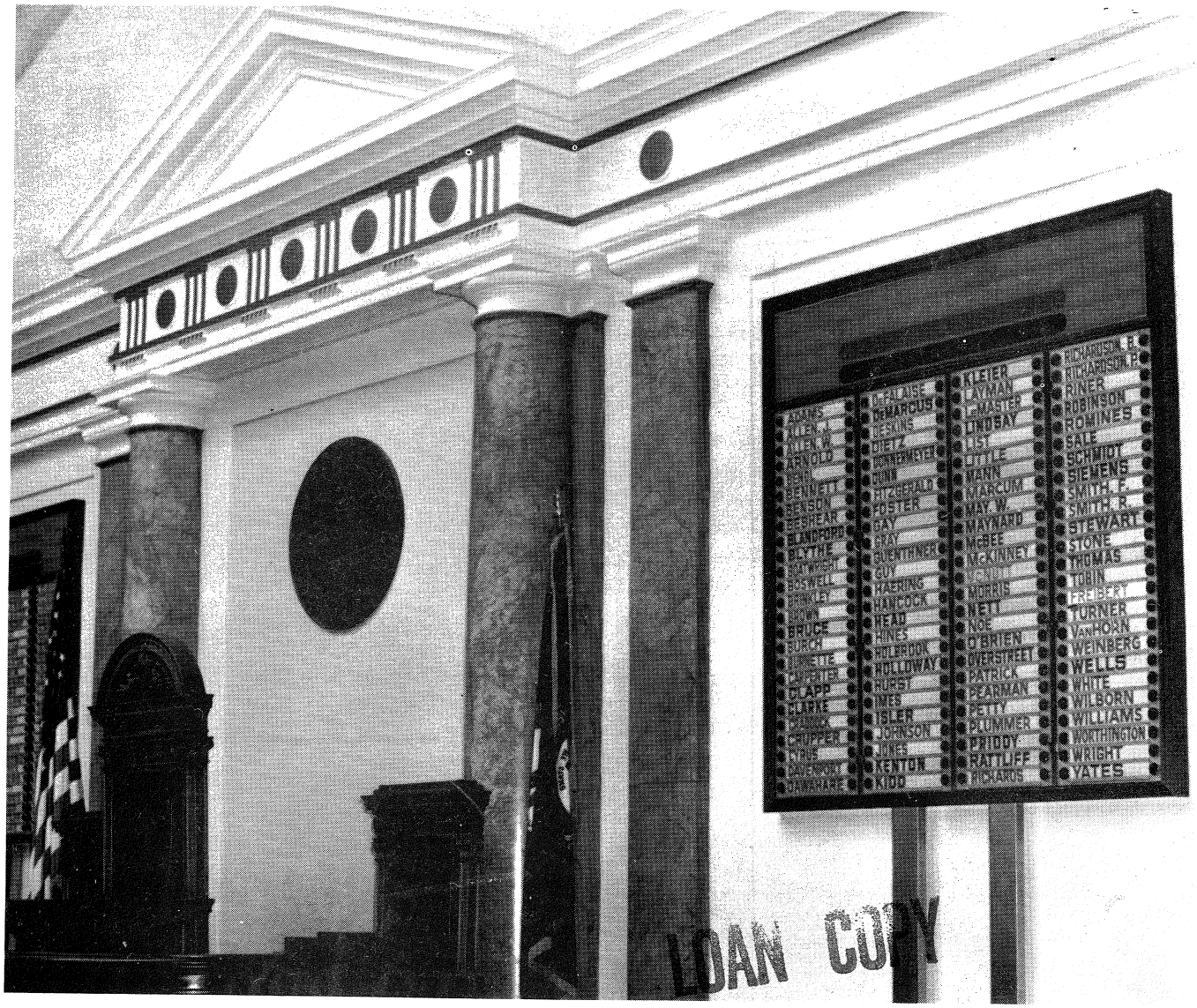
ISSUES CONFRONTING THE 1980 GENERAL ASSEMBLY



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LEGISLATIVE RESEARCH COMMISSION

Frankfort, Kentucky

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The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting a pre-session orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

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

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

ISSUES CONFRONTING THE 1980 GENERAL ASSEMBLY

Prepared by
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FOREWORD

This collection of briefs, prepared by members of the Legislative Research Commission staff, attempts to bring into sharper focus some of the major issues which have received considerable legislative attention during the interim. The reports by no means exhaust the list of important issues facing the 1980 legislature. At the same time the alternatives and comments suggested are neither exclusive nor exhaustive.

Effort has been made to present these issues objectively, unemotionally, and in as concise a form as the complexity of the subject matter allows. They are grouped for the convenience of the reader into the various committee jurisdictions and no particular meaning is placed upon the order in which they are presented.

Staff members who prepared the reports were selected on the basis of their knowledge of the subject matter and their work with the issues during the 1978-79 interim. Most of the staff has worked closely with the interim legislative committees which studied the issues and helped draft some of the proposed legislation.

This bulletin has been published earlier than in previous interims in order that all members of the 1980 General Assembly may have ample time to review these issues prior to the convening of the General Assembly in January 1980.

It is anticipated that a supplement to this bulletin will be published immediately prior to the 1980 Session updating current issues and adding such new issues that may emerge in the meantime.

VIC HELLARD, JR.
Director

Frankfort, Kentucky
August 1979

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Agriculture and Natural Resources

MANAGEMENT OF HAZARDOUS WASTE

Prepared by Peggy Hyland

Issue

What legislative action is needed to address the immediate problems associated with illegal hazardous waste disposal and with the long-term problems of the generation, transportation, treatment, storage and disposal of hazardous waste in the Commonwealth?

Background

In 1976, the U.S. Congress passed the Resource Conservation and Recovery Act (RCRA), which was aimed at addressing the solid and hazardous waste management problems in the U.S. In the area of hazardous waste the law provides for the development of criteria for the identification and listing of hazardous waste and of standards for generation, transportation, storage, treatment and disposal of such waste. The law also calls for the development of a system to track wastes from point of generation to point of disposal by means of a manifest. The manifest will consist of a multicopy form (similar to a bill of lading or shipping voucher) that will identify, among other things, the origin, quantity, composition, and destination of the hazardous waste. The form is completed and signed by the generator. The generator retains a copy and gives the original and remaining copies to the transporter. The transporter signs and retains a copy and gives the original and remaining copies to the disposer on delivery of the waste. The disposer signs the manifest, keeps a copy, and returns the original to the generator. Such a "manifest" system is intended to track the wastes from "cradle to grave."

Federal regulations to implement the manifest system and the rest of RCRA relating to hazardous waste are not expected to be final until late 1979 or early 1980. They become effective six months after final promulgation.

States may administer and enforce the hazardous waste program if they

obtain EPA authorization to do so. For full authorization the state program must be at least equivalent to the federal program, consistent with other federal programs, comparable to programs in other states, and demonstrate adequate enforcement. Such factors as available laboratory facilities, data processing of manifests, and technical staff resources are likely to be evaluated. The proposed federal guidelines outlining requirements for state programs are expected to be complete in the fall of 1979.

The federal law also provides for interim authorization, which allows the states to operate the program for 24 months, while upgrading their programs to achieve full authorization. EPA estimates that states will need to submit hazardous waste programs (statutes and regulations) for approval for interim authorization in April, 1980 (approximately 90 days after final promulgation of the federal regulations). Authorized states will receive federal monies to administer their hazardous waste programs.

The 1978 General Assembly, Regular Session, enacted legislation (SB 174) directed at providing enabling authority for implementation of RCRA. Since that time, various events have led some to the conclusion that further changes in the law are necessary. Some examples include the following:

(a) The problems associated with the management of hazardous waste in the Commonwealth emerged dramatically in late 1978 when the existence of hazardous waste dumps in Bullitt, Jefferson, and Hardin counties were brought to the attention of the public, the "Valley of the Drums" being the most celebrated example. Such episodes pointed up deficiencies in federal laws, which do not make any monies readily available for cleaning up abandoned sites or dumps already in existence. Likewise, no state funds had been earmarked for this purpose. The question of liability as it relates to the generator, the transporter, the disposer and the landowner was raised. Some problems were also associated with proving significant environmental impact to require remedial and cleanup activities.

(b) EPA has indicated concern that Kentucky may not meet the requirements for interim authorization if it retains KRS 224.855(5) intact. KRS 224.855(5) requires that no hazardous waste disposal site for long-lived wastes that may require long-term or perpetual care and maintenance can be permitted without the approval of the General Assembly and the Governor. EPA considers this to be so administratively cumbersome as to make the disposal site permit unworkable. EPA has indicated that additional changes will likely be necessary for full authorization.

(c) The Kentucky Department for Natural Resources and Environmental Protection has indicated problems in interpreting KRS 224.252, which requires that state regulations be no more stringent than federal requirements. Their problem arises when there are no federal requirements, as has been the case, since federal regulations are not yet complete. In addition, the Kentucky statute contains requirements different from those of the federal law and proposed federal regulations. State law requires that generators be permitted; federal law and proposed regulations do not require permitting of generators, but only that generators comply with certain standards relating to such things as the manifest and recordkeeping. Moreover, there are differences in state and federal definitions of hazardous waste.

Other areas such as facility siting, interfacing roles with the Kentucky Department of Transportation, discerning hazardous waste from hazardous materials, citizen suit provisions, and enforcement procedures are all of potential concern.

As a consequence of some of these problems, on March 14, 1979, the Governor created a Commission on Hazardous Waste Management to review hazardous waste management practices within the Commonwealth and develop recommendations for submission to the Governor and to the next legislative session and to review and recommend the adoption of appropriate interim state hazardous waste regulations.

The Hazardous Waste Commission is currently meeting to accomplish these tasks. The full commission proposals will not be complete until November, 1979.

There are several factors unique to Kentucky, because of its geographical location, that will have an important influence on its hazardous waste program. They are some of the factors which must be considered in setting the state's policy on the management of hazardous waste. For example: According to EPA's figures, 65% of the hazardous wastes generated in the United States originate in ten states. Of these ten states, five border on Kentucky (Indiana, Illinois, Ohio, Tennessee, and West Virginia). Kentucky itself is ranked in the top twenty states in the volume of hazardous waste generated within its borders. A state may not restrict the importation into or transportation of wastes through its borders. Such an act is a restriction on interstate commerce. Consequently, any hazardous waste disposal facility is likely to serve an area greater than just the Commonwealth.

EPA is attempting to coordinate regional activities. In order to assist the states in developing hazardous waste policies, EPA has set overall this order of priorities for disposing of hazardous waste:

1. Reduce the generation of hazardous waste;
2. Separate out and isolate hazardous waste from other industrial wastes, to keep the volume small;
3. Utilize the waste through exchange and recovery;
4. Incinerate the waste; detoxify or neutralize where possible;
5. Dispose in secure landfills.

Alternatives and Implications

At this point, perhaps the only agreement on the issue of hazardous waste lies in the realization that it is an extremely complex problem. There are many more questions than there are answers. Overall, the 1980 General Assembly has several alternatives in relationship to hazardous waste. It may:

1. Overhaul its hazardous waste statutes in light of RCRA and of EPA's current interpretation of RCRA, as indicated in its proposed regulations.

The advantage to this would be to provide some consistency, in order to follow as far as possible the federal program without being more stringent. The disadvantage is that amendments to RCRA are already being proposed in the current session of the U.S. Congress and their outcome is unknown. The federal timetable is such that federal regulations which interpret the statute will most likely not be final before January, 1980. It is also highly unlikely that sufficient data will have been collected by then to provide an adequate picture of hazardous waste generation, treatment, storage and disposal needs in the Commonwealth.

2. Modify the Kentucky hazardous waste statutes in order to improve chances for obtaining interim authorization.

The General Assembly may need to address KRS 224.855(5) in order to qualify for interim authorization. In this case, the General Assembly may delete the requirement that hazardous waste disposal sites which require long-term or perpetual care and maintenance be approved by the General Assembly and the Governor. Or the General Assembly may simply wish to better define long-lived wastes that may require perpetual care and maintenance. EPA's concern is with the administration of this section; the General Assembly may wish to clarify that KRS 224.855(5) applies only to a very limited type of disposal facility and not to all disposal facilities. Or it may wish to replace KRS 224.855(5) with more specific criteria for landfill disposal siting and financial requirements. The advantage of addressing KRS 224.855(5) in some fashion would be that it would indicate a good faith attempt to address EPA concerns. The disadvantage is that it may be premature, given the current level of information available on hazardous waste in Kentucky and landfill technology.

3. Expand Kentucky's hazardous waste statutes to deal with the problems

associated with abandoned sites and illegal dumps.

Based on its experiences with current abandoned and illegal sites, the General Assembly may wish to examine what may be weaknesses in current law, including departmental authority to deal with such problems, liabilities, and financing mechanisms. The advantage to such changes would be to permit a more timely response to abandoned and illegal sites. A disadvantage may lie in the fact that changes would most likely be made before the direction of new federal efforts in this area are made final.

4. Make no changes in the current law at this time.

Any changes to the law in 1980 will likely be based on incomplete information on federal requirements and only sketchy data on the types and volumes of hazardous waste originating, transported or disposed of in the Commonwealth. Basic authority for implementing a hazardous waste program is currently in the statutes. A mechanism for funding a state program is already provided for in the statutes from permit fees. Consequently, there is an advantage to taking additional time to collect the data to direct sound changes that are appropriate for the Commonwealth.

The disadvantage is that the Commonwealth may not receive interim authorization to administer the hazardous waste program, and would thus lose federal money for program administration. Generators, transporters, those who treat, store or dispose of hazardous waste would be required to work with the EPA Regional Office in Atlanta for appropriate permits, reports and other requirements. Because current state law also requires certain state permits, a dual program could be in effect in the Commonwealth.

The Commonwealth would continue its present course of action for abandoned or illegal sites or depend on new federal activities in this area.

Fiscal Implications

Actual dollar amounts which will be required in the next biennium for hazardous waste management cannot yet be pinpointed; it seems inevitable, how-

ever, that program costs will be much greater. The final amount will depend upon several factors:

(a) Whether Kentucky qualifies for interim authorization for the hazardous waste program from EPA and thus receives federal funds for program administration;

(b) Final EPA requirements for full state program authorization and the degree to which Kentucky's program is to be upgraded if it is to seek full authorization;

(c) The degree to which the burden of program cost may be placed on generators, transporters, and those who treat, store, or dispose of hazardous waste, by means of a fee structure;

(d) The action, if any, which is taken to deal with the program of abandoned hazardous waste sites.

Appropriations and Revenue

SIMPLIFYING THE STATE INDIVIDUAL INCOME TAX LAW AND RETURN

Prepared by C. Gilmore Dutton

Issue

Should the Kentucky individual income tax law and return be simplified and, if so, to what extent?

Background

Almost everyone reading this article will have experienced at some point the frustration of having just finished preparing a federal tax return, only to find that he must repeat most of the same calculations to complete his state tax return. This apparent duplication of effort strikes most taxpayers as an unnecessary waste of time, and is annually the source of considerable constituent complaint, particularly during and immediately after income tax season.

Simplifying the state income tax return, which of course must be preceded by simplification of the law, has been an issue of varying magnitude during the interims and sessions of the general assembly for at least the last 15 years. The issue was given added weight in 1972 with the passage of the federal revenue sharing act (State and Local Fiscal Assistance Act of 1972), which, in addition to authorizing the sharing of federal revenues with states and local governments, also provided for the collection of state individual income taxes by the federal government, if a state fully adopted the Federal Internal Revenue (income tax) Code as its own income tax law. The issue of simplication apparently will come to a head in the 1980 session of the General Assembly, having been brought to that state by a study initiated by the Interim Joint Committee on Appropriations and Revenue immediately following the 1978 session, and a resolution adopted by the 1979 Extraordinary Session of the General Assembly.

Kentucky currently follows the federal income tax code to the extent that

it selectively adopts provisions of the Internal Revenue Code and accepts the definitions utilized in those provisions. The state law, however, has stopped short of adopting the income, or adjustments to income, or personal deductions, or credits, etc., computed for federal tax purposes, as a basis for calculating the state tax liability. On the contrary, the state law currently requires the taxpayer to recalculate his income, adjustments to income, and deductions when completing his state tax return.

Legislative Alternatives

Two general alternatives are available to the legislature for simplification of the state tax law and tax return. The first is to adopt the complete federal tax code as the state individual income tax law, making the state tax liability a percentage of the federal tax liability, with no adjustments whatsoever. The second would be to integrate the state tax law with the federal tax code in such a manner as to allow the taxpayer to compute his state tax liability on the basis of a designated figure taken from his federal tax return.

The first alternative offers no options. Its advantages would be the utmost of simplicity for the taxpayer, and the potential for federal collection of the state individual income tax, with a concomitant reduction in state administrative costs. Its major disadvantage would be a total lack of control over the state's individual income tax destinies, both in regards to raising tax revenues and in providing benefits, or lack thereof, to specific taxpayer groups.

The second alternative offers several options, each involving the adoption of a designated figure from the federal tax return as a beginning point in the state tax computation process, and each progressively eliminating more and more computations by the taxpayer. One of the options, or starting points, would be the federal tax return figure identified as "total income," a second would be the figure identified as "adjusted gross income," a third

would be the figure identified as "taxable income," and a fourth would be the amount identified as "tax." Adopting these starting points would eliminate, respectively, the listing and addition of sources of income, the listing and subtraction of adjustments to income, the listing and subtraction of itemized deductions, and the determination and multiplication of the proper tax rate. (In the fourth option only a simple percentage calculation would be required.)

The advantages and disadvantages of one option over the other are similar to those between the two general approaches. As the federal tax return figure selected as a starting point approaches the final figure on the federal tax return, fewer computations are required by the state taxpayer. The disadvantages, however, increase in direct proportion to the advantages. That is, the closer the state law approaches the federal law, the less flexibility is allowed in the state law.

For example, if the "total income" figure is adopted as the starting point, the taxpayer would be required to compute his adjustments to income, his itemized deductions, etc., but the legislature would retain control over which adjustments and deductions would be allowed; or, if the "taxable income" figure was adopted as the starting point, the taxpayer would not be required to recompute his adjustments to income and personal deductions, but the legislature would lose the flexibility of determining which adjustments and deductions it would allow.

The option providing the most relief for the taxpayer, but the least flexibility for differing with the federal law, is the option of adopting the federal "tax" as the starting point for the state computation. As in the first general alternative, the state tax liability would become a percentage of the federal tax liability, but this alternative would differ from the first general alternative in that some adjustments to the figure arrived at by the percentage method would be permitted.

Twenty-one states use the federal "adjusted gross income" as a starting

point in computing their state tax liability. Eight states have adopted the federal "taxable income" as a starting point, and three states use the "federal tax" as their starting point. The remaining states which levy an individual income tax follow the Kentucky approach of selective adoption of federal code provisions.

A number of other considerations are involved in selecting an alternative for simplification of the individual income tax law and return, as well as in the decision as to whether to change substantially Kentucky's present individual income tax law. Size of tax base (the kinds and amount of income subject to tax), the degree of progressivity (the rate at which higher incomes are taxed), the shifts in tax burden, and the gains or losses of state tax revenue, are all factors which must be dealt with and resolved before an alternative or option can be selected.

Fiscal Implications

One potential source of significant revenue loss has been identified (but not estimated) as inherent with any alternative or option selected. That source is the treatment of family income (the husband's and wife's combined income) as a unit, regardless of whether it was earned by both the husband and wife or by just one of them. Currently Kentucky's tax law allows the husband and wife to "split" their income, so that each will be taxed at the lowest possible tax rate; however, there is no provision for moderating the effect of the tax rate schedule where the family income is earned by only one spouse.

To continue to require the two spouses to "split" their incomes to attain the most favorable tax treatment would defeat the entire goal of simplification. Federal tax law makes it advantageous for a husband and wife to combine their incomes and file a "joint" return. Unless the state matched that advantage, or at least negated the disadvantage of not "splitting" incomes, then the husband and wife who were each income owners would be forced to file separate returns and compute their tax liabilities from "scratch."

A tax rate schedule for married couples which would tax the family income as a unit will be developed as part of the study being conducted by the Interim Joint Committee on Appropriations and Revenue. This schedule will have the effect of lowering the tax burden on single-income families, thus resulting in a loss of revenue to the state from that category of taxpayer. The issue of whether to absorb the loss or make it up from some other source is the subject for another article.

ESTABLISHING LEGISLATIVE CONTROL OVER THE ISSUANCE OF REVENUE BONDS

Prepared by C. Gilmore Dutton

Issue

Should the Kentucky legislature exercise control over the issuance of reserve bonds?

Background

The Interim Joint Committee on Appropriations and Revenue (ICAR) in its review of the executive budget for the 1974 Session of the General Assembly, became aware of the magnitude of the state's long-term debt and the annual debt service required to retire the debt. Again in 1975, in preparation for the 1976 appropriation process, the committee reviewed the outstanding debt and prefiled a bill (which eventually failed to pass) that would have provided for legislative control over part of the source of that debt, revenue bonds.

In 1977 the committee attempted to secure a copy of a study on Kentucky's state debt, commissioned by the Office for Research, College of Business and Economics, University of Kentucky, which it hoped to use to update its earlier studies in time for the 1978 Session of the General Assembly. The study, however, was made available to the committee only after the 1978 session, and was presented by its author, Dr. Richard E. Gift, at the committee's September 20, 1978, interim meeting. That study confirmed the committee's earlier findings, and renewed its concern over the lack of legislative control over the issuance of revenue bonds, which remain the major source of the state's long-term debt.

Because the state's constitution limits the state's casual debt to $500,000 beyond the accumulation of surplus reserves or payment from current revenues, the state has only two effective means of financing major construction projects, general obligation bonds, and revenue bonds. General obligation bonds pledge the full faith and credit of the Commonwealth to the payment of the bonded debt, and must be approved by the voters of the state prior

to their issuance. By contrast, revenue bonds may be issued without a referendum by agencies or authorities designated by the legislature. General obligation bonds normally carry a higher credit rating and thus a lower rate of interest than revenue bonds, because of the full faith and credit pledge.

Revenue bonds are issued to finance projects which are presumed to generate independently sufficient income to retire the debt as well as cover current operating expenses. In many, if not most cases, the income generated by projects financed through revenue bonds is derived from lease or rental payments from state agencies utilizing the facilities. The state agencies' income is, in turn, derived from general fund or road fund appropriations, so that the end result is that tax revenues are ultimately involved in the retirement of revenue bond debt.

Over the years the Kentucky legislature has granted the authority to issue revenue bonds to no fewer than a dozen agencies, authorities, or institutions, including the State Property and Buildings Commission, the Capital Plaza Authority, the Water Resources Authority, the Turnpike Authority, the Bureau of Highways, the Kentucky Housing Authority, the Health and Geriatric Authority, the Pollution Abatement Authority, the State Fair Board, and all of the state's universities. Revenue bonds may be issued in most cases at the sole discretion of the individual agency, and always without the legal consent, other then the original authorization, of the state legislature.

The agency proposing to issue revenue bonds must demonstrate, however, an ability to meet the annual debt service, which it usually does through a combination of user fees, rental payments, and annual operating income surplus. In those cases where rental payments are identified as sources of income, the lessee agency is in effect obligating a portion of its annual operating income to debt service for the next 20-30 years; the same is true in those cases where operating surplus is identified as the source of income. Since the demands on the state's fiscal resources normally exceed those

resources, revenue bond debt services compete with other governmental services for available revenues. Because the general assembly is not legally involved in the decision to issue revenue bonds, it is not legally involved in the determination of priorities for the use of those available funds.

Legislative Alternatives

Because revenue bonds can be issued in one budget period, with the initial debt service not coming due until the subsequent budget period, an agency can, in effect, force the legislature to appropriate funds sufficient to carry on the services of the agency as well as retire its debt. The usual alternatives available to the legislature are either to reduce services, refuse funds to retire the debt, or appropriate funds sufficient to satisfy both the service and debt needs. While revenue bonds do not carry the pledge of the state's full faith and credit, the legislature is effectively bound to provide for the annual debt service, for failure to do so would mean default on the bonds and would preclude the state's issuance of revenue bonds in the future. The legislation prefiled in 1976 by the Interim Joint Committee on Appropriations and Revenue, and the legislation currently under consideration by that committee, would require each agency proposing to issue revenue bonds during a forthcoming budget period to identify that proposal in its proposed budget for that period by budgeting funds sufficient for the payment of the first full year's debt service. Enactment of such legislation would allow the General Assembly, through approval or disapproval of the budget, to become involved in the allocation of available funds, and would preclude it's being faced with a fait accompli.

Control over the issuance of revenue bonds would also allow the legislature control over the size of the state's long-term debt. As of June 30, 1978, Kentucky's outstanding debt amounted to $2.09 billion, of which $1.79 billion was attributable to revenue bonds. Kentucky ranks higher than its neighboring states in ratio of total state and local long-term debt to per-

sonal income, and in 1978 Kentucky used nearly 7% of the state's revenue to pay the debt service on the state's debt. Futhermore, if just the outstanding debt issue authority (i.e. specific dollar amount authority to issue revenue bonds) is fully exercised before the end of fiscal year 1978-79, Kentucky's debt service burden for fiscal year 1979-80 will be about 12% of its projected revenues for that year.

While there is no hard and fast rule as to "how much is too much," these statistical comparisons have indicated to some members of the General Assembly a need for restraint in the creation of additional debt in the near future. And to some it appears to follow logically that if the legislature will be required to provide the necessary funds to service existing and any future debts, then the legislature should be a legal part in the decision-making process of creation of the debt.

Prepared by C. Gilmore Dutton

Establishing Legislative Control Over the Receipt and Expenditure of Federal Funds

Issue

Should the Kentucky legislature exercise control over the receipt and expenditure of federal funds?

Background

The General Assembly traditionally appropriates in the biennial appropriation act all federal funds received by the state. This blanket enactment gives the executive branch full authority to apply for, and expend, all federal funds to which the state may be entitled.

On the surface it would appear that such authorization would present no problem to the General Assembly. However, in recent years, the federal government has more and more frequently looked upon its grants as "seed money," employing the grants as a mechanism to begin governmental services, with the intent of creating a constituent expectation and forcing the state to assume the responsibility of funding the services upon cessation of the grant program.

Legislative Alternatives

Because of Congress's policy, the legislature finds itself increasingly faced with the alternative of either using discretionary state money to fund services initiated under a federal grant program, or ceasing the services. Since other services are always in competition for the discretionary money, more and more state legislatures, including Kentucky's, are moving to become more directly involved in the expenditure of federal funds. This involvement can take the form of legislative approval of federal grant applications, or explicit appropriation of federal funds, as opposed to the traditionally carte blanche appropriation of federal funds.

Requiring State Funding of State Mandates for Local Governments

Issue

Should the state fund the programs it mandates for local governments?

Background

The state legislature, through the enactment of measures such as the property tax "roll-back" law in 1965 and House Bill 44 in 1979, has restricted the revenue raising ability of local governments, while at the same time, through the enactment of minimum wage laws, workmen's compensation laws, etc., it has increased the financial burden of local governments. The state's local governments are becoming more and more insistent that the state participate in the funding of those programs which the state mandates for local governments.

Legislative Alternatives

Legislation requiring the state's participation in such funding would include a mechanism for the identification of mandates, as well as set a level for state participation in their funding.

In some states the requirement that the state participate in the funding of state mandates for local governments has been offered as a constitutional amendment.

Substituting a Local Income or Sales Tax for Local Property Tax for Support of Local Schools

Issue

Should a local income or sales tax be used as a substitute for the local property tax for support of schools?

Background

The state's restrictions on the levy of property taxes has effected local school districts' ability to raise revenues. Approximately 15 percent of all local school district costs are funded through local taxes, and local districts must have some means of increasing revenues to match the inflationary increases of those expenses.

Legislative Alternatives

A case can be made for utilizing a locally levied, state piggy-backed, income or sales tax, in lieu of a property tax, to provide necessary local funds. The "case" would be based on the theory that schools provide people-related services, and thus, people-related taxes should be used to fund those services.

The assumption is also made that taxpayers will be more receptive to an increase in local funding for schools if income or sales, rather than property, is the tax base.

A constitutional amendment would be the first step in the authorization of a local school district levy of an income or sales tax.

Indexing the State Individual Income Tax Rate Structure

Issue

Should the state's individual income tax rate structure be indexed?

Background

As taxpayers' incomes increase, they are subject to higher tax rates, under Kentucky's progressive tax rate structure. During periods of low inflation, income increases have meant increases in the individual's buying power, or discretionary funds, and the individual's ability to pay additional taxes without loss in standard of living.

During periods of high inflation, increases in an individual's income may only be sufficient to match the increases in his cost of living, and may not mean additional buying power or discretionary funds, or the ability to pay additional taxes without reduction of standard of living. Nonetheless, in a period of high inflation, as in a period of low inflation, income increases subject the individual to payment of a greater percentage of his income for income taxes.

Legislative Alternatives

A mechanism recently employed in several states to offset the effect of inflation on the progressivity of the tax rate structure has been to "index" the tax rates. This involves the periodic widening of the income categories to which the progressive tax rates are applied by a factor equal to the prior year's cost of living increase.

Exempting Business Inventories from Property Taxes

Issue

Should business inventories be exempted from property taxes?

Background

The equitable assessment of business inventories for property tax purposes requires, in almost all cases, an assessment staff, and in some cases, a relatively high degree of expertise on the part of that staff. The property valuation administrator's office staff usually is not large enough or experienced enough for such valuation, forcing the property valuation administrator to take the taxpayer's word on the value of his inventory. While the presumption should be that the taxpayer is honest, there should be some means of verifying that honesty to assure all taxpayers that each in turn is paying his fair share.

Legislative Alternatives

A number of states have been faced with the same problem and have solved it by exempting business inventories from property taxes, and by replacing that tax burden with a business tax. Kentucky could probably not afford to lose the revenues from property taxes on business inventories and would also be required to substitute a business tax.

Banking and Insurance

KENTUCKY HOUSING CORPORATION

Prepared by Greg Freedman

Issue

Is the Kentucky Housing Corporation operating within the statutory authority and carrying out the intent of the Kentucky General Assembly?

Background

The 1972 Kentucky General Assembly created the Kentucky Housing Corporation (KHC) as a "de jure municipal corporation and political subdivision of the Commonwealth of Kentucky" to provide financing for development costs, land development and residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income. Although initially KHC was authorized to issue tax exempt bonds and bond anticipation notes up to $200,000,000, the KHC is now authorized by an act of the 1978 General Assembly to issue such bonds and notes up to $700,000,000. The proceeds are used to provide below-market interest rate financing for single and multi-family housing, land acquisition and development, construction, and rehabilitation of housing for sale or rent to persons and families of lower income.

The two KHC programs for single-family loans are the mortgage purchase program and the loans to lenders programs. To qualify under these programs the applicant must meet KHC income, assets, and purchase price guidelines. The KHC also administers a federal rent subsidy program in cooperation with the U.S. Department of Housing and Urban development. Interim and/or permanent financing is provided by KHC at below-market interest rates for multi-family developments and administration of the complex is provided upon completion. In addition, the KHC administers funds provided by the Appalachian Regional Development Act through KHC's Kentucky Appalachian Housing Program.

Alternatives

The Subcommittee on Banking of the Interim Joint Committee on Banking and Insurance initiated its review of the practices and procedures of the Kentucky Housing Corporation upon request by a member of the KHC board of directors. Significant allegations have been that the Kentucky General Assembly has lost control over KHC, that KHC is serving persons of middle income rather than lower income, that KHC is artificially stimulating the housing construction industry, and that the KHC operating budget has increased tremendously.

The 1980 General Assembly may want to enact legislation providing the General Assembly with input into the selection of members of the KHC board of directors. This could entail authorizing the General Assembly to submit a list of names to the Governor, from which the Governor may select the members. The General Assembly could enact legislation establishing the criteria to be met by applicants for the single-family loan program. The legislature would have to weigh the benefits of such action against the removal of KHC flexibility in this area. Other alternatives will be developed as the review by the subcommittee on banking continues.

ARSON AND INSURANCE

Prepared by Greg Freedman

Issue

Should legislation be enacted to curtail the rise in arson and its effect on insurance rates?

Background

The incidence of arson has grown to such an extent as to become a major criminal problem as well as an insurance problem. The great losses of life and property due to arson-caused fires affects the insurance rates of all policyholders. It has been said that arson is one of the most difficult crimes to investigate. Legislation that would aid such investigations could deter arsonists and, at the same time, have a positive effect on insurance rates.

A study published in 1977 by the Law Enforcement Assistance Administration of the U.S. Department of Justice stated that in 1975 arson killed 1,000 persons, injured 10,000 persons and caused property losses estimated at $1.4 billion. The report noted that between 1965 and 1975 building fires increased 325%. The study found that only 9 persons are arrested for every 100 cases of known or suspected arson, only 2 of those 9 are convicted, and seldom is anyone jailed. It also stated that cities with higher arson arrests and convictions have fewer arson cases.

On December 1, 1978 the Director of the Division of Criminal Investigation of the Kentucky State Police informed the Subcommittee on Insurance of the Interim Joint Committee on Banking and Insurance that arson had increased in Kentucky by 78%, that 50% of the 883 fires reported to the state police last year were caused by arson, that 193 arrests were made last year, and that the KSP solution rate is 30%.

Alternatives

The Subcommittee on Insurance of the Interim Joint Committee on Banking and Insurance is reviewing a bill draft which will require insurance companies to make available to law enforcement officials evidence gathered by the companies in the investigation of fires. The bill provides a limited immunity to the insurance companies, since they are reluctant to make such evidence available without protection from civil action or criminal prosecution. The purpose of the bill is to provide a free flow of information between the insurance industry and law enforcement officials.

The 1980 Kentucky General Assembly may also desire to clarify the role of the Office of State Fire Marshal and the Bureau of State Police in the investigation of arson. In 1974 the Bureau of State Police was given the responsibility of investigating arson as provided in KRS 227.275. However, KRS 227.220 provides that it is the duty of the State Fire Marshal to enforce all laws on arson and to investigate the cause, origin and circumstances of fires and explosions for the purpose of detecting and suppressing arson. It is important that the role of these two agencies be clearly defined if arson is to be effectively investigated.

Finally, the 1980 Kentucky General Assembly may wish to broaden the definition of "building" in KRS 513.010(1)(b) to include such items as large stacks of lumber or large inventories of equipment which may be stacked in the open. Presently, a person who destroys such property may be convicted of criminal mischief but not arson, which carries a tougher penalty.

Prepared by Greg Freedman

Automobile Insurance

Issue

Should legislation be enacted pertaining to rates, expenses, and cancellation of policies of automobile insurers?

Background

There are several issues relating to automobile insurance that the 1980 Kentucky General Assembly may wish to address. The use of age and sex factors in rating automobile insurance has come under attack in other states. It is alleged that age and sex are not credible criteria for determining insurance rates. Also, it has been suggested that administrative expenses for processing a policy are discriminatory in that they are determined on a percentage-of-the-premium basis rather than a fixed amount. This results in persons with higher premiums paying higher administrative costs even though the administrative expenses are essentially the same for all policyholders. Another issue is the cancellation or nonrenewal of applicants or policyholders because of age. Kentucky statutes provide two grounds for cancellation but no grounds are provided for nonrenewal. A final issue involves the statutory authority for auto insurers to deduct Medicare Part A benefits in arriving at their liability for a loss. This raises the question of whether insurers of persons receiving Medicare should be required to offer those persons a reduced rate.

Medicare Supplemental Policies

Issue

Should legislation be enacted to protect senior citizens from purchasing excessive supplemental health insurance policies?

Background

Some elderly Kentuckians are being sold multiple health insurance policies to supplement Medicare, when, in most cases, all that is needed is one good supplemental policy. One elderly Kentuckian bought 19 policies, another paid $30,000 in premiums in one year, and another purchased policies providing maternity benefits. The Department of Insurance is working on a regulation that may prevent the need for legislation.

Credit Life and Mortgage Insurance

Issue

Should persons who sell only mortgage insurance be allowed to obtain a limited license?

Background

A person selling credit life insurance may obtain a limited license but a person selling mortgage insurance may not. Lenders sell credit life insurance to borrowers on loans of $10,000 or less and 5 years or less. Mortgage insurance is sold by lenders of money in excess of those limits. Under current law an applicant who wants to sell mortgage insurance must obtain a permanent insurance agent's license. The advantage of a limited license as opposed to a permanent license is that an applicant for a limited license does not have to complete a 40-hour course of study nor prove financial responsibility, as does an applicant for a permanent license. The subcommittee on insurance is working on a bill draft to allow persons to sell mortgage insurance with a limited license. The subcommittee is also considering decreasing the rate for credit life insurance, which is the only insurance rate set by statute, and amending other provisions pertaining to credit life insurance.

Business Organizations and Professions

"SUNRISE" AND "SUNSET" IN OCCUPATIONAL LICENSING

Prepared by Mike Greer

Issue

How can the Kentucky General Assembly effectively determine which occupations should be regulated to protect the public and what form that regulation should take?

Background

In recent years, the number of occupations which require licenses has increased dramatically. A 1952 report published by the Council of State Governments listed only 79 licensed occupations. A more extensive study conducted by the U.S. Department of Labor in 1968 identified 517 licensed occupations. A recent update of this study revealed that the number of licensed occupations has grown to more than 900.

The list includes traditional professionals, such as doctors, lawyers, accountants and engineers, and generally recognized skilled trades people, such as plumbers, electricians and barbers. The list also includes various types of brokers, dealers, distributors, inspectors, installers, salesmen and repairmen. In addition, some states license such occupational groups as alligator hunters, artificial inseminators, cesspool cleaners, fortune tellers, hareracers, hookers, horseshoers, lightning rod salesmen, parachute riggers, rainmakers, sardine packers and tattoo artists.

Each year state legislatures receive requests to license still other occupations. In a recent session of the New Jersey legislature, bills were introduced to license auctioneers, home improvement contractors, pet groomers, sex therapists, television repairmen, electrologists, data processors, appraisers, professional salespersons and a dozen other groups. The 1978 Kentucky General Assembly considered 21 bills to license a variety of occupations, including athletic trainers, denturists, memorial dealers, well dril-

lers, soil classifiers, septic tank installers and, last but not least, politicians.

The proliferation of licensing has generated concern among legislators and has focused attention on occupational licensing as a key legislative issue. Several states have enacted various types of "regulatory reform" legislation in an effort to address the problem. Some states have consolidated licensing boards under "umbrella" agencies. Some states have focused on more specific problem areas, such as enforcement. Minnesota unsuccessfully attempted a complete and comprehensive restructuring of its licensing system.

Unquestionably the most popular reform measure has been "sunset" legislation. The "sunset" concept is not new but it was not formally developed until Colorado enacted the first "sunset" law in April, 1976. Since then, nearly 30 states have adopted "sunset" laws. "Sunset" legislation, very simply stated, establishes a date on which a program or agency will terminate, or "fade into the sunset," unless it is reenacted by the legislature. Prior to termination, agencies are evaluated as to need and effectiveness and efficiency of operation.

Several "sunset" bills for occupational licensing boards were introduced in the 1978 regular session of the Kentucky General Assembly; SB 152, HB 212 and HB 279. One of these, HB 212, passed the House by a vote of 73-18, but died in Senate committee. HB 56 was a sunset bill introduced in the 1979 special session.

"Sunset" accomplishes a review of existing licensing boards but it does not deal with occupational groups seeking to be regulated. Three states, Minnesota, Virginia, and Washington, have developed guidelines for reviewing licensing proposals to determine need. With the increase in licensing requests, there is reason to believe that more states will develop review processes.

The Subcommittee on Occupational Licensing of the Interim Joint Committee

on Business Organizations and Professions has developed a set of review guidelines for Kentucky. These guidelines have been tagged "sunrise," since they deal with occupations on which the sun has not yet risen. On June 7, 1979, the committee voted to request the Legislative Research Commission to incorporate the guidelines into committee rules. There is also a possibility that they may be prepared in bill form for the 1980 General Assembly.

Alternatives

A number of different approaches to "sunset" have been taken by the states. The biggest difference seems to be the extent of "sunset" coverage. Most states have limited "sunset" to licensing boards and other regulatory functions. Some have no specified application but give the legislative oversight body discretion to select programs to be "sunsetted." A few states have adopted comprehensive laws which apply "sunset" to all state agencies.

Common Cause, generally acknowledged as the architect of "sunset" in Colorado, cautions against the comprehensive approach, such as enacted in Alabama. The Alabama law sunsets all state agencies over a period of four years; one-fourth per year. The legislature can only reenact programs as they are or allow them to terminate. Very little funding was provided for evaluation. The comprehensive approach does not recognize the resource commitment necessary for "sunset" and it is considered an unrealistic and unworkable approach. Common Cause contends that, "ultimately these legislatures may be responsible for ruining a good concept by loving it to death."

Common Cause endorses limited "sunset," such as enacted in Colorado, Florida and several other states. By applying "sunset" to a limited area, expertise can be developed and "sunset" expanded gradually to other areas. Regulatory agencies are usually chosen for initial application because they represent a manageable group of like agencies with well-defined goals and objectives. More importantly, regulatory agencies have a significant impact on the economy, yet they traditionally have received little scrutiny, since

their funding is largely self-generated.

Common Cause has developed a list of 10 principles which it feels are essential to workable and successful "sunset" legislation.

1. The programs or agencies covered under the law should automatically terminate on a date certain, unless affirmatively recreated by law.
2. Termination should be periodic (e.g., every six or eight years) in order to institutionalize the process of reevaluation.
3. Like all significant innovations, introduction of the Sunset mechanism will be a learning process and should be phased in gradually, beginning with those programs to which it seems most applicable.
4. Programs and agencies in the same policy area should be reviewed simultaneously in order to encourage consolidation and responsible pruning.
5. Consideration by relevant legislative committees must be preceded by competent and thorough preliminary studies.
6. Exiting bodies (e.g., the executive agencies, General Accounting Office) should undertake the preliminary evaluation work, but their evaluation capacities must be strengthened.
7. Substantial committee reorganization, including adoption of a system of rotation of committee members, is a prerequisite to effective Sunset oversight.
8. In order to facilitate review, the Sunset proposal should establish general criteria to guide the review and evaluation process.
9. Safeguards must be built into the Sunset mechanism to guard against arbitrary termination and to provide for outstanding agency obligations and displaced personnel.
10. Public participation in the form of public access to information and public hearings is an essential part of the Sunset process.

The principle "sunset" bill in the 1978 Kentucky General Assembly, HB

212, applied only to occupational and professional licensing boards. The bill contained termination dates for 25 licensing boards over a six-year period. Two years prior to termination, comprehensive review and evaluation of each board would be undertaken by the Legislative Research Commission. Evaluation criteria relating to both need and performance were contained in the bill. Provisions were made for the assumption of outstanding debts and obligations in case of actual termination. A public hearing would be required as part of the process.

There are a number of arguments against "sunset." Most of these arguments pertain to the comprehensive approach and are not valid for limited "sunset." There is, however, the basic argument that a state legislature already has the power to terminate boards and "sunset" is, therefore, an unnecessary expense.

Proponents of "sunset" agree that legislatures have the power to terminate but are quick to point out that the power is seldom exercised. Legislators are more concerned with pressing issues and they generally do not take time to review what has been done and how it is working. As a result, agencies tend to perpetuate, many times long after they have ceased to serve a purpose. "Sunset" serves as an "action-forcing mechanism" which requires legislators to review agencies periodically and take affirmative action to continue their existence or to assure that they are effectively meeting a public need.

"Sunrise" guidelines, on the other hand, address the need before an agency comes into existence. The guidelines contain criteria which must be met by any occupational group seeking licensure or any other form of regulation. The criteria are designed to determine the need for regulation, and if a need exists, the most appropriate method of regulation. Documentation generated during the "sunrise" process provides a sound information base on which legislators can make decisions.

In Minnesota and Virginia, the licensing review system is included in the executive branch. The Minnesota system applies only to health occupations and is administered through the State Board of Health and a Human Services Occupations Advisory Council. Virginia's is administered through the Department of Commerce and applies to all emerging occupations. Only Washington has a legislative program; House Bill 315, passed in early 1979, created a system of reviewing licensing proposals through legislative committees of reference. Specific and detailed review criteria are contained in the bill.

The "sunrise" guidelines developed and proposed by the Subcommittee on Occupational Licensing contain three sections. The first section states purposes and intent and places jurisdiction for "sunrise" under the Business Organizations and Professions Committee. Section two contains policy guidelines for the General Assembly to use in reviewing proposals. The third section specifies information that any group seeking regulation will be required to submit.

Fiscal Implications

Licensing boards have little overall impact on the state budget. The combined appropriations for all of Kentucky's licensing boards amounts to approximately $2.5 million for 1978-79. The funding does not come out of the general fund, but is generated from license fees. Fee receipts are deposited by each board to a "trust and agency" account to be used for the operation of the respective board. Occupational groups effectively argue that licensing activities are self-sustaining and do not cost the taxpayer anything. This argument is frequently stressed by occupational groups seeking licensure.

The relative insignificance of licensing board budgets and the high cost of evaluation are used as arguments against "sunset." Opponents point out that in the first year of "sunset" in Colorado, approximately $170,000 was spent for the evaluation of 13 boards. Termination was recommended for only two boards and their combined budget was less than $10,000. It has been

inferred from this that the cost of "sunset" is clearly greater than the benefits derived.

The real fiscal implications of licensing boards are not in the state budget, however, but in the impact licensing has on the general economy. Licensing creates entry and practice restrictions on an occupation which decrease the supply of available practitioners. A reduced supply creates a greater demand, which in turn raises consumer prices for services. So the real fiscal implication in licensing is in the cost of services.

There have been no studies to determine the actual cost of licensing. The Federal Trade Commission estimates that the cost of regulation generally is 3% to 5% of the cost of doing business. A Florida report indicates that roughly half of a state's gross product is generated by businesses or occupations under regulation. Using the estimated Kentucky gross state product for 1979 of $33.6 billion, the total cost of regulation in Kentucky is between $504 and $840 million annually. If occupational licensing accounts for merely 5% of the cost of regulation, the cost to the consumer is between $25.2 and $42 million per year. A good argument can therefore be made that termination of licensing boards or restructuring to make them less restrictive can result in considerable savings to the consumer.

AUTOMOBILE SALES AND REPAIR

Prepared by Robert Sherman

Issue

Should the General Assembly enact consumer legislation protecting the purchasers of new automobiles found to be defective and the purchasers of automotive repair services?

Background

Problems relating to automobile sales and repair evidently affect consumers throughout the Commonwealth. The issues of the sale of defective automobiles and of unsatisfactory auto repair services are, however, separate both in description and possible legislative responses to these consumer problems, and will therefore be discussed individually.

New Car Sales -- The Consumer Protection Division of the Kentucky Attorney General's Office reports that during calendar year 1978, the largest number of consumer complaints received by far concerned dissatisfaction with new car dealers and manufacturers regarding lack of remedial action on defects in automobiles sold. Findings of the Subcommittee on Consumer Affairs of the Interim Joint Committee on Business Organizations and Professions have been consistent with the report of the Attorney General's Office. The subcommittee has conducted a number of public hearings throughout the state during this legislative interim for the purpose of receiving general consumer complaints. Although public response to the hearings was for the most part poor and complaints received were greatly varied, it would have to be said that complaints concerning defective new cars were the most common.

New car complaints are uniform to some extent. The typical scenario involves a purchaser who finds his new automobile to have chronic mechanical or structural problems. These defects will often cause the purchaser to place the vehicle in the dealer shop for warranty repair numerous times, resulting in loss of vehicle use to the consumer as well as time lost transporting the

automobile to and from the dealer. Consumers have reported that the new car manufacturer and dealer may attempt to shift responsibility for the defect between them so as presumably to escape certain financial responsibility. In many cases the new car buyer may finally become weary from the effort required to obtain constant service and simply demand a new car of like model in exchange for his so-called "lemon." This demand, however, is certainly not one easily satisfied.

It should be pointed out that legislation intended to remedy problems associated with new car warranty is not a new idea. Two pieces of legislation labeled "New Car Lemon Bills" were introduced during the 1976 Regular Session of the General Assembly, H.B. 115 and H.B. 771. Neither of these bills was enacted into law.

Auto Repair -- The second most frequently received consumer complaint as reported by the Consumer Protection Division of the Kentucky Attorney General's Office relates to difficulties encountered with auto repair services. Further disclosure of an evidently national problem in this area is provided by a recently completed survey conducted by the Department of Transportation in Washington, D.C. According to the survey, the consumer of auto repair services stands only a fifty percent chance of getting his car repaired, at the correct price, on any random visit. It should also be noted that the Kentucky Consumer Advisory Council is studying this issue and has conducted an auto repair public hearing in Louisville, at which time testimony was taken from auto mechanics and their representatives, as well as consumers.

Problems that consumers face in the field of auto repair include the following: improper diagnosis by mechanics of automobile malfunction, performance by an auto repair establishment of more labor and the replacement of more parts than necessary to correct an automobile malfunction, performance of labor and replacement of parts completely unrelated to the malfunction complained of, and costs exceeding originally estimated charges, or costs simply

deemed excessive by consumers. It may be assumed that in cases where complaints are justified, a great deal of improper diagnosis and many repairs performed which are not justified by the actual vehicle malfunction are attributable to mechanic incompetence. However, the possibility of fraud should not be overlooked.

Alternatives and Implications

New Car Sales -- Probably the most obvious legislative response to consumer problems related to the sale of defective new automobiles would be the reintroduction and enactment of a "new car lemon bill." Legislation of this type, as introduced but not enacted during the 1976 Regular Session, would be better described as statutory full warranty protection for the car buyer.

Full warranty legislation, as drafted in the past, accomplishes a number of basic things. First of all, statutory definitions are set out that define a "non-merchantable vehicle." Upon a finding of non-merchantability, either through manufacturer-buyer agreement or through litigation, the statute demands and describes the procedure to be followed for the exchange or return of the defective vehicle to the manufacturer/dealer. The manufacturer is prohibited from deleting any existing warranties simply because of the passage of full warranty legislation. In addition, each manufacturer/dealer is required to furnish the car buyer with a copy of his rights under such legislation.

A second legislative approach to this problem, which has been discussed by the Consumer Affairs Subcommittee of the Interim Joint Committee on Business Organizations and Professions, is an approach probably less drastic than full warranty legislation. It was noticed by the Subcommittee in public hearings conducted in various state locations that consumers presenting automobile complaints were often able to present cases that were, to say the least, convincing. Were these new car buyers afforded a forum, such as the small claims division of the district court, where they could present their claims swiftly and inexpensively, relief could be granted, while at the same time

avoiding the extensive statutory regulation required by a new car lemon bill. The Subcommittee has therefore considered legislation which would raise the jurisdictional amount of the small claims division of the district court from its present level of $500 to an amount approximating $3,000 in automotive cases only.

It should be remembered, of course, that in the majority of cases automobile dealers and manufacturers probably do live up to their warranty agreements. Evidence of consumer complaints, however, show that problems do exist. Any legislative approach taken would hopefully provide relief where consumer abuse is apparent, while at the same time allowing the responsible business or businessman to operate in as unfettered a manner as possible.

Auto Repair -- It has been suggested that statutorily licensing mechanics would be the solution to mechanic incompetence regarding automobile malfunction diagnosis and repair. The desire for licensing is often a conditioned response, however, to a perceived problem in the manner in which consumers receive services from persons with a specialized skill.

"Licensing" in the area of auto repair services could take several forms. Mechanics themselves could be licensed after proof of certain skills and educational qualifications. Those persons not licensed would be unable to offer services and those licensed mechanics shown to be incompetent would have their licenses revoked. Another approach would entail the licensing of auto repair establishments. Such a scheme would again require license revocation should it be shown that services performed at that establishment did not meet certain competency and trade practice standards. Finally, a mechanic certification or registration system could be established. Such a system would not prohibit anyone from offering auto repair services but would require that before such a person represents himself to the public as a "certified mechanic" or a "registered mechanic," educational qualifications and/or mechanical skills must have been demonstrated.

On the other hand, schemes that would license an occupational group should not be entered into lightly. While licensing may at first glance seem to be the obvious method of ensuring competency in an occupation, studies have shown that testing of applicant qualification does not necessarily quarantee properly conducted service to the consumer public. It should be remembered also that most forms of licensing result in a situation where the number of persons offering the service is not as great as was the case prior to licensing, because of the fact that not everyone with the inclination to offer the service may do so. Thus, the service is not as widely offered, demand for the service increases, and prices rise -- an obvious disadvantage to the consumer.

The Kentucky Consumer Advisory Council and the Subcommittee on Consumer Affairs have considered legislation in the auto repair area that is less of a regulatory burden than a licensing program. This legislation would be termed a "disclosure bill." Under its terms, a consumer would, upon request, receive a written estimate of cost that could not be exceeded by more than twenty-five dollars without further authorization. All replaced parts, with limited exceptions, would be returned to the consumer. The auto repair customer, after work was completed, would be presented with an itemized description of the repair, consisting of a listing and description of condition of all parts used and all labor costs assessed. Finally, auto repair establishments would each be required to post a sign advising customers of their rights under the legislation. Although this type of disclosure legislation does not overtly attempt to ensure levels of mechanic competency and service quality, its intention is to provide consumers with the tools necessary to compare costs and labor performed in such a way that those auto repair establishments providing better service would naturally acquire greater patronage.

Fiscal Implications

New Car Sales -- A new car lemon bill, as discussed earlier, would possibly have significant fiscal implications. In discussions with car dealers

during debate over the legislation in 1976, the dealers alleged that such statutory full warranty protection would cause the price of their cars to increase, thereby putting them in an undesirable competitive stance with dealers of neighboring states. Whether this allegation is true remains to be seen. It is noticed, however, that "lemon bills" introduced in 1976 specifically allowed for automobile prices to be raised to cover the cost of the legislation, upon supplying the Attorney General with data supporting the increase.

Auto Repair -- Should the General Assembly elect to use a form of licensing to control the competency of auto repair personnel, there is certain to be a fiscal implication. The state would incur costs in staffing a board to conduct applicant testing, check applicant qualifications, investigate claims of incompetency, and generally enforce competency standards. In addition, a form of regulation like occupational licensing, which disrupts to some extent the normal supply of services, will mean some additional cost to consumers, apparent in higher prices.

Cities

STATE MANDATES

Prepared by J. David Morris

Issue

Should Kentucky attempt to control state mandates to local governments?

Background

Local governments are forced to contend with a variety of outside factors which impinge upon their financial affairs. The federal government imposes requirements, the courts impose requirements, states impose requirements and inflation imposes its own special requirements on local governments. What these outside forces have in common is that they represent pressures upon local budgetary priorities. These requirements have come to be known as mandates. Little, if anything, can be done about federal, judicial and inflationary mandates, but state mandates are well within the control of the General Assembly.

A state mandate may be defined as any state constitutional, statutory or administrative action that either limits or places additional expenditure requirements on local governments. State mandates take many different forms. Generally five major types can be distinguished:

(1) "Rules of the road mandates," relating to organization and procedures of local government;

(2) "Spillover" mandates, which require new or expanded local programs;

(3) "Interlocal equity" mandates, designed to prevent interjurisdictional conflicts;

(4) "Loss of local tax base" mandates, wherein the state directly affects local government taxing abilities; and

(5) "Personnel benefit" mandates, where the state sets local personnel policies.

Many mandates are appropriate because the state has supremacy over local

governments and mandates often are required for the achievement of some clear statewide policy objective which should supersede purely local interests. Examples of appropriate mandates are those which prescribe forms of local government, the holding of elections, the designation of public officers and their responsibilities, those which set out "due process" or procedural safeguards, and those which require a minimum level of service where there is a clear and present statewide interest, e.g., education.

Many mandates imposed upon local governments do not aid the accomplishment of statewide objectives, but are the products of less altruistic motives. Often, local interest groups finds it easier to achieve their ends through the state legislature than on the local level. Additionally, the legislature is often tempted to provide a requested service by mandating it to local governments so that the financing of the service will be local officials' problem, not state government's. In either case, the state is not serving a statewide interest but is responding to state--or special interest group--demands on local governments.

In the past, state mandates have not presented too serious a burden to local governments in Kentucky. However, with the current financial stress being felt by local governments--stemming from mounting inflation rates, a slowing of federal aid growth, and the growing popularity of tax and expenditure limits--now is the time to examine the state's role in, and relationship with, local governments.

Alternatives and Implications

Almost half the states have enacted legislation designed to limit run-away mandating by the state to local governments. The procedures to control mandates shall be discussed further, but generally involve prohibitions, reimbursement formulas or fiscal note procedures.

Before any attempt is made to control prospective mandates, the state should inventory existing mandates, so that a determination can be made as to

their impact on local governments. Unfortunately, there is often a dearth of data on the financial affairs of local governments (in Kentucky data is available for counties, but little is available on the over 400 cities). In such cases, it is therefore necessary to require certain minimum reporting standards for local government as well as to designate some agency of state government as the repository of such information. The creation of this local government data base is especially important where the fiscal note method is to be used.

The strictest control on state mandates is a prohibition against their enactment. Such a prohibition should be constitutional, so that it cannot be repealed or ignored by a subsequent, less fiscally responsible legislature. Currently, three states have amended their constitutions to include such a prohibition.

Instead of forbidding mandates, approximately ten states have required that the state reimburse local governments in whole or in part, for the costs of state mandates. Generally total reimbursement is required only for certain mandates--while in most cases the state will merely share with the local government the costs of the mandate in accordance with a predetermined formula, usually based upon the degree of state interest involved.

The third method can either stand on its own or complement either of the above methods. Fiscal notes, estimating the fiscal impact on local governments if the proposed legislation is put into effect, can be required. To this date, some 25 states have adopted some type of formal fiscal note procedure. While the note procedure, by itself, does not limit mandates, it can serve as a brake on state legislative activities affecting local governments, because the costs of such legislation is no longer hidden, but is out in the open, exposed to the scrutiny of legislators, local officials and the public. Of course, a necessary requisite for a fiscal note process is the existence of an adequate body of information on the fiscal condition and affairs of local

governments.

Fiscal notes are a good starting point in controlling state mandates. The procedures required for their production insure a better and continuing understanding of the fiscal interrelatedness of the state and local governments. The notes procedure, while it can stand on its own, is also a first step toward state reimbursement for mandates, if that is ultimately the direction in which the state would like to go.

MUNICIPAL STATUTE REVISION

Prepared by J. David Morris

Issue

Should there be a major reform of Kentucky municipal statutes?

Background

Municipal law in Kentucky is not an orderly code; instead, it is an accretion, built up haphazardly over the years in response to the ad hoc, and often shortsighted or contradictory demands and desires of the over 400 cities in the Commonwealth.

The principal culprit in this proliferation of laws is a doctrine of municipal law known as "Dillon's rule." This rule, last stated by the Kentucky Court of Appeals in City of Bowling Green v. Gasoline Marketers, et al., Ky., 539 S.W. 2d 281 (1976), states that "a municipal corporation possesses no powers except those expressly granted or those essential to the accomplishment of its declared objectives and purposes." Thus a city can perform no act without constitutional or statutory authorization, the result being that city officials are forced to request legislation time and time again so that they can keep up with changing situations. Since there are so many different cities with so many different needs, the body of municipal law has grown rapidly, but not in an orderly, coherent fashion; rather it has swollen into a misshapen body, rife with contradictions, anachronisms and irrationally disparate laws.

In its present form, Kentucky municipal law fails to adequately meet the needs of Kentucky's cities for many reasons, but mainly because the law:

(1) Is overly restrictive, thus inhibiting cities from effectively dealing with their own unique needs through their own actions;

(2) Is voluminous and confusing, so that city officials have great difficulty in determining what they shall or shall not do; and

(3) Is slow to respond to the needs of cities, because of the biennial nature of the General Assembly.

The General Assembly has recognized the pressing need for reform of the municipal statutes. The Cities Committee in the 1974-76 interim traveled about the state gathering information from local officials. As a result of those extensive investigations, the 1976 General Assembly created the Municipal Statute Revision Commission to examine the municipal law. After almost two years of work the commission produced a comprehensive revision of the municipal law, which became known as the Municipal Code. The code was introduced as HB 87 in the 1978 Session of the General Assembly, where, for a variety of reasons, it failed to be passed by the House. So that the idea of municipal statute reform would not falter, the General Assembly in 1978 created the Local Government Statute Revision Commission, which throughout the 1978-79 interim has attempted to carry on the work of the Municipal Statute Revision Commission and to come up with an acceptable municipal statute reform proposal for the 1980 Session of the General Assembly.

Alternatives and Implications

A comprehensive reform of the over 2,000 municipal statutes is a monumental project, which will ultimately affect over 400 cities and the vast majority of the population of Kentucky. The main task is to modernize and clean up the existing Municipal Code. The simplist and most effective method to accomplish such a cleanup is through the grant of home rule to Kentucky's cities. Home rule reverses the basic relationship between local governments and the legislature. With home rule, the legislature grants to cities all the power it may grant except for those powers expressly withheld. With home rule powers, cities are left free to fashion their own solutions to their unique needs by independent action, yet the legislature still retains ultimate control.

It is wrong to think that with home rule the legislature will lose its

control over cities. It will still, as indeed it should, have plenary power over cities. It is also wrong to think that home rule is a revolutionary concept in Kentucky. Cities of the first class have possessed home rule powers since 1972, urban-county governments since 1974, and all 120 Kentucky counties were granted home rule powers in 1978.

If home rule is granted cities, reform of the municipal statutes becomes a relatively simple matter. First the vast number of specific enabling statutes necessary because of Dillon's rule, but superfluous under home rule, should be repealed. Second the various organizational, procedural and administrative matters over which the General Assembly will still continue to exercise control should be revised and made as uniform as possible. Third, various deficiencies in current municipal law should be remedied.

Any legislation designed to accomplish the above ends will, of necessity be massive. However, its ultimate effect will be to yield a simplified, orderly code of municipal law, which should permit local officials to better respond to the needs of citizens of local governments throughout the state.

OTHER ISSUES IN CITIES

Prepared by Jessica Cannon

Architectural Barriers to the Handicapped

Issue

Reformulating the Architectural Barriers Act.

Background

In 1974, the Kentucky General Assembly passed legislation (KRS 227.305) requiring that public buildings and public accommodations be accessible to physically handicapped persons. To implement the Act, regulations adopting standards known as the American National Standard Institute Specifications were required.

In 1978, the General Assembly amended the definition of a public accommodation, and the Department of Housing, Buildings and Construction issued proposed amendments to the regulations. In response to criticisms of the proposed amendments, Chairman Bob Benson requested that the Interim Joint Committee on Cities be given the opportunity to review them before they would be acted upon by the Administrative Regulation Review Subcommittee.

In reformulating the Architectural Barriers Act, several issues must be resolved.

1. Should the scope of the law be limited to facilities defined as public accommodations by the Federal Civil Rights Act of 1964?

2. What authority is needed to assure compliance with the law?

3. Should the law apply to an entire building if only a portion of the building is leased by the Commonwealth?

4. How shall standards for implementing the law be established?

Urban Abandonment and Tax Delinquency.

Issue

Should the General Assembly develop a Land Reutilization Program for Cities and Urban Counties to change foreclosure procedures to meet the growing problems of abandonment of urban real estate and inner city tax delinquency?

Background

The problems of urban abandonment and property tax delinquency are far from new to Kentucky legislators. During the 1978 Regular Session, the General Assembly passed Senate Resolution No. 42, which directed the LRC to study the problems of urban abandonment and property tax delinquency. It was the finding of that study that the problem of tax delinquency and its companion, property abandonment, were serious impediments to attempts to revivify downtown areas in Kentucky's larger cities. The study suggested the following remedial measures:

1. Reduction of the time period allowed for redemption of tax delinquent property.

2. A general streamlining of the tax foreclosure process.

3. Instituting wholesale, group foreclosure suits (i.e., against a large number of parcels).

4. The establishment of municipal land reutilization authorities to acquire tax delinquent real estate and see to its use for the betterment of urban development.

These reforms are based upon the 1971 Missouri Municipal Land Reutilization Act, which is considered to be the most noteworthy reform in dealing with urban abandonment and foreclosure procedures for tax delinquency. Detailed information on the St. Louis experience is available in LRC Research Report No. 149 on urban abandonment and property tax delinquency.

Cities' Pension Debts

Issue

Should the state pay a portion of the pension debt of cities?

Background

Because of actuarial evaluation requirements enacted in 1978, cities are becoming aware of their pension liabilities, which are quite sizable in certain cases. Actuaries are advising cities that they must increase their pension contributions to remain solvent. Tax increases may be required, but increasing taxes has been made more difficult by the provisions of 1979 HB 44. For these reasons the Kentucky Municipal League has adopted a policy position (23 April, 1979) whereby it will ask the General Assembly to assist cities in amortizing large pension debts in those cases where benefit levels were mandated by statute. Pension liabilities grow as a result of inadequate funding on a yearly basis. Those cities which made serious efforts to fund their pension systems will be in less financial difficulty than those which have not. It would be inequitable then, to fail to assist cities which are in relatively good condition because of their own efforts while aiding those in poor condition because of their own negligence. If General Assembly action is taken in this area, it will be important to distinguish between those cities which have made conscientious efforts to fund pension debt, and those which have not.

Counties and Special Districts

REGIONAL JAILS

Prepared by William Wiley

Issue

Should Kentucky establish a system of regional jails?

Background

All counties are required by the state constitution to elect a jailer, unless the offices of sheriff and jailer are consolidated, and the statutes have been interpreted as requiring each county to have a jail. Prior to the adoption of the Judicial Article, county jails were accepted as a county function. Jails were financed through county appropriations and by dieting fees paid for each prisoner housed. Fees for felony offenders were paid by the state, and fees for misdemeanor offenders were paid by the county.

When the county courts were abolished and replaced by the state district courts, there was expectation on the part of some county officials that jails would also become a state responsibility, but this was not provided for in the legislation implementing the new court system. The law relating to dieting fees was changed, however. Responsibility for paying the dieting fee for misdemeanor offenders was placed upon the unit of government whose law was violated. Thus the state would pay for most misdemeanor offenders as well as for felony offenders. Initially the state attempted to deduct these increased dieting payments from the net court revenue payments made to counties, but county protest and opinions of the Attorney General that this was not a proper interpretation of the statutes caused the state to cease this practice.

In 1979, responsibility for paying medical expenses for indigent prisoners was also transferred from the county to the unit of government whose law was violated (usually the state), and a further enactment prohibited the state from deducting dieting fees or medical expenses from net court revenue payments.

Dieting fees for prisoners have escalated steadily in recent years, but apparently no more than the cost of living. In 1968, the daily fee was $3.00. It has risen in five steps to $6.75 in 1979. Despite the fact that the state is now paying most dieting fees, many county officials say that they cannot maintain county jails on the revenues coming in.

There are several factors which may be contributing to the problem. Jails obviously deteriorate with age and need to be repaired or replaced. Furthermore, what may have been considered adequate for prisoners in the past may not be adequate today. We live in an era in which prisoners are likely to sue county officials if they consider jail facilities to be detrimental to their health. A Kentucky county has already been sued in federal district court for maintaining a jail in which incarceration is alleged to constitute cruel and unusual punishment. There is also the ever present possibility of federal intervention in the state jail system if overall conditions are substandard. Fire safety standards are also being more vigorously enforced on public buildings such as jails.

Some disruptions may also have occurred as a result of the new court system. In some counties, district judges may be putting fewer offenders in jail than did their county judge predecessors. On the other hand, other judges may be putting more offenders in jail.

One obvious factor causing financial difficulties for many county jails is simply that Kentucky has so many counties (120) and many of them are very small. They simply do not generate enough imprisonment to support a jail adequate to present day standards. There is no economic rationale for these counties to maintain jails.

Cumulative pressures caused by problems with jails in many counties led to the introduction of SB 16 in the 1979 Extraordinary Session of the General Assembly, which would have permitted counties to close their jails upon petition to the circuit court. The bill failed because no solutions were found to

several vexing problems related to closing jails, but the necessity of dealing with the problem was emphasized. Meanwhile a Subcommittee on Jails of the Task Force for the Study of the Commonwealth's Legal System, created by the passage of 1978 HJR 86, has been studying the problems discussed in this paper, and will probably present legislative proposals to the General Assembly in 1980.

Alternatives and Implications

1) Permit counties to close their jails upon petition to and approval of the circuit court, with selection of alternate jail facilities in another county. Require consent of the county which would receive additional prisoners. Retain county ownership and control of county jails. (Similar to 1979 SB 16 proposal)

If this alternative should be chosen, it is certain that those counties which are having financial difficulties with their jails would petition to close them. Creating a system of jails which would adequately serve the commonwealth would depend upon the uncoordinated decisions of the various circuit judges, which might not be adequate. Many counties with jails capable of receiving more prisoners might be relucant to do so, for fear of increased management problems and inadequate compensation.

Several other complications would arise. Who, for example, would pay transportation costs for transferring offenders to jail, and to court appearances? Would temporary lockup facilities have to be provided in counties without jails? How could temporary lockups be economically operated? What responsibilities would be given to elected jailers in those counties with no jails? How would they be compensated? Should the offices of sheriff and jailer in these counties be consolidated?

Regardless of the problems which might accompany this alternative, it does avoid the fiscal complications which would result from attempting to transfer total ownership and control of jails from the counties to the state.

2) Permit counties to close jails as in Alternative 1, but only petition to and approval of a central authority designated for the purpose. This authority could fit jail closings and choice of alternative facilities into a rational pattern suitable to the needs of the commonwealth. Analysis of the fiscal impact of additional prisoners on county jails, and fair compensation to such jails would be a necessary and desirable part of such a procedure. Use of this alternative would avoid the problem of lack of coordination found in Alternative 1, but the other problems mentioned would remain to be solved.

3) A third alternative would be to remove all county jails from the jurisdiction of county government and make the operation and maintenance of jails a state responsibility. This alternative no doubt would require a comprehensive plan for closing certain jails, maintaining and improving others, and constructing new ones. Advantages of such a plan would include centralized and professional administration of physical facilities, uniform personnel policies and policies toward management of prisoners, and economies of scale for the purchase of food and other supplies.

Implementation of this alternative would create problems in determining how to compensate those counties whose jails were incorporated into the state jail system. Regardless of what system of district jails was created, it would still be necessary to have some sort of overnight lockup facility in each county. An elected jailer would still be present in each county also, unless the constitution were amended to eliminate this requirement, or unless the offices of sheriff and jailer were combined.

The fiscal impact of transferring the jail system to state control must be considered in light of the trend toward state payment of jail expenses. Since the state is presently paying most dieting fees and medical expenses, it

bears a significant proportion, if not virtually all, of the costs of maintaining county jails. If jails are to be upgraded, it is probable that the state will have to pay these additional costs, regardless of who controls the jails, because of the inability or unwillingness of county governments to upgrade their jails. The fiscal impact relates to upgrading jails, not to who controls them. Since the state will bear the expense of providing jail facilities capable of meeting the standards which the federal government and the state's own regulatory agencies will enforce, the state might as well take over the jails and gain the benefits of consolidation mentioned above.

The actual cost of upgrading jails depends upon the standards which must be met, and plans which are finally adopted. The Subcommittee on Jails of the Task Force for the Study of the Commonwealth's Legal System has approved a proposal for a three-level district jail system, which they consider as a foundation for further study. The system would consist of district jails in heavily populated areas, for long-term detention; feeder jails near the district jails, for short-term confinement; and short-term facilities for temporary detention in those counties otherwise not providing jails. The plan would call for construction of 15 new jails and renovation of others. Staffing would be by the Bureau of Corrections. The costs of this proposal will no doubt be presented as the concept is refined. If such a proposal is adopted by the General Assembly, care must be taken to tailor it to the needs of future, and not to maintain, at additional expense, vestiges of the old system, such as jailers where there are no jails, or inadequate older jails maintained under the new designation of "temporary lockups."

SPECIAL DISTRICTS AND ACCOUNTABILITY

Prepared by Mike York

Issue

Should the General Assembly enact legislation to require a greater measure of accountability of special districts through budgetary reporting or other means?

Background

Special districts are separate political entities of local government, formed, for the most part, to deliver services in an area of lesser or greater size than a county. The classic justification for formation of a special district is that provision of the service on a county-wide basis would be less economical or efficient than for the special district. Reticence by the existing unit of local government to provide the service, because of debt limitations, unwillingness to increase taxation, or simple inertia, has often served to promote the organization of special districts, many of which can be formed simply by petition to the fiscal court.

While special districts serve the laudable purpose of providing necessary services, they have been criticized with increasing regularity for the numerous problems accompanying their existence.

Most significant among these problems is identification. A 1968 LRC report listed the number of then-operating special districts at 448; most local government experts now believe that there are well over 1,000 districts currently providing services. It is not uncommon, for example, for more than five water and sewer districts to exist within a single county. KRS 65.005 requires each special district to file with the county clerk and state local finance officer, but since many districts have not done so, no one knows just how many special districts exist, and as an obvious result, the General Assembly has no way of knowing how prospective legislation may affect them.

Chief among criticisms leveled at special districts, is their general

lack of accountability to local governments and to their constituents. Because each of the more than 25 types of special districts was authorized for a different purpose, there is a wide disparity in the means of creation, function and dissolution (most statutes authorizing districts lack procedures for dissolution) among the various types of districts. A fundamental problem with the operation of most districts is the apparent lack of fiscal reporting and an absence of oversight of the district's management by any other governmental body. District audits are not uniformly required and in many instances district revenue figures and expenditure data are totally unavailable. It is no wonder, then, that many county judges/executive do not know the memberships of all the districts operating within their counties.

It has even been charged by some county government experts that most district boards "rule in a vacuum," that members are either appointed and then forgotten or that they are self-perpetuating.

While duplication of services is generally not a problem, other districts offering the same service often exist side-by-side, as a result of piecemeal creation.

Not all special districts suffer from these problems. In the case of library districts and conservation districts, for example, there has been considerable state government involvement, which has resulted in a comparatively high degree of coordination of local operations.

Alternatives

The Interim Joint Committee on Counties and Special Districts, together with the Local Government Statute Revision Commission, which was created by the 1978 General Assembly, has undertaken a review of the various statutes creating special districts. During the 1978 Session, a bill was offered which would have established a uniform framework for the creation and operation of special districts. For several reasons, predominantly an apparent lack of urgency, that bill was unsuccessful and current proposals envision a more

limited approach.

The County Issues Task Force of the Local Government Statute Revision Commission and a subcommittee of the Interim Joint Committee on Counties and Special Districts have both approved a measure, 80 BR 102, which would bring a measure of accountability, through financial disclosure, to the various forms of special districts, while allowing them to retain their individuality of purpose.

The bill would:

(1) Require all special districts to prepare an annual budget using standardized budget forms and would also require an independent audit of the district at least once every four years;

(2) Require each district to file with the county clerk of each county in which the district is located a certification showing the name of the district, its statutory authority and the names and addresses of the district's officials;

(3) Allow the county clerk to collect a $2.00 fee for filing the certification described above.

OTHER ISSUES

Prepared by William Wiley

Pension Law Revision

Issue

Should state and local pension law be revised in anticipation of federal regulation?

Background

Legislation will soon be introduced in Congress which would regulate state and local pension systems. Congressional action is expected in early 1980. The federal proposal will certainly speak to the issues of reporting to beneficiaries and public officials, disclosure of investment information, and fiduciary responsibility. Kentucky pension statutes have some shortcomings in these areas, especially those statutes dealing with local government pension systems. Certain improvements are needed regardless of federal action. It is expected that any federal bill passed will exempt from its regulatory provisions any state which has passed state regulatory legislation at least as stringent as the federal law. Kentucky could choose to anticipate federal requirements and make needed improvements in state, and particularly local, pension law, or it could choose to make no changes in 1980, pending the passage of the federal law.

Providing Space in the Court House

Issue

Should the General Assembly modify the law to alter or make clear the relative powers of fiscal court and the court of justice to control space in the court house?

Background

KRS 26A.100 provides that each county shall provide space in the court house for district and circuit courts. The counties are to provide "such reasonably available space which would not disrupt the operation of county government as necessary in the county courthouse..." Conflict has arisen over how much space must be provided to the courts, and what space is "reasonably available." The language of the statute makes the Supreme Court the deciding authority in controversy over court space, but this statutory provision does not prevent conflict in the political arena. Disagreement has also arisen over the amounts which counties should be compensated by the Administrative Office of the Courts. The amounts for operating and use allowances are calculated on the proportion of floor space in the court house or other county facility which the court of justice occupies. If county government is forced to acquire office space outside the court house as a result of court of justice requirements, then the payments from the court system must equal the counties' costs for outside space, if the counties are to be kept "whole." As the functions of county government become more complex and professionalized, more space is needed for general county government. If the court system takes so much space that county government must move out of the court house, conflict will be generated over "turf," inconvenience and expense.

Education

SCHOOL FUNDING

Prepared by Sam Sears

Issue

Should the property tax be replaced as the major source of revenue for local school districts?

Background

Throughout the nation property values and assessments have increased at a greater rate than inflation. This rapid rate of increase has served to focus the public's attention on the property tax and the public services it supports. It has also generated much pressure on state legislatures to place limits on the amount of revenue which can be collected from the tax.

Proposition 13, which passed by an overwhelming margin in California, placed such a limit on property tax revenues and provided the impetus for a nationwide tax revolt. Since public elementary and secondary schools throughout the nation are largely supported by revenues from property tax, the impact of such actions naturally has drawn attention to the enormous amounts of tax dollars that are expended for their operation.

Historically, the local property tax provided the bulk of revenues for the operation of public schools in Kentucky and state funds were used to supplement local sources. However, equalization efforts down through the years increased the state support level. The Minimum Foundation Program law, which was passed by the General Assembly in 1954, committed a large portion of local property tax revenues to the support of the program, and consequently reduced the amount of funds school districts had to spend at their discretion. And, since that time, the state has funded an increasingly larger portion of the cost of elementary and secondary education, until in the 1978-79 school year almost 70% of the total costs were funded from state sources.

Subsequent actions by the General Assembly have further decreased the

amount of local support for education. The "roll-back" law enacted in 1965 essentially froze local tax rates and, in the 1979 special session of the General Assembly, a cap was placed on the amount of revenue local taxing districts could realize from the property tax. These actions have severely restricted the ability of school districts to generate additional revenues to enrich their programs beyond the basic state program required by the Foundation Program.

Even though the state has assumed the major portion of the cost of public schools, and even though tax rates have been frozen and limits placed on local revenues from property tax, there is widespread interest in searching for alternate local sources of revenue to support education.

As a result of this interest, the Governor's Task Force on Education has studied this issue from 1976 to the present and the Interim Joint Committee on Education selected it as a topic for study during the 1978-80 interim.

Alternatives and Implications

It appears that there are two viable and stable alternative sources of revenue which could be used in lieu of the property tax to support public schools at the local school district level: a local sales tax and a local surtax on Kentucky income tax, both considered excise taxes. However, it should be pointed out that questions have been raised as to the constitutionality of levying these two taxes. These questions are related to the levying of an excise tax at the local level, thereby violating the provisions of Sections 171 and 181 of the Constitution.

Alternative 1: A local sales tax. If the rates were set locally, so that the amount of sales tax revenue generated in a particular district would replace the amount of property tax revenue generated in that district, then the apparent implications of this alternative would be as follows:

1. There would be less identification with the tax as the basic support for schools than there is with the property tax.

2. Everyone, including visitors to the state, would pay the tax.
3. Provisions would need to be made to take into account rates for power-equalization participation and set-aside funds for special voted building tax levies.
4. Local businesses would collect the tax along with the state sales tax.
5. Rates would vary from district to district.
6. Each district would have varying assessment brackets or breaking points for increasing the tax collected.
7. Local businesses would have to apply two assessment brackets, one state and one local.
8. Revenues would be sent to the Department of Revenue and disbursed back to the school district.
9. The cost of administration of the sales tax would increase because the Department of Revenue would be required to record collections by school districts.

Fiscal Implications

The fiscal implications of this alternative would be determined by the amount of local property tax to be replaced and the projected revenues from property and sales tax. For example, if all local property tax revenues were to be replaced, the revenues from property tax estimated to increase by 10% in 1978-79 and 7% in 1979-80, and the sales tax revenues estimated to increase by 14.5% in both 1978 and 1979, then the estimated average local sales tax which would have to be levied in 1980 would be 1.13¢ per dollar of sales. Tax levies within each school district would, as previously stated, vary.

Alternative 2: A local income surtax. The surtax would be levied as a percent of an individual's or corporation's Kentucky income tax liability. If the rates were set locally to replace the local property tax then the apparent implications would be as follows:

1. There would be less identification with the tax as the basic support for schools.
2. All working individuals and corporations would not necessarily pay the tax.
3. Provisions would need to be made for participation in the power-equalization program and for set-asides for special voted building levies.
4. Percentage rates would vary from district to district.
5. The Department of Revenue would collect the tax and return the revenues to local school districts.
6. The cost of administration of the income tax would increase, as the Department of Revenue would be required to record collections by school districts.

Fiscal Implications

The fiscal implications of this alternative would depend upon the growth of revenues from the income tax and local property tax through 1980. For example, if all local property tax revenues were to be replaced, the revenues from local property taxes estimated to increase by 10% in 1978-79 and 7% in 1979-80, and income tax revenues estimated to increase by 15% in both 1978 and 1979, then the estimated average local surtax which would have to be levied in 1980 would be 21.3% of each individual and corporate tax liability.

THE WEIGHTED PUPIL UNIT METHOD

Prepared by Sam Sears

Issue

Should the classroom unit method of allocating Minimum Foundation Program funds to local school districts be replaced with the weighted pupil unit method?

Background

The Minimum Foundation Program Law was enacted in 1954 and except for one brief period of time has provided funds to local school districts based on classroom units. A basic classroom unit is assigned for every 27 pupils in average daily attendance in a district. Special units for kindergarten, exceptional children and vocational education are also made available when districts have a qualified teacher available and the proper space in which to house the unit. In addition, districts are allocated support staff units based on the number of basic units they qualify for, Administrative and Special Instructional Services (ASIS), Supervisor, and Pupil Personnel Units. One unit for superintendent is also allocated each district.

The total number of units assigned to a district - basic, special, ASIS, supervisor, pupil personnel, and superintendent - forms the basis for calculating the cost of the Foundation Program. For each unit assigned, funds are allocated for teachers' salaries, current expenses, and capital outlay. Transportation funds are also allocated but are based on a separate formula, which includes population density, number of pupils transported and actual costs of transportation per pupil in the previous year.

The classroom unit approach to funding, for the most part, is based on allocating funds for personnel services, operation, and facilities and not directly for pupil or program needs. Pupil needs are addressed generally in the program of studies and accreditation standards mandated by the State Board

of Education and through the discretion of local boards of education to develop programs which fit their districts' needs. Some effort to fund programs based on the needs of pupils is made through the provision of vocational and exceptional children programs. The Foundation Program, then, is basically a fund allocation system, and the financial accounting system presently in use does not reveal, except in very general terms, in which programs the funds are expended.

The bulk of the Foundation Program funding, then, has not been based on pupil needs. This lack of focus on needs prompted the organization of the Citizens' Council for the Foundation Program Study in 1972. After two years of study, the Council proposed changing the program from a classroom unit cost basis to a pupil unit cost basis, in order to expand equal educational opportunities for Kentucky's school children.

The pupil unit method recognizes that pupils' needs differ and that programs to satisfy those needs vary in cost. The Council's proposal set up six general programs and each program assigned cost weights. Basic program weights were as follows: Kindergarten, weight 1.10; Grades 1 and 2, weight 1.30; Grades 3 through 8, weight 1.00; Grades 9 through 12, weight 1.20. Add-on weights were assigned to two program categories: exceptional, weights 1.10 to 2.70, according to exceptionality; and vocational, weights .30 to 1.55, according to type of program.

Since it would be possible for a pupil to participate in more than one type of program, each of which had a different weight, a method of calculating the number of full-time equivalent pupils in each program was developed. For example, a pupil might be enrolled in a regular grade 5 class one-half day and in an exceptional class one-half day. The total weighted pupil cost, then, would be higher than if he spent the entire day in the regular class since the exceptional class has a higher weight.

The number of full-time equivalent pupils in each program would be multi-

plied by the program weight and the total number of weighted pupil units in each program calculated. This unit cost would then be multiplied by a fixed dollar base per pupil, the amount of which would depend on funds appropriated for the program, and the program cost of the Foundation Program would result. Costs for transportation and capital outlay would be allotted in addition to the program costs and the total of the three would be the amount a district would receive in Foundation Program funds. In order to determine whether or not the Weighted Pupil Unit method of funding would achieve its basic purpose, that of assuring that funds allocated for a particular program were expended in that program, then, an accounting system which would break out expenditures by program would also need to be developed and implemented.

The weighted pupil unit approach offers the following apparent advantages:

1. It allows the state to allocate funds to specific programs.
2. It is more equitable in that it recognizes that students have different needs and cost differences occur in meeting these needs.
3. It assigns funds on the basis of the actual time a pupil spends in a particular program.
4. It has the potential of producing a greater measure of accountability.
5. It eliminates such strictures as the number of pupils per teacher and the number of ASIS units, thus allowing districts more discretion in these areas.
6. It is based on the relative differences in actual costs of various programs.

The following apparent disadvantages might accrue if the approach were adopted:

1. It would require more rigorous recordkeeping at district and state levels.

2. It would require monitoring by the state.
3. It would eliminate some of the flexibility districts now enjoy, since they would be required to spend funds for programs funds were assigned to.
4. The changeover from classroom unit to weighted pupil unit would cause a decrease in Foundation Program funds for some districts, unless more funds were put into the program.
5. In order to determine whether or not funds allocated for program categories were in fact expended in those programs, a totally new accounting system would have to be developed and implemented.

The weighted pupil unit concept was enacted into law by the 1974 General Assembly to take effect in the 1975-76 school year, with the guarantee that no district would receive less Foundation Program funds than under the classroom unit method of calculation. Under this guarantee, an additional $5.5 million was needed to implement the program. Principally due to the difficulty in determining the number of full-time equivalent pupils in the exceptional and vocational programs and the lack of a program accounting system, the law was repealed by the 1976 General Assembly. It was generally accepted that most of the difficulty in calculation was due to the large number of weighted categories in the exceptional and vocational programs.

Even though the weighted pupil statutes were repealed, much interest in the concept has been maintained because of its potential for providing more equal educational opportunity and more effective accountability measures. For these reasons, it has been a topic of extended study by the Governor's Task Force on Education during the period of 1976-79 and the Interim Joint Committee on Education during the 1978-80 interim.

Alternatives and Implications

The General Assembly has several courses of action it could take regarding the question of whether the Minimum Foundation Program should be calcu-

lated and funded on a classroom unit basis or a pupil unit basis.

Alternative 1. Continue to fund the Minimum Foundation Program by the classroom unit method as it is funded under existing statutes and to use the current fund accounting system. The implications are that the program would continue to be basically a fund allocation system with few methods of assuring that funds are expended based on pupil needs or in specific programs and that the accounting system would not break out expenditures by program, except in very limited terms. School districts would also continue to have little flexibility in the areas of pupils per teacher or in the types of support staff employed.

Fiscal Implications. The fiscal implications of this alternative would depend upon the conditions under which the program would be funded. For example, if the calculation of program costs reflected a projected decrease in ADA, increases in salaries, current expense, and transportation categories to offset the effects of projected inflation (9.16% in 1980-81 and 7.85% in 1981-82), continued increases in ADA deductions for exceptional and vocational units, completely phasing out the "bonus" effect, increases in kindergarten units to lower the pupil-teacher ratio, increases in vocational and exceptional units based on past utilization, then funding for the biennium would approximate the following: from $670 million in 1978-79 to $738 million 1980-81, an increase of $68 million; and from $738 million in 1980-81 to $795 million 1981-82, an increase of $57 million. The total increase in funding for the biennium would be $125 million. Program costs would increase or decrease according to changes made in the conditions under which the above cost estimates were calculated.

Alternative 2. Amend the Foundation Program statutes to incorporate some of the features of the Weighted Pupil Unit method allocating funds. An example of this approach might be: basic and special unit costs could be calculated as they presently are and an add-on percentage factor to current

expenses and capital outlay used to determine a final unit cost figure. ASIS, other administrative and supervisory units, and grades 3 through 8 units would have no add-on percentage factor applied. Add-on percentage factors for other programs might be as follows: kindergarten, a factor of 10% to current expenses; grades 1 and 2, a factor of 30% to current expenses, grades 9 through 12, a factor of 20% to current expenses; exceptional units, a factor of 70% to current expenses; and vocational units, a 50% factor to current expenses and capital outlay.

Implications of this alternative are that funds would be allocated to specific programs by classroom units and, in order to insure that funds were expended in a particular program, a new program fund accounting system would need to be developed and implemented.

Fiscal Implications. The fiscal implications of this alternative would depend upon the conditions under which the programs were funded. If a predetermined total amount were allocated for the Foundation Program, then the add-on percentage could be adjusted to fit that amount. Or, if the Foundation Program were calculated as in Alternative 1 and the add-on percentages applied in addition to that amount, then the cost of the program would increase.

Alternative 3. Replace the classroom unit method of calculating Foundation Program allocations to school districts with the Weighted Pupil Method. Implications are that funds would be allocated on the basis of pupil needs and to specific programs, a new program fund accounting system would need to be developed and implemented, state program monitoring would need to be increased, and more rigorous record-keeping would be required. Local districts would have more flexibility in utilizing staff but less flexibility in program selection.

Fiscal Implications. Fiscal implications of this alternative would vary according to the amount of Foundation Program funds made available during the biennium, the various weights assigned to each pupil unit category, and

whether districts would be guaranteed that they would not receive less in funds than they would have received under the classroom unit method of calculation. For example, if the assigned weights were identical to those used in the 1975-76 pupil unit program, the difference between the 1975-76 classroom unit calculation and the 1975-76 pupil unit calculation remained proportionately the same, including the guarantee provision, and the amount of Foundation Program funds appropriated were equal to the projected amounts in Alternative 1, then costs of the program would approximate the following: from $670 million in 1979-80 to $767 million 1980-81, an increase of $97 million; and from $767 million in 1980-81 to $826 million in 1981-82, an increase of $59 million. The total increase for the biennium would be $156 million. Program costs would increase or decrease according to changes made in the conditions under which the above estimates were calculated.

Alternative 4. Enact legislation establishing a financial accounting system which would break out expenditures by program categories. Such a system could provide accurate program cost data which could be used in developing a more logical and equitable method of allocating Foundation Program funds in the future whether it be the weighted pupil unit, weighted classroon unit or some other method.

Implications of this alternative are that funds would be accounted for by programs necessitating a revision in the total accounting system now in use.

Fiscal Implications

The cost of revising the present accounting system is not known at this time.

OTHER ISSUES

Prepared by Sam Sears

Funding for Vocational and Special Education

Issue

Should the funding method for vocational and special education programs be changed?

Background

The 1978 General Assembly through HJR 67 directed the Legislative Research Commission to conduct a comprehensive study of Kentucky's educational programs for exceptional children and vocational education. Though it is the policy of the Commonwealth to provide these programs, the cost to the state continues to accelerate. In spite of increased state funding, unmet needs continue and state Department of Education and local school district personnel allege that state financing for these special programs is inadequate.

The objectives of the Legislative Research Commission study are to determine the extent to which need is being met, analyze the costs of current practices, and assess the adequacy of financing of these special programs. The special programs are currently funded through the Foundation Program and funds are allocated by a classroom unit method of funding, which provides an allotment for teachers' salaries, current expenses, capital outlay and transportation, based on a designated number of pupils as determined by administrative regulations. It is difficult to determine the cost-effectiveness of the classroom unit method of funding and to assure that funds provided for exceptional and vocational pupils are expended for those pupils' program needs. It is likely that, based on the conclusions and recommendations of the study, the 1980 General Assembly will want to consider an alternative method of funding which will provide a funding system for pupils' individual educational needs and include a component to make school systems accountable for the appropriations to these special programs.

Professional School Admissions

Issue

Should applicants from underserved and/or underrepresented areas of the state be given special assistance in obtaining admission to professional schools of medicine, dentistry, and law?

Background

Traditionally certain areas of the state have experienced shortages in professional services ranging from minor to extremely critical. These same areas are usually underrepresented in professional school enrollments.

The Professional Schools Admissions Committee has developed recommendations and drafted legislation for establishing a comprehensive professional education preparation program which would range from early identification in high school to academic and financial support in graduate school. The program is geared toward the potential applicant from underserved and underrepresented areas.

Kentucky School Building Authority

Issue

Should the Kentucky School Building Authority be continued?

Background

The School Building Authority was established by the 1978 General Assembly with an appropriation of $7 million to provide matching funds to local school districts for debt service on construction bonds. The first bonds were to be issued after July 1, 1979.

During the 1979 Special Session, a number of legislators questioned the guidelines and regulations, and the appropriation was reduced to $3.5 million, of which $1.5 million was earmarked for vocational construction, with the remaining $2 million for local school construction. At the same time, capital outlay in the foundation program was increased by $100 per unit. Current estimates indicate that the $3.5 million will support 25-year bond issues of approximately $30-$40 million, with the first series of bonds to be issued immediately.

Several alternatives are possible:

1. Continue funding the Authority at the current $3.5 million.
2. Retain the School Building Authority and increase funding.
3. Eliminate the School Building Authority and transfer the $3.5 million commitment to some other agency.

The Learning Disabled Student

Issue

Are screening and instructional programs available and adequate for learning disabled children? (The study resolution directed a study of the needs of dyslexic children. As the study committee began their efforts, a controversy was found to exist among authorities regarding the term dyslexia. Due to this disagreement in the field and the fact that federal regulations identify dyslexia as a "specific learning disability," the study committee resolved to pursue the directives of the resolution with the focus on all specific learning disabilities.)

Background

Kentucky's public schools are currently providing instructional programs for 10,433 learning disabled (L.D.) students, which is 68% of the anticipated L.D. population. Of the 181 school districts, there are 73 districts without L.D. programs; these 73 districts are primarily in rural areas which have funding and geographic constraints. The overriding constraint to providing services for L.D. children is the lack of L.D. teachers. Other program constraints are in the areas of: in-service training needs for regular teachers and other supportive school personnel, certification requirements and the level of coordination and planning between local school districts, the Kentucky Department of Education and higher education institutions. Results of a survey of L.D. teachers conducted by the study committee reported that many placements in L.D. classes are inappropriate. The screening committee functions and the monitoring of placement activity are identified as factors of inadequate placement of students.

Elections and Constitutional Amendments

PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION WHICH GRANTS VOTING REPRESENTATION IN CONGRESS TO WASHINGTON, D.C.

Prepared by Mary Helen Wilson

Issue

Should Washington, D.C. have full voting representation in the House of Representatives and the Senate of the Congress of the United States?

Background

The District of Columbia was established in 1790 as a federal district over which the Congress of the United States had full control and was named the capital of the United States. The establishment of this district was in response to an incident which occurred in Philadelphia on June 21, 1783, when an angry group of Revolutionary Army soldiers marched on Independence Hall where the Continental Congress was meeting. The Pennsylvania militia refused the request of the Congress for protection, and the Congress was forced to flee the city. Consequently, the framers of the Constitution approved Article I, Section 8, Clause 17 of the Constitution, giving Congress the power to create as the seat of government a federal district totally independent from any state.

From 1790 to 1800 the residents of the District of Columbia voted in all elections as residents of Maryland or Virginia. In 1800 the administration of the District was set up by the John Adams administration, and no provision was made for residents to vote. The population of the District at that time was 14,000.

In 1960 Congress submitted to the states for ratification the 23rd amendment to the U.S. Constitution which provided for the residents of the District of Columbia the right to vote for the President and Vice President of the United States. This amendment was ratified by the required 38 states in April, 1961, and the residents voted in the presidential election of 1964.

In 1971 Congress provided to the District a non-voting delegate in the

House of Representatives. This delegate attends committee meetings and hearings and works in the interests of the District but does not vote on matters before the House. A new Charter for the District has been in effect since January 2, 1975, and it provides for a popularly elected mayor and city council.

In August, 1978 the Congress approved for submission to the states an amendment to the U.S. Constitution which reads as follows:

> Section 1. For purposes of representation in the Congress, election of the President and Vice President, and Article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.
>
> Section 2. The exercise of the rights and powers conferred under this article shall be by the people of the the District constituting the seat of government, and as shall be provided by the Congress.
>
> Section 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.
>
> Section 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

To be effective, this amendment must be ratified by thirty-eight states by August 28, 1985. Six states - Ohio, New Jersey, Michigan, Minnesota, Connecticut, and Massachusetts - have ratified the amendment. Five states - Pennsylvania, Idaho, Maryland, North Dakota and Wyoming - have defeated the amendment. The 1980 General Assembly will be the first opportunity for Kentucky legislators to act on this proposed amendment.

The Debate

This issue was debated in Congress and hearings were held by subcommittees of the Committee on the Judiciary in the U.S. House of Representatives and in the U.S. Senate. The arguments which have been presented include the following:

Support of the Amendment

1. The District of Columbia now has a population of some 700,000 residents, which is greater than the population of any of the following states, as estimated by the Bureau of the Census for 1978: Nevada, North Dakota, Delaware, Vermont, Wyoming and Alaska. These 700,000 people in the District do not have voting representation in the Congress of the United States.

2. According to data prepared by the library of Congress, the residents of the District of Columbia paid more in federal taxes than the residents of any of these eleven states - Maine, New Hampshire, Alaska, Nevada, Idaho, Delaware, Montana, North Dakota, South Dakota, Wyoming and Vermont. On a per capita basis, the residents of the District pay $2,116 in federal taxes, which is $491 above the national average of $1,625. Only one other state - Alaska - has a higher per capital tax burden. The residents of the District have no vote in Congress on tax bills.

3. Seven federal nations (Argentina, Australia, Brazil, Malaysia, Mexico, Venezuela and the United States) have capital cities which are federal districts with a special status similar to that of the District of Columbia. Only Brazil and the United States deny voting representation in the legislature to residents of their capital cities.

4. Approximately one-third of the District's work force is employed by the federal government. The other two-thirds are employed in a diversity of fields, including business, banking, construction, teaching and manufacturing. The residents reflect interests other than the business of the federal government, yet have no voting representation in these interests.

Opposition to the Amendment

1. Article I, Sections 2 and 3, of the Constitution state that the House of Representatives and the Senate shall be composed of members elected from each state. Since the ratification of the Constitution in 1789, no lands or

territories have achieved voting representation in Congress without first becoming a state.

2. The representation in the House of Representatives is based on the apportionment of population by state. The regular membership of the House has remained unchanged at 435 for 66 years. When Alaska and Hawaii became states, each was assigned one seat, temporarily increasing the size of the House to 437. However, the statehood enactments for both of these states provided that the total of 435 would be restored in the apportionment based on the 1960 census. If the proposed constitutional amendment is ratified, one of the several unanswered questions confronting Congress would be whether to increase the size of the House of Representatives. If the size is not increased, the representation for the District of Columbia will result in the loss of one seat for the people now represented.

3. Representation in the Senate is based on equal representation for states. If this amendment is approved, the District of Columbia would have two senators representing a federal district which is uniquely not a state. This would be contrary to Article 5 of the Constitution, which provides that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

4. Since the District of Columbia is a federal district over which Congress has control, and since the senators and representatives are physically present in the District, its problems and development are well known to Congress. The committee which oversees the District is composed of voting members of Congress. The interests of the residents of Washington, D.C. are represented by the entire Congress.

Action by the Kentucky General Assembly

The ratification of a proposed amendment to the U.S. Constitution in Kentucky requires a joint resolution approved by a simple majority vote in both houses of the General Assembly.

PROPOSED AMENDMENTS TO THE KENTUCKY CONSTITUTION

Prepared by Mary Helen Wilson and Linda Wood

Issue

Should the Kentucky Constitution be amended to expand the currently restricted power of referendum and initiative?

Background

Voters have become increasingly interested in the availability of the referendum and initiative processes since the recent passage of Proposition 13 in California. Proposition 13 rolled back property assessments, limited property tax increases, and limited the tax rate to a fixed percentage of market value.

Referendum is the process whereby the voters take direct action to repeal existing laws. Initiative is the process whereby the voters take direct action to pass new laws or to amend existing ones.

The referendum and initiative powers are exercised by filing a petition which sets forth the matter to be voted upon. The petition must be signed by the number of voters specified in the legislation providing for the referendum or initiative. The number of signatures must then be certified before the matter is placed on the ballot for voter acceptance or rejection. Legislation granting referendum and initiative powers to the voters generally provides that the approval of the governor is not necessary to ratify the action before it takes effect. The legislation generally further provides that action taken by the voters cannot be amended or repealed by the legislature but can only be modified by the electorate.

The referendum and initiative processes are not inherently available to voters but must be provided for by law. Twenty-one states currently have initiative provisions for state legislation. An additional eleven states, including Kentucky, have provisions for an initiative process that is avail-

able only to local units of government or to some local units of government. Thirty-nine states, including Kentucky, currently have provisions for a referendum process on state legislation. The Kentucky referendum process, however, applies only to a referendum on legislation classifying property and providing for differential taxation on the property.

Section 60 of the Kentucky Constitution provides that except for laws relating to those items which are listed in that section, no law "shall be enacted to take effect upon the approval of any other authority than the General Assembly unless otherwise expressly provided in this Constitution." The Constitution provides for a referendum in Sections 61, 64, 157, 157A, 171, 184 and 258, relating respectively to liquor sales; the change of the area of a county or the moving of a county seat; indebtedness exceeding the income of a city, county and taxing district; county road indebtedness; property classfication; school taxes; and Constitutional Conventions.

KRS 89.240 and 89.600 establish a referendum process for action upon ordinances of the commission and city manager forms of government. KRS 132.100, 160.485, and 242.020 establish the referendum process for action concerning the classifying of property, license fees for schools, and local option for alcoholic beverage control, respectively. KRS 89.250 and 89.610 establish the initiative process for ordinances of the commission and city manager forms of government.

Legislation was introduced in both 1972 and 1974 to provide for a general referendum power. A bill has been prefiled for the 1980 General Assembly which proposes to amend the Kentucky Constitution to provide for general referendum and initiative powers.

Alternatives and Implications

There are three types of referenda: the optional referendum, which is at the discretion of the legislature; the obligatory referendum, in which particular subject matters are referred to the electorate; and a popular referendum,

which provides that voters may compel a vote on a measure which has already passed. There are two types of initiative: the direct initiative, in which a petition is prepared, signatures are gathered, and the matter is placed directly on the ballot; and an indirect initiative, in which a petition is prepared, signatures are gathered, and the petition is presented to the legislature for action. The matter is only placed on the ballot if the legislature does not pass the measure. The legislation establishing the initiative process may require that a second petition be prepared and signatures gathered a second time before a matter can be placed on the ballot, if the matter has been sent to a legislature but not passed.

Critics of the referendum and initiative process point out that a disadvantage of placing such broad power in the hands of the people is that the voters do not generally have an opportunity to study each matter in depth before a vote is taken and the question is resolved, whereas members of the legislature generally have adequate opportunities to study a subject thoroughly before voting.

Proponents of the referendum and initiative processes point out that an advantage to giving broad power of direct action to the voters is that sometimes a measure can be passed by the voters which could not have been passed by the legislature. Of course, this possibility could also be considered a disadvantage.

PROPOSED AMENDMENTS TO THE KENTUCKY CONSTITUTION

Prepared by Mary Helen Wilson and Linda Wood

Issue

Should the Kentucky Constitution be amended to extend the homestead exemption to the permanently and totally disabled?

Background

In 1971 voters approved an amendment to Kentucky's 1891 Constitution to provide an exemption to property tax on the permanent residences of Kentucky citizens over the age of 65, up to the assessed valuation of $6,500. In 1975 an amendment was approved by the voters to include in this exemption condominiums or multiple-family dwellings which are owned and are the residences of persons over 65, up to the assessed valuation of $6,500. The $6,500 is regarded as $6,500 in 1972 purchasing power and is revised every two years to reflect the change in purchasing power due to inflation, as required in KRS 132.810. The exemption for 1977 and 1978 was $8,900.

The proposal to extend the homestead exemption to the permanently and totally disabled, of any age, was made in the 1976 and the 1978 General Assembly but did not pass. A proposed amendment for this purpose has been pre-filed for the 1980 General Assembly.

Effect

According to estimates made by the Social Security Administration, based on the projected 1980 population, there are approximately 180,000 totally and permanently disabled persons in Kentucky between the ages of 20-64. Not all of these people, however, own their homes and would thus be affected by the proposed amendment.

The maximum revenue loss to local taxing jurisdictions - counties, cities and school districts - could be much greater than the loss to the state. This is because total local property tax rates on real estate average $1.10 per one

hundred dollars of assessed value. Local taxing jurisdictions, however, are allowed to increase their rates to compensate for any anticipated reduction in revenue due to the homestead exemption. Historically, local jurisdictions have almost always exercised this option. Therefore, rather than a loss to local jurisdictions, a shift in the tax burden from the disabled to the healthy would be expected.

OTHER ISSUES

Prepared by Mary Helen Wilson

Issues within the jurisdiction of the Committee on Elections and Constitutional Amendments which have been discussed but for which no bills have been pre-filed include a constitutional amendment to permit sheriffs to succeed themselves and a provision for public financing of campaigns for governor and lieutenant governor of Kentucky. These issues have been the subject of newspaper editorials and public comment and will likely be considered by the 1980 General Assembly.

Public Financing of Elections

Issue

Public financing of elections has been a topic of interest and concern for several years. The public financing of presidential campaigns became a reality in the 1976 election, and public financing for elections to the U.S. House of Representatives is being debated in Congress now. Several states utilize public financing in statewide elections.

Background

The Supreme Court case of Buckley v. Valeo, January, 1976, has had a great impact on public financing laws. The Court ruled that the expenditures of a candidate cannot be limited unless the candidate voluntarily agreed to accept public financing and, thus, accept the expenditure limits required.

The most common source of funds for public financing of elections is the income tax check-off, whereby the taxpayer designates that a stated amount of his taxes go into a fund for financing campaigns. A few states do provide for a direct appropriation of tax revenue to the fund.

Kentucky presently has an income tax check-off provision which allows a taxpayer to designate $1.00 ($2.00 on joint returns) for a political party. The party must use the funds for its candidates in a general election, but the party has the discretion on how the money is distributed. As a result of this check-off, the Democratic Party received $135,000, and the Republican Party received $47,100 in 1978.

The principle of public financing operates as follows:

To be eligible for public financing a candidate raises a stated amount of funds in contributions of less than a specified limit. Thereby, the candidate establishes that his support is strong enough and has a wide enough base to make him a viable candidate for the office.

When the candidate has raised the required base amount, he becomes eli-

gible for the public funds, which are distributed according to a prescribed formula. The candidate also becomes subject to the limitations on spending which the public financing law has prescribed.

One problem that is occurring with public financing is that candidates sometimes find it is to their advantage to raise funds and not accept the expenditure limits, rather than accept funds and the expenditure limits. To be effective, the public financing of election campaigns must provide enough money to the candidate to make the acceptance of the money and the expenditure limitations attractive enough to warrant the restrictions involved. A candidate cannot be forced to accept public financing of a campaign.

Sheriffs Serving Successive Terms

Issue

Section 99 of the Constitution of Kentucky prohibits a sheriff's re-election or acting as deputy, for the succeeding term.

Background

All county officers, except sheriffs, may succeed themselves in office. The Constitution permits the General Assembly to combine the offices of sheriff and jailer, and this has been done in Jefferson County.

The four constitutions of Kentucky have all limited the term of the county sheriff. The first constitution prohibited successive terms, the second constitution provided for a two-year term for sheriffs, the third constitution provided for two successive two-year terms, and the fourth and present constitution provides for one four-year term for sheriff.

A proposed amendment which would permit sheriffs to succeed themselves failed to receive voter approval in 1959 and in 1973.

Health and Welfare

STATE GOVERNMENT AND THE DISABLED

Prepared by Bruce Simpson

Issue

Should a new state office be created, or an existing state agency's responsibilities be expanded, to respond to certain needs of disabled citizens?

Background

The House of Representatives in the 1978 General Assembly adopted House Resolution 136, which directed the Legislative Research Commission to study the feasibility of establishing in Kentucky State Government an Office of Ombudsman for the Adult Handicapped and Developmentally Disabled. This study resolution was introduced in response to a growing concern among the disabled citizens of the Commonwealth and their advocates that state government did not have adequate or appropriate administrative capabilities to respond to certain critical needs. These included:

(1) The need for state government to more actively pursue legal, administrative, and other appropriate means to ensure that the statutory and administrative rights of the disabled are upheld; and

(2) The need for state government to provide disabled citizens and interested others with information and referral services regarding the programs, statutes and regulations which pertain to the disabled.

Alternatives and Implications

Although the study is not yet completed, preliminary findings indicate that there is a definite need for State Government to expand information and referral services to disabled Kentuckians. Depending on the definition used, there are between 300,000 - 450,000 disabled men, women and children in the Commonwealth. A significant number of these persons, because of their disability, are likely to seek the services and benefits which are made available

to the disabled under the auspices of State Government. However, there is no single agency in State Government that has the specific mandate to provide disabled citizens and interested others with information and referral services regarding programs, benefits and certain statutory and regulatory rights that pertain to the disabled. Consequently, those persons seeking such information are at times forced to contact numerous departments of State Government, and the many bureaus and divisions within these departments, before their questions can be answered. There are eight different Departments of State Government which administer a variety of state and federal programs directed towards the disabled.

Other findings of the study indicate that State Government needs to assume a broader role in ensuring that the statutory and regulatory rights of all disabled Kentuckians are upheld. Presently, the Division for Protection and Advocacy in the Department of Justice has the authority under federal law, P.L. 94-103 as amended by P.L. 95-602, to protect and advocate the rights of persons with developmental disabilities and to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State.

This Division also provides numerous other services, including: the provision of information and referral services; the provision of legal and other backup resources to citizens and volunteer advocates; testifying before relevant committees of the General Assembly about rights of the developmentally disabled; and reviewing and commenting upon administrative regulations which affect developmentally disabled persons.

Developmental disability, in general terms, means a severe, chronic disability of a person which is attributable to a mental or physical impairment, is likely to continue indefinitely, results in substantial functional limitations of major life activities, and is manifested before the person attains

the age of twenty-two.

Those persons who become disabled at age twenty-two or later do not fall within the jurisdiction of the Division for Protection and Advocacy. Thus, there exists a sizeable number of disabled citizens in the Commonwealth who are not eligible to receive the assistance offered by this office.

There are at least two alternatives the General Assembly may want to consider in addressing the aforementioned needs of disabled Kentuckians. These options are outlined below.

(1) Expand the jurisdiction of the Division for Protection and Advocacy to serve those persons who are defined to be "handicapped" by Section 504 of the 1973 Rehabilitation Act (P.L. 93-112).

The definition of handicapped individual under Section 504 of the 1973 Rehabilitation Act is anyone with a physical or mental disability which substantially impairs or restricts one or more of such major life activities as walking, seeing, hearing, speaking, working, or learning. A history of such disability, or the belief on the part of others that a person has such a disability, whether it exists or not, also is recognized as a handicap. This definition includes such disabilities as cancer, diabetes, heart disease, cerebral palsy, multiple sclerosis, deafness or hearing impairment, drug addiction and alcoholism, among others.

The use of the Section 504 definition of a handicapped individual is recommended because it encompases virtually all of the existing definitions of disability and, most importantly, is the definition which is used to implement the civil rights provisions of the 1973 Rehabilitation Act. This Act, under the prescriptions of Section 504, provides that no otherwise qualified handicapped individual in the United States shall solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or

be subjected to discriminations under any program or activity receiving federal financial assistance.

Since many entities (i.e., public schools, colleges and universities, building contractors, etc.) in the Commonwealth receive federal funds, it would seem that State Government has some significant responsibility for ensuring that the rights of the handicapped as specified by Section 504 are upheld. The Division for Protection and Advocacy already has two years experience in protecting and advocating the rights of developmentally disabled citizens. This Division has the autonomy to be an advocate for the disabled even if it means challenging another state agency. It also has in place a toll-free number where a limited amount of information and referral services are provided. Thus, this Division has valuable experience in addressing the rights of the disabled and possesses some knowledge about the multitude of programs and services which are provided the disabled by State Government. Moreover, the Division is not compromised in its role of being an advocate for Kentucky's disabled citizens. No other existing agency in State Government possesses these same characteristics.

In order to accommodate the increased number of disabled citizens who would be eligible to receive the services of the Division for Protection and Advocacy, it is estimated that eight additional staff members (2 attorneys, 2 investigators, 1 information and referral specialist and 3 secretaries) would have to be hired. In addition, an advisory board should be established so that organizations representing the disabled and interested others would have the opportunity for input in the general operations of the Division. The costs for implementing this alternative are estimated to be between $125,000 and $175,000 per year.

(2) Expand the present responsibilities of the Ombudsman for the Department for Human Resources to provide that such services be made available to disabled Kentuckians.

The Ombudsman currently investigates complaints against the Department for Human Resources raised by those persons who are receiving services or benefits or who are seeking services or benefits from the Department. This office also serves as an information and referral system for all citizens who call.

Implementing this alternative would raise serious questions about a conflict of interest. That is, the Department for Human Resources provides many different types of services to the disabled, and to direct that this same agency act as advocate for a consumer of such services is an inherent conflict of interest. The Ombudsman role by its mandate is not an advocacy position. Rather, the Ombudsman is charged with the responsibility of investigating complaints made against the agency and making subsequent recommendations to the administrator of the agency as to how the complaint should best be resolved. The administrator is not obligated to abide by the recommendations of the Ombudsman.

It is difficult to estimate the fiscal implications of this option, since the Ombudsman's Office does not presently employ attorneys and investigators who engage in legal advocacy on behalf of complainants. However, the expenses to be incurred in expanding their information and referral services component would be negligible, since they already have a toll-free number and staff in place to provide these services.

It should also be pointed out that several questions have been raised about the value of expanding State Government's advocacy responsibilities to disabled persons. Some of these concerns are highlighted by the following

questions:

1) Should State Government continue to expand programs and services that will continue to increase in costs in an era when many, if not a majority of taxpayers, want to reduce government expenditures?;

2) If more advocacy services are needed for disabled persons, why doesn't the Federal Government provide funding assistance to the states, since it was the United States Congress which enacted the civil rights provisions of Section 504 of the 1973 Rehabilitation Act?; and

3) Is it possible for agencies in State Government to function in an autonomous advocacy role for citizens who have grievances with other state agencies, or is their ability to act as an advocate weakened by the fact that they are still part of the executive branch?

HOME HEALTH CARE INSURANCE

Prepared by Bruce Simpson

Issue

Should health insurance companies authorized to issue policies in the Commonwealth be required to make home health care policies available for purchase by the general public?

Background

The provision of home health care services has been recommended by many health care professionals and others as a viable option to an extended stay in a hospital or residence in a nursing home. Studies have shown that not only are persons more satisfied receiving care in the familiar surroundings of their own home but that for many people home health care is also less costly than the same type of services provided in a hospital or nursing home. Further, it is estimated that only 25 percent of the need for home health services in Kentucky is being met.

Home health care consists of part-time or intermittent skilled nursing services and may include a variety of other supportive services, such as home health aide services; physical, occupational and speech therapy service; homemaker service; and medical social work service, all of which are provided to individuals in their own home. Home health care services are delivered under the auspices of licensed home health agencies in accordance with a treatment plan prescribed by a physician.

Recently, the Special Advisory Commission for Senior Citizens to the Legislative Research Commission adopted a recommendation that directs the 1980 General Assembly to enact legislation which would require health insurance companies to make home health care policies available for purchase. This Commission also recommended that certain specified services (i.e., homemaker and home health aides) be included in these policies.

Alternatives and Implications

The primary sources of reimbursement for home health care services have been the federal programs of Medicare and Medicaid, with the result that service has been limited to the elderly, the disabled and those persons with very low incomes who qualify for public assistance. Approximately 93 percent of the services delivered by home health agencies are paid for by these two programs. Slightly more than 3 percent of home health care services are paid directly by the beneficiaries, with the remaining payment sources coming from unions, the Veterans Administration, and private insurance companies.

Currently, nine states (Arizona, California, Connecticut, Maryland, Nevada, New Mexico, New Jersey, New York, Vermont) have enacted legislation to expand the availability of home health care services by requiring health insurance companies to include home health care coverage in all accident/sickness policies or that the coverage be made available to purchasers of such policies. Several other states have introduced legislation which, if enacted, would mandate similar provisions. Any change in the Medicare or Medicaid programs to expand the number of people who would be eligible to receive home health care services would require action at the federal government level. Thus, if the General Assembly deems that home health care services ought to be accessed by more Kentuckians, the members may want to consider enacting legislation which would require health insurance companies to make these services available for purchase.

Several research projects have demonstrated that home health care services are less costly than the same type of service provided in a hospital. Blue Cross of Greater Philadelphia, in the eight years from 1962 to 1970, showed that the use of home health care services resulted in an average savings of $330 per case. Similarly, Blue Cross of Michigan found that during the period from 1963 to 1972 the provision of home health care services resulted in an average savings per case of $519 - $917.

Home health care has also been shown to be less costly than nursing home care for many elderly people. In a study prepared by the United States General Accounting Office in 1978, it was found that until older people become greatly or extremely impaired, the cost of nursing home care exceeds the cost of home care, to say nothing of the value of the general support services provided by family and friends. However, this study also pointed out that the true costs of maintaining the elderly and sick in their own homes have been hidden, because the greatest portion of such costs represent services provided by families and friends. It was further noted that the potential for home health benefits as an alternative to institutionalization depends largely on the continued supportive services given by family and friends.

There are several mitigating conditions which will have a significant impact on the cost of insurance premiums paid by consumers for home health care services if health insurance companies were required by law to make such policies available. Perhaps the most important factor in determining the eventual premium cost is the scope of the home health program that would be required. The following questions highlight some of the components that will have to be addressed.

(1) Would both individual and group health insurance contracts be required to offer home health benefits?

(2) What specific home health services should be provided for in the policy?

(3) Should Medicare beneficiaries be eligible to obtain the policies?

(4) Should the policyholder have to be hospitalized, as several states presently require, before home health benefits could be obtained?

(5) How much of a "deductible" should be incorporated in these policies?

(6) Should there be an option for a co-insurance provision?

(7) How many home health agency visits should the policy provide for in any one year?

(8) Should there be a cap on the dollar amount for home health benefits provided in a one-year period?

These and other questions need to be resolved before any accurate projection can be made regarding the costs and ultimate benefits for the consumer if legislation were enacted to mandate that home health care policies be made available.

Finally, it should be pointed out that health insurance companies writing policies in Kentucky presently have the option of making home health care policies available for purchase by the general public. Insurance companies do not need another state law authorizing them to issue such policies. Obviously, then, there must be some reasons why health insurance companies have chosen not to enter the home health care market to any larger extent than they have in the past.

Concern has been expressed about the monitoring that would be needed to insure the qualify and appropriateness of services delivered by home health agencies. It has also been noted that health insurance companies would probably have to hire additional staff to monitor the utilization of home health services and that this cost would eventually be passed on to the consumer.

SENIOR CITIZEN DISCOUNT PROGRAM

Prepared by James Monsour

Issue

Should state government implement a senior citizen discount program that would allow the state's approximately 400,000 senior citizens to obtain discounts on retail goods and services from voluntarily participating retail businesses throughout Kentucky?

Background

Of Kentucky's 400,000 citizens sixty years of age or older, almost one-fourth have yearly incomes under $3,000. Nearly 46% have yearly incomes of less than $6,000 and fully 59% have incomes of less than $10,000 per year (Kentucky Elderly Needs Assessment, University of Louisville, 1978). Because the vast majority of the expenditures made by these citizens, many of whom are on fixed incomes, are for essential items, such as food, clothing and household maintenance, inflation can have a catastrophic effect on their standard of living. Continuing increases in the cost of food, clothing and fuel, for example, have diminished the actual purchasing power of these persons, despite periodic upward adjustments in Social Security or private pensions.

The impact of continuing inflation on the limited incomes of many older persons has led to the voluntary establishment by retailers of discounts on consumer goods and services for senior citizens across the United States. While discounts are available both through merchants acting individually and from businesses participating in locally-organized discount programs, of which there are seven in Kentucky, only recently has the concept of consolidating into one program the discounts available throughout a state been implemented. Under this arrangement, an agency of state government utilizes a statewide network to promote and publicize the program, enlist business participation and issue proof of age to those lacking it.

This results in more discounts on more goods and services being made available to more people. The annual savings of individuals participating in a statewide discount program have been estimated to average $392, while couples can expect to save approximately $434 per year.

While it would be difficult to argue against the relative merit of a program designed to aid the state's older population, some questions have arisen regarding the need or desirability of the state's organizing and promoting such a program. Among objections raised are:

1) Why should the state intervene in the free enterprise sector when discounts are currently available from local merchants acting on their own initiative?
2) What guarantee is there that the cost savings realized by the 10% to 12% of the citizens eligible to participate in such a program would not have to be absorbed by the rest of the populace?
3) The cost to administer the program itself represents increased government spending and hence might contribute to inflation and increase the cost of living.

The implementation of a statewide senior citizen discount program in the neighboring state of Ohio has served as the impetus to the establishment of a similar program in Kentucky. Whether the state should encourage Kentucky's retail businesses to sell goods or services at a reduced rate to elderly citizens, on a voluntary basis, will be a question confronting the members of the 1980 General Assembly.

FUNDING FOR EMERGENCY MEDICAL SERVICES

Prepared by Gerry Kiefer

Issue

Should state or local tax dollars subsidize Kentucky's emergency medical services systems?

Background

The provision of quality emergency medical services (EMS) is expensive. According to data gathered by the Department for Human Resources, the total 1978 annual operating cost (including personnel) of statewide ambulance services was $19,000,000. Continued funding for ambulance service in Kentucky is threatened by funding restrictions imposed by the federal Comprehensive Employment and Training Act (CETA) Amendments of 1978. Sixty-one counties in Kentucky rely heavily upon CETA funding to pay the salaries of EMS personnel.

Although there appears to be congressional support for continued federal funding of EMS systems under Title XII and Section 789 of the Public Health Service Act, the Carter administration supports an "orderly phase-out" of federal EMS spending. The funding gap created by the restrictions on CETA funds and any further withdrawal of federal EMS support must be filled through either state or local funding if ambulance service is to continue at its present operational level.

Two major difficulties which contribute to the inability of ambulance services to become self-supporting include a high rate of uncollectible bills, resulting in an annual loss of $3,600,000, and inappropriate third-party reimbursement policies. Both of these conditions encourage providers of ambulance services to seek local, state and federal subsidies.

Labor and Industry

WORKMEN'S COMPENSATION

Prepared by Linda Bussell

Issue

The high cost of workmen's compensation in Kentucky compared to the benefits received by injured workers has been a major issue in regular legislative sessions since 1972 and promises to be a major issue in the 1980 legislative session.

Background

All states have enacted workmen's compensation laws. Kentucky's law has been in effect since 1916. The basic purpose of Kentucky's workmen's compensation program is to provide cash and medical benefits to workers injured in the course of employment.

In Kentucky, every employer having one or more employes must provide workmen's compensation insurance coverage for his employes. However, agricultural employes and some domestic employes are exempt from coverage.

Employers have three methods by which to insure their liability under the workmen's compensation law - private insurance, self-insurance and group self-insurance.

Private Insurance

The majority of Kentucky employers maintain the required coverage of their employes by purchasing workmen's compensation insurance through an insurance company.

The workmen's compensation insurance premiums are determined by a rating system developed by the National Council on Compensation Insurance, a rating and statistical organization for insurance companies. The rating system used is basically the same throughout the country except for the state fund states. (A state fund, for purposes of workmen's compensation, refers to an alternative method used in some states to provide coverage. In a state fund system,

employers discharge liability to pay workmen's compensation benefits through a government agency that functions as an insurance business, in that the fund is financed from premiums collected from employers.)

Basically, workmen's compensation premiums are determined through the application of the following general processes:

--Industries are grouped into approximately 500 broad classifications; and

--For each classification, rates are calculated by the state, based upon the degree of risk experienced by employes in the particular industry.

These classifications describe a product, a process, an operation or a general type or character of business. The premiums will vary according to the loss experience of industries in each classification. Those classifications which include very hazardous industries will have higher rates than those which include non-hazardous industries.

The premium is computed on the basis of the employer's payroll and is paid on each $100 of payroll.

The National Council on Compensation Insurance computes the rates and files them with the Kentucky Department of Insurance, whose function is to review the rates. The Kentucky insurance code (KRS 304) requires that workmen's compensation rates be adequate, but that they not be excessive or unfairly discriminatory. Current law (1978 HB 358) provides that a public hearing must be held by the Kentucky Insurance Regulatory Board on each workmen's compensation rate filing.

Self-Insurance

The workmen's compensation law (KRS 342.340) provides that an employer can qualify as a self-insured employer if he can demonstrate an ability to pay directly the compensation awarded as a result of the law

Currently, there are approximately two hundred and ten self-insured employers in Kentucky. Usually, only large employers have the financial capa-

bility to be self-insured.

One reason cited for the comparatively small number of self-insured employers is a provision contained in KRS 342.122(1). This section outlines the manner in which the Special Fund is financed. The Special Fund is used to help finance paid benefits to an injured worker when more than one employer is involved and in cases with a pre-existing condition.

A Special Fund tax is levied against the "adjusted costs" of a self-insured employer. "Adjusted costs" include all losses, plus an additional 12 percent, but cannot be less than 20 percent of the rate. Prior to the 1978 General Assembly "adjusted cost" could not be less than 50 percent of the manual rate. This was an attempt on behalf of the 1978 legislature (HB 358) to make self-insurance possible for more employers.

Group Self-Insurance

As a result of the 1978 legislative session, two or more employers are permitted to pool their liabilities for the purpose of qualifying as a self-insured employer. However, the group must consist exclusively of employers who conduct related activities in a given industry and who employ persons performing work in connection with the same industry. Currently, group self-insurance associations operating in Kentucky represent over 200 employers.

Increased Premiums

Since 1973, workmen's compensation insurance premiums have increased 100 percent. Premiums are adjusted because of legislative changes made in the workmen's compensation law; court decisions resulting from various interpretations of the law; annual experience reviews, which consider factors such as loss experience and inflation; and annual benefit level changes, which occur in January of each year when the average weekly wage of the state is determined.

When compared with those of other states, Kentucky's rates appear to be excessive, but the benefits paid to injured workers do not appear to be

commensurate with the high rates. The current maximum weekly benefit paid is $121.

According to reports, some employers, especially high risk employers, have seen their annual workmen's compensation premium double in the past few years. However, insurance companies insist that the rate increases are necessary to provide adequate coverage against losses incurred in workmen's compensation cases. Obviously, this kind of increase poses a serious problem to those officials responsible for attracting new industry to Kentucky and for maintaining and expanding existing industry.

Alternatives and Implications

In the 1980 legislative session, there will be much more discussion about a state fund approach for workmen's compensation. Workmen's compensation insurance may be provided by state insurance funds. In some instances, these may be exclusive funds; that is, they operate as the only source of coverage available to employers. In other instances, state funds operate in competitive climates and are referred to as competitive funds. State fund systems operate in eighteen states.

Proponents of the state fund concept contend that significant savings can be realized through the elimination of marketing costs characteristic of the private insurer. One of the arguments against the state fund concept is that the government is operating an insurance business, which hints of creeping socialism.

The American Association of State Compensation Insurance Funds (AASCIF) has drafted model legislation for the creation of a state fund system. It is likely that this legislation will be considered in the upcoming months.

In seeking other methods to decrease the high costs of workmen's compensation insurance, legislators might consider adopting a wage-loss approach for calculating benefits paid to injured workers. Wage-loss benefits are based on actual wages lost. Florida legislators recently adopted a workmen's compen-

sation reform bill that embodied a wage-loss formula for calculating benefits. According to recent reports, the Florida legislation increased benefits to some employes and mandated an immediate decrease in premiums paid by employers.

Another approach to reducing premiums would be through the social security reverse offset. Basically, this means that the state, rather than the federal government, would realize a savings on those individuals who are dual recipients of workmen's compensation and social security benefits.

Finally, the 1980 legislature will consider the findings and recommendations of an outside consultant currently being hired to study workmen's compensation problems in Kentucky. At the request of the LRC Special Subcommittee on Workmen's Compensation, Governor Julian Carroll has appropriated $50,000 for this purpose.

Fiscal Implications

The fiscal implications of establishing a state fund for workmen's compensation is difficult to determine. Several factors must be considered. For example, the creation of an exclusive state fund system would be more expensive than a competitive system, because in an exclusive system, all employers must insure their liability with the state fund. The cost of creating a competitive system would be dependent on such factors as the market share of the total premium volume that would be achieved.

Unfortunately, information indicating what types of savings would be realized if Kentucky adopted a wage-loss approach to calculating benefits is not available. Obviously, the cost savings depends on the wage-loss formula adopted. Nor can the cost savings upon application of the social security reverse offset now be determined, because our Kentucky Department of Labor does not have sufficient information to make such determination.

PREVAILING WAGE

Prepared by Jean Keene

Issue

Should Kentucky's Prevailing Wage Law be repealed?

Background

The Davis-Bacon Act, passed by Congress in 1931, requires contracts for federally financed or assisted construction costing over $2,000 to contain a provision stating the minimum hourly wage rate to be paid the various classes of laborers or mechanics. Wage determinations are made by the Secretary of Labor based on an evaluation of prevailing wages for the corresponding classes of workers on similar projects contracted in the area where the work is to be performed. In 1964, an amendment modernized the Act by requiring that the fringe benefits presently common to the construction industry as a whole be available to all employes under the contract.

Before the passage of Davis-Bacon, seven states had prevailing wage laws of their own, Kansas being the first, passing such a law in 1891. Today, 40 states, including Kentucky, have "little Davis-Bacon Acts." In the case where a state or local construction project is federally assisted, it may be subject to separate state and federal prevailing wage determinations. When these two rates differ, the higher wage must be paid to each classification involved.

Although federal and state wage determination methods and project coverage may differ, the purpose for all prevailing wage laws is the same: to protect local workers and contractors from itinerant contractors who hire cheap labor from outside the area. The prevailing wage laws were designated to give local labor and contractors a fair opportunity. Questions have been raised recently as to whether the desired purpose is being achieved.

Indications are that 1979-80 could be critical years for prevailing wage legislation. The General Accounting Office has released a study calling for

the repeal of Davis-Bacon and six state legislatures introduced legislation to repeal their prevailing wage laws in 1979.

Kentucky's Prevailing Wage Law

Kentucky has had a prevailing wage law since 1940. At that time, the public authority issuing the contract was required to establish the prevailing wage for laborers, workmen, and mechanics on each project performed. Our current prevailing wage law has been in effect since 1960 and the Commissioner of Labor has the responsibility of making initial determinations, which are reviewed upon the request of a public authority or any interested party by the Prevailing Wage Board.

Before advertising for bids or entering into a contract for construction of public works costing over $500, every public authority must notify the Department of labor, in writing, of the work to be done and request the prevailing wages and fringe benefits for each classification of laborers, workmen, and mechanics to be used on the project in the area where the work will be performed. In the event that a contract is not then awarded within 90 days, the public authority must ascertain a new schedule of wages from the Department of Labor. If it is found that a public authority has not followed this procedure, the Commissioner of Labor shall give written notice and grant sufficient time for compliance. If violations still occur, suit may be brought in the circuit court of the county where the authority is located.

If a contractor or subcontractor is not paying the required prevailing wage, the public authority awarding the contract may withhold the amount from the contractor and pay it directly to the workers. A contractor is then prohibited from bidding on public works until he is in compliance with this act.

In determining wage scales, the Commissioner of Labor shall consider:

1) Wage rates on previous public works in the locality;

2) Wage rates previously paid on reasonably comparable private construction projects in the locality; and

3) Collective bargaining agreements which apply to the locality where the construction is done.

The "prevailing wage rate" for each classification of workers shall be that which is paid to the majority of those workers in similar projects in the area. If a majority is not paid the same rate, then the rate paid to the greater number is said to be prevailing, provided that such rate is paid to at least 30% of those employed. If less than 30% are receiving the same rate, the average rate is used. Since union scales, which are set in collective bargaining agreements, are uniform, while non-union wages generally are not, the Department of Labor often ends up with the union rate in setting its prevailing rates.

The arguments for and against the Kentucky Prevailing Wage Law are the same as those for and against the federal Davis-Bacon Act. The Kentucky Prevailing Wage Law is currently a subject of much controversy. Arguments opposed to prevailing wage included the following: 1) the act came as a result of the depression and is no longer necessary; 2) it is inflationary because it results in public works contracts costing more than other construction contracts, since labor costs are higher. This extra cost is then passed on to the taxpayers; and 3) it gives an unfair advantage to union employers over non-union employers in bidding for public works contracts. Hostility may develop between employes of an open shop contractor if those working under the government contract are making better wages than those working on private projects.

Arguments in favor of the prevailing wage law include: 1) Since Kentucky's present law was passed in 1960, it is more than a depression measure and still is needed today; also, some states enacted prevailing wage legislation prior to the depression; 2) It insures that those contractors that pay decent wages and offer decent working conditions are not disadvantaged when bidding for public works contracts; and 3) It is not

inflationary, since it only calls for the payment of wages already prevailing in the locality. If these were not required to be paid, there is no guarantee that the overall cost of the construction would decrease.

Legislative Alternatives

As stated before, many states have introduced legislation affecting the provisions of their prevailing wage laws. In 1979, thirteen states introduced repealer legislation. At this time only Florida has repealed its prevailing wage law. In the other states, repealers were killed or blocked, including those in Arizona and Utah which were stopped by gubernatorial veto. Bills to reduce coverage were passed in two states and are still pending in six other states.

Several alternatives to Kentucky's Prevailing Wage Law are available and are being used or considered in other states.

1) Repeal the law - In May, Florida repealed its prevailing wage law and several other states have introduced repealers in 1979. At the same time, Hawaii and Massachusetts have introduced legislation which would expand coverage of the prevailing wage law to include contracts to which a public utility is a party.

2) Raise the $500 coverage threshold because of the inflation since 1940, when the present statute was passed (in proportion to changes in the Consumer Price Index). This would decrease administrative burden and costs since fewer projects would be covered by the prevailing wage law.

3) Use the arithmetic average of wages and fringe benefits in determining the wage to be paid, instead of using the current "30 percent rule." This would be more representative of all the construction workers in the area. However, it could hardly be called "prevailing" since it would be artificial, applying to no one or only a few. The calculation of the average would also require more work.

4) Calculate different wage rates for cities and counties. In Kansas,

counties containing a first or second class city have separate prevailing wage rates for the county and city. Therefore, rural areas do not have to pay the same wages paid in larger cities, where the cost of living may be higher.

Fiscal Implications

The fiscal implications of these alternatives is virtually impossible to determine. Each contract would have to be reviewed to achieve some idea of the effect repealing the prevailing wage law would have. However, reviewing each contract might not reveal the cost effect, because there are too many factors involved. For example, there are inconsistencies in the manner in which contractors define actual labor costs. Also, there are many categories of employes involved in these contracts and many different wage rates. Many contractors are bound by collective bargaining agreements and many are not. All of these factors affect the cost of the contract and cause extreme difficulties in trying to determine the cost effect of repealing the prevailing wage law.

The fiscal impact of increasing the $500 threshold amount cannot be determined. However, it is obvious that by increasing this amount, fewer contracts will be subject to the provision of the prevailing wage law. According to a recent report, nine states have laws that cover only contracts ranging from $25,000 to $500,000.

If the Commissioner of Labor required that the "average wage rate" be applied to public construction projects, the result could possibly be higher wage rates on some projects and lower wage rates on other projects.

If "localities" were redefined, a cost difference in public construction projects would be realized but the extent of this difference is not known. The Commissioner of Labor's determination of the meaning of "localities" is a major source of controversy in Kentucky's prevailing wage law.

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYES

Prepared by Michael Luvisi

Issue

Should the General Assembly authorize or require collective bargaining arrangements between public employes and their employers?

Background

Since 1966, some form of public employe collective bargaining legislation has been introduced during each regular session of the General Assembly.

During this period, some groups of public employes have attained varying degrees of collective bargaining rights through legislation or legal interpretation.

KRS Chapter 345 grants collective bargaining rights to firefighters employed by any city containing at least 300,000 persons, or any city which petitions to be included.

KRS 78.470 grants county police employes in any county with a population of 300,000 or more the right to participate in lawful, concerted activity for the purpose of collective bargaining.

KRS 336.130 grants employes the right to bargain collectively. However, this statute has been clarified by two major court decisions and further scrutinized by the Attorney General in several opinions.

One of the major cases concerning public employe bargaining rights is Jefferson County Teachers Association v. Board of Education (1970) 463 S.W. 2d 627. This case distinguished between public and private employes and held that teachers do not have the right to strike.

The most recent case on the subject is Board of Trustees of the University of Kentucky, et al. v. Public Employees Council No. 51, American Federation of State, County and Municipal Employees, AFL-CIO etc., et al., (1978), 571 S.W. 2d 616. In this case, the Supreme Court of Kentucky held (1) that

the Board of Trustees has no duty to recognize, negotiate or bargain with the public employes' union and (2) that the Board could not prohibit nonacademic employes from affiliating with the union.

OAG 65 - 84 opines that teachers may organize and bargain with a local school board if that board so chooses.

OAG 67 - 7 states that neither the Commonwealth nor its agencies are required to recognize third parties as official bargaining agents of state employes.

Finally, OAG 72 - 279 opines that KRS 336.130 is inapplicable to public employes, thereby denying them collective bargaining rights.

Though several large public employe groups in Kentucky's major cities have been allowed to exercise collective bargaining rights, the majority of public employes in Kentucky have not been afforded authority to do so.

Alternatives

Collective bargaining is a broad term which includes various employe-employer arrangements for bargaining, especially in the public sector.

Below are listed several modifications which have been applied most frequently to collective bargaining arrangements in the public sector:

Arbitration - A method of settling a labor/management dispute by having an impartial third party hold a formal hearing, take testimony and render a decision. The decision may or may not be binding upon the parties.*

No-strike clause - A provision in a collective bargaining contract in which the union promises that during the life of the contract the employees will not engage in strikes, slowdowns, or other job actions.*

Mediation - An attempt by an impartial third party, called a mediator, to bring together parties in a labor dispute.*

Meet and Confer - A particular labor/management relationship set up under some state public sector laws which gives public employes the right to organize and make recommendations to management but gives management the right

to make the ultimate decision on terms and conditions of employment.*

A collective bargaining for public employes bill could reasonably include one or several of these elements. Any collective bargaining bill will reflect the freedom and responsibility which the legislature accords the public employe-public employer relationship.

Fiscal Implications

Any attempt to estimate the fiscal impact of public employe collective bargaining legislation would be speculative. The possible variations in legislation and the nature of the collective bargaining process itself prevents any reliable evaluation of costs which public employe collective bargaining would entail.

*Terms in Public Sector Labor Relations, A Practitioner's Guide, Midwest Center for Public Sector Labor Relations, Indiana University, Bloomington, Indiana.

Public Utilities and Transportation

ENERGY COST ASSISTANCE

Prepared by Linda Kubala and Richard Sims

Issue

What actions, if any, should be taken to alleviate the burden of high energy costs on low-income elderly citizens?

Background

The cost of energy required by households for space heating, water heating, lighting and cooking has increased dramatically. Shortages and phased deregulation have sent natural gas and fuel oil prices sharply upward, and electricity rates have climbed steadily for some years. Many families find themselves paying a larger portion of their income for energy than before, and those on low and fixed incomes are increasingly unable to absorb the costs without giving up other essentials. The plight of elderly low-income Kentuckians has caused particular concern. Many of the elderly live in poorly-insulated homes, and are unable to borrow money for weatherization improvements. They are more susceptible to illness or death due to insufficient heat in the winter, and their incomes usually have not increased as rapidly as inflation. It is feared that rising fuel costs may force some senior citizens to abandon the independence of living in their own homes, or to risk severe health damage because they cannot afford sufficient home heat.

The 1978 General Assembly created the two-year Energy Cost Assistance Program (SB 279) to address this problem, and funded it with $5 million for each year of the current biennium. The legislature also removed the sales tax from utility bills during the 1979 Special Session. Since energy costs are projected to continue their increase, further assistance may well be necessary.

Legislative Alternatives and Implications

Several alternatives are available to the General Assembly if it wishes

to provide energy cost relief to low-income and elderly individuals. These include continuation of the present Energy Cost Assistance Program; administration of an energy credits program through a department other than Human Resources; establishment of lifeline or other discount utility rates for the elderly poor, financed by other rate payers; and funding of expanded home weatherization work.

Continue or Expand the Present Energy Cost Assistance Program. The ECAP program pays eligible individuals between $40 and $80 a year to help offset winter fuel costs. To be eligible, an individual must be over 62, and have an income below what is designated as "125-percent-of-poverty." Present income ceilings are $3900 for an individual, $5200 for a couple. Totally blind or disabled persons under 62 who qualify for Supplemental Security Income payments (SSI) also are eligible. Applicants must meet resource as well as income requirements; money available in savings, stocks, bonds, etc. may not exceed $1500 - $3400, depending on the size of the household.

The program attracted fewer applicants than were expected during its first year of operation. By March 1979, only $1.5 million of the $5 million appropriation had been spent. The newness of the program may explain in large part this under-utilization. Several groups have suggested changes to the program, which should be considered if it is extended into the next biennium:

1. Increase or remove resource restrictions. Many elderly Kentuckians on low incomes do not qualify for energy payments because the cash value of their life insurance and the amount of their savings exceed the resource limits set by the Department for Human Resources. If the program is supposed to extend to elderly Kentuckians who have managed to remain independent, yet are living on low cash incomes, the low resource ceilings may be undesirable.

2. Increase the amount of the payment. Some groups have argued that a payment of $40 - $80 is too small to give any real relief, and that this is one reason for the small number of applicants during the first year of program

operation.

3. Make monthly payments during the winter months. The one-time payment seems to have caused some confusion, since most assistance payments are made monthly.

4. Take applications at Senior Citizen Centers as well as Human Resources offices. Applicants now must apply in person at the nearest office of the Bureau for Social Insurance. This requires a special trip, and may discourage many senior citizens, who are embarrassed about applying for welfare.

Operate an Energy Assistance Program for the Elderly through the Department of Revenue or Finance, Rather than the Department for Human Resources. Criticisms of the current Energy Cost Assistance Program may point to a deeper problem. The relatively high income levels specified in SB 279 imply that the program was intended to include senior citizens who are not on public assistance. Yet almost all of the recipients in the first year were people already receiving public assistance through the Supplemental Security Income program (SSI). Others either were not aware of the program, or were excluded by the low resource ceilings.

If the program is intended for a population very different from the usual client population served through the Bureau for Social Insurance, it may be better to operate the program through a different agency.

Two years ago the Ohio legislature created an Energy Credits Program, administered through the Department of Taxation, with a legislative advisory committee. The Program provides a 25% discount on utility bills during the five winter months, or a flat payment for citizens who heat with such fuels as wood or fuel oil. Recipients must be over 65 or disabled, head of household, and not exceed a specified income ($7000 during first year of operation, $7400 the second). Income levels are verified by tax returns.

A program such as this, with relatively few restrictions and little red

tape, probably would cost considerably more than the $5 million appropriated for Kentucky's Energy Cost Assistance Program. Ohio spent $21 million on benefits during the first year of program operation, and $23 million the second year. A similar program in Kentucky, for the elderly only, is estimated to require $8 million the first year. (Fiscal implications are discussed in greater detail at the end of this paper.)

Require Utilities to Offer a Lifeline Rate or Other Discount to Senior Citizens, and to Recover Lost Revenues through Higher Rates to Other Customers. A lifeline rate for senior citizens was proposed in SB 73 of the 1978 Session. The bill provided limited amounts of electricity and natural gas to eligible customers at a considerable discount. Regular residential rates were to apply to amounts consumed beyond the "lifeline" quantity. Any electric or gas customer 65 or over could apply for this rate; the bill also extended the discount to Supplemental Security Income (SSI) recipients under 65.

A lifeline rate for senior citizens is appealing mainly because it does not require additional taxes. Utility customers who do not qualify for lifeline, including all commercial and industrial customers, would pay higher rates to subsidize the discount. For most utilities, the lifeline rates would apply only to a small portion of all electricity or gas sold. Therefore, only a small increase in regular rates would be required to cover the subsidy. In 1978, the Public Service Commission estimated that SB 73 would decrease gas and electric bills for lifeline customers by $50 - $60 per year, and would increase rates for other customers by $2 - $3 per year.

Virtually all senior citizens use electricity and thus could benefit from the lifeline discount. The rates would not, however, benefit those senior citizens who pay for utilities as part of their rent. Customers who heat with natural gas would receive a discount not available to those who use other home heating fuels. For this reason, it might be preferable to restrict consideration of lifeline rates to electricity only.

At a time when the public wants lower taxes, it is tempting to propose a subsidy program financed by other rate payers, rather than by tax money. But, although it is not identified as such, the higher electricity or gas rates paid by other customers under lifeline would be similar to a tax levied for a program mandated by the General Assembly. Since low-income families in Kentucky, in general, must budget a larger portion of their income for utility payments than high income families, this "invisible" tax might prove highly regressive.

All of the above proposals subsidize energy costs for low-income elderly and disabled individuals. Numerous variations can be suggested. Essentially, however, these proposals are band-aid solutions to the deeper problem of poverty, which is not caused by or limited to energy costs. Energy costs are rising rapidly at the present time, and since energy is essential, programs are needed to help those who cannot pay higher prices. A new subsidy creates new guidelines and red tape, and adds to existing subsidies available to the poor to purchase such items as food, housing, and medical services. The subsidies are necessary because a segment of the population, including many of the elderly, have incomes too low to survive without them. Eventually, it may be necessary to ensure higher incomes instead of extending subsidies to more and more commodities. This will require decisions at the national level and cannot reasonably be solved by the General Assembly.

Insulation and Weatherization Programs. A major shortcoming of cost assistance programs is that for them to have any long-term benefit for recipients they require a continuing and probably increasing annual appropriation. This would mean a perpetual drain on the state treasury and would do nothing to promote energy conservation. A more permanent solution, benefiting users through reducing their energy needs, the treasury through reducing the long-term funding requirements, and the utilities through reducing the requirement for new capacity, would be a program to help individuals weather-proof their

homes. The elderly often have limited means with which to finance weatherizing home improvements and may be physically limited on improvements they could make themselves. The federal government has recognized this problem and attempts to provide partial relief through programs such as FHA low interest (1%) weatherization loans and the Weatherization for Low-Income Housing Program administered through the Community Action Agencies. $4.5 million will be available for Kentucky through the latter program during the coming year. This program provides up to $400 per eligible household to cover the cost of weatherizing materials such as insulation, caulking, weatherstripping, and storm windows. Installation is then made by CETA workers. The General Assembly might find it advantageous to work in conjunction with existing federal programs by providing supplemental appropriations to enable them to reach more households, and by providing state assistance for installation to supplement the CETA program.

While weatherization does seem to offer benefits to all concerned, it must be recognized that it is a long-term program and will take years to effectively reach all households in need of it. In the meantime, there will still be numerous senior citizens needing short-term assistance in meeting disruptively sharp jumps in energy costs.

Fiscal Implications

1. Continuation of the Energy Cost Assistance Program

The General Assembly appropriated $5 million for each year of the current biennium to operate the Energy Cost Assistance Program. Under the present benefit levels of $40 - $80, the Department for Human Resources estimated that it could serve 65,000 elderly low-income Kentuckians each year.

Almost 100,000 Kentuckians currently receive Supplemental Security Income benefits. About half of these are over 65; the remainder are blind or totally disabled. Virtually all SSI recipients are eligible for payments under the current ECAP program if they apply.

Maximum income under SSI, for a single individual, is $209 per month. The ECAP program offers assistance to individuals receiving up to $328 per month, and income ceilings increase with the size of the household. Therefore, many of the state's nearly 400,000 senior citizens should be eligible for ECAP payments even though they do not receive SSI payments. Only about 22,000 people received benefits through the ECAP program in 1978-79, and the Department failed to use its $5 million appropriation. Yet with greater publicity it appears that the program will require larger appropriations in the future to maintain current benefit levels.

2. Energy Credits Program:

It is estimated that an energy credits program similar to the one operated in Ohio would cost about $8 million in the first year. This estimate makes no provision for serving disabled citizens; it assumes a program solely for low-income senior citizens.

Based on projections by the Urban Studies Center at the University of Louisville, there will be about 389,000 Kentuckians over age 65 in 1980. No current income or household figures are available for this group. In 1970, however, 62.3% of Kentucky's senior citizens were listed as heads of household. National figures for 1977 indicate that 63.5% of the people over 65 have household incomes below $7,000 per year. A rough estimate based on these figures indicates that approximately 200,000 Kentuckians are over 65, are either head of a household or living alone, have an income less than $7,000 per year, and therefore would qualify for an energy credits program similar to the one currently offered in Ohio.

In Ohio, 57% of the estimated eligible population applied for the credits in the first year, and 60% in the second. This was accomplished by extensive promotional efforts. A Kentucky program might conservatively reach 50% of those potentially eligible during the first year, or about 100,000 people.

In Ohio, those who heat with natural gas or electricity receive a 25%

credit on their utility bills; those who heat with unmetered fuels, such as fuel oil or coal, receive $87.50. Average benefits were $75 per recipient. No information is available on average fuel bills paid by elderly Kentuckians. Taking Ohio's average payment as midpoint, benefit costs could be expected to fall within the following range:

Average benefit per recipient	$62.50	$75.00	$87.50
Number of recipients	100,000	100,000	100,000
Cost for benefits, first year of program operation	$6,250,000	$7,500,000	$8,750,000

The Department of Revenue estimates administrative costs for this program at 5% of total benefits during the first year. These would decline to an eventual level of about 2.5%. Therefore, administrative costs for the first year could be expected to fall between $312,000 and $438,000.

These estimates assume 50% participation the first year. If Ohio's experience of 57% is used as a base, benefits and administrative costs could range from $7.5 to $10.5 million for the first year.

Thus, depending on the level of benefits and the number of applicants assumed, costs for the first year of operation could range from a low of $6.5 million to a high of $10.5 million. Thereafter, administration as a percent of total cost should decline, but the number of beneficiaries can be expected to increase, at least initially, by two or three percent a year. Since payments are a portion of total bills, a growth factor must be included for expected inflation.

These estimates assume a program solely for senior citizens. The inclusion of certain disabled persons would increase the cost.

3. Utility Lifeline or Discount Rates:

A lifeline rate or similar discount program would cost the state nothing in direct benefit payments. Utility companies could not reasonably be

expected to establish the eligibility of each recipient, however, so the state would incur some administrative costs for this purpose. State funds might also be required to promote and publicize the program.

4. Insulation and Weatherization Programs:

The weatherization programs currently in operation use no appreciable state funding. They are operated primarily by the regional Community Action Agencies with federal funds. Some of these agencies also work closely with the Farmer's Home Administration to help qualifying individuals obtain low-cost FHA weatherization loans.

General Assembly action in this area probably would involve the appropriation of state money to expand the existing work. Creation of a separate state program, either to provide low-cost loans or direct weatherization services, would seem an unnecessary duplication.

UTILITY RATE LEGISLATION

Prepared by Linda Kubala

Issue

Should the General Assembly, by legislation, regulate the structure of utility rates?

Background

Rates charged for electric, gas, sewer and telephone services have become controversial in recent years. Legislation is likely to be introduced in 1980 to change certain utility rate designs by statute, or to clarify ratemaking standards. Electric and gas companies have traditionally set their rates so that customers pay less per unit as they increase their consumption; yet projected energy shortages underscore the need for conservation. Some groups would like to abolish the traditional declining rates and replace them with rates which penalize wasteful consumption. The national energy act encourages experiments with new types of electric and gas rates to promote production efficiency and conservation.

Welfare considerations also have been important in developing utility rate legislation. Special telephone rates for the handicapped and discount rates for the elderly have been proposed.

By proposing legislation of this sort, the General Assembly is taking a direct role in an area previously delegated to regulatory commissions. The statutes on utility regulation contain only very general principles concerning rates. They are to be "fair, just and reasonable" (KRS 278.030), and are not to discriminate between customers (KRS 278.170). The statutes are similarly broad concerning many other aspects of the utility business.

Instead of providing detailed instructions for the conduct of utilities, the statutes contain detailed procedural guidelines for their regulation, in the public interest, by the Energy and Utility Regulatory Commissions (for-

merly the Public Service Commission). The commissions are empowered to set rates, conduct investigations, approve the sale of securities or the construction of facilities, and oversee essentially all activities undertaken by the companies under their jurisdiction.

It generally has been felt that the complexity of utility issues and the great differences between utility companies make detailed regulation by statute unworkable. Regulations can be changed more easily than statutes, and the quasijudicial procedures of the commissions allow them to tailor decisions to each situation. This is not the case everywhere, however. Legislatures in other states, such as Ohio or California, have enacted by statute many procedures which in Kentucky have been handled by regulation.

Legislative Alternatives

The General Assembly may wish to take a more direct role in the regulation of utilities. Since changing conditions have made utility rate structures a subject of public concern, clarification or expansion of the current statutory guidelines may be needed.

If the General Assembly wishes that a procedure be followed statewide, then a statute is required, because the commissions have no authority over municipal utilities. For example, commission regulations which limit the use of fuel adjustment clauses do not extend to municipally-owned electric companies. Legislation would be required to extend the regulation to them.

The Energy and Utility Commissions have the power to adjust rates and rate structures if the changes are justified by clear efficiency or cost considerations. Changes for social purposes probably require legislation. If the commission ordered a discount for senior citizens, financed by higher industrial rates, it probably would be overturned in court. The Energy Regulatory Commission recently ordered electric and gas utilities to establish lifeline rates for residential customers. The order has been appealed. Without enabling legislation, a change of this magnitude may exceed the

commission's authority.

Neither the regulatory commissions, nor the General Assembly, can forbid utilities from passing on costs which were reasonably incurred in providing service to customers, or require utilities to operate below cost. Besides bankrupting the utility, such action would represent denial of just compensation under Section 13 of the Kentucky Constitution. If a utility must pay a franchise fee as a condition of doing business, for example, it must be allowed to recover this expense from customers. On the other hand, utilities can be forbidden from "passing on" expenses which are deemed unnecessary, or to the benefit of investors rather than customers. As an example, the commissions acted recently to limit advertising expenditures. In some states, the same thing has been done by legislation.

Utility regulation is a complex and rapidly changing field. Proposed legislation should, if possible, provide only the basic principles to be followed, and allow details to be worked out in commission and company deliberations. The same statute may apply to large and small, investor-owned and public, urban and rural companies. Unexpected problems may become apparent on closer scrutiny, so flexibility is desirable.

Fiscal Implications

Legislation on utility rate reform would not necessarily have any fiscal impact. The commissions may need additional staff if legislation requires that extensive hearings be held, or that new administrative functions be performed.

Since this is a technical field, there is a danger that seemingly simple legislation may cause unexpected problems and expenses. In 1975, California passed what seemed to be a simple bill requiring lifeline rates for electric and gas customers. The legislation specified, however, that the lower rates apply to quantities of gas and electricity needed for lighting, cooking, space and water heating. The California commission held months of hearings to

determine these quantities, and eventually set at least 16 lifeline amounts for electricity alone, depending on the fuel used for cooking and heating, the type of residence, and the climatic zone.

Such an extreme situation in Kentucky is unlikely, but proposed legislation should be analyzed carefully to see whether it would require additional recordkeeping or administrative expense.

OTHER ISSUES

Prepared by Linda Kubala

Energy Conservation and Tax Relief

Issue

Should the state offer tax relief for approved energy conservation practices?

Background and Alternatives

Deductions and credits now are available from the federal income tax for expenditures on home insulation and weatherization, and for investments in such conservation systems as solar heating. Many states have enacted similar legislation. A number of states also have passed laws to exempt from property taxes the value of solar, wind, or bio-energy equipment.

It is a common practice to use tax incentives to encourage actions thought to be in the public interest. Short-term incentives for new products, such as solar equipment, may speed the development of cost-competitive products without subsidies. Tax incentives should be viewed with caution, however, since they will narrow the tax base to some degree, further complicate tax procedures, and possibly add administrative costs.

Gasohol Production in the Commonwealth

Issue

Should the State encourage development of gasohol production in the Commonwealth?

Background

Gasohol, a mixture of 90% gasoline and 10% ethyl alcohol, can be used by automobiles without mechanical changes. Since alcohol can be produced domestically from surplus agricultural products, it can reduce our dependence on foreign oil, and strengthen the market for grain.

Kentucky could encourage alcohol consumption by reducing or eliminating the gasoline tax for gasohol. This would further reduce the state road fund. Measures could also be taken to encourage alcohol production. Some of the state's idle distillery capacity could be modified to produce pure alcohol.

Alcohol is still slightly more expensive than gasoline but that gap is closing. Large-scale production may require some guarantee of sufficient grain supplies at reasonable prices, and may require technological changes to reduce fuel needs in the production process.

Road Funds

Issue

Can the road fund be maintained despite efforts to reduce gasoline comsumption?

Background and Alternatives

The 9 cents/gallon state motor fuels tax provides the bulk of road fund revenues. Since this tax is not pegged to the price of fuel, road fund receipts have not kept up with increased road maintenance and construction costs.

Legislation aimed at decreasing motor fuel consumption will further reduce revenues available for the road fund, unless the motor fuels tax is increased at the same time. Legislation to conserve gasoline includes subsidies for public transportation, carpooling and van pooling programs, removal of the gasoline tax on gasohol, and tax incentives for purchasing smaller cars.

It may be necessary to find alternate revenue sources to pay for road maintenance and construction.

State Government

THE DUTIES OF THE LIEUTENANT GOVERNOR

Prepared by Joyce S. Honaker

Issue

Should the General Assembly prescribe additional duties for the Lieutenant Governor? Should the duties of the Lieutenant Governor be primarily legislative or executive?

Background

The Kentucky Constitution assigns two part-time functions to the Lieutenant Governor: presiding over the Senate during sessions of the General Assembly, and acting as Governor if the Governor is absent from the state, dies, or is otherwise unable to perform his duties. The General Assembly has by statute assigned a few additional part-time functions to the Lieutenant Governor. The current statutory duties of the Lieutenant Governor are to serve as a member of the State Property and Buildings Commission, as a member of the Governor's Council on Agriculture, as vice-chairman of the Kentucky Turnpike Authority and in the Governor's absence, as chairman of the County Debt Commission. The Lieutenant Governor also appoints three members of the General Assembly's Board of Ethics and one member of the Public Officials' Compensation Board. Historically, Kentucky Governors have assigned various duties to their Lieutenant Governors, the scope of responsibilities varying according to the relationship between the two officeholders. Governor Julian Carroll has designated Lieutenant Governor Thelma Stovall as one of Kentucky's representatives on the Southern Growth Policies Board and the Education Commission of the States, two bodies created by interstate compacts to which Kentucky is a party.

From 1948 to 1975, the Lieutenant Governor served as chairman of the Legislative Research Commission, initially by designation of the Governor, who was ex officio chairman of the Commission from 1948 to 1956, and, effective

July 1, 1956, by statute. In recognition of the increasing work required of the Lieutenant Governor as Legislative Research Commission chairman, the 1956 General Assembly directed the Old Governor's Mansion be repaired, furnished, and assigned to the Lieutenant Governor as his official residence.

In 1974, the General Assembly enacted legislation to remove the Lieutenant Governor from the Legislative Research Commission and designate the President Pro Tempore of the Senate and the Speaker of the House of Representatives as co-chairmen of the Commission. The act became effective January 3, 1975, following then-Lieutenant Governor Julian Carroll's succession to the Governor's office, due to Governor Wendell Ford's election to the United States Senate.

Lieutenant Governor Stovall, the first Lieutenant Governor to serve following this change, has repeatedly voiced concern that the office now lacks any substantial official duties. Although proposals to amend the Constitution to abolish the office and assign its constitutional functions to other officials were discussed, the 1976 and 1978 General Assemblies took no action either to add duties to the office or propose its abolition to the voters. Both the salary and budget of the office were increased, however; and the salary of the Lieutenant Governor was made subject to automatic annual cost-of-living increases, as were those of all other elected state executive officers except the Governor.

Dissatisfaction with the current status of the office of Lieutenant Governor resulted in the 1978-79 Interim Joint Committee on State Government's decision, at its first meeting, to study the duties of the office and related matters and to assign the issue to a Subcommittee on Legislative Effectiveness and the Duties of the Lieutenant Governor. The Subcommittee has extensively discussed various alternatives regarding the duties of the office and has solicited the views of former Lieutenant Governors, Lieutenant Governor Stovall, and the announced candidates for nomination to the office in the May,

1979 primary election. The Subcommittee will report its recommendations to the Interim Joint Committee on State Government this summer.

Alternatives and Implications

As the Subcommittee has noted, there are five policy alternatives regarding the duties of the Lieutenant Governor that are logically available to the 1980 General Assembly:

1) Retain the status quo by assigning no additional statutory duties to the Lieutenant Governor, allowing any additional duties to be determined by each Lieutenant Governor and Governor.
2) Propose a constitutional amendment to abolish the office of Lieutenant Governor and assign its constitutional duties to one or more other public officials.
3) Assign additional executive branch duties to the Lieutenant Governor by statute.
4) Assign additional legislative branch duties to the Lieutenant Governor by statute.
5) Enact legislation assigning additional duties in both the executive and legislative branches to the Lieutenant Governor.

If the status quo is retained, the 1980 General Assembly will need to consider whether the budget proposed for the Lieutenant Governor's office is commensurate with its duties, both current and prospective. Because the working relationship between the newly-elected Governor and Lieutenant Governor may not have clearly developed before the General Assembly's 1980 Regular Session adjourns, structuring a budget for the office based on its duties during the forthcoming biennium, rather than on preceding budgets, may be difficult. Since the Kentucky Constitution prohibits the General Assembly from changing an officer's salary during the term for which he was elected, the General Assembly cannot adjust the Lieutenant Governor's compensation to conform with the duties he actually performs through his personal initiative

or agreement with the Governor.

Proponents of allowing additional duties of the Lieutenant Governor to be defined primarily by the Lieutenant Governor and Governor argue that statutorily mandated duties may hamper the Lieutenant Governor from performing other useful functions on his own initiative or at the Governor's request. They also question the effectiveness of statutory prescriptions if a good working relationship does not exist between the Governor and the Lieutenant Governor, and suggest that the General Assembly can best assure the utility and effectiveness of the office through budget control, overseeing its performance, and ultimately proposing a constitutional amendment to abolish the office, if advisable. Those favoring a statutory listing of duties of the Lieutenant Governor argue that a statutory list need not hamper the Lieutenant Governor from performing other functions, that it is difficult to control the budget appropriately if the duties are not clearly established by law, and that the General Assembly should assure that the constitutionally-mandated office is a useful one, regardless of whether particular Governors and Lieutenant Governors work together effectively.

If the General Assembly proposes to amend the constitution to abolish the office of Lieutenant Governor, it must determine which officials should appropriately act as Governor when necessary and who should be designated President of the Senate. It will also need to consider whether the amendment should be made effective immediately upon its adoption or at the end of the incumbent Lieutenant Governor's term of office. If proposed by the 1980 General Assembly, a constitutional amendment would be submitted to the voters in the November, 1981 general election in accordance with Constitution Section 256.

The constitutional functions of the Lieutenant Governor could be assigned to another statewide elected officer, to a legislative leader, or divided between the two types of offices, with an officer elected by statewide vote serving as acting Governor and a Senate member serving as its presiding offi-

cer. The statewide elective office most frequently cited in recommendations to the Subcommittee on Legislative Effectiveness and the Duties of the Lieutenant Governor has been that of Secretary of State. Others have proposed that the Senate elect its own presiding officer, who might also act as Governor when the need arises. This suggestion parallels Kentucky's present constitutional provision for the President Pro Tempore of the Senate to preside in the Lieutenant Governor's absence and to act as Governor if both the Governor and Lieutenant Governor are unable to do so. The Speaker of the House of Representatives could be made first in line of succession to the governorship; a 1975 proposal to the Interim Joint Committee on Elections and Constitutional Amendments would have made the leader of the Governor's political party in the House of Representatives first in the line of succession.

The third alternative would be to assign additional executive branch responsibilities to the Lieutenant Governor by statute. In general, those who favor an executive branch orientation for the office feel that the Lieutenant Governor's principal functions are to assist the Governor and to develop the capability to act as Governor when the need arises. They tend to view the office's role of Senate president as a traditional, secondary function and to see the expansion of legislative duties as an infringement on legislative independence.

Three general alternatives regarding the types of executive duties that might be assigned to the Lieutenant Governor are (1) to place him in a position that will give him experience in and some degree of authority over a variety of policy areas in state government, such as Secretary of the Cabinet or executive ombudsman; (2) to give the Lieutenant Governor responsibility for a particular policy area, such as economic development; or (3) to make him a member or chairman of various state boards and commissions and, in the Governor's absence, acting chairman of bodies that are chaired by the Governor. Those who emphasize the importance of the Lieutenant Governor's prepara-

tion to act as Governor tend to favor such assignment of general executive branch responsibilities to the office.

A key issue in determining the executive branch duties that the General Assembly might assign to the Lieutenant Governor is the unpredictability of the relationship between individual Governors and Lieutenant Governors. Because the Governor and Lieutenant Governor in Kentucky are separately elected and do not run as a team in the primary or general election, the potential exists for persons of different political parties, different intra-party factions, or conflicting philosophies or personalities to be elected to the two offices, each with a statewide constituency of his own. If conflicts arise in such cases, the possibility of the Lieutenant Governor's effectively performing a major role in the Governor's administration is minimal. A function assigned to him may receive little gubernatorial support. On the other hand, if the Governor and Lieutenant Governor are politically, personally and philosophically compatible, the Lieutenant Governor can conceivably occupy a major policy position in the executive branch. (As the history of the United States Vice-Presidency illustrates, however, team election does not guarantee a major policy role for the number two executive.)

The Subcommittee on Legislative Effectiveness and the Duties of the Lieutenant Governor has developed legislation placing the Lieutenant Governor on several executive branch and interstate boards concerned with economic development and related matters.

The fourth alternative, assigning the Lieutenant Governor greater legislative branch responsibilities, was the pattern that existed in Kentucky when the Lieutenant Governor was chairman of the Legislative Research Commission. Alternative legislative branch roles of the Lieutenant Governor might include membership on one or more interim joint committees or special permanent subcommittees of the Legislative Research Commission. Proponents of assigning more legislative responsibilities to the office generally assert that the

removal of the Lieutenant Governor from the Legislative Research Commission did not strengthen legislative independence, but weakened it, due to the long-existing pattern of close rapport between the Governor and the legislative leaders of his party. They often view legislative branch experience as a means for the Lieutenant Governor to obtain the wide-ranging experience in state government policy-making and problems necessary for serving as acting Governor. Opponents of a greater legislative branch role for the Lieutenant Governor generally argue that the removal of the Lieutenant Governor from the Legislative Research Commission was a step toward greater legislative independence from the executive, which the General Assembly should not reverse.

Adoption of the fifth alternative, the assignment of additional responsibilities in both the executive and legislative branches, would further promote the concept of the Lieutenant Governor's role as a mixed one. The major issue in defining the Lieutenant Governor's duties under this alternative would be balancing the legislative and executive roles and avoiding conflicts between them.

Fiscal Implications

Unless the additional duties assigned to the Lieutenant Governor are newly-created ones, there should be no significant fiscal impact associated with any of four of the five alternatives. The second alternative above, abolishing the office, would probably result in some cost savings, although its constitutional functions would be borne by other officials, who would need additional funds to perform the added duties.

STATE EMPLOYE SALARY IMPROVEMENTS

Prepared by Rhonda E. Morgan

Issue

Whether salary improvement money is fulfilling the state's needs for recruitment and retention of qualified state employes.

Background

The state employe salary schedule for the classified service is essential to an orderly, systematic and equitable pay system. Yet, it is not uncommon to find that state workers at the lower level of the pay scale receive more compensation for the same type work than their counterparts working in private enterprise. Employes at the top of the salary schedule -- scientists, executives, doctors -- are generally paid less than their counterparts in the private sector. External misalignment of pay, misalignment with the private sector, results in an abundance of top-quality workers for the lower paid jobs and fewer, less qualified workers for top professional, executive and scientific positions.

Recruitment and retention needs were recognized by Governor Carroll in the State Pay Plan Proposal presented to the General Assembly in 1976. The 1976 Executive Budget proposed a three-part pay plan: To provide an automatic five percent (5%) annual increment as a cost of living increase; a five percent (5%) merit increase from existing agency funds for true meritorious service; and $18 million over the biennium for pay improvements in selected job classes, based on the standards of equity, comparability of duties and responsibilities, and recruitment of needs.

Monies were appropriated by the General Assembly for salary improvements in accordance with the Governor's plan in the 1976 Regular Session. A total of $28 million was appropriated for the biennium -- $13 million for fiscal year 1976-1977 and $15 million for fiscal year 1977-1978. In 1978 the General

Assembly continued the program by appropriating $35,600,000 for salary improvements during the biennium -- $16,800,000 for fiscal year 1978-1979, and $18,800,000 for fiscal year 1979-1980. The funds were in addition to salary improvement monies that were incorporated into the budget of each agency of state government. The Department of Finance received the appropriation to be transferred to any major program area or agency of state government, based upon the recommendations of the Department of Personnel. The Department of Personnel bases its determination on agency recommendations as to which job classifications are to receive priority for salary improvements.

On June 30, 1978, the end of the last biennium, the State of Kentucky's Financial Report, prepared by the Department of Finance, indicated that $6.1 million of state employe Salary Improvement Fund monies had lapsed. The Secretary of Finance, in reply to questions regarding lapse of the funds, explained that the monies had lapsed because to have used the $6.1 million at the end of the biennium would have resulted in an annualized cost of $24.4 million over and above the original $28 million appropriation.

During the 1979 Extraordinary Session, the Department of Personnel requested an additional $7 million for salary improvements for the remainder of the 1978-1980 biennium, and $5 million was included in the budget for fiscal year 1978-1979. Also, during the 1979 Extraordinary Session, the General Assembly directed and authorized the Interim Joint Committee on State Government to monitor the use of salary improvement monies.

Implementation of the Program

Salary upgrades under the salary improvement program were first implemented on June 16, 1976. Approximately 35,000 persons were employed in the state merit system at any given time from June 16, 1976 through May 17, 1979. During this three-year period a total of 56,465 permanent full-time filled positions have been affected by salary upgrades from salary improvement monies. The total number of grade changes for this time period as a result of

salary improvements was 2,723 of which 581 job classes received multiple upgrades.

Implementation of the salary improvement program warrants examination. The purpose of the initial salary improvement appropriation was to recruit and retain employes in certain job classes, based on needs communicated by the individual agencies. Application of the funds to 56,456 full-time filled positions over a three-year period indicates either that the agencies are experiencing difficulty in recruiting and retaining all classes of personnel, or that the purpose of the salary improvement appropriation is being overlooked.

Problems in recruitment and retention of qualified employes in Kentucky's personnel system are evidenced by the volume of Personal Service Contracts which the state enters into yearly. The total dollar amount of contracts issued between July 1, 1978 and March 31, 1979, a nine-month period, was $31,381,930.40. Services rendered by professionals -- attorneys, architects, engineers, medical doctors and consultants -- comprised approximately one-half the cost of all personal service contracts entered into by the state.

State contracts for everything from medical services to engineering services result in greater spending of the taxpayer's dollar. The state must not only pay for the current rate for professional services, but also the cost of overhead and profit of the individual contractor. In addition to the higher cost of outside professional services contracted in the marketplace, the state must withhold for the majority of contracts, Social Security payments for the contractor's employes, and the contract is increased by the amount of the employer-contractor share of Social Security costs.

Possible Legislative Action

For certain positions, rates of pay produced by the state salary schedule are unrealistic, because they are far below salaries paid by private employers with whom the state must compete, reducing governmental ability to recruit and

retain a qualified workforce. Pay structures of competing employers are often so diverse, however, that it is virtually impossible to make adequate pay comparisons. In positions where comparability of pay with that of the private sector proves impossible under the state salary schedule, a viable alternative would be legislation allowing a Special Pay Schedule, a special scale to pay certain employes in certain positions. The Special Pay Schedule would be based on the needs of state government to recruit and retain employes in critical positions.

A Special Pay Schedule would require flexibility in terms of ability to change the jobs that could be included in the schedule, due to changes in the job market. For example, surface mining reclamation inspectors may be difficult to recruit or retain in 1979, due to competition from the federal government, thus requiring inclusion of mine inspectors in the Special Pay Schedule. But the competition and the job market may change in the future, and mine inspectors could be removed from the Special Pay Schedule after the state's needs and external conditions changed.

The Department of Personnel and individual agency personnel divisions would have to maintain a constant vigil to evaluate the job classes which necessitate the use of the special schedule. When turnover reaches excessive levels, or recruitment for a particular occupation becomes difficult, and analysis indicates that inadequate pay is the cause, inclusion of that occupation in the Special Pay Schedule would be prudent.

With five-sixths of the national work force employed by the federal government and in the private sector, and with the current inflation rate in excess of ten percent, it is becoming essential to rethink present methods of developing pay plans, and tailor the pay structure to the demands of the work and competition in the marketplace. Attracting qualified personnel will reduce the cost of personal service contracts, and retention of those same employes with competitive salaries will reduce turnover and increase efficiency in state government.

OTHER ISSUES IN STATE GOVERNMENT

Prepared by Joyce Honaker

Use of State Vehicles and Real Estate

Issue

Should the legislature revise the rules governing the purchase, control and use of state vehicles and real estate? What revisions in reporting and records covering state vehicles are necessary?

Background

In a June 1, 1978 letter addressed to the Legislative Research Commission, Governor Julian Carroll asked for legislative determination of appropriate policies concerning the purchase, control and use of state aircraft, passenger motor vehicles and real property, such as the executive mansion. The Legislative Research Commission referred the matter to the Interim Joint Committee on State Government. The Committee's Subcommittee on State Vehicles and Property is reviewing current policies and practices for possible revision. Any recommendations for legislation developed by the Subcommittee and approved by the Interim Joint Committee on State Government will be presented to the 1980 General Assembly for its consideration.

Lieutenant Governor as Acting Governor

Issue

Should the Lieutenant Governor automatically serve as Governor any time the Governor leaves the state, or should limitations be placed on the Lieutenant Governor's power to act as Governor in this event? Should methods be provided for determining the Governor's "inability" to continue serving due to a physical or mental infirmity?

Background

Kentucky's Constitution directs the Lieutenant Governor to act as Governor whenever the Governor is absent from the state, dies, or is otherwise unable to perform the duties of his office. The Subcommittee on Legislative Effectiveness and the Duties of the Lieutenant Governor is presently considering proposals to define the Governor's absence from the state, for purposes of the Lieutenant Governor's acting as Governor, as an absence that renders it impossible for the Governor to perform a duty that must be immediately performed. It would establish guidelines for determining whether an effective absence exists and create the presumption that the Governor is not effectively absent if the official who would act in his place does not make a good-faith effort to contact him. The Subcommittee is also considering developing legislation to establish a procedure for determining whether the Governor is unable to continue serving in the event of his physical or mental disability.

Fringe Benefits and State Officials

Issue and Background

Are the salaries and fringe benefits granted various state officials appropriate or excessive?

The Subcommittee on State Vehicles and Property of the Interim Joint Committee on State Government has been charged with examining the perquisites of various state offices to determine whether they should be continued or modified. Among the fringe benefits being examined are assignments of state vehicles to elected state officials, use of state aircraft, and state-provided housing.

State Mail Service

Issue

Should the General Assembly statutorily prescribe the appropriate classes of mail to be used in state mailing? Should the legislature direct the Department of Finance to adopt regulations prescribing the appropriate classes of mail to be used for various types of matter mailed by state agencies?

Background

State mail service is conducted by the Division of Postal Services in the Department of Finance pursuant to KRS 42.055. However, individual departments and employes generally determine the class of mail that will be used in particular instances. Various state statutes require registered mail or certified mail with return receipt requested to be used in some instances; these two relatively expensive methods of mailing may be overused. According to the Director of the Division of Postal Services, abuse of expensive classes of mail accounts for a large portion of the state's mailing expenses, which are in excess of four million dollars per year. The Interim Joint Committee on State Government is considering legislation on this subject.

Disability Benefits for State Employes

Issue

Should a new disability benefit program adopted for state police officers in 1979 be extended to additional state employes?

Background

A state employe who is disabled in the course of his employment may receive workmen's compensation benefits, Social Security benefits and disability retirement benefits, if he meets various eligibility requirements. Under 1979 Special Session Senate Bill 9, a state police officer who is disabled as a result of performing a hazardous duty in his work for the Bureau of State Police may elect to continue receiving his regular salary, less any government-financed disability benefits, instead of electing disability retirement. After reporting Senate Bill 9 to the House of Representatives, the House Committee on State Government requested that the Interim Joint Committee on State Government consider the advisability of extending this benefit option to additional state employes. A subcommittee of the interim committee is considering the issue; and any resulting legislative proposal that receives the full committee's endorsement will be presented to the 1980 General Assembly. Major questions concerning this issue are the number and types of employes to whom the benefit might be extended, and the cost of providing the benefit.