Chair Andrew McMichael called the meeting to order at 3:33 p.m. The following members were present: Greg Arbuckle, Ferhan Aticci, Mustafa Aticci, Nedra Atwell, Barbara Brindle, Stuart Burris, Mike Carini, Walter Collett, Thad Crews II, Robert Dietle, Richard Dressler, Dana Emberton-Tinuus, Jane Fiffe, Malia Formes, Jerry Gotlieb, Deana Groves, Joe Hardin, Anthony Harkins, Pamela Jukes, Soleiman Kiasatpour, Amy Krull, Karen Mason, Kathleen Matthew, Marge Maxwell, James McCaslin, Andrew McMichael, Roger Murphy, George Musambira, Dan Myers, David Neal, Johnston Njoku, Laurin Notheisen, Lester Pesterfield, Katharine Pettit, Katrina Phelps, Keith Phillips, Kara Ratliff, Eric Reed, Sherry Reid, Jeffrey Samuels, Bud Schlinker, Roger Scott, Peter Sepanski, Douglas Smith, Nevil Speer, Peter St. Pierre, Sandra Starks, Mason Stevenson, Stacy Wade, Judy Walker, Jeff Willis, Mary Wolinski. Alternates present were: Phil Lienesch for Lawrence Alice, Robert Smith for Marty Bowman, John Petersen for Barbara Burch, Rachel Kinder for Freda Embry, ??? for James LeTourneau, Bill Greenwalt for Cynthia Mason, Eddy Cuisenier for Laura McGee, Jerry Daday for John Musalia, Beth Plummer for Sylvia Puylliam, Kate Hudepohl for Julie Shadoan, David Young for Tom Tutino. Members absent were: John All, Lynn Austin, Mike Binder, Ellen Bonaguro, John Bonaguro, Tim Brotherton, John Bruni, Scott Dobler, Sam Evans, Blaine Ferrell, Elner Gray, Kirk Heriot, Michelle Hollis, Nezam Iraniparast, Kaveh Khatir, David Lee, Minwoo Lee, Deborah Lively, Terrence McCain, Timothy Mullin, Anne Onyekwuluje, Heather Pulliam, Gary Ransdell, Robert Reber, Vernon Sheeley, Robert Sims, Samaanta Thapa, Carol Watwood, Richard Wilson

Approval of the Minutes

The Minutes of September 15, 2005, were approved with corrections.

Report from the Chair

Chair McMichael reported the following:

Beginning with the meeting, the reports of the Chair, Vice Chair, Regent, Provost and Committee Chairs will be limited to no more than 10 minutes of report. That does not include questions and answers. Anything taking longer than 10 minutes will be submitted in writing and made a part of the agenda.

The executive committee is appointing a faculty representative to the Provost’s core committee. The committee that figures out how to carry out the QEP. The faculty regent, the chair of the UCC, and the Chair will meet with the Provost on November 1, 2005 to decide what sections of the QEP as requiring University Senate approval before they are implemented.

The parking committee would like one faculty member from each college. The colleges need to caucus to choose a representative. They may be a member of the University Senate or they may be a non-Senate representative chosen by the college caucus. The following colleges
already have a representative appointed: CEBS and BGCC.

The executive committee has asked the university curriculum committee to look at way to revise the university’s drop policy. To look at the ways to reinstate the policy by which professors can drop students from their rolls for nonattendance. This is mostly due to General Education classes like Math 116 that have very long waiting lists. They need to purge people off their rolls who are not attending and get people off the waiting lists so that they can graduate.

The senators from the School of Education to send a representative to the Faculty Welfare and Professional Responsibilities Committee. Their old representative was not attending so a new one is needed.

Scott Lasley (Political Science) has been appointed as Potter College Faculty Representative to the University Athletics Committee. The position is a rotating position of three years. Each college has a representative and each year colleges come up for reappointment.

**Report from the Faculty Regent**

The Faculty Regent, Robert Dielle, reported that the committees of the WKU Board of Regents will have their committee meetings Friday, October 28, 2005, in the Mass Media and Technology Hall, Cornelius Martin Regent’s Room. The Regents will have their regularly scheduled quarterly meeting on November 18, 2005.

**Report from the Provost**

The Provost was absent. There was no report.

**STANDING COMMITTEE REPORTS**

**University Curriculum Committee** (Report attached to Agenda)

Kate Hudepohl (substituting for Julie Shadoan) moved approval of the report. No items were pulled from the consent agenda to the action agenda. The report was unanimously approved.

**Faculty Welfare and Professional Responsibilities Committee**

Mary Wolinski reported the formation of several subcommittees.
- The Faculty Salary Survey subcommittee will do the annual survey of faculty salaries. That is being prepared in the Fall.
- The Senate Survey of the President and Faculty Work Life is the second subcommittee. Last year’s report has been completed and is available on the website listed on the submitted report. To get greater response this committee is working to shorten the survey. Out of 600 faculty we only have a response of about 240.
- The third subcommittee is working on the idea of a faculty ombudsman. That would be someone who could act as a liaison between faculty and administration.
for various problems. Members of faculty welfare as well as the faculty regent are serving on this committee.

The Subcommittee on Faculty Workload is just beginning. They are attempting to take stock on how the faculty is rewarded for what they do both through merit pay and teaching load.

The Faculty Welfare Committee welcomes other senators who would like to join these subcommittees. Clearly the Faculty Welfare and Professional Responsibilities Committee is too small to take in such big questions by themselves.

Senator Wolinski also reported that the FWPR committee does have representatives from Community College and the Libraries, but still needs representation from the College of Education and Behavioral Sciences.

**Report from the Vice Chair**

Vice Chair, John All reported that Robert Dietle is still the only candidate for Faculty Regent and that the deadline for nominations closes tomorrow, October 21, 2005.

**Graduate Council** (Report attached to the Agenda)

Dean Gray was absent. An information item was reported by the Chair.

**Benefits Committee** (One Page Summary attached to the Agenda)

Chair McMichael reminded the body that the Benefits Committee is not an official subcommittee of the senate, but that the senate has representatives to this committee.

Tony Glisson submitted this report and the floor was opened for 10 minutes of questions:

Senator Atwell: It seems unfair to people in my college that for two years in a row that the same group has had an increase in health benefit costs. Last year it was more substantial than the $32 increase before us now, but it seems that something needs to be done so that you are not consistently raising the rate on the same group. Last year it was a more significant amount, 75 or 80 dollars, so that is $120 dollars on one group of folks and nothing for the others.

Chair McMichael: Are you talking about the increase for the High Plan?

Senator Atwell: It is an increase for the High Plan Couple. Very soon they will be paying as much as the High Plan Families.

Tony Glisson: The Benefits Committee has been very careful to drill down into our use data and for the past couple of years, and even back before that, we have begun to look not only at what was happening for each plan but also what was happening for the tiers within each plan and we continue to see that particular category unfortunately is the one that drives our costs factors.
Now I agree that we are reaching the point of maxing out on that particular group, but if you look at the ratios we have changed them. For example if you look at the cost of a single compared with the cost of a couple—cost of a single compared with cost of a family—those ratios have changed. That is what the benefits committee continues to adjust. The benefits committee felt that continuing to adjust that category considering that is where the cost increases are coming from was appropriate.

[Senator Myers attempted to bring up an email concerning the potential development of a university retirement plan and was ruled out of order.]

Regent Dietel: I noticed that we have changed the company through which we have life insurance. Are the benefits the same as they were under Metropolitan?

Tony Glisson: They are better. You will note that we are increasing the basic life insurance, in other words, the free life insurance coverage that we all get as employees from $10,000 to $15,000. We could do that at a cost reduction to the university. The costs for supplemental coverage are also going down. No matter what your health status you are eligible for $200,000 in life insurance coverage no questions asked. That is a very opportune thing to look at when you make plan changes and carrier changes.

Alternate Smith: Does the age of people in the couples category affect the rate? Are those people who are at an age where their children have left home?

Tony Glisson: I think that for many people who talk about this on the committee. You might think that those people with 3, 4, or five children are really the ones who cost us money, but they are not. Kids do not cost anything. Those of us get in our mid-forties or mid-fifties, we start having heart attacks and other things that are really beginning to cost.

Senator Atwell: So it is more about age discrimination?

Tony Glisson: Perhaps. You know insurance is really a sharing of the total risk of the population. The committee talked about exactly the point you made earlier. I think we are reaching the point to where we are probably not going to adjust those factors again. But we are trying to be fair about where the cost lies and what is charged.

Another Comment. I think that the document sent out did not discuss those who waive coverage. You might have an interest in that. The total university contribution is going up to $405 per month. One half of that is $203 dollars. So employees who waive university health coverage will get $203 dollars per month in a medical flexible account.

Senator Samuels: A question came up on those who do not opt for health care? Is that money that is put aside guaranteed in any way? Because I remember last year from the Senate, Dr. Burch said that they were going to use the excess of that money, if I remember correctly, to fund the Parking and Transportation Dept...

Chair McMichael: No, it was a health position in the Preston Center—a salaried position for one year.
Senator Samuels: For one year. So how tight is that money? It is interested that the university could dip into that money and use it for other means when it should be reserved for...

Tony Glisson: I do not have any recollection of the money being used in that fashion. It was used for the total university budget cut. I think the total budget cut was $285,000 or $385,000.

Chair McMichael: What part of the report does this pertain to? Because I have already cut one person off for getting off the topic. When you started, I thought that you were asking something about the report. Are there further discussions about this report? Then thank you very much.

Old Business:

Chair McMichael: The resolution concerning KTRS and ORP. Last month we voted to postpone this resolution. That motion is back on the floor and up for discussion. Is there any discussion? We will read the motion out another time.

Whereas, WKU contributions to faculty ORP retirement accounts are currently being devoted to KTRS.

Whereas, this is a breach of fiduciary duties under ERISA and other applicable laws,

And whereas, this currently has the effect of reducing retirement benefits by approximately one-third for ORP plan members,

Therefore the University Senate demands that the University Attorney commence legal proceedings against the Commonwealth of Kentucky and any other relevant parties.

The floor is open for discussion.

Senator Atwell: I have several concerns about this. Part of them I expressed last month. Part of them I will express again. I am concerned about the document sent statewide to everyone in KTRS.

Chair McMichael: You are referring to the KTRS newsletter? Yes, ma'am.

Senator Atwell: I have been questioned about this as I travel and work in public schools. A large part of our alumni and our contingency are people that work in schools. You must fine tune the argument to try to explain this to them. Honestly, some of us who are trying to do that are having difficulty with that because it does not quite hold water. So it is costing us public relations-wise and with our alumni in certain areas.

The other thing I have questions about the WKU retirement white paper that was put in there. I think any document about this issue we need to know who it is from and whether they are a KTRS member or an ORP member.

Chair McMichael: This white paper?
Chair McMichael: This white paper was put out by WKU Department of Human Resources. It says so on the last page.

Senator Atwell: That is not what I am talking about. WKU Retirement, KTRS vs. ORP.

Chair McMichael: You said the white paper. Are you talking about the white paper?

Senator Atwell: Oh...no. I am talking about the handout that came with last month’s packet and whether they are a KTRS member or an ORP member.

Chair McMichael: This is the same document handed out last meeting and it came from the same person who sponsored the resolution: Bill Trainor.

Senator Atwell: Anything that comes with this...I think that we also need to know whether they are KTRS members or ORP members. Honestly, ORP members have self interest in wanting more money. I have no problem understanding that. KTRS members also have self interest in not wanting what they have disturbed and ruined by ORP people. So you need to have ...I think that this issue can be very divisive within the faculty and very divisive between the faculty and the community so how we handle it needs to be appropriately done. Before we do anything, I would like to see the senate have people from KTRS come and make presentation. I know that you may have tried to do that, but I would like to see an effort really made because after something comes out in the paper that we are talking about suing you. You already have a less than friendly...so I’d like to see a real attempt made to have other sides presented.

Chair McMichael: Let me really quickly address that. Is Bill Trainor here?

Bill Trainor: Yes.

Chair McMichael: You are a member of ORP, correct?

Bill Trainor: Correct.

Chair McMichael: The author of the original motion was an ORP member. To answer your question about KTRS, they were sent an official invitation by me from the executive committee. They refused. I sent them, via email, three more invitations urging them to come. In all three cases they have stated very clearly that they regard this as an internal matter between WKU and its employees and that they have no intention of sending someone here to talk about this issue.

Senator Atwell: I think that we need to discuss this issue very thoroughly.

Senator Myers: According to the white paper we are not happy with the way that KTRS does things? We would like KTRS to change the way that they tax us?

Tony Glisson: I think that we are not happy with the extent of the taxation on ORP people, yes.
Senator Myers: Are there avenues that the university is attempting to follow to remedy this problem?

Tony Glisson: Yes, as I understand it, the university presidents have already met to discuss this generally. I prepared this brief in consultation with President Ransdell. It is my understanding that there is a meeting on November 2, 2005 with retirement officials to talk about this and perhaps what it is that we are proposing to do.

Senator Myers: When people sign up for the ORP, are they expressly stated that the contribution from the university would be on a sliding scale and subject to decrease?

Tony Glisson: Yes it is. It is in the enrollment form that all employees sign. Now what I will tell you is there is much stuff thrown at you and perhaps you did not catch. Nevertheless, it is in the enrollment document that tells what the current rate is and that fact that it is subject to change annually.

Senator Myers: Is there any way for people who have chosen the ORP plan and are unhappy with it to change to the KTRS plan at this time?

Tony Glisson: Yes, there was a bill passed that became effective on July 1, 2004, that allows people to make a one-time, lifetime decision to make a change from ORP to KTRS. You cannot go from KTRS to ORP. However, the provision in the law does allow you to make a one-time, lifetime change. Before July 1, 2004, you could not do that. Once you decided, you were forever bound by that.

Senator Myers: Thank you.

Tony Glisson: Can I make a point of correction in your resolution? It is technically incorrect in that the university is not covered by ERISA. You might want to be aware of that.

Senator: Does the proponent still allege that this plan is a violation of applicable laws? In particular do you claim that it is violating KRS 161.569?

President McMichael: Are you asking that of Professor Trainor?

Senator: Dr. Glisson?

President McMichael: Can you restate this?

Senator: Is this KRS 161.569?

Tony Glisson: I do not believe that we are violating the law, no.

Senator: The recommendation suggests that we ignore that law. The recommendation says that we will stop saying that. According to the law it says that we will pay it.

Tony Glisson: That is not what it means. Any change would have to be enacted through
legislation. So that for example if we negotiated with KTRS... that hey, KTRS, we would like to get to a more reasonable level of taxation that may go to you... perhaps 2 or 3 percent similar to other states that would be the result of a change of law that then would not be violating the law.

Senator: But right now we meet KRS 161.569? In fact we are obligated by this state law that says that every institution shall do this?

Tony Glisson: That is correct and that is what we are doing.

Senator: OK, so I am asking now the proponent of the resolution do you still urge that this is a breach of other applicable laws? Would you like to change that?

Chair McMichael: He cannot change that. We can move to change that, but if you want to direct the question at him then I will ask Professor Trainor to respond to that.

Professor Trainor: Thank you. I brought this up several months ago as you know in an email. I would like to make the point of why I am here in the first place. Based on contributions, the university makes a 13.84% contribution to every person's account sitting here whether we are in KTRS or ORP. We are not asking for the university to reduce your contribution of 13.84%. We are simply asking for KTRS to quit taking our part. I got the following points concerning the things that have been happening over the past five or six years. Based on the current reduction in the employment contribution, ORP people can now expect to receive $14,000 less in retirement.

Chair McMichael: Hold on. Is this already in the report?

Professor Trainor: Yes it is.

Chair McMichael: Well, you do not have to repeat yourself, we already have that information.

Professor Trainor: Well, I am making the point about why I am standing here. Down to $39,000, KTRS people can expect about $56,000. So already you are about 17,000 dollars ahead of us at retirement. I want to make the following point based on that statute. 1. KTRS was established in 1938 on an actuary reserved system. That contribution system is based on the following. That means contributions of members and employers and their earnings from KTRS investments are placed in reserve to pay for the systems annuity obligation. The goal is to finance benefits of the system as a level percentage of pay over the entire career of each member in KTRS. ORP people are not members of KTRS and the above statute is in direct conflict with the KTRS original mandate. 2. KTRS is a defined benefit plan as qualified and they state this specifically in their annual report under Section 401a of the IRC code. Two provisions of that code, I believe, are relevant here. The first one being the exclusive benefit rule. The second one being discrimination against one group of employees for the benefit of another. Here, employees in ORP are being discriminated against for those in KTRS. Those of you current KTRS members are apparently financing current retirees in the system since obviously their contributions were not large enough to meet the current systems needs. 3. KTRS has gone from fully funded in 1999. Then they did not need any of our money. To being only 80% funded five years later. Obviously the stock market crash had something to do with that. This is a 3.3 billion-dollar
shortfall. This amounts to more than $8,000 for every man, woman, and child in the Commonwealth. If KTRS had taken every dime of every ORP member in all five universities over the last five years that would only give them an additional 50 million dollars. That does not even reduce their shortfall by a decimal point. That is the rational that they are using to take more of our money. 4. For these individuals in KTRS who see nothing wrong with all this, i.e., requiring others to subsidize your retirement against our will, you should take a long, hard look in the mirror. I think it is fair to characterize the position of these folks as “it’s OK to do it for me, but don’t do it to me.”

Chair McMichael: Stop. Now. You are out of order.

Bill Trainor: Very well.

Senator: Did he answer my question?

Chair McMichael: No.

Senator: Thank you.

Senator 2: I would like to express an objection to the common reading of this as the KTRS people versus the ORP people. As I see it, the ORP problem is not hinged on taking away money from people on KTRS. The ORP people are asking for is to bring their rate of university contribution back up. They are not asking for that amount to be made up by taking it away from KTRS people. Now if I am wrong, please correct me and if I am right then I think that information needs to go out because all across campus that is all I am hearing. I do not hear anybody asking that the shortfall be made up by subtracting from the KTRS fund and so I think that the point you made about the people identifying themselves and expressing their self interest is a little dangerous. For one thing, we are all faculty senators acting on behalf of the faculty and this is not a partisan issue.

Alternate Robert Smith: I have a few questions after reading the white paper and that is how will the ceasing of the current funding of the ORP until 2018 impact the currently retired and to be retired under the KTRS system? What would be the cost to the university of the differential in university contributions for the ORP if it was paid out of the university general funds instead of being taken out of the university contribution to ORP plan members?

Tony Glisson: Let me see in understand your first question. I think you are asking how is KTRS adversely affected if we do not continue to pay until 2018? I cannot answer that. That is probably a question that only a KTRS actuary can answer. So I do not know.

Alternate Robert Smith: How do we get that information?

Tony Glisson: Again, that is part of the dialog that is occurring between the presidents and the retirement system is asking those kinds of questions. Other than that I am not sure how we get to that. The whole actuary thing is a big mystery.

The cost to the university if it makes up that differential that you were referring to depends on what that number is. If you get up to the 13.84%, it is the difference between 5.66%
and 13.84%. So what you all have if you do that keep in mind is that the ORP people may be getting a benefit much larger than KTRS people. It may be about 20% or so versus 13.84% compared with KTRS. Now KTRS is a defined benefit. What you put in has nothing to do with what you get out. It is by formula. ORP is defined contribution. What you put in concerns what you get out.

Regent Dietle: I have a few questions. I am worried about some imprecise language that is being used in this debate. Correct me if I am wrong. Sometime before 1996, the comprehensive universities of this state entered an agreement through legislative action to allow new faculty arriving to choose ORP plans. As part of that agreement, all the universities signed off on making what I would call a supplemental payment to the KTRS system to make up for that there were faculty that would no longer be contributing to KTRS. My interest is that this issue is always presented as that we are required to take this supplemental payment out of the university’s contribution to the ORP folks, but is that in fact a requirement of the plan.

Tony Glisson: Yes, it is. As I recall, I was here. I helped put in ORP. It was one of the first major initiatives in 1996. I do not recall us signing anything with KTRS. This was a matter of doing what was passed by the legislature . . . what the legislature allowed us to do. The KRS statutes that speak to that says that this is what we must do. It does not define or determine the rate. It says the rate is determined annually by KTRS annually. Nevertheless, the requirement to do it is definitely there in state law.

Chair McMichael: What he is asking is does the law says that you must take it from ORP accounts or does the law simply say that you must contribute.

Regent Dietle: My question is that it defines the amount, but does it tell us how we have to find that amount?

Tony Glisson: Yes. It talks about what goes where. To the KTRS system an amount equal to the contribution that would have been payable to the KTRS because of the unfunded liability if the member has elected to participate in the plan instead of the ORP. In other words, take the 13.84% subtract the part that KTRS says it needs and the employee gets the remainder. Now the supplement that we have been doing for the past couple of years is really . . . you know . . . I do not know whether it is consistent with this or not. I think the retirement system newsletter did give us some freedom to do that if we chose to, but the way that we interpreted this previously is that the ORP person gets what is left and that is all.

Regent Dietle: I would like you to send me the exact wording because I am still unclear that it requires us to take the money out of the university contribution to ORP accounts. I know it requires us to fund an amount to KTRS that is based upon a formula related to the ORP accounts. My question to those of you who are seeking a fair contribution to your benefits is it KTRS or the university that you need to turn to for justice.

Tony Glisson: That is KRS 161.569, Item 5a. It says each institution shall contribute on behalf of each participant in this option retirement program the following: To the designated company or companies an amount equal to the amount that would have been payable to the KTRS system if the member had elected to participate in that plan instead of the ORP minus the amount.
contributed to the KTRS system pursuant to subparagraph 2, which is that ORP thing.

Senator Speer: The issue is an issue of legality. What is the law? Are we within the law or outside the law and the Regent made the issue really well. Is our issue really with KTRS or is it really or may be it is an internal factor? Maybe we do not even have the legal expertise here today to take this step.

Senator 2: I did not plan on speaking again but I wanted to bring up two things. For one thing I had been in TIAA-CREF for 10 years before I got here. So the characterization that as we were sitting here at Western signing the papers that we knew what we were signing. Some of us were already in an ORP when we got here and it affected how we made that choice. The other issue, having been in an ORP for 10 years before I got to Western, I was used to paying a some support for the state system that I understood was the price you paid for the increased portability, et cetera, but that percentage was always in the 1% to 2% range in the two other states I worked in. I think that in most states that is where it is. So if KTRS is in that big trouble I want to know why. I have no problem paying for the portability of my system but 8 or 9 percent seems radical.

Senator All: I think the point of the lawsuit is to examine the breach of fiduciary duty because essentially KTRS is the one who selects the rate and yet KTRS is also the one that benefits from the selected rate. So you essentially have the fox guarding the henhouse, and that is the situation that legally has to be addressed. On the broader scale, again we can argue the details of this ad infinitum but the key for my department is that half of us of pre-tenure... all the young people we came in... since I have been here the overall money I make from the university has decreased. The cuts to my ORP have more than offset the salary increases that I have gotten and everyone that has come in with me is in the same situation. So what is happening is that all the young professors are looking at leaving the university. That is what you have to ask yourself, what is the future of the university if we drive away all the good faculty the ones who can leave by consistently cutting our pay rate that is what is going to happen you are going to drive all the young faculty away. If that is what you want to achieve then that is fine.

Senator Phelps: I have several conversations with members of my department about this issue. Everyone felt that it is a very serious issue. For the reason you just raised... it is becoming a brain drain. Two concerns that were raised as to the motion. One was whether we really had the expertise to decide whether it is a legal issue or a fairness issue. Whether in fact we are outside the law or whether in fact we are unfairly burdening but are still within the law. The people in my department did not feel like we knew... and we did not feel like putting a motion forward without further information about the legality of the situation. The other concern was that the people I spoke with were not comfortable with making a recommendation for a lawsuit. They were very comfortable with making a recommendation further to explore the issue, to do the kinds of things that are currently being done like holding meetings with presidents of the other universities, but they did not feel like making a motion from the senate for the university to engage in a lawsuit was something they wanted to support.

Senator Atwell: I would just like to say two things. It may be Dr. Dietle may have hit on the issue since the law does not say the university has to take it from the ORP folks, this may be something that the money could be taken in another area. The law does not say that the
difference has to be made up there. So that could be an issue that needs to be explored at another level and I would like to see numbers run on faculty that have been here less than five years. How many are ORP, how many are KTRS and do a survey before we have the impassioned

Chair McMichael: I think that is in the white paper, it is in the white paper.

Senator Atwell: There are some numbers in there, but if you look at the numbers, there are more KTRS folks than there are ORP.

Chair McMichael: What additional numbers are you asking that be run?

Senator Atwell: Dr. All mentioned that we were losing new faculty, people say less than five years who are non-tenured. There is nothing in here that addresses just the people with less than five years who are non-tenured, whether they are ORP or KTRS.

Chair McMichael: Under contribution history, the data file, does that not, does that not address that Mr. Glisson?

Mr. Glisson: Well, no, my . . . Just to be clear

People less than five years who are non-tenured, I would like to know the number that are KTRS, the number that are ORP and then maybe we need to survey to see if it has an effect.

Chair McMichael: OK.

Senator Crews: In just a short moment we are probably going to vote on whether or not we support suing and that is very specific as opposed to the data collection. Perhaps one item on the whereas is that the second item I think it is, says that KTRS is doing something illegal, I would like whoever, Dr. Trainor or someone to address that specific issue.

Chair McMichael: We can, someone can . . .

Senator Crews: I am not sure that is clear to most of us that somebody’s doing something illegal at this point and that is a crucial element I think to being able to vote on the specific matter and not to hinder the discussion of this topic going forward.

Chair McMichael: Let me give you a couple of options here, Senator Crews. You can make an amendment to this, you can move to strike a part of it, you can make a point, Prof. Trainor has addressed this body and at the end of it he began accusing some senators of things that I did not like. I am not going to let him address this body again unless someone wants to challenge that.

Senator Crews: Can anyone else address that, and again, I do not have it in front of me. Dr. Dietle if you have that - one whereas that says specifically that they are doing something I believe in breach of something?

Chair McMichael: It says a breach of fiduciary duties under ERISA, which we are not subject to.
Senator Crews: Is that the question that did not get answered specifically? There was a moment where someone asked . . . okay. Right, just on the motion, the statement “whereas this is a breech of the duties under applicable laws” I guess I would like someone to know that really is a breech or not. I do not know if the experts needed to answer that question are here or not.

Chair McMichael: We may have a solution here. Go Ahead.

Vice-Chair All: Since it seems like we are hung up on the legality. The thing I would like to do is offer a friendly amendment, where it says therefore the University Senate demands that the University Attorney commence legal proceeding, how about we change that to University Senate demands that the administration pursue any and all avenues possible to remedy the situation? Would that address many people’s concerns?

Chair McMichael: He needs to make a motion to amend.

Vice-Chair All: I make a motion to amend it. I make a motion to amend the last sentence of it to say that “therefore the University Senate demands that the University administration pursue any and all avenues to remedy this situation.”

Chair McMichael: Dr. All what I would have for this, and we have a second, discussion of that amendment - the discussion is now open for that amendment.

Senator Walker: “Any and all” means lawsuits so within we officially say that as well.

Chair McMichael: It includes lawsuits, it is not limited to a lawsuit, it would include a lawsuit, it would include negotiation. In my sense it lets the administration decide what it thinks is the best remedy for fixing this situation. Is that everybody’s sense of this or does someone else have a different sense so that when someone asks me about that I can say.

Senator Myers: I want to offer another amendment after

Chair McMichael: You want to offer another amendment, okay, discussion is still open on this amendment. Do you have a question on this amendment, the discussion?

Senator #3: Well, I will form it as a question. Does not KRS 161.569 b and c...the efficacy that the KRS is required to use a criterion to select optional retirement plans that demonstrate an efficacy of the contracts in the recruitment and retention of employees and in the nature and extent of the rights and benefits, so does not that constitute possible grounds for legal action?

Chair McMichael: I am sure it could, this amendment could leave it open to the interpretation of the administration on how to pursue it?

Senator Musambira: As I am sure it is the case to many of us here, some of us are members of KTRS but as Senators we represent people in ORP as well. I have also had extended discussions with members of either one group. The problem that I have with the current motion as it is, is that it might for some reason depending on the members of the administration that are in ORP or KTRS, it might end up tilting them to adopting a legal suit and yet I would have thought that if
this problem started with legislation, it should, we should go back to the legislation, we should handle it through legislation at Frankfort, where it originated. I think the motion should be phrased such that it gives the administration direction, more direction toward that, rather than just leaving it open ended and then some member of the administration, for whatever reason, decides to take the legal suit, rather than considering legislation.

Chair McMichael yields the Chair to the Vice-Chair.

Vice-Chair All: Floor is still open to comments and I recognize Senator McMichael.

Senator McMichael: I am an ORP member, I would simply like to voice my support for this amendment as it reads. I think it avoids the harshness of the lawsuit, it avoids us trying to bind the University to one course of action, it lets the University pursue multiple courses of action not limited to simply a lawsuit but including that if it becomes necessary.

Vice-Chair All yields the Chair back to Chair McMichael.

Chair McMichael: The floor is still open for discussion of this amendment.

Unknown Female Senator: Andrew, if we vote in favor of this are we still saying that the law is broken?

Chair McMichael: The amendment as it written will not strike the second whereas. All we are doing here is voting on amending the document and later we will vote on the document itself.

Senator Greewalt: Point of order ... the only thing that we are voting on is the resolution, not the whereases. What is in the whereases is not in the resolution.

Chair McMichael calls the question. The motion to amend is passed unanimously.

Chair McMichael: The motion is again open for discussion of this resolution.

Senator Myers: I would like to amend the resolution to strike the second whereas.

Chair McMichael: To strike it completely.

Senator Myers: Yes.

There were several seconds to this motion.

Chair McMichael: Discussion of the motion to strike that portion of the rationale . . .

There was no further discussion of the motion and Chair McMichael called the question. The motion passed.

Chair McMichael: Further discussion of the resolution . . .
There was no further discussion. Chair McMichael called for a written vote. The motion passed by a 26 in favor, 15 against, with four abstentions.

**New Business**

Senator Musambira: Given the changes in the teaching schedule that took effect this semester, I would like to propose that the beginning of the senate session be moved so that some of us who teach classes until 3:30 can attend on time. Perhaps the meeting time could be shifted forward 15 minutes?

Chair McMichael: I have set the time of the meeting at the discretion of the chair and I have arbitrarily set it at 3:30. So what you are doing is asking to vote me down... that is fine. To tell you the truth that 3:30 or 3:45 does not matter to me. Nevertheless, I think we do need to make sure that it is the sense of the senate or at least most of the senate that we move it. What I have done is wait to begin because I realize that with the changing time of classes that we are all sort of off.

Motion was seconded. There was no discussion. The question was called and the proposal moving the meeting to 3:45 was passed. The Chair was properly chastened.

**Announcements**

Tony Glisson: I am a really simple guy but I think that if I were dealing with this retirement thing I believe what we will need to do. I do not think that anything will happen short of a law change. That is my personal opinion. The law says what it says and we are going to do what the law says. Nevertheless, I think it is not adequate for this group to say to the administration go and do what it is you need to do to solve this. I think that you need a specific recommendation on what ORP's purpose is, what it is doing to our current participants, what its implications are for faculty recruitment and retention. They do not listen to people like me. They listen to people like you. You need to get your colleagues at the other universities to do the same thing. Because I think that we now have the retirement systems attention and we have the community's attention and to me that is the way to get something done through the legislative process. We could get this number down in the 2 or 3 percent that if you look at the document that is what other states are doing. I think we could all be happy. Still, I think we need more support from you guys about what it is doing to you, what it is doing to the institution and the other institutions to help us.

Chair McMichael: I will be making regular reports to this body concerning what the administration is doing and I do hope that at a future point that the senators will again take up the issue if they do not feel the issue is being rectified.

This is the representative body of the faculty. It is the departmental senators' job to survey their department and the at-large senators to survey their colleges to bring forward any resolution and any business that affects the university. We should not shy back from commanding the university to do what we think is right. It is our job to watch out for what occurs at this university. We are the stewards of this place.

I will check on Garrett for the next meeting.

Senator Smith: COSFL will meet Saturday. I and Regent Dietle will be attending by ITV.
Anyone who wishes to join us can meet with us 9:00 Saturday morning in the MMTH-ITV conference room. The chair of CPE will be there.

There was a reminder to caucus for parking committee.

There was a motion to adjourn.

Respectfully submitted,

Douglas Smith, Secretary

**NOTE:** The agenda with its attachments for this meeting can be found on the University Senate website: [http://www.wku.edu/Dept/Org/FS/meetings.htm](http://www.wku.edu/Dept/Org/FS/meetings.htm)