

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

**2005**

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and the  
2006 Kentucky General Assembly**

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**December 2005**



## FOREWORD

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

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

During the 2005 Interim, all 14 interim joint committees held meetings. Four special committees were authorized by LRC. All eight statutory committees met during the 2005 Interim.

LRC provides this informational booklet as a summary of the activity of the interim joint, special, and statutory committees since adjournment of the 2005 General Assembly. The reports were prepared separately by the committee staff.

Robert Sherman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
December 2005



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**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
AGRICULTURE AND NATURAL RESOURCES**

**Sen. Tom Jensen, Co-Chair  
Rep. Tom McKee, Co-Chair  
Rep. James Gooch, Co-Chair**

Sen. David E. Boswell	Rep. W. Milward Dedman, Jr.
Sen. Ernie Harris	Rep. Mike Denham
Sen. Dan Kelly	Rep. C.B. Embry, Jr.
Sen. Robert J. Leeper	Rep. W. Keith Hall
Sen. Vernie McGaha	Rep. Jimmy Higdon
Sen. Joey Pendleton	Rep. Charlie Hoffman
Sen. J. Dorsey Ridley	Rep. Charles E. Meade
Sen. Richie Sanders, Jr.	Rep. Reginald K. Meeks
Sen. Ernesto Scorsone	Rep. Brad Montell
Sen. Damon Thayer	Rep. Fred Nesler
Rep. Royce W. Adams	Rep. Don R. Pasley
Rep. Adrian K. Arnold	Rep. Marie L. Rader
Rep. John A. Arnold, Jr.	Rep. Rick W. Rand
Rep. James E. Bruce	Rep. Steven Rudy
Rep. Dwight D. Butler	Rep. Terry Shelton
Rep. James Carr	Rep. Brandon D. Smith
Rep. Mike Cherry	Rep. Jim Stewart III
Rep. Hubert Collins	Rep. Tommy Turner
Rep. James R. Comer, Jr.	Rep. Ken Upchurch
Rep. Howard D. Cornett	Rep. Robin L. Webb
Rep. Tim Couch	Rep. Susan Westrom

LRC Staff: Tanya Monsanto, Biff Baker, Hank Marks, Lowell Atchley, and Kelly Blevins

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

**SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP****Subcommittee on Rural Issues****Sen. Vernie McGaha, Co-Chair****Rep. Mike Denham, Co-Chair**

Sen. Tom Jensen, ex officio	Rep. James Gooch, Jr., ex officio
Sen. Robert J. Leeper	Rep. Jimmy Higdon
Sen. Richie Sanders, Jr.	Rep. Tom McKee, ex officio
Rep. Adrian K. Arnold	Rep. Fred Nesler
Rep. John A. Arnold, Jr.	Rep. Marie L. Rader
Rep. Dwight D. Butler	Rep. Rick W. Rand
Rep. Mike Cherry	Rep. Steven Rudy
Rep. James Comer, Jr.	Rep. Tommy Turner
Rep. C.B. Embry, Jr.	

**Subcommittee on Horse Farming****Sen. Damon Thayer, Co-Chair****Rep. Susan Westrom, Co-Chair**

Sen. Tom Jensen, ex officio	Rep. James Gooch, Jr., ex officio
Sen. Joey Pendleton	Rep. Charlie Hoffman
Rep. Royce W. Adams	Rep. Tom McKee, ex officio
Rep. James E. Bruce	Rep. Brad Montell
Rep. James Carr	Rep. Don R. Pasley
Rep. W. Milward Dedman, Jr.	Rep. Ken Upchurch

**Subcommittee on Natural Resources****Sen. Ernie Harris, Co-Chair****Rep. W. Keith Hall, Co-Chair**

Sen. David E. Boswell	Rep. Tom McKee, ex officio
Sen. Tom Jensen, ex officio	Rep. Charles E. Meade
Sen. Dan Kelly	Rep. Reginald K. Meeks
Sen. Ernesto Scorsone	Rep. Terry Shelton
Rep. Hubert Collins	Rep. Brandon D. Smith
Rep. Howard Cornett	Rep. Jim Stewart III
Rep. Tim Couch	Rep. Robin L. Webb
Rep. James Gooch, Jr., ex officio	

## **INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES**

**JURISDICTION:** Matters pertaining to crops, livestock, poultry, and their marketing, disease control, and warehousing; tobacco; stockyards; agricultural cooperatives and marketing associations; agriculture weights and measures; veterinarians; State Fair; county fairs; water pollution; air pollution; management of waste; protection of the environment; noise pollution; forestry; mining; fish and wildlife resources; soil and water conservation; flood control and water usage; drainage and irrigation; geology and water resources; waterways and dams; oil, gas, and salt water wells; state and national parks; Environmental and Public Protection Cabinet; all matters not specifically assigned to another committee relating to administrative, regulatory, or operating issues which, because of their smaller size, uniquely impact small business.

### **COMMITTEE ACTIVITY**

From July to November, the Interim Joint Committee on Agriculture and Natural Resources held six monthly meetings during the 2005 Interim. Three subcommittees were formed. They were the Natural Resources Subcommittee, the Horse Farming Subcommittee, and the Rural Issues Subcommittee.

The Interim Joint Committee on Agriculture and Natural Resources balanced its attention between agricultural issues, natural resource issues, and environmental concerns during the 2005 Interim. The topics illustrated the conflict between different-sized producers of agricultural commodities, the effect of the deepening energy crisis, and the impact of federal actions on Kentucky.

The committee focused on a number of important agricultural issues during the 2005 interim. Those issues included the promotion of grape and wine production in Kentucky, the implementation of an animal identification and tracking system, and the restructuring of the Kentucky Farm Service Agency.

Natural resource issues included the impact of marina setbacks on sport anglers, the application of usage fees on boat ramps at some state park facilities, and the future of cervid ranching in Kentucky. Environmental issues included the beneficial reuse of biosolids and the state assumption of the Section 404 water permitting program.

The committee also discussed several energy-related issues including the permitting process for coal mining, the education and training opportunities for those working in the extractive industries, and the importance of coal in the generating fuel stock.

Finally, the committee received administrative regulations and several mandated reports. The committee also adopted a resolution on the Thoroughbred Generating Facility in Muhlenberg County.

Regarding agricultural issues, in July, the committee received testimony from the Northern Kentucky Grape Growers Association, the Governor's Office of Agricultural Policy (GOAP), and the Kentucky Department of Agriculture (KDA). The meeting was held at Northern Kentucky University. The discussion highlighted the different needs of small and large grape growers and wine producers, particularly regarding access to investment funds and promotional practices for the grape and wine industry.

Representatives from the grape growers association told the committee that the industry wants increased funding from the Agricultural Development Board to expand grape and wine production, but representatives from GOAP indicated that future funding would be predicated on increasing local grape production. Both the growers association and KDA discussed changes to the Kentucky Grape and Wine Council to make it more representative of grape-growing regions. Representatives from KDA stated that in restructuring the Grape and Wine Council, legislation should address the appointment process and the chair rotations.

The grape growers association and KDA also discussed the United States Supreme Court decision in the *Granholm v. Heald* decision. In this decision, the court determined that in-state and out-of-state shipments of wine must be treated the same. As a result, many state laws are being invalidated. In Kentucky, the decision is creating a dispute between large distributors and small in-state wine makers. Currently, small in-state wine makers are able to sell directly to the public without using a distributor.

KDA reported in June that animal identification/tracking systems continue to be a central issue. The federal government has charged states with implementing a program to allow for a 24-hour tracing system to reduce the impact of animal diseases on public health. At this stage, KDA is working on the implementation of a premises identification system. The program is voluntary; however, representatives from KDA stressed their intention to seek legislative authorization to make this program mandatory.

At the July meeting, the committee received testimony from the Kentucky Farm Service Agency regarding their efforts to restructure its offices. This restructuring is needed after passage of the federal tobacco buyout legislation, which ended many of the agency's Kentucky tobacco programs. Kentucky is voluntarily opting to reduce staff by 46 persons in anticipation of mandated personnel reductions. The personnel reductions are being accomplished by voluntary retirements. Constituents affected by an office closure will be notified and will have the option of being served by another Farm Service Agency office.

Regarding natural resource and environmental issues, in July, the committee received testimony from the commissioner of the Kentucky Department of Fish and Wildlife Resources (KDFWR) and from several sport anglers regarding a policy that

prohibits fishing 150 feet from a floating or moored structure. The policy is authorized by a lease agreement between the United States Army Corps of Engineers and private marina owners, but the provisions are required to be enforced by KDFWR. Sport anglers, particularly those participating in tournaments, oppose the policy as too restrictive and not uniformly imposed.

The committee also received testimony from the Department of Parks on a new policy to impose boat launch fees at several state parks. The boat launch fee was initiated by the Department of Parks as a revenue-enhancing measure and has been successful at generating funds. However, the policy was criticized as not having public input and not being transparent to the public. The Department of Parks indicated the boat launch fee was still a policy in development and it will eventually be formalized through the promulgation of an administrative regulation.

A natural resource issue discussed during the 2005 Interim was cervid ranching. In November, the committee received testimony from various groups about the permitting and expansion of captive cervid facilities and shooting preserves. KDFWR and the Governor's Office expressed intent to maintain a moratorium on the issuance of new permits for facilities and shooting preserves, as well as on prohibiting the expansion of existing facilities. The Kentucky Department of Agriculture discussed the need to clarify the definition of "wildlife" as it pertains to captive cervids. KDA stated there is ambiguity in the definition and the ambiguity creates public confusion. Finally, representatives from the Kentucky Alternative Livestock Association and a deputy state veterinarian from South Dakota discussed ways to reduce restrictions on captive cervid ranching.

There were two environmental issues taken up by the committee. In July, the committee received testimony from the secretary of the Environmental and Public Protection Cabinet (EPPC) regarding the beneficial reuse of biosolids. Biosolids, commonly referred to as sewage sludge, are designated by statute as a special waste. Therefore, biosolids are not subject to notice and public determination requirements in the same manner as municipal solid waste when permitted by EPPC.

In October, the secretary of EPPC provided an update on the activities of the 404 Task Force. This task force was established pursuant to Senate Bill 175 which was passed during the 2005 General Assembly. The 404 Task Force is charged with examining the feasibility of the state assuming responsibility for the issuance of Section 404 permits. Section 404 permits are required for those activities that will cause impairment to streams and wetlands.

Energy-related issues before the committee demonstrated the role of the 2005 energy crisis in raising the public awareness of coal as a principal fuel stock for the nation. In August, the committee adopted a committee resolution supporting the construction of the Thoroughbred Generating Station in Muhlenberg County. This electric generating facility will use Kentucky coal but is currently under permit review by the EPPC's Division of Air Quality.

In October, the agenda focused on new coal-fired generating technologies such as fluidized bed and integrated gasification combined cycle. Both of these technologies are designed to reduce harmful emissions. Discussion also centered on the importance of increasing supplies of critical fuel stocks like coal to deal with the deepening energy crisis. The commissioner of the Department for Natural Resources discussed efforts to streamline the permitting process for coal mining operations. Numerous permits are required for these operations.

Also, the University of Kentucky's Department of Mining Engineering requested funding for a project to increase the number of scholarships to students enrolled in the mining engineering program. There is currently a shortage of mining engineers across the nation, and given the increase in coal prices, production has increased.

### **Administrative Regulations**

The committee traditionally receives and reviews a considerable number of administrative regulations promulgated by state agencies.

During the 2005 Interim, the committee received 31 administrative regulations pertaining to programs in the Department of Agriculture; the Governor's Office of Agriculture Policy; the Department for Fish and Wildlife Resources; and the Divisions of Air Quality, Waste Management, Water, and Mine Reclamation and Enforcement within the Environmental and Public Protection Cabinet.

The committee placed all administrative regulations on the agenda, but the committee did not take separate committee action on the administrative regulations. In not taking any action, administrative regulations were deemed approved.

### **Prefiled Bills Referred to the Committee**

The committee received one prefiled bill for the 2006 Regular Session. BR 140 AN ACT relating to animals was prefiled by Rep. Crimm on July 20, 2005.

### **Legislative Proposals Received From State Agencies**

Several legislative proposals were received in subcommittee and reported by the co-chairs to the full committee. Each proposal is identified below.

Kentucky Section of the American College of Obstetrics and Gynecology proposes that the state Medicaid law be changed to prohibit a person from using a Medicaid card to cover the cost of a pregnancy if the pregnancy can be covered by regular health care insurance;

Kentucky Department of Agriculture proposes amendment to KDA's logo program and wants to establish requirements and fees for ginseng collectors and dealers;

KDA proposes allocating \$500,000 per year to fund infrastructure grants for land acquisition and improvements at county fair grounds;

KDA proposes decreasing the number of members on the Agritourism Council, reorganizing the Kentucky Grape and Wine Council, and addressing direct shipment of wine in Kentucky;

KDA proposes increasing the bonding requirements for stockyards and addressing inconsistencies in the definition of “wildlife” in both KDA statutes and Fish and Wildlife statutes;

KDA proposes increasing funding for farm safety programs, for a pesticides testing laboratory, and for establishing a best practices programs for lime and motor fuels;

KDA proposes repealing statutes relating to the regulation of apples and strawberries;

KDA proposes that it be given the authority to establish fees for several services, to increase fees for the hay grading program, and to charge different fees for amusement rides;

Kentucky State University (KSU) proposes that food processing regulations be amended as pertains to the handling and harvesting of shrimp;

KSU proposes that regulations relating to organics be amended as pertain to aquaculture;

KSU and KDA jointly propose reforms that would lower product liability insurance for farmers who use the multiple processing unit;

KDA requests authorization to implement a premises identification and livestock identification program;

Kentucky Farm Bureau proposes that funding should continue to various agricultural projects including the animal diagnostic lab, agricultural research stations at Princeton and Robinson Forest, the Kentucky Department of Agriculture, and the water quality cost-share program;

The Kentucky Equine Education Project proposes stud fees, horse feed, supplies, and equipment be exempted from state sales tax;

The University of Louisville proposes use of a portion of the pari-mutuel wagering tax to support the Equine Industry Program;

The Kentucky Horse Park proposes additional funding to complete an indoor arena at the Kentucky Horse Park;

The Kentucky Department of Fish and Wildlife Resources (KDFWR) proposes consent legislation to prohibit use of license fees for areas other than those related to fish and wildlife;

KDFWR proposes use of tax credits for conservation easements to protect species and habitat;

KDFWR requests authority to distribute federal grant funds and to specify the number of special permits issued;

KDFWR proposes an omnibus bill that would address several areas including penalties, permit revocations, definition of farmland for hunting purposes, fish kill compensation, land surveys, use of commercial guides, hunting preserve licenses, fishing licenses, holding of furs, and boat registrations;

The Environmental and Public Protection Cabinet proposes reauthorization of the solid waste and hazardous waste assessment fee;

EPPC proposes authorizing use of the environmental remediation fee for grants to counties to conduct recycling programs and for hazardous waste pickup;

EPPC proposes authorization for the Division of Water to conduct waste water planning on a watershed basis with area development districts and counties;

EPPC proposes adoption of the federal standard for post closure monitoring under the Resource Conservation and Recovery Act; and

EPPC proposes increasing penalties for water well driller certification violations.

### **Reports Received**

Several reports were received by the committee. They are listed as follows.

*Auditor of Public Accounts, Department of Fish and Wildlife Resources, in Reference to the Statewide Single Audit of the Commonwealth of Kentucky for the Year Ended June 30, 2004*

*Auditor of Public Accounts, Environmental and Public Protection Cabinet, in Reference to the Statewide Single Audit of the Commonwealth of Kentucky for the Year Ended June 30, 2004*

*Petroleum Storage Tank Environmental Assurance Fund Facilities Status Report  
Kentucky Tobacco Research and Development Center*

*Kentucky Interagency Groundwater Monitoring Network, Annual Report 2004-2005*

## **SUBCOMMITTEE ACTIVITY**

### **Subcommittee on Natural Resources**

The natural resources subcommittee held four meetings during the 2005 Interim. At the July meeting, the Environmental and Public Protection Cabinet and the Cabinet for Health Services provided a progress report on permitting on-site waste disposal systems for residential use. The Kentucky On-Site Wastewater Association discussed training and public education programs for those seeking waste water permits.

At the September meeting, the Kentucky Department of Fish and Wildlife Resources discussed the 2006 legislative agenda focusing on the need for consent legislation, conservation easements, special permits, and the authority to distribute federal grant moneys. The subcommittee also received a proposal for an omnibus fish and wildlife bill.

The third meeting focused on the Underground Petroleum Storage Tank Program. The subcommittee received testimony on the limited funding of the program and the problems faced by contractors and tank owners who are enrolled in the program. Its director also identified initiatives to streamline the program.

At the fourth meeting, legislative proposals were received from EPPC. The proposals included reauthorization of the waste tire and hazardous waste fees; use of the environmental remediation fee for recycling and hazardous waste pickup; and authorization to conduct waste water planning with area development districts and counties. The subcommittee also received testimony on the Kentucky Conservation Initiative.

### **Subcommittee on Rural Issues**

The subcommittee held four meetings from July through November. In July, the subcommittee heard presentations from representatives of the University of Kentucky Area Health Education Center, the Center of Excellence in Rural Health, the Kentucky Rural Health Association, and the Kentucky Section of the American College of Obstetrics and Gynecology on ways to address the disparity in urban and rural health care. Also discussed were ways to increase the number of trained health care professionals in underserved areas of the state and to redress the rising cost of professional liability insurance.

In September, the subcommittee received legislative proposals from representatives of the University of Kentucky College of Agriculture, Kentucky Farm Bureau, Kentucky Department of Agriculture, and Kentucky State University.

In October, the subcommittee received testimony from the Kentucky Infrastructure Authority regarding water and waste water projects and the various loan programs that it administers.

In November, representatives from the Kentucky Department of Agriculture discussed the agriculture spraying program and the spread of West Nile virus in Kentucky. Various county groups discussed their efforts to establish a Museum of Kentucky Agriculture.

### **Subcommittee on Horse Farming**

The Subcommittee on Horse Farming met four times during the 2005 Interim. At its July meeting, the subcommittee received testimony from the state veterinarian, the general manager of Churchill Downs, directors of the University of Kentucky Gluck Equine Center, and the Livestock Disease Diagnostic Center on the impact of recent disease outbreaks in the horse industry.

In September, representatives of the Kentucky Department of Agriculture, Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders (KTA/KTOB), and Keeneland Association discussed international thoroughbred marketing efforts and the ongoing bid to attract the 2010 Federation Equestre Internationale World Equestrian Games.

In October, the director of the University of Louisville's Equine Industry Program gave a program report and discussed legislative funding. Representatives from the University of Kentucky discussed the Equine Initiative. Finally, KTA/KTOB discussed an American Horse Council report about the horse industry.

At the fourth meeting, the Kentucky Equine Education Project reviewed 2006 legislative goals including a request for sales and use tax equity. Also, the Kentucky Department of Agriculture discussed the effect of the national animal identification system on horse owners and breeders.

**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
APPROPRIATIONS AND REVENUE**

**Sen. Charlie Borders, Co-Chair  
Rep. Harry Moberly, Jr., Co-Chair**

Sen. David E. Boswell	Rep. James R. Comer, Jr.
Sen. Tom Buford	Rep. Jesse Crenshaw
Sen. Carroll Gibson	Rep. Bob M. DeWeese
Sen. Denise Harper Angel	Rep. Jon Draud
Sen. Ernie Harris	Rep. Danny R. Ford
Sen. Dan Kelly	Rep. W. Keith Hall
Sen. Alice Kerr	Rep. Joni L. Jenkins
Sen. Robert J. "Bob" Leeper	Rep. Jimmie Lee
Sen. Vernie McGaha	Rep. Mary Lou Marzian
Sen. R.J. Palmer II	Rep. Lonnie Napier
Sen. Tim Shaughnessy	Rep. Fred Nesler
Sen. Robert Stivers II	Rep. Stephen R. Nunn
Sen. Gary Tapp	Rep. Don R. Pasley
Sen. Elizabeth Tori	Rep. Marie L. Rader
Sen. Johnny Ray Turner	Rep. Charles L. Siler
Sen. Jack Westwood	Rep. Arnold Simpson
Rep. Royce W. Adams	Rep. John Will Stacy
Rep. John A. Arnold, Jr.	Rep. Tommy Turner
Rep. Joe Barrows	Rep. John Vincent
Rep. Scott W. Brinkman	Rep. Jim Wayne
Rep. Dwight D. Butler	Rep. Robin L. Webb
Rep. Larry Clark	Rep. Rob Wilkey

LRC Staff: Pam Thomas, John Scott, Charlotte Quarles, and Sheri Mahan

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

**SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP****Budget Review Subcommittee on  
Economic Development and Tourism, Natural Resources and  
Environmental Protection****Sen. Ernie Harris, Co-Chair**  
**Rep. John Arnold, Co-Chair**Sen. David E Boswell  
Sen. Alice Forgy Kerr  
Sen. Richie Sanders, Jr.  
Rep. Larry Clark  
Rep. Charlie Hoffman  
Rep. Dennis Keene  
Rep. Lonnie NapierRep. Arnold Simpson  
Rep. Tommy Thompson  
Rep. John Vincent  
Rep. Susan Westrom  
Rep. Jim Gooch, Jr., nonvoting ex officio  
Rep. Ruth Ann Palumbo, nonvoting ex officioSen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officioBudget Review Staff: Jeff Hancock, Kevin Mason, Jack McNear, and Spring  
Emerson**Budget Review Subcommittee on  
Education****Sen. Brett Guthrie, Co-Chair**  
**Rep. John Will Stacy, Co-Chair**Sen. Tim Shaughnessy  
Sen. Ken Winters  
Rep. Joe Barrows  
Rep. Jon Draud  
Rep. Derrick GrahamRep. Mary Lou Marzian  
Rep. Charles Miller  
Rep. Rick G. Nelson  
Rep. Tommy Turner  
Rep. Frank Rasche, nonvoting ex officioSen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officio

Budget Review Staff: Dudley Cotton, Linda Jacobs Ellis, and Matt Ellis

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

**Sen. Jack Westwood, Co-Chair**  
**Rep. Royce Adams, Co-Chair**

Sen. Julian M. Carroll	Rep. Tanya G. Pullin
Sen. Dana Seum Stephenson	Rep. Rick W. Rand
Sen. Elizabeth Tori	Rep. Charles L. Siler
Sen. David L. Williams	Rep. Jim Wayne
Rep. Carolyn Belcher	Rep. Thomas M. McKee, nonvoting ex officio
Rep. Don R. Pasley	Rep. Mike Weaver, nonvoting ex officio

Sen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officio

Budget Review Staff: Jim Reynolds, Randy Smith, Frank Willey, and Jenifer Harrison

**Budget Review Subcommittee on  
Human Resources**

**Sen. Tom Buford, Co-Chair**  
**Rep. Jimmie Lee, Co-Chair**

Sen. Julie Denton	Rep. Reginald K. Meeks
Sen. Daniel Mongiardo	Rep. Stephen R. Nunn
Rep. Scott W. Brinkman	Rep. Darryl T. Owens
Rep. Bob M. DeWeese	Rep. Kathy W. Stein
Rep. Joni L. Jenkins	Rep. Tom Burch, nonvoting ex officio

Sen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officio

Budget Review Staff: Cindy Murray, Frank Willey, and Matt Ellis

**Budget Review Subcommittee on  
Justice and Judiciary**

**Sen. Robert Stivers, Co-Chair**  
**Rep. Jesse Crenshaw, Co-Chair**

Sen. Gerald A. Neal	Rep. Marie L. Rader
Sen. Dan Seum	Rep. Robin L. Webb
Rep. Dwight D. Butler	Rep. Brent Yonts
Rep. Perry B. Clark	Rep. Gross C. Lindsay, nonvoting ex officio
Rep. Charles E. Meade	

Sen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officio

Budget Review Staff: Karen Hilborn Crabtree, Mike Mullins, and Jenifer Harrison

**Budget Review Subcommittee on  
Transportation**

**Sen. Robert Leeper, Co-Chair**  
**Rep. Rob Wilkey, Co-Chair**

Rep. Eddie Ballard	Rep. W. Keith Hall
Rep. James Carr	Rep. Fred Nesler
Rep. James R. Comer, Jr.	Rep. Ancel Smith
Rep. Mike Denham	Rep. Hubert Collins, nonvoting ex officio
Rep. Danny R. Ford	

Sen. Charlie Borders, ex officio  
Rep. Harry Moberly, Jr., ex officio

Budget Review Staff: Joe Lancaster, Bart Hardin, and Spring Emerson

Ex Officio Members:  
Sen. Charlie Borders  
Sen. Ernie Harris  
Rep. Harry Moberly, Jr.

## INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

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

### COMMITTEE ACTIVITY

During the 2005 Interim, the Interim Joint Committee on Appropriations and Revenue held five meetings.

The committee held its first meeting on June 8, 2005, at Northern Kentucky University. The committee heard from attorneys representing the President of the Senate and the Speaker of the House regarding the Kentucky Supreme Court decision in *Fletcher v. Stumbo*. The Speaker's attorney discussed whether the governor has the authority to spend general fund money without specific appropriations. He stated that the *Fletcher* decision limits the ability of the courts and a governor to spend funds absent legislative appropriations. He commented that the retroactive suspension of statutes by the General Assembly may now be suspect because of the decision. The President's attorney stated that the *Fletcher v. Stumbo* decision is a significant victory for the General Assembly. He stated that the decision confirms that the power of the General Assembly over the appropriation of state funds is virtually exclusive. He noted that the decision also rejected the idea of executive branch emergency powers to spend state moneys. The committee also heard from the president of Northern Kentucky University who discussed the importance of regional colleges in regional economic development. The president of Gateway Community College briefly discussed the role of the community college in Kentucky. He highlighted the importance of workforce development and providing access to post secondary education to all Kentuckians. Finally, a representative of the Consensus Forecasting Group and a representative of the Office of the State Budget Director gave a report on state revenue receipts and provided the revenue forecast.

The second meeting was held on August 25, 2005, at the University of Louisville. After a welcome by the mayor of Louisville Metro and the president of the University of Louisville, the committee heard testimony from the state budget director regarding the year-end revenue report for the 2004-2005 fiscal year. He provided details of the spending plan, including details of the year-end projected revenues and expenditures. He then discussed future budget challenges and expenditure pressures. The secretary of the Commerce Cabinet updated the committee on the redistribution of funds from the statewide lodging tax. The commissioner of the Department of Revenue and staff discussed several topics, including the creation of the Special Investigations Unit within the department, progress in the Streamlined Sales Tax Project, the implementation of the

telecommunications tax provisions in 2005 HB 272, and the collection of the utility gross receipts tax for schools.

On September 22, 2005, the committee met at Kentucky State University. The president of the university welcomed the committee. The committee received testimony from representatives of the Office of the State Budget Director regarding the status of the executive budget capitol projects and bonding. One of the effects of gasoline and diesel pricing on state revenues and expenditures was discussed. The impact of fuel price increases on local school districts in Kentucky was also discussed. The secretary of the Economic Development Cabinet and the commissioner of the Department of Commercialization and Innovation updated the committee on economic development in Kentucky. Finally, the commissioner and associate commissioner of the Kentucky Department of Education discussed the technology needs in Kentucky's schools.

The committee held its fourth meeting on October 14, 2005, at the University of Kentucky. The president of the University of Kentucky provided an overview of the university's Top 20 Business Plan. The president briefly discussed the challenge given to the university by the legislature to become a top 20 research university and the university's plan to reach this goal by 2020. He stated that it is vitally important for Kentucky's economic future to have a top 20 research institution. The chief executive officer of Commerce Lexington welcomed the members to Lexington. Next, the undersecretary of the Cabinet for Health and Family Services and the commissioner of the Department of Medicaid Services updated the committee on Medicaid and related funding issues. The commissioner discussed the current Medicaid budget and addressed short-term and long-term strategies being implemented to address cost overruns.

The committee held its fifth meeting of the interim on November 2, 2005, in the Capitol Annex. A representative of the Office of the State Budget Director and a representative from the Consensus Forecasting Group discussed the October 2005 revenue estimates. The associate commissioner of the Office of District Support Services updated the committee on the impact of fuel prices on school district budgets. The commissioner of the Department of Corrections and a representative from the Office of the State Budget Director discussed the current prison population and related funding issues. The executive director of the Kentucky Retirement Systems discussed current retirement system funding needs. The public advocate of the Department of Public Advocacy presented the findings of the Public Advocacy Commission and discussed funding needs of the Department. Finally, representatives of the Children's Alliance discussed child welfare in Kentucky and the additional funding needed by the Cabinet for Health and Family Services to support appropriate out-of-home care for committed children.

In August, the committee reviewed administrative regulation 907 KAR 1:018 & E: Reimbursement for Drugs, Cabinet for Health and Family Services, Department for Medicaid Services. The committee, at the request of the Department of Medicaid Services, amended the regulation.

The committee did not take action on any prefiled bills.

## **SUBCOMMITTEE ACTIVITY**

### **Budget Review Subcommittees**

The Interim Joint Committee on Appropriations and Revenue is organized into six budget review subcommittees. Their purpose is to review revisions to the enacted budget and to monitor the budgetary operations and programs of state government, as well as address agency budget needs for the 2004-2006 biennium.

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

The Budget Review Subcommittee on Economic Development and Tourism, Natural Resources and Environmental Protection held two meetings during the 2005 Interim.

The first meeting was held on October 14, 2005, at the University of Kentucky. A representative of the Kentucky Horse Racing Authority appeared before the committee to present an oral report on the progress of the establishment of an International Wagering Hub in Kentucky. He stated that work is currently underway to draft the final issues on definitions, wagering rules, and approval processes for the hub. He stated that the goal is to have applications coming into the Horse Racing Authority by the end of this calendar year. Also the executive director of the Commerce Cabinet's Office of Finance and Administration discussed the increase in minority employment in the cabinet from 4.9 percent to 6.5 percent. He also discussed the efforts of the Commerce Cabinet to promote a creative environment where artists can make an honest living preparing and selling their crafts via state avenues such as the Artisan's Center and the Kentucky Center for the Arts.

The subcommittee held its second meeting on November 2, 2005, in Frankfort. The executive administrator of the Office of the Secretary, and the fiscal director for the Economic Development Cabinet provided an overview of the cabinet's 2005-2006 budget as enacted, including an explanation of the use of funds in each appropriation unit.

#### **Budget Review Subcommittee on Education**

The Budget Review Subcommittee on Education met twice during the 2005 Interim. The first meeting was held on June 8, 2005, at Northern Kentucky University (NKU). After a welcome from the provost and vice president for Academic Affairs, the committee heard presentations from the Council of Partners in Education and its work with the Chamber of Commerce. The associate provost for Economic Initiatives made a presentation on NKU's economic initiatives and the impact on workers throughout the state. The president of Gateway Community and Technical College gave a brief

overview of the college's accomplishments over recent years. The president of NKU reinforced the importance of the close relationship between NKU and the college.

At its second meeting, held on November 10, 2005, in Louisville, the subcommittee was welcomed by the president of the University of Louisville, who gave a brief overview of the university's strategic plan and mission. The vice president of External Affairs and the associate vice president of External Affairs provided information on the University's Signature Partnership program. A representative from the Kentucky Science and Technology Corporation made a presentation on Knowledge-Based Economy initiatives. The subcommittee members then took a tour of the Kentucky Center for African American Heritage currently under construction in Louisville.

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

The Budget Review Subcommittee on General Government, Finance and Public Protection met once during the 2005 Interim, on November 2, 2005. The subcommittee heard testimony from three executive branch agencies. The Personnel Cabinet reported on an appropriation increase of \$1,850,000 in restricted funds. The Kentucky Office of Homeland Security provided a presentation on the agency's strategic plan and an update on progress toward those goals. The Commonwealth Office of Technology reported on a \$1,908,700 federal Homeland Security grant received.

### **Budget Review Subcommittee on Human Resources**

The Budget Review Subcommittee on Human Resources did not meet during the 2005 Interim.

### **Budget Review Subcommittee on Justice and Judiciary**

The Budget Review Subcommittee on Justice, Corrections, and Judiciary met twice during the 2005 Interim. The first meeting was held on October 18, 2005, in Frankfort. The subcommittee heard budget presentations from the director of the Administrative Office of the Courts, the deputy secretary of the Justice and Public Safety Cabinet, the executive director of the Office of Drug Control Policy, the public advocate, and the commissioner of the Department of Corrections.

The second meeting was held on November 2, 2005, in Frankfort. The Commissioner of the Department of Corrections discussed the process to assist eligible felony offenders to apply for restoration of their civil rights. The subcommittee also heard budget presentations from the deputy secretary of the Justice and Public Safety Cabinet, from the deputy commissioner of the Department of Juvenile Justice, and from the deputy commissioner with the Department of State Police.

### **Budget Review Subcommittee on Transportation**

The Budget Subcommittee on Transportation held one meeting during the 2005 Interim on September 22, 2005. The subcommittee did not take action on any routine requests for interim appropriations increases. During the meeting, the primary focus of the subcommittee was the status of Road Fund revenues, specifically the additional revenue generated from the increase in the wholesale price of gasoline and the lack of revenue growth from the other components of the Road Fund. In addition, the Transportation Cabinet presented the subcommittee with updates on the status of the bond funds previously authorized by the 2005 General Assembly, with a primary focus on the \$150 million for the County and Municipal Road Aid programs. The subcommittee also received a status report on state highway projects and the state's Six-Year Road Plan projections from the state highway engineer. The Transportation Cabinet presented the quarterly cash flow plan and explained the growing cash balances in the Road Fund.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
BANKING AND INSURANCE**

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

Sen. Julie Denton	Rep. Danny R. Ford
Sen. Ernie Harris	Rep. Jim Gooch ,Jr.
Sen. Tom Jensen	Rep. J.R. Gray
Sen. Robert J. “Bob” Leeper	Rep. Mike Harmon
Sen. Daniel Mongiardo	Rep. Jimmy Higdon
Sen. Gerald A. Neal	Rep. Dennis Horlander
Sen. J. Dorsey Ridley	Rep. Dennis Keene
Sen. Richard “Dick” Roeding	Rep. Charles E. Meade
Sen. Dan Seum	Rep. Rick W. Rand
Sen. Tim Shaughnessy	Rep. Frank Rasche
Rep. Sheldon E. Baugh	Rep. Steve Riggs
Rep. James Carr	Rep. Brandon D. Smith
Rep. James R. Comer, Jr.	Rep. Tommy Thompson
Rep. Ron Crimm	Rep. Ken Upchurch
Rep. Robert R. Damron	Rep. Susan Westrom
Rep. Mike Denham	Rep. Rob Wilkey
Rep. Ted “Teddy” Edmonds	Rep. Addia Wuchner
Rep. Joseph M. Fischer	

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

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

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

### COMMITTEE ACTIVITY

The Interim Joint Committee on Banking and Insurance met six times during the 2005 Interim.

The committee held its first meeting on June 8, 2005, at the Citigroup Call Center in Florence. The president of the center said Citigroup had 3,900 employees across Kentucky. The site in Florence employs 1,300 persons. The director of the Citigroup Office of Financial Education in Washington, D.C., stated that the United States has the lowest personal savings rate in the industrialized world. In 2004, Americans saved just 1.4 percent of their disposable income. She stated that the number of personal bankruptcies has nearly doubled since 1994, reaching 1.6 million in 2004. She stated that individuals younger than 25 are the fastest growing group of individuals filing bankruptcy. She stated that one-third of retirees older than 65 rely on Social Security for 90 percent or more of their income, that between 25 and 56 million American adults are “unbanked,” and that 43 percent of Americans spend more than they earn each year. Americans spend, on average, \$1.22 for each dollar they earn. She stated that the average household credit card debt is \$8,000, a 167 percent increase over the 1990 amount of \$3,000. She stated that the average combined retirement accounts for Americans in their 40s and 50s only total \$37,000. Director of Business Practices at Citi Cards addressed the committee regarding identity theft. She stated that identity theft is the unauthorized use of personal information to establish or assume credit under someone else’s name. She stated that identity theft manifests itself primarily in two ways for credit card fraud: fraudulent application and account takeover. She discussed the myths and facts of identity fraud and gave tips for consumers to protect themselves. She discussed possible legislative provisions that would help prevent identity theft.

The second meeting was held on July 26, 2005. The executive director of the Office of Insurance addressed the committee regarding the status of AIK Comp. He stated that there are no active policies and all business was canceled as of February 28, 2005, and they are operating in “run off” mode. He stated that claims are currently being paid on a timely basis by Brentwood, the third-party administrator. He stated that 1.5

million dollars in claims are being paid monthly, but that number is gradually declining. There are four full-time and two temporary employees at AIK Comp at present. He stated that regarding the assessment, the 2005 plan was filed with the court in June; the estimated assessment is \$97,304,349; and members between 1999 and February 28, 2005, will be assessed.

The third meeting was held on August 23, 2005. The chief executive officer and chief financial officer of Kentucky Employers Mutual Insurance (KEMI) addressed the committee concerning self-insured group workers compensation insurers. He said fraud was not easy to prevent and KEMI recently prosecuted a policyholder for fraud that was in excess of \$6 million. The executive director of the Kentucky Bankers Association stated that his organization is concerned about the vacancy since last April in the executive director position at the Office of Financial Institutions. He stated that there are critical concerns regarding the bank examining staff. He stated that the Office of Financial institutions has lost 30 percent of the examiners on staff and will lose 35 percent over the next two years, many are due to retirement. He stated that it takes at least 18 months to train an examiner to travel the state and make the examinations of Kentucky banks.

The fourth meeting was held on September 27, 2005. The committee discussed the state employee health insurance plan with representatives of the Cabinet for Health and Family Services and the Personnel Cabinet. Of the 180,000 employees eligible for health insurance coverage, about 145,000 participate covering 228,000 lives. The 2006 plan will be self-funded, and the contribution to a flexible spending account for anyone who waives coverage will be reduced from \$234 per month to \$200 per month on July 1, 2006. A spokesman for TRICARE Insurance presented a budget reduction strategy as an alternative, optional benefit for state employees.

The fifth meeting was held on October 13, 2005, in Lexington. The committee discussed with representatives of the Kentucky Bankers Association the legislative agenda of the association. This included a data match system on tax collections proposed by the Revenue Cabinet, administrative fees for garnishment searches, identity theft prevention legislation that should take into consideration pending federal legislation, prosecution of armed robbers, and misuse of bank names. The committee also heard from the Kentucky Association of Health Plans about cost drivers in health insurance.

The sixth and final meeting of the interim was held on November 22, 2005. The committee discussed the implications of an administrative regulation pertaining to loss ratios filed by health insurers. Anthem Insurance Company spoke against the regulation, and the Office of Insurance spoke in favor of its administrative regulation. Anthem contended it was treated differently under the administrative regulation than new health insurers entering the state. The Office of Insurance disagreed. The committee took no action.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
ECONOMIC DEVELOPMENT AND TOURISM**

**Sen. Alice Kerr, Co-Chair  
Rep. Eddie Ballard, Co-Chair**

Sen. Julian M. Carroll	Rep. Ted “Teddy” Edmonds
Sen. Julie Denton	Rep. Jim Gooch, Jr.
Sen. Brett Guthrie	Rep. W Keith Hall
Sen. Denise Harper Angel	Rep. Mike Harmon
Sen. Ray S. Jones II	Rep. Mary Harper
Sen. Jerry P. Rhoads	Rep. Melvin B. Henley
Sen. Richie Sanders, Jr.	Rep. Dennis Horlander
Sen. Katie Stine	Rep. Dennis Keene
Sen. Jack Westwood	Rep. Thomas Kerr
Sen. Ken Winters	Rep. Stan Lee
Rep. Royce W. Adams	Rep. Gross C. Lindsay
Rep. Carolyn Belcher	Rep. Gerry Lynn
Rep. Joe Bowen	Rep. Thomas M. McKee
Rep. Kevin D. Bratcher	Rep. Brad Montell
Rep. Denver Butler	Rep. Fred Nesler
Rep. James Carr	Rep. David Osborne
Rep. Larry Clark	Rep. Ruth Ann Palumbo
Rep. Perry B. Clark	Rep. Tanya G. Pullin
Rep. Howard D. Cornett	Rep. Ancel Smith
Rep. Tim Couch	Rep. Brandon D. Smith
Rep. Jesse Crenshaw	Rep. John Will Stacy
Rep. Jim DeCesare	Rep. Tommy Thompson
Rep. W. Milward Dedman, Jr.	Rep. Mike Weaver
Rep. Mike Denham	Rep. Robin L. Webb
Rep. Bob M. DeWeese	

LRC Staff: John Buckner, Karen Armstrong-Cummings, Lou Pierce, and  
Dawn Johnson

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP**

### **Task Force on Economic Development**

**Sen. Alice Kerr, Co-Chair**

**Rep. Ruth Ann Palumbo, Co-Chair**

Sen. Julie Denton  
Sen. Brett Guthrie  
Sen. Jerry P. Rhoads  
Rep. Joe Bowen  
Rep. Kevin D. Bratcher  
Rep. Denver Butler  
Rep. James Carr  
Rep. Perry B. Clark  
Rep. Tim Couch  
Rep. Jesse Crenshaw  
Rep. Jim DeCesare  
Rep. Mike Denham  
Rep. Bob M. DeWeese  
Rep. Ted "Teddy" Edmonds

Rep. Melvin B. Henley  
Rep. Dennis Horlander  
Rep. Dennis Keene  
Rep. Thomas Kerr  
Rep. Stan Lee  
Rep. Gross C. Lindsay  
Rep. Gerry Lynn  
Rep. Brad Montell  
Rep. Fred Nesler  
Rep. David Osborne  
Rep. John Will Stacy  
Rep. Tommy Thompson  
Rep. Mike Weaver

Rep. Eddie Ballard, ex officio

## **INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM**

**JURISDICTION:** Matters pertaining to commerce, industry, and economic and industrial development not specifically assigned to another committee; economic development planning, international trade, and investment; investment companies and industrial loan corporations as they relate to economic and industrial development; recruitment of business and industry; small business matters relative to economic and industrial development; financing of business and industrial development; business regulatory matters, including the Uniform Commercial Code, relative to economic and industrial development; worker training; technology development and application; chambers of commerce; convention centers and publicly owned exhibition and parking facilities; arts and arts exhibition facilities; state, interstate, and national parks and historic sites; travel promotion and advertising.

### **COMMITTEE ACTIVITY**

During the 2005 Interim, the Interim Joint Committee on Economic Development and Tourism met three times. The Task Force on Economic Development met once during the course of the 2005 Interim.

The first meeting, held June 16 in Frankfort, focused on women- and minority-owned businesses. The committee heard from the Appalachian director of the Steel-Reece Foundation, which founded the New Opportunity School for Women. She explained that the intensive three-week program teaches women self-esteem, job interviewing, and technology skills. Funded by foundations and individual donors, the program also pays for childcare and transportation. The director of the program explained that it is in its 38th session and has had 455 women complete the program.

The co-owners of Big Meadow Oil, Incorporated, of Glasgow explained that the company was created in 1981 in an effort to help their largely farming community. While successful, the company was not profitable so they began working with the Small Business Development Center and the Office of Minority Affairs, now the Office for Business and Occupational Development. Through the Office of Minority Affairs, they became a certified Disadvantaged Business Enterprise (DBE) company and were certified with the Transportation Cabinet, which helped to increase their profitability. The owners expressed concerns about the state not doing business with DBE firms, Small Business Administration standards, and the lack of insurance companies in Kentucky willing to write policies for small, women-, and minority-owned companies. They are now working with a new organization, the Kentucky Association of Disadvantaged Business Enterprise, which offers help to the DBE companies after certification.

A representative of Dulworth, Breeding & Karns explained that in 2002 the Small Business Administration classified 96.9 percent of Kentucky businesses as small (having

less than 500 employees). Between 1999 and 2000, small business created almost 31,000 employees, which accounted for 70 percent of the nonfarm jobs in Kentucky. In 2002, there were almost 50,000 self-employed women, equaling 35 percent of the self-employed. There were 66,000 women-owned businesses in Kentucky, of which 16.4 percent had employees. They generated \$9.9 billion in revenue in 1997. The representative said that tax policy has certain goals including equity, simplicity, and efficiency. Based on available information, under the Governor's Tax Modernization Plan, a single, working mother making approximately \$53,000 as a sole proprietor, with home mortgage interest, will pay approximately \$1,800 in state income tax. If she conducts her business through a single-member limited liability corporation, she will pay approximately 20 percent more; and if she conducts her business as part of a large partnership (but still a small business), she will pay approximately 75 percent more. Also, she said that the Revenue Cabinet is unable to answer some questions regarding the tax plan. She thought the difficulty lies in the state separating itself from the federal tax system. She said there is a well-known tax treatise on state taxation that says it would be irresponsible for states to separate from federal tax treatment for states because they do not have the resources to administer it.

The president and chief executive officer of LexTech, Incorporated, a 13-year-old technology company based in Lexington, explained that she was representing three different groups: small-business owners, women business owners, and small technology companies. She said small-business owners employ 50 percent of all private-sector employees, pay 44.3 percent of the total United States private payroll, and have generated 60-80 percent of the net new jobs annually over the last decade. They receive 23 percent of federal procurement dollars spent by the federal government. Women business owners represent 51 percent of the Kentucky and U.S. population. Although women are the majority in population, they are the minority in getting business. Small technology companies employ 39 percent of all high-tech workers in the U.S. She said very few women are in the technology field and even fewer are business owners. She started LexTech in 1992 and now has large accounts in 18 states. In some years, more than 75 percent of LexTech's business has been out of state. In 1996, she served as a national representative on the National Association of Women Business Owners public policy council. She explained that the national public policy focus at that time was on the Federal Bundling Procurement Policy that was initiated in 1992. The association's fear that this would have a major negative impact on small businesses came true. From 1992 to 2001, large firms were winning 67 percent of all prime contracts and 75 percent of all bundled contracts. At the same time, large corporations and state governments began following this philosophy. In 2001, federal government policies were changed to focus on unbundling contracts. With the new emphasis on small, women, veteran, and minority-owned businesses, large prime contractors began focusing on partnering with them. She said she hoped the committee understood that Kentucky's government policies can make a difference for small businesses. She explained that Kentucky's small-business concerns lie in several areas such as access to affordable health care insurance. She said they legislatively need major medical insurance made available. As a company owner with a few employees, they are willing to pay and self-fund like the large companies. Small businesses also need increased government procurement opportunities

for small, women-, and minority-owned companies. Fair and equitable tax treatment for small businesses is also needed as well as an educated workforce. She said the state should track the product and services procured from small, women-, and minority-owned businesses. Money spent with Kentucky firms creates jobs and creates revenue for state government. She said that in 1997, small, women-, and minority-owned businesses were left out of the loop during the creation of the Empower Kentucky plan. She questioned if expenditures for the 2002 Strategic Plan for the New Economy were being tracked and questioned whether the focus was only on starting new business or if they were looking for entrepreneurs who have experiences in driving a business to success. She suggested that Kentucky might need its own matchmaking program. She said Kentucky needs to tie financial incentives for large companies to subcontracting and procurement opportunities for small businesses of all types. She said that in the 1990s, manufacturers in Kentucky used to buy products and services for their Kentucky facilities from Kentucky companies, including LexTech. However, by 2000, the purchasing had been bundled into corporate offices and they no longer serve as their procurement companies. She noted that in Indiana, state financial incentives for casinos were tied to small, women-, and minority-owned business procurement. Procurement was tracked, and at one time, construction stopped at a facility for noncompliance. Indiana has continued contracting with small businesses in its daily operations because of this incident. She said creative policies are needed for small businesses to work with state government without it costing the state. She suggested Kentucky use the U.S. Department of Defense's Central Contractor Register system to certify ownership type. She said certifying existing small companies in their lines of expertise, setting prices, and letting departments work with whomever they want on the certified list would be a great way to grow Kentucky businesses. Large request for proposals need to require subcontracting with small, women-, and minority-owned firms. She said this helps train small businesses and gives them references on large jobs. She said LexTech is currently active in a government bidding process with IBM that required small-business subcontractors. She said the system does work and she urged the committee to make small-business legislation a priority.

The chief executive officer of SKS Accounting and Consulting Firm explained that, after working for several large firms, she began her own company providing accounting services for small and medium-sized businesses. Her company assists businesses with the initial setup of their business plan and in-house accounting along with being their off-site accountant as needed. She explained that, through her trial and error experiences with her own business, she was able to assist other companies in avoiding certain pitfalls. The company currently has two locations and a staff of 15 who provide monthly financial services for approximately 100 clients and approximately 2,000 tax returns during tax season. She explained that her company consists of accounting and consulting, income tax, and payroll divisions. The company is now focusing on the payroll company becoming a service bureau in order to get state contracts because of government-certified payrolls. She explained that one obstacle she has faced is the ability to acquire large clients and establish the company name. Networking and certifications do not always provide this. She said there are two primary roadblocks that prevent women- and minority-owned businesses from growth. The first is that in acquiring state contracts, it is difficult to obtain required performance bonds because of

the lack of experience and working capital. She recommended counseling or a step-by-step bonding resource center. She said the second roadblock is certifications. Certifications help women- and minority-owned businesses and promote building business relationships with corporate companies wanting to do business with women and minorities. The Transportation certification, DBE, is strictly based on net worth and does not have a women- or minority-owned designation. She would recommend a certification strictly for women- and minority-owned businesses.

Next to testify was the president and chief executive officer of Auburn Leather, who is the fifth-generation owner of Auburn Leather Company, formerly Caldwell Lace Leather, which was started in 1863. She said the company has been owned or managed by her family for 142 years except for two—1983 to 1985—when it was bought by an outside interest that dismantled, sold, or closed all the divisions with 500 employees in three states. The facility in Auburn was going to be sold at auction, so she and her father bought it back. They had no business plan, no backing, no customers, and no product. They did have 11 employees left who were leather craftsmen. She explained that in 1985, there were four major competitors in the shoelace business, supplying the U.S. market. Now, Auburn Leather is one of two remaining U.S. suppliers. Eighty percent of its customers are in southeast China. She said that in 1989, with low-interest Kentucky Economic Development Finance Authority funds and the help of Grand Rivers Area Development District, her father relocated the coloring plant of his tannery company from Florida to Franklin, Kentucky. Around that time, with the help of the Small Business Development Center at Western Kentucky University, they put together a loan package to get Small Business Administration backing for plant improvements and machinery. They currently have 90 employees. As a business owner committed to staying in Auburn, she said she is in need of programs that will help her company increase productivity via machinery, technology, and engineering. She must find ways to stay competitive with firms located in impoverished third-world countries. She said she may be able to create 10 to 50 more jobs, but her primary concern is saving the 90 jobs that exist. She explained that Auburn Leather has started a subcontracting production site in China as a marketing strategy to increase employment in Auburn. The average employee in China costs the company \$5 per day. She stated there are a lot of efficiencies she has to make up with American workers making \$10.50 per hour.

The second meeting of the committee was held September 15 in Frankfort. The committee heard an update from the Commerce Cabinet by the commissioner of the Department of Tourism and the deputy commissioner of Support Services in the Department of Parks. The commissioner said that the 1 percent transient room lodging tax on suites, rooms, and cabins went into effect June 1, 2005. It is paid by everyone and collected by any business providing accommodations, except campgrounds. Receipts from the tax are deposited into the Tourism Meeting and Convention Marketing Fund, which is administered by the Commerce Cabinet. The fund will be used for nonprofit entities only and for the sole purpose of marketing and promoting areas that will bring tourists and conventions to Kentucky. It is estimated to generate approximately \$8 million annually. Some eligible projects include tourism publications, media advertising, signage, and convention trade shows. The commissioner explained that the funds would

be divided into three pools of money. The first, approximately \$800,000, will be allocated proportionally to the nine tourism regions in the state at an 80/20 percent match. The second pool, approximately \$6 million, will be used for approved projects and matched on a 50/50 basis. The third pool, approximately \$1.2 million, will be used for projects affecting the entire state. The program operates on a one-year project cycle from May 1, 2005, through April 30, 2006, with a November 1, 2005, project application deadline and a May 1, 2006, project reimbursement deadline.

The commissioner noted that the Tourism Development Act has been amended several times, and that the Commerce Cabinet will be requesting legislation to clarify past amendments to more clearly define qualifying projects and to clarify inducements. The commissioner stated that he, the Governor, and other staff members met in Los Angeles with key movie industry representatives to discuss incentives to bring future films to Kentucky. Staff is currently working on a study and proposals to increase the state's participation. When complete, the results will be presented to the committee.

Finally, the deputy commissioner said that in an attempt to capitalize on the October and February breaks in the school year, the parks have started a new program called "Family Adventure Quest." Though the program, families visit a park and complete a list of fun quests to receive a \$100 state park gift card. The deputy commissioner said Internet service is being added to all state parks. Two parks have wireless Internet and the remaining parks will have service soon.

Next the executive director of the Office of Legal Services and the commissioner of the Department for Existing Business in the Kentucky Cabinet for Economic Development appeared before the committee to explain Executive Orders 05-02, 05-03 and Executive Order 2005-571. Executive Order 05-03 changed the name of the Department for Innovation and Commercialization for a Knowledge-Based Economy to the Department for Commercialization and Innovation. Executive Order 05-02 transferred single-county funds and programmatic oversight to the Kentucky Community Development Office. The Department for Regional Development was abolished so the remaining duties for the multicounty funds have been shifted to the Department for New Business Development. The executive director explained that the Governor's Executive Order 2005-571 moves the Commission of Small Business Advocacy to the Cabinet for Economic Development. The Division of Small Business Services in the Department of Existing Business will work with the commission. The reorganization changes the setup and number of members of the commission, created an executive director position, and provides funding that will allow implementation of some of the commission's ideas and issues of concern.

The Secretary of State, assistant Secretary of State, and director of Communications gave an overview of the updated Web site for the Office of the Secretary of State. The Secretary of State said the main idea was to provide as many of the office's services online as possible for convenience to constituents. He said it also allows the office to provide more services with the same amount of resources. Updates include the ability to view the Web site in six different languages and to view certificates

of existence. He said starting with September, every corporate document is being scanned and placed online. Later, older microfilm will be available online also. He said there is a summons database available for attorneys that has greatly reduced phone calls to the office.

The Secretary said that entities renewing online increased to 64 percent. He said half of the Uniform Commercial Code filings are now done online reducing the number of clerks needed from 14 to 4. The Secretary explained the online program tentatively called Fast Track—a collaboration between state agencies to create a portal that the public can use to form an entity, pay taxes, etc. Plans are to pilot the project in early 2006. He said the Land Office now has many resources online also.

The third meeting of the committee was held October 13 at the Kentucky Horse Park in Lexington. The executive director of the park outlined plans for construction of a new indoor arena. He said Kentucky is considered to be the leading candidate for the 2010 Federation Equestre Internationale World Equestrian Games. The event will last more than two weeks, attract an estimated 300,000 people, be broadcast live to 40 countries, and bring in an estimated 1,000 international media representatives. The central component to the bid for the World Equestrian Games is a new indoor arena. The proposed arena will seat 6,000, be climate controlled, and include box seats and other amenities. He said the arena is essential for the continued viability of the Horse Park. He also said that the design includes an expansion of the campgrounds to provide an amphitheater for community cultural events.

The deputy secretary for Tourism Development said this would be the first time the games would be held in the United States. He said the Federation Equestre Internationale was interested in Kentucky's branding initiative and has sought advice on how to brand the group's World Equestrian Games. The committee voted to send a letter of support to the federation.

### **SUBCOMMITTEE ACTIVITY**

The Task Force on Economic Development held a meeting on October 13 at Considine Farm in Versailles. The manager gave a presentation of the farm's operations. He said it is one of the leading farms in the region for importing and exporting horses. While most of the farm's business centers upon Thoroughbred racehorses, it ships and receives all breeds, from Arabians to English Shires. He said that it is not unusual for the farm to ship entire planeloads of Thoroughbred racehorses to Europe, Japan, Australia, New Zealand, Saudi Arabia, and many countries throughout the Caribbean and South America. The farm is also involved with Thoroughbred breeding operations. Mares and stallions are shipped to the farm, and foaling is another aspect of the farm's operations. He said that his farm uses tens of thousands of dollars annually in hay and feed for horses, and because the profit margin is so small, sales tax relief would be very helpful to small-scale horse farms. He discussed how more Thoroughbred breeding is being done outside of Kentucky. He said that this is largely because of the sales tax levied against

stud fees. The tax percentage is particularly hard on breeders using stallions having lower stud fees—the percentage increase in the cost attributable to state tax makes any potential profit margin much less attractive.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON EDUCATION**

**Sen. Ken Winters, Co-Chair  
Rep. Frank Rasche, Co-Chair**

Sen. Walter Blevins, Jr.	Rep. C.B. Embry, Jr.
Sen. Brett Guthrie	Rep. Bill Farmer
Sen. Dan Kelly	Rep. Derrick Graham
Sen. Alice Kerr	Rep. Mary Harper
Sen. Vernie McGaha	Rep. Mary Lou Marzian
Sen. Gerald A. Neal	Rep. Reginald K Meeks
Sen. R .J. Palmer II	Rep. Charles Miller
Sen. Dana Seum Stephenson	Rep. Harry Moberly, Jr.
Sen. Tim Shaughnessy	Rep. Russ Mobley
Sen. Gary Tapp	Rep. Rick G. Nelson
Sen. Johnny Ray Turner	Rep. Darryl T. Owens
Sen. Jack Westwood	Rep. Tom Riner
Sen. David L. Williams	Rep. Terry Shelton
Rep. Mike Cherry	Rep. Charles L. Siler
Rep. Hubert Collins	Rep. Arnold Simpson
Rep. Jim DeCesare	Rep. Kathy W. Stein
Rep. Jon Draud	Rep. Addia Wuchner
Rep. Ted "Teddy" Edmonds	

LRC Staff: Audrey Carr, Jonathan Lowe, Janet Stevens, Sandy Deaton, Lisa Moore,  
and Jo Ann Paulin

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

**SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP****Subcommittee on Elementary and Secondary Education****Sen. Vernie McGaha, Co-Chair****Rep. Ted “Teddy” Edmonds, Co-Chair**

Sen. Walter Blevins  
Sen. Brett Guthrie  
Rep. Mike Cherry  
Rep. Hubert Collins  
Rep. Jon Draud

Rep. Derrick Graham  
Rep. Harry Moberly, Jr.  
Rep. Darryl Owens  
Rep. Rick Nelson  
Rep. Terry Shelton  
Rep. Arnold Simpson

Sen. Ken Winters, ex officio  
Rep. Frank Rasche, ex officio

LRC Staff: Janet Stevens, Audrey Carr, and Jo Ann Paulin

**Subcommittee on Postsecondary Education****Sen. David L. Williams, Co-Chair****Rep. Mary Lou Marzian, Co-Chair**

Sen. Alice Forgy Kerr  
Sen. Gerald A. Neal  
Sen. R.J. Palmer II  
Sen. Dana Seum Stephenson  
Sen. Gary Tapp  
Sen. Johnny Ray Turner  
Sen. Jack Westwood  
Rep. Jim DeCesare  
Rep. C.B. Embry, Jr.

Rep. Bill Farmer  
Rep. Mary Harper  
Rep. Reginald K. Meeks  
Rep. Charles Miller  
Rep. Russ Mobley  
Rep. Tom Riner  
Rep. Charles L. Siler  
Rep. Kathy W. Stein  
Rep. Addia Wuchner

Sen. Ken Winters, ex officio  
Rep. Frank Rasche, ex officio

LRC Staff: Jonathan Lowe, Sandy Deaton, and Lisa Moore

## **INTERIM JOINT COMMITTEE ON EDUCATION**

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

### **COMMITTEE ACTIVITY**

The Interim Joint Committee on Education met six times between June 1, 2005 and December 1, 2005.

The committee was organized into two subcommittees: Elementary and Secondary Education and Postsecondary Education. Following is a summary of activity of the full committee and each subcommittee.

The committee held four meetings in Frankfort and made two site visits. During the Frankfort meetings, members heard a review of the status of Adult Education and Literacy in Kentucky by a national consultant and staff of the Council on Postsecondary Education; presentations by national researchers and Kentucky educators on college affordability; recommendations from the Business Forum for Kentucky Education; a proposal for developing school leaders by a former governor of Kentucky; a progress report on Civic Literacy initiatives in Kentucky by the Secretary of State; an overview of the Kentucky Youth ChalleNGe Program; a discussion of bullying presented via a taped production by a nationally recognized expert on bullying and a victim of the Heath High School tragedy; a presentation relating to writing portfolios for student assessment and improving instruction from the commissioner of education with pro and con responses from local practitioners; a presentation by the commissioner of education relating to high school redesign and proposed high school graduation changes with responses from the chair of the Local Superintendents Advisory Council and a high school counselor.

Site visits to western Kentucky and eastern Kentucky provided committee members the opportunity to view local challenges and innovations to meet specific local needs. Members visited Farmington Elementary School in Graves County where they toured classrooms and heard student and faculty presentations relating to raising student achievement and improving learning for all students. Members also visited Owsley County High School and Elementary School where they learned about the challenges associated with providing comprehensive programs and services in small rural districts with limited resources. Immediately preceding the Owsley County visit, members met at Natural Bridge State Park for a meeting focused on postsecondary collaborations between

the Kentucky Community and Technical College System and four-year institutions with particular emphasis on the University Center of the Mountains.

In performing its statutory legislative oversight responsibilities, the committee reviewed six administrative regulations.

## **SUBCOMMITTEE ACTIVITY**

### **Subcommittee on Postsecondary Education**

The Subcommittee on Postsecondary Education met four times during the 2005 Interim. During the meetings, subcommittee members heard a presentation by state education officials regarding high school student readiness for postsecondary education and initiatives under way to address the problem; a presentation by representatives from the Kentucky Department of Education, the Cabinet for Health and Family Services and selected postsecondary education institutions regarding the availability of child care for students, faculty, and staff on public postsecondary campuses in Kentucky; a discussion of the role of the postsecondary education system in promoting economic development by representatives of the Cabinet for Economic Development, Council on Postsecondary Education, and the presidents of the University of Kentucky, University of Louisville, and the Kentucky Community and Technical College system; a presentation regarding the process used to develop the Council on Postsecondary Education's 2006-08 biennial budget request by the president and the chair of the council; and a presentation by representatives of the University of Kentucky and the University of Louisville regarding the pharmacy, medical, and dental schools at those schools. Health care needs were identified by an industry representative.

### **Subcommittee on Elementary and Secondary Education**

The Subcommittee on Elementary and Secondary Education met four times during the 2005 Interim. The first meeting included presentations by staff of the Education Professional Standards Board and board members relating to teacher supply and demand data, problems associated with recruiting and retaining highly qualified teachers, and actions being taken to correct these problems. Additional discussion centered on the seven options available to persons seeking an alternative method to teacher certification.

Staff from the Kentucky Center for School Safety appeared at the second meeting to explain the technical assistance they provide to schools and districts and the statewide data they collect. Local education staff discussed their involvement in school safety practices and programs.

At the third meeting, an overview of the state's professional development program was presented by staff from the Kentucky Department of Education, including an explanation of how funds allocated for professional development are distributed and

used. Several local educational practitioners discussed high-quality professional development activities in which they have been involved and how these activities improve teaching and learning.

The last meeting included a presentation of findings from a research study conducted by the University of Kentucky on the differentiated compensation for teachers pilot program; a presentation by the Western Kentucky University Clinical Complex and the Kentucky Autism Center at the University of Louisville regarding the services available to autistic individuals and their families; and a presentation of the Boone County Success By 6<sup>®</sup> program, a public and private partnership working to ensure that every child is healthy, safe, nurtured, and ready to succeed in school by age 6.



**REPORT OF THE 2005  
SPECIAL SUBCOMMITTEE ON ENERGY**

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

Sen. Walter Blevins, Jr.	Rep. Carolyn Belcher
Sen. Charlie Borders	Rep. James E. Bruce
Sen. Denise Harper Angel	Rep. Dwight D. Butler
Sen. Ernie Harris	Rep. Bob M. DeWeese
Sen. Tom Jensen	Rep. J.R. Gray
Sen. Vernie McGaha	Rep. Thomas Kerr
Sen. Jerry P. Rhoads	Rep. Lonnie Napier
Sen. Katie Stine	Rep. Rick G. Nelson
Sen. Johnny Ray Turner	Rep. Fred Nesler
Rep. Royce W. Adams	Rep. Tom Riner
Rep. Rocky Adkins	Rep. Brandon D. Smith
Rep. Eddie Ballard	Rep. Brent Yonts

LRC Staff: D. Todd Littlefield, Bill Bowker, and Rhonda Schierer

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **SPECIAL SUBCOMMITTEE ON ENERGY**

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

### **COMMITTEE ACTIVITY**

During the 2005 Interim, the Special Subcommittee on Energy held seven meetings.

The committee held its first meeting on June 17, 2005. The committee held the public hearing and review of the block grant application for the federal fiscal year 2006 Low Income Home Energy Assistance Program (LIHEAP). The director of International Affairs for the Council of State Governments discussed international trade agreements' effects on state sovereignty as it relates to energy. The committee passed a motion requesting the Governor to appoint a Special Point of Contact to the United States Trade Representative. Finally, the executive director of the Kentucky Office of Energy Policy discussed the Governor's executive orders issued in conjunction with the Comprehensive Energy Strategy.

The committee held its second meeting on July 22, 2005. During this meeting, the executive director of the Municipal Electric Power Association of Kentucky and the director of Government Relations for the Electric Authority of Georgia discussed joint municipal power authority legislation. The vice president of Retail and Gas Storage Operations for LGE Energy, the vice president of Marketing and Regulating Affairs with Atmos Energy, and the director of Governmental Policy with Columbia Gas of Kentucky discussed utility check-off programs. A professor from the Department of Forestry at the University of Kentucky discussed research concerning reforestation on surface-mined lands. Finally, the director of the Center for Applied Energy Research at the University of Kentucky discussed resources and uses for Kentucky's coal refuse.

On August 12, 2005, the committee held its third meeting. At this meeting, the director of the Division of Renewable Energy and Energy Efficiency of the Kentucky Office of Energy Policy, the executive director of the Kentucky Clean Fuels Coalition, the general manager of Commonwealth Agri-Energy, an assistant professor of Bioprocess and Food Engineering at the University of Kentucky, and the director of Marketing for Griffin Industries, Inc. discussed the production and use of clean fuels in Kentucky. Also, the director of the Division of Oil and Gas Conservation of the Environmental and Public Protection Cabinet discussed the coal-bed methane regulatory scheme in the state.

In response to comments made by Rep. Gooch, the committee held a discussion concerning the progress and future of the Thoroughbred Energy Campus.

The committee held its fourth meeting on September 16, 2005. The vice president of the Center for Energy and Economic Development discussed clean coal incentives. Next, a representative of the Kentucky Community and Technical College System and the director of Fossil Fuels and Utility Services of the Office of Energy Policy discussed the Kentucky Coal Academy and coal mining workforce development efforts in Kentucky. Finally, the commissioner of the Department for Natural Resources discussed bond pool basics. She also discussed potential expanded uses for the bond pool.

The committee held its fifth meeting on October 21, 2005. At this meeting, the manager of Marketing & Natural Resources for East Kentucky Power Cooperative, a professor of the Department of Biosystems and Agricultural Engineering at the University of Kentucky, and the executive director of the Kentucky Pollution Prevention Center at the University of Louisville discussed energy conservation and efficiency efforts in Kentucky.

On November 18, 2005, the committee held its sixth meeting. During the meeting, the executive advisor for the Finance and Administration Cabinet discussed the cabinet's energy program. A representative from the East Kentucky Independent Oil and Gas Association discussed issues involving eastern Kentucky's natural gas producers' inability to obtain pipeline capacity to move product to market. The committee passed a resolution urging federal and state officials and agencies to look into the problem. The chair of the University of Kentucky's Department of Mining Engineering discussed the shortage of mining engineers currently being trained in the state. The commissioner of the Department for Workforce Investment discussed the efforts in the secondary school system to address the need for a skilled workforce in the coalfields. Finally, the training director for the National Energy Education Development discussed the importance of focusing on energy issues in early education.

On December 16, 2005, committee held its seventh meeting. Additional discussion of the problem with east Kentucky gas wells being "shut in" took place, including responses from representatives of the gas transmission industry. Regulations governing the Kentucky Gas Pipeline Authority were reviewed. Representatives of the Office of Energy Policy made a progress report on initiatives undertaken in response to the Comprehensive Energy Strategy announced early this year.

The committee did not take action on any prefiled bills.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
HEALTH AND WELFARE**

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

Sen. Charlie Borders  
Sen. Tom Buford  
Sen. Denise Harper Angel  
Sen. Alice Kerr  
Sen. Joey Pendleton  
Sen. Richard "Dick" Roeding  
Sen. Ernesto Scorsone  
Sen. Dan Seum  
Sen. Katie Stine  
Sen. Johnny Ray Turner  
Rep. John A. Arnold, Jr.  
Rep. Scott W. Brinkman  
Rep. James R. Comer, Jr.

Rep. Robert R. Damron  
Rep. Bob M. DeWeese  
Rep. David Floyd  
Rep. Joni L. Jenkins  
Rep. Mary Lou Marzian  
Rep. Stephen R. Nunn  
Rep. Darryl T. Owens  
Rep. Ruth Ann Palumbo  
Rep. Jon David Reinhardt  
Rep. Ancel Smith  
Rep. Kathy W. Stein  
Rep. Susan Westrom  
Rep. Addia Wuchner

LRC Staff: Murray Wood, Barbara Baker, Eric Clark, Tyler Campbell, Miriam Fordham,  
DeeAnn Mansfield, Gina Rigsby, and Cindy Smith

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP**

### **Subcommittee on Families and Children**

**Sen. Katie Stine, Co-Chair**

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

Sen. Charlie Borders

Sen. Tom Buford

Sen. Denise Harper Angel

Sen. Alice Kerr

Sen. Richard "Dick" Roeding

Sen. Dan Seum

Sen. Johnny Ray Turner

Rep. Bob M. DeWeese

Rep. Joni L. Jenkins

Rep. Mary Lou Marzian

Rep. Stephen R. Nunn

Rep. Darryl T. Owens

Rep. Ruth Ann Palumbo

Rep. Jon David Reinhardt

Rep. Ancel Smith

Rep. Kathy W. Stein

Rep. Susan Westrom

Rep. Addia Wuchner

Sen. Julie Denton, ex officio

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

**JURISDICTION:** Matters pertaining to human development, health, and welfare; delivery of health services; fire prevention and protection; support of dependents; garbage and refuse disposal; public assistance; child welfare; adoptions; assistance to children; children's homes; disabled persons; family welfare; aid to the blind; commitment and care of children; mental health; substance abuse; health, medical, and dental scholarships; local health units and officers; vital statistics; communicable diseases; hospitals, clinics, and long-term care facilities; food, drugs, and poisons; restaurants and trailer park regulations; sanitation plants; sanitation districts; alcoholism; health professions; physicians, osteopaths, and podiatrists; chiropractors; dentists and dental specialists; nurses; pharmacists; embalmers and funeral directors; clinical psychologists; optometrists; ophthalmic dispensers; physical therapists.

### **COMMITTEE ACTIVITY**

During the 2005 Interim, the Interim Joint Committee on Health and Welfare held six meetings, including two out-of-town meetings: one in northern Kentucky and one in Louisville. The committee was organized into one subcommittee, the Families and Children Subcommittee. The following is a summary of the activities by the committee and subcommittee.

#### **Major Issues Considered by the Committee Children and Family Issues**

##### **Boone County Success by 6<sup>®</sup>**

The executive director, board member, and chair of the Boone County Success by 6<sup>®</sup>, and also the Boone County judge/executive explained that the group was formed after several countywide agencies reviewed local Kids Count data and found that many local efforts were uncoordinated. They formed a coalition with United Way and adopted the Boone County Success by 6<sup>®</sup> program and began kindergarten assessments. Rep. Wuchner stated that 90 percent of brain development occurs from birth to 3 years of age. The earlier a delay is recognized the more a parent can help the child reach full potential. Once a child falls behind, he or she never catches up. She said that the group's mission was to unite Boone County to ensure all children are healthy, safe, nurtured, and prepared to succeed in school. The focus areas are early literacy, nutrition and physical activity, poor dental care, inadequate prenatal care, and early care and education. Rep. Wuchner added that Boone County is ranked second in percentage population growth in Kentucky and the Cincinnati region and ranked 80th in the top 100 fastest growing counties in the United States.

The executive director testified that each school conducted child screening in the summers of 2003, 2004, and 2005, and the findings include 1) age and length of county

residence influenced social and emotional health; 2) children in two-parent families seemed to be better prepared to succeed in school; 3) 97 percent of the children tested within the expected average range on the adaptive component; 4) 32 percent of the children tested were overweight or at risk of being overweight, according to their Body Mass Index; 5) cognitive abilities were lowest among overweight children; 6) 53 percent tested below what is expected from a child entering kindergarten on the literacy assessment; and 7) dental problems were a health barrier.

In September 2004, Boone County Success by 6<sup>®</sup> was awarded a \$717,600 federal Early Learning Opportunities Act grant to assess data analyzed by the Child Policy Research Center, to launch an intense community awareness campaign, to begin a home visitation program that fills the gap of Boone County families that are not eligible for other home visitation programs, and to purchase a 40-foot mobile vehicle that would serve as a community center on wheels to deliver services directly into neighborhoods. Rep. Wuchner stated that quality early learning reduces crime rates, teenage pregnancy, welfare dependency, job training costs, special education costs, and grade repetition. It increases success in school, graduation rates, workforce readiness, job production, and community engagement.

### **Adolescent Depression and Suicide**

A professor from the University of Kentucky testified that youth suicide is the third leading cause of death in the 10-to 24-year-old age group, and in Kentucky it is the second leading cause of death for adolescents. Statistics were provided from Suicide Awareness Voices of Education organization, the Centers for Disease Control and Prevention, and the *Journal of the American Medical Association*: 1) every 17 minutes someone in the United States dies from suicide; 2) on an average day, 84 people die from suicide and another 1,838 attempt suicide; 3) more than 765,000 Americans attempt suicide each year; 4) in 2000, there were 1.7 times more suicides than homicides; and 5) the rate of youth suicide has tripled since the 1950s. The physician added that for each completed suicide, there are 20 attempts. When firearms are in the home, suicide completion risk is five times greater because this is the most frequently used method of suicide.

Thirty central Kentucky agencies created the “Stop Youth Suicide Campaign” in 2000 to improve community awareness of the problem; assess the community need and knowledge about youth suicide; target parents, teachers, and others for a public education campaign; improve education of medical care providers in screening and assessing for depression and suicide; and provide around-the-clock help to any teenagers who were suicidal or needed help. Over the last four years, the campaign has received a total of 843 e-mails and 513 phone calls from teenagers who were contemplating suicide and asking for help. Hospital admissions for attempted suicide are down as well as are completed suicides. There is also an improved awareness in the community about youth suicide. The cost of this program through mid-September was \$15,729 and includes many volunteer hours and donations. The Web site is <[www.stopyouthsuicide.com](http://www.stopyouthsuicide.com)>.

Legislators asked about the adequacy of assessments and anti-bullying measures. The physician recommended parity in compensation for mental health; more education and awareness that will lead to increased need for help and intervention; funding for programs that actually provide service not only education; and prevention and screening to lower costs of treatment.

### **Kentucky Kids Count Data**

The coordinator of Kids Count of the Kentucky Youth Advocates and the executive director of the Kentucky Youth Advocates explained that Kids Count is a nationwide effort, funded by the Annie E. Casey Foundation, focused on data relating to child well-being. The Kids Count Data Book compares and ranks states on 10 indicators of child well-being, such as child deaths, teen births, and teens without a high school diploma. In the report released in July 2005, Kentucky fell from 37th to 42nd in the nation, which is the lowest rank Kentucky has received in the 16 years the report has been released.

In the 15 prior years, Kentucky had improved in 80 percent of the measures in the report, but based on 2003 data, Kentucky declined in 60 percent of the measures. The mortality rate for every Kentuckian between the ages of 1 and 19 increased; approximately 81,000 children lived in homes where neither parent had secure employment, which ranked Kentucky 46th; and child poverty increased by 9 percent. Positive indicators included that Kentucky and Wyoming were the only two states that did not experience an increase in infant mortality rates; Kentucky's rate of teen pregnancy declined by 7 percent; and, Kentucky showed a 10 percent decline in high school dropout rates.

Legislators discussed the decline in rankings and asked about outreach efforts for enrollment in the KCHIP program. Representatives from the Kentucky Youth Advocates stated that while rankings are a concern, change of the trend line from improvement to decline is of more concern. They said the biggest concern is that instead of improving in 80 percent of the areas, Kentucky declined in 60 percent of the areas.

### **Graduated Driver's License Program**

A representative of the National Transportation Safety Board (NTSB) in Washington, D.C., testified that Kentucky has one of the nation's weakest teen driver licensing laws. Only Arizona, Arkansas, Kansas, and Kentucky do not have an intermediate licensing phase. In 2004, Kentucky teens made up approximately 6 percent of the driving population and constituted more than 13 percent of the drivers involved in fatal crashes. Almost 21 percent of the deaths in 2004 on Kentucky roads involved teen drivers. From 1997 through 2004, 1,538 Kentuckians died in crashes involving teen drivers. It was estimated that in Kentucky, teen-involved fatalities cost more than \$1.5 billion, and teen motor vehicle occupant fatalities cost approximately \$1 billion. He stated that strengthening Kentucky's graduated driver licensing law would be an

important step in reducing needless deaths and injuries on Kentucky highways and help thousands of young drivers to adjust to new driving responsibilities.

Traffic crashes are the leading cause of death for 15- to 20-year-olds and account for 40 percent of all deaths among that age group. Studies conducted by federal agencies, states, and private organizations have shown that 16-year-old drivers are more likely to be involved in single-vehicle crashes, more likely to be responsible for the crash, more likely to be cited for speeding, and carry more passengers in vehicles than older drivers. The crashes mostly occur from 10 p.m. to midnight on Fridays and Saturdays. Although young drivers only drive 20 percent of the time at night, more than one-half of their fatalities occur at night. A study published in the *Journal of the American Medical Association* concluded that the risk of death increased significantly with each additional teen passenger transported by the teen driver. In single-vehicle crashes involving teen drivers, two-thirds of the fatally injured passengers were also between the ages of 15 and 19.

Based on research by the NTSB, National Highway Transportation Safety Administration and others, the NTSB recommends that the basic elements of a graduated driver licensing program include 1) a minimum 6-month holding period for the learner's permit, during which a licensed driver who is at least 21 years old supervises the permit holder; 2) at least 50 hours of supervised driving practice with a licensed driver who is at least 21 years old; 3) a minimum period of 6 months without at-fault crashes or traffic violations, and accelerated penalties if the driver has an at-fault crash or traffic violation; 4) a subsequent 6-month intermediate phase that includes restrictions on nighttime driving, driving with excessive passengers, and cell phone use. Mandatory seat belt use and zero tolerance of alcohol use is recommended at each stage. He also recommended stiff penalties for drivers of all ages convicted of driving under the influence and improving child passenger safety by adopting a booster seat requirement for children up to age 8.

Legislators discussed the booster seat requirements and data on any reduction of teen deaths in states that had graduated driver licensing. The speaker stated that although the studies involved a variety of factors and definitions, a number of studies in different states have shown reductions of 25 to 60 percent in crashes involving teens.

### **Out-of-Home Care Issues**

A board member of the Home of the Innocents and a board member of Brooklawn, both members of the Children's Alliance, testified that the Children's Alliance represents 6,471 children in out-of-home care in Kentucky. These children have been abandoned, abused, or neglected, or are medically fragile and are entering the child welfare system at younger and younger ages. They remarked that the agencies in the Children's Alliance provide care and treatment for children who would have been placed in a psychiatric hospital 10 years ago. They stated that private child care provider rates have not increased in five years and asked for \$6 million in additional funding for the growing number of children.

Representatives from the Potter Children’s Home and Family Ministries discussed a “no-dollar contract” with the state in order to accept the placement of children committed to the state’s custody in their facility. Discussion was held about their policies on corporal punishment and attendance at church services. The program representatives discussed an Arkansas law that provides licensing exemptions for church-related child welfare agencies. No such exemption currently exists in Kentucky law. Officials from the Department of Community Based Services stated that children they place in residential care have significant emotional and behavioral issues and need specific structured treatment, and they expressed concern that Potter Children’s Home does not have a treatment license.

### **Foster Care**

A foster parent and member of the Kentucky Foster/Adoption Care Association testified regarding the association’s requests of legislators to 1) prohibit a birth parent from providing tobacco products to children in foster care; 2) review policies on respite care for foster parents; 3) increase the per diem reimbursement per child; 4) amend the vehicle sales tax to permit tax-free transfers of vehicles to foster children; 5) allow interested foster parents to pay their own premiums to participate in the state health insurance plan; 6) support a Foster Parent Bill of Rights; 7) support state-funded adoption subsidies; and 8) extend health insurance or Medicaid coverage for out-of-home care and adopted children to age 23 as long as they are in vocational training or college.

### **Health Care**

#### **Nursing Home Quality of Care and Quality Improvement Initiative**

A representative of the Kentucky Association of Health Care Facilities described a Quality Task Force that was formed to learn what management tools were available to help nursing homes improve quality of care and to better understand how patients view the care provided in nursing homes. The president and founder of My InnerView of Wausau, Wisconsin, testified that his company’s mission is to help long-term care professionals improve the quality of care and accommodations they furnish their customers. He said that his company maintains the largest private database of quality performance information for nursing homes outside of the federal government. He described methods used to develop facility quality profiles and resident satisfaction surveys for a group of 40 nursing homes in Kentucky. The early results did not reveal any evidence of a general crisis in quality of care in Kentucky nursing homes, but they did indicate areas of vulnerability and priorities for improvement efforts. Legislators discussed the survey tool and process, the mix of nursing facilities that participated, issues regarding survey data completed by family members and surveys for residents who had no family members, and staffing and workforce issues including perceptions about the adequacy of the ratio of nursing facility staff to resident. An advocate from Kentuckians for Nursing Home Reform voiced concern about the voluntary nature of this process and the need for minimum staffing ratios as required in 37 other states.

## **Mental Health**

A representative from NorthKey community mental health center testified that quality mental health services are good for the people who need and receive services, for their families and the community, and for business growth. He stated that some regional challenges for northern Kentucky are 1) a rapidly growing population that has created an increased demand for services that is outpacing the growth in funding streams; 2) that the Department for Medicaid Services is primarily based in payment systems that emphasize traditional services; 3) a statewide mental health service system that has been unable to respond to demands for safety net services to low-income individuals; 4) that mental health, substance abuse, and mental retardation and developmentally disabled services must overcome the stigma to be seen as a legitimate health care service; 5) that the budget has consistently underfunded the northern Kentucky region on a per-capital basis for approximately 10 years; 6) that there is a critical need for increased residential treatment options for youths and adults with substance abuse; and 7) that jails continue to house many individuals with mental health and substance abuse problems and need additional treatment resources. He advocated for a more proportional allocation of funds, Medicaid funding across the continuum of services and broader payments for evidence-based treatment, and flexibility in funding and matching funds to better address local identified needs.

## **Certificate of Need**

The executive director of the Office of Health Policy testified that health care entities are required to apply for a certificate of need (CON) before obtaining a license, before providing new services, or before building a new facility. The application is reviewed based on the demographic health care needs of the community with the goal of avoiding increased health care costs. The State Health Plan includes the criteria used for approving applications, and, by statute, physician offices and clinics are exempt from the CON process. The State Health Plan must be updated prior to the end of calendar year 2005 based on state planning data, public input, research on best practices, utilization data, and cost data from other states. He said that in June 2005, Governor Fletcher issued Executive Order 2005-615, prohibiting the CON division from processing applications for new facilities or services, with exceptions for applications that qualify for non-substantive review, such as rehabilitation agencies, nursing-facility bed transfers, applications to establish magnetic resonance imaging services at hospitals or hospital-owned facilities, and applications to alleviate emergencies. The current moratorium expires December 30, 2005. There was discussion about competition and other states' experiences with certificates of need. He described the cabinet's reorganization of the Office of Certificate of Need to the Office of Health Policy that included the Division of Certificate of Need and the Division of Health Policy Planning and Development.

## **e-Health Information**

In an update on 2005 SB 2, the secretary of the Cabinet for Health and Family Services testified that the Governor made appointments to the Kentucky e-Health

Network Board. The board was created to help develop a secure statewide electronic network for patients, physicians, and other health care providers to access and transfer medical information. The board includes 11 at-large members and an additional 12 individuals who serve by virtue of their positions in the General Assembly or the administration. Further information regarding the Kentucky e-health Network can be found at <<http://ehealth.ky.gov>>.

## **Medicaid**

The commissioner of the Department for Medicaid Services described Medicaid's pharmacy benefit management contract with First Health, Inc. that began in December 2004 for drug utilization review, prior authorization, and clinical review. Another contract was awarded effective Dec. 1, 2005, to Electronic Data Systems, Inc. for the Medicaid Management Information System for claims, warehouse data, and data reporting. A third contract for an administrative agency was awarded to First Health, Inc., effective December 1, 2005.

### **1115 Waiver and New Initiatives/Updates**

The undersecretary for Health and the commissioner of the Department for Medicaid Services testified about cost containment measures that reduced Medicaid's \$675 million deficit to approximately \$425 million for FY 2006. The undersecretary described the proposed components of a demonstration waiver (1115 Waiver) to redesign the program for future sustainability. Kentucky's waiver application will be called "KyHealth Choices" to reflect the individual's key role in choosing, purchasing, and planning his or her own health needs. The waiver would allow flexible benefit designs, co-payments based on income, mandatory education, and disease management requirements. KyHealth Choices would affect all Medicaid enrollees, including those currently in the home- and community-based waiver, the Supports for Community Living waiver, and the Acquired Brain Injury waiver. It would not affect those in the 15 counties enrolled in the Passport program. They described the involvement of the advocacy and consumer communities and said the program details would be promulgated through administrative regulations. Department officials testified there would be no per capita cap but budget neutrality was required. Members requested more information on proposed co-payments and pharmacy management, and requested input into program design before the application was submitted to the federal government. Officials noted that the federal match rate would decrease in FY 2008. The waiver application was submitted to the federal Centers for Medicare and Medicaid Services in early November 2005. The waiver application is available on the cabinet's Web site.

Advocates for children, the elderly, and the disabled addressed the committee about concerns regarding the waiver plan. Many advocates were in favor of the changes proposed for the long-term care program, including increasing the availability of community-based services and no co-payments for services provided to individuals in institutions. Advocates for children and other special populations expressed concern that increasing co-payments for a poor population could limit their access to care and actually

increase costs because they may not seek primary care and could end up needing more expensive treatment. The process of developing the waiver was discussed, and there was general agreement about the need to restructure the program.

Cabinet officials also testified that enrollment in the Medicare Part D drug discount program was challenging. Kentucky, like all other states, is required to pay the federal government the amount the state would spend on prescription drugs for the population that will now be paid by Medicare Part D. The “clawback” amount for Kentucky is \$89.9 million a year or \$7.4 million per month for FY 2006.

## **Oakwood**

The undersecretary for Health and the commissioner for the Department for Mental Health and Mental Retardation Services testified that Oakwood Intermediate Care Facility for the Mentally Retarded, located in Somerset, has approximately 1,200 staff and 300 residents, and has an annual budget of approximately \$54 million. Between April and October 2005, Oakwood had received five “Immediate Jeopardy” Type A citations by the Office of Inspector General in the Cabinet for Health and Family Services. Since October 2005, additional citations have been issued and at least one employee has been indicted for abuse of an Oakwood resident. Because of the citations, the federal Centers for Medicare and Medicaid Services (CMS) issued a letter of termination of Medicaid funding effective September 14, 2005, with a 30-day transition period. Cabinet officials appealed that decision, and federal funding will continue during the appeal, with the understanding that federal Medicaid funding can be terminated at any time if it is determined that the health or safety of Oakwood residents is at risk. CMS expects continued progress on Oakwood’s improvement plans and will subject the facility to additional reporting and monitoring requirements. The appeals process would also provide the cabinet time to consider and implement new management and clinical strategies for Oakwood for the short and long term. Oakwood has been under supervision by the United States Department of Justice since 2001. In 2004, Kentucky entered into an agreement with the Department of Justice that detailed long-range plans for improvement.

The cabinet instituted a short-term crisis management team at Oakwood and implemented the following safety measures: 1) the cabinet secretary issued an order to bring Oakwood into compliance; 2) the cabinet entered into a partner relationship with Lake Cumberland Hospital and the local health department to provide clinical staff; 3) the cabinet formed an advisory council to oversee health and safety issues, to develop request for proposals for management services; 4) an interdisciplinary team of physicians, nurses, and clinicians was assembled to assess each resident; 5) training on abuse and neglect was conducted by Department for Community Based Services staff and the interim facility director; and 5) the cabinet conducted investigation training stressing data collection. An emergency request for proposals was issued and a new management contract has been instituted with Liberty, Inc. for senior management of the facility.

The cabinet identified 11 Supports for Community Living (SCL) slots and 11 facility beds available in the community. The cabinet requested 100 SCL slots from CMS specifically earmarked for Oakwood residents. He said that the focus had been to “safe size” the Oakwood population. The cabinet is considering the following regulatory changes: an expansion of SCL-staffed residences from three to four beds; an expansion of the number of Medicaid-funded residents in a group home from three to eight; and revision of Medicaid regulations to adjust the rate and reimbursement structure. The cabinet plans to send letters to parents, guardians, employees, and staff; to have a Department of Justice quarterly review; and to have face-to-face meetings with legislators and parents.

### **Veriscrip™**

A professor and chair of the Department of Health Management and System Sciences of the University of Louisville School of Public Health and Information Sciences testified about a prescription drug monitoring study that used the Veriscrip™ system in two pilot sites in eastern Kentucky. Veriscrip™ is a real-time electronic prescribing system that has been proposed by the vendor for use as an electronic controlled-prescription monitoring system or as an enhancement to an existing system. The pilot project had physicians typing controlled-substance prescriptions into a computer that printed a bar-coded paper prescription. The patient would take the prescription to a pharmacist who would compare the paper prescription to information in the computer system. This permits “real-time” prescription data. The report included an assessment of costs associated with this approach and commented on implementation costs, less diversion of controlled substances, and improved patient care. Resistance from prescribers was noted; however, it was reported that approximately 50 percent of practitioners have some form of clinical technology such as e-prescribing, physician order entry systems, or electronic health records systems. Current Kentucky law requires pharmacies to report controlled-substance prescriptions every two weeks. Legislation would be needed to require all controlled-substance prescriptions to be reported differently.

### **KASPER**

A branch manager of the Drug Enforcement and Professional Practices in the Office of Inspector General testified that the Kentucky All Schedule Prescription Electronic Reporting (KASPER) program began in 1999 and that 21 states now have prescription monitoring programs. KASPER is considered the national model as a tool for medical professionals and law enforcement personnel to use to combat illegal diversion of legal controlled substances. An anticipated volume of 2,000 reports per year grew to an actual number of more than 800 reports per day with more than 575,000 reports provided since 1999. The volume necessitated technological intervention, and in 2003, the General Assembly appropriated \$1.4 million to enhance the KASPER system.

Enhanced KASPER (eKASPER) is a secure Web-based product available to users all day everyday. A user may request an eKASPER report from any computer with Web

access. KASPER has bank- and Homeland Security-level security. The cabinet dictated identity management procedures for access to the eKASPER system. The largest increase in eKASPER usage is from emergency room-based physicians. The system is valuable to pharmacists. Future planned enhancements include real-time data collection, higher levels of security, more proactive use of KASPER data (quarterly trend reporting), data sharing with other states, and KASPER system integration with e-prescribing technology. Legislators discussed the use of KASPER data in court and its use to identify those who “doctor shop.”

## **The Uninsured**

The Kentucky Long-Term Policy Research Center presented the results of its Health Insurance Research Project, a state planning grant funded by the U.S. Health Resources and Services Administration. The purpose of the grant was to determine the number of uninsured in Kentucky, why they are uninsured, how long they have been uninsured, and how best to address their needs. The project investigators conducted public forums and small group meetings, conducted surveys, and analyzed data to recommend policies to increase the number of insured people in Kentucky.

The public forums revealed that most participants believe that the nation’s health care system is in crisis; that cost is the main obstacle to obtaining health insurance; that cost-shifting in hospitals is significant and there are many ongoing problems with private and public insurers; and that community institutions such as community hospitals, nonprofit organizations, health departments, employers, and local governments face risks from rising costs and uncompensated care.

More than 28 percent of Kentuckians reported being uninsured for some part of the last year and more than 13 percent reported being uninsured at the time of the survey. Almost 50 percent reported being uninsured for more than three years. About 75 percent of the uninsured have an annual household income of less than \$30,000. One-half to one-third of the uninsured reported they did not seek care, missed a diagnostic test, did not fill a prescription, or did not see a specialist because of cost; about one-fourth of the insured reported the same.

The majority of the uninsured is employed. Of the small employers (less than 50 employees), 57 percent did not offer health benefits. Small employers that offer health insurance reported a 30 percent median increase in premiums and other cost-sharing policies since 2002.

It was estimated that uncompensated care and out-of-pocket costs for the uninsured cost Kentucky about \$811 million in 2004, and medical spending for the uninsured would increase about \$552 million if they had full coverage. It was stated that the benefits of full coverage for the uninsured outweigh costs at a ratio of approximately 1.7 to 1.

## **Elderly and Disabled**

The president and chief executive officer of Senior Services of Northern Kentucky testified that 21 percent of Kentucky's elderly live at or below the poverty level, and in the next 48 years, the elderly population will triple. Federal and state resources for the aged have not increased in the past 15 years and there is a global aging crisis in every industrialized country. The United States is not prepared to meet the increased demand. She urged the legislature to support the elderly by providing more funds for needed resources and to continue to use civil monetary penalty funds to supplement the state's ombudsman program.

The state president of the American Association of Retired Persons, a case manager with the Bluegrass Area Agency on Aging, and an advocate of the Center for Accessible Living testified that there are more than 4,000 seniors on waiting lists for programs that enable them to maintain themselves in the community. The wait for personal care assistance can be as long as 15 years. Accessible housing, employment, transportation, and availability of direct care professionals were identified as significant issues for the near future. It was reported that the Special Advisory Commission on Senior Citizens adopted one priority recommendation for the 2006 General Assembly: a 20 percent increase in state funding for area agencies on aging for each year of the biennium.

Advocates testified that there needs to be a separate and distinct forum to address the legislature with ideas and concerns regarding the elderly and disabled, an arena where the voices and concerns of the elderly and disabled could be heard. As of six years ago, there were 874,000 Kentuckians with disabilities, excluding children younger than 5. Approximately 435,000 of the 874,000 were aged 55 or older.

A motion to request an Aging, Disabilities, Independent Living, and Long-Term Care Subcommittee for the 2006 Interim was made by Rep. Jenkins, seconded by Sen. Pendleton, and approved by voice vote. An advocate of nursing home reform gave his support of the subcommittee.

### **Adult Day Active Services**

The president of the Kentucky Association of Adult Day Centers, a registered nurse with the Active Day Services, and a family member of an adult day participant testified that the longer a person can remain at home with families, the happier and healthier the person is. Adult day services allow some individuals to receive medical supervision, and the program allows families to keep loved ones at home longer while allowing family members to continue to work. Nutrition is extremely important, and if an individual can attend an adult day center and receive nutritious meals, it could help prevent medical problems. Socialization is important, especially for individuals with dementia or Alzheimer's disease. The cost for these services is \$56 per day per unit, including transportation to and from the program. The cost depends on the plan of care

and how often an individual attends an adult day center. The facility cannot charge private-pay patients less than it does Medicaid patients.

### **Supported Employment**

The legislative liaison of the Association for Persons in Supported Employment, a family member of a program participant, and a representative of the Seven Counties Services testified that supported employment enables people with the most severe disabilities to obtain and maintain paid employment in typical community businesses. The services and supports are customized to fit the individual needs of the employee and the employer. Supported employment is a win-win situation for growth in Kentucky's economy and better lives for people with disabilities.

It was stated that extreme shortages in funding for long-term support services have resulted in waiting lists in almost every county. With no funding for new program development, people who could benefit are either at home waiting or are in programs that do not maximize their employment potential. According to supported employment provider data, at least 2,500 people need supported employment. In 2002, Kentucky began to eliminate waiting lists for supported employment through a line item in the state budget. The Office of Vocational Rehabilitation will request \$500,000 in the 2007-2008 budget to continue the progress. With the increased funding, the Office of Vocational Rehabilitation would be able to assist in developing new support employment providers, eliminate barriers based on disability type and county of residence, increase the existing supported employment provider network to better serve the people, and direct new long-term funding for supported employment in every county. Some services provided with supported employment include skills training, coworker training, job coaching, employer support, and follow-up services. Legislators discussed awareness efforts for the program and recommended working with the Economic Development Cabinet.

## **Public Health**

### **Autism**

Rep. Brinkman stated that statistics show that one out of every 160 children born in this country is diagnosed at some point with Autism Spectrum Disorders (ASD). Currently, there are 24,000 Kentuckians that have been diagnosed with ASD. He sponsored 2005 House Bill 296 that established the Kentucky Commission on Autism Spectrum Disorders to develop and monitor the implementation of a comprehensive state plan for an integrated system of training, treatment, and services for individuals of all ages with ASD. Subcommittees of the commission will hold regional forums for input from individuals interested in ASD and report to the commission. The first report is due to the Legislative Research Commission and the Governor by October 1, 2006. After the report has been submitted, the commission will cease to exist as a statutory commission and will become a subcommittee of the Kentucky Council on Developmental Disabilities. The subcommittee will report, through the council, to the Legislative Research Commission and the governor biennially until October 1, 2015.

## **All Terrain Vehicle Safety**

The chair of the Department of Emergency Medicine at the University of Kentucky College of Medicine, the chair of the Traumatic Brain Injury Trust Fund, and a member of the Traumatic Brain Injury Trust Fund Board testified that from 1992-1994, there were 93,207 all terrain vehicle (ATV) injuries in the United States, with the average medical cost per injury of \$6,899; and in 2005, the average cost per injury is \$9,091. Serious injuries and deaths suffered by children younger than 16 cost society approximately \$2.5 billion annually, and more than one-third of people injured on ATVs will eventually be on Medicaid. The University of Kentucky's per patient hospital-only fees average \$13,000 per ATV patient.

West Virginia had the highest rate of ATV deaths per 100,000; however, Kentucky had the greatest number of ATV deaths in the nation at 109, and Pennsylvania ranked second with 73 deaths. The ATV-related injuries in Kentucky in 2000-2003 showed that the 16 to 24 age group was the largest group of hospital discharges relating to ATV injuries, and almost two-thirds of the ATV crashes reported by police occurred among youth younger than 25. Children are at greater risk when riding ATVs because of immature psychomotor skills and strength, lack of cognitive development to operate ATVs safely on a consistent basis, use of adult ATVs that were not designed for children's bodies, disregard for engine size and age restrictions, and youths' increased risk-taking behavior. Preliminary data suggest that very few drivers use helmets. Current laws regarding ATV use were reviewed, and safety advocates recommended a comprehensive strategy involving education, legislation, and improved enforcement to lessen the dangers of ATV use. Legislation suggested included prohibiting persons younger than 16 from riding an ATV, strictly enforcing engine size and age restrictions, and requiring safety courses and licensing.

## **In Case of Emergency Program**

The director of the Frankfort Disaster and Emergency Services testified that Frankfort was one of the first cities to encourage citizens to enter an emergency contact number in their cellular phonebook under the name of ICE, for in case of emergency. A sticker would be placed on the outside of the phone to show there is an emergency contact number in the phone book. He said that 8 out of 10 people do not have contact information in case of an emergency, and this program could help save time identifying an emergency contact person.

## **Smoking Cessation Programs**

The team leader of the Tobacco Prevention and Control Team in the Chronic Disease Prevention and Control Branch in the Department for Public Health testified that 72 percent of adults in Kentucky do not smoke, and almost one-half of those who do smoke tried to quit last year. More than 8,000 Kentuckians die each year of tobacco-related diseases. The rate of smoking among pregnant women has increased slightly over the past year and is costly in terms of neonatal health care. It was reported that studies

show that state Medicaid programs can increase quit rates by 30 to 70 percent for pregnant women by offering counseling.

The Centers for Disease Control and Prevention recommend evidence-based practices involving media messages, increasing the unit price for tobacco products, health care provider education, and telephone counseling. Kentucky is using these strategies with the Legacy Foundation, KIDS NOW, family youth resource service centers, coordinated school health programs, and local health departments.

### **Kentucky Regional Poison Center**

The director of the Kentucky Regional Poison Center at the Kosair Children's Hospital and the commissioner of the Department for Public Health testified that in 2004 there were 77,212 calls made to the Kentucky Regional Poison Center, an average of 210 to 215 calls per day. The annual call volume from 2000 to 2004 increased 21 percent. The center is open 24 hours a day, seven days a week, and is provided in all 120 counties. Seventy-five percent of patients are treated outside of the hospital, which saves between \$8-12 million per year by reducing unnecessary emergency room use. Of the 25 percent of poisoning cases that were treated in a hospital, Kentucky Regional Poison Center reduced the length of stay by 46 percent and saved between \$2-4 million per year.

The Department for Public Health designated the Kentucky Regional Poison Center as the primary contact for health professionals, emergency service providers, hospitals, and the general public during the first six days after a biological or chemical terrorist attack in the state. During the last eight consecutive years there has been no change or increase in state support for the center. Louisiana and Illinois closed their centers, and both states re-opened them within two years. Personnel cost are more than 93 percent of the operating budget. The annual budget is \$1 million state general funds, \$254,980 federal funds, and \$863,020 Norton Healthcare funds, for a total of \$2,118,000. The proposed funding for fiscal year 2007 is the same as the current amount but with an increase in state funds of \$150,000, federal funds remaining at \$254,980, and a decrease in Norton Healthcare funding to \$713,020. The center serves all 120 counties, but Norton Healthcare is the only medical provider that contributes funding.

## **Disaster Preparedness**

### **Hurricane Katrina**

The founder of the Joseph Project in Louisville testified that Louisiana could not absorb everyone who needed to relocate, so there was a need to help on a national level. In this effort to help, evacuees are matched up with a local host family that helps with whatever they need. The Joseph Project also helps find missing family members of evacuees. It was reported that some of the evacuees want to relocate to Louisville permanently. As of September 2005, approximately 134 evacuees had arrived in Louisville and more were expected. More housing, jobs, and vehicles are needed.

Because of the large volunteer effort within the first three weeks, only about \$2,000 was spent by the Joseph Project.

Legislators thanked those involved and were appreciative that the project was working across political, economic, and racial lines. Legislators discussed coordination with public health departments and mental health services and suggested contact with the Department of Tourism for possible use of the state parks. The co-chair added that this type of effort is needed for Kentucky's citizens who are in need.

The commissioner of the Department for Public Health stated that the cabinet created blanket policies on eligibility for all programs and relaxed requirements to serve displaced persons. A Web site was created to register and to conduct needs assessment for displaced persons and to register health professionals who volunteer. As of September 2005, more than 1,200 health professionals and 1,000 Katrina evacuees have been registered. According to Federal Emergency Management Administration records, Kentucky has 6,800 evacuees located in 94 counties. Local health departments, social service offices, private physicians, and private hospitals are working together in each of the counties. The department used the Health Alert Network and emergency medical systems for data and information dissemination, and used telemedicine in 42 locations to present public health, medical, mental health, social, and Medicaid information. An environmental strike team was deployed to inspect food and water supplies in the Mississippi area, and a public health administrative strike team was deployed to operate local health departments in six Mississippi Gulf Coast counties for 30 days. Six public health nurses were also deployed to work in a Red Cross shelter in Mississippi.

The Emergency Management Assistance Compact is a state-to-state agreement that if a state needs assistance, other states will send governmental, health department, and state employees to assist. It was recommended that people get disaster training if they plan to go to a disaster area because people do not realize the impact it will have on their own emotional state of being. The Citizen Corps, coordinated through the Office of Homeland Security, has a volunteer training program in place and a medical reserve corps team component for clinical or medical professionals. Kentucky law provides a 30-day instant licensure in an emergency situation, but the statute does not provide the ability to extend beyond the 30-day period.

Cabinet officials testified that presumptive eligibility for Medicaid is an option for individuals who have been displaced and want to remain here. For individuals who do not want to remain in Kentucky, the federal government has set up a system where physicians in Kentucky can become providers for the Louisiana Medicaid Program. The Kentucky Physician Care Program will provide physicians free of charge for those who are economically challenged, and there is also a pharmaceutical benefit program that will provide drugs. Local health departments work with the school systems to determine compliance with state immunization laws. It was noted that this would be a challenge because some children's records are lost.

## **Avian Flu**

The commissioner of the Department for Public Health testified that a pandemic is a severe outbreak of the flu that involves all parts of the world. Although the virus genes of the avian flu have not mutated yet, there is potential for it to become a human-to-human contagion. Each year, 36,000 U.S. deaths are reported from pneumonia, secondary bacterial pneumonia, and encephalitis due to the flu. The pneumococcal vaccine is an important prevention strategy. The avian flu could also have a major agricultural impact as Kentucky is the eighth largest producer of broiler chickens in the U.S., a \$600 million business. None of the avian flu virus has been found in people or in birds in the U.S. Based on a research model of attack rates of 15 to 35 percent, it is estimated that the U.S. could suffer between 89,000 to 207,000 deaths; 314,000 to 734,000 hospitalizations, and have an economic impact of \$71 to \$166 billion. In Kentucky, the estimates are 3,000 to 7,000 deaths and 9,200 to 21,400 hospitalizations.

The department developed state and local pandemic influenza response plans in 2002 and the workgroup continues to meet monthly. The plan encompasses more than mass vaccinations. It also involves surveillance, quarantine and isolation procedures, medical surge capacity, personnel and staffing, and strategies for priority populations. No vaccine against a pandemic virus would be available for the first six months or so because of the production methods. There is a worldwide shortage of antivirals. It was recommended that every person can help by using prevention strategies such as frequent hand washing, covering one's mouth when coughing, avoiding crowds, and staying home if sick.

### **Referred Block Grant Applications**

Pursuant to KRS 45.353, the committee held legislative hearings on five block grant applications: federal fiscal year 2007 Community Services; federal fiscal year 2006 Community Mental Health Services; state fiscal year 2006 Social Services; federal fiscal year 2006 Substance Abuse Prevention and Treatment; and federal fiscal year 2007 Temporary Assistance for Needy Families.

### **Referred Administrative Regulations**

In performing its statutory legislative oversight responsibility, the committee reviewed 31 administrative regulations upon referral from the Administrative Regulations Review Subcommittee under the review process established in KRS Chapter 13A. No administrative regulation was found deficient.

### **Referred Executive Orders**

Pursuant to KRS Chapter 12.028, the committee held legislative hearings on one executive order upon referral from the Legislative Research Commission: Executive Order 2005-779, relating to the reorganization of the Cabinet for Health and Family Services.

## **SUBCOMMITTEE ACTIVITY**

### **Subcommittee on Families and Children**

The Subcommittee on Families and Children met four times during the 2005 Interim. The following are the major issues that were considered.

#### **Kentucky Early Intervention System, or First Steps Program**

The deputy commissioner of the Department for Public Health provided an update of the Kentucky Early Intervention System, also known as the First Steps Program. First Steps serves children with developmental delays from birth to age 3 years. In March 2004, the First Steps Program was transferred by administrative order from the Commission for Children with Special Health Care Needs to the Department for Public Health. The program has been undergoing a change in the model of service delivery in order to contain growth and deliver improved services. The cabinet indicated that the FY 2005 expenditures were below the budgeted amount of \$36.3 million. The number of children served in FY 2004 was 11,511 and the number served in FY 2005 was 11,052. The next steps for the program are to have a focused effort on finding children in need, continue training on evidence-based practices, have additional administrative efficiency, have a focused effort on utilizing private insurance, develop pilot sites for innovative service delivery, and have a focused effort on child and program evaluation.

#### **Child Care Subsidies**

The director of the Division of Child Care presented the results of the annual child care market survey. This survey of child care providers across the state is used to set reimbursement rates to child care providers under the subsidy program. As a result of the survey, the average increase to child care providers is \$.90 per day per child, an overall expenditure increase of \$13 million. In 2005, an average of 37,281 children per month received child care subsidies funded by the Child Care Development Fund that consists of federal block grant funds of more than \$157 million and about \$28.4 million general fund dollars.

Testimony was presented by the director of the Division of Child Care about the implementation of two new competitively bid child care contracts between the Human Development Institute at the University of Kentucky and the Division of Child Care in the Department for Community Based Services of the Cabinet for Health and Family Services. The previous contracts were negotiated with the Child Care Network, which served as the umbrella agency for the 10 Child Care Resource & Referral agencies (CCR&Rs) located across the state. One of the new contracts will include subcontracts with the current CCR&Rs to provide core services (\$2.8 million). The other contract will transfer the STARS for Kids Now quality rating system to the Kentucky Community and Technical College System (\$2.4 million). The contracts resulted in net gains for the cabinet because each contract was reduced by \$100,000 per year and an in-service match

was leveraged for \$1.5 million. The new contracts are intended to expand seamless services through increased accountability, assessment, technology, and evaluation.

The community education director of the Human Development Institute discussed its commitment to continue support of early childhood services in the state. Progress in the implementation of the contract was reported at the August meeting and included that 1) work scopes and budgets were submitted by all CCR&Rs; 2) contracts were in process; 3) Web sites had been developed and launched; 3) data system training and development process were underway; and 4) staff had been interviewed and hired.

Representatives from current CCR&Rs, including the executive director of 4C, Community Coordinated Child Care, expressed concerns about the new contracts. They indicated child care providers may feel alienated from services provided by the university and the community colleges. They added that providers need to have access to resources at the local level and expressed the fear that CCR&Rs may disappear from the local level.

### **Substance Abuse**

There were several presentations to the subcommittee related to substance abuse. Information was presented on the prevalence of use, successful treatment programs, and planned prevention efforts by the director of the Division of Mental Health and Substance Abuse Services.

The director of the Drug Policy Task Force of the Justice and Public Safety Cabinet gave a presentation on adolescent substance abuse in northern Kentucky that indicated the biggest problem drugs are marijuana, crack cocaine, powder cocaine, prescription drug abuse, heroin, and methamphetamine.

An update was presented by the program coordinator for Recovery Kentucky, an initiative of Governor Fletcher to help Kentuckians recover from substance abuse. The initiative will provide treatment and recovery units across the state with 100 beds. There will be at least 10 units, two per congressional district, with separate facilities for men and women. The Kentucky Housing Corporation will build the structures with additional funding from the Community Development Block Grant and the Department of Corrections. The estimated cost per unit is \$3.6 million. These adult facilities are voluntary and are of no cost to the individual clients. The recovery model is based on the therapeutic community model used at the Healing Place in Louisville and the Hope Center in Lexington. Residents may live in the supportive housing for up to 24 months. Several applications had been received from communities requesting a unit in their area.

A report on data from the Kentucky Treatment Outcome Study presented by an associated from the Center on Drug and Alcohol Research noted that for every \$1 spent on substance abuse treatment, Kentucky tax payers saved an estimated at \$4.52.

The executive director of Resources for Education, Adaptation, Change & Health, Inc. of Louisville presented data from a competitive federal grant received by Kentucky

for a five- to seven-year prevention effort in targeted communities. The first phase of the grant was to assess the data across the state. The data will be used to develop a plan to prevent the onset and reduce the progression of substance abuse, reduce substance abuse-related problems in communities, and build prevention capacity and infrastructure at the state and community levels. The goal is to implement evidence-based prevention programs and activities. National data that was presented indicated that Kentucky has a high rate of youth smoking, underage drinking, marijuana use, methamphetamine use, and inhalant use relative to other states.

Prevention and treatment efforts that target youths were also considered by the subcommittee. The Youth Policy Assessment reviewed data collected by Kentucky Child Now! and the Kentucky Youth Development Partnership was presented by the 4-H Youth Development Program coordinator on statewide resources and supports for Kentucky's young people. The goal was to find ways to coordinate the existing programs in order to improve services for young people ages 8 to 24 years. The total number of programs studied was 61, which represents a total of more than \$855 million of the FY 2004 budget. The study assessed the degree to which the programs met the "Five America Promises to Youth" that research has found to be the best predictors of positive outcomes for youth programs. A major deficiency of existing programs in Kentucky is the finding that 83 percent of the programs meet only two of the five promises; 94 percent meet only three of the promises. The largest deficiency was in the lack of programs that offer young people opportunities to serve. Out of the 61 programs, 28 have advisory councils and only a small number of those have youths involved.

### **Graduated Driver's License**

The subcommittee heard testimony from two young persons associated with Kentucky Youth Advocates in support of a graduated driver's license with an intermediate phase, night-time driving restrictions, and passenger limits for teenage drivers. They indicated that a poll they conducted of 500 teens showed overwhelming support for changes in the graduated driver's license program.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON JUDICIARY**

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

Sen. Carroll Gibson	Rep. Joseph M. Fischer
Sen. Ray S. Jones II	Rep. Jeff Hoover
Sen. Gerald A. Neal	Rep. Stan Lee
Sen. Jerry P. Rhoads	Rep. Darryl T. Owens
Sen. Richard "Dick" Roeding	Rep. Frank Rasche
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Sen. Dan Seum	Rep. Arnold Simpson
Sen. Katie Stine	Rep. Kathy W. Stein
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Sen. David L. Williams	Rep. Robin L. Webb
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Rep. Perry B. Clark	Rep. Brent Yont
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LRC Staff: Norman Lawson, Jonathan Grate, Joanna Decker, Katie Coyle, Tiffany Lockhart, and Michelle Coyle

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON JUDICIARY

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

### COMMITTEE ACTIVITY

During the 2005 Interim, the Interim Joint Committee on Judiciary held five meetings.

The first meeting of the committee was held in Frankfort on April 14, 2005, with Rep. Lindsay chairing the meeting. Chairman Lindsay announced the topic of the meeting as eminent domain and indicated that Rep. Clark had agreed to have the committee look directly at the issue rather than have a study made of the issue.

Representatives of various citizens groups from throughout the state spoke of the current situation relating to eminent domain and what they termed as abuses in the use of eminent domain to benefit private developers and businesses. Speakers from Louisville indicated that Jefferson County had taken 3,000 private homes in an expansion of the Standiford Field airport. Much of the property taken was later sold or leased to private business. Sen. Seum indicated that the community of Highland Park was taken using eminent domain, that federal courts fined the airport for irregularities in the takings, and that the citizens of Jefferson County not only paid for the condemnations but also paid for the fines. Sen. Seum observed that the government uses government-paid attorneys in condemnation cases while the private citizen whose property is being taken must pay for his or her own defense and may not have the money to hire an attorney.

Speakers from northern Kentucky spoke of a situation in Newport where private developers attempted to purchase land from home owners for a new housing development but were unsuccessful so the developers convinced the city to take the property as "blighted" pursuant to KRS Chapter 99. Public funds were used to take and pay for the property in order for the property to be sold to the developer. Speakers from northern Kentucky also briefed the committee on the *Kelo v. City of New London* case, which was

then pending before the Supreme Court of the United States. The *Kelo* case challenged taking land for private economic development under the “public use” doctrine in the Fifth Amendment to the U.S. Constitution.

Rep. Wilkey suggested that government should pay into the court the amount offered for taking property under eminent domain in the same manner as offers of judgment. Sen. Roeding suggested that a time limit be imposed upon the time between the taking of the property and the redevelopment of the property.

Speakers from Jefferson County objected to a practice by sewer boards in the county permitting private developers to use the board’s power of condemnation when developing subdivisions. Speakers from Bowling Green spoke of a situation there where the city government is taking portions of the downtown area for a hotel and other facilities. It was alleged that the city encouraged property owners not to fix up their property because it ultimately was in the condemnation target area. The property owners did not maintain their property, property values decreased, and the city was able to take the property for less money. This also resulted in persons whose property was taken being unable to rebuild elsewhere because the amount awarded did not cover the costs of rebuilding.

The next speakers were from the Transportation Cabinet. They explained how the cabinet uses eminent domain in acquiring land for highways, bridges, and buildings.

Discussion turned to the process for appraising the property to be taken, and suggestions were made for the use of the offer of judgment process in eminent domain. The cabinet indicated that it normally makes payment within two to four weeks after an offer is accepted.

The next speakers were from the Kentucky League of Cities. They urged the committee to leave the current law in place because it was a valuable tool for eliminating blighted and slum areas and for economic development

Rep. Stein described the features of 2005 HB 360 relating to shared parenting and 2005 HB 359 relating to child support guidelines. Several circuit judges who spoke of the need for both bills accompanied Rep. Stein. The shared parenting bill set forth the standards for child custody and support in a shared fashion, while the child support guidelines bill adjusted the child support guidelines to accommodate the expenses and needs of the shared parenting program.

The second meeting of the committee was held on June 9, 2005 at the Newport on the Levee Community Center, with Sen. Stivers as chairman. The first speaker was the Lieutenant Governor who announced the formation of a task force to study proposals for changes in the laws relating to sex offenders and their monitoring. The next speaker was the commissioner of Corrections who spoke about 2005 HB 75, which would permit inmates to work for private industry in a federally approved prison industries program. Speakers for the Justice and Public Safety Cabinet spoke in favor of 2004 HB 389, which

required inmates to exhaust administrative remedies before filing suit; 2005 HB 226, making technical corrections in status offender determinations; and 2005 HB 361, relating to confidential communications between sex offenders and sex offender treatment program personnel. Several members of the committee questioned the use of prisoners in data entry programs regarding personal information citing a chance of identity theft and other opportunities for criminal activity.

The next speakers were circuit judges and district judges from northern Kentucky and the chief of staff for the Supreme Court of Kentucky. The topic was judicial caseloads and the need for new judges. The chief of staff for the Supreme Court indicated that new judgeships cost approximately \$300,500 not counting the need for new courtrooms, offices, and support personnel. The chief of staff indicated that the senior status judge program in which retired judges who agree to serve temporarily to hear cases when assigned can receive an increase in retirement benefits is currently meeting the need for additional judges. The program has been extremely successful in reducing the time to try a case, reducing caseload backlogs, and providing relief for overworked regular judges and does so at a great saving to the state.

Circuit and district judges from northern Kentucky indicated that they make virtually full-time use of senior status judges but that population and business growth in northern Kentucky has left them with a caseload of 2,000 cases per judge. The judges indicated that other programs, which they are using to handle cases, involve civil and criminal mediation where cases are diverted to volunteer mediators who attempt to reach an amicable settlement of the case without trial. One judge indicated that there is an 80 percent settlement rate in civil cases. Sen. Seum spoke of the statewide problem with 250,000 unserved criminal warrants and the need to solve that problem and to have additional judges available to try the cases. Chairman Stivers observed that the court system is not equitable throughout the state—in some counties you may get a trial and in others you may not—and stated that at some time in the future constitutional equal protection litigants might raise questions.

The Boone County judge/executive spoke of increases in population, an ever-increasing criminal and civil caseload, and jail overcrowding. He indicated the need for more judges and for state relief for the costs of jail operation.

The next speakers were Rep. Draud, Sen. Westwood, and the Kenton County sheriff. Rep. Draud brought a comprehensive sex offender management bill before the committee that would provide that certain sexual offenders be on parole for life and be subject to enhanced monitoring, that the public be notified as to where sex offenders reside, and that sex offenders would be restricted from residing near schools and child care facilities. The Kenton County sheriff spoke of a newly implemented program in northern Kentucky where local police and sheriffs physically check and verify sex offender residences.

The next speaker was from the Campbell County fiscal court accompanied by a Circuit judge who described the community corrections program in Campbell County.

The community corrections program is designed to deal with convicted criminals who normally would not be granted probation but who could benefit from counseling, work, and enhanced supervision in lieu of incarceration. The program in Campbell County operates on a \$20,000 grant and saved the county \$1 million in incarceration costs. In addition, participants must pay child support if ordered, restitution if ordered, participate in GED programs if necessary, and be subject to drug and alcohol testing. There are 12 such programs in the state with differing services, and the total cost from state funds is \$600,000.

The next speakers were the jailers from Campbell and Kenton Counties who spoke of 32 percent increases in the jail population, overcrowded facilities, and increased medical costs. The jailers indicated that operating the Kenton County jail costs \$7.3 million per year, while operating the Campbell County jail costs \$3.2 million. The Campbell County jailer indicated that his county has recently opened a restricted custody center for nondangerous inmates who are on work release and similar programs at a cost savings over regular jail costs.

The third meeting of the committee was held in Frankfort on September 20, 2005, with Chairman Lindsay presiding. The first topic was eminent domain with an update on the decision of the Supreme Court of the United States in the case of *Kelo v. City of New London*. Chairman Lindsay indicated that Kentucky law on taking blighted and slum property for redevelopment is very similar to the law in Connecticut, which the Supreme Court ruled did not violate the Fifth Amendment to the U.S. Constitution. In the *Kelo* case, the court opined that it would not reexamine the decision of the Connecticut legislature to authorize the use of eminent domain for economic redevelopment of blighted and slum areas; it would not reexamine the decision of authorities in New London to approve the specific redevelopment in question; and that all of the properties in a blighted redevelopment area do not have to be blighted or deteriorated themselves. Chairman Lindsay indicated that several members of the committee have indicated a desire for changes in the law.

The first speakers were from the Kentucky League of Cities who indicated that the Supreme Court of the United States had found that economic development was a legitimate public purpose justifying the use of eminent domain; and that the Kentucky law provided adequate safeguard against improper use of eminent domain. They urged that the law remain unchanged. Chairman Lindsay questioned the actions of authorities in Bowling Green and Newport in taking private property for private economic redevelopment.

Rep. Wilkey distributed a proposed bill that would require the use of trained appraisers in lieu of three citizens in determining the value of property to be taken by eminent domain. Sen. Stivers indicated that he felt that the amount offered for property in an eminent domain case be deposited in an escrow account before the condemning party occupied the property. He suggested that if the amount of the award by a jury exceeded the condemnor's offer by 20 percent or more, the condemnor would have to pay the legal fees of the condemnee.

The next speakers were from northern Kentucky. They indicated that in the Newport condemnation case, the city used the theory that the area was blighted and deteriorated because the streets and sewers were deteriorated and that maintenance of these items was the responsibility of government. The speakers urged that KRS Chapter 99 be repealed and that public use restrictions be placed on all government eminent domain proceedings. The Kentucky League of Cities responded that they prefer the existing statutes remain without any changes.

A speaker from Bowling Green asked that eminent domain in Kentucky be limited to the traditional public uses for streets, public buildings, and similar items. The speaker urged the repeal of KRS Chapter 99 or the restriction of all taking in blighted areas be restricted to the traditional public use doctrine. In response to a question from Sen. Stivers about what should be done by government about legitimately blighted or deteriorated properties, the speaker suggested that existing building codes, fire codes, and similar statutes provided adequate remedies. Speakers from Jefferson County asked that sewer districts be prohibited from giving the power of eminent domain or the threat of the use of eminent domain to private developers.

Next, the Lieutenant Governor gave an update on the hearings conducted throughout the state on sex offender proposals and indicated that since the meetings were still occurring, a proposal would not be available until after the hearings had concluded and the task force made its recommendations. Several legislators asked about specific situations where proposals had been made with regard to castration and other matters to which the Lieutenant Governor responded that some other states use castration but that decision had not been made yet by the task force. Rep. Lindsay observed that there will probably be many sex offender proposals and urged the members to compromise and submit a single sex-offender bill if at all possible. Sen. Stivers then urged the members of the Senate to do the same.

Rep. Jenkins indicated that she is sponsoring a sex offender registration bill for the Attorney General that is aimed at closing loopholes in existing law; increasing penalties for violation; creating a crime of harboring a sex offender; and prohibiting any registered sex offender, not just ones on probation or parole, from living within 1,000 feet of a school, day care, or similar facility. Rep. Rader indicated that she is sponsoring 06 RS BR 63, which would require the Criminal Justice Council to study sex offender registration and management and make a report to the General Assembly; place automated fingerprint identification equipment in probation and parole offices; criminalize harboring of a sex offender; and increase penalties for sex crimes against children younger than 12. Rep. Crimm indicated that he is the sponsor of 06 RS BR 201, which would add persons convicted of sexual abuse and criminal abuse of persons younger than 12 as violent offenders who must serve 85 percent of their sentence before being eligible for parole. Rep. Nelson indicated that he is the sponsor of 06 RS BR 48, which would require sex offenders moving into the community to register with the sheriff and to require the school system to annually publish photos and information relating to registered sex offenders in the community.

The next speaker was a county detective from Gallatin County who urged the committee to delete the requirement in KRS 17.495 that a sex offender be on probation, parole, or other form of supervision before they become subject to the 1,000-foot residence restriction. He indicated that he felt that “other form of supervision” included sex offender registration but that the probation and parole officers did not agree. He indicated that the matter might be litigated in an upcoming criminal case in Gallatin County.

The next speakers were the Secretary of State and several attorneys who spoke of the progress in updating limited liability corporation laws, adopting a new partnership law, and other corporate law changes. They indicated that drafts of the legislation might be available by November. Chairman Lindsay cautioned the speakers about negative tax revenue consequences in the proposed legislation and indicated that they did not want to repeat a problem with a recent reorganization of the limited liability corporation laws.

The next speakers were from the Justice and Public Safety Cabinet who wanted to return to its original language an administrative regulation regarding access to corrections records 501 KAR 6:020 that had been amended in the regulation review process. The speakers suggested that there was a conflict between two statutes as to how much time the department had to act on an open records request and that they wanted a single policy. Chairman Lindsay responded that the committee did not have the jurisdiction to make that determination and suggested the matter be the subject of legislation in 2006.

The fourth meeting of the committee was held in Frankfort on October 18, 2005, with Chairman Stivers presiding. The first speaker was a Circuit judge who spoke about the community corrections program in his judicial circuit. The judge indicated that there are 10 community corrections programs funded by the state. Each program operates differently and offers different services. However, the programs are designed to divert from incarceration convicted felons who ordinarily would not be good risks for probation but who may benefit from diversion for other reasons, such as drug and alcohol treatment, work release, or other community-related activity. The judge indicated that in his program, there are 40 persons and that the success rate is 50 percent. Rep. Stein observed that some Commonwealth’s attorneys oppose the program as being soft on crime, to which the judge replied that the Commonwealth’s attorney is on the community corrections board and supports the program. The judge observed that if the person fails on the program, there is always the option of incarceration. Rep. Lee asked what constituted being “unsuccessful” in the program, to which the judge responded that it could be incarceration for a new offense, failure to pay child support, driving under the influence, and other violations of the conditions of probation.

The next speaker was the Chief Justice of the Supreme Court of Kentucky who indicated that he had no prepared remarks but would respond to questions. Chairman Lindsay commented on the success of family courts and asked about plans for expanding the program. The Chief Justice responded that in 1998, family courts served only 25 percent of the population of the state but now, due to additional judgeships and transfers of judges, 75 percent of the population is covered. The Chief Justice observed

that a new family court position will be requested for Kenton County. However, he is considering specialized multicounty family courts in smaller, single-county districts where several counties will be combined to create the new family court. These family court circuits will be different from the original judicial circuits. Under the plan, he explained, there will be no need for new circuit clerks or Commonwealth's attorneys. The Chief Justice indicated that multicounty family courts might be created in counties like Bell and Harlan; Perry and Letcher; and Knott, Magoffin, and Floyd. Rep. Lindsay asked the Chief Justice if he had considered general redistricting of the court system, to which the Chief Justice replied that he had but had rejected the idea as too difficult to manage. Rep. Lee asked if recircuiting would save money, to which the Chief Justice replied yes.

Rep. Lindsay asked about situations where mediators and domestic relations commissioners were being used in family courts and in regular Circuit Court domestic relations cases. The Chief Justice responded that in some counties, mediators paid by the court were being used in family court; the Jefferson Family Court was using mediators paid for by the litigants; and the General Assembly had forbade the use of domestic relations commissioners in family courts but that domestic relations commissioners were still in use in the regular Circuit Courts because of caseload considerations. Chairman Stivers observed that there are courts with only 500 cases per judge, while others had 2,000 cases per judge; that there are some courts where domestic relations cases are handled directly by the judge and others where the litigants must pay for a mediator or domestic relations commissioner; and that such inequities may ultimately lead to litigation.

Rep. Webb asked about the increasing caseload of the Court of Appeals and asked if that court needed additional justices. The Chief Justice responded that since the Court of Appeals has seven districts, one judge would not be practical because seven would need to be elected and there is not enough caseload to justify seven additional judges. The Chief Justice indicated that senior status retired Court of Appeals judges are now being added to the existing panels of judges with a panel consisting of two regular judges and one senior status judge.

The next speaker was the chief of staff in the Office of the House Speaker Pro Tempore who spoke about 06 RS BR 113, which has been prefiled by Rep. Clark. This bill, which was also introduced in past years, deals with grandparents rights and kinship care. Under the proposal, a kinship care arrangement could be made between a parent and grandparent or other person for the care of a child, including making educational arrangements and providing permission for health care without the necessity of a formal guardianship proceeding. Several members questioned whether the health care language would permit a kinship caregiver to authorize an abortion for the health of the child. The Chief of Staff indicated that the sponsor would not be adverse to prohibiting consent for abortions. Sen. Roeding asked that the bill be broadened to include consent for pharmacy services.

Rep. Stein indicated that she will propose reintroduction of her bill from the 2005 Session that made it a Class D felony to warn health care facilities of upcoming unannounced inspections but that the bill would be amended to reduce the penalty to a Class A misdemeanor.

Chairman Stivers called the committee's attention to the case of *Creed and Sadie Webb et. al. v. City of Newport* in which the Kentucky Court of Appeals upheld the taking of private property for the Cote Brillante development project that had been the subject of testimony at previous meetings.

The fifth meeting of the committee was held in Frankfort on November 15, 2005, with Chairman Gross Lindsay presiding.

The first speaker was Sen. Tapp who spoke in favor of 06 RS BR 79, which would provide a court proceeding to secure the release and burial of a body when the next of kin was the person alleged to have murdered the deceased and will not release the body for burial. Other family members can petition the court for permission to bury the body. The Justice and Public Safety Cabinet indicated it supports the bill.

The Secretary of State and representatives of the bar presented a proposal, 2006 RS BR 158, for revising the limited liability corporation (LLC) laws to permit serial limited liability corporations and require annual reporting by LLCs. Various members questioned the tax implications of the proposals. The proponents indicated that they knew of no negative impact on state tax revenues from the proposals. The same parties also presented 2006 RS BR 157, which they described as a major updating of the partnership and limited liability partnership laws in conformity with the Revised Uniform Partnership Act.

Rep. Lindsay spoke in favor of his 06 RS BR 135, which provides for notification of persons whose identifying information is stolen from private or governmental repositories of personal information. The proposal authorizes civil actions for damages for failure to notify persons of unauthorized release of their information.

The director of the Consumer Protection Division of the Office of the Attorney General presented a comprehensive identity theft proposal, which was the result of an Attorney General's task force. The bill proposes protection relating to collection and distribution of Social Security numbers by business and government; security freezes in the event of loss of information; notice to consumers as to loss of data; permitting a victim of identity theft to go to District Court for an official determination that the person is the victim of identity theft; procedures for taking police reports in identity theft cases; and other protections.

The commissioner of the Department of Corrections spoke in favor of a Prison Industries Enhancement certification program bill. This is relating to a federal program in which prison inmates can work for private industry in prison; receive prevailing

wages; make payments for child support, restitution, and fines as appropriate; and have the products made in the program sold in interstate and international commerce.

A representative of the Justice and Public Safety Cabinet spoke about omnibus cabinet legislation designed to include Kentucky State Police and Kentucky Vehicle Enforcement in the police salary supplement program; revise the membership of the Kentucky Law Enforcement Council; permit State Police to participate in the state employee suggestion program; permit the State Police to assign local police to task forces; enlarge upon record checks for cabinet-level appointees and disaster refugees; enhance the investigation of Sudden Infant Death Syndrome (SIDS) cases; require inmates to exhaust administrative appeals prior to filing a court action; and require persons seeking inmate testimony in civil cases to pay costs of transportation. Members of the committee asked whether the enhanced investigation of SIDS cases would result in additional costs, but the state medical examiner indicated there would be no new costs because the investigations are currently being conducted in the manner specified in the proposal. The committee also discussed two cases in which the Department of Corrections was held in contempt of court for failing to transport prisoners in county jails to various court proceedings despite a statute that requires the county sheriff to conduct this transportation.

**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
LABOR AND INDUSTRY**

**Sen. Alice Forgy Kerr, Co-Chair  
Rep. J.R. Gray, Co-Chair**

Sen. Julian M. Carroll  
Sen. Julie Denton  
Sen. Brett Guthrie  
Sen. Denise Harper Angel  
Sen. Ray S. Jones II  
Sen. Jerry P. Rhoads  
Sen. Richie Sanders, Jr.  
Sen. Katie Stine  
Sen. Jack Westwood  
Sen. Ken Winters  
Rep. John A. Arnold, Jr.  
Rep. Joe Bowen

Rep. Denver Butler  
Rep. C.B. Embry, Jr.  
Rep. Bill Farmer  
Rep. Charlie Hoffman  
Rep. Dennis Horlander  
Rep. Joni L. Jenkins  
Rep. Thomas Kerr  
Rep. Charles Miller  
Rep. Russ Mobley  
Rep. Rick G. Nelson  
Rep. Jim Stewart III  
Rep. Brent Yonts

LRC Staff: Linda Bussell, Betty Davis, Adanna Hydes, Melvin LeCompte, and Ashli Schmidt

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY

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

### COMMITTEE ACTIVITY

The committee held six meetings during the 2005 Interim. At the first meeting, held in June, new members of the committee were introduced. The topic for discussion was solvency of the Unemployment Insurance (UI) Trust Fund. Officials of the Department for Workforce Investment (DWI) stated that Kentucky was among several states experiencing financial problems with their trust funds. Since 2000, Kentucky has experienced a gap between UI taxes paid by employers into the trust fund and benefits paid to unemployed workers. Contributions have not kept pace with benefits paid, and this trend is expected to continue if programmatic changes are not made. Officials said trust fund solvency is not at a crisis point, but they expressed concern about the impact on the trust fund—whether or not it can withstand the demands of another recession or major layoff. The officials suggested that the General Assembly might want to consider corrective actions before the trust fund becomes insolvent, forcing Kentucky to borrow from the federal government to pay benefits to unemployed workers and to operate the program.

DWI officials presented information on the history of the trust fund and statistics on trust fund balances and benefit rates for the past 5 to 10 years. Also, officials informed the committee of initiatives including partnering with the Revenue Cabinet to recoup benefit overpayments and collect delinquent employer taxes. Committee members asked questions about program operations, several having to do with UI eligibility (i.e., when a worker voluntarily quits employment or is discharged from employment for misconduct).

The July meeting agenda continued the discussion of UI Trust Fund solvency issues. Also on the agenda was an update on the workers' compensation self-insured group fund, AIK Comp, that became insolvent in 2004, entered state rehabilitation, and quit writing worker's compensation insurance policies in 2005. The agenda also included a brief overview of the National Council on Compensation Insurance loss costs advisory filing for 2005.

Officials of DWI addressed members' questions on UI practices raised during and after the June meeting. Their written presentation covered the topics of eligibility determination, misconduct, voluntary quit, and burden of proof in cases on appeal. Also,

updated information on the UI Trust Fund balance was provided, which indicated that the trust fund balance as of July 15, 2005, was more than \$291.3 million.

Next, the executive director of the Kentucky Office of Insurance (KOI) reported on the status of AIK Comp. He informed committee members that the self-insured group's deficit was approximately \$97 million, that a second assessment plan had been filed with the Franklin Circuit Court in June 2005, and that he was hopeful the court would issue an affirmative ruling on joint and several liability for deficits of the group fund. Also, the executive director said third parties (i.e., managers, trustees, actuaries, accounting firms working for or with AIK Comp, and others believed to be culpable) were being sued by state rehabilitators.

In accordance with Senate Bill 86 enacted in 2005, the executive director said the remaining seven workers' compensation self-insured groups have been reviewed and examinations and final order for three groups were completed. All have been issued new certificates of filing and are required to submit quarterly financial reports.

For 2005, the executive director said the National Council on Compensation Insurance loss cost advisory filing for workers' compensation premiums recommended an average increase of 3.7 percent for industrial classes, and an average 5.5 percent increase for coal (based on a 10.5 percent increase for underground mining and a 5.5 percent decrease for surface mining). The effective date of the filing had been moved to October 1 to give insurers time to adjust to the new rates. Also, the filing was being reviewed by an external actuary.

Topics discussed at the third meeting, held in August, included the status of black lung or coal workers' pneumoconiosis (CWP) claims under House Bill (HB) 348, enacted in 2002; the CWP Fund and assessment rates for the CWP and Special Fund; and an issue relating to Kentucky labor law posters. First, the executive director of the Office of Workers' Claims presented national statistics on black lung claims. He said the National Institute of Occupational Safety and Health has shown a decline in the incidence of black lung nationally, and the award rate for federal black lung claims is 8.3 percent. Officials with the Office of Workers' Claims also presented information on state black lung claims. Under HB 348, which established the consensus process used for interpreting X-ray data in determining eligibility for black lung benefits, 1,347 claims have been filed. Of that number, 425 cases are being held in abeyance due to a court challenge of the consensus process, and 226 claims are on appeal. He then discussed the *Hunter Excavating v. Bartrum* case, in which the Kentucky Supreme Court subsequently found the statutory language of KRS 342.316 constitutional, but ruled the regulatory language prohibiting the consideration of additional X-rays to rebut the consensus process exceeded the office's authority. Statistics indicated that the consensus procedure is yielding a 17 to 18 percent award rate. Also, of the 729 claims that have been adjudicated by administrative law judges, 56 were settled, 93 resulted in benefit awards, and 580 were dismissed.

The director of the CWP Fund gave an overview of its activity stating that the fund has participated in 141 awards since its inception in 1996, and 121 of those awards

resulted from HB 348. The undiscounted liability for awards is approximately \$6.8 million excluding an estimated \$1.5 million in liability for 18 coal miners participating in retraining programs. In response to questions on the number of cases filed under HB 348 resulting in benefits, the executive director said 149 out of 922 have resulted in awards. The director of the CWP Fund said 30 coal miners had received monetary benefits under retraining incentive benefit provisions.

Next, the executive director of the Workers' Compensation Funding Commission told committee members that from 1997 to 2005, the assessment rate for the Special Fund was 9 percent. CWP Fund assessments have been scaled back since 1997, and in 2004 the CWP Fund collected a little more than \$1 million. In 2005, less than \$1 million was collected, and the current assessment is one-half percent on premium and one-quarter cent per ton of coal severed, the lowest rate without suspending the assessment. While there is a surplus in the CWP Fund, the commission's Board of Directors chose to continue the assessment in accordance with statutory requirements to prefund its liabilities.

In response to a question on how long the CWP Fund could pay benefits if assessments were suspended, the executive director said approximately three to four years. Responding to a question on the suspension of coal severance tax dollars to the Special Fund, commission officials said approximately \$76 million in coal severance tax funds have not been received since 2001. The target payoff of the Special Fund liability is still 2018, but the lack of coal severance tax dollars may result in higher assessment rates for employers in order to meet the payoff deadline.

The general counsel for the Department of Labor, in response to employers receiving notices offering to sell them Kentucky labor law posters, told the committee that labor law posters were available from the department at no cost to employers. The solicitation, he said, was from a private business trying to market the posters.

The fourth meeting was held in September as part of Kentucky's Annual Labor-Management Conference, at Kentucky Dam Village in Gilbertsville. Another update on the UI Trust Fund was presented. New information included the Mercer Model economic projections of solvency through the year 2013. Based on the Mercer Model projections, if no changes are made to the UI program the trust fund will probably become insolvent in 2009. Potential insolvency could occur in 2008, depending on the quarterly cycle of contributions and payment of benefits. Finally, policy options affecting contributions and benefits were presented to the committee for consideration.

The fifth meeting was held in Lexington at the Kentucky Horse Park as part of a series of legislative meetings being held in the central Kentucky area. The agenda included presentations on workers' compensation insurance for jockeys and other racetrack employees, and another update on the status of AIK Comp.

The first presenters were the executive director of the Office of Workers' Claims and the chair of the Governor's Blue Ribbon Panel to Study Workers' Compensation

Coverage for Jockeys. An overview of the work of the panel was presented, and the committee was told that the panel's recommendation to the Governor included amending the workers' compensation statute to include jockeys as covered employees, rather than independent contractors, for purposes of workers' compensation. In addition, a fund would be created to function as the employer of jockeys and apprentice jockeys for workers' compensation purposes only. Providing coverage for exercise riders would be the responsibility of the trainers. Major stakeholders in the industry (e.g., racetracks, owners, and jockeys) would each contribute one-third of the funding mechanism. The panel's recommendations were presented to the Governor on September 2, 2005.

Next, officials of KOI presented updated information on AIK Comp. Prior to the September court hearing, said the executive director, the judge ordered a three-day mediation between KOI and the intervenors. He said five of the intervenors participated in the mediation process, and as a result, a settlement agreement was reached that has allowed his office to move forward. Progress was made on issues including the additional premium discount AIK Comp members received, claims monitoring and processing, and the concept of retro premiums. In response to group members' concerns about how claims were managed and paid, the executive director said KOI has developed a method to permit AIK Comp members computer access to view the claims of their employees. If the court approves the settlement plan, reorganization plan, and modified assessment plan, KOI could receive approximately 80 percent of the entire AIK Comp deficit within 60 days.

The executive director said KOI received a favorable ruling from the court on the issue of joint and several liability, allowing his office to negotiate for an alternative financing mechanism. Built into the settlement agreement is a trigger amount above which the group members who participated in the settlement agreement would be relieved of their joint and several liability. Those members would continue to pay their pro rata share of the deficit, but an excess policy of \$10 million was purchased to pay liability that might accrue in addition to the deficit amount that is currently known. In addition, he said the money received as a result of the settlement will make AIK Comp more attractive to sell in the commercial market.

The last meeting was held in November. The agenda consisted of a final report on UI Trust Fund solvency issues along with recommendations; an overview of Kentucky's apprenticeship program; and a report on the implementation of the workers' compensation emergency administrative regulation establishing mandatory mediation for medical disputes.

Kentucky's UI Trust Fund balance has increased to \$275 million, according to DWI officials. Recommendations to improve the solvency of the fund included increasing the taxable wage base by \$500 per year for the next four years, implementing a one-week wait period before benefits are paid, freezing the maximum weekly benefit allowance (MWBA) at 2006 levels for the years 2007 and 2008, and slowing the rate of increase for the MWBA by reducing the percentage by which the MWBA is increased when the trust fund balance changes. DWI officials also recommended that several

features of the program remain unchanged, such as indexing of weekly benefit payments to earning at 1.3078 percent, eligibility for 26 weeks of benefits, voluntary contributions by employers, trust fund triggers for tax schedules, and tax rate schedules. They admitted that their recommendations were short-term solutions and would probably postpone the threat of insolvency only until 2013.

Members of the committee asked whether or not legislation would be forthcoming, what solutions were being considered to correct structural imbalances in the program to avoid insolvency in the long run, how employer hiring patterns and practices affect the solvency of the trust fund, and what issues arise when trying to determine when employees are considered independent contractors for unemployment insurance purposes. Finally, it was noted that the recommendations were those of the department and have not been endorsed by the Governor's Office.

Next, the commissioner of the Department of Labor and the director of the Division of Employment Standards, Apprenticeship and Training presented a status report on Kentucky's apprenticeship programs. As of September 2005, Kentucky has 277 registered apprenticeship programs with more than 2,700 apprentices. Labor officials said they wanted to increase the viability of the program but lacked resources to market the program, provide technical assistance to employers conducting training programs, or offer incentives for employers to establish apprenticeship programs. In response to questions about monitoring the quality of the programs, Department of Labor officials indicated that they currently have few field staff and it is difficult to monitor the programs or work with employers as much as they would like. Also, the director mentioned the need, in the new economy, to develop apprenticeship programs in vocations other than construction.

The final presentation was on the workers' compensation mediation program for medical disputes. The executive director of the Office of Workers' Claims said that medical disputes post awards or settlements had risen from slightly more than 400 in FY 2000 to more than 1500 in FY 2005. Staff of the Office of Workers' Claims along with administrative law judges reviewed the reasons for the increase, developed a "pilot" approach, and issued an emergency administrative regulation, 803 KAR 25:205E, establishing mandatory mediation when medical disputes arise. Information on the mediation process was presented. Several suggestions for strengthening the approach to ensure quick and final resolutions in such cases were offered. The executive director was encouraged to monitor the pilot project closely.

**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
LICENSING AND OCCUPATIONS**

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

Sen. Tom Buford	Rep. Ron Crimm
Sen. Julian M. Carroll	Rep. W. Milward Dedman, Jr.
Sen. Julie Denton	Rep. Jon Draud
Sen. Ray S. Jones II	Rep. Dennis Horlander
Sen. Daniel Mongiardo	Rep. Joni L. Jenkins
Sen. Ernesto Scorsone	Rep. Dennis Keene
Sen. Dan Seum	Rep. Stan Lee
Sen. Dana Seum Stephenson	Rep. Paul H. Marcotte
Sen. Robert Stivers II	Rep. Reginald K. Meeks
Sen. Damon Thayer	Rep. Charles Miller
Sen. David L. Williams	Rep. Ruth Ann Palumbo
Rep. Tom Burch	Rep. Jon David Reinhardt
Rep. Larry Clark	Rep. Susan Westrom

LRC Staff: Vida Murray, Ann Seppenfield, Bryce Amburgey, and Susan Cunningham

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS

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

### COMMITTEE ACTIVITY

During 2005, the Interim Joint Committee on Licensing and Occupations met five times.

At its first meeting, representatives of the Office of Housing, Buildings, and Construction briefed members on the changes being considered in plumbers' testing, the reasons a backlog exists in processing electrical licenses, the implementation of changes required because of 2005 legislation, the status of the low-voltage program, and proposed legislative changes. Reasons cited for the delays experienced in processing electrical licenses were lack of funding, the volume of applicants, and the need to hire temporary rather than seasoned employees. The state fire marshal told committee members that establishing low-voltage regulations has been difficult because of the breadth of occupations within the field. He expressed concern that the expertise required by the various occupations performing low-voltage work make a single, generic license inadequate. The state fire marshal ended his presentation by briefing members on proposed changes in the electrical licensing laws. The changes include establishing separate licenses for master, journeyman, and apprentice electricians and establishing separate licenses for master electricians based on whether they do residential or high-voltage work.

Additionally, a representative of the Office of Housing, Buildings, and Construction reported that it had requested from the Office of Budget Management 15 of the 51 plumbing, heating, ventilation, air conditioning, and building code enforcement inspector positions that were appropriated in the 2005 budget. In response, the committee adopted a resolution urging the expeditious hiring of the inspectors.

Next on the agenda, Legislative Research Commission (LRC) staff reported to the committee the findings of a staff study on expanding the prescriptive authority of advanced registered nurse practitioners (ARNP). The study found that more prescriptions for controlled substances per capita were written in states where ARNPs prescribe controlled substances. The study indicated that the content of physician and advanced

registered nurse practitioner pharmacology classes offered at selected state universities was similar. The study's findings also indicated that despite differences in physicians' and advanced registered nurse practitioners' opinions as to whether ARNPs should prescribe controlled substances, both groups agreed that there should be a collaborative agreement between physicians and ARNPs if the ARNPs prescribe controlled substances. LRC staff clarified that current research is unclear as to whether the greater number of prescriptions for controlled substances was attributed to the ARNPs or to new physicians. The study also showed that in those states where nurses prescribed controlled substances, there was a higher incidence of scheduled drugs being prescribed.

Representatives of the Kentucky Medical Association reported that in the past two years, the association has opposed expanded prescriptive authority for ARNPs because of its concern that more prescribers of controlled substances would lead to more controlled substances on the street. Representatives of ARNPs reported that Kentucky was one of only five states that do not allow ARNPs to prescribe controlled substances. The representatives said that ARNPs need this authority to improve care and reduce patient costs in rural areas where doctors are not on-site, adding that nurse practitioners are responsible professionals, as exhibited by the number of complaints lodged and disciplinary actions taken.

At the committee's second meeting, the executive director of the Kentucky Horse Racing Authority reported on proposed changes to Kentucky's race day equine medication policy. The executive director said that Kentucky's policy, which allows up to five medications to be administered to horses as little as 4 hours prior to post time, is the most liberal equine medication policy in the country. The executive director added that Kentucky is the only racing jurisdiction that allows multiple nonsteroidal anti-inflammatory drugs on race day and is one of only two jurisdictions that allow a steroidal anti-inflammatory drug on race days 4 hours prior to post time. The racing authority, on the recommendation of the Equine Drug Research Council, has adopted the model rule being promoted nationally by the Racing Medication and Testing Consortium. The rule, which has been adopted wholly or in part by 15 states and is in the regulatory process in at least 8 other states, will provide uniformity and facilitate the participation of Kentucky horses in races in other jurisdictions. The executive director of a horsemen's group and a pharmacologist spoke in opposition to the new equine medication rules. They noted that the administration of some medications on race days are advantageous and should be permitted unless scientific evidence indicates otherwise. In addition, they noted that medication policies were determined by the respective jurisdictions and take into account conditions that are particular to that jurisdiction.

Second on the agenda, the executive director of the Office of Alcoholic Beverage Control reported on a recent United States Supreme Court decision that held that it was unconstitutional for a state to restrict out-of-state wineries from shipping wine while allowing in-state wineries to ship. He noted that several issues are affected by a state's decision to allow or disallow interstate shipment: sales to minors, the collection of excise taxes, sales in dry territories, and the economic impact on Kentucky wineries. The

number of Kentucky small and farm winery licensees has grown from 2 in 1990 to 40 this year. The growth is attributed to farmers seeking an alternative to growing tobacco.

The final item on the meeting's agenda was an update on the hiring of the 51 inspector positions referenced at the committee's first meeting. The executive director of the Office of Administrative Services in the Environmental and Public Protection Cabinet reported that 24 of the 51 inspector positions had been hired at a cost of \$1,527,571. He explained that the smaller number hired reflects what the revenue stream can sustain.

At the committee's third meeting, the president of the Kentucky Lottery Corporation and the executive director of the Kentucky Higher Education Assistance Authority updated members on the Kentucky Education Excellence Scholarship (KEES) program. The president discussed losses in revenue experienced by the lottery since the implementation of the lottery in Tennessee. The largest downturn in sales was attributed to the establishment of the multistate Powerball Game in Tennessee in 2004. Losses in revenue were more pronounced in counties bordering Tennessee where sales had previously accounted for 18 percent of the lottery's sales statewide but were 11 percent this year. The president identified the challenges the Kentucky Lottery faces including continuing growth of the Tennessee lottery the maturing product mix, and the expansion of more active forms of gaming in neighboring states. The president advocated allowing the lottery to advertise how moneys are spent.

The executive director of the Kentucky Higher Education Assistance Authority informed members that there were more student-aid needs than the revenue from the lottery can support and cautioned that college is becoming less accessible because of increasing tuition costs. Responding to members' questions, the executive director noted that eligibility for a KEES award is based on a lower grade point average than some other states use because the legislature wanted to encourage average or lower-performing students to improve.

Next on the agenda was a presentation on proposed legislation requiring the certification of home contractors performing work of \$2,500 or more. Under the proposed legislation, all residential contractors in Kentucky would be required to have at least \$250,000 of general liability and property insurance, comply with workers' compensation laws, enter into a written contract with their customers, and supply a one-year warranty for the work performed. The legislation would also allow a local community to serve as a licensing agent. Questions from the members focused on the advisability of allowing a designee to attend continuing education classes and the sufficiency of the \$250,000 insurance coverage.

Last on the agenda was a presentation on prefiled legislation to certify persons practicing acupuncture. The prefiled legislation would require acupuncture practitioners to pass an examination and complete 1,800 hours of course training, 300 of which must be clinical. Representatives of several acupuncture groups testified that the certification of acupuncturists was necessary to safeguard the public. In the absence of certification, the public has no means of knowing whether the practitioner meets competency and

safety standards. The advocates noted that Kentucky was one of eight states that do not regulate acupuncturists and that persons seeking treatment often seek treatment in neighboring states. Following the presentation, members commented on the advisability of having unregulated practitioners and on the quality of the research conducted.

At the committee's fourth meeting, prefiled legislation relating to electricians was discussed. The bill was prompted by the death of a young boy who was electrocuted as the result of improper electrical work that would have been discovered if an electrical permit had been obtained. The sponsor explained that the prefiled legislation would enable electrical inspectors to perform more efficiently, raise fines to deter non-compliance, and shorten to 10 the number of consecutive days a journeymen electrician from another state could work in Kentucky without applying for a license. Under the existing law, an electrician from another state may work in Kentucky for 30 consecutive days without obtaining a license.

Next on the agenda was a presentation from representatives of alcohol beverage wholesalers associations on the three-tier system of alcoholic beverage distribution. The representatives indicated that the three-tier system provides an orderly market by which alcoholic beverages are distributed and safeguards against improper influence by prohibiting a wholesaler or distributor from having an interest in a licensed retail establishment. They opined that the three-tier system serves the public's interest by ensuring that alcoholic beverage taxes are consistently paid at the wholesale level, by preventing sales to minors or those in dry territories, and by requiring that alcoholic beverages be sold in face-to-face transactions. The representatives concluded that the three-tier system operates in most states and was not affected by the United States Supreme Court's recent decision on interstate wine shipment.

Next on the agenda, representatives of the Kentucky Real Estate Commission informed committee members of the terms of the consent agreement between the United States Department of Justice and the Kentucky Real Estate Commission arising out of an antitrust suit. The terms of the agreement permit real estate associates and brokers to offer inducements and prizes and require the commission to place in the folders of anyone who was sanctioned for giving inducements a letter noting that the commission's action has been nullified.

The last item on the agenda was a presentation from the deputy state budget director on the hiring of the 51 inspector positions in the Office of Housing, Buildings, and Construction as discussed in previous meetings. She reported that the office has requested registers for 13 of the positions identified by the office as the most critical. Additional positions will be filled once new employees are trained. One of the problems noted with maintaining inspectors is the low salaries. Typically, after an inspector is trained, the inspector is hired away by a local government for a higher salary. The deputy state budget director warned that by 2008, the office would not have enough funds to maintain the increased staffing unless fees were increased and statutes changed. Certain statutory provisions prohibit licensing fees from one trade being used by another.

At the committee's fifth meeting, the executive director for the Attorney General's Office of Consumer Protection told the members that identity theft was the office's priority legislation for the 2006 Session. The proposed legislation would protect consumers' Social Security numbers by restricting businesses' collection of them, provide consumers the ability to freeze their credit reports, require companies to notify consumers if their identifying information is stolen, and allow consumers to take court action to validate their identities.

The second item on the agenda was an explanation from the sponsor of House Bill 13 from the 2005 General Assembly. The bill was designed to deter the purchases of fraudulent certificates, transcripts, and letters of recommendation. The sponsor testified that \$500 million was spent on fraudulent diplomas in the United States and that 1 million Americans have fraudulent degrees. She reported that the legislation was necessary to prosecute persons in state who obtain fraudulent degrees.

The final item on the agenda was the discussion of the status of new hires in the Office of Housing, Buildings, and Construction as required by the 2005 Budget Bill. Representatives of industry trade groups opined that the office, in implementing changes, should seek input from the citizen members on the various trade boards because they, as practitioners, are in touch with the needs of the industry. Additionally, they urged that the General Assembly not redirect their licensing fees to the General Fund for other budgetary needs. Lastly, they urged that the office act expeditiously in hiring inspectors so that construction work may proceed in a timely manner. In response, the commissioner of the Department of Public Protection updated members on the status of the new hires requested by the budget, noting that 24 of the positions should begin by November 1, and 19 more by April 2006. The commissioner reported that the backlogs in processing applications in the office have been alleviated and that a completed application for the renewal of an electrical license can be processed in 2 days. The turnaround for a plumbing license and a building code enforcement permit are 7 days and 15 days, respectively.

**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
LOCAL GOVERNMENT**

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

Sen. Walter Blevins, Jr.  
Sen. Julian M. Carroll  
Sen. Carroll Gibson  
Sen. Ernie Harris  
Sen. Tom Jensen  
Sen. Dan Kelly  
Sen. Alice Kerr  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner  
Sen. Ed Worley  
Rep. Adrian K. Arnold  
Rep. Scott W. Brinkman  
Rep. Ron Crimm  
Rep. Mike Denham  
Rep. Ted "Teddy" Edmonds

Rep. David Floyd  
Rep. Derrick Graham  
Rep. Jimmy Higdon  
Rep. Charlie Hoffman  
Rep. Dennis Keene  
Rep. Stan Lee  
Rep. Thomas M. McKee  
Rep. Reginald K. Meeks  
Rep. Brad Montell  
Rep. David Osborne  
Rep. Terry Shelton  
Rep. Arnold Simpson  
Rep. Ancel Smith  
Rep. Ken Upchurch  
Rep. Jim Wayne

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

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

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

### COMMITTEE ACTIVITY

The Interim Joint Committee on Local Government met five times during the 2005 Interim. It held meetings in Covington, Louisville, and Frankfort. The committee discussed the long-term planning efforts underway in northern Kentucky. It also heard testimony relating to the funding of county jails, the need for tax modernization at the local level, the review of Kentucky's Community Development Block Grant application, the need for changes in the training and duties of jailers, collection fees for sheriffs, the cost of public notices for local governments, and the executive branch reorganization of the Department for Local Government as the new Governor's Office for Local Development. The committee also met with various local government interest groups to determine their concerns and legislative needs for the 2006 legislative session.

The first interim meeting for the committee was held in Covington. The members heard testimony from representatives of Vision 2015, which is a visioning group that has been put into place to plan the future of the northern Kentucky area. Representatives of the group explained the structure and operations of the group as well as the visioning process. They noted that they were hoping to create a 10-year blueprint for the area to address the critical issues of economic competitiveness, educational excellence, urban renaissance, effective governance, and livable communities. They also stressed the importance of the involvement of all demographic segments of the community in order for the plan to be successful in truly addressing the needs of the entire area. In addition

to the Vision 2015 group, the committee also heard testimony from representatives of the Northern Kentucky Chamber of Commerce on the contributions and needs of the state's urban areas. They discussed the existence of 9 metropolitan and 17 micropolitan areas within the state and their current inability to attract new high-paying jobs due to what they perceived as inadequate and unfair state and local tax and funding policies in these areas. The last topic discussed at this meeting was an effort to form a coalition of cities of the second class. Mayors representing these cities wanted to alert the members to their efforts to form this group in preparation for the upcoming legislative session.

The second meeting of the committee was held in Frankfort in July. This meeting was primarily dedicated to the review of the 2005 Kentucky Community Development Block Grant application. Representatives of the Governor's Office for Local Development (GOLD) summarized the program application, discussed expected federal funding levels, and answered questions from committee members about the 2005 program. The committee then reviewed Executive Order 2005-494, which proposes the reorganization of the Department for Local Government into GOLD. During the presentation, the commissioner and office representatives laid out the rationale for the reorganization and provided members with a detailed graph of the structure and operations of the restructured agency. They also discussed the administrative transfer of Renaissance Kentucky from the Kentucky Housing Corporation to GOLD, the administrative transfer of the East and West Kentucky Corporations and the Single County Coal Fund to GOLD, and the creation of an office of legislative services within the agency.

In September, the committee met with representatives of the Kentucky County Judge/Executives Association (KCJEA), the Kentucky Department of Correction's Division of Local Facilities (KDC), the Kentucky Jailer's Association, and the Kentucky Magistrates and Commissioners Association (KMCA). Members were told that one of the most costly responsibilities for counties is the result of underfunded state mandates arising from the care and housing of prisoners. Representatives of KCJEA said it was now not uncommon for at least one-third to one-half of a county's budget to be dedicated to the operation and funding of jails and the incarceration of prisoners. They were told by KDC that counties are currently expending \$60-\$70 million annually to house and care for the approximately 7,000 inmates that currently reside in the 76 full-service and 16 life-safety jails across the state. KDC also indicated that there are some ways in which many of the counties and the jailers could more efficiently operate the jails. The members were told by county representatives that health care costs for prisoners are stretching county budgets to the limit. Issues such as medical cards becoming invalid upon incarceration, who pays for expensive medical and psychological testing that are not a result of incarceration, the need for better medical management practices, the need for drug treatment programs or facilities at the county jails, the need for bilingual training for jail staffs, and the need for emergency jail evacuation plans were also discussed. Representatives of the Kentucky Jailer's Association also presented the committee with other legislative proposals that included the possible development of a qualifying test for jailer candidates similar to that given to property valuation administrators.

At the fourth meeting in October, the committee traveled to Louisville to meet in conjunction with the annual meeting of the Kentucky League of Cities (KLC) to discuss their legislative needs for the 2006 General Assembly. At this meeting, KLC discussed its issues of concern that included the need for all local governments to have the flexibility they need to generate the revenues necessary to operate in the face of increasing operational costs; eminent domain and the effect of recent court decisions in this area; the importance of fairness for local governments as the state develops its programs for providing health care insurance benefits for active and retired local government workers; additional options for the merger of local governments; and unfunded mandates.

In the area of health insurance, KLC told the members that it is important to remember that many local governments are under the state's health insurance program and must pay the same rate as state government pays as an employer. They told the committee that this is becoming more difficult for local governments as premiums keep going up and benefits going down. They also reminded the members that the salaries of local employees and the budgets of local governments are not as large as that of state government and that costs in this area must be held to reasonable and affordable levels for both the employee and the employer. In addition to discussing the cost factors relating to health insurance, KLC also discussed the need to include better claims management, the lowering of prescription costs, and the inclusion of wellness programs for members in the state's health insurance program.

KLC next discussed the issue of eminent domain and the need for the various statutes related to this issue to be unified, better developed, and codified together as an eminent domain policy for the state. It was pointed out that this issue is a vital tool for the development and growth of Kentucky's cities. KLC also told the committee that it may at some point in the future be bringing legislative proposals before the General Assembly that will call for a constitutional amendment to shift the authority to utilize different revenue options from inherent and limited constitutional authority to the legislature, provide for a one-time catch-up provision for cities from HB 44, create a local option sales tax, and expand the restaurant tax to all classes of cities. KLC said these options would benefit local governments in that the revenue-generating needs of local governments could be met as economic needs dictate and in a more timely manner.

A final issue discussed at this meeting was the review of pre-filed bill 2006 RS BR 49 relating to the operation of management districts. It was pointed out by representatives of the Louisville Downtown Management District that this proposal was only a refinement of the bill that was enacted in 2005, which was supported by their members as well as Louisville Metro Government. The committee unanimously approved the pre-filed bill as presented.

At the final committee meeting in November, representatives of the Kentucky Press Association, KCJEA, KMCA, and KLC came before the committee to present a number of proposed changes to the local government public notice statutes. The proposed changes were a follow-up to legislation that was considered during the 2005

legislative session. The recommended changes included decreasing the number of times the county's delinquent tax list must be published; specifying a smaller print point size for published advertisements; clarifying the advertising rates that may be required of local governments; requiring a 30-day notice to local governments for any advertising rate increases; clarifying the composition of the list of vendors that must be published by local governments; and increasing from \$3 to \$5 the amount that the sheriff or fiscal court may add to each delinquent tax bill each time it is published to help defray the cost of publication.

Other issues discussed at the final meeting were a request by the Kentucky Sheriff's Association to increase the amount of fees that can be collected by the sheriff for the serving of process and the review of an administrative regulation relating to the disbursement of funds to sheriffs.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
SENIORS, VETERANS,  
MILITARY AFFAIRS, AND PUBLIC PROTECTION**

**Sen. Elizabeth Tori, Co-Chair  
Rep. Mike Weaver, Co-Chair**

Sen. Carroll Gibson	Rep. Carolyn Belcher
Sen. Denise Harper Angel	Rep. Tom Burch
Sen. Vernie McGaha	Rep. James Carr
Sen. Daniel Mongiardo	Rep. Bill Farmer
Sen. Joey Pendleton	Rep. Mary Harper
Sen. Jerry Rhoads	Rep. Gerry Lynn
Sen. J. Dorsey Ridley	Rep. Fred Nesler
Sen. Richard "Dick" Roeding	Rep. Tanya G Pullin
Sen. Dan Seum	Rep. Steve Riggs
Sen. Katie Stine	Rep. Tom Riner
Sen. Jack Westwood	Rep. Steven Rudy
Sen. Ken Winters	Rep. Charles L. Siler
Rep. Sheldon E. Baugh	Rep. Ancel Smith

LRC Staff: Scott Varland, Clint Newman, Mustapha Jammeh, Ashley Sanders, and Rhonda Schierer

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

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

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

### **COMMITTEE ACTIVITY**

Through November of the 2005 Interim, the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection has met six times. The Interim Joint Committee intends to meet for a seventh time in December.

The June 2005 committee meeting began with the adoption of three resolutions honoring Kentucky soldiers killed in Operation Iraqi Freedom.

The executive director of the Kentucky Commission on Military Affairs described its mission as preserving and expanding national defense and military activities in Kentucky. There have been two major successes in recent years. First, since 2001, Kentucky has seen a 250 percent increase in military contract spending: the largest gain of any of the 50 states. Second, the secretary of Defense has just issued military Base Realignment and Closure (BRAC) recommendations that favor Kentucky. If the recommendations are adopted, increased military activity will generate an estimated additional \$254 million in military salaries, 2,000 new civilian jobs, and an additional \$106 million in military construction. Fort Campbell will lose an Attack Aviation Battalion of 434 personnel. However, Fort Campbell will gain a Brigade Combat Team of 3,272 personnel. The recommendations significantly change Fort Knox. It will no longer be the home of the Armor Center and School. Of the 11,759 personnel departing Fort Knox, 7,566 will be Armor Center and School students. Fort Knox will gain a Light Infantry Brigade of 3,272 personnel, and the Consolidated Human Resources Command of 2,794 personnel will move to Fort Knox. This command includes many high-paying civilian jobs. The Blue Grass Army Depot will gain two U.S. Army Reserve Units. Lastly, the recommendations shut down the Lexington Defense Finance and Accounting Service Center (45 jobs) and the Louisville Naval Surface Warfare Center (223 jobs). The executive director concluded by saying that the recommendations have not been adopted. The Kentucky Commission on Military Affairs, assisted by the Rhoads Group and Public Private Solutions Group, Inc., will continue to advance Kentucky's interests until BRAC concludes in November.

Co-Chair Weaver thanked the executive director, legislators, and concerned citizens who had supported the formation and funding of the Kentucky Commission on Military Affairs so that it could carry out its mission.

In July, the committee met at the Veterans Affairs Medical Center, Leestown Division, in Lexington. The meeting began with the Dedication and Ribbon-Cutting Ceremony for the Homeless Veterans Transitional Treatment Program.

The committee adopted four resolutions honoring Kentucky soldiers killed in Operation Iraqi Freedom.

The secretary of the Personnel Cabinet spoke on the state hiring preference for veterans established under KRS 18A.150. This preference is applied to Written Test and Training and Experience job classifications and has a limited impact. First, an individual must meet minimum requirements. After meeting these requirements, an individual takes a test. Preference points are added to the test score only after the test taker passes the test. Once the preference points are added, the test taker is not automatically considered for the job vacancy. The Personnel Cabinet refers only candidates with the top five scores to the hiring state agency, which then conducts interviews. The veterans preference is not applied to Qualifying job classifications. Once an individual meets minimum requirements, the Personnel Cabinet submits that person's name for review by the state hiring agency. Therefore, veterans have a better chance of being considered for a job under Qualifying job classifications than under the Written Test and Training and Experience job classifications.

Sen. Tori and Rep. Belcher urged the secretary to consider identifying veterans when they are interviewed by a hiring state agency.

The commissioner of the Kentucky Department of Veterans Affairs (KDVA) made opening remarks concerning KDVA and its programs. The department assists 370,000 Kentucky veterans and their families. While KDVA's budget has not increased in several years, the department has brought more and more federal veterans' benefits into the Commonwealth, so that during the last fiscal year more than \$1 billion in federal benefits were expended in Kentucky.

The executive director of the Office of Kentucky Veterans Centers discussed the Kentucky veterans nursing homes located in Wilmore, Hanson, and Hazard. He said that passage of 05 HB 439 makes possible the avoidance of \$1.5 million in annual provider tax payments. In addition, during FY 2005, nursing homes will generate \$1.5 million for reinvestment in construction and salaries. Lastly, at present, veterans nursing homes are not Medicaid certified. This will change in FY 2006 when the nursing homes will be supported as follows: Medicaid will pay \$16 million; the General Fund will pay \$3.5 million; resident charges will pay \$6 million; and the federal Veterans Administration will pay \$10.8 million.

The veterans branch manager for Veterans Benefits Operations spoke on the KDVA program to help veterans obtain veterans benefits. His staff consists of 15 field representatives, four veterans regional administrators, three administrative personnel, and one administrative branch manager. This team of individuals operates in every county to assist veterans with all aspects of their claims for veterans benefits. Field representatives conduct activities ranging from filling out forms to conducting home visits. As the staff for Veterans Benefits Operations has increased from 9 to 21, the amount of veterans benefits collected has increased from \$1 million in 1997 to \$52.9 million in 2004.

The State Veterans Cemetery branch manager discussed the State Veterans Cemetery Program. Kentucky must achieve three goals to obtain a federal grant to build a veterans cemetery. First, suitable land must be deeded to the state. Second, there must be a viable architectural/engineering design. Third, the state budget must indicate a commitment to operate the cemetery in perpetuity. Kentucky has five state veterans cemeteries at different stages of development. One has opened in Hopkinsville. The State Veterans Cemetery Program administers a Burial Honors Program that includes financing burials, flag presentations, and music.

The Women Veterans coordinator spoke on the newly established Kentucky Women Veterans Program that came into being through passage of 05 HB 62. She said the program has the mission to ensure that Kentucky women veterans have equitable access to federal and state veterans services and benefits.

The Homeless Veterans coordinator said that the General Assembly passed 00 HB 295 to assist homeless veterans on a statewide basis. The KDVA, federal Veterans Administration, and Volunteers of America are working together to run the Homeless Veterans Transition Facility in Lexington.

The committee met a second time in July, this time at the Colvin Community Center in Radcliff. The entire meeting was devoted to the “veterans preference.” The secretary of the Personnel Cabinet said that the veterans preference does not apply to nonmerit jobs but may apply to merit jobs. With regard to merit employees, there are three types of job classifications: Qualifying (73 percent), Written Test (16 percent), and Training and Experience (11 percent). Examination preference points are added for the Written Test and Training and Experience, or 27 percent of the merit job classifications. He said that he might recommend that all Final Registers identify the veterans on these registers.

The commissioner of the Kentucky Department of Veterans Affairs also spoke on the veterans preference. He said that a veterans preference helps eliminate penalizing veterans and National Guard members for time spent in military service and acknowledges the larger obligation owed to disabled veterans and their families. He said that the current veterans preference has limited impact. Therefore, he proposed that the preference be changed to require that the state hiring agency interview every veteran who appears on the register of finalists for a position.

Under new business, Co-Chair Tori described Executive Order 2005-563 that creates the Kentucky Office of Homeland Security. She said that the committee would take no action on the order; however, at a later meeting, the committee would discuss it. She also said that Co-Chair Weaver and she would send a letter to the Governor urging him to help save the Patton Museum that was under threat from the potential move of armor from Fort Knox.

The September meeting was held at Bluegrass Station in Lexington. The meeting began with the adoption of two resolutions honoring Kentucky soldiers killed in Operation Iraqi Freedom.

The adjutant general discussed Kentucky Department of Military Affairs issues. He began by describing Bluegrass Station that is managed by the Department of Military Affairs. The station has 48 tenants that employ 1,750 individuals with an annual \$60 million payroll. The General Assembly has funded expansion of Bluegrass Station, including the construction of a new aircraft hangar.

The adjutant general next gave an overview of Kentucky Department of Military Affairs. The department has a \$200 million budget, of which \$11,147,600 come from state funds. The department has various responsibilities, including supervising the Army National Guard and Air National Guard, emergency management, managing Capital City Airport and state aircraft, and running Kentucky Youth Challenge to provide a disciplined positive environment for at-risk youth.

The fiscal manager with the Kentucky Department of Veterans Affairs spoke on the Veterans Program Trust Fund. He said that it is established pursuant to KRS 40.460(2). Oversight is provided by a board appointed by the governor. The fund assists veterans without the use of state appropriations. In fiscal year 2005, income was provided by donations (\$71,400); license plates voluntary contribution (\$47,700); tax check off (\$39,300); and interest (\$8,100). With the new \$5 mandatory renewal fee for certain military license plates, there will be an additional \$200,000 in funding on an annual basis. The new funding will be used for any number of programs. At present, the Veterans Program Trust Fund provides financial support for the Homeless Veterans Transition Facility, Mobile Outreach, Veterans Nursing Homes, Burial Honors, and Veterans Cemeteries.

The October meeting began with the adoption of two resolutions honoring two Kentucky soldiers killed in Operation Iraqi Freedom.

The commissioner of the Commonwealth Office of Technology presented the annual wireless interoperability report mandated by KRS 11.5163. Wireless interoperability permits police, firefighters, and other first responders to communicate over the radio during an emergency.

The commissioner began his presentation with a discussion of the Kentucky Emergency Warning System (KEWS). Following the 1974 tornadoes, Kentucky built 144

towers to create KEWS, which replaced commercial communications that often failed during an emergency. KEWS has served Kentucky well but is now inadequate to handle digital communication. The General Assembly has provided \$13 million in funding for the first phase of upgrading the KEWS microwave infrastructure backbone. The commissioner asked for support in obtaining an additional \$13.8 million in funding for the second phase of the upgrade.

The commissioner continued by stating that in 2003 the General Assembly passed HB 309 to establish the Kentucky Wireless Interoperability Executive Committee and gave it the mission of achieving wireless interoperability for first responders in Kentucky.

The Kentucky Wireless Interoperability Executive Committee and the Commonwealth Office of Technology set five goals for 2005. First, pursuant to the provisions of 04 HB 226, develop a template for the review and approval of wireless communication plans. Second, support a statewide wireless voice mutual aid plan. Third, pursue a strategic initiative for a statewide wireless data network. Fourth, support a tactical initiative to improve communications interoperability using a network voice gateway technology solution. Fifth, develop a network architecture that meets the national standard (P25) for statewide public safety voice communications. All five goals were accomplished. Six goals have been set for 2006.

Co-Chair Weaver asked if additional wireless interoperability legislation were needed. The commissioner responded no.

The executive director of the Kentucky Office of Homeland Security discussed Executive Order 2005-563. She said that this executive order was a revised version of Executive Order 2004-530 that established the Kentucky Office of Homeland Security (KOHS). KOHS advises state and local agencies on terrorism and natural disasters and decides which agencies receive federal homeland security grants.

An audit manager with the Auditor of Public Accounts gave the next presentation. She had audited the Department of Military Affairs and found two material findings. First, the department had failed to properly monitor the spending of federal money that it had sent on to agencies. Second, the department had lacked internal control for the State Domestic Preparedness Equipment Assistance. She concluded by saying that the department was putting forth a major effort to correct these deficiencies.

Another audit manager with the Auditor of Public Accounts explained that he was responsible for auditing the federal cemetery grants received by the Kentucky Department of Veterans Affairs. He found one instance of the KDVA not monitoring the spending of federal grant money and one instance of KDVA lacking internal controls. He concluded by saying that KDVA should be able to correct these problems.

The sixth meeting, held in November, began with the adoption of a resolution honoring a Kentucky soldier killed in Operation Iraqi Freedom.

The executive director and a deputy director of KOHS presented the annual homeland security report.

The deputy director described the seven goals that KOHS has established in its strategic plan. First, implement the National Incident Management System and National Response Plan by the end of 2006. Second, expand regional collaboration. Third, implement the National Infrastructure protection plan. Fourth, strengthen information sharing and collaboration capabilities. Fifth, strengthen interoperable communications capabilities. Sixth, strengthen chemical, biological, radiological, and nuclear detection response and decontamination capabilities. Seventh, strengthen medical surge and mass prophylaxis capabilities.

The deputy director stated federal homeland security funding received in Kentucky during 2004. The federal government sent \$420,465,512 directly to state and local agencies. The federal government sent \$69,695,895 to KOHS, which then distributed this money in grants. The federal government sent \$13,934,634 in Urban Area Security Initiative funding to KOHS to pass directly to Louisville.

The deputy director described how KOHS awards federal homeland security money as grants. KOHS creates an independent technical review team that scores grant applications. KOHS executive staff reviews the scores and makes preliminary recommendations. The governor and the lieutenant governor review all previous analyses and make their own recommendations. KOHS presents all recommendations to a blue ribbon panel, which has the final say.

Rep. Riggs said he was surprised that Louisville did not receive any homeland security grant money even though Louisville is the most likely terrorist target in Kentucky.

The director of the Kentucky Division of Emergency Management spoke on Kentucky Emergency Management. He described the division's mission as providing a comprehensive Kentucky emergency management system to protect life and property, public peace, health, safety, and the environment. This is accomplished through mitigation, preparedness, response, and recovery for all hazards when a local emergency response agency determines that these activities are beyond its capabilities.

The Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection will hold its final meeting in December. It is anticipated that the committee will consider veterans nursing home funding and 911 emergency phone service.



**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON  
STATE GOVERNMENT**

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

Sen. Walter Blevins, Jr.  
Sen. Julian M. Carroll  
Sen. Carroll Gibson  
Sen. Ernie Harris  
Sen. Tom Jensen  
Sen. Dan Kelly  
Sen. Alice Kerr  
Sen. Elizabeth Tori  
Sen. Johnny Ray Turner  
Sen. Ed Worley  
Rep. Adrian K. Arnold  
Rep. Eddie Ballard  
Rep. Joe Barrows  
Rep. Sheldon E. Baugh  
Rep. Carolyn Belcher  
Rep. Kevin D. Bratcher  
Rep. James E. Bruce  
Rep. Dwight D. Butler  
Rep. Perry B. Clark  
Rep. Tim Couch  
Rep. Joseph M. Fischer  
Rep. David Floyd

Rep. Danny R. Ford  
Rep. Derrick Graham  
Rep. J.R. Gray  
Rep. Mike Harmon  
Rep. Melvin B. Henley  
Rep. Charlie Hoffman  
Rep. Jimmie Lee  
Rep. Gross C. Lindsay  
Rep. Gerry Lynn  
Rep. Paul H. Marcotte  
Rep. Mary Lou Marzian  
Rep. Lonnie Napier  
Rep. Stephen R. Nunn  
Rep. Tanya G. Pullin  
Rep. Jon David Reinhardt  
Rep. Tom Riner  
Rep. John Will Stacy  
Rep. Kathy W. Stein  
Rep. Tommy Thompson  
Rep. Jim Wayne  
Rep. Mike Weaver  
Rep. Brent Yonts

LRC Staff: Joyce Crofts, Karen Armstrong-Cummings, Judy Fritz, Betsy Johnson,  
Alisha Miller, Clint Newman, Karen Powell, Erica Warren, Stewart  
Willis, Peggy Sciantarelli, and Terisa Roland

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

**SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP**

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

**Sen. Damon Thayer, Co-Chair**  
**Rep. Adrian K. Arnold, Co-Chair**

Sen. Julian M. Carroll  
Sen. Carroll Gibson  
Sen. Alice Kerr  
Sen. Elizabeth Tori  
Rep. Joe Barrows  
Rep. Kevin D. Bratcher  
Rep. James E. Bruce  
Rep. Perry B. Clark

Rep. Joseph M. Fischer  
Rep. J.R. Gray  
Rep. Mike Harmon  
Rep. Melvin B. Henley  
Rep. Gross C. Lindsay  
Rep. Mary Lou Marzian  
Rep. Jon David Reinhardt  
Rep. Kathy Stein

Rep. Mike Cherry, ex officio

## INTERIM JOINT COMMITTEE ON STATE GOVERNMENT

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

### COMMITTEE ACTIVITY

The Interim Joint Committee on State Government held five meetings during the 2005 Interim. The committee focused on the public employee health insurance program and the recommendations of the Blue Ribbon Panel on Public Employee Health Benefits; the Auditor of Public Accounts' management letter concerning the Finance and Administration Cabinet, in reference to the FY 2004 statewide single audit; emergency management at the federal, state, and local levels; prefiled legislation relating to governmental purchasing from nonprofit agencies and work centers serving disabled Kentuckians; reorganization of the Personnel Cabinet; status of the Kentucky Lottery Corporation; an administrative regulation of the Finance and Administration Cabinet, relating to sponsorships; proposed recommendations of the Blue Ribbon Task Force on the Merit System; and the performance audit of Kentucky's administration and management of contracting for services.

In June, the committee met jointly with the Interim Joint Committee on Local Government at the Northern Kentucky Convention Center in Covington. The committees received a briefing from the co-chairs of Vision 2015, a strategic visioning process to create a 10-year blueprint for northern Kentucky. The president of the Northern Kentucky Chamber of Commerce discussed issues affecting Kentucky's metropolitan and micropolitan areas. The mayors of the cities of Newport and Williamstown spoke about issues of concern to northern Kentucky cities.

In July, members of the Blue Ribbon Panel on Public Employee Health Benefits presented the panel's final adopted recommendations, in advance of issuing its final

report. The 32-member panel, including six legislators, was authorized in the 2004 Special Session to study public employee health benefits. The committee heard reports on the activities of each of the panel's five subcommittees (Benefits, Governance, Group Makeup, Technology, and Wellness). The panel discussed at length its 48 recommendations relating to the Commonwealth's public employee health insurance program, including potential cost impact and anticipated method of implementation. Much of the discussion focused on self-insurance; wellness and disease management; Senate Bill 2, enacted in 2005; the "unescorted retiree" issue; cost of dependent coverage; health care costs in general; and the use of information technology in health care.

The committee also discussed the state Auditor's management letter concerning the Finance and Administration Cabinet, in reference to the statewide single audit for FY 2004. Officials of the Auditor's Office reviewed their findings and recommendations. Representatives of the cabinet discussed their response to the audit and stated that most of the audit recommendations had been implemented.

In September, the committee discussed emergency management at the federal, state, and local levels. Guest speakers were the former Chicago regional director for the Federal Emergency Management Agency, who was also the former director of the Ohio Emergency Management Agency; the director of the Kentucky Division of Emergency Management in the Department of Military Affairs; and local directors of emergency management from Louisville and from Anderson, Campbell, and Scott Counties. Topics discussed included the status of Kentucky's preparedness; interoperable communications; the role of state and federal offices of homeland security; how emergency preparedness has been impacted by the focus on terrorism; importance of developing emergency response plans and utilizing available resources; and funding issues. A representative of the Kentucky Office of Homeland Security also briefly discussed that agency's Community Preparedness Program.

In October, the committee discussed 06 RS BR 71, prefiled by Rep. Wayne, relating to governmental purchasing of goods and services from nonprofit agencies and work centers serving the blind and severely disabled. The Co-Chair noted that the legislation was brought before the committee for discussion only and that a vote would not be taken. Speaking in support of the legislation were representatives of Goodwill Industries of Kentucky and the National Industries for the Severely Disabled; the executive director of the Indiana Association of Rehabilitation Facilities; the director of Developmental Disabilities Services at the Pennyroyal Center; a parent of a disabled Kentuckian; and a disabled Kentuckian employed by a community rehabilitation program in Lexington.

The committee reviewed Executive Order 2005-891, relating to reorganization of the Personnel Cabinet. Discussion focused on the creation of an Office of Merit System Referral, the projected cost of the reorganization, and the status of implementation. The Personnel Cabinet's general counsel answered questions about the executive order and agreed to provide additional information requested by a member of the committee.

The agenda also included review of the Finance and Administration Cabinet's administration regulation 200 KAR 5:080, which would establish parameters under which an executive branch agency may enter into a written contract for sponsorship from a business. Responding to questions from the committee, a staff attorney from the Finance and Administration Cabinet said that staff of the Administrative Regulation Review Subcommittee had agreed with the cabinet's position that it has statutory authority to promulgate the regulation. Representatives of the Commerce Cabinet also participated in the discussion since the Commerce Cabinet is comprised of agencies that would benefit from the regulation, namely the Kentucky Horse Park and the Kentucky Fair Board. Some members expressed concern about granting broad authority for sponsorships and whether sponsorships should be addressed statutorily. No action was taken on the regulation.

The final item on the agenda was a status report from the president of the Kentucky Lottery Corporation. He noted that the lottery is doing well—better than anticipated after startup of the Tennessee lottery. He said that the Tennessee lottery has had a significant impact in counties adjacent to the Tennessee border but that sales have increased in the rest of Kentucky. He noted that operating expenses have declined over the past five years. He reaffirmed the corporation's position that advertising how lottery proceeds are spent would benefit both the Commonwealth and its citizens. There was also discussion of the impact of expanded gaming on lotteries in other states.

At the final meeting in November, the Committee discussed recommendations adopted by the Governor's Blue Ribbon Task Force on the Merit System. The Personnel Cabinet secretary, who is chair of the task force, gave the presentation. He was assisted by Representative Cherry, who chaired the task force's Employee Relations Subcommittee. The Committee also reviewed the Auditor of Public Accounts' performance audit of Kentucky's administration and management of contracting for service workers. Officials from the Auditor's Office presented the major findings and recommendations of the audit, and representatives of the Finance and Administration Cabinet presented the cabinet's response. The discussion focused on the findings relating to poor or inaccurate contract data on service contracts, unavailability of regular reporting on contracts, and the lack of cost-benefit analysis on the front end of the contracting process to determine whether it would be more cost efficient for the service to be performed by state employees than to be contracted outside of state government.

## **SUBCOMMITTEE ACTIVITY**

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

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held three meetings during the 2005 Interim.

The task force held its first meeting on Tuesday, July 26. The task force was given an update from the executive director of the State Board of Elections regarding the implementation of the Help America Vote Act. Also, the task force had a discussion of prefiled bill BR 123, sponsored by Sen. Seum.

The second meeting was held on Tuesday, September 27. An update from the executive director of the Kentucky Disabilities Coalition was given regarding the implementation of accessibility requirements of the Help America Vote Act.

The Task Force on Elections, Constitutional Amendments, and Intergovernmental Affairs held its third and final meeting of the 2005 Interim on Tuesday, November 15. The task force was given an update from the Secretary of State and the executive director of the State Board of Elections regarding the purchase of voting machines by counties to comply with the Help America Vote Act. The task force also reviewed 31 KAR 4:150, a new administrative regulation that provides tracking of the registration of voters identifying with political organizations, political groups, and voters of independent status. Lastly, the co-chairs of the Advisory Task Force For Development of the Registry's Legislative Package presented their final report to the members. Staff from the Office of the Attorney General briefly presented a dissenting report.

**REPORT OF THE 2005  
INTERIM JOINT COMMITTEE ON TRANSPORTATION**

**Sen. Brent Guthrie, Co-Chair  
Rep. Hubert Collins, Co-Chair**

Sen. Walter Blevins	Rep. Keith Hall
Sen. Charles Borders	Rep. Melvin Henley
Sen. David Boswell	Rep. Jimmie Lee
Sen. Bob Leeper	Rep. Paul Marcotte
Sen. R.J. Palmer	Rep. Charles Meade
Sen. Richard Roeding	Rep. Charles Miller
Sen. Richard Sanders	Rep. Russ Mobley
Sen. Gary Tapp	Rep. Lonnie Napier
Sen. Damon Thayer	Rep. Rick Nelson
Sen. David Williams	Rep. Don Pasley
Sen. Ed Worley	Rep. Marie Rader
Rep. John Arnold	Rep. Rick Rand
Rep. Eddie Ballard	Rep. Ancel Smith
Rep. Carolyn Belcher	Rep. Jim Stewart
Rep. Denver Butler	Rep. Tommy Turner
Rep. Howard Cornett	Rep. John Vincent
Rep. Jim DeCesare	Rep. Michael Weaver
Rep. J.R. Gray	

LRC Staff: John Snyder, Jim Roberts, and Linda Hughes

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## INTERIM JOINT COMMITTEE ON TRANSPORTATION

**JURISDICTION:** Matters relating to airports and aviation; boats and boating; licensing of motor vehicles; operators and trailers; financial responsibility law; nonresident motorists; motor vehicle sales; railroad rates, service and operating regulations; motor carriers; construction and maintenance of the state highway system; the Department of Transportation; state aid for local roads and streets; the state police; the Federal Highway Safety law; turnpike authority; state and federal highways; limited access facilities; use of road bond moneys; automobile recyclers; highway beautification; bridges, tunnels, and ferries; traffic regulations; vehicle equipment and storage; driver training schools.

### COMMITTEE ACTIVITY

The Interim Joint Committee on Transportation met six times during the 2005 Interim.

During the first meeting, June 9, 2005, the committee met at the Cincinnati/Northern Kentucky International Airport to discuss highway needs in northern Kentucky and the role of the Department of Aviation in developing aviation in the Commonwealth.

A spokesperson for the Kenton County Airport Board informed the committee that there were more than 33 foreign manufacturers employing thousands of workers in that area and that last year Kentucky exported more than \$13 billion in goods, creating jobs for 53,000 residents, who contributed over \$56 million in state and local taxes. He said that a recent study set the annual impact of the Cincinnati/Northern Kentucky International Airport at \$4.5 billion dollars. Two-thirds of this impact is derived from the airport being a major hub for Delta Airlines. He also stated that the airport serves more United States nonstop designations than any other city in the country, with the exception of Atlanta and Minneapolis.

A number of local officials discussed northern Kentucky's highway needs. Seventeen projects in the three northern Kentucky counties (Kenton, Boone, and Campbell) that lie within the metropolitan planning organization for the Greater Cincinnati region were discussed: seven in Boone County, and five each in Campbell and Kenton Counties. The committee was told that these were some of the fastest growing counties in Kentucky, with state-generated revenues in these three counties growing at a pace of almost \$20 million a year.

The Department of Aviation commissioner stated that his goal was to make aviation a stronger entity throughout the state. He said there are approximately 120,000 jobs directly attributable to aviation in Kentucky and that there were six important reasons why aviation is important to the state: emergency medical care, organ transplant

operation, tourism, law enforcement, recreation, and enhancement opportunities for industrial recruiting. He noted that all of these reasons were important to the quality of life in Kentucky. He said that not only was Kentucky enhancing current airports for safety and maintenance but also building three new airports: Marion/Crittenden County, Morehead/Rowan County, and Williamsburg/Whitley County.

During the committee's July 5, 2005, meeting, the members heard an update on the Transportation Cabinet's implementation of 2005 legislation. The legislation included unbuildable titles (HB 109), special license plates (HB 134), adoption of the Federal Motor Carrier Safety Improvement Act (HB 133), and access to Hal Rogers Parkway (HB 340). The committee also received information regarding permits and reduction of distances between access points on Kentucky's highways.

With regard to HB 109, Transportation Cabinet officials offered a draft of a special title for vehicles declared to be unbuildable in other states. This title includes a red border on the form and the bold words "MAY NOT BE ELIGIBLE FOR TITLING IN ALL STATES" printed on the form. The form was due to be implemented on August 1, 2005. A plate will also be installed on the inside side of the driver's door stating that the vehicle may not be eligible for titling in all states.

For HB 134, the cabinet informed the committee that presently there are six or seven organizations that have contacted the cabinet stating that they are near to the required 900 license threshold. The committee requested that the cabinet notify it with the names of the organizations that have reached the 900 threshold and also whether or not the cabinet approved the design of their plate.

With regard to HB 133, the cabinet stated that it was aware that September 30, 2005, is the effective date of the Motor Carrier Safety Improvement Act; however, to date, the cabinet had not received 6 of the 19 Act reference manuals from the federal government. Under the new law, school bus drivers must have an S-endorsement license prior to September 30, 2005. To receive the S-endorsement, a driver, including a current driver, must pass a written test. The cabinet official stated that it was the cabinet's goal to have all 13,000 school bus drivers grandfathered into the system prior to the September deadline so these drivers would not have to take road tests.

Under HB 340 (permitting access to the Hal Rogers Parkway), the committee was told that controlled-access highways are necessary for safer roads that can be traveled at higher speeds. The original intent was not to provide access for every person who sought access, but rather to provide a safe and reliable highway system and at the same time provide economic development opportunities in the area. The cabinet has proposed that the minimum spacing distances between accesses on the parkway be 2640 feet (one-half mile). By using 2640 feet spacing on the 55-mile long parkway, there could be up to 240 possible accesses. There are currently 20 accesses on the Hall Rogers Parkway.

At the committee's August 9, 2005, meeting, a teleconferenced meeting for Sen. Leeper, there was an update on final fiscal year 2005 Road Fund revenues and

expenditures, a report on construction efforts in fiscal year 2005, a presentation regarding highway safety issues, and a presentation of a report titled "Analysis of Emergent Motor Vehicle Injury Data and Safety Belt Use in the Barren River ADD."

The committee was told that FY 2005 Road Fund revenues were actually up by \$6.8 million from earlier estimates, resulting in a total of \$28.6 million surplus. The surplus is divided into four areas: Road Fund with \$6.8 million, Highways Administration with \$5.8 million, General Administration and Support with \$2.8 million, and the remaining \$13.2 million surplus for Debt Service. The cabinet has also saved money in the reduction of out-of-state travel, down from \$320,000 in 2001 to \$106,000 in 2005.

The committee was also informed that the average wholesale price of gasoline increased to a level that added 1.1 cents to the variable portion of the gas tax for a total of 12.1 cents. When added to the 5 cents Motor Fuel User Tax and the 1.4 cent Underground Storage Tank Fee, Kentucky's total gasoline tax rate is 18.5 cents. However, if the growth in the tax was not capped by statute at 10 percent annually, the tax rate would have been 21.6 cents.

The FY 2006 quarterly revised net cash balance reflected \$191 million in the first quarter, \$213 million in the second quarter, \$291 million for the third quarter, and \$237 million in the fourth quarter. The way the cabinet determines the cash balance is to take the beginning balance and factor in quarterly receipts, non-Six-Year Highway Plan expenditures, available cash balance for highway projects, and estimated Six-Year Highway Plan expenditures.

The cabinet stated that the status of construction lettings and programs for calendar year 2004 showed that contracts amounting to \$460 million had been let with payments of \$163 million (or 35 percent) paid out: \$62 million in resurfacing, \$7.5 million in state construction, \$312 million in Federal construction, and \$34 million in maintenance. Calendar year 2005 lettings show \$380 million in projects awarded, \$50 million pending from the August 5 letting, and a remaining \$300 to \$350 million anticipated projects to be let. Historically, construction lettings totaled \$460 in FY 2004, \$656 million in 2003, \$694 million in 2002, and \$775 million in 2001.

Transportation Cabinet officials said that Kentucky is guaranteed a spending authority of \$286.4 billion over the next six years with the Federal Transportation Program Reauthorization. This gives Kentucky an average annual federal apportionment of \$632.7 million for FY 2005 to FY 2009, as compared to \$485.5 million under the six years of TEA-21. This is a 30 percent increase in funding levels for Kentucky. There are special earmarked projects consisting of \$350 million over the life of the six-year bill.

Regarding safer highway issues, the cabinet stated it is its mission to reduce fatalities, injuries, and crashes on the roadways. And its vision, through public and private partnerships, is to achieve the most improved and sustainable downward trend in highway fatalities and injuries in the nation. To reach this goal, the cabinet has a number

of projects: Drive Smart signage, blitzes, seatbelt survey and education programs, seatbelt awareness program rollover simulator, impaired driving program such as “ghost out” for teenagers, simulated mock crashes and fatal vision goggles, and guest speakers and information booths at various functions.

A report titled “Analysis of Emergent Motor Vehicle Injury Data and Safety Belt Use in the Barren River ADD” depicted that youths between the ages of 16 and 19 are the most likely not to use seat belts and the ones most likely to be injured in motor vehicle accidents. The report also showed that between 2003 and 2005, of the 332 vehicles observed, 252 children ages 4-5 were either not in or not properly secured in child booster seats, and children ages 6-12 were not correctly restrained in seatbelts. The data indicated that male drivers buckled up 20 percent more than female drivers did, and that crashes most often occur in the 20-29 age group, with the 11-19 age group coming in second. Kentucky ranks fifth in the lowest seatbelt use in the United States. Twenty-one states, four territories, and the District of Columbia have all enacted primary seatbelt legislation. If Kentucky passed a primary seatbelt law, it would expect the average usage to increase by 11 percent, save 62 additional lives, prevent an additional 740 serious injuries, and experience a cost savings of \$148 million.

During the committee’s fourth meeting, held on September 6, 2005, the Transportation Cabinet presented testimony on the cabinet’s Affirmative Action Plan, its fleet management survey of state vehicles, and its efforts to use alternative fuels such as biodiesel, ethanol, and natural gas in the state’s fleet.

The committee was told that the cabinet is working directly with Kentucky State University for its minority recruiting. The administrative scholarship model is based on the current program for engineers, in which the cabinet pays for a student’s education and provides summer employment in exchange for an employment commitment upon graduation. Currently there are no students enrolled in the administrative scholarship program between the Cabinet and the university; however, 20 students are anticipated to be in the program by January 2006. The cabinet’s minority employment rate is 7.18 percent, with women comprising 19.58 percent of the cabinet’s workforce. During the current administration, 7.65 percent of the cabinet’s hires have been minorities and 32.1 percent have been women.

The Transportation Cabinet reported that there are 5,646 passenger vehicles (excluding vehicles owned or operated by state universities, the Kentucky State Police, and vehicles one ton and larger). The survey showed that there were 148 vehicles not under the fleet management program. There were 64 vehicles removed from the inventory and sold, and 287 vehicles identified with various problems such as damaged windshields, bodies, brakes, taillights and/or headlights, and tires. The committee was told that 184 surplus vehicles were sold in April 2005, with another 280 to be sold in September 2005. Currently, vehicle replacements are scheduled when a vehicle reaches 90,000+ miles or five years of service.

With regard to alternative fuels, the cabinet reported that of the 5,189 active vehicles in the state's fleet, 1,130 (21.7 percent) are flexible fuel vehicles (E-85 capable), 39 (0.75 percent) are powered by diesel fuel, 12 (0.23 percent) are hybrids, and none is powered by natural gas. The cabinet began using B-2 diesel in its equipment, and in April, May, and June 2005, it used approximately 500 gallons in District 6. This program expanded to an August usage of 17,000 gallons in four districts and the central office. Pursuant to Executive Order 2005-124, the cabinet stated it is currently preparing an employee education program to educate state employees on alternative fuels and distribution locations in the Commonwealth.

During the committee's October 4, 2005, meeting held in Paintsville, the members reviewed administrative regulation 601 KAR 11:010, Fees relating to commercial driver's licenses. Also at the meeting, the Transportation Cabinet gave a presentation on the Inspector General Report on change orders and the cabinet's efforts to reduce those orders, and major projects scheduled for letting in the Big Sandy Area Development District during the next 12 months. The committee also heard testimony from local officials as to their highway needs and concerns. The committee raised no objections to 601 KAR 11:010.

The Transportation Cabinet stated that a review of the change order process to increase efficiency and oversight led to the following recommendations: the commissioner of highways approve all change orders; advance approval is needed for work to be done; both the construction and design divisions must agree the change order is needed; improvement of the engineer's estimate for bid lettings; and implementation of the TRANSPORT site manager computer program. All change orders of more than \$100,000 must receive advance approval. The full implementation of a TRANSPORT site manager is expected by May 2007. In recent years, the percent of total contract modifications amounted to 11.28 percent of total contract dollars in FY 2003, 23.35 percent in FY 2004, 8.04 percent in FY 2005, and 5.20 percent in FY 2006 to date. These contract modifications include construction, resurfacing, mowing, striping, and other contract maintenance activities.

The next item on the committee's agenda was a presentation of major projects scheduled for letting in the Big Sandy Area Development District during the upcoming 12 months. Statewide projects costing \$521 million have been awarded year to date, with \$50 million due to be let in the September letting. The remaining 2005 lettings were anticipated to be between \$160 and \$210 million with a total target for 2005 in the neighborhood of \$730 to \$780 million. With regard to the local area, the committee was briefed on the following projects: \$379,000 in federal funds were used to pave the existing mile-long gravel road into Butcher Hollow, the childhood home of country music star Loretta Lynn; a project in Floyd County to improve the access to Jenny Wiley State Park and Dewey Lake Road; and a number of land slide repairs and resurfacing projects that were in the September 6 and 23 lettings. Projects in those two lettings included projects in Johnson, Pike, Martin, and Floyd Counties. Two bond projects are scheduled on the cabinet's October 21 letting: reconstruction on KY 40 on Buck Creek Hill, a \$2 million project in Martin County; and a \$5.2 million new bridge over the

Louisa Fork River outside Paintsville in Johnson County. Two large projects in Pike County, each estimated to cost \$30 million, will be paid for with Appalachian Highway Program Funds: two additional sections of US 460 and a curve revision on KY 319. Also in Pike County there are some scheduled bridge repairs and replacements on County Road 1823 at Peters Creek. Two bridge replacements are scheduled in Magoffin County on US 460 for \$1.5 million in the December letting; and in Johnson County on Greasy Creek on KY 2040 for \$1.1 million in the cabinet's January letting.

The consensus of local officials testifying before the committee was that the most important concern was to four-lane the Mountain Parkway from Campton to Prestonsburg; followed by an upgrade and extension of US 645 to US 23; the completion of KY 680, the connector between Minny, McDowell, and Herald in Floyd County; maintaining Route 460 coming out of West Liberty in Morgan County into Johnson County; maintaining Route 460 going toward West Liberty out of Salyersville; and resurfacing the new Route 460 that joins up to the Mountain Parkway.

The committee's last meeting during the 2005 Interim was held on November 1, 2005. At this meeting, the Transportation Cabinet reported on the final implementation of 2004 HB 29, electronic reporting of auto insurance; the new Federal REAL ID Act of 2005; and the cabinet's 2006 legislative agenda.

- The cabinet informed the members that overall the HB 29 legislation project is on track to be fully implemented by April 2006. It was the strategy of the Transportation Cabinet to have in place by December 12, 2005, a fully implemented public relations campaign; to have in place by January 1, 2006, all computer programming in place; and by April 1, 2006, begin the process of sending out notice's to registered vehicle owners who have not maintained their insurance. Beginning January 1, 2006, all insurance companies are required to supply the state with a list of individuals and vehicles to which they issue policies.
- The cabinet said that under the REAL ID Act, all states must have their driver's license or identification (ID) system certified by the Department of Homeland Security by May 11, 2008. After this date, persons who do not have a federally sanctioned driver's license or ID will not be permitted to use that state's cards to enter into commercial airports, Social Security offices, or any federal court buildings.
- Under the REAL ID Act the state must ensure the physical security of the location where driver's licenses and IDs are produced and the security of documentation materials and papers from which they are produced. Also, employees authorized to produce driver's licenses or IDs are required to receive security clearance and go through specialized training such as fraudulent document recognition. States much adhere to these mandates without any federal financing.
- The committee was told that Kentucky and New Hampshire will share in a \$6 million grant that was awarded through U.S. Homeland Security to pilot the REAL ID project. Kentucky and New Hampshire have been recognized as forerunners in their security efforts since Sept. 11, 2001; and while there is no financing for the mandates, Kentucky will receive grant money to assist in its pilot efforts.

- The last item on the committee's November agenda was the Transportation Cabinet's 2006 legislative agenda. The members were told that one of the legislative priorities was graduated driver's license legislation. By creating an intermediate period of 6 months for teen drivers between the learner's permit and full license, the teen gains driving experience while conditions known to be risky are limited, such as night-time driving and driving with numerous teen passengers and the accompanying distractions. Under this system, if free of violation, a teen can receive a full license at age 17. The cabinet does not anticipate any fiscal impact with the graduated driver's license proposal.
- Another legislative priority is quick clearance for interstates and parkways, which is the practice of rapidly and safely removing temporary obstructions from the state's roadways. Four main elements make up quick clearance laws: 1) driver stop law - when in an accident, drivers must stop their cars without obstructing traffic as much as possible; 2) driver removal law - in an accident with nonserious or no injuries, drivers must move their cars to the side of the road; 3) authority removal law - the incident commander or surrogate authority at the accident scene can order the removal of vehicles to a safer place, even if the driver objects; and 4) authority tow law - this is the same as authority removal except that it emphasizes removal to a legal parking area or safe refuge. The cabinet anticipates a cost to the cabinet of between \$100,000 and \$200,000 for signage programs. A similar cost as was incurred with signage directing motorists to yield and pull into the passing lane when encountering emergency vehicles on the roadside.
- The third priority was a Kentucky Reused Statutes Cleanup. The Kentucky Transportation Center reviewed relevant Kentucky Administrative Regulations and Kentucky Revised Statutes that are inconsistent, incomplete, and/or out of date with the goal of making them more understandable and consistent with each other, the Uniform Vehicle Code, and the Manual on Uniform Traffic Control Devices. There are no costs associated with this priority.

**REPORT OF THE 2005  
BLUE RIBBON PANEL ON PUBLIC EMPLOYEE HEALTH BENEFITS**

**Sen. Tom Buford, Co-Chair  
Rep. Harry Moberly, Jr., Co-Chair**

Sen. Julie Denton  
Sen. Daniel Mongiardo  
Rep. Bob M. DeWeese  
Rep. Jimmie Lee  
Bob Arnold  
Jerry Bailey  
Carol Carman  
Brad Collins  
Victor Cooper  
Shawn Crouch  
Lee Guice  
William Hanes  
Gary Harbin  
Cheryl Hayes  
Lee Jackson

J. D. Jones  
Arletta Kennedy  
Susan Lehmann  
Thomas Loving  
Milton Mains  
Michael Mayo  
Brent McKim  
Wanda Mitchell-Smith  
Richard Remmers  
Erwin Roberts  
Jim Sproul  
Jude Thomspson  
Nancy Toombs  
Nancye Vincent  
J.P. Wiles

LRC Staff: Mark Roberts, Greg Freedman, Rhonda Franklin, Betsy Johnson, Alisha Miller, Karen Powell, Frank Willey, Joyce Crofts, Kristin Burton, Jamie Griffin, Terisa Roland, Marlene Rutherford, and Peggy Sciantarelli

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **SUBCOMMITTEE ORGANIZATION AND MEMBERSHIP**

### **Benefits Subcommittee**

#### **Rep. Jimmie Lee, Chair**

Jerry Bailey  
Victor Cooper  
Shawn Crouch  
Lee Guice  
Cheryl Hayes

Brent McKim  
Richard Remmers  
Jude Thompson  
Nancy Toombs

### **Governance Subcommittee**

#### **Sen. Julie Denton, Chair**

Lee Jackson  
J.D. Jones

Susan Lehmann  
Thomas Loving

### **Group Makeup Subcommittee**

#### **Erwin Roberts, Co-Chair Arletta Kennedy, Co-Chair**

Bob Arnold  
Brad Collins

William Hanes  
Gary Harbin

### **Technology Subcommittee**

#### **Sen. Daniel Mongiardo, Chair**

Carol Carman  
Michael Mayo

Jim Sproul

### **Wellness Subcommittee**

#### **Rep. Bob M. DeWeese, Chair**

Milton Mains  
Wanda Mitchell-Smith

Nancye Vincent  
J.P. Wiles

Sen. Tom Buford, ex officio  
Rep. Harry Moberly, Jr., ex officio

## **BLUE RIBBON PANEL ON PUBLIC EMPLOYEE HEALTH BENEFITS**

**JURISDICTION:** House Bill 1, enacted in the 2004 Extraordinary Session, directed the Speaker of the House and the President of the Senate to establish the Blue Ribbon Panel on Public Employee Health Benefits, a 32-member legislative branch task force, for the purpose of examining all aspects of health benefits available to public employees, including the procurement process; benefits offered; plan membership; implementation, maintenance, and administration of the plan; alternative methods of providing benefits and services; and any other issues related to public employee health benefits that the panel determines to be relevant. The legislation specified that the panel make recommendations and propose legislation as necessary; submit a written report and proposed legislation to the Legislative Research Commission, the Governor, and the Chief Justice of the Supreme Court; and present the report and proposed legislation to the Interim Joint Committees on Appropriations and Revenue and State Government during the 2005 Interim.

### **PANEL ACTIVITY**

The Blue Ribbon Panel on Public Employee Health Benefits met four times between April and July 2005. The initial meeting of the panel was held on April 27, 2005, at the Kentucky History Center. The undersecretary for Health in the Cabinet for Health and Family Services and the commissioner of the Personnel Cabinet's Department for Employee Insurance gave presentations on the history and current status of the Public Employee Health Insurance Program.

The Blue Ribbon Panel met for the second time on May 24 and 25, 2005. On the first day, representatives of the Cabinet for Health and Family Services and the Personnel Cabinet made a presentation concerning the 2006 request for proposals for a third-party administrator. The panel reviewed the timeline for the procurement, as well as the key components and evaluating factors in the request for proposals. There were also discussions concerning a separate contract for a pharmacy benefits administrator and health savings accounts.

The secretary of the Personnel Cabinet gave an overview of the October 2004 Annual Report of the Kentucky Group Health Insurance Board. The report summarized the experience of the Public Employee Health Insurance Program for 2003 and provided board recommendations and commentary, as well as a summary of legislated health insurance benefits.

Staff from the Kentucky Long-Term Policy Research Center presented information titled "Trends in Health Care and Benefits and Possible Strategies for Improving Quality of Care." This presentation included information on the impact of health care costs on state budgets, factors driving health care costs upward, higher-than-

average Kentucky health expenditures, and how the rising expectation of lower out-of-pocket expenses and unfettered choice impacts benefits costs.

On the second day of the meeting, the panel split into discussion groups to consider individually assigned topics and plan for future subcommittee meetings.

After the second meeting of the full Blue Ribbon Panel, the Legislative Research Commission approved the creation of subcommittees of the panel to cover the topic areas specified in House Bill 1. The panel was divided into the benefits, governance, group makeup, technology, and wellness subcommittees. The subcommittees met throughout June and July and reported their recommendations to the full panel on July 13, 2005. The Blue Ribbon Panel held its last meeting on July 19, 2005, and voted on the recommendations submitted by each subcommittee.

## **SUBCOMMITTEE ACTIVITY**

### **Benefits Subcommittee**

The Benefits Subcommittee held four meetings, three in Frankfort and one in Louisville. The subcommittee met on May 25, June 15, July 8, and July 12, 2005. The subcommittee heard testimony from representatives of PricewaterhouseCoopers; a consulting actuary for the House of Representatives; the Department for Employee Insurance in the Personnel Cabinet; the Cabinet for Health and Family Services; the Kentucky Education Association; and the Jefferson County School System. The topics discussed included current Kentucky public employee health benefits, cost trends, employee and employer cost-sharing strategies, cost management programs, health management programs, prescription drug use by Kentucky public employees, consumer-driven health plans, calendar year or fiscal year plan configuration, employee and employer contribution levels, state contribution for persons who waive coverage of the health insurance plan, evaluation of the drug formulary, utilization review, public reporting of state health insurance plan activity, creation and use of self-insurance premium pool funds, and coverage for dependents eligible for Medicare.

### **Governance Subcommittee**

The Governance Subcommittee met on June 22 and July 12 prior to reporting its recommendations to the full panel. The subcommittee heard presentations from representatives from the Personnel Cabinet's Department for Employee Insurance, Cabinet for Health and Family Services, the Department of Education, and the Kentucky Education Association. Discussion was held on the effect on the Department of Education and local school districts of changing the plan year to a fiscal year. An overview of the public employee health insurance program's pharmacy and therapeutics committee was presented.

### **Group Makeup Subcommittee**

The Group Makeup Subcommittee met on June 22 and July 12. The subcommittee heard presentations from the Personnel Cabinet and the Cabinet for Health and Family Services concerning plan composition. Representatives of the Kentucky Retirement System presented a detailed description of the various aspects related to the “unescorted retiree” issue. The Kentucky Teachers’ Retirement System delivered a position paper on near- and long-term issues the system felt should be considered by the subcommittee. Representatives of the Kentucky Foster/Adoptive Care Association addressed the subcommittee regarding obtaining coverage under the state insurance plan. At the final meeting, the subcommittee agreed on a set of issues that would be presented to the full panel for consideration.

### **Technology Subcommittee**

The Technology Subcommittee met twice. At its initial meeting on May 24, the subcommittee discussed general information provided by staff and decided to focus on technology and medical malpractice.

At the June 16 meeting, the chief information officer and the executive officer for Health in the Cabinet for Health and Family Services gave an update on the implementation of 2005 SB 2, the bill that established the e-Health Network. A University of Kentucky physician presented information on ways in which incentives could be used to encourage doctors to adopt technology in their practices. Representatives of the Kentucky Medical Association discussed provider technology incentives and presented information relating to medical malpractice issues. The former chief of staff of the Lexington Veteran’s Affairs Medical Center, Leestown Division, explained how the “Sorry Works!” program was developed and how it can be used to lower medical malpractice costs. A medical malpractice attorney with 35 years of experience offered his views on ways in which medical malpractice costs could be lowered. Representatives of the Kentucky Association of Trial Attorneys and the Medical Protective Insurance Company contributed ideas for resolving the medical malpractice “crisis” in Kentucky. Finally, a representative of Kentucky Watch, a consumer advocacy group, discussed how some of the proposed solutions to stem the cost of medical malpractice might affect consumers. He also asked questions that the subcommittee might consider in its deliberations. Following the presentations, the subcommittee developed recommendations to present to the full Blue Ribbon Panel.

### **Wellness Subcommittee**

The Wellness Subcommittee met in Frankfort on May 25, June 21, June 28, and July 12. The subcommittee heard testimony from representatives of Passport Health Plan, Anthem Blue Cross/Blue Shield, University of Kentucky, Kentucky Department for Employee Health Insurance, Wellness, Inc., Bluegrass Family Health, United Healthcare, and the Louisville Metro Health Department. The topics discussed were wellness and

disease management capabilities, the 2006 request for proposals and future changes, and the use of incentives and motivational techniques in wellness programs.

**REPORT OF THE  
TASK FORCE ON LOCAL TAXATION  
Established by 2005 HB 272**

**Sen. Damon Thayer, Co-Chair  
Rep. Charlie Hoffman Co-Chair**

Sen. Denise Harper Angel  
Sen. Ernie Harris  
Rep. Steve Riggs  
Rep. Arnold Simpson  
Secretary Gene Strong  
Commissioner Ellen Williams  
Mayor Glenn Caldwell  
Judge R.T. (Tucker) Daniel  
Mayor Tom Guidugli

Judge Larry Whitaker  
Steve Hoskins  
Vince Lange  
Gary Larimore  
Kevin Leonard  
Bert May  
Willie McElroy  
Richard Tanner  
Bill Thielen

LRC Staff: Pam Thomas, Jamie Franklin, Mike Clark, Donna Gaines, Mark Mitchell,  
Joe Pinczewski-Lee, Barry Boardman, John Scott, Charlotte Quarles, and  
Sheri Mahan

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
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## TASK FORCE ON LOCAL TAXATION

**JURISDICTION:** The 18-member task force is charged with the following responsibilities: review the current structure of local taxation, including: the constitutional requirements regarding local taxation; current taxes imposed by local governments including the rates and tax base; the local tax burden in various Kentucky cities and counties; revenues generated by type of tax, including all permissible local taxes; and existing economic development incentives available to local governments and how effectively those incentives are used by local governments.” The task force is required to report written recommendations and any proposed legislation to the Interim Joint Committees on Appropriations and Revenue and Local Government no later than November 1, 2005.<sup>1</sup> The report and recommendations must address the following areas: the identification of any constitutional impediments to the development of a modern local tax system and proposed constitutional amendments to address any identified issues related to existing constitutional language; an analysis of the existing tax structure, including identification of the taxes that are effective and those that are ineffective; the identification and recommendation of alternative methods for generating a comparable amount of local revenue, including the imposition of a local sales tax; and an analysis of the existing economic development incentive programs available to local governments and a recommendation of alternative methods for promoting capital investment and job creation on the local level.

### TASK FORCE ACTIVITY

During the 2005 Interim, the Task Force on Local Taxation held three meetings.

The first meeting was held on September 23, 2005. Task force members reviewed the legislative charge to the task force and discussed background documents prepared for the task force by Legislative Research Commission (LRC) staff.

The second meeting was held on November 4, 2005. The task force heard testimony from an LRC staff economist and staff from the University of Kentucky's Martin School of Public Policy and Administration about the elements of a good tax system and how Kentucky's current local tax system compares to those of other states. The task force also reviewed the results of member surveys submitted during the first task force meeting.

The third meeting was held on December 2, 2005. The task force heard testimony from LRC staff about unfunded mandates on local governments. The task force also heard testimony from the Department of Revenue about the history of House Bill 44. Finally, the task force heard testimony from a professor of Economics from the University of Louisville about local tax structures and how they impact Kentucky's economic competitiveness.

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<sup>1</sup> The reporting deadline was extended by the Legislative Research Commission to July 1, 2006.

**REPORT OF THE 2005  
KENTUCKY BROADBAND TASK FORCE**

**Sen. Ernie Harris, Co-Chair  
Rep. Charles Hoffman, Co-Chair**

Sen. David E. Boswell, Sr.  
Sen. Tom Jensen  
Rep. W. Keith Hall  
Rep. Marie L. Rader  
LaJuana S. Wilcher  
Christopher L. Lilly  
W. Gregory Coker  
James Welch  
Andrew V. McNeill  
Daniel Logsdon

Tony Taylor  
Mark Romito  
William Magruder  
Darrell Maynard  
Charles Watkins  
Lizabeth Thacker  
Libby Marshall  
Patsy Judd  
Bradley Tracy

LRC Staff: William Bowker, D. Todd Littlefield, and Rhonda Schierer

**PRESENTED TO THE  
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AND THE  
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## KENTUCKY BROADBAND TASK FORCE

**JURISDICTION:** Under 04 HB 627, the Kentucky Broadband Task Force was created to “examine the deployment of broadband in the Commonwealth including, but not limited to, the following aspects of provisioning broadband service: regulation, cost, access to facilities, and market competition.” House Bill 267 of the 2005 Regular Session required that the task force provide an interim report no later than November 15, 2005, and a final report no later than November 15, 2006. Broadband is defined in 04 HB 627 and codified at KRS 278.5461(1) as “any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per second in at least one direction; or any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services.” Broadband is often referred to as “high speed Internet access.”

### TASK FORCE ACTIVITY

The task force met three times during the 2005 Interim, twice in Frankfort and once in Lexington, in conjunction with the 9<sup>th</sup> Annual Rural Telecon Conference. At the first meeting, the Kentucky Public Service Commission reported on the status of broadband regulation in Kentucky. An official of the Federal Communications Commission (FCC) reported on the status of federal regulation of broadband and on imminent rulings of the U.S. Supreme Court and the FCC that were expected to determine whether or not providers of broadband via cable modem and traditional telephone companies would be required to lease their facilities to competitors. An official of ConnectKentucky, the public/private entity charged by Governor Ernie Fletcher to achieve his goal of 100 percent broadband accessibility by 2007, provided the baseline and trend data showing the extent of broadband deployment in Kentucky and described ConnectKentucky’s programs for mapping broadband deployment and for working with local leaders to assess and increase the awareness of the benefits of broadband service and, consequently, increase the demand for broadband service.

ConnectKentucky reported that, as of mid-2005, about 75 percent of Kentucky households were able to subscribe to broadband service. This compared to about 60 percent two years earlier. The 25 percent that did not have access to broadband service is largely located in the more rural areas of the Commonwealth. In Kentucky, 25 percent of all households have subscribed to broadband service. This compares to 30 percent nationwide and ranks Kentucky 43<sup>rd</sup> among the states.

At the second meeting of the task force, members discussed the implications for competition among broadband technologies and providers of the U.S. Supreme Court ruling in the so-called Brand X Case. In the June 27, 2005, ruling, the court deferred to a 2002 ruling of the FCC that cable modem service is an information service and, as such, is not required to provide access to the Internet to competitors.

At the third meeting of the task force, held in Lexington in conjunction with the 9<sup>th</sup> Annual Rural Telecon Conference, officials of ConnectKentucky discussed the August 5, 2005, FCC decision that extended the Brand X ruling to wireline, or Digital Subscriber Line, broadband service. The FCC ruled that, after a one-year transition period, telephone companies would no longer be required to provide access to the Internet for competitors at discounted tariffed rates. The FCC stated that its intention was to develop a consistent regulatory framework across broadband platforms and to remove regulation that it considered detrimental to broadband deployment.

ConnectKentucky outlined financial and other incentives that it was considering proposing for legislative action in 2006. Connect Kentucky stated that these were intended to encourage companies to provide service, especially in areas that otherwise would not be considered economical to serve, and to create demand for broadband service. These incentives are listed below:

- A. Financial incentives for any willing provider to decrease the cost of investment in unserved areas;
  - Tax incentives based on Mississippi and South Carolina provision of income tax or sales tax incentives;
  - Revolving loan pool through the Kentucky Infrastructure Authority (KIA);
- B. A fund, similar to the KIA structure, to offset cost of satellite service installation;
- C. Opening rights of way for infrastructure expansion; and
- D. Deregulation of the telecommunications industry (coupled with contract stability in rural areas).

ConnectKentucky explained in reference to item C that infrastructure such as cell towers and water towers can be a part of helping to improve the business case for an investment. ConnectKentucky explained in reference to item B that satellite may be the most effective way to extend access to the final 10 percent of customers not having access. The state might wish to give providers an incentive of half of the \$400 to \$800 cost of installation with the satellite service provider matching the other half of the cost. This incentive would eliminate all of the installation cost to the consumer.

The task force submitted its interim report to Governor Fletcher and the Legislative Research Commission on November 15, 2005. The interim report described the current status of broadband deployment and adoption in Kentucky and the factors, identified in 04 HB 627, that affect deployment and adoption. These factors, which include regulation, cost, access to facilities, and market competition, affect various segments of the membership of the task force in specific ways. The task force, as a whole, made no recommendations in the interim report.



**REPORT OF THE 2005  
SCHOOL CALENDARS AND THE TOURISM INDUSTRY  
TASK FORCE**

**Sen. Ken Winters, Co-Chair  
Rep. J.R. Gray, Co-Chair**

Sen. Alice Kerr	Randy Fiveash
Sen. Tim Shaughnessy	Ray Gillespie
Rep. Mary Harper	Brian Humphrey
Rep. Frank Rasche	Brenda Jackson
Terry Brown	Kyna Koch
Tom Caradonio	Kay McCollum
Michael Casteel	Sharron Oxendine
Sherry Crose	George Ward
Brian Dale	David Webb
Gay Dwyer	Patty Young

LRC Staff: Louis Pierce, Janet Stevens, and Dawn Johnson

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
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2006 REGULAR SESSION OF THE  
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## **SCHOOL CALENDARS AND THE TOURISM INDUSTRY TASK FORCE**

**JURISDICTION:** The Legislative Research Commission shall establish a task force to examine the effect of school calendars on Kentucky's tourism industry and the potential effect that changes in school calendars may have on Kentucky's educational system.

### **TASK FORCE ACTIVITY**

During the 2005 Interim, the School Calendars and the Tourism Industry Task Force met one time.

On November 8, 2005, the task force met in Frankfort to discuss the effect of school calendars on Kentucky's tourism industry and the potential effect of any changes on Kentucky's educational system. Co-Chair Gray explained that the task force was created due to concerns expressed about the decreasing length of the tourism season caused by schools going into session earlier, which is impacting tourism-related businesses. He said it was also important to keep in mind the needs and responsibilities of the education community.

A task force member said that, as a marina owner for more than 25 years, he has noticed a steady decline in business during the latter part of the tourist season, which normally runs from Memorial Day to Labor Day. He said schools are starting earlier in August affecting both the part-time workforce, who are mostly school age, and the number of families vacationing. He said tourism-related business owners would like to open dialogue with the legislature and the education community to discuss the problem and find a solution without negatively affecting students or the educational system.

He said tourism-related businesses were not asking that schools should not open between Memorial Day and Labor Day, or that there should be a reduced number of school days. He suggested starting classes after Labor Day and having "float days" during times the weather was not as conducive to vacations, such as late May and early June versus August, the warmest month of the year.

A task force member with the Kentucky Association of School Administrators explained the school calendar process. He said Kentucky requires 1,050 instructional hours in a school year. September through May there are 195 working days, and schools are required to set their calendar with 185 days: 175 instructional days, 4 holidays, 4 professional development days, and an opening and closing day. He noted that this does not allow much leeway in setting school calendars.

A task force member with the Department of Education said there are 176 school calendars, and they are most likely all different. She said calendars are a local decision.

Approval at the state level is only to ensure there are 185 calendar days and 1,050 instructional hours. She said school districts try not to be in session in June because many teachers use summer for extended learning—either professional development activities or postsecondary education. She said that the average school day is roughly 6 hours, with beginning and ending times varying per school.

Co-Chair Winters said 29 districts in Kentucky have year-round calendars. He said the universities had to adjust summer scheduling to accommodate teachers. In 2004-05, 65 districts started the first week of August, 69 districts started the second week, and all had started before August 23.

A member of the task force with Cave City Tourism said that in the last 10 years, annual visitation to the area's main attraction, Mammoth Cave National Park, fell from 2.5 million to 1.8 million and cave tours dropped from 571,000 to 350,000. He said each year, the park loses part of its workforce early. He said that of the top states for park attendance—Michigan, Indiana, Ohio, Illinois and Tennessee—most do not go into session until near Labor Day. He said even though the park advertises year-round attractions, it has had to reduce hours and close some attractions early, disappointing park attendees. Other states have the same problem. He said North Carolina suffered a \$70 million economic loss in tourism recently.

A task force member with the Commerce Cabinet's Department of Parks said the department lost 200 of its 1,200 seasonal employees the first week of August. He said people from other states visit the parks and find attractions closed, such as public swimming pools, due to lack of workforce. He said the 11 parks that have swimming pools lose 15 to 25 days of business due to lack of lifeguards.

Sen. Shaughnessy asked why schools were starting earlier each year. Marshall County director of pupil personnel replied that most college courses for extended training of teachers begin around June 1 and end around August 1. Sen. Shaughnessy said that previously when schools had significant days lost due to snow the legislature granted an exemption. Noting the increase in fuel and heating expenses, he suggested that perhaps the school day should be extended.

Rep. Rasche said two reasons schools start earlier are the desire to end the fall semester before Christmas and the introduction of the fall break.

A task force member said that as a teacher it was important to have students in class as many days as possible for both semesters before testing began. She said that teachers are under pressure with the current testing system to achieve, therefore, breaks in the school calendar allow students and teachers a break from rigorous days in class. She said it is important to consider if a longer day is more beneficial to students as opposed to having more days. She said teachers also have to constantly reassess methods of instruction. She recommended inviting representatives from state universities regarding alternative class scheduling for teachers during the summer.

A representative with the Kentucky Tourism Council clarified that the tourism industry is not asking for a Labor Day to Memorial Day calendar. She said the council is willing to give up parts of June for more time in August when temperatures are warmer.

Co-Chair Winters added that the Business Forum on Education Report recommended lengthening the school year up to 10 days, which will probably be an issue during the 2006 General Assembly.

The director of Member Support Services with the Kentucky School Board Association explained that school calendars are created by a committee of teachers, school board members, and parents who painstakingly work to ensure there are enough instructional days before testing.

Co-Chair Gray said that as the sponsor of HCR 55 it was not his intention or the General Assembly's intention to cause harm to the educational system. He said the idea behind the resolution was to create dialog between educators and the tourism community on the issue.

Task force member and the Kentucky commissioner of Tourism said that multiple states have the same problem and suggested looking toward other states that have made changes to school calendars to review the reasons and the process. He said tourism staff would be on hand to help if needed.

A task force member with the School Board Association said she was speaking as a school board member when stating that calendars were mostly based on parental input.

The task force was scheduled to meet November 29 in London and December 5 at Kentucky Dam Village to continue discussion and hear testimony on the impact of school calendars on the tourism industry in order to submit a report to the Legislative Research Commission by December 15.

**REPORT OF THE 2005  
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**Sen. Richard “Dick” Roeding, Co-Chair  
Rep. Tanya G. Pullin, Co-Chair**

Sen. Alice Kerr  
Sen. Joey Pendleton  
Sen. Gary Tapp

Rep. James E. Bruce  
Rep. Jimmie Lee  
Rep. Jon David Reinhardt

LRC Staff: Emily Caudill, Dave Nicholas, Donna Little, Sarah Amburgey, Karen Howard, Laura Milam, Emily Harkenrider, Roslyn Hendrickson, and Ellen Steinberg

**PRESENTED TO THE  
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## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

**JURISDICTION:** Review and comment upon administrative regulations submitted to it by the Legislative Research Commission; make nonbinding determinations concerning the statutory authority to promulgate administrative regulations filed with the Legislative Research Commission; review existing administrative regulations; recommend the amendment, repeal, or enactment of statutes relating to administrative regulations; conduct a continuous study of the administrative regulations procedure and the needs of administrative bodies; study statutes relating to administrative hearings; make legislative recommendations.

### SUBCOMMITTEE ACTIVITY

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

During the period January 2005 through November 2005, executive branch agencies filed 78 emergency administrative regulations and 470 ordinary administrative regulations. Of the ordinary administrative regulations filed, 95 were new, 328 were amendments to existing administrative regulations, and 47 were amended after comments. The Administrative Regulation Review Subcommittee reviewed all of the ordinary administrative regulations that were not withdrawn or expired prior to the date of its monthly subcommittee meeting, in accordance with the provisions of KRS Chapter 13A. Of those administrative regulations reviewed, 2 were found deficient (and amended to conform with KRS Chapter 13A), 268 were amended to conform with KRS Chapter 13A and other appropriate statutes, and 73 were approved as submitted by the agency. Additionally, 7 administrative regulations expired and a total of 23 administrative regulations were withdrawn by the agency during this period. One additional administrative regulation was withdrawn after the subcommittee reviewed it. (The total does not include the 97 ordinary administrative regulations scheduled for review during the subcommittee's December 2005 or January 2006 meetings.)

In March, April, September, and November, the subcommittee staff and the regulations compiler conducted six training sessions for representatives of several executive branch agencies, including the Finance and Administration Cabinet, the Justice and Public Safety Cabinet, the Environmental and Public Protection Cabinet, the Cabinet

for Health and Family Services, the Commerce Cabinet, and the Education Cabinet. The two- to three-hour training sessions focused on the administrative regulations process and the requirements for drafting and formatting administrative regulations. Approximately 250 representatives of those agencies participated in this training.

Additionally, a subcommittee staff member presented a one-hour Continuing Legal Education program to the State Government Bar Association in May and again as part of the Legislative Research Commission's continuing legal education program in June. That program focused on the changes to the administrative regulation process (KRS Chapter 13A) following the enactment of Senate Bill 123 in the 2005 Regular Session of the Kentucky General Assembly. Subcommittee staff are currently working with the University of Kentucky Continuing Legal Education Department to update its publication regarding administrative agency rule making in Kentucky. That final product is scheduled to be published in early 2006.

In August 2005, the Legislative Research Commission published the Administrative Regulations Service of Kentucky, which contains administrative regulations in effect as of July 15 of each year.



**REPORT OF THE 2005  
CAPITAL PLANNING ADVISORY BOARD**

**Sen. Jack Westwood, Co-Chair**  
**Rep. Perry B. Clark, Co-Chair**

Sen. David Boswell  
Rep. Ron Crimm  
Bradford Cowgill  
James Deckard  
Ben S. Fletcher III  
Paul Gannoe  
William H. Hintze, Jr.

William H. May III  
Jason M. Nemes  
Norma Northern  
Laurel True  
Garlan Vanhook  
Judge William Wehr  
Melinda Wheeler

LRC Staff: Pat Ingram, Mary Lynn Collins, Nancy Osborne, and Debbie Rodgers

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## CAPITAL PLANNING ADVISORY BOARD

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

### BOARD ACTIVITY

Since adjournment of the 2005 Regular Session, the Capital Planning Advisory Board has held five meetings.

On July 12 and 13, 2005, the board convened at the Council on Postsecondary Education in Frankfort to review the agency capital plans that had been submitted on April 15. (Instructions for the agencies to use in submitting their plans had been approved by the board at a December 2004 meeting.) Presentations on the plans were made by representatives of the various state agencies and postsecondary institutions.

The agenda also included the presentation of reports from the Council on Postsecondary Education regarding projects and capital issues related to the postsecondary institutions and from the Commonwealth Office of Technology regarding information technology projects submitted in the agency plans and related issues.

On August 11, 2005, the board concluded its review of the agency capital plans. The meeting focused on the plans submitted by agencies that administer grant and loan programs authorized in the capital budgets, and the plan submitted by the judicial branch. On August 26, 2005, the board received a staff report on the status of Kentucky's bonded indebtedness. At this meeting, the board also began developing recommendations to be included in the *2006-2012 Statewide Capital Improvements Plan*.

On September 23, 2005, the board continued its work on recommendations for the *2006-2012 Statewide Capital Improvements Plan*. Additionally, the Finance and Administration Cabinet presented a report on the use of Energy Savings Performance Contracts to finance capital improvements, which result in energy savings for state facilities.

On October 21, 2005, the board gave final approval to the *2006-2012 Statewide Capital Improvements Plan* for submission to the heads of the three branches of government. That report includes both policy recommendations on various capital-

related issues and specific project recommendations. The policy recommendations address the following:

- Financing Major Capital Renewal and Maintenance
- Funding Agency Maintenance Pools
- Implementing the Real Properties/Facilities Management Database
- Managing State Information Technology Operations and Services
- Providing Alternatives to Incarceration
- Raising the Planning (and Budgeting) Thresholds for Capital Projects
- Raising the Force Account Limit for Postsecondary Institutions
- Replenishing the Budget Reserve Trust Fund
- Studying Kentucky's Debt Policies and Practices

The project recommendations address two categories of capital projects as follows:

- Projects To Be Financed From State Funds
- Projects To Be Financed From Other than State Funds



**REPORT OF THE 2005  
CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE**

**Sen. Elizabeth Tori, Co-Chair  
Rep. Mike Denham, Co-Chair**

Sen. Tom Buford  
Sen. Jerry P. Rhoads  
Sen. Dan Seum

Rep. Robert R. Damron  
Rep. Paul H. Marcotte  
Rep. Jim Wayne

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

**PRESENTED TO THE  
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2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

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

**JURISDICTION:** The committee is a permanent subcommittee of the Legislative Research Commission and is charged with overseeing 1) the expenditure of funds budgeted for capital projects; 2) the allotment of funds from the Emergency Repair, Maintenance, and Replacement Account and the Capital Construction and Equipment Purchase Contingency Account; 3) the state's acquisition of capital assets, including the lease of real property; 4) the issuance of bonds by the Commonwealth and related individual projects; and 5) the issuance of bonds by or on behalf of local school districts.

### **COMMITTEE ACTIVITY**

As a statutory committee, the Capital Projects and Bond Oversight Committee meets monthly, even when the General Assembly is in session. This report covers committee activity between November 1, 2004, and October 31, 2005. During this period, the committee met 12 times. Eleven of the committee's meetings were held in Frankfort in the Capitol Annex. In October 2005, the committee held its meeting in Maysville at the Maysville Community and Technical College. During this meeting, the committee received a briefing by the president of the Kentucky Community and Technical College System and the president of Maysville Community and Technical College on various authorized and proposed capital projects. In addition, the committee toured the Maysville College campus and the new Mason County Intermediate School.

The committee continued efforts begun last reporting period to assure auditing of leases procured by the postsecondary education institutions. In December 2004, the Council on Postsecondary Education's vice president for Finance reported that the postsecondary institutions had agreed to include lease compliance review in their annual external audits beginning in fiscal year 2006. (Audit contracts had already been executed for the fiscal year 2005.)

The committee received reports of construction issues associated with two Justice and Public Safety Cabinet facilities: the Little Sandy Correctional Complex in Elliott County and the Laurel County Regional Juvenile Detention Center. In February 2005, the secretary of the Finance and Administration Cabinet described multiple problems at the Elliott County facility including stainless steel windows that had rusted, cracks and mold caused by water infiltration in the pre-cast concrete, a bowed retaining wall, and sewer system and HVAC issues. It was noted that the facility was constructed using the design-build method. Under this method, a team is hired under a single procurement for design and construction rather than the traditional method where a construction contract is not awarded until design is completed. The secretary said that when problems developed on the prison project between the architect and the contractor, they brought suit against each other. The commissioner for the Finance Cabinet's Department for Facilities and Support Services told the committee that if the project had been designed first and followed by a construction bid, the Commonwealth would have had more information about the design

and control over the construction. He said the Finance Cabinet will limit its use of the design-build method in the future for this reason. In a follow-up report in July, the secretary stated that the problems at the new prison had been substantially addressed and the state was negotiating with the contractor to withhold a portion of the final payment to cover future maintenance costs the state will incur, such as the rubberized coating on cell walls that will need to be applied every 15 years.

Also in July, the secretary of the Finance and Administration Cabinet briefed the committee on settlement problems at the Laurel County Regional Juvenile Detention Center. The \$5.6 million facility located on state property next to the London State Office Building was completed in March 2002. The facility was closed in June 2005 due to severe settlement that caused cracked and bowed walls, requiring the boilers to be shut down. The 31 youths housed in the facility were transferred to other Department of Juvenile Justice facilities. The secretary authorized an allocation of \$70,000 from the Emergency Repair, Maintenance and Replacement Account to hire an independent forensic engineer to evaluate the facility and conduct a geotechnical study. The secretary agreed to report back to the committee once the study was completed.

The committee also received a report from the secretary of the Finance Cabinet and the executive director of the Commonwealth Office of Technology concerning procurement of a Wireless Information Network Upgrade to move the Kentucky Emergency Warning System from analog to digital technology. The Finance and Administration Cabinet secretary assured the committee that although the project is only partially funded at \$13 million, and an additional \$13.8 million will be requested during the 2006 Session, any procurement accomplished under the existing authorization and prior to the completion of the 2006 Session will only be done if the work will result in a useful project.

The committee continued to receive official notification from agencies concerning their plans to use a construction delivery method other than the traditional design-bid-build method whereby the state bids out the design first that is then the basis for soliciting construction bids. The reports on alternative methods are done in compliance with legislation enacted by the 2003 General Assembly. The agencies that reported use of the alternative methods of construction during the reporting period were the University of Kentucky, the University of Louisville, and the Finance and Administration Cabinet.

The use of the design-build method whereby a team is hired under one procurement to design and construct a facility was reported by the University of Kentucky for the Nutter Training Center Football Practice Field and by the University of Louisville for the Indoor Football Practice Facility. The Finance and Administration Cabinet also reported the use of the design-build method for an information technology project to upgrade the Kentucky Emergency Warning System.

The use of the construction management-at-risk delivery method was reported by the University of Kentucky for the Memorial Coliseum Basketball Practice Facility and for the new Patient Care Facility (bed tower), by the University of Louisville for the

Health Sciences Center Research Facility Phase III, and by the Finance and Administration Cabinet for the Northern Kentucky Regional Special Events Center. Under this method, a construction manager is used instead of a general contractor. The construction manager is typically brought in early during the design phase to assist with cost estimates and scheduling, and at some point in the process, takes the risk, typically assumed by a general contractor, for delivering the project on time and within budget.

The committee also continued to review energy savings performance contracts (ESPCs). Under an ESPC, a contractor agrees to design, finance, install, or manage energy conservation measures in state buildings and guarantees a level of energy savings. If the project does not generate the guaranteed level of energy savings in any given year, the contractor must reimburse the owner the amount of the shortfall. Pursuant to legislation passed in the 2003 Regular Session, all ESPCs must be reviewed and approved by the Finance and Administration Cabinet's Office of Financial Management and reported to the committee (KRS 56.770–56.784).

The Finance and Administration Cabinet reported seven ESPC contracts totaling \$45.9 million that were procured by the cabinet: CHR Complex involving Health Services, Commonwealth Office of Technology, and central utility plant (\$7,483,859 for an 18-year term); the Department of Military Affairs for 10 national guard armories and the Boone National Guard Center in Frankfort (\$1,285,293 for an 18-year term); the Transportation Cabinet to retrofit all traffic signals statewide (\$10,264,392 for a 6-year term); the Corrections Department for three state prisons (\$6,789,792 for a 12-year term); Morehead State University (\$2,627,280 for a 15-year term); Northern Kentucky University (\$7,101,192 for a 12-year term); and Kentucky State University (\$10,378,016 for a 16-year term). Murray State University, which manages its own capital projects, reported an ESPC for \$8,691,000 for a 12-year term. During the review of these contracts, questions were raised concerning the lengthy payback periods of some of the contracts. In February 2005, the Finance and Administration Cabinet published a manual to provide guidelines for the ESPC approval process and evaluation criteria that included limiting the payback period to a term of 12 years. These guidelines will apply to any future ESPCs.

Dam safety was a concern identified during the reporting period. In response to a request by the committee, a report was submitted on Kentucky's Dam Safety Program and the 64 dams owned by the state. All dams, whether privately owned or publicly owned, are inspected by the state if the dam meets one of three criteria: 1) is 25 feet or greater in height, 2) has a maximum impoundment capacity of 50 acres or more, or 3) has the potential for loss of life or significant property damage if it were to fail. Dams are classified as low hazard (minor damage if failure), moderate hazard (significant property damage if failure), and high hazard (potential for loss of life if failure). There are 175 high-hazard dams in the state, of which the state owns 20.

The committee monitored the issuance of project notes by the Kentucky Asset/Liability Commission to finance the state payments to tobacco growers who were beneficiaries under the National Tobacco Growers Settlement Trust Fund. The 2005

General Assembly authorized state payments to be made in lieu of the final year distribution from the trust fund due to ongoing litigation. As a condition of receiving state payments, beneficiaries assigned their right to funds in the Trust Case should an appellate ruling favor the beneficiaries. In June, it was reported that the state payments of \$114 million had been supplemented by the Kentucky Burley Tobacco Growers Cooperative by \$10 million and that checks had been mailed to about 164,000 Kentuckians. In October, it was reported that the appellate court had ruled in favor of the beneficiaries.

In August, the Finance and Administration Cabinet reported that the Commerce Cabinet had allocated the \$35 million Parks Renovation Pool appropriated by the 2005 General Assembly for 27 projects. Twenty of the projects have a cost in excess of \$400,000 each (threshold for reporting).

Also in August, the deputy state budget director reported the relocation of the offices of the Department for Facilities and Support Services from the Capitol Annex to the state-owned Bush Building in Frankfort. This move is being made to make additional space in the Capitol Annex available to the legislative branch. In compliance with the 2004-06 Budget Bill, the cost associated with the move was paid from the General Fund Surplus Account. The deputy state budget director told the committee that future relocations from the Capitol Annex were planned for other offices, including the Commissioner of Agriculture, the Auditor's Office, and the State Treasurer's offices.

The University of Louisville reported the use of an alternative financing plan to construct a new residence hall to serve 359 students. The university entered into a 40-year land lease with ULH, Inc., a subsidiary of the University of Louisville Foundation, to build and own the dorm, which will be located on university land. ULH, Inc. has contracted with a private developer to build and operate the dorm, and ULH, Inc. is issuing bonds through the Louisville Metro Government to finance the project using student fees to pay the debt service. Once the bonds are paid off, ownership of the building will revert to the university.

The committee reviewed numerous agency requests concerning capital projects and bond issues. A summary of those reviews follows.

### **Review of Unbudgeted Capital Projects**

The committee approved 12 unbudgeted capital projects with a total scope of approximately \$31.4 million. KRS 45.760(14) permits a capital construction project to be authorized even though it is not specifically listed in an enacted budget if at least 50 percent of the costs are from private or federal sources and if the project is presented to the committee for review. The unbudgeted projects approved by the committee were funded through a mixture of federal grants, state funds (mostly restricted funds), and private donations. These projects are listed below.

**Military Affairs**—Office of Adjutant General Wendell Ford Training Center Phase IV (\$11,674,000 federal funds); Bluegrass Station Renovation of Building 1 (\$800,000 federal funds; \$500,000 restricted funds).

**Justice and Public Safety Cabinet**—Kentucky State Police Upgrade Statewide Communications System (\$2,896,100 federal funds), Special Response Vehicle (\$176,581 federal funds), and Upgrade Automated Fingerprint ID System (\$1,550,000 - 67% federal funds; 33% restricted funds).

**Environmental and Public Protection Cabinet**—Knobs State Forest land acquisition (\$1,608,000 KY Heritage Land Conservation Funds; \$1,677,000 federal funds).

**Commerce Cabinet**—Fish and Wildlife Resources land acquisition (\$540,000 restricted funds).

**University of Kentucky**—Renovate Football Practice Fields (\$2,400,000 private funds); Renovate Commonwealth Stadium Locker Room (\$650,000 private funds); and Design Fit-up of 4th Floor Biomedical/Biological Sciences Research Building (\$850,000 - 50:50 federal and restricted funds).

**University of Louisville**—Regional Computer Forensic Lab (\$2,968,400 federal funds).

**Western Kentucky University**—Purchase Buses/Construct Bus Transportation Center (\$3,069,561 federal funds).

### **Review of Budgeted Capital Projects**

**Consolidation of budgeted capital projects.** In August, the Personnel Cabinet reported the consolidation of four capital projects relating to replacement of the personnel payroll system that “involved overlapping and complementary elements” in order to move toward a more comprehensive personnel management system. Two projects were authorized in 2000-02 and one project authorized in 2002-04 had a total of \$1,068,056 in available funds. These projects were combined with the 2004-06 project, Replace Personnel Payroll System that was authorized for \$25 million Bond Funds. It was noted that a \$20 million Phase II project for further enhancements of the system was in the cabinet’s six-year capital plan for 2006-08.

**Requests for scope increases.** The committee approved 12 agency requests to increase the scope of authorized capital projects, using private, federal, or restricted (agency) funds. Requests were made to permit the fit-up of shelved space, to award construction contracts to address increased costs of construction materials, and to increase the scope of programs. In several cases, requests were made to increase the project scope because of the availability of private or federal funds. Pursuant to KRS

45.760(13), to be eligible for interim approval, any increase in excess of 15 percent of a project's authorized scope must be funded by federal or private funds.

The scope increases approved by the committee are as follows:

**Department of Military Affairs—Capital City Airport Runway/Taxiway/ Apron Rehabilitation**. In January 2005, a \$413,991 increase was approved to complete the apron rehabilitation and design runway for a scope of \$1,180,000 (\$43,636 restricted funds; \$370,355 federal funds). The 2005 General Assembly authorized \$1,901,000 additional federal funds for a scope of \$3,720,991. In September 2005, the department requested a \$1,926,237 increase to complete the runway construction (\$1,734,875 federal funds; \$191,362 restricted funds) for a revised scope of \$5,647,228. Also approved were Bluegrass Station Roof Replacement (\$800,000 restricted funds; revised scope \$1,080,000); and National Guard Armory Mobile Command Post Vehicle (\$65,000 federal funds; revised scope \$300,000).

**University of Kentucky—Biomedical Biological Sciences Research Building** (\$3,689,825 restricted funds increase to fit-up research space that was constructed as shell space for a revised scope of \$77,280,000).

**Northern Kentucky University—Natural Science Building** (\$925,000 increase using \$500,000 private funds, \$175,000 restricted funds, and \$250,000 federal funds to construct a planetarium and greenhouse that had been deleted from the original project but had been provided for in the design, for a revised scope of \$40,125,000).

**Finance Cabinet—Phase II Tobacco Settlement State Payments** (\$10,000,000 from the Burley Tobacco Growers Cooperative to increase the state payments of \$114,000,000 made to tobacco growers for a total scope of \$124,000,000).

**Environmental and Public Protection Cabinet—Link to National Environmental Exchange Network** (increase of \$34,000 federal funds for a revised scope of \$334,000).

**Justice Cabinet—Department of Corrections Northpoint Training Center to continue renovating the Old Hospital Building** that has been vacant for 20 years (increase of \$2,186,000 federal funds and \$242,889 maintenance pool funds for a revised scope of \$6,011,410).

**Department of Veterans Affairs—Renovate/Relocate Special Care Unit at Thomson-Hood Veterans' Center** (increase of \$124,345 in federal funds and \$66,955 in restricted funds for a revised scope of \$4,141,300).

**Department of Agriculture—Purchase of Agricultural Conservation Easements** (\$1,274,000 federal funds increase for a revised scope of \$9,649,987).

**University of Louisville**—Construct Residence Hall, Community Park (\$1,080,000 in restricted funds due to increases in the Louisville construction market to a scope of \$15,080,000).

**Murray State University**—Western Regional Center for Emerging Technology (\$450,000 from a combination of federal, restricted, and private funds to fit-up shelled space in the regional innovation and commercialization center for a revised scope of \$3,450,000).

### **Review of Allocations From the Statutory Capital Accounts**

**Capital Construction and Equipment Purchase Contingency Account.** The contingency account is used primarily to address cost overruns of authorized projects, and allocations are made by the secretary of the Finance and Administration Cabinet. Proposed allocations are to be submitted to the committee for its consideration. During the reporting period, three allocations, totaling \$261,000, were made from the Capital Construction and Equipment Purchase Contingency Account for cost overruns. An allocation of \$63,000 was made for the Nolin Lake Park Campground Improvement Project, \$8,000 was allocated for an Energy System Project for the Kentucky School for the Blind, and \$190,000 was allocated for the Belinda Mason Academic/Technical Building at the Southeast Community College.

The statute that establishes the Contingency Account also permits the account to be used to finance feasibility studies for projects that may be contemplated by the General Assembly for future funding. At its September 2005 meeting, the committee approved an allocation of \$1 million from the Contingency Account to fund a feasibility study to assess the costs of a proposed new Louisville arena. A portion of the allocation is to be used to reimburse the Commerce Cabinet's Kentucky Sports Authority, which staffed the Louisville Arena Task Force appointed by the Governor in April 2005 and had contracted for various consulting services prior to the Contingency Account allocation. The remainder of the allocation may be used for architectural services, environmental studies, archeological studies, estimates of costs associated with preparing a site for construction as well as assessments of soil, foundation, and structural issues.

**Emergency Repair, Maintenance, and Replacement Account.** There was more demand this year on the Emergency Repair, Maintenance, and Replacement Account. The committee reviewed eight emergency allocations totaling \$2,758,500—compared to five allocations made last year for a total of \$848,000. As is the case with the Contingency Account, allocations from the Emergency Account are made by the secretary of the Finance and Administration Cabinet. In November 2004, a \$794,500 allocation was made to address structural repairs at Kentucky State University's Bradford Hall; the project also included \$114,000 in interest income from two previously issued bonds. In December 2004, the committee reviewed an allocation of \$555,000 to increase the project scope of the Department of Military Affairs' Roof Repair Project at Bluegrass Station. Two more roof repair projects were allocated funds in June 2005 for the Office for the Blind's McDowell Center (\$561,000) and the Department of Corrections'

Northpoint Training Center (\$430,000). In July 2005, the committee reviewed allocations for HVAC repair at the Old Science Building at Northern Kentucky University (\$100,000) and to hire a forensic engineer to investigate the settlement issues associated with the Laurel County Regional Juvenile Detention Center (\$70,000), which were discussed earlier. In August 2005, an allocation of \$120,000 to replace the sprinkler system at the Kentucky Horse Park was reported. In September 2005, an allocation of \$128,000 was made to repair the stairwells in a parking garage in Lexington built with state economic development bonds that is managed by a private company. All emergency allocations are to be reported to the committee within 30 days.

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

**Economic Development Bond projects.** The committee reviewed and approved five grants, representing \$1,715,000 from the Economic Development Bond Pool. This bond-funded program makes grants (forgivable loans) to local governments to leverage against private investments for economic development in the Commonwealth. In return for assistance, companies are required to make commitments regarding job creation and/or job maintenance. The five projects funded during the reporting period and the amount of the Economic Development Bond assistance awarded were 1) City of Danville, 3B Inc. (\$200,500); 2) Hart County, T. Marzetti Company (\$125,000); 3) Calloway County, Webasto Roof System (\$500,000); 4) Lexington-Fayette Urban County Government, Belcan Engineering Group Inc. (\$500,000); and (5) Warren County, Retail Logic Inc. (\$340,000).

The committee also received a report of the Economic Development Bond job creation and job maintenance requirements for projects previously approved. Of the projects currently being monitored by the Cabinet for Economic Development, five are in compliance with job creation and maintenance requirements, and five are not in compliance and have made or will be required to make annual payments to the county in which they are located for those jobs not created or maintained.

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

1. **Fund A (Federally Assisted Wastewater Revolving Loan Fund)**—Eight new loans totaling \$40,183,047 were made to the cities of Hodgenville, Danville (2), Carrollton, Winchester, Alexandria, and Lebanon Junction, and the Madison County Utility District. The loan to the City of Winchester for \$21,000,000 is more than one-half of all Fund A loans made during the period. In addition, the loan to the Regional Water Resources Agency (RWRA) in Owensboro/Daviess County made in 1999 for \$26,179,248 (one of the largest loans made by the authority) was restructured in 2005. The initial loan carried the standard interest rate of 3.8 percent; however, the RWRA submitted census information relating to the service area and requested that the interest rate be reduced to 1 percent, the hardship rate.

2. **Fund C (Government Agencies Program, user-supported)**—Three new loans were made: \$317,000 to the Johnson County Fiscal Court, \$946,900 to the Peaks Mills Water District, and \$775,000 to the City of Danville to assume the Junction City loan.
3. **Fund F (Federally Assisted Drinking Water Revolving Loan Fund)**—Five loans totaling \$17,169,500 were made to the cities of Manchester and Richmond, the Madison County Water District, the McCreary County Water District, and the Greater Fleming County Regional Water Commission. The loan to the City of Richmond for \$8,000,000 was the maximum amount of a Fund F loan allowable and represents 47 percent of all loans made during the period.
4. **Fund B (State Drinking Water Fund)**—Seven loans totaling \$8,310,378 were made to the cities of Owenton, Newport, and Paris; the fiscal courts of Union, Hart, and Boone Counties; and the Fancy Farm Water District.

### **Review of Bond Issues and Financing Agreements**

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

1. **Kentucky Infrastructure Authority**—A total of \$51.5 million in bonds was issued through the State Property and Buildings Commission to provide one-fourth of the financing each for the Kentucky Infrastructure Authority Economic Development Fund for Coal Producing Counties and the Economic Development Fund for Tobacco Producing Counties.

Interim financing for the Fund A Federally Assisted Wastewater Revolving Loan Fund (\$2.2 million) and Fund F Federally Assisted Water Revolving Loan Fund (\$2.6 million) was provided through Kentucky Asset/Liability Commission (ALCo) project notes.

2. **Kentucky Economic Development Finance Authority (KEDFA)**—In KEDFA issues, the state is a conduit issuer and as such, has no legal or moral obligation for repayment of the debt. Three KEDFA issues were approved during the reporting period: a \$94.3 million refunding issue on behalf of Baptist Healthcare System; \$94.6 million in variable rate revenue bonds for Catholic Health Initiatives; and \$12 million of both variable and fixed rate bonds for three landfills in Grant, Trimble, and Lincoln Counties.
3. **Postsecondary Institutions**—The committee approved the University of Kentucky issuing \$120 million in bonds through ALCo for the first phase of construction of a new patient care facility for the UK Hospital. These bonds are the first to be issued under a new general receipts trust indenture that combines all debt issued under the existing Consolidated Educational

Buildings Revenue Bond System, Housing and Dining, and Hospital indentures. Until previously issued bonds are retired, the new indenture will involve a combination of senior and subordinate liens. All UK debt issued after September 20, 2005, will be issued under the General Receipts Trust Indenture. UK elected to issue the bonds through ALCo because it would allow the university to use negotiated sales.

Twenty-six projects for various postsecondary institutions totaling nearly \$400 million received General Fund-supported financing in the 2004-06 budget. Five of the projects, totaling \$35.8 million, received permanent financing from the State Property and Buildings Commission. The remaining projects received interim financing through ALCo.

Eighteen agency fund-supported postsecondary institution projects totaling \$230 million received interim financing through ALCo, which will allow the universities to draw down funds up to the amount authorized, thus making funding incrementally available on an as-needed basis.

4. **Kentucky Higher Education Student Loan Corporation**—One new issue totaling \$400 million to provide money for student loans was approved by the committee.
5. **Kentucky Housing Corporation**—The committee approved five new issues of single-family housing revenue bonds totaling \$420 million. Also approved were three conduit multifamily housing revenue bond issues totaling approximately \$28.5 million. In the three multifamily issues (Clarksdale Revitalization Project, Gleneagles Apartments Project, and Florence Christian Homes), the Kentucky Housing Corporation served as a conduit for the sale of bonds and has no obligation for the repayment of debt.
6. **School district bond issues with School Facilities Construction Commission participation**—Ninety issues were approved, totaling \$444,856,000.
7. **School district bond issues 100 percent locally funded**—Forty-one issues totaling \$217,950,451 were approved.
8. **Kentucky Asset/Liability Commission**—Since the establishment of the Kentucky Asset/Liability Commission in 1997, ALCo has annually issued Tax and Revenue Anticipation Notes (TRANS). TRANS are issued to manage the cash flow of the General Fund by using tax-exempt sources of funds to meet the payment obligations of the state. ALCo issued approximately \$500 million of TRANS in June 2005.

ALCo also issued approximately \$813 million in General Fund project notes and \$166 million in agency fund project notes. The committee reviewed the

first issue by ALCo of Grant Anticipation Revenue Vehicle bonds as authorized by the 2005 General Assembly with the debt service on the fixed rate 12-year notes to be paid from anticipated federal funds. The \$150 million in bond proceeds are to be used for interstate improvements on I-64, I-65, and I-75. Project notes provide interim financing for projects where bond funding is anticipated.

9. **State Property and Buildings Commission**—The committee approved one issue of approximately \$182 million of revenue refunding bonds and two issues of revenue bonds totaling approximately \$256 million.

### Review of State Leases

During the reporting period, the committee reviewed 21 state agency lease modifications. Seven of these lease modifications increased annual rental payments by a total of \$170,221 to cover the cost of state agency-requested improvements, another 11 increased the amount of space leased, and 3 decreased the amount of leased space.

The committee approved the award by the Finance and Administration Cabinet of five renewal leases for office space in Franklin County with rent increases. These renewals represent \$477,220 in increased annual rental costs.

The committee also reviewed three new leases for office space in Franklin County: Cabinet for Health and Family Services, Kentucky Automated Management and Eligibility System Program at an annual cost of \$157,574; Office of the State Treasurer at an annual cost of \$149,318; and one new emergency lease for the Environmental and Public Protection Cabinet (EPPC). EPPC obtained emergency replacement space after an inspection of the leased facility by the state Fire Marshal revealed settlement problems that could potentially compromise the building's structural integrity. The annual cost of the lease is \$47,260.

Also reviewed was a report of a sublease of the Lake Barkley Marina facility to a private entity, B-Mar & Associates, to maintain and operate the marina for a 15-year term. B-Mar & Associates will pay the base monthly rent of \$3,000, plus 5 percent of gross receipts, and will make capital improvements with a total investment value of \$4 million and \$1 million in inventory.

The committee also approved two leases for the University of Kentucky: a new lease for the UK Hospital Finance Department at an annual cost of \$108,962; and a lease renewal for the UK Department of Psychiatry at a cost of \$412,653 annually. The lease renewal included the addition of 2,800 square feet of research space to be used for research activities and additional staff.

A new lease by the University of Louisville was also approved at an annual cost of \$142,747. The university obtained additional leased space to adequately accommodate its need for additional clinical space, as well as a new Sports Medicine Fellowship Program.

**REPORT OF THE 2005  
EDUCATION ASSESSMENT AND ACCOUNTABILITY  
REVIEW SUBCOMMITTEE**

**Sen. Jack Westwood, Co-Chair  
Rep. Harry Moberly, Jr. Co-Chair**

Sen. Dan Kelly  
Sen. Ken Winters  
Sen. Ed Worley

Rep. Jon Draud  
Rep. Mary Lou Marzian  
Rep. Frank Rasche

LRC Staff: Sandra Deaton and Lisa Moore

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE**

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

### **SUBCOMMITTEE ACTIVITY**

The subcommittee met seven times prior to December 1, 2005.

During the April, May, and June meetings, the subcommittee heard reports on the study of the Commonwealth Accountability Testing System (CATS) conducted by the Office of Education Accountability (OEA) as directed by Senate Joint Resolution 156 from the 2004 Regular Session of the General Assembly. The report provided 1) an overview of CATS, 2) alignment of CATS with the requirements of the federal No Child Left Behind Act, 3) reliability and validity of CATS, 4) a summary of the surveys of Kentucky teachers, principals, superintendents, students, parents and guardians, and school board members, and 5) the cost of CATS. The subcommittee requested additional information on the cost of CATS.

In addition, the chair and co-chair of the National Technical Advisory Panel on Assessment and Accountability attended the May meeting to discuss the assessment and accountability modifications being considered by the Kentucky Board of Education as it prepares for testing contract negotiations.

The July meeting provided an opportunity for selected presenters to comment on the Kentucky Board of Education's proposed changes to CATS. The presenters represented the School Curriculum, Assessment, and Accountability Council and the Northern Kentucky Council of Partners. The Office of Education Accountability also provided additional information on the cost of CATS as was requested at the June meeting. The subcommittee accepted OEA's report on CATS.

In August, the subcommittee received a progress report from the chair of the Committee for Mathematics Achievement established by House Bill 93 from the 2005 Regular Session. The committee, which is required to develop a strategic plan for improving mathematics achievement in Kentucky, has identified four general areas of need and will identify specific areas of focus within each area. A Center for Mathematics Achievement will be established by January 2006.

The subcommittee reviewed amendments to administrative regulation 703 KAR 5:001, Assessment and accountability definitions. A concerned citizen raised questions about whether the amendments concurred with the federal No Child Left Behind Act, and

the director of the Office of Education Accountability was asked to discuss the issue with the U.S. Department of Education.

During the September meeting, the members heard a presentation by Department of Education staff on the intervention strategies used to assist low-performing schools. They identified several types of assistance, including scholastic audits and reviews; highly skilled educators; Commonwealth School Improvement Funds; and a special education mentor. They reported a declining trend in the number of schools in assistance: 141 schools in 2000 and 47 schools in 2004. Of the 130 schools in assistance in the past two biennia, 104 (80 percent) have remained out of assistance. Schools receiving assistance have had an average increase in their academic index two to four points higher than the average gain for all schools.

The subcommittee reviewed amendments to administrative regulation 703 KAR 5:020, The formula for determining school accountability; and 703 KAR 5:130, School district accountability.

The commissioner of Education provided a report on the statewide test results at the October meeting. Scores from the Kentucky Core Content Tests given to students in the spring of 2005 generally show progress when compared to past years' data, and seven-year trends show improvements in all subject areas.

The Office of Education Accountability staff presented a progress report on the study of the School Facilities Construction Commission required by the 2005 General Assembly. OEA was directed to conduct a review of the School Facility Construction Commission's ability to provide local school districts with necessary debt service assistance to maintain a facility program that will be conducive to a positive learning environment.

The 2005 General Assembly also directed OEA to conduct an inventory and assessment of indicators that may be used to analyze financial, academic, and demographic data in order to evaluate school performance. OEA staff presented a work plan that was accepted by the subcommittee.



**REPORT OF THE 2004 - 2005  
GOVERNMENT CONTRACT REVIEW COMMITTEE**

**Sen. Katie Stine, Co-Chair  
Rep. Brent Yonts, Co-Chair**

Sen. Carroll Gibson  
Sen. Ernesto Scorsone  
Sen. Elizabeth Tori

Rep. Jesse Crenshaw  
Rep. Brad Montell  
Rep. Kathy W. Stein

LRC Staff: Michael Meeks, Kim Eisner, and Jennifer Wilson

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## GOVERNMENT CONTRACT REVIEW COMMITTEE

**JURISDICTION:** Provide legislative review of all nonexempt memoranda of agreement by and between state agencies, and of all nonexempt personal service contracts by state agencies and by off-budget agencies that include, but are not limited to, the Kentucky Lottery Corporation, the Kentucky Housing Corporation, state universities within the Commonwealth, the Kentucky Employers' Mutual Insurance Corporation, the Kentucky Higher Education Assistance Authority, the Kentucky Student Loan Corporation, the Kentucky Retirement Systems, and other municipal corporations to examine the stated need for the service, whether the service could or should be performed by state personnel, the amount and duration of the contract or agreement, and the appropriateness of any exchange of resources or responsibilities.

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

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

## COMMITTEE ACTIVITY

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

During the 2005 fiscal year beginning July 1, 2004, and ending June 30, 2005, the committee reviewed 1,238 personal service contracts and 445 amendments to personal service contracts. The committee also reviewed 490 personal service contracts for \$10,000 or less, which are submitted to the committee for informational purposes only.

Since the start of the 2006 fiscal year, beginning July 1, 2005, through November 8, 2005, the committee has reviewed 524 personal service contracts and 162 amendments to personal service contracts. The committee has also reviewed 182 personal service contracts for \$10,000 or less, which are submitted to the committee for informational purposes only.

During the 2005 fiscal year beginning July 1, 2004, and ending June 30, 2005, the committee reviewed 1,366 memoranda of agreement and 1,057 memoranda of agreement amendments. The committee also reviewed 1,220 memoranda of agreement for \$50,000 or less, which are submitted to the committee for informational purposes only.

Since the start of the 2006 fiscal year, beginning July 1, 2005, through November 8, 2005, the committee has reviewed 546 memoranda of agreement and 390 memoranda of agreement amendments. The committee also reviewed 737 memoranda of agreement for \$50,000 or less, which are submitted to the committee for informational purposes only.

During the 2005 fiscal year, the committee reviewed a total of 2,173 personal service contract items and a total of 3,643 memoranda of agreement items for a grand total of 5,816 items.

Since the start of the 2006 fiscal year through November 8, 2005, the committee has reviewed a total of 868 personal service contract items and a total of 1,673 memoranda of agreement items for a grand total of 2,541 items.



**REPORT OF THE 2005  
MEDICAID OVERSIGHT AND ADVISORY COMMITTEE**

**Sen. Richard "Dick" Roeding, Co-Chair  
Rep. Rick Rand, Co-Chair**

Sen. Walter Blevins  
Sen. Tom Buford  
Sen. Julie Denton  
Sen. Dan Seum

Rep. James Bruce  
Rep. Joni Jenkins  
Rep. Jimmie Lee  
Rep. Steve Nunn

LRC Staff: Barbara Baker, Eric Clark, and Cindy Smith

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## MEDICAID OVERSIGHT AND ADVISORY COMMITTEE

**JURISDICTION:** Provides oversight on the implementation of Medicaid within the Commonwealth including access to services, utilization of services, quality of services, and cost containment.

### COMMITTEE ACTIVITY

During the 2005 Interim, the Medicaid Oversight and Advisory Committee held five meetings. The following is a summary of the activities by the committee.

#### Major Issues Considered by the Committee

##### **KyHealth Choices 1115 Waiver**

The commissioner of the Department for Medicaid Services provided an update on the cabinet's progress toward modernization of the Medicaid program. At the November 28, 2005, meeting, the commissioner presented an overview of the 1115 Waiver, referred to as "KyHealth Choices." The waiver was submitted to the federal Centers for Medicare and Medicaid Services (CMS). Negotiations with CMS will begin on November 29, 2005. The waiver will permit the department to design benefit packages tailored to meet the needs of various populations. There are four different benefit plans: global choices, optimum choices, family choices, and comprehensive choices. The department could design disease management programs for specific populations in specific parts of the state. Without the waiver, all programs must be offered statewide. Other goals of the waiver are to ensure that Medicaid is the payer of last resort by providing an "opt out" option for Medicaid members who have private insurance, leverage the commercial market, integrate care delivery, and establish provider education and accountability. The waiver is also envisioned to provide "Get Healthy Accounts," which would provide small financial incentives to recipients for completing specific screenings or disease management programs. The funds could be used for services not covered by Medicaid, such as membership to Weight Watchers or a gym. The department has discussed the possibility of providing a card with a designated amount of money for over-the-counter drugs. The department plans to contract with a commercial plan to administer Kentucky Children's Health Insurance Program (KCHIP) but will only do so if it is cheaper than administering the program by the department. Prescriptions will be limited to four; however, the cabinet plans to exclude diagnoses that are currently excluded under the three brand-name rule. These diseases would include HIV/AIDS, mental health, end-stage renal disease, diabetes, and Alzheimer's disease. Dental services under the new waiver would remain the same as currently covered by the Medicaid program. Phase II of the waiver would use any savings to expand coverage to uninsured Kentuckians.

## Medicaid Modernization

The commissioner of the Department for Medicaid Services reported that the goal of Medicaid modernization is to bring Medicaid administration into the 21<sup>st</sup> century by implementing approaches and practices that have proven to be successful in other states and in the commercial sector. The components include benefit management, care management, and technology improvements. The commissioner outlined changes in the Medicaid infrastructure that have occurred over the past year. A pharmacy benefit administrator, First Health, was implemented in December 2004. The Kentucky Medicaid Management Agent contract was awarded to First Health, which started in September 2005 with the implementation of a call center with a nurse call line. The call abandonment rate has decreased. First Health is responsible for utilization review, provider enrollment, provider and member education, call center operation, and disease and case management.

The senior vice president of Client Relations and the director of Health Economics explained the role of First Health Services as the Kentucky Medicaid Management Agent. First Health Services will be responsible to administer Kentucky's Medicaid program, gather and analyze data, and make recommendations for program improvement. It is charged with raising the level of care delivered by the Commonwealth, while improving cost efficiency. First Health will partner with the Commonwealth and its contractors on implementation and operation of new initiatives. All the key metrics are moving in the right direction. First Health uses an innovative "fishbone" methodology to target savings initiatives. The prescription program is achieving savings in a range of a 9 percent reduction. Prescription initiatives have decreased the prescription expense per member and the cost per prescription. Kentucky's prescription cost per member is slightly below average in comparison to other states. The Kentucky prescription claim cost is the lowest among compared states. Prescription utilization has decreased, but Kentucky prescription utilization is higher than the average of compared states. The use of generics has increased and the prescription claim cost for multisource drugs has declined. First Health recommends more prescription management, such as expanding the provider coordination and adding clinical edits. It predicted that Kentucky would save \$46,115,920 annually with participation in the National Medicaid Pooling Initiative. The commissioner of the Department for Medicaid Services reported that Kentucky submitted a state plan amendment to enter the multistate purchasing pool in December 2004, but CMS has not made a decision yet. The department is waiting on final approval of that state plan amendment.

The Kentucky Medicaid Information System was contracted to Electronic Data Systems (EDS). The current legacy system was transferred from UNISYS to EDS on Thanksgiving Day. EDS plans to implement an improved computer system by November 1, 2006. The account executive and account operation manager with EDS provided testimony on proposed improvements related to Medicaid information management. The new Medicaid information system would be Web enabled and browser based, have real time for all claim types and real time eligibility, and allow providers to interact with the system. There will be a new data warehouse and decision support system. The estimated

cost is \$25 million to \$30 million annually and the amount of savings will depend on Medicaid policies. There was a protest to the awarding of the contract to EDS, which the Finance Cabinet determined to be invalid.

The commissioner of the Department for Medicaid Services and the assistant deputy counsel of the Cabinet for Health and Family Services presented testimony related to increased cost sharing in the Medicaid program. The department was anticipating a \$675 million Medicaid shortfall for fiscal year 2006, which led to the addition of co-payments for services and drugs. The additional co-payments are estimated to save the program \$30 million annually. The new co-payments will take effect on a staggered timetable, with the first increased co-payments beginning on July 11. Prescription cost sharing will be based on a three-tier system to encourage use of generic drugs. Medicaid members will pay \$1 for generic drugs, \$2 for preferred brand name drugs, and \$3 for non-preferred brand-name drugs. On July 15, optional eligibility groups will pay a tiered prescription drug co-payment of \$3 for generic drugs, \$10 for preferred brand-name drugs, and \$20 for non-preferred brand-name drugs. On August 1, co-payments for all Medicaid members will include \$6 for emergency room visits, \$2 for physician office visits, \$50 for inpatient hospital stays, and \$3 for outpatient hospital services. In April 2005, a limit of three brand name prescriptions was implemented.

### **Medicare Prescription Drug, Improvement, and Modernization Act of 2003**

The acting regional administrator with the Atlanta CMS Regional Office provided an overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). This legislation transformed the Medicare Program by expanding private health plan options, establishing preventative benefits such as a "Welcome to Medicare" physical, and most significantly adding an outpatient prescription drug benefit that offers comprehensive affordable prescription drug coverage to 43 million seniors.

This sweeping legislation has a significant impact on states. CMS estimates that states will save \$73 billion from FY 2006 to FY 2010. These savings are achieved by 1) providing Medicare Prescription coverage for Full Benefit Dual Eligible beneficiaries who would otherwise be paid by Medicaid; 2) replacing a portion of the spending of State Pharmaceutical Assistance Programs and Pharmacy Plus programs; and 3) providing a retiree subsidy to states providing prescription coverage to retirees. CMS estimates that MMA will cost states \$65 billion from FY 2006 to FY 2010. These costs include the phased-down contribution, administrative costs associated with determining eligibility, technology updates, and the costs associated with increased enrollment. The net result is a savings to states of \$8 billion over five years.

January 1, 2006, states will begin paying the "phased-down" contribution for dual eligibles. The contribution amount is 90 percent of the per capita prescription drug expenditures for dual eligible beneficiaries in FY 2003. The percentage of the contribution is phased-down to 75 percent by 2014. The formula for the phased-down contribution contains an annual inflation factor that is the percent increase in per capita prescription drug spending nationwide.

The acting regional administrator briefly overviewed the Medicare prescription drug benefit. Beginning January 1, 2006, approximately 43 million Medicare beneficiaries will be eligible to enroll in Medicare Part D. Medicare will cover 75 percent of drug expenses up to \$2,250 after a \$250 deductible for Medicare recipients whose incomes are at or above 150 percent of the federal poverty guideline (\$14,355 for an individual or \$19,245 for a couple). There is a monthly premium of approximately \$35.85. In addition, the Medicare prescription drug benefit will provide catastrophic coverage by paying 95 percent of any additional pharmaceutical expenses for individuals whose out-of-pocket spending reaches \$3,600 in a year.

The MMA provides extra help for prescription drugs to low-income individuals. Three groups of people who are eligible for low-income assistance are 1) full-benefit dual eligibles with incomes at or below 100 percent of the federal poverty guideline (\$9,570 for an individual and \$12,830 for a couple); 2) full-benefit dual eligibles with incomes above 100 percent of the federal poverty guideline; people whose states pay for their Medicare premiums, deductibles, or cost sharing; and 3) recipients with incomes below 150 percent of the federal poverty guideline and assets of less than \$10,000 for an individual and \$20,000 for a couple. These groups may be eligible for no or reduced cost sharing. Institutionalized full-benefit dual eligibles can enroll in a plan that has no premiums, no deductibles, and no cost sharing.

There has been a great deal of concern about the transitioning of dual eligibles from Medicaid to Medicare. CMS recognizes the enormity of the transition and is working diligently to ensure the process for transitioning beneficiaries is quick and efficient. He noted that no full-benefit dual-eligible beneficiary would go without coverage during the transition. CMS will pay particular attention to formulary designs of the new drug plans to ensure they are not discriminatory and they meet the needs of all beneficiaries. CMS will ensure formularies recognize the special needs of those with mental illness or HIV/AIDS, and those who live in nursing homes.

States, as employers, may opt to apply for the Medicare retiree drug subsidy on behalf of retired state employees. The subsidy pays 28 percent of a retiree's drug cost between \$250 and \$5,000 in 2006, and participating sponsors will receive an average subsidy of \$668 per capita retiree. In order to qualify for the subsidy, the state retiree system must show that its coverage is as good as or better than the Medicare prescription drug benefit. Kentucky's retiree system may apply for the subsidy only in regard to retirees eligible for but not enrolled in the Medicare prescription drug benefit. If Kentucky's retiree system determines that the retiree subsidy is not feasible, the MMA provides other options to plan sponsors of retiree drug coverage.

A representative of Passport Health Plan and the executive vice president of University Health Care presented information on the Passport Health Plan drug program for dual eligibles, called "Passport Health Plan Medicare Advantage Special Needs Plan," effective January 1, 2006. There are approximately 12,000 members each year. Passport will not expand the product beyond the Medicaid population. Fifty-five percent of its eligible members are disabled, and 45 percent are aged. The Medicare Modernization

Act Public Information Campaign started on May 1, 2005. The opt out mailing arrived at members' homes in September 2005. The Opt Out/Eligibility Verification/Enrollment Acknowledgement packet was mailed on October 1, 2005. Member identification cards will be mailed December 1-10, 2005, and new member kits will be available December 22-31, 2005. January 1, 2006, is the Passport Health Plan Medicare Advantage Special Needs Plan effective date.

## **KASPER**

The inspector general of the Cabinet for Health and Family Services and the director of the Division of Fraud, Waste and Abuse, Identification and Prevention provided an update on the Kentucky All Schedule Prescription Electronic Reporting (KASPER) program. The KASPER program was designed to produce 2,000 reports per year, but is producing in excess of 2,500 reports per week. In 2003, the development of enhanced KASPER began after a \$1.4 million funding initiative from the legislature. In 2004, the KASPER program requests increased to 122,469. Enhanced KASPER (eKASPER) has been implemented. The inspector general reported that the 2004 Hal Rogers Grant will be completed June 30, and the report will be submitted to federal Department of Justice, and the 2005 Hal Rogers Grant application will be submitted. Even with 87 percent of the total KASPER reports being run by physicians, it is estimated that less than 50 percent of the physicians prescribing controlled substances are using the system. The branch has 11 full-time personnel with 5 dedicated to the KASPER report processing. The inspector general discussed the role of the Drug Enforcement and Professional Services Branch in administering the Kentucky Controlled Substances Act. The branch will process more than 150,000 KASPER requests in 2005. There are currently more than 200 ongoing prescription drug investigations. There is also a contract with the Kentucky Board of Medical Licensure to assist with the investigation of physician misconduct, serve as consultants in drug-related matters to various public health initiatives, and collect fees from and issue licenses to more than 240 manufacturers, wholesalers, and distributors of controlled substances. The economics of drug division was discussed, and the inspector general provided several examples of the street values of certain prescription drugs. He reported that since implementing eKASPER, there have been 23,300 requests for reports processed, an average of about 582 reports per day. There are approximately 180 requestors that have been credentialed and given Web access. Two training sessions have been conducted, one for the State Police Academy and one for second-year students at the University of Louisville Medical School. Numerous additional training sessions are planned. He also reported on the impact of eKASPER. Physicians can discuss potential addictions with patients before patients leave the physician's office, and pharmacists will be able to prevent a questionable prescription from being dispensed to a drug seeker.

The inspector general reported on the Determining Eligibility Through Extensive Review (DETER) program. He reported that Jefferson and Kenton Counties were selected for pilots due to their population, location, and number of complaints received from those areas. As of April 1, 2005, three DETER investigators are on staff. The Office of Inspector General (OIG) is also developing an ongoing intelligence

methodology for tracking DETER complaints and investigating outcomes that will define the future direction for DETER staffing, developing anti-fraud training, as well as assisting in other OIG anti-fraud operations. The next steps are to analyze public assistance participation and complaint ratio to determine where best to locate investigators. After establishing DETER in the east and west regions OIG will begin the process of moving across the state. OIG will also assign DETER investigators to Department for Community Based Services field offices when space is available to encourage a cooperative effort and provide real-time investigative resources.

The Fraud and Abuse Hotline was also discussed. OIG is responsible for maintaining and publicizing a 24-hour toll-free hotline for the purpose of receiving reports of alleged fraud and abuse. The OIG's office received more than 5,300 calls on the hotline in 2004, an increase of 700 calls from 2003. There have been posters prepared and disseminated that publicize the hotline. Two statewide press releases also have been issued describing the office hotline. Additional releases are planned.

### **907 KAR 1:018**

A representative of the Kentucky Pharmacists Association reported that 907 KAR 1:018, which was filed as an emergency regulation in December 2004, will have a negative effect on small, independent pharmacies. These pharmacies will not be able to absorb the reduction in payments because of decreased profit margins. He reported that small pharmacies will have to reduce salaries or terminate workers. This regulatory change could result in 80 statewide pharmacies being closed. Pharmacies provide more services than filling prescriptions, and these services save money for the Medicaid program.

A community pharmacist from Barbourville explained to the committee that he has experienced 10- to 45-minute telephone waits for pre-authorization of drugs. The reduction in payments will mean decreasing extra services. The acquisition cost plus the \$4.50 dispensing fee would not cover his cost of \$5.60 per drug, and this reduction in payment will necessitate terminating employees. He recommended increasing the three brand-name prescription limit to four, and reverting to the 14- to 21-day payment cycle instead of the 30-day payment cycle because discounts are based on weekly prepayment.

A member of the Medicaid Pharmacy and Therapeutics (P & T) Committee addressed the committee. He was concerned that the Pharmacy Benefit Administrator may not be returning the full rebate to the state. He indicated that the P & T Committee has saved the Commonwealth \$1 million, has identified problems such as any new drug being automatically placed on the formulary until reviewed, and has identified Medicaid procedural problems. He suggested that the change from UNISYS to First Health has resulted in slow preauthorizations, too many help telephone numbers, and the pharmacists not being aware of changes in the program.

A pharmacist representing long-term care facilities explained that the long-term care pharmacies are overwhelmed with the cuts that were instituted in August 2004 and December 2004. He explained that the cuts were not appropriate for long-term care pharmacies because of their payer mix. He suggested that Kentucky reconsider the three brand-name drug limit for long-term care patients.

The commissioner of the Department for Medicaid Services replied that the department is fully aware of the impact of 907 KAR 1:018. She explained that cuts had to be made before considering program benefit cuts. She expressed appreciation for the P & T Committee and noted accounting for rebate dollars. She remarked that the transition from UNISYS to First Health has been smooth. She reported that pharmacy expenditures for fiscal year 2005 are expected to be \$820 million compared to \$779 million in fiscal year 2004. The department is trying to slow the growth of the program. She reported that \$150 million of hospital provider tax and drug rebates are included in the Governor's budget. She concluded that the P & T Committee is valued and their recommendations are taken seriously.

### **Hospital Provider Tax**

The president of St. Elizabeth Medical Center addressed the committee regarding the hospital tax. He suggested that Kentucky cap the tax on hospitals at the 2003 level, which will make them more competitive. The disproportionate share hospital funding mechanism is included in the Governor's budget.

**REPORT OF THE 2005  
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

**Sen. Ernie Harris, Co-Chair  
Rep. Tommy Thompson, Co-Chair**

Sen. Charlie Borders  
Sen. Brett Guthrie  
Sen. Vernie McGaha  
Sen. R.J. Palmer II  
Sen. Joey Pendleton  
Sen. Dan Seum  
Sen. Katie Stine

Rep. Adrian K. Arnold  
Rep. Sheldon E. Baugh  
Rep. Dwight D. Butler  
Rep. Charlie Hoffman  
Rep. Rick G. Nelson  
Rep. Ruth Ann Palumbo  
Rep. Susan Westrom

LRC Staff: Greg Hager, Kara Daniel, Rick Graycarek, Jim Guinn, Tom Hewlett,  
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Stacie Otto, Rkia Rhrib, Cindy Upton, and Susan Spoonamore

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

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

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

### COMMITTEE ACTIVITY

In 2005, the Legislative Program Review and Investigations Committee held eight meetings through November.

At the March meeting, members of the committee elected House and Senate co-chairs.

At the May meeting, staff presented the report *Offshore Outsourcing of Kentucky State Government Services: Direct Contracting Is Limited but the Amount of Subcontracting Is Unknown*. The director of the Finance and Administration Cabinet's Division of Material and Procurement Services responded. After discussion, the committee adopted the report. Staff summarized a written proposal for a study of planning for water and sewer projects, which the committee had initiated in 2004. The committee discussed the proposal and asked staff to proceed with the study as planned.

The June meeting was held in Covington. Staff presented the report *Improved Coordination and Information Could Reduce the Backlog of Unserved Warrants*. After discussing the report, the committee toured the Kenton County Circuit Court Clerk's office.

At the July meeting, staff presented a summary of the report *Improved Coordination and Information Could Reduce the Backlog of Unserved Warrants*, which had been presented initially at the previous meeting. The Administrative Office of the Courts' director and general manager of Pretrial Services and the program manager of the

Unified Criminal Justice Information System responded to the report. After discussion, the committee adopted the report and its recommendations.

At the August meeting, staff presented a summary of the report *Human Service Transportation Delivery: System Faces Quality, Coordination, and Utilization Challenges*, which the committee had adopted at its May 2004 meeting. The acting executive director of the Transportation Cabinet's Office of Transportation Delivery updated the committee on responses to the report's recommendations. The committee discussed the recommendations and responses.

Also at the August meeting, staff presented a summary of the report *Improving Fiscal Accountability and Effectiveness of Services in the Kentucky Transitional Assistance Program*, which the committee had adopted at its June 2004 meeting. The Cabinet for Health and Family Services' inspector general and the commissioner, director for Policy and Program Development, and director of the Division of Family Support of the cabinet's Department for Community Based Services updated the committee on responses to the report's recommendations. The committee discussed the recommendations and responses.

At the September meeting, staff summarized the different types of warrants from the report *Improved Coordination and Information Could Reduce the Backlog of Unserved Warrants*. The president and executive director of the Kentucky Sheriffs Association discussed the report.

Staff presented a follow-up to the report *Uncollected Revenues and Improper Payments Cost Kentucky Millions of Dollars a Year*, which the committee had adopted at its September 2004 meeting. The director of the Administrative Office of the Courts updated the committee on responses to the report's recommendations. The committee discussed the recommendations and responses.

Also at the September meeting, the committee voted to initiate a study of the legal aspects of eminent domain in Kentucky.

At the October meeting, staff presented the report *Planning for Water Projects in Kentucky: The Implementation of Senate Bill 409*. The executive director and the executive assistant of the Kentucky Infrastructure Authority responded to the report. After discussion, the committee adopted the report and its recommendations.

At the November meeting, staff presented a follow-up review of the report *Kentucky Can Improve the Coordination of Protective Services for Elderly and Other Vulnerable Adults*, which the committee had adopted at its November 2004 meeting. The director and a policy analyst of the Division of Protection and Permanency of the Department for Community Based Services of the Cabinet for Health and Family Services responded to the review. The committee discussed the review and the agency response. Staff also presented a follow-up review of the report *Appropriate Management and Technology Can Reduce Costs and Risks of Computer Use by State Employees*,

which the committee had adopted at its September 2004 meeting. The deputy commissioner of the Commonwealth Office of Technology answered questions from committee members about computer use.

Also at the November meeting, the committee approved five topics for study by staff: 1) community mental health centers, 2) funding and administration of school facilities construction, 3) Kentucky's foster care program, 4) the highly skilled educators program, and 5) the effect of school size on educational indicators.

For the December meeting, staff will present two reports for the committee's consideration: 1) the effectiveness and potential integration of the Medicaid Management Information System and Kentucky's All Schedule Prescription Electronic Reporting System, and 2) legal aspects of eminent domain in Kentucky.

**REPORT OF THE 2005  
TOBACCO SETTLEMENT AGREEMENT FUND  
OVERSIGHT COMMITTEE**

**Sen. Vernie McGaha, Co-Chair  
Rep. Carolyn Belcher, Co-Chair**

Sen. Charlie Borders  
Sen. David E. Boswell  
Sen. Dan Kelly  
Sen. Joey Pendleton  
Sen. Richie Sanders, Jr.

Rep. Adrian K. Arnold  
Rep. James Comer, Jr.  
Rep. Charlie Hoffman  
Rep. Thomas McKee  
Rep. Tommy Turner

LRC Staff: Tanya Monsanto, Lowell Atchley, and Kelly Blevins

**PRESENTED TO THE  
LEGISLATIVE RESEARCH COMMISSION  
AND THE  
2006 REGULAR SESSION OF THE  
KENTUCKY GENERAL ASSEMBLY**

## **TOBACCO SETTLEMENT AGREEMENT FUND OVERSIGHT COMMITTEE**

**JURISDICTION:** Matters pertaining to the Agricultural Development Board, including requests to the board for grants and loans; planning by the board to establish short-term and long-term goals, to devise strategies, and to make investments that will assist farmers, and the administrative, financial, and programmatic activities of the board; expenditures under the Early Childhood Development Fund and the Kentucky Health Care Improvement Fund; efforts of agencies and educational institutions to assist in the revitalization and diversification of tobacco farms; efforts of institutions of public postsecondary research in conducting alternative crop development research; review of county agricultural development council plans; review of the use of Tobacco Master Settlement Agreement money.

### **COMMITTEE ACTIVITY**

During the 2005 calendar year, the Tobacco Settlement Agreement Fund Oversight Committee held 11 meetings. In January, the House members elected a House co-chair to replace an outgoing member. Then, in May, the committee again elected House and Senate co-chairs in accordance with KRS 248.723. The committee also received regular activity reports from the Governor's Office of Agricultural Policy (GOAP) and from the Agricultural Development Board's funding decisions of project applications. There were three main issues that the committee focused on during the 2005 calendar year: the passage of the federal tobacco buyout, the creation of a model tobacco program, and the performance of agricultural cooperatives.

The first issue was the passage of the federal tobacco buyout and its implications for Kentucky tobacco farmers. In January 2005, the Office of the Attorney General (OAG) and GOAP discussed "The American Jobs Creation Act of 2004" (JOBS). This legislation contained the federal tobacco buyout provision that eliminated the federal price support and quota system for tobacco. The production and sale of tobacco would henceforth be subject to the competitive market system.

Several meetings were then devoted to updates from OAG and GOAP regarding an appeal of the North Carolina Business Court decision. The North Carolina Business Court has jurisdiction over the Phase II Settlement Agreement and the Phase II Trust Fund. The OAG explained that because the JOBS bill was signed in 2004, three tobacco companies were requesting refunds of the moneys paid to the Phase II Trust Fund for 2004. Those companies filed intention to withhold the December 2004 Phase II payment too. Updates from OAG and GOAP essentially chronicle the history of the Phase II conflict between the tobacco companies and the various states that are parties to the Phase II Settlement Agreement.

In January, the OAG testified that the court barred distribution of Phase II funds to states. Kentucky farmers would not receive the 2004 Phase II payment as anticipated. The committee also discussed a provision in House Bill 611 that required Phase II to be supplemented by the agricultural portion of Phase I funds.

In June, the committee reviewed an action taken by the 2005 General Assembly to make \$114 million in Phase II replacement payments. GOAP explained that a total of \$124 million, which would be paid directly to farmers, would come from a combination of the following sources: the agricultural portion of the Phase I funds, bond funds, and \$10 million in supplemental funds contributed by the Burley Tobacco Growers Cooperative.

In July, GOAP reported that Phase II payments had been sent to farmers. The committee also received information on eligibility requirements for Phase II replacement payments and how farmers could apply for the Phase II replacement funds. GOAP further explained that the action of signing the Phase II check resolved problems of the tobacco companies reimbursing the state directly if the state prevailed in the appeal of the North Carolina Business Decision.

In September, OAG explained that the tobacco companies lost in the North Carolina Supreme Court, and they would be required to make the 2004 Phase II payment. GOAP explained how its office would allocate the \$114 million in reimbursements from the tobacco companies. In October, GOAP testified that while the state had received approximately \$95 million in Phase II funds from the tobacco companies, tobacco companies continued to contest the release of the final quarter Phase II payment. Most of the funds received would be used to make payments on the bond issue let to finance Phase II replacement payments.

A second issue that occupied the committee's attention is directly related to the passage of the federal tobacco buyout. The buyout created questions about whether tobacco settlement dollars should be invested in the production and marketing of tobacco itself. The federal tobacco buyout, in ending the price support and quota system, signaled that tobacco would be the same as any other agricultural commodity. Several meetings were devoted to a discussion of an application made by a Christian County agribusiness group to create a model tobacco program.

In May, GOAP explained that the first discussions surrounding the creation of a model tobacco program ensued immediately after Congress enacted the tobacco buyout legislation. Kentucky Farm Bureau had endorsed the idea, but House Bill 611 neither prohibits nor endorses the use of tobacco settlement dollars for the production of tobacco. The larger question of using tobacco settlement dollars to grow tobacco is policy related. The committee continued to discuss whether tobacco settlement dollars should be used to continue diversifying Kentucky agriculture and to reduce dependence on the production of the commodity.

The August meeting centered on the report of the Agricultural Development Board's (ADB) project funding decisions. GOAP explained that the ADB denied funding for a Christian County Agribusiness Association that would create a county-based model tobacco program. This program would not use any state funds. ADB has the right to approve or deny projects that use either state or county agricultural development funds. This question revived a previous policy debate on whether ADB should have the authority to veto projects that use only county funds.

The committee took action in September exercising rights granted under House Bill 611 to request ADB to reconsider the Christian County proposal. In October, GOAP stated the decision of ADB was to deny the request to reconsider the Christian County proposal stating the request had not mirrored the process established in House Bill 611.

The third prominent issue addressed by the committee was the performance of various growers' and marketing cooperatives, particularly those that handle vegetables and fish from aquaculture operations. The central debate is whether ADB, which makes project financing available for agricultural diversification, should finance operations that demonstrate weak or unsustainable financial performance.

For many years, ADB has made a series of grants and loans to several grower cooperatives throughout Kentucky. In 2005, ADB reported that it was concerned that many of the cooperatives were not improving their financial and managerial performance over time, and that those cooperatives could default on loans or be forced to sell assets to cover debt service. The question became whether to restructure cooperatives and how to better secure loans made to cooperatives in the event of default.

In January, GOAP discussed the performance of Western Kentucky Growers Cooperative, which had witnessed a poor crop year in 2004 and sought better production management. The committee also received testimony on the performance of marketing cooperatives. Efforts were underway by an alliance of Kentucky producers and retailers to formulate ideas for helping producers meet market demand.

GOAP updated the committee in April and in May on the performance of and the plan to restructure the Purchase Area Aquaculture Cooperative. The cooperative had experienced a series of bad production years due in part to poor production planning and weak financial management. Obligations continued to outpace revenues from sales of aquaculture products. The cooperative would be split into two new entities. One called Mid-America Aquaculture Cooperative would be a growers' cooperative, and the other called the Purchase Area Aquaculture Corporation would operate a fish processing facility.

In October and November, the committee again discussed actions taken by the ADB to make loans and grants available to grower cooperatives for poor financial performance. In October, GOAP informed the committee of loans made to a cooperative to cover operating losses for the 2004 crop year.

GOAP explained that each cooperative is being reviewed individually, and any loans made in the future would be repaid if the cooperative's operations ceased. Assets are being pledged to secure those loans, but some nonperformance on those loans is anticipated.

In both October and in November, the committee received testimony on a study of Kentucky's grower cooperatives financed by ADB. The study called for cooperatives to consolidate and centralize management to reduce overhead. By operating under a single umbrella organization, cooperatives would be able to better utilize their facilities to plan production for anticipated market demand.

### **Review of Projects**

At each committee meeting, the committee received a report of the projects that the Agricultural Development Board acted on in its earlier meeting. In so doing, the committee performed its responsibility of (a) monitoring the expenditure of funds received under the Tobacco Master Settlement Agreement, (b) receiving reports of the Agricultural Development Board through the Governor's Office of Agricultural Policy, and (c) overseeing the pattern of Master Settlement Agreement fund usage in accordance with the requirements of the agreement.

GOAP representatives reviewed projects affecting multiple counties and regions and the state as a whole. They also presented a monthly listing of county model programs. In addition to routine projects, the committee also heard about those projects receiving funding under two new competitive awards programs: the agritourism competitive awards program and the farmers' market competitive awards program.

Several projects reflected the ADB interest in rural development through the expansion of technology and training to farmers. One project involved expanding access to high-speed Internet to be provided through a Rural Electric Cooperative. Two other projects funded by ADB involved computer training and entrepreneurial opportunities for farmers through the Kentucky Community and Technical College System and the Kentucky Entrepreneurial Coaches Institute.

Finally, the committee continued to function as a forum for public input and performed an oversight function regarding funding decisions made by ADB. Two projects rejected by ADB were acted on by the committee and then returned to ADB for reconsideration. The first project involved reconsideration of the request for state funds for the purchase of a facility to show Kentucky Angus beef cattle. The project had been rejected by ADB because it was classified as a stockyard. The second project requested authorization to use county funds to establish a model tobacco program in Christian County. ADB reversed its decision for state funding for the project to show Kentucky Angus beef cattle, but it declined to accept the committee's request for reconsideration of the Christian County model tobacco program.

## Reports Received

Along with the monthly project reports from representatives of the Governor's Office of Agricultural Policy, the committee received status reports from administrators of programs that received tobacco settlement funds through the state budget or directly from the Agricultural Development Board.

Directors of programs associated with the Kentucky Health Care Improvement Fund reported to the committee in July. The executive director of Kentucky Access updated the committee on the status of the high-risk insurance pool. The committee heard from directors of the Kentucky Tobacco Prevention and Cessation Program and the Kentucky Agency for Substance Abuse Policy. Doctors affiliated with the University of Louisville's Brown Cancer Center and the University of Kentucky's Markey Cancer Center reported on cancer research projects.

In August, the committee received a report on the Early Childhood Development Fund and the many programs affiliated with that fund. The Early Childhood Development Fund received about 25 percent of the Phase I Master Settlement Agreement distribution.

The status of the many projects undertaken in soil erosion and water quality cost share and soil stewardship programs were included in a September report from the director of the state Division of Conservation.

The panel received information during the October meeting from the Purchase of Agricultural Conservation Easement, and the Lexington-Fayette County Purchase of Development Rights programs, both which benefited from a bond issue backed by tobacco settlement funds. Representatives of the Kentucky Infrastructure Authority reported in November on water and wastewater projects administered by the authority.

The committee also received a report in December on programmatic and financial activities of the Kentucky Agricultural Finance Corporation.

In addition to reports from agencies receiving annual tobacco settlement funding, the committee heard in April from representatives of the Kentucky Dairy Focus (later called the Kentucky Dairy Development Council), an ADB grant recipient. The committee received a status report in May from the director of the Kentucky Entrepreneurial Coaches Institute, a recipient of tobacco settlement funds.

The committee conducted its June meeting at the Kentucky Tobacco Research and Development Center on the University of Kentucky campus. During the meeting, the committee heard a report from the center's director on its tobacco research activities.

In August, the state Farm Service Agency director outlined agency plans to close some county offices because of the end of the federal tobacco quota and price support system.