and pay taxes and contribute to his family or that person because that stimulus was not there, would have been laid off. It could have been a new job creation but the only way to truly measure it by actually taking the payroll and saying this payroll is there because the stimulus money was there.

In response to a question from Representative Lee, Mr. Riggs said the cabinet does not know how many were actually public jobs. It can go back and take a look at that. If it was a public sector or private sector, it is still a job that was paid for with stimulus funds and that the community somehow got enhanced because that person was there working. The cabinet will try to break that out to see whether the jobs are private or public.

Representative Graham commented that the government did not have to fund unemployment as much because of the use of stimulus funds.

Senator Carroll commented that the stimulus dollars have been of tremendous benefit to keeping approximately 9,200 Kentuckians employed who might otherwise have been drawing unemployment and not paying local taxes.

In response to a question from Representative Housman, Mr. Haskamp stated that the stimulus money is expected to peak in 2011 and it begins to sharply taper off after that point running into 2012 and 2013.

In response to a question from Representative Housman regarding a breakdown of how many of the 5,200

jobs created or retained in education are at the collegiate level versus the local level, Mr. Haskamp said that information was not readily available, but that he would get it.

Representative McKee commented that a bridge is being built in his district by a company that is back building because of stimulus funds.

Senator Thayer commented that taxpayers are funding the ARRA.

Representative Denham commented that he appreciated the Mr. Haskamp’s presentation which will be a big help in explaining the ARRA to his constituents.

In response to a question from Senator Thayer regarding how \$118 million in funds were appropriated and the criteria for allocating those funds to provide fiscal relief to the state to prevent tax increase and avert cutbacks in other critical services, Mr. Haskamp said that is the money which was used by the general assembly that went to support corrections.

Senator Thayer said he would like to know when the CDBG grants were announced for Marion and Lewis Counties. He would also like to know the deployment of all ARRA funds between August 15<sup>th</sup> and Nov. 1<sup>st</sup> in Fayette, Franklin and Jefferson Counties. He would like that information sent to his office in the next couple of weeks.

Senator Carroll said he would like that information for Franklin and Fayette counties sent to his office. Information for Franklin County should be given to Representative Graham.

Representative Riggs thanked Mr. Haskamp for the presentation and said it would come in handy for members when meeting with constituents.

### **Consideration of Referred Administrative Regulations**

The committee considered referred Administrative Regulations, 109 KAR 15:020, which establishes the standards for budgeting, report, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds; and 815 KAR 7:110, which establishes requirements for local building departments to request and be granted expanded building code plan review, inspection jurisdiction and to collect fees for those activities. Representative Riggs stated that a written report of the review will be submitted to the LRC.

There being no further business, the meeting was adjourned at 11:25.

### **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs Minutes of the 4th Meeting of the 2010 Interim**

November 16, 2010

### **Call to Order and Roll Call**

The 4th meeting of the Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs of the Interim Joint Committee on State Government was held on Tuesday, November 16, 2010, at 12:45 PM, in Room 149 of the Capitol Annex. Senator Damon Thayer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Senators Walter Blevins Jr., Jimmy Higdon, and John Schickel; Representatives Kevin D. Bratcher, Mike Cherry, Larry Clark, James R. Comer Jr., Joseph M. Fischer, Mike Harmon, Melvin B. Henley, and Mary Lou Marzian.

Guests: Sarah Ball Johnson, Executive Director and Katie Gabhart, General Counsel of the Kentucky State Board of Elections.

LRC Staff: Judy Fritz, Karen Powell, Terisa Roland, Bill VanArsdall, Kevin Devlin, and Greg Woosley.

Approval of Minutes

Upon motion by Representative Henley and second by Senator Blevins, the minutes of the October 26, 2010 meeting were approved without objection.

### **November 2010 Election Review**

Sarah Ball Johnson, Executive Director of the State Board of Elections, reviewed the November 2010 elections. The election was conducted relatively smoothly, with only a few minor issues involving the number of paper ballots printed in a couple of counties and voter coding in split precinct elections. Ms. Johnson also noted her office is considering offering a legislative proposal to clarify the law applicable to challengers, the dissemination of absentee vote totals on Election Day, and recount and recanvass procedures.

Several members of the Task Force posed questions and voiced their opinions and concerns.

### **Signature Requirements for Independent Candidates in Consolidated Local Governmental Elections**

Katie Gabhart, General Counsel of the State Board of Elections, reviewed recent litigation relating to the number of required signatures for an independent candidate in a Louisville Metro Council election. Ms. Gabhart noted that the Jefferson Circuit Court found an ambiguity in the current law, and she offered a recommendation as to how the ambiguity could be resolved by the General Assembly.

Several members of the Task Force posed questions and voiced their opinions and concerns.

Business concluded for the meeting schedule for the 2010 Interim and adjourned at 1:45 p.m.

### **INTERIM JOINT COMMITTEE ON VETERANS, MILITARY AFFAIRS, and PUBLIC PROTECTION**

#### **Minutes of the 5th Meeting of the 2010 Interim**

December 7, 2010

#### **Call to Order and Roll Call**

The 5th meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Tuesday, December 7, 2010, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Tanya Pullin, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Elizabeth Tori, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Carroll Gibson, Denise Harper Angel, Joey Pendleton, Jerry P. Rhoads, Kathy W. Stein, Jack Westwood, and Ken Winters; Representatives Linda Belcher, Dwight D. Butler, Mike Cherry, Larry Clark, Leslie Combs, Tim Couch, Ron Crimm, Robert R. Damron, Myron Dossett, David Floyd, Jeff Greer, Jimmie Lee, Terry Mills, Tim Moore, Fred Nesler, Tom Riner, Carl Rollins II, Steven Rudy, Sal Santoro, Charles Siler, and Alecia Webb-Edgington.

Guests: Mark Needham, BRAC Advisor, Governor's Office, COL Eric Schwartz, Garrison Commander, Fort Knox, Brad Richardson, Executive Director, OneKnox; Tim Hubbard, Assistant Director, Tony Hatton, Director, Kim Greenridge, Superfund Program Coordinator, Superfund, Energy and Environment Cabinet; Tom Preston, Executive Director, Gene Kiser, Deputy Director, and Shelby Lawson, Chief of Staff, Kentucky Office of Homeland Security.

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

#### **Minutes**

Co-Chair Pullin asked members to review the November 22<sup>nd</sup> meeting minutes. After a motion to approve by Representative Nesler, and a second by Representative Floyd, the minutes were adopted by a voice vote.

#### **Resolutions**

Representative Floyd read a resolution honoring fallen soldier Staff Sergeant Jordan B. Emrick.

Co-Chair Pullin read resolutions honoring Representatives Siler, Smith, and Sims, and Senator Tori for their service to the committee and Commonwealth. Representative Nesler moved to adopt all of the resolutions, and the motion was seconded by Representative Clark. The resolutions were adopted by a unanimous voice vote.

### **Base Realignment And Closure (BRAC) Update**

Mark Needham, BRAC Advisor, Governor's Office, Col. Eric Schwartz, Garrison Commander, Fort Knox, and Brad Richardson, Executive Director, One Knox, gave an update on BRAC progress at Fort Knox. Col. Eric Swartz testified about BRAC progress. Col. Swartz stated that Fort Knox is on track to meet the mandated BRAC completion date of Sept. 15, 2011, and he discussed the major changes to the post. Col. Swartz discussed the workforce dynamics and other noteworthy items to including the LTG Timothy J. Maude Human Resources Complex, which is the largest facility in Kentucky and is 80 per cent occupied, the increased traffic at gates, soldiers living off post, turning over the state Fort Knox child protective investigations, changes to the Patton Museum, and 3,500 Fort Knox Soldiers deploying to Afghanistan.

Brad Richardson briefed the committee on the regional economic impact and Fort Knox area housing. The projected net of new jobs for military, civilian, contractors, and the private sector is up to 7,800. There are 300 new apartments under construction in Hardin County, and single-family residential home sales have a sale price to list price of about 98 percent. The daily commute time for many has doubled, and the traffic count at the intersection nearest Ft. Knox Wilson Gate has increased 50 percent since April 2010.

Mark Needham briefed the committee on road and infrastructure projects around the post. He described the growth of the schools in Hardin County, Fort Knox, and Meade County. Mr. Needham discussed a visioning project for Hardin County to include governance, education, and community development due to the growth and transportation issues of Ft. Knox.

In response to Representative Clark's question, Col. Schwartz stated that the Human Resource Center is filled two thirds to its capacity and there are still 1,200 positions available. In response to Senator Gibson's question, Col. Schwartz stated that the remaining positions are IT or technically specific jobs.

#### **Methamphetamine Cleanup**

Tim Hubbard, Assistant Director of the Division of Waste Management, and Kim Greenridge, Program Coordinator, Superfund, Energy and Environment Cabinet, presented the committee with a power point presentation on the status and overview of Kentucky's Meth Lab Cleanup Program. Mr. Hubbard discussed Kentucky's meth problem stating that Kentucky is ranked 3<sup>rd</sup> nationally for the number of meth labs discovered in 2009 and as of October 31, 2010, that number has increased 42 percent.

Mr. Hubbard briefed the committee on the meth law timeline, decontamination tracking, program update, increasing challenges, recommended enhancements, and future efforts of the Kentucky Meth Lab Cleanup Program. The program was awarded the 2008 Department of Environmental Protection's Outstanding Performance Award.

In response to Representative Webb-Edgington, Mr. Hubbard stated that laboratories are defined by the Kentucky State Police and counted by the local drug task force and police departments. Laboratories could be in a home or even a car, but Mr. Hubbard's office only addressed labs found in residences.

In response to Representative Cherry's question, Mr. Hubbard stated that the owner of a contaminated property is the person responsible for the cleanup.

In response to Senator Westwood's question, Mr. Hubbard stated that the practice of "smurfing" is getting a number of people to buy their limit of pills containing pseudoephedrine and turning them over to the cooker which explains the increase in the number of incidents reported since 2008 even with the restrictions on medication per person.

### **Office of Homeland Security Annual Report**

Tom Preston, Executive Director, Kentucky Office of Homeland Security (KOHS), presented the committee with a copy of the Kentucky Office of Homeland Security 2010 Annual Report. KOHS has 18 employees available to carry out mandates, federal grant management duties, administration of the Kentucky Intelligence Fusion Center, analysis and disposition of cases including growing suspicious activity, critical infrastructure assessments for public and private facilities, first responder training and exercises, support services to police and fire agencies, management of the Law Enforcement Protective Program and JusticeXChange, community outreach and safety education, and private sector security counseling. Mr. Preston stated that in spite of fiscal constraints, the KOHS is expected to achieve more with much less.

There being no further business, the meeting adjourned.

### **CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

#### **Minutes**

January 18, 2011

#### **Call to Order and Roll Call**

The Capital Projects and Bond Oversight Committee met on Tuesday, January 18, 2011, at 1:00 PM, in Room 169 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary

called the roll.

Present were:

**Members:** Senator Bob Leeper, Co-Chair; Representative Jim Glenn, Co-Chair; Senators Tom Buford, Jared Carpenter, and Julian M. Carroll; Representatives Robert R. Damron, Steven Rudy, and Jim Wayne.

**Guests:** Jeff Mosely, Finance and Administration Cabinet; Bob Wiseman, University of Kentucky; Ken Ramey, Northern Kentucky University; John Hicks, Governor's Office for Policy Management; Fred Engel, Kentucky Education Television; Sandy Williams, Kentucky Infrastructure Authority, and Brett Antle, Office of Financial Management.

**LRC Staff:** Shawn Bowen, Don Mullis, and Samantha Gange.

Welcome of New Members

Senator Leeper welcomed Senator Carpenter and Representative Glenn to the committee.

Election of House Co-Chair

Representative Damron nominated Representative Glenn for the position of House Co-Chair. The motion was seconded by Representative Wayne. Representative Damron then made a motion that nominations cease and that Representative Glenn be elected House Co-Chair by acclamation. The motion was seconded by Representative Rudy and approved by voice vote.

Approval of Minutes for November 16, 2010

Senator Buford made a motion to approve the minutes of the November 16, 2010, meeting. The motion was seconded by Representative Damron and approved by voice vote.

#### **Resolution Honoring Senator Elizabeth Tori**

Senator Leeper read a resolution honoring Senator Tori and her service to the committee and the Commonwealth.

Senator Buford made a motion for the resolution to be adopted by the committee. The motion was seconded by Representative Wayne and adopted by voice vote.

#### **Correspondence Items**

Senator Leeper asked Shawn Bowen, Staff Administrator, Capital Planning Advisory Board, to discuss correspondence items. Ms. Bowen said members' folders contained three items of correspondence: correspondence to Secretary Miller, Finance and Administration Cabinet, and President James Ramsey, University of Louisville, regarding no action being taken on projects because of cancellation of the December 2010 committee meeting; correspondence from Secretary Miller and President Ramsey, regarding approval of projects from the December 2010 committee meeting; and correspondence from the University of Kentucky report-

ing plans to use the Construction Management-at-Risk project delivery method for the Renovate Track and Field Facility project.

#### **Information Items**

Ms. Bowen said members' folders also contained several information items. The first two items were the quarterly status reports on capital projects from the Finance and Administration Cabinet and the universities that manage their own capital construction programs; and the quarterly status report on court facility construction and renovation projects from the Administrative Office of the Courts.

The third item was a memo from the Kentucky Infrastructure Authority (KIA) regarding additional federal requirements for the Clean Water State Revolving Fund (Fund A) and the Drinking Water State Revolving Fund (Fund F). The additional requirements include wage rate provisions, additional subsidization, and green projects.

The fourth item was a report on the Kentucky Horse Park (KHP) Hotel project lawsuit. According to the Lexington Herald-Leader, on January 4, 2011, a Franklin Circuit Court judge granted a summary judgment to dismiss the lawsuit brought by the Bluegrass Equine and Tourism Foundation because financing was not secured for the KHP Hotel project. According to the article, the judge ordered the Commonwealth to pay KHPWESLUX, LLC, \$476,322 in utility and construction costs incurred.

Jeff Mosely, General Counsel, Finance and Administration Cabinet, asked to address the committee regarding inaccurate information about the lawsuit that was reported in the media. Mr. Mosely said the state was not ordered to pay \$476,322 to KHPWESLUX, LLC. He said the Finance and Administration Cabinet filed a counter-claim against KHPWESLUX, LLC for \$476,322. The judge denied the Finance and Administration Cabinet's motion to collect the \$476,322.

Ms. Bowen said the last three information items included proposed legislation related to the jurisdiction of the committee and the staff and bond market updates.

#### **University of Kentucky (UK) Wildcat Lodge Scope Increase**

Senator Leeper asked Bob Wiseman, Vice President for Facilities Management, UK, to present three items. Mr. Wiseman said the first item was a request for a scope increase for the Replace Wildcat Lodge Student Housing project. UK requested a private funds scope increase of \$1,050,000 (15 percent) for a revised scope of \$8,050,000. The increase was necessitated because bids on the project came in over budget. He said the donors have agreed to fund

the increase.

Senator Buford made a motion to approve the scope increase. The motion was seconded by Senator Carroll. Seven members voted "yes" and one member voted "no." The motion passed.

#### **UK Land Lease**

Mr. Wiseman said the second item was a report of a land lease with Kentucky Medical Services Foundation (KMSF). He said UK leases four acres on its south campus to KMSF at \$1 per year. The lease will allow KMSF, in partnership with Child Development Care of the Bluegrass (CDC), a nonprofit corporation, to construct a 22,000 square-foot child care facility and associated parking. The facility will provide child care services to members of the community including children of UK faculty and staff. The \$6 million facility will be paid for by KMSF, CDC, and other private funds. Committee policy requires reporting of any construction taking place on state property. No further action was needed.

#### **UK 4-H Camps Scope Increase**

Mr. Wiseman said the third project was a request for a scope increase for the Renovate 4-H Camps project. UK requested a private funds scope increase of \$200,000 for a revised scope of \$2,200,000. The project was authorized in HB 406 (2008-10 budget), however, the university hoped that private donors would help construct 4-H cabins in addition to those which the \$2 million state funding would allow. Touchstone Energy, the Durr Foundation, and the 4-H Foundation have recently committed to construct two additional cabins at the North Central 4-H camp.

Senator Buford made a motion to approve the scope increase. The motion was seconded by Representative Wayne and passed unanimously by roll call vote.

#### **Northern Kentucky University (NKU) Land Acquisition**

Senator Leeper asked Ken Ramey, Vice President for Administration and Finance, NKU, to present one item related to a land acquisition. Mr. Ramey said NKU is reporting the acquisition of two undeveloped parcels of land at 2636 and 2648 Alexandria Pike in Highland Heights, Kentucky from the Northern Kentucky University Foundation (foundation). These parcels are located at the main entrance to the university's campus.

He said NKU conveyed the 2636 Alexandria Pike parcel to the foundation as part of a land swap deal between the two entities in 2002. The 2648 Alexandria Pike parcel was acquired by the foundation through a separate and unrelated transaction in 1999. This property had contained an old grocery store building and a

single-family residence; the foundation demolished both buildings in 2008. The foundation had intended to develop both parcels in a manner consistent with the memorandum of agreement it had executed with the university. The acquisition price for the two parcels combined is \$2,200,000 (restricted funds). The acquisition was authorized in HB 1 (2010-12 budget) with a total scope of \$20 million. Land acquisitions over \$600,000 are required to be reported to the committee. No further action was needed.

Senator Leeper asked what purpose does NKU see the land serving. Mr. Ramey said the university wants to maintain "green space" as it relates to the main entrance to campus. He said future plans for the land could include the development of retail and office space.

#### **Unbudgeted Capital Project from the Finance and Administration Cabinet for the Education and Workforce Development Cabinet, Kentucky Education Television (KET)**

Senator Leeper asked John Hicks, Deputy Director, Governor's Office of Policy and Management, to present three items. Mr. Hicks said the first item was a request for an unbudgeted capital project for the Education and Workforce Development Cabinet, KET Transmission Lines Upgrade/Antennas project. The project scope is \$1,224,000 and will be funded from a federal grant from the National Telecommunications and Information/Public Telecommunications Facilities Program (50 percent) and restricted funds (50 percent) carried forward from fiscal year 2010. The project involves upgrading KET's analog transmission lines to carry digital signals. The upgrade will increase the coverage area of the signal and also upgrade two digital antennas.

Representative Rudy asked if this upgrade would address the current outage that people in the western part of the state are experiencing. Fred Engel, Senior Director of Technology, KET, responded affirmatively.

Representative Damron made a motion to approve the unbudgeted capital project. The motion was seconded by Representative Wayne and passed unanimously by roll call vote.

#### **Unbudgeted Capital Project from the Finance and Administration Cabinet for the Education and Workforce Development Cabinet, Employment and Training**

Mr. Hicks said the second item was a request for an unbudgeted capital project from the Education and Workforce Development Cabinet, Employment and Training – Unemployment Insurance System upgrade. The project scope is \$8,519,300 and

is 100 percent federally funded. The source of the funds is several U.S. Department of Labor grants. The grants will allow an upgrade to the Unemployment Insurance information technology infrastructure, security, and programming services. Other changes are associated with the extensions to the unemployment insurance benefits and state and federal changes to the laws.

Senator Buford made a motion to approve the unbudgeted capital project. The motion was seconded by Representative Damron and passed unanimously by roll call vote.

#### **Unbudgeted Capital Project from the Finance and Administration Cabinet for Kentucky State University (KSU)**

Mr. Hicks said the third item was a request for an unbudgeted project from KSU to Purchase Research Vessel. The project scope is \$320,000 and is 100 percent federally funded from a U.S. Department of Agriculture grant. KSU will purchase a 52-foot vessel that will be used as a floating laboratory for research and instructional programs.

Senator Buford made a motion to approve the unbudgeted capital project. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

#### **Kentucky Infrastructure Authority (KIA) Fund A Loans**

Senator Leeper asked Sandy Williams, Financial Analyst, KIA, to present several loan requests. Ms. Williams said the first request was a \$1,105,000 Fund A loan for the City of Livermore in McLean County for the Sewer Rehabilitation project. The loan term is 20 years with an interest rate of one percent.

Senator Leeper asked if the public was aware of the rate increase associated with the project. Ms. Williams said KIA requires all rate increases to be passed at a public meeting with two readings.

In response to another question from Senator Leeper, Ms. Williams said the City of Livermore has not yet passed the rate increase. She said as a condition of the loan, the city must pass the increase by March 2011.

Representative Wayne commented that the committee should take up these loans once the rate increase has passed at the local level. He asked if it would be possible for KIA to submit the loan requests to the committee after the rate increases are passed. Ms. Williams said it could conflict with construction schedules, but it was not impossible.

Ms. Williams said the second request was a \$4,005,000 Fund A loan for the Regional Water Resource Agency in Daviess County for two projects to address an enforcement order to mitigate combined sewer

overflows. The loan term is 20 years with an interest rate of one percent.

The third request was a \$1,800,000 Fund A loan for the City of Bardstown in Nelson County for the Bardstown-Bloomfield Sewer Connection project. The loan term is 20 years with an interest rate of two percent.

The fourth request was an \$895,000 Fund A loan for the City of LaCenter in Ballard County for the construction of two lift stations to replace undersized and dilapidated lift stations. The loan term is 20 years with an interest rate of two percent.

The fifth request was a \$3,000,000 Fund A loan for the City of Morehead for the benefit of the Morehead Utility Plant Board in Rowan County for the Wastewater Treatment Plant Flood Rebuild project. The loan term is 20 years with an interest rate of one percent.

Representative Damron asked if the rate increases are conditions of the loans. Ms. Williams responded affirmatively.

In response to another question from Representative Damron, Ms. Williams said KIA does not release funds until the loan conditions are met.

Representative Rudy made a motion to approve the five Fund A loan requests. The motion was seconded by Senator Buford and passed unanimously by roll call vote. The Fund A loans were approved subject to the loan conditions being met.

#### **KIA Fund B Loans**

Ms. Williams said the sixth loan request was a \$110,000 Fund B loan for the City of Caneyville in Grayson County to upgrade its existing wastewater treatment plant. The loan term is 20 years with an interest rate of one percent.

In response to a question from Senator Buford, Ms. Williams said in many cases, local governments use the KIA loan as a tool to implement rate increases because they are so unpopular.

The seventh loan request was an \$810,000 Fund B loan for the City of Crab Orchard in Lincoln County to replace the Lancaster-to-Crab Orchard Transmission Main. The loan term is 20 years with an interest rate of one percent.

The eighth loan request was a \$475,000 Fund B loan for the Bracken County Water District for the Short Roads Improvement and Upgrades project. The loan term is 20 years with an interest rate of one percent.

In response to a question from Representative Wayne, Ms. Williams said ten new customers in Bracken County will be served as a result of the Short Roads Improvement and Upgrades project.

Senator Buford made a motion to approve the three Fund B loans. The

motion was seconded by Representative Damron and passed unanimously by roll call vote. The Fund B loans were approved subject to the loan conditions being met.

Senator Leeper asked if Ms. Williams could communicate to the KIA Board that when possible, the committee would prefer to review the loans with rate increases after they have been passed at the local level. Ms. Williams responded affirmatively.

#### **KIA Grants**

Ms. Williams indicated various coal and tobacco development grants authorized by the General Assembly were included in members' folders. Each project was authorized in a budget bill and no further committee action was needed.

#### **New Bond Issue – Office of Financial Management (OFM)**

Senator Leeper asked Brett Antle, Deputy Director, OFM to present a new bond issue. Mr. Antle requested approval of a new bond issue for Northern Kentucky University General Receipts Bonds, 2011 Series A. Proceeds from this bond issue will finance 1) the acquisition of land in single-family parcels, and 2) the acquisition of two radio licenses and equipment to allow the university's public radio station to extend its broadcast. The par amount of the bonds is \$9,460,000.

Senator Buford made a motion to approve the new bond issue. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

#### **Follow-up Report for Previously Approved Bond Issue – OFM**

Mr. Antle said the follow-up report was for the University of Louisville General Receipts Bonds 2010 Series A (Build America Bonds) and Series B (Qualified Energy Conservation Bonds). This bond issue will finance energy conservation measures within 17 buildings on the Health Science, Shelby, and Belknap campuses. These improvements are expected to generate an annual utility cost savings of over \$2,000,000. The committee did not take action on this bond issue because the December 2010 meeting was cancelled. The committee received a letter from the Finance and Administration Cabinet advising the committee that it would proceed with the bond issue. No committee action was needed.

#### **School Bond Issues**

Mr. Antle reported six new bond issues with School Facilities Construction Commission (SFCC) debt service participation for Boone County, Bourbon County, Hopkins County, Jackson County, Robertson County, and Southgate Independent in Campbell County.

Senator Buford made a motion

to approve the six new bond issues with SFCC participation. The motion was seconded by Representative Rudy and passed unanimously by roll call vote.

Senator Leeper asked Ms. Bowen to report one new local school bond issue. Ms. Bowen reported one new local school district bond issue with 100 percent local debt service support for Hopkins County.

With there being no further business, Representative Damron made a motion to adjourn the meeting. The motion was seconded and the meeting adjourned at 1:50 p.m.

## **CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

### **Minutes**

March 15, 2011

#### **Call to Order and Roll Call**

The Capital Projects and Bond Oversight Committee met on Tuesday, March 15, 2011, at 12:00 p.m., in Room 169 of the Capitol Annex. Senator Bob Leeper, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Bob Leeper, Co-Chair; Representative Jim Glenn, Co-Chair; Senators Tom Buford, Jared Carpenter, and Julian M. Carroll; Representatives Steven Rudy and Jim Wayne.

Guests: Tom Howard and Brett Antle, Office of Financial Management; John Hicks, Governor's Office for Policy Management; Bob Wiseman, University of Kentucky; Charles Bush, Division of Real Property; Sandy Williams, Kentucky Infrastructure Authority; Joe Pavoni, GRW Engineers; and Denny Gallagher, Nicholas County Sanitation District #2.

LRC Staff: Kristi Culpepper and Samantha Gange.

Approval of Minutes for January 18, 2011

Representative Rudy made a motion to approve the minutes of the January 18, 2011, meeting. The motion was seconded by Senator Buford and approved by voice vote.

#### **Resolution Honoring Representative Susan Westrom**

Senator Leeper read a resolution honoring Representative Westrom and her service to the committee.

Senator Carroll made a motion for the resolution to be adopted by the committee. The motion was seconded by Representative Glenn and adopted by voice vote.

#### **Correspondence Items**

Senator Leeper asked Kristi Culpepper, Staff Administrator, to discuss correspondence items. Ms. Culpepper said members' folders contained five items of correspondence.

The first two items of correspondence were to Secretary Miller, Finance and Administration Cabinet, regarding no action being taken on projects because of cancellation of the February 2011 committee meeting; and correspondence from Secretary Miller notifying the committee that the projects from the February 2011 committee meeting would proceed.

Ms. Culpepper said the third item of correspondence was a letter from the Office of Financial Management (OFM) explaining that the bond counsel for the University of Kentucky (UK) and the University of Louisville's qualified energy conservation bonds has corrected the federal subsidy calculations on the bond issues. The results benefit both universities.

#### **Discussion of Kentucky Asset/Liability Commission Disclosure Filing**

The fourth item of correspondence was a letter from OFM notifying the committee that the Kentucky Asset/Liability Commission (ALCo) had filed a voluntary disclosure, which has been posted on the Municipal Securities Rulemaking Board's website. The voluntary disclosure explains that the state's counterparty has changed on the four interest rate swap agreements hedging ALCo's General Fund Floating Rate Project Notes, 2007 Series A and Series B. Deutsche Bank replaced Citi as the swap counterparty on February 14, 2011.

Ms. Culpepper explained that the 2007 deal provided permanent financing for the state's grant to the Louisville Arena Authority and the Petroleum Storage Tank Environmental Assistance Fund and refunded some outstanding debt. This was the first time the state has used a floating rate note structure to issue bonds. To hedge the state's variable interest rate exposure, ALCo entered into four swap contracts where ALCo received payments corresponding to the variable rate owed on the floating rate notes and paid Citi a fixed rate. The swap effectively converted the variable rate debt to a fixed rate.

In December, the insurer on the bonds and swaps was downgraded below the rating threshold specified in the swap contract, which was an event that gave Citi the right to terminate the swaps. If Citi would have terminated the swaps, the state would have had to make a substantial termination payment because the swaps had a negative market value at the time. However, Citi agreed assign the swaps to Deutsche Bank instead. There were no changes to the financial terms of the swap contracts, and the assignment produced no cost for the state beyond bond counsel fees for the required enforceability opinion. The most significant modifications made

to the original swap contracts are that the new swaps are not insured and the state's rating would have to fall below the A3 / A- level to trigger the automatic termination of the swaps, which is the same level as that for the counterparty and reflects the fact that municipal borrowers are now being rated on the same scale.

#### **Committee Member Questions**

In response to a question from Senator Buford, Tom Howard, Executive Director, OFM, said there was no negative budgetary impact. He said the Commonwealth has entered into the four interest rate swaps on a cost-of-funds basis, which means the counterparty pays the exact cost of funds on the floating rate leg and the Commonwealth continues to pay the agreed upon fixed-rate on the bonds.

Senator Buford asked what the current market valuation was on the outstanding swap contracts. Mr. Howard said the cumulative market value of the four swaps given the current rate environment is about negative \$20 million should the swaps be terminated. He said he does not anticipate the swaps being terminated. He said Deutsche Bank cannot terminate the agreement unless the Commonwealth is downgraded below a threshold of A3 / A- and the Commonwealth's is currently rated Aa2 with a negative outlook by Moody's Investor Service, AA- with a negative outlook by Fitch Ratings, and A+ by Standard and Poor's. He said the Commonwealth's ratings are considerably above the termination trigger.

In response to another question from Senator Buford, Mr. Howard said the Turnpike Authority of Kentucky (TAK) ratings are viewed different than the state's General Fund ratings. He said on the General Fund side, the Commonwealth faces significant pension liability issues and the rating agencies cite this as a major concern when rating the state. He said the structural imbalances of state pensions are concerns with the rating community.

In response to a question from Senator Carroll, Mr. Howard said an interest rate swap is an exchange of interest payments. Deutsche Bank is not assuming principal repayment risk. He said the bank has agreed to pay the Commonwealth its cost of funds on its Floating Rate Notes, and in exchange the Commonwealth has agreed to pay a fixed interest rate based on market conditions at the time the swap was executed. The bank is net-neutral on the transaction. The bondholder has the exposure in that the Commonwealth will repay the principal and interest.

Senator Carroll asked if there

is authorized but unissued debt. Mr. Howard said the Commonwealth has a fair amount of unissued debt from previous budget cycles. He said pre-2010 budget there is \$604 million of unissued debt, of which \$233 million is General Fund, \$200 million is Road Fund, \$40 million is Agency Fund, and \$131 million is supported by federal funds for the Louisville Bridges project. From the 2010-2012 budget, there is approximately \$1.9 billion of unissued debt, which represents \$132 million of General Fund, \$522 million Road Fund, \$466 million Agency Fund, and \$435 million of GARVEEs for the Western Kentucky Bridges project.

Senator Carroll asked how the restructuring of debt will affect the state's current bond ratings. Mr. Howard said the restructurings are relatively modest to small in size in comparison to the budget. He said debt restructuring is not the primary driving force of the state's rating. However, continued debt restructuring is not a preferred strategy. He said out of the maturing debt, within five years the state will have 27 percent of debt maturing and within 10 years 60 percent of debt maturing. The duration is relatively short on a significant amount of obligation, which is within the rating target in terms of liability.

Senator Buford asked if there was any concern with the swap agreements with regard to the bond insurer FGIC. Mr. Howard responded no. He said there were two issues with respect to the bond insurance. One, the Commonwealth issued notes with FGIC insurance, which was assumed by MBIA (with a subsidiary called National). This piece involves the bondholders assuming the risk that the insurer will pay them if the Commonwealth does not. The state has no exposure; it is strictly an investor exposure. Two, they insured the swap payments from the Commonwealth to Citibank. The fact that the swap policy was in place was not a credit concern of the state's until it hit the trigger. Once the trigger was struck, then the state arranged the assignment of the swap contracts with Deutsche Bank. Citibank agreed to the assignment. Deutsche Bank did not want the insurance policy and National agreed to drop it. The Commonwealth is no longer relying on a third party to guarantee the payments to Deutsche Bank.

#### **Correspondence Continued**

Ms. Culpepper said the fifth item of correspondence was a notice from the Finance and Administration Cabinet regarding advertisement of leased space that would provide office and warehouse space for the Labor Cabinet in Franklin County.

Information Items

Ms. Culpepper said members' folders contained several information items. The first information item was a report from the Auditor of Public Accounts (APA) regarding certain procedures, controls, and finance activities of Mountain Water District. The auditor's report included eight findings and 40- recommendations, and was also referred to the Kentucky Attorney General's Office and the Legislative Ethics Commission for their consideration. The committee has reviewed various line-item water and sewer infrastructure grants and a Fund A loan for the district in the past.

In response to a question from Senator Buford, Sandy Williams, Financial Analyst, Kentucky Infrastructure Authority (KIA), said that they were not aware of the audit at the time the Fund A loan was made. She said KIA was contacted by the APA after the Fund A loan was approved by the committee and the KIA Board. KIA did not have any problems receiving financial information from the Mountain Water District.

The second information item was a special report released by Moody's Investors Service, one of three rating agencies that grade Kentucky's debt, which combines states' bonded indebtedness and unfunded pension liabilities, then ranks states according to the various credit rating indicators the agency uses.

The third information item was a rating report from Fitch Ratings for the ALCo Kentucky Teachers Retirement System (KTRS) Notes issued in February 2011. Fitch has assigned Kentucky's appropriation-supported debt rating a negative outlook.

The fourth information item was another report from Fitch Ratings on states' pension liabilities explaining changes that the rating agency has made to its analysis. Fitch is implementing a standardized seven percent investment return assumption. Fitch generally considers a funded ration of 70 percent or above adequate and less than 60 percent weak. At a seven percent discount rate, Fitch considers the Kentucky Employees Retirement System 41.6 percent funded, and KTRS 60.3 percent funded.

The fifth information item was a quarterly follow-up report from the School Facilities Construction Commission (SFCC) regarding bonds sold with SFCC debt service participation.

The sixth information item was a report detailing the available balances within the various loan funds administered by KIA for the 2011 funding cycle.

The seventh information item was an Energy Savings Performance Contract from the Finance and Administration Cabinet to make energy efficiency improvements in various

buildings in Frankfort. The total project cost is \$2.6 million, which will be financed over 14 years through the Kentucky Green Bank Program's revolving loan fund. The interest rate on the loan is 2.25 percent and annual lease payments will be \$225,372.

The eighth information item was certifications from a representative of the APA, which are required by statute, explaining that the selection processes for underwriters, bond counsels, and other professional services to be provided to state-level issuers in compliance with the Kentucky Model Procurement Code.

The ninth information item was a preliminary new bond issue report for the TAK. The authority is exempt from the committee's review by statute, but OFM has agreed to provide this information as a courtesy to the committee. The new bond issue, which will be in an amount not to exceed \$200 million, will do three things. First, it will provide permanent financing for \$56 million of BRAC projects as authorized in HB 3 of the 2010 Extraordinary Session. Second, it will refund \$55.3 million of outstanding 2001 Turnpike bonds for a present value savings. Third, it will restructure approximately \$33 million of fiscal year 2011 Road Fund debt service. The restructuring will produce a cash flow savings of \$32 million by pushing debt due now out into future years, but it will come at a cost of \$10.8 million.

#### **Discussion of the Turnpike of Kentucky Debt Restructuring**

Senator Leeper asked why the cost to restructure is higher than anticipated. Mr. Howard said the enacted 2010-2012 budget assumed debt restructurings for TAK of \$52 million in fiscal year 2011 and \$53 million in fiscal year 2012. He said the initial calculations were based on gross debt service and not net of a BAB subsidy, which increased the number by approximately \$9 million.

In response to another question from Senator Leeper, John Hicks, Deputy Director, Governor's Office of Policy and Management, said in the last interim quarterly revenue report published by the Office of the State Budget Director projected Road Fund receipts for fiscal year 2011 will exceed estimated amounts of \$69 million. Of that \$69 million, \$29.5 million is statutorily committed to local governments and approximately \$39 million will accrue to the Road Fund surplus. He said the state will have to restructure \$33 million in debt to be within the debt service appropriation in the enacted budget. The additional revenues are not yet available for appropriation. Mr. Howard noted that the debt structuring for the Road Fund differs from debt restructuring of the General Fund, whereas the General Fund pays operating expenses and the

Road Fund pays for cash-funded road projects.

Senator Leeper asked if an increased appropriation could have been requested during the 2011 Regular Session. Mr. Hicks said the surplus estimate is internal and unofficial and might not be sufficient enough for the General Assembly to take formal action.

Representative Wayne commented that he was concerned that the Commonwealth is paying \$10.8 million to restructure \$33 million in debt.

In response to a question from Representative Wayne, Mr. Howard said in the event that the Commonwealth were downgraded to the single A level it would cost about 20 or 30 basis points, which equates to approximately \$3 million per \$1 billion. Mr. Hicks said if that were to happen it would only apply to unissued debt and have no effect on the existing debt or pension liabilities.

Senator Carpenter asked what the terms of the restructuring were. Mr. Howard said the terms of the TAK debt restructuring include taking both the principal and the interest and moving it out into future years. OFM is amortizing the full principal out 9-10 years.

Senator Buford asked if the Governor has the authority to restructure and create new debt without General Assembly approval. Mr. Hicks said the restructuring of debt does not create new debt. He said the constitutional provisions in Chapter 56 of the statute say that only the General Assembly can authorize debt.

#### **Information Items Continued**

Ms. Culpepper said the last three information items included proposed legislation related to the jurisdiction of the Capital Projects and Bond Oversight Committee from the 2011 Regular Session and the staff and bond market updates.

#### **University of Kentucky Projects**

Senator Leeper asked Bob Wiseman, Vice President for Facilities Management, University of Kentucky (UK) to report on five projects. Mr. Wiseman said the first item was an unbudgeted capital project for the Renovate Schmidt Vocal Arts Center project. The project was authorized in 2010 Extraordinary Session HB 1 (2010-2012 budget) for \$1,500,000 in restricted funds. UK expects to be able to pay for the project with \$1,350,000 in private funds achieved through fundraising efforts and \$150,000 of university restricted funds. The UK Board of Trustees approved the project at its February 2011 meeting.

The second item was for an

unbudgeted capital project for the purchase of Medical Equipment and Systems (Ambulatory Electronic Medical Records). The project is required for UK to comply with federal requirements enacted in the 2009 Health Information Technology for Economic and Clinical Health Act and the 2010 Patient Protection and Affordable Care Act, which requires health care providers to implement electronic medical records. The project is estimated to cost \$51,767,000. UK expects to receive \$26 million in federal funds and the remaining funding for the project will come from a \$15 million tax-exempt lease-purchase agreement and \$11 million from UK Health Care operations. This project is being submitted to the committee ahead of the Council on Postsecondary Education (CPE) because CPE does not meet until April and delaying the project could entail UK being penalized under the new federal legislation. The committee's approval would be contingent on CPE approval.

Mr. Wiseman said the third item was a consolidation of budget authorizations for the Upgrade Student Center Infrastructure and the Repair, Upgrade, Improve Building Mechanical Systems. The \$23,000,000 project will be funded with \$17,805,000 in agency bonds and \$5,195,000 of accumulated funds in the Student Center Renewal and Replacement fund. This project will repair, upgrade, and improve existing building infrastructure systems at the UK Student Center. The UK Board of Trustees approved the consolidation at its February 2011 meeting. Debt service on the agency bonds will be supported by the Student Center Mandatory fee.

The fourth item was for a scope increase for the Renovate/Expand the Center for Applied Energy Research. UK is requesting a \$403,003 scope increase to be paid from federal funds from the US Department of Energy. The funds will be used to conduct a Front End Engineering and Design Study for a refinery and to construct a 3,000 gross square foot shell facility to house the refinery. The committee approved a \$1,712,581 scope increase for the budgeted project in January 2009. Pursuant to UK Administration Regulations, President Lee Todd approved the scope increase on March 3, 2011.

Representative Rudy made a motion to approve the four projects for UK. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

Mr. Wiseman said the fifth item was a report on the status of the Construct Patient Care Facility project. Because of the substantial scope of this project, which includes multiple authorizations across budget cycles, UK has made a practice of

providing the committee with periodic updates on the project's status. He said in October 2008 the committee approved the university's request to consolidate \$250 million of authorizations, bringing the total project scope to \$700 million. At its February 2011 meeting, the UK Board of Trustees increased its scope from \$570 million to \$575.6 million, and approved the initiation of the \$5.6 million Data Center and Related Support Space phase of the project. No committee action was required.

#### **Project Scope Increase from the Finance and Administration Cabinet**

Senator Leeper asked Mr. Hicks to present one item. Mr. Hicks said the Finance and Administration Cabinet is requesting approval of a scope increase for the Kentucky Department of Veterans' Affairs (KDVA), Western Kentucky Veterans' Center Alzheimer's/General Care Unit project. The scope increase is \$900,000 with a revised project scope of \$9,900,000. The additional funds will be provided from the US Department of Veterans' Affairs (USDVA) \$438,750 and \$461,250 from unbudgeted restricted funds. The additional \$461,250 required from the state can be paid for with KDVA receipts, which are greater than expected this fiscal year due to a higher per-resident daily rate from USDVA for rates at the state's veterans' nursing homes. The scope increase was necessitated due to construction bids being higher than estimated.

Representative Rudy made a motion to approve the scope increase. The motion was seconded by Representative Glenn and passed unanimously by roll call vote.

#### **Report of New Lease from the Finance and Administration Cabinet**

Senator Leeper asked Charles Bush, Director, Division of Real Property, Finance and Administration Cabinet, to report a new lease. Mr. Bush said the new lease was for the Department of Kentucky State Police for new space for the Western Regional Forensic Laboratory currently leased under PR-3281. The department indicated a need for 9,211 square feet of office/laboratory space with a sprinkler system. The annual rental cost is \$110,880 effective through June 30, 2018.

Senator Buford made a motion to approve the new lease. The motion was seconded by Senator Carroll and passed unanimously by roll call vote.

#### **KIA Fund A Loans**

Senator Leeper asked Ms. Williams to present several loan requests. Ms. Williams said the first loan request was a \$1,400,000 Fund A loan for the City of Campton in Wolfe



County for the West KY 15, Quillins Chapel, and North Campton Sewer Line Extension project. The loan term is 20 years with an interest rate of one percent. The project also qualifies for 30 percent of additional subsidization in principal forgiveness.

The second request was a \$3,400,000 Fund A loan for the Louisville and Jefferson County Metropolitan Sewer District for Phase I green infrastructure improvements in the Northeast and Northwest Focus Areas. The loan term is 20 years with an interest rate of one percent. The project also qualifies for Green Project funding for \$3,400,000 under the category Green Infrastructure.

Senator Buford asked how the project qualified for a one percent hardship rate when Jefferson county's median household income is higher than that of the Commonwealth. Ms. Williams said the district submitted census tract information for the specific areas affected by the project. She said the median household income for the project area is less than 80 percent of the Commonwealth, which qualifies the project for the one percent hardship rate.

In response to a question from Senator Carroll, Ms. Williams said KIA obtains the census tract information from the Kentucky State Data Center and the US Census Bureau. She said KIA looks at the specific census tracts being served by a particular project.

The third request was a Fund A Loan increase for the Ohio County Regional Wastewater District. The district is requesting a \$14,226 increase to its \$451,077 Fund A Loan for the Southern Elementary extension project. The new loan amount is \$465,303 with a 20 year term and a two percent interest rate. The committee approved the original loan request at its December 2009 meeting.

Representative Rudy made a motion to approve the two Fund A loans and the Fund A loan increase. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

#### **KIA Fund B Loan – Nicholas County Sanitation District No. 2**

The fourth loan request was a \$550,000 Fund B loan for the Nicholas County Sanitation District #2 to construct a new collection and treatment system to serve 103 households at Lake Carnico. The loan term is 20 years with an interest rate of two percent.

Senator Leeper said he was concerned with the cost of the project given there is only 103 customers. He asked what rate of growth is expected in the area. Ms. Williams said the system will provide service to the current 103 customer and any additional development in the area. Joe Pavoni, Professional Engineer, GRW Engineers,

said the system is designed to provide service for up to 165 homes, which is the maximum number of homes that can be developed in the area.

In response to a question from Representative Wayne, Mr. Pavoni said the county currently does not have planning and zoning laws. He said the original plan for this area was to send the wastewater to the City of Carlisle, however it is not economical.

In response to a question from Senator Buford, Mr. Pavoni said the Nicholas County Sanitation District is currently in the process of completing an agreement with the water district for billing services.

Senator Buford asked how KIA came up with the credit analysis for the project, considering it is a start-up utility and whether the sanitation district has established an office. Denny Gallagher, President and Chairman, Nicholas County Sanitation District #2, said that the district has not yet established an office. Ms. Williams said the information that was used for the credit analysis was based on the number of homes that are currently occupied and the water usage for each household.

In response to a question from Senator Leeper, Mr. Gallagher said the lake is a public lake, however the Nicholas County Development Corporation owns the property around the lake.

Senator Leeper asked if the project will still move forward if the 2012 General Assembly does not reallocate the \$125,000 grant and if all the interested parties were aware that the grant money would be used for this project. Mr. Pavoni said both the County Judge Executive and the Mayor of Carlisle are in favor of using the \$125,000 for the project. Mr. Gallagher said to his knowledge all parties involved are in support. Ms. Williams said the KIA Board approved the loan with the condition that the grant is reauthorized and reallocated by the General Assembly.

In response to a question from Senator Carroll, Mr. Pavoni said the residents currently pay about \$120 every four to six weeks to have the septic tanks pumped.

Representative Rudy asked if private businesses in that area currently have their tanks pumped. Mr. Gallagher responded affirmatively and said the waste for businesses in the area is being hauled to Millersburg, Kentucky.

Senator Carroll made a motion to approve the Fund B loan. The motion was seconded by Senator Buford and passed unanimously by roll call vote.

#### **KIA Fund B loans**

Ms. Williams said the fifth

loan request was a \$175,000 Fund B loan for the City of Beattyville in Lee County to replace deteriorating water lines. The loan term is 20 years with an interest rate of one percent. The loan is structured as 80 percent principal forgiveness.

In response to a question from Senator Carroll, Ms. Williams said the principal forgiveness is similar to that of a grant. KIA forgives 80 percent of the principal repayments for the borrower.

The sixth loan request was a \$250,000 Fund B loan for the McLean County Fiscal Court for the benefit of the North McLean County Water District to construct a new water line and master meter. The loan term is 20 years with an interest rate of two percent.

Representative Rudy made a motion to approve the two Fund B loans. The motion was seconded by Representative Wayne and passed unanimously by roll call vote.

#### **KIA Fund C Loan**

The seventh loan request was a \$621,000 Fund C loan for the Bracken County Water District to replace a 25-year-old water main from the pump house. The loan term is 20 years with an interest rate of three percent.

Representative Wayne made a motion to approve the Fund C loan. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

#### **KIA Fund F Loan**

The eighth loan request was a \$2,250,000 Fund F loan for the US 25 North Water Main Replacement Phase II and III project. The loan term is 20 years with an interest rate of two percent.

Representative Rudy made a motion to approve the Fund F loan. The motion was seconded by Senator Carpenter and passed unanimously by roll call vote.

#### **KIA Grants**

Ms. Williams indicated various coal and tobacco development grants authorized by the General Assembly were included in members' folders. No further committee action was needed.

#### **School Bond Issues**

Brett Antle, Deputy Director, OFM reported 10 new bond issues with SFCC debt service participation for Corbin Independent in Whitley County, Cumberland County, Fayette County, Glasgow Independent in Barren County, Grayson County, Nicholas County, Paris Independent in Bourbon County, Rockcastle County, Scott County, and Wayne County.

Representative Wayne made a motion to approve the 10 new bond issues with SFCC participation. The motion was seconded by Senator Carroll and passed unanimously by

roll call vote.

Senator Leeper said there were two new local school district bond issues with 100 percent local debt service for Glasgow Independent in Barren County and Paducah Independent in McCracken County.

With there being no further business, Senator Carroll made a motion to adjourn the meeting. The motion was seconded by Representative Glenn and the meeting adjourned at 1:50 p.m.

## **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

### **Minutes of the December Meeting**

December 14, 2010

#### **Call to Order and Roll Call**

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 14, 2010, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy Kerr, and Joey Pendleton, and Representatives Leslie Combs and Danny Ford.

Guests: Robert Brown, Mike Carr, Alicia Sneed, Education Professional Standards Board; Laura Ferguson, DeVon Hankins, Mark Johnson, Gary Morris, Jeff Mosley, Don Richardson, Lisa Swiger, Rose Caudle, Travis Powell, Don Speer, Finance and Administration Cabinet; Michael Burleson, Board of Pharmacy; Brian Bishop, Katherine King, Susan King, Robert Zena, Board of Dentistry; William Adcock, Jim Grawe, Margaret Hazlette, Board of Social Work; Karen Waldrop, Department of Fish and Wildlife; Sue Billings, Robert Stout, Clint Quarles, Department of Agriculture; Dan Ballard, Ann D'Angelo, Transportation Cabinet; Kevin Brown, Michael Miller, Kentucky Department of Education; D.J. Wasson, Department of Insurance; Patricia Cooksey, Marc A. Guilfoil, Mary Scollay, Susan Speckert, Timothy West, Kentucky Horse Racing Commission; Michael D. Bennett, Dawn Bellis, Michael D. Bennett; Department of Housing, Buildings and Construction; Paula Goff, I.J. Eneje, Janice Johnston, Ray Peters, Cabinet for Health and Family Services; Gabe Prewitt, Kentucky Harness Horsemen.

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

The Administrative Regulation Review Subcommittee met on Tuesday, December 14, 2010, and submits this report:

Administrative Regulations Re-

viewed by the Subcommittee:

EDUCATION PROFESSIONAL STANDARDS BOARD: Teaching Certificates

16 KAR 2:150. Probationary certificate for teachers of engineering and technology education. Mike Carr, director of certification, and Alicia Sneed, director of legal services, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Income Taxation: Income Tax; General Administration

103 KAR 15:180. Kentucky New Markets Development Program Tax Credit. Laura Ferguson, assistant general counsel; Jeff Mosley, general counsel; and Gary Morris, policy advisor, represented the office.

In response to a question by Senator Pendleton, Mr. Mosley stated that all stakeholder requests for changes to this administrative regulation had been made with the exception of a request that required a statutory change. The office intended to work on the statutory change during the 2011 Regular Session of the General Assembly and then amend the administrative regulation to conform.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Purchasing

200 KAR 5:400. Kentucky resident bidder reciprocal preference. Travis Powell, deputy general counsel, and Don Speer, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:165. Transfer of prescription information. Michael Burleson, executive director, represented the board.

Board of Dentistry: Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490. Katherine King, DMD and vice president; Susan M. King, DMD and secretary/treasurer; and Brian Bishop, executive director, represented the board.

In response to a question by Senator Pendleton, Mr. Bishop stated that the board had met with stakeholders and held ten (10) town-hall meetings pertaining to these administrative regulations. The board kept the latest versions of these administrative regulations available on its Web site and had informed licensees of the proposed changes through affiliated associations.

In response to questions by Co-Chair Combs, Mr. Bishop stated that the board would communicate directly with licensees to inform them of the proposed amendments. The administrative regulations were filed by the board as emergencies because the statutes were repealed and reenacted and the board did not realize the prior administrative regulations would stay in effect until repealed or amended by the board.

201 KAR 8:510 & E. Advisory opinions.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:520 & E. Fees and fines.

A motion was made and sec-

onded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend Section 4(5) to delete provisions for a fifty (50) dollar fee for a paper copy of the Dental Practice Act; (3) to amend Sections 5 and 6 to comply with the format requirements of KRS Chapter 13A; (4) to amend Section 3 to delete the registered dental assistant initial fee for IV access line registration, and (5) to amend Section 5 to: (a) clarify that fines may be agreed to by settlement agreement or as listed in this Section, rather than "in addition to"; (b) limit the fine for a licensee deficient on hours after a continuing education audit to \$200 per hour deficient, not to exceed \$5,000; (c) lower the fine for failure of a follow-up infection control inspection from \$1,000 to \$500; (d) change the time frame for a follow-up anesthesia and sedation facility that has failed a previous inspection from no sooner than twenty (20) to no sooner than thirty (30) days following the initial failed inspection; and (e) lower the fine for a follow-up anesthesia and sedation facility inspection after an initial inspection failure from \$2,500 to \$1,500. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:540 & E. Dental practices.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3(3) to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Social Work: Board

201 KAR 23:050. Renewal, termination, reinstatement of license. Jim Grawe, assistant attorney general; Margaret Hazlette, executive director; and William Adcock, board member, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "licensee"; (2) to amend Section 1(3) to specify that address changes shall be provided to the board in writing; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the

drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:221 & E. Waterfowl seasons and limits. Karen Waldrop, wildlife director, represented the department.

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands.

Wildlife

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area.

DEPARTMENT OF AGRICULTURE: Office of State Veterinarian: Division of Animal Health: Livestock Sanitation

302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky. Sue Billings, DVM, deputy state veterinarian; Robert Stout, DVM, state veterinarian; and Clint Quarles, staff attorney, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 12 to update the name of a form; and (2) to amend Sections 1 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

In response to a question by Senator Pendleton, Dr. Stout stated that there had been no reported cases of chronic wasting disease in Kentucky for wild or domesticated animals.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 9 for clarification, to insert citations, and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Vehicle Tax

601 KAR 9:140. Temporary registration plates. Dan Ballard, branch manager, and Ann D'Angelo, assistant general counsel, represented the division.

In response to a question by Senator Pendleton, Ms. D'Angelo stated that the division was making progress regarding discussions with stakeholders relating to 601 KAR 1:018 & E, special overweight or overdimensional permits.

EDUCATION AND WORKFORCE

DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Office of Instruction

704 KAR 3:303. Required core academic standards. Kevin Brown, general counsel, and Michael Miller, director, Division of Program Standards, represented the department.

704 KAR 3:305. Minimum requirements for high school graduation.

A motion was made and seconded to approve the following amendment: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, 5, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Division of Kentucky Access: Health Insurance Contracts

806 KAR 17:320. Kentucky Access requirements. D.J. Wasson, staff assistant, represented the division.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:009 & E. Jockeys and apprentices. Susan Speckert, general counsel, and Timothy West, assistant general counsel, represented the commission.

In response to questions by Co-Chair Combs, Ms. Speckert stated that the commission understood that emergency administrative regulations shall conform to KRS Chapter 13A. The commission met with the Kentucky Jockeys' Guild and with the Kentucky Horsemen's Benevolent and Protective Association, and those stakeholders were in agreement with the proposed amendments.

At the October 12, 2010, meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 15(4) to delete the new provisions that require disclosure of advertising agreement terms to the commission; (2) to amend the advertising request form, KHRC 009-001, in conformity; (3) to amend Section 14 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (4) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 14 to 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agree-

ment of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: (1) to amend Section 14(5) to: (a) delete the two (2) pound weight limit for safety vests; and (b) specify that a safety vest shall meet or exceed one (1) of the listed safety standards; and (2) to amend Section 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:026 & E. Racing associations.

At the October 12, 2010, meeting of the Administrative Regulation Review Subcommittee, a motion was made and seconded to approve the following amendments: (1) to amend Section 31 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 21, 28, 30, 31, 36, and 37 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Section 31 to: (a) specify that a safety vest shall meet or exceed one (1) of the listed safety standards; and (b) make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:130. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:220. Harness racing at county fairs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 12, 13, 15, 17, 21, and 24 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:260. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the

drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:170. Postrace sampling and testing procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, 4, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Electrical Inspectors

815 KAR 35:100. Electrical continuing education procedure. Michael D. Bennett, staff attorney, and Dawn Bellis, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to revise the forms incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Kentucky Early Intervention System

902 KAR 30:001 & E. Definitions. Paula Goff, Part C coordinator, represented the division.

In response to questions by Senator Givens, Ms. Goff stated that the federal statutes that authorize the First Steps program were revised in 2004. Kentucky had been in special circumstances with federal administrators until Kentucky's administrative regulations could be amended commensurate with the federal changes. Also, new technologies precipitated changes to the forms and processing requirements. The division was pleased with the new system, TOTS, which was more efficient than expected. The data management system tracked each child in First Steps from referral to discharge, enabled the division to track funding for the program and engage in meaningful quality assurance, and compiled information for reporting information, including data needed for Medicaid billing.

In response to a question by Co-Chair Tori, Ms. Goff stated that most children in the program were between eighteen (18) months and twenty (20) months of age at the time of referral and were in the program for an average of one (1) year and six (6) months. A smaller percentage of children were referred at birth due to medical condi-

tions identified at birth.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend the TITLE and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 1 to add definitions for "cabinet-approved criterion referenced instrument", "cabinet-approved screening protocol", "First Steps data management system", "Kentucky Early Childhood Data System", "Part C coordinator", and "record review team". Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:110 & E. Point of entry and service coordination.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:120 & E. Evaluation and eligibility.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 1 to establish the criteria for approved neonatal follow-up program teams and intensive level evaluation teams; (4) to amend Section 2 to specify the three (3) assessment instruments approved by the cabinet; and (5) to amend Section 4 to incorporate by reference the three approved assessment instruments and the First Steps Established Risk Condition List. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:130 & E. Assessment, service planning, and assistive technology.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO

and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 2 to specify that services shall be limited to one hour per day, rather than one hour per week; (5) to amend Section 3 to establish the requirements for assistive technology services, including the review process; and (6) to amend Section 4 to incorporate by reference the Individualized Family Service Plan. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

902 KAR 30:150 & E. Personnel qualification.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Section 1 to clearly establish the application requirements; and (5) to amend Section 2 to re-insert licensed psychologists, certified psychologists with autonomous functioning, and licensed psychological practitioners to the list of personnel who may provide services. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:160 & E. Covered services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to: (a) comply with the drafting and format requirements of KRS Chapter 13A; (b) specify which services may be provided without the child being present; and (c) add to the list of disciplines that provide early intervention professionals who are licensed psychologists, physicians, optometrists, and ophthalmologists. Without objection, and with agreement of the agency, the amendments

were approved.

902 KAR 30:180 & E. Procedural safeguards.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to amend Section 5 to incorporate by reference the First Steps Complaint Form and the Mediation/Due Process Request Form. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 30:200 & E. Coverage and payment for services.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 2 to reinsert licensed psychologists to the list of providers who shall be reimbursed for services; (4) to amend Section 3 to specify when early intervention family services authorized by KRS 200.654(7) may be provided without the child present; (5) to amend Section 6 to incorporate by reference the record review supporting documentation; and (6) to amend Section 2 to change the reimbursement paid to licensed psychological associates or certified psychologists for services by increasing from: (a) \$46 to \$61 the reimbursement for services provided in an office or center-based site; and (b) \$70 to \$81 the reimbursement for services provided in a home or community site. Without objection, and with agreement of the agency, the amendments were approved.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Behavioral Health: Mental Health

908 KAR 2:230. Kentucky family peer support specialist. I.J. Eneje, internal policy analyst, and Janice Johnston, administrator, Behavioral Health Program, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; NECESSITY, FUNCTION, AND CONFORMITY paragraphs; Sections 1 through 7; and Section 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the

amendments were approved.

The following administrative regulations were deferred to the January 11, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:225. General compliance with federal tax laws.

102 KAR 1:230. Limitations on benefits.

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:500 & E. Board organization.

201 KAR 8:530 & E. Licensure of dentists.

201 KAR 8:560 & E. Licensure of dental hygienists.

Board of Licensure for Private Investigators: Board

201 KAR 41:100. Verification of 240 hour employees.

TRANSPORTATION CABINET: Department of Vehicle Regulation:

Division of Motor Carriers: Division 601 KAR 1:018 & E. Special overweight or overdimensional permits.

LABOR CABINET: Department of Workers' Claims: Department

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

803 KAR 25:091 & E. Workers' compensation hospital fee schedule.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission:

Thoroughbred Racing 810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing 811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care 908 KAR 3:050. Per diem rates.

Ray Peters, program administrator, represented the division.

In response to a question by Senator Kerr, Mr. Peters stated that the division needed to verify the rates in the proposed amendment before continuing with Subcommittee consideration of this administrative regulation. The division requested deferral of this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the January 11, 2011 meeting of the Subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

The subcommittee adjourned at 1:50 p.m. until January 11, 2011.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the January Meeting

January 11, 2011

#### Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 11, 2011, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Leslie Combs, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Senators David Givens, Alice Forgy Kerr, and Joey Pendleton; Representatives Leslie Combs, Co-Chair; Representatives Robert R. Dameron, Danny Ford, and Jimmie Lee.

Guests: Representative Johnny Bell; Robert Brown, Alicia Sneed, Education Professional Standards Board; Emily Dennis, Ellen Gotshall, Registry of Election Finance; Beau Barnes, Kentucky Teachers' Retirement System; Jim Grawe, Board of Accountancy; Tom Nieman, Billy Van Pelt, State Board of Examiners and Registration of Landscape Architects; Jay Davidson, Margaret Hazlette, Board of Social Work; Mark Brengelman, David Garr, Board of Examiners of Psychology; Angela Evans, Board of Private Investigators; Denise Logsdon, Michael West, Board of Licensure for Massage Therapy; Mary Dickey, Chris Fitzpatrick, Anthony Hatton, Cassandra Jobe, Division of Waste Management; Charles Jevin, Marylee Underwood, Heather Wagers, Kentucky State Police; Ann D'Angelo, Judy Taylor, Rick Taylor, Tom Zawacki, Transportation Cabinet; Clay Lamb, James Maxson,

Education and Workforce Development Cabinet; Lucretia Johnson, Dwight Lovan, Charles Lowthers, Kelly Tharpe, Department of Workers' Claims; Sandy Chapman, Bill Nold, Robin Coombs, Frank Goins, Michael Staley, DJ Wasson, Department of Insurance; Patricia Cooksey, Marc A. Guilfoil, Mary Scollay, Timothy West, Kentucky Horse Racing Commission; Dawn Bellis, George Mann, Timothy House, Housing, Buildings and Construction; Mary Begley, Stephanie Brammer Barnes, Glenn Bryant, Ray Peters, Cabinet for Health and Family Services.

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

The Administrative Regulation Review Subcommittee met on Tuesday, January 11, 2011 and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

**EDUCATION PROFESSIONAL STANDARDS BOARD:** Administrative Certificates

16 KAR 3:050. Professional certificate for instructional leadership - school principal, all grades. Robert Brown, director, Division of Professional Learning and Assessment, and Alicia Sneed, director, Division of Legal Services, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 to comply with the drafting requirements of KRS 13A.222. Without objection, and with agreement of the agency, the amendments were approved.

**DEPARTMENT OF STATE:** Kentucky Registry of Election Finance: Reports and Forms

32 KAR 1:030 & E. Election finance statement forms; campaign contributions or expenditures in excess of \$3,000. Emily Dennis, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 1 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

32 KAR 1:190 & E. Forms for gubernatorial slates of candidates and related filers.

**FINANCE AND ADMINISTRATION CABINET:** Kentucky Teachers' Retirement System: General Rules

102 KAR 1:225. General compliance with federal tax laws. Beau Barnes, deputy executive secretary and general counsel, represented the

system.

102 KAR 1:230. Limitations on benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to make technical corrections; (2) to amend Section 1(6) to delete an unnecessary term; and (3) to amend Section 2(6)(a)2.b. to state that limitation years after December 31, 2008, rather than December 31, 2009, shall apply the mortality tables described in 26 C.F.R. 417(e)(3)(B). Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET:** State Board of Accountancy: Board

201 KAR 1:065. Individual license renewal and fee. James Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend the forms incorporated by reference to align with the requirements of the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 1:140. Procedures for the reinstatement and reissuance of a license.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend the form incorporated by reference to align with the requirements of the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Board of Examiners and Registra-

tion of Landscape Architects: Board  
201 KAR 10:050. Fees. Tom Nie-  
man, president, and Billy Van Pelt,  
member, represented the board.

In response to questions by Representative Lee, Mr. Van Pelt stated that the board had support from the membership and from trade associations. The budget resources decreased significantly over the past few years, and the fee was last increased in 2002. 250 members would be affected to generate \$7,500.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a punctuation error; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Social Work:** Board  
201 KAR 23:020. Fees. Jay David-  
son, vice chair; James Grawe, assistant  
attorney general; and Margaret Ha-  
zelett, executive director, represented  
the board.

In response to questions by Representative Lee, Ms. Hazelett stated that the board had notified each licensee and association that fees were being increased. Fees had not been increased since 1997.

In response to a question by Senator Givens, Ms. Hazelett stated that only initial applicants for licensure were required to take a licensure examination. Applicants for renewal did not take the licensure examination.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to: (1) require examination fees to be paid to the board as required by statute; and (2) establish that the examination fee shall be the amount charged by the examining entity, the Association of Social Work Boards. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7(2) to clarify the supervision requirements; and (2) to amend Sections 1, 2, 3, 4, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 23:075. Continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 4, 5, 7, 9, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Examiners of Psychologists:** Board

201 KAR 26:115. Definition of psychological testing. David Garr, acting executive director, Division of Occupations and Professions, and Mark Brengelman, assistant attorney general, represented the board.

In response to a question by Senator Givens, Mr. Brengelman stated that these administrative regulations were being amended for consistency with the governing statutes, which had also been revised.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:121. Scope of practice and dual credentialing.

201 KAR 26:125. Health service provider designation.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 3 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:130. Complaint procedure.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; and (2) to amend Section 2 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

A motion was made and seconded to approve the following

amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:171. Requirements for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 5 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:175. Continuing education.

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to make technical corrections and to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:190. Requirements for supervised professional experience.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:200. Definitions of terms used by the Board of Examiners of Psychologists for meeting educational requirements for licensure as a licensed psychologist.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as

required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:215. Nonresident status.

201 KAR 26:230. Examinations. A motion was made and seconded to approve the following amendment: to amend Section 3 to clarify board options. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 26:270. Change of license status.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

201 KAR 26:310. Telehealth and telepsychology.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Private Investigators: Board

201 KAR 41:100. Verification of 240 hour employees. Angela Evans, assistant attorney general, and David Garr, acting executive director, Division of Occupations and Professions, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to correct a punctuation error; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 6 to: (a) clearly establish the requirements for employee registration, quarterly reports, notification of maximum hours, and renewal; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to amend Section 6 to incorporate by reference a revised form; and (5) to amend the form incorporated by reference to conform to the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Massage Therapy: Board

201 KAR 42:010. Goals for massage therapy sessions. David Garr, acting executive director, Division of

Occupations and Professions; Denise Logsdon, secretary; and Michael West, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:020. Fees.

In response to questions by Representative Damron, Mr. West stated that there was not a fee increase, but that he was unsure if the fee would be refundable for an applicant who did not obtain a license. There had been three (3) applicants who did not obtain licensure after application.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:030. Licensee's change of name, home address, or place of business.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Section 2 to make a technical correction. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:035. Application process, exam, and curriculum requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:040. Renewal.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO

and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:050. Complaint procedure and disciplinary action.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5 and 7 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:060. Code of ethics, and standards of practice for massage therapists.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:070. Endorsement.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) revises material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:080. Programs of massage therapy instruction.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 1 through 4 and 6 to comply with the drafting and formatting re-

quirements of KRS Chapter 13A; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 42:110. Continuing education requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3 through 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**ENERGY AND ENVIRONMENT CABINET:** Department for Environmental Protection: Division of Waste Management: Solid Waste Planning

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration. Chris Fitzpatrick, branch manager, Recycling Branch, and Tony Hatton, director, Division of Waste Management, represented the division.

In response to questions by Senator Bowen, Mr. Hatton stated that funding was allotted prior to a dump cleanup because sometimes local governments did not have existing funds to begin the clean up. Mr. Fitzpatrick stated that inspections were performed and receipts required to ensure that funding was spent for the original purpose. Repayment was required for inappropriate expenditures, and all clean up had to comply with the administrative regulation.

**JUSTICE AND PUBLIC SAFETY CABINET:** Department of State Police: Medical Examiner Protocols

502 KAR 12:010. Sexual assault forensic-medical examination protocol. Charles Geveden, deputy secretary, and Heather Wagers, staff attorney, represented the department. Mary Lee Underwood, staff attorney, Kentucky Association of Sexual Assault Programs, Inc., appeared in support of this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET:** Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:018 & E. Special overweight or overdimensional permits. Ann D'Angelo, assistant general counsel; Rick Taylor, deputy commissioner; and Tom Zawacki, com-

missioner, represented the division. Judy Taylor, Lexington-Fayette Urban County Government and Commerce Lexington, appeared in support of this administrative regulation.

In response to a question by Co-Chair Combs, Ms. D'Angelo stated that this administrative regulation made technical changes, reorganized requirements, and exempted Fayette County from certain rush-hour prohibitions because the Fayette County section of the interstate system involved bypassed city activity.

Senator Pendleton thanked the division for further amending this administrative regulation.

In response to a question by Representative Damron, Ms. D'Angelo stated that Fayette County had petitioned the division to establish the rush-hour prohibition exemption. Ms. Taylor affirmed that Fayette County had petitioned the division to establish the rush-hour prohibition exemption.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and the RELATES TO paragraph and Sections 1, 2, 4, 5, 7, 8, and 11 through 22 to make technical corrections; (2) to amend Section 3 to delete steering axle requirements for 20,000 pounds; (3) to amend Section 10 to delete requirements pertaining to bulldozers and front end loaders; (4) to revert pilot and escort requirements to the previous version of this administrative regulation before the emergency amendment; (5) to amend Sections 1 and 13 to delete requirements pertaining to sealed, containerized, ocean-going cargo units; and (6) to amend Section 19 to revert inclement weather provisions to those in the previous version of this administrative regulation before this emergency amendment. Without objection, and with agreement of the agency, the amendments were approved.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:** Department of Workforce Investment: Office of Employment Training: Employment Services

787 KAR 2:020. Confidentiality of records of the Office of Employment and Training. Clay Lamb, staff attorney, and James Maxson, policy advisor and attorney, represented the office.

In response to a question by Senator Givens, Mr. Maxson stated that H-2A and H-2B records were subject to open records requests and were not confidential unless the subject matter was specifically exempted in accordance with open records law.

In response to questions by Representative Bell, Mr. Maxson stated that various requests had been made from different parties for H-2A and H-2B records, including employer and

employee records. Legal Aid Services frequently requested these records.

**LABOR CABINET:** Department of Workers' Claims: Department

803 KAR 25:089. Workers' compensation medical fee schedule for physicians. Thomas Dockter, staff attorney; Dwight Lovan, commissioner; and Charles E. Lowther, general counsel, represented the department.

803 KAR 25:091 & E. Workers' compensation hospital fee schedule.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 5, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET:** Department of Insurance: Division of Agent Licensing: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:220. Continuing education. Sandy Chapman, acting director, represented the division.

**Health and Life Division: Trade Practices and Frauds**

806 KAR 12:150. Annuity disclosures. William Nold, director, represented the division.

806 KAR 12:170. Life insurance disclosures.

**Property and Casualty Division: Rates and Rating Organizations**

806 KAR 13:120. Workers' Compensation deductible policies. Robin Coombs, assistant director; Frank Goins, director; and Michael Staley, policy specialist, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Mine Subsidence Insurance**  
806 KAR 44:010. Notification of qualified locations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:110 & E. Out-of-

competition testing. Patricia Cooksey, director of public relations; Mary Scollay, DVM, Equine Medical Director; and Timothy West, assistant general counsel, represented the commission.

In response to a question by Senator Pendleton, Ms. Cooksey stated that she supported these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Harness Racing**  
811 KAR 1:240 & E. Out-of-competition testing.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Quarter Horse, Appaloosa and Arabian Racing**

811 KAR 2:150 & E. Out-of-competition testing.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3(2) to clarify that a horse can only be designated for testing if it meets the specified criteria; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, and 6 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code**

815 KAR 7:120. Kentucky building code. Dawn M. Bellis, general

counsel; Timothy R. House, director of plumbing and acting director of HVAC; and George Mann, deputy commissioner, represented the division.

In response to a question by Representative Damron, Ms. Bellis stated that public comments were received from stakeholders during the public comment period. The comments concerned the original provision that a permit holder would bear the responsibility of notifying the owner of carbon monoxide requirements. The division amended that requirement in response to comments so that the permitting authority would bear the responsibility of notifying the owner.

In response to a question by Representative Lee, Mr. Mann stated that the carbon monoxide detectors were only required for new construction if the construction was to contain fuel-fired equipment or if there was to be an attached garage. A new construction that used only electricity would not be required to have the carbon monoxide detectors.

815 KAR 7:125. Kentucky residential code.

Division of Plumbing: Plumbing  
815 KAR 20:034. Requirements for approval of continuing education courses and providers.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:410 & E. Specialty intermediate care clinics. Mary Begley, inspector general, represented the division.

Representative Bell stated that, the average cost for a patient at Oakwood was approximately \$370,000 per year. An administrative regulation that provided for the transfer of some patients to community living should result in cost savings, but the division had stated in the REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT that it did not. Caregivers who assisted those transferred to community living were not reimbursed by the state at the same \$370,000 per year as those at Oakwood. Representative Bell requested that the division consider ways to save the state money and to help home-care providers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 2 to correct statutory citations; and (2) to amend Section 5 to correct numbering; and

(4) to amend Sections 4, 5, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Mental Health and Mental Retardation Services: Division of Administration and Financial Management: Institutional Care

908 KAR 3:050. Per diem rates. Glenn Bryant, assistant director, and Ray Peters, program administrator, represented the division.

At the December 14, 2010, meeting of the Administrative Regulation Review Subcommittee a motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to approve the following amendments: to amend Section 1(1)(b) to decrease the per diem rates for four (4) facilities, including: (1) Central State Hospital, from \$685 to \$660; (2) Western State Hospital, from \$720 to \$710; (3) Western State Nursing Facility, from \$350 to \$345; and (4) Eastern State Hospital, from \$445 to \$440. Without objection, and with agreement of the agency, the amendments were approved.

Other Business:

Co-Chair Combs introduced Senator Joe Bowen, who was appointed to the Subcommittee to fill the Senate vacancy. Senator Pendleton made a motion, seconded by Senator Kerr, that Senator Bowen be nominated for Senate Co-Chair. Senator Bowen accepted the nomination. Senator Pendleton made a motion, seconded by Senator Kerr, to end nominations and to elect Senator Bowen by acclimation. The motion passed and Senator Bowen was elected as Senate Co-Chair of the Subcommittee.

Co-Chair Combs stated that she was resigning as Co-Chair and as a member of the Subcommittee after the meeting. She introduced Rep. Johnny Bell, who was in attendance for today's meeting. A motion was made and seconded to approve a resolution honoring Co-Chair Combs for her outstanding work while serving on the Administrative Regulation Review Subcommittee. The resolution was unanimously approved.

The following administrative regulations were deferred to the February 14, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

PUBLIC PROTECTION CABINET: Crime Victims Compensation Board: Sexual Assault Examinations Program

107 KAR 2:010. Payment schedule for sexual assault examinations.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:500 & E. Board organization.

201 KAR 8:530 & E. Licensure of dentists.

201 KAR 8:560 & E. Licensure of dental hygienists.

JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Policy: Office

500 KAR 20:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) start-up funding for local boards.

500 KAR 20:020. Kentucky agency for substance abuse policy on-going funding for local bands and reporting requirements.

Parole Board: Board

501 KAR 1:030. Determining parole eligibility.

501 KAR 1:080. Parole board policies and procedures.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:101. Proof of liability and cargo insurance.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:060 & E. Timetable for submission of certificate of need applications.

The Subcommittee adjourned at 2 p.m. until February 14, 2011.

**ADMINISTRATIVE  
REGULATION REVIEW  
SUBCOMMITTEE  
Minutes of the February Meeting**

February 14, 2011

### **Call to Order and Roll Call**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 14, 2011, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Joe Bowen, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Senators David Givens, and Joey Pendleton; Representatives Johnny Bell, Robert R. Damron, Danny Ford, and Jimmie Lee.

Guests: Becky Gilpatrick, Melissa Justice, Kentucky Higher Education Assistance Authority; Lindsay Crawford, Virginia Woodward, Crime Victims Compensation Board; Nathan Goldman, Board of Nursing; Margaret Everson, Benji Kinman, Mark Mangot, Karen Waldrop, Department of Fish and Wildlife; John Cummings, Verman Winburn, Parole Board; Ann D'Angelo, Godwin Onodu, Rick Taylor, Transportation Cabinet; Jill Mitchell, Department of Insurance; Debbie Garrison, Ron Horseman, Rosie Miklavcic, Kathy Fowler, Lewis Ramsey, Department for Public Health; Stuart Owen, Department for Medicaid Services; Virginia Carrington, Elizabeth Caywood, Shirley Eldridge, Elizabeth Fiehler, Juanita Shackelford, Cabinet for Health and Family Services; and Winnie Hepler, Conservationist.

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

The Administrative Regulation Review Subcommittee met on Monday, February 14, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. Becky Gilpatrick, branch manager, Student Aid Branch, and Melissa Justice, senior associate counsel, represented the division.

Authority

11 KAR 4:080. Student aid applications.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 2 and the form incorporated by reference to update the title of the form to reflect its intended use. Without objection, and with agreement of the agency, the amendments were approved.

Coal County Scholarship Pro-



gram

11 KAR 19:010. Coal County Scholarship Program for Pharmacy Students.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 19:020. Service cancellation and repayment of Coal County pharmacy scholarship.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2, 3, 4, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

11 KAR 19:030. Deferment of repayment of Coal County Scholarships for pharmacy students.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Crime Victims Compensation Board: Sexual Assault Examinations Program

107 KAR 2:010. Payment schedule for sexual assault examinations. Lindsay Crawford, policy advisor, and Virginia Woodward, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend Section 1 to add definitions; (3) to amend Section 3 to

correct the reimbursement amounts and to clarify the reimbursement process; (4) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (5) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (6) to amend Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards. Nathan Goldman, general counsel, represented the board.

TOURISM, ARTS AND HERITAGE: Department of Fish and Wildlife Resources: Game

301 KAR 2:122. Seasons, methods, and limits for small game. Margaret Everson, general counsel; Mark Mangeot, legislative liaison; and Karen Waldrop, Wildlife Director, represented the department. Winnie Hepler, conservationist, appeared in opposition to 301 KAR 3:012 and 3:022.

In response to a question by Representative Damron, Ms. Waldrop stated that biologists investigated requests by hunters to lengthen the squirrel-hunting season. Biologists determined that lengthening the season should not have negative biological effects.

In response to a question by Co-Chair Bell, Ms. Waldrop stated that changes to prohibitions against hunters carrying certain ammunition or firearms were for compliance with the right to bear arms. Hunters were not prohibited from carrying certain ammunition or firearms, but were still subject to requirements pertaining to methods of taking wildlife. For example, a hunter hunting deer during archery season may carry a firearm but shall not harvest a deer with a weapon other than the established archery equipment.

Hunting and Fishing  
301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

In response to a question by Representative Damron, Ms. Waldrop stated that the department had meetings with stakeholder groups in the Otter Creek area.

Local landowners were apprised of the changes, and the department had not received complaints from the stakeholders.

Winnie Hepler, conservationist from Louisville, stated that Otter Creek Park should not be opened to activities that endanger wildlife in

the park. The Department of Fish and Wildlife Resources was unduly influenced by hunters because the funding came from those interests. The department should be funded from the General Fund so that conservationists would have balanced influence with the department. She stated that hunting was a cruel and unnecessary activity. The department did not have the moral right to open Otter Creek to hunting. The wildlife inhabitants of Otter Creek were unprepared for the changes because they had been protected for decades. Otters had only recently returned to the area. Whooping crane hunting led to near extinction of the species. Ms. Hepler stated that the killing of wildlife in Otter Creek Park should be limited to at least fifty (50) percent of what was allowed by the administrative regulations.

In response to a question by Senator Pendleton, Ms. Hepler and Ms. Waldrop stated that Otter Creek Park consisted of 2,200 acres.

Senator Pendleton stated that overpopulation in parks sometimes led to wildlife problems and violence against a species. Squirrels were known to cause property damage.

Ms. Everson stated that the original deed permitted recreational hunting in Otter Creek Park. The department provided an opportunity for a public hearing and was available to accept written public comments but did not receive any.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 3:022. License, tag, and permit fees.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board: Board

501 KAR 1:030. Determining parole eligibility. John Cummings, counsel, Office of Legal Services, Kentucky Parole Board, and Verman Winburn, chair, Kentucky Parole Board, represented the board.

In response to a question by Co-Chair Bell, Mr. Winburn stated that the omnibus bill being promoted by the Pugh Foundation, if approved, would not substantively impact these administrative regulations. Mr. Cummings stated that the omnibus bill would not substantively impact these administrative regulations and

that the board provided flexibility in certain portions of these administrative regulations in anticipation of the possibility of changes resulting from approval of the omnibus bill. There may be a need for new administrative regulations if the omnibus bill was approved, but the approval would not require amendments to these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to delete Sections 3(6), 4, 5, and 6 because those provisions are more appropriately included in 501 KAR 1:080; and (2) to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 1:080. Parole board policies and procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1(1) and the material incorporated by reference to delete unnecessary policies, correct citations, clarify provisions and policy titles, delete provisions in conflict with other statutes and administrative regulations, relocate provisions from other board administrative regulations, and include provisions on final disposition hearings and board deadlines. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Division

601 KAR 1:101. Proof of liability and cargo insurance. Ann D'Angelo, assistant general counsel; Godwin Onodu, assistant director; and Rick Taylor, deputy commissioner, represented the division.

Senator Pendleton thanked the division for working diligently to assist with developing 2011 Senate Bill 79 and 601 KAR 1:018 & E, the administrative regulation pertaining to overweight or overdimensional vehicle loads.

Division of Motor Vehicle Licensing: Division

601 KAR 9:210. Continuation of title liens.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Division

806 KAR 17:460. Requirements for autism benefits for children. Jill Mitchell, branch manager, Health and Life Division, represented the division.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Administration and Financial Management: Local Health Departments

902 KAR 8:040. Definition of terms in 902 KAR Chapter 8. Ron Horseman, branch manager, and Rosie Miklavcic, director, Division of Administration and Financial Management, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend the RELATES TO paragraph to add a citation; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:060. Classification and compensation plans for local health departments.

In response to questions by Representative Ford, Mr. Horseman stated that the administrative regulation provided more flexibility pertaining to salary issues for employees of local health departments. The administrative regulation established a ten (10) percent maximum cap for salary increases resulting from a reclassification. Ms. Miklavcic stated that local health departments developed their budgets independently.

A motion was made and seconded to approve the following amendments: (1) to delete Sections 1 and 2 because they repeated statutory provisions in violation of KRS 13A.120(2); (2) to amend the TITLE for clarity; (3) to amend the RELATES TO paragraph to correct statutory citations; (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (5) to amend Sections 1, 2, 3, 6, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7(1) to incorporate by reference the updated application form; and (2) to amend Sections 1, 3, 4, 6, and 7 to comply

with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:080. Initial appointment, probationary period, layoff, performance evaluation, and the resignations of employees of local health departments.

A motion was made and seconded to approve the following amendments: to amend Sections 6, 7, 9, 11, 12, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:090. Promotion, transfer, and demotion of local health departments.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:096. Local health department employee performance evaluation program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend Sections 1, 3, 4, 5, 8, 9, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

In response to questions by Representative Ford, Mr. Horseman stated that the administrative regulation was amended to clarify requirements pertaining to carrying concealed weapons with a permit. The amendment revised the language to comply with statutory provisions pertaining to carrying concealed weapons with a permit.

A motion was made and seconded to approve the following amendments: (1) to amend Section 4(2)(c) to comply with statutory provisions regarding the carrying of concealed weapons; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:110. Disciplinary appeal process applicable for local health

department employees.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6, 9, 10, 11, 13, 18, and 19 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:140. Appointment of health officer or a health department director of a local health department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Public Health: Division of Public Health Protection and Safety: Milk and Milk Products

902 KAR 50:110. Grade A milk and milk products standards. Kathy Fowler, interim director, Division of Public Health Protection and Safety, and Lewis Ramsey, manager, Milk and Milk Products Safety, represented the department.

In response to questions by Senator Pendleton, Mr. Ramsey stated that this administrative regulation applied only to interstate raw milk sales, not to raw milk farm-direct sales. This administrative regulation was amended to comply with federal requirements. Most farm-direct raw milk sales had removed advertisements for raw milk; however, it was not likely that they had all ceased selling farm-direct raw milk.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CON-

FORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Medical Management: Payment and Services

907 KAR 3:215 & E. Tobacco cessation coverage and reimbursement. Stuart Owen, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 10 to incorporate by reference the updated Tobacco Cessation Referral Form; (2) to amend the form incorporated by reference to list on the form the support programs approved for the tobacco cessation program; (3) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1, 3, 4, 5, 8, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Aging and Independent Living: Aging Services

910 KAR 1:190. Nutrition program for older persons. Shirley Eldridge, internal policy analyst III; Elizabeth Fiehler, dietician consultant; and Juanita Shackelford, internal policy analyst III, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1, 2, 4 through 11, 13, and 14 to comply with: (a) the drafting and formatting requirements of KRS Chapter 13A; and (b) applicable federal law provisions; and (4) to create a new Section 15 to incorporate by reference the Meal Planning Nutrient Requirements and the Dietary Guidelines for Americans. Without objection, and with agreement of the agency, the amendments were approved.

910 KAR 1:200. Senior community service employment program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO

and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 13 to comply with: (a) the drafting and formatting requirements of KRS Chapter 13A; and (b) applicable federal law provisions. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). Elizabeth Caywood, internal policy analyst IV, and Virginia Carrington, branch manager, represented the division.

In response to questions by Representative Ford, Ms. Carrington stated that this administrative regulation revised provisions pertaining to benefit allowances based on who the applicant was. Home school recipients were included as potential beneficiaries; however, verification was required.

In response to questions by Senator Givens, Ms. Carrington stated that the requirements in this administrative regulation proceeded from the previous program. TANF was a fairly flexible program, and the division had options to establish state-specific requirements for benefit retention. If a beneficiary refused to work, the beneficiary could not reapply for benefits for thirty (30) days.

921 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; (2) to amend Section 3(3) to state that the following shall not be included in the \$2,000 resource limit: (a) a federal tax refund or advance payment of a refundable federal tax credit for a period of twelve (12) months from receipt; or (b) after December 31, 2012, earned income tax credit payment in the month of receipt and the following month; and (3) to amend Section 5(2) to state that the following income shall be excluded in the gross income test: (a) a federal tax refund or advance payment of a refundable federal tax credit; or (b) after December 31, 2012, the advance payment or refund of earned income tax credit. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 2:017. Kentucky works

supportive services.

921 KAR 2:370. Technical requirements for Kentucky Works.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to put definitions in alphabetical order; (2) to amend Section 2 for clarity; and (3) to amend the KW-202 form for minor corrections. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 2:500. Family alternatives diversion (FAD).

Food Stamps

921 KAR 3:010. Definitions.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:025. Technical requirements.

Other Business

Staff introduced Representative Johnny Bell who was appointed to the Subcommittee to fill the House vacancy. Representative Lee made a motion, seconded by Representative Damron, that Representative Bell be nominated for House Co-Chair. Representative Bell accepted the nomination. Representative Damron made a motion, seconded by Representative Lee, to end House Co-Chair nominations. Representative Bell was unanimously endorsed as House Co-Chair of the Subcommittee.

The following administrative regulations were deferred to the March 8, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:571. Registration of dental assistants.

201 KAR 8:581. Charity dental practices.

JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Policy: Office

500 KAR 20:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) start-up funding for local boards.

500 KAR 20:020. Kentucky agency for substance abuse policy on-going funding for local bands and reporting requirements.

Parole Board: Board

501 KAR 1:070 & E. Conducting sex offender conditional discharge revocation hearings.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:060 & E. Timetable for submission of Certificate of Need applications.

Department for Public Health: Division of Public Health Protection and Safety: Radiology

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

902 KAR 100:021. Disposal of radioactive material.

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

902 KAR 100:070. Transportation of radioactive material.

902 KAR 100:072. Use of radionuclides in the health arts.

902 KAR 100:165. Notices, reports and instructions to employees.

Department for Community Based Services: Division of Family Support: Food Stamps

921 KAR 3:035. Certification process.

The Subcommittee adjourned at 2:10 p.m. until March 8, 2011.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the March Meeting March 8, 2011

#### Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 8, 2011, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Johnny Bell, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; Representative Johnny Bell, Co-Chair; Senators David Givens, Alice Forgy Kerr, and Joey Pendleton.

Guests: Amy Andrews, Amy Barker, Van Ingram, Heather Wainwright, Office of Drug Control Policy; Robert Brown, Alicia Sneed, Education Professional Standards Board; Beau Barnes, Kentucky Teachers' Retirement System; Michael Burlison, Board

of Pharmacy; Brian Bishop, Board of Dentistry; Nathan Goldman, Board of Nursing; Larry Disney, Jim Grawe; Kentucky Real Estate Appraisers Board; Mark Cramer, Margaret Everson, Mark Mangeot, Karen Waldrop, Department of Fish and Wildlife; John Cummings, Verman Winburn, Parole Board; Mark Guilfoil, Greg Lamb, Timothy West, Kentucky Horse Racing Commission; Carrie Banahan, Mary Begley, Allen J. Brenzel, Virginia Carrington, Elizabeth Caywood, Stephanie Brammer-Barnes, Bob Nowell, Stuart Owen, Cabinet for Health and Family Services; Bill Doll, Kentucky Medical Association; Michelle Sanborn and Caitlin Mudd, Brooklawn Child and Family Services.

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

The Administrative Regulation Review Subcommittee met on Tuesday, March 8, 2011, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Control Policy: Kentucky Agency for Substance Abuse Policy

10 KAR 7:011. Repeal of 10 KAR 7:010, 10 KAR 7:020. Amy Barker, assistant general counsel, and Van Ingram, executive director, represented the agency.

EDUCATION PROFESSIONAL STANDARDS BOARD: Educator Preparation

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs. Robert Brown, director, Division of Professional Learning and Assessment, and Alicia A. Sneed, director, Division of Legal Services, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 26 to correct a statutory citation; and (2) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 12, 13, 17, 20, 21, 22, 23, and 27 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION

TION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:175. Investment policies. Beau Barnes, deputy executive secretary of operations and general counsel, represented the system.

In response to questions by Senator Givens, Mr. Barnes stated that the allowable percentage of investment in foreign stock trust funds was being raised from fifteen (15) to thirty (30) percent, the allowable percentage of investment in other investment categories was being raised from ten (10) to fifteen (15) percent, and investment parameters for bonds were being lowered from the top two (2) average ratings to the top four (4) average ratings. Lowering the bond rating requirements added flexibility to the bond portfolio and allowed for investment in more corporate, rather than primarily government, bonds. The changes were initiated by Kentucky, not by federal revisions, to address recent market changes.

In response to questions by Co-Chair Bowen, Mr. Barnes stated that internal and external finance managers recommended the amendments. Stakeholders had not expressed opposition to the changes, and the changes were commensurate with those of other pension programs this size in other states.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to provide criteria for board approval for investing in bullion, stamps, rare coins, or collectibles. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:015. Continuing education. Michael Bursleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 5 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry: Board

201 KAR 8:571. Registration of dental assistants. Brian Bishop, executive director, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make formatting changes; (2) to amend the STATUTORY AUTHORITY paragraph to insert a statutory citation; and (3) to amend Sections 2 through 6 and 13 to comply with the drafting

and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:581. Charity dental practices.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. Nathan Goldman, general counsel, represented the board.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:050. Examination and experience requirement. Larry Disney, executive director, and James J. Grawe, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:070. Grievances.

201 KAR 30:125. Continuing education for appraisers.

201 KAR 30:150. Education provider approval.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 30:190. Educational requirements for certification.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:132. Elk depredation permits, landowner cooperators permits, and quota hunts. Margaret Everson, assistant attorney general; Mark Mangeot, legislative liaison; and Karen Waldrip, wildlife division director, represented the department.

JUSTICE AND PUBLIC SAFETY CABINET: Office of Drug Policy: Office

500 KAR 20:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) start-up funding for local boards. Amy Barker, assistant general counsel, and Van Ingram, executive director, represented the office.

500 KAR 20:020. Kentucky agency for substance abuse policy on-going funding for local bands and reporting requirements.

Parole Board: Board

501 KAR 1:070 & E. Conducting sex offender conditional discharge revocation hearings. John Cummings, staff attorney, and Verman Winburn, chairman, represented the board.

In response to questions by Co-Chair Bell, Mr. Cummings stated that a violation of terms of post-incarceration supervision subjected the violator to the possibility of being re-incarcerated. Because sex offender sentences tended to be shorter prison sentences, this administrative regulation insured treatment after re-entry into society.

In response to a question by Co-Chair Bowen, Mr. Winburn stated that most treatment facilities were in metropolitan areas, and it potentially could be a burden to arrange transportation to the treatment facility. Mr. Cummings stated that the Department of Corrections oversaw the location of the various programs.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 and 2 to: (a) conform to HB 463 from this session of the General Assembly; (b) clarify board procedures for preliminary revocation hearings, warrants, and final revocation hearings; and (c) include provisions on reconsideration and modification of revocation decisions; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:012. Horses. Greg Lamb, supervisor of pari-mutuel wagering, and Tim West, assistant general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend Section 14 to incorporate by reference the standard governing microchips used for horse identification; and (2) to amend Sections 2, 6, 11, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:027. Entries, subscriptions, and declarations.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3, 5, 7, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:140. Calculation of payouts and distribution of pools.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: State Health Plan

900 KAR 5:020 & E. State health plan for facilities and services. Carrie Banahan, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to correct the title and edition date of the material incorporated by reference; and (2) to amend the material incorporated by reference to: (a) correct typographical errors; and (b) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Certificate of Need

900 KAR 6:060 & E. Timetable for submission of Certificate of Need applications.

900 KAR 6:125. Certificate of Need annual surveys, and registration requirements for new Magnetic Resonance Imaging units.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6 through 8, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:320 & E. Level I and Level II psychiatric residential treatment facility operation and services. Mary Begley, inspector general, and Allen J. Brenzel, M.D., medical director, Department for Behavioral Health, Development and Intellectual Disabilities, represented the division. Caitlin Mudd, staff, Brooklawn Child and Family Services, and Michelle Sanborn, interim president, Children's Alliance, appeared in support of these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 through 26 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 20:330 & E. Psychiatric residential treatment facilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 through 6, 9, 13, 14, 15, 17, and 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Information Systems: Electronic Health Record Incentive Payments

907 KAR 6:005 & E. Electronic health record incentive payments. Bob Nowell, director, information services, and Stuart Owen, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 5, 7, 8, 12, 13, 14, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 13 to specify the timelines for holding a dispute resolution meeting. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Food Stamp Program

921 KAR 3:035. Certification process. Virginia Carrington, branch manager, and Elizabeth Caywood, policy analyst, represented the program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8

to update a form; and (2) to amend the SNAP 6-Month Review form, FS-2: (a) for clarity; and (b) to make the form compatible with the eligibility data system. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the April 12, 2011, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Office of Sales and Excise Taxes: Forms

103 KAR 3:050. Miscellaneous taxes forms manual.

Office of Income Taxation: Income Tax; General Administration

103 KAR 15:190. Endow Kentucky Tax Credit.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:001. Definitions.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

Harness Racing

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

Quarter Horse, Appaloosa and Arabian Racing

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:160. Exotic wagering.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Public Health Protection and Safety: Radiology

902 KAR 100:010. Definitions for 902 KAR Chapter 100.

902 KAR 100:021. Disposal of radioactive material.

902 KAR 100:058. Specific licenses to manufacture, assemble, repair, or distribute products.

902 KAR 100:070. Transportation of radioactive material.

902 KAR 100:072. Use of radionuclides in the health arts.

902 KAR 100:165. Notices, reports and instructions to employees.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:420 & E. Child fatality or near fatality investigations.

The Subcommittee adjourned at 10:50 a.m. until April 12, 2011.

## **EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE**

### **Minutes of the December 7, 2010 Meeting**

**Call to Order and Roll Call**  
The Education Assessment and

Accountability Review Subcommittee met on Tuesday, December 7, 2010, at 9:30 AM, in Room 169 of the Capitol Annex. Representative Kent Stevens, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Jack Westwood, Co-Chair; Representative Kent Stevens, Co-Chair; Senators Vernie McGaha, and Ken Winters; Representatives Bill Farmer, Mary Lou Marzian, and Harry Moberly Jr.

**Guests:** Jim Thompson, Legislative Liaison, Education and Workforce Development Cabinet; Keith White, Office of Education Accountability; Clyde Caudill, Legislative Agent, Jefferson County Public Schools and Kentucky Association of School Administrators; and LuAnn Asbury, Kentucky Education Association.

**LRC Staff:** Sandy Deaton, Audrey Carr, Ken Warlick, Janet Stevens, and Janet Oliver.

Approval of Minutes

Representative Marzian made a motion that the minutes of the October 12, 2010, meeting be approved. Representative Farmer seconded the motion and the motion was approved by voice vote.

### **Review of 703 KAR 5:171 (Repeal of 703 KAR 5:170) and 703 KAR 5:190**

Kevin Brown, Legal Counsel, and David Cook, Director, Division of Innovation & Partner Engagement, Kentucky Department of Education (KDE), explained the regulatory changes. Mr. Brown said that 703 KAR 5:171 was promulgated to repeal 703 KAR 5:170 relating to the Highly Skilled Educator Program. Regulation 703 KAR 5:190 establishes a new program utilizing education specialists selected pursuant to KRS 158.782 to provide assistance to persistently low-achieving schools. The regulation creates Centers for Learning Excellence in KDE's District 180 Assistance Program. The centers are located in state universities and include an education recovery director; education recovery leaders; education recovery specialists; math and reading intervention specialists; and an advisory committee. Mr. Brown said the centers are already in place and staffed to provide assistance at the recently identified ten persistently low-achieving schools.

In response to questions from Senator Winters, Mr. Brown said that the three participating universities were selected based on their proximity to the first cohort of identified persistently low-achieving schools. The three universities are the University of Louisville, Morehead State University, and Western Kentucky University and more sites will be added as low-achieving schools needing assistance are identified. Mr. Brown said the

commissioner of education has broad authority over programmatic areas and K-12 education to hire specialists and other personnel to assist low-achieving schools in addition to the specific authority set forth in KRS 158.782.

Upon motion by Representative Farmer, seconded by Representative Marzian, the regulatory changes were approved by voice vote.

### **Office of Education Accountability's Proposed 2011 Study Agenda**

Marcia Seiler, Director, Office of Education Accountability (OEA), said the proposed OEA study agenda for 2011 includes six topics and the annual reports on district data profiles and compendium of state education rankings. OEA will review expenditures of on-behalf payments appropriated during the past five years. On-behalf payments are disseminated by KDE and other state agencies to school districts for administrative fees, health and life insurance, teachers' retirement, vocational education, technology, and other payments not included in SEEK funding. A funding equity analysis will be completed to update the OEA school finance report provided to EAARS in 2008 and will include all available data for years since FY 2006. A study will be conducted on the validity of Kentucky test data including a review of processes, missing pieces, and results. The study will examine test security, testing environments, and validation efforts and the National Technical Advisory Panel on Assessment and Accountability (NTAPAA) will be asked to provide guidance and input. The 2009 OEA special education study will be updated to include information on how special needs students are identified and assessed and the progress being made to implement the recommendations contained in the 2009 study. OEA will conduct a study on career and college readiness rates using Kentucky P20 Data Collaborative information to provide benchmarking and validation data on students who exited high school in the spring of 2009. OEA will also conduct an analysis of the Kentucky Education Excellence Scholarship (KEES) program including how funding is awarded and if there are any trends based on various student demographics and geographic locations. Ms. Seiler said she hopes that some reports will be ready for presentation to EAARS as early as May 2011.

In response to a question from Senator Westwood, Ms. Seiler said it is anticipated that the funding equity study and the review of on-behalf payments will be conducted concurrently since they are intertwined.

Senator Westwood moved that the 2011 OEA study plan be ap-

proved. Senator Winters seconded the motion and the motion was approved by voice vote.

### **Review of Teacher Evaluation and Compensation**

Ms. Brenda Landy, OEA Research Analyst, presented the report on teacher evaluation and compensation. She said Kentucky's system provides for more evaluations of first year teachers and it takes longer to achieve tenure than in most states. As in many states, evaluations are not used to their fullest potential to improve performance and states tying student performance to evaluations and compensation are receiving mixed results. Kentucky is currently conducting a three-year initiative to improve the evaluation process with involvement from major stakeholders. OEA research included review of district evaluation forms and research and policy literature and information obtained in an online survey in which responses were received from 14,000 teachers and 700 principals with representation from all the districts.

Ms. Landy said teacher evaluation is an ongoing process of measuring performance based on identified criteria and providing formative feedback to teachers followed by a year-end summative evaluation. Frequency of evaluations is usually based on teacher experience with first year teachers in the Kentucky Teacher Internship Program (KTIP) being evaluated multiple times and tenured teachers receiving a summative evaluation about every three years. The primary evaluator is the immediate supervisor, who is generally the school principal. The summative evaluation sums up and draws conclusions from all performance measures and should be conducted in person between the evaluator and teacher. The evaluation should include recommendations to be incorporated into the teacher's professional growth plan and establish training opportunities and resources for the teacher's self-improvement efforts. A consequence of a poor evaluation can be non-renewal of the contract which is relatively straight forward for new teachers during the first four years but much more difficult to accomplish once a teacher has achieved tenure. Detailed written documentation of performance issues or improper conduct following due process procedures set out in the statutes and collective bargaining agreements in various districts are necessary to terminate a tenured teacher contract.

All evaluators are required to have an initial two-day training and ongoing training. The evaluation process is governed by KRS 156.557 which established ten broad standards for evaluating performance with further guidance set forth in 704 KAR

3:345. Each district may develop their own evaluation forms and processes although most districts use model forms and guidance provided by KDE.

Survey results indicated that strengths in the current system include overall compliance with requirements, satisfaction with systems used by districts, and effective monitoring of non-tenured teachers, which exceed requirements in other states. Weaknesses included burdensome paperwork rather than useful tools for improving performance; lack of administrative support and resources for self-improvement efforts; and lack of action on behalf of administrators to improve the performance of ineffective teachers. Information on evaluations and dismissals is not collected by KDE so complaints about disciplinary actions are difficult to confirm. KTIP data shows that about one percent of teachers do not complete the program. Evaluation criteria are often viewed to be subjective and do not include student achievement measures and rating scales rarely distinguish excellent and poor performance from just average. Teacher pay is not governed by evaluations but by years of experience and formal education, which impacts the credibility of the system.

A three-year initiative to provide recommendations on improving system is underway and a working conditions survey to be disseminated in the upcoming year may provide useful feedback. Initiatives being undertaken in other states include stricter tenure policies, annual evaluations for all teachers, and using student growth as an evaluation criterion. Concerns at the national and state level include whether federal funds will continue to be available to support incentives to improve teacher performance and pay. There is also concern about using student performance as a criterion for evaluation when numerous other factors beyond teacher control may affect student growth, such as poverty, lack of parental involvement, school culture, and not holding students accountable for poor performance. OEA found that the differentiated compensation pilot in 2002-2004 had mixed results. Teachers responding to the survey prefer financial incentives for teaching in low-performing schools and teaching difficult subjects and 44% favor incentives for above average student growth. Principals would like more flexibility in evaluating tenured teachers and a reduction in the paperwork and procedures required to dismiss tenured teachers, although information from other states indicates that procedural changes had minimal impact on dismissing ineffective teachers because of social, political, and teacher supply issues. Experts believe that systematic and holistic

changes are needed to improve the evaluation system and include sustainability of funding for incentives, improving working conditions, providing advancement opportunities, and using multiple performance measures.

In response to a question from Representative Stevens about the lack of teacher response to the online survey, Ms. Landy said principals may have had more time to respond to the survey and greater access to technology than classroom teachers and teachers may be more satisfied with the current evaluation system.

In response to a question from Representative Farmer, Ms. Landy said that each person responding to the survey was provided a unique identifier and that duplication would have been difficult.

In response to a question from Senator Winters, Ms. Landy said that the national data showing 96% of teachers are paid based on experience and education is several years old. She said that a working condition survey will be disseminated next year and it is anticipated that working conditions, including safety, cleanliness, school culture, and other factors, may be as important as monetary incentives.

In response to questions from Senator Westwood, Ms. Landy said evaluators attend a two-day training provided by the Kentucky Association of School Administrators and are required to complete 12 hours of ongoing training during each subsequent two-year period. Ms. Landy said many of the survey respondents believe that poor performance does not produce a bad evaluation with consequences.

In response to a question from Senator McGaha, Ms. Landy said the information that ineffective teachers do not receive poor evaluations was gleaned from open-ended comments from teachers. Senator McGaha said that the data may be skewed since evaluators generally conduct evaluations in private. He said as a former principal he could attest to the difficulty in trying to remove an ineffective tenured teacher.

Representative Stevens said he also could attest to the difficulty of removing ineffective teachers. He said he believes the Kentucky Teachers Internship Program is proving to be an effective tool in training new teachers.

Senator Westwood announced that this is the final EAARS meeting for Representatives Kent Stevens and Harry Moberly and Senator Ed Worley and thanked them for their service and dedication to improving the education of Kentucky's students.

### **Compendium of State Education Rankings 2010**

Ms. Landy said the rankings

in the compendium are based on information from the fifty states and the District of Columbia but the data contained in the tables focuses on the states in the Southern Region Educational Board and states that border Kentucky. The chapter on demographics provides various comparisons of factors that may affect academic performance, such as poverty and non-English speaking students. Ms. Landy said the services chapter reiterates OEA concerns about how students with disabilities are identified. The chapter relating to fiscal matters shows that even after adjusting for geographic differences and costs of services and goods, Kentucky's per pupil revenues and expenditures are still low compared to national averages, although teacher salaries are close to the national average. The 2009 National Assessment of Education Progress (NAEP) results showed that Kentucky's fourth grade reading and math scores increased faster than the national average and eighth grade math scores were close to the national average. NAEP results do not include assessment data for students with disabilities and language barriers or students tested with accommodations. The percentage of students passing advanced placement (AP) examinations continues to improve. Although Kentucky's graduation rank had improved to 23<sup>rd</sup> between 2002 and 2006, it has declined to 32<sup>nd</sup> in 2008. All Kentucky juniors have been required to take the ACT since 2008. In 2010 five other states also required 100% participation for ACT testing and the data reflects that higher participation rates results in lower average scores. In 2008, when the participation rate was 72%, Kentucky ranked 24<sup>th</sup> overall nationally on the composite score but it now ranks 50<sup>th</sup>. The average composite score in Kentucky is 19.4, which is a half-point below the national average of 20.

In response to a question from Representative Moberly, Ms. Landy said that the National Center for Education Statistics comparable wage index is used to rank teacher salaries but OEA also factors in the geographic cost of living index in the ranking. Representative Moberly said he noted in the report that the student/teacher ratio is below the national average which is a positive step.

In response to a question from Senator Westwood, Ms. Landy said on-behalf payments and benefits are not included in teacher salary rankings. Senator Westwood said he would be interested in a comparison of benefits with other states. Ms. Seiler said the information could be included in the 2011 study of on-behalf payments.

In response to a question from Representative Stevens, Ms. Landy

said accurate comparisons of ACT and SAT results is difficult because many states do not require all students to take the tests and, even when required to take the examinations, students may not put forth their best effort if they are not planning to attend college. Senator Winters said it was recognized when the ACT was mandated for all high school juniors that the overall average would decrease but the benefit of having many more students pursue postsecondary education based on ACT test results outweighs having a lower state average.

In response to a question from Senator McGaha, Ms. Landy said that the definition of school administrator does not include counselors. She said Kentucky ranks sixth in the number of school administrators because it is a rural state with many small schools.

### **Analysis of Collective Bargaining Agreements in Kentucky Districts**

Dr. Ken Chilton, Director of Research, OEA, said collective bargaining agreements in Kentucky districts, with the exception of Jefferson County, has minimal impact on school staffing, school-based decision making management at the school level, and teacher evaluations, except in Jefferson County. There are nine districts in Kentucky with collective bargaining agreements representing approximately 23% of Kentucky's teachers and 22% of Kentucky's students. Membership in teacher associations in those districts range from a high of approximately 95% in Jefferson County to a low of about 35% in Newport Independent although the average is 60-80%. With the exception of Jefferson County, political activism by the teacher association is limited. The main focus in most contracts is teacher assignment issues regarding transfers, evaluations, non-renewal of contracts, termination, and related personnel actions.

OEA's research included a review of all of the contracts and memoranda of agreement and responses to a questionnaire. Also site visits were conducted in various schools in the nine districts with collective bargaining agreements and also in schools in four non-contract districts to provide an adequate comparison of contract effects.

Dr. Chilton said that statutes do recognize the right of teacher unions to organize in the state. The study focused on the provisions of KRS 160.345(2)(h)1., which is the school-based decision making (SBDM) council law that recognizes the right of a collective bargaining agreement to utilize transfer provisions that may deviate from SBDM staffing protocol and allows collective bargaining agreements to supersede the statutory process for staffing followed in non-

contract districts. The study also focused on KRS 160.380(1) (c) relating to the filling of vacancies in districts with collective bargaining agreements. Contracts can be modified between inception and renewal by memoranda of agreement, some have deviation clauses that permit amendment, and many of the contracts could be re-opened at various times for renegotiation of terms. OEA believes that some of the modifications to the contracts have not been transparent.

Dr. Chilton said that the principal in contract districts that have strong seniority preferences are somewhat limited when filling vacancies, although most administrators in those districts had little complaint about the effect on school staffing. Contracts can be used to determine the order of interviews and guarantee courtesy interviews although principals said candidates are chosen based on experience and related factors. OEA did find that seniority provisions in Jefferson County's contract has more significant impact on SBDM council and principal choice in hiring and transferring staff, especially on the distribution of teachers across the district. An analysis of the transfer list for 2009 revealed some delineation in transfer requests between high demand and low demand schools. Schools with the lowest reading and math proficiency levels had much higher numbers of teachers with three years or less of experience and in some cases higher rates of teacher attrition. Teachers in Jefferson County can apply for transfer after completing the KTIP program. The schools with the highest rate of attrition tend to be in neighborhoods that have negative perceptions. One of the schools was Frost Middle School which has been identified as a persistently low-achieving school. Tests data in Jefferson County showed a correlation between low test results and transfer and teacher experience issues. Dr. Chilton said that principal and school council authority is limited in Jefferson County although other contract districts did not have issues with council authority. An example was that a math curriculum change in Jefferson County required a two-thirds vote through a deviation clause in the contract, which may conflict with the statutory provisions relating to the autonomy of SBDM councils.

Dr. Chilton said contracts have very little impact on teacher evaluations although four of the collective bargaining agreements expressly forbid the use of student test data to evaluate teachers. Due process procedures outlined in the statutes are often included in the contracts and principals in all schools said the process of removing ineffec-

tive tenured teachers is too burdensome and takes too much time away from other important tasks, such as providing instructional leadership in the building. Newer teachers in most districts, including contract districts, are less likely to be involved in teacher associations and tend to work toward developing collaborative relationships with administrators.

Based on information collected, Dr. Chilton said collective bargaining agreements, memoranda of agreement, and contract modifications need to be more transparent. Also districts need to ensure that seniority based transfer provisions in collective bargaining agreements are aligned with 2009 Senate Bill 1 and 2010 House Bill 176 to promote student achievement.

In response to a question from Representative Moberly, Dr. Chilton said the statutes referenced in his presentation were passed in the 1990-1992 timeframe. He said the study should provide useful information to help identify some of the issues that may be impacting the low performing schools in Jefferson County.

In response to a question from Senator Westwood, Dr. Chilton said that language in some of the contracts may conflict with statutes relating to the authority of SBDM councils, such as requiring a two-thirds vote to implement a curriculum change. It was noted by Kevin Noland, former general counsel for KDE, who was in the audience, that the authority of councils relating to curriculum and assignment of students and teachers cannot be overridden by a collective bargaining agreement.

In response to a question from Representative Moberly, Dr. Chilton said that differentiated pay had been discussed in contract negotiations for hard to staff schools. He offered to provide more detailed information to Representative Moberly on specific comments or contract language.

### **Assistance to Low-achieving Schools and Districts: Strengths, Limitations, and Continuing Challenges**

Ms. Deborah Nelson, Research Analyst, OEA, said that although providing assistance has resulted in substantial gains in some low-achieving schools, many schools have achieved limited or no gain after several years of intervention. Intervention measures often do not address attracting and retaining building leaders and teachers with the skills necessary to be successful in certain school environments, especially when local community support is not available. OEA analysis included review of assessment, demographic, and staffing data; review of research information; and interviews with over 55 educators

at all levels of schools in Kentucky.

Ms. Nelson said that previously Level III schools, which were identified as the bottom third of schools in Kentucky, were eligible for assistance through state funding and Title I schools that had not met adequate yearly progress (AYP) goals under federal guidelines received federal funding assistance. Level III schools qualified for the services of highly skilled educator (HSEs), scholastic audits, and grants from the Commonwealth School Improvement Fund that could be used to pursue new strategies. Title I schools were eligible for No Child Left Behind (NCLB) grants. The smaller grant was the Section 1003(a) grant for schools that had not met AYP for two consecutive years and the larger grant was issued pursuant to Section 1003(g) for schools that had not met AYP for five consecutive years and was generally in the \$100,000 range. During the period, Kentucky did not choose the severe strategies of restaffing or closing a school but chose major restructuring in some schools.

Historically, KDE had the primary statutory responsibility for identifying and providing intervention assistance to the lowest-achieving schools with district superintendents and administrators taking a lesser role and receiving no direct funding to implement strategies, even though research shows that districts should play a critical role in identifying schools for assistance. Even though the Kentucky Education Reform Act increased the authority and responsibility of local school councils, some districts do not accept responsibility for poor student outcomes while others, even in high poverty areas, are exceeding state averages for student achievement.

Currently the only schools that can receive assistance are Title I schools meeting the federal definition for improvement and persistently low-achieving schools identified by the criteria set forth in 2010 House Bill 176. Title I persistently low-achieving schools are also eligible for Section 1003(a) and (g) grants and the amount of funding from the 1003(g) grants can be as high as \$1.5 million over a three-year period. State funding is available in the current year to provide an education recovery leader to assist the principal and one reading and one math education recovery specialists to provide content specific assistance. Each persistently low-achieving school is also eligible for a leadership assessment, which is similar to the scholastic audit except it directly assesses the capacity of the council and the principal to carry out the interventions. KDE has recently reorganized and coordinates all forms of assistance to schools under the Division of District 180. Centers for

Learning Excellence have been established at three state universities to coordinate assistance to the schools needing assistance. Interventions may include using external management, restaffing, school closure, or transformation. Six of the ten recently identified persistently low-achieving schools, which are all located in Jefferson County, have chosen the restaffing model and the remaining schools have chosen the transformation model.

State funding for the HSE program declined from \$5.5 million in 2008 to \$5.2 million in 2011 and no funds have been appropriated for the HSE program for 2012. The HSE appropriation is currently being used to fund the education recovery personnel at the Centers for Learning Excellence. No funds have been identified at the state level to continue funding the centers in the upcoming year, although districts may use their substantial federal funds to continue the services. The Commonwealth School Improvement Fund has declined from about \$1.5 million in 2008 to \$1.4 million in 2012 and KDE was granted authority in 2009 to use this funding source to pay for scholastic audits and leadership assessments instead of giving the funds directly to the district. In 2009, federal funding exceeded state funding by \$15 million. Currently approximately \$33 million is flowing to the schools, mostly from the 1003(g) fund to provide grants to low-achieving schools.

Ms. Nelson said the only valid assessment data available during the last decade for all schools is the Kentucky Common Core Test (KCCT) data for reading and mathematics. No historical data is available on college and career preparedness. Although NAEP data does not substantiate KCCT data, KCCT results showed a substantial improvement in all Kentucky elementary schools in reaching proficiency rates in combined reading and math scores from 2000 to 2009. Similar data was available for middle and high schools. The lowest deciles of schools lagging behind state averages remained unchanged during the period.

Ms. Nelson said the system that had been used to identify low-achieving schools under the Commonwealth Accountability Testing System (CATS) was not totally accurate. Based on current federal guidelines, the overwhelming majority of Kentucky schools will soon be identified as needing assistance. Although KDE has revised its method of identifying low performance, using only quantitative data does not accurately reflect the specific challenges faced by the schools, such as social and political culture, experience of teachers, and other contributing factors. In the fu-

ture audit data may compliment quantitative data in identifying schools needing intervention strategies.

Ms. Nelson said based on a review of 2009 KCCT data, less than 50% of high school students were proficient in math and reading, and about 83% had less than a 50% combined reading and math proficiency score. Some of the characteristics of the lowest-achieving schools have been higher than average poverty and minority student rates. In Kentucky, many of the lowest achieving schools are located in Jefferson County and other urban areas, which is consistent with nationwide data. Ms. Nelson said data has shown little correlation between assistance and achievement gains in low-achieving schools as a group, although there have been exceptions. Also, intervention efforts appear to be less effective in schools facing deep challenges evidenced by the fact that some of the lowest achieving schools have been receiving assistance as long as eight years without any significant improvement in assessment scores. Ms. Nelson said that it is difficult to conduct a rigorous analysis of the reasons for failure and to determine what issues need to be addressed because of the lack of true comparison groups. The lack of leadership skills appears to be a key factor in achieving goals and holding students and staff accountable for academic improvement. Low-achieving schools are characterized by inconsistent expectations for students and staff, disunity among faculty, low morale, and a perception among teachers that challenges, lack of student discipline and large numbers of students below grade level, remain the same even after interventions have occurred. The use of scholastic audits and an infusion of federal and state monies have proven ineffective except in those schools where changes have already begun to occur.

A significant challenge has been attracting and retaining effective building leaders and teachers. Although Jefferson County has chosen the restaffing option for all six of its low-achieving schools, which means that 50% of teachers were replaced with more effective teachers, a review of teacher credentials showed those teachers are being replaced with a high percentage of new teachers with very few teachers having greater than three years experience. The same situation is occurring in the rural areas, especially in finding teachers qualified to teach mathematics. Another significant challenge is lack of support from school and district administrators and local school board members to implement the changes necessary to increase student learning.

Ms. Nelson said that no single strategy will be effective in all schools.

Scholastic audits and working condition surveys may help identify specific needs. Other strategies may be the development of pipelines of teachers and leaders with skills necessary to succeed in difficult environments; providing recruitment and retention incentives; working directly with district administrators and local school boards to increase their capacity to monitor schools and provide support; and rigorous evaluations of intervention measures. OEA recommends that KDE revise the audit process to include staffing, student mobility, and other data; explore alternative forms of providing assistance to schools that have not responded to intervention measures; and establish tiered interventions in districts that have schools that are not responding to interventions. OEA recommends that the General Assembly allow KDE to continue to use the Commonwealth School Improvement Funds for assistance efforts; update the statutory responsibilities of local school board members to include monitoring of student learning in schools; support district efforts to improve that learning; and link future funding to rigorous evaluation.

In response to a question from Senator McGaha, Ms. Nelson said that the NCLB 1003(g) funds are being used for Title I schools in their fifth year of consequences. Additional funds are being received through the American Recovery and Reinvestment Act (ARRA) allocations for both Title I and non-Title I persistently low-achieving schools based on criteria established by the federal government. The ARRA funds were approved for two years and may not be a renewed funding source.

In response to a question from Senator Westwood, Ms. Nelson said some low-achieving schools have made remarkable progress, others have improved, and others have made little or no progress as a result of state assistance and intervention. Each school is unique and no single intervention has proven effective in every school. Senator Westwood said that the legislature could not correct cultural issues and the challenge seems to be determining which measures will be effective in the various districts.

In response to a question from Senator McGaha, Ms. Nelson said an HSE could only serve three years in the HSE program. Schools that had been in assistance for more than three years would have had more than one HSE assigned. Ms. Nelson said there have been instances where a change in school leadership has resulted in dramatic increases in student achievement. Ms. Connie Lester, Branch Manager, Supporting Schools & District Branch, Division of District 180, KDE, said HSEs were given one year

contracts and their performance was monitored through their reports and school data.

#### **Approval of Reports**

Senator Westwood made a motion that the four reports discussed at the meeting be accepted. Representative Stevens seconded the motion and the motion was approved by voice vote.

#### **Adjournment**

There being no further business to discuss, the meeting adjourned at 12:00 Noon.

## **GOVERNMENT CONTRACT REVIEW COMMITTEE**

### **Committee Minutes**

December 14, 2010

#### **Call to Order and Roll Call**

The Government Contract Review Committee met on Tuesday, December 14, 2010, at 10:00 AM, in Room 129 of the Capitol Annex. Representative Dennis Horlander, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Vernie McGaha, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julian M. Carroll and Carroll Gibson; Representatives Jesse Crenshaw, Brad Montell, and Brent Yonts.

Guests: Vickie Wise, Nan Hanley, Richard Cullison, Rick McQuady, Rick Boggs, Dan Walton, Charlie Harman, Jennifer Stafford, Don Speer, Travis Powell, Jeremy Thompson, Gene Kiser, and Tim Miller.

LRC Staff: Kim Eisner, Matt Ross and Becky Brooker.

A motion was made by Representative Yonts to approve Minutes of the November 2010 meeting of the committee. Senator McGaha seconded the motion, which passed without objection.

Senator McGaha read a resolution honoring Senator Tori upon her departure from the Government Contract Review Committee. A motion was made by Senator McGaha to adopt the resolution and send to Senator Tori. Representative Yonts seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Senator McGaha seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Senator McGaha seconded the motion, which passed without objection.



A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Senator McGaha seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Senator McGaha seconded the motion, which passed without objection.

**NOVEMBER 2010 DEFERRED LIST:**

A motion was made by Representative Yonts to approve the following contract: Morehead State University, 11-016, STAMATS. Senator McGaha seconded the motion, which passed without objection.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:**

**ADMINISTRATIVE OFFICE OF THE COURTS:**

Chrysalis House Incorporated, 1100001377; Hope Center, 1100001379.

**ATTORNEY GENERAL, OFFICE OF THE:**

Miner Barnhill & Galland, PC, 1100000737.

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION:**

Landon Earl McKinney, 1100001170.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:**

Staff Care Incorporated, 1100000985.

**DEPARTMENT FOR PUBLIC HEALTH:**

Kentucky Pharmacists Association, 1100000224.

**EDUCATION PROFESSIONAL STANDARDS BOARD:**

Cassandra Trueblood, 1100001338.

**EMBALMERS & FUNERAL HOME DIRECTORS, BOARD OF:**

Kathleen Kearney Schell, Attorney-at-Law, 1100001229.

**FAIR BOARD:**

David H Snowden, 1100001243; Scarlett W. Mattson, 1100001244.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:**

Thomas McDowell, 1100001003.

**KENTUCKY HOUSING CORPORATION:**

BLX Group, LLC, KHC-2012-4.

**NORTHERN KENTUCKY UNIVERSITY:**

Gartner Incorporated, 2011-571; Huron Consulting Services, LLC, 2011-572.

**PERSONNEL-OFFICE OF THE SECRETARY:**

Mercer Investment Consulting Incorporated, 1100000799; Mercer Investment Consulting Incorporated, 1100000800.

**PUBLIC ADVOCACY, DEPARTMENT FOR:**

DNA Diagnostics Center, 1100001242.

**TRANSPORTATION CABINET:**

Wallace Boggs, PLLC, 1100001135; Patrick Law Firm, 1100001253; HMB Professional Engineers Incorporated, 1100001265; Entran, PLC, 1100001375.

**TREASURER, OFFICE OF THE KENTUCKY STATE:**

ACS State & Local Solutions Incorporated, 1100001189.

**UNIVERSITY OF KENTUCKY:**

Stengel-Hill Architecture, A111080; Greenwood/Asher & Associates Incorporated, K11-172.

**UNIVERSITY OF LOUISVILLE:**

EOP Architects, 11-089.

**WESTERN KENTUCKY UNIVERSITY:**

ITS Partners, LLC, 101136; Multi, 101137.

**THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

**AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:**

Christian Sturgeon & Associates, PSC, 1100000245.

**DEPARTMENT FOR AGING & INDEPENDENT LIVING:**

Experience Works, 1000003127.

**DEPARTMENT FOR COMMUNITY BASED SERVICES:**

Kentucky Domestic Violence Association, 1000001619.

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION:**

Stantec Consulting Services Incorporated, 1000001351.

**DEPARTMENT FOR FAMILY RESOURCE CENTERS & VOLUNTEER SERVICES:**

American Red Cross Louisville, 1000001540.

**DEPARTMENT FOR INCOME SUPPORT:**

Jan Jacobson, 1000003674; Dr. Gus A. Bynum, 1000003692.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:**

Crown Services Incorporated, 1000002837; Guardian Angel Staffing Agency, 1000002838; Guardian Healthcare Providers, 1000002839; Nurse staffing Group Kentucky, LLC, 1000002840.

**DEPARTMENT FOR NATURAL RESOURCES:**

Tee Engineering Company Incorporated, 1100000440.

**DEPARTMENT OF HOUSING,**

**BUILDING, AND CONSTRUCTION:**

Code Administrative Associates of Kentucky, 1100000513.

**DEPARTMENT OF INSURANCE:**  
Ingenix Consulting, 1000002972.

**EDUCATION, DEPARTMENT OF:**

Multi, 1000003005; Multi, 1000003009.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:**

CDP Engineers Incorporated, 0800010316; Voelker Blackburn Niehoff Architects, 0900011541; Arrasmith Judd Rapp Chovan Incorporated, 0900011608; Staggs & Fisher Consulting Engineers Incorporated, 0900011701; Barnette Bagley Architects, 1000001690; John Milner Associates Incorporated, 1100000253; HDR Engineering Incorporated, 1100000605; Ross Tarrant Architects Incorporated, C-06082726.

**FISH & WILDLIFE, DEPARTMENT OF:**

McBrayer, McGinnis, Leslie & Kirkland, 1100001048.

**JUVENILE JUSTICE, DEPARTMENT OF:**

Mid America Health Incorporated, 1000003112.

**TRANSPORTATION CABINET:**

WMB Incorporated, 0700005041; Wilbur Smith Associates, 0800007893; Qore Incorporated, 0800010576; Thelen Associates Incorporated, 0800010581; Horn & Associates Incorporated, 0900011454; Burgess & Niple Incorporated, 1000000895; Hazelrigg & Cox, 1000002211; Kohnen & Patton, LLP, 1000002240; Kohnen & Patton, LLP, 1000002421; GRW Engineers Incorporated, C-01345104-1; E A Partners PLC, C-03011914-2; Entran PLC, C-99005137-5; Presnell Associates Incorporated d/b/a Qk4, C-99005372-3.

**UNIVERSITY OF KENTUCKY:**

Omni Architects, A101140; Hewitt Associates Public Sector Consulting, LLC, K11-143.

**THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:**

**ADMINISTRATIVE OFFICE OF THE COURTS:**

Morehead State University, 1100001371; Morehead State University, 1100001372.

**AGRICULTURE, DEPARTMENT OF:**

University of Kentucky Research Foundation, 1100001314; University of Kentucky Research Foundation, 1100001316; University of Kentucky Research Foundation, 1100001317.

**DEPARTMENT FOR COMMUNITY BASED SERVICES:**

Kentucky Domestic Violence Association, 1100001252.

**DEPARTMENT FOR ENVIRON-**

**MENTAL PROTECTION:**

City of Bowling Green, 1100001322.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:**

Bluegrass Regional Mental Health Mental Retardation, 1000001373.

**DEPARTMENT FOR NATURAL RESOURCES:**

Kentucky Waterways, 1100001133.

**DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:**

University of Kentucky Research Foundation, 1100001255.

**EDUCATION, DEPARTMENT OF:**

University of Wisconsin Madison, 1000004092; Morehead State University Office of Information Technology, 1100000750; University of Kentucky Research Foundation, 1100001057; University of Kentucky Research Foundation, 1100001147; University of Kentucky Research Foundation, 1100001148.

**INFRASTRUCTURE AUTHORITY:**

Breathitt County Fiscal Court, 1100001223.

**MILITARY AFFAIRS, DEPARTMENT OF:**

Lexington-Fayette Urban County Government, 1100000759; Shelby County, 1100001043; Hopkins County Fiscal Court, 1100001166; City of Taylor Mill, 1100001177; KCTCS, 1100001220.

**OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:**

City of Allen, 1100000960; Martin County Fiscal Court, 1100001195; Harlan County Fiscal Court, 1100001207; Harlan County Fiscal Court, 1100001208; City of Mortons Gap, 1100001212; Hopkins County Fiscal Court, 1100001213; City of Hawesville, 1100001224; Crittenden County Fiscal Court, 1100001263; Pike County Fiscal Court, 1100001273; City of Providence, 1100001276; Pike County Fiscal Court, 1100001291; City of Ludlow, 1100001303; Menifee County Fiscal Court, 1100001308; Union County Fiscal Court, 1100001309; City of Hyden, 1100001330; City of Scottsville, 1100001335; Martin County Fiscal Court, 1100001336.

**POST SECONDARY EDUCATION, COUNCIL ON:**

Washington Center for Internships & Academic Seminars, 1100001163.

**TRANSPORTATION CABINET:**

National Highway Institute, 1100001140.

**WORKFORCE INVESTMENT, OFFICE OF:**

University of Kentucky, Human Development Institute, 1100001124.

**THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

**ADMINISTRATIVE OFFICE OF THE COURTS:**

University of Louisville Research Foundation, 100000777; Pennyroyal Mental Health, 1000003853; Cumberland River Mental Health Mental Retardation Board Incorporated, 1000004083; Kentucky River Community Care Incorporated, 1000004085; River Valley Behavioral Health, 1000004086.

**AGRICULTURE, DEPARTMENT OF:**

Multi, 0900011602; Multi, 0900011666; Multi, 0900011722.

**CORRECTIONS, DEPARTMENT OF:**

Clark County Jail, 1000003188; Three Forks Regional Jail, 1000003298.

**CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:**

Lexington Division of Police, 1000002556.

**DEPARTMENT FOR AGING & INDEPENDENT LIVING:**

Northern Kentucky Cooperative Educational Services, 1000002249.

**DEPARTMENT FOR FAMILY RESOURCE CENTERS & VOLUNTEER SERVICES:**

Northern Kentucky University Research Foundation, 1100000395.

**EDUCATION, DEPARTMENT OF:**

University of Kentucky Research Foundation, 1000003653; University of Louisville Research Foundation, 1100000507.

**MILITARY AFFAIRS, DEPARTMENT OF:**

Shelby County, 1000003215.

**OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:**

Greenup County Fiscal Court, 0600003021; Garrard County Fiscal Court, 0700004300; City of Corydon, 0800009788; Muhlenberg County Fiscal Court, 1000000520; Federation of Appalachian Housing Enterprises, 1000000714; Garrard County Fiscal Court, 1000000828.

**TRANSPORTATION CABINET:**

Pike County Health Department, 1000003142.

**WORKFORCE INVESTMENT, OFFICE OF:**

Barren River Area Development District, 1000003019; Bluegrass Area Development District, 1000003026; Eastern Kentucky CEP Incorporated, 1000003028; Green River Area Development District, 1000003030; Lincoln Trail Area Development District, 1000003031; Kentuckiana Works/Workforce Investment Board, 1000003032; Northern Kentucky Area Development District, 1000003033; Buffalo Trace Area Development Dis-

trict, 1000003036; Pennyryle Area Development District, 1000003037; Lake Cumberland Area Development District, 1000003038; Eastern Kentucky University, 1000003934.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:**

**JUSTICE CABINET**

Access to Justice Foundation, 1100000586. Vickie Wise, Nan Hanley and Richard Cullison discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

**KENTUCKY HOUSING CORPORATION**

Conservation Services Group Incorporated, KHC-2011-23. Rick McQuady and Rick Boggs discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**OFFICE OF THE SECRETARY FOR THE LABOR CABINET**

McBrayer McGinnis Leslie & Kirkland, 1100001302. Dan Walton discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:**

**EDUCATION, DEPARTMENT OF**

Human Resources Research Organization, 1000002688. Charlie Harman and Jennifer Stafford discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

**FINANCE AND ADMINISTRATION CABINET**

Morgan & Pottinger, 1000003754. Don Speer, Travis Powell and Jeremy Thompson discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**EXEMPTION REQUESTS**

**OFFICE OF HOMELAND SECURITY:**

Gene Kiser from The Office of Homeland Security requested continued exemption from Committee review for all agreements issued as instruments of obligation for funds under State and Federal Homeland Security Grant Programs and will provide quarterly reports. A motion was made by Representative Yonts to approve the request to December 31, 2011. Senator McGaha seconded the

motion, which passed unanimously.

**ENERGY AND ENVIRONMENT CABINET:**

Tim Miller from the Energy and Environment Cabinet requested continued exemption from two year contracting restrictions for Nonpoint Source MOAs and PSCs; and requested continued exemption from the two year contracting restrictions for the remaining phases of the Map Modernization Management Support and Risk Mapping Grant; 100% Federally funded. A motion was made by Representative Yonts to approve the request. Representative Crenshaw seconded the motion, which passed unanimously.

With no further business before the committee, the meeting adjourned at 11 a.m.

**GOVERNMENT CONTRACT REVIEW COMMITTEE**

**Committee Minutes**

January 11, 2011

**Call to Order and Roll Call**

The Government Contract Review Committee met on Tuesday, January 11, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Vernie McGaha, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Vernie McGaha, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julian M. Carroll and Paul Hornback; Representatives Jesse Crenshaw, Brad Montell, and Brent Yonts.

**Guests:** Glenn Birdwhistell, Marilyn Kennedy, Stephen VanZant, Charles Kendell, Sue Thomas-Cox, Kelley Webb, Mike Riley, David Holcomb, Wendell Followell, Jean Morton, Peggy Stratton, David Waldner, Charles Harman, Jennifer Stafford, Holly Spade, John Wehrle, Sean O'Leary, Joe Barrows, John Davies, Paul Brooks, Greg Guess, Mitchell Payne, Tom Peterson, and Judy Forcht.

**LRC Staff:** Kim Eisner, Matt Ross, and Becky Brooker.

A motion was made by Senator Carroll to approve the December 2010 meeting minutes. Representative Horlander seconded the motion, which passed without objection.

**DEFERRED ITEMS:**

A motion was made by Representative Horlander to defer the following contracts to the February 2011 meeting of the committee: DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENT DISABILITIES & ADDICTION SERVICES: 1100001294, Crown Services Incorporated; 1100001295, Staff Easy, LLC; 1100001296, Medstaff Healthcare Solutions; 1100001396, Staff Easy, LLC; 1100001397, Crown Services Incorporated; 1100001398, Crown Services Incorporated. MORE-

HEAD STATE UNIVERSITY: 11-018, Scannell & Kurtz Incorporated. DEPARTMENT OF FISH & WILDLIFE: 1100000918, Council to Advance Hunting & Shooting Sports. Senator Carroll seconded the motion, which passed without objection.

A motion was made by Representative Horlander to consider as reviewed the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Horlander to consider as reviewed the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Horlander to consider as reviewed the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Horlander to consider as reviewed the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:**

**AGRICULTURE, DEPARTMENT OF:**

Kentucky Center for Agriculture & Rural Development, 1100001441.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:**

Medical Doctor Associates Incorporated, 1100000113; Med Care Pharmacy, LLC, 1100000679; Pennyryle Radiology, 1100001012.

**FINANCE AND ADMINISTRATION CABINET:**

Goldberg & Simpson PSC, 1100001356; Frost Brown Todd, LLC, 1100001388.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:**

Florence & Hutcheson, 1100001321.

**FISH & WILDLIFE, DEPARTMENT OF:**

Copperhead Environmental Consulting Incorporated, 1100001289; Meyer Forest Management,

1100001311.

KENTUCKY EMPLOYERS MUTUAL INSURANCE:

Dean, Dorton & Ford, 11-DDF-001.

KENTUCKY HOUSING CORPORATION:

Caine Mitter & Associates, KHC-2012-3.

KENTUCKY STATE UNIVERSITY:  
Mo'Better Marketing, 11-06.

NORTHERN KENTUCKY UNIVERSITY:

Jeri Geisser, 2011-573.

PERSONNEL-OFFICE OF THE SECRETARY:

Aon Consulting, 1100001332.  
TRANSPORTATION CABINET:  
S & M E Incorporated, 1100001451.

UNIVERSITY OF KENTUCKY:

BFMJ, A111070.

UNIVERSITY OF LOUISVILLE:

Advances in Education, 11-093.

WORKERS CLAIMS, DEPARTMENT OF:

Ingenix Incorporated, 1100001126.

**THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:

Tichenor & Associates, 1000003798.

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:

Guardian Quest, LLC, 1100000556; Ronald H. Traenkle, 1100001002.

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Versar Incorporated, 1000002155; Acclaim Systems Incorporated, 1000002315.

DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:

AMS Temporaries Incorporated, 1000002836; Crown Services Incorporated, 1000002837; Guardian Angel Staffing Agency, 1000002838; Guardian Healthcare Providers, 1000002839; Nursestaffing Group Kentucky, LLC, 1000002840.

ECONOMIC DEVELOPMENT - OFFICE OF THE SECRETARY:

Kentucky Science & Technology Corporation, 1000004184; Kentucky Science & Technology Corporation, 1000004202.

EDUCATION PROFESSIONAL STANDARDS BOARD:

Dani Smith Thorne, 1100000765.

EDUCATION, DEPARTMENT OF:

Danville Pediatrics, 1000002469; Jennifer R. Stocker, 1000002679; Donna A. Meyer, 1000002680; Kearns Physical Therapy, LLC, 1000002683.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

CMTA Incorporated, 0700004269; Omni Architects, 0900011348; Bennett Rosser International, LLC, 0900012990; GRW Engineers Incorporated, 1000002308; Tate Hill Jacobs Architect Incorporated, C-00251065.

MEDICAL LICENSURE, BOARD OF:

Multi, 1000002739.

NORTHERN KENTUCKY UNIVERSITY:

Susan Brinkman, 2012-533; Multi, 2012-563.

PERSONNEL-OFFICE OF THE SECRETARY:

PriceWaterhouseCoopers, LLP, 1000001916.

TRANSPORTATION CABINET:

HNTB Corporation, 0900011447; URS Corporation, 1000000126; WMB Incorporated, 1000000854; Municipal Engineering Company, 1000000945; H A Spalding Incorporated, 1000001390; Kentucky Waterways Alliance, 1000002449; Property Service Group Southeast Incorporated, 1000002568; Aaron Engineering PLLC, 1000003102; J. M. Crawford & Associates Incorporated, 1000004236; Presnell Associates Incorporated d/b/a QK4, C-01285458-1; DLZ Kentucky Incorporated, C-99005073-12; W M B Incorporated, C-99005607-6; Entran, PLC, M-04536257-1.

UNIVERSITY OF LOUISVILLE:

Academic Search Incorporated 11-075.

**THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:**

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Western Kentucky University, 1100001150; Jackson Purchase RC & D, 1100001151; Madison County Fiscal Court, 1100001394.

EDUCATION, DEPARTMENT OF:

Eastern Kentucky University, 1100001206; University of Kentucky, 1100001312; Menifee County Board of Education, 1100001374.

FISH & WILDLIFE, DEPARTMENT OF:

Big Sandy Resource Conservation & Development Area Incorporated, 1000002438.

INFRASTRUCTURE AUTHORITY:

City of Clay, 1100001412; City of Sebree, 1100001417.

MILITARY AFFAIRS, DEPARTMENT OF:

Crittenden Health Systems, 1100001064; City of Mayfield, 1100001066.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERN-

MENT:

Knott County Fiscal Court, 1100000964; Leslie County Fiscal Court, 1100001325; Leslie County Fiscal Court, 1100001326; Leslie County Fiscal Court, 1100001327; Leslie County Fiscal Court, 1100001334; Pike County Fiscal Court, 1100001340; Jackson County Fiscal Court, 1100001360; Morgan County Fiscal Court, 1100001361; Morgan County Fiscal Court, 1100001362; Breathitt County Fiscal Court, 1100001367; Henderson County Fiscal Court, 1100001389; Pulaski County Fiscal Court, 1100001393; Harlan County Fiscal Court, 1100001401; Leslie County Fiscal Court, 1100001407; Union County Fiscal Court, 1100001409; City of Danville, 1100001444; Harlan County Fiscal Court, 1100001445; Christian County Fiscal Court, 1100001447; Kenton County Fiscal Court, 1100001448; City of Glasgow, 1100001449.

PARKS, DEPARTMENT OF:

Breaks Interstate Parks Commission, 1100000783.

POST SECONDARY EDUCATION, COUNCIL ON:

Association of Independent Kentucky Colleges & Universities, 1100001281.

**THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

ADMINISTRATIVE OFFICE OF THE COURTS:

University of Louisville Research Foundation, 1000000777; National Center for State Courts, 1000001165.

AGRICULTURE, DEPARTMENT OF:

Multi, 0900011602; Multi, 0900011666; Multi, 1100001230.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Purchase Area Development District, 1000001996; Pennyriple Area Development District, 1000001997; Kentucky River Area Development District, 1000002007; Four Rivers Behavioral Health, 1000002081; Pennyroyal Mental Health, 1000002082; Lifeskills Incorporated, 1000002084; Communicare Incorporated, 1000002085; Seven Counties Services, 1000002086; Northern Kentucky Regional Mental Health Mental Retardation Board, 1000002087; Pathways Incorporated, 1000002089; Mountain Comp Care Center, 1000002090; Kentucky River Community Care, 1000002091; Cumberland River Mental Health Mental Retardation Board Incorporated, 1000002092; Bluegrass Regional Mental Health Mental Retardation, 1000002094.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Seven Counties Services,

1000001942; Morehead State University, 1000003627; University of Louisville Research Foundation, 1000003632.

DEPARTMENT FOR NATURAL RESOURCES:

Multi, 1100001181; U. S. Department of the Interior, 1100001197.

EDUCATION, DEPARTMENT OF:

Science Hill Independent School, 1000001333; West Point Independent Board of Education, 1000001346; Madison County Board of Education, 1000001785; Shelby County Board of Education, 1000001846.

FISH & WILDLIFE, DEPARTMENT OF:

Licking River Valley Resource Conservation & Development Council, 1000003085.

MILITARY AFFAIRS, DEPARTMENT OF:

Multi, 0800007886; City of Murray, 0800010541; Mountain Comprehensive Care Center, 1100000336.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

City of Stanton, 0800009081; City of Mayfield, 0800010252; Hancock County Fiscal Court, 1100001268; Knott County Fiscal Court, M-05185688.

TRAVEL, DEPARTMENT OF:

Multi, 1000003537; Multi, 1000003538; Multi, 1000003539; Multi, 1000003540; Multi, 1000003541; Multi, 1000003542; Multi, 1000003543; Multi, 1000003544; Multi, 1000003547.

WORKFORCE INVESTMENT, OFFICE OF:

University of Kentucky Research Foundation, 1000003599; Morehead State University, 1000004080.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:**

AUCTIONEERS, BOARD OF:

Stephen W. VanZant, 1100001275. Glenn Birdwhistell, Marilyn Kennedy and Stephen VanZant discussed the contract. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

DEPARTMENT FOR PUBLIC HEALTH:

Clearwater Research Incorporated, 1100001014. Charles Kendall and Sue Thomas-Cox discussed the contract. A motion was made by Representative Montell to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

JUVENILE JUSTICE, DEPARTMENT OF:

The Peoples Institute for Survival and Beyond, 1100001192. Kelley Webb and Mike Riley discussed the contract. A motion was made by Rep-

representative Montell to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM:**

Hewitt Associates, LLC, KCT-PS-482. David Holcomb, Wendell Followell and Jean Morton discussed the contract. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**KENTUCKY COMMUNITY & TECHNICAL COLLEGE SYSTEM:**

Osborn, Carreiro & Associates, KCT-PS-483. David Holcomb, Wendell Followell and Jean Morton discussed the contract. A motion was made by Representative Montell to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**TRANSPORTATION CABINET:**

Kentucky Natural Lands Trust Incorporated, 1100001299. Peggy Stratton and David Waldner discussed the contract. A motion was made by Representative Montell to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**UNIVERSITY OF LOUISVILLE:**

Red7e, 11-092. Mitchell Payne, Tom Peterson and Judy Forcht discussed the contract. A motion was made by Representative Crenshaw to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**UNIVERSITY OF LOUISVILLE:**

Vivian Llambi & Associates, 11-094. Mitchell Payne, Tom Peterson and Judy Forcht discussed the contract. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:**

**EDUCATION, DEPARTMENT OF:**

The Riverside Publishing Company, 1000002692. Charles Harman and Jennifer Stafford discussed the contract. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**FINANCIAL INCENTIVES, DEPARTMENT OF:**

Kentucky Science & Technology Corporation, 1000004213. Holly Spade, John Wehrle and Sean O'Leary discussed the contract. A motion was made by Representative Yonts to con-

sider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**OFFICE OF HOMELAND SECURITY:**

Goldberg & Simpson, PSC, 1000004121. Joe Barrows discussed the contract. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

**THE FOLLOWING MEMORANDUM OF AGREEMENT WAS SELECTED FOR FURTHER REVIEW:**

**DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:**

Eastern Kentucky University, 1100001266. John Davies, Paul Brooks and Greg Guess discussed the contract. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:**

University of Kentucky Research Foundation, 1100001392. John Davies, Paul Brooks and Greg Guess discussed the contract. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

With no further business before the committee, the meeting adjourned at 12:00 PM.

**GOVERNMENT CONTRACT REVIEW COMMITTEE Committee Minutes**

February 8, 2011

**Call to Order and Roll Call**

The Government Contract Review Committee met on Tuesday, February 8, 2011, upon adjournment of both chambers, in Room 171 of the Capitol Annex. Representative Dennis Horlander, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Vernie McGaha, Co-Chair; Representative Dennis Horlander, Co-Chair; Senators Julian M. Carroll, Carroll Gibson, and Paul Hornback; Representatives Jesse Crenshaw, Brad Montell, and Brent Yonts.

**Guests:** Mike Tuggle, Sandy Fawbush, Marvin Miller, Jennifer Linton, Richard Dugas, Paul Gannoe, Dennis Taulbee, William Robinson, David Gayle, Karen Waldrop, Benjy Kinman, Mark Mangeot and Melany Griffith.

**LRC Staff:** Kim Eisner, Matt Ross and Becky Brooker

A motion was made by Representative Yonts to approve Minutes of the January 2011 meeting of the committee. Representative Montell

seconded the motion, which passed without objection.

**JANUARY 2011 DEFERRED LIST**

A motion was made by Senator McGaha to approve the following contract: Morehead State University, 11-018, Scannell & Kurz Incorporated. Representative Yonts seconded the motion, which passed without objection.

**DEFERRED ITEMS**

A motion was made by Senator McGaha to defer the following contracts to the March 2011 meeting of the committee: DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENT DISABILITIES & ADDICTION SERVICES: 1100001294, Crown Services Incorporated; 1100001295, Staff Easy, LLC; 1100001296, Medstaff Healthcare Solutions; 1100001396, Staff Easy, LLC; 1100001397, Crown Services Incorporated; 1100001398, Crown Services Incorporated. DEPARTMENT FOR PUBLIC HEALTH: 1100001261, Ardem Incorporated. UNIVERSITY OF KENTUCKY: 4500044591, TreMonti Consulting, LLC. Representative Yonts seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative Montell seconded the motion, which passed without objection.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:**

**CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:**

Crisis Solutions, LLC, 1100001284; Veritas Leadership Solutions, LLC, 1100001287.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:**

Multi, 1000001427.

**EASTERN KENTUCKY UNIVERSITY:**

Center for Aggression Management, 12-032.

**ECONOMIC DEVELOPMENT - OFFICE OF THE SECRETARY:**

Perdue Farms Incorporated, 1100001434.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:**

GRW Engineers Incorporated, 1100001420; Vaughn & Melton, 1100001425.

**JUVENILE JUSTICE, DEPARTMENT OF:**

Vera Institute of Justice Incorporated, 1100001301; Scotty Dwayne Combs, 1100001496.

**NORTHERN KENTUCKY UNIVERSITY:**

David Deggs, 2011-576; Collaborative Concepts, 2012-574.

**POST SECONDARY EDUCATION, COUNCIL ON:**

Dale Meyer, 1100001456.

**TRANSPORTATION CABINET:**

Applied Pavement Technology Incorporated, 1100001466; Palmer Engineering Company, 1100001520; Vaughn & Melton Consulting Engineers (Kentucky), Incorporated, 1100001521.

**UNIVERSITY OF KENTUCKY:**

Ross Tarrant Architects Incorporated, A111060; GRW Incorporated, A111090; Citrix Systems Incorporated, K11-173; Witt/Kieffer, K11-174.

**VETERANS AFFAIRS, DEPARTMENT OF:**

Disabled American Vets, 1100000608.

**WESTERN KENTUCKY UNIVERSITY:**

Frost & Sullivan, 101145; The Via Group, 101146; Ross Tarrant Architects, 101229.

**WORKFORCE INVESTMENT, OFFICE OF:**

Michelle Wircenski, 1100001411.

**THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

**AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:**

Ray, Foley, Hensley & Company, PLLC, 1100000250.

**CORRECTIONS, DEPARTMENT OF:**

Louisville Metro Reentry Task Force Incorporated, 1000001913; Phamatch Incorporated, 1000002817.

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION:**

URS Corporation, 1000001352.  
DEPARTMENT FOR FAMILY RE-SOURCE CENTERS & VOLUNTEER SERVICES:

Project Unite, 1000001576.

DEPARTMENT FOR NATURAL RESOURCES:

Multi, 1000002784.

DEPARTMENT FOR PUBLIC HEALTH:

National Jewish Health, 1000001737.

EDUCATION PROFESSIONAL STANDARDS BOARD:

Southern Regional Education Board, 1000001590.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Staggs and Fisher Consulting Engineers Incorporated, 0700004025; Cunningham Consultants, 0700006172; Roger Cunningham Cunningham Consultants, 0700006172; Paladin Incorporated, 0700006242; CDP Engineers Incorporated, 0800010316; Omni Architects, 0900011348; Mactec Engineering & Consulting, 1000001118; Mactec Engineering & Consulting, 1000002150; Sherman Carter Barnhart, 1100000599; Nolan & Nolan Incorporated, C-99015882.

OFFICE OF INSPECTOR GENERAL:

Donnie Ray Woosley, 1100000387.

PUBLIC PROTECTION & REGULATION CABINET:

Vaughn Murphy PLLC, 1000000863; Mike Wilson, 1000000864; William W. Trude, Jr., 1000000865.

STATE POLICE, DEPARTMENT OF:

ASCLD Lab, 1000002515.

TRANSPORTATION CABINET:

BTM Engineering Incorporated, 0700003469; GRW Engineers Incorporated, 0700006362; Burgess and Niple Incorporated, 0800007154; Palmer Engineering Company, 0800011179; Greenman-Pedersen Incorporated, 0800011200; Kelly Taylor, 1000001984; Teri Lampkins, 1000001987; Bowles Rice McDavid Graff and Fred E. Fugazzi Jr., 1000002197; Mary Jane Hensley, 1000002831; Chevalier, Ginn, Shirooni & Kruer, P.S.C., 1000003272; Quest Engineering Incorporated, C-00256534-3; Presnell Associates Incorporated d/b/a QK4, C-04224166-2; W M B Incorporated, C-99005798-3.

UNIVERSITY OF KENTUCKY:

GBBN Architects, A061080; Core Management Services, LLC, K11-108; Horizon Engineering, K11-153.

**THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJEC-**

**TION:**

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

City of Danville, 1100001153; Pulaski County Conservation District, 1100001155; Kenton County School District Finance Corporation, 1100001320.

DEPARTMENT FOR FAMILY RE-SOURCE CENTERS & VOLUNTEER SERVICES:

Green River Area Development District, 1100001216.

DEPARTMENT FOR PUBLIC HEALTH:

Food World Incorporated, 1100000328.

DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:

Alliance to Save Energy, 1100001343.

EDUCATION, DEPARTMENT OF:

Kentucky State University, 1100001381; Kentucky Center for the Arts, 1100001416.

INFRASTRUCTURE AUTHORITY:

Muhlenberg County Water District #3, 1100001470; Knott County Fiscal Court, 1100001474; Knott County Fiscal Court, 1100001475; Jackson Municipal Waterworks, 1100001494; Prestonsburg City's Utilities Commission, 1100001516; Letcher County Fiscal Court, 1100001541.

MILITARY AFFAIRS, DEPARTMENT OF:

Oldham County, 1100001046; Multi, 1100001405.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

University of Louisville Research Foundation, 1100001290; Garrard County Fiscal Court, 1100001446; City of Morehead, 1100001457; Breckinridge County Fiscal Court, 1100001459; Warren County Fiscal Court, 1100001513; Letcher County Fiscal Court, 1100001537; Letcher County Fiscal Court, 1100001539; City of Uniontown, 1100001547.

POST SECONDARY EDUCATION, COUNCIL ON:

Board of Trustees of the University of Illinois, 1100001439; Southern Regional Education Board, 1100001495.

**THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

ADMINISTRATIVE OFFICE OF THE COURTS:

Cabinet for Health & Family Services, Department for Mental Health/Mental Retardation, 1000001177.

AGRICULTURE, DEPARTMENT OF:

Multi, 0900011602; Multi, 0900011666; Multi, 0900011722.

COMMISSION FOR CHILDREN

WITH SPECIAL HEALTH CARE NEEDS:

Eastern Kentucky University Training Resource Center, 1000003526.

CORRECTIONS, DEPARTMENT OF:

Kentuckiana works, 1000003774.

DEPARTMENT FOR AGING & INDEPENDENT LIVING:

Kentuckiana Regional Planning, 1000001994; Green River Area Development, 1000001998; Barren River Area Development District, 1000001999; Lincoln Trail Area Development District, 1000002000; Northern Kentucky Area Development District, 1000002001; Buffalo Trace Area Development District, 1000002002; Gateway Area Development District, 1000002003; Fivco Area Development District, 1000002004; Big Sandy Area Development District, 1000002005; Cumberland Valley Area Development District, 1000002008; Lake Cumberland Area Development District, 1000002009; Bluegrass Area Development District Title III, 1000002011; Green River Regional Mental Health Mental Retardation Board d/b/a River-valley Behavior, 1000002083; Comprehend Incorporated, 1000002088; Lake Cumberland Mental Health Mental Retardation Board, 1000002093; Northern Kentucky Cooperative Educational Services, 1000002249; Licking Valley CAA, 1000002330; Audubon Area Community Services Incorporated, 1000002333.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Big Sandy Area Development District, 1000001965; Gateway Community Services Organization, Incorporated, 1000002346; Community Action of Southern Kentucky Incorporated, 1000002359; University of Kentucky Human Development Institute, 1000003388; University of Kentucky Research Foundation, 1000003401; University of Kentucky Research Foundation, 1000003546.

DEPARTMENT FOR FAMILY RE-SOURCE CENTERS & VOLUNTEER SERVICES:

Morehead State University, 1000003914.

DEPARTMENT FOR MEDICAID SERVICES:

Eastern Kentucky University, 1000004032.

DEPARTMENT FOR NATURAL RESOURCES:

U. S. Department of the Interior, 1100001197.

DEPARTMENT FOR PUBLIC HEALTH:

Comprehend Incorporated, 1000001715; Four Rivers Behavioral Health, 1000001716; Lifeskills, 1000001721; Mountain Comprehensive Care Center, 1000001722; Pennyroyal Mental Health, 1000001733; Cumberland River Regional Mental

Health Mental Retardation Board, 1000001848; U of L Research Foundation, 1000003902; University of Kentucky Research Foundation, 1000003968; University of Kentucky Research Foundation, 1000004064; University of Kentucky Research Foundation, 1000004112; University of Kentucky Research Foundation, 1000004116; University of Kentucky Research Foundation, 1000004134.

EDUCATION, DEPARTMENT OF:

Department for Public Health Chronic Disease Program, 1000001482; KCTCS, 1100000001; University of Kentucky Research Foundation, 1100001001.

MILITARY AFFAIRS, DEPARTMENT OF:

Pathways Incorporated, 1100000335.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Wayne County Fiscal Court, 0700003148; City of Manchester, 0700003617; City of Pineville, 1000000169; City of Pineville, 1000000229; Gateway Area Development District, 1000003846; Cumberland Valley Area Development District, 1000003852; Purchase Area Development District, 1000003854; Kentucky River Area Development District, 1000003856; Lincoln Trail Area Development District, 1000003876; Pennyroyal Area Development District, 1000003877; KIPDA, 1000003905; Fivco Area Development District, 1000003941; Barren River Area Development District, 1000003975; Buffalo Trace Area Development District, 1000004119; Big Sandy Area Development District, 1000004182; Bluegrass Area Development District, 1000004199; City of Campbellsville, 1100001194; Henderson County Fiscal Court, 1100001389; Harlan County Fiscal Court, 1100001445; Christian County Fiscal Court, 1100001447; City of Morehead, 1100001457.

WORKFORCE INVESTMENT, OFFICE OF:

UK Research Foundation, 1000003589.

**THE FOLLOWING PERSONAL SERVICE CONTRACT WAS SELECTED FOR FURTHER REVIEW:**

DEPARTMENT FOR PUBLIC HEALTH

St. Elizabeth Medical Center, 1100000269. Mike Tuggle, Sandy Fawbush and Marvin Miller discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:**

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING**

Facility Commissioning Group, 0900011688. Jennifer Linton, Richard Dugas and Paul Gannoe discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING**

GRW Engineers Incorporated, 1000000839. Jennifer Linton, Richard Dugas and Paul Gannoe discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator Carroll seconded the motion, which passed unanimously.

**POST SECONDARY EDUCATION, COUNCIL ON**

Dianne Bazell, 1000002429; SC Educational Services, 1000002432; John A. Muffo & Associates Incorporated, 1000002434; Legacy Consulting Group, LLC, 1100000738. Dennis Taulbee discussed the contracts with the committee. A motion was made by Senator Carroll to consider the contracts as reviewed. Representative Yonts seconded the motion, which passed with Representative Montell electing to abstain (pass) and Senator McGaha voting no..

**THE FOLLOWING MEMORANDUM OF AGREEMENT WAS SELECTED FOR FURTHER REVIEW:**

**FISH & WILDLIFE, DEPARTMENT OF**

United States Fish & Wildlife Service, 1100001387. Karen Waldrop, Benjy Kinman and Mark Mangeot discussed the contract with the committee. A motion was made by Senator Carroll to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**THE FOLLOWING MEMORANDUM OF AGREEMENT AMENDMENT WAS SELECTED FOR FURTHER REVIEW:**

**DEPARTMENT FOR COMMUNITY BASED SERVICES**

Community Action Kentucky Incorporated, 1000001353; Community Action Kentucky Incorporated, 1000001353. William Robinson and David Gayle discussed the contracts with the committee. A motion was made by Representative Yonts to consider the contracts as reviewed. Senator Carroll seconded the motion,

which passed unanimously.

**DEFERRED ITEM**

(This contract was originally deferred on the January, 2011 MOA List.)

**FISH & WILDLIFE, DEPARTMENT OF**

Council to Advance Hunting & Shooting Sports, 1100000918. Karen Waldrop, Benjy Kinman and Mark Mangeot discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Senator McGaha seconded the motion, which passed unanimously.

**EXEMPTION REQUESTS**

Mike Tuggle from the Cabinet for Health and Family Services requested continued exemption for all Local Health Department Memoranda of Agreements and Amendments from the committee's routine review process and will provide quarterly reports. A motion was made by Representative Yonts to approve the request to December 31, 2011. Senator McGaha seconded the motion, which passed unanimously.

**OTHER BUSINESS**

Melany Griffith, Legal Counsel for Tourism Cabinet appeared before the committee to provide and update of the Fish & Wildlife litigation; James N. Strader v. Kentucky Department of Fish and Wildlife Resources, Jonathan W. Gassett, et al., Civil Action No 3:09-CV-00062-DCR.

With no further business before the committee, the meeting adjourned at 6:10 PM.

**GOVERNMENT CONTRACT REVIEW COMMITTEE**

**Committee Minutes**

March 8, 2011

**Call to Order and Roll Call**

The Government Contract Review Committee met on Tuesday, March 8, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Vernie McGaha, Chair, called the meeting to order, and the secretary called the roll.

Present were:

**Members:** Senator Vernie McGaha, Co-Chair; Representative Dennis Horlander, Co-Chair; Senator Paul Hornback; Representatives Jesse Crenshaw and Brent Yonts.

**Guests:** Jill Hunter, Lee Barnard, Kevin Mudd, Steve Hall, Adam Jones, Don Speer, Charles Kendell, Joy Hoskins, Debra Israel, Charlie Harman, Hiren Desai, Kay Kennedy, Linda Robinson, Karen Waldrop, Mark Mangeot, Kathy Burke, Bob Wiseman, Denise Finn, David Cook, Stephanie Robey, Leslie Mahoney, Ryan Green and Charles Puckett.

**LRC Staff:** Kim Eisner, Matt Ross

and Becky Brooker.

A motion was made by Representative Yonts to approve Minutes of the February 2011 meeting of the committee. Representative Horlander seconded the motion, which passed without objection.

**FEBRUARY 2011 DEFERRED LIST**

A motion was made by Representative Yonts to approve the following contract: Department for Public Health, 1100001261, Ardem Incorporated. Representative Horlander seconded the motion, which passed without objection.

**DEFERRED ITEMS**

A motion was made by Representative Yonts to defer the following contracts to the April 2011 meeting of the committee: DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENT DISABILITIES & ADDICTION SERVICES: 1100001294, Crown Services Incorporated; 1100001295, Staff Easy, LLC; 1100001296, Medstaff Healthcare Solutions; 1100001396, Staff Easy, LLC; 1100001397, Crown Services Incorporated; 1100001398, Crown Services Incorporated. UNIVERSITY OF KENTUCKY: 4500044591, TreMonti Consulting, LLC. Representative Horlander seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract List, with exception of those items selected for further review by members of the committee. Representative Horlander seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Personal Service Contract Amendment List, with exception of those items selected for further review by members of the committee. Representative Horlander seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement List, with exception of those items selected for further review by members of the committee. Representative Horlander seconded the motion, which passed without objection.

A motion was made by Representative Yonts to consider as reviewed, the Memoranda of Agreement Amendment List, with exception of those items selected for further review by members of the committee. Representative Horlander seconded the motion, which passed without objection.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE REVIEWED WITHOUT OBJECTION:**

**AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:**

Morgan Franklin, LLC, 1100001652; Tichenor and Associates, 1100001654.

**EDUCATION, DEPARTMENT OF:**

Multi, 1100001595; Multi, 1100001598.

**FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:**

Omni Architects, 1100001422; Omni Architects, 1100001498.

**JUVENILE JUSTICE, DEPARTMENT OF:**

Glen J. Bichlmeir, MD, 1100001609.

**KENTUCKY LOTTERY CORPORATION:**

Kizan Technologies, LLC, 12-05-013; PriceWeber Marketing Communications Incorporated, 12-08-043.

**TRANSPORTATION CABINET:**

American Engineers Incorporated, 1100001599; Geotech Engineering & Testing Incorporated, 1100001602; Entran, PLC, 1100001670.

**UNIVERSITY OF KENTUCKY:**

Skystone Partners, LLC, K11-175.

**UNIVERSITY OF LOUISVILLE:**

Robert Pass & Associates, 11-107.

**WORKFORCE INVESTMENT, OFFICE OF:**

Lincoln Electric Company, 1100001488.

**THE FOLLOWING PERSONAL SERVICE AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

**ADMINISTRATIVE OFFICE OF THE COURTS:**

Little Mendelson, 1100001232.

**AUDITOR OF PUBLIC ACCOUNTS, OFFICE OF THE:**

Teddy Michael Prater CPA, PLLC, 1000003800.

**BOARD OF CLAIMS & CRIME VICTIMS COMPENSATION:**

Bowles Rice McDavid Graff & Love, 1000003138; Goldberg Simpson, LLC, 1000003139.

**CORRECTIONS, DEPARTMENT OF:**

Prodigal Ministries Incorporated, 1000003932.

**CRIMINAL JUSTICE TRAINING, DEPARTMENT OF:**

Occupational Medicine Center, 1000002626; Guardian Quest, LLC, 1100000556.

**DEPARTMENT FOR BUSINESS DEVELOPMENT:**

General Electric Company, 1000002289.

**DEPARTMENT FOR ENVIRONMENTAL PROTECTION:**

Camp Dresser & McKee, 0600002008; Chase Environmental Group, 1100000056.

DEPARTMENT FOR FAMILY RESOURCE CENTERS & VOLUNTEER SERVICES:

Ohio Valley Education Coop, 1000001575.

DEPARTMENT FOR NATURAL RESOURCES:

ATC Associates Incorporated, 1000002337; HMB Professional Engineers Incorporated, 1100001280.

DEPARTMENT FOR PUBLIC HEALTH:

Volunteers of America of Kentucky Incorporated, 1100000118; Matthew 25 AIDS Services Incorporated, 1100000120.

FINANCE AND ADMINISTRATION CABINET:

Multi, 1100000187.

FINANCE AND ADMINISTRATION CABINET - DIVISION OF ENGINEERING:

Evans Murphy Graves Architects, 0600002221; Michael Baker, Jr. Incorporated, 0600002724; 5253 Design Group, 0700005726; Michael Baker, Jr., Incorporated, 0800007669; Stantec Consulting Services Incorporated, 0800007671; Luckett and Farley Architects Engineers and Const Managers Incorporated, 0900012055; Shield Environmental, 1000001028; Fitzsimons Office of Architecture Incorporated, 1000002919; Luckett and Farley Architects Engineers and Const Managers Incorporated, 1100000714; Stantec Consulting Services Incorporated, C-01187237; Sherman Carter Barnhart, C-05236910.

GOVERNORS OFFICE OF AGRICULTURAL POLICY:

Goldberg Simpson, LLC, 1000002776.

MEDICAL LICENSURE, BOARD OF:

Multi, 1000002739.

NORTHERN KENTUCKY UNIVERSITY:

Alt & Witzig Engineering, 2011-521; Tom Triplett, 2011-564.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Jeffrey P. Hanna, 1100000666.

TRANSPORTATION CABINET:

Entran, PLC, 0700003240; Burgess & Niple Incorporated, 0700003514; W M B Incorporated, 0700003516; Hall Harmon Engineers Incorporated, 0700004926; Palmer Engineering Company, 0700006363; Community Transportation Solutions, 0900012152; American Engineers Incorporated, 1000001074; Capital City Aviation, 1000001985; Johnson True & Guarnieri, LLP, 1000002227; Pedley & Gordinier, PLLC, 1000002423; J. M. Crawford & Associates Incorporated, 1000002872; URS Corporation, 1000004203; Palmer Engineering Company, C-00208210-4; Presnell Associates Incorporated d/b/a QK4, C-99059032-5.

UNIVERSITY OF KENTUCKY:  
APAX Software Development, LLC, 4500040474.

**THE FOLLOWING MEMORANDA OF AGREEMENTS WERE REVIEWED WITHOUT OBJECTION:**

DEPARTMENT FOR ENVIRONMENTAL PROTECTION:

Boone County Conservation District, 1100001154.

DEPARTMENT OF ENERGY DEVELOPMENT AND INDEPENDENCE:

Midwest Energy Efficiency Alliance, 1100001510.

HIGHER EDUCATION ASSISTANCE AUTHORITY, KENTUCKY:

Northern Kentucky University, 1100001574.

INFRASTRUCTURE AUTHORITY:

City of Booneville, 1100001672.

MILITARY AFFAIRS, DEPARTMENT OF:

University of Kentucky Research Foundation, 1100001421; Lexington-Fayette Urban County Government, 1100001426; Louisville Jefferson County Metro EMA Hazard Mitigation, 1100001524.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Fox Creek Watershed Conservancy District, 1100001501; Kentucky Highlands Investment Corporation, 1100001515; Breathitt County Board of Education, 1100001526; City of Sebre, 1100001540; City of Sebre, 1100001542; Consolidated Health Systems d/b/a Highland Health System, 1100001553; Pike County Fiscal Court, 1100001557; Pike County Fiscal Court, 1100001559; City of Richmond, 1100001562; Lee County Fiscal Court, 1100001565; City of Maysville, 1100001581; City of Hindman, 1100001583; Kentucky Highlands Investment Corporation, 1100001587; Bell County Fiscal Court, 1100001591; City of Lebanon, 1100001613; Marshall County Fiscal Court, 1100001625; Knott County Fiscal Court, 1100001641; City of Frankfort, 1100001680.

**THE FOLLOWING MEMORANDA OF AGREEMENT AMENDMENTS WERE REVIEWED WITHOUT OBJECTION:**

AGRICULTURE, DEPARTMENT OF:

Multi, 0900011602; Multi, 0900011722; Murray State University, 1000003732; UK Research Foundation, 1000003733.

COMMISSION FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS:

University of Kentucky Research Foundation, 1000003495.

CORRECTIONS, DEPARTMENT

OF:

Pike County Detention Center, 1000003265; Louisville Metro Criminal Justice Commission, 1000003906.

DEPARTMENT FOR COMMUNITY BASED SERVICES:

Community Action Kentucky Incorporated, 1000001353; Kentuckianaworks, 1000001486; KCTCS, 1000003550.

DEPARTMENT FOR INCOME SUPPORT:

Legal Aid Society, 1000002964.

DEPARTMENT FOR MEDICAID SERVICES:

Multi, 1000001186.

DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES:

Four Rivers Behavioral Health, 1000001651; Pennyroyal Mental Health, 1000001652; Green River Regional Mental Health Mental Retardation Board, 1000001653; Communicare Incorporated, 1000001655; Seven Counties Services, 1000001656; Northern Kentucky Regional Mental Health Mental Retardation Board, 1000001657; Comprehend Incorporated, 1000001658; Pathways Incorporated, 1000001659; Mountain Comp Care Center, 1000001660; Kentucky River Community Care, 1000001661; Cumberland River Mental Health Mental Retardation Board Incorporated, 1000001662; Lake Cumberland Mental Health Mental Retardation Board, 1000001663; Bluegrass Regional Mental Health Mental Retardation, 1000001664.

DEPARTMENT FOR NATURAL RESOURCES:

Department of the Interior, 1100001197.

DEPARTMENT FOR PUBLIC HEALTH:

Bluegrass Regional Mental Health Mental Retardation, 1000001714; Adanta Group, 1000001720; Seven Counties Services, 1000001734; University of Kentucky Research Foundation, 1000004103; U of L Research Foundation, 1000004106; University of Kentucky Research Foundation, 1000004130; Brenda D. Cowan Coalition for Kentucky Incorporated, 1100000042.

EDUCATION, DEPARTMENT OF:

Owen County Board of Education, 1000001796; Owen County Board of Education, 1000001839; Scott County Board of Education, 1000001844; Madison County Board of Education, 1000002798; Carter County Board of Education, 1000002917; Letcher County Board of Education, 1000002922; Letcher County Board of Education, 1000002929; Madison County Board of Education, 1000002933; Green County Board of Education, 1000002994; Scott County Board of Education, 1000003282;

Todd County Board of Education, 1000003284; University of Louisville Research Foundation, 1000003407; Jefferson County Board of Education, 1000003640; Madison County Board of Education, 1000003649; Todd County Board of Education, 1000003650; Carter County Board of Education, 1000003759; Woodford County Board of Education, 1000003777; Northern Kentucky Research Foundation, 1000003936; Madison County Board of Education, 1000003946; Ballard County Board of Education, 1100000132; Bowling Green Independent Board of Education, 1100000134; Edmonson County Board of Education, 1100000139; Fleming County Board of Education, 1100000141; Franklin County Board of Education, 1100000142; Livingston County Board of Education, 1100000150; Magoffin County Board of Education, 1100000151; McCreary County Board of Education, 1100000153; Scott County Board of Education, 1100000158; Simpson County Board of Education, 1100000160; Union County Board of Education, 1100000162; Monroe County Board of Education, 1100000221; Bracken County Board of Education, 1100000223; University of Kentucky Research Foundation, 1100000745; University of Kentucky Research Foundation, 1100000908.

JUSTICE CABINET:

Department of Pathology and Laboratory Medicine, 1000004126.

OFFICE OF THE GOVERNOR, DEPARTMENT FOR LOCAL GOVERNMENT:

Muhlenberg County Fiscal Court, 1000001992; Northern Kentucky Area Development District, 1000003945; Green River Area Development District, 1000003977; Lake Cumberland Area, 1000004180; Hart County Fiscal Court, 1100000448; Crittenden County Fiscal Court, 1100001263; Pulaski County Fiscal Court, 1100001393.

TRANSPORTATION CABINET:

Council on Postsecondary Education, 1000001742.

WORKFORCE INVESTMENT, OFFICE OF:

UK Research Foundation, 1000003595; University of Kentucky Research Foundation, 1000003880.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS WERE SELECTED FOR FURTHER REVIEW:**

DEPARTMENT FOR MEDICAID SERVICES

Navigant Consulting Incorporated, 1000001432. Jill Hunter and Lee Barnard discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES**

Allan Bergman, 1100001254. Kevin Mudd, Steve Hall, Adam Jones and Don Speer discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**DEPARTMENT FOR PUBLIC HEALTH**

Planned Parenthood of Greater Louisville, 1100001205. Charles Kendell, Joy Hoskins and Debra Israel discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed subject to the Department for Public Health filing an amendment to change the name of the contract to the correct vendor name of Planned Parenthood of Kentucky. Representative Horlander seconded the motion, which passed with Senator McGaha voting NO.

**EDUCATION, DEPARTMENT OF**  
Electronic Training Solutions Incorporated, 1100001531. Charlie Harman and Hiren Desai discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**EDUCATION, DEPARTMENT OF**  
Parsons Commercial Technology Group Incorporated, 1100001588. Charlie Harman, Hiren Desai and Kay Kennedy discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**EDUCATION, DEPARTMENT OF**  
Hazard Perry County Community Ministries Development Center d/b/a New Beginnings Child, 1100001665; Save the Children Appalachian Field Office, 1100001666. Charlie Harman and Linda Robinson discussed the contracts with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**FISH & WILDLIFE, DEPARTMENT OF**

Responsive Management, 1100001438. Karen Waldrop and Mark Mangeot discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed with Senators Hornback and McGaha voting NO.

**THE FOLLOWING PERSONAL SERVICE CONTRACTS AMEND-**

**MENTS WERE SELECTED FOR FURTHER REVIEW:**

**DEPARTMENT FOR MEDICAID SERVICES**

Brenda Parker, 1000001091. Jill Hunter and Lee Barnard discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDICTION SERVICES**

AMS Temporaries Incorporated, 1000002836; Crown Services Incorporated, 1000002837; Guardian Angel Staffing Agency, 1000002838; Guardian Healthcare Providers, 1000002839; Nursestaffing Group Kentucky, LLC, 1000002840. Kevin Mudd, Steve Hall and Kathy Burke discussed the contracts with the committee. A motion was made by Representative Yonts to consider the contracts as reviewed. Representative Horlander seconded the motion, which passed unanimously.

**UNIVERSITY OF KENTUCKY**

Stidham & Associates, K11-113. Bob Wiseman and Denise Finn discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

**THE FOLLOWING MEMORANDUM OF AGREEMENT WAS SELECTED FOR FURTHER REVIEW:**

**EDUCATION, DEPARTMENT OF**  
Fayette County Treasurer Board of Education, 1100001642; Floyd County Board of Education, 1100001643; Kenton County Board of Education, 1100001644; McCracken County Board of Education, 1100001645; Spencer County Board of Education, 1100001646; Washington County Board of Education, 1100001647. Charlie Harman and David Cook discussed the contracts with the committee. A motion was made by Senator Hornback to consider the contracts as reviewed. Representative Crenshaw seconded the motion, which passed with Representative Yonts electing to abstain (PASS) and Senator McGaha voting NO.

**EDUCATION, DEPARTMENT OF**  
Adair County Board of Education, 1100001656; Berea Independent Board of Education, 1100001657; Caverna Independent Board of Education, 1100001658; Cloverport Independent Board of Education, 1100001659; Crittenden County Board of Education, 1100001660; Floyd County Board of Education, 1100001661; McCracken County

Board of Education, 1100001663; Woodford County Board of Education, 1100001664. Charlie Harman and Linda Robinson discussed the contracts with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**MILITARY AFFAIRS, DEPARTMENT OF**

Multi, 1100001569. Stephanie Robey and Leslie Mahoney discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

**THE FOLLOWING MEMORANDUM OF AGREEMENTS AMENDMENTS WERE SELECTED FOR FURTHER REVIEW:**

**DEPARTMENT FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES & ADDITION SERVICES**

Lifeskills Incorporated, 1000001654. Kevin Mudd, Steve Hall and Kathy Burke discussed the contracts with the committee. A motion was made by Senator McGaha to DISAPPROVED the contract. Representative Crenshaw seconded the motion, which passed unanimously.

**EDUCATION, DEPARTMENT OF**

Casey County Board of Education, 1000002618; Corbin Independent Board of Education, 1000002646; Cumberland County Board of Education, 1000002653; Fayette County Board of Education, 1000002656; Fulton County Board of Education, 1000002666; Glasgow Independent Board of Education, 1000002671; Hancock County Board of Education, 1000002674; Henderson County Board of Education, 1000002695; Lincoln County Board of Education, 1000002728; Livingston County Board of Education, 1000002729; Lyon County Board of Education, 1000002731; Metcalfe County Board of Education, 1000002733; Monroe County Board of Education, 1000002736; Nelson County Board of Education, 1000002740; Taylor County Board of Education, 1000002762; Whitley County Board of Education, 1000002770. Charlie Harman and Linda Robinson discussed the contracts with the committee. A motion was made by Senator Hornback to consider the contract as reviewed. Representative Yonts seconded the motion, which passed unanimously.

**WORKFORCE INVESTMENT, OFFICE OF**

University of Kentucky Research Foundation, 1000003599. Ryan Green and Charles Puckett discussed the contract with the committee. A motion was made by Representative Yonts to consider the contract as

reviewed. Representative Crenshaw seconded the motion, which passed unanimously.

**THE FOLLOWING MEMORANDA OF AGREEMENTS FOR \$50,000 & UNDER WERE SELECTED FOR FURTHER REVIEW:**

**FISH & WILDLIFE, DEPARTMENT OF**

Missouri Department of Conservation, 1100001700. Karen Waldrop and Mark Mangeot discussed the contract with the committee. A motion was made by Representative Yonts to defer the contract to the April 2011 meeting of the committee. Representative Crenshaw seconded the motion, which passed unanimously.

With no further business before the committee, the meeting adjourned at 12:50 PM.

**JOINT MEETING OF THE TASK FORCE ON MEDICAID COST CONTAINMENT and MEDICAID OVERSIGHT and ADVISORY COMMITTEE Minutes of the 11th Meeting of the 2010 Interim**

December 1, 2010

**Call to Order and Roll Call**

A joint meeting of the Task Force on Medicaid Cost Containment and the Medicaid Oversight and Advisory Committee was held on Wednesday, December 1, 2010, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Katie Kratz Stine, Co-Chair, called the meeting to order at 10:10 AM, and the secretary called the roll.

Present were:

**Members:** Senator Katie Kratz Stine, Co-Chair; Representative Jimmie Lee, Co-Chair; Senators Tom Buford, Denise Harper Angel, Bob Leeper, Dan Seum, and David L. Williams; Representatives Tom Burch, Bob DeWeese, Joni Jenkins, Rick Rand, Greg Stumbo, and Jill York.

**Guest Legislators:** Senator Tim Shaughnessy and Representative John Will Stacy.

**Guests:** Crit Luallen, Auditor of Public Accounts; Brian Lykins, Office of the Auditor of Public Accounts; Eric T. Clark and Wayne Johnson for the Kentucky Association of Health Care Facilities; John Cooper for the Kentucky Medical Association; Bryce McGowan, KYNHN; Linda Sims, LT-DHD/KHDA; and Mary Sparra, CSE.

**LRC Staff:** Miriam Fordham, Pam Thomas, Cindy Murray, Mike Clark, DeeAnn Mansfield, Frank Willey, Jonathan Scott, and Gina Rigby.

Approval of Minutes

The minutes of the November 15, 2010 and November 16, 2010 meetings of the Medicaid Cost Containment Task Force were approved without objection by the members



of the Medicaid Cost Containment Task Force.

### **Discussion of State Auditor's Examination of the Passport Health Plan**

Auditor Luallen stated the Examination of Certain Policies, Procedures, Controls, and Financial Activity of University Health Care, Inc. (UHC), dba Passport Health Plan, and its Affiliation with the University of Louisville and the Cabinet for Health and Family Services was released November 9, 2010. Passport holds the state's largest contract at \$793 million for the current year. The exam calls for more accountability and transparency in the management and oversight of the Medicaid managed-care provider. The report identifies 20 findings and offers 85 recommendations to strengthen the management, oversight, and the transparency of Passport to provide consistent good stewardship over Medicaid funds. The scope of the examination encompassed records and information for the period January 1, 2007 through December 31, 2009, unless otherwise specified. The objectives developed the Auditor of Public Accounts (APA) for this examination included: review controls and organizational oversight; determine the appropriateness of capital and other significant distributions by UHC; determine the comparability of Passport Health Plan costs to other Medicaid fee-for-service costs; determine whether actual cost savings could be attributed to UHC; determine whether expenditures support the mission of Passport Health Plan; determine whether conflicts of interest exist; and report findings and recommendations related to these and other matters identified in the examination.

Passport was created for the purpose of offering Medicaid services to beneficiaries in 16 counties for 164,000 poor and disabled beneficiaries residing in Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, LaRue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties. Passport has been ranked among the best Medicaid plans in the nation based on access to care, overall member satisfaction, prevention services, and treatment. The exam by the Auditor's Office did not address the quality or delivery of medical services in the national ranking.

The Auditor's Office examined issues concerning certain financial activity of Passport. The exam recommends Passport's policies regarding expenditures and cash distributions should be consistent with the original goal of controlling growth in Medicaid costs. Passport exceeded its state-required cash reserves for each of the three years reviewed. At the end of 2009, Passport had approximately

\$77 million of excess reserves over the amount insurance regulators require, even after a distribution of \$30 million to the original investors. The exam questions whether these \$30 million in distributions are in compliance with Kentucky law and the IRS tax code related to non-profits, and whether they were properly communicated to the Department for Medicaid Services. The exam recommends Passport seek an opinion from the Kentucky Office of Attorney General and or the IRS on these distributions.

As Passport's excess revenues grew, it increased spending on lobbying, public relations, travel and salaries, and provided financial benefits that favored its original investors over other area providers. Passport spent nearly \$14 million on consulting and outsourced services, including \$1 million for lobbying and public relations. The Auditor's Office found that staff travel costs, primarily for two UHC executives, for the three years reviewed totaled approximately \$230,000. Approximately \$73,000 was spent on meals; \$242,000 was given to AmeriHealth Mercy employees as anniversary bonuses; \$423,000 was contributed to local sponsorships; and \$250,000 was spent on memberships to various organizations. The executive vice-president's average annual income for the three years reviewed was \$285,000, including salary and bonuses from UHC and the University of Louisville. The executive vice-president received compensation as a partner in the consulting firm that received more than \$354,000 from AmeriHealth Mercy for consulting services, and were cited as a conflict of interest. The exam recommends the board strengthen oversight of spending.

Auditors found that the governing board of Passport is incorrectly structured based on federal guidelines and recommends restructuring the board to have equitable regional representation by all providers and significant beneficiaries.

In addition to the report findings and recommendations, Chapter 2 of the report discusses the concept of budget neutrality, including the Section 1115 federal Medicaid demonstration waiver. The Kentucky Health Care Partnership Demonstration in Region 3 was implemented on November 1, 1997, by UHC, dba Passport Health Plan, a sole-source, non-competitive managed care provider. Passport is the only model of its type without competition that exists in the nation. The initial capitalization for Passport was provided by the University of Louisville Medical School Practice Association (now known as University Physicians Associates); the University Medical Center, dba University of Louisville

Hospital; Jewish Hospital Healthcare Services (now Jewish Hospital and St. Mary's Healthcare); the Alliant Health System (now Norton Healthcare); and the Louisville and Jefferson County Primary Care Association. The total capitalization investment in UHC of all contributors was \$10.5 million, which was returned to the original investors in December 2008. UHC is a nonprofit corporation managed by a Board of Directors which represents the original five investors in Passport Health Plan. Additionally, a Partnership Council representing both public and private providers has authority for health care oversight and guidance for the Passport Health Plan.

The Cabinet for Health and Family Services pays Passport a monthly, per member capitation payment, whether or not a member receives services during the period covered by the payment. Since approximately 86 percent of its funding is derived and expended are from state funds, Passport is considered to be a public agency. UHC contracts with AmeriHealth Mercy Health Plan as its third party administrator to perform the day-to-day functions for the operation of Passport. AmeriHealth Mercy earns incentives if it meets, in whole or in part, one or more of the operational goals and meets at least 75 percent of the quality goals set by UHC/Passport Health Plan.

Budget neutrality requires that federal expenditures for Medicaid services allowed under a waiver program not be greater than a cost ceiling projected by the Centers for Medicare and Medicaid Services (CMS) based on historical trends. The actual cost of the program must be less than the calculated maximum cost, or ceiling, in order to be deemed budget neutral. For a Medicaid waiver program to be considered budget neutral, the state must illustrate over the life of the waiver program that the program, Passport Health Plan, will not be expected to cost the federal government more than the maximum ceiling it projects. Kentucky is at risk for repayment of federal dollars if the CMS imposed budget neutrality limits are exceeded by Passport. Therefore, the Department for Medicaid Services (DMS) monitors budget neutrality on a regular basis to ascertain that, for the waiver period, Passport is budget neutral, according to the definition of budget neutral. To gain a true analysis that will determine whether there are actual savings for the Commonwealth, the Auditor's Office recommended a detailed study that compares costs in every category and evaluates what it would cost the state under a fee-for-service model to perform the same functions in that region. The cabinet has agreed in their response to the report to contract for such an

analysis.

Recommendations were also made for the Department for Medicaid Services to strengthen contract negotiations with Passport. Specifically, the department needs to analyze more detailed financial information, including the levels of reserves, and evaluate cost comparisons before the final contract rate is negotiated. Passport plays such a vital role in the lives of many Kentuckians, that it is imperative that it use state and federal Medicaid funds in an equitable, appropriate, and transparent manner. Any cost savings generated by the program should take the form of lower costs to the state or additional services for the beneficiaries. The report does not express an opinion on the viability of a managed care model for delivery of Medicaid services; but a managed care approach can prove to be an effective method for controlling growth in Medicaid costs. If the state is going to continue to use this model and consider additional managed care approaches, it is critical that there is strong accountability and oversight of these public funds.

Both the UHC and the Department for Medicaid Services have responded to the audit and their responses are included in the report. A meeting has been scheduled for December 7 to discuss a corrective action plan for Passport being developed by the cabinet. Passport officials indicate their willingness to consider the audit's recommendations. State officials commit to strengthen oversight and contract negotiations as recommended in the audit. The Auditor's Office will be involved as the cabinet initiates additional audits of Passport and its subcontractors.

In response to a question by President Williams, Auditor Luallen stated that information was given to the Auditor's Office by several sources that helped developed the scope necessary to answer questions raised about Passport. The controls and organizational oversight was looked at and looked specifically at the distribution of capital issue and to see if there was an easy way to compare Passport's costs to other fee-for-service cost. The only question that could not be answered without additional work would have been a more detailed cost analysis, but a recommendation was made. Examination procedures included the review of thousands of pages of documents and interviews of Passport Health Plan executive staff members, the secretary and DMS staff of the Cabinet for Health and Family Services, providers, hospital administrators, current and previous Passport board members, trying to find the best documented way to answer all the questions that had been raised.

In response to a question by Senator Stine, Auditor Luallen stated that the exam did not compare the Passport model with the cost for a fee-for-service model. It would be difficult to compare Passport with a fee-for-service model because it does not conduct business like the rest of the state.

In response to a question by Senator Stine, Auditor Luallen stated that a letter had been sent to the General Assembly from the cabinet that stated it costs more for Passport than it did in the rest of the state. What it did not point out is what it would cost to perform the same services that Passport is serving in its region. There is a detailed section in the audit about the question of how to define budget neutrality and how it can meet the federal guidelines and still cost more. The cabinet has agreed to contract with an independent contractor to do a detailed cost analysis. It is difficult to compare Passport with the rest of the state, because it does not provide services like the rest of the state. An analysis needed to be done to show the cost to the state of providing the same services as Passport in the same region under a fee-for-service model. A consultant with expertise in analyzing health care data who has actuarial expertise available during the process to look at every detail of exactly what Passport is providing and analyze every area of its cost and then compare that to what it would cost the state in the same region to perform the same service.

In response to a question by President Williams, Auditor Luallen stated that Kentucky had to apply for a waiver to perform services different from the fee-for-service delivery of Medicaid services. A baseline and growth level established under federal guidelines would be allowed. As the Passport contract and revenues grew, there was not an adjustment in terms of having a stronger level of compliance and oversight to see exactly how the money was being spent because that is not how the model started.

In response to questions by President Williams, Auditor Luallen stated that the original investors, who put up the money assume the risks if cost exceeds the capitated payments. It was appropriate to return the \$10 million original investment to the original investors. The contract states that Passport has to contact the cabinet 30 days before the distribution of funds. The problem with the next \$20 distribution was they were labeled indigent care grants and given back to the original investors in the same proportion as the same original investment, not based upon how much indigent care that was provided. There was no formal process for determining how the money

replaced indigent care expenses; it just went back into the general fund. Documentation was provided that said that each of the entities had spent at least that much on indigent care. The problem was not so much that the funds were labeled indigent care as much as the minutes show there was a discussion about the need to distribute the money to improve their negotiating position with the state. Passport sought legal counsel on how to appropriately distribute the money. Indigent care costs are not part of the investors' responsibility for providing Medicaid services, because all the entities have indigent care costs that are absorbed in normal operations. There is not enough attention given by the Passport governance or the cabinet to ensure that the state is getting every possible dollar to be used on Medicaid services. Passport is a non-profit entity formed for the sole purpose of providing services for the poor and disabled, but they have developed a culture that is more like a for-profit vendor. Passport should be considered a public agency and should be held accountable to the taxpayers. Even though the original investors are non-profit entities, they have varying sources of revenues. Passport exists solely based a contract of state and federal funds.

In response to questions by President Williams, Auditor Luallen stated that the governing authority for UHC did not have regional representation in the conduct of the financial administration of Passport. UHC, through its board, is responsible for all financial decisions of Passport Health Plan, while the Partnership Council's role is defined as primarily to provide guidance and oversight to the operational aspects of the third-party providers. This is the first time the state has ever contracted with a non-profit group of providers, but they were not performing and leading the organization with the responsibility back to the taxpayer. In her opinion, she feels the Passport staff and the board felt their responsibility was to the original investors more than the taxpayers.

In response to a question by President Williams, Auditor Luallen stated that the cabinet makes sure it is in compliance with federal guidelines on budget neutrality and looking at data related to delivery of service. The cabinet agrees it should have done a better job monitoring the activities of Passport and are working on implementing the recommendations in the report. Hopefully, the report will help the cabinet on how to build in the proper financial analysis, cost comparisons, accountability, and contract compliance when negotiating other managed care contracts.

In response to a question by

President Williams, Auditor Luallen stated that other private companies who provide these services understand and know how to enter into a contractual relationship and hold up their end of the bargain, because the company knows it will be monitored by the state. Passport did not think they should be accountable as if it was a public agency.

In response to a question by President Williams, Auditor Luallen stated that AmeriHealth Mercy was awarded the third-party administrator without any competitive bidding. The cabinet will seek audits of all vendors, including AmeriHealth Mercy.

In response to a question by President Williams, Auditor Luallen stated that anyone conducting business with the executive or legislative branches should register as lobbyists. Passport had two employees who were registered as lobbyists and had 11 contract lobbyists and the audit shows that this was excessive. Passport used Medicaid funds intended for the health care for the poor and disabled to hire contract lobbyists to enhance its position with the legislative and executive branches.

In response to a question by President Williams, Auditor Luallen stated that Passport is a public entity because it receives 100 percent state funds. If a private entity enters into a contract and performs services only for the Commonwealth, it should be held accountable on how it spends the money. She agreed that Passport went outside of its mission and the cabinet was not set up to find or utilize the information to appropriately negotiate with this vendor.

In response to a question by Senator Stine, Auditor Luallen stated that all cabinets should have detailed financial analysis, oversight, and accountability for all entities that have contracts with the state. Senator Stine referenced a draft report, Medicaid Management and Program Integrity: Update on Recommendations From Three Program Review Reports, prepared by the Program Review and Investigations Committee staff of the Legislative Research Commission that contains a detailed follow-up describing the status of the recommendations and provides current findings. Anything that can be put in legislation that ensures that any cabinet negotiating on behalf of the state needs to have a detailed cost analysis to ensure the best deal possible. Once the contract has been negotiated, there needs to be proper reporting and oversight. If the state is going to contract out more services, it has to do a better job of building in more levels of accountability, and the only way to do it is to have accurate detailed financial information.

In response to a question by

Representative Burch, Auditor Luallen stated that in order to have better management, oversight, and accountability of programs, people with the best expertise are needed.

In response to questions by Speaker Stumbo, Auditor Luallen stated that after six years of operations, Passport started to have excess revenues. Speaker Stumbo asked staff to prepare a year-by-year timeline of what transpired at the cabinet that allowed Passport to accumulate excess revenues and information on what hampered the cabinet's ability to oversee Passport's contract. Auditor Luallen stated that there needs to be a comparable chart of rate increases being awarded at the same period of time. In the contract negotiations, the state gives a percentage increase for the capitated rates. During the recession, approximately 3,000 new recipients have been added to the Medicaid rolls monthly. There have to be economies of scale. If one keeps adding more people and getting exactly the same amount of money no matter how many people are added, it needs to be looked at to see if that is one reason Passport began to accumulate so much excess money. Passport receives money for all 164,000 recipients, and it is their job to manage the population. Not enough analysis is being done before negotiations to see if there is a better way to do that. She questioned whether Passport should be allowed to accumulate more money as they add more beneficiaries without looking at the underlining costs of the new recipients.

In response to questions by Senator Stine, Auditor Luallen stated that the Department of Insurance (DOI) determines the level of reserves that should be maintained by an insurance company based on population and the risk of caring for that population. Currently, \$88 million is required for reserves. At the end of 2009, Passport had \$77 million above the required reserves even after the \$30 million distributions. The primary concern of the Department of Insurance is to ensure there are adequate reserves.

In response to questions by Senator Buford, Auditor Luallen stated that UHC/Passport is required to submit to DOI an annual statement that contains significant details on the financial operations which include detailed reserve calculations. The Department of Insurance monitors Passport as an insurance provider. Mr. Lykins stated that the actuarial process will identify expenditures not directly related to providing health care services and eliminate the expenditures to look at the actual cost of providing the service and determine if the rate structure is adequate to support expenditures

and have adequate reserves. It is the cabinet's responsibility to design and monitor the contract and hold the vendor accountable, not the DOI.

In response to a question by Senator Buford, Auditor Luallen said the financial information provided to the cabinet did not have a breakout of the amount of reserves, but this information was provided to DOI. The cabinet then requested more information from DOI about the reserve levels.

In response to questions by Senator Leeper, Auditor Luallen stated that the first disbursement was the \$10 million return of capital investment in 2008, and the second and third disbursements of \$10 million each were made in 2008 and 2009. Before the first distribution of funds, Dr. Cook and Secretary Miller discussed the amount of the reserves, and how it would be on the cabinet's mind during negotiations. Her understanding is there was no discussion about how Passport should spend the money. The audit points out that if there are cost savings of that magnitude, it should either accrue back to the state or take the form of new services to the recipients. The cabinet is very aware they need stronger oversight and more accountability. In a previous administration, the current executive vice president at Passport was the commissioner of the Department for Medicaid Services, and the influence this group had affected their relationships with both the legislative and executive branches. Medicaid is the toughest challenge in the state, and it is critical that Secretary Miller has the right expertise around her to implement the necessary things that need to be done. The administration recognizes it has to try some new innovative approaches and initiatives to save money.

In response to a question by President Williams, auditor Luallen stated that Medicaid funding provided to and by Passport for graduate medical education (GME) lacked proper documentation to demonstrate whether the Medicaid funds Passport received for GME were actually paid to eligible hospitals for GME, whether they were used for GME purposes, and whether they were excessive. Mr. Lykins stated there should be a consistent approach to the GME calculation, and if there are other supplemental payments made to entities, a process would be followed to make sure that the calculation and payment of the supplemental payments would be transparent. During the 2010-2011 negotiation process, UHC officials requested over \$30 million for GME to be included in the per member capitated rate, but did not provide to DMS cost report data or calculations to support their request. Documentation made it appear the funding provided

in the contract for Intensity Operating Allowance and the Urban Trauma Center may have been duplicated in the capitated rate.

In response to questions by President Williams, Auditor Luallen stated that the audit takes issue with the \$1.2 million expenditures for salaries, lobbyists, and memberships and the \$20 million distributions. The broader concern is if Passport receives too much money. There needs to be stronger oversight from both the state and the governance body of the organization to make sure they are fulfilling the original mission of controlling costs in Medicaid. The audit did not recommend specific outcomes but that Passport needed to have more accountability and stronger governance. Also, the cabinet needs to have better information and negotiate on behalf of the taxpayers from a stronger position. The audit does not question whether distributing the \$20 million for indigent care was the wrong thing to do, but having the extra \$20 million and looking for a way to spend it says the cabinet should make sure it holds Passport accountable and negotiate the best contract on behalf of the taxpayer. Passport has to share in the responsibility for the problem and recognize they are accountable for public money.

Senator Buford requested that the DOI provide the last three years of financial statements from Passport and DOI recommendations and analysis done on statements.

In response to questions by Senator Stine, Auditor Luallen stated that the databook used during the contract negotiation between an entity and the cabinet is the compilation of all the information related to their utilization, delivery of medical services, everything that comprises the bulk of what they perform under the contract and the delivery of care. Price Waterhouse removed the \$30 million distributions in the actuarial analysis provided to the cabinet before negotiations with Passport.

In response to comments by Senator Shaughnessy, Auditor Luallen stated that there were some in-kind contributions from some of the original investors. There was no specific information related to the safety net program or the medical education program that is different from the GME.

There being no further business, the meeting was adjourned at 12:12 p.m.

#### **TASK FORCE ON MEDICAID COST CONTAINMENT Minutes of the 12th Meeting of the 2010 Interim**

December 2, 2010

##### **Call to Order and Roll Call**

The 12th meeting of the Task Force on Medicaid Cost Containment

was held on Thursday, December 2, 2010, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Jimmie Lee, Chair, called the meeting to order 10:09 AM, and the secretary called the roll.

Present were:

Members: Senator Katie Kratz Stine, Co-Chair; Representative Jimmie Lee, Co-Chair; Senators Tom Buford, Julie Denton, Denise Harper Angel, Bob Leeper, and David L. Williams; Representatives Tom Burch, Rick Rand, Greg Stumbo, and Jill York.

Guests: Linda Sims for the KHDA/LTDHD; Mike Coppel; Julie McKee for the Department for Public Health, Kentucky Office of Health Policy, Cabinet for Health and Family Services; Jodi Mitchell for the Kentucky Voices for Health; Gene Huff for the CHI; Dayle Johnson and Eric T. Clark, Kentucky Association for Health Care Facilities; Bryce McGowan, KYNHR; and Marty White and Bill Doll for the Kentucky Medical Association.

LRC Staff: Miriam Fordham, Pam Thomas, Cindy Murray, Mike Clark, DeeAnn Mansfield, Frank Willey, Jonathan Smith, and Gina Rigsby.

##### **Discussion of State Auditor's Examination of the Passport Health Plan**

Sharon Clark, Commissioner, and Bill Clark, Chief Financial Analyst, Department of Insurance (DOI), were present to respond to questions about the role of the DOI in regard to Passport Health Plan. Commissioner Clark stated that financial reports are submitted quarterly and annually from Passport, and the department will receive the 2010 statement in March 1, 2011. As of December 31, 2009, Passport had \$91 million in capital and surplus funds respectively. Based on the risk-based capital models, Passport is only required to have a minimum of \$57 million surplus funds, so no regulator action was taken by DOI.

In response to a question by Representative Lee, Commissioner Clark stated that the DOI is charged to review the reserves of the Medicaid managed care partnerships to verify the reserves meet statutory requirements; certify the license status of any risk-bearing entity designated by the partnerships; monitor quarterly and annual financial reports of the partnership to verify compliance with financial solvency requirements; work in cooperation with the Department for Medicaid Services (DMS) and exercise any authority DOI has to rehabilitate or to liquidate a partnership; and, if asked, provide financial technical assistance.

In response to questions by President Williams, Commissioner Clark stated that UHC/Passport is licensed as a health maintenance

organization (HMO) in Kentucky. An HMO is a managed care entity and not a full health insurance company, but has a specific limited design. Humana, Anthem, United Healthcare of Kentucky, and Bluegrass Family Health are domestic health entities. Passport and the four other insurance companies file on the same format as all health entities, but the difference is Passport is a Medicaid-only line of business. Other entities could operate a similar business as UHC, and would have to file for a certificate of authority and undergo a review by the DOI.

In response to questions by President Williams, Commissioner Clark stated that the department utilizes a risk-based formula to measure the amount of appropriate capital for a reporting entity to support its overall business operations in consideration of its size and risk profile. KRS 304.3-080(2) outlines the DOI's authority to investigate the professional experience, credentials, and background of all the directors, officers, and managers of any insurance company that is seeking admission to do business in the Commonwealth. When insurance companies make any changes in these positions, these changes also must be submitted to DOI for review. Surplus reserves ensure future policy benefits.

In response to questions by President Williams, Commissioner Clark stated that all health insurance companies use the same formula to determine capital and surplus funds needed on hand. Passport needs to have \$57.4 million dollars on hand to make sure it remains solvent to address the risk assumed to do business in Kentucky as an HMO. If reserves fall below this amount, by statute it is considered a company action level and a corrective action plan would have to be submitted to the DOI explaining how it would correct the situation and get back above the reserve level.

In response to a question by President Williams, Commissioner Clark stated that the University Physicians Associates owns 51.35 percent of Passport; the Louisville Association/Jefferson County Primary Care Association, 10.4 percent; the University Medical Center, 12.53 percent; Jewish Hospital and St. Mary's Healthcare, 12.86 percent; and Norton Healthcare, 12.86 percent. The University of Louisville is not one of the sponsors. As of the September 30, 2010, quarterly financial filing, UHC reported \$207 million in total assets and \$106.8 million in capital and surplus. If Passport fell below its reserves, there are two actions that could be taken. One is a company action where a company is ordered to increase its reserves, and if that does not take place, then there is a regulatory action where the DOI would step

in and take control of the company. There is a guarantee fund for regular insurance companies, but not for HMOs. The IRS code for a non-profit organization is 501(c)(3).

In response to questions by President Williams, Commissioner Clark stated that statutory language states that the DOI either disapproves or does not disapprove transfers. Concerns by the DOI were expressed to Passport if a non-profit could distribute funds for indigent care and a legal opinion was provided from Passport. The Memorandum of Agreement between the Cabinet for Health Services, Department for Medicaid Services, and the Public Protection and Regulation Cabinet, Department of Insurance dated August 27, 1997 states that the DOI can, upon request, assist the DMS in its review and analysis of monthly, quarterly, and annual financial reports received by the DMS from the partnerships. In January 2010, the DMS requested information about the level of reserves and what would be appropriate for the DMS to require. After the review by DOI, the cabinet believed Passport had sufficient reserves for lower contract level negotiations.

In response to questions by Speaker Stumbo, Commissioner Clark stated that the DOI had performed the same financial analysis for Passport as it had done for other insurance companies. The department only looked at the reserves to make sure there was enough money to pay outstanding claims in the event the contract was terminated.

In response to questions by Senator Buford, Commissioner Clark stated that no one asked if the DMS suggested to UHC how to handle and distribute funds. The DOI approves rates for traditional health insurance companies, and the cabinet approves the rates for Passport.

In response to questions by Representative Lee, the DOI has no authority with any insurance company on the rates to providers. There is no mandate to have control over rate increases. One of the main missions of the DOI is ensure financial solvency of all insurance companies.

In response to questions by President Williams, Commissioner Clark stated that the DOI will track the \$20 million to determine where it went. The money was not dedicated toward an account but dedicated for a purpose. Passport was scheduled for one of its five-year financial examination in 2011, but because of the schedule of the DOI examiners it has been moved up earlier.

In response to a question by Speaker Stumbo, Commissioner Clark stated that the DOI did not negotiate Passport's contract. It only reviews claims to make sure reserves were

adequate enough to pay claims if a contract had been cancelled.

Janie Miller, Secretary for the Cabinet for Health and Family Services, stated that since early 2008, the DMS had increased its financial analysis of Passport. For rate years starting in July 2008 through the most recent negotiation, the department utilized all information available to ascertain Passport's financial information necessary to evaluate the cost of Passport relative to the costs of the same services for the same eligible categories in the balance of the state. The department did review and pull from the financial statements information regarding reserves, net underwriting gains and losses, changes in investments, and their total adjusted capital. There were discussions with Passport officials about excess reserves above and beyond what the required level of capital and surplus was. An analysis of Passport's reserves reveals that Passport's solvency, as defined by total capital and surplus, grew significantly between 2004 and 2007 from \$43.8 million to \$88.4 million. Passport showed significant net profits from both its underwriting operations and from investments with net income reported as \$11.5 million, \$7.3 million, \$15.4 million, and \$20.5 million in net income gains from 2004, 2005, 2006, and 2007 respectively. The cabinet negotiated a lower capitation rate increase in lieu of per capita payments to the extent that Passport would agree to continue with its program. The history of rate increases shows that rate increases relative to the increase in the per capita rates have been held to 3.1 percent, 3.1 percent, and 0 percent for the last three rate periods, averaging slightly over 2 percent per year. Currently, the value of a one percent increase is approximately \$8 million. In the 2010 Regular Session, there were a number of budget bill provisions passed that would either give Passport special benefits or tie the cabinet's hands with regard to dealing with Passport, but Governor Beshear vetoed the measures. Every dollar of taxpayer money spent by Passport must be necessary for the administration of Medicaid benefits for the recipients in the Passport area.

The cabinet agrees with the Auditor of Public Accounts that it relies on contract performance monitoring and independent financial audits conducted by Passport's audit firms. The resources allocated to administering the DMS have been extremely limited for several years. Approximately two percent of total Medicaid funding has been allocated to administration. The short tenure of Medicaid commissioners during the prior four years has created a challenging environment for creating experience, knowledge,

stability, and capacity for the Medicaid program analysis and development. Another major factor that has affected all of state government is the loss of historical, long-term institutional program knowledge and expertise, largely due to the retirement window available to employees at the end of calendar year 2008. The cabinet has experienced eight separate rounds of budget reductions that have exacerbated the shortage of experience and expertise at all levels of state government. In addition, The Michele P. lawsuit, programmatic challenges at Oakwood, and a backlog of hospital and other provider rate appeals have consumed an inordinate amount of administrative and management time that could have been directed to other program management issues. The cabinet canceled some contracts for functions that did not sufficiently add to the effective administration of the Medicaid program. Some functions that had previously been contracted to outside vendors were successfully returned to the department and have proven to be more cost efficient and effective.

The cabinet has restored the program integrity function in the department, and restored the relationship between the cabinet and the Office of the Attorney General's Medicaid Fraud and Control Unit in order to more aggressively pursue detection and prosecution of waste, fraud, and abuse. The cabinet is working with the U.S. Attorney's Office to take advantage of the tools available under the federal law for the prosecution of egregious instances of health care fraud. The cabinet is establishing a Managed Care Contract Oversight Unit to oversee Passport's implementation of the Corrective Action Plan and the development of the scope of the financial audit in conjunction with the Auditor of Public Accounts' office. The unit will be enlarged as needed in conjunction with the release and issuance of the Requests for Information (RFI) and forthcoming Requests for Proposals (RFP) and managed care contracts.

The 11-point Corrective Action Plan outlines the steps that Passport must take to come into compliance and address the structural issues with governance, management, and oversight. The UHC Board of Directors has appointed a new interim CEO. In conjunction with the Auditor of Public Account's office, the cabinet will develop the scope of work for the full financial audit of Passport and its subcontractors.

In response to a question by Representative Lee, Secretary Miller stated that in the 11-point Corrective Action Plan, the cabinet will conduct a financial and programmatic audit done by an accounting firm to assure that the

expenses in the general ledger are being matched appropriately to financial statements and determine how the money is being spent. The purpose of the audit is to assure that the funding and expenditures are necessary to the support of the program to provide services to Medicaid beneficiaries. The cabinet will hire an independent entity that has the qualification and abilities to do a cost effectiveness analysis. The entity would have to develop the approach, the methodology, and then do the analysis. The time frame for the completion of the cost effective analysis would hopefully be four to five months.

In response to questions by Representative Lee, Secretary Miller stated that the cabinet wants management of the patients' needs and services and medical conditions in such a way that the it is willing to make the investment of the right things at the right time to drive down the cost to get the outcomes and improve health outcomes.

In response to a question by Senator Harper Angel, Secretary Miller stated that the two-fold problem that needs to be addressed is the level of reserves and how to negotiate rates to assure the net income at the end of the year does not grow and add to the capital surplus and reserve level for the next year.

In response to questions by Representative Burch, Secretary Miller stated that the rate increases to Passport were not for services in additional counties. In 2006, adjustments were made in rates because of the passage of the Part D Medicare drug program. Passport has an aggressive formulary making sure generic products are used to lower costs, and they pay a lower dispensing fee. Over the past 13 years, fee-for-service has significantly improved its supplemental rebates. The cost per member for pharmacy services is not very different for the managed care and fee-for-service models. The savings are achieved in different ways.

In response to questions by Representative Burch, Secretary Miller stated that the Medicaid program has access to a beneficiary's medical information after a point of service transaction. An RFI has been issued for pharmacy management that will address many issues under the pharmacy benefits program. Another cost savings initiative announced was related to making sure a prescriber was enrolled in the Medicaid program that should address the doctor-shopping issue.

In response to questions by Senator Denton, Secretary Miller stated that an independent firm that has actuarial and health care expertise and qualification would develop an approach on how to go back and do

the cost effectiveness analysis. The cabinet has some basic activities for provider education for drug management.

In response to questions by President Williams, Secretary Miller stated that the first 3.1 percent rate increase was negotiated before the first \$10.5 million dollar distribution to return the initial capital contributions of the original investors in November 2008. The second \$10 million distribution was made in December 2008. In 2010 when the DMS was uncertain about the distributions, she contacted Commissioner Clark who told her to file an open records request to get the information. Two of the distributions were reported on the financial statement under medical and hospital expenditures and were not disclosed anywhere as distributions for indigent care. The two distributions were found when the actuary reconciled the medical expenditures that were showing on the medical and hospital expense line on the financial statement with the actual encounter data supplied by the plan and noticed a difference. The information was found when Price Waterhouse was preparing the databook for the last rate negotiation. The cabinet has agreed to hire an outside independent agency to prepare a cost effectiveness analysis to compare what the fee-for-service costs would be in the Passport region if Passport did not exist. The cabinet has extensive data on the costs of fee-for-services and the cost of Passport services that could be used in the cost effectiveness analysis.

In response to questions by Speaker Stumbo, Secretary Miller stated that with limited information, it would be hard to say why a rate increase is needed. In the negotiation process, the cabinet and the entity both do the best job to negotiate what is best for each of them. Speaker Stumbo stated that in contract negotiations, the cabinet needs historical data to determine the reasons for a rate increase.

Speaker Stumbo recommended that there needs to be a state Medicaid False Claims Act that would address Medicaid fraud abuse. A motion to accept the recommendation was made by Speaker Stumbo, seconded by Representative Rand, and accepted by voice vote.

President Williams recommended that task force members submit their findings or recommendations to the co-chairs for accumulation of a draft final report to be circulated to members and when a sufficient amount of yeas have been obtained, it be filed as the final report of the task force without the necessity of incurring the cost of an additional meeting. A motion to accept the recommendation was made by President Williams, seconded

by Speaker Stumbo, and accepted by voice vote.

A motion to request the Legislative Research Commission, upon the request of the co-chairs, the authority to take depositions to be submitted as part of the record was made by President Williams, seconded by Speaker Stumbo, and approved by voice vote.

Representative Lee made a motion to take the task force recommendations and allow the Medicaid Oversight and Advisory Committee to consider the recommendations and continue discussions in future committee meetings.

There being no further business, a motion to adjourn at 1:11 p.m. was made by Representative York, seconded by Speaker Stumbo, and approved by voice vote.

### **JOINT MEETING OF THE TASK FORCE ON MEDICAID COST CONTAINMENT and MEDICAID OVERSIGHT and ADVISORY COMMITTEE**

December 1, 2010

#### **Call to Order and Roll Call**

A joint meeting of the Task Force on Medicaid Cost Containment and the Medicaid Oversight and Advisory Committee was held on Wednesday, December 1, 2010, at 10:00 AM, in Room 171 of the Capitol Annex. Senator Katie Kratz Stine, Co-Chair, called the meeting to order at 10:10 AM, and the secretary called the roll.

Present were:

Members: Senator Katie Kratz Stine, Co-Chair; Representative Jimmie Lee, Co-Chair; Senators Tom Buford, Denise Harper Angel, Bob Leeper, Dan Seum, and David L. Williams; Representatives Tom Burch, Bob DeWeese, Joni Jenkins, Rick Rand, Greg Stumbo, and Jill York.

Guest Legislators: Senator Tim Shaughnessy and Representative John Will Stacy.

Guests: Crit Luallen, Auditor of Public Accounts; Brian Lykins, Office of the Auditor of Public Accounts; Eric T. Clark and Wayne Johnson for the Kentucky Association of Health Care Facilities; John Cooper for the Kentucky Medical Association; Bryce McGowan, KYNHN; Linda Sims, LT-DHD/KHDA; and Mary Sparra, CSE.

LRC Staff: Miriam Fordham, Pam Thomas, Cindy Murray, Mike Clark, DeeAnn Mansfield, Frank Willey, Jonathan Scott, and Gina Rigsby.

#### **Approval of Minutes**

The minutes of the November 15, 2010 and November 16, 2010 meetings of the Medicaid Cost Containment Task Force were approved without objection by the members of the Medicaid Cost Containment Task Force.

#### **Discussion of State Audi-**

### **tor's Examination of the Passport Health Plan**

Auditor Luallen stated the Examination of Certain Policies, Procedures, Controls, and Financial Activity of University Health Care, Inc. (UHC), dba Passport Health Plan, and its Affiliation with the University of Louisville and the Cabinet for Health and Family Services was released November 9, 2010. Passport holds the state's largest contract at \$793 million for the current year. The exam calls for more accountability and transparency in the management and oversight of the Medicaid managed-care provider. The report identifies 20 findings and offers 85 recommendations to strengthen the management, oversight, and the transparency of Passport to provide consistent good stewardship over Medicaid funds. The scope of the examination encompassed records and information for the period January 1, 2007 through December 31, 2009, unless otherwise specified. The objectives developed the Auditor of Public Accounts (APA) for this examination included: review controls and organizational oversight; determine the appropriateness of capital and other significant distributions by UHC; determine the comparability of Passport Health Plan costs to other Medicaid fee-for-service costs; determine whether actual cost savings could be attributed to UHC; determine whether expenditures support the mission of Passport Health Plan; determine whether conflicts of interest exist; and report findings and recommendations related to these and other matters identified in the examination.

Passport was created for the purpose of offering Medicaid services to beneficiaries in 16 counties for 164,000 poor and disabled beneficiaries residing in Breckinridge, Bullitt, Carroll, Grayson, Hardin, Henry, Jefferson, LaRue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, and Washington Counties. Passport has been ranked among the best Medicaid plans in the nation based on access to care, overall member satisfaction, prevention services, and treatment. The exam by the Auditor's Office did not address the quality or delivery of medical services in the national ranking.

The Auditor's Office examined issues concerning certain financial activity of Passport. The exam recommends Passport's policies regarding expenditures and cash distributions should be consistent with the original goal of controlling growth in Medicaid costs. Passport exceeded its state-required cash reserves for each of the three years reviewed. At the end of 2009, Passport had approximately \$77 million of excess reserves over the amount insurance regulators require, even after a distribution of \$30 million

to the original investors. The exam questions whether these \$30 million in distributions are in compliance with Kentucky law and the IRS tax code related to non-profits, and whether they were properly communicated to the Department for Medicaid Services. The exam recommends Passport seek an opinion from the Kentucky Office of Attorney General and or the IRS on these distributions.

As Passport's excess revenues grew, it increased spending on lobbying, public relations, travel and salaries, and provided financial benefits that favored its original investors over other area providers. Passport spent nearly \$14 million on consulting and outsourced services, including \$1 million for lobbying and public relations. The Auditor's Office found that staff travel costs, primarily for two UHC executives, for the three years reviewed totaled approximately \$230,000. Approximately \$73,000 was spent on meals; \$242,000 was given to AmeriHealth Mercy employees as anniversary bonuses; \$423,000 was contributed to local sponsorships; and \$250,000 was spent on memberships to various organizations. The executive vice-president's average annual income for the three years reviewed was \$285,000, including salary and bonuses from UHC and the University of Louisville. The executive vice-president received compensation as a partner in the consulting firm that received more than \$354,000 from AmeriHealth Mercy for consulting services, and were cited as a conflict of interest. The exam recommends the board strengthen oversight of spending.

Auditors found that the governing board of Passport is incorrectly structured based on federal guidelines and recommends restructuring the board to have equitable regional representation by all providers and significant beneficiaries.

In addition to the report findings and recommendations, Chapter 2 of the report discusses the concept of budget neutrality, including the Section 1115 federal Medicaid demonstration waiver. The Kentucky Health Care Partnership Demonstration in Region 3 was implemented on November 1, 1997, by UHC, dba Passport Health Plan, a sole-source, non-competitive managed care provider. Passport is the only model of its type without competition that exists in the nation. The initial capitalization for Passport was provided by the University of Louisville Medical School Practice Association (now known as University Physicians Associates); the University Medical Center, dba University of Louisville Hospital; Jewish Hospital Healthcare Services (now Jewish Hospital and St. Mary's Healthcare); the Alliant Health

System (now Norton Healthcare); and the Louisville and Jefferson County Primary Care Association. The total capitalization investment in UHC of all contributors was \$10.5 million, which was returned to the original investors in December 2008. UHC is a nonprofit corporation managed by a Board of Directors which represents the original five investors in Passport Health Plan. Additionally, a Partnership Council representing both public and private providers has authority for health care oversight and guidance for the Passport Health Plan.

The Cabinet for Health and Family Services pays Passport a monthly, per member capitation payment, whether or not a member receives services during the period covered by the payment. Since approximately 86 percent of its funding is derived and expended are from state funds, Passport is considered to be a public agency. UHC contracts with AmeriHealth Mercy Health Plan as its third party administrator to perform the day-to-day functions for the operation of Passport. AmeriHealth Mercy earns incentives if it meets, in whole or in part, one or more of the operational goals and meets at least 75 percent of the quality goals set by UHC/Passport Health Plan.

Budget neutrality requires that federal expenditures for Medicaid services allowed under a waiver program not be greater than a cost ceiling projected by the Centers for Medicare and Medicaid Services (CMS) based on historical trends. The actual cost of the program must be less than the calculated maximum cost, or ceiling, in order to be deemed budget neutral. For a Medicaid waiver program to be considered budget neutral, the state must illustrate over the life of the waiver program that the program, Passport Health Plan, will not be expected to cost the federal government more than the maximum ceiling it projects. Kentucky is at risk for repayment of federal dollars if the CMS imposed budget neutrality limits are exceeded by Passport. Therefore, the Department for Medicaid Services (DMS) monitors budget neutrality on a regular basis to ascertain that, for the waiver period, Passport is budget neutral, according to the definition of budget neutral. To gain a true analysis that will determine whether there are actual savings for the Commonwealth, the Auditor's Office recommended a detailed study that compares costs in every category and evaluates what it would cost the state under a fee-for-service model to perform the same functions in that region. The cabinet has agreed in their response to the report to contract for such an analysis.

Recommendations were also made for the Department for Medic-

aid Services to strengthen contract negotiations with Passport. Specifically, the department needs to analyze more detailed financial information, including the levels of reserves, and evaluate cost comparisons before the final contract rate is negotiated. Passport plays such a vital role in the lives of many Kentuckians, that it is imperative that it use state and federal Medicaid funds in an equitable, appropriate, and transparent manner. Any cost savings generated by the program should take the form of lower costs to the state or additional services for the beneficiaries. The report does not express an opinion on the viability of a managed care model for delivery of Medicaid services; but a managed care approach can prove to be an effective method for controlling growth in Medicaid costs. If the state is going to continue to use this model and consider additional managed care approaches, it is critical that there is strong accountability and oversight of these public funds.

Both the UHC and the Department for Medicaid Services have responded to the audit and their responses are included in the report. A meeting has been scheduled for December 7 to discuss a corrective action plan for Passport being developed by the cabinet. Passport officials indicate their willingness to consider the audit's recommendations. State officials commit to strengthen oversight and contract negotiations as recommended in the audit. The Auditor's Office will be involved as the cabinet initiates additional audits of Passport and its subcontractors.

In response to a question by President Williams, Auditor Luallen stated that information was given to the Auditor's Office by several sources that helped developed the scope necessary to answer questions raised about Passport. The controls and organizational oversight was looked at and looked specifically at the distribution of capital issue and to see if there was an easy way to compare Passport's costs to other fee-for-service cost. The only question that could not be answered without additional work would have been a more detailed cost analysis, but a recommendation was made. Examination procedures included the review of thousands of pages of documents and interviews of Passport Health Plan executive staff members, the secretary and DMS staff of the Cabinet for Health and Family Services, providers, hospital administrators, current and previous Passport board members, trying to find the best documented way to answer all the questions that had been raised.

In response to a question by Senator Stine, Auditor Luallen stated that the exam did not compare the

Passport model with the cost for a fee-for-service model. It would be difficult to compare Passport with a fee-for-service model because it does not conduct business like the rest of the state.

In response to a question by Senator Stine, Auditor Luallen stated that a letter had been sent to the General Assembly from the cabinet that stated it costs more for Passport than it did in the rest of the state. What it did not point out is what it would cost to perform the same services that Passport is serving in its region. There is a detailed section in the audit about the question of how to define budget neutrality and how it can meet the federal guidelines and still cost more. The cabinet has agreed to contract with an independent contractor to do a detailed cost analysis. It is difficult to compare Passport with the rest of the state, because it does not provide services like the rest of the state. An analysis needed to be done to show what it would cost the state to provide the same services as Passport in the same region under a fee-for-service model. A consultant with expertise in analyzing health care data who has actuaries available during the process to look at every detail of exactly what Passport is providing and analyze every area of its cost and then compare that to what it would cost the state in the same region to perform the same service.

In response to a question by President Williams, Auditor Luallen stated that Kentucky had to apply for a waiver to perform services different from the fee-for-service delivery of Medicaid services. A baseline and growth level established under federal guidelines would be allowed. As the Passport contract and revenues grew, there was not an adjustment in terms of having a stronger level of compliance and oversight to see exactly how the money was being spent because that is not how the model started.

In response to questions by President Williams, Auditor Luallen stated that the original investors, who put up the money assume the risks if cost exceeds the capitated payments. It was appropriate to return the \$10 million original investment to the original investors. The contract states that Passport has to contact the cabinet 30 days before the distribution of funds. The problem with the next \$20 distribution was they were labeled indigent care grants and given back to the original investors in the same proportion as the same original investment, not based upon how much indigent care that was provided. There was no formal process for determining how the money replaced indigent care expenses, it just went back into the general fund. Documentation was provided that

said that each of the entities had spent at least that much on indigent care. The problem was not so much that the funds were labeled indigent care as much as the minutes show the there was a discussion about the need to distribute the money to improve their negotiating position with the state. Passport sought legal counsel on how to appropriately distribute the money. Indigent care costs are not part of the investors' responsibility for providing Medicaid services, because all the entities have indigent care costs that are absorbed in normal operations. There is not enough attention given by the Passport governance or the cabinet to ensure that the state is getting every possible dollar to be used on Medicaid services. Passport is a non-profit entity formed for the sole purpose of providing services for the poor and disabled, but they have developed a culture that is more like a for-profit vendor. Passport should be considered a public agency and should be held accountable to the taxpayers. Even though the original investors are non-profit entities, they have varying sources of revenues. Passport exists solely based a contract of state and federal funds.

In response to questions by President Williams, Auditor Luallen stated that the governing authority for UHC did not have regional representation in the conduct of the financial administration of Passport. UHC, through its board, is responsible for all financial decisions of Passport Health Plan, while the Partnership Council's role is defined as primarily to provide guidance and oversight to the operational aspects of the third-party providers. This is the first time the state has ever contracted with a non-profit group of providers, but they were not performing and leading the organization with the responsibility back to the taxpayer. In her opinion, she feels the Passport staff and the board felt their responsibility was to the original investors more than the taxpayers.

In response to a question by President Williams, Auditor Luallen stated that the cabinet makes sure it is in compliance with federal guidelines on budget neutrality and looking at data related to delivery of service. The cabinet agrees it should have done a better job monitoring the activities of Passport and are working on implementing the recommendations in the report. Hopefully, the report will help the cabinet on how to build in the proper financial analysis, cost comparisons, accountability, and contract compliance when negotiating other managed care contracts.

In response to a question by President Williams, Auditor Luallen stated that other private companies who provide these services under-

stand and know how to enter into a contractual relationship and hold up their end of the bargain, because the company knows it will be monitored by the state. Passport did not think they should be accountable as if it was a public agency.

In response to a question by President Williams, Auditor Luallen stated that AmeriHealth Mercy was awarded the third-party administrator without any competitive bidding. The cabinet will seek audits of all vendors, including AmeriHealth Mercy.

In response to a question by President Williams, Auditor Luallen stated that anyone conducting business with the executive or legislative branches should register as lobbyists. Passport had two employees who were registered as lobbyists and had 11 contract lobbyists and the audit shows that this was excessive. Passport used Medicaid funds intended for the health care for the poor and disabled to hire contract lobbyists to enhance its position with the legislative and executive branches.

In response to a question by President Williams, Auditor Luallen stated that Passport is a public entity because it receives 100 percent state funds. If a private entity enters into a contract and performs services only for the Commonwealth, it should be held accountable on how it spends the money. She agreed that Passport went outside of its mission and the cabinet was not set up to find or utilize the information to appropriately negotiate with this vendor.

In response to a question by Senator Stine, Auditor Luallen stated that all cabinets should have detailed financial analysis, oversight, and accountability for all entities that have contracts with the state. Senator Stine referenced a draft report, Medicaid Management and Program Integrity: Update on Recommendations From Three Program Review Reports, prepared by the Program Review and Investigations Committee staff of the Legislative Research Commission, that contains a detailed follow-up describing the status of the recommendations and provides current findings. Anything that can be put in legislation that ensures that any cabinet negotiating on behalf of the state needs to have a detailed cost analysis to ensure the best deal possible. Once the contract has been negotiated, there needs to be proper reporting and oversight. If the state is going to contract out more services, it has to do a better job of building in more levels of accountability, and the only way to do it is to have accurate detailed financial information.

In response to a question by Representative Burch, Auditor Luallen stated that in order to have better management, oversight, and account-

ability of programs, people with the best expertise are needed.

In response to questions by Speaker Stumbo, Auditor Luallen stated that after six years of operations, Passport started to have excess revenues. Speaker Stumbo asked staff to prepare a year-by-year timeline of what transpired at the cabinet that allowed Passport to accumulate excess revenues and information on what hampered the cabinet's ability to oversee Passport's contract. Auditor Luallen stated that there needs to be a comparable chart of rate increases being awarded at the same period of time. In the contract negotiations, the state gives a percentage increase for the capitated rates. During the recession, approximately 3,000 new recipients have been added to the Medicaid rolls monthly. There have to be economies of scale. If one just keeps adding more people and getting exactly the same amount of money no matter how many people are added, it needs to be looked at to see if that is one reason Passport began to accumulate so much excess money. Passport receives money for all 164,000 recipients, and it is their job to manage the population. Not enough analysis is being done before negotiations to see if there is a better way to do that. She questioned whether Passport should be allowed to accumulate more money as they add more beneficiaries without looking at the underlining costs of the new recipients.

In response to questions by Senator Stine, Auditor Luallen stated that the Department of Insurance (DOI) determines the level of reserves that should be maintained by an insurance company based on population and the risk of caring for that population. Currently, \$88 million is required for reserves. At the end of 2009, Passport had \$77 million above the required reserves even after the \$30 million distributions. The primary concern of the Department of Insurance is to ensure there are adequate reserves.

In response to questions by Senator Buford, Auditor Luallen stated that UHC/Passport is required to submit to DOI an annual statement that contains significant details on the financial operations which include detailed reserve calculations. The Department of Insurance monitors Passport as an insurance provider. Mr. Lykins stated that the actuarial process will identify expenditures not directly related to providing health care services and eliminate the expenditures to look at the actual cost of providing the service and determine if the rate structure is adequate to support expenditures and have adequate reserves. It is the cabinet's responsibility to design and monitor the contract and hold the

vendor accountable, not the DOI.

In response to a question by Senator Buford, Auditor Luallen said the financial information provided to the cabinet did not have a breakout of the amount of reserves, but this information was provided to DOI. The cabinet then requested more information from DOI about the reserve levels.

In response to questions by Senator Leeper, Auditor Luallen stated that the first disbursement was the \$10 million return of capital investment in 2008, and the second and third disbursements of \$10 million each were made in 2008 and 2009. Before the first distribution of funds, Dr. Cook and Secretary Miller discussed the amount of the reserves, and how it would be on the cabinet's mind during negotiations. Her understanding is there was no discussion about how Passport should spend the money. The audit points out that if there are cost savings of that magnitude, it should either accrue back to the state or take the form of new services to the recipients. The cabinet is very aware they need stronger oversight and more accountability. In a previous administration, the current executive vice president at Passport was the commissioner of the Department for Medicaid Services, and the influence this group had affected their relationships with both the legislative and executive branches. Medicaid is the toughest challenge in the state, and it is critical that Secretary Miller has the right expertise around her to implement the necessary things that need to be done. The administration recognizes it has to try some new innovative approaches and initiatives to save money.

In response to a question by President Williams, auditor Luallen stated that Medicaid funding provided to and by Passport for graduate medical education (GME) lacked proper documentation to demonstrate whether the Medicaid funds Passport received for GME were actually paid to eligible hospitals for GME, whether they were used for GME purposes, and whether they were excessive. Mr. Lykins stated there should be a consistent approach to the GME calculation, and if there are other supplemental payments made to entities, a process would be followed to make sure that the calculation and payment of the supplemental payments would be transparent. During the 2010-2011 negotiation process, UHC officials requested over \$30 million for GME to be included in the per member capitated rate, but did not provide to DMS cost report data or calculations to support their request. Documentation made it appear the funding provided in the contract for Intensity Operating Allowance and the Urban Trauma Center may have been duplicated in

the capitated rate.

In response to questions by President Williams, Auditor Luallen stated that the audit takes issue with the \$1.2 million expenditures for salaries, lobbyists, and memberships and the \$20 million distributions. The broader concern is if Passport receives too much money. There needs to be stronger oversight from both the state and the governance body of the organization to make sure they are fulfilling the original mission of controlling costs in Medicaid. The audit did not recommend specific outcomes but that Passport needed to have more accountability and stronger governance. Also, the cabinet needs to have better information and negotiate on behalf of the taxpayers from a stronger position. The audit does not question whether distributing the \$20 million for indigent care was the wrong thing to do, but having the extra \$20 million and looking for a way to spend it says the cabinet should make sure it holds Passport accountable and negotiate the best contract on behalf of the taxpayer. Passport has to share in the responsibility for the problem and recognize they are accountable for public money.

Senator Buford requested that the DOI provide the last three years of financial statements from Passport and DOI recommendations and analysis done on statements.

In response to questions by Senator Stine, Auditor Luallen stated that the databook used during the contract negotiation between an entity and the cabinet is the compilation of all the information related to their utilization, delivery of medical services, everything that comprises the bulk of what they perform under the contract and the delivery of care. Price Waterhouse removed the \$30 million distributions in the actuarial analysis provided to the cabinet before negotiations with Passport.

In response to comments by Senator Shaughnessy, Auditor Luallen stated that there were some in-kind contributions from some of the original investors. There was no specific information related to the safety net program or the medical education program that is different from the GME.

There being no further business, the meeting was adjourned at 12:12 p.m.

**TASK FORCE ON THE PENAL CODE AND CONTROLLED SUBSTANCES ACT**  
**Minutes of the 7th Meeting of the 2010 Interim**

December 14, 2010

**Call to Order and Roll Call**

The 7th meeting of the Task Force on the Penal Code and Controlled Substances Act was held on Tuesday, December 14, 2010, at 11:00 AM, in

Room 131 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order, the secretary called the roll, a quorum was present, and the minutes of the November 16, 2010 meeting were approved.

Present were:

**Members:** Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; J. Michael Brown, Tom Handy, John D. Minton, Jr., J. Guthrie True, and Tommy Turner.

**Guests:** Charles George, Kentucky Chamber of Commerce; Richard Jerome, Pew Center on the States, Peter Ozanne, Crime and Justice Institute; and James Austin, JFA Institute.

**LRC Staff:** Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., and Rebecca Crawley.

### **Presentation and discussion on the Draft Policy Framework and potential impact on the corrections system**

The first speaker was Richard Jerome of the PEW Public Safety Performance Project who presented a report on proposals for legislative and administrative action for consideration during the 2011 Regular Session of the General Assembly. The recommendations relate to four focus areas, including Strengthen Probation and Parole, Adopt Common Sense Sentencing Reforms, Support and Restore Victims, and Improve Government Performance.

The recommendations under Strengthen Probation and Parole include (1) base key decisions on risk and needs data, 2011 for parole and supervision (this is now being implemented but needs statutory authorization); (2) mandatory re-entry supervision, 2011; (3) require parole board to hear cases 60 days prior to parole release date, 2011 and limit deferments to 12 months for Class C and D felons and 5 years for other felons with deferment of more than 2 years to be approved by full board, 2011; (4) allow parolees to complete programming in local community and allow release of prisoners through county jails and use GPS monitoring, 2011; (5) require use of evidence based programs and treatment with evaluations of program effectiveness, adopt probation and parole supervision incentives and administrative supervision for low risk offenders, 2011; (6) require a risk assessment for pretrial supervision, 2012 (this is now being implemented by the Administrative Office of the Courts); and (7) incorporate risk and needs data into the presentence investigation, 2012.

The recommendations under Common Sense Sentencing Reforms include (1) modernize the controlled substances act by revising possession of controlled substances, create quantity levels for drug possession, dis-

tinguish commercial trafficking from peddling, reduce the drug free school zone from 1000 yards to 1000 feet, limiting sentencing enhancements, and reinvest savings in to expanded treatment programs, 2011; and (2) expand medical parole and allow circuit judges to grant medical furloughs for county jail prisoners, 2011.

The recommendations for Support and Restore Victims include (1) require the Department of Corrections to provide a web-based system to courts containing sentencing-related information, and (2) support a statewide automated tracking system for payment of restitution to victims, 2011.

The recommendations for Improve Government Performance include (1) define success in corrections as reduction of recidivism, and improving public safety; (2) establish measures for system accountability and cost-effectiveness for the Department of Corrections and the Administrative Office of the Courts; (3) establish a system of performance incentive funding; (4) use performance contracting for Department of Corrections service providers; (5) improve legislative corrections impact statements; and (6) and require a certificate of need for new jails and expansion of jails, 2011.

James Austin, JFA Institute, suggested the LS/CMI risk/needs assessment instrument be validated every three years using results for Kentucky offenders. Mr. Handy commented that mandatory release should not be used for Class A felons and release of these persons should be at the discretion of the Department of Corrections. Mr. Jerome commented that South Carolina uses a six-month supervision period while New Hampshire uses a nine-month supervision period. Mr. True observed these persons will be released at the end of their sentence and any program should not automatically eliminate any class of persons from supervision since supervision may reduce reoffending. Discussion then turned to the potential for mandatory post-incarceration supervision for persons convicted after the effective date of the act, which is currently used for sex offenders. California and the federal government use post-incarceration supervision. Mr. Austin commented the number of persons receiving post-incarceration supervision would be small. Senator Jensen commented these people need supervision. Mr. Ozanne commented that post-incarceration supervision would reduce recidivism and protect public safety.

Discussion turned to the proper operation and evaluation of programs which should occur at least once every five years and which should result in the elimination of poorly perform-

ing programs. Mr. Ozanne indicated low-risk offenders should be moved to administrative supervision as early as possible, with supervision focusing on high risk offenders, along with a combination of needed programs for such offenders. Chief Justice Minton said the courts have viewed probation as a judicial responsibility and relinquishing supervision decisions to probation and parole officers may be a problem for some judges. Members of the task force commented that in some jurisdictions, judges approve early termination of probation for good behavior and program compliance, while others never shorten the period of probation, and a statewide standard is needed. Several suggestions were made for pilot projects around the state. Mr. True suggested that small counties be used for the pilot projects as well as large counties.

With regard to a suggestion that the Department of Corrections conditionally discharge prisoners to county jails for a period of time prior to expiration of their sentence, several objections were raised including the fact that some jails do not want state prisoners, some are full, and many jails are not equipped to provide the programs which the pre-release offenders need. Representative Tilley observed that Section 253 of the Constitution of Kentucky prohibits these persons from being released to work at private employment. Mr. True indicated these persons should be released into the community and be required to participate in community programs.

Discussion continued on Controlled Substances Act proposals to define commercial drug trafficking, lesser degrees of drug trafficking, and matters such as reducing drug free school zones, included general approval for limiting drug free school zones to 1,000 feet rather than 1,000 yards, eliminating enhancements for drug possession offenses, and enhancing penalties for commercial drug traffickers. A recommendation for presumptive probation for 1st and 2nd offense drug possession met general approval. Discussion regarding making various offenses misdemeanors rather than felonies included a comment from Chief Justice Minton that misdemeanors would be tried in District Court rather than Circuit Court and probation supervision may be a problem, and concerns that counties are left to pay the costs of misdemeanor incarceration. There was also discussion of how many grams of a substance should be related to commercial trafficking or whether other factors should be considered. Mr. Handy recommended that a common scheme and plan could elevate the offense from simple trafficking and commercial trafficking. Several

members favored eliminating "double enhancement" in drug cases where repeat offenses bring not only a statutory enhancement but the potential for conviction as a persistent felony offender.

Mr. Austin presented preliminary simulations based on prison population estimates. Reviewing current trends, he said the leading reason for the increase in prison population is new Class D offenders, mostly for drug crimes, driven by more arrests and high prison disposition rates. A large number of Class D offenders, the second largest in the nation, are housed in county jails. Mr. Austin said the keys to addressing prison population include reducing the number admitted or the length of stay or both, reducing admissions by increased use of probation and reduction in the number of offenders sent to prison for probation violations and parole violations (50 percent of admissions), reducing of the length of sentence through sentence and good time credits, changing the laws on sentence lengths, better supervision of probationers and parolees using incentives for probation and parole success, and reducing returns to prison through the use of intermediate sanctions. Mandatory reentry supervision would be for all prisoners not released on parole. Under mandatory supervision, they would be released 180 days prior to expiration of their sentence. This would not apply to maximum or close custody prisoners or Class A felons. This would require adopting reforms for parole credits to avoid overloading parole caseloads.

If these recommendations are implemented July 1, 2011, it would reduce incarceration by 1,625 prisoners by 2020. Diverting technical shock probation violations in 50 percent of the cases would result in 325 fewer persons sent to prison by 2013. Community treatment could result in the release of 240 prisoners who have been granted parole but cannot currently receive mandated treatment. Increasing transitional bed capacity for paroled prisoners who have no satisfactory residence plan could involve about 170 prisoners by 2010. If all recommendations to the task force are adopted, he said the prison population could be reduced by 2,799 prisoners.

The task force recessed at 3:35 p.m. and resumed discussions on December 15, 2010 at 10:00 a.m.

### **Reinvestment Strategies**

Peter Ozanne, Crime and Justice Institute, presented information on performance incentive funding which proposed pilot programs by the Department of Corrections in counties with the highest prison disposition rates to create a criminal justice coordinating council involving the



Commonwealth's attorney, county attorney, jailer, public advocate, police, sheriff, and probation and parole. If the prison disposition rate is reduced by 50 percent, the state will reimburse 50 percent of the savings as follows: 50 percent to the state, 25 percent to probation and parole for better supervision in the county, and 25 percent to the criminal justice coordinating council for treatment and services in the county.

Another proposal would create five pilot projects in the Department of Corrections to reduce the number of probation and parole revocations sent to prison. The same criminal justice coordinating council would be used. The savings would be distributed at 50 percent to the state, 25 percent to probation and parole for improvement in services in the county, and 25 percent to the criminal justice coordinating council for treatment and services in the county.

Programs would include validated risk/needs assessments, implementation of evidence-based practices, programs with cognitive behavioral therapy, and tracking of program results. County Judge-Executive Turner approved of the program and thought it had merit. Mr. Handy requested information on how the state 50 percent would be divided. Questions included how would the criminal justice coordinating council reduce the prison disposition rate? County Judge-Executive Turner suggested if a prisoner is sentenced to the county jail for a misdemeanor which was previously a felony, the state should pay the cost of incarceration. Secretary Brown suggested examining the Penal Code in more detail to expand the classifications of felony offenses and reassessing appropriate levels of penalties. Secretary Brown also commented on the effectiveness of day reporting centers in Chicago for persons on probation and parole. Senator Jensen indicated he favored eliminating double enhancements for drug offenses and suggested the persistent felony offender statute exclude KRS Chapter 218A offenses. He asked for more information on the number of persons charged with persistent felony offender violations versus convictions, and recommended that a certificate of need be enacted for the expansion of jails or the building of new jails. Mr. Handy indicated he approved of the proposal to provide crime victims with more information as to the defendant's status and progress in paying court ordered restitution.

The meeting adjourned at 11:45 a.m.

#### **TASK FORCE ON THE PENAL CODE AND CONTROLLED SUBSTANCES ACT**

#### **Minutes of the 1st Meeting of the 2011 Session Break**

January 18, 2011

##### **Call to Order and Roll Call**

The 1st meeting of the Task Force on the Penal Code and Controlled Substances Act was held on Tuesday, January 18, 2011, at 10:00 AM, in Room 171 of the Capitol Annex. Representative John Tilley, Chair, called the meeting to order. The secretary called the roll and a quorum was present. The minutes of the December meeting were approved.

Present were:

**Members:** Senator Tom Jensen, Co-Chair; Representative John Tilley, Co-Chair; J. Michael Brown, Tom Handy, John D. Minton, Jr., J. Guthrie True, and Tommy Turner.

**Guests:** Barry D. Moore, Commonwealth Attorney 12<sup>th</sup> District; Verman R. Winburn, Kentucky Parole Board; Don Stosberg, Woodstore Resources; Marylee Underwood, Kentucky Association of Sexual Assault Programs; Michael Shumar, UK College of Pharmacy; Jenifer Noland, Westcare; and Charles Zoeller.

**LRC Staff:** Norman Lawson Jr., Jon Grate, Joanna Decker, Ray Debolt, Jr., Kyle Moon, and Kathy Miller.

##### **Discussion of Recommendations**

Richard Jerome and Jason Newman, PEW Public Safety Performance Project, Peter Ozanne and Kristy Danford, Crime and Justice Institute, and James Austin, JFA Institute, presented the January 18, 2011 policy recommendation memorandum draft and a copy of 11 RS BR 363, which contained a draft of the Task Force Bill.

Mr. Jerome discussed the "Policy Recommendations" memorandum. The memo contained a summary relating to the growth of the corrections population, costs of corrections, drivers of prison population, a summary of suggested reforms, and a national summary of recent corrections reforms. He said that some reforms recommended for Kentucky were already being implemented, such as use of the LSCMI risk/needs assessment by the Department of Corrections and the Parole Board in making parole release decisions and in determining treatment and other recommendations for parolees. Training for probation and parole officers in the use of the risk/needs assessment is nearly complete.

Other factors discussed were rising costs, incarceration with low public safety return, and fluctuating rates of recidivism. The report cited prison growth as being driven by increased arrests and court cases including a 70 percent increase in drug arrests, 22 percent arrest rate for Part 1 (serious) offenses and a 33 percent increase in the arrest rate for Part 2 offenses, the above 60 percent rate

of felony imprisonment sentences issued by courts compared with a national average of 41 percent, and the large number of offenders returned to prison for technical probation and parole violations.

Information from the JFA Institute estimated that, with no action, the prison population will grow by 1,400 inmates in 10 years at an estimated cost of \$161 million.

Recommendations for strengthening probation and parole included: (1) incorporating a risk/needs assessment into the presentence investigation report to guide the judge in sentencing; (2) using the risk/needs assessment during the parole process and during supervision; (3) implementing mandatory reentry supervision for inmates who had not been paroled; and (4) improving the Parole Board deferment process.

Suggestions relating to mandatory reentry supervision generated much discussion. Some inmates serve their entire sentence without parole and are released at the expiration of their sentences either because they were sentenced to life imprisonment without parole or they were denied parole. The recommendations included a nine month early release as one type of parole so the offender is given some treatment and supervision prior to the expiration of sentence. Some members of the task force felt this was a good idea while others thought the process might reward bad behavior and failure to participate in programs while in prison. Some members suggested the solution was to have post-incarceration supervision as is done for sex offenders. Under this program, the prisoner would be required to serve a period of supervision following release and if they violated the conditions of release, they would be returned to prison for the remainder of the supervision period. One year of supervision was recommended. This option would require an amendment to existing statutes which would apply only to persons convicted after the effective date of the statute.

Other suggestions included using higher levels of supervision for high and medium risk offenders, expanding the use of GPS monitoring, and limiting Parole Board deferments to 12 months for Class C and D felons, and 5 years for Class A and B felons, and requiring that any deferment of more than 2 years be approved by the full board. Some members of the task force favored this proposal while others wanted 10 year deferments. Offenders who did well on parole or on probation would be rewarded by lowering the level of supervision and by shortening the period of supervision.

A recommendation was made to shorten the length of time for proba-

tion revocation hearings from 90 days to 15 days or to permit the use of administrative sanctions by probation and parole officers. The Hawaii HOPE project was suggested as an effective model program with immediate sanctions for violation of the provisions of supervision.

With all programs, the recommendations included use of evidence-based practices and monitoring of programs to see that they used evidence-based practices and had genuine success in reducing recidivism. Discussion turned to how and where offenders released on pre-release supervision should stay. Some favored direct release and supervision by the Department of Corrections. Chairman Tilley suggested that, since the released prisoners were actually still prisoners under Department of Corrections' control, Section 253 of the Constitution of Kentucky would prevent them from working except on public projects. The suggested alternative was to release the prisoners on parole so they were no longer under the department's control and could work at private employment. Mr. True opposed a suggestion that released prisoners be housed in county jails while on parole because he felt that offenders would do better in a community setting.

The next topic of discussion was the adoption of "common sense" sentencing reforms, many of which related to controlled substances offenses. The first proposal included "presumptive probation" for drug possession offenses. Under this proposal, the sentencing judge would probate the offender unless there were "substantial and compelling reasons why the defendant could not be safely and effectively supervised in the community and is not amenable to community-based treatment." Chief Justice Minton observed that since most of the drug possession offenses were misdemeanors and were tried in the District Court, a problem would arise because probation and parole services are not normally available in District Court. Probation and parole officers are normally available only in Circuit Court for felony offenses and District Court is not prepared to supervise misdemeanants because of the lack of probation officers.

Drug proposals included setting 5 gram or 5 dosage unit limits as a break between possession and trafficking offenses except for methamphetamine, which was set at 2 grams, reducing the drug-free school zone distance from 1,000 yards to 1,000 feet, and mandatory release prior to trial, particularly for possession offenses. Mr. Handy suggested lowering the limit for possession to 4 grams and permitting trafficking charges on multiple offenses. Another recommendation

was to eliminate “double enhancements” for offenses where subsequent offenses would have a higher penalty and could also bring prosecution as a persistent felony offender.

The Task Force approved a suggestion to expand the medical parole statute (KRS 439.3405) to include other conditions and change the requesting authority from the warden of the prison to the medical director of the Department of Corrections.

Mr. Austin reported that the prison population was stable and holding and the crime rate was declining, but drug arrests were up 70 percent, that 7,000 Class D felons were housed in county jails, and the initial assumptions about prison growth remain valid.

Under the topic of support and respect to victims, the recommendations included creating a Department of Corrections web-based system to provide courts, attorneys, and victims with the offender’s risk and needs information, expected time to be served, parole eligibility date, goodtime release date, historic length of time served by similar offenders, and the costs and likelihood for reoffending for various sentencing alternatives.

Recommendations to improve government performance included defining success in corrections as recidivism reduction, and reduction of criminal behavior. Other recommendations included accountability for programs to ensure success, re-investing savings in evidence-based intervention programs, increased pretrial monitoring as an alternative to jail, increased investment in technology infrastructure, evaluate state funded intervention programs, pilot programs, transitional housing, and GPS monitoring as an alternative to incarceration.

Task force members supported recommendations for presumptive treatment for drug offenses but stressed the need for a community buy-in. Judge Turner indicated he supported the proposal that 50 percent of any savings go to the state with 25 percent to probation and parole and 25 percent to community corrections. Mr. True indicated he supported local community councils if they had guidelines and could reduce the prison disposition rate. Mr. True also indicated concern about the equity of 1 to 3 years of post-release supervision for felons who serve out their sentences. Secretary Brown indicated that future consideration should be given to expanding felony classifications to include class E and F felonies, reapplying penalties within the right range, and the use of day reporting centers as used in Chicago.

As to drug proposals, Mr. Handy suggested using dosage units versus quantity for prescription drugs and

further discussion of the precursor statutes with regard to methamphetamine. Senator Jensen indicated he wanted to see a draft relating to double enhancements and persistent felony offender statutes which would eliminate double enhancements and eliminate KRS Chapter 218A from the PFO statute. Mr. True observed he preferred the original drug proposals to the current ones. Chief Justice Minton observed the PFO statute is a plea bargain tool and that virtually no trials are happening in Kentucky.

The task force approved the revised version of the Policy Recommendations, dated January 19, 2011, which contained several changes accepted by the Task Force on January 18, 2011, for submission to the Interim Joint Committee on Judiciary and the LRC.

The meeting adjourned at 11:55 a.m.

## **PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE Minutes**

January 13, 2011

### **Call to Order and Roll Call**

The Program Review and Investigations Committee met on Thursday, January 13, 2011, at 10:00 AM, in Room 131 of the Capitol Annex. Greg Hager, Committee Staff Administrator, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Fitz Steele, Co-Chair; Senators Vernie McGaha, R.J. Palmer II, John Schickel, Dan “Malano” Seum, Brandon Smith, and Katie Kratz Stine; Representatives Dwight D. Butler, Leslie Combs, Terry Mills, David Osborne, Ruth Ann Palumbo, Rick Rand, and Arnold Simpson.

Legislative Guest: Representative Linda Belcher.

Guests: Van Ingram, Executive Director, Kentucky Office of Drug Control Policy; Major Joe Williams, Special Enforcement Troop, Kentucky State Police; Mandy N. Hagan, Director of State Government Relations, Consumer Healthcare Products Association; Kim Greenidge, Kentucky Department for Environmental Protection’s Division of Waste Management; Jim Acquisto, Director of Government Relations, Appriss, Inc.; Mitchel Denham, Executive Director, Office of Medicaid Fraud and Abuse Control, Office of the Attorney General.

LRC Staff: Greg Hager, Committee Staff Administrator; Rick Graycarek, Christopher Hall, Colleen Kennedy, Van Knowles, Lora Littleton, Jean Ann Myatt, Sarah Harp, Cindy Upton, and Stella Mountain, Committee Assistant.

### **Election of Senate Co-chair**

Upon nomination by Senator

Schickel and second by Senator Seum, Senator Higdon was nominated for the position of Senate Co-chair.

Upon motion by Senator McGaha and second by Senator Stine that nominations cease, Senator Higdon was elected Senate Co-chair by acclamation, without objection.

### **Election of House Co-chair**

Upon nomination by Representative Combs and second by Representative Rand, Representative Steele was nominated for the position of House Co-chair.

Upon motion by Representative Palumbo and second by Representative Rand that nominations cease, Representative Steele was elected House Co-chair by acclamation, without objection.

Senator Higdon offered condolences to Representative Osborne in recognition of his father’s passing as well as to the families in Arizona for the tragedy there.

### **Approve Minutes for November 4, 2010**

Upon motion by Representative Combs and second by Senator Schickel, the minutes of the November 4, 2010 meeting were approved by voice vote, without objection.

### **Selection of Study Topics for 2011**

Senator Higdon said that he and Representative Steele recommend four study topics for adoption by the committee: 1) expenditures by the Kentucky Community and Technical College System for marketing, lobbying, and administrative costs, 2) 911 services and funding, 3) the horse breeding industry, and 4) school renovation and employment. Upon motion by Representative Combs and second by Senator Schickel, the four study topics were approved by roll call vote.

### **Consideration of Three Previously Presented Reports**

Upon motion by Senator Seum and second by Representative Mills, three reports presented previously--Air Service at Kentucky’s Commercial Airports; Transparency and Accountability of Quasi-governmental Entities; and The Impact of Industrial Revenue Bonds on Property Taxes and School Funding--were approved by roll call vote.

### **Staff Report: Controlling Access to Methamphetamine Precursors in Kentucky**

Greg Hager presented the report. Methamphetamine is a Schedule II controlled substance that can be a legitimate prescription drug, but it can also be an illegal, highly addictive recreational drug. In Kentucky, methamphetamine is typically made in toxic labs small enough to be located in residences or vehicles. Labs

and dumpsites are dangerous to users’ families and the community, law enforcement, and workers who clean up the sites.

Pseudoephedrine and ephedrine are ingredients in over-the-counter products commonly used to treat the symptoms of colds and allergies. They are also necessary precursor drugs used to make the most common form of illegal methamphetamine.

It is unknown how many labs and dumpsites there really are in Kentucky. Labs and dumpsites reported by law enforcement increased to around 600 in 2004 and 2005. Law mandated in 2005 that precursors be sold behind the counter. Reported labs and dumpsites declined by about half after 2005 but began increasing in 2007. More than 700 labs and dumpsites were reported in 2009, the 3<sup>rd</sup> highest in the U.S. The final number for 2010 is expected to be more than 1,000. One half of the 704 reported labs and dumpsites in 2009 were located in six counties. Overall, methamphetamine labs and dumpsites are more prevalent in some counties than others, but reported labs and dumpsites are widespread in the state.

Statutes and regulations establish standards and procedures for the Department for Environmental Protection to use for cleanup or decontamination of inhabitable properties that have been used as methamphetamine labs or dumpsites. When it is suspected that methamphetamine has been manufactured in a property that is inhabitable, law enforcement agents remove any bulk waste, remove any children from the site, secure the area, and notify the local health department. People may still live in the property as long as they have notice of the methamphetamine problem. The owner must decontaminate the site before the property can be released from its official contaminated status and from the necessity for the posting of a notice of contamination.

An individual can purchase more than the lawful limited amounts by using fake IDs. This evasion of legal limits is referred to as smurfing. Smurfing can also be done by a group of individuals buying up to their limits and selling or giving the products to the person organizing the purchases.

The amount of precursor drugs diverted to make illegal methamphetamine is unknown. For labs and dumpsites that are found, it can often be estimated by law enforcement what the capacity of a lab would be to produce a single batch of methamphetamine. For just the 491 labs for which there was an estimated single-batch capacity in 2009, Program Review staff estimated that approximately 2.2 percent of precursor drugs sold that year would have had to be diverted to

make one batch of methamphetamine each in those labs.

Appriss, the Louisville-based company that created the tracking system NPLEx, provided resources for the pilot program for electronic tracking. Once it was no longer a pilot program, electronic tracking was funded by government. Total government funding was \$990,000. The Consumer Healthcare Products Association's members include makers of over-the-counter medicines, including pseudoephedrine and ephedrine. The association now provides funding through the National Association of Drug Diversion Investigators for states to use NPLEx for free. Kentucky's free use began January 2010. To get and maintain funding from the association, a state must have enabling legislation that requires a mandatory, stop-sale system for all pharmacies.

At least 42 states have laws controlling at least the sale of pseudoephedrine. Nineteen states have laws allowing or calling for electronic tracking of precursors. Some states have implemented registries of offenders, which are listings or access to listings of those who have been convicted of specified controlled substance offenses. Kentucky Senate Bill 211, introduced last year, would have blocked sales of methamphetamine precursors to those convicted under specified statutes, primarily KRS Chapter 218A, the controlled substances statutes. Based on a sample of those convicted under KRS Chapter 218A, Program Review staff estimated that more than 5,400 individuals convicted in 2008 would have been blocked from buying methamphetamine precursor drugs.

Two states have classified products containing the precursor drugs as Schedule III, prescription-only drugs. Oregon did so in 2006. Reported labs and dumpsites were already declining in Oregon. They declined even more after the prescription law went into effect: going from an average of 9 per month to 1.5 per month. Mississippi became the second prescription state as of July 2010. On average, there were 77 reported labs and dumpsites per month in the 12 months prior to the prescription law. From July to December 2010, there were 23 reported labs and dumpsites per month.

If precursor drugs were to be made prescription only, a factor to consider is whether to make the drugs controlled substances or legend drugs. Making a precursor drug a controlled substance under a specified schedule means that it would be subject to the same restrictions as other drugs in that schedule. As a controlled substance, a precursor drug would be tracked in KASPER, the state's prescription drug monitoring system. A legend drug is prescription only but is not a

scheduled, controlled substance. The legal provisions for a legend drug can be specific to that drug.

In response to a question from Senator Higdon, Mr. Hager responded that some Kentuckians buy pseudoephedrine out of state, but the exact number is not known.

In response to questions from Senator Stine, Mr. Hager replied that if multiple two-liter bottles are found at a single location, it would be reported as one lab. Staff did not look closely at all states with decreases in labs and dumpsites but did look at some. Minnesota was one state with a large decrease in dumpsites. The number of labs has decreased significantly, but there have been large increases in the amount of imported methamphetamine seized by law enforcement. He clarified that the pilot pseudoephedrine tracking system was funded by Appriss. Then, it was funded by the government. As of January 2010, it was funded at no cost to the state by the Consumer Healthcare Products Association. There are specific requirements put in place by the association. If there were changes to the relevant laws, the system would no longer be provided for free.

Representative Belcher pointed out that House Bill 15, which she sponsored, would make the methamphetamine precursors scheduled prescription drugs.

In response to a question from Senator Seum, Mr. Hager noted that Oklahoma's law places pseudoephedrine behind the counter. He also noted that its electronic tracking system might show a pharmacist if someone is blocked from purchasing pseudoephedrine due to conviction for a drug offense.

Senator Seum commented that he was concerned about criminalizing pharmacists or turning them into policing entities.

In response to a question from Representative Palumbo, Mr. Hager noted that the owner of a contaminated, inhabitable property is responsible for covering the cost of decontamination, but there is an administrative cost. Ms. Greenidge responded that the Kentucky Department for Environmental Protection's (KYDEP) administrative costs related to decontamination of properties is approximately \$75,000 per year. On average, one third of such properties receive decontamination services and two thirds remain contaminated with the placard remaining on the door. Adults can live there, but not children.

In response to questions from Senator Stine, Major Williams stated that since Oregon switched to prescription only for pseudoephedrine, Medicaid costs increased by approximately \$7,700 per year. Mr. Hager

noted that it should not be assumed that everyone who would originally have purchased pseudoephedrine as an over-the-counter drug would attempt to get a prescription for it if it were made prescription only.

In response to a question from Representative Osborne, Mr. Hager replied that stop sales are recorded in the NPLEx system and law enforcement has access to the information in the system. He also noted that over the first two years of the system's operation in Kentucky, two percent of attempted purchases were stopped. He further said that there is no penalty for persons blocked from purchase other than that they cannot make the purchase.

Senator McGaha commented that there was a noted decrease in Oregon before it became prescription only and that alcohol is the most highly abused drug in Kentucky.

In response to questions from Senator McGaha, Mr. Hager responded that staff did not get information on how many individuals seeking medical assistance at hospitals were Medicaid recipients. Major Williams replied that if law enforcement no longer had access to NPLEx, it would not impact law enforcement's ability to locate methamphetamine labs. If pseudoephedrine were to be tracked in KASPER, then law enforcement could use the system only after a case has been opened on an individual.

In response to a question from Representative Mills, Major Williams responded that the amount of methamphetamine produced from a given amount of pseudoephedrine would depend on factors such as the experience of the person making the methamphetamine.

In response to a question from Representative Butler, Major Williams noted that the average cost to law enforcement for rendering a lab or dumpsite scene safe is \$2,100 per lab. He also noted that the cost to decontaminate the property is the responsibility of the property owner. Ms. Greenidge stated that the cost to the property owner could range from \$1,000 to \$25,000, depending on the amount of cleanup required and the property. Insurance coverage would depend on the terms of the policy.

In response to questions from Senator Stine, Mr. Hager replied that he was not aware of any changes in the way labs are reported by law enforcement over time. He said that staff did not have information on whether NPLEx was used differently in other states.

Mr. Ingram commented on the thoroughness of the report presented by staff and encouraged everyone to read it in order to understand the complexity of the subject.

Major Williams noted that it was

a comprehensive report but that the estimated 2.19 percent of pseudoephedrine for the specified number of labs was based on incomplete information. He has staff who will research this issue.

Mandy Hagan from the Consumer Healthcare Products Association (CHPA) said that CHPA is a non-profit 129-year-old trade association representing major manufacturers of United States non-prescription drugs and has been involved in the debate on controls for pseudoephedrine for several years. CHPA supports a comprehensive approach to balance the legitimate access for consumers with the legitimate law enforcement concerns about preventing illegal sales. The costs to the state in terms of sales tax revenue, potential increase in insurance cost to state employees, as well as cost to private individuals of taking time off work to see a doctor, should be balanced with the concerns that law enforcement has raised. She commended Program Review staff for the excellent report. To add a more national perspective and numbers that are not in the report, she said the non-prescription drug industry in the U.S. is about a \$22 billion a year industry. Of that, the cough and cold category, which includes pseudoephedrine, is a \$4.6 billion per year category. Pseudoephedrine sales in the U.S. are about \$550 million a year, not including Wal-Mart sales.

CHPA has not found any correlation with pseudoephedrine sales in a particular state and the number of methamphetamine labs found in that state. Nationwide about 50 million packages of pseudoephedrine are sold in the U.S. each year and there are about 10,000 methamphetamine lab incidents in the whole country, indicating that the number of incidents of pseudoephedrine being diverted for methamphetamine production is probably small. More importantly, the states where the most pseudoephedrine is sold are not the states that have the highest numbers of methamphetamine lab incidents. The states with the highest methamphetamine production - Indiana, Missouri, Kentucky, and Tennessee - are not the bigger markets for pseudoephedrine. Pseudoephedrine sales are closely correlated with population, the highest sales being in California, Florida, Texas, and New York. In Kentucky, about 500,000 people each year buy pseudoephedrine. NPLEx has not only kept those people buying it within legal limits, but has shown that they are buying well within legal limits. In the last year there were only 9 people in the entire state that bought more than 100 grams, the maximum amount per year.

Ms. Hagan said CHPA's commitment in the U.S. is to provide NPLEx

to other states. Since 2008, legislators from other states have approached CHPA to adopt NPLeX in their states. CHPA has agreed to expand NPLeX into other states because of the results the system offers.

Kentucky's increase in labs coincides with the increase in the one-pot method, and of the seven neighboring states, only two have tracking systems comparable to Kentucky's. Indiana, Tennessee and Ohio, states with high numbers of methamphetamine lab incidents, have no electronic tracking systems in place and there is no way for a pharmacist to know that a person is buying illegally. CHPA is committed to passing laws in Indiana, Tennessee, and Ohio in 2011 to bring NPLeX to those states which will intertwine seamlessly with NPLeX in Kentucky.

CHPA has supported the tracking system used in Oklahoma which blocks anybody convicted of a drug-related offense from purchasing pseudoephedrine. Other states should also look at doing that.

In response to questions from Representative Belcher, Ms. Hagan responded that she was unaware of any reliable estimates for the amount of pseudoephedrine purchased by smurfers. Major Williams described a pharmacy with exceptionally high sales of pseudoephedrine. After law enforcement monitored activity and confronted buyers at the pharmacy, sales decreased by 78 percent.

In response to a question from Senator Stine, Ms. Hagan responded that NPLeX does its job by blocking sales and provides valuable information for law enforcement. Many law enforcement agents use the system. Mr. Ingram noted that compliance with the system by pharmacies is very good. The Office of Drug Control Policy monitors compliance. Pharmacies' use of the information system is reviewed by the Board of Pharmacy.

In response to a question from Representative Rand, Major Williams said that his main concern with the report was the 2.19 percent figure and that he could supply further information on that.

Representative Combs said that the issue merits further study. Senator Higdon stated that no vote would be taken on the report at the meeting.

In response to a question from Representative Belcher, Mr. Ingram responded that he did not know the specific cost for Kentucky to combat methamphetamine labs. He was aware of an estimate of \$350,000 in societal costs per lab.

Jim Acquisto from Appriss, Inc. said that 25,000 pharmacies use the NPLeX system. He described the procedure for buying pseudoephedrine. NPLeX blocks sales of 10,000 grams of pseudoephedrine per month in

Kentucky. Illinois, Missouri, Kansas, Iowa, Florida, Alabama, Washington, South Carolina, and Louisiana have enacted appropriate legislation and joined the NPLeX system in 2010. The system is real-time and is able to block an illegal sale immediately. Purchasers can be tracked across state lines in any of the states using the system. The system is valuable for showing patterns of purchases. The sales of pseudoephedrine in Kentucky are more tightly controlled by NPLeX than prescription drugs could be by KASPER. Enforcing the law as in Oklahoma, by preventing a convicted criminal from purchasing any amount of pseudoephedrine, is a great idea. Senate Bill 211, which was introduced last session and almost passed, would have blocked 5,400 people from purchasing pseudoephedrine in Kentucky last year.

In response to a question from Representative Belcher, Mr. Acquisto responded that if House Bill 15 were passed, making pseudoephedrine prescription only, the law would then have to be amended to make possible duplicate entries into NPLeX and KASPER, since NPLeX tracks only non-prescription medications.

In response to a question from Representative Osborne, Mr. Acquisto replied that the number of reported labs has gone up, but sales of pseudoephedrine have been fairly low. In his opinion, the main reason for the dramatic increase in methamphetamine labs is the one-pot method where one can make methamphetamine with a single box of cold medicine.

Senator Higdon noted that the Medicaid report would not be taken up at the meeting.

The meeting was adjourned at 11:50 a.m.

## **TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE Minutes**

December 1, 2010

### **Call to Order and Roll Call**

The Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, December 1, 2010, at 10:00 AM, in Room 129 of the Capitol Annex. Senator Carroll Gibson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Carroll Gibson, Co-Chair; Representative Dottie Sims, Co-Chair; Senator Damon Thayer; Representatives Royce W. Adams, James R. Comer Jr., Charlie Hoffman, Tom McKee, and Tommy Turner.

Guests: Roger Thomas, Joel Neaveill, Bill McCloskey, Tim Hughes, Michael Tobin, Jennifer Hudnall, Angela Blank, and Christi Marksbury, Governor's Office of Agricultural

Policy.

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

Once a quorum was established during the meeting, minutes of the November 5, 2010, meeting were approved by voice vote and without objection on a motion by Representative McKee and second by Senator Thayer.

### **Governor's Office of Agricultural Policy Report**

Mr. Roger Thomas, Executive Director, Mr. Joel Neaveill, Chief of Staff, and Mr. Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), reported on the actions by the Agricultural Development Board (ADB) at its November meeting.

Mr. Neaveill summarized funding approvals in three categories – the County Agricultural Improvement (CAIP), Deceased Farm Animal Disposal Assistance, and the Shared-use Equipment programs. The speaker also brought to the attention of the committee various amendments approved for programs that were funded earlier.

During the review of the University of Kentucky Research Foundation project to buy and retrofit a high clearance sprayer and build a greenhouse at the Princeton research facility, Mr. Thomas indicated the project represented a good example of commodity groups partnering with the Agricultural Development Fund. Both the Kentucky Soybean and the Kentucky Corn Growers associations agreed to contribute \$125,667 in matching funds for the UK Research Foundation project.

They responded to Co-chair Gibson and Representative Comer's questions about the Kentucky Dairy Development Council (KDDC) funding, which totals over \$1.6 million over a two-year span. Mr. Thomas described a KDDC Milk Incentive Leadership for Kentucky (MILK) initiative that also involves milk processors in the state. The processors match KDDC funds used in an awards program aimed at increasing milk production, dairy promotion, and fostering growth in the industry. He said 200 dairies in the state participate.

Mr. Thomas responded to Representative Comer that 48 percent of the funding awarded to KDDC for 2011 and 2012 will be used as a part of the MILK initiative. Responding to another question, he indicated that the KDDC does not receive the direct financial benefits from dairy producer check-offs as do some commodity associations. Farmers benefit from the overall dairy promotion efforts.

During the discussion of the Kentucky Horticulture Council (KHC) project, which received over \$1.4 mil-

lion in Agricultural Development Fund moneys, Mr. Thomas noted that the KHC, as well as the other entities, would be required to meet certain benchmarks in 2011 and 2012 and periodically report back to the board. The board will determine if the benchmarks have been achieved in 2011 prior to granting funds in 2012.

Another project discussed also will have benchmarks, that of the Kentucky Department of Agriculture's Kentucky Proud marketing program, which received grant funds totaling over \$2.8 million for 2011 and 2012.

Regarding the Kentucky Beef Network LLC project, funded at over \$1.9 million, Mr. Thomas explained to Representative McKee that the Kentucky Beef Network is a subsidiary of the Kentucky Cattlemen's Association. In addition, the association has other segments under its umbrella. According to Representative McKee, the Kentucky Cattlemen's Association/Kentucky Beef Network's programs are beneficial to the beef cattle industry.

In other discussion, Co-chair Gibson mentioned the "Commonwealth Grows" newsletter published by the GOAP and asked about the timeframe for the projects listed in the publication. Mr. Thomas indicated the listing included all projects funded this year. GOAP will soon be distributing to legislators a list of all projects funded for the fiscal year.

Mr. Thomas also highlighted for the committee some of the issues discussed during the board's recent planning and policy sessions, and business meeting. The board discussed a need to continue focusing on the Kentucky Agricultural Finance Corporation's revolving loan programs because the loan funds will remain even as the Master Settlement Agreement funds decline. The board also is looking favorably at: putting more focus on regional projects, particularly in areas that have received little funding; emphasizing unique types of projects, such as farmer's markets, continuing investments in marketing Kentucky products, such as for Kentucky Proud; and creating a logo that can be used to denote that agriculture development funds were contributed to a particular project. The board is interested in the sustainability of certain agricultural entities once they no longer receive MSA funds.

During the on-going discussion, the speakers responded to Co-chair Sims that the interest in funding for horticulture endeavors has been increasing.

Asked about ways to allay confusion that sometimes occurs regarding where farmers should go to request agriculture development funds, Mr. Thomas indicated that local agricul-

tural extension agents are the best point of contact.

In addition, Mr. Thomas described some CAIP policy changes or additions that would be approved during the board's December meeting.

One of the program additions suggested was the creation of a separate CAIP cost-share program for on-farm dead livestock disposal. In particular, he mentioned on-farm composting. Commenting on the plan, Co-chair Gibson cautioned that such composting should be monitored to make sure it is done correctly. Representative McKee later discussed the viability of farm composting and suggested that counties investigate regional composting efforts.

On another issue, the speakers responded to Co-chair Sims' questions about a University of Kentucky-based entrepreneurial training program that had received agricultural development funds on two occasions. The speakers explained the status of the current program, which had recently won an award for its accomplishments. According to Mr. Thomas, there is no indication that those in charge of the program would be seeking funds for a third training program.

#### **Energy Development Report**

The committee heard a report by Mr. Tim Hughes, GOAP Senior Policy Analyst. Mr. Hughes discussed the several regional and local energy projects funded to date with agricultural development funds and federal American Recovery and Reinvestment Act (ARRA) funds. Regional projects assisted have ranged from the Commonwealth Agri-Energy corn ethanol production plant in Hopkinsville to the Eastern Kentucky University algae energy production research endeavor. County funds have been awarded for several on-farm energy efficiency and production investments. The ARRA funds have supplemented agricultural development funds for on-farm projects, according to Mr. Hughes.

Responding to Representative McKee, Mr. Hughes indicated that East Kentucky Power has a continuing interest in the project in the northeastern part of the state to raise switchgrass and use it as a supplemental energy production commodity. He indicated to the committee that the power company has committed funding for the project by buying the switchgrass and has dedicated personnel to the effort.

At the conclusion of the presentation, Mr. Thomas noted the ARRA funds have benefitted energy projects throughout the state.

Documents distributed during the committee meeting are available with meeting materials in the LRC Library.

The meeting adjourned at approximately 11:45 a.m.

### **TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE Minutes**

February 2, 2011

#### **Call to Order and Roll Call**

The meeting of the Tobacco Settlement Agreement Fund Oversight Committee was held on Wednesday, February 2, 2011, upon adjournment of the House and Senate Chambers, in Room 129 of the Capitol Annex. Senator Carroll Gibson, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Carroll Gibson, Co-Chair; Representative Wilson Stone, Co-Chair; Senators David Givens, Vernie McGaha, Dennis Parrett, and Damon Thayer; Representatives Royce W. Adams, James R. Comer Jr., Tom McKee, and Fred Nesler.

Guests: Roger Thomas, Joel Neaveill, Bill McCloskey, Jennifer Hudnall, Michael Tobin, and Angela Blank, Governor's Office of Agricultural Policy.

LRC Staff: Lowell Atchley, Biff Baker, and Kelly Blevins.

#### **Election of House Co-Chair**

Following roll call, there was an election of a House Co-Chair to replace former Representative Dottie Sims.

Representative Tom McKee nominated Representative Wilson Stone for House Co-Chair; seconded by Representative Fred Nesler. Representative Nesler moved that nominations cease and that Representative Stone be elected by acclamation, and this was seconded by Representative Jamie Comer. Without objection, Representative Stone was elected House Co-Chair. Upon his election, Representative Stone thanked the committee for the opportunity to serve.

#### **Minutes and Announcements**

The December 1, 2010 minutes were approved, by voice vote and without objection, on a motion made by Senator McGaha and seconded by Senator Givens.

The presiding chair, Senator Carroll Gibson formally welcomed three new committee members who then introduced themselves: Senator Dennis Parrett, Representative Nesler, and Representative Stone.

#### **Governor's Office of Agricultural Policy**

Chairman Gibson called on Mr. Roger Thomas, Executive Director, and Mr. Joel Neaveill, Chief of Staff, and Bill McCloskey, Director of Financial Services, Governor's Office of Agricultural Policy (GOAP), to review the projects considered by the Agricultural Development Board (ADB) during meetings in December 2010 and January 2011.

Before summarizing the projects, the three GOAP representatives reviewed the 2011 program and policy revisions approved by the ADB in the earlier meetings. The changes affected several areas, including: general guideline changes and policy changes; share-use equipment; producer education and training (new program); farmers' market infrastructure competitive grant program (new program); agricultural diversification investment; buyer-seller language; dead livestock on-farm composting; farm structure and commodity handling investment; fertilizer; and technology investment.

They responded to several committee members' questions, including the levels of commitment and growth of local and regional farmers' markets, the procedures involved in setting up on-farm composting endeavors, general guidelines related to non-profit applications, and general procedures related to applying for funds.

The GOAP officials reviewed the projects approved for funding at the earlier ADB meetings. Those included: Heart of Scottsville, a farmers' market feasibility study; Crittenden County Board of Education, a high school greenhouse project; Grayson County Conservation District, welding training; Wayne County Pork Producers Association, a project in support of the Wayne County Women in Agriculture program; Jessamine County FFA Alumni Association, a chainsaw safety training project; and Scott B. Shackelford, an individual setting up a produce collection and shipping facility in Todd County.

Regarding the Heart of Scottsville farmers' market feasibility study, Senator Givens first complimented Representative Nesler for earlier questioning the need for such a study. He then pointed out the study would have a long-term value to that city. He noted that the Turner Foundation is committing funds to the endeavor, thus in-depth study would be needed.

During the Grayson County welding project discussion, the GOAP officials responded to Co-Chair Gibson that a \$400 commitment from each participant is generally a standard amount. They also later clarified the fee arrangement for Senator McGaha.

As for the Jessamine County chainsaw project, the GOAP officials noted that an ADB application review committee had earlier recommended no-funding for the project, but the full board decided to grant funding because of the safety aspect involved.

The Scott Shackelford project also prompted questions from committee members. The GOAP officials explained to Co-Chair Gibson that the applicant had prior experience in

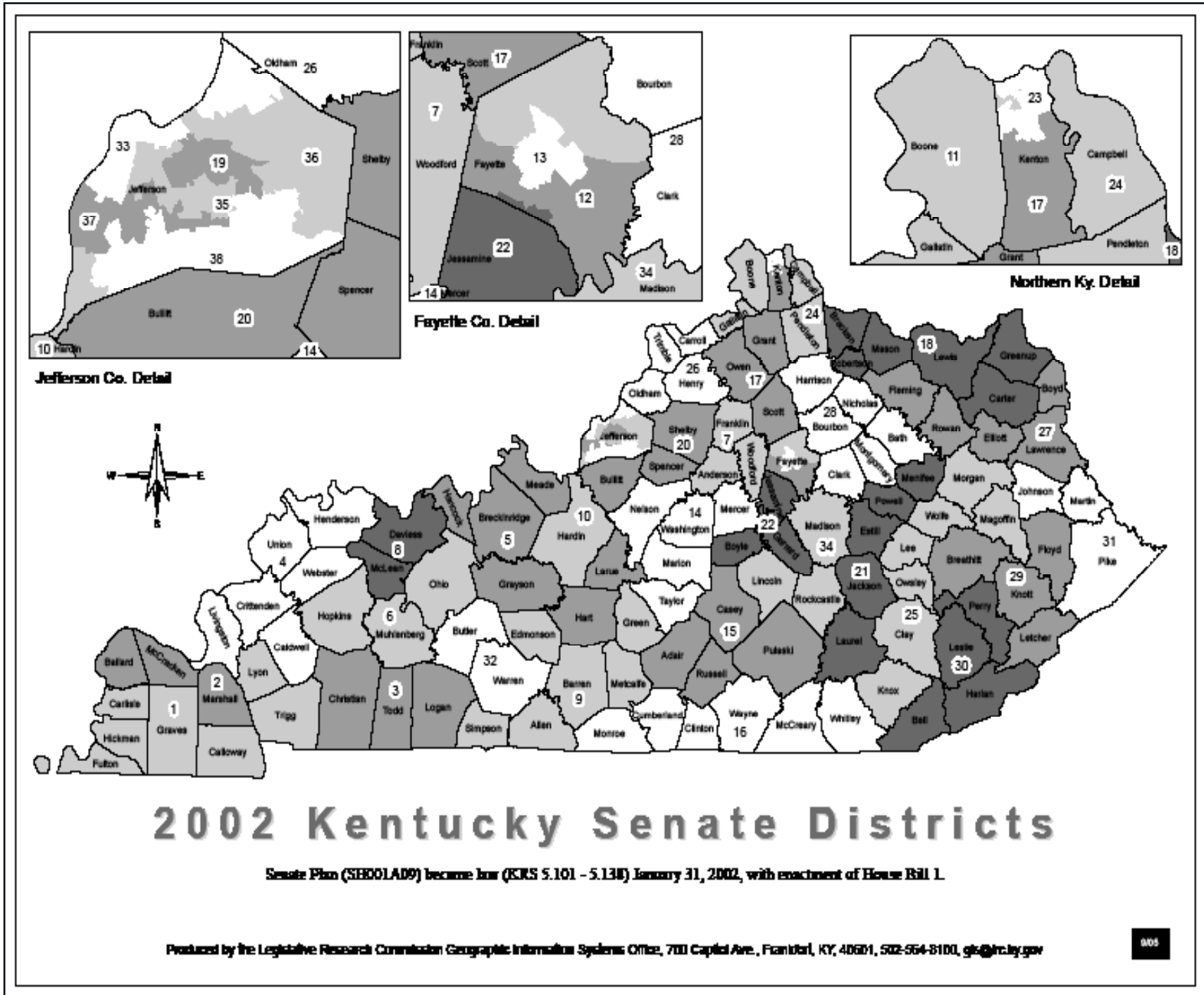
produce handling and delivery. Mr. McCloskey noted that several producers are involved in the undertaking in the Todd County area, and that Mr. Shackelford agreed to take the lead on shipment efforts. Mr. Thomas noted that ADB funds committed will be used to renovate an existing building as a site to take in produce and sort it for shipment.

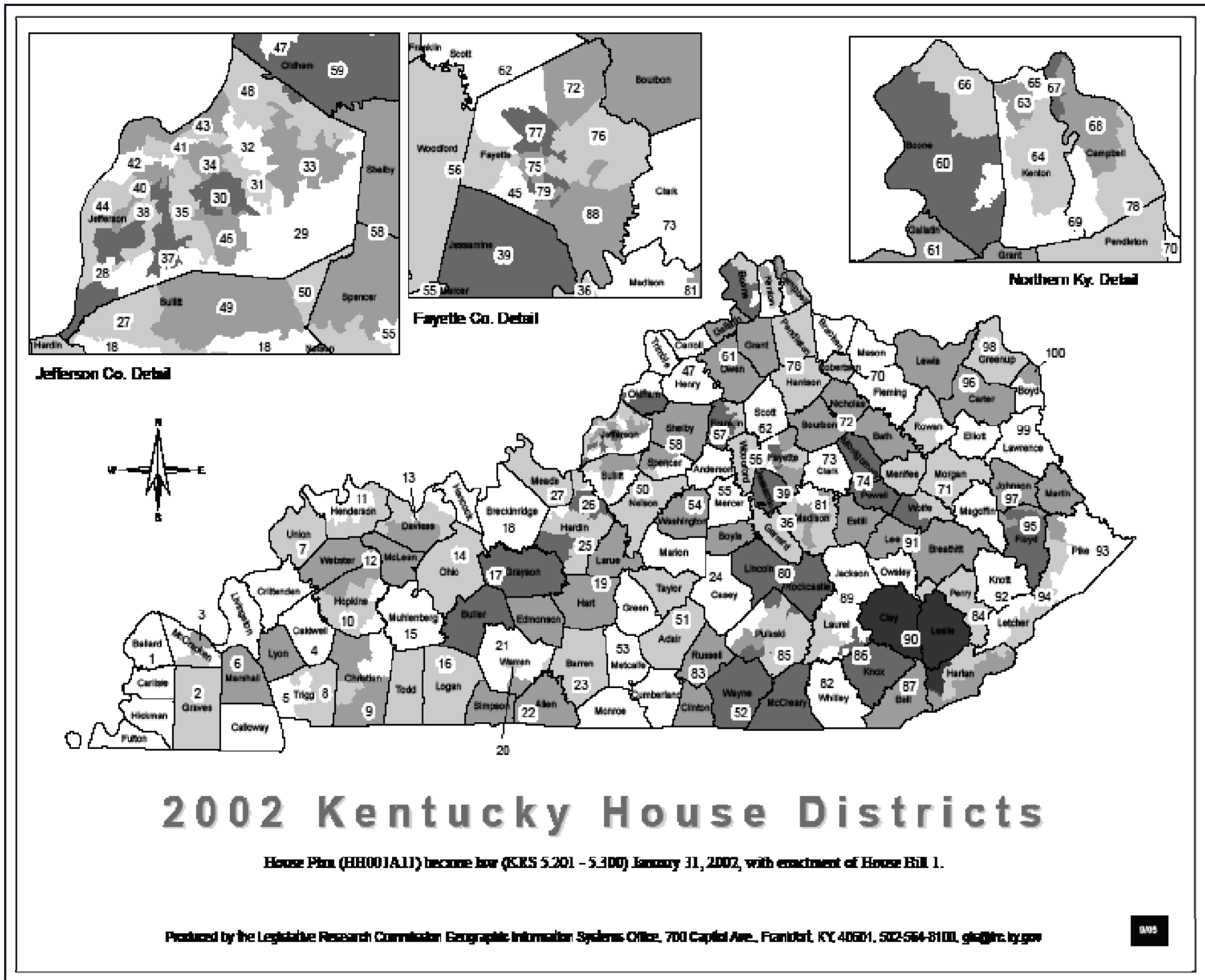
They indicated to Co-Chair Stone that the project is not associated with an auction facility in Fairview operated by Mennonite producers. Co-Chair Stone said it is appropriate to encourage such produce distribution efforts.

Co-Chair Gibson talked about produce distribution activities in Hart County. Mr. McCloskey suggested that those involved may wish to apply for agricultural development funds.

Documents distributed during the committee meeting are available with meeting materials in the LRC Library.

The meeting adjourned at approximately 5:45 pm.







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